



San Francisco Water Power Sewer

Services of the San Francisco Public Utilities Commission

Contract Administration Bureau
525 Golden Gate, 8th Floor
San Francisco, CA 94102
T 415.551.4603
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June 15, 2017

Holly L. L. Kennedy
HDR Engineering Inc.
560 Mission Street, Suite 900
San Francisco, CA 94105-2907
Email: Holly.Kennedy@hdrinc.com

- RE:** 1) Notice of Contract Award - New Headworks Facility Construction Management (CM) Staff Augmentation Services (PRO.0028)
2) Transmittal - Executed Agreement between the City and County of San Francisco Public Utilities Commission and HDR Engineering Inc.

Dear Ms. Kennedy:

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

BLANKET PURCHASE ORDER NO: **BPUC17000092**
- Work may not be charged against this blanket purchase order number

SCOPE: To provide construction management staff augmentation services for the new headworks facility project. Pre-construction services, construction contract administration, construction inspection, construction contract management, project controls, and building information modeling.

EFFECTIVE DATE: **June 12, 2017 to June 14, 2023**

CONTRACT TO DATE: Total value of contract not to exceed **\$17,000,000.00**

Invoices must be charged against specific task orders only after a *Notice to Proceed* has been issued.

Should you have any questions, please do not hesitate to contact Rosiana Angel at (415) 554-1549.

Edwin M. Lee
Mayor

Anson Moran
President

Ike Kwon
Vice President

Ann Moller Caen
Commissioner

Francesca Vietor
Commissioner

Vince Courtney
Commissioner

Harlan L. Kelly, Jr.
General Manager

Enclosure: Executed Agreement

cc: Jim Wang
File/NCA-PRO.0028



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

Agreement between the City and County of San Francisco and

HDR Engineering, Inc.

**PRO.0028 New Headworks Facility Construction Management (CM) Staff
Augmentation Services**

This Agreement is made this 31st day of May, 2017, in the City and County of San Francisco, State of California, by and between HDR Engineering, Inc., 560 Mission Street, Suite 900, San Francisco, CA 94105-2907 (“Contractor”) and City.

Recitals

WHEREAS, the San Francisco Public Utilities Commission (“Department,” or “SFPUC”) wishes to retain a qualified consultant for the provision of Construction Management Staff Augmentation Services for the SFPUC Sewer System Improvement Program’s New Headworks Facility Project (“Project”); and

WHEREAS, the City issued a Request for Proposal (“RFP”) on November 14, 2016, seeking proposals from parties interested in providing the Services; and

WHEREAS, Contractor submitted a proposal to the City and the City determined Contractor to be (1) qualified to perform the Services, and (2) to have submitted the highest scoring proposal in response to the RFP; and

WHEREAS, the Local Business Enterprise (“LBE”) subcontracting participation requirement for this Agreement is 20%; and

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

WHEREAS, the City’s Civil Service Commission approved the Agreement on October 17, 2016, as 44553 - 16/17;

WHEREAS, approval for this Agreement was obtained from the San Francisco Public Utilities Commission Resolution Number 17-0059 on March 28, 2017; and

WHEREAS, approval for this Agreement was obtained from the San Francisco Board of Supervisors by Resolution Number 191-17 on May 16, 2017;

Now, THEREFORE, the parties agree as follows:

Article 1 Definitions

The following definitions apply to this Agreement:

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

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

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

1.4 "Contractor" or "Consultant" means HDR Engineering, Inc., 560 Mission Street, Suite 900, San Francisco, CA 94105-2907.

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

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

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

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

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

Article 2 Term of the Agreement

2.1 The term of this Agreement shall commence on the latter of: (i) June 15, 2017; or (ii) the Effective Date and expire on June 14, 2023, unless earlier terminated as otherwise provided herein.

2.2 The City shall have the sole discretion to extend the Agreement term for up to a total of nine (9) years (or 108 months), by modifying this Agreement as provided in Section 11.5, "Modification of this Agreement."

Article 3 Financial Matters

3.1 Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation. This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

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

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

3.3 Compensation.

3.3.1 Payment. Contractor shall provide an invoice to the City on a monthly basis for Services completed in the immediate preceding month, unless a different schedule is set out in Appendix B, "Calculation of Charges." Compensation shall be made for Services identified in the invoice that the General Manager of the SFPUC, in his or her sole discretion, concludes has been satisfactorily performed. Payment shall be made within 30 calendar days of receipt of the invoice, unless the City notifies the Contractor that a dispute as to the invoice exists. In no event shall the amount of this Agreement exceed **Seventeen Million Dollars (\$17,000,000)**. The breakdown of charges associated with this Agreement appears in Appendix B, "Calculation of Charges," and Appendix B-1, "Fee Schedule," attached hereto and incorporated by reference as though fully set forth herein. In no event shall the City be liable for interest or late charges for any late payments except as set forth in Administrative Code Section 6.22(j).

