

**City and County of San Francisco  
Office of Contract Administration  
Purchasing Division  
City Hall, Room 430  
1 Dr. Carlton B. Goodlett Place  
San Francisco, California 94102-4685**

**Agreement between the City and County of San Francisco  
and  
Archer Energy Solutions, LLC  
PRO.0327  
1000038000  
HHWP NERC Compliance and Audit Support**

This Agreement is made this 11 day of March, 2026, in the City and County of San Francisco (“City”), State of California, by and between Archer Energy Solutions, LLC (“Contractor”) and City.

**Recitals**

WHEREAS, the San Francisco Public Utilities Commission (“Department” or “SFPUC”) seeks to procure the services of a qualified Consultant to assist with Hetch Hetchy Water and Power’s (HHWP) North American Electric Reliability Corporation (NERC), Western Electricity Coordinating Council (WECC), California Independent System Operator (CAISO), and California Public Utilities Commission (CPUC) regulatory compliance programs, from Contractor; and

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

WHEREAS, Contractor was competitively selected pursuant to a Request for Proposals (“RFP”) entitled HHWP NERC Compliance and Audit Support issued through PUC.PRO.0327; and

WHEREAS, this is a contract for Services and the Local Business Enterprise (“LBE”) subcontracting participation requirement for the Services has been waived pursuant to waiver CMD14B0005556 ; and

WHEREAS, approval for the Agreement was obtained on March 3<sup>rd</sup>, 2025 from the Civil Service Commission under PSC number DHRPSC0004718 in the amount of \$11,600,000 for the period of five years; and

WHEREAS, the City’s Public Utilities Commission approved this Agreement by 26-0038 on March 10, 2026 in the amount of \$11,600,000 for the period of five years; and

WHEREAS, the Department has filed Ethics Form 126f2 (Notice of Submission of Proposal) because this Agreement has a value of \$100,000 or more in a fiscal year and will require the approval of the Board of Supervisors; and

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

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

Now, THEREFORE, the parties agree as follows:

## **Article 1 Definitions**

The following definitions apply to this Agreement:

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

1.2 "Appendices" means the appendices listed in Article 14 ("Appendices") herein.

1.3 "Artificial Intelligence" or "Artificial Intelligence Model" means an engineered or machine-based system that varies in its level of autonomy and that can, for explicit or implicit objectives, infer from the input it receives how to generate outputs that can influence physical or virtual environments.

1.4 "Artificial Intelligence System" means a machine-based system that is designed to operate with varying levels of autonomy and that may exhibit adaptiveness after deployment, and that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments.

1.5 "City" means the City and County of San Francisco, a municipal corporation, acting by and through both its Director of the Office of Contract Administration or the Director's designated agent, hereinafter referred to as "Purchasing" and the SFPUC.

1.6 "City Data" means all data collected, used, maintained, processed, stored, and/or generated by or on behalf of City in connection with this Agreement. City Data includes, without limitation, Confidential Information and Deliverable Data.

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

1.8 "Confidential Information" means confidential City information including, but not limited to, personal identifiable information ("PII"), protected health information ("PHI"), or individual financial information (collectively, "Proprietary or Confidential Information")

that is subject to local, state or federal laws restricting the use and disclosure of such information. Confidential Information includes, without limitation, City Data.

1.9 “Contractor” means Archer Energy Solutions, LLC, 12042 SE Sunnyside Road, Suite 292, Clackamas, Oregon 97015.

1.10 “Deliverable Data” means any data that is required to be delivered to City as a Deliverable, or as a part of a Deliverable, under this Agreement.

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

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

1.13 “Generative Artificial Intelligence” means Artificial Intelligence that can generate derived synthetic content, such as text, images, video, and audio, that emulates the structure and characteristics of the Artificial Intelligence’s training data.

1.14 “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.

1.15 “Party” and “Parties” means City and Contractor either individually or collectively.

1.16 “Personal Identifiable Information (PII)” means information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular individual or household. Personal information includes, but is not limited to, the following if it identifies, relates to, describes, is reasonably capable of being associated with, or could be reasonably linked, directly or indirectly, with a particular individual or household as further defined in the California Consumer Privacy Act.

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

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

2.1 **Term.** The term of this Agreement shall commence on the Effective Date and expire five (5) later, unless earlier terminated as otherwise provided herein.

2.2 **Options to Extend.** City has the option to renew the Agreement for a period of four (4) additional years. City may exercise this option at City’s sole and absolute discretion

by modifying this Agreement as provided in Section 11.5, “Modification of this Agreement.” Extensions may be for the whole or partial period provided for above.

### **Article 3 Financial Matters**

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

**3.1.1 Termination in the Event of Non-Appropriation.** This Agreement is subject to the budget and fiscal provisions of Section 3.105 of the City’s Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City’s obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to 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.

**3.1.2 Maximum Costs.** 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 City required to honor, any offered or promised payments to Contractor under this Agreement in excess of the certified maximum amount without the Controller having first certified the additional promised amount and the Parties having modified this Agreement as provided in Section 11.5, “Modification of this Agreement.”

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

#### **3.3 Compensation.**

**3.3.1 Contract Not to Exceed Amount.** The amount of this Agreement shall not exceed **Eleven Million Six Hundred Thousand Dollars (\$11,600,000)**, the breakdown of which appears in Appendix B, “Calculation of Charges.” City shall not be liable for interest or late charges for any late payments. City will not honor minimum service order charges for any Services covered by this Agreement.

