

SAN FRANCISCO PUBLIC UTILITIES COMMISSION

Contract Administration Bureau
Ivy V. Fine, Manager
1155 Market Street, 9th Floor, San Francisco, CA 94103 • Tel. (415) 551-4603 • Fax (415) 554-3225



March 16, 2011

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ED HARRINGTON
GENERAL MANAGER

Bob Ellis
HDR Engineering Inc.
575 Market Street, Suite 700
San Francisco, CA 94105-2837

RE: 1) Notice of Contract Award – **Construction Management for HTWTP Long Term Improvements Project (CS-919R)**
2) Transmittal – Executed Agreement between the City and County of San Francisco Public Utilities Commission and **HRD Engineering Inc.**

Dear Mr. Ellis,

This letter provides a *notification of contract award* for the following contracted work:

BLANKET PURCHASE ORDER NO: BPUC11000064– *Work may not be charged against this blanket purchase order number*

SCOPE: To provide construction management services for the Harry Tracy Water Treatment Plant – Long Term Improvements Project.

EFFECTIVE DATE: March 4, 2011 to February 25, 2016

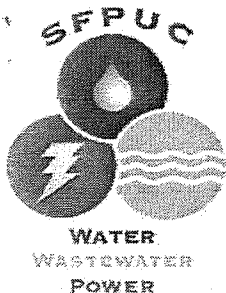
CONTRACT TO DATE: Total value of contract not to exceed \$ 16,000,000.00

Invoices must be charged against specific task orders only after a *Notice to Proceed* has been issued.

Should you have any questions, please do not hesitate to contact Connie Chang at (415) 554-3497.

Enclosure: Executed Agreement

cc: Husam N. Masri ✓
File/NCA 919(R)



SAN FRANCISCO PUBLIC UTILITIES COMMISSION



**City and County of San Francisco
San Francisco Public Utilities Commission
1155 Market Street, 11th Floor
San Francisco, California 94103**

Agreement between the City and County of San Francisco and

**HDR Engineering Inc.
CS-919R Construction Management Services - Staff Augmentation
Harry Tracy Water Treatment Plant Long Term Improvements Project**

This Agreement is made this February 25, 2011, in the City and County of San Francisco, State of California, by and between **HDR Engineering Inc. 575 Market Street, Suite 700, San Francisco, CA 94105-2387** hereinafter referred to as "Contractor," and the City and County of San Francisco, a municipal corporation, hereinafter referred to as "City," acting by and through the San Francisco Public Utilities Commission.

Recitals

WHEREAS, the San Francisco Public Utilities Commission ("Department") wishes to retain a consultant for the provision of Construction Management Services staff augmentation for the SFPUC Water System Improvement Program's Harry Tracy Water Treatment Plant Long Term Improvements Project ("HTWTP LONG TERM IMPROVEMENTS"); and,

WHEREAS, a Request for Proposal ("RFP") was issued on October 13, 2010, and City selected Contractor as the highest ranked proposer under the RFP selection process; 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, approval for this Agreement was obtained from the Civil Service Commission by Notice of Action PSC # 4123-01/10 on April 19, 2010; and,

WHEREAS, on January 11, 2011, pursuant to Resolution No. 11-0010, the San Francisco Public Utilities Commission awarded this Agreement, subject to approval by the Board of Supervisors under Charter section 9.118, and authorized the General Manager to execute this Agreement upon Board approval; and,

WHEREAS, approval for this Agreement was obtained from the San Francisco Board of Supervisors by Resolution No. 87-11 on February 15, 2011;

Now, THEREFORE, the parties agree as follows:

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.

2. Term of the Agreement.

Subject to Section 1, the term of this Agreement shall be sixty (60) months from the effective date as set forth in Section 3, below.

3. Effective Date of Agreement.

This Agreement shall become effective when the Controller has certified to the availability of funds and Contractor has been notified in writing.

4. Services Contractor Agrees to Perform.

The Contractor agrees to perform the services provided for in Appendix A, "Description of Services," attached hereto and incorporated by reference as though fully set forth herein.

5. Compensation.

Compensation shall be made in monthly payments on or before the thirtieth day of each month for work, as set forth in Section 4 of this Agreement that the General Manager of the Public Utilities Commission in his or her sole discretion, concludes has been adequately performed as of the last day of the immediately preceding month. In no event shall the amount of this Agreement exceed Sixteen Million Dollars (\$16,000,000). Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein.

As part of this contract Task Orders will be prepared in accordance with Appendix A, Section 2. Task Orders will identify a detailed project scope, sub tasks, staffing plan, LBE utilization, schedule, deliverables, budget and costs to complete the task. Each Task Order shall identify the entire amount to which the Contractor shall be entitled to fully perform and deliver to the City all work identified in that Task Order.

No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by San Francisco Public Utilities Commission as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement.

In no event shall City be liable for interest or late charges for any late payments.

The Controller is not authorized to pay invoices submitted by Contractor prior to Contractor's submission of HRC Progress Payment Form. If Progress Payment Form is not submitted with Contractor's invoice, the Controller will notify the department, the Director of HRC and Contractor of the omission. If Contractor's failure to provide HRC Progress Payment Form is not explained to the Controller's satisfaction, the Controller will withhold 20% of the payment due pursuant to that invoice until HRC Progress Payment Form is provided.

Following City's payment of an invoice, Contractor has ten days to file an affidavit using HRC Payment Affidavit verifying that all subcontractors have been paid and specifying the amount.

6. Guaranteed Maximum Costs.

- a. The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification.
- b. Except as may be provided by laws governing emergency procedures, officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Commodities or Services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law.
- c. Officers and employees of the City are not authorized to offer or promise, nor is the City required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller.
- d. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

7. Payment; Invoice Format.

Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller, and must include a unique invoice number. All amounts paid by City to Contractor shall be subject to audit by City.

Payment shall be made by City to Contractor at the address specified in the section entitled "Notices to the Parties."

8. Submitting False Claims; Monetary Penalties. Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. The text of Section 21.35, along with the entire San Francisco Administrative Code is available on the web at <http://www.municode.com/Library/clientCodePage.aspx?clientID=4201>. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (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.

9. Disallowance - Left blank by Agreement of the Parties.

10. Taxes.

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

b. Contractor recognizes and understands 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:

(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;

(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.

(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.

(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.

11. Payment Does Not Imply Acceptance of Work.

The granting of any payment by City, or the receipt thereof by Contractor, shall in no way lessen the liability of Contractor to replace unsatisfactory work, equipment, or materials, although the unsatisfactory character of such work, equipment or materials may not have been apparent or detected at the time such payment was made. Materials, equipment, components, or workmanship 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.

12. Qualified Personnel.

Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor. Contractor will comply with City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall commit adequate resources to complete the project within the project schedule specified in this Agreement.

13. Responsibility for Equipment.

City shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to Contractor by City.

