

**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
AECOM Technical Services, Inc.**

PRO.0096 Mountain Tunnel Improvements Construction Management Services

This Agreement is made this 12th day of July, 2019, in the City and County of San Francisco (“City”), State of California, by and between AECOM Technical Services, Inc., located at 300 Lakeside Drive, Oakland, CA 94612 (“Contractor”) and City.

Recitals

WHEREAS, the San Francisco Public Utilities Commission (“Department,” or “SFPUC”) wishes to retain the services of a qualified consulting firm to assist with the following: pre-construction services, including, but not limited to, constructability review of project design milestone documents, and bidding support assistance; construction services, including, but not limited to, construction contract administration, contract management, tunnel inspection, civil/environmental inspection, lab testing, start-up & testing assistance, commissioning, construction safety inspection, project controls, and environmental compliance; and

WHEREAS, this Agreement was competitively procured as required by San Francisco Administrative Code Section 6.40 through a Request for Proposal (“RFP”) issued on October 10, 2018, in which City selected Contractor as the highest qualified scorer pursuant to the RFP; and

WHEREAS, the Local Business Enterprise (“LBE”) subcontracting participation requirement for this Agreement is 12%; and

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

WHEREAS, the City’s Civil Service Commission approved Contract number 49237-17/18 on December 18, 2017;

WHEREAS, the San Francisco Public Utilities Commission awarded this Agreement to Contractor under Resolution No. 19-0085 on April 23, 2019;

WHEREAS, approval for this Agreement was obtained from the San Francisco Board of Supervisors by Resolution Number 278-19 on June 21, 2019;

Now, THEREFORE, the parties agree as follows:

Article 1 Definitions

The following definitions apply to this Agreement:

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

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

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

1.4 "Contractor" or "Consultant" means between AECOM Technical Services, Inc., located at 300 Lakeside Drive, Oakland, CA 94612.

1.5 "Deliverables" means Contractor's work product resulting from the Services that are 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.

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

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

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

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

Article 2 Term of the Agreement

2.1 The term of this Agreement shall commence on the later of: (i) June 25, 2019; or (ii) the Effective Date and expire on June 24, 2027, unless earlier terminated as otherwise provided herein.

2.2 The City may extend this Agreement beyond the expiration date by exercising an option at the City's sole and absolute discretion and by modifying this Agreement as provided in Section 11.5, "Modification of this Agreement."

Article 3 Financial Matters

3.1 **Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation.** This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This

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

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

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

3.3 Compensation.

3.3.1 Payment. Contractor shall provide an invoice to the City on a monthly basis for Services completed in the immediate preceding month, unless a different schedule is set out in Appendix B, "Calculation of Charges." Compensation shall be made for Services identified in the invoice that the General Manager of the SFPUC, in his or her sole discretion, concludes has been satisfactorily performed. Payment shall be made within 30 calendar days of receipt of the invoice, unless the City notifies the Contractor that a dispute as to the invoice exists. In no event shall the amount of this Agreement exceed **Twenty-Four Million Five Hundred Thousand Dollars (\$24,500,000)**. The breakdown of charges associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. A portion of payment may be withheld until conclusion of the Agreement if agreed to both parties as retainage, described in Appendix B. In no event shall the City be liable for interest or late charges for any late payments except as set forth in Administrative Code Section 6.22(j).

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

3.3.3 Withhold Payments. If Contractor fails to provide Services in accordance with Contractor's obligations under this Agreement, the City may withhold any and

all payments due Contractor until such failure to perform is cured, and Contractor shall not stop work as a result of City's withholding of payments as provided herein.

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

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

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

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

(b) The following information is required to sign up: (i) The enrollee must be their company's authorized financial representative, (ii) the company's legal name, main telephone number and all physical and remittance addresses used by the company, (iii) the company's U.S. federal employer identification number (EIN) or Social Security number (if they are a sole proprietor), and (iv) the company's bank account information, including routing and account numbers.

3.3.7 Reserved. (Grant Funded Contracts)

3.3.8 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).

3.4 Audit and Inspection of Records. Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records

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

3.5 Submitting False Claims. Pursuant to Article V of Chapter 6 of the Administrative Code, any contractor, subcontractor, supplier, consultant or subconsultant who submits a false claim may be subject to monetary penalties, investigation and prosecution and may be declared an irresponsible bidder or an unqualified consultant and debarred as set forth in that Article. A contractor, subcontractor, supplier, consultant or sub consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor, supplier, consultant or subconsultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

3.6 Payment of Prevailing Wages

3.6.1 Covered Services. Services to be performed by Contractor under this Agreement may involve the performance of trade work covered by the provisions of Section 6.22(e) [Prevailing Wages] of the Administrative Code (collectively, "Covered Services"). The provisions of Section 6.22(e) of the Administrative Code are incorporated as provisions of this Agreement as if fully set forth herein and will apply to any Covered Services performed by 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, as such prevailing wage rates may be changed during the term of this Agreement, are hereby incorporated as provisions of this Agreement. Copies of the prevailing wage rates as fixed and determined by the Board of Supervisors are available from the Office of Labor Standards and Enforcement ("OLSE") and are also available on the Internet at <http://www.dir.ca.gov/DLSR/PWD>. Contractor agrees that it shall pay not less than the prevailing wage rates, as fixed and determined by the Board, to all workers employed by Contractor who perform Covered Services under this Agreement. Contractor further agrees as follows:

3.6.3 Subcontract Requirements. As required by Section 6.22(e)(5) of the Administrative Code, Contractor shall insert in every subcontract or other arrangement, which it

may make for the performance of Covered Services under this Agreement, a provision that said subcontractor shall pay to all persons performing labor in connection with Covered Services under said subcontract or other arrangement not less than the highest general prevailing rate of wages as fixed and determined by the Board of Supervisors for such labor or services.

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

3.6.5 Payroll Records. As required by Section 6.22(e)(6) of the Administrative Code and Section 1776 of the California Labor Code, Contractor shall keep or cause to be kept complete and accurate payroll records for all trade workers performing Covered Services. Such records shall include the name, address and social security number of each worker who provided Covered Services on the project, including apprentices, his or her 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 undertake the performance of any part of Covered Services shall keep a like record of each person engaged in the execution of Covered Services under the subcontract. All such records shall at all times be available for inspection of and examination by the City and its authorized representatives and the DIR.