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

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

**3.3.4 Invoicing.** Contractor shall invoice the City for the Services provided under this Agreement on a timely basis, and in no event later than 30 days after delivery of the Services or as specified in Appendix B, Calculation of Charges, except for the last invoice of the fiscal year which must be submitted within 15 days before the end of July. Invoices submitted by Contractor must be in a form acceptable to the Controller, the SFPUC, and City and include a unique invoice number and a specific invoice date. At the option of City, Contractor may be required to submit invoices directly in SOLIS. For access to SOLIS, submit a request through [SFPUCVendorSupport@sfgwater.org](mailto:SFPUCVendorSupport@sfgwater.org). Payment shall be made by City as specified in Section 3.3.7, or in such alternate manner as the Parties have mutually agreed upon in writing. Invoices that do not include all required information or contain inaccurate information will not be processed for payment.

**3.3.5 Reserved (LBE Payment and Utilization Tracking System).**

**3.3.6 Reserved (Grant Funded Contracts).**

**3.3.7 Payment Terms.**

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

(b) **Reserved (Payment Discount Terms).**

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

this Agreement shall have the same rights as conferred upon City by this Section. Contractor shall include the same audit and inspection rights and record retention requirements in all subcontracts.

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

3.6 **Reserved (Payment of Prevailing Wages).**

## **Article 4 Services and Resources**

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

4.2 **Qualified Personnel.** Contractor represents and warrants that it is qualified to perform the Services for which it is contracted to provide through this Agreement, and that all Services will be performed by competent personnel with the degree of skill and care required by current and sound professional procedures and practices. Contractor will comply with City’s reasonable requests regarding assignment and/or removal of personnel, but all personnel, including those assigned at City’s request, must be supervised by Contractor. Contractor shall commit sufficient resources for timely completion within the project schedule.

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

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

4.4.1 **Independent Contractor.** For the purposes of this Section 4.4, “Contractor” shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, Contractor is an independent contractor and is wholly responsible for the manner and means by which

it performs the Services and work required under this Agreement. Contractor, including its agents and employees, will not represent or hold itself/themselves out to be employees of City at any time. 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 is liable for its acts and omissions. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing Services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor, or any of its agents or employees. Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor's compliance with Section 4.4. Should City determine that Contractor is not performing in accordance with the requirements of Section 4.4, City shall provide Contractor with written notice of such failure. Within five (5) business days of Contractor's receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

**4.4.2 Payment of Employment Taxes and Other Expenses.** Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past Services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with 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 Section 4.4 shall be solely limited to the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, Contractor agrees to indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorneys' fees, arising from Section 4.4.

**4.5 Assignment.** The Services to be performed by Contractor are personal in character. This Agreement may not be directly or indirectly assigned, novated, or otherwise transferred unless first approved by City by written instrument executed and approved in the

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

4.6 **Reserved (Liquidated Damages).**

4.7 **Reserved (Performance Bond).**

4.8 **Reserved (Fidelity Bond or Crime Insurance).**

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

## **Article 5 Insurance and Indemnity**

### **5.1 Insurance.**

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

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

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

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

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

(e) Reserved (Technology Errors and Omissions Liability Insurance)

(f) Reserved (Cyber and Privacy Liability Insurance)

(g) Reserved (Pollution Liability Insurance)

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

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

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

(c) Reserved (Auto Pollution Additional Insured Endorsement)

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

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

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

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

(c) Reserved (The Pollution Liability Insurance)

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

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

(b) Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, be maintained for a period of three (3) years beyond the expiration of this Agreement, to the effect that, should occurrences during the Agreement term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

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

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

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

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

## 5.2 **Indemnification.**

5.2.1 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 liabilities (legal, contractual, or otherwise), losses, damages, costs, expenses, or claims for injury or damages (collectively, "Claims"), arising from or in any way connected with Contractor's performance of the Agreement, including but not limited to, 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 personal 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; except to the extent such indemnity is void or otherwise unenforceable under applicable law, and except where such Claims are the result of the active negligence or willful misconduct of City and are 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, experts, and related costs, and City's costs of investigating any claims against City.

5.2.2 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.

5.2.3 Contractor shall indemnify, defend, 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.

5.2.4 Under no circumstances will City indemnify, defend, or hold harmless Contractor.

## **Article 6 Liability of the Parties**

6.1 **Liability of City.** CITY'S TOTAL LIABILITY UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ITS PAYMENT OBLIGATIONS UNDER THIS AGREEMENT, SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 3.3.1, "CONTRACT NOT TO EXCEED AMOUNT," OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

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

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

## **Article 7 Payment of Taxes**

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

7.2 **Possessory Interest Taxes.** Contractor acknowledges that this Agreement may create a "possessory interest" for property tax purposes. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to timely report on behalf of City to

the County Assessor the information required by San Francisco Administrative Code Section 23.39, as amended from time to time, and any successor provision. Contractor further agrees to provide such other information as may be requested by City to enable City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

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

## **Article 8 Termination and Default**

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

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

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

(a) Completing performance of any Services that City requires Contractor to complete prior to the Termination Date.

(b) Halting the performance of all Services on and after the Termination Date.

(c) Cancelling all existing orders and subcontracts by the Termination Date and not placing any further orders or subcontracts for materials, Services, equipment or other items.

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

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

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

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

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

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

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

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

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

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

amount and City’s estimate of the reasonable cost of performing the invoiced Services in compliance with the requirements of this Agreement.

8.1.6 **Payment Obligation.** City’s payment obligation under Section 8.1, “Termination for Convenience,” 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	10.3.6	Alcohol and Drug-Free Workplace
Article 5	Insurance and Indemnity	11.10	Compliance with Laws
Article 7	Payment of Taxes	Article 13	Data and Security

(b) Contractor fails or refuses to perform the Services or to perform or observe any other term, covenant or condition contained in this Agreement, including any obligation imposed by ordinance or statute and incorporated by reference herein, and such default is not cured within ten (10) days after written notice thereof from City to Contractor or from when Contractor otherwise becomes aware of the Event of Default. If Contractor defaults a second time in the same manner as a prior default cured by Contractor, in addition to all other remedies available to City, City may in its sole discretion immediately terminate the Agreement for default or grant an additional period not to exceed five days for Contractor to cure the default.