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

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

3.3.4 Invoice Format. Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller and City, and must include a unique invoice number. Payment shall be made by City to Contractor at the address specified in Section 11.1, "Notices to the Parties," or in such alternate manner as the Parties have mutually agreed upon in writing.

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

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

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

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

3.3.7 Reserved. (Grant Funded Contracts)

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

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

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

decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

Article 4 Services and Resources

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

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

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

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

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

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

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

4.5 Assignment. The Services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by Contractor unless first approved by City by written instrument executed and

approved in the same manner as this Agreement. Any purported assignment made in violation of this provision shall be null and void.

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

4.7 **Reserved. (Liquidated Damages)**

Article 5 Insurance and Indemnity

5.1 **Insurance.**

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

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

(b) Commercial General Liability Insurance with limits not less than \$5,000,000 per each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products, and Completed Operations; and

(c) Commercial Automobile Liability Insurance with limits not less than \$2,000,000 each occurrence, "Combined Single Limit" for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

(d) Professional liability insurance, applicable to Contractor's profession, with limits not less than \$5,000,000 each claim with respect to negligent acts, errors or omissions in connection with the Services.

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

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

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

5.1.3 All policies shall be endorsed to provide thirty (30) days' advance written notice to the City of cancellation for any reason, intended non-renewal, or reduction in coverages, except for non-payment for which no less than ten (10) days' notice shall be provided

to City. Notices shall be sent to the City address set forth in Section 11.1, entitled "Notices to the Parties."

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

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

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

5.1.7 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.

5.1.8 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.

5.2.1 General.

(a) Contractor shall indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them from and against any and all claims, demands, losses, damages, costs, expenses, and liability (legal, contractual, or otherwise) arising from or in any way connected with any: (i) injury to or death of a person, including employees of City or Contractor; (ii) loss of or damage to property; (iii) violation of local, state, or federal common law, statute or regulation, including but not limited to privacy or personally identifiable information, health information, disability and labor laws or regulations; (iv) strict liability imposed by any law or regulation; or (v) losses arising from Contractor's execution of subcontracts not in accordance with the requirements of this Agreement applicable to subcontractors; so long as such injury, violation, loss, or strict liability (as set forth in subsections

(i) – (v) above) arises directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, Contractor's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors, or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City.

(b) 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.

(c) 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.

5.2.2 Indemnification For Design Professionals.

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

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

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

Article 6 Liability of the Parties

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

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

Article 7 Payment of Taxes

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

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

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

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

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

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

Article 8 Termination and Default

8.1 Termination for Convenience

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

defective or rejected Services, the difference between the invoiced amount and City's estimate of the reasonable cost of performing the invoiced Services in compliance with the requirements of this Agreement.

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

8.2 Termination for Default; Remedies.

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

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

3.5	Submitting False Claims
4.5	Assignment
Article 5	Insurance and Indemnity
Article 7	Payment of Taxes

10.4	Nondisclosure of Private, Proprietary or Confidential Information
10.10	Alcohol and Drug-Free Workplace
11.10	Compliance with Laws

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

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

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

8.2.2 On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, where

applicable, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor: (i) all damages, losses, costs or expenses incurred by City as a result of an Event of Default; and (ii) any liquidated damages levied upon Contractor pursuant to the terms of this Agreement; and (iii), any damages imposed by any ordinance or statute that is incorporated into this Agreement by reference, or into any other agreement with the City.

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

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

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

8.4 Rights and Duties upon Termination or Expiration.

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

3.3.2	Payment Limited to Satisfactory Services	9.2	Works for Hire
3.4	Audit and Inspection of Records	10.4	Nondisclosure of Private, Proprietary or Confidential Information
3.5	Submitting False Claims	11.6	Dispute Resolution Procedure
Article 5	Insurance and Indemnity	11.7	Agreement Made in California; Venue
6.1	Liability of City	11.8	Construction
Article 7	Payment of Taxes	11.9	Entire Agreement
8.1.6	Payment Obligation	11.10	Compliance with Laws
9.1	Ownership of Results	11.11	Severability

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, shall become the property of and will be transmitted to City. However, unless expressly prohibited elsewhere in this Agreement, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

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

Article 10 Additional Requirements Incorporated by Reference

10.1 **Laws Incorporated by Reference.** The full text of the laws listed in this Article 10, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Article and elsewhere in the Agreement ("Mandatory City Requirements") are available at www.sfgov.org under "Government."

