



September 27, 2018

Dilip Trivedi
Moffatt and Nichol-AGS, JV
2185 N. California Blvd., Suite 500
Walnut Creek, CA 94596
Email: dtrivedi@moffattnichol.com

RE: 1) Notice of Contract Award
2) Executed Agreement between the City and County of San Francisco
Public Utilities Commission and Moffatt and Nichol-AGS, JV.

Dear Mr. Trivedi,

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

Contract ID Number: PRO.0092 (1000012212)

Contract Title: Engineering Services for South Ocean Beach Coastal
Erosion and Wastewater Infrastructure Protection

Effective Date: September 26, 2018 to September 25, 2023

Amount: Total value of contract not to exceed
\$3,750,000.00

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

Sincerely,

Rosiana Angel
Infrastructure Budget and Payment Processing

Enclosure: Executed Agreement
cc: Heather Manders

File/PRO.0092 NCA

London Breed
Mayor

Ike Kwon
President

Vince Courtney
Vice President

Ann Moller Caen
Commissioner

Francesca Vietor
Commissioner

Anson Moran
Commissioner

Harlan L. Kelly, Jr.
General Manager



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

Agreement between the City and County of San Francisco and

Moffatt and Nichol-AGS, JV

PUC.PRO.0092

**Engineering Services for South Ocean Beach Coastal Erosion and Wastewater
Infrastructure Protection**

This Agreement is made this 24th day of July 2018, in the City and County of San Francisco (“City”), State of California, by and between Moffatt and Nichol-AGS, JV (“Consultant”) and City.

Recitals

WHEREAS, the San Francisco Public Utilities Commission (“Department,” or “SFPUC”) wishes to retain the services of a qualified consultant to provide professional engineering services to support the design, engineering, construction administration services, and geotechnical services for coastal erosion management of existing buried wastewater infrastructure (Lake Merced Transport Tunnel) along South Ocean Beach as it runs from Sloat Boulevard to the Oceanside Water Pollution Control Plant; and,

WHEREAS, this Agreement was competitively procured as required by San Francisco Administrative Code Chapter 6 through a Request for Proposal (“RFP”) issued on April 25, 2018, in which City selected Consultant as the highest qualified scorer pursuant to the RFP; and

WHEREAS, the Local Business Enterprise (“LBE”) subcontracting participation requirement for this Agreement is 10%;

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

WHEREAS, the City’s Civil Service Commission approved Contract number 46784-16/17 on August 21, 2017;

WHEREAS, the San Francisco Public Utilities Commission awarded this Agreement to Consultant under Resolution No. 18-0128 on July 24, 2018;

Now, THEREFORE, the parties agree as follows:

Article 1 Definitions

The following definitions apply to this Agreement:

1.1 "Agreement" means this contract document, including all attached appendices, and all applicable City Ordinances and Mandatory City Requirements, which are specifically incorporated into this Agreement by reference as provided herein.

1.2 "City" or "the City" means the City and County of San Francisco, a municipal corporation, acting by and through the SFPUC.

1.3 "CMD" means the Contract Monitoring Division of the City.

1.4 "Consultant" or "Consultant" means Moffatt and Nichol-AGS, JV.

1.5 "Deliverables" means Consultant's work product resulting from the Services that Consultant provides to City during the course of Consultant's performance of the Agreement, including without limitation, the work product described in the "Scope of Services" attached as Appendix A.

1.6 "Effective Date" means the date upon which the City's Controller certifies the availability of funds for this Agreement as provided in Section 3.1.

1.7 "Mandatory City Requirements" means those City laws set forth in the San Francisco Municipal Code, including the duly authorized rules, regulations, and guidelines implementing such laws, which impose specific duties and obligations upon Consultant.

1.8 "Party" and "Parties" mean the City and Consultant either collectively or individually.

1.9 "Services" means the work performed by Consultant under this Agreement as specifically described in the "Scope of Services" attached as Appendix A, including all services, labor, supervision, materials, equipment, actions and other requirements to be performed and furnished by Consultant under this Agreement.

Article 2 Term of the Agreement

2.1 The term of this Agreement shall commence on the later of: (i) August 1, 2018; or (ii) the Effective Date and expire on July 30, 2023, unless earlier terminated as otherwise provided herein.

2.2 The City has options to renew the Agreement for a period of four years for a total duration of up to nine years. The City may extend this Agreement beyond the expiration date by exercising an option at the City's sole and absolute discretion and by modifying this Agreement as provided in Section 11.5, "Modification of this Agreement."

Article 3 Financial Matters

3.1 **Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation.** This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if City does not appropriate funds for the next succeeding fiscal year. If the City appropriates funds 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 the City appropriated

funds. 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. Consultant's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

3.2 Guaranteed Maximum Costs. The City's payment obligation to Consultant cannot at any time exceed the amount certified by City's Controller for the purpose and period stated in such certification. Absent an authorized Emergency per the City Charter or applicable Code, no City representative is authorized to offer or promise, nor is the City required to honor, any offered or promised payments to Consultant under this Agreement in excess of the certified maximum amount without the Controller having first certified the additional promised amount and the Parties having modified this Agreement as provided in Section 11.5, "Modification of this Agreement."

3.3 Compensation.

3.3.1 Payment. Consultant shall provide an invoice to the City on a monthly basis for Services completed in the immediate preceding month, unless a different schedule is set out in Appendix B, "Calculation of Charges." City shall compensate Consultant for Services identified in the invoice that the General Manager of the SFPUC, in his or her sole discretion, concludes have been satisfactorily performed. City shall issue payment within 30 calendar days of receipt of the invoice unless the City notifies the Consultant that a dispute as to the invoice exists. In no event shall the amount of this Agreement exceed **Three Million Seven Hundred Fifty Thousand Dollars (3,750,000)**. The breakdown of charges associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. City may withhold a portion of any payment until conclusion of the Agreement if agreed to by both parties as retainage, described in Appendix B. In no event shall the City be liable for interest or late charges for any late payments except as set forth in Administrative Code Section 6.22(j).

3.3.2 Payment Limited to Satisfactory Services. Consultant is not entitled to any payments from City until SFPUC approves Services, including any furnished Deliverables, as satisfying all of the requirements of this Agreement. Payments to Consultant by City shall not excuse Consultant from its obligation to replace unsatisfactory Deliverables, including equipment, components, materials, or Services even if the unsatisfactory character of such Deliverables, equipment, components, materials, or Services may not have been apparent or detected at the time such City issued a payment. The City may reject any deliverables, equipment, components, materials and Services that do not conform to the requirements of this Agreement and in such case Consultant shall replace what the City rejected without delay at no cost to the City.

3.3.3 Withhold Payments. If Consultant fails to provide Services in accordance with Consultant's obligations under this Agreement, the City may withhold any and all payments due Consultant until such failure to perform is cured, and Consultant shall not stop work as a result of City's withholding of payments as provided herein.

3.3.4 Invoice Format. Invoices furnished by Consultant under this Agreement must be in a form acceptable to the Controller and City, and must include a unique invoice number. City shall issue payment as specified in 3.3.6, or in such alternate manner as the Parties have mutually agreed upon in writing.