14. Independent Contractor; Payment of Taxes and Other Expenses.

a. Independent Contractor.

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 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.

b. Payment of Taxes and Other Expenses.

Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority.

Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this

Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability).

A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor agrees to a reduction in City's financial liability so that City's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

15. Insurance.

a. 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:

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

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

(3) Commercial Automobile Liability Insurance with limits not less than \$2,000,000 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 Contractor's profession, with limits not less than \$5,000,000 each claim with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement.

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

(1) Name as Additional Insured the City and County of San Francisco, the San Francisco Public Utilities Commission, and their respective Officers, Agents, and Employees.

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

c. Regarding Workers' Compensation, Contractor hereby agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor 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 Contractor, its employees, agents and subcontractors.

d. All policies shall provide thirty 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.

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

f. 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.

g. 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.

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

i. Approval of the insurance by City shall not relieve or decrease the liability of Contractor hereunder.

j. If a subcontractor will be used to complete any portion of this agreement, the Contractor shall ensure that the subcontractor 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 Contractor listed as additional insureds.

All policies shall provide thirty (30) days advance written notice to City of reduction or non-renewal of coverage's or cancellation of coverage's for any reason.

Waiver of Subrogation

Consultant hereby agrees to waive subrogation which any insurer of Consultant may acquire from Consultant by virtue of the payment of any loss. Consultant agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation.

Deductibles and Self-Insured Retention

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or the Consultant shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

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 five 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 are 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 this 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 coverage's 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 Proposer in the Agreement.

If a sub-contractor will be used to complete any portion of the Agreement, the Proposer shall ensure that the sub-contractor 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 as additional insured's.

Insurance requirements may be changed at the option of the City.

16. Indemnification.

a. General Indemnity.

To the fullest extent permitted by law, Contractor shall assume the defense of, indemnify and save harmless the City, its boards, commissions, officers, and employees (collectively "Indemnitees"), from any claim, loss, damage, injury (including, without limitation, injury to or death of an employee of the Contractor or its subconsultants) and liabilities of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney's fees and costs of investigation), that arise directly or indirectly, in whole or in part, from (1) the services under this Agreement, or any part of such services, and (2) any negligent, reckless, or willful act or omission of the Contractor and subconsultant to the Contractor, anyone directly or indirectly employed by them, or anyone that they control (collectively, "Liabilities"), subject to the provisions set forth herein.

b. Limitations.

(1) No insurance policy covering the Contractor's performance under this Agreement shall operate to limit the Contractor's liability under this provision. Nor shall the amount of insurance coverage operate to limit the extent of such liability.

(2) The Contractor assumes no liability whatsoever for the sole negligence or willful misconduct of any Indemnitee or the contractors of any Indemnitee.

(3) The Contractor's indemnification obligations of claims involving "Professional Liability" (claims involving acts, errors or omissions in the rendering of professional services) and "Economic Loss Only" (claims involving economic loss which are not connected with bodily injury or physical damage to property) shall be limited to the extent of the Contractor's negligence or other breach of duty.

c. Copyright Infringement.

Contractor shall also indemnify, defend and hold harmless all Indemnitees from all suits or claims for infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark, or any other proprietary right of any person or persons in consequence of the use by the City, or any of its boards, commissions, officers, or employees of articles or services to be supplied in the performance of Contractor's services under this Agreement.

17. Incidental and Consequential Damages.

Contractor shall have no liability to City for any type of special, consequential or incidental damages arising out of or connected with Contractor's services performed in connection with this Agreement. This limit of liability applies under all circumstances including, but not limited to, the breach, completion, termination, suspension or cancellation of the services under this Agreement or this Agreement, and negligence or strict liability of Contractor. This limit of liability shall NOT apply to or limit: (i) Contractor's obligation to pay Liquidated Damages as set forth in this Agreement; (ii) damages caused by Contractor's gross negligence, reckless conduct, willful acts or omissions, fraud or illegal or unlawful acts; (iii) Contractor's liability for third party claims; (iv) Contractor's liability for any type of damage to the extent such damage is required to be covered by insurance as specified herein; (v) Contractor's obligation to indemnify and defend the City for intellectual property infringement; (vi) wrongful death caused by Contractor; (vii) punitive or treble damages; and (viii) Contractor's liability for damages expressly provided for in this Agreement.

18. Liability of City.

CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 5 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.

19. Liquidated Damages - Left Blank by Agreement of the Parties.

20. Default; Remedies.

a. Each of the following shall constitute an event of default ("Event of Default") under this Agreement:

(1) Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement: 8, 10, 15, 24, 30, 37, 53, 55, 57, or 58.

(2) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, and such default continues for a period of ten days after written notice thereof from City to Contractor.

(3) Contractor (a) is generally not paying its debts as they become due, (b) 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, (c) makes an assignment for the benefit of its creditors, (d) 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 (e) takes action for the purpose of any of the foregoing.

(4) A court or government authority enters an order (a) 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, (b) 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 (c) ordering the dissolution, winding-up or liquidation of Contractor.

b. 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, 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 all damages, losses, costs or expenses incurred by City as a result of such Event of Default and any liquidated damages due from Contractor pursuant to the terms of this Agreement or any other agreement.

c. 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.

21. Termination for Convenience.

a. 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 minimum of fourteen (14) days written notice of termination. The notice shall specify the date on which termination shall become effective.

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

(1) Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by City.

(2) Not placing any further orders or subcontracts for materials, services, equipment or other items.

(3) Terminating all existing orders and subcontracts.

(4) 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.

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

(6) Completing performance of any services or work that City designates to be completed prior to the date of termination specified by City.

(7) 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.

c. 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:

(1) The reasonable cost to Contractor, without profit, for all services and other work City directed Contractor to perform prior to the specified termination date, for which services or work 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 or other work. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.

(2) A reasonable allowance for profit on the cost of the services and other work described in the immediately preceding subsection (1), provided that Contractor can establish, to the satisfaction of City, that Contractor would have made a profit had all services and other work under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.

(3) 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.

(4) 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.

d. In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by City, except for those costs specifically enumerated and described in the immediately preceding subsection (c). Such non-recoverable costs include, but are not limited to, anticipated profits on 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 such subsection (c).

e. In arriving at the amount due to Contractor under this Section, City may deduct: (1) all payments previously made by City for work or other services covered by Contractor's final invoice; (2) any claim which City may have against Contractor in connection with this Agreement; (3) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (d); and (4) in

instances in which, in the opinion of the City, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced amount and City's estimate of the reasonable cost of performing the invoiced services or other work in compliance with the requirements of this Agreement.

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

22. Rights and Duties upon Termination or Expiration.

a. This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement: 8 through 11, 13 through 18, 24, 26, 27, 28, 48 through 52, 56, and 57.

b. Subject to the immediately preceding subsection (a), upon termination of this Agreement prior to expiration of the term specified in Section 2, this Agreement shall terminate and 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. This subsection shall survive termination of this Agreement.

