

CITY AND COUNTY OF SAN FRANCISCO

CONTRACT ORDER

CONTRACT WITH:

[T.Y. Lin International](#)  
[345 California Street, Suite 2300,](#)  
[San Francisco, CA 94104](#)

CHANGE { ORIGINAL  
INCREASE  
DECREASE  
OTHER CHANGE

Department:		Controller No.
27 AIRPORT COMMISSION		0000871128
Department Contact		TELEPHONE NO
Deborah Gill		(650) 821-9357
PS Contract	Fund Group/Fd/	Date:
1000034239		9/30/2024
Category Codes	Supplier ID	Job No.
91200	0000010039	CT10401.46
Period Covered:		Amount:
1 YEAR		\$1,201,000.00

**FOR THE PURPOSE OF : FOR CT10401.46 Capital Program Support Services for the Capital Improvement Plan**

To Provide Capital Program Support Services for the Capital Improvement Plan in not to exceed contract amount of \$8,000,000 for one year term and The City has options to extend the Contract term for up to five years.

PSC FORM 1 # 40890-1415 (06/01/2015-12/31/2029)      \$      110,000,000.00  
PSC FORM 2      \$      8,000,000.00

**THIS ENCUMBRANCE:**      **\$1,201,000.00 PO 0000871128 FR5659, 5745**

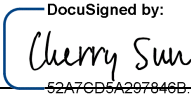
**TOTAL ENCUMBRANCE AMOUNT**      \$      1,201,000.00

**CONTRACT PERIOD:** The term of this Agreement shall commence on the date of the Notice to Proceed and expire one year later unless earlier terminated as otherwise provided in this Agreement.

**COMMISSION APPROVAL:** \$8,000,000 for the first year of services and options to extend the Contract term for up to five years per Commission Resolution no. 24-0173

	Amount	Expiration Date
Worker's Comp.	\$1,000,000	11/01/2024
Comp. Gen. Liab.	\$1,000,000	11/01/2024
Automobile	\$1,000,000	11/01/2024
Umbrella	n/a	n/a
Professional Liab.	\$2,000,000	11/01/2024
MAIL INVOICE TO: Deborah Gill San Francisco Airport Commission P.O. Box 8097  San Francisco, CA 94128		

RECOMMENDED AND APPROVED

IVAR C. SATERO Airport Director			Chief Administrative Officer, Board of supervisor		Materials, Supplies & Services Purchaser Real Property Leases & Rents Director of Property		Certification Date:	
By:  52A7CD5A297846D...		9/30/2024						
Line #	Document		Amount	Fund	Department	Authority	PROJECT	
	Number	Account					Project	Activity
1	0000871128	527990	\$3,489.00	19380	109722	10345	10004262	0018
2	0000871128	527990	\$36,528.00	19383	109722	10345	10004262	0018
3	0000871128	527990	\$1,159,983.00	19391	109722	10345	10004262	0018
4	0000871128	527990	\$1,000.00	19427	109722	10345	10004262	0018

**City and County of San Francisco**

**Airport Commission  
P.O. Box 8097  
San Francisco, California 94128**

**Agreement between the City and County of San Francisco and****T.Y. Lin International****Contract No. 10401.46****Capital Program Support Services for the Capital Improvement Plan**

This Agreement is made this August 20, 2024, in the City and County of San Francisco, State of California, by and between T.Y. Lin International, 345 California Street, Suite 2300, San Francisco, CA 94104, and the City and County of San Francisco, a municipal corporation (the “City”), acting by and through its Airport Commission (the “Commission”).

**Recitals**

A. The Commission wishes to enter into an Agreement for Capital Program Support Services for the Capital Improvement Plan for the San Francisco International Airport (the “Airport”); and

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

C. On February 9, 2024, the Commission issued a Request for Proposals (“RFP”) as required by the San Francisco Administrative Code (“Administrative Code”) Section 6.40, and as a result of the selection process prescribed in the RFP and upon the recommendation of the Airport Director, the Commission determined that the Contractor was the qualified proposer receiving the highest evaluation score; and

D. On August 20, 2024, by Resolution No. 24-0173, the Commission awarded this Agreement to the Contractor for a one-year term and a not-to-exceed amount of \$8,000,000; and

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

F. Approval for this Agreement was obtained when the Civil Service Commission approved PSC No. 40890-14/15

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 by reference into this Agreement.

1.2 “City” or “the City” means the City and County of San Francisco, a municipal corporation, acting by and through both its Director of the Office of Contract Administration, referred to as “Purchasing,” or the Director’s designated agent, the Commission.

1.3 “City Data” means that data as described in Article 13 of this Agreement, which includes, without limitation, all data collected, used, maintained, processed, stored, or generated by or on behalf of the City in connection with this Agreement. City Data includes, without limitation, Confidential Information.

1.4 “CMD” means the Contract Monitoring Division of the City.

1.5 Confidential Information

1.5.1 “Confidential Information” means confidential City information including, but not limited to, personally identifiable information (“PII”), protected health information (“PHI”), or individual financial information (collectively, “Proprietary or Confidential Information”) that is subject to local, state or federal laws restricting the use and disclosure of such information, including, but not limited to, Article 1, Section 1 of the California Constitution; the California Information Practices Act (Civil Code § 1798 *et seq.*); the California Confidentiality of Medical Information Act (Civil Code § 56 *et seq.*); the federal Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801(b) and 6805(b)(2)); the privacy and information security aspects of the Administrative Simplification provisions of the federal Health Insurance Portability and Accountability Act (45 CFR Part 160 and Subparts A, C, and E of Part 164); and Administrative Code Chapter 12M (“Chapter 12M”).

1.5.2 “Confidential Information” also means any and all nonpublic information, whether written, electronic, or oral, concerning or relating to Airport technology, computer, or data systems, processes, or procedures, or Critical Infrastructure Information or Protected Critical Infrastructure Information as defined under the Homeland Security Act of 2002 and 6 CFR §29.2, which information or access to such information is supplied by the Airport or on behalf of the Airport to Contractor or otherwise acquired by Contractor during the course of dealings with the Airport. Additionally, “Confidential Information” includes security or security-related information, whether or not such information constitutes sensitive security information (“SSI”) as provided under 49 CFR Part 1520. In the event Contractor acquires SSI, it shall treat such information in conformance with federal law and the provisions of this Agreement.

1.5.3 “Confidential Information” is confidential regardless of whether such information is in its original form, a copy, or a derivative product. “Derivative” means written or electronic material created from or with, or based on Confidential Information (i.e., a report analyzing Confidential Information shall also be considered Confidential Information). Confidential Information shall also mean proprietary, trade secret or other protected information, identified as Confidential Information by the Airport.

