

File No. 180310

Committee Item No. 2
Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Committee

Date April 19, 2018

Board of Supervisors Meeting

Date _____

Cmte Board

- Motion
- Resolution
- Ordinance
- Legislative Digest
- Budget and Legislative Analyst Report
- Youth Commission Report
- Introduction Form
- Department/Agency Cover Letter and/or Report
- MOU
- Grant Information Form
- Grant Budget
- Subcontract Budget
- Contract/Agreement
- Form 126 – Ethics Commission
- Award Letter
- Application
- Public Correspondence

OTHER (Use back side if additional space is needed)

- Public Utilities Commission Resolution
-
-
-
-
-
-
-
-
-
-

Completed by: Linda Wong
Completed by: Linda Wong

Date April 13, 2018
Date _____

1 [Agreement Amendments - Various Companies - Specialized and Technical Services for
2 Natural Resources and Watershed Management and Monitoring - Not to Exceed
3 Amounts of \$6,500,000, \$6,490,000, \$515,000, and \$7,490,000]

4 **Resolution authorizing the General Manager of the San Francisco Public Utilities**
5 **Commission to retroactively execute Amendment No. 1 to Agreements CS-211B**
6 **with ICF+Avila, and CS-211D with URS Corporation, for an increase of \$1,490,000**
7 **each, for a total not to exceed amount of \$6,490,000; retroactively execute**
8 **Amendment No. 1 to Agreement CS-211C with Shaw Environmental and**
9 **Infrastructure, Inc., to reduce the Agreement by \$4,485,000, for a total not to**
10 **exceed amount of \$515,000; execute Amendment No. 1 to Agreement CS-211A**
11 **with CDM Smith/ATS, increasing the Agreement by \$1,500,000 for a total**
12 **agreement amount not to exceed \$6,500,000; and execute Amendment No. 2 to**
13 **CS-211D with URS Corporation, increasing the Agreement by \$1,000,000 for a total**
14 **agreement amount not to exceed \$7,490,000 with no change to the length of terms**
15 **of the four Agreements to expire June 15, 2017, for Specialized and Technical**
16 **Services for natural resources and watershed management and monitoring,**
17 **pursuant to Charter, Section 9.118(b).**

18
19 WHEREAS, On April 9, 2013, the San Francisco Public Utilities Commission
20 (SFPUC) approved Resolution No. 13-0053, authorizing the General Manager of the
21 SFPUC to execute Agreements CS-211A with CDM Smith/ATS, CS-211B with
22 ICF+Avila, CS-211C with Shaw Environmental and Infrastructure, Inc., and CS-211D
23 with URS Corporation for Specialized and Technical Services for natural resources
24 management and monitoring technical services for the Water Enterprise, for an amount
25

1 not to exceed \$5,000,000 for each contract, with each contract having a term of fourteen
2 (14) years, concluding on June 15, 2027, pursuant to Board of Supervisors approval; and

3 WHEREAS, On June 11, 2013, the Board of Supervisors approved Resolution
4 No. 188-13, authorizing the General Manager of the SFPUC to execute the Agreements
5 with CDM Smith/ATS, ICF+Avila, Shaw Environmental Infrastructure, Inc., and URS
6 Corporation (now AECOM), for an amount not to exceed \$5,000,000 with a term of up to
7 fourteen (14) years for each Agreement, pursuant to Charter, Section 9.118(b); and

8 WHEREAS, On July 26, 2016, the SFPUC approved Resolution No. 16-0149,
9 authorizing the General Manager to execute Amendment No. 1, increasing Agreements
10 CS-211B and CS-211D by \$1,490,000 each with no changes to the duration of the
11 contracts, for a total not to exceed amount of \$6,490,000 and contract duration of
12 fourteen (14) years for each contract, and reducing Agreement CS-211C by \$4,485,000
13 with no change in contract duration, for a total not to exceed amount of \$515,000 and
14 contract duration of fourteen (14) years; and

15 WHEREAS, Amendment No. 1, authorized by SFPUC via Resolution No. 16-0149,
16 to Agreements CS-211B, CS-211D, and CS-211C, did not subsequently go to the Board
17 of Supervisors for approval prior to execution of Amendment No. 1 by the SFPUC; and

18 WHEREAS, Amendment No. 1, authorized by SFPUC via Resolution No. 16-0149,
19 requires Board of Supervisors approval pursuant to Charter, Section 9.118; and

20 WHEREAS, The SFPUC is now seeking retroactive approval to Amendment No. 1
21 to contracts CS-211B, CS-211D, and CS-211C; and

22 WHEREAS, On March 27, 2018, the SFPUC approved Resolution No. 18-0050,
23 authorizing the General Manager to seek Board of Supervisors approval to retroactively
24 Amendment No. 1 to CS-211B, CS-211D, and CS-211C, which increased Agreements
25

1 CS-211B and CS-211D by \$1,490,000 each, and decreased Agreement CS-211C by
2 \$4,485,000, with no change in contract duration to any of the contracts; and

3 WHEREAS, SFPUC Resolution No. 18-0050 also authorizes the SFPUC to execute
4 Amendment No. 1 to Agreement CS-211A, increasing the agreement by \$1,500,000 with
5 no change in contract duration, for a total agreement amount not to exceed \$6,500,000
6 and a total contract duration of fourteen (14) years, and to execute Amendment No. 2 to
7 CS-211D, increasing the agreement by \$1,000,000 with no change in contract duration,
8 for a total agreement amount not to exceed \$7,490,000 and a total contract duration of
9 fourteen (14) years, subject to Board of Supervisors approval pursuant to Charter
10 Section 9.118; and

11 WHEREAS, The Amendments are being requested to ensure continued specialized
12 and technical services related to collecting permit-required data, conducting time
13 sensitive maintenance monitoring, and preparation of annual monitoring reports for the
14 SFPUC's Water System Improvement Program (WSIP) mitigation sites as required by
15 WSIP environmental regulatory permits; and

16 WHEREAS, A Contract Monitoring Division sub-consulting goal of 13% Local
17 Business Enterprise participation of the total value of services to be provided has been
18 established for these agreements; and

19 WHEREAS, Funds for this agreement are available from Project No. 10015234
20 Alameda Watershed Monitoring and Project No. 10015235 Peninsula Watershed
21 Monitoring; now, therefore, be it

22 RESOLVED, That the Board of Supervisors hereby authorizes the General
23 Manager of the SFPUC to retroactively execute Amendment No. 1, increasing
24 Agreements CS-211B and CS-211D by \$1,490,000 each with no changes to the duration
25

1 of the contracts, for a total not to exceed amount of \$6,490,000 and contract duration of
2 fourteen (14) years for each contract, and reducing Agreement CS-211C by \$4,485,000
3 with no change in contract duration, for a total not to exceed amount of \$515,000 and
4 contract duration of fourteen (14) years, pursuant to Charter, Section 9.118; and, be it

5 FURTHER RESOLVED, That the Board of Supervisors hereby authorizes the
6 General Manager of the SFPUC to execute Amendment No. 1 to Agreement CS-211A,
7 increasing the agreement by \$1,500,000 with no change in contract duration, for a total
8 agreement amount not to exceed \$6,500,000 and a total contract duration of fourteen
9 (14) years, and to execute Amendment No. 2 to CS-211D, increasing the agreement by
10 \$1,000,000 with no change in contract duration, for a total agreement amount not to
11 exceed \$7,490,000 and a total contract duration of fourteen (14) years, pursuant to
12 Charter, Section 9.118; and, be it

13 FURTHER RESOLVED, That within thirty (30) days of the execution of the
14 Amendments, the General Manager of the SFPUC shall provide the signed revised
15 contracts to the Clerk of the Board for inclusion in the official file.
16
17
18
19
20
21
22
23
24
25

<p>Item 2 File 18-0310</p>	<p>Department: Public Utilities Commission (PUC)</p>
<p>EXECUTIVE SUMMARY</p>	
<p style="text-align: center;">Legislative Objectives</p>	
<ul style="list-style-type: none"> • The proposed resolution would (i) retroactively approve Amendment 1 to contracts between the San Francisco Public Utilities Commission (SFPUC) and ICF+Avila and URS Corporation; (ii) retroactively approve Amendment 1 to the contract between SFPUC and Shaw Environmental and Infrastructure, Inc.; (iii) approve Amendment 1 to the contract between SFPUC and CDM Smith/ATS; and (iv) approve Amendment 2 to the contract between SFPUC AND URS Corporation. The proposed resolution would not change the term lengths of the contracts, which expire June 15, 2027. 	
<p style="text-align: center;">Key Points</p>	
<ul style="list-style-type: none"> • For SFPUC’s Water System Improvement Project (WSIP) to comply with federal and state permits, SFPUC is required to conduct environmental monitoring and reporting for a minimum of 10 years at each mitigation area. In June 2013, the Board of Supervisors approved four natural resources technical services and watershed management and monitoring contracts between SFPUC and CDM Smith/ATS (a joint venture), ICF+Avila (a joint venture), Shaw Environmental and Infrastructure, Inc. (Shaw), and URS Corporation. Each of the contracts was for not to exceed \$5,000,000 and a term of 14 years, expiring June 15, 2027. In 2016, because Shaw ceased Bay Area environmental operations, SFPUC amended the contract with Shaw to reduce the contract amount from \$5,000,000 to \$515,000, and amended the contracts with ICF+Avila and URS, increasing the not-to-exceed amount for each contract by \$1,490,000, from \$5,000,000 to \$6,490,000. The contract amendments were executed without Board of Supervisors approval based on the misinterpretation of Charter Section 9.118 at that time. 	
<ul style="list-style-type: none"> • The actual costs of the services through these contracts exceeded original estimates. In order to complete the 2018 environmental monitoring, oversight, and report development, the SFPUC Commission approved increases in the contracts with CDM Smith/ATS and URS Corporation. The ICF+Avila contract remains. SFPUC has initiated a competitive process to select new contractors in 2019. 	
<p style="text-align: center;">Fiscal Impact</p>	
<ul style="list-style-type: none"> • The total original contract amounts for the four contracts between SFPUC and CDM Smith/ATS, ICF+Avila, Shaw, and URS Corporation was \$20,000,000. SFPUC amended three of the four contracts in 2016, resulting in total revised contract amounts for the four contracts of \$18,495,000. Under the proposed resolution, SFPUC would amend the contracts with CDM Smith/ATS and the URS Corporation, increasing the contract amounts for these two contracts by \$2,500,000, resulting in total combined contract amounts of \$20,995,000. Funding is available in the Alameda and Peninsula Watershed Monitoring budgets, funded by Water Enterprise revenue bonds. 	
<p style="text-align: center;">Recommendations</p>	
<ul style="list-style-type: none"> • Amend the resolution to correctly state that the Agreements expire June 15, 2027. • Approve the resolution as amended. 	

MANDATE STATEMENT

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

BACKGROUND

The San Francisco Public Utilities Commission's (SFPUC) Water System Improvement Program (WSIP) consists of 83 projects, stretching from San Francisco to the Sierra foothills, totaling \$4.8 billion over several years. For WSIP to comply with federal and state permits, SFPUC is required to conduct environmental monitoring for a minimum of 10 years.

In June 2013, the Board of Supervisors approved a resolution (File 13-0404, Resolution 188-13) authorizing four natural resources technical services and watershed management and monitoring contracts between SFPUC and CDM Smith/ATS (a joint venture), ICF+Avila (a joint venture), Shaw Environmental and Infrastructure, Inc. (Shaw), and URS Corporation. Each of the contracts was for not to exceed \$5,000,000 and a term of 14 years, expiring June 15, 2027. Subsequently, Shaw discontinued its environmental services in the Bay Area, having provided \$515,000 in services. SFPUC reallocated contract amounts to two of the other three contracts in September 2016 as shown in Table 1 below. The contract terms for the three remaining contracts did not change.

Table 1: 2016 Amendments to Natural Resources Technical Services and Watershed Management and Monitoring Contracts

	Original Amount	Amendment #	Revised Contract Amount	Increase/ (Decrease)
CDM Smith/ATS ^a	\$5,000,000	none	\$5,000,000	\$0
ICF+Avila	5,000,000	1	6,490,000	1,490,000
Shaw Environmental and Infrastructure	5,000,000	1	515,000	(4,485,000)
URS Corporation	5,000,000	1	6,490,000	1,490,000
Total	\$20,000,000		\$18,495,000	(\$1,505,000)

^aThe contract between SFPUC and CDM Smith/ATS was not amended.

According to Ms. Ivy Fine, Manager of the Project Administration Bureau, the contract amendments were executed without Board of Supervisors approval due to misinterpretation of Charter Section 9.118.¹

¹ According to Ms. Fine, the interpretation was that the prior Board of Supervisors approval was sufficient to implement the amendments because the amendments did not adjust the contract duration, and each contract value was less than \$10 million. SFPUC understands that a more accurate interpretation of Charter Section 9.118 requires all changes of \$500,000 or more to come to the Board of Supervisors if the original contract was approved subject to 9.118, regardless of the underlying contract value.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would authorize the SFPUC General Manager to:

- i. Retroactively execute Amendment 1 to contracts with ICF+Avila and URS Corporation, increasing the not-to-exceed amount by \$1,490,000 each, from \$5,000,000 to \$6,490,000, as shown in Table 1 above;
- ii. Retroactively execute Amendment 1 to the Shaw Environmental and Infrastructure, Inc. contract, reducing the not-to-exceed amount by \$4,485,000, from \$5,000,000 to \$515,000, as shown in Table 1 above;
- iii. Execute the new Amendment 1 to the CDM Smith/ATS contract, increasing the not-to-exceed amount by \$1,500,000, from \$5,000,000 to \$6,500,000, as seen in Table 2 below; and
- iv. Execute the new Amendment 2 to the URS Corporation contract, increasing the not-to-exceed amount by \$1,000,000, from \$6,490,000 to \$7,490,000, as shown in Table 2 below.

According to Mr. Greg Lyman, SFPUC Construction Contract Manager, annual specialized and technical services costs exceeded initial estimates. SFPUC staff realized that the total amounts authorized in the three existing contracts will not last until 2027 and decided to seek new contracts to be in place once the existing funds are expended in late 2018 or early 2019. In order to complete the 2018 permit required monitoring, oversight, and reporting, the SFPUC Commission approved on March 27, 2018 amendments to the contracts with CDM Smith/ATS and URS Corporation to increase the contract amounts. Amendment 1 to the contract between SFPUC and CDM Smith/ATS increases the not-to-exceed amount by \$1,500,000, from \$5,000,000 to \$6,500,000, and Amendment 2 to the contract between SFPUC and URS increases the not-to-exceed amount by \$1,000,000, from \$6,490,000 to \$7,490,000, as shown in Table 2 below.

Table 2: Proposed New Amendments to Natural Resources Technical Services and Watershed Management and Monitoring Contracts

	Current Amount	Proposed Amendment #	Proposed Contract Amount	Increase/ (Decrease)
CDM Smith/ATS	\$5,000,000	1	\$6,500,000	\$1,500,000
URS Corporation	6,490,000	2	7,490,000	1,000,000
Total	\$11,490,000		\$13,990,000	\$2,500,000

Under advice from the City Attorney's office, SFPUC is now seeking Board of Supervisors authorization for the new contract amendments, as well as retroactive authorization for the previous amendments.

Under the proposed resolution, the contract term lengths would not change, but according to Mr. Lyman, SFPUC expects to fully expend the total authorized amount after completing the 2018 annual monitoring reports. SFPUC is in the process of initiating a Request for Proposals

(RFP) for new contracts through a competitive process for future specialized and technical services.

FISCAL IMPACT

The total original contract amounts for the four contracts between SFPUC and CDM Smith/ATS, ICF+Avila, Shaw, and URS Corporation was \$20,000,000. As noted in Table 1 above, SFPUC amended three of the four contracts in 2016, resulting in total revised contract amounts for the four contracts of \$18,495,000. Under the proposed resolution, SFPUC would amend the contracts with CDM Smith/ATS and the URS Corporation, increasing the contract amounts for these two contracts by \$2,500,000, resulting in total contract amounts of \$20,995,000, as shown in Table 3 below.

Table 3: Proposed Changes in Natural Resources Technical Services and Watershed Management and Monitoring Contract Amounts

Contractor	Current Contract Amount (Table 1)	Proposed Amendment #	Proposed Amount	Increase/ (Decrease)
CDM Smith/ATS	\$5,000,000	1	\$6,500,000	\$1,500,000
ICF+Avila	6,490,000	None	6,490,000	0
Shaw	515,000	Suspended	515,000	0
URS Corporation	6,490,000	2	7,490,000	1,000,000
Total	\$18,495,000		\$20,995,000	\$2,500,000

According to Mr. Lyman, sufficient funding is available in the budgets for Alameda Watershed Monitoring and Peninsula Watershed Monitoring to fund the additional contract costs for specialized and technical services, including environmental monitoring. The Alameda Watershed Monitoring and Peninsula Watershed Monitoring projects are funded by the Water Enterprise Fund, through Water Enterprise Revenue Bonds. The total cost for specialized and technical services, including environmental monitoring over the next ten years is now estimated at \$42,000,000.

RECOMMENDATIONS

1. Amend the resolution to correctly state that the contracts expire June 15, 2027.
2. Approve the resolution as amended.

PUBLIC UTILITIES COMMISSION

City and County of San Francisco

RESOLUTION NO. 18-0050

WHEREAS, On April 9, 2013, pursuant to Resolution No. 13-0053, this Commission awarded Water Enterprise-funded Agreement Nos. CS-211A-D, Specialized and Technical Services, Natural Resources Division, Water Enterprise, to CDM Smith/ATS, a Joint Venture (CS-211A), ICF+Avila, a Joint Venture (CS-211B), Shaw Environmental and Infrastructure, Inc. (CS-211C), and URS Corporation (CS-211D), to provide permit compliance monitoring of Water System Improvement Program (WSIP) habitat mitigation sites, with an initial amount of \$5,000,000 for each contract, and each with a term of 14 years, concluding on June 15, 2027, subject to Board of Supervisors approval under Charter Section 9.118; and

WHEREAS, On June 11, 2013, the Board of Supervisors approved the award of Agreement Nos. CS-211A-D by File No. 130404; and

WHEREAS, On July 26, 2016, by Resolution No. 16-0149, this Commission approved amendments to reduce the amount of CS-211C and spread the unused contract capacity of CS-211C to one or more of the remaining three agreements, with no single agreement exceeding \$7,500,000, and with no change to the contract duration; and

WHEREAS, Pursuant to Resolution No. 16-0149, the SFPUC executed amendments increasing CS-211B and CS-211D by \$1,490,000 each for a not to exceed amount of \$6,490,000 each, and reducing CS-211C by \$4,485,000 to \$515,000; and

WHEREAS, Additional contract capacity is now needed in Agreements CS-211A and CS-211D to continue the work required by federal and state environmental permits associated with the WSIP projects; and

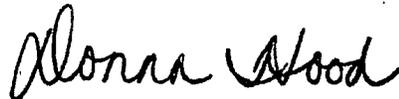
WHEREAS, The Contract Monitoring Division (CMD) established a sub-consulting requirement of 13% Local Business Enterprise (LBE) participation, of the total value of services to be provided, for each of these agreements; and

WHEREAS, Funds for these amendments will be available from Project No. 10015234 Alameda Watershed Monitoring; and Project No. 10015235 Peninsula Watershed Monitoring; now, therefore, be it

RESOLVED, That this Commission hereby approves amendments to Water Enterprise-funded Agreement Nos. CS-211A and CS-211D, and authorizes the General Manager of the San Francisco Public Utilities Commission (SFPUC) to negotiate and execute future amendments to Agreement No. CS211A in the amount of \$1,500,000, for a total not-to-exceed amount of \$6,500,000, and to Agreement No. CS211D in the amount of \$1,000,000, for a total not-to-exceed amount of \$7,490,000, with no change in contract durations, subject to Board of Supervisors approval pursuant to Charter Section 9.118; and be it

FURTHER RESOLVED, That this Commission authorizes the General Manager to request that the Board of Supervisors retroactively ratify the SFPUC's 2016 amendments to Water Enterprise-funded Agreement Nos. CS-211B, C, and D, which increased Agreements CS-211B and CS-211D by \$1,490,000 each, and decreased Agreement CS-211C by \$4,485,000, with no change in contract duration.

I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting of March 27, 2018.

A handwritten signature in black ink, appearing to read "Alonna Hood". The signature is written in a cursive style with a large initial "A".

Secretary, Public Utilities Commission

**City and County of San Francisco
San Francisco Public Utilities Commission
525 Golden Gate Avenue, 8th Floor
San Francisco, California 94102**

**First Amendment to the
Agreement between the City and County of San Francisco and
CDM Smith/ATS, a Joint Venture**

**CS-211A
Specialized and Technical Services, Natural
Resources Division, Water Enterprise**

THIS AMENDMENT (this "Amendment") is made as of [insert date], in San Francisco, California, by and between **CDM Smith/ATS, a Joint Venture** ("Contractor"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Director of the Office of Contract Administration.

RECITALS

WHEREAS, City and Contractor have entered into the Agreement (as defined below); and

WHEREAS, City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to increase the contract amount, and update standard contractual clauses;

WHEREAS, approval for this Amendment was obtained when the San Francisco Public Utilities Commission approved Resolution number **18-0050** on **March 27, 2018**;

WHEREAS, approval for this Amendment was obtained from the San Francisco Board of Supervisors by Resolution Number **xxx-xx** on **Date**;

NOW, THEREFORE, Contractor and the City agree as follows:

1. Definitions. The following definitions shall apply to this Amendment:

1a. Agreement. The term "Agreement" shall mean the Agreement dated **April 10, 2013** between Contractor and City.

1b. Contract Monitoring Division. Effective July 28, 2012, with the exception of Sections 14B.9(D) and 14B.17(F), all of the duties and functions of the Human Rights Commission under Chapter 14B of the Administrative Code (LBE Ordinance) were transferred to the City Administrator, Contract Monitoring Division (“CMD”). Wherever “Human Rights Commission” or “HRC” appears in the Agreement in reference to Chapter 14B of the Administrative Code or its implementing Rules and Regulations, it shall be construed to mean “Contract Monitoring Division” or “CMD” respectively.

1c. Other Terms. Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

2. Modifications to the Agreement. The Agreement is hereby modified as follows:

2a. Section 5. Section 5 “Compensation” of the Agreement currently reads as follows:

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 performed as of the last day of the immediately preceding month. In no event shall the amount of this Agreement exceed **Five Million Dollars (\$5,000,000)**. The breakdown of costs associated with this Agreement appears in Appendix B, “Calculation of Charges,” attached hereto and incorporated by reference as though fully set forth herein. 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 the 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.

Such section is hereby amended in its entirety to read as follows:

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

performed as of the last day of the immediately preceding month. In no event shall the amount of this Agreement exceed **Six Million Five Hundred Thousand Dollars (\$6,500,000)**. The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. 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 the 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 CMD Progress Payment Form. If Progress Payment Form is not submitted with Contractor's invoice, the Controller will notify the department, the Director of CMD and Contractor of the omission. If Contractor's failure to provide CMD 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 CMD Progress Payment Form is provided. Following City's payment of an invoice, Contractor has ten days to file an affidavit using CMD Payment Affidavit verifying that all subcontractors have been paid and specifying the amount.

2b. Insurance. Section 15 is hereby replaced in its entirety to read as follows:

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 \$1,000,000 each occurrence and \$2,000,000 general aggregate 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 \$1,000,000 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 \$2,000,000 each claim with respect to negligent acts, errors or omissions in connection with the Services.

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

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, its 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. All policies shall be endorsed to provide thirty (30) days' advance written notice to the City of cancellation for any reason, intended non-renewal, or reduction in coverages. Notices shall be sent to the City address set forth in the Section entitled "Notices to the Parties."

d. 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.

e. 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.

f. Before commencing any Services, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Approval of the insurance by City shall not relieve or decrease Contractor's liability hereunder.

g. The Workers' Compensation policy(ies) shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

h. If Contractor will use any subcontractor(s) to provide Services, Contractor shall require the subcontractor(s) to provide all necessary insurance and to name the City and County of San Francisco, its officers, agents and employees and the Contractor as additional insureds.

i. Should any of the required insurance be provided under a form of coverage that includes a general aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregate limit shall be double the occurrence or claims limits specified above.

2c. Replacing "Not Used" Section with "Consideration of Criminal History in Hiring and Employment Decisions" Section. Section 32 "Not Used" is hereby replaced in its entirety to read as follows:

32. Consideration of Criminal History in Hiring and Employment Decisions.

a. Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12T "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Administrative Code (Chapter 12T), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as

though fully set forth herein. The text of the Chapter 12T is available on the web at www.sfgov.org/olse/fco. A partial listing of some of Contractor's obligations under Chapter 12T is set forth in this Section. Contractor is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

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

c. Contractor shall incorporate by reference in all subcontracts the provisions of Chapter 12T, 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.

d. Contractor or Subcontractor shall not inquire about, require disclosure of, or if such information is received, base an Adverse Action on an applicant's or potential applicant for employment's, or employee's: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

e. Contractor or Subcontractor shall not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in subsection 32(d), above. Contractor or Subcontractor shall not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

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

g. Contractor and Subcontractors shall post the notice prepared by the Office of Labor Standards Enforcement (OLSE), available on OLSE's website, in a conspicuous place at

every workplace, job site, or other location under the Contractor or Subcontractor's control at which work is being done or will be done in furtherance of the performance of this Agreement. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the workplace, job site, or other location at which it is posted.

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

3. Effective Date. Each of the modifications set forth in Section 2 shall be effective on and after **the date of this Amendment.**

4. Legal Effect. Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, Contractor and City have executed this Amendment as of the date first referenced above.

CITY

CONTRACTOR

Approved:

CDM Smith/ATS, a Joint Venture

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

Signature of Authorized Representative

Name of Authorized Representative

Approved as to Form:

Title

City supplier number: 0000023207

Dennis J. Herrera
City Attorney

By: _____
[name of Deputy City Attorney]
Deputy City Attorney

**City and County of San Francisco
San Francisco Public Utilities Commission
Contract Administration Bureau
525 Golden Gate Ave, 8th Floor
San Francisco, CA 94102**

**Second Amendment to the Agreement
Between the City and County of San Francisco and
URS Corporation Americas
Specialized and Technical Services, Natural Resources Division, Water Enterprise
(CS-211.D)**

THIS AMENDMENT (this “Amendment”) is made as of [insert date], in San Francisco, California, by and between **URS Corporation Americas** (“Contractor”), and the City and County of San Francisco, a municipal corporation (“City”), acting by and through its Director of the Office of Contract Administration.

RECITALS

WHEREAS, City and Contractor have entered into the Agreement (as defined below); and

WHEREAS, City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to increase the contract amount;

WHEREAS, approval for this Amendment was obtained when the San Francisco Public Utilities Commission approved Resolution number **18-0050** on **March 27, 2018**;

WHEREAS, approval for this Amendment was obtained from the San Francisco Board of Supervisors by Resolution Number **xxx-xx** on **Date**;

NOW, THEREFORE, Contractor and the City agree as follows:

1. Definitions. The following definitions shall apply to this Amendment:

1a. Agreement. The term “Agreement” shall mean the Agreement dated **April 10, 2013** between Contractor and City, as amended by the First Amendment, dated **August 2, 2016**.

1b. Contract Monitoring Division. Effective July 28, 2012, with the exception of Sections 14B.9(D) and 14B.17(F), all of the duties and functions of the Human Rights Commission under Chapter 14B of the Administrative Code (LBE Ordinance) were transferred

to the City Administrator, Contract Monitoring Division (“CMD”). Wherever “Human Rights Commission” or “HRC” appears in the Agreement in reference to Chapter 14B of the Administrative Code or its implementing Rules and Regulations, it shall be construed to mean “Contract Monitoring Division” or “CMD” respectively.

1c. Other Terms. Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

2. Modifications to the Agreement. The Agreement is hereby modified as follows:

2a. Section 5. Section 5 “Compensation” of the Agreement currently reads as follows:

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 performed as of the last day of the immediately preceding month. In no event shall the amount of this Agreement exceed **Six Million Four Hundred Ninety Thousand Dollars (\$6,490,000)**. The breakdown of costs associated with this Agreement appears in Appendix B, “Calculation of Charges,” attached hereto and incorporated by reference as though fully set forth herein. 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 the 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 CMD Progress Payment Form. If Progress Payment Form is not submitted with Contractor’s invoice, the Controller will notify the department, the Director of CMD and Contractor of the omission. If Contractor’s failure to provide CMD 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 CMD Progress Payment Form is provided. Following City’s payment of an invoice, Contractor has ten days to file an affidavit using CMD Payment Affidavit verifying that all subcontractors have been paid and specifying the amount.

Such section is hereby amended in its entirety to read as follows:

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 performed as of the last day of the immediately preceding month. In no event shall the amount of this Agreement exceed **Seven Million Four Hundred Ninety Thousand Dollars (\$7,490,000)**. The breakdown of costs associated with this Agreement appears in Appendix B, “Calculation of Charges,” attached hereto and incorporated by reference as though fully set forth

herein. 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 the 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 CMD Progress Payment Form. If Progress Payment Form is not submitted with Contractor's invoice, the Controller will notify the department, the Director of CMD and Contractor of the omission. If Contractor's failure to provide CMD 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 CMD Progress Payment Form is provided. Following City's payment of an invoice, Contractor has ten days to file an affidavit using CMD Payment Affidavit verifying that all subcontractors have been paid and specifying the amount.

3. Effective Date. Each of the modifications set forth in Section 2 shall be effective on and after the date of this Amendment.

4. Legal Effect. Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, Contractor and City have executed this Amendment as of the date first referenced above.

CITY

CONTRACTOR

Recommended by:

URS Corporation Americas

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

Signature of Authorized Representative

Name of Authorized Representative

Approved as to Form:

Title

Dennis J. Herrera
City Attorney

City vendor number: 0000009069

By: _____
[name of Deputy City Attorney]
Deputy City Attorney



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

525 Golden Gate Avenue, 13th Floor
 San Francisco, CA 94102
 T 415.554.3155
 F 415.554.3161
 TTY 415.554.3488

January 20, 2017

Richard Bolander
 CB&I Government Solutions, Inc.
 1251 Avenue of the Americas, 7th Floor, Suite 750
 New York, NY 10020
 Email: Richard.bolander@cbi.com

- RE: 1) Notice of Contract Amendment Certification –Specialized and Technical Services, Natural Resources and Land Management Division, Water Enterprise (CS-211.C)
 2) Transmittal - Executed Agreement #1 between the City and County of San Francisco Public Utilities Commission and **CB&I Government Solutions, Inc.**

Dear Mr. Bolander:

This letter provides a *notification of amendment certification* for a DECREASE in contract value for the following contracted work:

BLANKET PURCHASE ORDER NO: **BPUC13000095**
 – *Work may not be charged against this blanket purchase order number*

SCOPE: To provide technical expertise in program/project management, construction management, project controls management, contract administration, and project engineering support services for the Hetchy System Improvement Program.

EFFECTIVE DATE: **August 21, 2013 to June 15, 2027**

CONTRACT TO DATE: Total value of contract not to exceed **\$ 515,000.00**

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 Rosiana Angel at (415) 554-1549.

Enclosure: Executed Amendment #1

cc: Ellen Natesan
 File/NCAC CS-211.C

- Edwin M. Lee
Mayor
- Anson Moran
President
- Ike Kwon
Vice President
- Ann Moller Caen
Commissioner
- Francesca Viator
Commissioner
- Vince Courtney
Commissioner
- Harlan L. Kelly, Jr.
General Manager



**City and County of San Francisco
San Francisco Public Utilities Commission
Contract Administration Bureau
525 Golden Gate Ave, 8th Floor
San Francisco, CA 94102**

**First Amendment
Between the City and County of San Francisco and
Shaw Environmental & Infrastructure, Inc.
Specialized and Technical Services, Natural Resources Division, Water Enterprise
(CS-211.C)**

THIS AMENDMENT (this "Amendment") is made as of **October 18, 2016**, in San Francisco, California, by and between **Shaw Environmental & Infrastructure, Inc.** ("Contractor"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through the San Francisco Public Utilities Commission.

RECITALS

WHEREAS, City and Contractor have entered into the Agreement (as defined below); and

WHEREAS, City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to update the contractor's name, decrease the contract amount, and update standard contractual clauses; and

WHEREAS, On April 10, 2013 the City and County of San Francisco, through the San Francisco Public Utilities Commission, entered into Agreement CS-211.C "Specialized and Technical Services, Natural Resources Division, Water Enterprise" with Shaw Environmental & Infrastructure, Inc., as evidenced by a copy of the Agreement attached hereto in Attachment A; and

WHEREAS, On December 26, 2013, Shaw Environmental & Infrastructure, Inc. changed its name to CB&I Government Solutions, Inc., as evidenced by a copy of the documentation attached hereto in Attachment B; and

WHEREAS, The City is no longer issuing task orders to the Contractor for CS-211.C, and the total contract value for this agreement did not exceed \$515,000; and

WHEREAS, The Civil Service Commission approved Contract number 4009-12/13 on **May 21, 2013**; and

WHEREAS, Approval for this Amendment was obtained when the San Francisco Public Utilities Commission approved Resolution number 16-0149 on **July 26, 2016**;

NOW, THEREFORE, Contractor and the City agree as follows:

1. Definitions. The following definitions shall apply to this Amendment:

1a. Agreement. The term "Agreement" shall mean the Agreement dated April 10, 2013 between Contractor and City.

1b. Contract Monitoring Division. Effective July 28, 2012, with the exception of Sections 14B.9(D) and 14B.17(F), all of the duties and functions of the Human Rights Commission under Chapter 14B of the Administrative Code (LBE Ordinance) were transferred to the City Administrator, Contract Monitoring Division ("CMD"). Wherever "Human Rights Commission" or "HRC" appears in the Agreement in reference to Chapter 14B of the Administrative Code or its implementing Rules and Regulations, it shall be construed to mean "Contract Monitoring Division" or "CMD" respectively.

