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

Agreement between the City and County of San Francisco and

Parsons Water & Infrastructure Group, Inc.

PUC.PRO.0104 Southeast Water Pollution Control Plant Program Construction Management Services

This Agreement is made this 18th day of June, 2018, in the City and County of San Francisco ("City"), State of California, by and between Parsons Water & Infrastructure Inc., 44 Montgomery Street, Suite 880, San Francisco, California 94104 ("Contractor") and City.

Recitals

WHEREAS, the San Francisco Public Utilities Commission ("Department," or "SFPUC") wishes to retain the services of a qualified consultant to provide Program Construction Management oversight of Sewer System Improvement Program ("SSIP") projects located at the Southeast Water Pollution Control Plant ("SEP"); and

WHEREAS, this Agreement was competitively procured as required by San Francisco Administrative Code Chapter 6 through a Request for Proposal ("RFP") on November 6, 2017, seeking proposals from parties interested in providing the Services; and in which City selected Contractor as the highest qualified scorer pursuant to the RFP; and

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

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

WHEREAS, the City's Civil Service Commission approved Contract number 44553 - 16/17 on November 22, 2017; and

WHEREAS, approval for this Agreement was obtained from the San Francisco Public Utilities Commission by Resolution Number 18-0027 on February 13, 2018; and

WHEREAS, approval for this Agreement was obtained from the San Francisco Board of Supervisors by Resolution Number 86-18 on April 3, 2018;

Now, THEREFORE, the parties agree as follows:

Article 1 Definitions

The following definitions apply to this Agreement:

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

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

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

1.4 "Contractor" or "Consultant" means Parsons Water & Infrastructure Inc., 44 Montgomery Street, Suite 880, San Francisco, California 94104.

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

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

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

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

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

Article 2 Term of the Agreement

2.1 The term of this Agreement shall commence on the later of: (i) July 1, 2018; or (ii) the Effective Date and expire on June 30, 2028, unless earlier terminated as otherwise provided herein.

2.2 The City shall have the sole discretion to extend the Agreement term by modifying this Agreement as provided in Section 11.5, "Modification of this Agreement."

Article 3 Financial Matters

3.1 **Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation.** This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the

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

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

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

3.3 **Compensation.**

3.3.1 **Payment.** Contractor shall provide an invoice to the City on a monthly basis for Services completed in the immediate preceding month, unless a different schedule is set out in Appendix B, "Calculation of Charges." Compensation shall be made for Services identified in the invoice that the General Manager of the SFPUC, in his or her sole discretion, concludes has been satisfactorily performed. Payment shall be made within 30 calendar days of receipt of the invoice, unless the City notifies the Contractor that a dispute as to the invoice exists. In no event shall the amount of this Agreement exceed **Thirty-Five Million Dollars ($35,000,000)**. The breakdown of charges associated with this Agreement appears in Appendix B, "Calculation of Charges," and Appendix B-1, "Fee Schedule," attached hereto and incorporated by reference as though fully set forth herein. In no event shall the City be liable for interest or late charges for any late payments except as set forth in Administrative Code Section 6.22(j).

3.3.2 **Payment Limited to Satisfactory Services.** Contractor is not entitled to any payments from City until SFPUC approves Services, including any furnished Deliverables, as satisfying all of the requirements of this Agreement. Payments to Contractor by City shall not excuse Contractor from its obligation to replace unsatisfactory Deliverables, including equipment, components, materials, or Services even if the unsatisfactory character of such Deliverables, equipment, components, materials, or Services may not have been apparent or detected at the time such payment was made. Deliverables, equipment, components, materials

and Services that do not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay at no cost to the City.

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

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

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

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

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

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

3.3.7 **Subcontractor Prompt Payment.** Except as otherwise required by Chapter 14B of the Administrative Code, and consistent with the provisions of Section 6.42(f) of the Administrative Code, Contractor shall pay its subcontractors within seven calendar days after receipt of each progress payment from the City, unless otherwise agreed to in writing by both

Contractor and the subcontractor. In the event that there is a good faith dispute over all or any portion of the amount due on a progress payment from Contractor to a subcontractor, the Contractor may withhold the disputed amount, but shall pay the undisputed amount. If Contractor violates the provisions of Section 6.42(f), then Contractor shall pay to the subcontractor directly the penalty specified in Section 6.42(f).