1.6 “Contractor” means T.Y. Lin International, 345 California Street, Suite 2300, San Francisco, California 94104.

1.7 “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.

1.8 “Digital Signature” means an electronic identifier, created by computer, intended by the party using it to have the same force and effect as the use of a manual signature.

1.9 “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.

1.10 “Party” and “Parties” mean the City and Contractor either collectively or individually.

1.11 “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 date of the Notice to Proceed and expire one year later unless earlier terminated as otherwise provided in this Agreement.

2.2 The City has options to extend the Contract term for up to five years. The City may exercise each 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 under this Agreement 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 San Francisco Board of Supervisors (“BOS”). Contractor’s assumption of the 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 Calculation of Charges.** Contractor shall provide an invoice to the City on a monthly basis for goods delivered and/or Services completed in the immediately 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 City, in its sole discretion, concludes have been satisfactorily performed. In no event shall the amount of this Agreement exceed Eight Million Dollars (\$8,000,000). The breakdown of charges associated with this Agreement appears in Appendix B, "Calculation of Charges." A portion of the payment may be withheld until the conclusion of the Agreement if agreed to by both Parties as retainage, described in Appendix B. In no event shall City be liable for interest or late charges for any late payments. City will not honor minimum service order charges for any Services covered by this Agreement.

**3.3.2 Payment Limited to Satisfactory Services and Delivery of Goods.** Contractor is not entitled to any payments from City until the Commission approves the goods and/or Services delivered under this Agreement. Payments to Contractor by City shall not excuse Contractor from its obligation to replace unsatisfactory delivery of goods and/or Services even if the unsatisfactory character may not have been apparent or detected at the time such payment was made. Goods and/or Services delivered under this Agreement that do not conform to the requirements of this Agreement may be rejected by the 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 goods and/or Services consistent 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 in this Agreement.

**3.3.4 Invoice Format.** Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller and City and include a unique invoice number and a specific invoice date. Payment shall be made by City as specified in Section 3.3.6, or in such alternate manner as the Parties have mutually agreed upon in writing. All invoices must show the City's financial and procurement system ("PeopleSoft") Purchase Order ID Number, PeopleSoft Supplier Name and ID, Item numbers (if applicable), complete description of goods delivered or Services performed, sales/use tax (if applicable), contract payment terms and contract price. Invoices that do not include all required information or contain inaccurate information will not be processed for payment.

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

### 3.3.6 Getting Paid by the City for Goods and/or Services.

(a) The City and County of San Francisco utilize the Paymode-X<sup>®</sup> service offered by Bank of America Merrill Lynch to pay City contractors. Contractor must sign up to receive electronic payments to be paid under this Agreement. To sign up for electronic payments, visit [http://portal.paymode.com/city\\_countyofsanfrancisco](http://portal.paymode.com/city_countyofsanfrancisco).

(b) At the option of the City, Contractor may be required to submit invoices directly in PeopleSoft via eSettlement. Refer to <https://sfcitypartner.sfgov.org/pages/training.aspx> for more information on eSettlement. For access to PeopleSoft eSettlement, submit a request through [sfemployeeportalsupport@sfgov.org](mailto:sfemployeeportalsupport@sfgov.org).

### 3.3.7 **Grant Funded Contracts** – Not applicable.

### 3.3.8 **Payment Terms.**

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

(b) **Payment Discount Terms:** Not Applicable.

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 less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any Federal agency having an interest in the subject matter of this Agreement shall have the same rights as conferred upon City by this Section. Contractor shall include the same audit and inspection rights and record retention requirements in all subcontracts.

3.5 **Submitting False Claims.** The full text of Administrative Code Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Under Administrative Code Section 21.35, any contractor or subcontractor who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to the City if the contractor or subcontractor: (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 Administrative Code Section 6.22(e) [Prevailing Wages] or Section 21C [Miscellaneous Prevailing Wage Requirements] (collectively,

“Covered Services”). The provisions of Administrative Code Sections 6.22(e) and 21C are incorporated as provisions of this Agreement as if fully set forth in this Agreement 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 BOS 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, as applicable. For trade work covered by the provisions of Administrative Code Section 21C, Contractor agrees that it shall pay not less than the prevailing wage rates, as fixed and determined by the BOS, to all workers employed by Contractor who perform such Covered Services under this Agreement. Copies of such rates are available from the Office of Labor Standards and Enforcement (“OLSE”) and on the Internet at <https://sfgov.org/olse/prevailing-wage-non-construction> . For trade work covered by the provisions of Administrative Code Section 6.22(e), Contractor agrees that it shall pay not less than the prevailing wage rates as fixed and determined by the California Department of Industrial Relations for the County of San Mateo to all workers employed by Contractor who perform Covered Services under this Agreement. Copies of such rates are available from the OLSE and on the Internet at <http://www.dir.ca.gov/DLSR/PWD>.

## **Article 4 Services and Resources**

**4.1 Services Contractor Agrees to Perform.** Contractor agrees to perform the Services stated in Appendix A, “Scope of Services.” Officers and employees of the City are not authorized to request, and the City is not required to 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 use 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.

**4.2.1 Key Personnel Substitutions.** The City and Contractor understand and agree that time is of the essence in all matters relating to the project and that the City will suffer financial and other, intangible but significant losses if the Services are not completed in a timely manner as described in the Agreement. Contractor further understands and agrees that the actual cost to the City that could result from Contractor’s substitution of Key Personnel is extremely difficult, if not impossible, to determine. Accordingly, the City and Contractor agree that should the City determine, in its sole discretion, that the substitution of Key Personnel has resulted in a loss of productivity, as liquidated damages for that loss of productivity (but not as a penalty), Contractor will pay the City the sum of either: (i) \$35,000 should Contractor replace Key Personnel during the period after award of the contract but prior to the issuance of the NTP or within the first sixty (60) days after issuance of the NTP; or (ii) the cost billed to the City for the substituted Key Personnel, including salary and overhead, should Contractor substitute Key Personnel after sixty (60) days after issuance of the NTP but before the completion of the first year of services.

**4.2.2** If Key Personnel is substituted without the prior approval of the City within twelve (12) months after issuance of the NTP, this may be considered a material breach of contract. The City reserves the right to terminate the Agreement should Contractor substitute Key Personnel without prior approval of the City. In addition, any such unapproved substitutions of Key Personnel may negatively affect

the evaluation of the Proposer's responsibility for future procurements. The City's approval of any substitution of Key Personnel must be in writing.

#### **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" and Article 13 "Data and Security" 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.