1c. Other Terms. Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

2. Modifications to the Agreement. The Agreement is hereby modified as follows:

2a. Change of Name. This modification implements the name change from Shaw Environmental & Infrastructure, Inc. to CB&I Government Solutions, Inc. The Agreement is amended by substituting the name CB&I Government Solutions, Inc. for Shaw Environmental & Infrastructure, Inc., wherever such name appears in the Agreement after the execution of the First Amendment. Specific reference is made to Appendix B-1 Fee Schedule where Shaw Environmental & Infrastructure, Inc. is referenced.

2b. Section 5. Section 5 "Compensation" of the Agreement currently reads as follows:

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 performed as of the last day of the immediately preceding month. In no event shall the amount of this Agreement exceed **Five Million Dollars (\$5,000,000)**. The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. 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 the 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.

Such section is hereby amended in its entirety to read as follows:

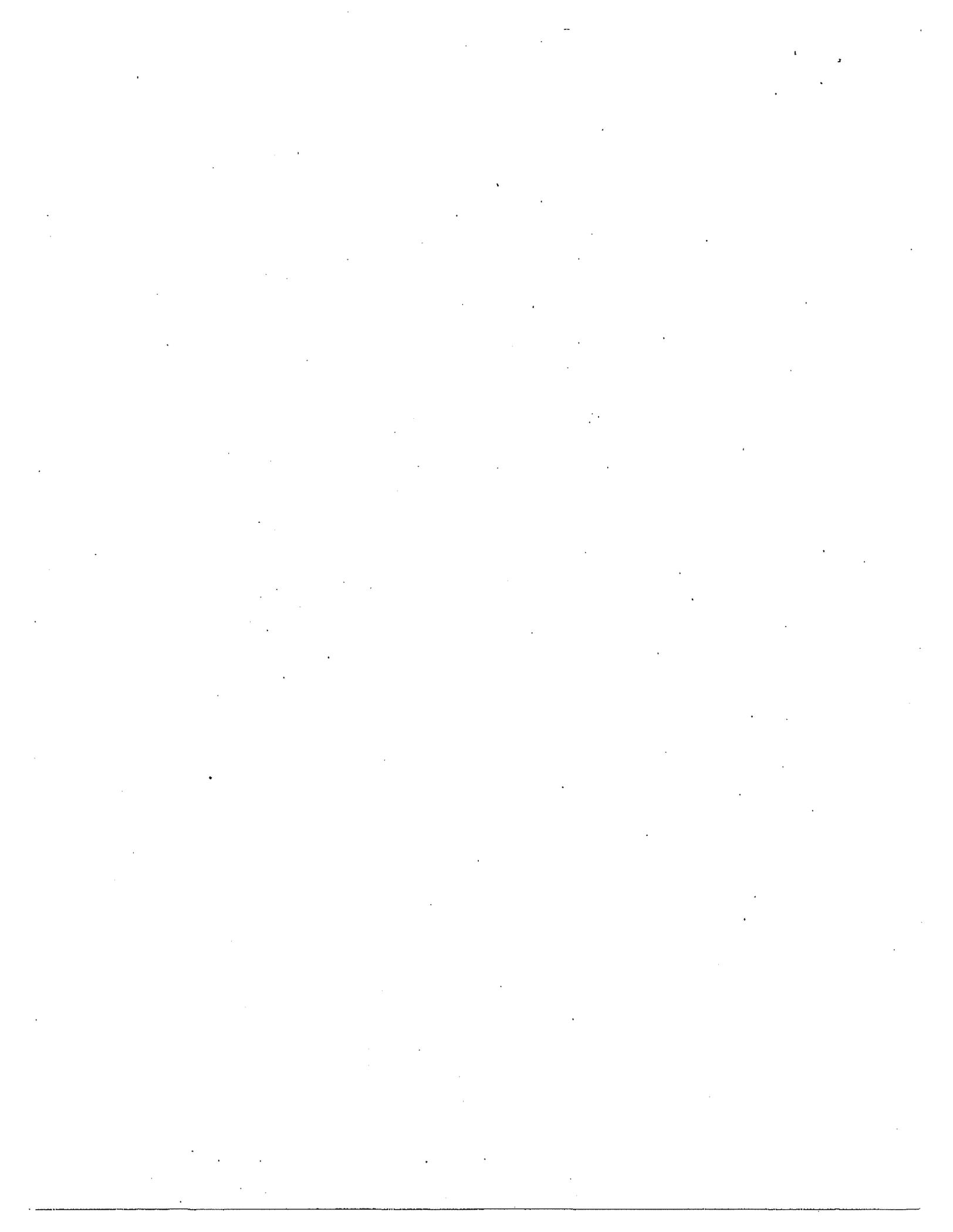
Compensation shall be made in monthly payments on or before the thirtieth day of each month for work, as set forth in Section 4 of this Agreement, that the General Manager of the Public Utilities Commission, in his or her sole discretion, concludes has been performed as of the last day of the immediately preceding month. In no event shall the amount of this Agreement exceed **Five Hundred Fifteen Thousand Dollars (\$515,000)**. The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. 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 the 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 CMD Progress Payment Form. If Progress Payment Form is not submitted with Contractor's invoice, the Controller will notify the department, the Director of CMD and Contractor of the omission. If Contractor's failure to provide CMD 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 CMD Progress Payment Form is provided. Following City's payment of an invoice, Contractor has ten days to file an affidavit using CMD Payment Affidavit verifying that all subcontractors have been paid and specifying the amount.

3. Effective Date. Each of the modifications set forth in Section 2 shall be effective on and after the date of this Amendment.

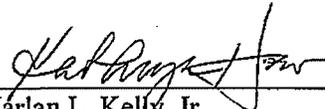
4. Legal Effect. Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.



IN WITNESS WHEREOF, Contractor and City have executed this Amendment as of the date first referenced above.

CITY

CONTRACTOR


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

CB&I Government Solutions, Inc.,
f/k/a Shaw Environmental & Infrastructure,
Inc.


Signature of Authorized Representative
PAUL J. GRETSKY
Name of Authorized Representative

Approved as to Form:

Director
Title

Dennis J. Herrera
City Attorney

City vendor number: 76225

By: 
Randy Parent
Deputy City Attorney

Attachment A: Agreement
Attachment B: Name Change Documents



ATTACHMENT A
Agreement

Agreement No. CS-211.C, dated April 10, 2013.





San Francisco Water Power Sewer

Services of the San Francisco Public Utilities Commission

Contract Administration Bureau
525 Golden Gate, 8th Floor
San Francisco, CA 94102
T 415.551.4603
F 415.554.3225

August 27, 2013

Teri Beckett
Shaw Environmental & Infrastructure
185 Berry Street, Suite 2200
San Francisco, CA 94107
Email: teri.beckett@shawgrp.com

- RE:** 1) Notice of Contract Award - Specialized and Technical Services, Natural Resources and Land Management Division, Water Enterprise (CS-211.C)
2) Transmittal - Executed Agreement between the City and County of San Francisco Public Utilities Commission and Shaw Environmental & Infrastructure

Dear Ms. Beckett:

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

BLANKET PURCHASE ORDER NO: **BPUC13000095**
- Work may not be charged against this blanket purchase order number

SCOPE: To provide specialized and technical services related to watershed management and monitoring for specific projects, including watershed resources monitoring and management services, specialized hydrologic services, data management and analytical services, watershed planning and regulatory compliance support, project management, and additional related services.

EFFECTIVE DATE: August 21, 2013 to June 15, 2027

CONTRACT TO DATE: Total value of contract not to exceed \$5,000,000.00

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 Rosiana Angel at (415) 554-1549.

Edwin M. Lee
Mayor

Art Torres
President

Vinca Courtney
Vice President

Ann Moller Caen
Commissioner

Francesca Viator
Commissioner

Anson Moran
Commissioner

Harlan L. Kelly, Jr.
General Manager



Enclosure: Executed Agreement

cc: Greg Lyman

File/NCA-CS-211.C

**City and County of San Francisco
San Francisco Public Utilities Commission
525 Golden Gate Avenue, 8th Floor
San Francisco, California 94102**

**Agreement between the City and County of San Francisco and
Shaw Environmental and Infrastructure, Inc.**

**CS-211C
Specialized and Technical Services,
Natural Resources Division, Water Enterprise**

This Agreement is made this 10th day of April, 2013, in the City and County of San Francisco, State of California, by and between: **Shaw Environmental and Infrastructure, Inc.**, 185 Berry Street, Suite 2200, San Francisco, CA 94107, 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") requires the assistance of consulting firms to perform specialized management and monitoring technical services for the Water Enterprise; and

WHEREAS, a Request for Proposal ("RFP") was issued on February 7, 2013, and City selected Contractor as the successful proposer pursuant to the RFP; and

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

WHEREAS, approval for this Agreement was obtained when the Civil Service Commission approved Contract number 4009-12/13 on July 16, 2012; and

WHEREAS, approval for this Agreement was obtained from the San Francisco Public Utilities Commission Resolution Number 13-0053 on April 9th, 2013; and

WHEREAS, approval for this Agreement was obtained from the San Francisco Board of Supervisors by Resolution Number 188-13 on June 11, 2013;

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 from June 15, 2013 to June 15, 2027.
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 performed as of the last day of the immediately preceding month. In no event shall the amount of this Agreement exceed **Five Million Dollars (\$5,000,000)**. The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. 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 the 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 an 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.** 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. 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. 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. 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." Refer to Appendix B for additional invoice requirements.

8. **Submitting False Claims; Remedies.** Pursuant to Article V of Chapter 6 of the San Francisco Administrative Code, any contractor, subcontractor, supplier, consultant or subconsultant who submits a false claim may be subject to monetary penalties, investigation and prosecution and may be declared an irresponsible bidder or an unqualified consultant and debarred as set forth in that Article. The text of Article V of Chapter 6, along with the entire San Francisco Administrative Code is available on the web at http://www.amlegal.com/nxt/gateway.dll?f=templates&fn=default.htm&vid=amlegal:sanfrancisco_ca. A contractor, subcontractor, supplier, consultant or sub consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor, supplier, consultant or subconsultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

9. **Left blank by agreement of the parties. (Disallowance)**

10. **Taxes.** 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. 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 at no cost to the City.

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.

Without in any way limiting Proposer's liability pursuant to the "Indemnification" section of the Agreement (Appendix C, Professional Services Agreement (P-500)), Proposer(s) will be required to maintain in force, during the full term of any Agreement, insurance in the following amounts and coverage:

1. Worker's Compensation Insurance, in statutory amounts, with Employer's Liability limits not less than is \$1,000,000 each accident, injury or illness; and
2. Commercial General Liability Insurance with limits not less than \$2,000,000 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 \$1,000,000 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 Proposer's profession, with limits not less than \$2,000,000 each claim with respect to negligent acts, errors or omissions in connection with professional services to be provided under the Agreement.
5. Commercial Marine Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired marine coverage, as applicable.

Commercial General Liability and Commercial Automobile and Marine 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; and
2. That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of the Agreement, and that insurance applies separately to each insured against who claim is made or suit is brought.

Regarding Workers' Compensation, Proposer hereby agrees to waive subrogation which any insurer of Proposer may acquire from Proposer by virtue of the payment of any loss. Proposer agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Proposer, its employees, agents and subcontractors.

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

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

Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs 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 the Agreement effective on the date of such lapse of insurance.

Before commencing any operations under the Agreement, Proposer shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of the Agreement.

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

If a subcontractor will be used to complete any portion of the agreement, the Proposer 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 Proposer listed as additional insureds.

16. Indemnification.

1. For design professional services performed under this Agreement, if any, the following indemnity and defense obligations shall apply:

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

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

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. Infringement of patent rights, copyrights, or other proprietary rights in the performance of this Agreement, if not the basis for indemnification under the law, shall nevertheless be considered a material breach of contract.

2. For all other services (not design professional) performed under this Agreement, the following indemnity and defense obligations shall apply:

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 be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

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. Left Blank by Agreement of the Parties (Liquidated Damages).

20. Default; Remedies. 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. Submitting false claims | 37. Drug-free workplace policy |
| 10. Taxes | 53. Compliance with laws |
| 15. Insurance | 55. Supervision of minors |
| 24. Proprietary or confidential information of City | 57. Protection of private information |
| 30. Assignment | 58. Graffiti removal |

(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.

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. 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 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. This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement:

- | | |
|---|---|
| 8. Submitting false claims | 24. Proprietary or confidential information of City |
| 9. Disallowance | 26. Ownership of Results |
| 10. Taxes | 27. Works for Hire |
| 11. Payment does not imply acceptance of work | 28. Audit and Inspection of Records |
| 13. Responsibility for equipment | 48. Modification of Agreement. |
| 14. Independent Contractor; Payment of Taxes and Other Expenses | 49. Administrative Remedy for Agreement Interpretation. |
| 15. Insurance | 50. Agreement Made in California; Venue |
| 16. Indemnification | 51. Construction |
| 17. Incidental and Consequential Damages | 52. Entire Agreement |
| 18. Liability of City | 56. Severability |
| | 57. Protection of private information |

Subject to the immediately preceding sentence, 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, or by e-mail, and shall be addressed as follows:

To City: Greg Lyman
San Francisco Public Utilities Commission
525 Golden Gate Avenue
San Francisco, CA 94103
(tel.) (415) 554-1601
email: glynnan@sfgwater.org

To Contractor: Ms. Teri Beckett, P.E.
Shaw Environmental and Infrastructure, Inc.
185 Berry Street, Suite 2200
San Francisco, CA 94107
Phone: 954.868.6065|Fax: 415-512-2424
E-mail: teri.beckett@shawgrp.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. Not Used.

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 subcontracting participation goal for this contract is 22.9 %. 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 agrees 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. Contractor further agrees to provide to City the names of each person, entity or committee described above.

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/ofse. 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. Disputes; Government Code Claim Requirements.

a. **Negotiation; Alternative Dispute Resolution.** The parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement by negotiation. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of the City. If agreed by both parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. Neither party will be entitled to legal fees or costs for matters resolved under this section.

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

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, "Modification of Agreement."

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. Left blank by agreement of the parties. (Supervision of minors)

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. **Not Used.**

59. **Food Service Waste Reduction Requirements.** 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.

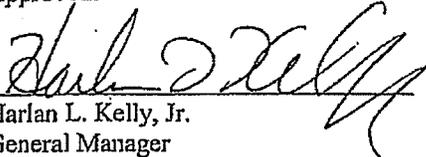
60. **Left blank by agreement of the parties. (Slavery era disclosure)**

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

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

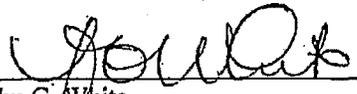
CITY

Approved:


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

Approved as to Form:

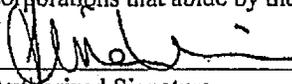
Dennis J. Herrera
City Attorney

By 
John G. White
Deputy City Attorney

CONTRACTOR

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.

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.


Authorized Signature

Dina Keirouz
Printed Name

District Manager
Title

Shaw Environmental & Infrastructure, Inc.
Company Name

#76225
City Vendor Number

185 Berry Street, Suite 2200, San
Address Francisco CA 94107

75-304-4680
Federal Employer ID Number

Appendices

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

Appendix A
Services to be provided by Contractor

Contractor agrees to perform the services described below in accordance with the terms and conditions of this Agreement, implementing task orders, the RFP, and Contractor's proposal dated March 8, 2013. The RFP and Contractor's proposal are incorporated by reference as though fully set forth herein. Should there be a conflict of terms or conditions, this Agreement and its implementing task orders shall control over the RFP and the Contractor's proposal.

1. General Description of Services

The primary role of the selected Contractor will be to provide professional and technical services related to watershed management and monitoring for specific projects including, but not limited to, the general service categories summarized in Section 2 below. The selected Contractor(s) will work under the direction of the Contract Manager in the Water Enterprise. Each task order will have a SFPUC Task Order Manager who will work with the Contractor to negotiate the project scope, cost and schedule.

2. Task Orders

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

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

These following tasks provide general guidance to the Contractor as to the anticipated scope of work which the SFPUC reserves the right to modify or delete:

A. Watershed Resources Monitoring and Management Services:

- i. **Ecology** – ecological surveys, studies, and assessments; biological community monitoring, identification, evaluation and mapping; wetland determinations and delineations; restoration ecology; genetic and taxonomic studies; studies of ecological processes and evaluation of ecological condition; ecological modeling; invasive plant mapping and control; site management evaluation and assessment; remedial erosion repairs oversight; integrated pest and invasive species (plant, wildlife, insect, or pathogen) management planning, monitoring, survey, and control oversight; soil analyses and mapping; quality control monitoring during and after maintenance and rehabilitation

of habitat restoration sites; wildlife monitoring including monitoring to minimize and avoid impacts during maintenance and monitoring to evaluate response to restoration or watershed management activities;

- ii. **Botany** – botanical surveys, including surveys for special status plants and butterfly host plants; special-status plant (and butterfly host plant) monitoring and mapping; rangeland assessments; other vegetation management planning, and monitoring for remedial planting and seeding; seed or propagate mapping and collection; grazing management and monitoring; development of nursery guidelines and nursery inspections; evaluations as to whether restoration projects are meeting pre-determined vegetation-related success criteria;
- iii. **Wildlife Surveys and Monitoring** – wildlife surveys, including those for special status species that conform to CDFG and USFWS approved protocols; trapping, tagging, tracking and monitoring studies; wildlife camera studies;
- iv. **Fisheries Management** – evaluation of in-stream flows; anadromous fish habitat requirements and assessments; stream sediment characterizations; riparian zone quality assessments; rapid biological assessments (in particular benthic macro-invertebrate assessments); PIT and radio tagging and tracking studies; in-stream and fish passage camera, PIT antennae array, and other remote sensing system design, maintenance, operations, and data analysis; fish parasite and pathology studies; fish bioenergetics and predatory fish gut content analysis; migratory fish trapping studies; genetic and aging studies using otolith, scale, and tissue; reservoir fish population characterization studies;
- v. **Land Acquisition Services** – Conservation easement and land acquisition document development, Phase I environmental assessment, title reports, land surveys, baseline survey reports, road assessments, PAR analysis, conservation easement endowment planning, conservation easement monitoring, legal descriptions, appraisals, public outreach, property management plans (i.e., grazing management plan, resource management plan, and routine maintenance plan).

B. Specialized Hydrologic Services:

Geologic, hydrogeologic surveys, analysis and studies, installations (piezometers, cattle water supply wells, flow meters, data loggers) ; ; topographic and bathymetric survey; limnology studies, creek monitoring and geomorphic surveys and studies; hydrologic and open channel (i.e., stream, river) hydraulic modeling and model interpretation; stream and river flow measurements; groundwater and surface water sampling and analysis; erosion monitoring and evaluation; pond, wetland, creek, and riparian restoration and habitat site remediation;

C. Data Management and Analytical Services:

Perform and interpret aerial surveys; support management of data, perform statistical analyses and interpret results, support means of tracking permit compliance, and assist with ecological data storage and analysis.

D. Watershed Planning and Regulatory Compliance Support:

- i. **Reports** - technical editing; graphics; report preparation and reproduction; scientific peer review of papers, reports and planning documents;
- ii. **Resource Agency Permits** - permit application and amendment preparation such as those required for routine maintenance and management activities;
- iii. **Resource Agency Permit compliance** - assistance for federal, state and local environmental regulations including but not limited to U.S. Army Corps of Engineers Section 404, FESA, NEPA, CEQA, California Fish & Game Code Section 1602, CDF&G CESA, Clean Water Act (including National Pollutant Discharge Elimination

System and Storm Water Pollution Prevention Plans) and Migratory Bird Act requirements;

- iv. **Education** - development and implementation of environmental education programs including interpretive master plans, and interpretive signage and trails and displays, and outreach programs; training on federal, state, and local environmental regulations and regulatory changes;
- v. **Planning** - native landscape design, trail planning and design, fisheries or wildlife management planning; grazing and range management planning; watershed management and development planning; land acquisition and protections planning; conservation easement program planning; environmental oversight during maintenance planning, training and implementation; operational compliance planning, training, and implementation; development of best land management practices; and development of design documents for repair of natural habitat and modifications of existing habitat improvements;
- vi. **Specialized Resource Analysis** - Provide specialized environmental resource expertise services, research, reports and recommendations associated with routine maintenance management activities including water quality, air quality, health risk assessments for air emissions, climatology, paleontology, greenhouse gases, noise, hazardous materials, natural resources risk assessment and risk management, pre-historic and historic archaeology, and historic architecture. Specialized resource analysis work that may be needed as part of a CEQA document or for resource agency permits that may be performed by consultants under this contract, may be managed by BEM or NRLMD staff, as determined by the type and size of the project.
- vii. **Watershed Resource Policy Development** - Gather and analyze data, prepare background studies and reports, and develop policies and plans related to watershed resources identified in the WMP including (but not limited to) a pesticide management plan and vegetation management plan.

E. Project Management:

Provide coordination for keeping SFPUC informed of progress, technical issues, and planned activities and events. Prepare scopes of work, budgets and schedules for all task proposals. Prepare for and attend coordination bi-weekly progress meetings between SFPUC staff and senior project staff from the Proposer. Submit monthly progress reports, with highlights of work achievements during the past month, work planned and important milestones for the upcoming month and identify any issues or scope changes that may affect overall cost and/or schedule of tasks. Maintain project files including all reports, correspondence, data, observations, and other documents pertaining to tasks. Coordinate review comments provided by others on reports, memoranda, project documents and other work products and document and disseminate responses to review comments.

F. Additional Services: In addition to services identified above, the contractor(s) may also be asked to provide:

- i. Presentations to the SFPUC Staff and/or Commission, the San Francisco Board of Supervisors, SFPUC retail and/or wholesale customers, SFPUC stakeholders, and neighborhood or community meetings;
- ii. Professional consultations and expert testimonies;
- iii. Reservoir management services including permitting; algae control analyses; reservoir sediment contamination monitoring; aquatic toxicity testing; water quality analytical services; water quality data management; source and discharge water assessments; sample collection and laboratory support.
- iv. Field inspections and surveys at project sites; and

- v. Specialized statistical analyses and interpretation for compliance monitoring of shoreline bacteria (including running geometric means), sediment grain size (including mean phi, skewness, and kurtosis), benthic infauna and fisheries communities (including diversity measures and reference envelope analysis), and recreational use data (including Bayesian Belief Network analysis).

G: Community Benefits Commitments

Following issuance of the Notice-to-Proceed (NTP) for the first task to be performed by Shaw Environmental & Infrastructure, Inc. (Shaw) under this Agreement, Shaw commits to providing the Community Benefits Commitments detailed below during the 14-year term of the Agreement. Shaw's commitments shall be funded independently by Shaw and shall not be tied to or dependent upon SFPUC funds or sources of funding, receivables from SFPUC, or retention associated with this Project. Because this is an As-Needed contract, Shaw acknowledges that there is no guarantee that the entire contract not-to-exceed amount set forth in section I will be funded. Instead, work is issued on a task order basis as it is needed by the SFPUC, and Contractor is not entitled to funding beyond any issued-task order. The provision of Community Benefits Commitments by Shaw does not entitle Shaw to additional task orders or additional work beyond issued-task orders. In the event that the contract value is not fully expended or is otherwise amended, the parties hereby agree to meet and discuss the impact to the corresponding Community Benefit Commitments. The representations, warranties and other terms contained in this Community Benefit Commitments section have been designed by Shaw as the basis for a Community Benefit Plan, but are for the sole benefit of the parties hereto and shall not be construed as conferring any rights on any other persons or entities.

As stated in the Request for Proposals

"Although this Task G is a deliverable task, it is a zero-dollar task. Zero hours should be allotted in your Overhead and Profit Schedule (OPS) for this task. No hours or dollars should be allotted or included in Proposer's costs for this Project in order to perform or deliver your voluntarily proposed Community Benefits commitments. If the Proposer commits any funds to delivering the Community Benefits commitments it proposes, all such funds must be independent of SFPUC funding or any dollars associated with this Project. If the Proposer commits to contributing any funds to performing or delivering its commitments related to this task, such funds may not be dependent in any way upon receipt of SFPUC funding, including not being dependent upon release of retention, etc."

Community Benefits Plan and Timeline

Shaw shall develop a Community Benefits Plan and Timeline within three months of issuance of NTP. The Community Benefits Plan and Timeline will provide details regarding expenditures, a schedule, and timelines related to the Community Benefits Commitments described below. Shaw will develop the Community Benefits Plan and Timeline with the necessary flexibility relating to timing, expenditure of funds, partners, strategic delivery, scale, and performance of Community Benefits Commitments to best achieve positive community impacts. Once the initial Community Benefits Plan and Timeline are developed, SFPUC and Shaw shall meet at least once a year during the term of the Agreement to discuss the work plan and associated timelines, and make any adjustments or updates as necessary.

Community Benefits Commitments

Shaw shall develop a work plan, schedule, and timeline as one component of the Community Benefits Plan and Timeline to deliver, perform and produce the following Community Benefits Commitments:

Description of Community Benefit Initiative	Total Volunteer Hours	Volunteer Hourly Rate	Volunteer Contribution (\$)	Financial Contribution (\$)	In-Kind Contribution (\$)	Total Contribution (\$)
Workforce Development	260		\$15,600 for three years			\$15,600 for three years
Total Value of Commitments	260		\$15,600 for three years			\$15,600 for three years

*Volunteer contribution + Direct Financial Contribution + In-Kind Contribution = Total Contribution

Shaw shall provide 260 volunteer hours (equating to \$15,600) over the lifetime of this contract.

Workforce Development

In partnership with the Mission Neighborhood Center, Shaw shall commit 100 hours of habitat restoration technician training for participants for year 1 and 80 hours for year 2 and year 3. Shaw will ensure that the training mirrors near future opportunities.

Shaw's community benefits commitments will be documented as part of the Project Management described in Task G above and executed as a major task for the Project.

Community Benefits Work Approach, Project Team/Organization, and Accountability

Shaw's Community Benefits Program shall be directed by Mitchell Salazar from the Mission Neighborhood Centers and Dr. Emma Jack from Shaw. They shall serve as the executive in charge of delivering the community benefits commitments. Shaw community benefits contacts shall ensure that the community benefits commitments herein are delivered to the communities that they are intended to benefit in a transparent and accountable manner. Shaw community benefits contacts shall organize, plan, track, measure, and report on Contractor's community benefits commitments. Shaw community benefits contacts shall also coordinate the senior management of Shaw's subconsultants to encourage full participation by the entire team in providing benefits to communities within the SFPUC's service area.

Shaw community benefit contacts shall submit a stand-alone annual report on progress in fulfilling Shaw's community benefits commitments, detailing factors such as the total number of dollars and hours contributed to each of the proposed tasks and organizations over the year. Shaw shall also provide independently verifiable documentation (such as certified payroll records, receipts, etc.) that the SFPUC can use to independently and easily verify that the dollars and volunteer hours contributed by Shaw as part of its Community Benefits Commitments were delivered to and actually reached the communities they were intended to benefit.

Shaw shall ensure that quarterly reports are prepared and submitted to SFPUC on the last business day of the month following the close of each quarter. The reports shall describe Shaw's community benefits efforts under the program both in the prior quarter and contract to date. Shaw's quarterly reports shall include the name and description of all projects commenced, underway, and completed;

the dollar and hour values of all activities and elements of each project; the progress to date of each project; and the outcomes of projects that are underway. Shaw shall submit such documentation to substantiate that the Community Benefits Commitments and any funds associated thereto were in fact delivered to the communities they were intended to benefit within the three months immediately following delivery of such Community Benefits Commitments or dollars associated thereto.

Shaw's Community Benefits Commitments shall be performed prospectively during the term of the Agreement, after the award of the Agreement and following issuance of NTP on the first task assigned to Shaw under this Agreement. Commitments performed as part of previous contracts or prior to Shaw being awarded the Agreement cannot be used as part of Shaw's Community Benefits Commitments for this Project.

Shaw's Community Benefits Commitments Task G Proposal is attached and incorporated herein. Shaw shall provide all of the Commitments, consistent with all of the terms of Contractor's attached Proposal (including Shaw's Work Approach, Project Team and Organization, and Accountability), which are not explicitly detailed in this Task G. Where and if there are any conflicts or discrepancies between the language above in Task G of this Agreement and the attached Proposal, the terms of the language of Task G above shall prevail as Shaw and SFPUC's final mutual understanding and agreement.

3. Performance Evaluation

Performance evaluations support the SFPUC's objective of continuously improving the quality of Contractor services. The SFPUC will 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. When 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.

SFPUC's Infrastructure Division Procedures Manual, Volume 4, Program and Project Management, Section 3: Contract Management, Procedure: PM 3.16, Consultant Services Performance Evaluation requires that a contract manager evaluate a consultant's performance on engineering, environmental and construction management projects and complete the Consultant Services Performance Evaluation Form (CSPE) during the contract term. A final end of year CSPE will be kept on file with the SFPUC for three years after contract completion. Completed end-of-contract CSPEs, including any consultant responses, will be forwarded to the evaluation panel for future RFPs, where a proposer identifies the evaluated project as a qualifying project reference under the RFP. If a proposer responding to a future RFP identifies an ongoing SFPUC project as a qualifying project reference (and the ongoing project complies with RFP reference requirements), SFPUC staff will forward the most recent annual CSPE for the qualifying project, if any, to the RFP evaluation panel. (Include if contract is engineering design, environmental analysis services and construction management).

4. Reports

Contractor shall submit written reports as requested by the SFPUC. Format for the content of such reports shall be determined by the Contract Manager. 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.

5. Department Liaison

In performing the services provided for in this Agreement, Contractor's liaison with the SFPUC will be:
Greg Lyman.

Appendix B Calculation of Charges

As part of Contractor's proposal dated March 8, 2013, Contractor submitted proposed billing rates, attached hereto as Appendix B-1 Fee Schedule Form, for the requested tasks in the Overhead and Profit Schedule, incorporated herein by reference.

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

1. Billing Rates

Contractor's billing rates and each and every staff classification as stated in Appendix B-1 will be the billing rates for the listed individuals. The billing rate may not exceed the lowest rate charged to any other governmental entity except the City and County of San Francisco. Billing rates may be adjusted annually on the anniversary of the effective start date as indicated in the original Notice of Contract Award letter. The first adjustment may be made no earlier than the first anniversary of the effective start date. The amount of the adjustment is limited to a maximum of the CPI annual percentage change increase (San Francisco Bay Area for Urban Wage Earners and Clerical Workers) for the previous calendar year. No increase, including the annual CPI adjustment, is allowed to billing rates exceeding \$220 per hour, unless Contract Manager and Bureau Manager authorize an increase to the rate in writing.

2. Personnel Changes:

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

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

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

3. Effective Overhead and Profit Rate

The Effective Overhead and Profit Rate (EOPR) for CS-211 is 2.50. The EOPR OR Individual Firm Overhead and Profit Rate will apply to the billing rate of all individuals not listed in Appendix B-1. The EOPR will also apply to all amendments to the Agreement. If a new subconsultant is added during the duration of the Agreement, the new individual firm multiplier can be no more than the EOPR.

4. Other Direct Costs (ODC)

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

The following items will be eligible for reimbursement as ODCs:

- Out-of-town travel (“out-of-town” shall mean outside the nine Bay Area counties: San Francisco, Alameda, Marin, Santa Clara, Sonoma, Contra Costa, Napa, San Mateo, Solano);
- Out- of town meal, travel and lodging expenses for project-related business trips, including, but not limited to:
 - Rental vehicle: traveler must select the most economical contractor and type of vehicle available and acquire any commercial rate or government discount available when the vehicle is rented;
 - Personal vehicle use: Contractor will be paid per mile as established by the United State Internal Revenue Service and only for that portion of travel that is outside the nine Bay Area counties and non-routine. Should the travel begin or end on a normal workday, the Contractor shall subtract commuting mileage from total mileage to calculate reimbursable mileage. The Contractor shall submit to the City an approved mileage log with its monthly invoices;
 - Meal and lodging expenses shall be reasonable and actual but limited to Federal government per diem rates;
- Specialty printing (“specialty” as used herein shall mean large volume printing and color printing and requires prior written approval by SFPUC project staff and documentation of the written approval by the SFPUC must be included with the invoice);
- Specialty computer hardware and software (only with prior written approval by SFPUC project staff and documentation of the written approval by the SFPUC must be included with the invoice – all hardware and software will be the property of the City);
- Courier services that are project related and originated from the project site offices;
- Permit fees;
- Expedited courier services when requested by SFPUC staff; and
- Safety equipment.

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

- All other travel expenses such as parking, bridge tolls, public transit, vehicle mileage within the nine Bay Area Counties, travel from Contractor’s home office to SFPUC facilities;
- Contractor personnel relocation costs;
- Any home or regional office labor charges or pass-throughs, including but not limited to, administrative and clerical personnel time;
- Personnel relocation and temporary assignment expenses;
- Entertainment expenses;
- Cell phones;

- Home office expenses;
- Telephone calls and faxes originating in the firm's home office, standard computer use charges, computer hardware or software computer hardware or software (other than the specialty hardware or software mentioned above), communication devices, and electronic equipment;
- Meal expenses which are not related to project-related business trips, including refreshments and working lunches with SFPUC staff;
- Equipment to be used by SFPUC staff; and
- Postage and courier services which are not requested by SFPUC staff.

5. Subcontractor make-up and documentation

Second-tier and pass-through subcontracting is prohibited. Additional subcontractors may be added to the contractor team after obtaining pre-authorization by the SFPUC Contract Manager, Bureau/Division Manager and the Contract Monitoring Division. Note that subcontractor administration markup is limited to actual cost not to exceed 5%.