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

10.3 **Prohibition on Use of Public Funds for Political Activity.** In performing the Services, Contractor shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Agreement from being expended to participate

in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Contractor is subject to the enforcement and penalty provisions in Chapter 12G.

10.4 Nondisclosure of Private, Proprietary or Confidential Information.

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

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

10.5 Nondiscrimination Requirements

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

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

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

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

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

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

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

on contributions imposed by Section 1.126 and provide the names of the persons required to be informed to City.

10.12 Reserved. (Slavery Era Disclosure)

10.13 Reserved. (Working with Minors)

10.14 Consideration of Criminal History in Hiring and Employment Decisions

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

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

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

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

10.17 Reserved. (Sugar-Sweetened Beverage Prohibition)

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

10.19 Reserved. (Preservative Treated Wood Products)

Article 11 General Provisions

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

To City: Jim Wang
San Francisco Public Utilities Commission
525 Golden Gate Avenue, 6th Floor
San Francisco, CA 94102
jwang@sfwater.org

To Contractor: Holly L.L. Kennedy, P.E., Vice President
HDR Engineering, Inc.
560 Mission Street, Suite 900
San Francisco, CA 94105-2907
Holly.Kennedy@hdrinc.com

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

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

11.3 **Reserved. (Payment Card Industry ("PCI") Requirements)**

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

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

11.6 Dispute Resolution Procedure.

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

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

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

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

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

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

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

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

11.13 **Order of Precedence.** Contractor agrees to perform the services described below in accordance with the terms and conditions of this Agreement, implementing task orders, the RFP, and Contractor's proposal dated January 23, 2017. The RFP and Contractor's proposal are incorporated by reference as though fully set forth herein. Should there be a conflict of terms or conditions, this Agreement and any implementing task orders shall control over the RFP and the Contractor's proposal.

Article 12 MacBride And Signature

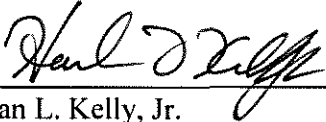
12.1 **MacBride Principles -Northern Ireland.** The provisions of San Francisco Administrative Code §12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, Contractor confirms that Contractor has read and understood that the City urges companies doing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

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

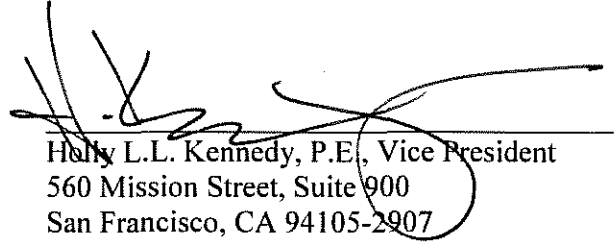
CITY

CONTRACTOR

HDR Engineering, Inc.



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




Holly L.L. Kennedy, P.E., Vice President
560 Mission Street, Suite 900
San Francisco, CA 94105-2907

City vendor number: **56143**

Approved as to Form:

Dennis J. Herrera
City Attorney

By: _____
Julia H. Veit
Deputy City Attorney

Appendices

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

Appendix A Scope of Services

Contractor agrees to perform the services set forth herein all in accordance with the terms of this Agreement.

1. Description of Services. The Contractor shall provide construction management (CM) staff augmentation services for the New Headworks Facility Project (“Project”), which include, but are not limited to, pre-construction services, construction contract administration, construction inspection, construction contracts management, project controls, and building information modeling (“BIM”). The Contractor shall serve as the Project’s Consultant Construction Manager (“CCM”) and will be required to provide fully qualified and highly experienced CM personnel to support the City in managing the construction of the Project. The CM personnel who will be responsible for undertaking the tasks as described below are as follows: Project Resident Engineer, Construction Cost Estimator, Lead Construction Inspector, Construction Scheduler, Field Contract Administrator, Construction Inspectors (one (1) ICC Civil/Welding Inspector, one (1) Mechanical Inspector, and one (1) Electrical Inspector), and BIM Specialist. The Contractor shall ensure that the Project Construction Management objectives and requirements are achieved and in conformance with the Sewer System Improvement Program (SSIP) Construction Management Plan, dated October 2016 (“SSIP CM Plan”).