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

4.4.1 **Independent Contractor.** For the purposes of this Section 4.4, "Contractor" shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, Contractor 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, Federal Insurance Contributions Act, 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 consistent with the requirements of this Agreement, City shall provide Contractor with written notice of such failure. Within five business days of Contractor's receipt of such notice, and consistent 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 under this Section 4.4 shall be solely limited to the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of 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. Neither this Agreement, nor any duties or obligations under this Agreement, may be directly or indirectly assigned, novated, hypothecated, transferred, or delegated by Contractor, or, where the Contractor is a joint venture, a joint venture partner, (collectively referred to as an "Assignment") unless first approved by City by written instrument executed and approved in the same manner as this Agreement consistent with the Administrative Code. The City's approval of any such Assignment is subject to the Contractor demonstrating to City's reasonable satisfaction that the proposed transferee is: (i) reputable and capable, financially and otherwise, of performing each of Contractor's obligations under this Agreement and any other documents to be assigned, (ii) not forbidden by applicable law from transacting business or entering into contracts with City; and (iii) subject to the jurisdiction of the courts of the State of California. A change of ownership or control of Contractor or a sale or transfer of substantially all of the assets of Contractor shall be deemed an Assignment for purposes of this Agreement. Contractor shall immediately notify City about any Assignment. 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 Liquidated Damages – Not applicable.**

**4.8 Bonding Requirements – Not applicable.**

## **Article 5 Insurance and Indemnity**

### **5.1 Insurance.**

**5.1.1 Required Coverages.** Without in any way limiting Contractor's liability under Section 5.2, "Indemnification" of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

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

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

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

(d) Professional Liability Insurance, applicable to Contractor’s profession, with limits not less than **\$2,000,000** for each claim with respect to negligent acts, errors, or omissions in connection with the Services.

(e) Technology Errors and Omissions Liability Coverage – Reserved.

(f) Cyber and Privacy Insurance Coverage – Reserved.

(g) Pollution Liability Insurance – Reserved.

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

(a) The Commercial General Liability policy must name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

(b) The Commercial Automobile Liability Insurance policy must name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

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

**5.1.3 Waiver of Subrogation Requirements.** 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.

#### 5.1.4 **Primary Insurance**

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

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

(c) The Pollution Liability Insurance Primary Insurance Endorsement – Not applicable.

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

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

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

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

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

(e) Before commencing any Services, Contractor shall furnish to City certificates of insurance 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 under this Agreement.

(f) If Contractor will use any subcontractor(s) to provide Services, Contractor shall require the subcontractor(s) to provide all necessary insurance and to name the City and County of San Francisco, 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: (a) injury to or death of a person, including employees of City or Contractor; (b) loss of or damage to property; (c) 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; (d) strict liability imposed by any law or regulation; or (e) losses arising from Contractor's execution of subcontracts not consistent with the requirements of this Agreement applicable to subcontractors; so long as such injury, violation, loss, or strict liability (as set forth in subsections (a) – (e) 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 and Defense Obligations for Design Professionals.** To the extent design professional services are performed under this Agreement, if any, the following indemnity and defense obligations shall apply:

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

**5.3.2 Indemnity Obligations.** To the fullest extent permitted by law, Contractor shall indemnify and hold harmless Indemnitees from and against any and all Liabilities, including but not limited to those for Damages or Litigation Expenses specified in Section 5.3.1.

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

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

## 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, "CALCULATION OF CHARGES," OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT, OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

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

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

## Article 7 Payment of Taxes

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

7.2 **Possessory Interest Taxes.** Contractor acknowledges that this Agreement may create a "possessory interest" for property tax purposes. 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 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 California 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., California Revenue and Taxation Code Section 64, as amended from time to time). Contractor 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.

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

## **Article 8 Termination and Default**

### **8.1 Termination for Convenience**

8.1.1 City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term of this Agreement, 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 may include any or all of the following, 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 thirty (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 supplier, 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 listed in Section 8.1.3. Such non-recoverable costs include, but are not limited to, anticipated profits on the Services under this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys’ fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under Section 8.1.3.

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

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

8.2 Termination for Default; Remedies.

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

8.2.2 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
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4.5	Assignment	10.13	Working with Minors
Article 5	Insurance and Indemnity	11.10	Compliance with Laws
Article 7	Payment of Taxes	Article 13	Data and Security

(a) 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 into this Agreement by reference, and such default is not cured within ten days after written notice of such default from City to Contractor. If Contractor defaults a second time in the same manner as a prior default cured by Contractor, City may in its sole discretion immediately terminate the Agreement for default or grant an additional period not to exceed five days for Contractor to cure the default.

(b) 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.

(c) 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.

8.2.3 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 under 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. This Section 8.2.2 shall survive termination of this Agreement.

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

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

8.3 **Non-Waiver of Rights.** The omission by either Party at any time to enforce any default or right reserved to it or to require performance of any of the terms, covenants, or provisions of this



Agreement 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.

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

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

3.3.2	Payment Limited to Satisfactory Service and Delivery of Goods	9.1	Ownership of Results
		9.2	Works for Hire
3.4	Audit and Inspection of Records	11.6	Dispute Resolution Procedure
3.5	Submitting False Claims	11.7	Agreement Made in California; Venue
Article 5	Insurance and Indemnity	11.8	Construction
6.1	Liability of City	11.9	Entire Agreement
6.3	Liability for Incidental and Consequential Damages	11.10	Compliance with Laws
Article 7	Payment of Taxes	11.11	Severability
8.1.6	Payment Obligation	Article 13	Data and Security
8.2.2	Exercise of Default Remedies	---	---

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

### Article 9 Rights in Deliverables

9.1 **Ownership of Results.** Any interest of Contractor or its subcontractors, in the Deliverables, 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 Article 10, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Article and elsewhere in the Agreement (“Mandatory City Requirements”) are available at: [http://www.amlegal.com/codes/client/san-francisco\\_ca/](http://www.amlegal.com/codes/client/san-francisco_ca/).

**10.2 Conflict of Interest.** By executing this Agreement, Contractor certifies that it does not know of any fact that 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 Administrative Code Chapter 12G (“Chapter 12G”), which prohibits funds appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Contractor is subject to the enforcement and penalty provisions in Chapter 12G.

**10.4 Consideration of Salary History.** Contractor shall comply with Administrative Code Chapter 12K (“Chapter 12K”), the Consideration of Salary History Ordinance or “Pay Parity Act.” Contractor is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Agreement or in furtherance of this Agreement, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in the City or on City property. The ordinance also prohibits employers from (1) asking such applicants about their current or past salary or (2) disclosing a current or former employee’s salary history without that employee’s authorization unless the salary history is publicly available. Contractor is subject to the enforcement and penalty provisions in Chapter 12K. Information about and the text of Chapter 12K is available on the web at <https://sfgov.org/olse/consideration-salary-history>. Contractor is required to comply with all of the applicable provisions of Chapter 12K, irrespective of the listing of obligations in this Section.

