



August 27, 2018

Carmine Marra, P.E., CCCA
Vice President
Arcadis U.S., Inc.
100 Montgomery Street, Suite 300
San Francisco, CA 94104
Email: carmine.marra@arcadis.com

RE: 1) Notice of Contract Award (Revised)
2) Executed Agreement between the City and County of San Francisco
Public Utilities Commission and Arcadis U.S., Inc..

Dear Mr. Marra,

This letter provides a *Notice of Contract Award* for the following contracted work:

Contract ID Number: PRO.0068 (1000011734)
Contract Title: Biosolids Digester Facilities Construction
Management Staff Augmentation Services
Effective Date: August 28, 2018 to August 27, 2025
Amount: Total value of contract not to exceed
\$42,000,000.00

Work may not be charged against the Contract ID Number. Invoices must be charged against specific task orders only after a *Notice to Proceed* has been issued.

Sincerely,

Rosiana Angel
Infrastructure Budget and Payment Processing

Enclosure: Executed Agreement
cc: Ryan Cayabyab

File/PRO.0068 NCA

OUR MISSION: To provide our customers with high-quality, efficient and reliable water, power and sewer services in a manner that values environmental and community interests and sustains the resources entrusted to our care.

London Breed
Mayor

Ike Kwon
President

Vince Courtney
Vice President

Ann Moller Caen
Commissioner

Francesca Vietor
Commissioner

Anson Moran
Commissioner

Harlan L. Kelly, Jr.
General Manager



**City and County of San Francisco
San Francisco Public Utilities Commission
525 Golden Gate Avenue
San Francisco, California 94102**

Agreement between the City and County of San Francisco and

Arcadis U.S., Inc.

PUC.PRO.0068

Biosolids Digester Facilities Construction Management Staff Augmentation Services

This Agreement is made this 30th day of July, 2018, in the City and County of San Francisco ("City"), State of California, by and between Arcadis U.S., Inc., 100 Montgomery Street, Suite 300, San Francisco, CA 94104 ("Contractor") and City.

Recitals

WHEREAS, the San Francisco Public Utilities Commission ("Department" or "SFPUC") wishes to retain the services of a qualified consultant to provide Construction Management ("CM") Staff Augmentation Services for the Biosolids Digester Facilities Project as part of the SFPUC's Sewer System Improvement Program ("SSIP"); and

WHEREAS, this Agreement was competitively procured as required by San Francisco Administrative Code Chapter 6 through a Request for Proposal ("RFP") issued on January 24, 2018, in which City selected Contractor as the highest qualified scorer pursuant to the RFP; and

WHEREAS, the Local Business Enterprise ("LBE") subcontracting participation requirement for this Agreement is 20%; and

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

WHEREAS, the City's Civil Service Commission approved Contract number 44553 - 16/17 on November 22, 2017;

WHEREAS, approval for this Agreement was obtained from the San Francisco Public Utilities Commission by Resolution Number 18-0078 on May 8, 2018; and

WHEREAS, approval for this Agreement was obtained from the San Francisco Board of Supervisors by Resolution number 205-18 on June 28, 2018;

Now, THEREFORE, the parties agree as follows:

Article 1 Definitions

The following definitions apply to this Agreement:

- 1.1 "Agreement" means this contract document, including all attached appendices, and all applicable City Ordinances and Mandatory City Requirements which are specifically incorporated into this Agreement by reference as provided herein.
- 1.2 "City" or "the City" means the City and County of San Francisco, a municipal corporation, acting by and through the San Francisco Public Utilities Commission.
- 1.3 "CMD" means the Contract Monitoring Division of the City.
- 1.4 "Contractor" or "Consultant" means Arcadis U.S., Inc., 100 Montgomery Street, Suite 300, San Francisco, CA 94104.
- 1.5 "Deliverables" means Contractor's work product resulting from the Services that are provided by Contractor to City during the course of Contractor's performance of the Agreement, including without limitation, the work product described in the "Scope of Services" attached as Appendix A.
- 1.6 "Effective Date" means the date upon which the City's Controller certifies the availability of funds for this Agreement as provided in Section 3.1.
- 1.7 "Mandatory City Requirements" means those City laws set forth in the San Francisco Municipal Code, including the duly authorized rules, regulations, and guidelines implementing such laws, which impose specific duties and obligations upon Contractor.
- 1.8 "Party" and "Parties" mean the City and Contractor either collectively or individually.
- 1.9 "Services" means the work performed by Contractor under this Agreement as specifically described in the "Scope of Services" attached as Appendix A, including all services, labor, supervision, materials, equipment, actions and other requirements to be performed and furnished by Contractor under this Agreement.

Article 2 Term of the Agreement

2.1 The term of this Agreement shall commence on the later of: (i) August 28, 2018; or (ii) the Effective Date and expire on August 27, 2025, unless earlier terminated as otherwise provided herein.

2.2 The City shall have sole and absolute discretion to extend the Agreement term by modifying this Agreement as provided in Section 11.5, "Modification of this Agreement."

Article 3 Financial Matters

3.1 **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.

3.2 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 11.5, "Modification of this Agreement."

3.3 Compensation.

3.3.1 Payment. 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 General Manager of the SFPUC, 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 **Forty-Two Million Dollars (\$42,000,000)**. 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 except as set forth in Administrative Code Section 6.22(j).

3.3.2 Payment Limited to Satisfactory Services. Contractor is not entitled to any payments from City until SFPUC 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.

3.3.3 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.

3.3.4 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 3.3.6, or in such alternate manner as the Parties have mutually agreed upon in writing.

3.3.5 LBE Payment and Utilization Tracking System. Contractor must submit all required payment information using the online LBE Utilization Tracking System (LBEUTS) as required by CMD to enable the City to monitor Contractor's compliance with the LBE subcontracting commitments in this Agreement. Contractor shall pay its LBE subcontractors within three working days after receiving payment from the City, except as otherwise authorized by the LBE Ordinance. The Controller is not authorized to pay invoices submitted by Contractor prior to Contractor's submission of all required CMD payment information. Failure to submit all required payment information to the LBEUTS with each payment request may result in the Controller withholding 20% of the payment due pursuant to that invoice until the required payment information is provided. Following City's payment of an invoice, Contractor has ten calendar days to acknowledge using the online LBEUTS that all subcontractors have been paid. Contractor shall attend a LBEUTS training session. LBEUTS training session schedules are available at www.sfgov.org/lbeuts.

3.3.6 Getting paid for goods and/or services from the City.

(a) 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.

(b) 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.

3.3.7 Federally Funded Contracts.

(a) Disallowance. If Contractor requests or receives payment from City for Services, reimbursement for which is later disallowed by the State of California or United States Government, Contractor shall promptly refund the disallowed amount to City upon City's request. At its option, City may offset the amount disallowed from any payment due or to become due to Contractor under this Agreement or any other Agreement between Contractor and City.

(b) SRF/WIFIA Requirements. The funding for this Agreement is expected to be funded in full or in part under the Clean Water State Revolving Fund Program ("SRF") and the Water Infrastructure Finance and Innovation Act ("WIFIA"). In order to receive these funds, the City is required to incorporate some of the terms and conditions into this Agreement. The incorporated terms are located in Appendix C, "SRF/WIFIA Requirements." Contractor and its subcontractors must follow the State and Federal requirements in Appendix C, which is hereby incorporated by reference, to meet SRF and WIFIA requirements. To the extent that any term in the SRF/WIFIA Requirements is inconsistent with any other provisions of this Agreement such that Contractor is unable to comply with both the SRF/WIFIA Requirements and the other provision(s), the SRF/WIFIA Requirements shall apply.

(c) Contractor shall insert each SRF/WIFIA Requirements into each lower tier subcontract, as applicable. Contractor is responsible for compliance with the SRF/WIFIA Requirements by any subcontractor, lower-tier subcontractor or service provider.

3.3.8 Subcontractor Prompt Payment. Except as otherwise required by Chapter 14B of the Administrative Code, and consistent with the provisions of Section 6.42(f) of the Administrative Code, Contractor shall pay its subcontractors within seven calendar days after receipt of each progress payment from the City, unless otherwise agreed to in writing by both Contractor and the subcontractor. In the event that there is a good faith dispute over all or any portion of the amount due on a progress payment from Contractor to a subcontractor, the Contractor may withhold the disputed amount, but shall pay the undisputed amount. If Contractor violates the provisions of Section 6.42(f), then Contractor shall pay to the subcontractor directly the penalty specified in Section 6.42(f).

3.4 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 Services. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not fewer than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any Federal agency having an interest in the subject matter of this Agreement shall have the same rights as conferred upon City by this Section. Contractor

shall include the same audit and inspection rights and record retention requirements in all subcontracts.

3.5 Submitting False Claims. Pursuant to Article V of Chapter 6 of the Administrative Code, any contractor, subcontractor, supplier, consultant or subconsultant who submits a false claim may be subject to monetary penalties, investigation and prosecution and may be declared an irresponsible bidder or an unqualified consultant and debarred as set forth in that Article. A contractor, subcontractor, supplier, consultant or sub consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor, supplier, consultant or subconsultant: (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.

3.6 Payment of Prevailing Wages

3.6.1 Covered Services. Services to be performed by Contractor under this Agreement may involve the performance of trade work covered by the provisions of Section 6.22(e) [Prevailing Wages] of the Administrative Code (collectively, "Covered Services") and the Davis-Bacon Act, see Appendix C, Section III. The provisions of Section 6.22(e) of the Administrative Code and Appendix C are incorporated as provisions of this Agreement as if fully set forth herein and will apply to any Covered Services performed by Contractor and its subcontractors.

3.6.2 Wage Rates. The latest prevailing wage rates for private employment on public contracts as determined by the San Francisco Board of Supervisors and the Director of the California Department of Industrial Relations, and, when federal funds are involved, the current General Wage Determination Decisions, as determined by the U.S. Secretary of Labor, as such prevailing wage rates may be changed during the term of this Agreement, are hereby incorporated as provisions of this Agreement. Contractor agrees that it shall pay not less than the prevailing wage rates, as fixed and determined by the Board, to all workers employed by Contractor who perform Covered Services under this Agreement.

(a) Copies of the prevailing wage rates as fixed and determined by the Board of Supervisors are available from the Office of Labor Standards and Enforcement ("OLSE") and are also available on the Internet at <http://www.dir.ca.gov/DLSR/PWD>.

(b) For the latest Davis-Bacon rates, search for WD# "CA29" at the internet site: <http://www.wdol.gov/dba.aspx>.

3.6.3 Subcontract Requirements. As required by Section 6.22(e)(5) of the Administrative Code, Contractor shall insert in every subcontract or other arrangement, which it may make for the performance of Covered Services under this Agreement, a provision that said subcontractor shall pay to all persons performing labor in connection with Covered Services under said subcontract or other arrangement not less than the highest general prevailing rate of wages as fixed and determined by the Board of Supervisors for such labor or services.