6. Retention

Five percent (5%) of each invoice payment will be withheld for each task order. When the work for the task order or defined critical milestones has been completed to the satisfaction of the SFPUC Regional Contract Manager and all work products have been received and approved by the SFPUC Regional Contract Manager, the Contractor may request that the retention be released. In lieu of money retention, an irrevocable letter of credit acceptable to the City will be accepted.

7. Invoice Requirements

The SFPUC is automating its contracting and invoice payment processes with online software systems (SOLIS). The following processes are being automated: Contract Certification, Insurance Compliance, Task Order Certification, Timekeeping, Invoice Approval, and Invoice Payment. As part of its contracting obligations, the Contractor is required to 1) become an authorized user of these systems, 2) attend user training for these systems; and 3) utilize these systems for the purposes for which they are intended. Contractor shall not bill the SFPUC to use these systems. Contractor shall not charge SFPUC to send appropriate personnel to user training.

Contractor shall follow the invoicing and supporting documentation instructions as detailed in the SOLIS training or otherwise prescribed by the SFPUC.

Appendix B-1
Fee Schedule

Consultant Name	Staff Classification	Staff Name	Billing Rate (\$/hour)	Firm Overhead and Profit Rate
Shaw Environmental & Infrastructure, Inc.	CM & TM - Project Management	Teri Beckett, PE, QSD, Arborist	\$210.22	2.95
	LTM - Specialized Hydrologic Services	Thomas Barry, PG, CEG, CHG	\$149.04	
	LTM - Data Management and Analytical Services	Jonathan Myers, PhD	\$178.15	
	KTM - Specialized Hydrologic Services	Michael Bombard, PG, CHG	\$151.11	
	KTM - Specialized Hydrologic Services	J.C. Isham, PG, CEG, CHG	\$184.67	
	KTM - Specialized Hydrologic Services	John McMillan, PhD, PE, GE	\$220.00	
	KTM - Specialized Hydrologic Services	Steven Pierce, PG	\$175.63	
	KTM - Watershed Resources M&M Services	Kathy Kinsland, CISEC, QSP	\$184.60	
	KTM - Data Management and Analytical Services	Karen Black	\$121.18	
	KTM - Data Management and Analytical Services	Matthew Held	\$121.29	
	KTM - Data Management and Analytical Services	Chris Russo, GISP	\$129.68	
	KTM - Data Management and Analytical Services	Eric Schmidt	\$123.81	
	KTM - Fisheries Management	John Downing	\$204.18	
	TM - Community Benefits Commitments	Emma Jack, PhD	\$0.00	
	TM - Expert Advisor / Deputy Contract Manager	Emma Jack, PhD	\$177.00	
	TM - Document Control	June Gilmore	\$106.35	
	TM - Groundwater Modeling	James Teo	\$133.58	
	TM - Wildlife Surveys and Monitoring	Chris Perry	\$147.50	
	TM - Wildlife Surveys and Monitoring	Aaron Sunshine, SEM	\$66.85	
	TM - Fisheries Management	Walter Klock	\$92.26	
	TM - Fisheries Management	Bruce Kvam	\$132.97	
	TM - Fisheries Management	Cameron Lange	\$131.48	
	TM - Fisheries Management	Garry Smythe	\$128.80	
	TM - Reports	Stefanie Nisich	\$110.63	
	TM - Reports	Anna Wallace	\$82.60	
	TM - Reports	Mary Worth, CPESC, QSD	\$135.14	
TM - Resource Agency Permit Compliance	Alex Naughton, CPESC, QSP, QSD	\$138.20		

Appendix B-1
Fee Schedule

	TM - Resource Agency Permit Compliance	Jamie Reese, CESSWI, QSP	\$118.00	
	TM - Resource Agency Permit Compliance	Mary Worth, CPESC, QSD	\$135.14	
	TM - Education	Emma Jack, PhD	\$177.00	
	TM - Watershed Resource Policy Development	Emma Jack, PhD	\$177.00	
ATS, Inc. (LBE)	LTM - Watershed P&RC Support	Dorinda Himes, CHMM	\$132.91	2.00
	TM - QA/QC	Dorinda Himes, CHMM	\$132.91	
	TM - Resource Agency Permits	Mark Fogiel	\$144.67	
	TM - Resource Agency Permits	Stuart Griffin	\$136.50	
	TM - Education	Elahe Enssani, PhD	\$189.00	
Associated Right of Way Services, Inc. (SBE)	KTM - Land Acquisition Services	William Tannenbaum, SR/WA	\$210.00	2.50
	TM - Land Acquisition Services	James Richards	\$189.00	
Basin Research Associates, Inc. (SBE)	TM - Specialized Resource Analysis	Colin Busby, PhD, RPA	\$152.25	2.50
	TM - Specialized Resource Analysis	Christopher Canzonieri, MA	\$91.88	
	TM - Specialized Resource Analysis	Donna Garaventa, PhD, RPA	\$122.06	
	TM - Specialized Resource Analysis	Ward Hill, MA	\$131.25	
BioMaAs, Inc. (LBE)	KTM - Watershed Resources M&M Services	Steve Powell	\$163.46	2.50
	KTM - Botany	Deborah Petersen	\$144.38	
	TM - Botany	Jane Valerius	\$190.92	
Cal Ecology (SBE, WBE)	KTM - Watershed Resources M&M Services	Amy Parravano	\$131.25	1.00
	KTM - Ecology	Amy Parravano	\$131.25	
	TM - Botany	Amy Parravano	\$131.25	
	TM - Reports	Amy Parravano	\$131.25	
	TM - Resource Agency Permits	Amy Parravano	\$131.25	
Coast Ridge Ecology (LBE)	KTM - Watershed Resources M&M Services	Patrick Kobernus	\$105.00	2.50
	TM - Ecology	Suk-Ann Yee	\$91.88	
	TM - Wildlife Surveys and Monitoring	Patty Ten Boom Byrnes	\$91.88	
	TM - Wildlife Surveys and Monitoring	Tida Leagnavar	\$78.75	
	TM - Resource Agency Permit Compliance	Chennie Castanon, QSP	\$91.88	
Cowhey Pacific Drilling, Inc. (LBE)	TM - Well Drilling	Peter Borjeson, PE	\$115.50	2.50
	TM - Well Drilling	Craig Chaffee	\$102.11	
	TM - Well Drilling	Terrence Cowhey, PE	\$115.50	
	TM - Well Drilling	Jason Klipfel	\$102.11	

Appendix B-1
Fee Schedule

Davis & Associates Communications, Inc. (LBE)	TM - Public Outreach	Darolyn Davis	\$220.00	2.50
	TM - Public Outreach	Zachary Klos	\$162.75	
	TM - Public Outreach	Tiffany Refuerzo	\$170.63	
EMS, Inc. (SBE, LBE)	TM - Project Management	Emad Mansour, PMP	\$220.00	2.30
Joseph DiDonato Wildlife Consulting & Photography	LTM - Watershed Resources M&M Services	Joseph DiDonato	\$105.00	1.00
	TM - Planning	Joseph DiDonato	\$105.00	
	TM - Watershed Resource Policy Development	Joseph DiDonato	\$105.00	
Meridian Surveying Engineering, Inc. (SBE, LBE)	TM - Surveys	Nathan Foley, LSIT	\$125.34	2.50
	TM - Surveys	Stanley Gray, PLS	\$210.00	
	TM - Surveys	Steve Klein, PLS	\$123.32	
	TM - Surveys	Emily Thomas, LSIT	\$94.76	
Mission Neighborhood Centers, Inc.	TM - Community Benefits Commitments	Mitchell Salazar	\$0.00	2.50
Olofson Environmental, Inc. (SBE)	KTM - Watershed P&RC Support	Peggy Olofson, PE	\$210.00	2.50
	TM - Project Management	Peggy Olofson, PE	\$210.00	
	TM - Riparian Restoration and Habitat Site Rem.	Jeanne Hammond	\$105.00	
	TM - Riparian Restoration and Habitat Site Rem.	Tripp McCandlish	\$131.25	
	TM - Riparian Restoration and Habitat Site Rem.	Peggy Olofson, PE	\$210.00	
	TM - Riparian Restoration and Habitat Site Rem.	Whitney Thornton	\$91.88	
	TM - Ecology	Jen McBroom	\$131.25	
	TM - Ecology	Brian Ort, PhD	\$196.88	
	TM - Ecology	Tobias Rohmer	\$105.00	
	TM - Botany	Simon Gunnar	\$78.75	
	TM - Botany	Whitney Thornton	\$91.88	
	TM - Planning	Leslie Bandy	\$91.88	
	TM - Planning	Stephanie Chen	\$91.88	
	TM - Planning	Jeanne Hammond	\$105.00	
	TM - Planning	Jeff Lewis	\$105.00	
TRC Solutions, Inc.	KTM - Watershed Resources M&M Services	Megan Peterson	\$144.38	2.50
	KTM - Watershed P&RC Support	Megan Peterson	\$144.38	
	KTM - Wildlife Surveys and Monitoring	Lincoln Allen	\$91.88	
	TM - Resource Agency Permit Compliance	Madeleine van der Heyden	\$91.88	
	TM - Watershed Resource Policy Development	Megan Peterson	\$144.38	

Appendix B-1
Fee Schedule

Yerba Buena Engineering & Construction, Inc. (SBE)	TM - Riparian Restoration and Habitat Site Rem.	Miguel Galarza	\$144.38	2.50
---	--	----------------	----------	------

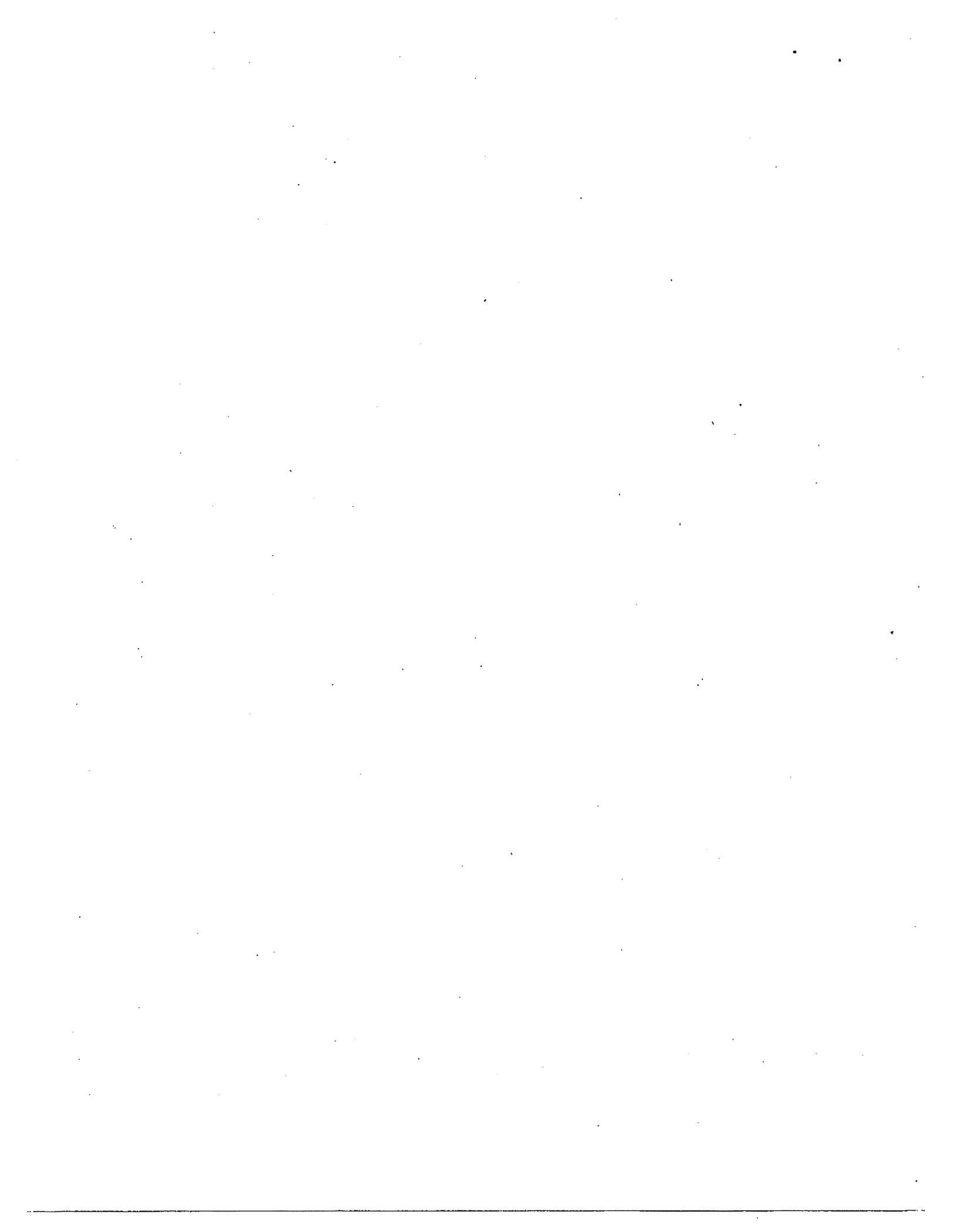
Mark-Up on Subs = 5%

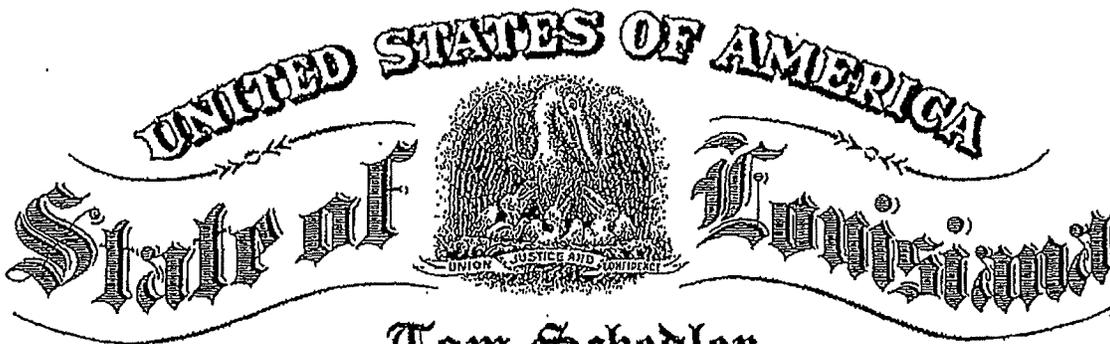
Effective Overhead and Profit Rate (EOPR): 2.50

ATTACHMENT B
Name Change Documents

Evidence of Name Change of Shaw Environmental & Infrastructure, Inc.: Certificate of Filing,
December 26, 2013..

CB&I Name Change Letter to SFPUC, September 21, 2016.





Tom Schedler

SECRETARY OF STATE

As Secretary of State of the State of Louisiana, I do hereby Certify that

a copy of an Amendment to the Articles of Incorporation of

SHAW ENVIRONMENTAL & INFRASTRUCTURE, INC.

Domiciled at BATON ROUGE, LOUISIANA, changing the corporate name to

CB&I GOVERNMENT SOLUTIONS, INC.

Was filed and recorded in this Office on December 26, 2013.

ORIG# 009 BNDL# 12551
12/26/2013 11:59:50 AM

FILED AND RECORDED
EAST BATON ROUGE PARISH, LA
DOUG WELBORN
CLERK OF COURT AND RECORDER

CUSTOMER PROVIDED COPY FOR
CERTIFIED TRUE COPY

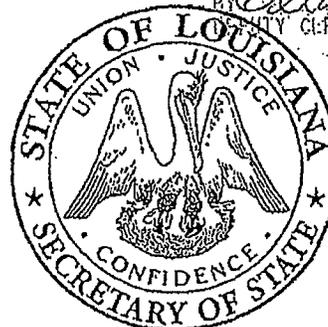
BY *Elaine M. Mearns*
COUNTY CLERK AND RECORDER

In testimony whereof, I have hereunto set my hand and caused the Seal of my Office to be affixed at the City of Baton Rouge on,

December 26, 2013

Secretary of State

WH35251103D



Certificate ID: 10447751#SLJ62

To validate this certificate, visit the following web site,
go to **Commercial Division, Certificate Validation**,
then follow the instructions displayed.
www.sos.louisiana.gov



SHAW ENVIRONMENTAL & INFRASTRUCTURE, INC.

ARTICLES OF AMENDMENT TO THE
ARTICLES OF INCORPORATION OF
SHAW ENVIRONMENTAL & INFRASTRUCTURE, INC.

The undersigned Secretary of Shaw Environmental & Infrastructure, Inc. (the "Company"), does hereby execute on behalf of the Company this Articles of Amendment to the Articles of Incorporation of the Company filed with the Louisiana Secretary of State on April 15, 2002.

The name of the corporation is Shaw Environmental & Infrastructure, Inc.

This Articles of Amendment alters Article I of the Articles of Incorporation of the Company, such that Article I be and reads as follows:

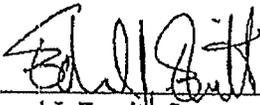
"ARTICLE I

The name of this corporation is CB&I Government Solutions, Inc."

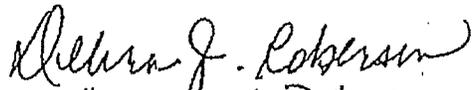
- (1) The Amendment to the Articles of Incorporation was adopted by the sole Shareholder of the Company by the vote required by the Business Corporation Law effective as of the 24th day of December, 2013.
- (2) The number of shares of Company stock outstanding is 1,000 shares. The number of shares of Company stock entitled to vote on the Amendment is 1,000. There is only one class Company stock.
- (3) All 1,000 shares of stock of the Company voted for the Amendment. No shares voted against the Amendment.
- (4) The Amendment does not provide for an exchange, reclassification or cancellation of issued shares.
- (5) The Amendment does not effect a change in the amount of stated capital.

This Articles of Amendment to the Articles of Incorporation of Shaw Environmental & Infrastructure, Inc. is executed on behalf of Shaw Environmental & Infrastructure, Inc. this 26th day of December, 2013, by the undersigned duly authorized Secretary of Shaw Environmental & Infrastructure, Inc.

SHAW ENVIRONMENTAL & INFRASTRUCTURE, INC.

By: 
Edward J. Everitt, Secretary

Notary


Debra J. Roberson
No. 48897
My Commission is for life
State of Louisiana
Parish of East Baton Rouge
Date: December 26, 2013

1 [Agreements - Specialized and Technical Services for Natural Resources and Watershed
2 Management and Monitoring - 14-Year Terms - Not to Exceed \$5,000,000 Each]

3 **Resolution authorizing the General Manager of the Public Utilities Commission to**
4 **execute Agreements with CDM Smith/ATS, a Joint Venture (CS-211A); ICF+Avila, a**
5 **Joint Venture (CS-211B); Shaw Environmental and Infrastructure, Inc. (CS-211C);**
6 **and URS Corporation (CS-211D) for Specialized and Technical Services for Natural**
7 **Resources and Watershed Management and Monitoring, each with an agreement**
8 **amount not to exceed \$5,000,000, and each with a term not to exceed (14) years,**
9 **pursuant to Charter, Section 9.118(b).**

10
11 WHEREAS, The Public Utilities Commission (PUC) issued a Request for Proposals
12 (RFP) for Specialized and Technical Services on February 8, 2013, in which it sought up
13 to four qualified firms to perform specialized natural resources management and
14 monitoring technical services for the Water Enterprise; and

15 WHEREAS, CDM Smith/ATS, a Joint Venture, ICF+Avila, a Joint Venture, Shaw
16 Environmental and Infrastructure, Inc., and URS Corporation were identified as the four
17 highest-ranking firms based on the RFP process; and

18 WHEREAS, The Water Enterprise is responsible for watershed and right-of-way
19 lands management and requires technical support for specialized monitoring of natural
20 resources and water quality associated with these responsibilities; and

21 WHEREAS, The PUC water supply system and watershed and rights-of-way lands
22 are operated and maintained under various state and federal environmental regulatory
23 permit conditions; and
24
25

1 WHEREAS, This Board and the PUC approved the Water System Improvement
2 Program (WSIP) regional projects, including environmental mitigation measures, such as
3 habitat restoration for endangered species, for which specialized monitoring is required
4 to satisfy state and federal regulatory agency permits; and

5 WHEREAS, WSIP regulatory agency permits require monitoring for ten years and
6 the last mitigation site, implemented in 2016, will commence ten years of monitoring in
7 2017; and

8 WHEREAS, The PUC anticipates the contract term for each agreement will be
9 approximately fourteen (14) years to accommodate monitoring of the WSIP mitigation
10 obligations as described in the WSIP project regulatory agency permits, and to support
11 other similar long term natural resource mitigation and monitoring obligations; and,

12 WHEREAS, WSIP monitoring obligations have commenced at some mitigation sites
13 and all monitoring obligations will have commenced by 2017; and

14 WHEREAS, Many of these WSIP monitoring and maintenance mitigation
15 obligations are in perpetuity, as required by the regulatory agency permits, and additional
16 aspects of these obligations will be brought to the PUC and the Board for review and
17 consideration in the future (e.g. perpetual conservation easements); and

18 WHEREAS, Charter Section 9.118(b) requires Board approval by resolution of
19 contracts with terms anticipated to exceed ten (10) years; and

20 WHEREAS, On April 9, 2013, by Resolution No. 13-0053, the PUC approved the
21 selection of and authorized the General Manager of the PUC to negotiate and execute
22 the four professional services agreements each with a not-to-exceed amount of
23 \$5,000,000 and each with a term not-to-exceed 14 years, subject to Board approval,
24 under Charter Section 9.118, of Water Enterprise-funded Agreement Nos. CS-211A-D,
25

1 Specialized and Technical Services to: CDM/Smith/ATS, a Joint Venture (CS-211A);
2 ICF+Avila, a Joint Venture (CS-211B); Shaw Environmental and Infrastructure, Inc. (CS-
3 211C); and URS Corporation (CS-211D); now, therefore, be it

4 RESOLVED, That the Board of Supervisors authorizes the General Manager of the
5 PUC to enter into an agreement with CDM Smith/ATS, a Joint Venture (CS-211A) in
6 substantially the form of agreement on file with the Clerk of the Board of Supervisors in
7 File No. 130404 with a term of fourteen (14) years commencing in 2013 and concluding
8 in 2027; and, be it

9 FURTHER RESOLVED, That the Board of Supervisors authorizes the General
10 Manager of the PUC to enter into an agreement with ICF+Avila, a Joint Venture (CS-
11 211B) in substantially the form of agreement on file with the Clerk of the Board of
12 Supervisors in File No. 130404 with a term of fourteen (14) years commencing in 2013
13 and concluding in 2027; and, be it

14 FURTHER RESOLVED, That the Board of Supervisors authorizes the General
15 Manager of the PUC to enter into an agreement with Shaw Environmental and
16 Infrastructure, Inc. (CS-211C) in substantially the form of agreement on file with the Clerk
17 of the Board of Supervisors in File No. 130404 with a term of fourteen (14) years
18 commencing in 2013 and concluding in 2027 ; and, be it

19 FURTHER RESOLVED, That the Board of Supervisors authorizes the General
20 Manager of the PUC to enter into an agreement with URS Corporation (CS-211D) in
21 substantially the form of agreement on file with the Clerk of the Board of Supervisors in
22 File No. 130404 with a term of fourteen (14) years commencing in 2013 and concluding
23 in 2027.



City and County of San Francisco
Tails
Resolution

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 130404

Date Passed: June 11, 2013

Resolution authorizing the General Manager of the Public Utilities Commission to execute Agreements with CDM Smith/ATS, a Joint Venture (CS-211A); ICF+Avila, a Joint Venture (CS-211B); Shaw Environmental and Infrastructure, Inc. (CS-211C); and URS Corporation (CS-211D) for Specialized and Technical Services for Natural Resources and Watershed Management and Monitoring, each with an agreement amount not to exceed \$5,000,000 and each with a term not to exceed 14 years pursuant to Charter, Section 9.118(b).

June 05, 2013 Budget and Finance Committee - RECOMMENDED

June 11, 2013 Board of Supervisors - ADOPTED

Ayes: 11 - Avalos, Breed, Campos, Chiu, Cohen, Farrell, Kim, Mar, Tang, Wiener and Yee

File No. 130404

I hereby certify that the foregoing
Resolution was ADOPTED on 6/11/2013 by
the Board of Supervisors of the City and
County of San Francisco.



Angela Calvillo
Clerk of the Board

Unsigned

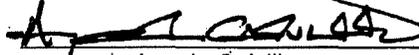
Mayor

6/21/13

Date Approved

Date: June 21, 2013

I hereby certify that the foregoing resolution, not being signed by the Mayor within the time limit as set forth in Section 3.103 of the Charter, or time waived pursuant to Board Rule 2.14.2, became effective without his approval in accordance with the provision of said Section 3.103 of the Charter or Board Rule 2.14.2.



Angela Calvillo
Clerk of the Board

File No.
130404

PUBLIC UTILITIES COMMISSION

City and County of San Francisco

RESOLUTION NO. 16-0149

WHEREAS, On April 9, 2013, this Commission awarded Agreement Nos. CS-211A-D, Specialized and Technical Services, Natural Resources Division, Water Enterprise, to provide permit compliance monitoring of Water System Improvement Program (WSIP) habitat mitigation sites, and authorized the General Manager of the San Francisco Public Utilities Commission (SFPUC) to negotiate and execute four professional services agreements, each with an initial amount of \$5,000,000 and with a term of 14 years, concluding on June 15, 2027, with CDM Smith/ATS, Joint Venture (CS-211A), ICF+Avila, Joint Venture (CS-211B), Shaw Environmental and Infrastructure, Inc. (CS-211C), and URS Corporation (CS-211D); and

WHEREAS, The total contract authority is \$20,000,000; and

WHEREAS, The original consultant for CS-211C, Shaw Environmental and Infrastructure, Inc. is no longer seeking task orders and the total contract value for this agreement will not exceed \$515,000; and

WHEREAS, Amendments to these agreements are being requested to spread the unused contract capacity of CS-211C to one or more of the remaining three agreements (CS-211A, CS-211B, and CS-211D), with no single agreement exceeding \$7,500,000, and with no change to the total contract authority of \$20,000,000; and

WHEREAS, A Contract Monitoring Division (CMD) sub-consulting requirement of 13% Local Business Enterprise (LBE) participation of the total value of services to be provided has been established for these agreements; and

WHEREAS, Funds for this agreement will be available from Project No. CUW271 Long Term Monitoring and Permit Program; now, therefore, be it

RESOLVED, That this Commission hereby approves amendments to Water Enterprise operations-funded Agreement Nos. CS-211A-D, Specialized and Technical Services, Natural Resources Division, Water Enterprise, with CDM Smith/ATS, Joint Venture (CS-211A); ICF+Avila, Joint Venture (CS-211B), Shaw Environmental and Infrastructure, Inc. (CS-211C), and URS Corporation (CS-211D) to provide ongoing watershed resources monitoring and management services, data management and analytical services, and watershed planning and regulatory compliance support for WSIP habitat mitigation sites; and authorizes the General Manager of the SFPUC to negotiate and execute future amendments, decreasing one or more of the agreements and increasing one or more of the agreements, for a cumulative total not-to-exceed amount of \$20,000,000 to be spread across the agreements, with no single agreement exceeding \$7,500,000.

I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting of July 26, 2016.



Secretary, Public Utilities Commission



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

Contract Administration Bureau
525 Golden Gate, 8th Floor
San Francisco, CA 94102
T 415.551.4603
F 415.554.3225

September 28, 2016

Kevin MacKay
ICF/Avila, JV
620 Folsom Street, Suite 200
San Francisco, CA 94107
Email: kevin.mackay@icfi.com

- RE:** 1) Notice of Contract Amendment Certification - Specialized and Technical Services, Natural Resources and Land Management Division, Water Enterprise (CS-211.B)
2) Transmittal - Executed Agreement #1 between City and County of San Francisco Public Utilities Commission and ICF/Avila, JV

Dear Mr. MacKay:

This letter provides a *notification of amendment certification* for an INCREASE in contract value for the following contracted work:

BLANKET PURCHASE ORDER NO: **BPUC13000097**
- *Work may not be charged against this blanket purchase order number*

SCOPE: To provide specialized and technical services related to watershed management and monitoring for specific projects, including watershed resources monitoring and management services, specialized hydrologic services, data management and analytical services, watershed planning and regulatory compliance support, project management, and additional related services.

EFFECTIVE DATE: **August 21, 2013 to June 15, 2027**

CONTRACT TO DATE: Total value of contract not to exceed **\$6,490,000.00**

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 Rosiana Angel at (415) 554-1549.

Edwin M. Lee
Mayor
Francesca Vietor
President
Anson Moran
Vice President
Ann Moller Caen
Commissioner
Vince Courtney
Commissioner
Ike Kwon
Commissioner
Harlan L. Kelly, Jr.
General Manager



Enclosure: Executed Amendment #1

cc: Greg Lyman

File/NCAC-CS-211.B Amendment #1

**City and County of San Francisco
San Francisco Public Utilities Commission
Contract Administration Bureau
525 Golden Gate Ave, 8th Floor
San Francisco, CA 94102**

**First Amendment
Between the City and County of San Francisco and
ICF+AVILA, Joint Venture
Specialized and Technical Services, Natural Resources Division, Water Enterprise
(CS-211.B)**

THIS AMENDMENT (this "Amendment") is made as of August 15, 2016, in San Francisco, California, by and between ICF+AVILA, Joint Venture ("Contractor"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through the San Francisco Public Utilities Commission.

RECITALS

WHEREAS, City and Contractor have entered into the Agreement (as defined below);
and

WHEREAS, City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to increase the contract amount, and update standard contractual clauses; and

WHEREAS, The Civil Service Commission approved Contract number 4009-12/13 on May 21, 2013; and

WHEREAS, Approval for this Amendment was obtained when the San Francisco Public Utilities Commission approved Resolution number 16-0149 on July 26, 2016 ;

NOW, THEREFORE, Contractor and the City agree as follows:

1. Definitions. The following definitions shall apply to this Amendment:

1a. Agreement. The term "Agreement" shall mean the Agreement dated April 10, 2013 between Contractor and City.

1b. Contract Monitoring Division. Effective July 28, 2012, with the exception of Sections 14B.9(D) and 14B.17(F), all of the duties and functions of the Human Rights Commission under Chapter 14B of the Administrative Code (LBE Ordinance) were transferred to the City Administrator, Contract Monitoring Division ("CMD"). Wherever "Human Rights Commission" or "HRC" appears in the Agreement in reference to Chapter 14B of the

Administrative Code or its implementing Rules and Regulations, it shall be construed to mean "Contract Monitoring Division" or "CMD" respectively.

1c. Other Terms. Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

2. Modifications to the Agreement. The Agreement is hereby modified as follows:

2a. Section 5. Section 5 "Compensation" of the Agreement currently reads as follows:

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 performed as of the last day of the immediately preceding month. In no event shall the amount of this Agreement exceed **Five Million Dollars (\$5,000,000)**. The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. 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 the 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.

Such section is hereby amended in its entirety to read as follows:

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 performed as of the last day of the immediately preceding month. In no event shall the amount of this Agreement exceed **Six Million Four Hundred Ninety Thousand Dollars (\$6,490,000)**. The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. 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 the 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 CMD Progress Payment Form. If Progress Payment Form is not submitted with Contractor's invoice, the Controller will notify the department, the Director of CMD and Contractor of the omission. If Contractor's failure to provide CMD 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 CMD Progress Payment Form is provided. Following City's payment of an invoice, Contractor has ten days to file an affidavit using CMD Payment Affidavit verifying that all subcontractors have been paid and specifying the amount.

2b. Insurance. Section 15 is hereby replaced in its entirety to read as follows:

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 \$2,000,000 each occurrence and \$4,000,000 general aggregate 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 \$1,000,000 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 \$2,000,000 each claim with respect to negligent acts, errors or omissions in connection with the Services.

5) Commercial Marine Liability insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired marine coverage, as applicable.

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, its 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. All policies shall be endorsed to provide thirty (30) days' advance written notice to the City of cancellation for any reason, intended non-renewal, or reduction in coverages. Notices shall be sent to the City address set forth in the Section entitled "Notices to the Parties."

d. 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.

e. 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.

f. Before commencing any Services, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Approval of the insurance by City shall not relieve or decrease Contractor's liability hereunder.

g. The Workers' Compensation policy(ies) shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

h. If Contractor will use any subcontractor(s) to provide Services, Contractor shall require the subcontractor(s) to provide all necessary insurance and to name the City and County of San Francisco, its officers, agents and employees and the Contractor as additional insureds.

i. Should any of the required insurance be provided under a form of coverage that includes a general aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregate limit shall be double the occurrence or claims limits specified above.

2c. Replacing "Earned Income Credit (EIC) Forms" Section with "Consideration of Criminal History in Hiring and Employment Decisions" Section. Section 32 "Earned Income Credit (EIC) Forms" is hereby replaced in its entirety to read as follows:

32. Consideration of Criminal History in Hiring and Employment Decisions.

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

b. The requirements of Chapter 12T shall only apply to a Contractor's or Subcontractor's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, shall apply only when the physical location of the

employment or prospective employment of an individual is wholly or substantially within the City of San Francisco, and shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

c. Contractor shall incorporate by reference in all subcontracts the provisions of Chapter 12T, 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.

d. Contractor or Subcontractor shall not inquire about, require disclosure of, or if such information is received, base an Adverse Action on an applicant's or potential applicant for employment's, or employee's: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

e. Contractor or Subcontractor shall not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in subsection 32(d), above. Contractor or Subcontractor shall not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

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

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

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

3. Effective Date. Each of the modifications set forth in Section 2 shall be effective on and after the date of this Amendment.