The SSIP CM Plan, as well as the Request for Proposals (PRO.0028) dated November 14, 2016 (including all addenda), are hereby incorporated into this Agreement as if fully set forth herein.

The tasks listed below are referenced to the relevant sections (*in parentheses*) in the SSIP CM Plan to provide guidance to the Contractor as to the anticipated scope of services. The sections referenced are not inclusive and are subject to change. The Contractor shall be responsible for reviewing and fully understanding the SSIP CM Plan and how it relates to the scope of services to be provided by the Contractor for each of the tasks listed below. The Contractor must perform these tasks in a manner that is consistent with the approach to Construction Management as described in the SSIP CM Plan.

TASK 1: PRE-CONSTRUCTION SERVICES

- Review and Comment on Construction Manager/General Contractor (CM/GC) Schedule (2.1.1).
- Provide Constructability and Biddability Reviews (2.1.2).
 - Provide constructability and biddability reviews at the 65% and 95% design milestones for each of the Scopes I-III.

- Review and comment on the final 100% design products prior to bid package development for each of the Scopes I-III.
- Review and comment, as needed, on the assembly and completeness of bid packages.
- Review and comment on Contractor required submittals.
- Provide Cost Estimates for bid packages to be reconciled with the estimates of the Project design consultant and the CM/GC (1.6.32).
 - Prepare cost estimates at the 65% and 95% design milestones for each of the Scopes I-III.
 - Prepare for and attend meetings at the 65% and 90%/95% milestones during the design for each of the Scopes I-III with the Project design consultant and the CM/GC to present, discuss, and compare cost estimates, if any, and to develop an agreed estimate for the Direct Costs of Construction.
 - Additional meetings may be required to reconcile any differences. Meetings will be held within fourteen (14) calendar days after the City Representative transmits the respective cost estimates to the CM/GC.
- Provide Bid and Award Phase Assistance for Construction Bid Package Procurement (2.1.3 and 2.1.5).
- Provide Support, as needed, for the Construction Bid Packages' Pre-Bid Conferences (2.1.6).
- Provide Support, as needed, for Assistance with Permits and Rights-of-Way (2.1.7).
- Provide Resource Loaded Task Plan for CM Consultant Services (2.2.5).
 - The Plan will match the CCM scope of work, Work Breakdown Structure (WBS) (Tasks, subtasks and subtask activities) and the level of resource loading (monthly person-hour loading of each resource) in a format as determined by the SSIP Deputy Director of Construction (or designee).
- Provide Project CM Safety Plan (2.1.10).
- Provide Project Risk Management Plan (2.1.11).
- Provide a plan for the development, implementation, and management of Building Information Modeling (BIM) (2.2.4).

TASK 2: CONSTRUCTION ADMINISTRATION

- Implement Project CM Safety Plan (2.2.2).
- Implement Construction Management Information System (CMIS) (2.2.3).

- Provide Support, as needed, for SFPUC Public Outreach Efforts (2.2.6).
- Administer Program Security Requirements for Project (2.2.7).
- Assist SFPUC with the implementation of the Project Labor Agreement (PLA) (2.2.8).

- The PLA is located on the www.sfwater.org website at the following link:

<https://sfwater.org/modules/showdocument.aspx?documentid=146>

The WSIP PLA has been extended to include the SSIP and is located at the following link:

<http://www.sfwater.org/Modules/ShowDocument.aspx?documentID=9178>

- Provide Construction Administration for the Project (2.2.9).
 - The SFPUC believes in the value of construction partnering and has fully embraced the partnering process. As such, the selected CCM shall participate in all partnering efforts.
- Provide Administrative Support, as needed, for the Project (1.6.22).
- Provide Testing and Startup Support Services (2.2.9).
- Provide Support for Spare Parts and Warranties (2.2.9).
- Provide Management of Acceptance of the Work and Closeout (2.2.9).
- Provide Support for Administration of Project Closeout and Turnover (2.2.9).

TASK 3: CONSTRUCTION INSPECTION

- Provide Construction Inspection Services (2.2.10).

TASK 4: CONSTRUCTION CONTRACTS MANAGEMENT

- Provide Construction Contracts Management Services (2.2.11).

TASK 5: CONSTRUCTION PROJECT CONTROLS

- Provide Construction Project Controls Services (2.2.12).

TASK 6: BUILDING INFORMATION MODELING (BIM)

- Provide Building Information Modeling Services (2.2.4).