3.6.4 Posted Notices. As required by Section 1771.4 of the California Labor Code, Contractor shall post job site notices prescribed by the California Department of Industrial Relations ("DIR") at all job sites where Covered Services are to be performed.

3.6.5 Payroll Records. As required by Section 6.22(e)(6) of the Administrative Code and Section 1776 of the California Labor Code, Contractor shall keep or cause to be kept complete and accurate payroll records for all trade workers performing Covered Services. Such records shall include the name, address and social security number of each worker who provided Covered Services on the project, including apprentices, his or her classification, a general description of the services each worker performed each day, the rate of pay (including rates of contributions for, or costs assumed to provide fringe benefits), daily and weekly number of hours worked, deductions made and actual wages paid. Every subcontractor who shall undertake the performance of any part of Covered Services shall keep a like record of each person engaged in the execution of Covered Services under the subcontract. All such records shall at all times be available for inspection of and examination by the City and its authorized representatives and the DIR.

3.6.6 Certified Payrolls. Certified payrolls shall be prepared pursuant to Administrative Code Section 6.22(e)(6) and California Labor Code Section 1776 for the period involved for all employees, including those of subcontractors, who performed labor in connection with Covered Services. Contractor and each subcontractor performing Covered Services shall submit certified payrolls to the City and to the DIR electronically. Contractor shall submit payrolls to the City via the reporting system selected by the City. The DIR will specify how to submit certified payrolls to it. The City will provide basic training in the use of the reporting system at a scheduled training session. Contractor and all subcontractors that will perform Covered Services must attend the training session. Contractor and applicable subcontractors shall comply with electronic certified payroll requirements (including training) at no additional cost to the City.

3.6.7 Compliance Monitoring. Covered Services to be performed under this Agreement are subject to compliance monitoring and enforcement of prevailing wage requirements by the DIR and /or the OLSE. Contractor and any subcontractors performing Covered Services will cooperate fully with the DIR and/or the OLSE and other City employees and agents authorized to assist in the administration and enforcement of the prevailing wage requirements, and agrees to take the specific steps and actions as required by Section 6.22(e)(7) of the Administrative Code. Steps and actions include but are not limited to requirements that:

(A) the Contractor will cooperate fully with the Labor Standards Enforcement Officer and other City employees and agents authorized to assist in the administration and enforcement of the Prevailing Wage requirements and other labor standards imposed on Public Works Contractor by the Charter and Chapter 6 of the San Francisco Administrative Code; (B) the Contractor agrees that the Labor Standards Enforcement Officer and his or her designees, in the performance of their duties, shall have the right to engage in random inspections of job sites and to have access to the employees of the Contractor, employee time sheets, inspection logs, payroll records and employee paychecks; (C) the contractor shall maintain a sign-in and sign-out sheet showing which employees are present on the job site; (D) the Contractor shall prominently post at each job-site a sign informing employees that the project is subject to the City's Prevailing Wage requirements and that these requirements are enforced by the Labor Standards Enforcement Officer; and (E) that the Labor Standards Enforcement Officer may audit such records of the Contractor as he or she reasonably deems necessary to determine compliance with the Prevailing Wage and other labor standards imposed by the Charter and this Chapter on Public Works Contractors. Failure to comply with these requirements may result in penalties and forfeitures consistent with analogous provisions of the California Labor Code, including Section 1776(g), as amended from time to time.

3.6.8 Remedies. Should Contractor, or any subcontractor who shall undertake the performance of any Covered Services, fail or neglect to pay to the persons who perform Covered Services under this Contract, subcontract or other arrangement for the Covered Services, the general prevailing rate of wages as herein specified, Contractor shall forfeit, and in the case of any subcontractor so failing or neglecting to pay said wage, Contractor and the subcontractor shall jointly and severally forfeit, back wages due plus the penalties set forth in Administrative Code Section 6.22 (e) and/or California Labor Code Section 1775. The City, when certifying any payment which may become due under the terms of this Agreement, shall deduct from the amount that would otherwise be due on such payment the amount of said forfeiture.

Article 4 Services and Resources

4.1 Services Contractor Agrees to Perform. Contractor agrees to perform the Services provided for in Appendix A, "Scope of Services." Officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Services beyond the Scope of Services listed in Appendix A, unless Appendix A is modified as provided in Section 11.5, "Modification of this Agreement."

4.2 Qualified Personnel. Contractor shall utilize only competent personnel under the supervision of, and in the employment of, Contractor (or Contractor's authorized subcontractors) to perform the Services. Contractor will comply with City's reasonable requests regarding assignment and/or removal of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall commit adequate resources to allow timely completion within the project schedule specified in this Agreement.

4.3 Subcontracting.

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

4.3.2 City's execution of this Agreement constitutes its approval of the subcontractors listed in Appendix B, Calculation of Charges, and/or Appendix B-1, Fee Schedule. Consistent with SFPUC policy, any modifications to the list of subcontractors must be effectuated via the City's approved invoice processing system, subject to the written approval of the City, and CMD, as needed.

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

4.4.1 **Independent Contractor.** For the purposes of this Article 4, "Contractor" shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement. Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor's compliance with this section. Should City determine that Contractor, or any agent or employee of Contractor, is not performing in accordance with the requirements of this Agreement, City shall provide Contractor with written notice of such failure. Within five (5) business days of Contractor's receipt of such

notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor, or any agent or employee of Contractor, warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

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

4.5 Assignment. The Services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by Contractor unless first approved by City by written instrument executed and approved in the same manner as this Agreement. Any purported assignment made in violation of this provision shall be null and void.

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

4.7 Reserved. (Liquidated Damages.)

4.8 Reserved. (Bonding Requirements.)

Article 5 Insurance and Indemnity

5.1 Insurance.

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

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

(b) Commercial General Liability Insurance with limits not less than \$5,000,000 each occurrence for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

(c) Commercial Automobile Liability Insurance with limits not less than \$2,000,000 each occurrence, "Combined Single Limit" for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

(d) Professional liability insurance, applicable to Contractor's profession, with limits not less than \$10,000,000 each claim with respect to negligent acts, errors or omissions in connection with the Services.

5.1.2 Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:

(a) Name as Additional Insured the United States Environmental Protection Agency, the California State Water Resources Control Board, and the City and County of San Francisco, its Officers, Agents, and Employees.

(b) 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.

5.1.3 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, except for non-payment for which no less than ten (10) days' notice shall be provided to the City. Notices shall be sent to the City address set forth in Section 11.1, entitled "Notices to the Parties."

5.1.4 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.

5.1.5 Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or

legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

5.1.6 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.

5.1.7 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.

5.1.8 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.

5.1.9 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.

5.2 **Indemnification.** Contractor shall indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them from and against any and all claims, demands, losses, damages, costs, expenses, and liability (legal, contractual, or otherwise) arising from or in any way connected with any: (i) injury to or death of a person, including employees of City or Contractor; (ii) loss of or damage to property; (iii) violation of local, state, or federal common law, statute or regulation, including but not limited to privacy or personally identifiable information, health information, disability and labor laws or regulations; (iv) strict liability imposed by any law or regulation; or (v) losses arising from Contractor's execution of subcontracts not in accordance with the requirements of this Agreement applicable to subcontractors; so long as such injury, violation, loss, or strict liability (as set forth in subsections (i) – (v) above) arises directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, Contractor's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except where such loss, damage, injury, liability or claim is the result of the 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.

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

5.3 Indemnification for Design Professionals. To the extent design professional services are performed under this Agreement, if any, the following indemnity and defense obligations shall apply: To the fullest extent permitted by law, Contractor shall assume the defense of (with legal counsel subject to approval of the City), indemnify and save harmless the City, its boards, commissions, officers, and employees (collectively "Indemnitees"), from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of the Contractor or its subconsultants), expense and liability of every kind, nature, and description (including, without limitation, incidental and consequential damages, court costs, attorneys' fees, litigation expenses, fees of expert consultants or witnesses in litigation, and costs of investigation), that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of the Contractor, any subconsultant, anyone directly or indirectly employed by them, or anyone that they control (collectively, "Liabilities").

5.3.1 Limitations. No insurance policy covering the Contractor's performance under this Agreement shall operate to limit the Contractor's Liabilities under this provision. Nor shall the amount of insurance coverage operate to limit the extent of such Liabilities. The Contractor assumes no liability whatsoever for the sole negligence, active negligence, or willful misconduct of any Indemnatee or the contractors of any Indemnatee.

5.3.2 Copyright Infringement. Contractor shall also indemnify, defend and hold harmless all Indemnitees from all suits or claims for infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark, or any other proprietary right of any person or persons in consequence of the use by the City, or any of its boards, commissions, officers, or employees of articles, work or deliverables supplied in the performance of Services. Infringement of patent rights, copyrights, or other proprietary rights in the performance of this Agreement, if not the basis for indemnification under the law, shall nevertheless be considered a material breach of contract.

Article 6 Liability of the Parties

6.1 **Liability of City.** CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 3.3.1, "PAYMENT," OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

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

6.3 **Reserved. (Liability for Incidental and Consequential Damages.)**

Article 7 Payment of Taxes

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

7.2 Contractor acknowledges that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:

7.2.1 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest.

7.2.2 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a "change in ownership" for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.

7.2.3 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the

possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code section 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

7.2.4 Contractor further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

Article 8 Termination and Default

8.1 Termination for Convenience

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

8.1.2 Upon receipt of the notice of termination, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by City and to minimize the liability of Contractor and City to third parties as a result of termination. All such actions shall be subject to the prior approval of City. Such actions shall include, without limitation:

(a) Halting the performance of all Services under this Agreement on the date(s) and in the manner specified by City.

(b) Terminating all existing orders and subcontracts, and not placing any further orders or subcontracts for materials, Services, equipment or other items.

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

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

(e) Completing performance of any Services that City designates to be completed prior to the date of termination specified by City.

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

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

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

(b) A reasonable allowance for profit on the cost of the Services described in the immediately preceding subsection (a), provided that Contractor can establish, to the satisfaction of City, that Contractor would have made a profit had all Services under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.

(c) The reasonable cost to Contractor of handling material or equipment returned to the vendor, delivered to the City or otherwise disposed of as directed by the City.

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

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

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

8.1.6 City's payment obligation under this Section shall survive termination of this Agreement.

8.2 Termination for Default; Remedies.

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

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

3.5	Submitting False Claims	10.10	Alcohol and Drug-Free Workplace
4.5	Assignment	11.10	Compliance with Laws
Article 5	Insurance and Indemnity	13.1	Nondisclosure of Private, Proprietary or Confidential Information
Article 7	Payment of Taxes		

(b) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, including any obligation imposed by ordinance or statute and incorporated by reference herein, and such default continues for a period of ten days after written notice thereof from City to Contractor.