23. Conflict of Interest.

Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provision of 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, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

24. Proprietary or Confidential Information of City.

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

25. Notices to the Parties.

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

To City:

San Francisco Public Utilities Commission
Contract Administration Bureau
1155 Market Street, 9th Floor
San Francisco, CA 94103
Tel.: 415) 551-4603
Email: rfp@sfwater.org

To Contractor: HDR Engineering Inc.
Attention: Bob Ellis, PE, Principal-in-Charge
575 Market Street, Suite 700
San Francisco, CA 94105-2837
Tel (415) 814-6711
Fax (415) 814-6801
Email: Robert.Ellis@hdrinc.com

Any notice of default must be sent by registered mail.

26. Ownership of Results.

Any interest of Contractor or its Subcontractors, in drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors in connection with services to be performed under this Agreement, shall become the property of and will be transmitted to City. However, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

27. Works for Hire.

If, in connection with services performed under this Agreement, Contractor or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, 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 are the property of the City. If it is ever determined that any works created by Contractor or its subcontractors under this Agreement are not works for hire under U.S. law, Contractor hereby assigns all copyrights to such works to the City, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of the City, Contractor may retain and use copies of such works for reference and as documentation of its experience and capabilities.

28. Audit and Inspection of Records.

Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its work under this Agreement. 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 conferred upon City by this Section.

29. Subcontracting.

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

30. Assignment.

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

31. 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.

32. Earned Income Credit (EIC) Forms.

Administrative Code section 120 requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found.

a. Contractor shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty days following the date on which this Agreement becomes effective (unless Contractor has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by Contractor; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement.

b. Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Contractor of the terms of this Agreement. If, within thirty days after Contractor receives written notice of such a breach, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty days, Contractor fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Agreement or under applicable law.

c. Any Subcontract entered into by Contractor shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this section.

d. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 120 of the San Francisco Administrative Code.

33. Local Business Enterprise Utilization; Liquidated Damages.

a. The LBE Ordinance.

Contractor, shall comply with all the requirements of the Local Business Enterprise and Non-Discrimination in Contracting Ordinance set forth in Chapter 14B of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the "LBE Ordinance"), provided such amendments do not materially increase Contractor's obligations or liabilities, or materially diminish Contractor's rights, under this Agreement. Such provisions of the LBE Ordinance are incorporated by reference and made a part of this Agreement as though fully set forth in this section. Contractor's willful failure to comply with any applicable provisions of the LBE Ordinance is a material breach of Contractor's obligations under this Agreement and shall entitle City, subject to any applicable notice and

cure provisions set forth in this Agreement, to exercise any of the remedies provided for under this Agreement, under the LBE Ordinance or otherwise available at law or in equity, which remedies shall be cumulative unless this Agreement expressly provides that any remedy is exclusive. In addition, Contractor shall comply fully with all other applicable local, state and federal laws prohibiting discrimination and requiring equal opportunity in contracting, including subcontracting.

b. Compliance and Enforcement.

(1) Enforcement.

If Contractor willfully fails to comply with any of the provisions of the LBE Ordinance, the rules and regulations implementing the LBE Ordinance, or the provisions of this Agreement pertaining to LBE participation, Contractor shall be liable for liquidated damages in an amount equal to Contractor's net profit on this Agreement, or 10% of the total amount of this Agreement, or \$1,000, whichever is greatest. The Director of the City's Human Rights Commission or any other public official authorized to enforce the LBE Ordinance (separately and collectively, the "Director of HRC") may also impose other sanctions against Contractor authorized in the LBE Ordinance, including declaring the Contractor to be irresponsible and ineligible to contract with the City for a period of up to five years or revocation of the Contractor's LBE certification. The Director of HRC will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to Administrative Code §14B.17.

By entering into this Agreement, Contractor acknowledges and agrees that any liquidated damages assessed by the Director of the HRC shall be payable to City upon demand. Contractor further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to Contractor on any contract with City.

Contractor agrees to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination or expiration of this Agreement, and shall make such records available for audit and inspection by the Director of HRC or the Controller upon request.

(2) Subcontracting Goals.

The LBE sub-consulting goal for this Contract is **21.63%** of the total labor value of the services to be provided. The LBE sub-contracting goal shall also apply to any labor value of the Additional Services authorized after issuance of the Notice to Proceed. Contractor shall fulfill the subcontracting commitment made in its bid or proposal. Each invoice submitted to City for payment shall include the information required in the HRC Progress Payment Form and the HRC Payment Affidavit. Failure to provide the HRC Progress Payment Form and the HRC Payment Affidavit with each invoice submitted by Contractor shall entitle City to withhold 20% of the amount of that invoice until the HRC Payment Form and the HRC Subcontractor Payment Affidavit are provided by Contractor.

Contractor shall not participate in any back contracting to the Contractor or lower-tier subcontractors, as defined in the LBE Ordinance, for any purpose inconsistent with the provisions of the LBE Ordinance, its implementing rules and regulations, or this Section.

(3) Subcontract Language Requirements.

Contractor shall incorporate the LBE Ordinance into each subcontract made in the fulfillment of Contractor's obligations under this Agreement and require each subcontractor to agree and comply with provisions of the ordinance applicable to subcontractors.

Contractor shall include in all subcontracts with LBEs made in fulfillment of Contractor's obligations under this Agreement, a provision requiring Contractor to compensate any LBE subcontractor for damages for breach of contract or liquidated damages equal to 5% of the subcontract amount, whichever is greater, if Contractor does not fulfill its commitment to use the LBE subcontractor as specified in the bid or proposal, unless Contractor received advance approval from the Director of HRC and contract awarding authority to substitute subcontractors or to otherwise modify the commitments in the bid or proposal. Such provisions shall also state that it is enforceable in a court of competent jurisdiction.

Subcontracts shall require the subcontractor to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination of this contract and to make such records available for audit and inspection by the Director of HRC or the Controller upon request.

(4) Payment of Subcontractors.

Contractor shall pay its subcontractors within three working days after receiving payment from the City unless Contractor notifies the Director of HRC in writing within ten working days prior to receiving payment from the City that there is a bona fide dispute between Contractor and its subcontractor and the Director waives the three-day payment requirement, in which case Contractor may withhold the disputed amount but shall pay the undisputed amount.

Contractor further agrees, within ten working days following receipt of payment from the City, to file the HRC Payment Affidavit with the Controller, under penalty of perjury, that the Contractor has paid all subcontractors. The affidavit shall provide the names and addresses of all subcontractors and the amount paid to each. Failure to provide such affidavit may subject Contractor to enforcement procedure under Administrative Code §14B.17.

34. Nondiscrimination; Penalties.

a. Contractor Shall Not Discriminate.