TASK 7: COMMUNITY BENEFITS

1) Community Benefits Commitments

Holly Kennedy shall serve as the Executive in Charge to manage the Contractor's Community Benefits Commitments and provide fiduciary oversight. The Executive in Charge shall ensure that the Community Benefits Commitments listed in the Community Benefits Summary Table below are delivered to the communities that they are intended to benefit in a transparent and accountable manner. The Executive in Charge shall work with the Community Benefits Coordinator, Mary Martis, to organize, plan, track, measure, and report on Contractor's Community Benefits Commitments. The Executive in Charge shall coordinate the senior management of Contractor's subconsultants to ensure the entire team participates in providing benefits to the San Francisco community.

2) Performance

Following issuance of the Notice-to-Proceed (NTP) for the first task to be performed by Contractor under this Agreement, Contractor commits to providing the Community Benefits Commitments detailed below during the term of the Agreement. Contractor's Community Benefits Commitments shall be funded independently by Contractor and shall not be tied to or dependent upon SFPUC funds or sources of funding, receivables from SFPUC, or retention associated with this Project. The representations, warranties and other terms contained in this Community Benefit Commitments section have been designed by Contractor as the basis for a Community Benefit Plan, but are for the sole benefit of the parties hereto and shall not be construed as conferring any rights on any other persons or entities.

As stated in the Request for Proposals:

"Community Benefits is a deliverable, zero-dollar task. No hours or dollars should be allotted or included in Contractor's costs under this Agreement in order to perform or deliver the voluntarily proposed Community Benefits Commitments. If the Contractor commits any funds to delivering the Community Benefits Commitments it proposes, all such funds must be independent of SFPUC funding or any dollars associated with this Agreement. If the Contractor commits to contributing any funds to performing or delivering its commitments related to this task, such funds may not be dependent in any way upon receipt of SFPUC funding, including release of retention, etc."

Contractor's Community Benefits Commitments shall be performed prospectively during the term of the Agreement, after the award of the Agreement and following issuance of NTP on the first task assigned to Contractor under this Agreement. Commitments performed as part of previous contracts or prior to Contractor being awarded the Agreement cannot be used as part of Contractor's Community Benefits Commitments under this Agreement. If a Contractor has established programs or plans that are consistent with the Community Benefits areas described in the RFP, they may continue those programs as part of their

Community Benefits Commitments and will be given credit for activities that are performed after the contract is awarded by the SFPUC.

3) Deliverables

a. Community Benefits Plan and Timeline

Contractor shall develop a Community Benefits Plan and Timeline within three (3) months of issuance of the first NTP for this Agreement. The Community Benefits Plan and Timeline will provide details regarding expenditures, a schedule, and timelines related to the Community Benefits Commitments outlined in the Community Benefits Table.

Contractor is invited to meet once a year, or as needed, with the External Affairs Community Benefits and Social Responsibility Manager during the term of the Agreement to discuss the work plan and associated timelines, and make any adjustments or updates regarding timing, expenditure of funds, partners, strategic delivery, scale, and performance necessary to ensure the commitments maximization of the collective resources and positive impact.

b. Community Benefits Commitments

The Contractor will deliver the proposed Community Benefits Commitments specified in the Community Benefits Summary Table which provides a description of the community benefit activity, expected outcomes, the timetable and duration of the commitments, the dollar amount of direct contributions, the number and cost of volunteer hours, and trainee hours that will be committed to the each specific initiative, as well as for the total project amount for the duration of the contract. Contractor shall provide \$200,000 in direct financial contributions, \$58,000 in volunteer hours, and \$30,000 in in-kind contribution. Contractor commits to a minimum contribution of \$288,500 over the life of this contract as stated in the Community Benefits Summary Table below. Any changes that occur to the Community Benefits Commitments must be submitted in writing to the Community Benefits and Social Responsibility Manager for review.

Community Benefits Summary Table

	(A)	(B)	(C)	(D)	(E)	(F)
Community Benefit Category	Direct Financial Contribution	Volunteer Hours	Volunteer Hourly Rate (rate is standardized)	Total Value of Volunteer Hours (B x C)	In-Kind Contributions	Total Contributions (A + D + E)
Environmental Justice	\$200,000	390 Hrs	\$150/hr	\$58,500	\$30,000	\$288,500
TOTAL	\$200,000	390 Hrs	\$150/hr	\$58,500	\$30,000	\$288,500

