

**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  
CDM Smith, Inc.  
PRO-0177  
Engineering Services for Sunol Valley Facilities Improvements**

This Agreement is made this [insert day] day of [insert month], [insert year], in the City and County of San Francisco (“City”), State of California, by and between [name of Contractor] (“Contractor”) and City.

**Recitals**

WHEREAS, the San Francisco Public Utilities Commission (“Department,” or “SFPUC”) wishes to procure planning and engineering design services for the Sunol Valley Facilities Improvements from Contractor; and

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

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WHEREAS, Contractor was competitively selected pursuant to a Request for Proposals (“RFP”) entitled PRO-0177 Engineering Services for Sunol Valley Facilities Improvements; and

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WHEREAS, this is a contract for Services and there is a Local Business Enterprise (“LBE”) subcontracting participation requirement with respect to the Services, as defined further herein; and

WHEREAS, approval for the Agreement was obtained on [insert date of Civil Service Commission action or DHR approval date if under \$100K] from the [Civil Service Commission or Department of Human Resources on behalf of the Civil Service Commission] under PSC number 41458-23/24 in the amount of 15,000,000 for the period of 11 years, 2 days; and

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WHEREAS, the City’s Public Utilities Commission approved this Agreement by 25-0070 on May 13, 2025 in the amount of 15,000,000 for 10 years; and

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WHEREAS, the Department has filed Ethics Form 126f4 (Notification of Contract Approval) because this Agreement has a value of \$100,000 or more in a fiscal year and will require the approval of the Board of Supervisors; and

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WHEREAS, the City's Board of Supervisors approved this Agreement by [insert resolution number] on [insert date of Commission or Board action] in the amount of [insert Dollar Amount] for the period commencing [Insert Start Date] and ending [Insert End Date]; and

Now, THEREFORE, the parties agree as follows:

## **Article 1      Definitions**

The following definitions apply to this Agreement:

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

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

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

1.4      "Confidential Information" means confidential City information including, but not limited to, personal identifiable information ("PII"), protected health information ("PHI"), or individual financial information (collectively, "Proprietary or Confidential Information") that is subject to local, state or federal laws restricting the use and disclosure of such information, including, but not limited to, Article 1, Section 1 of the California Constitution; the California Information Practices Act (Civil Code § 1798 et seq.); the California Confidentiality of Medical Information Act (Civil Code § 56 et seq.); the federal Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801(b) and 6805(b)(2)); the privacy and information security aspects of the Administrative Simplification provisions of the federal Health Insurance Portability and Accountability Act (45 CFR Part 160 and Subparts A, C, and E of part 164); and San Francisco Administrative Code Chapter 12M ("Chapter 12M"). Confidential Information includes, without limitation, City Data.

1.5      "Contractor" means CDM Smith, Inc, 2300 Clayton Road, Suite 950, Concord, CA 94520.

1.6      "Deliverables" means Contractor's or its subcontractors' work product, including any partially-completed work product and related materials, resulting from the Services provided by Contractor to City during the course of Contractor's performance of the Agreement, including without limitation, the work product described in the "Scope of Services" attached as Appendix A.

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

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

1.9      "Party" and "Parties" means the City and Contractor either individually or collectively.

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

## **Article 2 Term of the Agreement**

2.1 **Term.** The term of this Agreement shall commence on [the Effective date] and expire in 10 years, unless earlier terminated as otherwise provided herein.

## **Article 3 Financial Matters**

### **3.1 Certification of Funds; Budget and Fiscal Provisions.**

3.1.1 **Termination in the Event of Non-Appropriation.** This Agreement is subject to the budget and fiscal provisions of Section 3.105 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 the City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. The City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor’s assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

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

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

3.2 **Authorization to Commence Work.** Contractor shall not commence any work under this Agreement until the City has issued formal written authorization to proceed, such as a purchase order, task order or notice to proceed. Such authorization may be for a partial or full scope of work.

### **3.3 Compensation.**

3.3.1 **Calculation of Charges and Contract Not to Exceed Amount.** The amount of this Agreement shall not exceed Fifteen Million Dollars, \$15,000,000, the breakdown

of which appears in Appendix B, "Calculation of Charges." City shall not be liable for interest or late charges for any late payments. City will not honor minimum service order charges for any Services covered by this Agreement.

**3.3.2 Payment Limited to Satisfactory Services.** Contractor is not entitled to any payments until City approves the Services delivered. Payments to Contractor by City shall not excuse Contractor from its obligation to replace the unsatisfactory Services even if the unsatisfactory character was apparent or could have been detected at the time such payment was made. Non-conforming Services may be rejected by City and in such case must be replaced by Contractor without delay at no cost to the City.

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

**3.3.4 Invoice Format.** Invoices submitted by Contractor under this Agreement must be in a form acceptable to the Controller and City and include a unique invoice number and a specific invoice date. Payment shall be made by City as specified in Section 3.3.8, or in such alternate manner as the Parties have mutually agreed upon in writing. Invoices that do not include all required information or contain inaccurate information will not be processed for payment.

### **3.3.5 Prompt Payment of Subcontractors**

(a) **LBE Payment and Utilization Tracking System.** LBE Subcontracting Participation Requirements apply to a contract awarded pursuant to this Solicitation, the Awarded Contractor shall: (a) within three (3) business days of City's payment of any invoice to Contractor, pay LBE subcontractors as provided under Chapter 14B.7(H)(9); and (b) within ten (10) business days of City's payment of any invoice to Contractor, confirm its payment to subcontractors using the City's Supplier Portal Payment Module, unless instructed otherwise by CMD. Failure to submit all required payment information to the City's Supplier Portal Payment Module with each payment request may result in the withholding of twenty (20%) of subsequent payments due. Self-Service Training is located at this link: <https://sfcitypartner.sfgov.org/pages/training.aspx>.

(b) **Subcontractor Prompt Payment.** Except as otherwise required by Chapter 14B of the Administrative Code, and consistent with the provisions of Section 6.42(f) of the Administrative Code, Contractor shall pay its subcontractors within seven calendar days after receipt of each progress payment from the City, unless otherwise agreed to in writing by both Contractor and the subcontractor. In the event that there is a good faith dispute over all or any portion of the amount due on a progress payment from Contractor to a subcontractor, the Contractor may withhold the disputed amount, but shall pay the undisputed amount. If Contractor violates the provisions of Section 6.42(f), then Contractor shall pay to the subcontractor directly the penalty specified in Section 6.42(f). This provision does not create a private right of action against the City.