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

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

3.6 **Payment of Prevailing Wages.**

3.6.1 **Covered Services.** Services to be performed by Contractor under this Agreement may involve the performance of trade work covered by the provisions of Section 6.22(e) [Prevailing Wages] of the Administrative Code (collectively, "Covered Services"). The provisions of Section 6.22(e) of the Administrative Code are incorporated as provisions of this

Agreement as if fully set forth herein and will apply to any Covered Services performed by Contractor and its subcontractors.

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

3.6.3 **Subcontract Requirements.** As required by Section 6.22(e)(5) of the Administrative Code, Contractor shall insert in every subcontract or other arrangement, which it may make for the performance of Covered Services under this Agreement, a provision that said subcontractor shall pay to all persons performing labor in connection with Covered Services under said subcontract or other arrangement not less than the highest general prevailing rate of wages as fixed and determined by the Board of Supervisors for such labor or services.

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

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

3.6.6 **Certified Payrolls.** Certified payrolls shall be prepared pursuant to Administrative Code Section 6.22(e)(6) and California Labor Code Section 1776 for the period involved for all employees, including those of subcontractors, who performed labor in connection with Covered Services. Contractor and each subcontractor performing Covered Services shall submit certified payrolls to the City and to the DIR electronically. Contractor shall submit payrolls to the City via the reporting system selected by the City. The DIR will specify how to submit

certified payrolls to it. The City will provide basic training in the use of the reporting system at a scheduled training session. Contractor and all subcontractors that will perform Covered Services must attend the training session. Contractor and applicable subcontractors shall comply with electronic certified payroll requirements (including training) at no additional cost to the City.

3.6.7 **Compliance Monitoring.** Covered Services to be performed under this Agreement are subject to compliance monitoring and enforcement of prevailing wage requirements by the DIR and /or the OLSE. Contractor and any subcontractors performing Covered Services will cooperate fully with the DIR and/or the OLSE and other City employees and agents authorized to assist in the administration and enforcement of the prevailing wage requirements, and agrees to take the specific steps and actions as required by Section 6.22(e)(7) of the Administrative Code. Steps and actions include but are not limited to requirements that: (A) the Contractor will cooperate fully with the Labor Standards Enforcement Officer and other City employees and agents authorized to assist in the administration and enforcement of the Prevailing Wage requirements and other labor standards imposed on Public Works Contractor by the Charter and Chapter 6 of the San Francisco Administrative Code; (B) the Contractor agrees that the Labor Standards Enforcement Officer and his or her designees, in the performance of their duties, shall have the right to engage in random inspections of job sites and to have access to the employees of the Contractor, employee time sheets, inspection logs, payroll records and employee paychecks; (C) the Contractor shall maintain a sign-in and sign-out sheet showing which employees are present on the job site; (D) the Contractor shall prominently post at each job-site a sign informing employees that the project is subject to the City's Prevailing Wage requirements and that these requirements are enforced by the Labor Standards Enforcement Officer; and (E) that the Labor Standards Enforcement Officer may audit such records of the Contractor as he or she reasonably deems necessary to determine compliance with the Prevailing Wage and other labor standards imposed by the Charter and this Chapter on Public Works Contractors. Failure to comply with these requirements may result in penalties and forfeitures consistent with analogous provisions of the California Labor Code, including Section 1776(g), as amended from time to time.

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

Article 4 Services and Resources

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

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

4.3 **Subcontracting.**

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

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

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

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

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

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

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

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

4.7 **Reserved. (Liquidated Damages.)**

4.8 **Reserved. (Bonding Requirements.)**

Article 5 Insurance and Indemnity

5.1 **Insurance.**

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

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

(b) Commercial General Liability Insurance with limits not less than $10,000,000 each occurrence for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

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

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

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

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

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

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

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

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

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

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

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

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

5.2 **Indemnification**.

5.2.1 **General.**

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

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

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

(c) Contractor shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons arising directly or indirectly from the receipt by City, or any of its officers or agents, of Contractor's Services.

5.2.2 **Indemnification for Design Professionals.**

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

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

negligence, or willful misconduct of any Indemnitee or the contractors of any Indemnitee.