In the performance of this Agreement, Contractor agrees not to discriminate against any employee, City and County employee working with such contractor or subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

b. Subcontracts.

Contractor shall incorporate by reference in all subcontracts the provisions of §§12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from

Purchasing) and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

c. Nondiscrimination in Benefits.

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 bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in §12B.2(b) of the San Francisco Administrative Code.

d. Condition to Contract.

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

e. Incorporation of Administrative Code Provisions by Reference.

The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to §§12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

35. MacBride Principles—Northern Ireland.

Pursuant to San Francisco Administrative Code §12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Contractor acknowledges and agrees that he or she has read and understood this section.

36. Tropical Hardwood and Virgin Redwood Ban.

Pursuant to §804(b) of the San Francisco Environment Code, the City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

37. Drug-Free Workplace Policy.

Contractor acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is

prohibited on City premises. Contractor agrees that any violation of this prohibition by Contractor, its employees, agents or assigns will be deemed a material breach of this Agreement.

38. Resource Conservation.

Chapter 5 of the San Francisco Environment Code ("Resource Conservation") is incorporated herein by reference. Failure by Contractor to comply with any of the applicable requirements of Chapter 5 will be deemed a material breach of contract.

39. Compliance with Americans with Disabilities Act.

Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agree that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

40. Sunshine Ordinance.

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

41. Public Access to Meetings and Records.

If the Contractor 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, Contractor shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Agreement, the Contractor agrees to open its meetings and records to the public in the manner set forth in §§12L.4 and 12L.5 of the Administrative Code. Contractor further agrees to make-good faith efforts to promote community membership on its Board of Directors in the manner set forth in §12L.6 of the Administrative Code. The Contractor acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. The Contractor further acknowledges that such material breach of the Agreement shall be grounds for the City to terminate and/or not renew the Agreement, partially or in its entirety.

42. Limitations on Contributions.

Through execution of this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an

appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Contractor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

43. Requiring Minimum Compensation for Covered Employees.

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

b. The MCO requires Contractor to pay Contractor's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and Contractor is obligated to keep informed of the then-current requirements. Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is Contractor's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Contractor.

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

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

e. The City is authorized to inspect Contractor's job sites and conduct interviews with employees and conduct audits of Contractor

f. Contractor's commitment to provide the Minimum Compensation is a material element of the City's consideration for this Agreement. The City in its sole discretion shall determine whether such a breach has occurred. The City and the public will suffer actual damage that will be impractical or extremely difficult to determine if the Contractor fails to comply with these requirements. Contractor agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but

are reasonable estimates of the loss that the City and the public will incur for Contractor's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

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

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

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

44. Requiring Health Benefits for Covered Employees.

Contractor agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of section 12Q.5.1 of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at www.sfgov.org/olse. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

a. 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..

b. Notwithstanding the above, if the Contractor is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.

c. Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Contractor if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

d. Any Subcontract entered into by Contractor shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Contractor shall notify City's Office of Contract Administration when it enters into such a Subcontract and shall certify to the Office of Contract Administration that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Contractor shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Contractor based on the Subcontractor's failure to comply, provided that City has first provided Contractor with notice and an opportunity to obtain a cure of the violation.

e. Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Contractor's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

f. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

g. Contractor shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City Contract.

h. Contractor shall keep itself informed of the current requirements of the HCAO.

i. Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

j. Contractor shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least ten business days to respond.

k. Contractor shall allow City to inspect Contractor's job sites and have access to Contractor's employees in order to monitor and determine compliance with HCAO.

l. City may conduct random audits of Contractor to ascertain its compliance with HCAO. Contractor agrees to cooperate with City when it conducts such audits.

m. If Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause Contractor's aggregate amount of all agreements with City to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Contractor and the City to be equal to or greater than \$75,000 in the fiscal year.

45. First Source Hiring Program.

a. **Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapter 83 of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with, and be

bound by, all of the provisions that apply to this Agreement under such Chapter, including but not limited to the remedies provided therein. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83.

b. First Source Hiring Agreement. As an essential term of, and consideration for, any contract or property contract with the City, not exempted by the FSHA, the Contractor shall enter into a first source hiring agreement ("agreement") with the City, on or before the effective date of the contract or property contract. Contractors shall also enter into an agreement with the City for any other work that it performs in the City. Such agreement shall:

(1) Set appropriate hiring and retention goals for entry level positions. The employer shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to establish good faith efforts as to its attempts to do so, as set forth in the agreement. The agreement shall take into consideration the employer's participation in existing job training, referral and/or brokerage programs. Within the discretion of the FSHA, subject to appropriate modifications, participation in such programs may be certified as meeting the requirements of this Chapter. Failure either to achieve the specified goal, or to establish good faith efforts will constitute noncompliance and will subject the employer to the provisions of Section 83.10 of this Chapter.

(2) Set first source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to provide qualified economically disadvantaged individuals for consideration for employment for entry level positions. Employers shall consider all applications of qualified economically disadvantaged individuals referred by the System for employment; provided however, if the employer utilizes nondiscriminatory screening criteria, the employer shall have the sole discretion to interview and/or hire individuals referred or certified by the San Francisco Workforce Development System as being qualified economically disadvantaged individuals. The duration of the first source interviewing requirement shall be determined by the FSHA and shall be set forth in each agreement, but shall not exceed 10 days. During that period, the employer may publicize the entry level positions in accordance with the agreement. A need for urgent or temporary hires must be evaluated, and appropriate provisions for such a situation must be made in the agreement.

(3) Set appropriate requirements for providing notification of available entry level positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of qualified economically disadvantaged individuals to participating employers. Notification should include such information as employment needs by occupational title, skills, and/or experience required, the hours required, wage scale and duration of employment, identification of entry level and training positions, identification of English language proficiency requirements, or absence thereof, and the projected schedule and procedures for hiring for each occupation. Employers should provide both long-term job need projections and notice before initiating the interviewing and hiring process. These notification requirements will take into consideration any need to protect the employer's proprietary information.

(4) Set appropriate record keeping and monitoring requirements. The First Source Hiring Administration shall develop easy-to-use forms and record keeping requirements for documenting compliance with the agreement. To the greatest extent possible, these requirements shall utilize the employer's existing record keeping systems, be nonduplicative, and facilitate a coordinated flow of information and referrals.

(5) Establish guidelines for employer good faith efforts to comply with the first source hiring requirements of this Chapter. The FSHA will work with City departments to develop employer

good faith effort requirements appropriate to the types of contracts and property contracts handled by each department. Employers shall appoint a liaison for dealing with the development and implementation of the employer's agreement. In the event that the FSHA finds that the employer under a City contract or property contract has taken actions primarily for the purpose of circumventing the requirements of this Chapter, that employer shall be subject to the sanctions set forth in Section 83.10 of this Chapter.