## **10.5 Nondiscrimination Requirements**

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

**10.5.2 Nondiscrimination in the Provision of Employee Benefits.** Contractor does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of 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 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 use LBE subcontractors for at least 20% 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.** If Administrative Code Chapter 12P (“Chapter 12P”) applies to this contract, Contractor shall pay covered employees no less than the minimum compensation required by Chapter 12P, including a minimum hourly gross compensation, compensated time off, and uncompensated time off. Contractor is subject to the enforcement and penalty provisions in Chapter 12P. Information about and the text of the Chapter 12P is available on the web at <http://sfgov.org/olse/mco>. Contractor is required to comply with all of the applicable provisions of Chapter 12P, irrespective of the listing of obligations in this Section. By signing and executing this Agreement, Contractor certifies that it complies with Chapter 12P.

**10.8 Health Care Accountability Ordinance.** If Administrative Code Chapter 12Q (“Chapter 12Q”) applies to this contract, Contractor shall comply with the requirements of Chapter 12Q. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Administrative Code Section 12Q.3. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission. Information about and the text of Chapter 12Q, as well as the Health Commission’s minimum standards, is available on the web at <http://sfgov.org/olse/hcao>. Contractor is subject to the enforcement and penalty provisions in Chapter 12Q. Any subcontract entered into by Contractor shall require any subcontractor with 20 or more employees to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section.

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

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

**10.11 Limitations on Contributions.** By executing this Agreement, Contractor acknowledges its obligations under Section 1.126 of the City’s Campaign and Governmental Conduct Code (“Section 1.1.126”), which prohibits any person who contracts with, or is seeking a contract with, any department of the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be

approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 10% in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

**10.12 Slavery Era Disclosure – Not applicable.**

**10.13 Working with Minors – Not applicable.**

**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 Administrative Code Chapter 12T ("Chapter 12T"), "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," 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 in this Agreement. 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 Chapter 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 which excludes Airport property. 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 Public Access to Nonprofit Records and Meetings – Not applicable.**

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

**10.17 Distribution of Beverages and Water – Not applicable.**

**10.18 Tropical Hardwood and Virgin Redwood Ban.** Under 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 Preservative Treated Wood Products – Not applicable.**

**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 email and shall be addressed as follows:

To City: Deborah Gill  
Director of Capital Planning and Program Controls  
San Francisco International Airport  
P.O. Box 8097  
San Francisco, CA 94128  
Email: [deborah.gill@flysfo.com](mailto:deborah.gill@flysfo.com)

To Contractor: Anne Middlebrook  
Team Manager  
345 California Street, Suite 2300  
San Francisco, CA 94104  
Email: [Anne.middlebrook@tylin.com](mailto:Anne.middlebrook@tylin.com)

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

11.1.1 The Parties consent to the use of Digital Signatures, affixed using the City's DocuSign platform, to execute this Agreement and all subsequent modifications.

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

**11.4 Sunshine Ordinance.** Contractor acknowledges that this Agreement and all records related to its formation, Contractor's performance of Services, and City's payment are subject to the California Public Records Act, (California Government Code Section 6250 *et. seq.*), and the San Francisco Sunshine Ordinance, (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 a written instrument executed and approved in the same manner as this Agreement. Contractor shall cooperate with the 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, under 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 consistent with this 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 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 Administrative Code Chapter 10 and California Government Code Section 900, *et seq.*

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

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

**11.9 Entire Agreement.** This Agreement 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 consistent with the terms and conditions of this Agreement, the RFP, and Contractor's proposal dated [insert date of proposal]. The RFP and Contractor's proposal are incorporated by reference as though fully set forth in this Agreement. 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.

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

## **Article 12 Requirements For Airport Contracts**

**12.1 Airport Commission Rules and Regulations.** Contractor agrees to comply with the Airport Commission's Rules and Regulations for the San Francisco International Airport as amended from time to time. A copy of the current Rules and Regulations can be found at: <http://www.flysfo.com/about-sfo/the-organization/rules-and-regulations>.

**12.2 Airport Intellectual Property.** Under Resolution No. 01-0118, adopted by the Airport Commission on April 18, 2001, the Airport Commission affirmed that it will not tolerate the unauthorized use of its intellectual property, including the SFO logo, CADD designs, and copyrighted publications. No proposers, bidders, contractors, tenants, permittees, and others doing business with or at the Airport (including subcontractors and subtenants) may use the Airport intellectual property, or any intellectual property confusingly similar to the Airport intellectual property, without the Airport Director's prior written consent.

**12.3 Labor Peace/Card Check Rule.** Without limiting the generality of other provisions in this Agreement requiring Contractor to comply with all Airport Rules and Regulations, for all Covered Contracts, Contractor shall comply with the Airport's Labor Peace/Card Check Rule, a revised version of which was adopted as Rule 12.1 on February 7, 2023, by Airport Commission Resolution No. 23-0018 (as amended the "Labor Peace/Card Check Rule"). To comply with the Labor Peace/Card Check Rule, each Covered Employer shall comply with the Labor Peace/Card Check Rule, Section C, Covered Employer Duties, Items 1-13. If the Airport determines that Contractor violated the Labor Peace/Card Check Rule, the Airport shall have the option to terminate this Agreement, in addition to exercising all other remedies available to the Airport. Capitalized terms not defined in this provision are defined in the Labor Peace/Card Check Rule.

**12.4 Federal Fair Labor Standards Act.** This Agreement incorporates by reference the provisions of 29 USC §201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers. Contractor has full responsibility to monitor compliance to the referenced statute or regulation. Contractor must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

**12.5 Occupational Safety and Health Act of 1970.** This Agreement incorporates by reference the requirements of 29 CFR §1910 with the same force and effect as if given in full text. Contractor must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. Contractor retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (29 CFR §1910). Contractor must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

**12.6 Federal Nondiscrimination Requirements.** During the performance of this Agreement, Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as “Contractor”) agrees as follows:

**12.6.1 Compliance with Regulations.** Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts And Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.

**12.6.2 Nondiscrimination.** Contractor, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

**12.6.3 Solicitations for Subcontracts.** Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by Contractor of Contractor's obligations under this Agreement and the Nondiscrimination Acts And Authorities on the grounds of race, color, or national origin.