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

Article 6 Liability of the Parties

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

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

6.3 **Site Conditions and Safety.** It is understood that the City's construction contractors (hereinafter "General Contractor(s)") for the Sewer System Improvement Program's (SSIP) Phase 1 construction projects as set forth in Appendix A shall be responsible for the safety of persons and property for the respective worksite for their project pursuant to the General Contractor's construction contract with the SFPUC.

6.4 **Liability for Construction Means and Methods.** Contractor does not guarantee the performance and does not assume the duties of the General Contractor nor assumes responsibility for the General Contractor's failure to perform work in accordance with the construction documents. Additionally, Contractor's presence at the construction site, whether as onsite representatives or otherwise, does not relieve the General Contractors or any other entity of their obligations, duties and responsibilities, including, but not limited to, all construction methods, means, techniques, sequences, and procedures necessary for coordinating and completing the construction work in accordance with the construction documents and any health and safety precautions required by such construction work.

Article 7 Payment of Taxes

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

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

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

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

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

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

Article 8 Termination and Default

8.1 **Termination for Convenience.**

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

8.1.2 Upon receipt of the notice of termination, Contractor shall commence and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8.2 **Termination for Default; Remedies.**

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

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

3.5	Submitting False Claims	10.10	Alcohol and Drug-Free Workplace
4.5	Assignment	11.10	Compliance with Laws
Article 5	Insurance and Indemnity	13.1	Nondisclosure of Private, Proprietary or Confidential Information
Article 7	Payment of Taxes		

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

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

substantial part of Contractor's property; or (v) takes action for the purpose of any of the foregoing.

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

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

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

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

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

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

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

3.3.2	Payment Limited to Satisfactory Services	9.1	Ownership of Results
3.3.7	Subcontractor Prompt Payment	9.2	Works for Hire
3.4	Audit and Inspection of Records	11.6	Dispute Resolution Procedure

3.5	Submitting False Claims	11.7	Agreement Made in California; Venue
Article 5	Insurance and Indemnity	11.8	Construction
6.1	Liability of City	11.9	Entire Agreement
		11.10	Compliance with Laws
Article 7	Payment of Taxes	11.11	Severability
8.1.6	Payment Obligation	13.1	Nondisclosure of Private, Proprietary or Confidential Information

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

Article 9 Rights In Deliverables

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

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

Article 10 Additional Requirements Incorporated by Reference

10.1 **Laws Incorporated by Reference.** The full text of the laws listed in this

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

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

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

10.4 **Reserved.**

10.5 **Nondiscrimination Requirements.**

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

10.5.2 **Nondiscrimination in the Provision of Employee Benefits.** San Francisco Administrative Code 12B.2. Contractor does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section12B.2.

10.6 **Local Business Enterprise and Non-Discrimination in Contracting Ordinance.** Contractor shall comply with all applicable provisions of Chapter 14B ("LBE Ordinance"). Contractor is subject to the enforcement and penalty provisions in Chapter 14B. Contractor shall utilize LBE Subcontractors for at least **53%** of the Phase 1 Services (defined as $30.5 Million of the Total Actual Labor Cost plus Other Direct Costs as specified in Attachment B-1, Fee Schedule), except as otherwise authorized in writing by the Director of CMD. At the time that SFPUC further defines the Phase 2 Services (defined as the remaining $4.5 Million of

"Additional Unanticipated Services," as specified in Attachment B-1, Fee Schedule), CMD will apply a separate LBE subconsulting participation requirement for the Phase 2 Services based on the availability of LBEs to perform the newly defined scope of services. Contractor shall incorporate the requirements of the LBE Ordinance in each subcontract made in the fulfillment of Contractor's LBE subcontracting commitments.

10.7 **Minimum Compensation Ordinance**. Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P. Contractor is subject to the enforcement and penalty provisions in Chapter 12P. By signing and executing this Agreement, Contractor certifies that it is in compliance with Chapter 12P.

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

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

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

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

officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor must inform each such person of the limitation on contributions imposed by Section 1.126 and provide the names of the persons required to be informed to City.