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

(a) The City utilizes a commercial product through its banking partner to pay City contractors electronically. Contractors shall sign up to receive electronic payments to

be paid under this Agreement. To sign up for electronic payments, visit [SF City Partner at sf.gov](https://sf.gov/partner).

(b) At the option of the City, Contractor may be required to submit invoices directly in SOLIS. For access to SOLIS, Submit a request through SFPUCVendorSupport@sfgov.org.

3.3.7 **Reserved.**

3.3.8 **Payment Terms.**

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

(b) **Reserved.**

3.4 **Audit and Inspection of Records.** Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its Services. Contractor will permit City to audit, examine and make copies of such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any Federal agency having an interest in the subject matter of this Agreement shall have the same rights as conferred upon City by this Section. Contractor shall include the same audit and inspection rights and record retention requirements in all subcontracts.

3.5 **Submitting False Claims.** The full text of San Francisco Administrative Code Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Any contractor or subcontractor who submits a false claim shall be liable to the City for the statutory penalties set forth in that section.

3.6 **Payment of Prevailing Wages.**

3.6.1 **Covered Services.** Services to be performed by Contractor under this Agreement will involve the performance of work covered by the California Labor Code Sections 1720 and 1782, as incorporated within Section 6.22(e) of the San Francisco Administrative Code (collectively, "Covered Services"), which is incorporated into this Agreement as if fully set forth herein and will apply to any Covered Services performed by Contractor and its subcontractors.

3.6.2 **Wage Rates.** The latest prevailing wage rates for private employment on public contracts as determined by the San Francisco Board of Supervisors and the Director of the California Department of Industrial Relations ("DIR"), 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 applicable prevailing wage rates are available from the City's Office of Labor Standards and Enforcement ("OLSE"). See also <https://sf.gov/resource/2022/citywide-contractor-labor-laws>. Contractor agrees that it shall pay not less than the prevailing wage rates,



as determined by the Board of Supervisors and DIR, to all workers employed by Contractor who perform Covered Services under this Agreement.

**3.6.3 Subcontract Requirements.** Contractor shall insert in every subcontract for the performance of Covered Services under this Agreement a provision requiring subcontractor to pay all persons performing labor in connection with Covered Services under the subcontract not less than the highest general prevailing rate of wages as determined by the Board of Supervisors and DIR for such labor and services.

**3.6.4 Posted Notices.** Contractor shall post job site notices prescribed by DIR at all job sites where Covered Services are to be performed.

**3.6.5 Payroll Records.** Contractor shall keep or cause to be kept complete and accurate payroll records for all workers performing Covered Services. Such records shall include the name, address and social security number of each worker who provided Covered Services, including apprentices, their classification, a general description of the Services each worker performed each day, the rate of pay (including rates of contributions for, or costs assumed to provide fringe benefits), daily and weekly number of hours worked, deductions made and actual wages paid. Every subcontractor who shall perform any part of Covered Services shall keep a like record of each person engaged in the execution of Covered Services under the subcontract. All such records shall at all times be available for inspection of and examination by the City and its authorized representatives and/or DIR.

**3.6.6 Certified Payrolls.** Contractor shall prepare certified payrolls for the period involved for all employees, including those of subcontractors, who performed Covered Services. Contractor and each subcontractor performing Covered Services shall electronically submit certified payrolls to the City and to DIR as specified by the City and DIR. Contractor and all subcontractors that will perform Covered Services shall attend a training session on the preparation and electronic submission of certified payroll records provided by the City. Contractor and applicable subcontractors shall comply with electronic certified payroll requirements (including training) at no additional cost to the City.

**3.6.7 Compliance Monitoring.** Covered Services performed under this Agreement are subject to compliance monitoring and enforcement of prevailing wage requirements by DIR and/or OLSE. Contractor and any subcontractors performing Covered Services will cooperate fully with DIR and/or OLSE and other City employees and agents authorized to assist in the administration and enforcement of the prevailing wage requirements. Contractor agrees that (i) OLSE shall have the right to engage in random inspections of job sites and have access to the employees of the Contractor, employee time sheets, inspection logs, payroll records and employee paychecks; (ii) Contractor shall maintain a sign-in and sign-out sheet showing which employees are present on the job site; (iii) Contractor shall prominently post at each job-site a sign informing employees that the project is subject to City's prevailing wage requirements and that these requirements are enforced by OLSE; and (iv) OLSE may audit such records of Contractor as it reasonably deems necessary. Failure to comply with these requirements may result in penalties and forfeitures pursuant to the California Labor Code, including Section 1776(g), as amended from time to time, San Francisco Administrative Code Section 6.22(e), and San Francisco Labor and Employment Code Article 102, as applicable.

**3.6.8 Remedies.** Should Contractor, or any subcontractor performing Covered Services, fail or neglect to pay to the persons who perform Covered Services under this

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

### 3.7 **Apprentices.**

3.7.1 Contractor and its subcontractors of every tier that provide Covered Services under this Agreement (as defined in Section 10.20 above) shall, as a material term of the Agreement, comply with the requirements of the State Apprenticeship Program (as set forth in the California Labor Code, Division 3, Chapter 4 [commencing at Section 3070], and Section 1777.5 of the Labor Code) and Administrative Code Section 6.22(n). Contractor shall be solely responsible for securing compliance with Labor Code Section 1777.5 for all apprenticeable occupations.

3.7.2 Contractor shall include in all of its subcontracts the obligation for subcontractors to comply with the requirements of the State Apprenticeship Program.

3.7.3 Should Contractor fail to comply with the apprenticeship requirements of Labor Code Section 1777.5, Contractor shall be subject to the penalties prescribed in Labor Code Section 1777.7. The interpretation and enforcement of Labor Code Section 1777.5 shall be in accordance with rules and procedures prescribed by the California Apprenticeship Council.

3.7.4 Contractor, if not signatory to a recognized apprenticeship training program under Labor Code, Chapter 4, shall provide to the City with all progress payment requests, starting with the second such request, satisfactory evidence that it has contributed to the appropriate apprenticeship fund(s). Contractor shall require its subcontractors who are not signatories to provide such evidence to the City as a condition precedent for qualifying for payment from the City.

3.7.5 Contractor shall comply with all requests by the City to provide proof that Contractor and all of its subcontractors at every tier providing Covered Services are in compliance with the State Apprenticeship Program, including proof that Contractor and all of its subcontractors at any tier providing Covered Services contributed to the appropriate apprenticeship fund(s).

## **Article 4 Services and Resources**

4.1 **Services Contractor Agrees to Perform.** Contractor agrees to perform the Services stated in **Appendix A, "Scope of Services."** Officers and employees of the City are not authorized to request and the City is not required to compensate for Services beyond those stated.

