

File No. 220074

Committee Item No. 4

Board Item No. 14

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee Date March 2, 2022

Board of Supervisors Meeting Date March 8, 2022

#### Cmte Board

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| <input type="checkbox"/>            | <input type="checkbox"/>            | Legislative Digest                           |
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#### OTHER (Use back side if additional space is needed)

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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>PUC Request for Proposals - 7/16/2021</u>  |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>PUC Resolution No. 22-0014 - 1/12/2022</u> |
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Completed by: Brent Jalipa Date February 22, 2022

Completed by: Brent Jalipa Date March 4, 2022

1 [Professional Services Agreement - APX Inc. - Power Scheduling Coordination Services and  
2 Related Support Services - Not to Exceed \$134,742,800]

3 **Resolution authorizing the General Manager of the San Francisco Public Utilities**  
4 **Commission (SFPUC) to execute Power Enterprise Operating Budget-funded**  
5 **Agreement No. PRO.0152 with APX Incorporated to assist with power scheduling**  
6 **coordination services required for the SFPUC’s participation in the California**  
7 **Independent System Operator electricity market, for an amount not to exceed**  
8 **\$134,742,800 and with services anticipated to begin in April 2022, and end in March**  
9 **2027, for a term of five years.**

10

11 WHEREAS, In order for the San Francisco Public Utilities Commission (SFPUC) to  
12 provide service to its electric customers, it must transmit electric energy through the  
13 transmission system controlled by the California Independent System Operator (CAISO), and  
14 conduct wholesale electricity transactions through the CAISO operated wholesale market; and

15 WHEREAS, Only entities that have been certified as Scheduling Coordinators (SC)  
16 may interact with the CAISO to schedule all power deliveries over the transmission system  
17 and to process payments for electricity transactions; the SFPUC is not a CAISO-certified SC;  
18 without contracting with a certified SC, the SFPUC will not be able to transport power to its  
19 electric customers or engage in the CAISO wholesale markets; and

20 WHEREAS, It is necessary to procure the services of a qualified firm to provide  
21 specialized services including, but not limited to: CAISO communications, settlements, dispute  
22 resolution, and invoice processing and Congestion Revenue Rights (CRR) management  
23 services and processing all SFPUC payments to the CAISO for transmission and wholesale  
24 electricity transaction payments, charges, costs, and fees; and

25

1           WHEREAS, On July 16, 2021, SFPUC advertised a Request for Proposals (RFP) for a  
2 firm to assist the SFPUC with power scheduling coordination and scheduling agent services  
3 for the SFPUC's participation in the markets of the CAISO, with services anticipated to begin  
4 in April 2022 and end in March 2027, for a term of five years; and

5           WHEREAS, The SFPUC received one proposal in response to the RFP from APX  
6 Incorporated (APX), which currently serves as the SFPUC's scheduling coordinator; and

7           WHEREAS, SFPUC Power and Contract Monitoring Division (CMD) staff, upon review  
8 of the proposal, determined that APX is a responsive and responsible firm based on the  
9 established scoring criteria; and

10           WHEREAS, The estimated cost of Power Enterprise Operating Budget-funded  
11 Agreement No. PRO.0152 (Agreement) is \$134,742,800, with payments to APX in an amount  
12 not to exceed \$4,242,800 for the scheduling coordinator services and \$130,500,000 in pass-  
13 through payments to the CAISO which will be processed by APX without a mark-up; and

14           WHEREAS, On January 11, 2022, per Resolution No. 22-0014, the SFPUC approved  
15 the selection of APX, and authorized the General Manager to seek approval from the Board of  
16 Supervisors under Charter, Section 9.118 to execute the Agreement; and

17           WHEREAS, Pursuant Chapter 14B of the San Francisco Administrative Code, the  
18 Local Business Enterprise (LBE) sub-consulting requirement has been waived for this  
19 Agreement; and

20           WHEREAS, Funds for the Agreement will be available at the time of execution from  
21 Hetchy Power Operating Budget; now, therefore, be it

22           RESOLVED, That this Board of Supervisors hereby authorizes the General Manager of  
23 the San Francisco Public Utilities Commission to execute Power Enterprise Operating Budget-  
24 funded Agreement No. PRO.0152, Power Scheduling Coordination Services and Related  
25 Support Service with APX substantially in the form as the agreement on file with the Clerk and

1 to make amendments to the Agreement, as needed, that do not materially increase the  
2 obligations or liabilities of the City or reduce the benefits of the City, for an amount not to  
3 exceed \$134,742,800 and with a duration of five years; and

4 FURTHER RESOLVED, That within thirty (30) days of the agreement being fully  
5 executed by all parties the SFPUC shall provide the final agreement to the Clerk of the Board  
6 for inclusion into the official file.

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<p><b>Item 4</b> <b>File 22-0074</b></p>	<p><b>Department:</b> Public Utilities Commission (PUC)</p>
<p><b>EXECUTIVE SUMMARY</b></p>	
<p style="text-align: center;"><b>Legislative Objectives</b></p> <ul style="list-style-type: none"> <li>• The proposed resolution would approve a power scheduling coordinator agreement between the San Francisco Public Utilities Commission (SFPUC) and APX, Inc. for a term of five years from April 2022 through March 2027, and an amount not to exceed \$136,500,000.</li> </ul> <p style="text-align: center;"><b>Key Points</b></p> <ul style="list-style-type: none"> <li>• The SFPUC’s Power Enterprise is responsible for the generation, procurement, and delivery of power to its electric customers. The California Independent System Operator (CAISO) controls and operates the transporting of electric power over the state electric grid. SFPUC does not meet the CAISO requirements for a “scheduling coordinator,” an entity that is allowed to complete power transactions on the CAISO network and is able to make payments to CAISO for power transactions, so SFPUC has contracted for these services. In July 2021, SFPUC issued a Request for Proposals (RFP) to award a scheduling coordinator contract. APX, which is SFPUC’s existing scheduling coordinator, was the only proposer and met the minimum qualifications.</li> <li>• The scope of work under the agreement includes: (1) submitting day-ahead and real-time interchange schedules and bids to CAISO; (2) managing communications between CAISO and SFPUC schedulers and operators; (3) managing CAISO settlements and processing payments of CAISO charges; (4) managing CAISO and California Public Utilities Commission (CPUC) Resource Adequacy requirements; (5) managing access to CAISO systems for meter, outage, settlement, scheduling, and bid/award data; and (6) submitting Settlement Quality Meter Data (SQMD) to CAISO on behalf of SFPUC. Optional services, to be provided at the request of SFPUC, include market analyses, energy trading, development of revenue strategies, and training of SFPUC staff.</li> </ul> <p style="text-align: center;"><b>Fiscal Impact</b></p> <ul style="list-style-type: none"> <li>• The proposed agreement would have a total amount not to exceed \$136,500,000. Of this total amount, approximately \$130,500,000 are estimated pass-through payments to CAISO, and approximately \$6,000,000 are payments to APX for services provided. To account for budgeted scheduling coordinator costs and allow a \$1 million buffer for APX services, the Budget and Legislative Analyst recommends reducing the agreement amount by \$1,757,200, for a total not to exceed \$134,742,800.</li> </ul> <p style="text-align: center;"><b>Recommendations</b></p> <ul style="list-style-type: none"> <li>• Amend the proposed resolution to reduce the not-to-exceed amount of the agreement by \$1,757,200, for a total not to exceed \$134,742,800.</li> <li>• Approve the resolution as amended.</li> </ul>	

**MANDATE STATEMENT**

City Charter Section 9.118(b) states that any contract entered into by a department, board or commission that (1) has a term of more than ten years, (2) requires expenditures of \$10 million or more, or (3) requires a modification of more than \$500,000 is subject to Board of Supervisors approval.

**BACKGROUND**

The San Francisco Public Utilities Commission’s (SFPUC) Power Enterprise is responsible for the generation, procurement, and delivery of power to electric customers of the City, including CleanPowerSF customers, City departments and other public entities, entities providing service on behalf of or in coordination with tenants on City property (i.e. at the Port and Airport), and the Hunters Point Shipyard and other redevelopment projects.

The California Independent System Operator (CAISO)<sup>1</sup> controls and operates the transporting of electric power over California’s electric transmission system. State and Federal regulations govern payments made to CAISO. The SFPUC does not meet the CAISO requirements for a “scheduling coordinator,” an entity that is allowed to complete power transactions on the CAISO network and is able to make payments to CAISO for power transactions, so SFPUC has contracted for these services.<sup>2</sup>

In July 2021, SFPUC issued a Request for Proposals (RFP) to award a scheduling coordinator contract. APX, Inc., which is SFPUC’s existing scheduling coordinator, was the only proposer and met the minimum qualifications specified in the RFP. In January 2022, the SFPUC Commission approved a new agreement with APX.

**DETAILS OF PROPOSED LEGISLATION**

The proposed resolution would approve a power scheduling coordination services agreement between the SFPUC and APX, for a term of five years from April 2022 through March 2027, for an amount not to exceed \$136,500,000.

The scope of work under the agreement includes: (1) submitting day-ahead and real-time interchange schedules and bids to CAISO; (2) managing communications between CAISO and

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<sup>1</sup> CASIO is a nonprofit public benefit corporation that is regulated by the Federal Energy Regulatory Commission (FERC) to manage the flow of electricity across the high-voltage long-distance power lines that make up 80% of California’s power grid. CAISO is responsible for ensuring that there is sufficient, safe, reliable, and equal access to power transmission lines and facilitating competitive wholesale power markets to diversify resources and lower prices.

<sup>2</sup> According to Section 4.5.3 of the January 2022 CAISO Tariff, the duties of a scheduling coordinator include paying fees to CAISO, submitting qualified bids and interchange schedules for power, coordinating and modifying demand for power at the direction of CAISO, tracking and settling trades, and assuming financial responsibility for all requested transactions. According to Jeremy Spitz, SFPUC Local and Regional Policy and Government Affairs Manager, the primary obstacles to SFPUC achieving scheduling coordinator status are the lack of a real-time operations desk for SFPUC’s energy portfolios and the inability to consistently make timely payments under CAISO’s challenging deadlines.

SFPUC schedulers and operators; (3) managing CAISO settlements<sup>3</sup> and processing payments of CAISO charges; (4) managing CAISO and California Public Utilities Commission (CPUC) Resource Adequacy<sup>4</sup> requirements; (5) managing access to CAISO systems for meter, outage, settlement, scheduling, and bid/award data; and (6) submitting Settlement Quality Meter Data (SQMD) to CAISO on behalf of SFPUC. Optional services, to be provided at the request of SFPUC, include market analyses, energy trading, development of revenue strategies, and training of SFPUC staff.

The agreement may be extended beyond the initial five-year term. The RFP used to award the agreement states that the total term length may be up to eight years. According to Ivy Fine, SFPUC Contracts Administration Bureau Director, SFPUC may extend the term by three years pursuant to the RFP.

### **Social Impact Partnership Program**

The current agreement with APX requires APX to provide 123 volunteer hours to two community partners, the Center for Resource Solutions and the National Park Service, valued at \$24,600. According to the SFPUC, APX has provided 126 volunteer hours to date; 54 hours valued at \$200/hour, and 72 hours valued at \$150/hour, with a total value of \$21,600. The SFPUC standardized the value of volunteer hours in 2016 at \$150/hour, which explains the difference in hourly rates, and this policy change was communicated to and agreed upon by firms. APX has 20 remaining volunteer hours to complete for their Social Impact Commitments.

Although the RFP allowed for voluntary Social Impact Partnership (SIP) proposals, the proposed agreement does not require SIP benefits because the contractor's proposal did not include a SIP plan.

## **FISCAL IMPACT**

The proposed agreement would have a total not to exceed amount of \$136,500,000. Of this total amount, approximately \$130,500,000 are estimated pass-through payments to CAISO, and approximately \$6,000,000 are payments to APX for services provided. According to Sunita Jones, SFPUC Energy Scheduling and Settlements Manager, the estimated annual CAISO payment amount of \$26.1 million is based on actual expenditures for the period of October 2019 through September 2020. Energy Scheduling and Settlements Manager Jones reports that CAISO charges are volatile, and SFPUC may need to increase the not-to-exceed amount of the agreement if charges increase, subject to future Board of Supervisors approval if the contract's not to exceed amount is increased more than \$500,000. The estimated costs of APX services are shown in Exhibit 1 below.

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<sup>3</sup> According to Energy Scheduling and Settlements Manager Sunita Jones, the settlement process includes calculating the amount owed to CAISO, billing, and invoicing processes.

<sup>4</sup> State law requires all electric service providers, including CleanPowerSF, to maintain certain quantities of Resource Adequacy (RA) capacity to ensure sufficient electric generation resources are available on the grid to meet unusually high levels of customer demand.

**Exhibit 1: Estimated Payments to APX for Services**

Task	Estimated Hours	Hourly Billing Rate	Projected Cost
Submitting day-ahead and real-time interchange schedules and bids to CAISO	5,000	\$220	\$1,100,000
Managing communication between CAISO and SFPUC schedulers and operators, including 24/7 dispatch of the plants	5,000	220	1,100,000
Managing CAISO settlements and payments	4,200	220	924,000
Managing CAISO and CPUC Resource Adequacy requirements	180	220	39,600
Managing access to CAISO systems for meter, outage, settlement, scheduling, and bid/award data	90	220	19,800
Submit Settlement Quality Meter Data (SMQD) to CAISO on behalf of SFPUC	270	220	59,400
<b>Total</b>	<b>14,740</b>	<b>220</b>	<b>\$3,242,800</b>

Source: Proposed Agreement

As shown above, the proposed agreement includes a budget of \$3,242,800 million for APX service charges, based an hourly billing rate of \$220 per hour. This is 10% more than the \$200 billing rate in the current agreement with APX, which began in 2016.

The \$6,000,000 not-to-exceed amount in the proposed agreement for APX services, which was specified in the RFP, is larger than projected expenditures of \$3,242,800. To allow a \$1 million buffer in case actual hours for each task exceed what is anticipated, or if optional services are provided, the Budget and Legislative Analyst recommends reducing the agreement amount by \$1,757,200, for a total not to exceed of \$134,742,800.

The agreement would be funded by SFPUC Power Enterprise revenues.

## RECOMMENDATIONS

1. Amend the proposed resolution to reduce the not-to-exceed amount of the agreement by \$1,757,200, for a total not to exceed \$134,742,800.
2. Approve the resolution as amended.



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# Request for Proposals:

## Power Scheduling Coordination and Related Support Services

Agreement No. PUC.PRO.0152

7/16/2021



San Francisco  
**Water Power Sewer**  
Services of the San Francisco Public Utilities Commission

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# 1 RFP Summary

## 1.1 Introduction

The San Francisco Public Utilities Commission (SFPUC, or “Department”), a department of the City and County of San Francisco (“City”), seeks to retain the services of a qualified Proposer, a CAISO certified Scheduling Coordinator,<sup>1</sup> to assist the SFPUC with power scheduling coordination services for the SFPUC’s participation in the markets of the California Independent System Operator (CAISO). The term Proposer or Proposers shall refer to any legal entity(ies) submitting a proposal in response to this Request for Proposals (RFP).

Proposers responding to this RFP must have proven expertise and extensive experience to perform as a Scheduling Coordinator Services (SC) Provider including any applicable certifications or licenses associated with SC Services or required by the CAISO, NERC or WECC. The SC Provider is responsible for emergency operational actions as may be needed. Proposers should be well versed in the CAISO’s market initiatives and operation procedures, including but not limited to (energy and resource adequacy bidding, e-tagging, master file maintenance, use-limited resource registration, resource adequacy enhancements, as well as power scheduling, trading, portfolio management, agency communications, and other power scheduling-related tasks.

The SFPUC reserves the right to commence, close, reduce or extend Consultant services at any time in response to changing needs. In addition, SFPUC reserves the right to enter no agreement, enter multiple agreements, amend and reissue the RFP. Please take notice: By participating in this competitive process, Proposer agrees that any agreement resulting from this process may be utilized by other public entities to procure the commodities and/or services on the same terms. It should also be noted that the Task Descriptions (see Section 5.2.5) provided by Proposer as part of its proposal may be incorporated into the scope of services section of the Agreement (see Appendix A. The Overhead and Profit Schedule’s billing rates (see Section 5.2.7) to be provided by the Proposer as part of its proposal will be directly incorporated into the Agreement (see Appendix A as the applicable billing rates. The material terms and conditions of the Agreement, including but not limited to the overhead and profit rate and billing rates listed in the submitted OPS, will not be negotiable.