10.12 **Reserved. (Slavery Era Disclosure.)**

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

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

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

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

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

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

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

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

10.18.1 Contractor shall comply with San Francisco Environment Code Chapter 8, which provides that except as expressly permitted by the application of Sections 802(b) and

803(b) of the San Francisco Environment Code, Contractor shall not provide any items to the City in performance of this contract which are tropical hardwoods, tropical hardwood wood products, virgin redwood or virgin redwood wood products. Contractor is subject to the penalty and enforcement provisions of Chapter 8.

10.19 **Preservative Treated Wood Products.** Contractor shall comply with the provisions of San Francisco Environment Code Chapter 13, which requires that each Contractor purchasing preservative-treated wood products on behalf of the City, shall only purchase such products from the list of alternatives adopted by the Department of the Environment pursuant to Section 1302 of Chapter 13, unless otherwise granted an exemption by the terms of that Chapter.

Article 11 General Provisions

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

To City: Alan Johanson
SSIP Deputy Director of Construction
San Francisco Public Utilities Commission
Construction Management Bureau
525 Golden Gate Avenue, 6th Floor
San Francisco, CA 94102
ajohanson@sfwater.org

To Contractor: Randy Bryan
Vice President
Parsons Water & Infrastructure Inc.
44 Montgomery Street, Suite 880 San
Francisco, CA 94104
Randy.w.bryan@parsons.com

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

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

11.3 **Reserved.**

11.4 **Sunshine Ordinance.** Contractor acknowledges that this Agreement and all records related to its formation, Contractor's performance of Services, and City's payment are subject to the California Public Records Act, (California Government Code §6250 et. seq.), and

the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.

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

11.6 **Dispute Resolution Procedure.**

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

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

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

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

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

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

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

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

11.13 **Order of Precedence.** Contractor agrees to perform the services described below in accordance with the terms and conditions of this Agreement, implementing task orders, the RFP, and Contractor's proposal dated **November 28, 2017.** The RFP and Contractor's proposal are incorporated by reference as though fully set forth herein. Should there be a conflict of terms or conditions, this Agreement and any implementing task orders shall control over the RFP and the Contractor's proposal.

Article 12 Department Specific Terms

12.1 **Reserved.**

Article 13 Data and Security

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

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

13.1.2 In the performance of Services, Contractor may have access to City's proprietary or confidential information, the disclosure of which to third parties may damage City. If City discloses proprietary or confidential information to Contractor, such information must be held by Contractor in confidence and used only in performing the Agreement. Contractor shall

exercise the same standard of care to protect such information as a reasonably prudent Contractor would use to protect its own proprietary or confidential information.

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

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

Article 14 MacBride And Signature

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

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

CITY

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

CONTRACTOR

Parsons Water & Infrastructure Inc.

Randy Bryan
Vice President
44 Montgomery Street, Suite 880
San Francisco, CA 94104

City Supplier ID: 0000013493

Approved as to Form:

Dennis J. Herrera
City Attorney

By: _____
Julie Veit
Deputy City Attorney

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

Appendix A
Scope of Services

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

1. Description of Services. The Contractor shall provide program construction management services for the Sewer System Improvement Program's (SSIP) Phase 1 construction projects that compose the Southeast Water Pollution Control Plant (SEP) Program. These projects include: Biosolids Digester Facilities Project, New Headworks Replacement Project, Primary and Secondary Clarifiers Upgrades, 521/522 and Disinfection Upgrades, Facility-Wide Distributed Controls System Upgrades, Seismic Reliability and Condition Assessment Improvements, Power Feed and Primary Switchgear Upgrades, and Oxygen Generation Plant 01.

These services include, but are not limited to, SEP Construction Management, SEP Construction Controls Management, SEP Construction Contracts Management, SEP Construction Risk Management, Safety Management, Environmental Compliance Services, Public Outreach and Communications, and SEP Supplier Quality Surveillance. The Contractor shall serve as the Program Construction Manager ("PCM") for the SEP Program and shall provide oversight and supervision to ensure that project construction management (CM) teams are conforming to the SFPUC's goals and requirements in accordance with the SSIP Construction Management Plan ("CM Plan"), Safety Approach, and CM Procedures. Additionally, the PCM's oversight and supervision will ensure SEP Program standardization, conformity, and consistency among all SEP project CM teams throughout the duration of SEP project construction.