4.2 **Qualified Personnel.** Contractor represents and warrants that it is qualified to perform the Services required by the City, and that all Services will be performed by competent personnel with the degree of skill and care required by current and sound professional procedures and practices. Contractor will comply with the City's reasonable requests regarding assignment and/or removal of personnel, but all personnel, including those assigned at City's request, must

be supervised by Contractor. Contractor shall commit sufficient resources for timely completion within the project schedule.

**4.3 Subcontracting.** Contractor may subcontract portions of the Services only upon prior written approval of City. Contractor is responsible for its subcontractors throughout the course of the work required to perform the Services. All subcontracts must incorporate the terms of Article 10 “Additional Requirements Incorporated by Reference” of this Agreement, unless inapplicable. Neither Party shall, on the basis of this Agreement, contract on behalf of, or in the name of, the other Party. Any agreement made in violation of this provision shall be null and void. City’s execution of this Agreement constitutes its approval of the subcontractors listed below in Appendix B-1, Fee Schedule. Consistent with SFPUC policy, any modifications to the list of subcontractors must be effectuated via City’s approved invoice processing system, subject to the written approval of the City, and CMD, as needed.

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

**4.4.1 Independent Contractor.** For the purposes of this Section 4.4, “Contractor” shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, Contractor is an independent contractor and is wholly responsible for the manner and means by which it performs the Services and work required under this Agreement. Contractor, and its agents and employees will not represent or hold themselves out to be employees of the City at any time. Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by the City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor is liable for its acts and omissions. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor’s performing Services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor, or any of its agents or employees. Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor’s compliance with this Section. Should the City determine that Contractor is not performing in accordance with the requirements of this Section, City shall provide Contractor with written notice of such failure. Within five (5) business days of Contractor’s receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

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



upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with the City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to this Section 4.4 shall be solely limited to the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of the City. Notwithstanding the foregoing, Contractor agrees to indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorneys' fees, arising from this Section.

4.5 **Assignment.** The Services to be performed by Contractor are personal in character. This Agreement may not be directly or indirectly assigned, novated, or otherwise transferred 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 **Reserved.**

4.7 **Reserved.**

4.8 **Reserved.**

4.9 **Emergency - Priority 1 Service.** In case of an emergency that affects any part of the San Francisco Bay Area, Contractor will give the City and County of San Francisco Priority 1 service with regard to the Services procured under this Agreement unless preempted by State and/or Federal laws. Contractor will make every good faith effort in attempting to deliver Services using all modes of transportation available. In addition, the Contractor shall charge fair and competitive prices for Services ordered during an emergency and not covered under the awarded Agreement.

## **Article 5 Insurance and Indemnity**

### **5.1 Insurance.**

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

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

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

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

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

- (e) Reserved. Technology Errors and Omissions Liability Insurance
- (f) Reserved. Cyber and Privacy Liability Insurance
- (g) Reserved.

#### 5.1.2 **Additional Insured.**

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

5.1.3 **Waiver of Subrogation.** The Workers' Compensation Liability Insurance policy(ies) shall include a waiver of subrogation in favor of the City for all work performed by the Contractor, and its employees, agents and subcontractors.

#### 5.1.4 **Primary Insurance.**

- (a) The Commercial General Liability Insurance policy shall provide that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that the insurance applies separately to each insured against whom claim is made or suit is brought.
- (b) The Commercial Automobile Liability Insurance policy shall provide that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that the insurance applies separately to each insured against whom claim is made or suit is brought.
- (c) Reserved.

#### 5.1.5 **Other Insurance Requirements.**

- (a) Thirty (30) days' advance written notice shall be provided to the City of cancellation, intended non-renewal, or reduction in coverages, except for non-payment for which no less than ten (10) days' notice shall be provided to City. Notices shall be sent to the City address set forth in Section 11.1 entitled, "Notices to the Parties."
- (b) Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, be maintained for a period of three (3) years beyond the expiration of this Agreement, to the effect that, should occurrences during the Agreement term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

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

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

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

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

## **5.2 Indemnification and Defense Obligations For Design Professionals.**

**5.2.1 Defense Obligations.** To the fullest extent permitted by law, Contractor shall, following a tender of defense from City, assume the immediate defense of (with legal counsel subject to approval of the City), the City, its boards, commissions, officers, and employees (collectively "Indemnitees"), from and against any and all claims, losses, costs, damages, expenses and liabilities of every kind, nature, and description including, without limitation, injury to or death of any person(s) and incidental and consequential damages (collectively "Damages"), court costs, attorneys' fees, litigation expenses, fees of expert consultants or witnesses in litigation, and costs of investigation (collectively "Litigation Expenses"), that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the alleged negligence, recklessness, or willful misconduct of Contractor, any subconsultant, anyone directly or indirectly employed by them, or anyone that they control (collectively, "Liabilities"). City will reimburse Contractor for the proportionate percentage of defense costs exceeding Contractor's proportionate percentage of fault as determined by a Court of competent jurisdiction.

**5.2.2 Indemnity Obligations.** To the fullest extent permitted by law, Contractor shall indemnify and hold harmless Indemnitees from and against any and all Liabilities, including but not limited to those for Damages or Litigation Expenses specified in Section 5.2.1.

**5.2.3 Copyright Infringement.** Contractor shall also indemnify, defend and hold harmless all Indemnitees from all suits or claims for infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark, or any other proprietary right of any person or persons in consequence of the use by the City, or any of its boards, commissions, officers, or employees of articles, work or deliverables supplied in the performance of Services. Infringement of patent rights, copyrights, or other proprietary rights in the performance of this

Agreement, if not the basis for indemnification under the law, shall nevertheless be considered a material breach of contract.

**5.2.4 Severability Clause Specific to Indemnification and/or Defense**

**Obligations.** To the extent any Court of competent jurisdiction or law invalidates any word, clause, phrase, or sentence herein that word, clause, phrase, or sentence, and no other portion, shall be deemed removed from this Section. All other words, clauses, phrases and/or sentences remain enforceable to the fullest extent permitted by law.