Additional information relating to the RFP may be posted on the SFPUC Contract Administration Bureau webpage (<http://sfbid.sfwater.org>) as needed after issuance of the RFP. Proposers

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<sup>1</sup> “Proposer” refers to any entity responding to this Request for Proposals (RFP).

should therefore consult the SFBid website regularly for these updates. The anticipated total amount and duration of the Professional Services Agreement (“Agreement”) are as follows:

**Agreement Amount:** \$6,000,000.00

**Agreement Duration:** 5 Years

The Agreement amount is inclusive of all reimbursable costs and all optional tasks. In addition to the agreement amount received by the Consultant, one of the services the Consultant will perform is remitting on behalf of SFPUC passthrough charges to the CAISO. Funds passed-through will not exceed \$130,500,000. We make note of this for accounting purposes, and to distinguish from actual compensation rendered for services. The SFPUC reserves the right to commence, close, reduce, or extend Proposer services at any time in response to changing needs. The SFPUC shall have the sole discretion to increase the Agreement amount up to \$9,000,000 and extend the Agreement term for up to a total of eight (8) years (or 96 months) consistent with City requirements.

The SFPUC may incorporate the Task Descriptions set forth herein into the Agreement as the applicable scope of services. The SFPUC will incorporate the Overhead and Profit Schedule’s (OPS) billing rates provided by the selected Proposer (“Consultant”) as part of its proposal into the Agreement. The terms of the Agreement, including the overhead and profit rate and billing rates listed in the submitted OPS, will be non-negotiable.

The SFPUC may post additional information relating to the RFP on the SFBid website after issuance of the RFP. Proposers are responsible for consulting the [SFBid website](#) regularly for these updates.

## **1.2** Tentative RFP Schedule

The following dates for issuance of the RFP, receipt and evaluation of proposals, as well as award of an Agreement, are tentative, non-binding, and subject to change without prior notice:

Advertisement of RFP .....	7/16/2021
Pre-Submittal Conference.....	7/29/2021
Deadline for Proposers to Submit Questions .....	8/6/2021
Deadline for Proposers to Submit Proposals.....	8/19/2021
Posting of Proposer Ranking.....	9/22/2021
Public Utilities Commission Authorization to Execute Agreement .....	10/26/2021
Board of Supervisor's Approval .....	12/23/2021
Deadline for Proposer to Achieve Vendor Compliance and Execute Agreement .....	1/3/2022
Notice of Award of Agreement.....	1/20/2022

### **1.3** Pre-Submittal Conference

#### **Pre-submittal conference information:**

**Time:** 2:00 PM

**Date:** 7/29/2021

**Location:** <https://bluejeans.com/940223718>

The SFPUC encourages attendance at the pre-submittal conference. The SFPUC will address questions regarding the RFP at this conference and provide any new information at that time. While City staff may provide oral clarifications, explanations, or responses to any inquiries, the City will not be bound by any oral representation. If the City provides any new and/or substantive information in response to questions raised at the pre-submittal conference, the SFPUC will memorialize the information in a written addendum to this RFP.

### **1.4** Requests for Information and Addenda/Change Notices

All requests for information concerning the RFP, whether submitted before or after the pre-submittal conference, must be in writing and submitted via the [SFBid website](#).

The SFPUC will provide any interpretation of, or make any change in, the RFP by addendum, which will become a part of the RFP and of any Agreement that the SFPUC awards. The SFPUC will make reasonable efforts to post any modifications to the RFP in a timely manner on the [SFBid website](#).

Please refer to Sections 8.2 and 8.3 for more information regarding RFP inquiries and addenda/change notices.

### **1.5** Diversity in Contracting

This contracting opportunity is subject to compliance with the City's Administrative Code Chapter 14B Local Business Enterprise (LBE) subcontracting requirements. In addition, the SFPUC seeks to promote diversity within its contracting opportunities. Thus, the agency strongly encourages proposals from Proposers that optimize the use of LBE, Micro-LBE, Small-LBE, and SF Small Business Administration (SBA)-certified firms. The SFPUC also seeks to further optimize the use of consultant teams that reflect the diversity of the City and County of San Francisco. As such, the SFPUC recommends that Proposers consider the composition of their teams in terms of gender, age, ethnicity, and race, and utilize teams that include a diverse mix of staff at all organizational levels.

Note that the SFPUC's encouragement of diversity will not affect the evaluation of proposals for this RFP. Criteria for evaluation is limited to the factors described in the Evaluation and Selection Criteria section of this RFP (Section 6).

## **1.6** Limitations on Communications

From the earlier of either 1) the publication of this RFP on the SFPUC's Contract Advertisement Report, or 2) the date this RFP is issued, until completion of the competitive process of this RFP, either by cancelation or by final action of the San Francisco Public Utilities Commission, Proposers, subconsultants, vendors and/or their representatives or other interested parties, may communicate with the SFPUC only as instructed in this RFP.

The SFPUC strictly prohibits any attempt to communicate with or solicit any City official, representative or employee, except as instructed in this RFP. Failure to comply with this communications protocol may, at the sole discretion of the SFPUC, result in the disqualification of the Proposer or potential Proposer from the competitive process. This protocol does not apply to communications with the City regarding business not related to this RFP.

## **1.7** Conflicts of Interest

The City will require the Consultant to agree to comply fully with and be bound by all applicable provisions of state and local law related to conflicts of interest. The SFPUC advises Proposers to review [Section 12](#) of this RFP carefully before submitting a proposal.



# 2 Background

## 2.1 San Francisco Public Utilities Commission

The SFPUC is the City department that provides retail drinking water and wastewater services to San Francisco, wholesale water to three (3) Bay Area counties, and green hydroelectric and solar power to San Francisco's municipal operations.

The mission of the SFPUC is to:

- Serve San Francisco and its Bay Area customers with reliable, high quality, and affordable water, while maximizing benefits from power operations and responsibly managing the resources entrusted to its care;
- Protect public health, public safety, and the environment by providing reliable and efficient collection, treatment, and disposal of San Francisco's wastewater;
- Conduct its business affairs in a manner that promotes efficiency, minimizes waste, and ensures rate payer confidence; and
- Promote diversity and the health, safety, and professional development of its employees.

The SFPUC is comprised of three (3) separate enterprises: Water, Wastewater, and Power. The Water Enterprise is responsible for managing the transmission, treatment, storage, and distribution of potable water to San Francisco's wholesale and retail customers. The Wastewater Enterprise is responsible for managing the collection, treatment, and disposal of San Francisco's wastewater. The Power Enterprise is responsible for managing retail power sales, transmission and power scheduling, energy efficiency programs, street lighting services, utilities planning for redevelopment projects, energy resource planning efforts, and various other energy services.

With regard to the SFPUC Divisions, External Affairs provides Communications and Outreach services, Business Services oversees all financial and accounting matters for the entire SFPUC, and Infrastructure delivers capital improvement programs.

## 2.2 Reserved (SFPUC Policies)

## 2.3 SFPUC Power Enterprise

The SFPUC Power Enterprise (AA-/AA long-term bond ratings from Fitch/Standard and Poor's) is a municipal electrical utility servicing approximately 3,500 customer accounts with an annual load of approximately 1,000 gigawatt-hours (GWh). The SFPUC owns and manages the Hetch Hetchy Water and Power (HHP) resource located in the Sierra Nevada mountain range. HHP generation is delivered over HHP transmission facilities to SFPUC wholesale and retail customers.

Most SFPUC loads are in the Greater Bay Area and are served using Pacific Gas & Electric (PG&E) transmission and distribution facilities.

## **2.4 SFPUC Power Projects**

The Hetch Hetchy hydro project has a 406 MW nameplate rating. Typically, it generates up to 360 MW in the spring during peak hours, and in other months, the SFPUC uses it to follow the City's municipal load and Airport Tenant load (~150 MW peak). The SFPUC also has a contract with a 4.5 MW solar project located within San Francisco. The SFPUC buys and sells with third parties to balance its short/long positions and ensure compliance with regulatory requirements.

The SFPUC also manages and administers CleanPowerSF, San Francisco's Community Choice Aggregation program, and its energy portfolio. CleanPowerSF is a partnership between the City and County of San Francisco and PG&E to supply San Francisco electricity customers with affordable and cleaner energy. The City launched CleanPowerSF in May 2016 with the following goals: to provide (1) affordable and reliable electricity services to San Francisco residents and businesses, (2) cleaner energy alternatives advancing the City's Greenhouse Gas reduction goals; (3) investment in local renewable energy projects and jobs; and (4) long-term rate and financial stability. As a program of the Power Enterprise, CleanPowerSF is under the direct administrative oversight of its Assistant General Manager for Power, who in turn reports to the SFPUC General Manager. The program is funded solely by CleanPowerSF ratepayers and does not rely on funding from the Power Enterprise, SFPUC, or the City.

CleanPowerSF serves approximately 380,000 retail customer accounts with an annual energy requirement of approximately 3,000 GWh and peak demand of approximately 500 MW. The program has maintained a participation rate of more than 96% and has attracted more than 7,000 upgrades to its 100% Renewable Portfolio Standards (RPS)-eligible renewable SuperGreen product. CleanPowerSF's supply portfolio is comprised of numerous third-party energy contracts of varying tenor: long-term Power Purchase Agreements (PPAs), mid-term, and short-term transactions. These contracts include Inter-SC Trades (IST) within the CAISO, as-available and dispatchable renewable and energy storage contracts with projects located in the CAISO, and renewable energy carbon-free energy purchases from in-state and out-of-state resources indexed to a CAISO hub.

Although the SFPUC manages and administers both the HHP and CleanPowerSF energy portfolios, the programs service separate retail load and operate as two lines of businesses, maintaining separate financial and accounting records. HHP and CleanPowerSF are separate component units on the Hetch Hetchy Water and Power financial statement.

The SFPUC currently conducts its power operations and services in accordance with multiple agreements and Tariffs, including a CAISO Operating Agreement, the Wholesale Distribution Tariff, and a Scheduling Coordination Agreement with APX Power Markets, Inc. (APX). The APX agreement expires in June 2022 and the SFPUC is currently engaged in a comprehensive strategic

initiative to determine and secure the resources and services required to ensure its economical and uninterrupted operations.

# 3 Scope of Services

## 3.1 Description of Services

The primary role of the selected Proposer(s) will be to perform the following tasks:

1. Submitting Day Ahead and Real Time Interchange Schedules and Bids to CAISO
2. Managing Communications Between CAISO and SFPUC Schedulers and Operators including 7x24 dispatch of the plants
3. Managing CAISO Settlements and Payments
4. Managing CAISO and CPUC Resource Adequacy Requirements
5. Manage Access to CAISO Systems for Meter, Outage, Settlement, Scheduling, and Bid/Award data
6. Submit Settlement Quality Meter Data (SQMD) to CAISO on behalf of SFPUC
7. Optional Services

The Consultant will work under the direction of the SFPUC Power Enterprise, Energy Scheduling and Settlements group.

## 3.2 Contract Term and Schedule

The Agreement will have a duration of 5 Years.

The SFPUC reserves the right to commence, close, reduce or extend Consultant's services at any time in response to changing needs. In addition, the SFPUC shall have the sole discretion to increase the Agreement amount up to \$9,000,000 and to extend the Agreement term for up to a total of eight (8) years (or 96 months) consistent with City requirements.

## 3.3 Detailed Description of Tasks

The following is a detailed description of the tasks required to complete the assignment.

### **TASK 1 SUBMITTING DAY AHEAD AND REAL TIME INTERCHANGE, GENERATION AND LOAD SCHEDULES, RESOURCE ADEQUACY AND ANCILLIARY SERVICE BIDS TO THE CAISO FOR THE HHP AND CLEANPOWERSF PORTFOLIOS**

The SC shall submit schedules to the CAISO in the forward and the real-time markets pursuant to CAISO tariff and protocols.

#### **Task 1 – Deliverables may include but are not limited to:**

- The primary role of the selected SC will be to submit interchange, generation and load schedules into the CAISO scheduling system on behalf of the SFPUC within CAISO timelines as well as submitting corresponding meter data. The selected SC will work with and under the direction of the Scheduling and Settlements group in the SFPUC

Power Enterprise as well as operations staff at the Hetch Hetchy project located in Moccasin, California.

- The SC shall work with SFPUC to develop a detailed procedure once a contract is finalized.
- All transactions should be done using a unique HHP SC Identifier (“SCID”) and a unique CleanPowerSF SCID to facilitate settlements tracking and verification.
- SC services should include the following:
  - 7 days per week, day-ahead pre-scheduling
  - 7 days per week, 24-hour real-time services
  - Credit services/collateral with the CAISO
- The SC will commence scheduling on behalf of the SFPUC by the opening of the day-ahead market for the trade date of April 1, 2022. The selected SC must be able to provide the scope of services for a period of not less than five (5) years.
- The SC will proactively identify strategic bidding methodologies, Ancillary Services, and Resource Adequacy where possible to maximize CAISO revenue, minimize exposure and more efficiently perform related tasks.
- Maximize co-optimization of Ancillary Services (AS) and energy in the DAM that allows for full flexibility in terms of the combination of energy and AS capacity that can be offered.
- The SC shall submit and validate inter-SC trades on behalf of the SFPUC as required.
- The SC shall provide acknowledgement of successful submission of all schedules and notification of CAISO submission errors.
- The SC shall provide a tool and/or direct access to the SIBR, CMRI, MRI-S, ADS, CIRA, and other CAISO scheduling related portals as needed. The SFPUC should, in coordination with the SC, have the ability to modify the schedule submission for resubmittal to CAISO.
- The SC shall facilitate the submission and receipt of CAISO DA/RT forecasts for Sunset Reservoir photovoltaic and other renewable generation from CAISO if needed.
- The SC shall coordinate e-tagging for power schedules.
- SFPUC contracts through Power Purchase Agreements (PPAs) for the output from variable energy resources (VER), storage resources, and hybrid or co-located solar + storage resources, requiring SFPUC and the SC to be the authorized and designated SC for the Facility and perform the SC responsibilities accordingly.
  - The SC shall submit day ahead and real-time bids for VER, energy storage and hybrid resources, including setting up mechanisms to receive real-time information from third parties, if needed.
  - The SC shall coordinate with supplying generator owners and submit supply schedules to the Day-Ahead and Real-Time Markets, if needed.

- Operational scheduling processes and procedures will be negotiated as necessary for the SFPUC/SC to maximize benefits and minimize burdens as they exist.
- The SC shall monitor resource performance and provide recommendations for resource scheduling and dispatch to support portfolio optimization strategies.
- The SC shall provide all necessary CAISO settlement data and generate CAISO Charges Invoices to share with PPA Counterparties.

## **TASK 2 MANAGING COMMUNICATIONS BETWEEN CAISO, SFPUC SCHEDULERS / OPERATORS, AND OTHER AGENCIES**

The SC shall manage communications between CAISO and the SFPUC forward schedulers, real-time operators, and generator owners.

### **Task 2 - Deliverables may include but are not limited to:**

- The SC shall perform 7X24 dispatch of the plants.
- Install, maintain, and monitor the CAISO's Automatic Dispatch System (ADS) for the SFPUC's real-time dispatches.
- Notify the SFPUC Hetch Hetchy operators of CAISO dispatches and relay specific operating instructions.
- Reporting planned and unplanned generation resource outages on behalf of the SFPUC using the CAISO's Outage Management System (OMS).
- Document all communications with CAISO and Hetch Hetchy operators, including but not limited to information requests, outage notification
- Support and Coordinate with the SFPUC for contracted energy resources as needed, including for participation in CAISO's New Resource Implementation process and for dispatch management.
- For PPA related agreements, the SC will provide dispatch management and act as the interface and SC between renewable resource operator and the CAISO; meeting all DOT, outage, and curtailment notices. Manage, record, and coordinate planned and unplanned outages effectively in the Outage Management System (OMS) in accordance with the CAISO Tariff.

## **TASK 3 MANAGING CAISO AND CPUC RESOURCE ADEQUACY REQUIREMENTS**

The SC should work with the SFPUC to manage the Resource Adequacy portfolios, Supply Plans and Resource Adequacy Plans including submissions to the CAISO and the CPUC. The SC should inform the SFPUC of new initiatives, evolving regulations and obligations, and other updates on how such changes may impact operations.

### **Task 3 – Deliverables:**

- Grant access to SFPUC employees to submit annual and monthly RA and Supply plans to CAISO through CIRA for HHP and CleanPowerSF.
- Support the submission of annual and monthly CleanPowerSF RA plans to the CPUC through tracking and providing reports with the necessary resource information for the program's RA portfolio.
- Monitor, notify, and submit additional regulatory compliance reports related to RA to the CAISO and CPUC such as the Flex Capacity Needs Assessment, Import Allocation Process, Path 26 Process, and others as needed.
- Monitor and report on post cross-validation errors and POSO (Planned Outage Substitution Obligations).
- Monitor and report on CAISO NQC's list for resources in the HHP and CleanPowerSF portfolios. Complete and submit necessary requests to CAISO for inclusion in NQC lists.