3.6.6 Certified Payrolls. Certified payrolls shall be prepared pursuant to Administrative Code Section 6.22(e)(6) and California Labor Code Section 1776 for the period involved for all employees, including those of subcontractors, who performed labor in connection with Covered Services. Contractor and each subcontractor performing Covered Services shall submit certified payrolls to the City and to the DIR electronically. Contractor shall submit payrolls to the City via the reporting system selected by the City. The DIR will specify how to submit certified payrolls to it. The City will provide basic training in the use of the reporting system at a scheduled training session. Contractor and all subcontractors that will perform Covered Services must attend the training session. 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 to be performed under this Agreement are subject to compliance monitoring and enforcement of prevailing wage requirements by the DIR and /or the OLSE. Contractor and any subcontractors performing Covered Services will cooperate fully with the DIR and/or the OLSE and other City employees and agents authorized to assist in the administration and enforcement of the prevailing wage requirements, and agrees to take the specific steps and actions as required by Section 6.22(e)(7) of the Administrative Code. Steps and actions include but are not limited to requirements that: (A) the Contractor will cooperate fully with the Labor Standards Enforcement Officer and other City employees and agents authorized to assist in the administration and enforcement of the Prevailing Wage requirements and other labor standards imposed on Public Works Contractor by the Charter and Chapter 6 of the San Francisco Administrative Code; (B) the Contractor agrees that the Labor Standards Enforcement Officer and his or her designees, in the performance of their duties, shall have the right to engage in random inspections of job sites and to have access to the employees of the Contractor, employee time sheets, inspection logs, payroll records and employee paychecks; (C) the contractor shall maintain a sign-in and sign-out sheet showing

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

3.6.8 Remedies. Should Contractor, or any subcontractor who shall undertake the performance of any Covered Services, fail or neglect to pay to the persons who perform Covered Services under this Contract, subcontract or other arrangement for the Covered Services, the general prevailing rate of wages as herein specified, 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 provided for in Appendix A, "Scope of Services." Officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Services beyond the Scope of Services listed in Appendix A, unless Appendix A is modified as provided in Section 11.5, "Modification of this Agreement."

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

4.3 Subcontracting.

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

4.3.2 City's execution of this Agreement constitutes its approval of the subcontractors listed in Appendix B, Calculation of Charges. Consistent with SFPUC policy, any modifications to the list of subcontractors must be effectuated via City's approved invoice processing system, subject to the written approval of the City, and CMD, as needed..

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

4.4.1 **Independent Contractor.** For the purposes of this Article 4, "Contractor" shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not

limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement. Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor's compliance with this section. Should City determine that Contractor, or any agent or employee of Contractor, is not performing in accordance with the requirements of this Agreement, City shall provide Contractor with written notice of such failure. Within five (5) business days of Contractor's receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor, or any agent or employee of Contractor, warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

4.4.2 Payment of Employment Taxes and Other Expenses. Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, Contractor agrees to indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorneys' fees, arising from this section.

4.5 Assignment. The Services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by Contractor unless first approved by City by written instrument executed and approved in the same manner as this Agreement. Any purported assignment made in violation of this provision shall be null and void.

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

4.7 Reserved. (Liquidated Damages)

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) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and
- (b) Commercial General Liability Insurance with limits not less than \$5,000,000 each occurrence and \$10,000,000 general aggregate for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and
- (c) Commercial Automobile Liability Insurance with limits not less than \$2,000,000 each occurrence, "Combined Single Limit" for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.
- (d) Professional liability insurance, applicable to Contractor's profession, with limits not less than \$5,000,000 each claim with respect to negligent acts, errors or omissions in connection with the Services.

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

- (a) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.
- (b) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

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

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

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

5.1.6 Should any required insurance lapse during the term of this Agreement, 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.

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

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

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

5.2 Indemnification. Contractor shall indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them from and against any and all claims, demands, losses, damages, costs, expenses, and liability (legal, contractual, or otherwise) arising from or in any way connected with any: (i) injury to or death of a person, including employees of City or Contractor; (ii) loss of or damage to property; (iii) violation of local, state, or federal common law, statute or regulation, including but not limited to privacy or personally identifiable information, health information, disability and labor laws or regulations; (iv) strict liability imposed by any law or regulation; or (v) losses arising from Contractor's execution of subcontracts not in accordance with the requirements of this Agreement applicable to subcontractors; so long as such injury, violation, loss, or strict liability (as set forth in subsections (i) – (v) above) arises directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, Contractor's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors, or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City.

In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter.

Contractor shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent

rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons arising directly or indirectly from the receipt by City, or any of its officers or agents, of Contractor's Services.

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

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

5.3.2 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.

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.

Article 7 Payment of Taxes

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

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

7.2.2 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a "change in ownership" for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.

7.2.3 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code section 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

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

Article 8 Termination and Default

8.1 Termination for Convenience

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

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

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

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

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

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

(e) Completing performance of any Services that City designates to be completed prior to the date of termination specified by City.

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

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

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

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

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

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

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

8.1.5 In arriving at the amount due to Contractor under this Section, City may deduct: (i) all payments previously made by City for Services covered by Contractor's final invoice; (ii) any claim which City may have against Contractor in connection with this

Agreement; (iii) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection 8.1.4; and (iv) in instances in which, in the opinion of the City, the cost of any Service performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected Services, the difference between the invoiced amount and City's estimate of the reasonable cost of performing the invoiced Services in compliance with the requirements of this Agreement.

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

8.2 Termination For Convenience Due to Environmental Review

8.2.1 The potential environmental impacts of the proposed Project are being evaluated through the CEQA review process. Services during the Construction Phase will not be authorized until the CEQA review process is completed, and the City approves the Project. Design and construction work will need to incorporate any alterations, procedures or alternatives identified and adopted during the CEQA review process, and the Project might not proceed if the CITY does not approve the Project following completion of CEQA review.