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

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

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

(iii), any damages imposed by any ordinance or statute that is incorporated into this Agreement by reference, or into any other agreement with the City.

8.2.3 All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

8.2.4 Any notice of default must be sent by registered mail to the address set forth in Article 11.

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

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

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

3.3.2	Payment Limited to Satisfactory Services	9.2	Works for Hire
3.4	Audit and Inspection of Records	11.6	Dispute Resolution Procedure
3.5	Submitting False Claims	11.7	Agreement Made in California; Venue
Article 5	Insurance and Indemnity	11.8	Construction
6.1	Liability of City	11.9	Entire Agreement
Article 7	Payment of Taxes	11.10	Compliance with Laws
8.1.6	Payment Obligation	11.11	Severability
9.1	Ownership of Results	13.1	Nondisclosure of Private, Proprietary or Confidential Information

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

Article 9 Rights In Deliverables

9.1 **Ownership of Results.** Any interest of Contractor or its subcontractors, in the Deliverables, including any drawings, plans, specifications, blueprints, studies, reports,

memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors for the purposes of this agreement, shall become the property of and will be transmitted to City. However, unless expressly prohibited elsewhere in this Agreement, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

9.2 Works for Hire. If, in connection with Services, Contractor or its subcontractors creates Deliverables including, without limitation, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes, or any other original works of authorship, whether in digital or any other format, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works shall be the property of the City. If any Deliverables created by Contractor or its subcontractor(s) under this Agreement are ever determined not to be works for hire under U.S. law, Contractor hereby assigns all Contractor's copyrights to such Deliverables to the City, agrees to provide any material and execute any documents necessary to effectuate such assignment, and agrees to include a clause in every subcontract imposing the same duties upon subcontractor(s). With City's prior written approval, Contractor and its subcontractor(s) may retain and use copies of such works for reference and as documentation of their respective experience and capabilities.

Article 10 Additional Requirements Incorporated by Reference

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

10.2 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.

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

10.4 Nondiscrimination Requirements.

10.4.1 Nondiscrimination in Contracts. Contractor shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code, and the non-

discrimination requirements set forth in Appendix C, SRF and WIFIA Requirements. 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 and the requirements of Appendix C.

10.4.2 Nondiscrimination in the Provision of Employee Benefits. San Francisco Administrative Code 12B.2. Contractor does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

10.5 Local Business Enterprise and Non-Discrimination in Contracting Ordinance. Contractor shall comply with all applicable provisions of Chapter 14B ("LBE Ordinance"). Contractor is subject to the enforcement and penalty provisions in Chapter 14B. Contractor shall utilize LBE Subcontractors for at least **20.33%** of the Services except as otherwise authorized in writing by the Director of CMD. Contractor shall incorporate the requirements of the LBE Ordinance in each subcontract made in the fulfillment of Contractor's LBE subcontracting commitments.

10.6 Minimum Compensation Ordinance. Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P. Contractor is subject to the enforcement and penalty provisions in Chapter 12P. By signing and executing this Agreement, Contractor certifies that it is in compliance with Chapter 12P.

10.7 Health Care Accountability Ordinance. Contractor shall comply with San Francisco Administrative Code Chapter 12Q. Contractor shall choose and perform one of the Health Care Accountability options set forth in San Francisco Administrative Code Chapter 12Q.3. Contractor is subject to the enforcement and penalty provisions in Chapter 12Q.

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

10.9 Alcohol and Drug-Free Workplace. City reserves the right to deny access to, or require Contractor to remove from, City facilities personnel of any Contractor or subcontractor who City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs City's ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed

from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

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

10.10 Limitations on Contributions. By executing this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with 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, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City 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 and provide the names of the persons required to be informed to City.

10.11 Reserved. (Slavery Era Disclosure.)

10.12 Reserved. (Working with Minors.)

10.13 Consideration of Criminal History in Hiring and Employment Decisions.

10.13.1 Contractor 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 Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at <http://sfgov.org/olse/fco>. Contractor 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 Agreement shall have the meanings assigned to such terms in Chapter 12T.

10.13.2 The requirements of Chapter 12T shall only apply to a Contractor's or Subcontractor's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco. Chapter 12T 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.

10.14 Reserved. (Public Access to Nonprofit Records and Meetings.)

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

10.16 Reserved. (Sugar-Sweetened Beverage Prohibition.) Contractor 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.

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

10.18 Reserved. (Preservative Treated Wood Products.)

Article 11 General Provisions

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

To City: Ryan Cayabyab
Construction Manager
San Francisco Public Utilities Commission
Construction Management Bureau
525 Golden Gate Avenue, 6th Floor
San Francisco, CA 94102
rcayabyab@sfwater.org

To Contractor: Carmine Marra, P.E., CCCA
Vice President
Arcadis U.S., Inc.
100 Montgomery Street, Suite 300

San Francisco, CA 94104
carmine.marra@arcadis.com

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

11.2 Compliance with Americans with Disabilities Act. Contractor shall provide the Services in a manner that complies with the Americans with Disabilities Act (ADA), including but not limited to Title II's program access requirements, and all other applicable federal, state and local disability rights legislation.

11.3 Reserved.

11.4 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 law.

11.5 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 11.1, "Notices to Parties," regarding change in personnel or place, and except by written instrument executed and approved in the same manner as this Agreement. Contractor shall cooperate with Department to submit to the Director of CMD any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20% (CMD Contract Modification Form).

11.6 Dispute Resolution Procedure.

11.6.1 Negotiation; Alternative Dispute Resolution. The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement. If the Parties are unable to resolve the dispute, then, pursuant to San Francisco Administrative Code Section 21.36, Contractor may submit to the Contracting Officer a written request for administrative review and documentation of the Contractor's claim(s). Upon such request, the Contracting Officer shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing the Contractor of its right to judicial review. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. If the parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of

the City. Neither Party will be entitled to legal fees or costs for matters resolved under this section.

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

11.7 Agreement Made in California; Venue. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

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

11.9 Entire Agreement. This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Section 11.5, "Modification of this Agreement."

11.10 Compliance with Laws. Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and duly adopted rules 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.

11.11 Severability. Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

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

11.13 Order of Precedence. Contractor agrees to perform the services described below in accordance with the terms and conditions of this Agreement, implementing task orders, the RFP, and Contractor's proposal dated March 7, 2018. The RFP and Contractor's proposal are

incorporated by reference as though fully set forth herein. Should there be a conflict of terms or conditions, this Agreement and any implementing task orders shall control over the RFP and the Contractor's proposal.

Article 12 Department Specific Terms

12.1 Reserved.

Article 13 Data and Security

13.1 Nondisclosure of Private, Proprietary or Confidential Information.

13.1.1 If this Agreement requires City to disclose "Private Information" to Contractor within the meaning of San Francisco Administrative Code Chapter 12M, Contractor and subcontractor shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the Services. Contractor is subject to the enforcement and penalty provisions in Chapter 12M.

13.1.2 In the performance of Services, Contractor may have access to City's proprietary or confidential information, the disclosure of which to third parties may damage City. If City discloses proprietary or confidential information to Contractor, such information must be held by Contractor in confidence and used only in performing the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary or confidential information.

13.2 Reserved. (Payment Card Industry ("PCI") Requirements.)

13.3 Reserved. (Business Associate Agreement.)

Article 14 MacBride And Signature


14.1 **MacBride Principles - Northern Ireland.** The provisions of San Francisco Administrative Code §12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, Contractor confirms that Contractor has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

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

CITY

CONTRACTOR

Arcadis, U.S., Inc.



Harlan L. Kelly, Jr.
General Manager
San Francisco Public Utilities Commission


Carmine Marra, P.E., CCCA
Vice President
100 Montgomery Street, Suite 300
San Francisco, CA 94104

City Supplier Number: 0000025180

Approved as to Form:

Dennis J. Herrera
City Attorney

By: 
Julie Veit
Deputy City Attorney

Appendices

- A: Scope of Services
- B: Calculation of Charges
- B-1: Overhead and Profit Schedule
- C: Clean Water State Revolving Fund (SRF) Program and Water Infrastructure Finance and Innovation Act (WIFIA) Requirements

Appendix A

Scope of Services

1. Description of Services. The Contractor shall provide Construction Management (CM) Staff Augmentation Services for the Biosolids Digester Facilities Project (BDFP or Project) as part of the San Francisco Public Utilities Commission's (SFPUC's) Sewer System Improvement Program (SSIP). These CM services include, but are not limited to, Pre-Construction Services, Construction Administration, Construction Inspection, Construction Contracts Management, Project Controls, and Building Information Modeling (BIM). The Contractor shall serve as the Biosolids Digester Facilities Project Consultant Construction Manager (CCM) and shall provide fully qualified and experienced CM personnel to assist the SFPUC in managing the construction of the Project. The Contractor shall provide the City with CM Staff Augmentation Services to facilitate successful project delivery by meeting the SFPUC's quality goals, scope, schedule, and budget.

The CCM shall be required to provide fully qualified and experienced CM personnel to support the City in delivering the Project. The CM personnel responsible for undertaking the tasks described below are as follows: Project Resident Engineer, Assistant Resident Engineer (Nos. 1, 2, and 3), Construction Scheduler, Field Contracts Administrator, Estimator, Testing & Startup Engineer, Assistant Office Engineers (Nos. 1 and 2), BIM Specialist, Lead Construction Inspector (Mechanical/Electrical/Instrumentation & Control (I&C)), Construction Inspectors (Nos. 1 through 8), and Assistant Administrative Document Control Specialists (Nos. 1 and 2).

The Contractor shall be responsible for providing the Project Consultant Construction Manager (CCM) functional duties as outlined in Sections 1 and 2 of the CM Plan. The Contractor must perform these tasks in a manner that is consistent with the approach to construction management described in the CM Plan.

The CM Plan, as well as the Request for Proposals (PRO.0068) dated January 24, 2018 (including all addenda), are hereby incorporated into this Agreement as if fully set forth herein.

TASK 1: PRE-CONSTRUCTION SERVICES

- 1.A Review and comment on the Construction Manager/General Contractor's (CM/GC's) construction schedule (2.1.1).
- 1.B Provide constructability and biddability reviews (2.1.2).
 - Review and comment, as needed, on the assembly and completeness of bid packages.
 - Review and comment on contractor required submittals.
- 1.C Provide cost estimates, as needed, for bid packages to be reconciled with the estimates of the Project design consultant and the CM/GC (1.6.32).