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

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

(a) All City vendors receiving new contracts, contract renewals, or contract extensions must sign up to receive electronic payments through the City's Automated Clearing House (ACH) payments service/provider. The City processes electronic payments every business day and they are safe and secure. To sign up for electronic payments, visit www.sfgov.org/ach.

(b) Consultant shall comply with the following requirements and provide the following information to sign up for electronic payments: (i) the enroller must be the company's authorized financial representative, (ii) the company's legal name, main telephone number and all physical and remittance addresses used by the company, (iii) the company's U.S. federal employer identification number (EIN) or Social Security number (if they are a sole proprietor), and (iv) the company's bank account information, including routing and account numbers.

3.3.7 Reserved. (Grant Funded Contracts)

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

3.4 Audit and Inspection of Records. Consultant agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its Services. Consultant 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. Consultant shall maintain such data and records in an accessible location and condition for a period of not fewer than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any Federal agency having an interest in the subject matter of this Agreement shall have the same rights as conferred upon City by this Section. Consultant shall include the same audit and inspection rights and record retention requirements in all subcontracts.

3.5 Submitting False Claims. Pursuant to Article V of Chapter 6 of the Administrative Code, any Consultant, subconsultant, 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 City will deem a Consultant, subconsultant, supplier, consultant or subconsultant to have submitted a false claim to the City if the Consultant, subconsultant, supplier, consultant or subconsultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

3.6 Payment of Prevailing Wages

3.6.1 Covered Services. Consultant's Services under this Agreement may involve the performance of trade work covered by the provisions of Section 6.22(e) [Prevailing Wages] of the Administrative Code (collectively, "Covered Services"). The provisions of Section 6.22(e) of the Administrative Code are incorporated as provisions of this Agreement as if fully set forth herein and will apply to any Covered Services performed by Consultant and its subconsultants.

3.6.2 Wage Rates. The latest prevailing wage rates for private employment on public contracts as determined by the San Francisco Board of Supervisors and the Director of the California Department of Industrial Relations, as such prevailing wage rates may be changed during the term of this Agreement, are hereby incorporated as provisions of this Agreement. Copies of the prevailing wage rates as fixed and determined by the Board of Supervisors are available from the Office of Labor Standards and Enforcement ("OLSE") and are also available on the Internet at <http://www.dir.ca.gov/DLSR/PWD>. Consultant agrees that it shall pay not less than the prevailing wage rates, as fixed and determined by the Board, to all workers employed by Consultant who perform Covered Services under this Agreement. Consultant further agrees as follows:

3.6.3 Subcontract Requirements. As required by Section 6.22(e)(5) of the Administrative Code, Consultant shall insert in every subcontract or other arrangement that it may make for the performance of Covered Services under this Agreement a provision that said

subconsultant shall pay to all persons performing labor in connection with Covered Services under said subcontract or other arrangement not less than the highest general prevailing rate of wages as fixed and determined by the Board of Supervisors for such labor or services.

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

3.6.5 Payroll Records. As required by Section 6.22(e)(6) of the Administrative Code and Section 1776 of the California Labor Code, Consultant shall keep or cause to be kept complete and accurate payroll records for all trade workers performing Covered Services. Such records shall include: (1) the name address and social security number of each worker who provided Covered Services on the project, including apprentices; (2) his or her classification; (3) a general description of the services each worker performed each day; (4) the rate of pay (including rates of contributions for, or costs assumed to provide fringe benefits); (5) daily and weekly number of hours worked; (6) deductions made; and (7) actual wages paid. Every subconsultant who shall undertake the performance of any part of Covered Services shall keep a like record of each person engaged in the execution of Covered Services under the subcontract. Consultant shall make all such records available at all times for inspection of and examination by the City and its authorized representatives and the DIR.

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

3.6.7 Compliance Monitoring. Consultant's Covered Services under this Agreement are subject to compliance monitoring and enforcement of prevailing wage requirements by the DIR and/or the OLSE. Consultant and any subconsultants performing Covered Services shall cooperate fully with the DIR and/or the OLSE and other City employees and agents authorized to assist in the administration and enforcement of the prevailing wage requirements and shall take the specific steps and actions required by Section 6.22(e)(7) of the Administrative Code. Steps and actions Consultant is required to take include, but are not limited to, the following requirements: (A) the Consultant shall cooperate fully with the Labor Standards Enforcement Officer and other City employees and agents authorized to assist in the administration and enforcement of the Prevailing Wage requirements and other labor standards imposed on Public Works Consultant by the Charter and Chapter 6 of the San Francisco Administrative Code; (B) the Consultant agrees that the Labor Standards Enforcement Officer and his or her designees, in the performance of their duties, shall have the right to engage in random inspections of job sites and to have access to the employees of the Consultant, employee time sheets, inspection logs, payroll records and employee paychecks; (C) the Consultant shall maintain a sign-in and sign-out sheet showing which employees are present on the job site; (D)

the Consultant shall prominently post at each job-site a sign informing employees that the project is subject to the City's Prevailing Wage requirements and that these requirements are enforced by the Labor Standards Enforcement Officer; and (E) the Labor Standards Enforcement Officer may audit such records of the Consultant as he or she reasonably deems necessary to determine compliance with the Prevailing Wage and other labor standards imposed by the Charter and this Chapter on Public Works Consultants. Failure to comply with these requirements may result in penalties and forfeitures consistent with analogous provisions of the California Labor Code, including Section 1776(g), as amended from time to time.

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

Article 4 Services and Resources

4.1 Services Consultant Agrees to Perform. Consultant agrees to perform the Services and provide the Deliverables specified in Appendix A, "Scope of Services." Officers and employees of the City do not have the authority to request, and the City is not required to reimburse the Consultant for, Services beyond the Scope of Services listed in Appendix A, unless Appendix A is modified as provided in Section 11.5, "Modification of this Agreement."

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

4.3 Subcontracting.

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

4.3.2 City's execution of this Agreement constitutes its approval of the subconsultants listed in Appendix B, Calculation of Charges. Consistent with SFPUC policy, Consultant must make any modification to the list of subconsultants through the City's approved invoice processing system, subject to the written approval of the City, and CMD, as needed.

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

4.4.1 Independent Consultant. For the purposes of this Article 4, "Consultant" shall be deemed to include not only Consultant, but also any agent or employee of Consultant. Consultant acknowledges and agrees that at all times, Consultant or any agent or employee of Consultant shall be deemed at all times to be an independent Consultant and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Consultant, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Consultant or any agent or employee of Consultant 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. Consultant or any agent or employee of Consultant is liable for the acts and omissions of itself, its employees and its agents. Consultant 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 Consultant's performing services and work, or any agent or employee of Consultant providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Consultant or any agent or employee of Consultant. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Consultant's work only, and not as to the means by which Consultant obtains such a result. City does not retain the right to control the means or the method by which Consultant performs work under this Agreement. Consultant agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Consultant's compliance with this section. Should City determine that Consultant, or any agent or employee of Consultant, is not performing in accordance with the requirements of this Agreement, City shall provide Consultant with written notice of such failure. Within five (5) business days of Consultant's receipt of such notice, and in accordance with Consultant policy and procedure, Consultant shall remedy the deficiency. Notwithstanding, if City believes that an action of Consultant, or any agent or employee of Consultant, warrants immediate remedial action by Consultant, City shall contact Consultant and provide Consultant in writing with the reason for requesting such immediate action.