### **TASK 4 MANAGING CAISO SETTLEMENTS AND PAYMENTS**

The SC should manage all CAISO Settlement activities to the CAISO. SC shall be well versed in CAISO dispute procedures and shall be expected to maintain timely challenges to disputed CAISO charges and costs as well as provide regular reporting on disputes and good-faith negotiations to the SFPUC.

#### **Task 4 – Deliverables may include but are not limited to:**

- Retrieve CAISO Settlement Statements and Determinant files from CAISO.
- Retrieve CAISO Invoices.
- Open timely ISO Disputes where necessary and sees the dispute process through to resolve settlement errors.
- Provide Settlement validation summary report to SFPUC. Validation deltas, outlier charge amounts requiring attention, charge summary, etc.

The SFPUC is unable to process weekly invoice payments/collections; and/or respond to immediate collateral calls. Therefore, the SFPUC seeks a monthly payment cycle with the SC, where the SC manages the daily/weekly cash flows and cash calls

- Perform weekly cash clearing associated with CAISO invoices.
- Provide weekly/monthly invoice to SFPUC for CAISO payment
- Monitor and respond to any credit or collateral calls from the CAISO. Provide credit/collateral call information to SFPUC at time of event.
- Submit payment to the CAISO on behalf of SFPUC in accordance to the CAISO Payments Calendar.
- In accordance with NERC, WECC and CAISO requirements, provide all e-tagging and checkout of schedules with applicable timelines.

## **TASK 5 PROVIDE ACCESS TO CAISO SYSTEMS FOR METER, OUTAGE, SETTLEMENT, SCHEDULING, AND BID/AWARD DATA**

The SC shall provide access to all relevant CAISO data, on SC's software systems and/or via direct access for SFPUC to CAISO systems. The SC shall demonstrate experience in the use of SIBR, ADS, CMRI, CIRA, Master File User Interface, OMS and other applicable CAISO applications.

### **Task 5 – Deliverables may include but are not limited to:**

- The SFPUC uses PowerSettlements SettleCore system, and expects that system to be able to retrieve data from the CAISO systems via a digital certificate
- The SC shall provide digital certificate authorization for SFPUC to download these files. Data and file types should include, but not limited to, the following:
  - Expected energy
  - Market awards
  - Market prices
  - SFPUC and CAISO (public) bill determinants for all settlement statement versions
  - SFPUC settlement statements and invoices for all settlement statement versions
  - Submitted meter data
- The SC shall allow specified SFPUC staff access to relevant CAISO Market Participant Portal tools including CMRI, SIBR, MRI-S, ADS, CIRA, MasterFile and OMS by submitting applications to CAISO and facilitating keeping security certificates up to date

## **TASK 6 SUBMIT SETTLEMENT QUALITY METER DATA (SQMD) TO CAISO ON BEHALF OF HHP AND CLEANPOWERSE**

### **Task 6 – Deliverables may include but are not limited to:**

- The SC shall be required to provide automated receipt of load and generation meter data in CAISO MRI-S format, or other agreed-upon format, from SFPUC for each meter data submission period via vendor API, FTP, or web services, for delivery to CAISO.
- SC will ensure ALL meter data is submitted on time (to the CAISO Tariff timeline for meter data), accurately, and completely. SC will notify SFPUC when submission errors or tardiness occur.
- The SC shall provide acknowledgement of successful submission of all meter data and notification of CAISO submission errors.
- The SC shall coordinate with the SFPUC the biennial SC Self Audit. The SC shall submit a SQMD Plan Affirmation and SC Self Audit Attestation as required by CAISO. The SC shall contract with an agreed-upon auditor, if necessary, to audit SFPUC's SQMD collection, validation, and data. Charges for the third-party auditor shall be passed through the SC invoice process and paid by SFPUC.



# 4 Minimum Qualifications

The minimum qualifications set forth below are required for a Proposer to be eligible to submit a proposal in response to the RFP. Proposals must clearly demonstrate compliance with the specified minimum qualifications. The SFPUC may reject Proposals that do not clearly meet the minimum qualifications without further consideration. The SFPUC reserves the right to request clarification from Proposers who fail to meet any minimum qualification requirements prior to rejecting a Proposal for failure to demonstrate compliance.

## 4.1 Prime Proposer Qualifications

A Proposer cannot be a Prime Proposer on more than one (1) proposal. In addition, a Prime Proposer that intends to be listed as a subconsultant on another competing proposal must fully disclose that intention to the impacted parties.

To qualify as a Prime Proposer for this Agreement, a Proposer must currently be certified by the CAISO as an SC as the CAISO Tariff defines that term and specifies the functions and responsibilities of an SC. Proposers must have possessed this certification continuously for a period of not less than one (1) year, a Proposer must also possess at a minimum the following qualifications for not less than one (1) year:

- Applicable qualifications and experience with providing SC services for generating assets, including intermittent renewable resources and storage assets.
- Must have Operator Dispatch/ADS experience
- Experience and knowledge of the CAISO operations as they currently exist including substantial knowledge of CAISO Scheduling and Settlements Markets.
- Experience with CAISO dispute procedures, extensive knowledge of CAISO charge codes and experience in verifying and disputing CAISO charges

# 5 Proposal Response Format

## 5.1 Proposal Submission

All proposals must be submitted online via the [SFBid Website \(https://sfbid.sfwater.org/\)](https://sfbid.sfwater.org/).

For technical or procedural questions regarding the online submittal, please contact [sfbid@sfwater.org](mailto:sfbid@sfwater.org).

## 5.2 Proposal Requirements and Format

Detailed proposal response requirements are listed below and on the online response form within SFBid (“Proposal Response Form”). Please refer to the SFBid website and click the “Submit Proposal” button to view and complete the full Proposal Response Form. The Proposal must include the following:

### 5.2.1 Contact Information and Commitments

Provide contact information, identifying the Prime Proposer. If available, please provide your City “Bidder” or “Supplier” number.

Proposer must agree to the following commitments listed below and in the Proposal Response Form:

- Proposer has reviewed the Conflict of Interest Section of this RFP and agrees to comply with all conflict of interest rules and restrictions;
- Proposer has the qualifications and experience to perform and complete the work described in this RFP;
- Proposer has read and agrees to comply fully with the terms and conditions of the Professional Services Agreement (P-600) (see Appendix A);
- Proposer agrees to comply fully with all applicable laws, including the laws of the City and County of San Francisco.
- We have reviewed the Limitations on Communications Section of this RFP and certify compliance with all communications instructions and restrictions

### 5.2.2 Cover Letter

Submit a cover letter signed by an individual authorized to obligate the Proposer to fulfill the commitments contained in the proposal. The letter must include the following: (1) a statement identifying the Lead Proposer to this RFP; (2) a contact for all communications pertaining to the Proposer’s proposal (include telephone number, e-mail address and mailing address); (3) a statement of the Proposer’s overall ability and qualifications to conduct the work; (4) a statement that the Proposer agrees to comply fully with the terms

and conditions of the Agreement, attached hereto as Appendix A; (5) a statement that the Proposer agrees that the Proposer's rates and overhead and profit rate listed on the OPS are non-negotiable and will be incorporated into the Agreement; and (6) a statement that the Proposer agrees to fully comply with all applicable San Francisco laws.

### **5.2.3 Executive Summary**

Proposer must provide an executive summary that:

- Includes a brief overview of the Proposal's principal elements,
- Demonstrates an understanding of the project objectives, and
- Describes the Proposer's approach for carrying out the scope of services.

### **5.2.4 Qualifications Summary**

Proposer must provide a description and background summary of the Prime Proposer consulting firm(s), and Subconsultants. The summary must include corporate qualifications, commitment, strength, and technical capabilities to fulfill all services specified and required to accomplish the work successfully.

Proposer must clearly demonstrate that the Prime Proposer, and all Subconsultants meet all the minimum qualification requirements outlined in Section 4 of the RFP.

### **5.2.5 Task Descriptions**

Proposer must confirm, expand and/or detail the tasks outlined in the scope of services of this RFP (see Section 3.3, Tasks 1-6), and provide detailed descriptions of how the Proposer proposes to execute the work associated with each task. The more detailed descriptions to be provided by Proposer shall not in any way lessen or eliminate any of the work elements outlined in this RFP. The detailed task descriptions provided by the selected Proposer will constitute the scope of services section of the Agreement. The task descriptions to be provided as part of the proposal should therefore be detailed enough to clearly identify the work to be performed under each task. The detailed task descriptions should specifically address the Proposer's approach to the key work described in Section 3.3.

### **5.2.6 Work Approach**

Proposer must describe its overall work approach. Specifically address the following:

- Overall approach for meeting goals and objectives of this RFP;
- Approach for coordinating/managing all work activities, including coordination and communication with SFPUC staff.
- Processes/measures for tracking delivery/performance, and maximizing quality (Quality Assurance/Quality Control (QA/QC));
- Processes for internal and external notification and resolution of technical conflicts.

- Understanding of potential project/task issues and constraints, and approach to managing project-specific challenges.
- Location where the work is to be managed and location where each component of the work is to be performed;

### 5.2.7 Overhead and Profit Schedule

Compensation under this contract will be provided as: 1) labor related costs by hourly billing rates for hours worked, and 2) separately billed direct reimbursable expenses (ODCs).

Proposers must use the Overhead and Profit Schedule (OPS) Template, provided as an Excel file in Appendix B, to prepare their OPS. The OPS must include the base hourly rate and each firm's overhead and profit rate (OPR, or "multiplier") for each staff member for the Prime Proposer and all Subconsultants expected to work on the Project. Only one overhead and profit rate must be listed for each firm. The OPS must also include the markup on Subconsultant labor costs. **The base hourly rate is the employee's earned income hourly rate, which shall not include health benefits, retirement benefits, profit sharing, sick leave, and vacation.**

#### A. Applicable Rates/Tasks

All Proposals must provide 2021 billing rates. The Consultant will only be allowed to escalate its 2021 billing rates based on the annual percentage change of the Consumer Price Index (CPI) for the San Francisco Bay Area for Urban Wage Earners and Clerical Workers.

Based on the information provided in the OPS, SFPUC will calculate an Effective Overhead and Profit Rate (EOPR, or "Average Multiplier") by dividing the Total Actual Labor Cost by the Total Base Labor Cost. The EOPR will be a weighted average of the rates proposed for each firm listed as part of the Proposer's team. **The EOPR may not exceed 3.20. The maximum billing rate is \$220/hour.**

Any Proposer that does not completely fill out the OPS provided in this RFP and/or does not comply with the maximum allowed EOPR will not receive any points for the OPS portion of the proposal evaluation. Furthermore, it is within sole discretion of the SFPUC to reject any proposal that does not comply with the OPS requirements.

All costs to manage and administer the services under the Agreement must be included in each firm's OPR, or "multiplier." Only individuals who are assigned to the proposal or have been approved by the SFPUC Construction Manager to be added to the Agreement, and are performing tasks directly related to the Agreement, will be allowed to charge their time on the approved task orders.

## **B. Individual Contractor**

An Individual Contractor for purposes of the OPS is an individual staff team member proposed by Proposer who is compensated by Proposer under an hourly contract pay rate instead of an hourly base payroll labor rate. An Individual Contractor must be listed as a separate line item in the OPS. The Individual Contractor's name, entity, and hourly pay rate shall be listed, and the hourly pay rate extended to a billing rate with a 1.00 Overhead and Profit Rate pass-through. The Individual Contractor's hourly pay rate must be verifiable by an executed written contract with the Proposer. Markup on an Individual Contractor is limited to 5% of the Individual Contractor's proposed billed cost. The Proposer's markup for an Individual Contractor must be captured in the subconsultant markup box at the bottom of the OPS.

Provision of Individual Contractors for proposed services under the Agreement shall not exceed 3% of the Proposal Total Actual Labor Cost. If Proposer's Individual Contractor is later replaced or substituted after the Contract is executed, the billing rate of any new Individual Contractor must not exceed the billing rate proposed in the OPS for the position. If the Individual Contractor is replaced or substituted with a Prime or Subconsultant employee at an hourly payroll rate, the firm Overhead and Profit Rate applied to the replacement individual's hourly payroll rate must not exceed the Proposal EOPR.

## **C. Rates and Markups**

The Proposer's billing rates and EOPR provided in the OPS will be non-negotiable during the Agreement award process and for the duration of the Agreement. The EOPR will apply to the billing rate of all subconsulting firms not listed in the OPS. If a new subconsulting firm is added during the duration of the Agreement, the new individual firm Overhead and Profit Rate can be no more than the Proposal Effective Overhead and Profit Rate. The EOPR will also apply to all amendments to the Agreement.

SFPUC may require the Proposer to provide certified payroll records documenting the actual salaries of all individuals who will be added to the Project (i.e., individuals not listed in the OPS). The City will only approve project staff substitutions when that change in personnel is requested by the City and/or beyond the control of the Proposer. The City expects individuals listed in the OPS, and for whom résumés and qualifications have been submitted as part of the proposal, to be provided to the project team.

The Proposer shall provide the markup on Subconsultant labor costs as a separate line item in the OPS. Markups are limited to 5% of Subconsultants' actual labor costs. Markups on ODCs or materials for either the Proposer or its Subconsultants are not allowable.

Hourly billing rates shall be the actual hourly base salary rate of each employee utilized for the work multiplied by the firm's proposed overhead rate (including salary burden and fringe benefits) and proposed profit rate. Each firm's proposed OPR, or "multiplier," shall apply to all

proposed staff and substituted, new, or added staff for the duration of the contract and shall include all miscellaneous and incidental costs of work other than those as specifically defined below as direct reimbursable expenses.

#### **D. Other Direct Costs**

Direct reimbursable expenses (ODCs) 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 Manager.**

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: SFPUC will pay Consultant on a per mile basis 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 Consultant must subtract commuting mileage from total mileage to calculate reimbursable mileage. The Consultant must 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 Consultant must request the project vehicle and receive pre-authorization 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, SFPUC will not reimburse any additional insurance costs. 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; and
- Expedited courier services when requested by SFPUC staff and task-specific Safety equipment.

Anything not listed above is not eligible for reimbursement and therefore should be included in the Proposer’s EOPR if compensation for these expenses is desired. 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 Consultant’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.

### **5.2.8 CMD Local Business Enterprise Forms**

All proposals submitted must include the completed CMD Local Business Enterprise (LBE) Forms (CMD Attachment 2). Attach the completed CMD LBE Forms included in Appendix C: Form 2A, , Form 3, Form 4, and Form 5.

### **5.2.9 Additional Attachments: City Requirements Forms**

All proposals submitted must include the following:

- 1) CMD/12B & 12C Form: Attach the completed CMD Form 12B-101 included in Appendix D. See RFP Section 10.3 for more information.
- 2) Other Required City Forms: Attach the completed Minimum Compensation Ordinance (MCO) Declaration, Health Care Accountability Ordinance (HCAO) Declaration, and First Source Hiring Program (FSHP) Agreement included in Appendices E, F, and G, respectively. See RFP Sections 10.4, 10.5, and 10.6 for more information.
- 3) Chapter 12X Certification, included in Appendix H.
- 4) Release of Liability Form included in Appendix I.

# 6 Evaluation and Selection Criteria

This section describes the process for analyzing and evaluating the Proposals. SFPUC and CMD staff first perform an Initial Screening process as described in Section 6.1. Proposals that pass the Initial Screening process will proceed to the Evaluation Process described in Section 6.2.

## 6.1 Initial Review

SFPUC and CMD staff will review each proposal for initial determinations on responsiveness. Elements reviewed will include, without limitation: proposal completeness, compliance with format requirements, compliance with minimum qualification requirements, verifiable references, compliance with LBE requirements, and responsiveness to the material terms and conditions of the Agreement (Appendix A, Professional Services Agreement (P-600)).

SFPUC will not score Proposals during the Initial Review. Initial review will provide a pass/fail determination as to whether a proposal meets the threshold requirements described above. SFPUC will deem non-responsive any proposal that fails to meet these requirements. SFPUC will not include any Proposal deemed non-responsive in the Evaluation Process described in Section 6.2 below. The City reserves the right to request clarification from Proposers prior to rejecting a proposal for failure to meet the Initial Review requirements. SFPUC will limit clarifications to exchanges between the City and a Proposer for the purpose of clarifying certain aspects of the Proposal, and will not provide a Proposer the opportunity to revise or modify its Proposal.