**12.6.4 Information and Reports.** Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Airport or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Airport or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

**12.6.5 Sanctions for Noncompliance.** In the event of a Contractor's noncompliance with the Non-discrimination provisions of this Agreement, the Airport will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

(a) Withholding payments to the contractor under the contract until the contractor complies; and/or

(b) Cancelling, terminating, or suspending a contract, in whole or in part.



**12.6.6 Incorporation of Provisions.** Contractor will include the provisions of paragraphs 12.6.1 through 12.6.6 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. Contractor will take action with respect to any subcontract or procurement as the Airport or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, Contractor may request the Airport to enter into any litigation to protect the interests of the Airport. In addition, Contractor may request the United States to enter into the litigation to protect the interests of the United States.

**12.6.7 Title VI List of Pertinent Nondiscrimination Acts and Authorities.** During the performance of this Agreement, Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “Contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC §2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 USC §4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 USC. §794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended (42 USC §6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC §471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38 and the Department of Justice regulations at 28 CFR, parts 35 and 36;
- The Federal Aviation Administration’s Non-discrimination statute (49 USC §47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 CFR at 74087 to 74100);

- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC §1681 *et seq.*).

## **Article 13      Data and Security**

### **13.1      Nondisclosure of City Data, Private or Confidential Information.**

**13.1.1      Protection of Private Information.** If this Agreement requires City to disclose “Private Information” to Contractor within the meaning of Administrative Code Chapter 12M (“Chapter 12M”), Contractor and subcontractor shall use such information only consistent 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      Confidential Information.** In the performance of Services, Contractor may have access to, or collect on City’s behalf, City Data and /or Confidential Information, the disclosure of which to third parties may damage City. If City discloses City Data or Confidential Information to Contractor, or Contractor collects such information on City’s behalf, such information must be held by Contractor in confidence and used only in performing the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own confidential information.

### **13.2      Payment Card Industry (“PCI”) Requirements – Not applicable.**

### **13.3      Business Associate Agreement – Not applicable.**

### **13.4      Management of City Data and Confidential Information**

**13.4.1      Use of City Data and Confidential Information.** Contractor agrees to hold City Data received from, or collected on behalf of, the City, in strictest confidence. Contractor shall not use or disclose City Data except as permitted or required by the Agreement or as otherwise authorized in writing by the City. Any work using, or sharing or storage of, City Data outside the United States is subject to prior written authorization by the City. Access to City Data must be strictly controlled and limited to Contractor’s staff assigned to this project on a need-to-know basis only. Contractor is provided a limited non-exclusive license to use the City Data solely for performing its obligations under the Agreement and not for Contractor’s own purposes or later use. Nothing in this Agreement shall be construed to confer any license or right to the City Data or Confidential Information, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third-party. Unauthorized use of City Data by Contractor, subcontractors or other third-parties is prohibited. For purpose of this requirement, the phrase “unauthorized use” means the data mining or processing of data, stored or transmitted by the service, for commercial purposes, advertising or advertising-related purposes, or for any purpose other than security or service delivery analysis that is not explicitly authorized.

**13.4.2      Disposition of Confidential Information.** Upon request of City or termination or expiration of this Agreement, and under any document retention period required by this Agreement, Contractor shall promptly, but in no event later than thirty (30) calendar days, return all data given to or collected by Contractor on City’s behalf, which includes all original media. Once Contractor has received written confirmation from City that City Data has been successfully transferred to City, Contractor shall within ten (10) business days clear or purge all City Data from its servers, any hosted environment Contractor has used in performance of this Agreement, including its subcontractors’ environment(s), work

stations that were used to process the data or for production of the data, and any other work files stored by Contractor in whatever medium. Contractor shall provide City with written certification that such purge occurred within five (5) business days of the purge. Secure disposal shall be accomplished by “clearing,” “purging” or “physical destruction,” consistent with National Institute of Standards and Technology Special Publication 800-88 or most current industry standard.

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

## **Article 14 MacBride And Signature**

14.1 **MacBride Principles -Northern Ireland.** The provisions of Administrative Code Chapter 12F are incorporated 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.

<p><b>CITY</b> AIRPORT COMMISSION CITY AND COUNTY OF SAN FRANCISCO</p> <p>DocuSigned by: <u>Ivar C. Satero</u> 9/11/2024 8CFDC3E9126544B...</p> <p>By: _____ Ivar C. Satero, Airport Director</p> <p>Attest:</p> <p>DocuSigned by: <u>Kantrice Ogletree</u> 85B9720881A341D...</p> <p>By _____ Kantrice Ogletree, Secretary Airport Commission</p> <p>Resolution No: <u>24-0173</u></p> <p>Adopted on: <u>August 20, 2024</u></p> <p>Approved as to Form:</p> <p>David Chiu City Attorney</p> <p>DocuSigned by: <u>Daniel Edington</u> FAC8E38F96494BE...</p> <p>By _____ Daniel A. Edington, Deputy City Attorney</p>	<p><b>CONTRACTOR</b></p> <p>Signed by: <u>Phil Yartey</u> AC955E02F3C7406...</p> <p>_____ Authorized Signature</p> <p><u>Philip Yartey</u> _____ Printed Name</p> <p><u>Senior Vice President</u> _____ Title</p> <p>City Supplier Number: 0000010039 Federal Employer ID Number: 94-1598707</p>
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- Appendices**
- A: Scope of Services
  - B: Calculation of Charges

## **APPENDIX A SCOPE OF SERVICES**

Contractor shall be responsible for providing all staffing and services to oversee the CIP under and at the direction of the Airport's Design & Construction division's (D&C) Management.

The purpose and intent of the contract is to provide competent and qualified staff to D&C Management for the list of services described and set forth herein. The scope and level of performance required of each service shall remain exclusively within the control and direction of D&C Management. The services identified below are (1) intended to serve as initial, and (2) the list of services may be modified via contract modification by the D&C Management from time to time through addition or deletion to meet the dynamic requirements of the CIP.

### **I. REPORTING ON THIS CONTRACT**

Contractor shall produce reports and deliverables on the administration of this Contract that meet Airport requirements. Reports and deliverables shall be in electronic format to the greatest extent possible. Reports and deliverables include the following:

1. A written monthly report on Contractor's Services under this Contract in a format consistent with the Airport reporting processes. The Contractor will report on its progress and any problems in performing the Services.
2. Report on quality assurance and quality control processes and how these are being engaged monthly in the administration of this Contract.

### **II. CONTRACT ADMINISTRATION**

Contractor shall provide administration of this Contract, including but not limited to providing suggested staffing, progress payment processing, change order processing, forecasting, and monthly progress reporting for capital projects in the Airport's CIP.