4.4.2 Payment of Employment Taxes and Other Expenses. Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Consultant 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 Consultant that 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 Consultant for City, upon notification of such fact by City, Consultant shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Consultant under this Agreement (again, offsetting any amounts already paid by Consultant that 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; for all other purposes of this Agreement, Consultant shall not be considered an employee of City. Notwithstanding the foregoing, Consultant agrees to indemnify and save harmless City and its

officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorneys' fees, arising from this section.

4.5 **Assignment.** Consultant's Services under this Agreement are personal in character. Consultant shall not assign or delegate this Agreement nor any duties or obligations hereunder unless first approved by City by written instrument executed and approved in the same manner as this Agreement. Any purported assignment made in violation of this provision shall be null and void.

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

4.7 **Reserved. (Liquidated Damages)**

Article 5 Insurance and Indemnity

5.1 Insurance.

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

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

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

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

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

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

(a) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

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

5.1.3 Consultant shall provide certificates for all policies that are endorsed by its carrier(s) for the carrier(s) to provide thirty (30) days' advance written notice to the City of cancellation for any reason, intended non-renewal, or reduction in coverages, except for non-

payment for which carrier promises to provide no less than ten (10) days' notice. Insurance carriers shall send notices to the City address set forth in Section 11.1, entitled "Notices to the Parties."

5.1.4 If Consultant provides any of the required insurance under a claims-made form, Consultant shall maintain such coverage continuously throughout the term of this Agreement without lapse for a period of three years beyond the expiration of this Agreement. Such claims-made policies must provide coverage for any occurrences during the contract term that give rise to claims.

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

5.1.6 Should any required insurance lapse during the term of this Agreement, the City will not process requests for payments originating after such lapse until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If Consultant's carrier does not reinstate the insurance, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

5.1.7 Before commencing any Services, Consultant shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher that the State of California authorizes 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 Consultant's liability hereunder.

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

5.2 Indemnification For Design Professionals. To the fullest extent permitted by law, Consultant 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 Consultant 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 Consultant, any subconsultant, anyone directly or indirectly employed by them, or anyone that they control (collectively, "Liabilities").

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

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

Article 6 Liability of the Parties

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

6.2 **Liability for Use of Equipment.** City shall not be liable for any damage to persons or property because of the use, misuse or failure of any equipment used by Consultant, or any of its subconsultants, or by any of their employees, even though the City furnishes, rents or loans such equipment to Consultant.

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

Article 7 Payment of Taxes

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

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

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

7.2.2 Consultant, 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. Consultant accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.

7.2.3 Consultant, 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). Consultant accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

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

Article 8 Termination and Default

8.1 Termination for Convenience

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

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

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

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

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

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

(e) Completing performance of any Services that City directs Consultant to complete prior to the date of termination specified by City.

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

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

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

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

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

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

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

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

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

8.2 Termination for Default; Remedies.

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

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

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

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

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

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

8.2.2 On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, where applicable, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Consultant any Event of Default; Consultant 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 Consultant under this Agreement or any other agreement between City and Consultant: (i) all damages, losses, costs or expenses incurred by City as a result of an Event of Default; and (ii) any liquidated damages levied upon Consultant pursuant to the terms of this Agreement; and (iii), any damages imposed by any ordinance or statute that is incorporated into this Agreement by reference, or into any other agreement with the City.

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

8.2.4 The Parties must send any notice of default by registered mail to the address set forth in Article 11.

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

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

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

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

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

Article 9 Rights In Deliverables

9.1 **Ownership of Results.** Consultant shall transmit to the City any interest of Consultant or its subconsultants in the Deliverables, including any drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Consultant or its subconsultants for the purposes of this agreement, which shall become the property of the City. However, unless expressly prohibited elsewhere in this Agreement, Consultant may retain and use copies for reference and as documentation of its experience and capabilities.

9.2 **Works for Hire.** If, in connection with Services, Consultant or its subconsultants creates Deliverables including, without limitation, artwork, copy, posters, billboards,

photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes, or any other original works of authorship, whether in digital or any other format, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works shall be the property of the City. If any Deliverables created by Consultant or its subconsultant(s) under this Agreement are ever determined not to be works for hire under U.S. law, Consultant hereby assigns all Consultant's copyrights to such Deliverables to the City, agrees to provide any material and execute any documents necessary to effectuate such assignment, and agrees to include a clause in every subcontract imposing the same duties upon subconsultant(s). With City's prior written approval, Consultant and its subconsultant(s) may retain and use copies of such works for reference and as documentation of their respective experience and capabilities.

Article 10 Additional Requirements Incorporated by Reference

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

10.2 Conflict of Interest. By executing this Agreement, Consultant certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City's Charter; Article III, Chapter 2 of City's Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 *et seq.*), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 *et seq.*), and further agrees to notify the City promptly if it becomes aware of any such fact during the term of this Agreement.

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

10.4 Reserved.

10.5 Nondiscrimination Requirements.

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

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

of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

10.5.3 Prohibition Related to States with Anti-LGBT Laws. In performing the Services, Consultant shall comply with San Francisco Administrative Code Chapter 12X, which prohibits the City from entering into contracts with companies headquartered in states with laws that perpetuate discrimination against LGBT populations or where any or all of the work on the contract will be performed in any of those states.

10.6 Local Business Enterprise and Non-Discrimination in Contracting Ordinance. Consultant shall comply with all applicable provisions of Chapter 14B ("LBE Ordinance"). Consultant is subject to the enforcement and penalty provisions in Chapter 14B. Consultant shall utilize LBE Subconsultants for at least 10% of the Services except as otherwise authorized in writing by the Director of CMD. Consultant shall incorporate the requirements of the LBE Ordinance in each subcontract made in the fulfillment of Consultant's LBE subcontracting commitments.

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

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

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

10.10 Alcohol and Drug-Free Workplace. City reserves the right to deny access to, or require Consultant to remove from, City facilities personnel of any Consultant or subconsultant who City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity that in any way impairs City's ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

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

which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. The prohibition on contributions applies to each prospective party to the contract; each member of Consultant's board of directors; Consultant's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Consultant; any subconsultant listed in the bid or contract; and any committee that is sponsored or controlled by Consultant. Consultant must inform each such person of the limitation on contributions imposed by Section 1.126 and provide the names of the persons required to be informed to City.

10.12 Reserved. (Slavery Era Disclosure)

10.13 Reserved. (Working with Minors)

10.14 Consideration of Criminal History in Hiring and Employment Decisions.

10.14.1 Consultant agrees to comply fully with and be bound by all of the provisions of Chapter 12T, "City Consultant/Subconsultant 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 Parties hereby incorporate by this reference the provisions of Chapter 12T and make them a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at <http://sfgov.org/olse/fco>. Consultant is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

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

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

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

10.17 Reserved. (Sugar-Sweetened Beverage Prohibition)

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

10.18.1 Consultant shall comply with San Francisco Environment Code Chapter 8, which provides that except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code, Consultant shall not provide any items to the City in performance of this contract which are tropical hardwoods, tropical hardwood wood products, virgin redwood or virgin redwood wood products. Consultant is subject to the penalty and enforcement provisions of Chapter 8.