**5.2.5** Under no circumstances will City indemnify or hold harmless Contractor.

**Article 6 Liability of the Parties**

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

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

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

**Article 7 Payment of Taxes**

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

**7.2 Possessory Interest Taxes.** Contractor acknowledges that this Agreement may create a "possessory interest" for property tax purposes. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to timely report on behalf of the City to the County Assessor the information required by San Francisco Administrative Code Section 23.39, as amended from time to time, and any successor provision. Contractor further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

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

## **Article 8 Termination and Default**

### **8.1 Termination for Convenience.**

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

8.1.2 Upon receipt of the Notice of Termination, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to affect the termination of this Agreement on the Termination Date and to minimize the liability of Contractor and City to third parties as a result of the termination. All such actions shall be subject to the prior approval of City. Such actions may include any or all of the following, without limitation:

- (a) Completing performance of any Services that City requires Contractor to complete prior to the Termination Date.
- (b) Halting the performance of all Services on and after the Termination Date.
- (c) Cancelling all existing orders and subcontracts by the Termination Date, and not placing any further orders or subcontracts for materials, Services, equipment or other items.
- (d) At City's direction, assigning to City any or all of Contractor's right, title, and interest under the orders and subcontracts cancelled. Upon such assignment, City shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the cancellation of such orders and subcontracts.
- (e) Subject to City's approval, settling all outstanding liabilities and all claims arising out of the cancelled orders and subcontracts.
- (f) Taking such action as may be necessary, or as the City may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which City has or may acquire an interest.

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



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

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

(c) The reasonable cost to Contractor of handling and returning material or equipment delivered to City or otherwise disposed of as directed by City.

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

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

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

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

## **8.2 Termination for Default; Remedies.**

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

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

3.5	Submitting False Claims.	10.10	Alcohol and Drug-Free Workplace
4.5	Assignment	11.10	Compliance with Laws
Article 5	Insurance and Indemnity	Article 13	Data and Security

Article 7	Payment of Taxes		
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(b) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, including any obligation imposed by ordinance or statute and incorporated by reference herein, and such default is not cured within ten days after written notice thereof from City to Contractor. If Contractor defaults a second time in the same manner as a prior default cured by Contractor, City may in its sole discretion immediately terminate the Agreement for default or grant an additional period not to exceed five days for Contractor to cure the default.

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

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

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

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

**8.2.4** Any notice of default must be sent in accordance with 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
3.5	Submitting False Claims	9.2	Works for Hire
Article 5	Insurance and Indemnity	11.7	Agreement Made in California; Venue
6.1	Liability of City	11.8	Construction
6.3	Liability for Incidental and Consequential Damages	11.9	Entire Agreement
Article 7	Payment of Taxes	11.10	Compliance with Laws
8.1.6	Payment Obligation	11.11	Severability
8.2.2	Default Remedies	Article 13	Data and Security

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

### **Article 9 Rights in Deliverables**

9.1 **Ownership of Results.** Any interest of Contractor or its subcontractors in the Deliverables, any partially-completed Deliverables, and related materials, shall become the property of and will be transmitted to City. Unless expressly authorized in writing by City, Contractor may not retain and use copies for reference and as documentation of its experience and capabilities.

9.2 **Works for Hire.** All copyrights in Deliverables that are considered works for hire under Title 17 of the United States Code, shall be the property of the City. If any such Deliverables are ever determined not to be works for hire under federal law, Contractor hereby assigns all Contractor's copyrights to such Deliverables to the City, agrees to provide any material and execute any documents necessary to effectuate such assignment, and agrees to include a clause in every subcontract imposing the same duties upon its subcontractors. With City's prior written approval, Contractor and its subcontractors may retain and use copies of such works for reference and as documentation of their respective experience and capabilities

provided that any such use is in conformance with the confidentiality provisions of this Agreement.

## **Article 10 Additional Requirements Incorporated by Reference**

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

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

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

**10.4 Consideration of Salary History.** Contractor shall comply with San Francisco Labor and Employment Code Article 141, the Consideration of Salary History Ordinance or “Pay Parity Act.” Contractor is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Agreement or in furtherance of this Agreement, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in City or on City property. The ordinance also prohibits employers from (1) asking such applicants about their current or past salary or (2) disclosing a current or former employee’s salary history without that employee’s authorization unless the salary history is publicly available. Contractor is subject to the enforcement and penalty provisions in Article 141. Information about and the text of Article 141 is available on the web at <https://sfgov.org/olse/consideration-salary-history>. Contractor is required to comply with all of the applicable provisions of Article 141, irrespective of the listing of obligations in this Section.

### **10.5 Nondiscrimination Requirements.**

**10.5.1 Nondiscrimination in Contracts.** Contractor shall comply with the provisions of San Francisco Labor and Employment Code Articles 131 and 132. Contractor shall incorporate by reference in all subcontracts the provisions of Sections 131.2(a), 131.2(c)-(k), and 132.3 of the San Francisco Labor and Employment Code and shall require all subcontractors to comply with such provisions. Contractor is subject to the enforcement and penalty provisions in Articles 131 and 132.

**10.5.2 Nondiscrimination in the Provision of Employee Benefits.** San Francisco Labor and Employment Code Article 131.2 applies to this Agreement. Contractor does

not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for 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 Labor and Employment Code Article 131.2.

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

**10.7 Minimum Compensation Ordinance.** Labor and Employment Code Article 111 applies to this Agreement. Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Labor and Employment Code Article 111, including a minimum hourly gross compensation, compensated time off, and uncompensated time off. Contractor is subject to the enforcement and penalty provisions in Article 111. Information about and the text of Article 111 is available on the web at <http://sfgov.org/olse/mco>. Contractor is required to comply with all of the applicable provisions of Article 111, irrespective of the listing of obligations in this Section. By signing and executing this Agreement, Contractor certifies that it complies with Article 111.

**10.8 Health Care Accountability Ordinance.** Labor and Employment Code Article 121 applies to this contract. Contractor shall comply with the requirements of Article 121. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Article 121.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission. Information about and the text of Article 121, as well as the Health Commission’s minimum standards, is available on the web at <http://sfgov.org/olse/hcao>. Contractor is subject to the enforcement and penalty provisions in Article 121. Any Subcontract entered into by Contractor shall require any Subcontractor with 20 or more employees to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section.

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

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



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

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

**10.12 Reserved.**

**10.13 Reserved.**

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

10.14.1 Contractor agrees to comply fully with and be bound by all of the provisions of Article 142, “City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions,” of the San Francisco Labor and Employment Code (“Article 142”), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Article 142 are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of Article 142 is available on the web at <http://sfgov.org/olse/fco>. Contractor is required to comply with all of the applicable provisions of Article 142, 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 Article 142.

10.14.2 The requirements of Article 142 shall only apply to a Contractor’s or Subcontractor’s operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco. Article 142 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 Nonprofit Contractor Requirements.