- 1.D Provide bid and award phase assistance for construction bid package procurement (2.1.3 and 2.1.5).
- 1.E Provide support, as needed, for the construction bid packages' pre-bid conferences (2.1.6).
- 1.F Provide assistance, as needed, with permits and rights-of-way (2.1.7).
- 1.G Provide a Resource Loaded Task Plan for CM consultant services (2.2.5):
Contractor should note that the Plan will match the Project CCM scope of services, Work Breakdown Structure (WBS) (tasks, subtasks, and subtask activities), and level of resource loading (monthly person-hour loading of each resource) in a format as determined by the SSIP Deputy Director of Construction (or designee).
- 1.H Provide a Project CM Safety Plan (2.1.10).
- 1.I Provide a Project Risk Management Plan (2.1.11).
- 1.J Provide a plan for the development, implementation, and management of Building Information Modeling (BIM) (2.2.4).

TASK 2: CONSTRUCTION ADMINISTRATION

- 2.A Implement a Project CM Safety Plan (2.2.2).
- 2.B Implement a Construction Management Information System (CMIS) (2.2.3).
- 2.C Update and maintain on a monthly basis a Resource Loaded Task Plan for CM consultant services (2.2.5).
- 2.D Provide support, as needed, for the SFPUC's public outreach efforts (2.2.6).
- 2.E Administer security requirements for the Project as defined by the SFPUC (2.2.7).
- 2.F Assist the SFPUC with the implementation of the Project Labor Agreement (PLA) (2.2.8).
 - The PLA is located on the www.sfwater.org website at the following link:
<https://sfwater.org/modules/showdocument.aspx?documentid=146>
 - The WSIP PLA has been extended to include the SSIP and is located at the following link:
<http://www.sfwater.org/Modules/ShowDocument.aspx?documentID=9178>
- 2.G Implement and manage a Project Risk Management Plan during the lifetime of the Project (2.2.9).
- 2.H Provide construction administration services for the Project (2.2.9).
- 2.I Provide administrative support, as needed, for the Project (1.6.22).

- 2.J Provide testing and startup support services (2.2.9).
- 2.K Provide support for the acquisition of spare parts and warranties (2.2.9).
- 2.L Manage the completion and acceptance of the work for Project closeout (2.2.9).
- 2.M Provide support for Project administration closeout and turnover (2.2.9).

TASK 3: CONSTRUCTION INSPECTION

- 3.A Provide quality control construction inspection services (2.2.10):
Contractor should note the California Building Code (CBC) 2013, as adopted by the City and County of San Francisco's Department of Building Inspection and referred to as the San Francisco Building Code, lists structural inspections/observations that must be carried out on construction projects.)

TASK 4: CONSTRUCTION CONTRACTS MANAGEMENT

- 4.A Provide construction contracts management services (2.2.11).

TASK 5: PROJECT CONTROLS

- 5.A Provide project controls services (2.2.12).

TASK 6: BUILDING INFORMATION MODELING (BIM)

- 6.A Provide BIM services for the Project (2.2.4).

TASK 7: COMMUNITY BENEFITS

The selected Contractor commits to providing the Community Benefits Commitments detailed in its Community Benefits (CB) Submittal during the term of the Agreement. The representations, warranties, and other terms contained in the selected Contractor's CB Submittal will be the basis for a Community Benefit Plan, but are for the sole benefit of the parties hereto and shall not be construed as conferring any rights on any other persons or entities.

Providing community benefits is a deliverable, zero-dollar task. No hours or dollars should be allocated or included in selected Contractor's costs for the services under this Agreement in order to perform or deliver the voluntarily proposed CB Commitments. The selected Contractor shall fund the CB Commitments independently and such funding shall neither be tied to, nor dependent upon, SFPUC funds or sources of funding, receivable from the SFPUC, including retention associated with this Agreement. This requirement of independent funding includes direct financial contributions and any funding related to the performance or delivery of the CB Commitments. The provision of CB Commitments does not entitle the selected Contractor to additional work beyond that which is specified within the Agreement.

The selected Contractor shall commence performance of the CB Commitments promptly after issuance of the first Notice to Proceed (NTP) for this Agreement. CB Commitments performed

as part of previous contracts or prior to Contractor being awarded the Agreement cannot count towards the selected Contractor's CB Commitments for this Agreement. If a Contractor has established programs or plans that are consistent with the Community Benefits areas described in this RFP, the selected Contractor may continue those programs as part of its CB Commitments and will be given credit for activities that are performed following the issuance of the first NTP for this Agreement.

Project Team

Peter Wijsman shall serve as the Executive in Charge to manage the Contractor's CB Commitments and provide fiduciary oversight. The Executive in Charge shall ensure that the CB Commitments listed in the Community Benefits Summary Table below are delivered to the communities that they are intended to benefit in a transparent and accountable manner. The Executive in Charge shall work with the Community Benefits Coordinator, Melissa Pomales, to organize, plan, track, measure, and report on Contractor's CB Commitments. The Executive in Charge is responsible for coordinating the senior management of Contractor's subconsultants to provide benefits to the community should such subconsultants choose to participate.

Community Benefits Commitments

Contractor shall provide \$315,000 in direct financial contributions and \$185,000 in volunteer hours. Contractor commits to a minimum contribution of \$500,000 over the term of this Agreement as stated in the Community Benefits Summary Table below.

Community Benefits Summary Table

				(A)	(B)	(C)	(D)	(E)	(F)
Community Benefit Priority Area (choose from above)	Description of Community Benefit Program Area or Partner	Expected Outcomes	Timetable & Duration	Direct Financial Contribution	Volunteer Hours	Volunteer Hourly Rate (rate is standardized and cannot be changed)	Total Value of Volunteer Hours (B x C)	In-Kind Contributions	Total Contributions (A + D + E)
1. Education	- Young Community Developers - City College of San Francisco - San Francisco Education Fund's Espanola Jackson Scholarship	- Develop programmatic model to educate and prepare students for permanent career opportunities. - Support college scholarship for local students.	Years 1-7	\$215,000	560 Hrs	\$150/hr	\$84,000	\$0	\$299,000
2. Environmental Justice	- Friends of the Urban Forest - San Francisco Unified School District Bayview Zone Parent Teacher Associations	- Tree planting and greenscaping around Southeast Plant and neighboring community to make area more aesthetically pleasing and improve air quality. - Engage students and promote environmental education and stewardship.	Years 1-7	\$100,000	673 Hrs	\$150/hr	\$101,000	\$0	\$201,000
TOTAL				\$315,000	1,233 Hrs		\$185,000	\$0	\$500,000

Accountability and Deliverables

Contractors shall provide a description of the accountability methods to ensure that the proposed CB activities will be delivered in a transparent and accountable manner. To maximize transparency and accountability, a process must be proposed that will assist in independently verifying that such funds and resources were delivered to the intended beneficiaries.

Contractor must provide the following deliverables during performance of the Agreement:

1. Community Benefits Plan and Timeline

- Contractor shall develop a Community Benefits Plan within three (3) months of issuance of the first NTP. The Community Benefits Plan will provide details regarding community partnerships, expenditures, a schedule, and timelines related to the CB Submittal.
- Contractor is invited to meet once a year thereafter or as needed with the SFPUC External Affairs Community Benefits and Social Responsibility Manager during the term of the Agreement to discuss the work plan, timelines, partners, strategic delivery, scale, and performance necessary to ensure the commitments maximize collective resources and positive impact.

2. Community Benefits Commitments and Reporting

- Contractor shall deliver the proposed CB Commitments specified in the CB Submittal and the Community Benefits Plan. Any proposed changes to the CB Commitments as set forth herein shall be submitted in writing for review by the External Affairs Community Benefits and Social Responsibility Manager.
- Contractor shall submit biannual progress reports to the SFPUC External Affairs Community Benefits and Social Responsibility Manager, which detail the geographic scope of commitment, activities and outcomes, key metrics, and the total number of hours, dollars, etc. contributed to-date. Progress reports must be submitted on the last business day of the month following the close of 2nd and 4th business quarters. As part of the progress reports, Contractor also must submit documents to substantiate that the CB Commitments and any funds associated therewith were delivered to the communities they were intended to benefit. These reporting requirements may be adjusted over the duration of the program due to system improvements.
- Contractor shall also submit an annual report documenting the culmination of their CB Commitments, beneficiaries, and outcomes for the year.

Contractor shall provide all of the CB Commitments, consistent with all of the terms of Contractor's Community Benefits Proposal dated March 2018, which is incorporated herein by this reference. Should there be any conflicts or discrepancies between the language in this section and the Contractor's Community Benefits Proposal, the terms of the language of this section shall prevail as Contractor and SFPUC's final mutual understanding and agreement.

All written Deliverables, including any copies, shall be submitted on recycled paper and printed on double-sided pages to the maximum extent possible.

2. Services Provided by Attorneys. Any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. No invoices for services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will be paid unless the provider received advance written approval from the City Attorney.

3. Department Liaison

In performing the Services provided for in this Agreement, Contractor's liaison with the SFPUC will be **Ryan Cayabyab** ("SFPUC Construction Manager").

4. **Task Orders.** Performance of the service under this Agreement will be executed according to a task order process, and Contractor is required to provide adequate quality control processes and deliverables in conformance with the technical requirements of the task order. The SFPUC Construction Manager will initially identify tasks and request the Contractor to propose a project scope, sub tasks, staffing plan, LBE utilization, schedule, deliverables, budget and costs to complete the task in accordance with Appendix B. All costs associated with the development of the scope of work for each task order shall be borne by Contractor. A final task order will be negotiated between the SFPUC Construction Manager and the Contractor and then submitted for approval. However, as provided in the RFP, the budget, if applicable, identified for tasks is an estimate, and the City reserves the right to modify the applicable budget allocated to any task as more specific information concerning the task order scope becomes available.

The task order request will be processed for Controller certification of funding, after which a "Notice to Proceed" will be issued. The Contractor is hereby notified that work cannot commence until the Contractor receives a written Notice to Proceed in accordance with the San Francisco Administrative Code. *Any work performed without a Notice to Proceed will be at the Contractor's own commercial risk.* The calculations of costs and methods of compensation for all task orders under this Agreement shall be in accordance with Appendix B.

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

6. **Performance Evaluation.** Performance evaluations support the SFPUC's objective of continuously improving the quality of Contractor services. The SFPUC may or may not, at its sole discretion, conduct evaluation/s of Contractor's performance. Ratings are ultimately the decision of the SFPUC and are not subject to negotiation with the Contractor. However, the Contractor may provide comments on a performance evaluation form if an evaluation is performed. In the event that the SFPUC conducts performance evaluation(s) of the Contractor, such performance evaluation(s) shall not confer any express or implied rights upon Contractor, nor shall they shift any liability to the SFPUC for the Contractor's performance of the contract.