10.19 Reserved. (Preservative Treated Wood Products)

Article 11 General Provisions

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

To City: Heather Manders
San Francisco Public Utilities Commission
525 Golden Gate Avenue
San Francisco, CA 94102
hmanders@sfgwater.org

To Consultant: Dilip Trivedi
Moffatt and Nichol-AGS, JV
2185 N. California Blvd., Suite 500
Walnut Creek, CA 94596
dtrivedi@moffattnichol.com

A Party must send any notice of default by registered mail. Either Party may change its address for receipt of notices by giving written notice thereof to the other Party. If email notification is used, the sender must specify a receipt notice.

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

11.3 Sunshine Ordinance. Consultant acknowledges that this Agreement and all records related to its formation, Consultant's performance of Services, and City's payment are subject to the California Public Records Act, (California Government Code §6250 et. seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.

11.4 Modification of this Agreement. This Agreement may not be modified, nor may compliance with any of its terms be waived, except as noted in Section 11.1, "Notices to Parties," regarding change in personnel or place, and except by written instrument executed and approved in the same manner as this Agreement. Consultant shall cooperate with Department to submit to the Director of CMD any amendment, modification, supplement or change order that

would result in a cumulative increase of the original amount of this Agreement by more than 20% (CMD Contract Modification Form).

11.5 Dispute Resolution Procedure.

11.5.1 Negotiation; Alternative Dispute Resolution. The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement. If the Parties are unable to resolve the dispute, then, pursuant to San Francisco Administrative Code Section 21.36, Consultant may submit to the Contracting Officer a written request for administrative review and documentation of the Consultant's claim(s). Upon such request, the Contracting Officer shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing the Consultant of its right to judicial review. If agreed by both Parties in writing, the Parties may seek to resolve disputes by a mutually agreed-upon alternative dispute resolution process. If the parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law. The status of any dispute or controversy notwithstanding, Consultant shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of the City. Neither Party will be entitled to legal fees or costs for matters resolved under this section.

11.5.2 Government Code Claim Requirement. Contract may not bring suit for money or damages 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 Consultant's compliance with the California Government Code Claim requirements set forth in San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq.

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

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

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

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

11.10 Severability. Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as

to effect the intent of the Parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

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

11.12 Order of Precedence. Consultant agrees to perform the services described below in accordance with the terms and conditions of this Agreement, implementing task orders, the RFP, and Consultant's proposal dated [May 25, 2018](#). The RFP and Consultant's proposal are incorporated by reference as though fully set forth herein. Should there be a conflict of terms or conditions, this Agreement and any implementing task orders shall control over the RFP and the Consultant's proposal.

Article 12 Department Specific Terms

12.1 Reserved.

Article 13 Data and Security

13.1 Nondisclosure of Private, Proprietary or Confidential Information.

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

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

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


13.3 Reserved. (Business Associate Agreement)

Article 14 MacBride And Signature

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

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

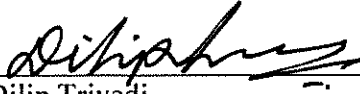
CITY



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

CONSULTANT

Moffatt and Nichol-AGS, JV

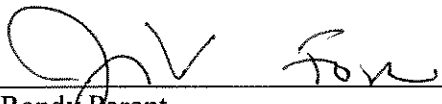


Dilip Trivedi
Vice President

City vendor number: **12725**

Approved as to Form:

Dennis J. Herrera
City Attorney

By: 

Randy Parent
Deputy City Attorney

Appendices

- A: Scope of Services
- B: Calculation of Charges

Appendix A Scope of Services

1. Description of Services. Consultant agrees to perform the following Services:

Professional engineering services to support the design, engineering construction administration services, and geotechnical services for coastal erosion management of existing buried wastewater infrastructure (Lake Merced Transport Tunnel) along South Ocean Beach as it runs from Sloat Boulevard to the Oceanside Water Pollution Control Plant.

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

TASK 1 MANAGEMENT AND COORDINATION OF CONSULTANT SERVICES

The Consultant will provide coordination for keeping project participants informed of progress, technical issues, and planned activities and events. Project participants include (1) SFPUC staff in project management, engineering, planning and public outreach, operations, and environmental roles; (2) independent experts; and (3) other parties such as public agencies, contractors, and other Consultants. For scheduling of design phase activities, the Consultant must include three weeks for SFPUC review of each Consultant deliverable unless otherwise noted. The Consultant will perform coordination activities described below:

- Based on the Project Approach Coordination and Control, the Task Description, and the Overhead and Profit Schedule submitted with the proposal, prepare a Draft Management Work Plan within two (2) weeks following NTP for review and acceptance by the SFPUC. The Final Management Work Plan must be submitted including all applicable comments within four (4) weeks of the NTP. The Work Plan is intended to lay the groundwork for efficient execution of contracted engineering services. The Plan should include the following information:
 - Project Team organization and responsibility (including SFPUC and prospective bidder subconsultants);
 - Consultant's contract administration procedures;
 - Cost and schedule control procedures;
 - List of tasks and corresponding staff and budget;
 - Detailed Critical Path Method (CPM) design schedule of tasks, milestones and deliverable due dates;
 - File management, using SharePoint and coordination guidelines to allow integration with project team members within SFPUC, consultant firms, agencies and others;
 - Detailed change control procedures to be instigated no later than the 35% design level to track and control changes during design development particularly those impacting

the construction cost estimate. Construction cost impacts to the 35% baseline estimate shall be identified and communicated to the SFPUC in a timely fashion; and

- Prepare for and attend project kick-off meeting to review tasks, milestones, roles, and communication and coordination processes. SFPUC and Consultant will discuss the management work plan during orientation meeting.
- Prepare for and attend coordination progress meetings for the duration of the contract. Assume one and a half (1.5) hours per meeting, twice per month between SFPUC staff and two (2) senior project staff from the Consultant.
- Prepare and make the CER presentations to the SFPUC project team as well as SFPUC WVE.
- Prepare and make presentations to the SFPUC project team of the Design Criteria Report (prepared prior to 35% design); Prepare and make presentations of design details and cost estimate to SFPUC WVE at all deliverable milestones.
- Prepare for and participate in a minimum of five (5) design coordination workshops, at the discretion of the SFPUC. Each design workshop will be half day and will be coordinated between the Consultant and the SFPUC after the CER, and the 35%, 65%, and 95% and 100% deliverable presentations. SFPUC may require the Consultant to lead these workshops.
- Submit monthly progress reports, with highlights of work achievements, and for each task: forecasted schedule and expenditures for next reporting period, estimate of physical percent complete, and summary of current expenditures (man hours, expenditure, and percent of task budget expended). The report will identify any issues or scope changes that may affect cost and/or schedule of design and/or construction. Consultant will email this report to the SFPUC Project Engineer, Contract Manager and Project Manager.
- Maintain project files (hard and electronic) utilizing Sharepoint, including all plans, reports, correspondence, calculations, and other documents pertaining to the design. Consultant will be required to transfer all electronic files (include workable format and pdf files) and a fully collated, organized, indexed set of copies to the SFPUC within twenty (20) working days of the 100% design completion, including copies of documents already passed to SFPUC during the assignment. Consultant will be required to fully check and sign off on all documents in accordance with their QA/QC procedures.
- Coordinate and address review comments provided by others on reports, memoranda, contract documents and other work products. Document and disseminate responses to comments logs.