c. **Reporting requirements**

- Contractor should provide detailed descriptions of accountability methods and measures that will be implemented to ensure that the proposed Community Benefits Commitments will be delivered to the communities they are intended to benefit in a transparent and accountable manner. To maximize transparency and accountability, a process or mechanism must be proposed that will assist the SFPUC in independently verifying that such funds and resources were actually delivered to the intended beneficiaries.
- The Contractor shall submit progress reports to the SFPUC Community Benefits and Social Responsibility Manager, which should detail factors such as total number of hours, dollars, etc. contributed to-date. Progress reports are submitted on the last business day of the month following the close of the 2nd and 4th quarter. As part of the progress reports, the Contractor will also be required to submit documents to substantiate that the Community Benefits Commitments and any funds associated thereto were in fact delivered to the communities they were intended to benefit.
- The Contractor shall also submit an annual report and newsletter to the SFPUC Community Benefits and Social Responsibility Manager documenting the culmination of the community benefit commitments, beneficiaries, and outcomes for the year.

4) **Statements of Understandings**

Contractor acknowledges that they agree with the following statements:

- Any of the Community Benefits Commitments that the Contractor voluntarily commits to should directly benefit the communities, neighborhoods, and/or residents served by or impacted by the SFPUC.
- Community Benefits Commitments must support nonprofit and charitable activities.
- Community Benefits Commitments shall not go to, nor benefit any SFPUC employee or entities associated with the SFPUC.
- Community Benefits Commitments must be delivered at zero cost to the SFPUC.
- Community Benefits Commitments are separate from and in addition to any regulatory or legal requirements related to the contract.
- Community Benefits Commitments are considered binding once they are included in the final agreement.

- Community Benefits Commitments must be delivered progressively over the life of the agreement.
- Only activities commenced following issuance of NTP will count towards fulfillment of the Community Benefits Commitments.
- Contractor commits to complying with SFPUC's reporting requirements.

Contractor's Community Benefits Commitments Proposal is incorporated herein. Contractor shall provide all of the Community Benefits Commitments consistent with all of the terms of Contractor's proposal dated January 23, 2017 (incorporated herein by this reference). Where and if there are any conflicts or discrepancies between the language of this Agreement and the Contractor's proposal, the terms of the language of the Agreement shall prevail as Contractor and SFPUC's final mutual understanding and agreement.

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

3. Department Liaison. In performing the Services provided for in this Agreement, Contractor's liaison with the SFPUC will be **Jim Wang** ("SFPUC Construction Manager"). SFPUC reserves the right to assign a different construction manager at any time and in its sole discretion.

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

The task order request will be processed for Controller certification of funding, after which a "Notice to Proceed" will be issued. The Contractor is hereby notified that work cannot commence until the Contractor receives a written Notice to Proceed in accordance with the San Francisco Administrative Code. *Any work performed without a Notice to Proceed will be at the*

Contractor's own commercial risk. The calculations of costs and methods of compensation for all task orders under this Agreement shall be in accordance with Appendix B.

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

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

7. Standard of Care for Design Professionals. To the extent design professional services are performed under this Agreement, if any, the following standard of care applies: Contractor acknowledges and agrees that Contractor shall perform its services under this Agreement in accordance with the professional standard of care applicable to professionals providing similar services for projects of similar type, size and complexity in the San Francisco Bay Area.

Appendix B Calculation of Charges

As part of Contractor's proposal dated January 23, 2017, Contractor submitted proposed billing rates, attached hereto as Appendix B-1, Overhead and Profit Schedule, for the requested tasks identified in Appendix A, Scope of Services, which are incorporated herein by this reference.

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

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

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

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

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

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

3. Effective Overhead and Profit Rate. The Effective Overhead and Profit Rate (EOPR) for PRO.0028 is 2.49. The EOPR or Individual Firm Overhead and Profit Rate will apply to the billing rate of all individuals not listed in Appendix B-1. The EOPR will also apply to all amendments to the Agreement. If a new subcontractor is added during the duration of the Agreement, the new individual firm multiplier can be no more than the EOPR.

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

The following items will be eligible for reimbursement as ODCs:

- Task specific Out-of-town travel as requested by SFPUC (“out-of-town” shall mean outside the nine Bay Area counties: San Francisco, Alameda, Marin, Santa Clara, Sonoma, Contra Costa, Napa, San Mateo, and Solano). Out-of-town travel must be non-routine.
 - Rental vehicle: traveler must select the most economical contractor and type of vehicle available and acquire any commercial rate or government discount available when the vehicle is rented.
 - Personal vehicle use: Contractor will be paid per mile as established by the United State Internal Revenue Service and only for that portion of travel that is outside the nine Bay Area counties and non-routine. Should the travel begin or end on a normal workday, the Contractor shall subtract commuting mileage from total mileage to calculate reimbursable mileage. The Contractor shall submit to the City an approved mileage log and expense report with its monthly invoices.
 - Project vehicle rental/lease cost, gasoline, tolls and parking. The project vehicle must be requested and pre-authorized by the SFPUC staff. The SFPUC will only reimburse the business portion of the vehicle use. Vehicle mileage log and expense report are required for consideration of reimbursement. Since auto insurance is already part of the contract, no additional insurance will be reimbursed. Commuting to Moccasin from Contractor’s temporary home is not eligible for reimbursement.
- Specialty printing (“specialty” as used herein shall mean large volume printing and color printing and requires prior written approval by SFPUC project staff and documentation of the written approval by the SFPUC must be included with the invoice);
- Task related permit fees; and
- Expedited courier services when requested by SFPUC staff and task specific Safety equipment.

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

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

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

6. **Subcontractor Fees:**

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

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

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

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

Invoice Supporting Documentation:

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

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

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

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

9. Prevailing Wages

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

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

- As required by Section 6.22(e)(5) of the Administrative Code, Contractor shall insert in every subcontract or other arrangement, which it may make for the performance of Covered Services under this Agreement, a provision that said subcontractor shall pay to all persons performing labor in connection with Covered Services under said subcontract or other

arrangement not less than the highest general prevailing rate of wages as fixed and determined by the Board of Supervisors for such labor or services.

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

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

- The City will not process monthly progress payments which include payment for Covered Services until Contractor and each subcontractor performing Covered Services submits weekly certified payrolls to the City for the applicable time period. Contractor and each subcontractor performing Covered Services must also submit weekly certified payrolls directly to the DIR before the City will process monthly progress payments. Certified payrolls shall be prepared pursuant to Administrative Code Section 6.22(e)(6) and California Labor Code Section 1776 for the period involved for all employees, including those of subcontractors, who performed labor in connection with Covered Services. Contractor and each subcontractor performing Covered Services shall submit certified payrolls to the City and to the DIR electronically. Contractor shall submit payrolls to the City via the Project Reporting System ("PRS") selected by the City, an Internet-based system accessible on the World Wide Web through a web browser. The DIR will specify how to submit certified payrolls to it. The Contractor and each subcontractor that will perform Covered Services will be assigned a log-on identification and password to access the PRS. Use of the PRS may require Contractor and applicable subcontractors to enter additional data relating to weekly payroll information including, but not limited to, employee identification, labor classification, total hours worked and hours worked on this project, and wage and benefit rates paid. Contractor's payroll and accounting software may be capable of generating a "comma delimited file" that will interface with the PRS software. The City will provide basic training in the use of the PRS at a scheduled training session. Contractor and all Subcontractors that will perform Covered Services must attend the PRS training session. Contractor and applicable subcontractors shall comply with electronic certified payroll requirements (including training) at no additional cost to the City.

- Covered Services to be performed under this Agreement are subject to compliance monitoring and enforcement of prevailing wage requirements by the DIR and /or the Office of Labor Standards Enforcement. Contractor and any subcontractors performing Covered Services will cooperate fully with the DIR and/or the Labor Standards Enforcement Officer and other City employees and agents authorized to assist in the administration and enforcement of the prevailing wage requirements, and agrees to take the specific steps and actions as required by Section 6.22(e)(7) of the Administrative Code.

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

**Appendix B-1
Overhead and Profit Schedule**

Submitted by HDR Engineering, Inc.