## 6.2 Overall Evaluation Process

The evaluation process will consist of the below phases with the following allocation of points:

Technical Written Proposal	900
Overhead and Profit Schedule	100
<b>TOTAL</b>	<b>1000</b>

The maximum total score for the evaluation process will be one thousand (1000) points.

The Selection Panels, including the Technical Panel and the Community Benefits Panel, will be comprised of individuals who are knowledgeable on the subject matter, and may include staff from the SFPUC, other City agencies, and/or other utilities or organizations. SFPUC/City will not include staff closely involved with the preparation of this RFP and the development of the scope of services on the Selection Panel.



## 6.2.1 Written Proposal Evaluation

The Written Proposal Evaluation consists of separate evaluations of both the Technical Written Proposal and the Community Benefits Submittal. SFPUC will total the scores for the Technical Written Proposal and the Community Benefits Submittal.

The assigned CMD Contract Compliance Officer will assess proposal compliance with LBE requirements and assign a rating bonus to the written proposal score, if applicable.

SFPUC will tabulate the written proposal scores, or CMD-adjusted written proposal scores (if applicable), and rank the Proposers starting with the Proposer receiving the highest score, then continuing with the Proposer receiving the second highest score, and so on.

### 6.2.1.1 Technical Written Proposal

The Technical Panel will evaluate and score written proposals using the following point scale:

EVALUATION CRITERIA	RFP SECTION(S)	POINTS
Proposer Format and Organization (Including Cover Letter and Executive Summary)	5.2.2, 5.2.3	50
Qualifications Summary	5.2.4	200
Task Description	5.2.5	350
Work Approach	5.2.6	300
Total Points:		<b>900</b>

## 6.2.2 Overhead and Profit Schedule Evaluation

SFPUC will score Proposals based on their proposed Effective Overhead and Profit Rate (EOPR, or “average multiplier”) for this Project.

SFPUC may reject the data provided in the and exclude it from the score tabulation if SFPUC finds it to be inconsistent with any of the information provided in the Proposal. For example, classification of team members presented in the Work Approach must be consistent with classification of team members listed in the OPS.

SFPUC will allocate up to **100** points for the Overhead and Profit based on the following table:

Effective Overhead and Profit Rate (EOPR, or “Average Multiplier”)	Point(s)
---	----------

< or equal to 2.50	100
2.51 - 2.60	90
2.61 - 2.70	80
2.71 - 2.80	70
2.81 - 2.90	60
2.91 – 3.00	50
3.01 - 3.10	40
3.11 - 3.20	30
> 3.20 *	0

\* The maximum allowable Effective Overhead and Profit Rate is **3.20**.

The CMD Contract Compliance Officer will assign a rating bonus to the combined OPS score, if applicable. SFPUC will tabulate the OPS Scores, or CMD-adjusted Fee Schedule scores (if applicable).

### **6.3** Final Scoring

The SFPUC will tabulate written proposal, and OPS scores and then rank Proposers, starting with the Proposer receiving the highest total score, then continuing with the Proposer receiving the second highest total score, and so on. SFPUC will identify the Proposer with the highest total score as the highest-ranked Proposer eligible to proceed with the award of an Agreement.

# 7 Award of an Agreement

## 7.1 Agreement Preparation

The SFPUC General Manager will make a recommendation to the SFPUC Commissioners, subject to approval by the San Francisco Board of Supervisors pursuant to City Charter Section 9.118, to award an Agreement to the highest-ranked Proposer.

Failure by the Proposer to obtain compliance with City requirements and execute an Agreement within two (2) weeks of the date of the Board of Supervisors' approval of the Commission's authorization to execute the Agreement may result in the General Manager's executing an Agreement with the next highest ranked Proposer. The SFPUC, at its sole discretion, may select another Proposer and may proceed against the original Consultant for damages.

SFPUC will issue a Notice of Contract Award (NCA) after the selected consultant obtains all necessary City approvals, submits required documents, executes the Agreement, and the Controller certifies the Agreement.

## 7.2 Standard Agreement Language

By submitting a proposal, Proposers acknowledge that they have read, understand, and agree, if selected, to enter into the City's Agreement as set forth in Appendix A, without changes to its terms and conditions. SFPUC will not negotiate the terms of the Agreement, including the overhead and profit rate and billing rates listed in the submitted OPS. By submitting its proposal, Proposer agrees to the terms of the Agreement and agrees not to propose negotiation of any of its terms.

## 7.3 Agreement Administration

SFPUC may direct Consultant to perform contract services in phases. The SFPUC will determine the work to be conducted under each phase and authorize the start of each phase in accordance with the overall agreed upon project schedule.

The City strictly prohibits the Consultant from commencing performance of work under the Agreement until the SFPUC issues a written Notice to Proceed (NTP). The City shall not be liable for payment for any work performed by the Consultant prior to the City's issuance of an NTP.

In accordance with San Francisco Administrative Code Chapter 6, no proposal is accepted and no contract in excess of \$110,000 is awarded by the City until such time as the SFPUC General Manager recommends the contract award and the Commission then adopts a resolution awarding the contract.

# 8 Terms and Conditions

## 8.1 Errors and Omissions in RFP

Proposers are responsible for reviewing all portions of this RFP, including all appendices. Proposers are to promptly notify the SFPUC, in writing, upon discovery of any ambiguity, discrepancy, omission, or other error in the RFP. Modifications and clarifications will be made by addenda as specified in Section 8.3 of this RFP. The City is not obligated to issue addenda in response to any request submitted after ~~deadline to submit questions.~~

## 8.2 Inquiries Regarding RFP

All requests for information concerning the RFP, whether submitted before or after the pre-submittal conference, must be in writing and submitted via the [SFBid website](#). Substantive replies will be memorialized in written addenda to be made part of this RFP. All addenda will be posted on the [SFBid website](#). This RFP will only be governed by information provided through written addenda. With the exception of CMD or City contracting inquiries, no questions or requests for interpretation will be accepted after 8/6/2021.

If any new and/or substantive information is provided in response to questions raised at the pre-submittal conference, it will be memorialized in a written addendum to this RFP and posted on the [SFBid website](#).

For questions concerning CMD certification requirements for equal benefits, Proposers should refer to the CMD website at <http://www.sfgov.org/cmd>.

Direct all inquiries regarding business tax registration procedures to the Tax Collector's Office at (415) 554-4400.

## 8.3 Interpretation and Addenda/Change Notices

Any interpretation of, or change in, the RFP will be made by addendum and shall become a part of the RFP and of any Agreement awarded. Change Notices in the form of Addenda will be posted on the [SFBid website](#).

The SFPUC will make reasonable efforts to post in a timely manner any modifications to the RFP on the [SFBid website](#). Notwithstanding this provision, the Proposer shall be responsible for ensuring that its proposal reflects any and all addenda posted by the SFPUC prior to the proposal due date regardless of when the proposal is submitted. Therefore, the City recommends that the Proposer check the SFBid website before submitting its proposal to determine if the Proposer has read all posted addenda. The SFPUC will not be responsible for any other explanation or interpretation.

## 8.4 Objections to RFP Terms

Should a prospective Proposer object on any ground to any provision or legal requirement set forth in the RFP (including all Appendices and all Addenda), including but not limited to Objections based on allegations that: (i) the RFP is unlawful in whole or in part; (ii) one or more of the requirements of the RFP is onerous, unfair or unclear; (iii) the structure of the RFP does not provide a correct or optimal process for the solicitation of the Services; (iv) the RFP contains one or more ambiguity, conflict, discrepancy or other error; or (v) the RFP unnecessarily precludes alternative solutions to the Services or project at issue, the prospective Proposer must provide timely written notice of Objection as set forth below.

a) An Objection must be in writing and must be received by the City no later than 5:00 p.m. on the 10th working date prior to the deadline for proposal submittal (as that deadline may be adjusted by Addenda). If an Objection is mailed, the prospective Bidder bears the risk of non-delivery within the required time period. Objections should be transmitted by a means that will objectively establish the date of receipt by the City. Objections or notices of Objections delivered orally (e.g., by telephone) will not be considered.

b) Objections must be delivered to:

San Francisco Public Utilities Commission

Contract Administration Bureau

RE: **PUC.PRO.0152 Power Scheduling Coordination and Related Support Services**

525 Golden Gate Avenue, 8<sup>th</sup> Floor

San Francisco, CA 94102

c) The Objection shall state the basis for the Objection, refer to the specific requirement or portion of the RFP at issue, and shall describe the modification to the RFP sought by the prospective Proposer. The Objection shall also include the name, address, telephone number, and email address of the person representing the prospective Proposer.

d) The City, at its discretion, may make a determination regarding an Objection without requesting further documents or information from the prospective Proposer who submitted the Objection. Accordingly, the initial Objection must include all grounds of objection and all supporting documentation or evidence reasonably available to the prospective Proposer at the time the Objection is submitted. If the prospective Proposer later raises new grounds or evidence that were not included in the initial Objection, but which could have been raised at that time, then the City may not consider such new grounds or new evidence.

e) Upon receipt of a timely and proper Objection, the City will review the Objection and conduct an investigation as it deems appropriate. As part of its investigation, the City may consider information provided by sources other than prospective Proposer. At the completion of its investigation, the City will provide a written determination to the prospective Proposer

who submitted the Objection. If required, the City may extend the proposal submittal deadline to allow sufficient time to review and investigate the Objection, and issue Addenda to incorporate any necessary changes to the RFP.

f) Objections not received within the time and manner specified will not be considered. A Proposer's failure to provide the City with a written Objection as specified above on or before the deadline specified above shall constitute a complete and irrevocable waiver of the ground(s) of objection and forfeiture of the Proposer's right to raise such ground(s) of objection later in the procurement process, in a Government Code Claim, or in other legal proceedings.

g) A Proposer may not rely on an Objection submitted by another Proposer, but must timely pursue its own Objection.

## **8.5** Reserved (Signature Requirements)

## **8.6** Term of Proposal

By submitting a proposal for consideration, the Proposer agrees that: (1) the proposed services and prices constitute an offer that is irrevocable for 120 calendar days from the proposal due date, and that the City may accept the offer at any time after submission through the end of the 120th calendar day following the deadline for submission of proposals; and (2) the quoted prices are genuine and not the result of collusion or any other anti-competitive activity.

## **8.7** Revision of Proposal

Notwithstanding the forgoing, a Proposer may withdraw or revise a proposal on the Proposer's own initiative at any time before the deadline for submission of proposals. The Proposer must submit the revised proposal in the same manner as the original proposal. A revised proposal must be received on or before the proposal due date.

In no case will a statement of intent to submit a revised proposal or the commencement of a revision process extend the proposal due date for any Proposer.

A Proposer may withdraw his/her Proposal prior to the proposal submission time by following prompts on the SFBid website. Once withdrawn, a Proposer may submit a revised proposal through SFBid ahead of the proposal deadline.

At any time during the proposal evaluation process, the SFPUC may require a Proposer to provide oral or written clarification of its proposal. The SFPUC reserves the right to make an award without receiving or accepting any clarifications of proposals received.

## **8.8** Errors and Omissions in Proposal

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

## **8.9** Financial Responsibility

The SFPUC accepts no financial responsibility for any costs incurred by a Proposer in either responding to this RFP, participating in oral presentations, or negotiating an Agreement with the SFPUC. The proposals in response to the RFP will become the property of the SFPUC and may be used by the SFPUC in any way it deems appropriate.

## **8.10** Proposer's Obligations Under the Campaign Reform Ordinance

Proposers must comply with Section 1.126 of the San Francisco Campaign and Governmental Code, which states:

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

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

- The officer's re-election campaign;
- A candidate for that officer's office; and
- A committee controlled by the officer or candidate.

The negotiation period begins with the first point of contact, either by telephone, in person, or in writing, when a Proposer approaches any City officer or employee about a particular contract, or a City officer or employee initiates communication with a potential Proposer about a contract. The negotiation period ends when a contract is awarded or not awarded to the Proposer. Examples of initial contacts include: (i) a vendor contacts a City officer or employee to promote himself or herself as a candidate for a contract; and (ii) a City officer or employee contacts a Proposer to propose that the Proposer apply for a contract. Inquiries for information

about a particular contract, requests for documents relating to a RFP, and requests to be placed on a mailing list do not constitute negotiations.

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

1. Criminal: Any person who knowingly or willfully violates Section 1.126 is subject to a fine of up to \$5,000 and a jail term of not more than six months, or both.
2. Civil: Any person who intentionally or negligently violates Section 1.126 may be held liable in a civil action brought by the civil prosecutor for an amount up to \$5,000.
3. Administrative: Any person who intentionally or negligently violates section 1.126 may be held liable in an administrative proceeding before the Ethics Commission held pursuant to the Charter for an amount up to \$5,000 for each violation.

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

### **8.11** Sunshine Ordinance

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

### **8.12** Public Access to Meetings and Records

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



### **8.13** Reservations of Rights by the City

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

1. Waive or correct any defect or informality in any response, proposal, or proposal procedure;
2. Reject any or all proposals;
3. Reissue an RFP;
4. Prior to submission deadline for proposals, modify all or any portion of the selection procedures, including deadlines for accepting responses, the specifications or requirements for any materials, equipment or services to be provided under this RFP, or the requirements for contents or format of the proposals;
5. Procure any materials, equipment or services specified in this RFP by any other means;  
or
6. Determine that no project will be pursued.

### **8.14** No Waiver

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

# 9 Contract Monitoring Division (CMD) Requirements

## 9.1 Chapter 14B Local Business Enterprise Subconsulting Participation Requirements and Good Faith Outreach Requirements

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

### 9.1.1 LBE Subconsulting Participation Requirements

The LBE subconsulting participation requirement for this Project is **waived**.

### 9.1.2 LBE Prime/JV Participation

#### Micro LBE, Small-LBE, SBA-LBE Rating Bonus

#### Micro LBE, Small-LBE, SBA-LBE Rating Bonus

Pursuant to Chapter 14B.7, rating bonuses will be applied at each phase of the selection process under this RFP as the anticipated Agreement is in excess of \$400,000 and less than or equal to \$10,000,000.

#### **Rating Bonus Application for SF Small- and Micro-LBEs**

- a) A 10% rating bonus to a Small- or Micro-LBE firm; or a JV exclusively among Small and/or Micro-LBE firms;
- b) A 7.5% rating bonus to a JV where participation by a Small- and/or Micro-LBE firm equals or exceeds 40%;
- c) A 5% rating bonus to a JV where participation by a Small- and/or Micro-LBE firm equals or exceeds 35% (but is less than 40%).

#### **Rating Bonus Application for SBA-LBEs**

- a) Pursuant to Section 14B.7(E), a 5% rating bonus will be applied to any proposal from an SBA-LBE, except that the 5% rating bonus will not be applied at any stage if it will adversely affect a SF Small- or Micro-LBE proposer or a JV with LBE participation.
- b) SBA-LBEs are not eligible for the rating bonus when joint venturing with a non-LBE firm. However, if the SBA-LBE joint ventures with a Small- or Micro-LBE, then the joint venture will be entitled to the joint venture rating bonus only to the extent of the Small- or Micro-LBE participation described above.

If applying for a rating bonus as a JV: The Small- and/or Micro-LBE must be an active partner in the JV and perform work; manage the job and take financial risks in proportion to the required level of participation stated in the proposal; be responsible for a clearly defined portion of the

work to be performed; and share in the ownership, control, management responsibilities, risks, and profits of the JV. Proposer must describe the portion of the Small- and/or Micro-LBE JV's work in detail separately from the work to be performed by the non-LBE JV partner. The Proposal must designate the Small- and/or Micro-LBE JV's specified portion of the contract work that constitutes a commercially useful function.

### **9.1.3 LBE Forms**

All response packages submitted must include the following Contract Monitoring Division (CMD) Forms contained in the CMD Attachment 2:

- Form 2A – CMD Contract Participation
- Form 3 – CMD Non-Discrimination Affidavit
- Form 4 – CMD Joint Venture Form (if applicable)

Form 5 – CMD Employment Form. Failure to complete, sign, and submit each of the required CMD/LBE forms may result in the response package being deemed non-responsive and rejected. Direct all inquiries concerning the CMD LBE program to Linda Rainaldi, the CMD Contract Compliance Officer for the SFPUC, at (415) 554-3106 or [Linda.Rainaldi@sfgov.org](mailto:Linda.Rainaldi@sfgov.org).

The City strongly encourages proposals from qualified LBEs. Certification applications may be obtained by calling CMD at (415) 581-2310 or by visiting the CMD website at <http://www.sfgov.org/cmd>.