(6) Set the term of the requirements.

(7) Set appropriate enforcement and sanctioning standards consistent with this Chapter.

(8) Set forth the City's obligations to develop training programs, job applicant referrals, technical assistance, and information systems that assist the employer in complying with this Chapter.

(9) Require the developer to include notice of the requirements of this Chapter in leases, subleases, and other occupancy contracts.

c. Hiring Decisions. Contractor shall make the final determination of whether an Economically Disadvantaged Individual referred by the System is "qualified" for the position.

d. Exceptions. Upon application by Employer, the First Source Hiring Administration may grant an exception to any or all of the requirements of Chapter 83 in any situation where it concludes that compliance with this Chapter would cause economic hardship.

e. Liquidated Damages. Contractor agrees:

(1) To be liable to the City for liquidated damages as provided in this section;

(2) To be subject to the procedures governing enforcement of breaches of contracts based on violations of contract provisions required by this Chapter as set forth in this section;

(3) That the contractor's commitment to comply with this Chapter is a material element of the City's consideration for this contract; that the failure of the contractor to comply with the contract provisions required by this Chapter will cause harm to the City and the public which is significant and substantial but extremely difficult to quantify; that the harm to the City includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to \$5,000 for every notice of a new hire for an entry level position improperly withheld by the contractor from the first source hiring process, as determined by the FSHA during its first investigation of a contractor, does not exceed a fair estimate of the financial and other damages that the City suffers as a result of the contractor's failure to comply with its first source referral contractual obligations.

(4) That the continued failure by a contractor to comply with its first source referral contractual obligations will cause further significant and substantial harm to the City and the public, and that a second assessment of liquidated damages of up to \$10,000 for each entry level position improperly withheld from the FSHA, from the time of the conclusion of the first investigation forward, does not exceed the financial and other damages that the City suffers as a result of the contractor's continued failure to comply with its first source referral contractual obligations;

(5) That in addition to the cost of investigating alleged violations under this Section, the computation of liquidated damages for purposes of this section is based on the following data:

A. The average length of stay on public assistance in San Francisco's County Adult Assistance Program is approximately 41 months at an average monthly grant of \$348 per month, totaling approximately \$14,379; and

B. In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least the first six months of employment was 84.4%. Since qualified individuals under the First Source program face far fewer barriers to employment than their counterparts in programs funded by the Workforce Investment Act, it is reasonable to conclude that the average length of employment for an individual whom the First Source Program refers to an employer and who is hired in an entry level position is at least one year;

therefore, liquidated damages that total \$5,000 for first violations and \$10,000 for subsequent violations as determined by FSHA constitute a fair, reasonable, and conservative attempt to quantify the harm caused to the City by the failure of a contractor to comply with its first source referral contractual obligations.

(6) That the failure of contractors to comply with this Chapter, except property contractors, may be subject to the debarment and monetary penalties set forth in Sections 6.80 et seq. of the San Francisco Administrative Code, as well as any other remedies available under the contract or at law; and

Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of \$5,000 for every new hire for an Entry Level Position improperly withheld from the first source hiring process. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the FSHA.

f. **Subcontracts.** Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section.

46. Prohibition on Political Activity with City Funds.

In accordance with San Francisco Administrative Code Chapter 12.G, Contractor may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. Contractor agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Contractor violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit Contractor from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider Contractor's use of profit as a violation of this section.

47. Preservative-treated Wood Containing Arsenic.

Contractor may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or

ammoniacal copper arsenate preservative. Contractor may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Contractor from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

48. Modification of Agreement.

This Agreement may not be modified, nor may compliance with any of its terms be waived, 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 HRC 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% (HRC Contract Modification Form).

49. Administrative Remedy for Agreement Interpretation.

Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to Purchasing who shall decide the true meaning and intent of the Agreement.

50. 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.

51. Construction.

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

52. Entire Agreement.

This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This contract may be modified only as provided in Section 48.

53. Compliance with Laws.

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

54. 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.

55. Supervision of Minors - Left Blank by Agreement of the Parties.

56. Severability.

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

57. Protection of Private Information.

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

58. Graffiti Removal.

Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti.

Contractor shall remove all graffiti from any real property owned or leased by Contractor in the City and County of San Francisco within forty eight (48) hours of the earlier of Contractor's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require a Contractor to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

Any failure of Contractor to comply with this section of this Agreement shall constitute an Event of Default of this Agreement.

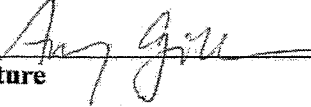
59. Food Service Waste Reduction Requirements.

Effective June 1, 2007, Contractor agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Contractor agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of one hundred dollars (\$100) liquidated damages for the first breach, two hundred dollars (\$200) liquidated damages for the second breach in the same year, and five hundred dollars (\$500) liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply with this provision.

60. Slavery Era Disclosure - Left Blank by Agreement of the Parties.

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

CITY	CONTRACTOR
<p>Approved by:</p> <p></p> <hr/> <p>Ed Harrington General Manager San Francisco Public Utilities Commission</p> <p>Approved as to Form:</p> <p>Dennis J. Herrera City Attorney</p> <p>By: </p> <hr/> <p>John G. White Deputy City Attorney</p>	<p>HDR Engineering Inc.</p> <p>By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.</p> <p>I have read and understood paragraph 35, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.</p> <p></p> <hr/> <p>Signature</p> <p></p> <hr/> <p>Name of Authorized Signature:</p> <p>Address 575 Market Street, Suite 700 San Francisco, CA 94105-2387</p> <p>City vendor number: _____</p>

Appendices

- A: Services to be provided by Contractor
- B: Calculation of Charges

Appendix A
Services to be provided by Contractor

Contractor agrees to perform said services all in accordance with the terms of this Agreement.

1. Description of Services

Contractor will provide construction management services staff augmentation for the Harry Tracy Water Treatment Plant Long Term Improvements Project. Contractor will be the Harry Tracy Water Treatment Plant Long Term Improvements Project Consultant Construction Manager (CCM), and will be required to provide fully qualified and highly experienced construction management personnel to support the City in managing the construction of the project. Contractor shall ensure that the Harry Tracy Water Treatment Plant Long Term Improvements Project Construction Management objectives and requirements are achieved and are in compliance with the WSIP Construction Management Plan ("WSIP CM Plan") guidelines, uniform procedures and policies.

The WSIP CM Plan Revision 3, as well as the Request for Proposals (CS-919R) dated October 13, 2010 (including all addenda), are hereby incorporated into this Agreement as if fully set forth herein.