The PCM will be required to provide fully qualified and highly experienced program CM personnel to support the City in overseeing, and successfully delivering, the SSIP Phase 1 construction work at the SEP. The CM personnel who will be responsible for undertaking the tasks as described below are as follows: SEP Program Construction Management Consultant Manager, SEP Construction Controls Manager, SEP Construction Contracts Manager, two (2) Safety Managers, Environmental Compliance Manager, Environmental Inspector, Specialty Environmental Monitor, Senior Outreach Liaison, Outreach Liaison, Process Engineer, and Administrative Document Control Specialist.

The Contractor shall be responsible for providing the program construction management functional duties as outlined in the CM Plan. The Contractor must perform these tasks in a manner that is consistent with the approach to Construction Management as described in the CM Plan. The CM Plan, as well as the Request for Proposals (PRO.0104) dated **November 6, 2017** (including all addenda), are hereby incorporated into this Agreement as if fully set forth herein.

TASK 1: SEP CONSTRUCTION MANAGEMENT

The SEP Program Construction Manager shall provide broad and strategic focus and integration across all project delivery elements including, but not limited to: assistance in developing top-

level execution strategies; program auditing and reporting functions; oversight of program-level construction schedule and cost controls, program-level risk management, and program-level safety management; recommendations for construction contracting strategies; recommendations for the allocation of contingencies; and ongoing alignment of top-level strategies to successfully achieve programmatic and technical requirements.

Other program construction management responsibilities include, but are not limited to, the following:

- Provide overall SEP program-level CM oversight and supervision to ensure that project CM teams are conforming to the SFPUC's goals and requirements in accordance with the CM Plan, Safety Approach, and CM Procedures, and to ensure program standardization, conformity, and consistency throughout the duration of SEP project construction.
- Support the SSIP Deputy Director for Construction by providing SEP program-level oversight and supervision of CM activities including, but not limited to: progress, cost, and schedule controls; auditing and reporting functions; construction administration services and construction contracts management; construction risk management; construction safety; project interface coordination; shutdown schedule coordination; review and analysis of construction changes and claims; environmental compliance services and assistance in coordinating with regulatory agencies; public outreach and communications; startup and commissioning; and closeout.
- Provide implementation and management of the CM Plan, Safety Approach, CM Procedures, and current project CM staffing plans and budgets, related contingencies, and escalation factors; continuously make recommendations for improvement and provide revisions as required and requested by the SSIP's Deputy Director of Construction.
- Use the SFPUC's Construction Management Information System (CMIS) to provide quality assurance (QA) on CMIS utilization by project CM teams in order to oversee program-level construction activities and develop construction status/progress reports for the SEP (and for other wastewater projects, as needed).
- Provide program-wide construction QA, including construction QA oversight of the individual SEP project CM teams.
- Review existing project quality control (QC) procedures, provide recommendations for improvement, assist with revisions as necessary, and ensure that all CM QC procedures are in place and are consistently being followed by the project CM teams.
- Identify program-level trends and potential problems; develop recovery plans as needed; set program priorities to ensure early identification and avoidance of future potential problems; and identify and recommend revisions to policies and procedures required to successfully manage the SEP Program.
- Provide recommendations for and assistance with the management of program-specific challenges at the SEP, e.g., site constraints, nature of construction work, planned and unplanned shutdowns, the need to maintain Plant facility operations, etc.
- Participate in partnering, dispute resolution advisor (DRA), and dispute review board

(DRB) meetings.

- Coordinate with the SEP project CM teams as necessary to update the San Francisco Municipal Transportation Agency (SFMTA) regarding local traffic, transit, bicycle, and pedestrian issues.
- Assist the SSIP Deputy Director of Construction in developing scopes of work for the SEP program-level CM tasks, securing the resources necessary, and providing monthly status reports of all SEP program-level CM work to the SSIP Deputy Director of Construction.
- Develop a communication plan for onsite Plant Operations staff regarding any upcoming construction changes potentially impacting the SEP and its treatment processes.
- Provide SEP project CM teams guidance and support, as necessary, in alternative project delivery methods.
- Provide orientation and training, as necessary, on construction claims analyses, scheduling, and risk assessment to SFPUC staff and project CM teams.
- Provide as-needed process engineering support for Plant Operations staff.
- Provide specialized as-needed construction management support, e.g., system integration and instrumentation & control (I&C) support, for the upgrade of the distributed control systems located at the SEP.
- Provide construction site security for the program CM field trailer(s) on an as-needed basis.
- Provide as-needed support for project CM teams on existing CM business processes and workflows.
- Provide additional program CM services and/or staff, e.g., SSIP safety oversight or environmental compliance, on an as-needed basis and as requested by the SSIP Deputy Director for Construction.
- Perform special tasks related to SEP program-level CM implementation as requested by the SSIP Deputy Director for Construction.