10.15.1 **Good Standing.** If Contractor is a nonprofit organization, Contractor represents that it is in good standing with the California Attorney General's Registry of Charitable Trusts and will remain in good standing during the term of this Agreement. Contractor shall immediately notify City of any change in its eligibility to perform under the Agreement. Upon City's request, Contractor shall provide documentation demonstrating its compliance with applicable legal requirements. If Contractor will use any subcontractors to perform the Agreement, Contractor is responsible for ensuring they are also in compliance with the California Attorney General's Registry of Charitable Trusts for the duration of the Agreement. Any failure by Contractor or its subcontractors to remain in good standing with applicable requirements shall be a material breach of this Agreement.

10.15.2 **Public Access to Nonprofit Records and Meetings.** If Contractor is a nonprofit organization, provides Services that do not include services or benefits to City employees (and/or to their family members, dependents, or their other designated beneficiaries); and receives a cumulative total per year of at least \$250,000 in City or City-administered funds, Contractor must comply with the City's Public Access to Nonprofit Records and Meetings requirements, as set forth in Chapter 12L of the San Francisco Administrative Code, including the remedies provided therein.

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

#### 10.17 Distribution of Beverages and Water.

10.17.1 **Reserved.**

10.17.2 **Reserved.**

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

### 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:	Tedman Lee Civil Division Manager-EMB San Francisco Public Utilities Commission 525 Golden Gate Avenue San Francisco, California 94102 TLee@sfgwater.org
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To Contractor:	Servando Molina Senior Vice President CDM Smith Inc. 2300 Clayton Road, Suite 950, Concord, CA 94520 molinas@cdmsmith.com (925) 296-8024
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Any notice of default or data breach must be sent by certified mail or other trackable written communication, and also by e-mail, with the sender using the receipt notice feature. Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party at least ten (10) days prior to the effective date of such change. If email notification is used, the sender must specify a receipt notice.

## 11.2 Compliance with Laws Requiring Access for People with Disabilities.

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

11.2.2 Reserved.

11.3 **Incorporation of Recitals.** The matters recited above are hereby incorporated into and made part of this Agreement.

11.4 **Sunshine Ordinance.** Contractor acknowledges that this Agreement and all records related to its formation, Contractor's performance of Services, and City's payment are subject to the California Public Records Act, (California Government Code § 7920 et seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state, or local law.

11.5 **Modification of this Agreement.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement. Contractor shall cooperate with Department to submit to the Director of CMD any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than twenty percent (20%).

## 11.6 Dispute Resolution Procedure.

11.6.1 **Negotiation; Alternative Dispute Resolution.** The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement. Disputes will not be subject to binding arbitration. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the

written directions of the City. Neither Party will be entitled to legal fees or costs for matters resolved under this Section.

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

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

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

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

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

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

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

**11.13 Order of Precedence.** The Parties agree that this Agreement, including all appendices, sets forth the Parties' complete agreement. If the Appendices to this Agreement include any standard printed terms from Contractor, Contractor agrees that in the event of discrepancy, inconsistency, gap, ambiguity, or conflicting language between the City's terms and Contractor's printed terms attached, the City's terms in this Agreement shall take precedence, followed by the procurement issued by the department (if any), Contractor's proposal, and Contractor's printed terms, respectively. Any hyperlinked terms included in Contractor's terms shall have no legal effect.

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

## **Article 12 Department Specific Terms**

**12.1 Reserved.**

## **Article 13 Data and Security**

**13.1 Nondisclosure of Private, Proprietary or Confidential Information.**

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

**13.1.2 City Data; Confidential Information.** In the performance of Services, Contractor may have access to, or collect on City’s behalf, City Data, which may include proprietary or Confidential Information that if disclosed to third parties may damage City. If City discloses proprietary or Confidential Information to Contractor, or Contractor collects such information on City’s behalf, such information must be held by Contractor in confidence and used only in performing the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary or Confidential Information.

**13.2 Reserved.**

**13.3 Reserved.**

**13.4 Management of City Data.**

**13.4.1 Use of City Data.** Contractor agrees to hold City Data received from, or created or collected on behalf of, City, in strictest confidence. Contractor shall not use or disclose City Data except as permitted or required by the Agreement or as otherwise authorized in writing by City. Any work by Contractor or its authorized subcontractors using, or sharing or storage of, City Data outside the United States is prohibited, absent prior written authorization by the City. Access to City Data must be strictly controlled and limited to Contractor’s staff assigned to this project on a need-to-know basis only. City Data shall not be distributed, repurposed or shared across other applications, environments, or business units of Contractor. Contractor is provided



a limited non-exclusive license to use the City Data solely for performing its obligations under the Agreement and not for Contractor's own purposes or later use. Nothing herein shall be construed to confer any license or right to the City Data, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third-party. Unauthorized use of City Data by Contractor, subcontractors or other third-parties is prohibited. For purpose of this requirement, the phrase "unauthorized use" means the data mining or processing of data and/or machine learning from the data, stored or transmitted by the service, for unrelated commercial purposes, advertising or advertising-related purposes, or for any purpose that is not explicitly authorized other than security or service delivery analysis.

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

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

**13.6 Loss or Unauthorized Access to City's Data; Security Breach Notification.** Contractor shall comply with all applicable laws that require the notification to individuals in the event of unauthorized release of PII, PHI, or other event requiring notification. Contractor shall notify City of any actual or potential exposure or misappropriation of City Data (any "Leak") within twenty-four (24) hours of the discovery of such, but within twelve (12) hours if the Data Leak involved PII or PHI. Contractor, at its own expense, will reasonably cooperate with City and law enforcement authorities to investigate any such Leak and to notify injured or potentially injured parties. The remedies and obligations set forth in this subsection are in addition to any other City may have. City shall conduct all media communications related to such Leak.

## **Article 14 MacBride And Signature**

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

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

**CITY**

Recommended by:

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

Approved as to Form:

David Chiu  
City Attorney

By: \_\_\_\_\_  
**Tyson Arbuthnot**  
Deputy City Attorney

**CONTRACTOR**

**CDM Smith, Inc.**

\_\_\_\_\_  
**Dave Ebersold**  
**Senior Vice President**

City Supplier Number: **0000023206**

**Appendices**

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

## **Appendix A Scope of Services**

### **I. Project Description**

Planning and engineering design services for Sunol Valley facilities.