The Consultant will be required to prepare and submit a Draft QA/QC Plan within two (2) weeks following NTP, for review and acceptance by the SFPUC. Consultant will submit the Final QA/QC Plan incorporating all applicable comments within three (3) weeks from NTP. The

QA/QC Plan must align with the SFPUC QA/QC program and identify the Consultant's requirements and procedures for ongoing QA/QC efforts, including, but not limited to:

- Ensuring all design work is in compliance with applicable codes and standards and industry practices;
- Procedures for reviewing, distributing, checking, tracking, controlling and documentation of all documents; and procedures for enforcing the QA/QC; and
- Procedures for resolution of review comments; procedures for coordination with the SFPUC project team, and any independent technical advisory panel.

The Consultant will be required to implement QA/QC procedures uniformly for construction contract documents and design process resulting in high-quality facilities while minimizing construction change orders. At a minimum, Consultant must conduct internal QA/QC prior to presenting deliverables to the SFPUC. Established QA/QC procedures, to be employed by all designers, must address the use of quality control review, calculation checking, design checking, AutoCAD interference and interface checking, construction and operation issues, and other measures necessary to maintain a consistent, complete, high quality, and compatible design. Establish QA/QC procedures for interfacing the design with subconsultants and SFPUC design team.

Deliverables:

- Draft Management Work Plan, two (2) hard copies and one (1) copy in digital format, within four (4) weeks from NTP.
- Final Management Work Plan, five (5) hard copies and one (1) copy in digital format, within two (2) weeks from receiving City's comments.
- Draft QA/QC Plan, two (2) hard copies and one (1) copy in digital format, within two (2) weeks from NTP.
- Final QA/QC Plan, two (2) hard copies and one (1) copy in digital format, within four (4) weeks from NTP.
- Agenda (in electronic form) for project meetings and workshops, delivered two (2) days prior to meeting and/or workshop date.
- Meeting minutes for project meetings and workshops, one (1) copy in digital format, within two (2) weeks of project meeting and workshop.
- Monthly progress reports, one (1) copy in digital format emailed to the SFPUC Project Engineer, Contract Manager, and Project Manager, conjointly, within five (5) calendar days after the end of each month.
- Monthly invoices, three (3) hard copies, one (1) copy in digital format emailed to the SFPUC Project Engineer, Contract Manager, and Project Manager, conjointly.

- Project correspondence, calculations, and other project records, one (1) copy in digital or hard copy format within twenty (20) working days of the 100% design completion.
- Responses to review comments, one (1) copy in digital format.

TASK 2 REVIEW BACKGROUND INFORMATION

This task will include the review of relevant project documents. At a minimum, the Consultant must review the following documents:

Reports:

- “Alternative Analysis Report For Coastal Adaptation Strategies For South Ocean Beach Wastewater Systems,” prepared by SFPUC Engineering Management Bureau, 2018.
- “Coastal Protection Measures & Management Strategy For South Ocean Beach,” prepared by SPUR, April 2015.
- “Ocean Beach Master Plan,” prepared by SPUR, May 2012.

After completing the review of all background information, the Consultant will be responsible for preparing a technical memorandum identifying any data gaps not covered by the background information, but necessary to complete the planning tasks (CER and CEQA checklist). The memorandum should include any additional field investigation needed to confirm site conditions such as potholing or surveying.

Deliverables:

- Draft and Final Technical memorandum identifying data gaps not covered in existing information but necessary for completing the planning tasks (CER and CEQA checklist).
- Draft technical memorandum to SFPUC within 4 weeks of Notice to Proceed.
- Meeting/presentation to project team, one (1) week after draft technical memorandum is submitted.

TASK 3 GEOTECHNICAL INVESTIGATION AND SITE CHARACTERIZATION

The Consultant will be responsible for developing and performing all geotechnical investigation and site characterization work necessary for the conceptual engineering report and design work. Consultant’s characterization program must provide information necessary to make the characterization of ground conditions conclusive for an effective design and minimize construction risks.

Consultant will be responsible to develop and prepare a draft and final Geotechnical Investigation and Site Characterization Work Plan that describes the geotechnical investigation and site characterization program. Consultant’s Work Plan must include a map identifying the location of the investigation (i.e., borings, test pits, fault trenches, geophysical surveys, geologic mapping, piezometers), access routes to the investigation sites; purpose and estimated depths of borings, test pits, and trenches; in-situ and laboratory testing on rock and soil samples;

exploration schedule and cost; and environmental considerations for the investigation. Applicable portions of the Plan must provide sufficient detail for obtaining permits for fieldwork and for the public outreach staff to notify affected public in advance of fieldwork.

The exploratory drilling, boring, testing, and inspection program must provide site specific geotechnical and seismic information for the facilities, temporary shoring, realignment of roadways/access roads, retaining structures and vaults, together with the groundwater table elevation. Report any potential hazardous material that the borings may encounter during the exploratory drilling program. The geotechnical exploration and characterization program may include, but not be limited to:

- Geologic conditions,
- Groundwater levels, water quality/chemistry (especially with respect to corrosivity), and monitoring, including seasonal variations,
- Liquefaction potential and hazards,
- Mitigation methods for liquefaction hazards,
- Differential settlement hazards,
- Mitigation methods for differential settlement,
- Bedrock elevation,
- Slope stability and landslide hazards,
- Mitigation methods for slope stability and landslide hazards,
- Lateral spread hazards,
- Mitigation methods for lateral spread hazards,
- Design requirements and parameters for shoring/bracing, retaining walls, backfilling, and other required features of the construction and facilities, if applicable,
- Corrosive properties of soil and groundwater,
- Site-specific seismic design response spectrum for maximum probable and credible earthquake,
- Site-specific seismic design time-history for maximum probable and credible earthquake,
- Coefficient of friction between concrete and soil or structural fill material,
- Design parameters for shallow and deep foundations, and
- Hazardous soil materials.

The Consultant will be responsible for obtaining the necessary environmental clearances and/or permits from regulatory agencies to carry out the proposed field investigation work, which has the potential to impact both biological and cultural resources. The Consultant must meet with the environmental representative in the field as needed to discuss the field investigation procedures, stake exploration locations and make adjustments to exploration locations as required. Consultant must perform field work in consideration of public safety, per industry standards, and in accordance with applicable permit and environmental regulations. Consultant must survey all boring, trench locations, and geophysical test locations.

Based on the results of the Geotechnical Investigation, the Consultant will be responsible for preparing reports summarizing the information obtained, interpreting geologic and geotechnical conditions, and providing recommendations for design. The geotechnical reports shall encompass two separate reports: the Geotechnical Data Report (GDR) and the Geotechnical Interpretive Report (GIR).

Deliverables:

- Draft and Final Geotechnical Investigation and Site Characterization Work Plan. Provide five (5) hard copies and one (1) digital copy of draft and final plans.
- Permit Applications. If permit applications to regulatory agencies are required, Consultant will prepare and submit the permit application with input from SFPUC.
- Draft and Final GDR - The report must provide factual data and information obtained from the geotechnical investigation efforts. The report must include, geologic maps, information from borings, test pits and groundwater well completion logs including groundwater levels, locations of soil or groundwater containing hazardous materials, results of geophysical surveys, results from borability study, and results from in-situ and laboratory test results.
- Draft and Final GIR - Consultant's GIR's must provide interpretation of factual data derived from field investigations.