4. Legal Effect. Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

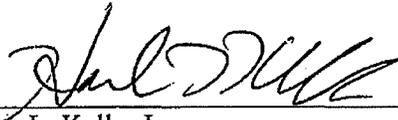
///
///

IN WITNESS WHEREOF, Contractor and City have executed this Amendment as of the date first referenced above.

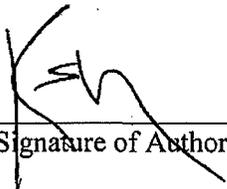
CITY

CONTRACTOR

ICF+AVILA, Joint Venture



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



Signature of Authorized Representative
Kevin MacKay

Name of Authorized Representative
Contract Manager

Title

Approved as to Form:

City vendor number: 91885

Dennis J. Herrera
City Attorney

By: 

Randy Parent
Deputy City Attorney



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

Contract Administration Bureau
525 Golden Gate, 8th Floor
San Francisco, CA 94102
T 415.551.4603
F 415.554.3225

September 28, 2016

Dina Robertson
URS Corporation
1333 Broadway, 8th Floor
Oakland, CA 94612
Email: dina.robertson@aecom.com

- RE:** 1) Notice of Contract Amendment Certification - Specialized and Technical Services, Natural Resources and Land Management Division, Water Enterprise (CS-211.D)
2) Transmittal - Executed Agreement #1 between City and County of San Francisco Public Utilities Commission and URS Corporation

Dear Ms. Robertson:

This letter provides a *notification of amendment certification* for an INCREASE in contract value for the following contracted work:

BLANKET PURCHASE ORDER NO: **BPUC13000096**
- *Work may not be charged against this blanket purchase order number*

SCOPE: To provide specialized and technical services related to watershed management and monitoring for specific projects, including watershed resources monitoring and management services, specialized hydrologic services, data management and analytical services, watershed planning and regulatory compliance support, project management, and additional related services.

EFFECTIVE DATE: **August 21, 2013 to June 15, 2027**

CONTRACT TO DATE: Total value of contract not to exceed **\$6,490,000.00**

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 Rosiana Angel at (415) 554-1549.

Edwin M. Lee
Mayor
Francesca Vietor
President
Anson Moran
Vice President
Ann Moller Caen
Commissioner
Vince Courtney
Commissioner
Ike Kwon
Commissioner
Harlan L. Kelly, Jr.
General Manager



Enclosure: Executed Amendment #1

cc: Greg Lyman

File/NCAC-CS-211.D Amendment #1

**City and County of San Francisco
San Francisco Public Utilities Commission
Contract Administration Bureau
525 Golden Gate Ave, 8th Floor
San Francisco, CA 94102**

**First Amendment
Between the City and County of San Francisco and
URS Corporation Americas
Specialized and Technical Services, Natural Resources Division, Water Enterprise
(CS-211.D)**

THIS AMENDMENT (this "Amendment") is made as of **August 2, 2016**, in San Francisco, California, by and between **URS Corporation Americas** ("Contractor"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through the San Francisco Public Utilities Commission.

RECITALS

WHEREAS, City and Contractor have entered into the Agreement (as defined below);
and

WHEREAS, City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to increase the contract amount, and update standard contractual clauses; and

WHEREAS, the Civil Service Commission approved Contract number **4009-12/13** on **May 21, 2013**; and

WHEREAS, Approval for this Amendment was obtained when the San Francisco Public Utilities Commission approved Resolution number **16-0149** on **July 26, 2016** ;

NOW, THEREFORE, Contractor and the City agree as follows:

1. Definitions. The following definitions shall apply to this Amendment:

1a. Agreement. The term "Agreement" shall mean the Agreement dated April 10, 2013 between Contractor and City.

1b. Contract Monitoring Division. Effective July 28, 2012, with the exception of Sections 14B.9(D) and 14B.17(F), all of the duties and functions of the Human Rights Commission under Chapter 14B of the Administrative Code (LBE Ordinance) were transferred to the City Administrator, Contract Monitoring Division ("CMD"). Wherever "Human Rights Commission" or "HRC" appears in the Agreement in reference to Chapter 14B of the Administrative Code or its implementing Rules and Regulations, it shall be construed to mean "Contract Monitoring Division" or "CMD" respectively.

1c. Other Terms. Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

2. Modifications to the Agreement. The Agreement is hereby modified as follows:

2a. Section 5. Section 5 "Compensation" of the Agreement currently reads as follows:

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 performed as of the last day of the immediately preceding month. In no event shall the amount of this Agreement exceed **Five Million Dollars (\$5,000,000)**. The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. 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 the 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.

Such section is hereby amended in its entirety to read as follows:

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 performed as of the last day of the immediately preceding month. In no event shall the amount of this Agreement exceed **Six Million Four Hundred Ninety Thousand Dollars (\$6,490,000)**. The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. 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 the 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 CMD Progress Payment Form. If Progress Payment Form is not submitted with Contractor's invoice, the Controller will notify the department, the Director of CMD and Contractor of the omission. If Contractor's failure to provide CMD 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 CMD Progress Payment Form is provided. Following City's payment of an invoice, Contractor has ten days to file an affidavit using CMD Payment Affidavit verifying that all subcontractors have been paid and specifying the amount.

2b. Insurance. Section 15 is hereby replaced in its entirety to read as follows:

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 \$2,000,000 each occurrence and \$4,000,000 general aggregate 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 \$1,000,000 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 \$2,000,000 each claim with respect to negligent acts, errors or omissions in connection with the Services.

5) Commercial Marine Liability insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired marine coverage, as applicable.

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, its 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. All policies shall be endorsed to provide thirty (30) days' advance written notice to the City of cancellation for any reason, intended non-renewal, or reduction in coverages. Notices shall be sent to the City address set forth in the Section entitled "Notices to the Parties."

d. 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.

e. 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.

f. Before commencing any Services, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Approval of the insurance by City shall not relieve or decrease Contractor's liability hereunder.

g. The Workers' Compensation policy(ies) shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

h. If Contractor will use any subcontractor(s) to provide Services, Contractor shall require the subcontractor(s) to provide all necessary insurance and to name the City and County of San Francisco, its officers, agents and employees and the Contractor as additional insureds.

i. Should any of the required insurance be provided under a form of coverage that includes a general aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregate limit shall be double the occurrence or claims limits specified above.

2c. Replacing "Earned Income Credit (EIC) Forms" Section with "Consideration of Criminal History in Hiring and Employment Decisions" Section. Section 32 "Earned Income Credit (EIC) Forms" is hereby replaced in its entirety to read as follows:

32. Consideration of Criminal History in Hiring and Employment Decisions.

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

Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

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

c. Contractor shall incorporate by reference in all subcontracts the provisions of Chapter 12T, 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.

d. Contractor or Subcontractor shall not inquire about, require disclosure of, or if such information is received, base an Adverse Action on an applicant's or potential applicant for employment's, or employee's: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

e. Contractor or Subcontractor shall not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in subsection 32(d), above. Contractor or Subcontractor shall not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

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

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

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

3. Effective Date. Each of the modifications set forth in Section 2 shall be effective on and after the date of this Amendment.

4. Legal Effect. Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

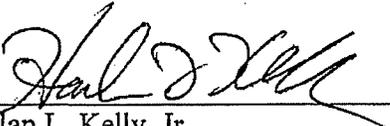
///
///

IN WITNESS WHEREOF, Contractor and City have executed this Amendment as of the date first referenced above.

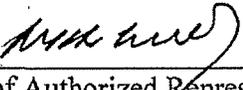
CITY

CONTRACTOR

URS Corporation Americas



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



Signature of Authorized Representative

NOEL WONG

Name of Authorized Representative

VICE PRESIDENT

Title

Approved as to Form:

Dennis J. Herrera
City Attorney

City vendor number: 19103

By: 

Randy Parent
Deputy City Attorney



San Francisco
Water Power Sewer

Services of the San Francisco Public Utilities Commission

Contract Administration Bureau
525 Golden Gate, 8th Floor
San Francisco, CA 94102
T 415.551.4603
F 415.554.3225

September 18, 2013

Ben Swann
CDM Smith/ATS, JV
201 Mission Street, Suite 1450
San Francisco, CA 94105
Email: swannbm@cdmsmith.com

- RE: 1) Notice of Contract Award - Specialized and Technical Services, Natural Resources Division, Water Enterprise (CS-211.A)
2) Transmittal - Executed Agreement between the City and County of San Francisco Public Utilities Commission and CDM Smith/ATS, JV

Dear Mr. Swann:

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

BLANKET PURCHASE ORDER NO: BPUC13000106
- *Work may not be charged against this blanket purchase order number*

SCOPE: To provide specialized and technical services related to watershed management and monitoring for specific projects, including watershed resources monitoring and management services, specialized hydrologic services, data management and analytical services, watershed planning and regulatory compliance support, project management, and additional related services.

EFFECTIVE DATE: September 9, 2013 to June 15, 2027

CONTRACT TO DATE: Total value of contract not to exceed \$5,000,000.00

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 Rosiana Angel at (415) 554-1549.

Edwin M. Lee
Mayor

Art Torres
President

Vinca Courtney
Vice President

Ann Moller Caen
Commissioner

Francesca Viotor
Commissioner

Anson Moran
Commissioner

Harlan L. Kelly, Jr.
General Manager



Enclosure: Executed Agreement

cc: Greg Lyman

File/NCA-CS-211.A

**City and County of San Francisco
San Francisco Public Utilities Commission
525 Golden Gate Avenue, 8th Floor
San Francisco, California 94102**

**Agreement between the City and County of San Francisco and
CDM Smith/ATS, a Joint Venture**

**CS-211A
Specialized and Technical Services, Natural
Resources Division, Water Enterprise**

This Agreement is made this **10th** day of **April, 2013**, in the City and County of San Francisco, State of California, by and between: **CDM Smith/ATS, a Joint Venture, 201 Mission Street, Suite 1450, San Francisco, CA 94105**, 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") requires the assistance of consulting firms to perform specialized management and monitoring technical services for the Water Enterprise; and

WHEREAS, a Request for Proposal ("RFP") was issued on February 7, 2013, and City selected Contractor as the successful proposer pursuant to the RFP; and

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

WHEREAS, approval for this Agreement was obtained when the Civil Service Commission approved Contract number 4009-12/13 on **July 16, 2012**; and

WHEREAS, approval for this Agreement was obtained from the San Francisco Public Utilities Commission Resolution Number **13-0053** on **April 9th, 2013**; and

WHEREAS, approval for this Agreement was obtained from the San Francisco Board of Supervisors by Resolution Number **188-13** on **June 11, 2013**;

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 from **June 15, 2013 to June 15, 2027.**
- 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 performed as of the last day of the immediately preceding month. In no event shall the amount of this Agreement exceed **Five Million Dollars (\$5,000,000)**. The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. 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 the San Francisco Public Utilities Commission as being in accordance with this Agreement. If Contractor fails to provide Services in accordance with Contractor's obligations under this Agreement, the City may, in addition to any other remedies allowed by law and/or this Agreement, withhold any and all payments due Contractor until such failure is cured. In no event shall Contractor stop work as a result of the City's withholding of payments.

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.** 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. 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. 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. 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." Refer to Appendix B for additional invoice requirements.

8. Submitting False Claims; Remedies. Pursuant to Article V of Chapter 6 of the San Francisco Administrative Code, any contractor, subcontractor, supplier, consultant or subconsultant who submits a false claim may be subject to monetary penalties, investigation and prosecution and may be declared an irresponsible bidder or an unqualified consultant and debarred as set forth in that Article. The text of Article V of Chapter 6, along with the entire San Francisco Administrative Code is available on the web at http://www.amlegal.com/nxt/gateway.dll?f=templates&fn=default.htm&vid=amlegal:sanfrancisco_ca. A contractor, subcontractor, supplier, consultant or subconsultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor, supplier, consultant or subconsultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

9. Left blank by agreement of the parties. (Disallowance)

10. Taxes. 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. 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 at no cost to the City.

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.

Without in any way limiting Proposer's liability pursuant to the "Indemnification" section of the Agreement (Appendix C, Professional Services Agreement (P-500)), Proposer(s) will be required to maintain in force, during the full term of any Agreement, insurance in the following amounts and coverage:

1. Worker's Compensation Insurance, in statutory amounts, with Employer's Liability limits not less than is \$1,000,000 each accident, injury or illness; and
2. Commercial General Liability Insurance with limits not less than \$2,000,000 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 \$1,000,000 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 Proposer's profession, with limits not less than \$2,000,000 each claim with respect to negligent acts, errors or omissions in connection with professional services to be provided under the Agreement.
5. Commercial Marine Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired marine coverage, as applicable.

Commercial General Liability and Commercial Automobile and Marine 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; and
2. That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of the Agreement, and that insurance applies separately to each insured against who claim is made or suit is brought.

Regarding Workers' Compensation, Proposer hereby agrees to waive subrogation which any insurer of Proposer may acquire from Proposer by virtue of the payment of any loss. Proposer agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Proposer, its employees, agents and subcontractors.

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

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

Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs 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 the Agreement effective on the date of such lapse of insurance.

Before commencing any operations under the Agreement, Proposer shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of the Agreement.

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

If a subcontractor will be used to complete any portion of the agreement, the Proposer 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 Proposer listed as additional insureds.

16. Indemnification.

1. For design professional services performed under this Agreement, if any, the following indemnity and defense obligations shall apply:

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

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

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. Infringement of patent rights, copyrights, or other proprietary rights in the performance of this Agreement, if not the basis for indemnification under the law, shall nevertheless be considered a material breach of contract.

2. For all other services (not design professional) performed under this Agreement, the following indemnity and defense obligations shall apply:

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 be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

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. Left Blank by Agreement of the Parties (Liquidated Damages).

20. Default; Remedies. 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. Submitting false claims | 37. Drug-free workplace policy |
| 10. Taxes | 53. Compliance with laws |
| 15. Insurance | 55. Supervision of minors |
| 24. Proprietary or confidential information of City | 57. Protection of private information |
| 30. Assignment | 58. Graffiti removal |

(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.

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. 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 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. This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement:

8. Submitting false claims
9. Disallowance

10. Taxes

- | | |
|---|---|
| 11. Payment does not imply acceptance of work | 26. Ownership of Results |
| 13. Responsibility for equipment | 27. Works for Hire |
| 14. Independent Contractor; Payment of Taxes and Other Expenses | 28. Audit and Inspection of Records |
| 15. Insurance | 48. Modification of Agreement. |
| 16. Indemnification | 49. Administrative Remedy for Agreement Interpretation. |
| 17. Incidental and Consequential Damages | 50. Agreement Made in California; Venue |
| 18. Liability of City | 51. Construction |
| 24. Proprietary or confidential information of City | 52. Entire Agreement |
| | 56. Severability |
| | 57. Protection of private information |

Subject to the immediately preceding sentence, 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, or by e-mail, and shall be addressed as follows:

To City: Greg Lyman
San Francisco Public Utilities Commission
525 Golden Gate Avenue
San Francisco, CA 94103
(tel.) (415) 554-1601
email: glyman@sfwater.org

To Contractor: CDM Smith/ATS, a Joint Venture
Attn.: Ben Swann
201 Mission Street, Suite 1450
San Francisco, CA 94105
(tel.) (415) 495-6201

(fax) (415) 495-5305
email: swannbm@cdmsmith.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. Not Used.

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 subcontracting participation goal for this contract is 13 %. 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 agrees 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. Contractor further agrees to provide to City the names of each person, entity or committee described above.

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 maybe 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. Disputes; Government Code Claim Requirements.

a. **Negotiation; Alternative Dispute Resolution.** The parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement by negotiation. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of the City. If agreed by both parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. Neither party will be entitled to legal fees or costs for matters resolved under this section.

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

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, "Modification of Agreement."

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. Left blank by agreement of the parties. (Supervision of minors)

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. Not Used.

59. Food Service Waste Reduction Requirements. 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.

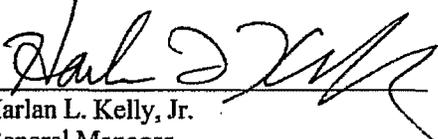
60. Left blank by agreement of the parties. (Slavery era disclosure)

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

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

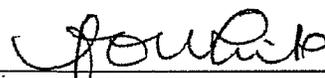
CITY

Approved:


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

Approved as to Form:

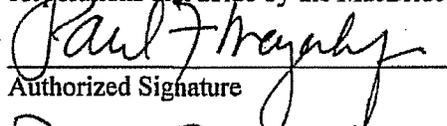
Dennis J. Herrera
City Attorney

By 
John G. White
Deputy City Attorney

CONTRACTOR

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.

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.


Authorized Signature
Paul F. Meyerhofer
Printed Name

Senior Vice President
Title

CDM Smith + A-T-S JV
Company Name

89119
City Vendor Number
201 Mission Street Suite 1450
San Francisco, CA 94105
Address

46-2509218
Federal Employer ID Number

Appendices

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

Appendix A
Services to be provided by Contractor

Contractor agrees to perform the services described below in accordance with the terms and conditions of this Agreement, implementing task orders, the RFP, and Contractor's proposal dated **March 8, 2013**. The RFP and Contractor's proposal are incorporated by reference as though fully set forth herein. Should there be a conflict of terms or conditions, this Agreement and its implementing task orders shall control over the RFP and the Contractor's proposal.

1. General Description of Services

The primary role of the selected Contractor will be to provide professional and technical services related to watershed management and monitoring for specific projects including, but not limited to, the general service categories summarized in Section III.3 below. The selected Contractor(s) will work under the direction of the Contract Manager in the Water Enterprise. Each task order will have a SFPUC Task Order Manager who will work with the Contractor to negotiate the project scope, cost and schedule.

2. Task Orders

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

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

These following tasks provide general guidance to the Contractor as to the anticipated scope of work which the SFPUC reserves the right to modify or delete:

A. Watershed Resources Monitoring and Management Services:

- i. **Ecology** – ecological surveys, studies, and assessments; biological community monitoring, identification, evaluation and mapping; wetland determinations and delineations; restoration ecology; genetic and taxonomic studies; studies of ecological processes and evaluation of ecological condition; ecological modeling; invasive plant mapping and control; site management evaluation and assessment; remedial erosion repairs oversight; integrated pest and invasive species (plant, wildlife, insect, or pathogen) management planning, monitoring, survey, and control oversight; soil analyses and mapping; quality control monitoring during and after maintenance and rehabilitation

of habitat restoration sites; wildlife monitoring including monitoring to minimize and avoid impacts during maintenance and monitoring to evaluate response to restoration or watershed management activities;

- ii. **Botany** – botanical surveys, including surveys for special status plants and butterfly host plants; special-status plant (and butterfly host plant) monitoring and mapping; rangeland assessments; other vegetation management planning, and monitoring for remedial planting and seeding; seed or propagate mapping and collection; grazing management and monitoring; development of nursery guidelines and nursery inspections; evaluations as to whether restoration projects are meeting pre-determined vegetation-related success criteria;
- iii. **Wildlife Surveys and Monitoring** – wildlife surveys, including those for special status species that conform to CDFG and USFWS approved protocols; trapping, tagging, tracking and monitoring studies; wildlife camera studies;
- iv. **Fisheries Management** – evaluation of in-stream flows; anadromous fish habitat requirements and assessments; stream sediment characterizations; riparian zone quality assessments; rapid biological assessments (in particular benthic macro-invertebrate assessments); PIT and radio tagging and tracking studies; in-stream and fish passage camera, PIT antennae array, and other remote sensing system design, maintenance, operations, and data analysis; fish parasite and pathology studies; fish bioenergetics and predatory fish gut content analysis; migratory fish trapping studies; genetic and aging studies using otolith, scale, and tissue; reservoir fish population characterization studies;
- v. **Land Acquisition Services** – Conservation easement and land acquisition document development, Phase I environmental assessment, title reports, land surveys, baseline survey reports, road assessments, PAR analysis, conservation easement endowment planning, conservation easement monitoring, legal descriptions, appraisals, public outreach, property management plans (i.e., grazing management plan, resource management plan, and routine maintenance plan).

B. Specialized Hydrologic Services:

Geologic, hydrogeologic surveys, analysis and studies, installations (piezometers, cattle water supply wells, flow meters, data loggers) ; ; topographic and bathymetric survey; limnology studies, creek monitoring and geomorphic surveys and studies; hydrologic and open channel (i.e., stream, river) hydraulic modeling and model interpretation; stream and river flow measurements; groundwater and surface water sampling and analysis; erosion monitoring and evaluation; pond, wetland, creek, and riparian restoration and habitat site remediation;

C. Data Management and Analytical Services:

Perform and interpret aerial surveys; support management of data, perform statistical analyses and interpret results, support means of tracking permit compliance, and assist with ecological data storage and analysis.

D. Watershed Planning and Regulatory Compliance Support:

- i. **Reports** - technical editing; graphics; report preparation and reproduction; scientific peer review of papers, reports and planning documents;
- ii. **Resource Agency Permits** - permit application and amendment preparation such as those required for routine maintenance and management activities;
- iii. **Resource Agency Permit compliance** - assistance for federal, state and local environmental regulations including but not limited to U.S. Army Corps of Engineers Section 404, FESA, NEPA, CEQA, California Fish & Game Code Section 1602, CDF&G CESA, Clean Water Act (including National Pollutant Discharge Elimination

- System and Storm Water Pollution Prevention Plans) and Migratory Bird Act requirements;
- iv. **Education** - development and implementation of environmental education programs including interpretive master plans, and interpretive signage and trails and displays, and outreach programs; training on federal, state, and local environmental regulations and regulatory changes;
 - v. **Planning** - native landscape design, trail planning and design, fisheries or wildlife management planning; grazing and range management planning; watershed management and development planning; land acquisition and protections planning; conservation easement program planning; environmental oversight during maintenance planning, training and implementation; operational compliance planning, training, and implementation; development of best land management practices; and development of design documents for repair of natural habitat and modifications of existing habitat improvements;
 - vi. **Specialized Resource Analysis** - Provide specialized environmental resource expertise services, research, reports and recommendations associated with routine maintenance management activities including water quality, air quality, health risk assessments for air emissions, climatology, paleontology, greenhouse gases, noise, hazardous materials, natural resources risk assessment and risk management, pre-historic and historic archaeology, and historic architecture. Specialized resource analysis work that may be needed as part of a CEQA document or for resource agency permits that may be performed by consultants under this contract, may be managed by BEM or NRLMD staff, as determined by the type and size of the project.
 - vii. **Watershed Resource Policy Development** - Gather and analyze data, prepare background studies and reports, and develop policies and plans related to watershed resources identified in the WMP including (but not limited to) a pesticide management plan and vegetation management plan.

E. Project Management:

Provide coordination for keeping SFPUC informed of progress, technical issues, and planned activities and events. Prepare scopes of work, budgets and schedules for all task proposals. Prepare for and attend coordination bi-weekly progress meetings between SFPUC staff and senior project staff from the Proposer. Submit monthly progress reports, with highlights of work achievements during the past month, work planned and important milestones for the upcoming month and identify any issues or scope changes that may affect overall cost and/or schedule of tasks. Maintain project files including all reports, correspondence, data, observations, and other documents pertaining to tasks. Coordinate review comments provided by others on reports, memoranda, project documents and other work products and document and disseminate responses to review comments.

F. Additional Services: In addition to services identified above, the contractor(s) may also be asked to provide:

- i. Presentations to the SFPUC Staff and/or Commission, the San Francisco Board of Supervisors, SFPUC retail and/or wholesale customers, SFPUC stakeholders, and neighborhood or community meetings;
- ii. Professional consultations and expert testimonies;
- iii. Reservoir management services including permitting; algae control analyses; reservoir sediment contamination monitoring; aquatic toxicity testing; water quality analytical services; water quality data management; source and discharge water assessments; sample collection and laboratory support.
- iv. Field inspections and surveys at project sites; and

- v. Specialized statistical analyses and interpretation for compliance monitoring of shoreline bacteria (including running geometric means), sediment grain size (including mean phi, skewness, and kurtosis), benthic infauna and fisheries communities (including diversity measures and reference envelope analysis), and recreational use data (including Bayesian Belief Network analysis).

G: Community Benefits Commitments

Following issuance of the Notice-to-Proceed (NTP) for the first task to be performed by CDM Smith/A-T-S JV under this Agreement, CDM Smith/A-T-S JV commits to providing the Community Benefits Commitments detailed below during the 14-year term of the Agreement. CDM Smith/A-T-S JV's commitments shall be funded independently by CDM Smith/A-T-S JV and shall not be tied to or dependent upon SFPUC funds or sources of funding, receivables from SFPUC, or retention associated with this Project. Because this is an As-Needed contract, CDM Smith/A-T-S JV acknowledges that there is no guarantee that the entire contract not-to-exceed amount set forth in section I will be funded. Instead, work is issued on a task order basis as it is needed by the SFPUC, and Contractor is not entitled to funding beyond any issued-task order. The provision of Community Benefits Commitments by CDM Smith/A-T-S JV does not entitle CDM Smith/A-T-S JV to additional task orders or additional work beyond issued-task orders. In the event that the contract value is not fully expended, is delayed or is otherwise amended, the parties hereby agree to meet and discuss the impact to the corresponding Community Benefit Commitments at least annually. The representations, warranties and other terms contained in this Community Benefit Commitments section have been designed by CDM Smith/A-T-S JV as the basis for a Community Benefit Plan, but are for the sole benefit of the parties hereto and shall not be construed as conferring any rights on any other persons or entities.

As stated in the Request for Proposals

"Although this Task G is a deliverable task, it is a zero-dollar task. Zero hours should be allotted in your Overhead and Profit Schedule (OPS) for this task. No hours or dollars should be allotted or included in Proposer's costs for this Project in order to perform or deliver your voluntarily proposed Community Benefits commitments. If the Proposer commits any funds to delivering the Community Benefits commitments it proposes, all such funds must be independent of SFPUC funding or any dollars associated with this Project. If the Proposer commits to contributing any funds to performing or delivering its commitments related to this task, such funds may not be dependent in any way upon receipt of SFPUC funding, including not being dependent upon release of retention, etc."

Community Benefits Plan and Timeline

CDM Smith/A-T-S JV shall develop a Community Benefits Plan and Timeline within three months of issuance of NTP. The Community Benefits Plan and Timeline will provide details regarding volunteer hours, a schedule, and timelines related to the Community Benefits Commitments described below. CDM Smith/A-T-S JV will develop the Community Benefits Plan and Timeline with the necessary flexibility relating to timing, partners, strategic delivery, scale, and performance of Community Benefits Commitments to best achieve positive community impacts. Once the initial Community Benefits Plan and Timeline are developed, SFPUC and CDM Smith/A-T-S JV shall meet at least once a year during the term of the Agreement to discuss the work plan and associated timelines, and make any adjustments or updates to the Plan as necessary.

Community Benefits Commitments

CDM Smith/A-T-S JV has initially proposed the following Community Benefits. On contract award, CDM-Smith/A-T-S JV shall develop a work plan, schedule, and timeline for fulfilling these efforts. The community benefits program will utilize staff as volunteers in the community.

Description of Community Benefit/ Initiative	# of Volunteer Hours	Volunteer Contributions (\$)	Financial Contribution (\$)	In-Kind Contributions (\$)	Total Contribution (\$)*
Workforce Development	166	\$15,000			\$15,000 annually
Education	140	\$5,000			\$5,000 annually
Environment	180	\$5,000			\$5,000 annually
Housing	320	\$15,000			\$15,000 annually
Total Value of Commitments (annually):	666	\$40,000 annually			\$40,000 annually

*Volunteer contribution + Direct Financial Contribution + In-Kind Contribution = Total Contribution

CDM Smith/A-T-S JV commits to perform 666 hours of volunteer service valued at \$40,000 annually in community benefits commitments over the life of the contract. On an annual basis, the parties will meet to discuss the Community Benefits Commitments and the status of the contract including, but not limited to, its fully expended value, delays, and amendments. The Community Benefits Plan will be updated annually as needed following review by the parties.

Workforce Development

CDM Smith/A-T-S JV shall support participants in Year Up, a program that seeks to close the opportunity divide by providing urban young adults with the skills, experience, and support that will empower them to reach their potential through professional careers and high education. The CDM Smith/A-T-S JV will support Year Up participants from San Francisco and those within SFPUC watershed region in two ways:

- Provide tutoring to two interns: 1.5 hours/week X 32 weeks X 2 students = 96 hours
- Mentoring two interns (140 hours)
- Attend the Year Up graduation and recognize the students who were selected as part of this community benefits commitment (54 hours plus graduation gift)

Education

CDM Smith/A-T-S JV shall annually select five (5) high school students through the San Francisco State University (SFSU) Summer Institute's Director, Dr. Nilgun Ozer. She will use her connections with the high school teachers at the institute to confirm student participation. Five (5) SFSU Science/Engineering senior-level students, working on their senior projects, will engage and mentor the five high school students. The high school students will work with the SFSU students on the

individual senior projects facilitated by CDM Smith/A-T-S JV. CDM Smith/A-T-S JV will require weekly and/or monthly reports and an end of year presentation from the high school students on the results of their learning. Individual exit interviews will be conducted with both the high school students and the SFSU students to evaluate the program and solicit input. An end of project test will be designed to evaluate the outcome and whether it meets with the initial goals. The effectiveness of the program will be measured by tracking the students for the life of the CS-211 project. The anticipated time commitment is 180 hours per year.

Environment

In San Francisco or Alameda County, the CDM Smith/A-T-S JV will mobilize 20 volunteers for two (2) clean up days annually to address the Bay shoreline or creeks. The anticipated time commitment is 320 hours per year.

Housing

CDM Smith/A-T-S JV shall assist Habitat-for-Humanity builds by mobilizing up to 20 volunteers for two (2) Saturday builds in SFPUC watershed areas. The Habitat-for-Humanity project may be limited to less than 20 workers for safety and space conditions. The anticipated time commitment 320 hours per year.

CDM Smith/A-T-S JV's Community Benefits Commitments will be documented as part of the project development described in Task G above and executed as a major task for the Project.

Community Benefits Work Approach, Project Team/Organization, and Accountability

CDM Smith/A-T-S JV Coordinators, Dr. Elahe Enssani and Phillippe Daniel, serve as the executive in charge of delivering the Community Benefits Commitments. CDM Smith/A-T-S JV Coordinators shall ensure that the Community Benefits Commitments herein are delivered to the communities that they are intended to benefit in a transparent and accountable manner. CDM Smith/A-T-S JV Coordinators shall organize, plan, track, measure, and report on Contractor's Community Benefits Commitments. CDM Smith/A-T-S JV Coordinators shall also coordinate the senior management of Contractor's subconsultants to ensure the entire team participates in providing benefits to the San Francisco community.

CDM Smith/A-T-S JV Coordinators shall submit a stand-alone annual report on progress in fulfilling CDM Smith/A-T-S JV's Community Benefits Commitments, detailing factors such as the total number of dollars and hours contributed to each of the proposed tasks and organizations over the year. CDM Smith/A-T-S JV shall also provide independently verifiable documentation (such as signed log in sheets, receipts, etc.) that the SFPUC can use to independently and easily verify that the volunteer hours contributed by CDM Smith/A-T-S JV as part of its Community Benefits Commitments were delivered to and actually reached the communities they were intended to benefit.

CDM Smith/A-T-S JV shall ensure that quarterly reports are prepared and submitted to SFPUC on the last business day of the month following the close of each quarter. The reports shall describe CDM Smith/A-T-S JV's community benefits efforts under the program both in the prior quarter and contract to date. CDM Smith/A-T-S JV's quarterly reports shall include the name and description of all projects commenced, underway, and completed; the hours and hour values of all activities and elements of each project; the progress to date of each project; and the outcomes of projects that are underway. CDM Smith/A-T-S JV shall submit such documentation to substantiate that the

Community Benefits Commitments were in fact delivered to the communities they were intended to benefit within the three months immediately following delivery of such Community Benefits Commitments.

CDM Smith/A-T-S JV's Community Benefits Commitments shall be performed prospectively during the term of the Agreement, after the award of the Agreement and following issuance of NTP on the first task assigned to CDM Smith/A-T-S JV under this Agreement. Commitments performed as part of previous contracts or prior to CDM Smith/A-T-S JV being awarded the Agreement cannot be used as part of CDM Smith/A-T-S JV's Community Benefits Commitments for this Project.

CDM Smith/A-T-S JV shall provide all of the Commitments, consistent with all of the terms of Contractor's Community Benefits Plan and Timeline and the Community Benefits Commitments as described above.

3. Performance Evaluation

Performance evaluations support the SFPUC's objective of continuously improving the quality of Contractor services. The SFPUC will 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. When 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.

SFPUC's Infrastructure Division Procedures Manual, Volume 4, Program and Project Management, Section 3: Contract Management, Procedure: PM 3.16, Consultant Services Performance Evaluation requires that a contract manager evaluate a consultant's performance on engineering, environmental and construction management projects and complete the Consultant Services Performance Evaluation Form (CSPE) during the contract term. A final end of year CSPE will be kept on file with the SFPUC for three years after contract completion. Completed end-of-contract CSPEs, including any consultant responses, will be forwarded to the evaluation panel for future RFPs, where a proposer identifies the evaluated project as a qualifying project reference under the RFP. If a proposer responding to a future RFP identifies an ongoing SFPUC project as a qualifying project reference (and the ongoing project complies with RFP reference requirements), SFPUC staff will forward the most recent annual CSPE for the qualifying project, if any, to the RFP evaluation panel.

4. Reports

Contractor shall submit written reports as requested by the SFPUC. Format for the content of such reports shall be determined by the Contract Manager. 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.

5. Department Liaison

In performing the services provided for in this Agreement, Contractor's liaison with the SFPUC will be: Greg Lyman.