### **II. Description of Services**

The primary role of the Contractor will be to perform the following types of engineering tasks, including but not limited to:

1. Architectural
2. Civil Engineering
3. Structural Engineering
4. Geotechnical Engineering
5. Mechanical Engineering
6. Treatment Process Engineering
7. Electrical Engineering
8. Instrumentation & Controls
9. Computer Aided Design & Building Information Modeling (BIM)
10. Specialized Drafting
11. Surveying and Mapping
12. Technical Writing and Editing Services
13. Other Specialized Services

The Contractor will work under the direction of the SFPUC Infrastructure Division – Engineering Management Bureau (EMB).

The SFPUC has developed a preliminary scope of work for the various Sunol Valley facility projects that it anticipates undertaking with Contractor support under the Agreement. However, the scope of services described for each project is not a complete listing of all services that SFPUC may require. The primary role of the Contractor will be to provide planning and engineering design services. The Contractor may perform engineering planning and/or design for a portion of a project or for an entire project. The SFPUC, in its sole discretion, may select the Contractor for all, portions, or none of the work described herein. SFPUC's EMB will determine the scope of work and schedule when it needs the Contractor to provide planning and engineering design services.

When requesting services for a specific project, SFPUC will provide the Contractor with current available project information. The Contractor will form a qualified team and provide a proposed detailed scope of work. Contractor will bear all costs associated with the development of the detailed scope of work. The SFPUC and Contractor will then negotiate a final task order with a scope of work and a negotiated not-to-exceed fee and schedule pursuant to the terms of the Agreement.

Services may include preparation of Needs Assessment Reports (NAR), Alternative Analysis Reports (AAR), Design Criteria Reports (DCR), Conceptual Engineering Reports (CER), Detailed Design, Engineering Support During Construction, and other miscellaneous services

such as environmental support and post-construction monitoring. An essential part of the Contractor work will be liaising with the City representatives and the City's design team. The Contractor will work under the direction of the SFPUC to provide planning and engineering design services for Sunol Valley facility projects identified within the Water Enterprise Capital Improvement Programs (WE CIP). Some assignments may require SFPUC engineering staff to be integrated into the Contractor project team. The Contractor's work objective will be to perform planning and engineering design services applying all applicable codes and SFPUC procedures.

SFPUC anticipates the projects to pertain to water pump stations and water treatment facilities. The projects may include additions, improvements, repairs or retrofits of existing water pump stations and water treatment facilities and the associated process systems and electrical systems. Desirable experience include expertise in: water treatment process design, the inspection and evaluation of existing water pump stations and water treatment facilities and their related systems, design of measures to address identified deficiencies, coordination with regulatory agencies to gain concurrence and approvals, and design for proper construction phasing in operating water pump stations and water treatment facilities.

### **III. SOCIAL IMPACT PARTNERSHIP**

#### **1. Terms and Conditions.**

- a. Contractor shall provide its Social Impact Partnership (SIP) Commitments during the term of the Agreement. The representations, warranties, and other terms contained in Contractor's SIP Proposal Response Form (SIP Proposal) will be the basis for a SIP Project Plan and SIP Annual Work Plan, but are for the sole benefit of the parties hereto and shall not be construed as conferring any rights on any other persons or entities.
- b. Providing SIP Commitments is a deliverable, zero-dollar task. Contractor may not allocate or include any hours or dollars in Contractor's costs for the services under the Agreement in order to perform or deliver the voluntarily proposed SIP Commitments. Contractor shall fund the SIP Commitments independently and such funding shall neither be tied to, nor dependent upon, SFPUC funds or sources of funding, receivable from SFPUC, including retention associated with the Agreement. This requirement of independent funding includes direct financial contributions and any funding related to the performance or delivery of the SIP Commitments. The provision of SIP Commitments does not entitle Contractor to additional work beyond the services specified within the Agreement.
- c. Contractor shall commence performance of the SIP Commitments promptly after issuance of the first Notice of Contract Award (NCA) for the Agreement and SIP Kick-off meeting. SIP Commitments performed as part of previous contracts or prior to Contractor being awarded the Agreement cannot count towards Contractor's SIP Commitments for the Agreement. If Contractor has established programs or plans that are consistent with the SIP program areas described in the Request for Proposals (RFP), Contractor may continue those programs as part of its SIP Commitments and will be given credit for activities that are performed following the issuance of the NCA by the SFPUC after the approval of the SIP Projection Plan and SIP Annual Work Plan .

- d. Contractor's progress on delivering SIP Commitments must keep pace with Contractor's progress of work on the project. If the SFPUC's SIP Program team determines that Contractor's delivery of SIP Commitments is 10% or more behind the underlying value of task orders issued, the City, in its sole discretion, may deem Contractor in material breach of the Agreement.
- e. The City's progressive remedies for Contractor's breach may include, at City's sole discretion, but need not be limited to (1) requiring Contractor to submit a corrective action plan; (2) withhold progress payments equal to the amount of undelivered SIP Commitments; (3) withholding progress payments from amounts due and owing under the Covered Contract up to 100% of the value of SIP Commitments; (4) assessment of actual damages in the amount equal to the total value of undelivered SIP Commitments, plus liquidated damages; ; (5) revoking noncompliant Contractor's eligibility for future Covered Contracts.
- f. If Contractor fails to complete its SIP Commitments, the SFPUC may withhold the value of the uncompleted SIP Commitments and deduct said amount from the sum the SFPUC owes to Contractor for performance of its work, which amount the SFPUC may reasonably determine in its sole discretion. If the SFPUC imposes actual or liquidated damages as a remedy against Contractor for non-compliance, the Controller shall withhold the damages assessed until such time as either Contractor has conceded to or acquiesced in the assessment or, in the event of an appeal, there is a determination no longer subject to judicial review. The Controller shall then deposit the amount withheld into a special account which shall be created for the sole purpose of receiving such funds. The funds deposited into this account shall be distributed by the Controller in accordance with the original SIP Commitments and by the process set forth in the SFPUC Social Impact Partnership Rules and Regulations.
- g. If Contractor fails to perform any of its SIP Commitments, Contractor shall be liable for liquidated damages on the Agreement in an amount equal to 110% of the total value of unmet SIP Commitments as determined by the SFPUC in its sole discretion.
- h. When City amends a Covered Contract that will result in an increase to the Covered Contract amount, the SFPUC will require the Contractor to propose a proportional increase to its SIP Commitments for the Covered Contract. Such increase shall be proportional to the increase to the Covered Contract amount under the amendment. The resulting amendment or modification shall incorporate the proportional increase to the SIP Commitments and comply with San Francisco Administrative Code Section 21F, and no increase the costs for delivery of the SIP Commitments to the SFPUC. The Contractor must propose how it intends to implement the proposer proportional increase to its SIP Work Plans, which will be subject to the SIP approval process for SIP Work Plans.
- i. Contractor shall save, keep, hold harmless, and fully indemnify the City and any of its officers or employees from all damages, costs, or expenses in law or equity, or claims for same, that may at any time arise from performance of SIP



Commitments. Contractor shall be obligated to deliver the increased SIP Commitment(s) at no additional cost to the SFPUC.