### **III. KEY SERVICES:**

#### **A. PROGRAM CONTROLS**

Contractor will work closely with project teams to gather, review, analyze, and report on cost, scope, and schedule information for CIP projects to ensure that project cost and schedule are developed, analyzed, and reported on in a transparent, consistent, and real-time manner. Key deliverables include:

1. Ensuring data integrity of the Airport's Project Management System, Primavera Unifier (Unifier), to ensure that data is accurate, thorough, and consistent. The Contractor shall use this data to identify and resolve any risks related to the overall CIP.

2. Working with project teams to uniformly exchange information relating to budget, costs, estimates, risk, and schedule to ensure reporting meets Airport reporting and formatting requirements.
3. Developing and maintaining a program-level Master Schedule in Primavera P6 Enterprise Project Portfolio Management (EPPM), using schedule information provided by each project team.
4. Overseeing and coordinating the integration of Airport processes and controls into Unifier.
5. Ensuring project teams are informed and trained on existing and new business processes.
6. Ensuring that D&C Management receives consistent and accurate reporting to assist in the identification, elevation, and resolution of issues.

## **B. PROCESS AND PROCEDURES**

The Contractor shall work alongside Airport staff to review and analyze existing business processes and develop new processes, forms, workflows, and reports as necessary and to be managed in Unifier including:

1. Update business processes as directed by Airport staff.
2. Identify and prioritize additional business processes to be managed in Unifier.
3. Analyze the existing processes and provide recommendations for improvement and efficiency.
4. Coordinate meetings with appropriate Airport stakeholders to develop new processes. Develop meeting minutes of findings and provide recommendations for implementation to the Airport.
5. Train Airport staff and project teams on the use of new processes.
6. Develop, test, and deploy business processes in Unifier.
7. Develop policies and procedures to document current and new processes.

## **C. UNIFIER ADMINISTRATION, DEVELOPMENT & SUPPORT**

The Contractor shall provide Unifier Administration, Programming, Development, and Support Services to assist the Airport with developing new and maintaining existing business processes in Unifier. Contractor shall also address any support problems and issues that come up from users of such processes. Many of the business processes, such as requests for information (RFIs), change management, payments, etc., are already established. However, the need may arise for a new business process to assist with the furtherance of the CIP and integration with other Airport or City and County of San Francisco systems.

The Contractor will support D&C staff to improve and maintain Unifier, including:

1. Manage and oversee the work of the Unifier Programmers, Developers, and Support staff.

2. Assist the Airport with the refinement of existing business processes, including the identification and development of additional business processes to enhance Unifier's capabilities for delivery of the CIP.
3. Provide maintenance and support of the Unifier database and develop quality assurance procedures to ensure data validity and business process accuracy.
4. Assist the Scheduling and Reporting Managers to develop and maintain integration with Unifier and web-based reporting.
5. Administer and maintain policies and procedures for the use of Unifier and develop new policies and procedures as they pertain to Unifier use.
6. Incorporate emerging technology and software, such as Power BI, to improve reporting and visibility into project health.

#### **D. COST MANAGEMENT**

The Contractor will work with Airport staff as well as external consultant teams to gather, review, analyze, and assist in reporting on project cost and scope information for projects within the CIP (CIP projects) to ensure that project costs are reported in a transparent, consistent, and real-time manner in Unifier, and assist D&C Management with the reconciliation of cost systems and quality control of data.

On a CIP Program Level, cost management shall consist of:

1. Develop and maintain program-level budget, funding, and forecast reports in Unifier or any other required system, using cost data provided by each CIP project team.
2. Performance analysis of cost data and RFIs to provide recommended solutions to D&C Management to manage program risks and make informed decisions.

For each CIP Project, the Contractor shall work alongside Airport staff and/or the CIP project team to:

1. Perform quality assurance of the CIP project teams to enhance consistency and accuracy in reporting all information.
2. Engage and work with other Airport divisions to uniformly exchange information relating to Program budget, costs, estimates, and other data with other Airport management systems (e.g., Capital Planning System).
3. Assist the CIP project teams in ensuring that cost reports meet the Airport's reporting and formatting requirements.

## **E. SCHEDULING**

The Contractor will work with Airport staff to coordinate Program-wide schedules and with separate CIP project teams to assist with their respective project schedules. The Contractor shall also identify opportunities to integrate schedules with cash flow consistently to link project costs to schedule seamlessly. The Contractor will administer and implement a consistent coding structure that will tie cost and schedule together at the project level and enable roll-up reporting for the overall CIP.

The Contractor will work with Airport staff and CIP project teams to gather, review, and report on project scope and schedule information for the overall CIP and will help the Airport ensure that project schedules are reported in a transparent, consistent, and real-time manner.

On a CIP program level, the Contractor shall:

1. Develop and maintain a program-level schedule using individual project schedules.
2. Identify and analyze dependencies, controls, and interfaces between CIP projects and other Airport operational activities.
3. Provide recommended solutions or re-sequencing options to Airport Management to help the Airport manage program risks and make informed decisions.

For each CIP project, the Contractor shall work alongside Airport staff and/or the CIP project team to:

1. Perform quality assurance of individual CIP project data to enhance consistency and accuracy in reporting all information.
2. Engage Airport staff and consultants alike to exchange information relating to schedules and risk uniformly.
3. Assist CIP project teams in ensuring that schedule reports meet airport reporting and formatting requirements.

## **F. PROGRAM CONTROLS TRAINING**

The Contractor shall assist the Airport in developing and training the Airport staff and CIP project teams. The training will encompass all business processes, including but not limited to cost, schedule, budgeting, forecasting, estimating, document control, progress payments, change control, audit response, contract administration, progress reporting, and use of Unifier.



## **G. REPORTING**

The Contractor shall develop and ensure timely delivery of the Monthly Program Report and the Quarterly Commission Report, comprising all individual CIP Project reports.

The Contractor shall perform quality control of document layout design, including graphic designs and content, for reporting consistency.

As requested, the Contractor shall update/develop the outline, graphics, data, charts, and content of reports and presentations so that different management levels within the Airport organization and the public can be communicated with varying levels of detail.

The Contractor shall interface with the CIP project teams to assist in ensuring reporting templates are utilized correctly and consistently. Observed issues, risks, or project challenges shall be communicated to D&C management for resolution.

## **H. DOCUMENT CONTROL**

The Contractor shall work with the CIP project teams to ensure that project information is documented in an integrated, accessible, electronic format stored in a retrievable system both on a project and program level as directed by the Airport to ensure quality control, meet regulatory and programmatic requirements, and achieve exceptional program outcomes.

## **I. MANAGEMENT SERVICES**

The Contractor may provide additional services across the CIP, including subject matter experts in support of the CIP such as safety management services, program-wide logistics, procurement and contract administration, project interface coordination, and other services as needed to assist in managing and implementing the CIP.