## **9.2 Chapters 12B and 12C Requirements (Equal Benefits)**

Effective June 1, 1997, Chapter 12B of the San Francisco Administrative Code was amended to prohibit the City from entering into contracts or leases with any entity that discriminates in the provision of benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of employees. All proposing firms should be in the process of becoming compliant with Chapter 12B if not already compliant. The Contract Monitoring Division (CMD) has developed rules of procedure and various resource materials explaining the equal benefits program. These materials are available by calling the CMD Equal Benefits Section at (415) 581-2310 or by visiting the CMD website at <http://www.sfgov.org/cmd>.

If you have any questions concerning the CMD 12B/12C Forms, you may call the CMD Equal Benefits Unit at (415) 581-2310.

# 10 Additional City Requirements

## 10.1 Insurance Requirements

Without in any way limiting Proposer's liability pursuant to the "Indemnification" section of the Agreement (see Appendix A), Proposer(s) will be required to maintain in force, during the full term of any Agreement, insurance in the following amounts and coverage:

1. **Worker's Compensation Insurance** with Employer's Liability limits not less than:  
\$1,000,000.  
In statutory amounts, per each accident, injury, or illness.
2. **Commercial General Liability Insurance** with limits not less than:  
\$1,000,000.  
Per each occurrence, and  
\$2,000,000 .  
General aggregate for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations.
3. **Commercial Automobile Liability Insurance** with limits not less than:  
\$1,000,000.  
Per each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned, and Hired auto coverage, as applicable.
4. **Professional Liability Insurance**, applicable to Proposer's profession, with limits not less than:  
\$1,000,000.  
Per each claim with respect to negligent acts, errors, or omissions in connection with professional services to be provided under the Agreement.

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

1. Name as Additional Insured the City and County of San Francisco, the SFPUC, and their respective officers, agents and employees; and
2. That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of the Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

Regarding Workers' Compensation, Proposer hereby agrees to waive subrogation, which any insurer of Proposer may acquire from Proposer by virtue of the payment of any loss. Proposer

agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Proposer, its employees, agents, and Subconsultants.

All policies shall provide thirty (30) days' advance written notice to the City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the City address in the "Notices to the Parties" section.

Should any of the required insurance be provided under a claims-made form, Proposer shall maintain such coverage continuously throughout the term of the Agreement and, without lapse, for a period of three years beyond the expiration of the 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.

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.

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

Before commencing any operations under the Agreement, Proposer 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. Failure to maintain insurance shall constitute a material breach of the Agreement.

Approval of the insurance by City shall not relieve or decrease the liability of Contractor hereunder. If a subconsultant will be used to complete any portion of the agreement, the Proposer shall ensure that the subconsultant shall provide all necessary insurance and shall name the City and County of San Francisco, the San Francisco Public Utilities Commission, and their respective officers, agents, and employees and the Proposer listed as additional insureds.

## **10.2** Standard Agreement

The Consultant will be required to enter into the Agreement, substantially in the form of the Agreement for Professional Services, attached hereto as Appendix A. Submission of a proposal shall indicate Proposer's Agreement to all terms of the Agreement.

Proposers are urged to pay special attention to the requirements of Administrative Code Chapters 12B and 12C, Nondiscrimination in Contracts and Benefits; the Minimum Compensation Ordinance; the Health Care Accountability Ordinance; the First Source Hiring Program; and applicable conflict of interest laws, as specified in RFP Sections 10.3, 10.4, 10.5, 10.6, and 10.9, and Section 12, respectively, as well as Article 11 in the attached Agreement.

### **10.3** Nondiscrimination in Contracts and Benefits

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

### **10.4** Minimum Compensation Ordinance for Employees (MCO)

The Consultant will be required to agree to comply fully with and be bound by the provisions of the Minimum Compensation Ordinance (MCO), as set forth in S.F. Administrative Code Chapter 12P. Generally, this Ordinance requires contractors to provide employees covered by the Ordinance who do work funded under the contract with hourly gross compensation and paid and unpaid time off that meet certain minimum requirements.

Additional information regarding the MCO, including the amount of hourly gross compensation currently required under the MCO, is available on the City website at [www.sfgov.org/olse/mco](http://www.sfgov.org/olse/mco). Note that the hourly gross compensation rate may increase on January 1 of each year and that contractors will be required to pay any such increases to covered employees during the term of the contract. See Article 11 in the Agreement for requirements.

### **10.5** Health Care Accountability Ordinance (HCAO)

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

### **10.6** First Source Hiring Program (FSHP)

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

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

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

## **10.7** City Vendor and Subconsultant Registration

Consultant must become an “Approved Supplier” in order to enter into an Agreement with the SFPUC/City. Approved Suppliers are entities that have met all the compliance requirements necessary to conduct business with the City, such as business tax registration and Chapter 12B compliance.

Vendors that are not currently doing business with the City must register within the City’s financial and procurement system to become an Approved Supplier. *Please note: The City also requires all Subconsultants working under a Selected Proposer to register with the City’s financial and procurement system. However, Subconsultants are not required to be compliant with the City’s vendor requirements.*

Please go to the City’s vendor portal, [SF City Partners](https://sfcitypartner.sfgov.org/Vendor) (<https://sfcitypartner.sfgov.org/Vendor>) to register.

Consultants must become Approved Suppliers, and Subconsultants must be registered, **within two weeks** of the posting of the highest-ranked Proposer, in order for award of Agreement to [occur / remain in effect].

## **10.8** Business Tax Registration

In accordance with San Francisco City Ordinance 345-88, all vendors conducting business with the City are required to maintain a valid business tax registration number. Agreements will not be awarded to the Consultant unless business tax registration fees are paid in full by the time the Agreement is awarded. Proposer may contact the Tax Collector's office at 415-554-4470 to confirm that business tax registrations fees have been paid in full. Each Consultant must provide a taxpayer ID. Vendor may register their business for tax purposes by filling out the Business Registration online application: <https://newbusiness.sfgov.org/vendor/>.

## **10.9** Conflicts of Interest

The Consultant will be required to agree to comply fully with and be bound by the applicable provisions of state and local law related to conflicts of interest as discussed in greater detail under Section 12 of this RFP.

## **10.10** Administrative Code 14B Reporting Requirements

**10.11** Contractor must submit all required payment information using the SFPUC's online system as required by CMD to enable the City to monitor Contractor's compliance with the LBE subcontracting commitments. Contractor shall pay its LBE subcontractors within three (3) working days after receiving payment from the City, except as otherwise authorized by the LBE Ordinance. Failure to submit all required payment information in the system 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 the City's payment of an invoice, Contractor has ten (10) calendar days to acknowledge all subcontractors have been paid in the online system.

Administrative Code Chapter 12X Requirements

Subject to certain exceptions, Proposers are hereby advised that this Contract is subject to the requirements of Administrative Code Chapter 12X, which prohibits the City from entering into a contract with a contractor that has its headquarters in a state that has enacted a law or laws that perpetuate discrimination against LGBT people and/or has enacted a law that prohibits abortion prior to the viability of the fetus, or a contractor that will perform any or all of the work on the contract in such a state. Chapter 12X requires the City Administrator to maintain a list of such states, defined as "Covered States" under Administrative Code Sections 12X.2 and 12X.12. The list of Covered States is available on the website of the City Administrator. Proposers will be required to certify compliance with Chapter 12X as part of its proposal, unless the City determines that a statutory exception applies. Each Proposer must certify compliance with this requirement as directed (see Appendix H).



# 11 Protest Procedures

## 11.1 Protest of Non-Responsiveness Determination

After receipt of proposals, the SFPUC, with the assistance of CMD, will conduct an Initial Screening of submitted proposals as set forth in Section 6.1 of this RFP. If staff determines that a proposal should be rejected because it is either non-responsive to RFP requirements or is otherwise unacceptable (i.e., fails to meet Minimum Qualifications Requirements set forth in the RFP), then the City will issue a Preliminary Notice of Proposal Rejection to the applicable Proposer(s).

If a Proposer believes that the City has improperly determined that its proposal should be rejected, Proposer may submit a written notice of protest within five (5) working days of the SFPUC's issuance of a Preliminary Notice of Proposal Rejection. Such notice of protest must be received by the SFPUC prior to 5:00 p.m. on or before the fifth (5th) working day following the SFPUC's issuance of the Preliminary Notice of Proposal Rejection. The notice of protest must include a written statement specifying in detail each and every one of the grounds asserted for the protest. The protest must be signed by an individual authorized to represent the Proposer, and must cite the law, rule, local ordinance, procedure or RFP provision on which the protest is based. In addition, the Proposer must specify facts and evidence sufficient for the SFPUC to determine the validity of the protest.

The City, at its discretion, may make a determination regarding a protest without requesting further documents or information from the Proposer who submitted the protest. Accordingly, the initial protest must include all grounds of protest and all supporting documentation or evidence reasonably available to the prospective Proposer at the time the protest is submitted. If the Proposer later raises new grounds or evidence that were not included in the initial protest, but which could have been raised at that time, then the City may not consider such new grounds or new evidence.

Upon receipt of a timely and proper protest, the City will review the protest and conduct an investigation as it deems appropriate. As part of its investigation, the City may consider information provided by sources other than the Proposer. The City may also consider supplemental correspondence or other information relating to the original ground(s) of Protest submitted by a protesting Proposer to the extent the City determines that such information will assist it in resolving the Protest. At the completion of its investigation, the City will provide a written determination to the Proposer who submitted the protest.

The City will not consider any protests not received within the time and manner specified. If a Proposer does not protest a Preliminary Notice of Proposal Rejection within the time and in the manner specified above, then the City's determination set forth in the Preliminary Notice will

become final. A Proposer's failure to protest as specified above on or before the deadline specified above shall constitute a complete and irrevocable waiver of the ground(s) of protest and a forfeiture of the Proposer's right to raise such ground(s) of protest later in the procurement process, in a Government Code Claim, or in other legal proceedings.

## **11.2** Protest of Agreement Award

As soon as the SFPUC finalizes Proposer rankings, the SFPUC will post the results on the [SFBid Website](#).

Within five (5) working days of the SFPUC's posting of the highest ranked Proposer on the [SFBid Website](#), any Proposer that has submitted a responsive proposal and believes that the City has unfairly selected another Proposer for award may submit a written notice of protest.

The notice of protest must include a written statement specifying in detail each and every one of the grounds asserted for the protest. The protest must be signed by an individual authorized to represent the Proposer, and must cite the law, rule, local ordinance, procedure or RFP provision on which the protest is based. In addition, the Proposer must specify facts and evidence sufficient for the City to determine the validity of the protest. All protests must be received by the SFPUC before 5:00 p.m. on or before the fifth (5<sup>th</sup>) working day following the SFPUC's posting of the highest ranked Proposer; the City will not consider untimely protests.

The City, at its discretion, may make a determination regarding a protest without requesting further documents or information from the Proposer who submitted the protest. Accordingly, the initial protest must include all grounds of protest and all supporting documentation or evidence reasonably available to the Proposer at the time the protest is submitted. If the Proposer later raises new grounds or evidence that were not included in the initial protest, but which could have been raised at that time, then the City may not consider such new grounds or new evidence.

Upon receipt of a timely and proper protest, the City will review the protest and conduct an investigation as it deems appropriate. As part of its investigation, the City may consider information provided by sources other than the Proposer. The City may also consider supplemental correspondence or other information relating to the original ground(s) of Protest submitted by a protesting Proposer to the extent the City determines that such information will assist it in resolving the Protest. At the completion of its investigation, the City will provide a written determination to the Proposer who submitted the protest.

The City will not consider any protests not received within the time and manner specified.

If a Proposer does not protest the SFPUC's posting of the highest ranked Proposer on the SFBid website within the time and in the manner specified, above, then the City's selection will become final and SFPUC staff may proceed to recommend the highest ranked Proposer for

award by the Commission. A Proposer's failure to protest as specified above on or before the time specified above shall constitute a complete and irrevocable waiver of the ground(s) of protest and forfeit the Proposer's right to raise such ground(s) of protest later in the procurement process, in a Government Code Claim, or in other legal proceedings.

### **11.3** Delivery of Protests

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

San Francisco Public Utilities Commission

Contract Administration Bureau

RE: **PUC.PRO.0152**

Power Scheduling Coordination and Related Support Services

525 Golden Gate Avenue, 8<sup>th</sup> Floor

San Francisco, CA 94102

# 12 Conflict of Interest

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

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

## 12.1 Obligations

It is the obligation of the Proposer as well as their Subconsultants to determine whether or not participation in that contract constitutes a conflict of interest. While city staff maintains records regarding award and execution of contracts, it does not have access to specific information concerning which entities, partners, sub-consultants or team members perform specific work on these contracts. A conflict of interest or an unfair advantage may exist without any knowledge of the SFPUC. The database of our records concerning work performed by various sub-consultants is available for reference to consultants making their own determination of potential conflicts. Proposers have sole responsibility for compliance with these requirements. A court makes the final determination of whether an actual conflict exists. The guidelines below are provided to assist Proposers; however, the City is not providing legal advice in providing the information and assumes no responsibility or liability arising from Proposer's reliance on this information. The guidelines below address conflicts under the aforementioned laws but there are other laws that affect qualifications for a contract.

## 12.2 Work

There are many phases of work pertaining to city contracts. Potential conflicts arise out of progressive participation in various phases of that work. Set forth below are general guidelines regarding when participation in a specific phase of work may create a conflict. Because an actual determination regarding whether a conflict exists depends upon the specific facts of each situation, Proposers should treat the general guidelines set forth below only as a starting point. The guidelines do not constitute legal advice. A Proposer should consult with its legal counsel to determine whether a potential conflict exists.

1. **RFI/RFQ/RFP/Bid Documents.** Any entity that participates in the development of any of these documents has participated in “making the contract” for the work. For these purposes “participating in making” has the same meaning as under Government Code Section 1090 and the term “entity” includes any parent, subsidiary or other related business.
2. **General Program Management Services.** Because these advisory services necessarily assist in general definitions of the program and projects, conflict would likely exist in participation in the design, construction management , and/or construction phase of any project.
3. **Preplanning.** Participation in preplanning work, which may include the needs assessment report, since it is an initial phase, would likely be limited only by previous participation in preparation of RFI/RFQ/RFP or bid documents.
4. **Planning.** The planning phase of any project establishes the facts pertaining to the project and possible options for consideration.
  - a) **Alternative Analysis Report.** This phase proposes to decision-makers the various alternatives in project scope, cost, schedule, and environmental impact necessary to make a determination of the proper project. Firms may have a conflict of interest in subsequent design work if they participated in the decision-making process of selecting an alternative.
  - b) **Conceptual Engineering Report.** This document defines the project and shapes the design contract. Participation in this phase may likely be in conflict with any future design services.
5. **Environmental Review.** Similar to the planning phase, this phase of work gathers information from other sources resulting in a definition of the project for the purposes of reviewing the environmental effects of the work. Firms participating in environmental review would likely not have a conflict in participating in subsequent phases.
6. **Final Engineering Design.** Documents produced under this phase constitute the definition of the construction contract. Participation in this phase would likely be in conflict with participation in any subsequent phases, such as construction management or general construction.
7. **Construction Management.** This work consists of review, assessment, and recommendation for actions based on interpretation of contract documents. No firm participating in one contract with SFPUC can review any of its own work performed under another contract. Conflicts would likely arise if any firm participates in either preparation of final engineering design or in preparing any documents enumerated in a contract for construction or in preparing any documents the SFPUC requires a Proposer to rely on in the preparation of its bid. Participation in this phase also would likely be in conflict with participation in the construction phase.
8. **Construction.** It is unlikely that participation in construction contracts, including alternative delivery projects, would result in conflicts on subsequent contracts. Restrictions on

participation in construction contracts may be stipulated in other federal, state, or local laws.

9. **Alternative Delivery.** To the extent that an alternative delivery method is used (e.g., design-build or construction manager/general contractor), the restrictions on design or construction management services mentioned herein would apply to those phases of the alternative delivery project.
10. **General.** Work associated with gathering, assessing, or reviewing technical data such as geotechnical investigations, site surveys, condition assessments, or cost estimating would likely have conflicts with other work only if the firms were in a position to review their own work.
11. **Administrative Services.** Any subconsultant or vendor providing general administrative services such as communications, reprographic, janitorial or security services during one phase of a project will not be precluded from providing similar services during later phases of the same project.