TASK 2: SEP CONSTRUCTION CONTROLS MANAGEMENT

- Provide program-level construction schedule management:
    - Develop and maintain on a monthly basis an SEP Construction Program Master Schedule that integrates all individual SEP project construction schedules, including renewal & replacement (R&R) projects and how those projects interface with SSIP construction projects as well as facility shutdowns and maintenance requirements for the SEP.
    - Provide oversight and management of site access and logistics including, but not limited to, site security, traffic coordination, equipment deliveries coordination, staging, construction power/telecommunication/internet access, and look-ahead activities communicated to the public.
    - Prepare a monthly update of the Master Summary Schedule by working with and incorporating information from the project CM teams, which shall include analyses and monitoring of schedule and cost trends.

- Provide independent assessments of progress and forecasts at completion of schedule and cost.

- Administer program-level construction cost control:
  - Provide SEP program-level change management auditing and cost control support for the on-going review and analysis of major construction changes and claims, including forecasting SEP Program and project construction costs to completion; provide consistency of reporting to other SFPUC Program Controls.
  - Prepare cost estimates as necessary.
  - Provide detailed documentation in support of the cost estimate summary amounts.
  - Provide comprehensive review and assessment of the Program's contingency and escalation factors on a periodic basis and provide comprehensive reporting on findings.

- Provide program-level document control and records management services:
  - Oversee SEP program-level document control including, but not limited to, management of construction document tracking through the use of the SFPUC's CMIS.
  - Coordinate with the SEP project CM teams to ensure Contract Documents are in good order and clearly marked to record accurately the Work as actually constructed ("as-built"), including changes, adjustments, and other information relative to the Work as actually constructed.
  - Ensure that building information modeling (BIM) standards and procedures for the SEP projects are set and in place for program-level use.

TASK 3: SEP CONSTRUCTION CONTRACTS MANAGEMENT

- Provide SEP program-level oversight of construction administration services. (See Section 2.2.9 of the CM Plan for greater detail.)
- Provide SEP program-level oversight of construction contracts management. (See Section 2.2.11 of the CM Plan for greater detail.)
- Oversee compliance with City ordinances and requirements.

TASK 4: SEP CONSTRUCTION RISK MANAGEMENT

- Assist with the development and administration of a program risk management plan for the Phase 1 construction projects located at the SEP.
  - Audit and review the project-specific risk management plans prepared by the project CM teams to assess the overall SEP Program risk exposure.
  - Incorporate risk management CM procedures into the overall SEP Program CM approach.
  - Assist with the risk management of SEP shutdown schedules, including providing troubleshooting assistance for Plant Operations staff.
  - Assist with ongoing assessments of general program risks and perform formal risk

assessments as requested.

- Develop comprehensive program-level risk management reports to apprise SFPUC senior management and various stakeholders of SEP Program risk.

TASK 5: SAFETY MANAGEMENT

- Provide safety oversight to ensure that the project CM teams are enforcing all safety requirements of the construction contractors and that the SSIP Safety Approach is being implemented.
- Assist in communicating with onsite Plant Operations staff regarding any upcoming construction changes potentially impacting the SEP and its treatment processes.
- Provide as-needed safety oversight on SSIP projects located at other wastewater facilities.