7. **Standard of Care for Design Professionals.** To the extent design professional services are performed under this Agreement, if any, the following standard of care applies: Contractor acknowledges and agrees that Contractor shall perform its services under this Agreement in accordance with the professional standard of care applicable to professionals providing similar services for projects of similar type, size and complexity in the San Francisco Bay Area.

Appendix B Calculation of Charges

As part of Contractor's proposal dated March 7, 2018, Contractor submitted proposed billing rates, attached hereto as Appendix B-1, Fee Schedule, for the requested tasks identified in Appendix A, Scope of Services which are incorporated herein by this reference.

As provided in the Fee Schedule, the budget identified for tasks is an estimate, and the City reserves the right to modify the budget allocated, if applicable, to any task as more specific information concerning the task order scope becomes available.

No invoices for Services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will be paid unless the provider received advance written approval from the City Attorney.

1. Billing Rates. Contractor's billing rates and each and every staff classification as stated in Appendix B-1 will be the billing rates for the listed individuals. The billing rate may not exceed the lowest rate charged to any other governmental entity except the City and County of San Francisco. Billing rates will be fixed for the first two years of the contract, and may be adjusted annually thereafter. The first adjustment may be made no earlier than the second anniversary of the effective start date as indicated in the original Notice of Contract Award letter. The amount of the adjustment is limited to a maximum of the CPI annual percentage change increase (San Francisco Bay Area for Urban Wage Earners and Clerical Workers) for the previous calendar year. No increase, including the annual CPI adjustment, is allowed to billing rates exceeding \$220 per hour, unless the SFPUC Construction Manager authorizes an increase to the rate in writing. Additionally, no increase, including the annual CPI adjustment, is allowed to billing rates exceeding \$240 per hour for the following Team Members: Project Resident Engineer, Assistant Resident Engineer (No. 1), Field Contracts Administrator, and Lead Construction Inspector.

2. Personnel Changes. Any proposed changes to project personnel or staff classification as listed in Appendix B-1 must be approved in advance of any work commencing on the project and in writing by the SFPUC Construction Manager. These personnel changes may include but are not limited to:

- Proposed addition of new project personnel to perform requested services that are within the scope of the Agreement;
- Proposed change of staff classification for existing personnel; and/or
- Proposed replacement or substitution of any employee listed in Appendix B-1 due to termination, promotion or reclassification.

All proposed personnel must meet all qualification requirements established by the Agreement.

3. Effective Overhead and Profit Rate. The Effective Overhead and Profit Rate (EOPR) for PRO.0068 is 2.54. The EOPR or Individual Firm Overhead and Profit Rate will apply to the billing rate of all individuals not listed in Appendix B-1. The EOPR will also apply to all amendments to the Agreement. If a new subcontractor is added during the duration of the Agreement, the new individual firm multiplier can be no more than the EOPR.

4. Other Direct Costs (ODC). Direct reimbursable expenses (ODCs – Other Direct Costs) shall include actual direct costs (with no markup) of expenses directly incurred in performing the work. All ODCs are subject to pre-approval in writing by the SFPUC Construction Manager.

a. The following items will be eligible for reimbursement as ODCs:

- Task-specific out-of-town travel as requested by SFPUC (“out-of-town” shall mean outside the nine Bay Area counties: San Francisco, Alameda, Marin, Santa Clara, Sonoma, Contra Costa, Napa, San Mateo, and Solano). Out-of-town travel must be non-routine;
 - Rental vehicle: Traveler must select the most economical contractor and type of vehicle available and acquire any commercial rate or government discount available when the vehicle is rented;
 - Personal vehicle use: The contractor will be paid per mile as established by the United State Internal Revenue Service and only for that portion of travel that is outside the nine Bay Area counties and non-routine. Should the travel begin or end on a normal workday, the contractor shall subtract commuting mileage from total mileage to calculate reimbursable mileage. The contractor shall submit to the City an approved mileage log and expense report with its monthly invoices;
 - Project vehicle rental/lease cost, gasoline, tolls and parking. The project vehicle must be requested and pre-authorized by the SFPUC staff. The SFPUC will only reimburse the business portion of the vehicle use. Vehicle mileage log and expense report are required for consideration of reimbursement. Since auto insurance is already part of the contract, no additional insurance will be reimbursed. Commuting to Moccasin from contractor’s temporary home is not eligible for reimbursement;
- Specialty printing (“specialty” as used herein shall mean large volume printing and color printing and requires prior written approval by SFPUC project staff and documentation of the written approval by the SFPUC must be included with the invoice);
- Task-related permit fees;
- Task-specific safety equipment and expedited courier services when requested by SFPUC staff; and

- Specialty services and items¹ used solely for the benefit of the Project, such as field trailer maintenance and phone/internet services, golf carts for SEP transportation, noise/dust/vibration monitoring equipment and maintenance services, two-way radios, specialty computer hardware and software, etc. All such services and items must receive prior written approval by SFPUC project staff and documentation of the written approval by the SFPUC must be included with the invoice. Note that all specialty hardware and software will be the property of the City.
- b. Anything not listed above is not eligible for reimbursement. They include, but are not limited to:
- All other travel expenses such as parking, bridge tolls, public transit, vehicle mileage within the nine Bay Area Counties, and travel from selected Contractor's home office to SFPUC facilities not requested by SFPUC;
 - Non-routine travel from contractor's home office to SFPUC facilities or to Moccasin;
 - Contractor staff relocation costs;
 - Any labor charges or pass-throughs including, but not limited to, administrative and clerical staff time;
 - Telephone calls and faxes originating in the firm's home office, standard computer use charges, computer hardware or software (other than the specialty hardware or software mentioned above), communication devices, and electronic equipment;
 - All meals, including refreshments and working lunches with SFPUC staff;
 - Equipment to be used by SFPUC staff;
 - Ergonomic office equipment; and
 - Postage and courier services that are not requested by SFPUC staff.

5. Subcontractor Make-up and Documentation. Second-tier and pass-through subcontracting is prohibited. Additional subcontractors may be added to the Contractor team after obtaining pre-authorization by the SFPUC Construction Manager and the Contract Monitoring Division (CMD).

6. Subcontractor Fees:

- Subject to the restrictions in Section 4;
- Shall be subject to written pre-approval by the Contractor's liaison with the SFPUC;
- Subcontractor administration markup is limited to five percent (5%) of subcontractors' actual labor costs.

7. Retention. Five percent (5%) of each invoice payment will be withheld for each task order. When the work for the task order or defined critical milestones has been completed to the satisfaction of the SFPUC Construction Manager and all work products have been received and

¹ These reimbursements are contingent upon City accounting policies.

approved by the SFPUC Construction Manager, the Contractor may request that the retention be released. In lieu of money retention, an irrevocable letter of credit acceptable to the City will be accepted.

8. Invoice Requirements. As part of its contracting obligations, the Contractor is required to utilize the City's approved invoicing and time-keeping systems, as specified by the SFPUC project team, for the purposes for which they are intended. Contractor shall not bill the SFPUC to use these systems. Contractor shall not charge SFPUC to send appropriate personnel to user training.

Contractor shall follow the invoicing and supporting documentation instructions as prescribed by the SFPUC.

Invoice Supporting Documentation:

All labor hours must be substantiated by timesheet summaries extracted from the Contractor's accounting system. Each timesheet summary shall include the staff person's name, company, dates of the days worked, and the number of hours worked each day.

Mileage ODCs must be accompanied by mileage logs providing the beginning and ending mileage to substantiate the variable portal-to-portal distance and local driving required while performing the work. All other ODCs must be substantiated with copies of original receipts including a brief description for each receipt memorializing the purpose.

CMD Form 7 "Progress Payment Form" must be included with each invoice to identify the participation and amount payable to the subcontractors.

CMD Form 9 "Payment Affidavit" must be submitted within ten (10) days of receiving payment for each invoice to document the subcontractor's payment by the prime contractor.

**Appendix B-1
Overhead and Profit Schedule**

Submitted by **Arcadis U.S., Inc.**

Task Number	Task Summary	Staff Position/Role	Name of Proposed Staff Person	Firm	SFPUC Estimated Number of Hours	Base Rate (\$/hour)	Base Labor Cost (\$) = [F]*[G]	Firm Overhead and Profit Rate (OPR, or "Multiplier") - one per firm	Billing Rate (\$/hour) = [G]*[I]	Actual Labor Cost (\$) = [F]*[J]
[A]	[B]	[C]	[D]	[E]	[F]	[G]	[H]	[I]	[J]	[K]
1	Pre-Construction Services	Project Resident Engineer	Carmine Marra	Arcadis	480	\$92.31	\$44,307	2.600	\$240	\$115,198
		Assistant Resident Engineer No. 1	David Schwartz	CDM Smith	480	\$93.12	\$44,698	2.560	\$238	\$114,426
		Field Contracts Administrator	Jon Westervelt	Arcadis	960	\$88.89	\$85,334	2.600	\$231	\$221,869
		Estimator	Sunil Shah	C M Pros	896	\$75.00	\$67,200	2.350	\$176	\$157,920
		Scheduler	George Escano	ECS	960	\$75.00	\$72,000	2.350	\$176	\$169,200
		BIM Specialist	Anilea Bennett	HDR	960	\$48.46	\$46,522	2.570	\$125	\$119,561
		Lead Construction Inspector - Mech / Elec / I&C	Dick Pascucci	Arcadis	320	\$87.78	\$28,090	2.600	\$228	\$73,033
TASK 1 TOTAL					5,056	-	\$388,150	-	-	\$971,207
2	Construction Administration	Project Resident Engineer	Carmine Marra	Arcadis	12,480	\$92.31	\$1,151,979	2.600	\$240	\$2,995,145
		Assistant Resident Engineer No. 1	David Schwartz	CDM Smith	11,552	\$93.12	\$1,075,722	2.560	\$238	\$2,753,849
		Assistant Resident Engineer No. 2	Ron Esmilla	Arcadis	11,600	\$81.48	\$945,168	2.600	\$212	\$2,457,437
		Assistant Resident Engineer No. 3	Constance Leonard	CDM Smith	11,600	\$71.21	\$826,036	2.560	\$182	\$2,114,652
		Assistant Office Engineer No. 1	Lizzy English	HDR	12,200	\$43.27	\$527,894	2.570	\$111	\$1,356,688
		Assistant Office Engineer No. 2	Garrett Kehoe	Arcadis	7,920	\$38.91	\$308,167	2.600	\$101	\$801,235
		Assistant Administrative Document Control Specialist No. 1	Jonathan Valencia	Hollins	12,056	\$42.00	\$506,352	2.350	\$99	\$1,189,927
		Assistant Administrative Document Control Specialist No. 2	Annette Hollenbeck	Arcadis	8,240	\$28.95	\$238,548	2.600	\$75	\$620,225
		Field Contracts Administrator	Jon Westervelt	Arcadis	5,400	\$88.89	\$480,006	2.600	\$231	\$1,248,016
TASK 2 TOTAL					93,048	-	\$6,059,872	-	-	\$15,537,173