Task Number [A]	Task Summary [B]	Staff Position/ Role [C]	Name of Proposed Staff Person [D]	Firm [E]	SFPUC Estimated Number of Hours [F]	Proposed Hours per Staff Person [G]	Base Hourly Rate (\$/hour) [H]	Base Labor Cost (\$) = [G]*[H] [I]	Firm Overhead and Profit Rate (OPR, or "Multiplier") [J]	Billing Rate (\$/hour) = [H]*[J] [K]	Actual Labor Cost (\$) = [G]*[K] [L]
1	Pre-Construction Services	Resident Engineer	Tom Haid	HDR Engineering, Inc.	640	128	\$123.00	\$15,744	3.267	\$220	\$28,160
			Norm Gadzinski	HDR Engineering, Inc.		512	\$120.19	\$61,537	3.267	\$220	\$112,640
		Estimator	Brad Saylor	Saylor Consulting Group	640	640	\$80.00	\$51,200	2.300	\$184	\$117,760
		Scheduler	Marc McKenney	ECS, Inc.	640	640	\$88.00	\$56,320	2.300	\$202	\$129,536
		Lead Inspector	Michael Mueller	HDR Engineering, Inc.	640	640	\$56.60	\$36,224	3.267	\$185	\$118,344
		BIM Specialist	Bradley Eilert	HDR Engineering, Inc.	640	560	\$49.95	\$27,972	3.267	\$163	\$91,385
Kirk Alloway	HDR Engineering, Inc.		80	\$64.27		\$5,142	3.267	\$210	\$16,798		
TASK 1 TOTAL					3,200		-	254,139	-	-	\$614,622
2A	Construction Contract Administration	Resident Engineer	Tom Haid	HDR Engineering, Inc.	9,920	9,520	\$123.00	\$1,170,960	3.267	\$220	\$2,094,400
			Norm Gadzinski	HDR Engineering, Inc.		400	\$120.19	\$48,076	3.267	\$220	\$88,000
		Field Contract Administrator	Bernie Mark	HDR Engineering, Inc.	4,960	4,960	\$86.50	\$429,040	3.267	\$220	\$1,091,200
TASK 2A TOTAL					14,880		-	1,648,076	-	-	\$3,273,600
2B	Construction Contract Administration During CLOSEOUT	Resident Engineer	Tom Haid	HDR Engineering, Inc.	960	960	\$123.00	\$118,080	3.267	\$220	\$211,200
		Field Contract Administrator	Bernie Mark	HDR Engineering, Inc.	480	480	\$86.50	\$41,520	3.267	\$220	\$105,600
		Lead Inspector	Michael Mueller	HDR Engineering, Inc.	160	160	\$56.60	\$9,056	3.267	\$185	\$29,586
		BIM Specialist	Bradley Eilert	HDR Engineering, Inc.	160	160	\$49.95	\$7,992	3.267	\$163	\$26,110
TASK 2B TOTAL					1,760		-	176,648	-	-	\$372,496

3	Construction Inspection	Lead Inspector	Michael Mueller	HDR Engineering, Inc.	9,520	9,520	\$56.60	\$538,832	3.267	\$185	\$1,760,364
		Inspector - Mechanical	Eric Koefoed	Joe Hill Consulting Engineers	9,520	9,520	\$65.00	\$618,800	2.300	\$150	\$1,423,240
		Inspector - Electrical	John Gipe	HDR Engineering, Inc.	8,560	8,560	\$56.79	\$486,122	3.267	\$186	\$1,588,162
		Inspector - ICC. Civil/Welding	Daniel Lacy	C M Pros	11,680	11,680	\$70.00	\$817,600	2.400	\$168	\$1,962,240
TASK 3 TOTAL					39,280		-	2,461,354	-	-	\$6,734,006
4	Construction Contract Management	Field Contract Administrator	Bernie Mark	HDR Engineering, Inc.	4,960	4,960	\$86.50	\$429,040	3.267	\$220	\$1,091,200
TASK 4 TOTAL					4,960		-	429,040	-	-	\$1,091,200
5	Construction Project Controls	Estimator	Brad Saylor	Saylor Consulting Group	2,480	2,480	\$80.00	\$198,400	2.300	\$184	\$456,320
		Scheduler	Marc McKenney	ECS, Inc.	2,976	2,976	\$88.00	\$261,888	2.300	\$202	\$602,342
TASK 5 TOTAL					5,456		-	460,288	-	-	\$1,058,662
6	Building Information Modeling	BIM Specialist	Bradley Eilert	HDR Engineering, Inc.	9,920	9,880	\$49.95	\$493,506	3.267	\$163	\$1,612,284
			Kirk Alloway	HDR Engineering, Inc.		40	\$64.27	\$2,571	3.267	\$210	\$8,399
TASK 6 TOTAL					9,920			\$496,077		-	\$1,620,683
PROJECT TOTAL					79,456			\$5,925,622			\$14,765,269

Effective Overhead and Profit Rate (EOPR, or Effective Project Multiplier) **2.49**

(= Total Actual Labor Cost / Total Base Labor Cost); Maximum Allowable EOPR = 3.20

TOTAL PROJECT COST BREAKDOWN

Total Actual Labor Cost: **\$14,765,269**

Total Other Direct Costs (ODCs): **\$500,000**

Total Costs for Additional Unanticipated Services: **\$1,500,159**

Markup on Subconsultant Labor Cost: **\$234,572**

(Maximum Allowable: 5% of subconsultant labor costs)

TOTAL PROJECT COST (NOT TO EXCEED \$17,000,000) **\$17,000,000**