The GDR will be included in the construction contract documents for reference purposes.

TASK 4 CONCEPTUAL ENGINEERING

Based on the information obtained from the AAR and background information reports, the Consultant will be responsible for preparing a Draft and Final Conceptual Engineering Report (CER). The CER will contain preliminary analysis of the preferred alternative required to develop a 10% level design, preliminary design criteria, and preliminary drawings, including site layouts. In addition, the CER, at a minimum should address the following:

- Project history, purpose and summary.
- Existing conditions, including identification and summary of natural hazards including erosion and coastal related hazards in the SOB area.
- Proposed design scheme for structural protection of the existing LMT structure, including proposed foundation and type of structural wall used including overall concept for coastal management in the SOB area.
- Basis of Design (Design Objectives and Preliminary Design Criteria).
- Description of proposed major project elements and anticipated construction method, including any phasing that will be utilized.
- Preliminary structural analysis modeling results.
- Right-of-Way Considerations (temporary and permanent).
- Environmental Considerations.

- Permitting Considerations.
- Utility identification and relocation considerations. Consultant is responsible for performing surveys of the existing facilities, including utility surveys and potholing if required.
- Anticipated Regulatory Requirements.
- Draft specifications section list.
- 10% Design drawings, in conformance with SFPUC standards and procedures.
- Project schedule.
- Anticipated construction phasing strategy and construction schedule.
- Construction and O&M cost estimates.
- Prepare Draft and Final CEQA Checklist, including technical memorandum including assumptions for CEQA checklist information provided.

Deliverables:

- Draft and Final CER, containing the minimum requirements listed above. This report requires SFPUC approval prior to proceeding with the detailed design. Consultant's lead design engineer must sign and stamp the final report. Provide ten (10) hard copies and one (1) digital copy of draft and final report.
- Draft and Final CEQA Checklist, including technical memorandum. Provide five (5) hard copies and one (1) digital copy of draft and final checklist and memorandum.
- Conduct one (1) workshop and two (2) presentations (SFPUC WVE and Project Team) with the submittal of the final Conceptual Engineering Report (CER).

TASK 5 DETAILED DESIGN

Upon completion of the CER and acceptance by the SFPUC, the Consultant will develop the detailed design for the conceptual design presented in the CER. This task includes all engineering and design services required to perform, document and prepare a complete detailed design package and Design Criteria Report, including, but not limited, to:

In preparation of the Design Criteria Report:

- Conduct a design criteria workshop, as early as possible in the design phase with the final Design Criteria Report finalized at the 35% design level.
- Identify applicable federal, state, and local building codes, regulations and standards.
- Identify applicable general SFPUC design criteria.
- Define project-specific design criteria and parameters.
- Include project-specific functional, operational, and maintenance requirements.
- Identify existing site conditions, history and restrictions.
- Include construction sequencing, shutdown, and start-up considerations.

- The SFPUC has developed a general seismic design criteria. Consultant must review this criteria and use it to form the basis of the specific design criteria developed for this project.
- Criteria should be developed for the following at a minimum: geotechnical, seismic, structural, civil, pipeline, architectural, hydraulics, electrical and instrumentation, mechanical, corrosion, site restoration, environmental, landscaping, traffic, security and health and safety.

In preparation of the Detailed Design Package:

- If not completed in CER, perform surveys of the existing facilities, including utility surveys and potholing if required.
- Perform analysis and design calculations, signed and stamped by the lead design engineer. Collate design calculations and analysis files into one design calculation file per discipline for each design milestone.
- Prepare Design Reports. Provide preliminary and final design reports. Subjects to be addressed in design reports, include but are not limited to: type of proposed structural wall including analysis justifying the design choice, deep foundation design, shoring methods, groundwater control and disposal, utility conflicts, staging areas, and construction sequencing.
- Prepare plans and technical specifications according to standard SFPUC format for each design milestone. Contract documents shall include plans and specifications for environmental mitigation, to obtain construction contractor compliance with mitigation requirements contained in EIR and permit documents.
- Provide technical information for and assist SFPUC staff in preparation of Division 0 and 1 of the project specifications.
- Prepare construction cost estimates and CPM schedules for each design milestone.
- Present the design, cost estimate and schedule at the 35%, 65%, and 95%, and 100% design milestones to the SFPUC and stakeholders.
- Present the analysis and design at the 35%, 65%, and 95% design milestones to a technical advisory panel comprised of independent experts and/or consultants, as required.
- Evaluate and respond to comments from a constructability review at the 35%, 65%, and 95% design milestone.
- Evaluate and respond to comments from third-party independent peer reviews at the 35%, 65%, and 95% design milestones.
- Conduct a risk register workshop at the 35% design for risk identification and qualitative risk analysis. Risk register shall be updated at 65% and 95% design with risk qualification and mitigation.

- Prepare draft and final risk assessment register technical memorandum, to be included in 95% submittal.

Deliverables:

- Draft Design Criteria Report, including comment responses.
- Final Design Criteria Report, which must be stamped and signed by the Lead Design Engineer.
- Draft and Final Design Reports. Provide five (5) hard copies and one (1) electronic copy of draft design reports and fifteen (15) hard copies and one (1) electronic copy of all final design reports.
- 35% design submittal including plans, outline of specifications, design calculation files, construction cost estimate and construction schedule. Provide 15 bound copies of half-size plans and specifications.
- 35% design submittal presentation, one (1) electronic copy.
- 35% design submittal comment responses, one (1) electronic copy.
- 65% design submittal including plans, outline of specifications, design calculation files, construction cost estimate and construction schedule. Provide 15 bound copies of half-size plans and specifications.
- 65% design submittal Presentation, one (1) electronic copy.
- 65% design submittal comment responses, one (1) electronic copy.
- 95% design submittal including plans, outline of specifications, design calculation files, construction cost estimate and construction schedule. Provide 15 bound copies of half-size plans and specifications.
- 95% design submittal Presentation, one (1) electronic copy.
- 95% design submittal comment responses, one (1) electronic copy.
- 100% design submittal including contract drawings, contract specifications, design calculation files, construction cost estimate, and construction schedule. Provide 15 bound copies of half-size plans and specifications. Provide electronic copy of 100% submittal. Electronica copy shall include AutoCAD files of all contract drawings, Adobe Acrobat PDF files of all contract drawings and MS Word and Adobe Acrobat PDF files of all specifications.
- Risk Register Technical Memorandum. Provide five (5) hard copies and one (1) electronic copy of the draft and final technical memorandum, as part of the 95% submittal.

TASK 6 ENGINEERING SUPPORT SERVICES FOR ENVIRONMENTAL REVIEW

The proposed project will require California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA) review. In support and at the discretion of the Project

Engineer, the Consultant may be requested to provide engineering support services during the environmental review period for the project, including but not limited to:

- Assist the SFPUC Project Engineer in completing the CEQA, NEPA and resource agency permitting checklists.
- Provide technical information for the CEQA documents, NEPA documents and resource agency permit applications (permits will be obtained by the SFPUC).
- Review and provide comments on environmental documents.
- Provide technical information for environmental analysis and documents, including responses to RFIs from SFPUC Bureau of Environmental Management and environmental consultants.