3	Construction Inspection	Lead Construction Inspector - Mech / Elec / I&C	Dick Pascucci	Arcadis	11,896	\$87.78	\$1,044,231	2.600	\$228	\$2,715,000
		Testing & Startup Engineer	Carl Hendrickson	CDM Smith	5,992	\$63.18	\$378,575	2.560	\$162	\$969,151
		Construction Inspector - Mechanical No. 1	Steve Swenson	Arcadis	11,312	\$56.00	\$633,472	2.600	\$146	\$1,647,027
		Construction Inspector - Mechanical No. 2	Carlos Melvin	CDM Smith	9,456	\$48.23	\$437,151	2.560	\$118	\$1,119,106
		Construction Inspector - Electrical / I&C No. 1	Nick Manzanares	DCMS	11,216	\$76.00	\$852,416	2.400	\$182	\$2,045,798
		Construction Inspector - Electrical / I&C No. 2	Dale Johnson	HDR	9,840	\$77.50	\$782,600	2.570	\$199	\$1,959,882
		Construction Inspector - Civil / Structural / Architectural	Jens Storm	Arcadis	9,616	\$56.00	\$538,496	2.600	\$146	\$1,400,090
		Construction Inspector - Geotechnical	Steven Mercer	CDM Smith	7,008	\$39.14	\$274,293	2.560	\$100	\$702,190
		Construction Inspector - NACE / Coating	Greg Mieczkowski	HDR	1,712	\$62.22	\$106,521	2.570	\$160	\$273,758
		Construction Inspector - Hazardous Materials	Danny Willis	Arcadis	2,064	\$39.20	\$80,909	2.600	\$102	\$210,363
TASK 3 TOTAL					80,112	-	\$5,108,663	-	-	\$13,042,366
4	Construction Contracts Management	Field Contracts Administrator	Jon Westarvelt	Arcadis	5,400	\$88.89	\$480,006	2.600	\$231	\$1,248,016
TASK 4 TOTAL					5,400	-	\$480,006	-	-	\$1,248,016
5	Project Controls	Estimator	Sunil Shah	C M Pros	10,600	\$75.00	\$795,000	2.350	\$176	\$1,868,250
		Scheduler	George Escano	ECS	10,680	\$75.00	\$801,000	2.350	\$176	\$1,882,350
TASK 5 TOTAL					21,280	-	\$1,596,000	-	-	\$3,750,600
6	Building Information Modeling (BIM)	BIM Specialist	Anilea Bennett	HDR	11,480	\$48.46	\$556,321	2.570	\$125	\$1,429,744
TASK 6 TOTAL					11,480	-	\$556,321	-	-	\$1,429,744
PROJECT TOTAL					216,376	-	\$14,189,012	-	-	\$35,979,106

Effective Overhead and Profit Rate (EOPR, or Effective Project Multiplier) **2.54**
 (= Total Actual Labor Cost ÷ Total Base Labor Cost); Maximum Allowable EOPR = 2.70

TOTAL PROJECT COST BREAKDOWN

Total Actual Labor Cost:	\$35,979,106
Total Other Direct Costs (ODCs):	\$2,000,000
Total Costs for Additional As-Needed Services:	\$3,000,000
Markup on Subconsultant Labor Cost: (Maximum Allowable: 5% of subconsultant labor costs)	\$1,011,323
TOTAL PROJECT COST (NOT TO EXCEED \$42,000,000)	\$41,990,428

Appendix C

Clean Water State Revolving Fund (SRF) Program and Water Infrastructure Finance and Innovation Act (WIFIA) Requirements

I. General Contract Requirements

It is expected that this Project will be in full or in part funded under the Clean Water State Revolving Fund Program (“SRF”) and the Water Infrastructure Finance and Innovation Act (“WIFIA”). This Appendix contains State and Federal requirements that the Contractor and subcontractors must follow to meet SRF and WIFIA requirements. See the WIFIA Handbook for a full list of WIFIA requirements: https://www.epa.gov/sites/production/files/2017-07/documents/program_handbook_7-18-17_final.pdf

If the Contractor subcontracts any part of the services to be performed under this Contract, the subcontract must be in writing and shall provide that all services to be performed thereunder shall be performed in accordance with the terms of the RFP including, but not limited to, this Section.

Solicitations for subcontracts shall have the following text: “Prospective subcontractors are hereby notified that work to be performed under this contract will be in full or in part financed by the Clean Water State Revolving Fund (SRF), administered by the United States Environmental Protection Agency (US EPA) and the State Water Resources Control Board (SWRCB), and by the Water Infrastructure Finance and Innovation Act (WIFIA), also administered by the US EPA. The prospective subcontractor shall comply with all applicable terms and conditions, special provisions, and reporting requirements, as set forth in the Request for Proposals (RFP), and as may be required by federal law, rule, or regulation.”

II. Disadvantaged Business Enterprise Requirements

A. Program Purpose

Contractors are required to seek, and are encouraged to use, Disadvantaged Business Enterprises (“DBEs”) for their subcontracting needs. These requirements apply to all subcontracts for equipment, supplies, construction, and services.

The key functional components of the DBE Program are as follows:

1. Fair Share Objectives
2. DBE Certification
3. Six Good Faith Efforts
4. Contract Administration Requirements
5. DBE Reporting

B. LBE Requirements Also Apply

In addition to the DBE Program, Contractors still are required to meet the LBE participation requirements of the City's Local Business Enterprise ("LBE") Program as required by Chapter 14B of the San Francisco Administrative Code and as set forth in CMD Attachment 2 (See RFP Section 9 and Appendix E). Please note that in some cases, Contractor's efforts will satisfy both the requirements of the LBE and the DBE Program, by using DBEs that are also certified as LBEs to satisfy the Contract's LBE requirement.

C. Definition of Disadvantaged Business Enterprise

The United States Environmental Protection Agency's DBE Program is primarily based on two (2) statutes. Public Law 102-389, 42 U.S.C. § 4370d, provides for an 8% objective for awarding contracts under EPA financial assistance agreements to business concerns or other organizations owned or controlled by socially and economically disadvantaged individuals, including HBCUs and women ("8% statute"). Title X of the Clean Air Act Amendments of 1990, 42 U.S.C. § 7601 note, provides for a 10% objective for awarding contracts under EPA financial assistance agreements for research relating to such amendments to business concerns or other organizations owned and controlled by socially and economically disadvantaged individuals ("10% statute").

For purposes of the DBE Program, "Entity or Entities" includes contractors, subconsultants, vendors and/or suppliers. The following Entities, as defined by 40 CFR § 33.103, are considered DBEs for the purposes of this Contract:

1. Entities owned and/or controlled by socially and economically disadvantaged individuals as described by Title X of the Clean Air Act Amendments of 1990 (42 U.S.C. 7601 note) (10% statute), and Public Law 102-389 (42 U.S.C. 4370d) (8% statute), respectively;
2. Minority Business Enterprise ("MBE"): an Entity that is at least 51% owned and/or controlled by a socially and economically disadvantaged individual as described by Title X of the Clean Air Act Amendments of 1990 (42 U.S.C. 7601 note), and Public Law 102-389 (42 U.S.C. 4370d), respectively;
3. Women Business Enterprise ("WBE"): an Entity that is at least 51% owned and/or controlled by women;
4. Small Business Enterprise ("SBE"): a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding, and qualified as a small business under the criteria and size standards in 13 CFR part 121;
5. Small Business in a Rural Area ("SBRA"): a small business operating in an area identified as a rural county with a code 6-9 in the Rural-Urban continuum Classification Code developed by the United States Department of Agriculture in 1980;
6. Labor Surplus Area Firm ("LSAF"): a concern that together with its first-tier subcontractors will perform substantially in labor surplus areas (as identified by the

Department of Labor in accordance with 20 CFR part 654). Performance is substantially in labor surplus areas if the costs incurred under the contract on account of manufacturing, production or performance of appropriate services in labor surplus areas exceed 50 percent of the contract price; or

7. Historically Underutilized Business ("HUB") Zone Small Business Concern or a concern under a successor program: a small business concern that appears on the List of Qualified HUB Zone Small Business Concerns maintained by the Small Business Administration.
8. DBE Joint Venture: an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

For purposes of this Contract, a DBE Joint Venture will only be credited with DBE participation for the portion of work performed by the DBE firm in a commercially useful function. To perform a commercially useful function, the DBE firm must be solely responsible for execution of a distinct element of the contract work, and must actually perform, manage and supervise the work involved in accordance with normal industry practice.

Many firms certified as Local Business Enterprises ("LBEs") by the San Francisco Contract Monitoring Division ("CMD") under San Francisco Administrative Code Chapter 14B also may qualify to be certified as DBEs. Therefore, the SFPUC encourages consultants, subcontractors, vendors, and/or suppliers to be certified under both programs when appropriate.

D. Certification of DBEs

a) Proof of DBE Certification. Contractors and subcontractors must provide to the SFPUC proof of DBE certification with its proposal submitted on SFBid. Entities that are not DBE certified at the time proposals are due shall not be eligible to be credited as DBEs for this Project.

Under the DBE Program, Entities can no longer self-certify and they must be certified at the time proposals are due. Certifications will ONLY be accepted from the following:

1. The United States Environmental Protection Agency ("EPA")
2. The Small Business Administration ("SBA");
3. The Department of Transportation's State implemented DBE Certification Program (with U.S. citizenship);
4. Tribal, State, and Local governments; or
5. Independent private organization certifications.

If an Entity holds one of these certifications, it is considered acceptable for establishing status under the DBE Program.

b) Locating DBEs.

Information for locating certified DBEs and/or LBEs is included below:

1. Certified Disadvantaged Businesses Enterprises ("Federal DBE Program")
http://www.dot.ca.gov/hq/bep/find_certified.htm
2. Certified Small Businesses Enterprises ("State Program")
<https://caleprocure.ca.gov/pages/PublicSearch/supplier-search.aspx>
3. Certified GSA Local Business Enterprises ("City Program")
<http://sfgov.org/cmd/lbe-certification>

Firms may obtain information on how to become certified as DBEs from either the State or City at the following addresses:

1. State Program:
California Department of General Services
Office of Small Business and DVBE Services, Room 1-400
P.O. Box 989052
West Sacramento, CA 95798-9052
(916) 375-4940
<http://www.dgs.ca.gov/pd/Programs/OSDS/GetCertified.aspx>
2. City Program:
Municipal Transportation Agency ("SFMTA")
Contract Compliance Office
One South Van Ness Avenue, 6th Floor
San Francisco, California 94103
(415) 701-4436
Attn: Sheila Evans-Peguese, CCO Certification Unit

Firms that wish to be certified as DBEs under the federal program can obtain DBE certification applications from SFMTA at the address listed above. Completed DBE certification applications can be returned to SFMTA or another certifying agency. A list of certifying agencies can be obtained by calling (415) 701-4436 or by going to the following website:

<http://www.dot.ca.gov/hq/bep/ucp.htm>

For more information about LBE certification, contact CMD as listed in RFP Section 9.1.3.