These following tasks, subtasks and subtask activities are referenced to the relevant sections (in parentheses) in the WSIP CM Plan to provide guidance to the Contractor as to the anticipated scope of work. The sections referenced are not inclusive. The CCM will be responsible for providing all of the duties required by the WSIP CM Plan for the functional positions that will be staffed by the CCM. The Contractor is responsible for reviewing the WSIP CM Plan to obtain a full understanding of that Plan and how it relates to the scope of work to be provided by the CCM and to each of these tasks, subtasks and subtask activities listed below. These tasks, subtasks and subtask activities shall be performed by the CCM and its staff for the HTWTP LONG TERM IMPROVEMENTS in a manner that is consistent with the approach to Construction Management as described in the WSIP CM Plan.

Task 1 **Intentionally Left Blank** – There will not be a designated Task 1 for the Proposed HTWTP Long Term Improvements Project.

Task 2 **Provide CM Services Staff Augmentation for the Proposed HTWTP Long Term Improvements Project. Proposers shall provide the following CM Team positions:**

Construction Scheduler/Cost Specialist
Environmental Compliance Manager
Environmental Inspector
(Specialty) Environmental Monitor
Estimator
Field Contract Administrator
Lead QA Electrical/Mechanical Inspector
Public Relation/Communication Specialist
QA Inspector Civil (Qualified for Special Inspection)
QA Inspector Electrical
QA Inspector I&C
QA Inspector Mechanical
QA Inspector Tunnel
QA Inspector Welding
Test and Start up Engineer
Administrative/Document Control Specialist (ADCS)

The above personnel shall be responsible to undertake the following Subtasks:

Based on the provided project schedule in Figure 3 of the RFP, the Contractor's hours and number of positions needed for each Subtask and Subtask activity will be as outlined in Appendix B-1:

Subtask 2.1 Pre-Construction Services

Activities:

- 2.1.1 Provide Resource Loaded Task, Subtask and Subtask Activities Plan for CM Consultant Services (2.2.4).

The Plan will match the CCM Scope of Work, WBS (Tasks, Subtasks and Subtask Activities) and the level of resource loading (monthly person-hour loading of each resource) in a format as determined by the Regional Project Manger.

- 2.1.2 Provide a Plan to describe the approach on how to implement the Environmental Mitigation Monitoring and Reporting Plan (2.1.10).
- 2.1.3 Provide CM Safety Plan (2.2.2.2).

Subtask 2.2 Construction Contract Administration Activities:

- 2.2.1 Implement CM Safety Plan (2.2.2.2).
- 2.2.2 Implement Construction Management Information System CMIS (2.2.3).
- 2.2.3 Manage CS-919R CM Services Contract (2.2.4).
- 2.2.4 Support SFPUC Public Outreach Efforts (2.2.5).

An experienced Public Relations Specialist will be required on a part-time to full-time basis (work schedule will vary according to construction workload and support needs) to support HTWTP-Long Term Project construction activities. For budgeting purposes, the consultant should allow a total of 0.3 FTE for the 54 months for this role. These hours will cover construction public outreach support for the HTWTP-Long Term Project during the pre-construction and construction phases. The Public Relations specialist will be stationed in the Project office and report directly to the SFPUC Communication Liaison appointed to the HTWTP-Long Term Project.

- 2.2.5 Assist in Administering the Security Program Requirements for the Project (2.2.6).
- 2.2.6 Assist SFPUC with the Implementation of the Project Labor Agreement (PLA) (2.2.7).

The PLA is located on the [wee.sfwater.org](http://sfwater.org) website at the following link:

http://sfwater.org/custom/bid/planlist.cfm/bidtype/1/MCID/15MSC_ID/149

- 2.2.7 Assist SFPUC in the Construction Administration for the Project (2.2.8.1 through 2.2.8.19)
- 2.2.8 Assist SFPUC in the Administration Support for the Project (1.6.25).
- 2.2.9 Provide Testing and Start-Up Management Services (2.2.8.20).
- 2.2.10 Provide Support for Spare Parts and Warranties (2.2.8.21).

- 2.2.11 Provide Support for the management of Acceptance of the Work and Close-Out (2.2.8.22).
- 2.2.12 Provide Support for Project Administration for Close-Out and Turn Over (2.2.8.23).

Subtask 2.3 Construction Quality Assurance (2.2.9.1 through 2.2.9.6)

Provide Quality Assurance Services as outlined in the WSIP CM Plan (2.2.9).

In addition, provide special inspections services as required by the California Building Code (CBC) 2007, Chapter 17 for the HTWTP-Long Term Project. Inspections may include:

- Structural Steel Inspection – structural welding, inspection of high strength bolts, steel deck installation
- Concrete Inspection - placement of concrete, reinforcing steel, concrete testing, anchor bolts and embedded items
- Soils and Foundation Inspection - subgrade preparation, excavation and backfill, soil nails, drilled piers and caissons
- Certified Welding Inspection of Pipelines – visual and non-destructive testing for pipelines.

The CCM will also establish control monuments, and may verify the Construction Contractor's line and grade, and provide surveying when requested by the Project Engineer, for preparing design changes.

Subtask 2.4 Construction Contracts Management (2.2.10.1 through 2.2.10.9)

Provide Construction Contracts Management Services in accordance with the requirements of the WSIP CM Plan (2.2.10).

Subtask 2.5 Construction Project Controls (2.2.11.1 through 2.2.11.13)

Provide Project Controls Services in accordance with the requirements of the WSIP CM Plan (2.2.11).

Subtask 2.6 Construction Environmental Compliance Monitoring Services (2.2.12.1 through 2.2.12.10).

Provide Environmental Compliance Monitoring Services in accordance with the requirements of the WSIP CM Plan (2.2.12.1 through 2.2.12.10).

The HTWTP-Long Term Project Final EIR was certified by the SF Planning Commission on October 14, 2010. The Final EIR outlines the CEQA and NEPA requirements and permit conditions for environmental protection during construction. In addition, some permits may be in negotiation with the relevant agencies and may require finalization by the Contractor

Subtask 2.7 Special Studies

As necessary, the CCM may be required to undertake special tasks, surveys, and activities and provide support to meet the overall objectives of the Harry Tracy Water Treatment Plant Long Term Improvements Project. As defined by the RPM, these tasks and special studies will be defined and executed on as defined and as needed

basis. The studies/surveys may include during- and post-construction surveys, special testing, technical studies, geotechnical investigations, determination of work-arounds to meet newly discovered site conditions, and other tasks necessary to support the delivery of the project within the established requirements and as directed and approved by the RPM.

2. Reports.

The Contractor shall submit written reports as requested by the SFPUC Regional Project Manager. Reports shall be thorough, competent and professional. Draft reports submitted for review shall be analyzed for technical content; clarity, language or technical content shall be grounds for resubmission as referred to in contract Item 11 describing "Acceptance of Work". The SFPUC Regional Project Manager shall determine the format for the content of such reports. Submission of all reports shall be in accordance with the schedule set forth in individual task orders. The reports, including any copies, shall be submitted on recycled paper and printed on double-sided pages to the maximum extent possible.