For budgeting purposes and preparation of the proposal OPS, provide an allowance of \$250,000 for this task.

TASK 7 ENGINEERING SUPPORT FOR BID AND AWARD

Provide engineering support services during the bidding period of the project, including, but not limited, to:

- Attend the project pre-bid conference and the site visit.
- Assist in preparing Contractor's pre-qualification requirements.
- Assist in evaluating Contractor's submitted qualifications.
- Respond to Questions on Bid Documents (QBDs).
- Prepare addenda to Contract Documents.
- Assist in the analysis and evaluation of bid packages.
- Review Requests for Substitutions of construction items (RFSs).

TASK 8 TECHNOLOGY TRANSFER

Provide SFPUC technology transfer/cross training related to the scope of work and deliverables. While training content will be identified jointly by the SFPUC during the Design Phase, training areas include but are not limited to structural sea wall design, structural modeling and geotechnical considerations related to sea walls. Services to be provided under this task include preparing, coordinating and providing training sessions. The training duration shall be approximately 80 hours of training and preparation time, and may be covered in a classroom, field visits or on-the-job sessions. These training shall be independent of the other workshops held for this project and the services provided for other tasks.

TASK 9 ENGINEERING SUPPORT FOR CONSTRUCTION

Provide engineering support services during the construction of the project, including, but not limited, to:

- Attend weekly construction progress meetings, at the discretion of the Project Engineer, to discuss specific construction issues.

- Perform periodic site visits to observe construction work.
- Review and respond to RFIs.
- Review and respond to RFSSs.
- Review and respond to submittals.
- Prepare revisions to contract documents, as required.
- Provide technical support for preparation of Proposed Change Orders (PCOs) and review of Change Order Requests (CORs).
- Perform substantial completion inspection walkthrough, and prepare punch list items.
- Provide assistance in project closeout.

*The following tasks are **optional**. Consultant shall not commence work on these tasks without prior written authorization from the SFPUC. Note that the “not-to-exceed” Agreement value specified for this project includes the budget allowances for these optional tasks.*

TASK 10 OPTIONAL ENGINEERING SERVICES

Provide as-needed engineering services for the project, including, but not limited, to:

- Tunnel engineering
- Additional engineering analysis
- Inspection services, including inspection of existing sewer/storm drain lines.

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

2. Services Provided by Attorneys. The City will not pay for any legal services provided to Consultant by a law firm or attorney unless the City Attorney reviews and approves such services in writing in advance. The City will not pay any invoices for services provided by law firms or attorneys, including, without limitation, as subconsultants of Consultant, unless the provider received advance written approval from the City Attorney.

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

4. Department Liaison. In performing the Services provided for in this Agreement, Consultant’s liaison with the SFPUC will be Heather Manders.

5. Task Orders. Consultant will perform Service under this Agreement under a task order process, and Consultant is required to provide adequate quality control processes and deliverables in conformance with the technical requirements of the task order. The SFPUC

Project Manager will initially identify tasks and request the Consultant to propose a project scope, sub tasks, staffing plan, LBE utilization, schedule, deliverables, budget and costs to complete the task in accordance with Appendix B. All costs associated with the development of the scope of work for each task order shall be borne by Consultant. The SFPUC Project Manager and the Consultant will negotiate a final task order subject to approval by the SFPUC Bureau Manager. 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 City will process the task order request for Controller certification of funding, after which the City will issue a "Notice to Proceed." Consultant shall not commence Services hereunder until the Consultant 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 Consultant'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.

6. Reports. Consultant shall submit reports as requested by the SFPUC in a format specified by the SFPUC. The timely submission of all reports is a necessary and material term and condition of this Agreement. Consultant shall submit written reports, including any copies, on recycled paper and printed on double-sided pages to the maximum extent possible.

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

8. Standard of Care for Design Professionals. Consultant acknowledges and agrees that Consultant shall perform its services under this Agreement in accordance with the professional standard of care applicable to professionals providing similar services for projects of similar type, size and complexity in the San Francisco Bay Area.

Appendix B Calculation of Charges

As part of Consultant's proposal dated **May 25, 2018**, Consultant submitted proposed billing rates, attached hereto as Appendix B-1, Fee Schedule, for the requested tasks identified in Appendix A, Scope of Services which are incorporated herein by this reference.

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

The City will not pay any invoices for Services provided by law firms or attorneys, including, without limitation, as subconsultants of Consultant, unless the provider received advance written approval from the City Attorney.

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

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

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

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

3. Effective Overhead and Profit Rate. The Effective Overhead and Profit Rate (EOPR) for PRO.0092 is **2.80**. The EOPR or Individual Firm Overhead and Profit Rate will apply to the billing rate of all individuals not listed in Appendix C. The EOPR will also apply to all

amendments to the Agreement. If Consultant adds a new subconsultant during the duration of the Agreement, the new individual firm multiplier can be no more than the EOPR.

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

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

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

b. Only charges listed above are eligible for reimbursement. Cost that are not eligible for reimbursement 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 Consultant's home office to SFPUC facilities;
- Consultant 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 that the SFPUC staff has not requested.

5. Subconsultant make-up and documentation. Second-tier and pass-through subcontracting is prohibited. Consultant may add additional subconsultants to the Consultant team after obtaining pre-authorization by the SFPUC Project Manager, Bureau/Division Manager and the Contract Monitoring Division (CMD).

6. Subconsultant Fees:

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

7. Retention. The City will withhold five percent (5%) of each invoice payment for each task order. When Consultant completes the work for a task order or critical milestones to the satisfaction of the SFPUC Project Manager, the City has received all required work product, and the City Project Manager has approved all required work products, the Consultant may request the City to release the retention. Consultant may substitute an irrevocable letter of credit acceptable to the City in lieu of money retention.

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

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

Invoice Supporting Documentation:

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

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

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

Consultant must submit CMD Form 9 "Payment Affidavit" within ten (10) days of receiving payment for each invoice to document the subconsultant's payment by the prime Consultant.

Appendix B-1 Fee Schedule

OVERHEAD AND PROFIT SCHEDULE for PRO.0092: Engineering Services for South Ocean Beach Coastal Erosion and Wastewater Infrastructure Protection [Moffatt & Nichol + AGS Joint Venture]