E. Good Faith Effort Process

a) In addition to the LBE Good Faith Outreach requirements set forth in Chapter 14B of the San Francisco Administrative Code, Contractors must also comply with the DBE Good Faith Effort ("GFE") Process outlined below to ensure that DBEs have the opportunity to compete for financial assistance dollars. The following six (6) steps comprise the GFE process:

1. Ensure DBEs are made aware of contracting opportunities to the fullest extent practical through outreach and recruitment activities. Place DBEs on solicitation lists and solicit them whenever they are potential sources.
2. Make information on forthcoming opportunities available to DBEs. Post solicitations for bids, quotes or proposals on subcontract opportunities, on at least one publicly available website, for a minimum of 30 calendar days before the proposal opening date.
3. Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs.
4. Encourage contracting with a group of DBEs when a contract is too large for one firm to handle individually.
5. Use the services of the Small Business Administration and/or Minority Business Development Agency ("MBDA") of the U.S. Department of Commerce.
6. If the Contractor awards subcontracts, the Contractor shall take the above steps.

b) Reserved.

F. Fair Share Objectives

a) Contractors should award a fair share of subcontracts to DBEs. A fair share objective is a goal based on the capacity and availability of qualified, certified MBEs and WBEs in the relevant geographic market for the grant recipient in the procurement categories of construction, equipment, services, and supplies compared to the number of all qualified entities in the same market for the same procurement categories. The Fair Share Objective for the State Water Resources Control Board can be found:

https://www.epa.gov/sites/production/files/documents/r9_fair_share_goals.pdf. Satisfaction of the DBE requirements is based on documented completion of the Good Faith Effort Requirements and other reporting requirements, and not the level of DBE participation proposed/achieved in this Appendix.

b) DBE Participation: includes contracts (other than employee contracts) between DBEs and the Contractor for any goods or services specifically required for the completion of the Work under this Agreement.

- 1) Only that portion of the work that is actually performed by a DBE's own forces or by its DBE Subcontractors and Suppliers shall be recognized for purposes of counting DBE participation.
- 2) Contractor assumes the responsibility of accurately identifying the DBE firms proposed, at any tier, in the DBE Subcontractor Utilization Form, SWRCB Form 4500-4 for Subcontractors of any tier.
- 3) DBE participation shall not be counted until the DBE firms have been paid.
- 4) DBE participation shall be counted in the same manner as LBE participation is counted, as noted in CMD Attachment 2. See Appendix E.

- c) A DBE must perform a commercially useful function, i.e., must be responsible for the execution of a distinct element of work and must carry out its responsibility by actually performing, managing, and supervising the work.
- d) Contractor shall submit quarterly reports to SFPUC detailing the utilization of DBEs to satisfy the Project's Fair Share Objectives. These reports shall provide (1) the names of all DBEs that have received payments on the Project, (2) the total dollar value of the payments made to each DBE, and (3) the overall DBE utilization on the Project in satisfaction of the Fair Share Objectives (reported as total dollars paid to all DBEs on the Project), all of which shall be updated as of the date of the report.
- e) The SFPUC shall monitor the Contractor's actual DBE subcontracting participation at regular intervals as the Project progresses. In the event that the SFPUC determines that the DBE participation at a particular time is materially lower than the Fair Share Objectives for this Project, set forth above, the Contractor shall take immediate corrective steps. The Contractor shall be solely responsible for complying with the requirements stated herein.
- f) Non-Discrimination Presumptions on Fair Share Objectives
 - 1) Presumption of Non-Discrimination
 - (a) The Fair Share Objectives set forth above are the levels of MBE and WBE subconsultant participation that would be expected for the Project in the absence of discrimination on the basis of race or gender. If the dollar amount or percentage of total contract value of subcontracts listed for MBEs/WBEs, at the time of proposal, is equal to or exceeds the Fair Share Objectives for the Project, it shall be presumed that the Contractor did not discriminate on the basis of race or gender.
 - (b) If the dollar amount or percentage of total contract value of MBE and/or WBE participation listed for subcontracts, at the time of proposal, is less than the MBE and/or WBE Fair Share Objectives established above, the SFPUC will investigate, as provided herein, to determine if the Contractor discriminated on the basis of race or gender.
 - 2) Information Required from Contractor Regarding Non-Discrimination
 - (a) If, at the time of proposal submission, a Contractor listed MBEs and WBEs to participate as subconsultants in dollar amounts or percentages of the total contract value it contends are reflective of the respective MBE and WBE Fair Share Objectives, the Contractor shall provide the following information upon request by the SFPUC.
 - (i) The dollar amount or percentage of the total contract value on each subcontract and a statement of the scope of work to be performed under the subcontract.

- (ii) Separately for each subcontract, the name, address, telephone number, DBE certification status for each business entity that was listed for the subcontract.
- (b) If, at the time of proposal submission, a Contractor has not listed MBEs and WBEs to participate as subconsultants in dollar amounts or percentages of the total contract value reflective of their respective Fair Share Objectives, the SFPUC may notify the Contractor in a manner that provides verification of receipt, that the Contractor has not listed MBEs and WBEs for subcontracts in dollar amounts or percentages of total contract value reflective of their respective Fair Share Objectives. This notice will include a summary of the calculations used by the SFPUC based on the information in the proposal. Upon request by the SFPUC, the Contractor shall provide the following information. If a Contractor has listed MBEs to participate as subconsultants in dollar amounts or percentages of the total contract reflective of the MBE but not WBE Fair Share Objectives, or vice versa, the Contractor should submit information listed below only as it relates to the Fair Share Objective which was not achieved:
 - (i) Separately for each subcontract, the name, address, telephone number, DBE certification status, race, gender national origin, color or ethnicity of the owner for each business entity that proposed to work on the subcontract, but was not listed as a subconsultant on the proposal.
 - (ii) Separately for each subcontract, the name address, telephone number, DBE certification status, race, gender national origin, color or ethnicity of the owner for each business entity that expressed an interest, on the telephone or in writing, in participating as a subconsultant, but was not included in the proposal.
 - (iii) For each subcontract where a MBE or WBE was not selected, copies of the subproposals submitted or records of the interest expressed by the non-MBE/WBE, who was listed as the subconsultant, and the subproposals or records of the interest expressed by each MBE and WBE. The documentation shall contain at least the following information: the amount and a description of the scope of work. If no written proposals were submitted by some or all of the subconsultants who expressed interest in the work, the Contractor shall provide a written statement containing the amount and scope of each oral proposal.

- (iv) Separately for each subcontract where the listed subconsultant is a non-MBE/WBE, a full and complete statement of the reason(s) that the non-MBE/WBE firm was listed for this subcontract and not a MBE or WBE. If the reason is based on relative qualifications, the statement must address the particular qualifications at issue. If the reason is the respective dollar amounts or percentages of work proposed, the statement must state the amounts or percentages and describe the similarities and/or dissimilarities in the scope of work covered by the proposals.
 - (v) A statement describing any efforts made by the Contractor to ensure nondiscrimination in subcontracting, including a description of any advertising and any other outreach efforts.
 - (vi) Such other information as may be requested by the SFPUC which is relevant to the issue of possible discrimination by the Contractor in subcontracting. The information may include the Contractor's record with respect to MBE, WBE, DBE, or LBE subcontractor participation on other contracts awarded to the Contractor in the previous 12 months.
- c) The SFPUC will assess the information, as needed, over the course of the Project to assist the Contractor with meeting with Fair Share Objectives. If the Fair Share Objectives are materially lower than projected, and the information provided above does not satisfy the SFPUC that the Contractor is using its best efforts to achieve its goals, the SFPUC will work the Contractor to take corrective action as stated above.

G. Contractor's List

The Contractor shall collect information on Entities that were contacted and/or responded with a subproposal, including both DBEs and non-DBEs. (See Attachment B.) The Contractor's List shall include the following:

1. Entity's name with point of contact.
2. Entity's mailing address and telephone number.
3. The scope of work on which the entity proposed and the date of the proposal.
4. Proposal's percentage of total amount of the contract.
5. Entity's status as a DBE or non-DBE.

Reserved (Submittal Requirements).

H. Reserved (Required Forms)

I. Contract Administration Requirements

During the term of the Project, the Contractor shall perform the following:

1. Pursuant to Section 14B.7(h)(9) of the San Francisco Administrative Code, the Contractor shall pay LBE subcontractor(s) for satisfactory performance no more than three (3) working days after receipt of payment from the SFPUC. For all other subcontractor(s), the Contractor shall pay for satisfactory performance no more than 30 days from the Contractor's receipt of payment from the SFPUC;
2. Notify the SFPUC in writing prior to any termination of a DBE subcontractor by the Contractor;
3. If a DBE subcontractor fails to complete work under the subcontract for any reason, the Contractor shall employ the six (6) GFEs set forth in Section II.E., if soliciting a replacement subcontractor; and
4. Provide SWRCB Form 4500-2 – DBE Subcontractor Participation Form (Attachment C) to all of its DBE subcontractors at time of subcontract award.

III. Davis Bacon Requirements

A. Contract and Subcontract Provisions

Services to be performed by the Contractor under this Agreement may involve the performance of trade work subject to prevailing wage requirements ("Covered Services") under the Davis Bacon Act in addition to Administrative Code Section 6.22(e). To the extent Covered Services are performed, Davis Bacon ("DB") requirements apply under this Contract. The Contractor and all of its subcontractors (including all sub-tier subcontractors) shall meet the DB requirements copied and pasted below and specified under Part 3 of Exhibit G – DAVIS BACON REQUIREMENTS (available from the State Water Resources Control Board for Wastewater Treatment Facility Construction Projects). Note: Where the term "Recipient" is used in this Appendix, it shall refer to the "SFPUC" ("Owner"). Where the term "Agency" is used in this Appendix, it shall refer to an agency of the State of California or the United States Government. The requirements are specified as follows:

3. Contract and Subcontract Provisions.

(a)(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the

classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

The Recipient may obtain wage determinations from the U.S. Department of Labor's web site, www.wdol.gov.

(ii)(A) The Recipient, on behalf of EPA, shall require that [and the Contractor shall ensure that] any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. The EPA award official shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Recipient agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be [prepared jointly by the Contractor and Recipient and] sent by the Recipient to the State Water Board. The State Water Board will transmit the report, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the State Water Board or will notify the State Water Board within the 30-day period that additional time is necessary.