3. Task Orders.

Performance of the Construction Management Services will be executed according to a task order process. The SFPUC Regional Project Manager will 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. A final task order scope proposal will be negotiated between the SFPUC Regional Project Manager and the Contractor and then submitted to Construction Management Bureau for approval. Labor rates, overhead rates and certain other HTWTP LONG TERM IMPROVEMENTS costs or prices, including profit will be accordance with Appendix B. However, as provided in the RFP, the budget identified for tasks in Overhead and Profit Schedule is an estimate, and the City reserves the right to modify the 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 Chapter 6 of 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 contract shall be in accordance with the negotiated master contract and billing rates set forth in Appendix B.

4. Contractor Responsibilities.

In addition to services identified above, the Contractor may also be asked to assist SFPUC staff in providing technical support and expertise in the development of the project and related documents during the Agreement period. The primary Contractor functions are:

- a. Ensure the timely delivery of quality services and within budget;
- b. Provide adequate quality control processes and deliverables in conformance with the technical requirements of the contract and task order;
- c. Maintain liaison and direct communications with SFPUC staff and promptly resolve any questions and issues that may arise;
- d. Submit invoices with proper supporting documentation in accordance with the terms of this agreement;

- e. Provide reports and deliverables as requested by SFPUC staff;
- f. Presentations to the SFPUC, the Board of Supervisors, and neighborhood or community meetings, as needed;
- g. Professional consultations and peer review;
- h. Field inspections and field or crisis management at project sites;
- i. Confined space entry may be required; and
- j. Emergency response.

5. 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.

6. Reports.

Contractor shall submit written reports as requested by the San Francisco Public Utilities Commission (SFPUC). Format for the content of such reports shall be determined by the Construction Management Bureau of the SFPUC. The timely submission of all reports is a necessary and material term and condition of this Agreement. The reports, including any copies, shall be submitted on recycled paper and printed on double-sided pages to the maximum extent possible.

7. Department Liaison.

In performing the services provided for in this Agreement, Contractor's liaison with the SFPUC shall be:

Husam N. Masri,
Regional Project Manager
1155 Market Street, 6th Floor
San Francisco, CA 94103
Tel. (415) 551-4563

Appendix B Calculation of Charges

As part of Contractor's proposal dated November 8, 2010, Contractor submitted billing rates, attached hereto as part of Appendix B-1. The Overhead and Profit Schedule, which list the requested tasks is hereby incorporated by reference. All costs associated with the development of the scope of work shall be borne by Contractor. The Contractor, with the assistance of the SFPUC, will be required to define the detailed scope for the tasks under this Agreement.

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

Pursuant to San Francisco Administrative Code §21.35, any Contractor, subcontractor or Contractor who submits a false claim shall be liable to the City for three times the amount of damages which the City sustains because of the false claim. A Contractor, subcontractor or Contractor who submits a false claim shall also be liable to the City for the costs, including attorneys' fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the City for a civil penalty of up to \$10,000 for each false claim. A Contractor, subcontractor or Contractor will be deemed to have submitted a false claim to the City if the Contractor, subcontractor or Contractor: (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.

1. Compensation under this contract will be provided as: a) labor related costs by hourly billing rates for hours worked, and b) separately billed direct reimbursable expenses (ODCs). (Markups on ODCs are not allowable)

a) Hourly billing rates shall be the actual hourly base salary rate of each employee utilized for the work multiplied by the firm(s) individual firm Overhead and Profit Rate, or effective Overhead and Profit Rate (for substituted firms or substituted individual contractors). The individual firm Effective Overhead and Profit Schedule shall include all miscellaneous and incidental costs of work other than those as specifically defined below as direct reimbursable expenses.

b) 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.

2 Billing Rates & Overhead and Profit Schedule.

The Contractor's billing rates and individual firm overhead and profit rates provided in the Overhead and Profit Schedule, Appendix B-1, shall not be negotiable during the Agreement award process and the duration of the Agreement. The individual firm overhead and profit rates shall apply to the billing rate of all individuals not listed in the Overhead and Profit Schedule (i.e., substitute staff and staff assigned later). The individual firm overhead and profit rates and Effective Overhead and Profit rate shall also apply to all amendments to the Agreement. If a new subconsultant 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.

If an Individual Contractor listed in the Overhead and Profit Schedule is later replaced or substituted after the Contract is executed, the billing rate of any new Individual Contractor shall not exceed the billing rate in the Overhead and Profit Schedule for the position. If the Individual Contractor is replaced or substituted with a Prime or Sub-consultant 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 Effective Overhead and Profit Rate. The Individual Contractor's hourly pay rate shall be verifiable by an executed written contract with the Contractor. Mark-up on an Individual Contractor shall be limited to 5% of the Individual Contractor's billing rate.

Contractor's billing rates stated in Appendix B-1 will be the billing rate for the listed individuals. Billing rates may be adjusted annually on the anniversary of the effective date of this Agreement as indicated in the Notice of Contract Award letter. The amount of any annual adjustment to billing rates is limited to a maximum of the CPI annual percent change increase (San Francisco Bay Area for Urban Wage Earners and Clerical Workers) for the previous calendar year, if the Index declines or shows no increase, billing rates will not be increased. Any increases in billing rates will be applied on a prospective basis only. The maximum hourly billing rate is **\$220 per hour**. In the event the maximum billing rate is to exceed \$220 per hour, the Contractor must obtain written pre-authorization from the SFPUC Project Manager and Bureau/Division Manager. Those who are allowed to exceed the maximum billing rate will keep the rate for the duration of the contract. No annual adjustment is allowed to billing rates exceeding \$220 per hour. Billing rates for staff in any position will apply regardless of whether it is straight time, premium time or overtime.

The billing rate for each listed individual may not exceed the lowest rate charged to any other governmental entity except the City and County of San Francisco. Additionally, billing rates shall not exceed Federal Acquisition Regulations (FAR) or Generally Accepted Accounting Principles (GAAP) rate; whichever is applicable, if both, whichever is lowest.

- Direct Labor is limited to actual salaries of project personnel
 - Effective Overhead and Profit Rate: 2.02
- 3 **Staff Changes:** The SFPUC Regional Project Manager must approve the assignment of staff prior to beginning a task order as well as any staff changes proposed by Contractor. The SFPUC Regional Project Manager must also approve in writing any personnel changes proposed by Contractor after Notice to Proceed has been issued.

The Contractor should note that 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 Contractor. Individuals listed in the Overhead and Profit Schedule and for whom resumes and qualifications have been submitted as part of the proposal are expected to be provided to the project team.