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

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

**8.2.2 Default Remedies.** On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, where applicable, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default. Contractor shall pay to City on demand all costs and expenses incurred by City arising from the Event of Default and/or in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall also 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 City.

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

8.2.4 Any notice of default must be sent in accordance with Article 11.

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

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

8.4.1 Section 8.4, “Rights and Duties upon Termination or Expiration,” 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	8.2.2	Default Remedies
		9.1	Ownership of Results
3.4	Audit and Inspection of Records	9.2	Works for Hire
3.5	Submitting False Claims	11.7	Agreement Made in California; Venue
Article 5	Insurance and Indemnity	11.8	Construction
6.1	Liability of City	11.9	Entire Agreement
6.3	Liability for Incidental and Consequential Damages	11.10	Compliance with Laws
Article 7	Payment of Taxes	11.11	Severability

8.1.6	Payment Obligation	Article 13	Data and Security
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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. Promptly upon expiration of this Agreement, or promptly upon receipt by Contractor of notice of termination of this Agreement, Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any Deliverables, work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City.

## **Article 9 Rights in Deliverables**

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

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

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

10.1 **Laws Incorporated by Reference.** The full text of the laws listed in this Article 10, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Article and elsewhere in the Agreement (“Mandatory City Requirements”) are available at [http://www.amlegal.com/codes/client/san-francisco\\_ca/%20](http://www.amlegal.com/codes/client/san-francisco_ca/%20).

### **10.2 Governmental Conduct Related Contractual Obligations.**

10.2.1 **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 City if it becomes aware of any such fact during the term of this Agreement.

**10.2.2 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 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.

**10.2.3 Limitations on Contributions.** By executing this Agreement, Contractor acknowledges its obligations under Section 1.126 of the City’s Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves; (ii) a candidate for that City elective office; or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve (12) months after the date City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of Contractor’s board of directors; Contractor’s chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than ten percent (10%) in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract and has provided the names of the persons required to be informed to the City department with whom it is contracting.

### **10.3 Employment Related Contractual Obligations.**

**10.3.1 Local Business Enterprise and Non-Discrimination in Contracting Ordinance.** Contractor shall comply with all applicable provisions of San Francisco Administrative Code Chapter 14B (“LBE Ordinance”). Contractor is subject to the enforcement and penalty provisions in Chapter 14B.

**10.3.2 Minimum Compensation Ordinance.** San Francisco Labor and Employment Code Article 111 applies to this Agreement. Contractor shall pay covered employees no less than the minimum compensation required by Article 111, including a

minimum hourly gross compensation, compensated time off, and uncompensated time off. Contractor is subject to the enforcement and penalty provisions in Article 111. Information about and the text of Article 111 is available on the web at <http://sfgov.org/olse/mco>. Contractor is required to comply with all of the applicable provisions of Article 111, irrespective of the listing of obligations in this Section. By signing and executing this Agreement, Contractor certifies that it complies with Article 111.

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

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

**10.3.5 Reserved (Working with Minors).**

**10.3.6 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.

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

10.3.8 **Nondiscrimination in the Provision of Employee Benefits.** San Francisco Labor and Employment Code Article 131.2 applies to this Agreement. Contractor does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in Article 131.2.

10.4 **Environmental Related Contractual Obligations.**

10.4.1 **Reserved (Packaged Water Prohibition).**

10.4.2 **Tropical Hardwood and Virgin Redwood Ban.** Pursuant to San Francisco Environment Code Section 804(b), 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.

10.4.3 **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.

10.4.4 **Reserved (Sugar-Sweetened Beverage Prohibition).**

10.4.5 **Reserved (Slavery Era Disclosure).** Contractor shall comply with San Francisco Administrative Code Chapter 12Y, San Francisco Slavery Era Disclosure Ordinance, including but not limited to Contractor's affirmative duty to research and disclose evidence of Contractor, its parent or subsidiary entity, or its Predecessor Company's Participation in the Slave Trade or receipt of Profits from the Slave Trade. Contractor is subject to the enforcement and penalty provisions in Chapter 12Y.

10.5 **Reserved (Nonprofit Contractor Obligations).**

**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:	Robert J. Gonzales, Jr. Power Regulatory Compliance Manager, Hetch Hetchy Water San Francisco Public Utilities Commission 525 Golden Gate Ave, San Francisco, CA 94102 rjgonzales@sfgwater.org 209-814-7370
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To Contractor:	Catrina Martin VP of Operations and Strategy Archer Energy Solutions, LLC 12042 SE Sunnyside Road, Suite 292, Clackamas, Oregon 97015 c.martin@archerint.com (801) 903-3102
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Any notice of default or data breach must be sent by certified mail or other trackable written communication, and also by e-mail, with the sender using the receipt notice feature. Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party at least ten (10) days prior to the effective date of such change. If email notification is used, the sender must specify a receipt notice.

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

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

11.2.2 Contractor shall provide technical assistance to City when responding to reasonable accommodation requests from City employees respecting their use of the information content and technology (“ICT”) and/or Services provided under this Agreement.

**11.2.3 Reserved (Web and Mobile Content Accessibility)**

**11.3 Incorporation of Recitals.** The matters recited in the Recitals section of this Agreement are a substantive portion of this Agreement and are hereby incorporated into and made part of this Agreement.

**11.4 Sunshine Ordinance.** Contractor acknowledges that this Agreement and all City records related to its formation, Contractor’s performance of Services, and City’s payment may be subject to the California Public Records Act, (California Government Code § 7920.000 et seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state, or local law.