(C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Recipient do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), USEPA will refer the questions, including the views of all interested parties and the recommendation of the State Water Board, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid [by the Contractor] to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been

met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding.

The Recipient, shall upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this Contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the Contract, the (Agency) may, after written notice to the Contractor, sponsor, applicant, or [Owner], take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The Contractor shall submit weekly, for each week in which any Contract work is performed, a copy of all payrolls to the Recipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State Water Board or EPA. As to each payroll copy received, the Recipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <https://www.dol.gov/whd/forms/wh347.pdf> or its successor site.

The prime Contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Recipient for transmission to the State or EPA if requested by EPA, the State, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime Contractor to require a

subcontractor to provide addresses and social security numbers to the prime Contractor for its own records, without weekly submission to the Recipient.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The Contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds [including progress payments to the Contractor]. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and Trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates

(expressed in percentages of the journeyman's hourly rate) specified in the [Contractor's] or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act Requirements.

The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this Contract.

(6) Subcontracts.

The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may be appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the Contract clauses in 29 CFR 5.5.

(7) Contract Termination: Debarment.

The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may be appropriate, and also a clause requiring the

subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the Contract clauses in 29 CFR 5.5.

(8) Compliance with Davis-Bacon and Related Act Requirements.

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this Contract.

(9) Disputes Concerning Labor Standards.

Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the Recipient, State, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of Eligibility.

(i) By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the [Contractor's] firm is a person or firm ineligible to be awarded Government [Contracts] by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

B. Contractors are advised that the California Department of Industrial Relations and the California Apprenticeship Council are no longer recognized by the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship. Therefore, all apprentices working on construction projects financed through CWSRF/DWSRF agreements must be registered in a bona fide apprenticeship program recognized by the Bureau of Apprenticeship and Training, U.S. Department of Labor. Compliance with this Davis-Bacon requirement is in addition to requirements set forth under section 6.22 of the San Francisco Administrative Code.

B. Contract Provisions For Contracts In Excess Of \$100,000

DB requirements apply to the work of this Contract. The Contractor and all of its subcontractors (including all sub-tier subcontractors) shall meet the Davis Bacon requirements copied and pasted below and specified under Part 4 of Exhibit G – DAVIS BACON REQUIREMENTS (available from the State Water Resources Control Board for Wastewater Treatment Facility Construction Projects). Note: Where the term “Recipient” is used within this section of the Appendix, it shall refer to the “SFPUC” (“Owner”). The requirements are specified as follows:

4. Contract Provision for Contracts in Excess of \$100,000.

(a) Contract Work Hours and Safety Standards Act.

As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements.

No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or

mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages.

In the event of any violation of the clause set forth in paragraph (a)(1) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under Contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages.

The Recipient, upon written request of the EPA Award Official or an authorized representative of the Department of Labor, shall withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such Contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (a)(2) of this section.

(4) Subcontracts.

The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(b) In addition to the clauses contained in Item 3, above, in any Contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Recipient shall insert a clause requiring that [and] the Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Recipient shall insert in any such Contract a clause providing that [and the Contractor shall ensure that] the records to be maintained under this paragraph shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the USEPA, State Water Board, and the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

C. Compliance Verification

DB requirements apply to the work of this Contract. To the extent Covered Services are required to be performed, the Contractor and all of its subcontractors (including all sub-tier subcontractors) shall meet, and where required, assist the SFPUC to meet the Davis-Bacon requirements copied and pasted below and specified under Part 5 of Exhibit G – DAVIS-BACON REQUIREMENTS (available from the State Water Resources Control Board for Wastewater Treatment Facility Construction Projects). Note: Where the term "Recipient" is

used within this section of this Appendix, it shall refer to the "SFPUC" ("Owner"). The requirements are specified as follows:

5. Compliance Verification

- (a) The Recipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The Recipient must use Standard Form 1445 or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.
- (b) The Recipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the Recipient must conduct interviews with a representative group of covered employees within two weeks of each contractor or subcontractor's submission of its initial weekly payroll data and two weeks prior to the estimated completion date for the contract or subcontract. The Recipient must conduct more frequent interviews if the initial interviews or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. The Recipient shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.
- (c) The Recipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The Recipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the Recipient must spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date of the contract or subcontract. The Recipient must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the Recipient shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.
- (d) The Recipient shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S. Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.
- (e) The Recipient must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at <http://www.dol.gov/whd/america2.htm#California>.

IV. General State and Federal Requirements

The following SRF and WIFIA agreement requirements apply to the Services of this Contract. The Contractor and all of its subcontractors (including all lower-tier subcontractors) shall meet the following State and Federal requirements. The requirements are specified as follows:

A. Non-Discrimination Clause

Contractor agrees to comply with Administrative Code Chapters 12B and 12C, and all applicable Federal civil rights and non-discrimination laws, including those listed on page 65 of the WIFIA Handbook.

1) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

2) The Contractor shall send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the Contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

3) The Contractor shall comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor. The Contractor shall furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and shall permit access to its books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

4) The Contractor shall include the provisions above in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of Sept. 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor shall take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

5) **Reserved (Submittal Requirements)**

B. Excluded Parties List

1) The SFPUC, Contractor, and subcontractors shall not contract or subcontract with any party who is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, "Debarment and Suspension."

2) Suspension and debarment information can be accessed at <http://www.sam.gov>. Contractor acknowledges that failing to disclose the information as required at 2 CFR 180.335

may result in the termination, delay or negation of this Agreement, or pursuance of legal remedies, including suspension and debarment.

3) The SFPUC will not consider or award an Agreement to any Contractor appearing on the Excluded Parties List. Any proposal received from a Contractor appearing on the Excluded Parties List will be rendered not qualified and will be rejected. The Contractor and its subcontractors shall not subcontract any portion of the work to any subcontractor appearing on the Excluded Parties List.

4) **Reserved (Submittal Requirements)**

C. American Iron and Steel Requirements

1) This Project is subject to the American Iron and Steel requirements of H.R. 3547, "Consolidated Appropriations Act, 2014" ("Appropriations Act") and H.R. 3080 "Water Resources Reform and Development Act of 2014" ("WRRDA") for all equipment and materials that are procured. To the extent the American Iron and Steel requirements apply to this Project, the aforementioned requirements are incorporated by reference therein.

2) General information on the AIS requirement is located on the EPA website at: http://water.epa.gov/grants_funding/aisrequirement.cfm

3) A guidance document "Implementation of American Iron and Steel provisions of PL 113-76, Consolidated Appropriations Action, 2014" dated March 20, 2014 further describing the requirements is located on the EPA website at: <http://www.epa.gov/sites/production/files/2015-09/documents/ais-final-guidance-3-20-14.pdf>

4) Contractor agrees to the following:

a) Contractor acknowledges to and for the benefit of the City that Contractor understands that goods and services for the Project are being funded with monies made available by the Clean Water State Revolving Fund and Water Infrastructure Finance and Innovation Act, which have statutory requirements commonly known as "American Iron and Steel;" and that requires all of the applicable iron and steel products used in the Project to be produced in the United States including iron and steel products provided for the Project;

b) During performance of the Project, contractors, consultants, vendors and suppliers must comply with the American Iron and Steel requirements; and

c) Contractor represents and warrants to and for the benefit of the City and the State that (1) the Contractor has reviewed and understands the American Iron and Steel requirements, and (2) if, and as, directed by the City, Contractor shall monitor American Iron and Steel compliance by the contractors, vendors and suppliers on the Project, unless a waiver of the requirement is approved.

d) Notwithstanding any other provision this Agreement, any failure to comply with this provision by the Contractor shall permit the City or State to recover as damages against the

Contractor for any loss, expense, or cost incurred by the City or State resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the State or any damages owed to the State by the City).

D. New Restrictions on Lobbying

1) Section 1352 of Title 31, United States Code, provides that none of the funds appropriated by any Act of Congress may be expended by a recipient of a contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, or an employee of a Member of Congress in connection with the award or making of a Federal contract, grant, loan, or cooperative agreement or the modification thereof. EPA interprets this provision to include the use of appropriated funds to influence or attempt to influence the selection for assistance under the WIFIA program.

2) Certification: Contractor and subconsultants must certify, to the best of his or her knowledge and belief, that:

a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Standard Form-LLL: <https://www.ecfr.gov/graphics/pdfs/34-437.eps.pdf>

Instructions: <https://www.ecfr.gov/graphics/pdfs/34-438.eps.pdf>

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

d) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S.

Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3) **Submission Requirements:** Contractor shall submit a completed Attachment G, Restrictions on Lobbying Certificate (1) within two weeks after award of the Agreement, and (2) at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any certification previously filed.

E. Wage Determinations

Included within Exhibit A to this Section is a copy of the DB prevailing wage determinations applicable to the Work of this Contract. Refer to Section III for the full prevailing wage requirements that are mandatory for the Contractor and all subcontractors under this Contract.

F. Trafficking in Persons

The requirements of the Trafficking Victims Protection Act of 2000 apply to this Contract. The Contractor, including, without limitation, subconsultants (including all sub-tier subconsultants) and their employees may not engage in severe forms of trafficking in persons during the term of this Contract, procure a commercial sex act during the term of this Contract, or use forced labor in the performance of this Contract. The Contractor must include this provision in its contracts and subcontracts for the performance of any work arising from or related to this Contract. The Contractor must inform the State Water Board immediately of any information regarding a violation of the foregoing. The Contractor understands that failure to comply with this provision may subject the State Water Board to loss of federal funds. The Contractor agrees to compensate the State Water Board for any such funds lost due to its failure to comply with this condition, or the failure of its contractors or subcontractors to comply with this condition.

V. Forms and Other Documents Incorporated by Reference

1. Other RFP Appendices:
 - Appendix E: CMD Attachment 2
 - Appendix F: San Francisco Administrative Code Chapters 12B & 12C Declaration: Non-Discrimination in Contracts and Benefits (EBO Form 12B-101)
2. SRF/WIFIA Attachments to be submitted:
 - Attachment A: DBE Good Faith Effort Certification and Commitment Certificate (submit with Proposal)
 - Attachment B: DBE Proposer's List (submit with proposal or within five [5] days of being identified as the Highest Ranked Proposer)
 - Attachment C: SWRCB Form 4500-2 (submit if applicable)
 - Attachment D: SWRCB Form 4500-3 (submit with Proposal, if applicable)
 - Attachment E: SWRCB Form 4500-4 (submit with Proposal)
 - Attachment F: Certification of Proposer Regarding Debarment and Suspension (submit with Proposal)

- Attachment G: Restrictions on Lobbying Certificate (submit within two [2] weeks of award)
3. SRF/WIFIA Exhibits:
- Exhibit A: Davis Bacon Requirements