All staff provided whether proposed in the Contractor's proposal or proposed as a substitution or a staff change shall meet the qualifications for the position as stated in Section IV.3 of the RFP

4. **Potential Delays to Project Schedule; Key/Lead Team Member Availability.**

The construction schedule is an estimate; the SFPUC cannot guarantee an exact start date for CM services. There are potential uncertainties that could delay the start of construction, which in turn could delay the start of services or result in the temporary suspension of services under this Agreement. Potential uncertainties include, but are not limited to: delays in completing the

environmental review process under the California Environmental Quality Act ("CEQA"), delays in the review and permitting processes required by Local, State and Federal resource agencies and delays in the availability of equipment and/or materials. In addition, until the CEQA review process is completed, the City retains sole and absolute discretion to, among other things, modify the project to mitigate significant environmental impacts, or elect not to proceed with the project based upon information generated by the environmental review process.

If there is a delay to the start of construction, the SFPUC may, depending on the reason(s) for and timing of the delay, elect not to issue a Notice to Proceed ("NTP") for services (see Appendix A to Agreement, above) or temporarily suspend services at some point after issuing NTP.

In light of the potential delay or temporary suspension of services under the Agreement, Contractor agrees to the following conditions:

- If a delay to the start of construction either delays the start of services or results in temporary suspension of services under the Agreement, the selected Contractor will guarantee the availability of the Key/Lead Team members identified in its proposal for a delay or suspension period of up to 6 months. For a delay in issuing NTP for services, the 6-month delay period will commence upon receipt of the Notice of Award of contract. For any suspension of services after issuance of NTP, the 6-month suspension period will commence upon the receipt of a notice of suspension from the SFPUC.
 - If any construction schedule-related delay or suspension period extends beyond 6 months, the selected Contractor may substitute Key/Lead Team members. The SFPUC will have the right to approve any substitutions, which approval will not be unreasonably withheld. Proposed substitute personnel must meet all applicable qualification requirements set forth in the Request for Proposals dated October 13, 2010 and all associated addenda.
 - Any construction schedule-related delay or suspension period will count toward the annual rate adjustment process described in Paragraph I, above.
5. **Additional Subcontractors:** Second-tier and pass-through subcontracting is prohibited. However, in the event that the prime Contractor and its approved subcontractors lack the necessary skills or expertise to perform requested services that are within the scope of the contract, additional subcontractors may be added to the Contractor team after obtaining pre-authorization by the SFPUC Regional Project Manager.
6. **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.

The following items will be eligible for reimbursement as ODCs from the provisional sum for ODCs as indicated in the Overhead and Profit Schedule:

- Out-of-town travel for project related business ("out-of-town" shall mean outside the nine Bay Area counties: San Francisco, Alameda, Marin, Santa Clara, Sonoma, Contra Costa,

Napa, San Mateo, Solano. For project related business travel within the nine Bay Area Counties, approved leased vehicles will be used);

- Out- of town meal, and lodging expenses for project-related business trips. Meal and lodging expenses shall be reasonable and actual but limited to Federal government per diem rates;
- 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. Rental Vehicle will be on an as needed basis and will require prior written approval of the SFPUC Project Manager;
- Personal vehicle use: Contractor will be paid per mile as established by the HTWTP LONG TERM IMPROVEMENTS and State Internal Revenue Service and only for that portion of travel that is outside the nine Bay Area counties and non-routine. If the Contractor needs to use personal Vehicles for Project related business within the nine Bay Area Counties a prior written approval from the SFPUC Project Manager is required. 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. Prior written approval from the SFPUC RPM for any personal vehicle use for project related business is required if requested to be reimbursed to the Consultant;
- Lease payments, fuel, maintenance, insurance, parking, and other associated vehicle expenses for Project Vehicles approved by SFPUC;
- 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;
- Safety equipment;
- Special services, used solely for the benefit of this project and not performed by the Prime Contractor or by the Sub-consultants, such as electrical testing, hazardous material testing, training, deliveries, diving services, office and field office setups and maintenance, and telephone and network installations and maintenance. All such service must receive prior written approval of SFPUC project staff and documentation of the written approval by the SFPUC must be included with the invoice;
- Materials testing (such as soils, rock, concrete, grout, rebar, etc) for Quality Assurance (QA) and any testing needed to support Special Inspections; and

- Laboratory costs associated with the implementation of air and water quality monitoring under the CAMP and the WQMP or other requested work.

Anything not listed above is not eligible for reimbursement. They include, but are not limited to:

- All other project business related travel expenses such as parking, bridge tolls, public transit, travel from Consultant's residence or home office to SFPUC facilities;
- Contractor personnel relocation costs;
- Any home office labor charges or pass-through, including but not limited to, administrative and clerical personnel time;
- Personnel relocation and temporary assignment expenses;
- Entertainment expenses;
- Home office expenses;
- Telephone calls and faxes originating in the firm's home office, standard computer use charges, computer hardware or software, communication devices, and electronic equipment;
- Meal expenses which are not related to project-related business trips, including refreshments and working lunches with SFPUC staff;
- Postage and courier services which are not requested by SFPUC staff; and
- Costs of preparing the proposal.

Office facilities (four work stations) will be provided by SFPUC in San Francisco at 1155/1145 Market Street for pre-construction phase services until the project field or the office is available. Project field offices will be provided by the construction contractor within thirty (30) days of the construction contract NTP. The offices will include office furnishings, telephone services and equipments, internet connection, copy machine, printer and fax machine, to include maintenance and supplies.

7. Subcontractor Fees:

- a. Subject to above restrictions
- b. Shall be subject to written pre-approval by the SFPUC Regional Project Manager
- c. Subcontractor administration markup is limited to five percent (5%) of *subconsultants' actual labor costs.*

8. Retention is not required under this contract - Left blank by Agreement of the Parties.

- 9. Invoice Requirements:** The Contractor shall submit one original invoice package with the appropriate HRC reporting forms and supporting documentation to substantiate services provided and allowable ODCs. Contractor will work with City Staff to establish an invoice format that will correlate with appropriate City scheduling software and will be used thereafter. Each invoice submission must include an HRC Form 7 to identify the participation and amount payable to the

subcontractors. Timesheets, cards or logs must include a brief description of when and what work was performed memorializing the day's progress. Mileage logs must include the beginning and ending mileage to substantiate the variable portal-to-portal distance and local driving required while performing the work. Any "Other Direct Costs" must be substantiated with receipts including a brief description for each receipt memorializing the purpose. All invoices must include the contract number, the task number (and title, if applicable), document reference number and funding source number. Complete invoice packages should be sent directly to:

San Francisco Public Utilities Commission
Contract Administration Bureau – Payment Processing Unit
1155 Market Street, 9th Floor
San Francisco, CA 94103

HRC Form 9 must be sent to the Contract Administration Bureau Payment Processing Unit within ten (10) days of receiving payment for each invoice to document the subcontractor's payment by the prime Contractor.

HRC Form 8 must be sent to the Contract Administration Bureau Payment Processing Unit with the final invoice for each task order to authenticate the total subcontractor participation and close out the Purchase Order Release.