**11.5 Modification of this Agreement.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.

**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. The city may elect, in its sole discretion, to participate in informal dispute resolution proceedings. Disputes will not be subject to binding arbitration. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of City. Neither Party will be entitled to legal fees or costs for matters resolved under Section 11.6.

**11.6.2 Government Code Claim Requirement.** No suit for money or damages may be brought against City until a written claim therefor has been presented to and rejected by 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 without regard to conflict of law provisions. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

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

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

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

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

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

against the Party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

11.13 **Order of Precedence.** If the Appendices to this Agreement include any Contractor terms, Contractor agrees that in the event of any discrepancy, inconsistency, gap, ambiguity, or conflict in language between City's terms and Contractor's terms, City's terms shall take precedence. Any hyperlinked terms included in Contractor's terms shall have no legal effect.

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

11.15 **No Third-Party Beneficiaries.** The representations, warranties and other terms contained herein are for the sole benefit of the Parties hereto and their respective successors and permitted assigns, and they shall not be construed as conferring any rights on any other persons.

## **Article 12 Department Specific Terms**

12.1 **Reserved.**

## **Article 13 Data and Security**

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

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

13.1.2 **City Data; Confidential Information.** In the performance of Services, Contractor may have access to, or collect on City's behalf, City Data, which may include proprietary or Confidential Information that if disclosed to third parties may damage City. If City discloses proprietary or Confidential Information to Contractor, or Contractor collects such information on City's behalf, such information must be held by Contractor in

confidence and used only in performing the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary or Confidential Information.

**13.2 Reserved (Payment Card Industry (“PCI”) Requirements).**

**13.3 Reserved (Business Associate Agreement).**

**13.4 Management of City Data.**

**13.4.1 Use of City Data.** Contractor agrees to hold City Data received from, or created or collected on behalf of, City, in strictest confidence. Contractor shall not use or disclose City Data except as permitted or required by the Agreement or as otherwise authorized in writing by City. Any work by Contractor or its authorized subcontractors using, or sharing or storage of, City Data outside the United States is prohibited, absent prior written authorization by City. Access to City Data must be strictly controlled and limited to Contractor’s staff assigned to this project on a need-to-know basis only. City Data shall not be distributed, repurposed or shared across other applications, environments, or business units of Contractor. Contractor is provided a limited non-exclusive license to use City Data solely for performing its obligations under the Agreement and not for Contractor’s own purposes or later use, provided, however, that no City Data may be used by Contractor to train, modify or improve any Artificial Intelligence Systems or Models without City’s prior written consent, which may be withheld or withdrawn at City’s sole discretion. Nothing herein shall be construed to confer any license or right to City Data, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third-party. Unauthorized use of City Data by Contractor, subcontractors or other third-parties is prohibited. For purpose of this requirement, the phrase “unauthorized use” means the data mining or processing of data and/or machine learning from the data, stored or transmitted by the service, for unrelated commercial purposes, advertising or advertising-related purposes, or for any purpose that is not explicitly authorized other than security or service delivery analysis.

**13.4.2 Disposition of City Data.** Except as otherwise provided for in this Agreement, upon City’s request, termination or expiration of this Agreement, or the expiration of any required document retention period or litigation hold, Contractor shall promptly, but in no event later than thirty (30) calendar days, return all City Data given to, or collected or created by Contractor on City’s behalf, which includes all original media. Once Contractor has received written confirmation from City that the City Data has been successfully transferred to City, Contractor shall, within ten (10) business days, securely dispose, clear, purge, and/or physically destroy, all copies of all City Data from its servers, files, hosted environments used in performance of this Agreement (including subcontractors’ environments), work stations used to process or produce the data, and any other work files stored by Contractor in whatever medium. Contractor shall provide City with written certification that such secure disposal occurred within five (5) business days of the disposal. Secure disposal shall be accomplished by “clearing,” “purging” or “physical

destruction,” in accordance with National Institute of Standards and Technology (NIST) Special Publication 800-88 or most current industry standard.

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

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

13.7 **Cybersecurity Risk Assessment.** If a Cybersecurity Risk Assessment (“CRA”) was required before entering the Agreement, Contractor must complete an annual CRA to demonstrate that it has maintained the data privacy and information security program required for City contractors. If Contractor does not satisfactorily complete an annual CRA, the City shall have the right, without further obligation or liability to Contractor, to terminate this Agreement or exercise any of its other remedies hereunder. Any failure by Contractor to comply with this Section shall be a material breach of this Agreement.

## **Article 14 Appendices**

14.1 **Appendices.** The following appendices (“Appendices” in the plural and each an “Appendix” in the singular) are hereby attached and incorporated into this Agreement by reference as though fully set forth herein:

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

## **Article 15 MacBride And Signature**

15.1 **MacBride Principles – Northern Ireland.** The provisions of San Francisco Administrative Code Chapter 12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, Contractor confirms that Contractor has read and understood that 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**

Recommended by:

**Archer Energy Solutions, LLC**

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

\_\_\_\_\_  
**Catrina Martin**  
**VP of Operations and Strategy**

City Supplier Number: **0000003467**

Approved as to Form:

David Chiu  
City Attorney

By: \_\_\_\_\_  
**Camille Stough**  
Deputy City Attorney

Approved:  
Sailaja Kurella  
Director of the Office of Contract Administration,  
and Purchaser

By: \_\_\_\_\_  
Name: \_\_\_\_\_

## **Appendix A - Scope of Services**

### **1. Project Description**

Contractor to assist with HHWP's NERC, WECC, CAISO, and CPUC regulatory compliance programs. The primary role of the Contractor will be to perform; staff augmentation; readiness assessment; matter expert (SME) training; on-site audit/spot check support; compliance process review, documentation and controls; risk management consultancy; cyber vulnerability assessment (CVA); functional registration review; services for regulatory issues. The Contractor will work under the direction of the HHWP NERC Compliance Manager.