Appendix B Calculation of Charges

As part of Contractor's proposal dated March 8, 2013, Contractor submitted proposed billing rates, attached hereto as Appendix B-1 Fee Schedule Form, for the requested tasks in the Overhead and Profit Schedule, incorporated herein by reference.

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

1. Billing Rates

Contractor's billing rates and each and every staff classification as stated in Appendix B-1 will be the billing rates for the listed individuals. The billing rate may not exceed the lowest rate charged to any other governmental entity except the City and County of San Francisco. Billing rates may be adjusted annually on the anniversary of the effective start date as indicated in the original Notice of Contract Award letter. The first adjustment may be made no earlier than the first anniversary of the effective start date. The amount of the adjustment is limited to a maximum of the CPI annual percentage change increase (San Francisco Bay Area for Urban Wage Earners and Clerical Workers) for the previous calendar year. No increase, including the annual CPI adjustment, is allowed to billing rates exceeding \$220 per hour, unless Contract Manager and Bureau Manager authorize an increase to the rate in writing.

2. Personnel Changes:

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

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

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

3. Effective Overhead and Profit Rate

The Effective Overhead and Profit Rate (EOPR) for CS-211 is 2.58. The EOPR OR Individual Firm Overhead and Profit Rate will apply to the billing rate of all individuals not listed in Appendix B-1. The EOPR will also apply to all amendments to the Agreement. If a new subconsultant is added during the duration of the Agreement, the new individual firm multiplier can be no more than the EOPR.

4. Other Direct Costs (ODC)

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

The following items will be eligible for reimbursement as ODCs:

- Out-of-town travel (“out-of-town” shall mean outside the nine Bay Area counties: San Francisco, Alameda, Marin, Santa Clara, Sonoma, Contra Costa, Napa, San Mateo, Solano);
- Out- of town meal, travel and lodging expenses for project-related business trips, including, but not limited to:
 - Rental vehicle: traveler must select the most economical contractor and type of vehicle available and acquire any commercial rate or government discount available when the vehicle is rented;
 - Personal vehicle use: Contractor will be paid per mile as established by the United State Internal Revenue Service and only for that portion of travel that is outside the nine Bay Area counties and non-routine. Should the travel begin or end on a normal workday, the Contractor shall subtract commuting mileage from total mileage to calculate reimbursable mileage. The Contractor shall submit to the City an approved mileage log with its monthly invoices;
 - Meal and lodging expenses shall be reasonable and actual but limited to Federal government per diem rates;
- Specialty printing (“specialty” as used herein shall mean large volume printing and color printing and requires prior written approval by SFPUC project staff and documentation of the written approval by the SFPUC must be included with the invoice);
- Specialty computer hardware and software (only with prior written approval by SFPUC project staff and documentation of the written approval by the SFPUC must be included with the invoice – all hardware and software will be the property of the City);
- Courier services that are project related and originated from the project site offices;
- Permit fees;
- Expedited courier services when requested by SFPUC staff; and
- Safety equipment.

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

- All other travel expenses such as parking, bridge tolls, public transit, vehicle mileage within the nine Bay Area Counties, travel from Contractor’s home office to SFPUC facilities;
- Contractor personnel relocation costs;
- Any home or regional office labor charges or pass-throughs, including but not limited to, administrative and clerical personnel time;
- Personnel relocation and temporary assignment expenses;
- Entertainment expenses;
- Cell phones;
- Home office expenses;

- Telephone calls and faxes originating in the firm's home office, standard computer use charges, computer hardware or software computer hardware or software (other than the specialty hardware or software mentioned above), communication devices, and electronic equipment;
- Meal expenses which are not related to project-related business trips, including refreshments and working lunches with SFPUC staff;
- Equipment to be used by SFPUC staff; and
- Postage and courier services which are not requested by SFPUC staff.

5. Subcontractor make-up and documentation

Second-tier and pass-through subcontracting is prohibited. Additional subcontractors may be added to the contractor team after obtaining pre-authorization by the SFPUC Contract Manager, Bureau/Division Manager and the Contract Monitoring Division. Note that subcontractor administration markup is limited to actual cost not to exceed 5%.

6. Retention

Five percent (5%) of each invoice payment will be withheld for each task order. When the work for the task order or defined critical milestones has been completed to the satisfaction of the SFPUC Regional Contract Manager and all work products have been received and approved by the SFPUC Regional Contract Manager, the Contractor may request that the retention be released. In lieu of money retention, an irrevocable letter of credit acceptable to the City will be accepted.

7. Invoice Requirements

The SFPUC is automating its contracting and invoice payment processes with online software systems (SOLIS). The following processes are being automated: Contract Certification, Insurance Compliance, Task Order Certification, Timekeeping, Invoice Approval, and Invoice Payment. As part of its contracting obligations, the Contractor is required to 1) become an authorized user of these systems, 2) attend user training for these systems; and 3) utilize these systems for the purposes for which they are intended. Contractor shall not bill the SFPUC to use these systems. Contractor shall not charge SFPUC to send appropriate personnel to user training.

Contractor shall follow the invoicing and supporting documentation instructions as detailed in the SOLIS training or otherwise prescribed by the SFPUC.

**Appendix B-1
Fee Schedule**

Consultant Name	Staff Classification	Name of Proposed Staff Person	Actual Hourly Rate (\$/hour)	Billing Rate (\$/hour)	Firm's Overhead and Profit Rate		
CDM Smith Inc.	Planner - PLGN7	Andria Loutsch	\$52.97	\$166.27	3.12		
	Environmental Engineer - ENEV3	Asami Tanimoto	\$39.75	\$124.02			
	Scientist - SCEV7	Barb Wells	\$58.07	\$181.18			
	Geologist - SCGE9	Ben Swann	\$87.37	\$220.00			
	Water Resources Engineer -	Bill Fernandez	\$49.16	\$153.38			
	Water Resources Engineer -	Brian Heywood	\$47.78	\$149.07			
	Water Resources Engineer -	Carrie Buckman	\$60.20	\$187.82			
	Scientist - SCEV6	Gwen Pelletier	\$48.48	\$151.28			
	Scientist - SCEV5	Jennifer Jones	\$40.73	\$127.08			
	Environmental Engineer - ENEV6	Kassandra Tzou	\$59.78	\$188.51			
	Planner - PLGN7	Kate Stenberg	\$56.85	\$177.37			
	Environmental Engineer - ENEV7	Pawan Sharma	\$59.45	\$185.48			
	Environmental Engineer - ENEV9	Phillippe Daniel	\$87.54	\$220.00			
	Scientist - SCEV9	Richard Meyerhoff	\$73.94	\$220.00			
	Geotechnical Engineer - ENGT9	Rick Chappel	\$80.00	\$220.00			
	Water Resources Engineer -	Russ Vadenals	\$35.30	\$110.14			
	Water Resources Engineer - ENWR7	Stefan Schuster	\$62.42	\$194.75			
	Scientist - SCEV6	Steve Wolosoff	\$49.42	\$154.18			
	Scientist - SCEV9	Tom Quasebarth	\$72.65	\$220.00			
	Scientist - SCEV8	Tony Gandusa	\$83.28	\$197.48			
	Planner - PLGN5	Wendy Katagi	\$72.30	\$220.00			
	Environmental Engineer - ENVE8	Servando Molina	\$77.08	\$220.00			
	Environmental Engineer - ENVE5	Sandie Dudley	\$52.49	\$183.77			
	Environmental Engineer - ENVE4	Mandy Lai	\$41.69	\$130.07			
	Scientist - SCGE4	Ahna Brossy	\$39.11	\$122.02			
	Scientist - SCGE2	Ryan Wood	\$28.23	\$91.20			
	Drafter - DNDF6	Kego Talbot	\$39.27	\$122.52			
	Lead Graphic Artist - CMGD8	Juan Tijero	\$43.37	\$135.31			
	Applied Technology & Science (ATS)	Wildlife Biologist/Biological Monitor/Special Handling Permit	Brent Helm	\$90.00		\$180.00	2.00
		Plant/Wildlife Biologist/Biological Monitor/Special Handling Permit	Daniel Edelstein	\$56.89		\$113.38	
Environmental Compliance Manager		Dorinda Himes	\$83.29	\$126.58			
President		Elahe Enssani	\$90.00	\$180.00			
Archaeologist/Cultural Resources Specialist		Henry Davis	\$85.00	\$130.00			
Paleontologist Paleontology Monitor		James Allen	\$57.00	\$114.00			
Paleontological Monitor/Geologist		James Walker	\$57.00	\$114.00			
Wildlife Biologist/Biological Monitor/Special Handling Permit		Joan Humphrey	\$58.59	\$113.18			
GIS Specialist/Database Management		Kristen Lawrence	\$50.00	\$100.00			
Plant/Wildlife/Permitting/Environmental Inspector/Biological Monitor/CDFG Permit to Collect		Mark Fogiet	\$88.89	\$137.78			
Plant/Wildlife Biologist/Biological Monitor/Special Handling Permit		Michael Bumgardner	\$90.00	\$180.00			
Geologist/Hydrologist		Paul Studemeister	\$65.00	\$130.00			
Entomologist/Biological Monitor/Special Handling Permit		Richard Arnold	\$90.00	\$180.00			
Wildlife Biologist/Biological Monitor/Special Handling Permit		Terrin Ricehill	\$68.89	\$137.78			
Wildlife Biologist/Environmental Inspector/Biological Monitor/Special Handling Permit/Ecologist		Vir McCoy	\$58.59	\$113.18			
Specialty Environmental Monitor/Arborist		Walter Levinson	\$55.99	\$111.98			
Bender Rosenthal, Inc.	Acquisitions Manager	Bob Morrison	\$108.17	\$214.18	1.98		
Davis & Associates Communications Inc.	Project Manager	Darolyn Davis	\$88.00	\$220.00	2.50		
Meridian Surveying Engineering Inc.	President	Stanley Gray	\$102.00	\$220.00	2.50		
Randolph Varney	Technical Editor & Writer	Randolph Varney	\$75.60	\$75.60	1.00		
Coast Ridge Ecology	Principal	Patrick Kobemus	\$40.00	\$100.00	2.50		
Dabri Inc.	Project Manager -Planning, Site Investigation & Assessment	Ajay Singh	\$89.50	\$220.00	2.50		



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

Contract Administration Bureau
525 Golden Gate, 8th Floor
San Francisco, CA 94102
T 415.551.4603
F 415.554.3225

August 27, 2013

Kevin MacKay
ICF/Avila, JV
620 Folsom Street, Suite 200
San Francisco, CA 94107
Email: kevin.mackay@icfi.com

- RE:** 1) Notice of Contract Award - Specialized and Technical Services, Natural Resources and Land Management Division, Water Enterprise (CS-211.B)
2) Transmittal - Executed Agreement between the City and County of San Francisco Public Utilities Commission and ICF/Avila, JV

Dear Mr. MacKay:

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

BLANKET PURCHASE ORDER NO: BPUC13000097
- Work may not be charged against this blanket purchase order number

SCOPE: To provide specialized and technical services related to watershed management and monitoring for specific projects, including watershed resources monitoring and management services, specialized hydrologic services, data management and analytical services, watershed planning and regulatory compliance support, project management, and additional related services.

EFFECTIVE DATE: August 21, 2013 to June 15, 2027

CONTRACT TO DATE: Total value of contract not to exceed \$5,000,000.00

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 Rosiana Angel at (415) 554-1549.

Edwin M. Lee
Mayor

Art Torres
President

Vince Courtney
Vice President

Ann Moller Caen
Commissioner

Francesca Vietor
Commissioner

Anson Moran
Commissioner

Harlan L. Kelly, Jr.
General Manager



Enclosure: Executed Agreement

cc: Greg Lyman

File/NCA-CS-211.B

**City and County of San Francisco
San Francisco Public Utilities Commission
525 Golden Gate Avenue, 8th Floor
San Francisco, California 94102**

**Agreement between the City and County of San Francisco and
ICF+Avila, a Joint Venture**

**CS-211B
Specialized and Technical Services, Natural
Resources Division, Water Enterprise**

This Agreement is made this **10th** day of **April, 2013**, in the City and County of San Francisco, State of California, by and between: **ICF+Avila, a Joint Venture, 620 Folsom Street, Suite 200, San Francisco, California 94107**, 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") requires the assistance of consulting firms to perform specialized management and monitoring technical services for the Water Enterprise; and

WHEREAS, a Request for Proposal ("RFP") was issued on February 7, 2013, and City selected Contractor as the successful proposer pursuant to the RFP; and

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

WHEREAS, approval for this Agreement was obtained when the Civil Service Commission approved Contract number 4009-12/13 on July 16, 2012; and

WHEREAS, approval for this Agreement was obtained from the San Francisco Public Utilities Commission Resolution Number 13-0053 on April 9th, 2013; and

WHEREAS, approval for this Agreement was obtained from the San Francisco Board of Supervisors by Resolution Number 188-13 on June 11, 2013;

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 from **June 15, 2013 to June 15, 2027.**
- 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 performed as of the last day of the immediately preceding month. In no event shall the amount of this Agreement exceed **Five Million Dollars (\$5,000,000)**. The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. 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 the San Francisco Public Utilities Commission as being in accordance with this Agreement. If Contractor fails to provide Services in accordance with Contractor's obligations under this Agreement, the City may, in addition to any other remedies allowed by law and/or this Agreement, withhold any and all payments due Contractor until such failure is cured. In no event shall Contractor stop work as a result of the City's withholding of payments.

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.** 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. 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. 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. 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." Refer to Appendix B for additional invoice requirements.

8. Submitting False Claims; Remedies. Pursuant to Article V of Chapter 6 of the San Francisco Administrative Code, any contractor, subcontractor, supplier, consultant or subconsultant who submits a false claim may be subject to monetary penalties, investigation and prosecution and may be declared an irresponsible bidder or an unqualified consultant and debarred as set forth in that Article. The text of Article V of Chapter 6, along with the entire San Francisco Administrative Code is available on the web at http://www.amlegal.com/nxt/gateway.dll?f=templates&fn=default.htm&vid=amlegal:sanfrancisco_ca. A contractor, subcontractor, supplier, consultant or sub consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor, supplier, consultant or subconsultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

9. Left blank by agreement of the parties. (Disallowance)

10. Taxes. 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. 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 at no cost to the City.

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.

Without in any way limiting Proposer's liability pursuant to the "Indemnification" section of the Agreement (Appendix C, Professional Services Agreement (P-500)), Proposer(s) will be required to maintain in force, during the full term of any Agreement, insurance in the following amounts and coverage:

1. Worker's Compensation Insurance, in statutory amounts, with Employer's Liability limits not less than is \$1,000,000 each accident, injury or illness; and
2. Commercial General Liability Insurance with limits not less than \$2,000,000 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 \$1,000,000 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 Proposer's profession, with limits not less than \$2,000,000 each claim with respect to negligent acts, errors or omissions in connection with professional services to be provided under the Agreement.
5. Commercial Marine Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired marine coverage, as applicable.

Commercial General Liability and Commercial Automobile and Marine 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; and
2. That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of the Agreement, and that insurance applies separately to each insured against who claim is made or suit is brought.

Regarding Workers' Compensation, Proposer hereby agrees to waive subrogation which any insurer of Proposer may acquire from Proposer by virtue of the payment of any loss. Proposer agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Proposer, its employees, agents and subcontractors.

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

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

Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs 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 the Agreement effective on the date of such lapse of insurance.

Before commencing any operations under the Agreement, Proposer shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of the Agreement.

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

If a subcontractor will be used to complete any portion of the agreement, the Proposer 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 Proposer listed as additional insureds.

16. Indemnification.

1. For design professional services performed under this Agreement, if any, the following indemnity and defense obligations shall apply:

a. **General.** To the fullest extent permitted by law, Contractor shall assume the defense of (with legal counsel subject to approval of the City), indemnify and save harmless the City, its boards, commissions, officers, and employees (collectively "Indemnitees"), from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of the Contractor or its subconsultants), expense and liability of every kind, nature, and description (including, without limitation, incidental and consequential damages, court costs, attorneys' fees, litigation expenses, fees of expert consultants or witnesses in litigation, and costs of investigation), that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the negligence, recklessness, or wilful misconduct of the Contractor, any subconsultant, anyone directly or indirectly employed by them, or anyone that they control (collectively, "Liabilities").

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

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. Infringement of patent rights, copyrights, or other proprietary rights in the performance of this Agreement, if not the basis for indemnification under the law, shall nevertheless be considered a material breach of contract.

2. For all other services (not design professional) performed under this Agreement, the following indemnity and defense obligations shall apply:

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 be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

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. Left Blank by Agreement of the Parties (Liquidated Damages).

20. Default; Remedies. 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. Submitting false claims | 37. Drug-free workplace policy |
| 10. Taxes | 53. Compliance with laws |
| 15. Insurance | 55. Supervision of minors |
| 24. Proprietary or confidential information of City | 57. Protection of private information |
| 30. Assignment | 58. Graffiti removal |

(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.

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. 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 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. This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement:

8. Submitting false claims
9. Disallowance

10. Taxes

- | | |
|---|---|
| 11. Payment does not imply acceptance of work | 26. Ownership of Results |
| 13. Responsibility for equipment | 27. Works for Hire |
| 14. Independent Contractor; Payment of Taxes and Other Expenses | 28. Audit and Inspection of Records |
| 15. Insurance | 48. Modification of Agreement. |
| 16. Indemnification | 49. Administrative Remedy for Agreement Interpretation. |
| 17. Incidental and Consequential Damages | 50. Agreement Made in California; Venue |
| 18. Liability of City | 51. Construction |
| 24. Proprietary or confidential information of City | 52. Entire Agreement |
| | 56. Severability |
| | 57. Protection of private information |

Subject to the immediately preceding sentence, 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, or by e-mail, and shall be addressed as follows:

To City: Greg Lyman
San Francisco Public Utilities Commission
525 Golden Gate Avenue
San Francisco, CA 94103
(tel.) (415) 554-1601
email: glyman@sfwater.org

To Contractor: Kevin MacKay
ICF+Avilla, a Joint Venture
620 Folsom Street, Suite 200
San Francisco, California 94107
(tel.): (408) 216-2816

(fax): (408) 216-2805
email: kevin.mackay@icfi.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. Not Used.

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 subcontracting participation goal for this contract is 13 %. 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 agrees 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. Contractor further agrees to provide to City the names of each person, entity or committee described above.

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 maybe 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. Disputes; Government Code Claim Requirements.

a. **Negotiation; Alternative Dispute Resolution.** The parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement by negotiation. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of the City. If agreed by both parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. Neither party will be entitled to legal fees or costs for matters resolved under this section.

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

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, "Modification of Agreement."

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. Left blank by agreement of the parties. (Supervision of minors)

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. Not Used.

59. Food Service Waste Reduction Requirements. 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.

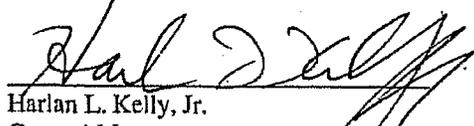
60. Left blank by agreement of the parties. (Slavery era disclosure)

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

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

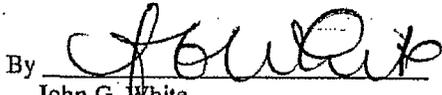
CITY

Approved:


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

Approved as to Form:

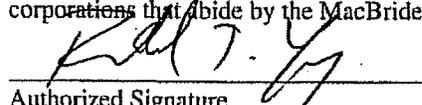
Dennis J. Herrera
City Attorney

By 
John G. White
Deputy City Attorney

CONTRACTOR

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.

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.


Authorized Signature
Rahul J. Young
Printed Name

Principal, Bay Branch Leader
Title

ICF+Avila, a Joint Venture
Company Name

91885
City Vendor Number

620 Folsom St, #200, SF, CA 94107
Address

46-2494358
Federal Employer ID Number

Appendices

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

Appendix A
Services to be provided by Contractor

Contractor agrees to perform the services described below in accordance with the terms and conditions of this Agreement, implementing task orders, the RFP, and Contractor's proposal dated **March 8, 2013**. The RFP and Contractor's proposal are incorporated by reference as though fully set forth herein. Should there be a conflict of terms or conditions, this Agreement and its implementing task orders shall control over the RFP and the Contractor's proposal.

1. General Description of Services

The primary role of the selected Contractor will be to provide professional and technical services related to watershed management and monitoring for specific projects including, but not limited to, the general service categories summarized in Section III.3 below. The selected Contractor(s) will work under the direction of the Contract Manager in the Water Enterprise. Each task order will have a SFPUC Task Order Manager who will work with the Contractor to negotiate the project scope, cost and schedule.

2. Task Orders

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

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

These following tasks provide general guidance to the Contractor as to the anticipated scope of work which the SFPUC reserves the right to modify or delete:

A. Watershed Resources Monitoring and Management Services:

- i. **Ecology** – ecological surveys, studies, and assessments; biological community monitoring, identification, evaluation and mapping; wetland determinations and delineations; restoration ecology; genetic and taxonomic studies; studies of ecological processes and evaluation of ecological condition; ecological modeling; ~~invasive plant~~ mapping and control; site management evaluation and assessment; rem repairs oversight; integrated pest and invasive species (plant, wildlife, i pathogen) management planning, monitoring, survey, and control overs and mapping; quality control monitoring during and after maintenance

of habitat restoration sites; wildlife monitoring including monitoring to minimize and avoid impacts during maintenance and monitoring to evaluate response to restoration or watershed management activities;

- ii. **Botany** – botanical surveys, including surveys for special status plants and butterfly host plants; special-status plant (and butterfly host plant) monitoring and mapping; rangeland assessments; other vegetation management planning, and monitoring for remedial planting and seeding; seed or propagate mapping and collection; grazing management and monitoring; development of nursery guidelines and nursery inspections; evaluations as to whether restoration projects are meeting pre-determined vegetation-related success criteria;
- iii. **Wildlife Surveys and Monitoring** – wildlife surveys, including those for special status species that conform to CDFG and USFWS approved protocols; trapping, tagging, tracking and monitoring studies; wildlife camera studies;
- iv. **Fisheries Management** – evaluation of in-stream flows; anadromous fish habitat requirements and assessments; stream sediment characterizations; riparian zone quality assessments; rapid biological assessments (in particular benthic macro-invertebrate assessments); PIT and radio tagging and tracking studies; in-stream and fish passage camera, PIT antennae array, and other remote sensing system design, maintenance, operations, and data analysis; fish parasite and pathology studies; fish bioenergetics and predatory fish gut content analysis; migratory fish trapping studies; genetic and aging studies using otolith, scale, and tissue; reservoir fish population characterization studies;
- v. **Land Acquisition Services** – Conservation easement and land acquisition document development, Phase I environmental assessment, title reports, land surveys, baseline survey reports, road assessments, PAR analysis, conservation easement endowment planning, conservation easement monitoring, legal descriptions, appraisals, public outreach, property management plans (i.e., grazing management plan, resource management plan, and routine maintenance plan).

B. Specialized Hydrologic Services:

Geologic, hydrogeologic surveys, analysis and studies, installations (piezometers, cattle water supply wells, flow meters, data loggers) ; ; topographic and bathymetric survey; limnology studies, creek monitoring and geomorphic surveys and studies; hydrologic and open channel (i.e., stream, river) hydraulic modeling and model interpretation; stream and river flow measurements; groundwater and surface water sampling and analysis; erosion monitoring and evaluation; pond, wetland, creek, and riparian restoration and habitat site remediation;

C. Data Management and Analytical Services:

Perform and interpret aerial surveys; support management of data, perform statistical analyses and interpret results, support means of tracking permit compliance, and assist with ecological data storage and analysis.

D. Watershed Planning and Regulatory Compliance Support:

- i. **Reports** - technical editing; graphics; report preparation and reproduction; scientific peer review of papers, reports and planning documents;
- ii. **Resource Agency Permits** - permit application and amendment preparation such as those required for routine maintenance and management activities;
- iii. **Resource Agency Permit compliance** - assistance for federal, state and local environmental regulations including but not limited to U.S. Army Corps of Engineers Section 404, FESA, NEPA, CEQA, California Fish & Game Code Section 1602, CDF&G CESA, Clean Water Act (including National Pollutant Discharge Elimination

- System and Storm Water Pollution Prevention Plans) and Migratory Bird Act requirements;
- iv. **Education** - development and implementation of environmental education programs including interpretive master plans, and interpretive signage and trails and displays, and outreach programs; training on federal, state, and local environmental regulations and regulatory changes;
 - v. **Planning** - native landscape design, trail planning and design, fisheries or wildlife management planning; grazing and range management planning; watershed management and development planning; land acquisition and protections planning; conservation easement program planning; environmental oversight during maintenance planning, training and implementation; operational compliance planning, training, and implementation; development of best land management practices; and development of design documents for repair of natural habitat and modifications of existing habitat improvements;
 - vi. **Specialized Resource Analysis** - Provide specialized environmental resource expertise services, research, reports and recommendations associated with routine maintenance management activities including water quality, air quality, health risk assessments for air emissions, climatology, paleontology, greenhouse gases, noise, hazardous materials, natural resources risk assessment and risk management, pre-historic and historic archaeology, and historic architecture. Specialized resource analysis work that may be needed as part of a CEQA document or for resource agency permits that may be performed by consultants under this contract, may be managed by BEM or NRLMD staff, as determined by the type and size of the project.
 - vii. **Watershed Resource Policy Development** - Gather and analyze data, prepare background studies and reports, and develop policies and plans related to watershed resources identified in the WMP including (but not limited to) a pesticide management plan and vegetation management plan.

E. Project Management:

Provide coordination for keeping SFPUC informed of progress, technical issues, and planned activities and events. Prepare scopes of work, budgets and schedules for all task proposals. Prepare for and attend coordination bi-weekly progress meetings between SFPUC staff and senior project staff from the Proposer. Submit monthly progress reports, with highlights of work achievements during the past month, work planned and important milestones for the upcoming month and identify any issues or scope changes that may affect overall cost and/or schedule of tasks. Maintain project files including all reports, correspondence, data, observations, and other documents pertaining to tasks. Coordinate review comments provided by others on reports, memoranda, project documents and other work products and document and disseminate responses to review comments.

F. Additional Services: In addition to services identified above, the contractor(s) may also be asked to provide:

- i. Presentations to the SFPUC Staff and/or Commission, the San Francisco Board of Supervisors, SFPUC retail and/or wholesale customers, SFPUC stakeholders, and neighborhood or community meetings;
- ii. Professional consultations and expert testimonies;
- iii. Reservoir management services including permitting; algae control analyses; reservoir sediment contamination monitoring; aquatic toxicity testing; water quality analytical services; water quality data management; source and discharge water assessments; sample collection and laboratory support.
- iv. Field inspections and surveys at project sites; and

- v. Specialized statistical analyses and interpretation for compliance monitoring of shoreline bacteria (including running geometric means), sediment grain size (including mean phi, skewness, and kurtosis), benthic infauna and fisheries communities (including diversity measures and reference envelope analysis), and recreational use data (including Bayesian Belief Network analysis).

G: Community Benefits Commitments

Following issuance of the Notice-to-Proceed (NTP) for the first task to be performed by ICF/Avila Joint Venture under this Agreement, ICF/Avila Joint Venture commits to providing the Community Benefits Commitments detailed below during the 14-year term of the Agreement. ICF/Avila Joint Venture's commitments shall be funded independently by ICF/Avila Joint Venture and shall not be tied to or dependent upon SFPUC funds or sources of funding, receivables from SFPUC, or retention associated with this Project. Because this is an As-Needed contract, ICF/Avila Joint Venture acknowledges that there is no guarantee that the entire contract not-to-exceed amount set forth in section I will be funded. Instead, work is issued on a task order basis as it is needed by the SFPUC, and Contractor is not entitled to funding beyond any issued-task order. The provision of Community Benefits Commitments by ICF/Avila Joint Venture does not entitle ICF/Avila Joint Venture to additional task orders or additional work beyond issued-task orders. In the event that the contract value is not fully expended or is otherwise amended, the parties hereby agree to meet and discuss the impact to the corresponding Community Benefit Commitments. The representations, warranties and other terms contained in this Community Benefit Commitments section have been designed by ICF/Avila Joint Venture as the basis for a Community Benefit Plan, but are for the sole benefit of the parties hereto and shall not be construed as conferring any rights on any other persons or entities.

As stated in the Request for Proposals

“Although this Task G is a deliverable task, it is a zero-dollar task. Zero hours should be allotted in your Overhead and Profit Schedule (OPS) for this task. No hours or dollars should be allotted or included in Proposer's costs for this Project in order to perform or deliver your voluntarily proposed Community Benefits commitments. If the Proposer commits any funds to delivering the Community Benefits commitments it proposes, all such funds must be independent of SFPUC funding or any dollars associated with this Project. If the Proposer commits to contributing any funds to performing or delivering its commitments related to this task, such funds may not be dependent in any way upon receipt of SFPUC funding, including not being dependent upon release of retention, etc.”

Community Benefits Plan and Timeline

ICF/Avila Joint Venture shall develop a Community Benefits Plan and Timeline within three months of issuance of NTP. The Community Benefits Plan and Timeline will provide details regarding expenditures, a schedule, and timelines related to the Community Benefits Commitments described below. ICF/Avila Joint Venture will develop the Community Benefits Plan and Timeline with the necessary flexibility relating to timing, expenditure of funds, partners, strategic delivery, scale, and performance of Community Benefits Commitments to best achieve positive community impacts. Once the initial Community Benefits Plan and Timeline are developed, SFPUC and ICF/Avila Joint Venture shall meet at least once a year during the term of the Agreement to discuss the work plan and associated timelines, and make any adjustments or updates as necessary.

Community Benefits Commitments

ICF/Avila Joint Venture shall develop a work plan, schedule, and timeline as one component of the Community Benefits Plan and Timeline to deliver, perform and produce the following Community Benefits Commitments:

Description of Community Benefit/ Initiative	# of Volunteer Hours	Volunteer Hourly Rate	Volunteer Contributions (\$)	Financial Contribution (\$)	In-Kind Contributions (\$)	Total Contribution (\$)*
Workforce Development – Summer Internship Program				\$38,400		\$38,400
Economic Development – Support Local Businesses				\$10,000		\$10,000
Positive Impact on the Environment and Support of Local Non-Profits	200	\$100/hr.	\$20,000	\$4,750		\$24,750
Total Value of Commitments (First five years):	200		\$20,000	\$53,150		\$73,150
Total Value of Commitments (Life of Contract):						\$204,820

*Volunteer contribution + Direct Financial Contribution + In-Kind Contribution = Total Contribution

ICF/Avila Joint Venture shall provide \$53,150 in direct financial contributions and 200 in volunteer hours (equating to \$20,000). ICF/Avila Joint Venture commits to a minimum contribution of \$73,150 for the first five years and a total of \$204,820 for the life of the contract.

Workforce Development - Summer Internship Program

ICF shall provide students through their summer internship program with hands-on experience in environmental planning, habitat restoration, environmental permitting, sustainability, and/or greenhouse gas reduction practices.

- ICF will hire a summer intern from the University of San Francisco or San Francisco State University during each of the next five years: 8 X 32 hours/week X \$15/hour = \$3,840/year.
- ICF will reevaluate the summer internship program after 5 years for potential continuation (Rahul Young will provide oversight for the internship program)

Avila shall hire either a high school or college student summer intern from San Francisco to learn about natural resource management and water management.

- Avila will hire a summer intern during each of the next five years: 8 weeks X 32 hours X \$15/hour = \$3,840/year.
- Avila will reevaluate the summer intern program after 5 years for potential continuation (Ernie Avila will provide oversight for the intern program).

Economic Development – Support Local Businesses

ICF/Avila Joint Venture shall support the local economy through the use of local businesses and, where possible, put monies spent into the hands of small and start-up business owners. Local spending will include caterers and restaurants, business suppliers, and other services. ICF/Avila Joint Venture will actively seek to employ local businesses and will report to the SFPUC the actual amount spent. The values committed are minimum commitments and ICF/Avila Joint Venture pledges to spend more as the opportunities arise. It will specifically hire green and community-oriented businesses.

- ICF will spend at least \$1,000 annually with local restaurants/caterers: \$1,000/year (Rahul Young will provide tracking and oversight of this program)
- Avila will spend at least \$1,000 annually with local businesses: \$1,000/year (Kate Bode will provide tracking and oversight of this program)

Positive Impact on the Environment

ICF shall ensure that we minimize the environmental impact of its operations, specifically commuting and business travel, which comprises approximately 50 percent of our total carbon footprint. To reduce the number of cars ICF's employees use for commuting, ICF will offer a subsidy for those who bike to work. In addition, ICF has an aggressive local recycling program, and will participate in the San Francisco Energy Watch program, supporting the City and County of San Francisco's goal to achieve immediate and comprehensive long-term energy and peak demand services.

- ICF will provide an after-tax bicycle subsidy for employees who bike to work an average of 3-4 times a week: 5 employees (approximate) X \$25/quarter = \$500/year (Rahul Young will provide oversight of the environmental impact program)

ICF, through their corporate giving program, shall provide volunteer hours to Friends of the Urban Forest in 2012 and 2013. Friends of the Urban Forest helps individuals and neighborhood groups plant and care for street trees and sidewalk gardens. This green infrastructure improves the City by beautifying neighborhoods, cleaning the air, raising property values, and reducing polluted stormwater runoff.

- ICF will provide 40 in-kind hours annually for staff to work with Friends of Urban Forest: 40 hours per year X \$100/hour = \$4,000/years (Rahul Young will provide oversight for our involvement with Friends of the Urban Forest)

ICF, through their corporate giving program, shall provide resources for Advancing Women in Transportation (WTS), a non-profit organization focused on local issues important to our firms. WTS is an international organization, with a San Francisco chapter dedicated to the advancement of women in transportation services.