## **J. COST ESTIMATING AND CONTROL SERVICES**

The Contractor shall be prepared to support financial analyses, which may include the following:

1. Prepare hard and soft cost budget estimates to establish baseline project budgets and high-level cost and trend management services.
2. Cost estimating to support change management procedures for individual CIP Projects.
3. Cost estimating to support CIP project teams' requests for the use of CIP budgets, such as the Net Zero Program Budget or the CIP Program Reserve Budget.

## **K. SCHEDULING SERVICES**

The Contractor shall be prepared to support Airport scheduling and analysis when requested, which may include the following services:

1. Compile applicable schedules from Airport staff and CIP project teams. Schedules will provide the overall period of performance, major milestones, contractual milestones, contract deliverables and other major project phases. Schedules will also show milestones that interface between projects.
2. Verify and validate Level 2 schedules provided by the project designers. The Level 2, or Intermediate Schedule, should contain a detailed reflection of the activities that must be accomplished to achieve the Level 1 schedule objectives. At a minimum, the Level 2 schedule shall include contractually required deliveries of critical long lead items, hardware, software, and performance requirements.
3. Verify and validate Level 3 schedules provided by the project builders. The Level 3, or Detailed Schedule, contains a detailed set of activities that must be accomplished to achieve Level 2 schedule objectives. This schedule should contain enough detail for the Airport's project manager to plan, direct, and monitor the completion of work and to calculate the project's critical path reliably. The Level 3 schedule shall reflect the Contractor's review and monitoring of construction schedules and the coordination of those schedules with other planned or ongoing Airport projects.
4. Identify and analyze dependencies, controls, and interfaces within a project, with other Airport operational activities, and/or with other projects and perform alternative analysis of project sequence to optimize project delivery within the Level 3 schedule.

#### **L. ADMINISTRATION OF STRUCTURED COLLABORATIVE PARTNERING AND STAKEHOLDER ENGAGEMENT PROCESS SERVICES**

When requested by the Airport, the Contractor shall assist in administering the Airport's Structured Collaborative Partnering and Stakeholder Engagement Processes. This includes but is not limited to, coordinating meetings, taking minutes of meetings, tracking action items, producing reports, etc. Additionally, the Contractor may be requested to provide neutral partnering facilitation services.

END OF APPENDIX A

## **APPENDIX B CALCULATION OF CHARGES**

### **1. GENERAL**

- 1.1 As set forth in Section 3.3, "Compensation," of the Agreement, compensation for Services performed under this Agreement will be on a time and materials basis, unless otherwise approved by the Airport Project Manager.
- 1.2 No charges shall be incurred under this Agreement, nor shall any payments become due to Contractor, until Services, reports, or both required under this Agreement are received from Contractor and approved by the Airport as being in accordance with this Agreement. In no event shall the Airport be liable for interest or late charges for any late payments.

### **2. METHOD OF PAYMENT**

- 2.1 Unless approved otherwise by the Airport, Contractor's services shall be invoiced on a monthly basis and payment will be made within 30 days of receipt of an acceptable invoice with satisfactory backup documentation, approved by the Airport Project Manager. The term "invoice" shall include Contractor's bill or other written request for payment under this Agreement for Services performed. All invoices shall be made in writing and delivered or mailed to the Airport to the mailing address listed in Section 11.1, "Notices to the Parties," of the Agreement.
- 2.2 Contractor shall invoice for the Services performed in conformance with procedures approved by the Airport.
  - a. Such invoices shall segregate current costs from previously invoiced costs.
  - b. Costs for individual labor shall be segregated by tasks and subtasks, if any.
  - c. In no case shall Contractor's invoices include costs which the Airport has disallowed or otherwise indicated that it will not recognize. Costs shall be invoiced by Contractor's accounting categories and shall be subject to the audit provisions of this Agreement.
  - d. Each invoice shall clearly distinguish Contractor's personnel invoiced at either the home office or field office overhead rate.
  - e. Such invoices shall be, as a minimum: (i) mechanically accurate, (ii) substantially evidenced and properly supported, and (iii) in compliance with generally accepted accounting principles.
- 2.3 Contractor shall also certify, for each invoice, that (i) the rates for direct labor to be paid under this Agreement, whether for Contractor or its subcontractor(s), are not in excess of the rates actually being paid to Contractor or subcontractor employees engaged in the performance of Services under this Agreement at that time; and (ii) that such rates are in conformance with the Agreement.
- 2.4 Salaried personnel shall be paid on a maximum of 40 hours per week with no overtime. Salaried personnel assigned to multiple projects shall be paid on a pro-rata share of a 40-hour week. Contractor shall provide copies of signed timecards or other verifiable time records showing all

assigned projects and the shared calculation.

- 2.5 The Airport reserves the right to withhold payment(s) otherwise due to Contractor in the event of Contractor's material non-compliance with any of the provisions of the Agreement, including, but not limited to, the requirements imposed upon Contractor in Article 5, "Insurance and Indemnity," of the Agreement. The Airport shall provide notice of withholding and may continue the withholding until Contractor has provided evidence of compliance that is acceptable to the Airport.

### **3. DIRECT LABOR RATES AND FEES**

#### **3.1 Direct Labor Rates and Direct Labor Rate Adjustments**

- a. The approved direct labor rate ranges stated in Paragraph 3.5 below shall remain in effect for the duration of the Agreement until modified by the Airport. Any changes to the direct labor rate ranges must be approved by the Airport and included in a written modification to the Agreement.
- b. Contractor shall request direct labor rate adjustments in accordance with the following procedures:
  - i. At the written request of Contractor, the Airport may approve an adjustment to the direct labor rates for individual staff who have been actively providing services under the Agreement for a minimum of one (1) year.
  - ii. If approved by the Airport, the annual rate adjustment will be based on the December increase in the Consumer Price Index (CPI) for the preceding twelve (12) months for the San Francisco Bay Area as published by the U.S. Department of Labor, Bureau of Labor Statistics, under the title of: "All Urban Consumers – San Francisco-Oakland-San Jose, California." This December-based CPI will be used for optional annual rate adjustments for the entire calendar year.
  - iii. The Airport will analyze requests for rate adjustments to determine if the requested adjustment(s) will cause any individual staff direct labor rates to exceed the approved direct labor rate range for their respective classification. Should any of the new rate(s) exceed the approved direct labor rate range(s), and if the rate adjustment is approved by the Airport, the Airport will modify the Agreement. These new rates will be effective upon certification of the contract modification.
  - iv. If all new rates fall within the approved direct labor rate ranges, the new rates will be effective upon receipt of written approval from the Airport Project Manager.
- c. No other adjustments will be allowed unless the adjustment is made to meet the requirements of prevailing or minimum wage legislative mandates.