8.2.2 Until the environmental review process is completed, and the City approves the Project, the City retains sole and absolute discretion to (1) modify the Project to mitigate significant environmental impacts; (2) select feasible alternatives which avoid significant environmental impacts of the Project; (3) require the implementation of specific measures to mitigate the significant environmental impacts of the Project; (4) reject the Project as proposed if the economic and social benefits of the Project do not outweigh otherwise unavoidable significant impacts of the Project; or (5) approve the Project upon a finding that the economic and social benefits of the Project outweigh otherwise unavoidable significant impacts.

8.2.3 If, as a result of the CEQA process, the City does not approve and/or authorize the Project, the City will not issue a Notice to Proceed. The City reserves all rights to suspend and/or terminate this Agreement for convenience as set forth in Paragraph 8.1.

8.3 Termination for Default; Remedies.

8.3.1 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		
Article 5	Insurance and Indemnity	11.10	Compliance with Laws
Article 7	Payment of Taxes	13.1	Nondisclosure of Private, Proprietary or Confidential Information

(b) 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 continues for a period of ten days after written notice thereof from City to Contractor.

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

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

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

8.3.3 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.

8.3.4 Any notice of default must be sent by registered mail to the address set forth in Article 11.

8.4 **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.

8.5 Rights and Duties upon Termination or Expiration.

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

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

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

Article 9 Rights In Deliverables

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

9.2 **Works for Hire.** If, in connection with Services, Contractor or its subcontractors creates Deliverables including, without limitation, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes, or any other original works of authorship, whether in digital or any other format, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works shall be the property of the City. If any Deliverables created by Contractor or its subcontractor(s) under this Agreement are ever determined not to be works for hire under U.S. law, Contractor hereby assigns all Contractor's copyrights to such Deliverables to the City, agrees to provide any material and execute any documents necessary to effectuate such assignment, and agrees to include a clause in every subcontract imposing the same duties upon subcontractor(s). With City's prior written approval,

Contractor and its subcontractor(s) may retain and use copies of such works for reference and as documentation of their respective experience and capabilities.

Article 10 Additional Requirements Incorporated by Reference

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

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 Reserved.

10.5 Nondiscrimination Requirements.

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

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

10.6 Local Business Enterprise and Non-Discrimination in Contracting Ordinance. Contractor shall comply with all applicable provisions of Chapter 14B ("LBE Ordinance"). Contractor is subject to the enforcement and penalty provisions in Chapter 14B. Contractor shall utilize LBE Subcontractors for at least **26.8%** 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. Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P. Contractor is subject to the enforcement and penalty provisions in Chapter 12P. By signing and executing this Agreement, Contractor certifies that it is in compliance with Chapter 12P.

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

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

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

10.11 Limitations on Contributions. By executing this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. The prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor must inform each such person of the limitation on contributions imposed by Section 1.126 and provide the names of the persons required to be informed to City.

10.12 Reserved. (Slavery Era Disclosure)

10.13 Reserved. (Working with Minors)

10.14 Consideration of Criminal History in Hiring and Employment Decisions.

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

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

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

10.16 Reserved. (Food Service Waste Reduction Requirements)

10.17 Reserved. (Sugar-Sweetened Beverage Prohibition)

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

10.19 Reserved. (Preservative Treated Wood Products)

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: Alan Johanson
San Francisco Public Utilities Commission
525 Golden Gate Avenue
San Francisco, CA 94102
AJohanson@sfgov.org

To Contractor: Eric Zagol
AECOM Technical Services, Inc.
300 Lakeside Drive
Oakland, CA 94612
Eric.zagol@aecom.com

Any notice of default must be sent by registered mail. Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party. If email notification is used, the sender must specify a receipt notice.

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

11.3 Reserved.

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

11.5 Modification of this Agreement. This Agreement may not be modified, nor may compliance with any of its terms be waived, except as noted in Section 11.1, "Notices to Parties," regarding change in personnel or place, and except by written instrument executed and approved in the same manner as this Agreement. Contractor shall cooperate with Department to submit to the Director of CMD any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20% (CMD Contract Modification Form).

11.6 Dispute Resolution Procedure.

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

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

Claim requirements set forth in San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq.

11.6.3 Reserved. (Health and Human Service Contract Dispute Resolution Procedure)

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

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

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

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

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

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

11.13 Order of Precedence. Contractor agrees to perform the services described below in accordance with the terms and conditions of this Agreement, implementing task orders, the RFP, and Contractor's proposal dated November 21, 2018. The RFP and Contractor's proposal are incorporated by reference as though fully set forth herein. Should there be a conflict of terms or conditions, this Agreement and any implementing task orders shall control over the RFP and the Contractor's proposal.

Article 12 Department Specific Terms

12.1 Reserved.

Article 13 Data and Security

13.1 Nondisclosure of Private, Proprietary or Confidential Information.

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

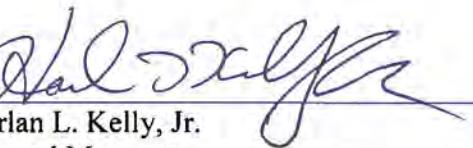
13.2 Reserved. (Payment Card Industry ("PCI") Requirements)

Article 14 MacBride And Signature

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

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

CITY


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

CONTRACTOR

AECOM Technical Services, Inc.


Eric Zagol
PE, Vice President

City Supplier Number: **0000003425**

Approved as to Form:

Dennis J. Herrera
City Attorney

By: 
Randy Parent
Deputy City Attorney

Appendices

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

Appendix A Scope of Services

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

Pre-Construction services, including but not limited to, constructability review of project design milestone documents, and bidding support assistance; and Construction Services, including, but not limited to, construction contract administration, contract management, tunnel inspection, civil/environmental inspection, lab testing, start-up & testing assistance, commissioning, construction safety inspection, project controls, and environmental compliance. The types of inspection include concrete tunnel lining repairs, shotcreting, contact grouting, invert repairs and smoothing, tunnel dewatering and treatment systems, large valve installations, concrete structures, roadways and other site improvements, environmental mitigations and site restorations.

The Contractor will be responsible for providing the Resident Engineer (RE) functional duties as outlined in the HCIP CM Plan. The RE shall employ CM processes that are consistent with the HCIP CM Plan, Safety Approach, and CM Procedures. The subtasks listed below reference the relevant sections of the HCIP CM Plan (in parentheses). These tasks are not inclusive and are subject to change.