- ICF will support WTS-San Francisco through annual membership: 2 members X \$225/year = \$450/year (Rahul Young will provide oversight for support of this non-profit)

ICF/Avila Joint Venture's community benefits commitments will be documented as part of the Project Development described in Task G above and executed as a major task for the Project. The

commitments presented in the agreement describe the first five years of the program up to \$73,150. At the five year mark, ICF/Avila Joint Venture will review the commitments and decide whether or not to recommit to this proposed Community Benefits Program or a modified version of the Program that would begin year 6 of the contract. The total amount committed for the life of the contract is \$204,820.

Community Benefits Work Approach, Project Team/Organization, and Accountability

ICF/Avila Joint Venture's shall serve as the executive in charge of delivering the community benefits commitments. ICF/Avila Joint Venture's shall ensure that the community benefits commitments herein are delivered to the communities that they are intended to benefit in a transparent and accountable manner. ICF/Avila Joint Venture's Coordinators, Rahul Young, and Katherine (Kate) Bode, shall organize, plan, track, measure, and report on Contractor's community benefits commitments. ICF/Avila Joint Venture's Coordinators shall also coordinate the senior management of ICF/Avila Joint Venture's subconsultants to ensure the entire team participates in providing benefits to the San Francisco community.

ICF/Avila Joint Venture's Coordinators shall submit a stand-alone annual report on progress in fulfilling ICF/Avila Joint Venture's community benefits commitments, detailing factors such as the total number of dollars and hours contributed to each of the proposed tasks and organizations over the year. ICF/Avila Joint Venture shall also provide independently verifiable documentation (such as certified payroll records, receipts, etc.) that the SFPUC can use to independently and easily verify that the dollars and volunteer hours contributed by ICF/Avila Joint Venture as part of its Community Benefits Commitments were delivered to and actually reached the communities they were intended to benefit.

ICF/Avila Joint Venture shall ensure that quarterly reports are prepared and submitted to SFPUC on the last business day of the month following the close of each quarter. The reports shall describe ICF/Avila Joint Venture's community benefits efforts under the program both in the prior quarter and contract to date. ICF/Avila Joint Venture's quarterly reports shall include the name and description of all projects commenced, underway, and completed; the dollar and hour values of all activities and elements of each project; the progress to date of each project; and the outcomes of projects that are underway. ICF/Avila Joint Venture shall submit such documentation to substantiate that the Community Benefits Commitments and any funds associated thereto were in fact delivered to the communities they were intended to benefit within the three months immediately following delivery of such Community Benefits Commitments or dollars associated thereto.

ICF/Avila Joint Venture's Community Benefits Commitments shall be performed prospectively during the term of the Agreement, after the award of the Agreement and following issuance of NTP on the first task assigned to ICF/Avila Joint Venture under this Agreement. Commitments performed as part of previous contracts or prior to ICF/Avila Joint Venture being awarded the Agreement cannot be used as part of ICF/Avila Joint Ventures Community Benefits Commitments for this Project.

3. Performance Evaluation

Performance evaluations support the SFPUC's objective of continuously improving the quality of Contractor services. The SFPUC will 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. When 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.

SFPUC's Infrastructure Division Procedures Manual, Volume 4, Program and Project Management, Section 3: Contract Management, Procedure: PM 3.16, Consultant Services Performance Evaluation requires that a contract manager evaluate a consultant's performance on engineering, environmental and construction management projects and complete the Consultant Services Performance Evaluation Form (CSPE) during the contract term. A final end of year CSPE will be kept on file with the SFPUC for three years after contract completion. Completed end-of-contract CSPEs, including any consultant responses, will be forwarded to the evaluation panel for future RFPs, where a proposer identifies the evaluated project as a qualifying project reference under the RFP. If a proposer responding to a future RFP identifies an ongoing SFPUC project as a qualifying project reference (and the ongoing project complies with RFP reference requirements), SFPUC staff will forward the most recent annual CSPE for the qualifying project, if any, to the RFP evaluation panel.

4. Reports

Contractor shall submit written reports as requested by the SFPUC. Format for the content of such reports shall be determined by the Contract Manager. 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.

5. Department Liaison

In performing the services provided for in this Agreement, Contractor's liaison with the SFPUC will be: Greg Lyman.

Appendix B Calculation of Charges

As part of Contractor's proposal dated March 8, 2013, Contractor submitted proposed billing rates, attached hereto as Appendix B-1 Fee Schedule Form, for the requested tasks in the Overhead and Profit Schedule, incorporated herein by reference.

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

1. Billing Rates

Contractor's billing rates and each and every staff classification as stated in Appendix B-1 will be the billing rates for the listed individuals. The billing rate may not exceed the lowest rate charged to any other governmental entity except the City and County of San Francisco. Billing rates may be adjusted annually on the anniversary of the effective start date as indicated in the original Notice of Contract Award letter. The first adjustment may be made no earlier than the first anniversary of the effective start date. The amount of the adjustment is limited to a maximum of the CPI annual percentage change increase (San Francisco Bay Area for Urban Wage Earners and Clerical Workers) for the previous calendar year. No increase, including the annual CPI adjustment, is allowed to billing rates exceeding \$220 per hour, unless Contract Manager and Bureau Manager authorize an increase to the rate in writing.

2. Personnel Changes:

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

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

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

3. Effective Overhead and Profit Rate

The Effective Overhead and Profit Rate (EOPR) for CS-211 is 2.65. The EOPR OR Individual Firm Overhead and Profit Rate will apply to the billing rate of all individuals not listed in Appendix B-1. The EOPR will also apply to all amendments to the Agreement. If a new subconsultant is added during the duration of the Agreement, the new individual firm multiplier can be no more than the EOPR.

4. Other Direct Costs (ODC)

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

The following items will be eligible for reimbursement as ODCs:

- Out-of-town travel (“out-of-town” shall mean outside the nine Bay Area counties: San Francisco, Alameda, Marin, Santa Clara, Sonoma, Contra Costa, Napa, San Mateo, Solano);
- Out-of town meal, travel and lodging expenses for project-related business trips, including, but not limited to:
 - Rental vehicle: traveler must select the most economical contractor and type of vehicle available and acquire any commercial rate or government discount available when the vehicle is rented;
 - Personal vehicle use: Contractor will be paid per mile as established by the United State Internal Revenue Service and only for that portion of travel that is outside the nine Bay Area counties and non-routine. Should the travel begin or end on a normal workday, the Contractor shall subtract commuting mileage from total mileage to calculate reimbursable mileage. The Contractor shall submit to the City an approved mileage log with its monthly invoices;
 - Meal and lodging expenses shall be reasonable and actual but limited to Federal government per diem rates;
- Specialty printing (“specialty” as used herein shall mean large volume printing and color printing and requires **prior** written approval by SFPUC project staff and documentation of the written approval by the SFPUC must be included with the invoice);
- Specialty computer hardware and software (only with **prior** written approval by SFPUC project staff and documentation of the written approval by the SFPUC must be included with the invoice – all hardware and software will be the property of the City);
- Courier services that are project related and originated from the project site offices;
- Permit fees;
- Expedited courier services when requested by SFPUC staff; and
- Safety equipment.

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

- All other travel expenses such as parking, bridge tolls, public transit, vehicle mileage within the nine Bay Area Counties, travel from Contractor’s home office to SFPUC facilities;
- Contractor personnel relocation costs;
- Any home or regional office labor charges or pass-throughs, including but not limited to, administrative and clerical personnel time;
- Personnel relocation and temporary assignment expenses;
- Entertainment expenses;
- Cell phones;
- Home office expenses;

- Telephone calls and faxes originating in the firm's home office, standard computer use charges, computer hardware or software computer hardware or software (other than the specialty hardware or software mentioned above), communication devices, and electronic equipment;
- Meal expenses which are not related to project-related business trips, including refreshments and working lunches with SFPUC staff;
- Equipment to be used by SFPUC staff; and
- Postage and courier services which are not requested by SFPUC staff.

5. Subcontractor make-up and documentation

Second-tier and pass-through subcontracting is prohibited. Additional subcontractors may be added to the contractor team after obtaining pre-authorization by the SFPUC Contract Manager, Bureau/Division Manager and the Contract Monitoring Division. Note that subcontractor administration markup is limited to actual cost not to exceed 5%.

6. Retention

Five percent (5%) of each invoice payment will be withheld for each task order. When the work for the task order or defined critical milestones has been completed to the satisfaction of the SFPUC Regional Contract Manager and all work products have been received and approved by the SFPUC Regional Contract Manager, the Contractor may request that the retention be released. In lieu of money retention, an irrevocable letter of credit acceptable to the City will be accepted.

7. Invoice Requirements

The SFPUC is automating its contracting and invoice payment processes with online software systems (SOLIS). The following processes are being automated: Contract Certification, Insurance Compliance, Task Order Certification, Timekeeping, Invoice Approval, and Invoice Payment. As part of its contracting obligations, the Contractor is required to 1) become an authorized user of these systems, 2) attend user training for these systems; and 3) utilize these systems for the purposes for which they are intended. Contractor shall not bill the SFPUC to use these systems. Contractor shall not charge SFPUC to send appropriate personnel to user training.

Contractor shall follow the invoicing and supporting documentation instructions as detailed in the SOLIS training or otherwise prescribed by the SFPUC.

Appendix B-1
Fee Schedule

[begins on next page]



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

Contract Administration Bureau
525 Golden Gate, 8th Floor
San Francisco, CA 94102
T 415.551.4603
F 415.554.3225

August 27, 2013

Teri Beckett
Shaw Environmental & Infrastructure
185 Berry Street, Suite 2200
San Francisco, CA 94107
Email: teri.beckett@shawgrp.com

- RE:** 1) Notice of Contract Award - Specialized and Technical Services, Natural Resources and Land Management Division, Water Enterprise (CS-211.C)
2) Transmittal - Executed Agreement between the City and County of San Francisco Public Utilities Commission and Shaw Environmental & Infrastructure

Dear Ms. Beckett:

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

BLANKET PURCHASE ORDER NO: **BPUC13000095**
- *Work may not be charged against this blanket purchase order number*

SCOPE: To provide specialized and technical services related to watershed management and monitoring for specific projects, including watershed resources monitoring and management services, specialized hydrologic services, data management and analytical services, watershed planning and regulatory compliance support, project management, and additional related services.

EFFECTIVE DATE: **August 21, 2013 to June 15, 2027**

CONTRACT TO DATE: Total value of contract not to exceed **\$5,000,000.00**

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 Rosiana Angel at (415) 554-1549.

Edwin M. Lee
Mayor

Art Torres
President

Vince Courtney
Vice President

Ann Molter Caen
Commissioner

Francesca Vietor
Commissioner

Anson Moran
Commissioner

Harlan L. Kelly, Jr.
General Manager



Enclosure: Executed Agreement

cc: Greg Lyman

File/NCA-CS-211.C

**City and County of San Francisco
San Francisco Public Utilities Commission
525 Golden Gate Avenue, 8th Floor
San Francisco, California 94102**

**Agreement between the City and County of San Francisco and
Shaw Environmental and Infrastructure, Inc.**

**CS-211C
Specialized and Technical Services,
Natural Resources Division, Water Enterprise**

This Agreement is made this **10th** day of **April, 2013**, in the City and County of San Francisco, State of California, by and between: **Shaw Environmental and Infrastructure, Inc., 185 Berry Street, Suite 2200, San Francisco, CA 94107**, 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") requires the assistance of consulting firms to perform specialized management and monitoring technical services for the Water Enterprise; and

WHEREAS, a Request for Proposal ("RFP") was issued on February 7, 2013, and City selected Contractor as the successful proposer pursuant to the RFP; and

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

WHEREAS, approval for this Agreement was obtained when the Civil Service Commission approved Contract number 4009-12/13 on **July 16, 2012**; and

WHEREAS, approval for this Agreement was obtained from the San Francisco Public Utilities Commission Resolution Number 13-0053 on **April 9th, 2013**; and

WHEREAS, approval for this Agreement was obtained from the San Francisco Board of Supervisors by Resolution Number 188-13 on **June 11, 2013**;

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 from **June 15, 2013 to June 15, 2027.**
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 performed as of the last day of the immediately preceding month. In no event shall the amount of this Agreement exceed **Five Million Dollars (\$5,000,000)**. The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. 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 the 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 an 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.** 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. 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. 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. 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." Refer to Appendix B for additional invoice requirements.

8. **Submitting False Claims; Remedies.** Pursuant to Article V of Chapter 6 of the San Francisco Administrative Code, any contractor, subcontractor, supplier, consultant or subconsultant who submits a false claim may be subject to monetary penalties, investigation and prosecution and may be declared an irresponsible bidder or an unqualified consultant and debarred as set forth in that Article. The text of Article V of Chapter 6, along with the entire San Francisco Administrative Code is available on the web at http://www.amlegal.com/nxt/gateway.dll?f=templates&fn=default.htm&vid=amlegal:sanfrancisco_ca. A contractor, subcontractor, supplier, consultant or sub consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor, supplier, consultant or subconsultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

9. **Left blank by agreement of the parties. (Disallowance)**

10. **Taxes.** 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. 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 at no cost to the City.

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.

Without in any way limiting Proposer's liability pursuant to the "Indemnification" section of the Agreement (Appendix C, Professional Services Agreement (P-500)), Proposer(s) will be required to maintain in force, during the full term of any Agreement, insurance in the following amounts and coverage:

1. Worker's Compensation Insurance, in statutory amounts, with Employer's Liability limits not less than is \$1,000,000 each accident, injury or illness; and
2. Commercial General Liability Insurance with limits not less than \$2,000,000 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 \$1,000,000 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 Proposer's profession, with limits not less than \$2,000,000 each claim with respect to negligent acts, errors or omissions in connection with professional services to be provided under the Agreement.
5. Commercial Marine Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired marine coverage, as applicable.

Commercial General Liability and Commercial Automobile and Marine 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; and
2. That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of the Agreement, and that insurance applies separately to each insured against who claim is made or suit is brought.

Regarding Workers' Compensation, Proposer hereby agrees to waive subrogation which any insurer of Proposer may acquire from Proposer by virtue of the payment of any loss. Proposer agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Proposer, its employees, agents and subcontractors.

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

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

Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs 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 the Agreement effective on the date of such lapse of insurance.

Before commencing any operations under the Agreement, Proposer shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of the Agreement.

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

If a subcontractor will be used to complete any portion of the agreement, the Proposer 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 Proposer listed as additional insureds.

16. Indemnification.

1. For design professional services performed under this Agreement, if any, the following indemnity and defense obligations shall apply:

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

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

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. Infringement of patent rights, copyrights, or other proprietary rights in the performance of this Agreement, if not the basis for indemnification under the law, shall nevertheless be considered a material breach of contract.

2. For all other services (not design professional) performed under this Agreement, the following indemnity and defense obligations shall apply:

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 be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

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. Left Blank by Agreement of the Parties (Liquidated Damages).

20. Default; Remedies. 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. Submitting false claims | 37. Drug-free workplace policy |
| 10. Taxes | 53. Compliance with laws |
| 15. Insurance | 55. Supervision of minors |
| 24. Proprietary or confidential information of City | 57. Protection of private information |
| 30. Assignment | 58. Graffiti removal |

(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.

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. 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 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. This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement:

- | | |
|---|---|
| 8. Submitting false claims | 24. Proprietary or confidential information of City |
| 9. Disallowance | 26. Ownership of Results |
| 10. Taxes | 27. Works for Hire |
| 11. Payment does not imply acceptance of work | 28. Audit and Inspection of Records |
| 13. Responsibility for equipment | 48. Modification of Agreement. |
| 14. Independent Contractor; Payment of Taxes and Other Expenses | 49. Administrative Remedy for Agreement Interpretation. |
| 15. Insurance | 50. Agreement Made in California; Venue |
| 16. Indemnification | 51. Construction |
| 17. Incidental and Consequential Damages | 52. Entire Agreement |
| 18. Liability of City | 56. Severability |
| | 57. Protection of private information |

Subject to the immediately preceding sentence, 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, or by e-mail, and shall be addressed as follows:

To City: Greg Lyman
San Francisco Public Utilities Commission
525 Golden Gate Avenue
San Francisco, CA 94103
(tel.) (415) 554-1601
email: glyman@sfwater.org

To Contractor: Ms. Teri Beckett, P.E.
Shaw Environmental and Infrastructure, Inc.
185 Berry Street, Suite 2200
San Francisco, CA 94107
Phone: 954.868.6065|Fax: 415-512-2424
E-mail: teri.beckett@shawgrp.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. Not Used.

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 subcontracting participation goal for this contract is **22.9 %**. 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 agrees 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. Contractor further agrees to provide to City the names of each person, entity or committee described above.

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 maybe 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. Disputes; Government Code Claim Requirements.

a. Negotiation; Alternative Dispute Resolution. The parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement by negotiation. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of the City. If agreed by both parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. Neither party will be entitled to legal fees or costs for matters resolved under this section.

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

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, "Modification of Agreement."

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. Left blank by agreement of the parties. (Supervision of minors)

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. Not Used.

59. Food Service Waste Reduction Requirements. 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.

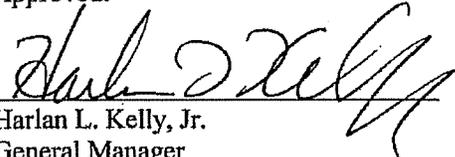
60. Left blank by agreement of the parties. (Slavery era disclosure)

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

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

CITY

Approved:


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

Approved as to Form:

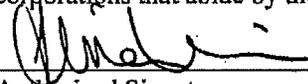
Dennis J. Herrera
City Attorney

By 
John G. White
Deputy City Attorney

CONTRACTOR

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.

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.


Authorized Signature

Dina Keirouz
Printed Name

District Manager
Title

Shaw Environmental & Infrastructure, INC.
Company Name

#76225
City Vendor Number

185 Berry Street, Suite 2200, San
Address Francisco CA 94107

75-304-4680
Federal Employer ID Number

Appendices

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

Appendix A Services to be provided by Contractor

Contractor agrees to perform the services described below in accordance with the terms and conditions of this Agreement, implementing task orders, the RFP, and Contractor's proposal dated March 8, 2013. The RFP and Contractor's proposal are incorporated by reference as though fully set forth herein. Should there be a conflict of terms or conditions, this Agreement and its implementing task orders shall control over the RFP and the Contractor's proposal.

1. General Description of Services

The primary role of the selected Contractor will be to provide professional and technical services related to watershed management and monitoring for specific projects including, but not limited to, the general service categories summarized in Section 2 below. The selected Contractor(s) will work under the direction of the Contract Manager in the Water Enterprise. Each task order will have a SFPUC Task Order Manager who will work with the Contractor to negotiate the project scope, cost and schedule.

2. Task Orders

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

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

These following tasks provide general guidance to the Contractor as to the anticipated scope of work which the SFPUC reserves the right to modify or delete:

A. Watershed Resources Monitoring and Management Services:

- i. **Ecology** – ecological surveys, studies, and assessments; biological community monitoring, identification, evaluation and mapping; wetland determinations and delineations; restoration ecology; genetic and taxonomic studies; studies of ecological processes and evaluation of ecological condition; ecological modeling; invasive plant mapping and control; site management evaluation and assessment; remedial erosion repairs oversight; integrated pest and invasive species (plant, wildlife, insect, or pathogen) management planning, monitoring, survey, and control oversight; soil analyses and mapping; quality control monitoring during and after maintenance and rehabilitation

of habitat restoration sites; wildlife monitoring including monitoring to minimize and avoid impacts during maintenance and monitoring to evaluate response to restoration or watershed management activities;

- ii. **Botany** – botanical surveys, including surveys for special status plants and butterfly host plants; special-status plant (and butterfly host plant) monitoring and mapping; rangeland assessments; other vegetation management planning, and monitoring for remedial planting and seeding; seed or propagate mapping and collection; grazing management and monitoring; development of nursery guidelines and nursery inspections; evaluations as to whether restoration projects are meeting pre-determined vegetation-related success criteria;
- iii. **Wildlife Surveys and Monitoring** – wildlife surveys, including those for special status species that conform to CDFG and USFWS approved protocols; trapping, tagging, tracking and monitoring studies; wildlife camera studies;
- iv. **Fisheries Management** – evaluation of in-stream flows; anadromous fish habitat requirements and assessments; stream sediment characterizations; riparian zone quality assessments; rapid biological assessments (in particular benthic macro-invertebrate assessments); PIT and radio tagging and tracking studies; in-stream and fish passage camera, PIT antennae array, and other remote sensing system design, maintenance, operations, and data analysis; fish parasite and pathology studies; fish bioenergetics and predatory fish gut content analysis; migratory fish trapping studies; genetic and aging studies using otolith, scale, and tissue; reservoir fish population characterization studies;
- v. **Land Acquisition Services** – Conservation easement and land acquisition document development, Phase I environmental assessment, title reports, land surveys, baseline survey reports, road assessments, PAR analysis, conservation easement endowment planning, conservation easement monitoring, legal descriptions, appraisals, public outreach, property management plans (i.e., grazing management plan, resource management plan, and routine maintenance plan).

B. Specialized Hydrologic Services:

Geologic, hydrogeologic surveys, analysis and studies, installations (piezometers, cattle water supply wells, flow meters, data loggers) ; ; topographic and bathymetric survey; limnology studies, creek monitoring and geomorphic surveys and studies; hydrologic and open channel (i.e., stream, river) hydraulic modeling and model interpretation; stream and river flow measurements; groundwater and surface water sampling and analysis; erosion monitoring and evaluation; pond, wetland, creek, and riparian restoration and habitat site remediation;

C. Data Management and Analytical Services:

Perform and interpret aerial surveys; support management of data, perform statistical analyses and interpret results, support means of tracking permit compliance, and assist with ecological data storage and analysis.

D. Watershed Planning and Regulatory Compliance Support:

- i. **Reports** - technical editing; graphics; report preparation and reproduction; scientific peer review of papers, reports and planning documents;
- ii. **Resource Agency Permits** - permit application and amendment preparation such as those required for routine maintenance and management activities;
- iii. **Resource Agency Permit compliance** - assistance for federal, state and local environmental regulations including but not limited to U.S. Army Corps of Engineers Section 404, FESA, NEPA, CEQA, California Fish & Game Code Section 1602, CDF&G CESA, Clean Water Act (including National Pollutant Discharge Elimination

System and Storm Water Pollution Prevention Plans) and Migratory Bird Act requirements;

- iv. **Education** - development and implementation of environmental education programs including interpretive master plans, and interpretive signage and trails and displays, and outreach programs; training on federal, state, and local environmental regulations and regulatory changes;
- v. **Planning** - native landscape design, trail planning and design, fisheries or wildlife management planning; grazing and range management planning; watershed management and development planning; land acquisition and protections planning; conservation easement program planning; environmental oversight during maintenance planning, training and implementation; operational compliance planning, training, and implementation; development of best land management practices; and development of design documents for repair of natural habitat and modifications of existing habitat improvements;
- vi. **Specialized Resource Analysis** - Provide specialized environmental resource expertise services, research, reports and recommendations associated with routine maintenance management activities including water quality, air quality, health risk assessments for air emissions, climatology, paleontology, greenhouse gases, noise, hazardous materials, natural resources risk assessment and risk management, pre-historic and historic archaeology, and historic architecture. Specialized resource analysis work that may be needed as part of a CEQA document or for resource agency permits that may be performed by consultants under this contract, may be managed by BEM or NRLMD staff, as determined by the type and size of the project.
- vii. **Watershed Resource Policy Development** - Gather and analyze data, prepare background studies and reports, and develop policies and plans related to watershed resources identified in the WMP including (but not limited to) a pesticide management plan and vegetation management plan.

E. Project Management:

Provide coordination for keeping SFPUC informed of progress, technical issues, and planned activities and events. Prepare scopes of work, budgets and schedules for all task proposals. Prepare for and attend coordination bi-weekly progress meetings between SFPUC staff and senior project staff from the Proposer. Submit monthly progress reports, with highlights of work achievements during the past month, work planned and important milestones for the upcoming month and identify any issues or scope changes that may affect overall cost and/or schedule of tasks. Maintain project files including all reports, correspondence, data, observations, and other documents pertaining to tasks. Coordinate review comments provided by others on reports, memoranda, project documents and other work products and document and disseminate responses to review comments.

F. Additional Services: In addition to services identified above, the contractor(s) may also be asked to provide:

- i. Presentations to the SFPUC Staff and/or Commission, the San Francisco Board of Supervisors, SFPUC retail and/or wholesale customers, SFPUC stakeholders, and neighborhood or community meetings;
- ii. Professional consultations and expert testimonies;
- iii. Reservoir management services including permitting; algae control analyses; reservoir sediment contamination monitoring; aquatic toxicity testing; water quality analytical services; water quality data management; source and discharge water assessments; sample collection and laboratory support.
- iv. Field inspections and surveys at project sites; and

- v. Specialized statistical analyses and interpretation for compliance monitoring of shoreline bacteria (including running geometric means), sediment grain size (including mean phi, skewness, and kurtosis), benthic infauna and fisheries communities (including diversity measures and reference envelope analysis), and recreational use data (including Bayesian Belief Network analysis).

G: Community Benefits Commitments

Following issuance of the Notice-to-Proceed (NTP) for the first task to be performed by Shaw Environmental & Infrastructure, Inc. (Shaw) under this Agreement, Shaw commits to providing the Community Benefits Commitments detailed below during the 14-year term of the Agreement. Shaw's commitments shall be funded independently by Shaw and shall not be tied to or dependent upon SFPUC funds or sources of funding, receivables from SFPUC, or retention associated with this Project. Because this is an As-Needed contract, Shaw acknowledges that there is no guarantee that the entire contract not-to-exceed amount set forth in section I will be funded. Instead, work is issued on a task order basis as it is needed by the SFPUC, and Contractor is not entitled to funding beyond any issued-task order. The provision of Community Benefits Commitments by Shaw does not entitle Shaw to additional task orders or additional work beyond issued-task orders. In the event that the contract value is not fully expended or is otherwise amended, the parties hereby agree to meet and discuss the impact to the corresponding Community Benefit Commitments. The representations, warranties and other terms contained in this Community Benefit Commitments section have been designed by Shaw as the basis for a Community Benefit Plan, but are for the sole benefit of the parties hereto and shall not be construed as conferring any rights on any other persons or entities.

As stated in the Request for Proposals

"Although this Task G is a deliverable task, it is a zero-dollar task. Zero hours should be allotted in your Overhead and Profit Schedule (OPS) for this task. No hours or dollars should be allotted or included in Proposer's costs for this Project in order to perform or deliver your voluntarily proposed Community Benefits commitments. If the Proposer commits any funds to delivering the Community Benefits commitments it proposes, all such funds must be independent of SFPUC funding or any dollars associated with this Project. If the Proposer commits to contributing any funds to performing or delivering its commitments related to this task, such funds may not be dependent in any way upon receipt of SFPUC funding, including not being dependent upon release of retention, etc."

Community Benefits Plan and Timeline

Shaw shall develop a Community Benefits Plan and Timeline within three months of issuance of NTP. The Community Benefits Plan and Timeline will provide details regarding expenditures, a schedule, and timelines related to the Community Benefits Commitments described below. Shaw will develop the Community Benefits Plan and Timeline with the necessary flexibility relating to timing, expenditure of funds, partners, strategic delivery, scale, and performance of Community Benefits Commitments to best achieve positive community impacts. Once the initial Community Benefits Plan and Timeline are developed, SFPUC and Shaw shall meet at least once a year during the term of the Agreement to discuss the work plan and associated timelines, and make any adjustments or updates as necessary.

Community Benefits Commitments

Shaw shall develop a work plan, schedule, and timeline as one component of the Community Benefits Plan and Timeline to deliver, perform and produce the following Community Benefits Commitments:

Description of Community Benefit/ Initiative	# of Volunteer Hours	Volunteer Hourly Rate	Volunteer Contributions (\$)	Financial Contribution (\$)	In-Kind Contributions (\$)	Total Contribution (\$)*
Workforce Development	260		\$15,600 for three years			\$15,600 for three years
Total Value of Commitments:	260		\$15,600 for three years			\$15,600 for three years

*Volunteer contribution + Direct Financial Contribution + In-Kind Contribution = Total Contribution

Shaw shall provide 260 volunteer hours (equating to \$15,600) over the lifetime of this contract.

Workforce Development

In partnership with the Mission Neighborhood Center, Shaw shall commit 100 hours of habitat restoration technician training for participants for year 1 and 80 hours for year 2 and year 3. Shaw will ensure that the training mirrors near future opportunities.

Shaw's community benefits commitments will be documented as part of the Project Management described in Task G above and executed as a major task for the Project.

Community Benefits Work Approach, Project Team/Organization, and Accountability

Shaw's Community Benefits Program shall be directed by Mitchell Salazar from the Mission Neighborhood Centers and Dr. Emma Jack from Shaw. They shall serve as the executive in charge of delivering the community benefits commitments. Shaw community benefits contacts shall ensure that the community benefits commitments herein are delivered to the communities that they are intended to benefit in a transparent and accountable manner. Shaw community benefits contacts shall organize, plan, track, measure, and report on Contractor's community benefits commitments. Shaw community benefits contacts shall also coordinate the senior management of Shaw's subconsultants to encourage full participation by the entire team in providing benefits to communities within the SFPUC's service area.

Shaw community benefit contacts shall submit a stand-alone annual report on progress in fulfilling Shaw's community benefits commitments, detailing factors such as the total number of dollars and hours contributed to each of the proposed tasks and organizations over the year. Shaw shall also provide independently verifiable documentation (such as certified payroll records, receipts, etc.) that the SFPUC can use to independently and easily verify that the dollars and volunteer hours contributed by Shaw as part of its Community Benefits Commitments were delivered to and actually reached the communities they were intended to benefit.

Shaw shall ensure that quarterly reports are prepared and submitted to SFPUC on the last business day of the month following the close of each quarter. The reports shall describe Shaw's community benefits efforts under the program both in the prior quarter and contract to date. Shaw's quarterly reports shall include the name and description of all projects commenced, underway, and completed;

the dollar and hour values of all activities and elements of each project; the progress to date of each project; and the outcomes of projects that are underway. Shaw shall submit such documentation to substantiate that the Community Benefits Commitments and any funds associated thereto were in fact delivered to the communities they were intended to benefit within the three months immediately following delivery of such Community Benefits Commitments or dollars associated thereto.

Shaw's Community Benefits Commitments shall be performed prospectively during the term of the Agreement, after the award of the Agreement and following issuance of NTP on the first task assigned to Shaw under this Agreement. Commitments performed as part of previous contracts or prior to Shaw being awarded the Agreement cannot be used as part of Shaw's Community Benefits Commitments for this Project.

Shaw's Community Benefits Commitments Task G Proposal is attached and incorporated herein. Shaw shall provide all of the Commitments, consistent with all of the terms of Contractor's attached Proposal (including Shaw's Work Approach, Project Team and Organization, and Accountability), which are not explicitly detailed in this Task G. Where and if there are any conflicts or discrepancies between the language above in Task G of this Agreement and the attached Proposal, the terms of the language of Task G above shall prevail as Shaw and SFPUC's final mutual understanding and agreement.

3. Performance Evaluation

Performance evaluations support the SFPUC's objective of continuously improving the quality of Contractor services. The SFPUC will 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. When 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.

SFPUC's Infrastructure Division Procedures Manual, Volume 4, Program and Project Management, Section 3: Contract Management, Procedure: PM 3.16, Consultant Services Performance Evaluation requires that a contract manager evaluate a consultant's performance on engineering, environmental and construction management projects and complete the Consultant Services Performance Evaluation Form (CSPE) during the contract term. A final end of year CSPE will be kept on file with the SFPUC for three years after contract completion. Completed end-of-contract CSPEs, including any consultant responses, will be forwarded to the evaluation panel for future RFPs, where a proposer identifies the evaluated project as a qualifying project reference under the RFP. If a proposer responding to a future RFP identifies an ongoing SFPUC project as a qualifying project reference (and the ongoing project complies with RFP reference requirements), SFPUC staff will forward the most recent annual CSPE for the qualifying project, if any, to the RFP evaluation panel. (Include if contract is engineering design, environmental analysis services and construction management).

4. Reports

Contractor shall submit written reports as requested by the SFPUC. Format for the content of such reports shall be determined by the Contract Manager. 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.

5. Department Liaison

In performing the services provided for in this Agreement, Contractor's liaison with the SFPUC will be:
Greg Lyman.

Appendix B Calculation of Charges

As part of Contractor's proposal dated March 8, 2013, Contractor submitted proposed billing rates, attached hereto as Appendix B-1 Fee Schedule Form, for the requested tasks in the Overhead and Profit Schedule, incorporated herein by reference.

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

1. Billing Rates

Contractor's billing rates and each and every staff classification as stated in Appendix B-1 will be the billing rates for the listed individuals. The billing rate may not exceed the lowest rate charged to any other governmental entity except the City and County of San Francisco. Billing rates may be adjusted annually on the anniversary of the effective start date as indicated in the original Notice of Contract Award letter. The first adjustment may be made no earlier than the first anniversary of the effective start date. The amount of the adjustment is limited to a maximum of the CPI annual percentage change increase (San Francisco Bay Area for Urban Wage Earners and Clerical Workers) for the previous calendar year. No increase, including the annual CPI adjustment, is allowed to billing rates exceeding \$220 per hour, unless Contract Manager and Bureau Manager authorize an increase to the rate in writing.

2. Personnel Changes:

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

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

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

3. Effective Overhead and Profit Rate

The Effective Overhead and Profit Rate (EOPR) for CS-211 is 2.50. The EOPR OR Individual Firm Overhead and Profit Rate will apply to the billing rate of all individuals not listed in Appendix B-1. The EOPR will also apply to all amendments to the Agreement. If a new subconsultant is added during the duration of the Agreement, the new individual firm multiplier can be no more than the EOPR.