### **2. Description of Services**

The primary role of the Contractor will be to provide as-needed support to HHWP in meeting their obligations to the NERC/WECC Reliability Standards and CPUC regulations, including but not limited to: (1) staffing and maintaining HHWP's NERC/WECC Compliance Program; (2) readiness assessment; (3) Subject Matter Expert (SME) training; (4) on-site audit/spot check support; (5) compliance process review, documentation and controls; (6) risk management consultancy; (7) cyber vulnerability assessments (CVAs); (8) functional registration review; and (9) services for regulatory issues.

Contractors shall provide qualified personnel for professional services to support operation and management of the HHWP Division as-needed.

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

#### **TASK 1 STAFF AUGMENTATION**

- Provide resources to HHWP to support the needs of their NERC Compliance Program. HHWP may be requesting the contractor to provide a Compliance Manager, CIP Expert and O&P Expert for their NERC/WECC Compliance Program. Given the maturity of HHWP's program, full-time support of these positions may be required.
- Contractor may be asked to provide electrical engineering to support PRC, MOD, TOP and TPL NERC/WECC Reliability Standards.
- Contractor may be asked to provide network programming services.
- Any other staff augmentation needs to support HHWP's Compliance Program.

#### **TASK 2 READINESS ASSESSMENTS**

- Contractor will utilize NERC/WECC audit procedures to assess the City's strict compliance with all applicable existing and future registrations. Contractor will work with the City staff to help review and assess compliance documentation and plans for the NERC requirements that are applicable to the City.

- The review period for each standard will cover the date the standard was last reviewed by the Compliance Enforcement Authority (CEA) through the date of the assessment. Where a standard has not yet been reviewed by the CEA, the assessment will go back to the mandatory and enforceable date.
- In addition to the reliability standards, the Consultant will utilize Compliance Application Notices (CAN), public notices, adopted interpretations, and Reliability Standard Audit Worksheets (RSAW) where appropriate to determine compliance.
- The City will identify the evidence that it believes supports compliance to each of the requirements. The Contractor may request specific information based on its experience of appropriate documentation. City staff will provide the information to the Contractor prior to the on-site work.

### **TASK 3 SME TRAINING**

- Contractor will prepare and conduct training sessions to train SME's in providing testimony during audits. The Contractor will subsequently provide practice sessions for the SME's to practice what they have learned. The Contractor will provide direct feedback to the SME's. The Contractor will provide input to compliance staff on the scheduling of SME's for the audit.

### **TASK 4 ON-SITE AUDIT/SPOT CHECK SUPPORT**

- Contractor will provide on-site support for NERC audits and spot checks as scheduled by the WECC, which includes accompanying SMEs during questioning to provide support as needed, identifying areas where the auditors exceed the scope of the standards or the audit, assisting standard owners and compliance staff with additional data requests from the auditors, and consulting with standard owners and compliance staff on issues brought up during the audit.

### **TASK 5 COMPLIANCE PROCESS REVIEW, DOCUMENTATION AND CONTROLS**

- Contractor will assist in the development of policies, procedures, business workflows and processes as requested. The Contractor will review documentation developed by SME's for sufficiency and provide quality improvement recommendations including recommendations for automation. The Contractor will assist the SME's in completing the RSAWs and other documentation related to data requested by NERC or WECC.
- Provide expertise in best practices of procedural approach (i.e. what works and what can be administrated effectively and efficiently).
- Provide expertise in the documentation, implementation, and evaluation of

HHWP's Preventative, Detective and Corrective Internal Controls used to meet NERC/WECC compliance obligations.

- Contractor will perform risk management assessments, evaluation of controls, and assist HHWP in submitting their Internal Controls Evaluation with the WECC.

#### **TASK 6 RISK MANAGEMENT CONSULTANCY**

- Contractor will perform risk management assessments, evaluation of controls, and assist HHWP in submitting their Internal Controls Evaluation with the WECC.

#### **TASK 7 CYBER VULNERABILITY ASSESSMENT (CVA)**

- Contractor will perform a CVA that meets or exceeds the requirements specified in the CIP standards. Contractor will provide the City with a comprehensive report that identifies all vulnerabilities and details how each applicable CIP requirement was met.

#### **TASK 8 FUNCTIONAL REGISTRATION REVIEW**

- Provide as-needed support for functional registration review.
- Provide as-needed support should the City be required to register for additional NERC functional registrations (e.g., Distribution Provider or Inverter Based Resource (IBR GO or IBR GOP)).

#### **TASK 9 SERVICES FOR REGULATORY ISSUES**

- Provide advance warning, guidance, and potential implementation issues and solutions associated with the issuance of new or revised NERC or WECC Reliability Standards.

### **3. Social Impact Partnership**

#### **A. Terms and Conditions.**

1. Contractor shall provide its Social Impact Partnership (SIP) Commitments during the term of the Agreement. The representations, warranties, and other terms contained in Contractor's SIP Proposal Response Form (SIP Proposal) will be the basis for a SIP Projection Plan and a SIP Annual Work Plan, but are for the sole benefit of the parties hereto and shall not be construed as conferring any rights on any other persons or entities. (Capitalized terms not defined herein are defined in SFPUC Social Impact Partnership Rules and Regulations and/or the Request for Proposals).
2. Providing SIP Commitments is a deliverable, zero-dollar task. Contractor may not allocate or include any hours or dollars in Contractor's costs for the services under the Agreement in order to perform or deliver the

voluntarily proposed SIP Commitments. Contractor shall fund the SIP Commitments independently and such funding shall neither be tied to, nor dependent upon, SFPUC funds or sources of funding, receivable from SFPUC, including retention associated with the Agreement. This requirement of independent funding includes direct financial contributions and any funding related to the performance or delivery of the SIP Commitments. The provision of SIP Commitments does not entitle Contractor to additional work beyond the services specified within the Agreement.