The HCIP CM Plan, as well as the Request for Proposals (PRO.0096) dated October 10, 2018 (including all addenda), are hereby incorporated into this Agreement as if fully set forth herein.

2. Detailed Description of Tasks.

Task 1 Pre-Construction Services

- a. Provide budget estimate forecast and a bar chart schedule of all Construction Management (CM) tasks, subtask, and deliverables for City review and approval.
- b. Provide Constructability and Biddability Reviews (*HCIP CM Plan 2.1.2*).
 - i. Provide constructability and biddability reviews at the 95% design milestone for the Project.
 - ii. Provide bid assistance support, including review of documents submitted by bidders; and
 - iii. Prepare for and attend meetings at the 95% design milestone during the project design with the design consultant and City staff to discuss review comments.
- c. Check estimates of the Project design consultant as part of Constructability and Biddability Reviews.

- i. Check Project design consultant prepared cost estimates at the 95% design milestone for the Project.
- ii. Prepare for and attend meetings at the 95% milestone during the design with the Project design consultant to present, discuss, and compare cost estimates, if any, and to develop an agreed estimate for the Direct Costs of Construction.
- d. Provide Support, as needed, for the Construction Pre-Bid Conference (*HCIP CM Plan 2.1.6*).
 - i. Review the Pre-Bid Conference agenda and suggest any topics that need to be added for discussion; for example, minimum tunnel construction qualifications and experience of key Construction Contractor staff.
- e. Provide Bid and Award Phase Assistance for Construction Bid Package Procurement (*HCIP CM Plan 2.1.3 and 2.1.5*).
 - i. Check project design consultant's cost estimates against Contractor bid pricing after the Bid Opening. Additional meetings may be required to reconcile any differences. Meetings will be held within fourteen (14) calendar days after the City Representative or Construction Manager transmits the cost estimates and the bid package to the RE.
 - ii. Perform tunnel construction related consultations, as needed, during Bidding to help resolve responses to questions submitted by bidders.
- f. Provide Support, as needed, for Assistance with Permits and Rights-of-Way (*HCIP CM Plan 2.1.7*).
 - i. Review the permits obtained for the construction contract to confirm interpretation of key permit requirements for adequate coverage in the specification language. Recommend corrections or clarifications to the specifications as needed.
 - ii. Review of the Mountain Tunnel ROW will not be needed as the project improvements are entirely within the City-owned ROW, and access roadways and staging have been, or will have been, granted via use permits by other agencies by the time of the Construction Phase.
- g. Provide Resource Loaded Task Plan for CM Consultant Services (*HCIP CM Plan 2.2.5*).
 - i. Provide resource loaded task plan matching the RE scope of work (HCIP CM Plan 1.2.13), Work Breakdown Structure (WBS) (Tasks, subtasks and subtask activities) and the level of resource loading (monthly person-hour loading of each resource) as described in Section 2.2.5 of the HCIP CM Plan. Provide the plan in an Excel table or similar format as approved by the Deputy Director of Construction (or designee).

- h. Provide Project CM Safety Plan (*HCIP CM Plan 2.1.10*).
 - i. Provide a CM Safety Plan tailored to the specific scope of work and construction site needs of this Project. Address issues of the work inside the tunnel, construction safety orders related to tunnels, deep shafts, confined spaces, and shutdowns and restoration of tunnel service, and qualifications of safety personnel needed to monitor, implement and enforce the safety plan.
- i. Provide Project Risk Management Plan (*HCIP CM Plan 2.1.11*).
 - i. Develop a project risk profile and plan for submittal for the Project. Refer to specific requirements in Section 2.1.11 of the HCIP CM Plan.
 - ii. Schedule a minimum of two workshops to gather input: 1) from SFPUC staff based in San Francisco, and 2) from SFPUC staff based in Moccasin, California.

Task 2 Construction Contract Administration

- a. Implement Project CM Safety Plan (*HCIP CM Plan 2.2.2*).
 - i. Contractor staff shall practice project safety as described in Section 2.2.2 of the HCIP CM Plan.
- b. Implement Construction Management Information System (CMIS) (*HCIP CM Plan 2.2.3*).
 - i. Contractor staff shall be trained by the City to utilize the City's UNIFER software for CMIS. Refer to Section 2.2.3 of the HCIP CM Plan for detailed requirements.
- c. Provide CM Contract Management during the multi-year contract (*HCIP CM Plan 2.2.5*)
 - i. The Contract Manager shall be responsible for all of the duties described in HCIP CM Plan Section 2.2.5 for the CM Consultant, including those cited for the PM, Project Controls, and RE.
- d. Public Outreach (*HCIP CM Plan 2.2.6*)
 - i. SFPUC's Public Information Office communications and outreach liaison staff will perform public outreach. Contractor shall coordinate all public communications and contacts through the SFPUC.
- e. Administer Program Security Requirements for Project (*HCIP CM Plan 2.2.7*).
 - i. Budget one half of a full-time equivalent for safety staff to implement the project specific security measures to be defined by the City's Emergency Planning and Security Division.

- f. Provide Construction Administration for the Project (HCIP CM Plan 2.2.9).
 - i. Office Mobilization/Demobilization - The RE shall participate in Project Office Mobilization/Demobilization providing coordination and logistics input as described in Section 2.2.9.1 of the HCIP CM Plan.
 - ii. Purchased Material and Equipment - The RE shall assist the City's project PE and CM as requested regarding SFPUC Purchased Material and Equipment as described in Section 2.2.9.2 of the HCIP CM Plan, including but not limited to:
 - 1. Defining QC requirements, in-factory witness testing or SQS requirements, storage, delivery and turnover requirements by vendors, and Defining QC requirements, in-factory witness testing or SQS requirements, storage, delivery and turnover requirements by vendors, and
 - 2. Arrangement for any needed in-factory inspections.
 - iii. Project Risk Management Plan - The RE shall manage and implement the Project Risk Management Plan as described in Section 2.2.9.3 of the HCIP CM Plan.
 - iv. Partnering - The RE shall define the partnering requirements and collaborate in selecting the partnering facilitator as described in Section 2.2.9.4 of the HCIP CM Plan. The SFPUC believes in the value of construction partnering and has fully embraced the partnering process. As such, the Contractor shall participate in all partnering efforts.
 - v. Pre-Construction Conference - The RE, with assistance from the Field Contracts Administrator and the Office Engineer, shall set the agenda, schedule, conduct the meeting, and produce the detailed minutes for the Pre-Construction Conference as described in Section 2.2.9.5 of the HCIP CM Plan.
 - vi. Construction Status Meeting - The RE, with assistance from the FCA and OE, shall set the agenda, schedule, conduct the meeting, and produce/distribute the minutes for the Construction Status Meeting (Weekly Progress Meetings) as described in Section 2.2.9.6 of the HCIP CM Plan.
 - vii. Application for Payment - The RE shall implement the procedure, verify the accuracy, negotiate quantities with the Construction Contractor, maintain auditable records and documentation, and forward for PM approval as required for Construction Contractor's Application of Payment

and Monthly Schedule Update as described in Section 2.2.9.7 of the HCIP CM Plan.