### **12.3 Other General Restrictions Applicable to this RFP**

A firm cannot be a Prime Consultant on more than one (1) proposing team. In addition, if a designated Prime Consultant intends to be listed as a subconsultant on another competing proposal, the Prime Consultant must fully disclose such intent to the affected parties 30 days prior to the due date for Proposal submittal. Failure to comply with these restrictions may result in the rejection of one or more affected Proposals. A Prime Consultant cannot participate in more than one interview.

### **12.4 Consultation with Counsel**

The SFPUC strongly advises any proposing/bidding firm to consult with their legal counsel to determine whether or not a conflict of interest exists. It is the responsibility of the proposing/bidding firm to make that determination. The SFPUC will not advise consultants on conflict of interest matters.

# 13 Acronyms and Abbreviations

- CAB .....Contract Administration Bureau
- LBE.....Local Business Enterprise
- LOS .....Level of Service
- ODC .....Other Direct Cost
- OPS.....Overhead and Profit Schedule
- RFP .....Request for Proposals
- SFPUC .....San Francisco Public Utilities Commission
- SOP .....Standard Operating Procedure
- WWE .....Wastewater Enterprise

# 14 List of Appendices

- A. Professional Services Agreement (P-600)
- B. Overhead and Profit Schedule (OPS) Template (Excel file)
- C. Contract Monitoring Division (CMD) LBE Forms
  - a. Form 2A – CMD Contract Participation Form
  - b. Form 3 – CMD Compliance Affidavit
  - c. Form 4 – CMD Joint Venture Form (if applicable)
  - d. Form 5 – CMD Employment Form
- D. 12B & 12C Declaration: Nondiscrimination in Contracts and Benefits Form (CMD-12B-101)
- E. Minimum Compensation Ordinance (MCO) Declaration
- F. Health Care Accountability Ordinance (HCAO) Declaration
- G. First Source Hiring Program Agreement
- H. Chapter 12X Certification
- I. Release of Liability Form



**PUBLIC UTILITIES COMMISSION**

City and County of San Francisco

RESOLUTION NO. 22-0014

WHEREAS, The San Francisco Public Utilities Commission (SFPUC) requires a Scheduling Coordinator (SC) to provide services necessary to provide electricity to its loads, for an amount not-to-exceed \$136,500,000, and with a duration of five (5) years; and

WHEREAS, It is necessary to procure the services of a qualified firm to provide specialized services including but not limited to California Independent System Operator (CAISO) communications, settlements, dispute resolution, and invoice processing and Congestion Revenue Rights (CRR) management services and processing all SFPUC payments to the CAISO for transmission and wholesale electricity transaction payments, charges, costs, and fees; and

WHEREAS, The estimated cost of services is \$136,500,000, with payments to APX in an amount not-to-exceed \$6,000,000 for the scheduling coordinator services and \$130,500,000 in pass-through payments to the CAISO which will be processed by APX without a markup; and

WHEREAS, On July 16, 2021, SFPUC advertised a Request for Proposals (RFP) for a firm to assist the SFPUC with power scheduling coordination and scheduling agent services for the SFPUC's participation in the markets of the CAISO, with services anticipated to begin in April 2022 and end in March 2027, for a term of five years; and

WHEREAS, The SFPUC received one proposal in response to the RFP from APX Incorporated (APX); and

WHEREAS, SFPUC Power and Contract Monitoring Division (CMD) staff, upon review of the proposal, determined that APX is a responsive and responsible firm based on the established scoring criteria; and

WHEREAS, Pursuant Chapter 14B of the San Francisco Administrative Code, the Local Business Enterprise (LBE) sub-consulting requirement has been waived for this agreement; and

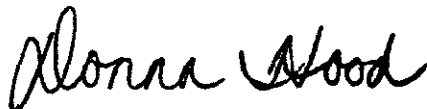
WHEREAS, The firm being awarded a contract by the SFPUC must be in compliance with the Equal Benefits Provisions of Chapter 12B of the City's Administrative Code either at the time of the award, or within two (2) weeks of the date of the Commission award; failure of the bidder to obtain compliance certification from CMD may, in the General Manager's sole discretion, result in award of the agreement to the next highest ranked proposer, or re-advertising and re-selecting consultants at the discretion of the City; and

WHEREAS, Funds for Agreement No. PRO.0152, Power Scheduling Coordination Services and Related Support Services will be available at the time of execution from Hetchy Power Operating Budget; now, therefore, be it RESOLVED, That this Commission hereby approves the selection of APX, the sole responsive, responsible, and qualified proposer, and awards Power Enterprise Operating Budget-funded Agreement No. PRO.0152, Power Scheduling Coordination Services and Related Support Service to APX to assist the San Francisco Public Utilities Commission (SFPUC) with power scheduling coordination services

the SFPUC's participation in the markets of the California Independent System Operator; now, therefore, be it

FURTHER RESOLVED, That this Commission authorizes the General Manager to negotiate and execute a professional services agreement with APX for an amount not-to-exceed \$136,500,000 and with a duration of five years, subject to Board of Supervisors approval pursuant to Charter Section 9.118.

*I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting of January 11, 2022.*

A handwritten signature in black ink that reads "Alonna Wood". The signature is written in a cursive, flowing style.

---

*Secretary, Public Utilities Commission*

**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**

**APX Inc.  
PRO.0152**

**Power Scheduling Coordination and Related Support Services**

This Agreement is made this [insert day] day of [insert month], [insert year], in the City and County of San Francisco (“City”), State of California, by and between APX Inc., 2150 N. First Street, Suite 200, San Jose CA 95131 (“Contractor”) and City.

**Recitals**

WHEREAS, the San Francisco Public Utilities Commission (“Department,” or “SFPUC”) wishes to retain the services of a qualified Proposer to assist the SFPUC with power scheduling coordination services for the SFPUC’s participation in the markets of the California Independent System Operator (CAISO); and

WHEREAS, this Agreement was competitively procured as required by San Francisco Administrative Code Chapter 21.1 through a Request for Proposal (“RFP”) issued on July 16, 2021, in which City selected Contractor as the highest qualified scorer pursuant to the RFP; and

WHEREAS, there is no Local Business Enterprise (“LBE”) subcontracting participation requirement for this Agreement; 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 PSC number 47781-20/21 on March 1, 2021; and

WHEREAS, the City’s Board of Supervisors approved this Agreement by [insert resolution number] on [insert date of Commission or Board action].

WHEREAS, the San Francisco Public Utilities Commission approved this Agreement by resolution number 22-0014 on January 11, 2022.

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 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 both its Director of the Office of Contract Administration or the Director’s designated agent, hereinafter referred to as “Purchasing” and the SFPUC.

1.3 “City Data” means that data as described in Article 13 of this Agreement which includes, without limitation, all data collected, used, maintained, processed, stored, or generated by or on behalf of the City in connection with this Agreement. City Data includes, without limitation, Confidential Information.

1.4 “CMD” means the Contract Monitoring Division of the City.

1.5 “Confidential Information” means confidential City information including, but not limited to, personally-identifiable information (“PII”), protected health information (“PHI”), or individual financial information (collectively, “Proprietary or Confidential Information”) that is subject to local, state or federal laws restricting the use and disclosure of such information, including, but not limited to, Article 1, Section 1 of the California Constitution; the California Information Practices Act (Civil Code § 1798 et seq.); the California Confidentiality of Medical Information Act (Civil Code § 56 et seq.); the federal Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801(b) and 6805(b)(2)); the privacy and information security aspects of the Administrative Simplification provisions of the federal Health Insurance Portability and Accountability Act (45 CFR Part 160 and Subparts A, C, and E of part 164); and San Francisco Administrative Code Chapter 12M (Chapter 12M).

1.6 “Contractor” or “Consultant” means APX Inc., 2150 N. First Street, Suite 200, San Jose CA 95131.

1.7 “Deliverables” means Contractor’s work product resulting from the Services 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.

1.8 “Effective Date” means the Effective Date stated in the Notice of Contract Award issued by the SFPUC once this Agreement has been fully approved and executed.

1.9 “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 that impose specific duties and obligations upon Contractor.

1.10 “Party” and “Parties” means the City and Contractor either collectively or individually.

1.11 “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) [insert Contractor's start date]; or (ii) the Effective Date and expire on [insert expiration date], unless earlier terminated as otherwise provided herein.

2.2 The City may extend this Agreement beyond the expiration date by exercising an option at the City's sole and absolute discretion and 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 **Calculation of Charges.** 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. In no event shall the amount of this Agreement exceed Six Million Dollars, \$6,000,000. The breakdown of charges associated with this Agreement appears in Appendix B, "Calculation of Charges." A portion of payment may be withheld until conclusion of the Agreement if agreed to by both Parties as retainage, described in Appendix B. In no event shall City be liable for interest or late charges for any late payments. City will not honor minimum service order charges for any services covered by this Agreement.

3.3.2 **Payment of CAISO Pass-Through Charges.** As part of the SC Services set forth in Appendix A, Contractor is responsible for processing payments of the City's CAISO Pass-Through Charges through the designated Clearing Account for the City in accordance with the CAISO Tariff. The total amount of City's CAISO Pass-Through Charges settled through this Agreement shall not exceed One Hundred Thirty Million and Five Hundred Thousand Dollars (\$130,500,000) ("Pass-Through Charge Amount"). The Pass-Through Charge Amount represents the value of City's CAISO Pass-Through Charges only, and does not alter the amount of compensation due to Contractor under Section 3.3.1 of this Agreement or any other right, obligation, or duty of either Party.

3.3.3 **Payment Limited to Satisfactory Services.** Contractor is not entitled to any payments from City until SFPUC approves the Services delivered pursuant to this Agreement. Payments to Contractor by City shall not excuse Contractor from its obligation to replace unsatisfactory delivery of goods and/or Services even if the unsatisfactory character may not have been apparent or detected at the time such payment was made. Goods and/or Services delivered pursuant to this Agreement 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.

3.3.4 **Withhold Payments.** If Contractor fails to provide goods and/or 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.

3.3.5 **Invoice Format.** Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller, the SFPUC and City and include a unique invoice number and a specific invoice date. Payment shall be made by City as specified in Section 3.3.7, or in such alternate manner as the Parties have mutually agreed upon in writing. Invoices that do not include all required information or contain inaccurate information will not be processed for payment.

### 3.3.6 **Payment Terms.**

(a) **Payment Due Date:** Unless City notifies the Contractor that a dispute exists, Payment shall be made within 30 calendar days, measured from (1) the delivery of goods and/or the rendering of services or (2) the date of receipt of the invoice, whichever is later. Payment is deemed to be made on the date on which City has issued a check to Contractor or, if Contractor has agreed to electronic payment, the date on which City has posted electronic payment to Contractor.

(b) **Reserved. (Payment Discount Terms).**

(c) No additional charge shall accrue against City in the event City does not make payment within any time specified by Contractor.

### 3.3.7 **Reserved. (LBE Payment and Utilization Tracking System.)**

### 3.3.8 **Getting paid by the City for Services.**

(a) The City and County of San Francisco utilizes the Paymode-X<sup>®</sup> service offered by Bank of America Merrill Lynch to pay City contractors. Contractor must sign

up to receive electronic payments to be paid under this Agreement. To sign up for electronic payments, visit [http://portal.paymode.com/city\\_countyofsanfrancisco](http://portal.paymode.com/city_countyofsanfrancisco).

(b) At the option of the City, Contractor may be required to submit invoices directly in the SFPUC's Online Invoice System (SOLIS). For access to SOLIS, submit a request through [SFPUCVendorSupport@sfwater.org](mailto:SFPUCVendorSupport@sfwater.org).

### 3.3.9 Reserved. (Grant Funded Contracts.)

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 less 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.** The full text of San Francisco Administrative Code Chapter 21, Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Pursuant to San Francisco Administrative Code §21.35, any contractor or subcontractor who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to the City if the contractor or subcontractor: (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 Reserved. (Payment of Prevailing Wages)

## Article 4 Services and Resources

4.1 **Services Contractor Agrees to Perform.** Contractor agrees to perform the Services stated 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. Consistent with SFPUC policy, any modifications to the list of subcontractors must be effectuated via 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 Section 4.4, "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 this Section 4.4 shall be solely limited to 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. Neither this Agreement, nor any duties or obligations hereunder, may be directly or indirectly assigned, novated, hypothecated, transferred, or delegated by Contractor, or, where the Contractor is a joint venture, a joint venture partner, (collectively referred to as an "Assignment") unless first approved by City by written instrument executed and approved in the same manner as this Agreement in accordance with the Administrative Code. The City's approval of any such Assignment is subject to the Contractor demonstrating to City's reasonable satisfaction that the proposed transferee is: (i) reputable and capable, financially and otherwise, of performing each of Contractor's obligations under this Agreement and any other documents to be assigned, (ii) not forbidden by applicable law from transacting business or entering into contracts with City; and (iii) subject to the jurisdiction of the courts of the State of California. A change of ownership or control of Contractor or a sale or transfer of substantially all of the assets of Contractor shall be deemed an Assignment for purposes of this Agreement. Contractor shall immediately notify City about any Assignment. 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.

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

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

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

(d) Professional Liability Insurance, applicable to Contractor's profession, with limits not less than **\$1,000,000** for each claim with respect to negligent acts, errors or omissions in connection with the Services.

(e) Reserved. (Technology Errors and Omissions Liability coverage)

(f) Reserved. (Cyber and Privacy Insurance)

(g) Reserved. (Pollution Liability Insurance)

### 5.1.2 Additional Insured Endorsements

(a) The Commercial General Liability policy must be endorsed to name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

(b) The Commercial Automobile Liability Insurance policy must be endorsed to name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

(c) The Commercial Automobile Liability Insurance policy must be endorsed to include (i) Auto Pollution Additional Insured Endorsement naming as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees; and (ii) Form MCS-90 for Motor Carrier Policies of Insurance for Public Liability under Sections 29 and 30 of the Motor Carrier Act of 1980.

### 5.1.3 Waiver of Subrogation Endorsements

(a) 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.

### 5.1.4 Primary Insurance Endorsements

(a) The Commercial General Liability policy shall provide 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 the insurance applies separately to each insured against whom claim is made or suit is brought.

(b) The Commercial Automobile Liability Insurance policy shall provide 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 the insurance applies separately to each insured against whom claim is made or suit is brought.

(c) The Pollution Liability Insurance policy shall provide 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 the insurance applies separately to each insured against whom claim is made or suit is brought.

#### 5.1.5 Other Insurance Requirements

(a) Thirty (30) days' advance written notice shall be provided to the City of cancellation, intended non-renewal, or reduction in coverages, except for non-payment for which no less than ten (10) days' notice shall be provided to City. Notices shall be sent to the City address set forth in Section 11.1 entitled "Notices to the Parties."

(b) 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 Agreement term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

(c) 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.

(d) 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.

(e) 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.

(f) 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.

## **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      Liability for Incidental and Consequential Damages.** Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions.

## Article 7 Payment of Taxes

7.1 **Contractor to Pay All Taxes.** 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 **Possessory Interest Taxes.** 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.

7.3 **Withholding.** Contractor agrees that it is obligated to pay all amounts due to the City under the San Francisco Business and Tax Regulations Code during the term of this Agreement. Pursuant to Section 6.10-2 of the San Francisco Business and Tax Regulations Code, Contractor further acknowledges and agrees that City may withhold any payments due to Contractor under this Agreement if Contractor is delinquent in the payment of any amount required to be paid to the City under the San Francisco Business and Tax Regulations Code. Any payments withheld under this paragraph shall be made to Contractor, without interest, upon Contractor coming back into compliance with its obligations.

## 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 may include any or all of the following, 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 listed 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	10.13	Working with Minors
Article 5	Insurance and Indemnity	11.10	Compliance with Laws
Article 7	Payment of Taxes	Article 13	Data and Security

(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 is not cured within ten days after written notice thereof from City to Contractor. If Contractor defaults a second time in the same manner as a prior default cured by Contractor, City may in its sole discretion immediately terminate the Agreement for default or grant an additional period not to exceed five days for Contractor to cure the default.

(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. This Section 8.2.2 shall survive termination of this Agreement.

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:

3.3.3	Payment Limited to Satisfactory	9.1	Ownership of Results
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	Services		
3.3.9	Grant Funded Contracts – Disallowance	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
6.3	Liability for Incidental and Consequential Damages	11.10	Compliance with Laws
Article 7	Payment of Taxes	11.11	Severability
8.1.6	Payment Obligation	Article 13	Data and Security

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/](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 **Consideration of Salary History.** Contractor shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or “Pay Parity Act.” Contractor is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Agreement or in furtherance of this Agreement, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in the City or on City property. The ordinance also prohibits employers from (1) asking such applicants about their current or past salary or (2) disclosing a current or former employee’s salary history without that employee’s authorization unless the salary history is publicly available. Contractor is subject to the enforcement and penalty provisions in Chapter 12K. Information about and the text of Chapter 12K is available on the web at <https://sfgov.org/olse/consideration-salary-history>. Contractor is required to comply with all of the applicable provisions of 12K, irrespective of the listing of obligations in this Section.