3. Contractor shall commence performance of the SIP Commitments promptly after issuance of the Notice of Contract Award (NCA) for the Agreement and SIP kick-off meeting. SIP Commitments performed as part of previous contracts or prior to Contractor being awarded the Agreement cannot count towards Contractor's SIP Commitments for the Agreement. If Contractor has established programs or plans that are consistent with the SIP Program Areas described in the Request for Proposals (RFP), Contractor may continue those programs as part of its SIP Commitments and will be given credit for activities that are performed following the issuance of the NCA by the SFPUC and after the approval of SIP Projection Plan and Annual Work Plan.
4. Contractor's progress on delivering SIP Commitments must keep pace with Contractor's progress and completion of the underlying contractual term. If the SFPUC's SIP Program team determines that Contractor's delivery of SIP Commitments is 10% or more behind the progress and completion of the underlying contractual term, the City, in its sole discretion, may deem Contractor in breach of the Agreement.
5. Depending on the phase of completion of Contractor's work under the Covered Contract, the City's progressive remedies for Contractor's breach may include, without limitation : (1) Requiring Contractor to submit a corrective action plan; (2) withholding progress payments equal to the amount of undelivered SIP commitments; (3) withholding progress payments from amounts due and owing under the Covered Contract up to 100% of the value of SIP Commitments; (4) assessing actual damages in the amount equal to the total value of undelivered SIP Commitments, plus liquidated damages equal to 10% of the total SIP Commitment value (5) temporarily revoking non-compliant Contractor's eligibility for SIP Commitment bonus points for future Covered Contracts. See SFPUC Social Impact Partnership Rules and Regulations (SIP Rules and Regulations) at Rule 5.
6. If Contractor fails to complete its SIP Commitments, the SFPUC may withhold the value of the uncompleted SIP Commitments and deduct said amount from the sum the SFPUC owes to Contractor for performance of its

work. If the SFPUC imposes actual or liquidated damages as a remedy against Contractor for non-compliance, the Controller shall withhold the damages assessed until such time as either Contractor has conceded to or acquiesced in the assessment or, in the event of an appeal, there is a determination no longer subject to judicial review. The Controller shall then deposit the amount withheld into a special account which shall be created for the sole purpose of receiving such funds. The funds deposited into this account shall be distributed by the Controller in accordance with the original SIP Commitments and by the process set forth in the SIP Rules and Regulations.

7. If Contractor fails to perform any of its SIP Commitments, in addition to the actual damages, the Contractor shall be liable for liquidated damages in an amount equal to 10% of the total value of unmet SIP Commitments.
8. When City amends a Covered Contract that will result in an increase to the Covered Contract amount, the SFPUC will require that the Contractor propose a proportional increase to its SIP Commitments for the Covered Contract. Such increase shall be proportional to the increase to the Covered Contract amount under the amendment. The Contractor must propose how it intends to allocate the proportional increase in its SIP Annual Work Plan. The SFPUC staff will discuss the foregoing revision to the SIP Annual Work Plan with the Contractor after the amendment is approved. Contractor shall be obligated to deliver the increased SIP Commitment(s) at no additional cost to the SFPUC
9. Without in any way limiting the City's other indemnity rights under this Agreement, Contractor shall save, keep, hold harmless, and fully indemnify the City and any of its officers or employees from all damages, costs, or expenses in law or equity, or claims for same, that may at any time arise from performance of SIP Commitments. Contractor shall bear sole responsibility and liability, if any, for any breach of the SIP Program provisions of its Covered Contract or San Francisco Administrative Code Chapter 21F.

## **B. Project Team**

Stacy Bresler shall serve as the Executive in Charge to manage Contractor's SIP Commitments and provide fiduciary oversight. The Executive in Charge shall ensure that the SIP Commitments outlined in the Social Impact Partnership Commitments Table below are delivered to the specific geographic area(s) as specified in the solicitation, ensuring transparency and accountability. The Executive in Charge shall work with the SIP Coordinator, Michelle Carter, to organize, plan, track, measure, and report on Contractor's SIP Commitments.

## **C. SIP Commitments.**

Contractor shall provide \$106,000 in direct financial contributions and \$10,050 in volunteer hours. Contractor commits to a minimum total contribution of \$116,050 over the term of the Agreement as stated in Contractor’s SIP Proposal Response Form and the Social Impact Partnership Commitments Table below.

**Social Impact Partnership Commitments Table**

SIP Program Area	Direct Financial Contributions	Volunteer Hours	Volunteer Hour (Fixed rate \$150)	Value of Volunteer Hours	Total Contribution
Job Exposure, Training, and Internships	\$ 30,000.00	20	\$ 150.00	\$ 3,000.00	\$ 33,000.00
Small Business Support	\$ 0.00	0	\$ 150.00	\$ 0.00	\$ 0.00
Public Education	\$ 30,000.00	14	\$ 150.00	\$ 2,100.00	\$ 32,100.00
Environment and Community Health	\$ 46,000.00	33	\$ 150.00	\$ 4,950.00	\$ 50,950.00
<b>TOTAL COMMITMENTS</b>					<b>\$ 116,050.00</b>

**D. Beneficiaries.**

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

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

Beneficiary, the definition of City shall include any other municipal/local, county, state, or federal jurisdiction.

A Beneficiary must be independent of the Contractor and its subcontractor(s) (at any tier) and their respective officers and employees. No Contractor or subcontractor officer or employee or Relative of an officer or employee may own, control, or manage a Beneficiary.