4. Other Direct Costs (ODC)

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

The following items will be eligible for reimbursement as ODCs:

- Out-of-town travel (“out-of-town” shall mean outside the nine Bay Area counties: San Francisco, Alameda, Marin, Santa Clara, Sonoma, Contra Costa, Napa, San Mateo, Solano);
- Out- of town meal, travel and lodging expenses for project-related business trips, including, but not limited to:
 - Rental vehicle: traveler must select the most economical contractor and type of vehicle available and acquire any commercial rate or government discount available when the vehicle is rented;
 - Personal vehicle use: Contractor will be paid per mile as established by the United State Internal Revenue Service and only for that portion of travel that is outside the nine Bay Area counties and non-routine. Should the travel begin or end on a normal workday, the Contractor shall subtract commuting mileage from total mileage to calculate reimbursable mileage. The Contractor shall submit to the City an approved mileage log with its monthly invoices;
 - Meal and lodging expenses shall be reasonable and actual but limited to Federal government per diem rates;
- Specialty printing (“specialty” as used herein shall mean large volume printing and color printing and requires **prior** written approval by SFPUC project staff and documentation of the written approval by the SFPUC must be included with the invoice);
- Specialty computer hardware and software (only with **prior** written approval by SFPUC project staff and documentation of the written approval by the SFPUC must be included with the invoice – all hardware and software will be the property of the City);
- Courier services that are project related and originated from the project site offices;
- Permit fees;
- Expedited courier services when requested by SFPUC staff; and
- Safety equipment.

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

- All other travel expenses such as parking, bridge tolls, public transit, vehicle mileage within the nine Bay Area Counties, travel from Contractor’s home office to SFPUC facilities;
- Contractor personnel relocation costs;
- Any home or regional office labor charges or pass-throughs, including but not limited to, administrative and clerical personnel time;
- Personnel relocation and temporary assignment expenses;
- Entertainment expenses;
- Cell phones;

- Home office expenses;
- Telephone calls and faxes originating in the firm's home office, standard computer use charges, computer hardware or software computer hardware or software (other than the specialty hardware or software mentioned above), communication devices, and electronic equipment;
- Meal expenses which are not related to project-related business trips, including refreshments and working lunches with SFPUC staff;
- Equipment to be used by SFPUC staff; and
- Postage and courier services which are not requested by SFPUC staff.

5. Subcontractor make-up and documentation

Second-tier and pass-through subcontracting is prohibited. Additional subcontractors may be added to the contractor team after obtaining pre-authorization by the SFPUC Contract Manager, Bureau/Division Manager and the Contract Monitoring Division. Note that subcontractor administration markup is limited to actual cost not to exceed 5%.

6. Retention

Five percent (5%) of each invoice payment will be withheld for each task order. When the work for the task order or defined critical milestones has been completed to the satisfaction of the SFPUC Regional Contract Manager and all work products have been received and approved by the SFPUC Regional Contract Manager, the Contractor may request that the retention be released. In lieu of money retention, an irrevocable letter of credit acceptable to the City will be accepted.

7. Invoice Requirements

The SFPUC is automating its contracting and invoice payment processes with online software systems (SOLIS). The following processes are being automated: Contract Certification, Insurance Compliance, Task Order Certification, Timekeeping, Invoice Approval, and Invoice Payment. As part of its contracting obligations, the Contractor is required to 1) become an authorized user of these systems, 2) attend user training for these systems; and 3) utilize these systems for the purposes for which they are intended. Contractor shall not bill the SFPUC to use these systems. Contractor shall not charge SFPUC to send appropriate personnel to user training.

Contractor shall follow the invoicing and supporting documentation instructions as detailed in the SOLIS training or otherwise prescribed by the SFPUC.

Appendix B-1
Fee Schedule

Consultant Name	Staff Classification	Staff Name	Billing Rate (\$/hour)	Firm Overhead and Profit Rate
Shaw Environmental & Infrastructure, Inc.	CM & TM - Project Management	Teri Beckett, PE, QSD, Arborist	\$210.22	2.95
	LTM - Specialized Hydrologic Services	Thomas Barry, PG, CEG, CHG	\$149.04	
	LTM - Data Management and Analytical Services	Jonathan Myers, PhD	\$178.15	
	KTM - Specialized Hydrologic Services	Michael Bombard, PG, CHG	\$151.11	
	KTM - Specialized Hydrologic Services	J.C. Isham, PG, CEG, CHG	\$184.67	
	KTM - Specialized Hydrologic Services	John McMillan, PhD, PE, GE	\$220.00	
	KTM - Specialized Hydrologic Services	Steven Pierce, PG	\$175.63	
	KTM - Watershed Resources M&M Services	Kathy Kinsland, CISEC, QSP	\$184.60	
	KTM - Data Management and Analytical Services	Karen Black	\$121.18	
	KTM - Data Management and Analytical Services	Matthew Held	\$121.29	
	KTM - Data Management and Analytical Services	Chris Russo, GISP	\$129.68	
	KTM - Data Management and Analytical Services	Eric Schmidt	\$123.81	
	KTM - Fisheries Management	John Downing	\$204.18	
	TM - Community Benefits Commitments	Emma Jack, PhD	\$0.00	
	TM - Expert Advisor / Deputy Contract Manager	Emma Jack, PhD	\$177.00	
	TM - Document Control	June Gilmore	\$106.35	
	TM - Groundwater Modeling	James Teo	\$133.58	
	TM - Wildlife Surveys and Monitoring	Chris Perry	\$147.50	
	TM - Wildlife Surveys and Monitoring	Aaron Sunshine, SEM	\$66.85	
	TM - Fisheries Management	Walter Klock	\$92.26	
	TM - Fisheries Management	Bruce Kvam	\$132.97	
	TM - Fisheries Management	Cameron Lange	\$131.48	
	TM - Fisheries Management	Garry Smythe	\$128.80	
	TM - Reports	Stefanie Nisich	\$110.63	
	TM - Reports	Anna Wallace	\$82.60	
	TM - Reports	Mary Worth, CPESC, QSD	\$135.14	
TM - Resource Agency Permit Compliance	Alex Naughton, CPESC, QSP, QSD	\$138.20		

Appendix B-1
Fee Schedule

	TM - Resource Agency Permit Compliance	Jamie Reese, CESSWI, QSP	\$118.00	
	TM - Resource Agency Permit Compliance	Mary Worth, CPESC, QSD	\$135.14	
	TM - Education	Emma Jack, PhD	\$177.00	
	TM - Watershed Resource Policy Development	Emma Jack, PhD	\$177.00	
ATS, Inc. (LBE)	LTM - Watershed P&RC Support	Dorinda Himes, CHMM	\$132.91	2.00
	TM - QA/QC	Dorinda Himes, CHMM	\$132.91	
	TM - Resource Agency Permits	Mark Fogiel	\$144.67	
	TM - Resource Agency Permits	Stuart Griffin	\$136.50	
	TM - Education	Elahe Enssani, PhD	\$189.00	
Associated Right of Way Services, Inc. (SBE)	KTM - Land Acquisition Services	William Tannenbaum, SR/WA	\$210.00	2.50
	TM - Land Acquisition Services	James Richards	\$189.00	
Basin Research Associates, Inc. (SBE)	TM - Specialized Resource Analysis	Colin Busby, PhD, RPA	\$152.25	2.50
	TM - Specialized Resource Analysis	Christopher Canzonieri, MA	\$91.88	
	TM - Specialized Resource Analysis	Donna Garaventa, PhD, RPA	\$122.06	
	TM - Specialized Resource Analysis	Ward Hill, MA	\$131.25	
BioMaAs, Inc. (LBE)	KTM - Watershed Resources M&M Services	Steve Powell	\$163.46	2.50
	KTM - Botany	Deborah Petersen	\$144.38	
	TM - Botany	Jane Valerius	\$190.92	
Cal Ecology (SBE, WBE)	KTM - Watershed Resources M&M Services	Amy Parravano	\$131.25	1.00
	KTM - Ecology	Amy Parravano	\$131.25	
	TM - Botany	Amy Parravano	\$131.25	
	TM - Reports	Amy Parravano	\$131.25	
	TM - Resource Agency Permits	Amy Parravano	\$131.25	
Coast Ridge Ecology (LBE)	KTM - Watershed Resources M&M Services	Patrick Kobernus	\$105.00	2.50
	TM - Ecology	Suk-Ann Yee	\$91.88	
	TM - Wildlife Surveys and Monitoring	Patty Ten Boom Byrnes	\$91.88	
	TM - Wildlife Surveys and Monitoring	Tida Leagnar	\$78.75	
	TM - Resource Agency Permit Compliance	Chennie Castanon, QSP	\$91.88	
Cowhey Pacific Drilling, Inc. (LBE)	TM - Well Drilling	Peter Borjeson, PE	\$115.50	2.50
	TM - Well Drilling	Craig Chaffee	\$102.11	
	TM - Well Drilling	Terrence Cowhey, PE	\$115.50	
	TM - Well Drilling	Jason Klipfel	\$102.11	

Appendix B-1
Fee Schedule

Davis & Associates Communications, Inc. (LBE)	TM - Public Outreach	Darolyn Davis	\$220.00	2.50
	TM - Public Outreach	Zachary Klos	\$162.75	
	TM - Public Outreach	Tiffany Refuerzo	\$170.63	
EMS, Inc. (SBE, LBE)	TM - Project Management	Emad Mansour, PMP	\$220.00	2.30
Joseph DiDonato Wildlife Consulting & Photography	LTM - Watershed Resources M&M Services	Joseph DiDonato	\$105.00	1.00
	TM - Planning	Joseph DiDonato	\$105.00	
	TM - Watershed Resource Policy Development	Joseph DiDonato	\$105.00	
Meridian Surveying Engineering, Inc. (SBE, LBE)	TM - Surveys	Nathan Foley, LSIT	\$125.34	2.50
	TM - Surveys	Stanley Gray, PLS	\$210.00	
	TM - Surveys	Steve Klein, PLS	\$123.32	
	TM - Surveys	Emily Thomas, LSIT	\$94.76	
Mission Neighborhood Centers, Inc.	TM - Community Benefits Commitments	Mitchell Salazar	\$0.00	2.50
Olofson Environmental, Inc. (SBE)	KTM - Watershed P&RC Support	Peggy Olofson, PE	\$210.00	2.50
	TM - Project Management	Peggy Olofson, PE	\$210.00	
	TM - Riparian Restoration and Habitat Site Rem.	Jeanne Hammond	\$105.00	
	TM - Riparian Restoration and Habitat Site Rem.	Tripp McCandlish	\$131.25	
	TM - Riparian Restoration and Habitat Site Rem.	Peggy Olofson, PE	\$210.00	
	TM - Riparian Restoration and Habitat Site Rem.	Whitney Thornton	\$91.88	
	TM - Ecology	Jen McBroom	\$131.25	
	TM - Ecology	Brian Ort, PhD	\$196.88	
	TM - Ecology	Tobias Rohmer	\$105.00	
	TM - Botany	Simon Gunnar	\$78.75	
	TM - Botany	Whitney Thornton	\$91.88	
	TM - Planning	Leslie Bandy	\$91.88	
	TM - Planning	Stephanie Chen	\$91.88	
	TM - Planning	Jeanne Hammond	\$105.00	
	TM - Planning	Jeff Lewis	\$105.00	
TRC Solutions, Inc.	KTM - Watershed Resources M&M Services	Megan Peterson	\$144.38	2.50
	KTM - Watershed P&RC Support	Megan Peterson	\$144.38	
	KTM - Wildlife Surveys and Monitoring	Lincoln Allen	\$91.88	
	TM - Resource Agency Permit Compliance	Madeleine van der Heyden	\$91.88	
	TM - Watershed Resource Policy Development	Megan Peterson	\$144.38	

Appendix B-1
Fee Schedule

Yerba Buena Engineering & Construction, Inc. (SBE)	TM - Riparian Restoration and Habitat Site Rem.	Miguel Galarza	\$144.38	2.50
---	--	----------------	----------	------

Mark-Up on Subs = 5%

Effective Overhead and Profit Rate (EOPR): 2.50



San Francisco Water Power Sewer

Services of the San Francisco Public Utilities Commission

Contract Administration Bureau
525 Golden Gate, 8th Floor
San Francisco, CA 94102
T 415.551.4603
F 415.554.3225

August 27, 2013

Dina Robertson
URS Corporation
1333 Broadway, 8th Floor
Oakland, CA 94612
Email: dina.robertson@urs.com

- RE:** 1) Notice of Contract Award - Specialized and Technical Services, Natural Resources and Land Management Division, Water Enterprise (CS-211.D)
2) Transmittal - Executed Agreement between the City and County of San Francisco Public Utilities Commission and URS Corporation

Dear Ms. Robertson:

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

BLANKET PURCHASE ORDER NO: BPUC13000096
- Work may not be charged against this blanket purchase order number

SCOPE: To provide specialized and technical services related to watershed management and monitoring for specific projects, including watershed resources monitoring and management services, specialized hydrologic services, data management and analytical services, watershed planning and regulatory compliance support, project management, and additional related services.

EFFECTIVE DATE: August 21, 2013 to June 15, 2027

CONTRACT TO DATE: Total value of contract not to exceed \$5,000,000.00

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 Rosiana Angel at (415) 554-1549.

Edwin M. Lee
Mayor

Art Torres
President

Vince Courtney
Vice President

Ann Moller Caen
Commissioner

Francesca Viator
Commissioner

Atison Moran
Commissioner

Harlan L. Kelly, Jr.
General Manager



Enclosure: Executed Agreement

cc: Greg Lyman

File/NCA-CS-211.D

**City and County of San Francisco
San Francisco Public Utilities Commission
525 Golden Gate Avenue, 8th Floor
San Francisco, California 94102**

**Agreement between the City and County of San Francisco and
URS Corporation Americas**

**CS-211D
Specialized and Technical Services, Natural
Resources Division, Water Enterprise**

This Agreement is made this 10th day of April, 2013, in the City and County of San Francisco, State of California, by and between: **URS Corporation Americas, 1333 Broadway, 8th Floor, Oakland, CA 94612**, 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") requires the assistance of consulting firms to perform specialized management and monitoring technical services for the Water Enterprise; and

WHEREAS, a Request for Proposal ("RFP") was issued on February 7, 2013, and City selected Contractor as the successful proposer pursuant to the RFP; and

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

WHEREAS, approval for this Agreement was obtained when the Civil Service Commission approved Contract number 4009-12/13 on July 16, 2012; and

WHEREAS, approval for this Agreement was obtained from the San Francisco Public Utilities Commission Resolution Number 13-0053 on April 9th, 2013; and

WHEREAS, approval for this Agreement was obtained from the San Francisco Board of Supervisors by Resolution Number 188-13 on June 11, 2013;

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 from **June 15, 2013 to June 15, 2027.**

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 performed as of the last day of the immediately preceding month. In no event shall the amount of this Agreement exceed **Five Million Dollars (\$5,000,000)**. The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. 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 the San Francisco Public Utilities Commission as being in accordance with this Agreement. If Contractor fails to provide Services in accordance with Contractor's obligations under this Agreement, the City may, in addition to any other remedies allowed by law and/or this Agreement, withhold any and all payments due Contractor until such failure is cured. In no event shall Contractor stop work as a result of the City's withholding of payments.

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. 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. 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. 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. 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." Refer to Appendix B for additional invoice requirements.

8. Submitting False Claims; Remedies. Pursuant to Article V of Chapter 6 of the San Francisco Administrative Code, any contractor, subcontractor, supplier, consultant or subconsultant who submits a false claim may be subject to monetary penalties, investigation and prosecution and may be declared an irresponsible bidder or an unqualified consultant and debarred as set forth in that Article. The text of Article V of Chapter 6, along with the entire San Francisco Administrative Code is available on the web at http://www.amlegal.com/nxt/gateway.dll?f=templates&fn=default.htm&vid=amlegal:sanfrancisco_ca. A contractor, subcontractor, supplier, consultant or sub consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor, supplier, consultant or subconsultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

9. Left blank by agreement of the parties. (Disallowance)

10. Taxes. 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. 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 at no cost to the City.

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.

Without in any way limiting Proposer's liability pursuant to the "Indemnification" section of the Agreement (Appendix C, Professional Services Agreement (P-500)), Proposer(s) will be required to maintain in force, during the full term of any Agreement, insurance in the following amounts and coverage:

1. Worker's Compensation Insurance, in statutory amounts, with Employer's Liability limits not less than is \$1,000,000 each accident, injury or illness; and
2. Commercial General Liability Insurance with limits not less than \$2,000,000 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 \$1,000,000 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 Proposer's profession, with limits not less than \$2,000,000 each claim with respect to negligent acts, errors or omissions in connection with professional services to be provided under the Agreement.
5. Commercial Marine Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired marine coverage, as applicable.

Commercial General Liability and Commercial Automobile and Marine 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; and
2. That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of the Agreement, and that insurance applies separately to each insured against who claim is made or suit is brought.

Regarding Workers' Compensation, Proposer hereby agrees to waive subrogation which any insurer of Proposer may acquire from Proposer by virtue of the payment of any loss. Proposer agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Proposer, its employees, agents and subcontractors.

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

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

Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs 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 the Agreement effective on the date of such lapse of insurance.

Before commencing any operations under the Agreement, Proposer shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of the Agreement.

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

If a subcontractor will be used to complete any portion of the agreement, the Proposer 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 Proposer listed as additional insureds.

16. Indemnification.

1. For design professional services performed under this Agreement, if any, the following indemnity and defense obligations shall apply:

a. **General.** To the fullest extent permitted by law, Contractor shall assume the defense of (with legal counsel subject to approval of the City), indemnify and save harmless the City, its boards, commissions, officers, and employees (collectively "Indemnitees"), from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of the Contractor or its subconsultants), expense and liability of every kind, nature, and description (including, without limitation, incidental and consequential damages, court costs, attorneys' fees, litigation expenses, fees of expert consultants or witnesses in litigation, and costs of investigation), that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the negligence, recklessness, or wilful misconduct of the Contractor, any subconsultant, anyone directly or indirectly employed by them, or anyone that they control (collectively, "Liabilities").

b. **Limitations.** No insurance policy covering the Contractor's performance under this

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

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. Infringement of patent rights, copyrights, or other proprietary rights in the performance of this Agreement, if not the basis for indemnification under the law, shall nevertheless be considered a material breach of contract.

2. For all other services (not design professional) performed under this Agreement, the following indemnity and defense obligations shall apply:

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 be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

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. Left Blank by Agreement of the Parties (Liquidated Damages).

20. Default; Remedies. 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. Submitting false claims | 37. Drug-free workplace policy |
| 10. Taxes | 53. Compliance with laws |
| 15. Insurance | 55. Supervision of minors |
| 24. Proprietary or confidential information of City | 57. Protection of private information |
| 30. Assignment | 58. Graffiti removal |

(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.

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. 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 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, prejudice 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. This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement:

- | | |
|---|---|
| 8. Submitting false claims | 24. Proprietary or confidential information of City |
| 9. Disallowance | 26. Ownership of Results |
| 10. Taxes | 27. Works for Hire |
| 11. Payment does not imply acceptance of work | 28. Audit and Inspection of Records |
| 13. Responsibility for equipment | 48. Modification of Agreement. |
| 14. Independent Contractor; Payment of Taxes and Other Expenses | 49. Administrative Remedy for Agreement Interpretation. |
| 15. Insurance | 50. Agreement Made in California; Venue |
| 16. Indemnification | 51. Construction |
| 17. Incidental and Consequential Damages | 52. Entire Agreement |
| 18. Liability of City | 56. Severability |
| | 57. Protection of private information |

Subject to the immediately preceding sentence, 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, or by e-mail, and shall be addressed as follows:

To City: Greg Lyman
 San Francisco Public Utilities Commission
 525 Golden Gate Avenue
 San Francisco, CA 94103
 (tel.) (415) 554-1601
 email: glyman@sfwater.org

To Contractor: Ms. Dina Robertson, Contract Manager
 URS Corporation Americas
 1333 Broadway, 8th Floor,
 Oakland, CA 94612
 (tel.) (510) 874-1751
 (fax) (510) 874-3268
 E-mail: dina.robertson@urs.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. Not Used.

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 subcontracting participation goal for this contract is 13 %. 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 agrees 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. Contractor further agrees to provide to City the names of each person, entity or committee described above.

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 maybe 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. Disputes; Government Code Claim Requirements.

a. **Negotiation; Alternative Dispute Resolution.** The parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement by negotiation. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of the City. If agreed by both parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. Neither party will be entitled to legal fees or costs for matters resolved under this section.

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

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, "Modification of Agreement."

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. Left blank by agreement of the parties. (Supervision of minors)

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. Not Used.

59. Food Service Waste Reduction Requirements. 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.

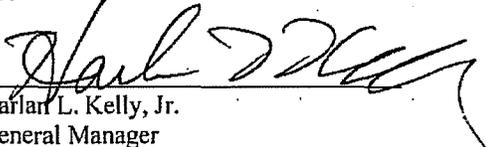
60. Left blank by agreement of the parties. (Slavery era disclosure)

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

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

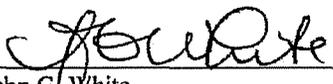
CITY

Approved:


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

Approved as to Form:

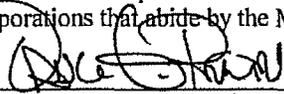
Dennis J. Herrera
City Attorney

By 
John G. White
Deputy City Attorney

CONTRACTOR

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.

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.


Authorized Signature

Vance G. Benté
Printed Name

Vice President
Title

URS Corporation Americas
Company Name

City Vendor Number

Address

Federal Employer ID Number

Appendices

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

Appendix A Services to be provided by Contractor

Contractor agrees to perform the services described below in accordance with the terms and conditions of this Agreement, implementing task orders, the RFP, and Contractor's proposal dated **March 8, 2013**. The RFP and Contractor's proposal are incorporated by reference as though fully set forth herein. Should there be a conflict of terms or conditions, this Agreement and its implementing task orders shall control over the RFP and the Contractor's proposal.

1. General Description of Services

The primary role of the selected Contractor will be to provide professional and technical services related to watershed management and monitoring for specific projects including, but not limited to, the general service categories summarized in Section III.3 below. The selected Contractor(s) will work under the direction of the Contract Manager in the Water Enterprise. Each task order will have a SFPUC Task Order Manager who will work with the Contractor to negotiate the project scope, cost and schedule.

2. Task Orders

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

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

These following tasks provide general guidance to the Contractor as to the anticipated scope of work which the SFPUC reserves the right to modify or delete:

A. Watershed Resources Monitoring and Management Services:

- i. **Ecology** – ecological surveys, studies, and assessments; biological community monitoring, identification, evaluation and mapping; wetland determinations and delineations; restoration ecology; genetic and taxonomic studies; studies of ecological processes and evaluation of ecological condition; ecological modeling; invasive plant mapping and control; site management evaluation and assessment; remedial erosion repairs oversight; integrated pest and invasive species (plant, wildlife, insect, or pathogen) management planning, monitoring, survey, and control oversight; soil analyses and mapping; quality control monitoring during and after maintenance and rehabilitation

of habitat restoration sites; wildlife monitoring including monitoring to minimize and avoid impacts during maintenance and monitoring to evaluate response to restoration or watershed management activities;

- ii. **Botany** – botanical surveys, including surveys for special status plants and butterfly host plants; special-status plant (and butterfly host plant) monitoring and mapping; rangeland assessments; other vegetation management planning, and monitoring for remedial planting and seeding; seed or propagate mapping and collection; grazing management and monitoring; development of nursery guidelines and nursery inspections; evaluations as to whether restoration projects are meeting pre-determined vegetation-related success criteria;
- iii. **Wildlife Surveys and Monitoring** – wildlife surveys, including those for special status species that conform to CDFG and USFWS approved protocols; trapping, tagging, tracking and monitoring studies; wildlife camera studies;
- iv. **Fisheries Management** – evaluation of in-stream flows; anadromous fish habitat requirements and assessments; stream sediment characterizations; riparian zone quality assessments; rapid biological assessments (in particular benthic macro-invertebrate assessments); PIT and radio tagging and tracking studies; in-stream and fish passage camera, PIT antennae array, and other remote sensing system design, maintenance, operations, and data analysis; fish parasite and pathology studies; fish bioenergetics and predatory fish gut content analysis; migratory fish trapping studies; genetic and aging studies using otolith, scale, and tissue; reservoir fish population characterization studies;
- v. **Land Acquisition Services** – Conservation easement and land acquisition document development, Phase I environmental assessment, title reports, land surveys, baseline survey reports, road assessments, PAR analysis, conservation easement endowment planning, conservation easement monitoring, legal descriptions, appraisals, public outreach, property management plans (i.e., grazing management plan, resource management plan, and routine maintenance plan).

B. Specialized Hydrologic Services:

Geologic, hydrogeologic surveys, analysis and studies, installations (piezometers, cattle water supply wells, flow meters, data loggers) ; ; topographic and bathymetric survey; limnology studies, creek monitoring and geomorphic surveys and studies; hydrologic and open channel (i.e., stream, river) hydraulic modeling and model interpretation; stream and river flow measurements; groundwater and surface water sampling and analysis; erosion monitoring and evaluation; pond, wetland, creek, and riparian restoration and habitat site remediation;

C. Data Management and Analytical Services:

Perform and interpret aerial surveys; support management of data, perform statistical analyses and interpret results, support means of tracking permit compliance, and assist with ecological data storage and analysis.

D. Watershed Planning and Regulatory Compliance Support:

- i. **Reports** - technical editing; graphics; report preparation and reproduction; scientific peer review of papers, reports and planning documents;
- ii. **Resource Agency Permits** - permit application and amendment preparation such as those required for routine maintenance and management activities;
- iii. **Resource Agency Permit compliance** - assistance for federal, state and local environmental regulations including but not limited to U.S. Army Corps of Engineers Section 404, FESA, NEPA, CEQA, California Fish & Game Code Section 1602, CDF&G CESA, Clean Water Act (including National Pollutant Discharge Elimination

System and Storm Water Pollution Prevention Plans) and Migratory Bird Act requirements;

- iv. **Education** - development and implementation of environmental education programs including interpretive master plans, and interpretive signage and trails and displays, and outreach programs; training on federal, state, and local environmental regulations and regulatory changes;
- v. **Planning** - native landscape design, trail planning and design, fisheries or wildlife management planning; grazing and range management planning; watershed management and development planning; land acquisition and protections planning; conservation easement program planning; environmental oversight during maintenance planning, training and implementation; operational compliance planning, training, and implementation; development of best land management practices; and development of design documents for repair of natural habitat and modifications of existing habitat improvements;
- vi. **Specialized Resource Analysis** - Provide specialized environmental resource expertise services, research, reports and recommendations associated with routine maintenance management activities including water quality, air quality, health risk assessments for air emissions, climatology, paleontology, greenhouse gases, noise, hazardous materials, natural resources risk assessment and risk management, pre-historic and historic archaeology, and historic architecture. Specialized resource analysis work that may be needed as part of a CEQA document or for resource agency permits that may be performed by consultants under this contract, may be managed by BEM or NRLMD staff, as determined by the type and size of the project.
- vii. **Watershed Resource Policy Development** - Gather and analyze data, prepare background studies and reports, and develop policies and plans related to watershed resources identified in the WMP including (but not limited to) a pesticide management plan and vegetation management plan.

E. Project Management:

Provide coordination for keeping SFPUC informed of progress, technical issues, and planned activities and events. Prepare scopes of work, budgets and schedules for all task proposals. Prepare for and attend coordination bi-weekly progress meetings between SFPUC staff and senior project staff from the Proposer. Submit monthly progress reports, with highlights of work achievements during the past month, work planned and important milestones for the upcoming month and identify any issues or scope changes that may affect overall cost and/or schedule of tasks. Maintain project files including all reports, correspondence, data, observations, and other documents pertaining to tasks. Coordinate review comments provided by others on reports, memoranda, project documents and other work products and document and disseminate responses to review comments.

F. Additional Services: In addition to services identified above, the contractor(s) may also be asked to provide:

- i. Presentations to the SFPUC Staff and/or Commission, the San Francisco Board of Supervisors, SFPUC retail and/or wholesale customers, SFPUC stakeholders, and neighborhood or community meetings;
- ii. Professional consultations and expert testimonies;
- iii. Reservoir management services including permitting; algae control analyses; reservoir sediment contamination monitoring; aquatic toxicity testing; water quality analytical services; water quality data management; source and discharge water assessments; sample collection and laboratory support.
- iv. Field inspections and surveys at project sites; and

- v. Specialized statistical analyses and interpretation for compliance monitoring of shoreline bacteria (including running geometric means), sediment grain size (including mean phi, skewness, and kurtosis), benthic infauna and fisheries communities (including diversity measures and reference envelope analysis), and recreational use data (including Bayesian Belief Network analysis).

G: Community Benefits Commitments

Following issuance of the Notice-to-Proceed (NTP) for the first task to be performed by URS under this Agreement, URS commits to providing the Community Benefits Commitments detailed below during the 14-year term of the Agreement. URS's commitments shall be funded independently by URS and shall not be tied to or dependent upon SFPUC funds or sources of funding, receivables from SFPUC, or retention associated with this Project. Because this is an As-Needed contract, URS acknowledges that there is no guarantee that the entire contract not-to-exceed amount set forth in Section 1 will be funded. Instead, work is issued on a task order basis as it is needed by the SFPUC, and URS is not entitled to funding beyond any issued-task order. The provision of Community Benefits Commitments by URS does not entitle URS to additional task orders or additional work beyond issued-task orders. In the event that the contract value is not fully expended or is otherwise amended, the parties hereby agree to meet and discuss the impact to the corresponding Community Benefit Commitments. The representations, warranties and other terms contained in this Community Benefit Commitments section have been designed by URS as the basis for a Community Benefit Plan, but are for the sole benefit of the parties hereto and shall not be construed as conferring any rights on any other persons or entities.

As stated in the Request for Proposals

"Although this Task G is a deliverable task, it is a zero-dollar task. Zero hours should be allotted in your Overhead and Profit Schedule (OPS) for this task. No hours or dollars should be allotted or included in Proposer's costs for this Project in order to perform or deliver your voluntarily proposed Community Benefits commitments. If the Proposer commits any funds to delivering the Community Benefits commitments it proposes, all such funds must be independent of SFPUC funding or any dollars associated with this Project. If the Proposer commits to contributing any funds to performing or delivering its commitments related to this task, such funds may not be dependent in any way upon receipt of SFPUC funding, including not being dependent upon release of retention, etc."

Community Benefits Plan and Timeline

URS shall develop a Community Benefits Plan and Timeline within three months of issuance of NTP. The Community Benefits Plan and Timeline will provide details regarding expenditures, a schedule, and timelines related to the Community Benefits Commitments described in the URS proposal and below. URS will develop the Community Benefits Plan and Timeline with the necessary flexibility relating to timing, expenditure of funds, partners, strategic delivery, scale, and performance of Community Benefits Commitments to best achieve positive community impacts. Once the initial Community Benefits Plan and Timeline are developed, SFPUC and URS shall meet at least once a year during the term of the Agreement to discuss the work plan and associated timelines, and make any adjustments or updates as necessary.

Community Benefits Commitments

URS shall develop a work plan, schedule, and timeline as one component of the Community Benefits Plan and Timeline to deliver, perform and produce the following Community Benefits Commitments:

Description of Community Benefit/ Initiative	# of Volunteer Hours	Volunteer Hourly Rate	Volunteer Contributions (\$)	Financial Contribution (\$)	In-Kind Contributions (\$)	Total Contribution (\$)*
Workforce Development	120	\$183.33	\$22,000	\$15,000		\$37,000
Economic Development				\$6,300		\$6,300
Total Value of Commitments:	120		\$22,000	\$21,300		\$43,300

*Volunteer contribution + Direct Financial Contribution + In-Kind Contribution = Total Contribution

URS shall provide \$21,300 in direct financial contributions and 120 volunteer hours (equating to \$22,000). URS commits to a minimum contribution of \$43,300 over the life of this Contract.

Workforce Development

URS shall provide internship opportunities by contributing moneys and volunteer hours to local students by partnering with the Mayor's Youth Employment and Education Program (MYEEP) through the Young Community Develops, Inc. (YCD). By partnering with YCD, we are able to fund interns through an ongoing program aimed at helping the San Francisco community. URS will fund three interns to participate in this rewarding summer program at a rate of one intern per year for the first three years of our CS-211 as-needed contract, equivalent to \$5,000 per year for a total value of \$15,000.

URS will contribute hours towards the mentorship and development of the interns assigned through the YCD program. In order to help further the educational activities associated with the internship, on an annual basis, URS will be providing two site supervisors/mentors to work with the students who are accepted into the program. By providing mentorship from URS' technical staff, the program participants will be able to ask questions, learn from, and engage in URS's senior experts in science and engineering. On an annual basis for three years, two site supervisors/mentors will each volunteer 20 hours of service to the program (inclusive of training required to be part of the YCD program). These hours represent about \$22,000 value in donated time on behalf of URS' community benefits program. This volunteerism will be at a rate of two site supervisors/mentors per year, for the first three years of the CS-211 as needed contract.

Economic Development

URS is has proposed and is prepared to direct expenses incurred from work on this project back to the local economy through local purchasing and expenditures. URS is prepared to commit to an amount of \$6,300 for such economic development activities over the lifetime of the contract. URS understands such commitment may not count towards Community Benefits commitments because SFPUC requires all such commitments be independent of SFPUC funding or any dollars associated with this project, however, URS will do so because there is a real benefit to the local economy.

URS's community benefits commitments will be documented as part of the Project Management in Task G above and executed as a major task for the Project.