### **10.5 Nondiscrimination Requirements.**

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

10.5.2 **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.

**10.6 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.

**10.7 Minimum Compensation Ordinance.** If Administrative Code Chapter 12P applies to this contract, Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P, including a minimum hourly gross compensation, compensated time off, and uncompensated time off. Contractor is subject to the enforcement and penalty provisions in Chapter 12P. Information about and the text of the Chapter 12P is available on the web at <http://sfgov.org/olse/mco>. Contractor is required to comply with all of the applicable provisions of 12P, irrespective of the listing of obligations in this Section. By signing and executing this Agreement, Contractor certifies that it complies with Chapter 12P.

**10.8 Health Care Accountability Ordinance.** If Administrative Code Chapter 12Q applies to this contract, Contractor shall comply with the requirements of Chapter 12Q. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission. Information about and the text of the Chapter 12Q, as well as the Health Commission’s minimum standards, is available on the web at <http://sfgov.org/olse/hcao>. Contractor is subject to the enforcement and penalty provisions in Chapter 12Q. Any Subcontract entered into by Contractor shall require any Subcontractor with 20 or more employees to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section.

**10.9 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.

**10.10 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.

**10.11 Limitations on Contributions.** By executing this Agreement, Contractor acknowledges its obligations under Section 1.126 of the City’s Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of the City for the rendition of personal services, for the furnishing of any material,

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

**10.12 Reserved (Slavery Era Disclosure.)**

**10.13 Reserved. (Working with Minors.)**

**10.14 Consideration of Criminal History in Hiring and Employment Decisions.**

10.14.1 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.

10.14.2 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.

**10.15 Reserved. (Public Access to Nonprofit Records and Meetings.)**

**10.16 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.

**10.17 Reserved. (Distribution of Beverages and Water.)**

**10.18 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.

**10.19 Reserved. (Preservative Treated Wood Products.)**

**10.20 Contractor Vaccination Policy.** Contractor shall comply with the requirements of the 38th Supplement to Mayoral Proclamation Declaring the Existence of a Local Emergency (“Emergency Declaration”), dated February 25, 2020, and the Contractor Vaccination Policy for City Contractors issued by the City Administrator (“Contractor Vaccination Policy”), as those documents may be amended from time to time. The requirements stated in the Emergency Declaration and Contractor Vaccination Policy are material terms and conditions of this Agreement, which include but are not limited to, the following:

1. Contractor shall identify its Covered Employees who are or will be performing Work or Services under this Agreement, and shall inform them of the COVID-19 vaccination requirements stated in the City’s Contractor Vaccination Policy and the Emergency Declaration.
2. Contractor shall maintain a list of its Covered Employees by name and position, which list shall not include the employees’ vaccination status. Contractor shall update the list as needed to show all current Covered Employees, and Contractor shall provide that list to the City on request.
3. Contractor shall be responsible for determining the vaccination status of any Covered Employees working for their subcontractors under this Agreement. Contractor shall ensure that its covered subcontractors submit required information to the Contractor respecting their compliance with the Contractor Vaccination Policy.
4. Contractor previously submitted to the City the Attestation Form confirming its compliance with the Contractor Vaccination Policy, including Attachment A thereto respecting any medical or religious vaccination exemptions granted to their Covered Employees. Contractor will submit an updated Attachment A if Contractor assigns a new Covered Employee to work on the contract who is eligible for an exemption under the Vaccination Policy.
5. Contractor shall coordinate with the City to confirm that the City can safely accommodate at its worksite any Covered Employee for whom the Contractor has granted a medical or religious vaccination exemption, which may include ensuring that exempt employees who are accommodated comply with any required health and safety protocols.

**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: **Sunita Jones, Manager, Energy Scheduling and Settlements, San Francisco Public Utilities Commission Power Enterprise, 525 Golden Gate Avenue, 7th Floor San Francisco, CA 94102, [skjones@sfwater.org](mailto:skjones@sfwater.org)**

To Contractor: **APX Inc., Cris Gallegos, 2150 N. First Street, Suite 200, San Jose CA 95131, [cgallegos@apx.com](mailto:cgallegos@apx.com)**

Any notice of default must be sent by registered mail or other trackable overnight 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 Incorporation of Recitals.** The matters recited above are hereby incorporated into and made part of this Agreement.

**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 (i) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (ii) 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 August 26, 2021. 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. If the Appendices to this Agreement include any standard printed terms from the Contractor, Contractor agrees that in the event of discrepancy, inconsistency, gap, ambiguity, or conflicting language between the City's terms and Contractor's printed terms

attached, the City's terms shall take precedence, followed by the procurement issued by the department, Contractor's proposal, and Contractor's printed terms, respectively.

**11.14 Notification of Legal Requests.** Contractor shall immediately notify City upon receipt of any subpoenas, service of process, litigation holds, discovery requests and other legal requests ("Legal Requests") related to all data given to Contractor by City in the performance of this Agreement ("City Data" or "Data"), or which in any way might reasonably require access to City's Data, and in no event later than 24 hours after it receives the request. Contractor shall not respond to Legal Requests related to City without first notifying City other than to notify the requestor that the information sought is potentially covered under a non-disclosure agreement. Contractor shall retain and preserve City Data in accordance with the City's instruction and requests, including, without limitation, any retention schedules and/or litigation hold orders provided by the City to Contractor, independent of where the City Data is stored.

## **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 Protection of Private Information.** 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 Confidential Information.** In the performance of Services, Contractor may have access to, or collect on City's behalf, 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, or Contractor collects such information on City's behalf, 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.) Reserved. (Business Associate Agreement.)**

**13.3 Ownership of City Data.** The Parties agree that as between them, all rights, including all intellectual property rights, in and to the City Data and any derivative works of the City Data is the exclusive property of the City.

**13.4 Management of City Data and Confidential Information.**

**13.4.1 Use of City Data and Confidential Information.** Contractor agrees to hold City's Data received from, or collected on behalf of, the City, in strictest confidence. Contractor shall not use or disclose City's Data except as permitted or required by the



Agreement or as otherwise authorized in writing by the City. Any work using, or sharing or storage of, City's Data outside the United States is subject to prior written authorization by the City. Access to City's Data must be strictly controlled and limited to Contractor's staff assigned to this project on a need-to-know basis only. Contractor is provided a limited non-exclusive license to use the City Data solely for performing its obligations under the Agreement and not for Contractor's own purposes or later use. Nothing herein shall be construed to confer any license or right to the City Data or Confidential Information, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third-party. Unauthorized use of City Data by Contractor, subcontractors or other third-parties is prohibited. For purpose of this requirement, the phrase "unauthorized use" means the data mining or processing of data, stored or transmitted by the service, for commercial purposes, advertising or advertising-related purposes, or for any purpose other than security or service delivery analysis that is not explicitly authorized.

**13.4.2 Disposition of Confidential Information.** Upon request of City or termination or expiration of this Agreement, and pursuant to any document retention period required by this Agreement, Contractor shall promptly, but in no event later than thirty (30) calendar days, return all data given to or collected by Contractor on City's behalf, which includes all original media. Once Contractor has received written confirmation from City that City's Data has been successfully transferred to City, Contractor shall within ten (10) business days clear or purge all City Data from its servers, any hosted environment Contractor has used in performance of this Agreement, including its subcontractors environment(s), work stations that were used to process the data or for production of the data, and any other work files stored by Contractor in whatever medium. Contractor shall provide City with written certification that such purge occurred within five (5) business days of the purge. Secure disposal shall be accomplished by "clearing," "purging" or "physical destruction," in accordance with National Institute of Standards and Technology (NIST) Special Publication 800-88 or most current industry standard.

## **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**

Recommended by:

**APX Inc.**

\_\_\_\_\_  
Dennis J. Herrera  
General Manager  
San Francisco Public Utilities Commission

\_\_\_\_\_  
[name of authorized representative]  
[title]  
[optional: address]  
[optional: city, state, ZIP]

City Supplier Number: 00000**26457**

Approved as to Form:

David Chiu  
City Attorney

By: \_\_\_\_\_  
**Gus Guibert**  
Deputy City Attorney

Approved:  
Sailaja Kurella  
Acting Director of the Office of Contract  
Administration, and Purchaser

By: \_\_\_\_\_  
[name of Purchaser or "Name: \_\_\_\_\_"]

**Appendices**

- A: Scope of Services
- B: Calculation of Charges
- B-1: Fee Schedule

## **Appendix A Scope of Services**

- 1. Description of Services.** Contractor agrees to perform the following Services:
- Submitting Day Ahead and Real Time Interchange Schedules and Bids to CAISO
  - Managing Communications Between CAISO and SFPUC Schedulers and Operators including 7x24 dispatch of the plants
  - Managing CAISO Settlements and Payments
  - Managing CAISO and CPUC Resource Adequacy Requirements
  - Manage Access to CAISO Systems for Meter, Outage, Settlement, Scheduling, and Bid/Award data
  - Submit Settlement Quality Meter Data (SQMD) to CAISO on behalf of SFPUC
  - Optional Services

The Consultant will work under the direction of the SFPUC Power Enterprise, Energy Scheduling and Settlements group.

### **TASK 1 SUBMITTING DAY AHEAD AND REAL TIME INTERCHANGE, GENERATION AND LOAD SCHEDULES, RESOURCE ADEQUACY AND ANCILLIARY SERVICE BIDS TO THE CAISO FOR THE HHP AND CLEANPOWERSF PORTFOLIOS**

The Scheduling Coordinator shall submit schedules to the CAISO in the forward and the real-time markets pursuant to CAISO tariff and protocols.

#### **Task 1 – Deliverables may include but are not limited to:**

- The primary role of the selected SC will be to submit interchange, generation and load schedules into the CAISO scheduling system on behalf of the SFPUC within CAISO timelines as well as submitting corresponding meter data. The selected SC will work with and under the direction of the Scheduling and Settlements group in the SFPUC Power Enterprise as well as operations staff at the Hetch Hetchy project located in Moccasin, California.
- The SC shall work with SFPUC to develop a detailed procedure once a contract is finalized.
- All transactions should be done using a unique HHP SC Identifier (“SCID”) and a unique CleanPowerSF SCID to facilitate settlements tracking and verification.
- SC services should include the following:
  - 7 days per week, day-ahead pre-scheduling
  - 7 days per week, 24-hour real-time services
  - Credit services/collateral with the CAISO
- The SC will commence scheduling on behalf of the SFPUC by the opening of the day-ahead market for the trade date of April 1, 2022. The selected SC must be able to provide the scope of services for a period of not less than five (5) years.
- The SC will proactively identify strategic bidding methodologies, Ancillary Services, and Resource Adequacy where possible to maximize CAISO revenue, minimize exposure and more efficiently perform related tasks.
- Maximize co-optimization of Ancillary Services (AS) and energy in the DAM that allows for full flexibility in terms of the combination of energy and AS capacity that can be offered.

- The SC shall submit and validate inter-SC trades on behalf of the SFPUC as required.
- The SC shall provide acknowledgement of successful submission of all schedules and notification of CAISO submission errors.
- The SC shall provide a tool and/or direct access to the SIBR, CMRI, MRI-S, ADS, CIRA, another CAISO scheduling related portals as needed. The SFPUC should, in coordination with the SC, have the ability to modify the schedule submission for resubmittal to CAISO.
- The SC shall facilitate the submission and receipt of CAISO DA/RT forecasts for Sunset Reservoir photovoltaic and other renewable generation from CAISO if needed.
- The SC shall coordinate e-tagging for power schedules.
- SFPUC contracts through Power Purchase Agreements (PPAs) for the output from variable energy resources (VER), storage resources, and hybrid or co-located solar +storage resources, requiring SFPUC and the SC to be the authorized and designated SC for the Facility and perform the SC responsibilities accordingly.
  - The SC shall submit day ahead and real-time bids for VER, energy storage and hybrid resources, including setting up mechanisms to receive real-time information from third parties, if needed.
  - The SC shall coordinate with supplying generator owners and submit supply schedules to the Day-Ahead and Real-Time Markets, if needed.
  - Operational scheduling processes and procedures will be negotiated as necessary for the SFPUC/SC to maximize benefits and minimize burdens as they exist.
  - The SC shall monitor resource performance and provide recommendations for resource scheduling and dispatch to support portfolio optimization strategies.
  - The SC shall provide all necessary CAISO settlement data and generate CAISO Charges Invoices to share with PPA Counterparties.

## **TASK 2 MANAGING COMMUNICATIONS BETWEEN CAISO, SFPUC SCHEDULERS / OPERATORS, AND OTHER AGENCIES**

The SC shall manage communications between CAISO and the SFPUC forward schedulers, real-time operators, and generator owners.

### **Task 2 - Deliverables may include but are not limited to:**

- The SC shall perform 7X24 dispatch of the plants.
- Install, maintain, and monitor the CAISO's Automatic Dispatch System (ADS) for the SFPUC's real-time dispatches.
- Notify the SFPUC Hetch Hetchy operators of CAISO dispatches and relay specific operating instructions.
- Reporting planned and unplanned generation resource outages on behalf of the SFPUC using the CAISO's Outage Management System (OMS).
- Document all communications with CAISO and Hetch Hetchy operators, including but not limited to information requests, outage notification
- Support and Coordinate with the SFPUC for contracted energy resources as needed, including for participation in CAISO's New Resource Implementation process and for dispatch management.
- For PPA related agreements, the SC will provide dispatch management and act as the interface and SC between renewable resource operator and the CAISO; meeting all DOT, outage, and

curtailment notices. Manage, record, and coordinate planned and unplanned outages effectively in the Outage Management System (OMS) in accordance with the CAISO Tariff.

### **TASK 3 MANAGING CAISO AND CPUC RESOURCE ADEQUACY REQUIREMENTS**

The SC should work with the SFPUC to manage the Resource Adequacy portfolios, Supply Plans and Resource Adequacy Plans including submissions to the CAISO and the CPUC. The SC should inform the SFPUC of new initiatives, evolving regulations and obligations, and other updates on how such changes may impact operations.

#### **Task 3 – Deliverables:**

- Grant access to SFPUC employees to submit annual and monthly RA and Supply plans to CAISO through CIRA for HHP and CleanPowerSF.
- Support the submission of annual and monthly CleanPowerSF RA plans to the CPU through tracking and providing reports with the necessary resource information for the program's RA portfolio.
- Monitor, notify, and submit additional regulatory compliance reports related to RA to the CAISO and CPUC such as the Flex Capacity Needs Assessment, Import Allocation Process, Path 26 Process, and others as needed.
- Monitor and report on post cross-validation errors and POSO (Planned Outage Substitution Obligations).
- Monitor and report on CAISO NQC's list for resources in the HHP and CleanPowerSF portfolios. Complete and submit necessary requests to CAISO for inclusion in NQC lists.

### **TASK 4 MANAGING CAISO SETTLEMENTS AND PAYMENTS**

The SC should manage all CAISO Settlement activities to the CAISO. SC shall be well versed in CAISO dispute procedures and shall be expected to maintain timely challenges to disputed CAISO charges and costs as well as provide regular reporting on disputes and good-faith negotiations to the SFPUC.

#### **Task 4 – Deliverables may include but are not limited to:**

- Retrieve CAISO Settlement Statements and Determinant files from CAISO.
- Retrieve CAISO Invoices.
- Open timely ISO Disputes where necessary and see the dispute process through to resolve settlement errors.
- Provide Settlement validation summary report to SFPUC. Validation deltas, outlier charge amounts requiring attention, charge summary, etc.

The SFPUC is unable to process weekly invoice payments/collections; and/or respond to immediate collateral calls. Therefore, the SFPUC seeks a monthly payment cycle with the SC, where the SC manages the daily/weekly cash flows and cash calls

- Perform weekly cash clearing associated with CAISO invoices.
- Provide weekly/monthly invoice to SFPUC for CAISO payment
- Monitor and respond to any credit or collateral calls from the CAISO. Provide credit/collateral call information to SFPUC at time of event.
- Submit payment to the CAISO on behalf of SFPUC in accordance to the CAISO Payments Calendar.

- In accordance with NERC, WECC and CAISO requirements, provide all e-tagging and checkout of schedules with applicable timelines.