#### **E. Accountability and Deliverables.**

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

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

##### **1. SIP Work Plans.**

###### **i. SIP Projection Plan.**

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

###### **ii. SIP Annual Work Plan.**

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

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

##### **2. SIP Commitments and Reporting.**

Contractors must submit annually a SIP Annual Work Plan, and regular, bi-annual, SIP Program performance reports to the SFPUC.

Contractors shall submit all reports, required documentation, and details regarding key performance indicators to the SFPUC via the online portal (SIP Portal): [www.sfpuc.org/SIPreporting](http://www.sfpuc.org/SIPreporting).

Reports submitted without corresponding documentation will not be accepted. Contractors must complete reporting at the end of each reporting period, including

if there are no activities. Failing to report and/or no response by the specified deadlines will be considered non-compliance and subject the Contractor to corrective action.

The biannual reporting periods are as follows:

**Q1/Q2 Biannual Report** for SIP Commitments delivered between July 1 to December 31, and all required documentation.

Reporting deadline: January 31.

**Q3/Q4 Biannual Report** for SIP Commitments delivered between January 1 to June 30, and all required documentation.

Reporting deadline: July 31.

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

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

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

Any proposed changes to the SIP Commitments as set forth herein shall be submitted in writing for review by the SFPUC SIP Program team.

## **F. Statements of Understanding.**

Contractor understands and accepts that:

- 1.** Contractor is bound by all instructions and requirements in the RFP for the SIP Proposal Response Form and the [SIP Rules and Regulations](#), as may be amended.
- 2.** Contractor's SIP Commitments must directly benefit the communities, neighborhoods, and/or residents served by or impacted by the SFPUC.
- 3.** SIP Commitments must provide support through financial donations and/or volunteer hours to or through Beneficiaries (as that term is defined in Administrative Code Section 21F.2 and SIP Rules and Regulations).
- 4.** SIP Commitments are separate from and in addition to any regulatory or legal requirements related to the Agreement.
- 5.** Contractor must deliver its SIP Commitments at no cost to the SFPUC.

6. Contractor is contractually obligated to deliver the total commitment amount listed in the Social Impact Partnership Commitments Table in the Agreement.
  7. Only activities commenced after the first NCA for the Agreement is issued and approval of SIP Projection and Annual Work Plan will count towards the fulfillment of Contractor's SIP Commitments.
  8. Contractor is obligated to comply with SFPUC's SIP Commitments reporting requirements.
  9. These reporting requirements may be adjusted over the duration of the agreement due to Program and system improvements.
- G. Contractor shall provide all of the SIP Commitments, consistent with all of the terms of Contractor's SIP Commitment Table, which is incorporated herein by this reference. Should there be any conflicts or discrepancies between the language in this section and Contractor's SIP Proposal Response Form, the language of this section shall prevail as Contractor's and SFPUC's final mutual understanding and agreement.

#### **4. General Obligations**

The HHWP Power Regulatory Compliance Manager will manage the contract capacity and assign and approve individual Task Orders, as needed.

The awarded Proposer shall be required to submit a semi-annual progress report to the HHWP Power Regulatory Compliance Manager on all Task Order assignments. A format for the semi-annual report will be presented at the Contract kick-off meeting. This format will include updates on each Task Order's scope activities, schedule, original budget and monthly expenditures by firm and LBE compliance reports. Please note that key team members will be expected to be available to work onsite in Moccasin for extended periods of time (ranging from 30% time onsite during non-audit periods, to 75% onsite during readiness audit, and audit periods).

#### **5. Project Evaluation**

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

#### **6. Reports**

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

**7. Department Liaison**

In performing the Services provided for in this Agreement, Contractor's liaison with the SFPUC will be Robert J. Gonzales, Jr..

**8. 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.

**9. Task Orders**

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

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

## Appendix B - Calculation of Charges

As part of Contractor's proposal dated July 10, 2025, Contractor submitted proposed billing rates, attached hereto as Appendix B-1, Fee Schedule, for the requested tasks identified in Appendix A, Scope of Services, which are incorporated herein by this reference.

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

**1. Billing Rates.** Contractor's billing rates and each and every staff classification as stated in Appendix B-1, Fee Schedule, will be the billing rates for the listed individuals. The individual staff billing rate may not exceed the lowest rate charged to any other governmental entity, within the geographic location of the services performed. Billing rates may be adjusted annually. The first adjustment may be made no earlier than the release of the January Consumer Price Index (CPI) increase published in the first calendar year following the proposal due date of July 15, 2025. The amount of the adjustment is limited to a maximum of the CPI annual percentage change increase (San Francisco Bay Area for Urban Wage Earners and Clerical Workers) for the previous calendar year. Any staff addition billing rate will be limited to the \$300 per hour increase plus applicable CPI adjustments.

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

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

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

**3. Effective Overhead and Profit Rate.** The Effective Overhead and Profit Rate (EOPR) for PRO.0327 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, Fee Schedule. The EOPR will also apply to all amendments to the Agreement. If a new subcontractor is added during the duration of the

Agreement, the new individual firm multiplier can be no more than the EOPR.