Community Benefits Work Approach, Project Team/Organization, and Accountability

URS's Contract Manager, Dina Robertson, and Principal-in-charge, Noel Wong, shall serve as the executive in charge of delivering the community benefits commitments. URS's Contract Manager shall ensure that the community benefits commitments herein are delivered to the communities that they are intended to benefit in a transparent and accountable manner. The Contract Manager shall organize, plan, track, measure, and report on Contractor's community benefits commitments. The Contract Manager shall also coordinate the senior management of URS's subconsultants to ensure the entire team participates in providing benefits to the San Francisco community.

URS's Contract Manager shall submit a stand-alone annual report on progress in fulfilling URS's community benefits commitments, detailing factors such as the total number of dollars and hours contributed to each of the proposed tasks and organizations over the year. URS shall also provide independently verifiable documentation (such as certified payroll records, receipts, etc.) that the SFPUC can use to independently and easily verify that the dollars and volunteer hours contributed by URS as part of its Community Benefits Commitments were delivered to and actually reached the communities they were intended to benefit.

URS shall ensure that quarterly reports are prepared and submitted to SFPUC on the last business day of the month following the close of each quarter. The reports shall describe URS's community benefits efforts under the program both in the prior quarter and contract to date. URS's quarterly reports shall include the name and description of all projects commenced, underway, and completed; the dollar and hour values of all activities and elements of each project; the progress to date of each project; and the outcomes of projects that are underway. URS shall submit such documentation to substantiate that the Community Benefits Commitments and any funds associated thereto were in fact delivered to the communities they were intended to benefit within the three months immediately following delivery of such Community Benefits Commitments or dollars associated thereto.

URS's Community Benefits Commitments shall be performed prospectively during the term of the Agreement, after the award of the Agreement and following issuance of NTP on the first task assigned to URS under this Agreement. Commitments performed as part of previous contracts or prior to URS being awarded the Agreement cannot be used as part of URS's Community Benefits Commitments for this Project.

3. Performance Evaluation

Performance evaluations support the SFPUC's objective of continuously improving the quality of Contractor services. The SFPUC will 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. When 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.

SFPUC's Infrastructure Division Procedures Manual, Volume 4, Program and Project Management, Section 3: Contract Management, Procedure: PM 3.16, Consultant Services Performance Evaluation

requires that a contract manager evaluate a consultant's performance on engineering, environmental and construction management projects and complete the Consultant Services Performance Evaluation Form (CSPE) during the contract term. A final end of year CSPE will be kept on file with the SFPUC for three years after contract completion. Completed end-of-contract CSPEs, including any consultant responses, will be forwarded to the evaluation panel for future RFPs, where a proposer identifies the evaluated project as a qualifying project reference under the RFP. If a proposer responding to a future RFP identifies an ongoing SFPUC project as a qualifying project reference (and the ongoing project complies with RFP reference requirements), SFPUC staff will forward the most recent annual CSPE for the qualifying project, if any, to the RFP evaluation panel.(Include if contract is engineering design, environmental analysis services and construction management).

4. Reports

Contractor shall submit written reports as requested by the SFPUC. Format for the content of such reports shall be determined by the Contract Manager. 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.

5. Department Liaison

In performing the services provided for in this Agreement, Contractor's liaison with the SFPUC will be: Greg Lyman.

Appendix B Calculation of Charges

As part of Contractor's proposal dated March 8, 2013, Contractor submitted proposed billing rates, attached hereto as Appendix B-1 Fee Schedule Form, for the requested tasks in the Overhead and Profit Schedule, incorporated herein by reference.

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

1. Billing Rates

Contractor's billing rates and each and every staff classification as stated in Appendix B-1 will be the billing rates for the listed individuals. The billing rate may not exceed the lowest rate charged to any other governmental entity except the City and County of San Francisco. Billing rates may be adjusted annually on the anniversary of the effective start date as indicated in the original Notice of Contract Award letter. The first adjustment may be made no earlier than the first anniversary of the effective start date. The amount of the adjustment is limited to a maximum of the CPI annual percentage change increase (San Francisco Bay Area for Urban Wage Earners and Clerical Workers) for the previous calendar year. No increase, including the annual CPI adjustment, is allowed to billing rates exceeding \$220 per hour, unless Contract Manager and Bureau Manager authorize an increase to the rate in writing.

2. Personnel Changes:

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

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

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

3. Effective Overhead and Profit Rate

The Effective Overhead and Profit Rate (EOPR) for CS-211 is 2.50. The EOPR OR Individual Firm Overhead and Profit Rate will apply to the billing rate of all individuals not listed in Appendix B-1. The EOPR will also apply to all amendments to the Agreement. If a new subconsultant is added during the duration of the Agreement, the new individual firm multiplier can be no more than the EOPR.

4. Other Direct Costs (ODC)

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

The following items will be eligible for reimbursement as ODCs:

- Out-of-town travel (“out-of-town” shall mean outside the nine Bay Area counties: San Francisco, Alameda, Marin, Santa Clara, Sonoma, Contra Costa, Napa, San Mateo, Solano);
- Out- of town meal, travel and lodging expenses for project-related business trips, including, but not limited to:
 - Rental vehicle: traveler must select the most economical contractor and type of vehicle available and acquire any commercial rate or government discount available when the vehicle is rented;
 - Personal vehicle use: Contractor will be paid per mile as established by the United State Internal Revenue Service and only for that portion of travel that is outside the nine Bay Area counties and non-routine. Should the travel begin or end on a normal workday, the Contractor shall subtract commuting mileage from total mileage to calculate reimbursable mileage. The Contractor shall submit to the City an approved mileage log with its monthly invoices;
 - Meal and lodging expenses shall be reasonable and actual but limited to Federal government per diem rates;
- Specialty printing (“specialty” as used herein shall mean large volume printing and color printing and requires **prior** written approval by SFPUC project staff and documentation of the written approval by the SFPUC must be included with the invoice);
- Specialty computer hardware and software (only with **prior** written approval by SFPUC project staff and documentation of the written approval by the SFPUC must be included with the invoice – all hardware and software will be the property of the City);
- Courier services that are project related and originated from the project site offices;
- Permit fees;
- Expedited courier services when requested by SFPUC staff; and
- Safety equipment.

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

- All other travel expenses such as parking, bridge tolls, public transit, vehicle mileage within the nine Bay Area Counties, travel from Contractor’s home office to SFPUC facilities;
- Contractor personnel relocation costs;
- Any home or regional office labor charges or pass-throughs, including but not limited to, administrative and clerical personnel time;
- Personnel relocation and temporary assignment expenses;
- Entertainment expenses;
- Cell phones;
- Home office expenses;

- Telephone calls and faxes originating in the firm's home office, standard computer use charges, computer hardware or software computer hardware or software (other than the specialty hardware or software mentioned above), communication devices, and electronic equipment;
- Meal expenses which are not related to project-related business trips, including refreshments and working lunches with SFPUC staff;
- Equipment to be used by SFPUC staff; and
- Postage and courier services which are not requested by SFPUC staff.

5. Subcontractor make-up and documentation

Second-tier and pass-through subcontracting is prohibited. Additional subcontractors may be added to the contractor team after obtaining pre-authorization by the SFPUC Contract Manager, Bureau/Division Manager and the Contract Monitoring Division. Note that subcontractor administration markup is limited to actual cost not to exceed 5%.

6. Retention

Five percent (5%) of each invoice payment will be withheld for each task order. When the work for the task order or defined critical milestones has been completed to the satisfaction of the SFPUC Regional Contract Manager and all work products have been received and approved by the SFPUC Regional Contract Manager, the Contractor may request that the retention be released. In lieu of money retention, an irrevocable letter of credit acceptable to the City will be accepted.

7. Invoice Requirements

The SFPUC is automating its contracting and invoice payment processes with online software systems (SOLIS). The following processes are being automated: Contract Certification, Insurance Compliance, Task Order Certification, Timekeeping, Invoice Approval, and Invoice Payment. As part of its contracting obligations, the Contractor is required to 1) become an authorized user of these systems, 2) attend user training for these systems; and 3) utilize these systems for the purposes for which they are intended. Contractor shall not bill the SFPUC to use these systems. Contractor shall not charge SFPUC to send appropriate personnel to user training.

Contractor shall follow the invoicing and supporting documentation instructions as detailed in the SOLIS training or otherwise prescribed by the SFPUC.

**Appendix B-1
Fee Schedule**

Consultant Name	Staff Classification	Name of Proposed Staff Person	Billing Rate (\$/hour)	Firms Overhead and Profit Rate
URS Corporation Americas	Biologist 3	Ode Bernstein	\$90.94	2.70
	Biologist 4	Matthew Bettelheim	\$113.18	
	Biologist 4	Letty Brown	\$109.30	
	Engineering Manager 2	Paul Burge	\$182.30	
	Biologist 4	Michael Carbiener	\$116.96	
	Office Support 2	Juan Castro	\$49.90	
	Engineering Manager 3	Terry Cooke	\$220.00	
	Certified Project Manager 2	Bonnie deBerry	\$142.24	
	Project Manager 3	Francesca Demgen	\$205.96	
	Ecologist 4	Katherine Dudney	\$93.53	
	Environmental Engineer 4	Maureen Dunn	\$114.37	
	Word Processor	Deb Fournier	\$85.75	
	Planning Manager 3	Alexandra Fraser	\$175.50	
	Project Manager 2	Seth Gentzler	\$188.46	
	GIS Specialist	Brian Greer	\$79.70	
	Archaeologist 6	Mark Hale	\$121.61	
	Certified Project Manager 2	David Halsing	\$147.85	
	Public Affairs Specialist 4	Heather Hansen	\$129.49	
	Certified Project Manager 4	Denise Heick	\$220.00	
	Biologist 2	Jolie Henricks	\$85.64	
	Certified Project Manager 2	Bob Horwath	\$169.24	
	Biologist 2	Derek Jansen	\$75.92	
	Archaeologist 2	Corri Jimenez	\$85.10	
	Geologist 4	Ben Kozlowicz	\$100.01	
	Planning Manager 1	Darcy Kremin	\$156.60	
	Biologist 2	Anna Larsen	\$83.16	
	Scientific Manager	Steve Leach	\$220.00	
	Civil-Water Resources Eng 4	Shannon Leonard	\$117.94	
	Biologist 3	Tammy Lim	\$109.08	

**Appendix B-1
Fee Schedule**

Consultant Name	Staff Classification	Name of Proposed Staff Person	Billing Rate (\$/hour)	Firms Overhead and Profit Rate
	Biologist 3	Shannon Lindquist	\$88.02	
	GIS Manager 1	Tomas Lopes	\$115.24	
	Biologist 1	Nour Mardini	\$73.22	
	Certified Project Manager 3	William Martin	\$181.98	
	Biologist 3	Mandi McElroy	\$88.02	
	Civil - Water Resources Eng 7	Phillip Mineart	\$172.26	
	Biologist 7	Michael Monroe	\$216.00	
	Environmental Engineer 3	Elizabeth Nielsen	\$100.66	
	Ecologist 4	Jan Novak	\$110.05	
	Biologist 2	Ivan Parr	\$76.68	
	GIS Specialist 4	Jessica Parteno	\$96.88	
	Geotechnical Engineer 7	John Paxton	\$158.54	
	Hydrologist 4	Jason Pearson	\$114.05	
	Biologist 1	Danielle Pefia	\$73.98	
	Biologist 3	Galen Peracca	\$94.61	
	Office Facility Manager 4	Robert Perez	\$157.57	
	Planning Manager 3	Linda Peters	\$177.88	
	Editor / Writer 4	Jay Plano	\$122.04	
	Biologist 2	Norm Ponferrada	\$77.98	
	Project Assistant	Jody Quick	\$81.43	
	Certified Project Manager 1	Christian Raumann	\$131.11	
	Certified Project Manager 3	Greg Reichert	\$220.00	
	Biologist 6	Dina Robertson	\$141.59	
	Environmental Engineer 5	Greg SanMartin	\$159.73	
	Environmental Engineer 4	Jennifer Schulte	\$110.38	
	Certified Project Manager 2	David Simpson	\$176.69	
	Geologist 5	Erik Skov	\$141.05	
	Graphic Designer 3	Matthew Smith	\$94.07	
	Certified Project	Lorena Solorzano-Vincent	\$147.64	

**Appendix B-1
Fee Schedule**

Consultant Name	Staff Classification	Name of Proposed Staff Person	Billing Rate (\$/hour)	Firms Overhead and Profit Rate
	Manager 2			
	Ecologist 6	Jon Stead	\$141.59	
	Registered Land Surveyor 4	Brian Stockinger	\$160.60	
	Landscape Architect 6	George Strnad	\$169.78	
	Biologist 5	Sue Townsend	\$135.00	
	Risk Assessor 7	Usha Vedagiri	\$207.79	
	Health & Safety Professional 2	Mark Wilson	\$78.84	
	Environmental Scientist 7	Chi-Wah Wong	\$155.74	
	Civil - Water Resources Eng 8	Noel Wong	\$220.00	
	Landscape Architect 2	Keith Wright	\$82.30	
	Environmental Planner 3	Hannah Young	\$108.00	
	Hydrologist 6	Steve Zembsch	\$155.84	
	AEW Engineering, Inc.	Principal	Kenneth Leung	
Senior Geologist		Randall Young	\$128.53	
Applied Technology & Science	Watershed P&RC Support	Dorinda Himes	\$126.58	2.00
	Watershed Resources M&M Services	Mark Fogiel	\$137.78	
	Watershed P&RC Support	Richard Arnold	\$180.00	
	Watershed Resources M&M Services	Stuart Griffin	\$130.00	
	Watershed Resources M&M Services	Terrin Ricehill	\$137.78	
	Watershed Resources M&M Services	Vir McCoy	\$113.18	
	Watershed Resources M&M Services	Joan Humphrey	\$113.18	
	Watershed Resources M&M Services	Daniel Edelstein	\$113.18	
	Watershed Resources M&M Services	Mike Bumgardner	\$180.00	
	Watershed Resources M&M Services	Michael Marangio	\$180.00	

**Appendix B-1
Fee Schedule**

Consultant Name	Staff Classification	Name of Proposed Staff Person	Billing Rate (\$/hour)	Firms Overhead and Profit Rate
Avocet Research Associates	Senior Biologist	Jules Evens	\$194.70	1.18
BioMaAS, LLC	Watershed Resources M&M Services	Deborah Petersen-Ecologist/Botanist	\$110.00	2.00
	Watershed Resources M&M Services	Jane Valerius-Plant Ecologist, Wetland Specialist	\$145.46	
	Watershed Resources M&M Services	Steve Powell-Wildlife	\$124.54	
	Watershed Resources M&M Services	Eric Peterson-Environmental Inspector	\$100.50	
	Watershed Resources M&M Services	Scott Cressey-Fisheries	\$140.00	
	Watershed Resources M&M Services	Evan Shanbrom-Wildlife, Environmental Inspector	\$54.00	
	Watershed Resources M&M Services	Brandon Vidrio-Wildlife, SWPPP	\$54.00	
	Watershed Resources M&M Services	Bruce Hanson-Paleontology	\$114.00	
	Watershed Resources M&M Services	Milton Yacelga-Wildlife	\$100.00	
Coast Ridge Ecology	Watershed Resources M&M Services	Patrick Kobernus	\$100.00	2.50
	Watershed Resources M&M Services	Suk-Ann Yee	\$87.50	
	Watershed Resources M&M Services	Tida Leagnavar	\$75.00	
	Watershed P&RC Support	Chennie Castañon	\$87.50	
	Watershed Resources M&M Services	Patty Ten Boom Byrnes	\$87.50	
Copymat	Printing/Reproduction	N/A	See Rate Sheet	1.00
Ed Connor	Consultant	Ed Connor	\$220.00	1.00
Joe Hill Consulting Engineers	Engineering Specialist	Joseph Hill	\$164.40	2.40

**Appendix B-1
Fee Schedule**

Consultant Name	Staff Classification	Name of Proposed Staff Person	Billing Rate (\$/hour)	Firms Overhead and Profit Rate
McBain & Trush	Fluvial Geomorphologist	Scott McBain	\$140.00	2.80
Michael Love & Associates	Principal Engineer	Michael Love	\$140.00	1.00
Michael S. Thomas Consulting Engineers	Principal Engineer	Michael Thomas	\$170.00	1.00
Natalie Macris	Planner/Writer/Editor	Natalie Macris	\$114.40	1.10
Oracle Oak	Principal/Consultant	Larry Costello	\$150.00	1.00
Orion Environmental Associates	Principal	Joyce Hsiao	\$196.80	2.46
	Senior Associate	Valerie Geier	\$167.28	
	Senior Biologist	Barbara Leitner	\$150.06	
	Senior Geologist	Mary McDonald	\$142.68	
Telamon Engineering Consultants, Inc.	Principal	Mennor Chan	\$217.70	3.11
The Thier Group	Project Manager	Holli Thier	\$220.00	2.65
Vibro-Acoustic Consultants	Principal	J. Byron Davis	\$212.97	3.10
Westervelt Ecological Services, LLC	Principal	TBD	\$202.63	1.85
	Senior Conservation Planner	TBD	\$91.98	
	Conservation Planner	TBD	\$69.67	
	Land Acquisition Specialist	TBD	\$120.08	

Effective Overhead and Profit Rate (EOPR): 2.50
--

FULL SERVICE

Special Quotes for Large Orders

8.5 x 11

Total No. of Copies	Overnight	Same Day
1 - 499	9.0c	10.0c
500 - 1999	8.0	9.0
2000 - 4999	7.0	8.0
5000 - 9999	6.0	7.0
10,000 & over	4.0	5.0

8 1/2 x 14..... Add 1/2¢ per Copy

11 x 17

1 - 499	15c
500 - 1999	12
2000 - 3999	10
4000 & over	8

Enlargement (First Copy)..... 25c

Reduction (First Copy)..... 25c

Two-sided Copies..... Double the price

For Rush Orders Please Add 20%

COLOR COPIES

Total No. of Copies	8 1/2 x 11	8 1/2 x 14	11 x 17
1 - 99	\$1.00	\$1.50	\$2.00
100 - 299	.85	\$1.30	\$1.70
300 - 499	.80	\$1.20	\$1.60
500 - 999	.75	\$1.15	\$1.50

Over 1000 Please Ask for Quote

Cover Stock..... Add 25c per sheet
Color Transparencies..... Add \$1.50 per sheet

LARGE FORMAT COPIES (BW)

\$1.50 - 18" x 24"

\$3.00 - 24" x 36"

\$4.50 - 30" x 42"

50c per Square Foot on 20# Bond

\$2.50 per enlargement/reduction

\$1.50 per Square Foot on Vellum

Download Fee..... \$60.00 per Hour*

Minimum Charge is \$5.00

PRINTED TABS

Black Print on White Stock

Mylar 5th Cut Tabs..... \$2.50 per Set

Special Cut Tabs..... per quote

Blank 5th Cut Tabs..... \$1.00 per Set

Minimum charge is \$25.00 plus setup

For an additional charge the body of the tab may be printed in color.

Please ask for quote.

BINDING

Velo and Card Card& 2 Vinyl
Spiral Covers 1 Vinyl Cover Covers

1"..... \$2.75..... \$3.50..... \$4.25

1-2"..... \$3.75..... \$4.50..... \$5.25

Over 2"..... \$5.75..... \$6.50..... \$7.25

Rebind up to 1"..... \$2.00

Rebind over 1"..... \$2.50

Wire-O binding Card Card& 2 Vinyl
Covers 1 Vinyl Cover Covers

up to 1/2"..... \$4.00..... \$4.75..... \$5.50

9/16 - 3/4"..... \$5.00..... \$5.75..... \$6.50

7/8 - 1 1/4"..... \$6.00..... \$6.75..... \$7.50

Rebind up to 3/4"..... \$2.50

Rebind over 1"..... \$3.00

Coil binding Card Card& 2 Vinyl
Covers 1 Vinyl Cover Covers

up to 1/2"..... \$4.25..... \$5.00..... \$5.75

9/16 - 3/4"..... \$5.25..... \$6.00..... \$6.75

7/8 - 1 1/4"..... \$6.25..... \$7.00..... \$7.75

Rebind up to 3/4"..... \$2.50

Rebind over 1"..... \$3.00

Punch Only (per book)..... \$1.00

Binding for 11 x 17 books...add \$2.00 to above costs

BOOKLET MAKER

Includes collating, Half-folding and Stapling

Minimum charge is \$25.00

Sheets per Booklet Booklet Cost

2-4..... 30c

5-7..... 35c

8-10..... 40c

11-13..... 75c

14 & over..... \$1.00

LAMINATING

3 mil laminating

8" x 11..... \$1.50*

11 x 17..... \$3.00

18 x 25..... \$5.00

* Min. charge \$3.00 Tight trim \$1.00 per trim

10 mil laminating..... \$5.00 per sq ft*

* Min. charge \$5.00 Tight trim \$1.00 per trim

FAX SERVICE

Receiving: Each Page..... \$1.00 per Page

Sending: to Bay Area / Local

First Page..... \$1.50

Additional pages..... \$1.00 per Page

Sending: to other Area Codes

First Page..... \$2.00

Additional pages..... \$1.50 per Page

International: Each Page..... \$5.00 per Page No

charge for cover sheet.

ADDITIONAL SERVICES

Machine Stapling..... 4c per Staple

Hand Stapling..... 10c per Staple

Drilling..... 50c per 100 Sheets

minimum \$5.00

Cutting*..... 50c per 100 Shts per cut

Folding*..... \$1.00 per 100 Sheets

Scoring*..... \$25.00 per 100 Sheets

B/W Transparencies..... \$1.00 per Sheet

Labels (33 per Page)..... 50c per Sheet

Labels (Full Sheet)..... 75c per Sheet

Padding..... (min) \$10.00 per 1000 Sheets

Special Handling..... \$60.00 per Hour

minimum \$15.00

Legal Tabs 1-10..... 50c each

10 or more..... 35c each

*..... \$10.00 min. Charge

**..... \$25.00 min. Charge

Desktop Publishing

Normal Turnaround is 24 hours
Rush charge is 100%

Full Service Rates:

Graphic Design / OCR \$70.00 per Hour
15 Minutes Minimum \$ 17.50

Scanning

TIF, EPS, JPEG, PDF, or GIF FORMATS

*Minimum charge \$ 10.00

For large scan projects please ask for Quote.

BW or Color \$70.00 per Hour
Scans of to 36" Wide

CD/DVD Duplication

CD Burn \$ 10.00 each

DVD Burn \$ 20.00 each

CD label color (2up) \$2.00 per sheet

CD label bw (2up) \$ 1.00 per sheet

Docutech Download

Download Fee \$ 60.00 per hour*

\$5.00 Minimum charge

Filey Download

Download Fee \$ 60.00 per hour*

\$5.00 Minimum charge

Digital Color Oversize

60" maximum width by any length
Please ask for Quote for multiple prints.

Matte Finish \$ 6.50 per Sq. Ft.

Coated Finish \$8.00 per Sq. Ft.

Super Gloss finish \$10.00 per Sq. Ft.

Please ask for quote for vinyl and other substrates

Mounting

Foamcore \$ 5.00 per Sq. Ft.

Gatorboard \$6.50 per Sq. Ft.

Please inquire regarding alternative mounting materials

Copymat also offers the following services:

- Perfect Binding
- Custom Made Tabs
- Offset Printing
- Bates Numbering
- Mail Services

Please call or email your projects specifications and we can provide you with a cost estimate and approximate turn-around time.

COPYMAT®

The Professional Leader in Document Processing

PRICE LIST

effective February 2013

**For Special Quotes
for Large Orders**

Call (415) 896-0500

or

email: copymat@copymatsf.com

Mon - Fri: 8:00 am – 6:00 pm
Sat: 10:00 am – 4:00 pm

455 Market Street, Suite 180
San Francisco, CA 94105

Store (415) 896-0500
FAX (415) 896-2656
email copymat@copymatsf.com

Please visit our website to upload
files larger than 10mbs
www.copymat1.com



San Francisco Water Power Sewer

Services of the San Francisco Public Utilities Commission

525 Golden Gate Avenue, 13th Floor
San Francisco, CA 94102
T 415.554.3155
F 415.554.3161
TTY 415.554.3488

TO: Angela Calvillo, Clerk of the Board

FROM: John Scarpulla, SFPUC Policy and Government Affairs

DATE: March 29, 2017

SUBJECT: Agreement Amendments - Four SFPUC contracts for Specialized and Technical Services for Natural Resources and Watershed Management and Monitoring

Attached please find an original and one copy of a proposed Resolution authorizing the General Manager of the San Francisco Public Utilities Commission (SFPUC) to retroactively execute Amendment No. 1 to Agreements CS-211B, CS-211C, and CS-211D, to execute Amendment No. 1 to Agreement CS-211A, and to execute Amendment No. 2 to CS-211D, for Specialized and Technical Services for natural resources and watershed management and monitoring, pursuant to Charter Section 9.118(b).

The following is a list of accompanying documents (2 sets):

1. Board of Supervisors Resolution
2. SFPUC Resolution No. 13-0053
3. CS-211 Original Contracts:
 - a. CS-211A with CDM Smith/ATS
 - b. CS-211B with ICF+Avila
 - c. CS-211C with Shaw Environmental and Infrastructure, Inc.
 - d. CS-211D with URS Corporation
4. Board Resolution No. 188-13
5. SFPUC Resolution No. 16-0149
6. Amendment No. 1 to Contracts:
 - a. CS-211B
 - b. CS-211D
 - c. CS-211C
7. SFPUC Resolution No. 18-0050
8. Proposed Amendment No. 1 to CS-211A
9. Proposed Amendment No. 2 to CS-211D
10. Form SFEC-126 for contractors

RECEIVED
 BOARD OF SUPERVISORS
 SAN FRANCISCO
 2018 MAR 29 PM 4:23
 BY [Signature]

Mark Farrell
Mayor

Ike Kwon
President

Vince Courtney
Vice President

Ann Moller Caen
Commissioner

Francesca Vietor
Commissioner

Anson Moran
Commissioner

Harlan L. Kelly, Jr.
General Manager

Please contact John Scarpulla at 415-934-5782 if you need any additional information on these items.

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



FORM SFEC-126:
NOTIFICATION OF CONTRACT APPROVAL
(S.F. Campaign and Governmental Conduct Code § 1.126)

City Elective Officer Information <i>(Please print clearly.)</i>	
Name of City elective officer(s): Members, Board of Supervisors	City elective office(s) held: Members, Board of Supervisors

Contractor Information <i>(Please print clearly.)</i>
Name of contractor: CDM Smith/A-T-S JV

Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary.

1) Members of the contractor's board of director:

- Elahe Enssani*
- Anoosheh E Tarassoly*
- Hala Titus*
- Tom Frisher*

2) The contractor's chief executive officer, chief financial officer and chief operating officer:

- Elahe Enssani*
- Tom Frisher*

3) Any person who has an ownership of 20 percent or more in the contractor:

N/A

4) Any subcontractor listed in the bid or contract:

- Davis & Associates communications, Inc.*
- Randolph Varney*
- Meridian surveying Engineering*
- Coast Ridge Ecology LLc*
- Dabri Inc.*
- Bender Rosenthal, Inc.*
- EcoAnalysts, Inc.*
- Phytosphere Research*
- Susan McCormick*
- Gary Chastagner*
- Marianne Elliott*
- David McLoughlin*

5) any political committee sponsored or controlled by the contractor:

N/A

Contractor address: 5 Third Street, Suite 1010, San Francisco, CA 94103

Date that contract was approved: Original Contract Date: April 9, 2013. Amended Contract: Pending	Amount of contract: Original Contract: \$5,000,000; Total Amended Contract: \$6,500,000
---	--

Describe the nature of the contract that was approved: Agreement will consist of professional and technical services in the following general service categories: Watershed resources monitoring and management services; Specialized hydrological services; Data management and analytical services; Watershed planning and regulatory compliance support; and, fulfillment of Community Benefit Commitments identified in the Consultant's Proposal.

Comments:

This contract was approved by (check applicable):

the City elective officer(s) identified on this form

a board on which the City elective officer(s) serves San Francisco Board of Supervisors
Print Name of Board

the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Relocation Appeals Board, and Local Workforce Investment Board) on which an appointee of the City elective officer(s) identified on this form sits

Print Name of Board

Filer Information <i>(Please print clearly.)</i>	
Name of filer: Angela Calvillo, Clerk of the Board	Contact telephone number: (415) 554-5184
Address: City Hall, Room 244, 1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102	E-mail: Board.of.Supervisors@sfgov.org

 Signature of City Elective Officer (if submitted by City elective officer)

 Date Signed

 Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk)

 Date Signed

**FORM SFEC-126:
NOTIFICATION OF CONTRACT APPROVAL
(S.F. Campaign and Governmental Conduct Code § 1.126)**

City Elective Officer Information <i>(Please print clearly.)</i>	
Name of City elective officer(s): Members, Board of Supervisors	City elective office(s) held: Members, Board of Supervisors

Contractor Information <i>(Please print clearly.)</i>	
Name of contractor: ICF + Avila Joint Venture	
<i>Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary.</i>	
ICF + Avila Management Committee: Amy Rucker, Kevin MacKay, Ernesto Avila, Cathy Avila	
Subconsultants: ESA; Hydroconsult Engineers, Inc.; Geotechnical Consultants, Inc.; Meridian Surveying Engineering, Inc.; Msy & Associates; Copymat; Wildlife Science Consulting; Richard Arnold, Entomological Consulting Services, LTD.; LD Ford Rangeland Conservation Science; The Acorn Group/Acorn Naturalists; Cramer Fish Sciences; Flow Science; Michael Johnson Consulting LCC; BioMaAS, Inc.; Cindy Schad; Randolph Varney	
Contractor address: 620 Folsom Street, Suite 200, San Francisco, CA 94107	
Date that contract was approved: Original Contract Date: April 9, 2013. Amended Contract: Pending	Amount of contract: Original Contract: \$5,000,000; Total Amended Contract: \$6,490,000
Describe the nature of the contract that was approved: Agreement will consist of professional and technical services in the following general service categories: Watershed resources monitoring and management services; Specialized hydrological services; Data management and analytical services; Watershed planning and regulatory compliance support; and, fulfillment of Community Benefit Commitments identified in the Consultant's Proposal.	
Comments:	

This contract was approved by (check applicable):

- the City elective officer(s) identified on this form
- a board on which the City elective officer(s) serves San Francisco Board of Supervisors
Print Name of Board
- the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Relocation Appeals Board, and Local Workforce Investment Board) on which an appointee of the City elective officer(s) identified on this form sits

Print Name of Board

Filer Information <i>(Please print clearly.)</i>	
Name of filer: Angela Calvillo, Clerk of the Board	Contact telephone number: (415) 554-5184
Address: City Hall, Room 244, 1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102	E-mail: Board.of.Supervisors@sfgov.org

Signature of City Elective Officer (if submitted by City elective officer)

Date Signed

Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk)

Date Signed

FORM SFEC-126:
NOTIFICATION OF CONTRACT APPROVAL
(S.F. Campaign and Governmental Conduct Code § 1.126)

City Elective Officer Information <i>(Please print clearly.)</i>	
Name of City elective officer(s): Members, Board of Supervisors	City elective office(s) held: Members, Board of Supervisors

Contractor Information <i>(Please print clearly.)</i>
Name of contractor: URS Corporation Americas
<p><i>Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary.</i></p> <p><i>1) members of the contractor's Board of Directors:</i> Michael S. Burke James H. Fordyce William Frist Linda Griego David W. Joos Dr. Robert J. Routs Clarence T. Schmitz Douglas W. Stotlar Daniel R. Tishman Janet C. Wolfenbarger</p> <p><i>2) the contractor's chief executive officer, chief financial officer and chief operating officer:</i> Chief Executive Officer: Michael S. Burke Chief Financial Officer: W. Troy Rudd Chief Operating Officer: Randall A. Wotring</p> <p><i>3) any person who has an ownership of 20 percent or more in the contractor:</i> There are no persons with ownerships of 20 percent or more of AECOM.</p> <p><i>4) Any subcontractor listed in the bid or contract:</i> AEW Engineering Applied Technology and Science Avocet Research Associates BioMaAs, LLC Coast Ridge Ecology Copymat Ed Conner Joe Hill Consulting engineers McBain and Trush Michael love and Associates Michael S. Thompson Consulting Engineers Natalie Macris Oracle Oak Orion Environmental services Telamon Engineering consultants, inc. The Their Group Vibro-Acoustics Consultants Westervelt Ecological Services, LLC.</p>

5) any political committee sponsored or controlled by the contractor: AECOM PAC	
Contractor address: 300 Lakeside Drive, Oakland, CA 94612	
Date that contract was approved: Original Contract Date: April 9, 2013. Amended Contract: Pending	Amount of contract: Original Contract: \$5,000,000; Total Amended Contract: \$7,490,000
Describe the nature of the contract that was approved: Agreement will consist of professional and technical services in the following general service categories: Watershed resources monitoring and management services; Specialized hydrological services; Data management and analytical services; Watershed planning and regulatory compliance support; and, fulfillment of Community Benefit Commitments identified in the Consultant's Proposal.	
Comments:	

This contract was approved by (check applicable):

- the City elective officer(s) identified on this form
- a board on which the City elective officer(s) serves San Francisco Board of Supervisors
Print Name of Board
- the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Relocation Appeals Board, and Local Workforce Investment Board) on which an appointee of the City elective officer(s) identified on this form sits

Print Name of Board

Filer Information (Please print clearly.)	
Name of filer: Angela Calvillo, Clerk of the Board	Contact telephone number: (415) 554-5184
Address: City Hall, Room 244, 1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102	E-mail: Board.of.Supervisors@sfgov.org

Signature of City Elective Officer (if submitted by City elective officer)

Date Signed

Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk)

Date Signed