1. The Construction Scheduler, Field Contracts Administrator, Office Engineer, and Project Controls staff shall assist the RE as described in this section.
- viii. Submittal Log - The RE shall help the PE develop submittal requirements prior to bidding, review other non-technical submittals as appropriate, and maintain the Submittal Log as described in Section 2.2.9.8 of the HCIP CM Plan.
 1. The Office Engineer (“OE”) will assist the RE and oversee the logging and routing of submittals and ensure compliance as described in this section.
- ix. Request for Information - The RE shall manage the Construction Contractor’s RFIs and is responsible for coordinating review, use of the correct format, and for tracking as described in Section 2.2.9.9 of the HCIP CM Plan.
 1. The OE will assist the RE and perform the initial review for completeness and conformance with submittal requirements as described in this section.
 2. The OE will coordinate other RFI reviews by the FCA, Construction Scheduler, CSM, ECM, Shutdown Coordinator, HHWP Representative, Outreach Liaison, or Construction Manager as appropriate, as described in this section.
- x. Substitution Requests - The City’s CM and PE staff will review Requests for Substitution as described in Section 2.2.9.10. However, the OE shall catalogue and monitor the requests. The RE shall check the requests for compliance with the procedures and requirements of the contract specification.
- xi. The RE shall maintain a copy of the contract documents and annotate all approved changes to the documents as described in Section 2.2.9.11 of the HCIP CM Plan.
- xii. Claims - The RE shall assist the City in minimizing the Construction Contractor’s opportunities for claims by implementing the pro-active claims management program as described in Section 2.2.9.12.

1. The RE shall review claims for conformance to the contract requirements, notify the City CM and PM, and lead the initial discussions with the City for a response to the claim.
2. The Construction Scheduler, Estimator, FCA, and Construction Inspectors will support the claim analysis and negotiation preparation.
3. The RE and FCA will meet with the Construction Contractor to discuss the claim.
4. The FCA will document all claim negotiations and record files.

xiii. Dispute Review Board - The RE will evaluate the project risks and jointly select the Dispute Resolution Dispute Review Board with the Construction Contractor as described in Section 2.2.9.13 of the HCIP CM Plan.

xiv. Construction Progress Reports - The RE and Construction Scheduler shall measure the Construction Contractor's progress each month against the Contractor's approved resource loaded baseline schedule, and assess the completion of activities, and prepares the Quarterly Project Construction Progress Report as described in Section 2.2.9.14 of the HCIP CM Plan.

xv. Value Engineering Change Proposals - The RE and FCA shall lead the negotiations with the Construction Contractor on Value Engineering Change Proposals as described in Section 2.2.9.15 of the HCIP CM Plan.

xvi. The RE shall monitor the Construction Contractor's schedule for access requirements to City facilities, check for schedule variances, and update the City's Shutdown Coordinator on a monthly basis, and perform the RE work responsibilities as described in Section 2.2.9.17 of the HCIP CM Plan.

g. Provide Administrative Support, as needed, for the Project (*HCIP CM Plan 1.2.15*).

- i. The Administrative Document Control Specialist shall provide the clerical, administrative and document support services as described in Section 1.2.15 of the HCIP CM Plan.

h. Provide Testing and Startup Support Services (*HCIP CM Plan 2.2.9.18*).

- i. The RE shall review the contract documents for testing and startup requirements. Contractor shall provide a Test and Startup Engineer to perform the testing and startup/commissioning work as described in Section 2.2.9.18 of the HCIP CM Plan.

i. Provide Support for Spare Parts and Warranties (*HCIP CM Plan 2.2.9.19*).

- i. The OE shall check the contract documents for spare parts and warranty requirements as described in Section 2.2.9.19 of the HCIP CM Plan, and report the requirements to the RE for enforcement with the Contractor.
- j. Provide Management of Acceptance of the Work and Closeout HCIP (*HCIP CM Plan 2.2.9.20*).
 - i. The RE, with assistance of the FCA, shall review the contract documents and enforce the requirements for Substantial Completion and Contractual Milestones and for Final Completion, and perform the RE work as described in Section 2.2.9.20 of the HCIP CM Plan.
- k. Provide Support for Administration of Project Closeout and Turnover (*HCIP CM Plan 2.2.9.21*).
 - i. The RE shall be responsible for preparing and submitting to the City's Construction Manager and Project Manager a Project History and Lessons Learned Report, transferring project files, turnover of warranties, and other support as described in Section 2.2.9.21 of the HCIP CM Plan.

Task 3 Construction Contract Management

- a. Provide Construction Contracts Management Services (*HCIP CM Plan 2.2.11*), including, but not limited to, the following key subtasks.
 - i. Change Management—The RE, with assistance by the FCA, shall manage the change management process in conformance with the contract documents as described in Section 2.2.11.1 of the HCIP CM Plan. Other members of the Proposer's CM team shall provide support, as needed.
 - ii. Change Processing—The FCA and RE shall perform the services related to CORs and PCOs as described in Section 2.2.11.2 of the HCIP CM Plan.
 - iii. Claims Avoidance and Management—The Contractor shall practice claim avoidance to the extent possible with the Construction Contractor by practicing partnering, engaging the Construction Contractor by discussing events or circumstances that may lead to claims, and discussing claims mitigation or avoidance measures.
 - iv. Change Log—The FCA will maintain the log of all changes in the CMIS as described in Section 2.2.11.3 of the HCIP CM Plan.
 - v. Cost and Schedule Trending—The FCA and Construction Scheduler shall have lead responsibility for the cost and schedule trending as described in Section 2.2.11.4 of the HCIP CM Plan.