#### **3.2 Overhead Rates**

- a. Contractor and approved first-tier subcontractors shall use the following approved overhead rates:

<b>Contractor</b>	<b>Home Office Overhead Rate</b>	<b>Field Office Overhead Rate</b>
TY Lin International	N/A	120.16%

<b>Approved First-Tier Subcontractors</b>	<b>Home Office Overhead Rate</b>	<b>Field Office Overhead Rate</b>
Chaves & Associates	N/A	138.11%
Currie & Brown, Inc.	N/A	115.92%
D.R. McNatty & Associates, Inc.	160.00%	N/A
EPC Consultants, Inc.	N/A	90.40%
Hollins Consulting, Inc.	N/A	121.19%
InnoActive Group	N/A	129.86%
M Lee Corporation	N/A	128.80%
Mirai Networks	N/A	130%
Montez Group Incorporated	N/A	131.55%
OrgMetrics LLC	N/A	N/A
Saylor Consulting Group	N/A	110.06%
Universal Development Consulting	N/A	130%

- b. The field office overhead rate shall be applied to the direct labor rates for staff provided with a workstation at the Airport, furnished with normal office equipment and materials, including computers, printers, internet access, and office supplies.
- c. The home office overhead rate shall be applied to the direct labor rates for staff working from the Contractor's or subcontractor's offices and not provided with an Airport computer. Use of the home office overhead rate requires prior written authorization from the Airport Project Manager.
- d. Annual adjustments to the overhead rate may be requested only from firms that have their overhead rate audited independently by a certified public accountant or other government agency. The request must be accompanied by an updated audited overhead report that adheres to Generally Accepted Government Auditing Standards. The Airport reserves the right to approve, deny, or modify any changes in overhead rates during the term of the Agreement. Overhead rates shall not exceed 145% for field offices and 160% for home offices.
  - i. If Contractor or subcontractor cannot provide an audited overhead report, they may submit a Statement of Direct Labor, Fringe Benefits and General Overhead (financial statement) for the previous year. The Airport will evaluate and if the overhead rate contained within is accepted, this rate will be firm for the duration of the Agreement.
  - ii. Small Business Enterprise (SBE) and Local Business Enterprise (LBE) subcontractors may request to use the Airport's SBE/LBE standard overhead rate of 120% for work completed from a home office and 90% for work completed from a field office if the subcontractor does not have relevant cost history data to use as a basis for overhead and the subcontract value is less than \$1,000,000. If approved, this rate will be firm for the duration of the Agreement.

### 3.3 Contractor Profit Rate

- a. A maximum profit rate of 10% may be applied to the sum of the direct labor rates and overhead rates for Services performed by Contractor.
- b. A 2% markup may be applied to first-tier subcontractor invoices.
- c. No markups are allowed on any Other Direct Costs, unless pre-approved in writing by the Airport.

### 3.4 Subcontractor Profit Rate and Markup

- a. Subcontractors performing the Services may apply a maximum profit rate of 10% to the sum of the direct labor rates and overhead rates for Services performed.
- b. No markups are allowed on lower-tier subcontractors.
- c. No markups are allowed on any Other Direct Costs (all tiers) unless pre-approved in writing by the Airport.

### 3.5 Direct Labor Rate Ranges

The approved direct labor rate ranges are as follows:

Classification	Direct Labor Rate Range	
	Low	High
Team Lead	\$ 90.00	\$ 128.00
PCM – PM	\$ 75.00	\$ 115.00
PCM – AE	\$ 75.00	\$ 115.00
Delivery Manager	\$ 75.00	\$ 115.00
Reporting Manager	\$ 65.00	\$ 85.00
Reporting Coordinator	\$ 40.00	\$ 65.00
Administrative Support	\$ 25.00	\$ 50.00
Senior Cost Engineer	\$ 75.00	\$ 93.00
Intermediate Office Engineer	\$ 60.00	\$ 82.00
Senior Scheduler	\$ 75.00	\$ 93.00
Intermediate Cost Engineer	\$ 60.00	\$ 82.00
Junior Cost Engineer	\$ 45.00	\$ 60.00
PMIS Administrator	\$ 75.00	\$ 83.00
PMIS Developer	\$ 65.00	\$ 85.00
PMIS Support	\$ 35.00	\$ 65.00
PMIS Integration	\$ 65.00	\$ 85.00
PMIS Developer	\$ 65.00	\$ 85.00
PMIS Developer (Power BI)	\$ 62.40	\$ 80.00
Senior Estimator	\$ 70.00	\$ 93.00
Estimator	\$ 55.00	\$ 70.00
Program Wide Coordinator	\$ 75.00	\$ 95.20

Program Management Advisor	\$ 120.00	\$ 167.88
Senior Technical Advisor	\$ 120.00	\$ 142.77

#### 4. OTHER DIRECT COSTS

- 4.1 Only the actual costs incurred by Contractor shall be allowed and invoiced as Other Direct Costs (ODC). Contractor shall not submit any cost in excess of \$500 without prior written authorization from the Airport. There shall be no mark-ups of any kind allowed on costs reimbursed under this Section. Costs shall be allowable only to the extent that costs incurred, or otherwise established prices, are consistent with the Federal Cost Principles (Title 48, Code of Federal Regulations, Part 31).
- 4.2 The following items may not be included as ODCs:
- Phone calls, faxes, mail, express mail, delivery service charges, or other communication charges between members of Contractor's team, regardless of location, including regional phone calls and faxes for all area codes having any geographical land area within 100 miles of San Francisco even though its outlying boundary exceeds the 100-mile limitation;
  - Internet gateways, email service or other technology-based communication service, FTP sites, or data file transfer or research services;
  - Travel by Contractor or subcontractors between its home office and the San Francisco Bay Area;
  - Travel within a 100-mile radius of San Francisco; travel outside a 100-mile radius of San Francisco unless pre-approved in writing by the Airport;
  - In-house coordination materials among Contractor's team and subcontractors, including photocopy and drawing materials, messenger services; and
  - Food and beverage and/or entertainment charges of any kind unless pre-approved in writing by the Airport.
- 4.3 Unless authorized by the Airport, the Airport will not reimburse Contractor for the costs of business travel, contractor meals, and accommodations. This includes specialists that are based out of town and not assigned to the jobsite office. Travel and per diem expenses for the project team's management, jobsite personnel, or staff that commute to or from other offices or residences are not allowed. When authorized, travel expenses must be in accordance with the City and County of San Francisco Travel Guidelines, found [here](#).

#### END OF APPENDIX B