OVERHEAD AND PROFIT SCHEDULE							
Firms	Staff Classification/Title	Name of Proposed Staff Person	Base Rate (\$/hour)	Firm's Overhead and Profit Rate (OPR, or "multiplier")	Billing Rate (\$/hour, not to exceed \$240/hour)	Estimated Participation per CMD Form 5 or 5A (% of Contract)	Contribution to Effective Overhead and Profit Rate
[A]	[B]	[C]	[D]	[E]	[F]=[D]x[E]	[G]	[H]=[G]x[E]
AGS	Lead Geotechnical Engineer	Bahram Khamenehpour	\$90.00	2.79	\$240.00	0.312	87%
	Principal Geotechnical Engineer	Kamran Ghiassi	\$74.75		\$208.55		
	Principal Geotechnical Engineer	Keyvan Fotoohi	\$65.50		\$182.75		
	Senior Geotechnical Engineer	Michelle Shiro	\$65.00		\$181.35		
	Senior Geotechnical Engineer	Steve Tsang	\$58.30		\$162.66		
	Project Geotechnical Engineer	Anthony Argriou	\$47.00		\$131.13		
	Principal Geologist	Rick Harlan	\$72.00		\$200.88		
	Senior Staff Geologist	Joseph Farrow	\$41.20		\$114.95		
	Senior Principal Civil Engineer	Kenneth Little	\$90.00		\$240.00		
	Principal Civil Engineer	Erik Scheller	\$68.50		\$191.12		
	Senior Civil Engineer	Stefan Hoffmeister	\$61.50		\$171.59		
	Project Civil Engineer	Jeffrey Leung	\$45.00		\$125.55		
	Project Civil Engineer	Pavel Guevarro	\$43.50		\$121.37		
	Senior Structural Engineer	Huanz Wang	\$72.00		\$200.88		
	Project Structural Engineer	Jeffrey Yip	\$48.00		\$133.92		
	Project Engineer	Jacob Horwath	\$42.75		\$119.27		
	CAD/BIM	Steve Grist	\$34.00		\$94.86		
Moffatt & Nichol	Principal	Richard Domheilm	\$105.88	3.00	\$240.00	0.468	140%
	Principal	Dilip Trivedi	\$93.50		\$240.00		
	Supervisory Engineer	James Brady	\$84.26		\$240.00		
	Supervisory Scientist	Stephanie Ostlick	\$77.00		\$231.00		
	Senior Engineer	Jack Fink	\$78.00		\$234.00		
	Senior Engineer	Mads Jorgensen	\$75.92		\$227.76		
	Senior Engineer	Azadeh Bozorgzadeh	\$72.80		\$218.40		
	Senior Engineer	Marc Percher	\$72.80		\$218.40		
	Senior Engineer	Neil Nichols	\$61.36		\$184.08		
	Designer	Elena Pleschuk	\$53.56		\$160.68		
	Eng II	Cheng-Feng Tsai	\$49.66		\$148.98		
	Eng II	Sam Tooley	\$40.56		\$121.68		
	Word Processing	Jagbir Dhaliwal	\$44.72		\$134.16		
	Staff Eng	Babak Tehranirad	\$41.60		\$124.80		
	Staff Eng	Katie Moyano	\$33.28		\$99.84		
Kennedy Jenks	Engineer 9	Joel Faller	\$95.91	3.05	\$240.00	0.030	9%
	Engineer 9	Kerwin C. Allen	\$93.44		\$240.00		
	Engineer 8	John Bergen	\$83.03		\$240.00		
	Engineer 8	David Williams	\$90.66		\$240.00		
	Engineer 8	Don Barraza	\$76.02		\$231.86		
	Engineer 4	Sony Sin	\$37.78		\$115.23		
	Engineer 6	Bob Ryder	\$69.39		\$211.64		
	Engineer 7	Emily Hudish	\$60.50		\$184.53		
	Engineer 4	Adam Butler	\$55.04		\$167.87		
	Engineer 3	Nick Lazarakis	\$39.36		\$120.05		
	Engineer 7	Sachi Itagaki	\$71.20		\$217.16		
	Project Administrator	Carol Toy	\$36.29		\$110.68		
	Project Administrator	Jim Aquino	\$34.68		\$105.77		
McMillen Jacobs Associates	Lead Associate	Shawn Spreng	\$62.64	2.90	\$181.66	0.030	9%
	Senior Associate	Norman Joyal	\$77.39		\$224.43		
	Senior Associate	Yiming Sun	\$81.14		\$235.31		
	Senior Project Engineer	Roozbeh Mikola	\$50.95		\$147.76		
CHS Consulting Group	Principal	Chi-Hsin Shao	\$110.16	2.97	\$240.00	0.010	3%
	Project Manager	Soroush Khadem	\$70.00		\$207.90		
	Senior Transportation Planner	Andrew Kluter	\$54.24		\$161.09		
	Senior Transportation Planner	Byung Lee	\$47.01		\$139.62		
	Senior Transportation Planner	Yashu Rastogi	\$47.04		\$139.71		
	Assistant Transportation Engineer	Frank Feng	\$34.13		\$101.37		
Davis & Associates Communications Inc.	Principal	Darolyn Davis	\$80.00	3.00	\$240.00	0.010	3%
	Project Manager	Scott Wintner	\$62.00		\$186.00		
	Project Supervisor	Matt Maltbie	\$55.00		\$165.00		
	Associate	Aaron Bialick	\$48.00		\$144.00		
Marta Fry Landscape Associates	Principal + Owner	Marta Fry	\$80.00	2.80	\$224.00	0.025	7%
	Principal + Project Manager	James Munden	\$65.00		\$182.00		
	Design Associate + production	Ambrose Luk	\$45.00		\$126.00		
	Design Associate + production	Alexandra Mei	\$41.67		\$116.67		
Meridian Surveying Engineering	Licensed Engineer / Surveyor	Stanley Gray	\$113.30	2.80	\$240.00	0.010	3%
	Project Surveyor	Keith Robichaud	\$50.00		\$140.00		
	Project Surveyor	Tim Robinson	\$50.00		\$140.00		
	Project Manager	Nathan Foley	\$45.00		\$126.00		
	Technician/CAD Operator	Ron Kuehn	\$38.00		\$106.40		
	Office/Project Accounting	Emily Thomas	\$35.00		\$98.00		
	Junior Engineer / Surveyor	Randall Cohen	\$35.00		\$98.00		
	Junior Engineer / Surveyor	Emily Thomas	\$38.00		\$106.40		
	Junior Engineer / Surveyor	Eric Ward	\$34.00		\$95.20		
	Field Chief (Prevailing Wage)	Varies	\$64.08		\$179.42		
Saylor Consulting Group	Field Rodman (Prevailing Wage)	Varies	\$58.11	2.34	\$162.71	0.025	6%
	Managing/Senior Estimator	Ian Slight	\$100.00		\$234.00		
	Senior Estimator	Bob Griesinger	\$72.00		\$168.48		
	Senior Mechanical Estimator	Tim Coyle	\$85.10		\$199.13		
	Senior Scheduler	Deviprasad Pentapati	\$100.00		\$234.00		
RES Engineers	Principal Engineer	Ross Esfandiani	\$80.00	2.80	\$224.00	0.010	3%
	Senior Special Inspector	Dennis Vargas	\$45.02		\$126.06		
	Special Inspector	Orion Berdick	\$43.02		\$120.46		
Professor Sitar	Bluff Erosion Expert	Nicholas Sitar	\$240.00	1.00	\$240.00	0.010	1%
Professor O'Roarke	Tunnel Seismic Safety Expert	Thomas O'Roarke	\$240.00	1.00	\$240.00	0.010	1%
CADNET	CAD/BIM Designer	Charlie Thomas	\$65.00	1.30	\$84.50	0.040	5%
	CAD Designer	Pavla Fumankova	\$50.00		\$65.00		
Sherwood Design Engineering	Principal	John Leys	\$115.76	3.05	\$240.00	0.010	3%
	Project Manager	Clara Tang	\$59.17		\$180.47		

Effective Project Overhead & Profit Rate (EOPR):
Maximum Allowable Effective Project Multiplier = 3.20

2.80