### **TASK 5 PROVIDE ACCESS TO CAISO SYSTEMS FOR METER, OUTAGE, SETTLEMENT, SCHEDULING, AND BID/AWARD DATA**

The SC shall provide access to all relevant CAISO data, on SC's software systems and/or via direct access for SFPUC to CAISO systems. The SC shall demonstrate experience in the use of SIBR, ADS, CMRI, CIRA, Master File User Interface, OMS and other applicable CAISO applications.

#### **Task 5 – Deliverables may include but are not limited to:**

- The SFPUC uses PowerSettlements SettleCore system, and expects that system to be able to retrieve data from the CAISO systems via a digital certificate
- The SC shall provide digital certificate authorization for SFPUC to download these files. Data and file types should include, but not limited to, the following:
  - Expected energy
  - Market awards
  - Market prices
  - SFPUC and CAISO (public) bill determinants for all settlement statement versions
  - SFPUC settlement statements and invoices for all settlement statement versions
  - Submitted meter data
- The SC shall allow specified SFPUC staff access to relevant CAISO Market Participant Portal tools including CMRI, SIBR, MRI-S, ADS, CIRA, MasterFile and OMS by submitting applications to CAISO and facilitating keeping security certificates up to date

### **TASK 6 SUBMIT SETTLEMENT QUALITY METER DATA (SQMD) TO CAISO ON BEHALF OF HHP AND CLEANPOWERSF**

#### **Task 6 – Deliverables may include but are not limited to:**

- The SC shall be required to provide automated receipt of load and generation meter data in CAISO MRI-S format, or other agreed-upon format, from SFPUC for each meter data submission period via vendor API, FTP, or web services, for delivery to CAISO.
- SC will ensure ALL meter data is submitted on time (to the CAISO Tariff timeline for meter data), accurately, and completely. SC will notify SFPUC when submission errors or tardiness occur.
- The SC shall provide acknowledgement of successful submission of all meter data and notification of CAISO submission errors.
- The SC shall coordinate with the SFPUC the biennial SC Self Audit. The SC shall submit a SQMD Plan Affirmation and SC Self Audit Attestation as required by CAISO. The SC shall contract with an agreed-upon auditor, if necessary, to audit SFPUC's SQMD collection, validation, and data. Charges for the third-party auditor shall be passed through the SC invoice process and paid by SFPUC.

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 **Sunita Jones**.

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 Project 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 Project Manager and the Contractor and then submitted to the SFPUC Bureau Manager 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 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. Written 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.



## **Appendix B Calculation of Charges**

As part of Contractor's proposal dated **August 26, 2021**, 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.

Penalties assessed due to inaction or late responses from APX to CAISO will be borne by APX.

The pass-through or settlement charges are the calculation, billing, and invoicing of charges and payments for market and transmission-related activities between market participants and the CAISO.

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 may be adjusted annually. The first adjustment may be made no earlier than the release of the January Consumer Price Index (CPI) increase published in the first calendar year following the proposal due date. 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 Project Manager and Bureau Manager authorize an increase to the rate in writing.

**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 Project 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.0152 is **1.00**. 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 mark up) of expenses directly incurred in performing the work. All ODCs are subject to pre-approval in writing by the SFPUC Project Manager.

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

- Out-of-town travel (“out-of-town” shall mean outside the nine Bay Area counties: San Francisco, Alameda, Marin, Santa Clara, Sonoma, Contra Costa, Napa, San Mateo, Solano);
- Out- of town meal, travel and lodging expenses for project-related business trips, including, but not limited to:
  - 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: 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 with its monthly invoices;
  - Meal and lodging expenses shall be reasonable and actual but limited to Federal government per diem rates;
- 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);
- Specialty computer hardware and software (only with prior written approval by SFPUC project staff and documentation of the written approval by the SFPUC must be included with the invoice – all hardware and software will be the property of the City);
- Courier services that are project related and originated from the project site offices;
- Permit fees;
- Expedited courier services when requested by SFPUC staff; and
- Safety equipment.

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, travel from Contractor's home office to SFPUC facilities;
- Contractor personnel relocation costs;
- Any home or regional office labor charges or pass-throughs, including but not limited to, administrative and clerical personnel time;
- Personnel relocation and temporary assignment expenses;
- Entertainment expenses;
- Cell phones;
- Home office expenses;
- Telephone calls and faxes originating in the firm's home office, standard computer use charges, computer hardware or software computer hardware or software (other than the specialty hardware or software mentioned above), communication devices, and electronic equipment;
- Meal expenses which are not related to project-related business trips, including refreshments and working lunches with SFPUC staff;
- Equipment to be used by SFPUC staff; and
- Postage and courier services which 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 Project Manager, Bureau/Division Manager and the Contract Monitoring Division (CMD).

**6. Subcontractor Fees:**

- Subject to the restrictions in this 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 Project Manager and all work products have been received and approved by the SFPUC Project 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.

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.

**PUC.PRO.0152 Power Scheduling Coordination and Related Support Services**

Overhead and Profit Schedule Submitted by APX Inc.

**OVERHEAD AND PROFIT SCHEDULE**

Task [ A ]	Task Summary [ B ]	Staff Classification/Role [ C ]	Name of Proposed Staff Person [ D ]	Firm [ E ]	Estimated Number of Hours [ F ]	Base Hourly Rate (\$/hour) [ G ]	Base Labor Cost (\$) = [F]*[G] [ H ]	Firm Overhead and Profit Rate (OPR, or "Multiplier") - one per firm [ I ]	Billing Rate (\$/hour) = [G]*[I] [ J ]	Actual Labor Cost (\$) = [F]*[J] [ K ]
1	Submitting Day Ahead and Real Time Interchange Schedules and Bids to CAISO	Operations	Nino Mijares (Manager, Operations)	APX Inc.	5,000	\$220.00	\$1,100,000		\$220.00	\$1,100,000
					<b>TASK 1 TOTAL</b>	<b>5,000</b>	<b>-</b>	<b>\$1,100,000</b>	<b>-</b>	<b>\$1,100,000</b>
2	Managing Communications Between CAISO and SFPUC Schedulers and Operators including 7x24 dispatch of the plants	Operations	Nino Mijares (Manager, Operations)	APX Inc.	5,000	\$220.00	\$1,100,000		\$220.00	\$1,100,000
					<b>TASK 2 TOTAL</b>	<b>5,000</b>	<b>-</b>	<b>\$1,100,000</b>	<b>-</b>	<b>\$1,100,000</b>
3	Managing CAISO Settlements and Payments	CAISO Settlement Analyst	Phil Doan (Manager, Settlements)	APX Inc.	4,200	\$220.00	\$924,000		\$220.00	\$924,000
					<b>TASK 3 TOTAL</b>	<b>4,200</b>	<b>-</b>	<b>\$924,000</b>	<b>-</b>	<b>\$924,000</b>
4	Managing CAISO and CPUC Resource Adequacy Requirements	Client Services Manager	Cris Gallegos (Sr Client Services Manager)	APX Inc.	180	\$220.00	\$39,600		\$220.00	\$39,600
					<b>TASK 4 TOTAL</b>	<b>180</b>	<b>-</b>	<b>\$39,600</b>	<b>-</b>	<b>\$39,600</b>
5	Manage Access to CAISO Systems for Meter, Outage, Settlement, Scheduling, and Bid/Award data	Client Services Manager	Cris Gallegos (Sr Client Services Manager)	APX Inc.	90	\$220.00	\$19,800		\$220.00	\$19,800
					<b>TASK 5 TOTAL</b>	<b>90</b>	<b>-</b>	<b>\$19,800</b>	<b>-</b>	<b>\$19,800</b>
6	Submit Settlement Quality Meter Data (SQMD) to CAISO on behalf of SFPUC	CAISO Settlement Analyst	Phil Doan (Manager, Settlements)	APX Inc.	270	\$220.00	\$59,400		\$220.00	\$59,400
					<b>TASK 6 TOTAL</b>	<b>270</b>	<b>-</b>	<b>\$59,400</b>	<b>-</b>	<b>\$59,400</b>
					<b>PROJECT TOTAL</b>	<b>14,740</b>	<b>-</b>	<b>3,242,800</b>	<b>-</b>	<b>3,242,800</b>

**Other Direct Costs (ODCs)**

	Description	Cost
1	Travel expenses outside Bay Area (example only)	
2	Travel expenses within Bay Area (example only)	
3	Reprographics and Mail (example only)	
4	Specialty computer hardware or software (example only)	
5	Field equipment (example only)	
6	Laboratory tests (example only)	
7	Permits (example only)	
8		
9		
10		
<b>TOTAL OTHER DIRECT COSTS</b>		<b>\$0</b>

Effective Overhead and Profit Rate (EOPR, or Effective Project Multiplier) **1.00**

(= Total Actual Labor Cost / Total Base Labor Cost)

Maximum Allowable Effective Project Multiplier = 3.20

**TOTAL PROJECT COST BREAKDOWN**

Total Actual Labor Cost: **\$3,242,800**

Total Other Direct Costs (ODCs) **\$0**

Markup on Subconsultant Labor Cost **\$0**

(Maximum Allowable: 5% of subconsultant labor costs)

**TOTAL PROJECT COST (NOT TO EXCEED \$6,000,000) **\$3,242,800****

**FEE SCHEDULE INSTRUCTIONS:**

The Consultant shall complete the Fee Schedule so that the Actual Labor Costs provided for tasks with specified allowances are consistent with these allowances.

**Column A - Task No.:** Use the task numbers provided.

**Column B - Task Summary:** Provide the task name and provide very brief description of the task

**Column C - Staff Classification:** Provide classification name/title for individuals proposed for this project. Add lines as needed.

**Column D - Name of Proposed Staff Person:** Provide name of individuals proposed for this project.

**Column E - Firm Name:** Provide name of consulting firm for each individuals proposed for this project.

**Column F - Estimated No. of Hours:** Provide an estimated number of hours that each individual is expected to spend on project tasks.

**Column G - Base Hourly Rate:** Provide individuals' actual hourly salary. These salaries must be verifiable by certified payroll records if required by SFPUC.

**Column H - Base Labor Cost:** Calculate the Base Labor Cost by multiplying Column F (Estimated No. of Hours) by Column G (Base Hourly Rate)

**Column I - Firm Multiplier:** Provide firm overhead and profit rate (one per firm).

**Column J - Billing Rate:** Provide actual billing rate for each individual by multiplying Column I (Firm Multiplier) by Column G (Base Hourly Rate). Maximum billing rate allowed is \$220/hour. Consultants will only be allowed to escalate billing rates based on the annual percentage change of the Consumer Price Index (CPI) for the San Francisco Bay Area. The billing rates must show two decimal points

**Column K - Actual Labor Cost:** Calculate the Actual Labor Cost by multiplying Column F (Estimated No. of Hours) by Column J (Billing Rate)

**Other Direct Costs (ODCs) -** Provide a subtotal for each ODC category listed, if applicable. Add additional categories if not listed.



## San Francisco Ethics Commission

25 Van Ness Avenue, Suite 220, San Francisco, CA 94102

Phone: 415.252.3100 . Fax: 415.252.3112

[ethics.commission@sfgov.org](mailto:ethics.commission@sfgov.org) . [www.sfethics.org](http://www.sfethics.org)

Received On:

File #: 220074

Bid/RFP #:

### Notification of Contract Approval

SFEC Form 126(f)4

(S.F. Campaign and Governmental Conduct Code § 1.126(f)4)

A Public Document

Each City elective officer who approves a contract that has a total anticipated or actual value of \$100,000 or more must file this form with the Ethics Commission within five business days of approval by: (a) the City elective officer, (b) any board on which the City elective officer serves, or (c) the board of any state agency on which an appointee of the City elective officer serves. For more information, see: <https://sfethics.org/compliance/city-officers/contract-approval-city-officers>

#### 1. FILING INFORMATION

<b>TYPE OF FILING</b>	<b>DATE OF ORIGINAL FILING (for amendment only)</b>
Original	
<b>AMENDMENT DESCRIPTION – Explain reason for amendment</b>	

#### 2. CITY ELECTIVE OFFICE OR BOARD

<b>OFFICE OR BOARD</b>	<b>NAME OF CITY ELECTIVE OFFICER</b>
Board of Supervisors	Members

#### 3. FILER'S CONTACT

<b>NAME OF FILER'S CONTACT</b>	<b>TELEPHONE NUMBER</b>
Angela Calvillo	415-554-5184
<b>FULL DEPARTMENT NAME</b>	<b>EMAIL</b>
Office of the Clerk of the Board	Board.of.Supervisors@sfgov.org

#### 4. CONTRACTING DEPARTMENT CONTACT

<b>NAME OF DEPARTMENTAL CONTACT</b>	<b>DEPARTMENT CONTACT TELEPHONE NUMBER</b>
Suni Jones	415-722-3495
<b>FULL DEPARTMENT NAME</b>	<b>DEPARTMENT CONTACT EMAIL</b>
PUC Power	skjones@sfwater.org

5. CONTRACTOR	
<b>NAME OF CONTRACTOR</b>  APX, Inc.	<b>TELEPHONE NUMBER</b>  408.517.2100
<b>STREET ADDRESS (including City, State and Zip Code)</b>  2150 N 1st St, San Jose, CA 95131	<b>EMAIL</b>

6. CONTRACT		
<b>DATE CONTRACT WAS APPROVED BY THE CITY ELECTIVE OFFICER(S)</b>	<b>ORIGINAL BID/RFP NUMBER</b>	<b>FILE NUMBER (If applicable)</b> 220074
<b>DESCRIPTION OF AMOUNT OF CONTRACT</b>  \$134,742,800		
<b>NATURE OF THE CONTRACT (Please describe)</b>  This contract seeks to acquire a CAISO certified Scheduling Coordinator (SC). In order for the SFPUC to participate in the California Independent System Operator (CAISO) electricity market and provide electric service to Hetch Hetchy Power (HHP) and CleanPowerSF customers, a CAISO certified SC is required.		

7. COMMENTS
Amount of contract reflects a reduction to the not to exceed amount as amended in Committee.

8. CONTRACT APPROVAL	
This contract was approved by:	
<input type="checkbox"/>	<b>THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM</b>
<input checked="" type="checkbox"/>	<b>A BOARD ON WHICH THE CITY ELECTIVE OFFICER(S) SERVES</b>  Board of Supervisors
<input type="checkbox"/>	<b>THE BOARD OF A STATE AGENCY ON WHICH AN APPOINTEE OF THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM SITS</b>

**9. AFFILIATES AND SUBCONTRACTORS**

List the names of (A) members of the contractor’s board of directors; (B) the contractor’s principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
1	Varnas, APX	Joe	CEO
2	Liang, APX	Kent	CFO
3	Brome, APX	Jason	Other Principal Officer
4	Gurvits, APX	Alexander	Other Principal Officer
5	Fellon, APX	Brian	COO
6			
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19			

Incomplete - Pending Signature



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#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
20			
21			
22			
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24			
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27			
28			
29			
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38			

Incomplete - Pending Signature

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List the names of (A) members of the contractor’s board of directors; (B) the contractor’s principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
39			
40			
41			
42			
43			
44			
45			
46			
47			
48			
49			
50			
<input type="checkbox"/>	Check this box if you need to include additional names. Please submit a separate form with complete information. Select “Supplemental” for filing type.		

**10. VERIFICATION**

I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information I have provided here is true and complete.

**I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.**

<p><b>SIGNATURE OF CITY ELECTIVE OFFICER OR BOARD SECRETARY OR CLERK</b></p>  <p>BOS Clerk of the Board</p>	<p><b>DATE SIGNED</b></p>
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**TO: Angela Calvillo, Clerk of the Board**

**FROM: Jeremy Spitz, Policy and Government Affairs**

**DATE: January 21, 2022**

**SUBJECT: [Professional Services Agreement – APX Inc. – Power Scheduling Coordination Services and Related Support Services - Not to Exceed \$136,500,000]**

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Please see attached a proposed Resolution authorizing the General Manager of the San Francisco Public Utilities Commission to execute Power Enterprise Operating Budget-funded Agreement No. PRO.0152 with APX Incorporated to assist with power scheduling coordination services required for the SFPUC's participation in the California Independent System Operator electricity market, for an amount not-to-exceed \$136,500,000 and with a duration of five years.

The following is a list of accompanying documents:

- Proposed Resolution (Word Doc Version)
- SFPUC Resolution No. 22-0014 (PDF)
- Original RFP (PDF)

Please contact Jeremy Spitz at [jspitz@sfgwater.org](mailto:jspitz@sfgwater.org) if you need any additional information on these items.

**London N. Breed**  
Mayor

**Anson Moran**  
President

**Newsha Ajami**  
Vice President

**Sophie Maxwell**  
Commissioner

**Tim Paulson**  
Commissioner

**Dennis J. Herrera**  
General Manager