**2. Project Team**

Dave Ebersold shall serve as the Executive in Charge to manage Contractor's SIP Commitments and provide fiduciary oversight. The Executive in Charge shall ensure that the SIP Commitments listed in the Social Impact Partnership Commitments Table below are delivered to the communities that they are intended to benefit in a transparent and accountable manner. The Executive in Charge shall work with the SIP Coordinator, Karen Pridmore, to organize, plan, track, measure, and report on Contractor's SIP Commitments.

**3. SIP Commitments.**

Contractor shall provide \$75,000 in direct financial contributions and \$75,000 in volunteer hours. Contractor commits to a minimum total contribution of \$150,000 over the term of the Agreement as stated in Contractor's SIP Proposal and the Social Impact Partnership Commitments Table below.

**Social Impact Partnership Commitments Table**

SIP Program Area	Direct Financial Contributions	Volunteer Hours	Volunteer Hour (Fixed rate \$150)	Value of Volunteer Hours	Total Contribution
Job Exposure, Training, and Internships	\$ 30,000.00	100	\$ 150.00	\$ 15,000.00	\$ 45,000.00
Small Business Support	\$ 0.00	0	\$ 150.00	\$ 0.00	\$ 0.00
Public Education	\$ 30,000.00	200	\$ 150.00	\$ 30,000.00	\$ 60,000.00
Environment and Community Health	\$ 15,000.00	200	\$ 150.00	\$ 30,000.00	\$ 45,000.00
TOTAL COMMITMENTS					\$ 150,000.00

**4. Accountability and Deliverables.**

Contractor shall provide supporting documentation, including Key Performance Indicators (KPIs), consistent with the reporting requirements detailed below to establish fulfillment of the SIP Commitments.

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

a. **SIP Work Plans.**

i. SIP Projection Plan

Contractor must attend a SIP Kick-off meeting and develop and submit to the SFPUC a SIP Projection Plan within three months of issuance of the NCA. The SIP Projection Plan is a detailed forecast that estimates the financial and volunteer contributions over the term of the contract.

ii. SIP Annual Work Plan

A detailed plan outlining the financial and/or volunteer contributions to identified beneficiaries for defined Fiscal Year. It specifies the resource allocation to ensure contributions are in alignment with the SIP Projection Plan.

The SFPUC will use the SIP Projection Plan and SIP Annual Work Plan to assess progress on SIP Commitments delivery regularly throughout the term of the Covered Contract.

b. **SIP Commitments and Reporting.**

iii. Contractors must submit annually a SIP Annual Work Plan, and regular, biannual SIP Program performance reports to the SFPUC SIP Program team.

iv. Reports submitted without corresponding documentation will not be accepted. Contractors must complete reporting at the end of each reporting period, including if there are no activities. Failing to report and/or no response by the specified deadline will be considered noncompliance and subject the Contractor to corrective action.

v. The biannual reporting periods are as follows:

**Q1/Q2 Biannual Report** for Social Impact Commitments delivered between July 1 to December 31, and all required documentation.  
Reporting deadline: January 31.

**Q3/Q4 Biannual Report** for Social Impact Commitments delivered between January 1 to June 30, and all required documentation.  
Reporting deadline: July 31.

vi. The SFPUC will review all submitted reports and supporting documentation for completion and accuracy, and will contact Contractors regarding any missing information or questions regarding their submissions.

vii. Contractor shall also submit a stand-alone annual newsletter to the SIP Portal, covering the highlights of the year's SIP Commitments, Program Areas, beneficiaries, and associated outcomes for online

publication.

- viii. Contractor must notify the SFPUC of any staffing changes related to the Contractor's SIP Executive in Charge and the SIP Coordinator within 30 days of a staffing change.

## **5. Statements of Understanding.**

Contractor acknowledges that they agree with the following statements:

- a. Contractor is bound by all instructions in the RFP for the SIP Proposal Response Form and the SIP Program Rules and Regulations as may be amended.
- b. Contractor's SIP Commitments must directly benefit the communities, neighborhoods, and/or residents served by or impacted by the SFPUC.
- c. SIP Commitments must provide support through financial donations and/or volunteer hours to or through Beneficiaries (as that term is defined in San Francisco Administrative Code 21F.2 and the SIP Rules and Regulations) as follows: services to or through Beneficiaries (as that term is defined in Administrative Code Section 21F.2 as follows:

"Beneficiary" means an organization that is eligible to receive a Social Impact Commitment.

A Beneficiary must be: (1) a nonprofit public benefit corporation that has established and maintains valid nonprofit status under Internal Revenue Code Section 501(c)(3), as amended, and all rules and regulations promulgated under that section; (2) an organization that has a fiscal agent that is a nonprofit corporation that has established and maintains valid nonprofit status under Internal Revenue Code section 501(c)(3), as amended, and all rules and regulations promulgated under said section and which provides that organization with fiduciary oversight, financial management, and administrative services related to its operation; or (3) a public school, which may include a public school district, County Office of Education, and/or a public college or university.

The following are not eligible Beneficiaries: any (1) City department, office, board, commission, or other entity; (2) City official or employee or Relative of a City official or employee, unless the resulting benefit is incidental to and not unique to the City official or employee or Relative, but rather benefits the general public or a particular community that is the focus or target of the Social Impact Commitment; or (3) entity subject to an order of debarment or suspension under San Francisco Administrative Code Chapter 28. Solely for the purposes of this definition of Beneficiary, the definition of City shall include any other municipal/local, county, state, or federal jurisdiction.

A Beneficiary must be independent of the Contractor and its subcontractor(s) (at any tier) and their respective officers and employees. No Contractor or

subcontractor officer or employee or Relative of an officer or employee may own, control, or manage a Beneficiary.

- d. SIP Commitments are separate from and in addition to any regulatory or legal requirements related to the Agreement.
- e. Contractor must deliver its SIP Commitments at no cost to the SFPUC.
- f. Contractor is contractually obligated to deliver the total commitment amount listed in the Social Impact Partnership Commitments Table in the Agreement.
- g. Only activities commenced after the NCA for the Agreement is issued will count towards the fulfillment of Contractor's SIP Commitments.
- h. Contractor is obligated to comply with SFPUC's SIP Commitments reporting requirements.
- i. Contractor is obligated to comply with the terms and conditions set forth in this section and in the Agreement.
- j. These reporting requirements may be adjusted over the duration of the Agreement due to SIP Program and system improvements.