- vi. Time Impact Analysis—The RE and Construction Scheduler shall have lead responsibility for the time impact analysis as described in Section 2.2.11.5 of the HCIP CM Plan.
- vii. Cost Proposal—The CM Estimator shall prepare detailed estimates for PCOs or CORs that exceed \$200,000 as described in Section 2.2.11.6 of the HCIP CM Plan.
- viii. Environmental Construction Compliance—The Environmental Compliance Manager (ECM) shall have lead responsibility for ensuring environmental requirements are implemented during construction of the project as described in Section 2.2.11.7 of the HCIP CM Plan.
- ix. Contract Change Order Processing—This item is related to Section 2.2.11.2 of the HCIP CM Plan. The FCA will prepare the Change Order for City review and ensure that the requirements of Section 2.2.11.8 of the HCIP CM Plan are completed.
- x. Claims Processing—This item is related to Section 2.2.9.12 of the HCIP CM Plan. The RE shall have lead responsibility for analyzing the merit of any claim and for processing the claim as described in Section 2.2.11.9 of the HCIP CM Plan.

Task 4 Construction Inspection

- a. Provide Construction Inspection Services (*HCIP CM Plan 2.2.10*).
 - i. The RE shall be responsible for providing the inspection resources for the Quality Control (QC) services of this section. The Lead Construction Inspector and the team of Construction Inspectors shall be responsible for performing the QC inspection, including, but not limited to the following:
 1. Daily QC inspections and other inspections as described in Section 2.2.10.2 of the HCIP CM Plan.
 2. Daily Inspection reports as described in Section 2.2.10.5 of the HCIP CM Plan.
 3. Tracking of quantities and change order work related to issue/claims, conflicts and potential disputes, and force account work as described as described in Section 2.2.10.5 of the HCIP CM Plan.
 4. Quality management of SFPUC purchased material and equipment as described in Section 2.2.10.2 of the HCIP CM Plan.
 5. Documentation of quality deficiencies as described in Section 2.2.10.5 of the HCIP CM Plan, Substantial Completion and

Final Completion punchlist management as described in Section 2.2.9.20 of the HCIP CM Plan.

6. Verification of Record Drawings - assist the RE in assuring that the "red-line" record drawings accurately document the work and approved changes as constructed as described in Section 2.2.9.11 of the HCIP CM Plan.
- b. Provide Materials Testing and Survey Control (HCIP CM Plan 2.2.10.3 and 2.2.10.4)
 - i. The RE shall be responsible for performing periodic independent materials testing as described in Section 2.2.10.3 of the HCIP CM Plan.
 - ii. The RE shall be responsible for establishing control monuments and conducting verification surveys as described in Section 2.2.10.4 of the HCIP CM Plan.

Task 5 Construction Project Controls

- a. Provide Construction Project Controls Services (HCIP CM Plan 2.2.12).
 - i. Document Controls and Records Management—The ADCS, under supervision of the RE, shall perform or implement the document control and records management duties as described in Section 2.2.12.1 of the HCIP CM Plan.
 - ii. SFPUC Master Project Schedules—The Contract Manager shall assist the RE in review of the SFPUC Master Project P6 Schedule and provide input regarding detail activities and updates on a monthly basis; and the Construction Scheduler shall do the same for the Construction Contractor's cost loaded Summary Schedule as described in Section 2.2.12.2 of the HCIP CM Plan.
 - iii. SFPUC Pre-Purchased Material and Equipment Schedules—The Contract Manager shall assist the City's PM in developing the schedule for any pre-purchase of materials and equipment by the SFPUC as may be required for the construction of the project. After the construction NTP is issued, the RE shall monitor and manage the inspection and delivery of the pre-purchases to the Construction Contractor. Please refer to Section 2.2.12.3 of the HCIP CM Plan.
 - iv. Schedule Management—The RE, with assistance from the Construction Scheduler and Lead Construction Inspector, shall be responsible for schedule management as described in Section 2.2.12.4 of the HCIP CM Plan.
 - v. Contractor's Schedule Requirements—The RE, with assistance from the Construction Scheduler, shall be responsible for enforcing the requirements of the schedule specifications as described in Section 2.2.12.5 of the HCIP CM Plan.
- b. Provide Schedule Review and Related Services (HCIP CM Plan 2.2.12). The RE, with assistance from the Construction Scheduler, shall provide the services as described in the following sections:

- i. Baseline Schedule Review and Approval as described in Section 2.2.12.6 of the HCIP CM Plan.
- ii. Monthly Schedule Updates as described in Section 2.2.12.7 of the HCIP CM Plan.
- iii. Recovery Schedules as described in Section 2.2.12.8 of the HCIP CM Plan.
- iv. 4-Week Look-Ahead Schedules as described in Section 2.2.12.9 of the HCIP CM Plan.
- v. Revisions to the Approved Schedule as described in Section 2.2.12.10 of the HCIP CM Plan.
- vi. Schedule Analysis and Variance Reporting as described in Section 2.2.12.11 of the HCIP CM Plan.

c. Provide Construction Cost Control and Forecasting Services (HCIP CM Plan 2.2.12). The RE, FCA and Construction Scheduler shall provide the services as described in the following sections:

- i. Construction Cost Control as described in Section 2.2.12.12 of the HCIP CM Plan.
- ii. Forecasting of Cost and Schedule as described in Section 2.2.12.13 of the HCIP CM Plan.

Task 6 Environmental Compliance Services

- a. Provide environmental construction compliance management, oversight, inspections, and specialty monitoring services for the Project to ensure that all environmental requirements in the specifications are implemented and enforced pursuant to the Project's Mitigation and Monitoring Reporting Plans (MMRPs), SFPUC's Standard Construction Measures, and resource agency permit condition. (HCIP CM Plan 2.2.13)
 - i. The ECM, with assistance from the Environmental Inspectors (EI) and Specialty Environmental Monitors (SEM), shall have responsibility for monthly reports to the RE and for implementing Section 2.2.13 of the HCIP CM Plan, maintaining quality and consistency of implementation, and for enforcing environmental procedures, including the services described in Sections 2.2.13.1 through 2.2.13.10 of the HCIP CM Plan.