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

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

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

- Rental vehicle or car share: traveler must select the most economical contractor and type of vehicle available and acquire any commercial rate or government discount available when the vehicle is rented.
- Personal vehicle use: The SFPUC will pay the Contractor on a per mile basis as established by the United States Internal Revenue Service and only for that portion of travel that is outside the nine Bay Area counties and non-routine. Should the travel begin or end on a normal workday, the Contractor must subtract commuting mileage from total mileage to calculate reimbursable mileage. The Contractor must submit to the SFPUC an approved mileage log and expense report with its monthly invoices.
- Project vehicle rental/lease cost, gasoline, tolls, and parking. The Contractor must request the project vehicle and receive pre-authorization by SFPUC staff. The SFPUC will only reimburse the business portion of the vehicle use. Vehicle mileage log and an expense report are required for consideration of reimbursement. Since auto insurance is already part of the Agreement, the SFPUC will not reimburse any additional insurance costs. Commuting to Moccasin from the Contractor’s temporary home is not eligible for reimbursement.
- Lodging, meals, and incidentals will be reimbursed at the GSA per-diem rate for the location of the nearest city to the task location.
- Airfare expenses to and from the consultant’s home to Moccasin, including parking, and shuttle/taxi expenses subject to GSA per-diem rates.
- Specialty printing (“specialty,” as used herein, shall mean large volume printing and color printing and requires prior written approval from SFPUC project staff and documentation of the written approval from the SFPUC must be included with the invoice);
- Task-related permit fees;

- Task-specific safety equipment;
- Specialty communication equipment rental (e.g. radio system that works inside tunnels);
- Expedited courier services when requested by SFPUC staff; and
- Special services, used solely for the benefit of the project, such as electrical testing, hazardous material testing, laboratory testing, deliveries, and coring/drilling services. All such services must receive prior written approval of SFPUC project staff and documentation of the written approval by the SFPUC must be included with the invoice.

Only the ODCs listed above are eligible for reimbursement. Compensation for all other ODCs shall be included in the Contractor's EOPR with no separate compensation or reimbursement. Expenses not eligible for reimbursement include, but are not limited to:

- All other travel expenses such as parking, bridge tolls, public transit, vehicle mileage within the nine Bay Area counties, and travel from the Contractor's home office to SFPUC facilities not requested by the SFPUC;
- Routine and/or commute travel from the 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, communication devices, and electronic equipment;
- All meals, including refreshments and working lunches with SFPUC staff;
- Equipment to be used by SFPUC staff;
- Office equipment, vehicle purchase and any automotive-related equipment; and
- Postage and courier services that are not requested by SFPUC staff.

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

**5. Subcontractor Fees.**

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

subcontractors' actual labor costs.

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

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

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

**Invoice Supporting Documentation:**

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

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

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

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

## Appendix B-1 Fee Schedule

**Fee Schedule for PUC.PRO.0327: HHWP NERC Compliance and Audit Support**  
*Archer Energy Solutions, LLC*

### OVERHEAD AND PROFIT SCHEDULE *(All Proposers to complete)*

Firms  [A]	Staff Classification/Title  [B]	Name of Proposed Staff Person (First Name, Last Name)  [C]	Base Rate (\$/hour)  [D]	Firm's Overhead and Profit Rate (OPR, or "multiplier")  [E]	Billing Rate (\$/hour, not to exceed \$300/hour)  [F]=[D]x[E]	Estimated Participation per CMD Form 2 or 2A (% of Contract)  [G]	Contribution to Effective Overhead and Profit Rate  [H]=[G]x[E]
Archer Energy Solutions, LLC	Project Manager	Stacy Bresler	\$ 185.00	2.50	\$275.00	84%	2.10
	O&P Key Team Member	Brian Pauling	\$ 185.00		\$275.00		
	CIP Key Team Member	Jason Smith	\$ 140.00		\$275.00		
	Compliance Administrative Support	Catrina Martin	\$ 97.32		\$200.00		
	Principal Consultant	Scott Downey	\$ 200.00		\$300.00		
	Principal Consultant	Leonard Chamberlin	\$ 185.00		\$275.00		
	Principal Consultant	Brian Haney	\$ 182.58		\$275.00		
	Principal Consultant	Karl Perman	\$ 175.00		\$275.00		
	Senior Consultant	Greg Coventry	\$ 170.00		\$275.00		
	Consultant	Thierry Ngassa	\$ 160.00		\$275.00		
Stantec Consulting Services Inc.	Senior Project Manager	Nancy Barnes	\$ 102.01	3.40	\$300.00	8%	0.27
	Project Manager	Helen Matzick	\$ 39.02		\$132.67		
	Asset Manager	Erin McLachlan	\$ 85.82		\$291.79		
	Senior Associate Engineering Manager	Alex Moldovan	\$ 101.22		\$300.00		
	Senior Project Engineer	Paul Moldovan	\$ 81.34		\$276.56		
	Senior Substation Engineer	Gary Patel	\$ 107.88		\$300.00		
	Senior Distribution Engineer	Saeid Sadeghi	\$ 63.77		\$216.82		
	Transmission Engineer	Pavlo Voloshyn	\$ 93.29		\$300.00		
	Substation Protection Engineer	Ori Roundtree	\$ 60.04		\$204.14		
	Lead Archaeologist	Alisa Reynolds	\$ 94.64		\$300.00		
	Senior Archaeologist	Jenn Blake	\$ 56.74		\$192.92		
PowerPros	Project Manager	Kris Moynihan	\$ 166.67	1.50	\$250.01	8%	0.12
	Principal Engineer	Bogdan Klimkiv	\$ 160.00		\$240.00		
	Power Test Tech	Blake Hawkins	\$ 160.00		\$240.00		
	Power Test Tech	Craig Zahara	\$ 133.33		\$200.00		
	Power Test Tech	Cameron Bradford	\$ 133.33		\$200.00		
	Project Administration	John Cano	\$ 100.00		\$150.00		
[Company Name]					\$0.00		0.00
					\$0.00		
					\$0.00		
					\$0.00		
					\$0.00		
[Company Name]					\$0.00		0.00
					\$0.00		
					\$0.00		
					\$0.00		
					\$0.00		
<b>Effective Project Overhead &amp; Profit Rate (EOPR):</b>						<b>2.49</b>	
Maximum Allowable Effective Project Multiplier = 3.20							