Contractor shall provide all of the SIP Commitments, consistent with all of the terms of Contractor's SIP Commitment Table, which is incorporated herein by this reference. Should there be any conflicts or discrepancies between the language in this section and Contractor's SIP Proposal Response Form, the terms of the language of this section shall prevail as Contractor and SFPUC's final mutual understanding and agreement.

#### **IV. Project Evaluation**

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

#### **V. Reports**

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

#### **VI. Department Liaison**

In performing the Services provided for in this Agreement, Contractor's liaison with the SFPUC will be Tedman Lee.

## **VII. Services Provided by Attorneys**

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

## **VIII. Task Orders**

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

The task order request will be processed for Controller certification of funding, after which a Notice to Proceed (NTP) will be issued. Contractor is hereby notified that work cannot commence until Contractor receives a written NTP in accordance with the San Francisco Administrative Code. ***Any work performed without an NTP will be at Contractor's own commercial risk.*** The calculations of costs and methods of compensation for all task orders under the Agreement shall be in accordance with Appendix B, Calculation of Charges, and Appendix B-1, Fee Schedule.



## **Appendix B Calculation of Charges**

As part of Contractor's proposal dated March 11, 2025, Contractor submitted proposed billing rates, attached hereto as Appendix B-1, Fee Schedule, for the requested tasks identified in Appendix A, Scope of Services, which are incorporated herein by this reference.

As provided in Appendix B-1, Fee Schedule, the budget identified for tasks is an estimate, and the City reserves the right to modify the budget allocated, if applicable, to any task as more specific information concerning the task order scope becomes available.

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

**1. Billing Rates.** Contractor's billing rates and each and every staff classification as stated in Appendix B-1, Fee Schedule, will be the billing rates for the listed individuals. The billing rate may not exceed the lowest rate charged to any other San Francisco Bay Area governmental entity except the City and County of San Francisco. Billing rates may be adjusted annually. The first adjustment may be made no earlier than the release of the January Consumer Price Index (CPI) increase published in the first calendar year following the proposal due date of March 11, 2025. 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 \$270 per hour, unless the SFPUC Contract Manager and Bureau Manager authorize an increase to the rate in writing.

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

- a. Proposed addition of new project personnel to perform requested services that are within the scope of the Agreement;
- b. Proposed change of staff classification for existing personnel; and/or
- c. Proposed replacement or substitution of any employee listed in Appendix B-1, Fee Schedule, 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.0177 is **3.20**. The EOPR or Individual Firm Overhead and Profit Rate will apply to the billing rate of all individuals not listed in Appendix B-1, Fee Schedule. The EOPR will also apply to all amendments to the Agreement. If a new subcontractor is added during the duration of the Agreement, the new individual firm multiplier can be no more than the EOPR.

**4. Other Direct Costs.** Direct reimbursable expenses (or “other direct costs” (ODCs)) shall include actual direct costs (with no markup) of expenses directly incurred in performing the work. All ODCs must receive written pre-approval from the SFPUC Contract Manager.

a. The following items will be eligible for reimbursement as ODCs: [Detailed ODC list to be updated upon award]

i. Task-specific out-of-town travel as requested by the SFPUC (“out-of-town” shall mean outside the nine Bay Area counties: San Francisco, Alameda, Marin, Santa Clara, Sonoma, Contra Costa, Napa, San Mateo, and Solano). Out-of-town travel must be non-routine.

a) Rental vehicle or car share: traveler must select the most economical contractor and type of vehicle available and acquire any commercial rate or government discount available when the vehicle is rented.

b) Personal vehicle use: The SFPUC will pay Contractor on a per mile basis as established by the United States 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, Contractor must subtract commuting mileage from total mileage to calculate reimbursable mileage. Contractor must submit to the SFPUC an approved mileage log and expense report with its monthly invoices.

c) Project vehicle rental/lease cost, gasoline, tolls and parking. Contractor must request the project vehicle and receive pre-authorization by SFPUC staff. The SFPUC will only reimburse the business portion of the vehicle use. Vehicle mileage log and an expense report are required for consideration of reimbursement. Since auto insurance is already part of the Agreement, the SFPUC will not reimburse any additional insurance costs. Commuting to Moccasin from Contractor’s temporary home is not eligible for reimbursement.

d) Geotechnical/environmental borings and testing;

e) Site and utility survey and potholing;

f) Hazardous materials survey and testing;

ii. Specialty printing (“specialty,” as used herein, shall mean large volume printing and color printing and requires prior written approval from SFPUC project staff and documentation of the written approval from the SFPUC must be included with the invoice);

iii. Task-related permit fees; and

iv. Expedited courier services when requested by SFPUC staff; and

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

i. All other travel expenses such as parking, bridge tolls, public transit,

vehicle mileage within the nine Bay Area counties, and travel from Contractor's home office to SFPUC facilities not requested by the SFPUC;

- ii. Commute time from Contractor's home office to SFPUC facilities or to Moccasin;
- iii. Travel Time
- iv. Contractor staff relocation costs;
- v. Any labor charges or pass-throughs including, but not limited to, administrative and clerical staff time;
- vi. Telephone calls and faxes originating in the firm's home office, standard computer use charges, computer hardware or software, communication devices, and electronic equipment;
- vii. All meals, including refreshments and working lunches with SFPUC staff;
- viii. Equipment to be used by SFPUC staff;
- ix. Office equipment, vehicle purchase and any automotive-related equipment; and
- x. Postage and courier services that are not requested by SFPUC staff.

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

**6. Subcontractor Fees.**

- a. Subject to the restrictions in this Section 6;
- b. Shall be subject to written pre-approval by Contractor's liaison with the SFPUC;
- c. Subcontractor administration markup is limited to five percent (5%) of subcontractors' actual labor costs.

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

**8. Invoice Requirements.** As part of its contracting obligations, Contractor is required to utilize the City's approved invoicing and time-keeping systems, as specified by the SFPUC

project team, for the purposes for which they are intended. Contractor shall not bill the SFPUC to use these systems. Contractor shall not charge SFPUC to send appropriate personnel to user training. Administrative costs such as preparing for an invoice is considered non-billable.

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

**Invoice Supporting Documentation:**

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

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

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

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

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

## **Appendix B-1 Fee Schedule**

[Insert Proposal Fee Schedule or other schedule of rates/charges]

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