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

3. Department Liaison. In performing the Services provided for in this Agreement, Contractor's liaison with the SFPUC will be **David Tsztoo**.

4. Task Orders. Performance of the service under this Agreement will be executed according to a task order process, and Contractor is required to provide adequate quality control

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

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

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

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

Appendix B Calculation of Charges

As part of Contractor's proposal dated **November 21, 2018**, Contractor submitted proposed billing rates, attached hereto as Appendix B-1, Fee Schedule, for the requested tasks identified in Appendix A, Scope of Services which are incorporated herein by this reference.

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

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

1. Billing Rates. Contractor's billing rates and each and every staff classification as stated in Appendix B-1 will be the billing rates for the listed individuals. The billing rate may not exceed the lowest rate charged to any other governmental entity except the City and County of San Francisco. Billing rates will be fixed for the first year of the contract, and may be adjusted annually thereafter. The first adjustment may be made no earlier than the first anniversary of the effective start date as indicated in the original Notice of Contract Award letter. The amount of the adjustment is limited to a maximum of the CPI annual percentage change increase (San Francisco Bay Area for Urban Wage Earners and Clerical Workers) for the previous calendar year. No increase, including the annual CPI adjustment, is allowed to billing rates exceeding **\$250 per hour**, unless Project Manager and Bureau Manager authorize an increase to the rate in writing.

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

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

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

3. Effective Overhead and Profit Rate. The Effective Overhead and Profit Rate (EOPR) for **PRO.0096** is 2.5. The EOPR or Individual Firm Overhead and Profit Rate will apply to the billing rate of all individuals not listed in Appendix B-1. The EOPR will also apply to all

amendments to the Agreement. If a new subcontractor is added during the duration of the Agreement, the new individual firm multiplier can be no more than the EOPR.

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

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

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

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

- All other travel expenses such as parking, bridge tolls, public transit, vehicle mileage within the nine Bay Area Counties, travel from Contractor's home office to SFPUC facilities;
- Contractor personnel relocation costs;
- Any home or regional office labor charges or pass-throughs, including but not limited to, administrative and clerical personnel time;
- Personnel relocation and temporary assignment expenses;
- Entertainment expenses;
- Cell phones;
- Home office expenses;
- Telephone calls and faxes originating in the firm's home office, standard computer use charges, computer hardware or software computer hardware or software (other than the specialty hardware or software mentioned above), communication devices, and electronic equipment;
- Meal expenses which are not related to project-related business trips, including refreshments and working lunches with SFPUC staff;
- Equipment to be used by SFPUC staff; and
- Postage and courier services which are not requested by SFPUC staff.

5. Subcontractor make-up and documentation. Second-tier and pass-through subcontracting is prohibited. Additional subcontractors may be added to the contractor team after obtaining pre-authorization by the SFPUC Project Manager, Bureau/Division Manager and the Contract Monitoring Division (CMD).

6. Subcontractor Fees:

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

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

8. Invoice Requirements. As part of its contracting obligations, the Contractor is required to utilize the City's approved invoicing and time-keeping systems, as specified by the SFPUC project team, for the purposes for which they are intended. Contractor shall not bill the SFPUC

to use these systems. Contractor shall not charge SFPUC to send appropriate personnel to user training.

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

Invoice Supporting Documentation:

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

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

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

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

**Appendix B-1
Fee Schedule**

PUC.PRO.0096 Mountain Tunnel Improvements Construction Managements Services
 Overhead and Profit Schedule Submitted by AECOM Technical Services, Inc.

OVERHEAD AND PROFIT SCHEDULE

Task	Task Summary	Staff Classification/Role	Name of Proposed Staff Person	Firm	Estimated Number of Hours	Base Hourly Rate (\$/hour)	Base Labor Cost (\$)	Firm Overhead and Profit Rate (OPR, or "Multiplier") - one per firm	Billing Rate (\$/hour) = [G]*[I] max \$240/hr. \$250/hr	Actual Labor Cost (\$) = [F]*[J]
[A]	[B]	[C]	[D]	[E]	[F]	[G]	[H]	[I]	[J]	[K]
1	Pre-Construction Services - Construction Management (CM) Workplan, Constructability and Biddability Reviews, Bid and Award Phase Assistance, Permits and Right of Ways Assistance, CM Controls, CM Safety Plan, and Risk Management Plan	Contract Manager Resident Engineer Office Engineer Field Contract Administrator Civil / Tunnel Inspector - Day Civil Inspector - Day Environmental Compliance Manager Safety Representative As-Needed Cost Estimator As-Needed Scheduler	John Kinnear Bob Mues Mehrzad Hakakzadgar Suhir Patel Thomas DeGra Richard Feeler Cullen Wilkinson Richard Cavil Stephen Higgins Vincent Martinez	AECOM AECOM AECOM AECOM AECOM AECOM BioMakS, Inc. AECOM AECOM AECOM Galen	322 822 576 576 79 26 178 266 88 178	\$98.81 \$98.81 \$72.15 \$74.65 \$78.00 \$75.00 \$86.57 \$63.00 \$78.00 \$175.00	\$32,331 \$81,340 \$41,552 \$42,966 \$8,178 \$2,100 \$15,444 \$24,701 \$6,958 \$31,220	2.53 2.53 2.53 2.53 2.50 2.53 2.40 2.50 2.50 1.00	\$249.99 \$249.99 \$182.54 \$188.86 \$195.00 \$188.75 \$207.77 \$232.50 \$195.00 \$175.00	\$81,798 \$205,791 \$105,143 \$108,786 \$15,444 \$5,313 \$37,098 \$61,752 \$17,384 \$31,220
		Contract Manager		John Kinnear	6,444	\$98.81	\$636,732	2.53	\$ 249.99	\$1,610,931
2	Construction Contract Administration - CM Plan Implementation, Safety, CM Information System, Contract Management, Construction Administration, Administrative Support, Testing and Startup Support, Support for Spare Parts and Warranties, Acceptance and Closeout, Administration of Closeout and Turnover	Resident Engineer Office Engineer Field Contract Administrator Administrative Document Controls Specialist Safety Representative	Bob Mues Mehrzad Hakakzadgar Suhir Patel Nicole McCutchen Richard Cavil	AECOM AECOM AECOM AECOM AECOM AECOM BioMakS, Inc. AECOM AECOM AECOM Galen	4,020 12,532 2,516 3,006 6,020	\$98.81 \$72.15 \$74.65 \$43.47 \$93.00	\$397,216 \$804,184 \$167,939 \$130,871 \$556,860	2.53 2.53 2.53 2.53 2.50	\$ 249.99 \$182.54 \$188.86 \$109.96 \$232.50	\$1,004,957 \$2,287,585 \$475,480 \$330,597 \$1,369,650
		Contract Manager		John Kinnear	3,171	-	\$284,928	-	-	\$168,705
3	Construction Contract Management - Change Management, Change Processing, Claims Avoidance, Change Log, Cost and Schedule controls, Environmental Construction Compliance, Change Order Processing and Claims Processing	Resident Engineer Field Contract Administrator Environmental Compliance Manager As-Needed Cost Estimator As-Needed Scheduler	Bob Mues Suhir Patel Cullen Wilkinson Stephen Higgins Vincent Martinez	AECOM AECOM BioMakS, Inc. AECOM AECOM AECOM BioMakS, Inc. AECOM AECOM Galen	2,782 7,481 2,410 62 85	\$98.81 \$74.65 \$86.57 \$78.00 \$175.00	\$274,928 \$556,442 \$708,599 \$4,836 \$14,872	2.53 2.53 2.40 2.50 1.00	\$ 249.99 \$188.86 \$207.77 \$195.00 \$175.00	\$895,570 \$1,412,858 \$500,638 \$12,090 \$14,872
		Contract Manager		John Kinnear	12,820	-	\$2,116,801	-	-	\$7,169,205
4	Construction Inspection - Construction Quality Control Inspections, Materials Testing and Surveying Control	Resident Engineer Civil / Tunnel Inspector - Day Civil / Tunnel Inspector - Day Civil / Tunnel Inspector - Night Civil Inspector - Day	Bob Mues Thomas DeGra Jack Bowing James Brown Robert Sanezug Richard Feeler	AECOM AECOM AECOM AECOM The Tinner Group AECOM	3,713 8,900 8,900 3,536 3,536 12,048	\$98.81 \$78.00 \$78.50 \$65.00 \$83.26 \$75.00	\$336,862 \$684,200 \$680,850 \$229,640 \$294,407 \$803,600	2.53 2.50 2.53 2.53 2.50 2.53	\$ 249.99 \$195.00 \$193.55 \$184.45 \$206.15 \$189.75	\$895,160 \$1,735,500 \$1,722,551 \$581,495 \$738,018 \$2,296,106
		Contract Manager		John Kinnear	40,833	-	\$3,188,758	-	-	\$7,988,832
5	Construction Inspection - Construction Quality Control Inspections, Materials Testing and Surveying Control	Resident Engineer Field Contract Administrator Administrative Document Controls Specialist As-Needed Cost Estimator As-Needed Scheduler	Bob Mues Suhir Patel Nicole McCutchen Stephen Higgins Vincent Martinez	AECOM AECOM AECOM AECOM AECOM AECOM BioMakS, Inc. AECOM AECOM Galen	2,475 2,482 9,016 129 252	\$98.81 \$74.65 \$43.47 \$10,085 \$44,815	\$244,575 \$165,251 \$392,012 \$10,085 \$306,442	2.53 2.53 2.53 2.50 1.00	\$ 249.99 \$188.86 \$109.96 \$195.00 \$175.00	\$81,774 \$448,666 \$991,792 \$25,214 \$44,615
		Contract Manager		John Kinnear	14,359	-	\$876,539	-	-	\$2,948,079
6	Environmental Compliance Services - Environmental construction compliance management, oversight, inspections and specialty monitoring services for the Project	Environmental Compliance Manager Environmental Inspector	Cullen Wilkinson Stuart Griffin	BioMakS, Inc. AECOM	9,341 8,536	\$86.57 \$35.90	\$406,033 \$306,442	2.40 2.52	\$ 207.77 \$98.83	\$1,940,719 \$775,296
		Contract Manager		John Kinnear	17,877	-	\$1,115,075	-	-	\$2,716,019
		PROJECT TOTAL			123,346	-	9,334,479	-	-	23,269,886

PUC.PRO.0096 Mountain Tunnel Improvements Construction Managements Services
 Overhead and Profit Schedule Submitted by AECOM Technical Services, Inc.

OVERHEAD AND PROFIT SCHEDULE

Task	Task Summary	Staff Classification/Role	Name of Proposed Staff Person	Firm	Estimated Number of Hours	Base Hourly Rate (\$/hour)	Base Labor Cost (\$) = [F]*[G]	Firm Overhead and Profit Rate (OPR, or "Multiplier") - one per firm	Billing Rate (\$/hour) = [G]*[I]	Actual Labor Cost (\$) = [F]*[J]
[A]	[B]	[C]	[D]	[E]	[F]	[G]	[H]	[I]	[J]	[K]
Other Direct Costs (ODCs)										
Effective Overhead and Profit Rate (OPR, or Effective Project Multiplier) 2.60										
(= Total Actual Labor Cost / Total Base Labor Cost)										
Maximum Allowable Effective Project Multiplier = 2.70										
TOTAL PROJECT COST BREAKDOWN										
Total Actual Labor Cost: \$23,269,868										
Total Other Direct Costs (ODCs): \$900,000										
Markup on Subconsultant Labor Cost: \$328,609.54										
(Maximum Allowable: 5% of subconsultant labor costs)										
TOTAL PROJECT COST (NOT TO EXCEED \$24,500,000) \$24,488,477										

FEES SCHEDULE INSTRUCTIONS:

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

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

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

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

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

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

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

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

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

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

Column J - Billing Rate: Provide actual billing rate for each individual by multiplying Column I (Firm Multiplier) by Column G (Base Hourly Rate). Maximum billing rate allowed is ~~\$250/hour~~ \$240/hour. Consultants will only be allowed to escalate billing rates based on the annual percentage change of the Consumer Price Index (CPI) for the San Francisco Bay Area.

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

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