TASK 6: ENVIRONMENTAL COMPLIANCE SERVICES

- Provide environmental compliance oversight and management, inspections, and specialty monitoring services for the SEP to ensure that the project CM teams are enforcing the implementation of all environmental requirements in the specifications pursuant to the projects' Mitigation and Monitoring Reporting Plans (MMRPs), SFPUC's Standard Construction Measures, and/or regulatory permits.
    - Coordinate with project CM teams regarding project schedules, budgets, compliance issue resolution, staffing, and other issues.
    - Maintain quality and consistency of implementation of environmental procedures and inspections and monitoring and associated reporting across projects.
    - Schedule environmental inspectors and specialty monitors.
    - Review Contractor Submittals and RFIs.
    - Review and obtain any requisite approvals related to Change Orders, including coordinating any supplemental environmental review that may be required.
    - Prepare environmental section of SEP program-level CM reports.
    - Develop and coordinate environmental trainings.
    - Conduct regular environmental inspections to document compliance with requirements and/or identify issues and facilitate their resolution.
    - Conduct as-needed specialty monitoring (i.e., for biological and archaeological resources).
    - Draft regulatory reports for the SFPUC BEM Environmental Construction Compliance Coordinator (ECCC).

TASK 7: PUBLIC OUTREACH AND COMMUNICATIONS

- Assist the SSIP Communications Manager in consolidating and coordinating all SEP public and contractor outreach efforts.
- Serve as an extension of the SFPUC Communications Team and provide a broad range of communication services needed for the successful delivery of the construction projects at the SEP including, but not limited to, direct community engagement, broader stakeholder

engagement, media engagement, and coordination within the SFPUC and with other City Agencies.

- Provide creative/graphical services to develop a wide variety of materials including, but not limited to, collateral, door hangers, advisories, fact sheets, and highly engaging visuals including infographics.
- Serve as immediate point of contact for all public, agency, and media inquiries related to SEP construction activities and potentially serve as the SEP construction spokesperson.
- Participate in District-wide (District 10) construction coordination meetings and track construction activities of other projects in close proximity to SEP.
- Track and record all inquiries, complaints, and engagements with the public and provide weekly reports to SFPUC Communications Team.
- Utilize drone and/or stationary cameras to record construction progress for use in communications, consistent with City policies.
- Participate in weekly construction meetings related to SEP construction projects and provide weekly updates on construction activities and a 3-week look ahead to be used for website, social media, and other collateral materials.
- Develop and distribute construction/traffic advisories to the SEP construction contact list, local media, and other interested stakeholders.
- Assist in identifying potential communication challenges that may not have been anticipated and resetting outreach priorities after review Public Information and Community Relation Plans.
- Assist in providing strategic guidance and as-needed support to the SEP project CM teams responsible for addressing complaints and concerns associated with construction activities.
- Assist in assessing and evaluating the SEP program-level CM communication message and refining the communication strategy as necessary; execute the SSIP "brand" to the fullest extent in order to capture the attention of stakeholders, elected/appointed officials, various interest groups, contractors, and trade organizations and to build support for the SEP.
- Assist in auditing the existing SSIP CM website to ensure that it includes features that have been beneficial in other complex, multi-year construction programs.
- Assist in making the SSIP CM website as responsive as possible in "real-time" to the public.

TASK 8: SEP SUPPLIER QUALITY SURVEILLANCE (SQS)

- Provide supplier quality surveillance (SQS) services as assigned by the SFPUC.

TASK 9: COMMUNITY BENEFITS

Terms and Conditions

Following issuance of the first Notice to Proceed ("NTP") for this Agreement, Contractor commits to providing the Community Benefits Commitments detailed in its Community Benefits Proposal ("CB Submittal") during the term of the Agreement. Contractor's Community Benefits Commitments shall be funded independently by the Contractor and shall not be tied to or

dependent upon SFPUC funds or sources of funding, receivables from SFPUC, or retention associated with this Agreement. The representations, warranties, and other terms contained in the Contractor's CB Submittal will be the basis for a Community Benefit Plan, but are for the sole benefit of the parties hereto and shall not be construed as conferring any rights on any other persons or entities.

The Community Benefits is a deliverable, zero-dollar task. No hours or dollars should be allocated or included in Contractor's costs for the services under this Agreement in order to perform or deliver the voluntarily proposed Community Benefits Commitments. If the Contractor commits any funds to delivering the Community Benefits Commitments it proposes, all such funds must be independent of SFPUC funding or any dollars associated with this Agreement. If the Contractor commits to contributing any funds to performing or delivering the Community Benefits Commitments related to this task, such funds may not be dependent in any way upon the receipt of SFPUC funding, including release of retention, etc. The provision of Community Benefits Commitments by the Contractor does not entitle Contractor to additional work beyond that specified within the Agreement.

The Contractor's Community Benefits Commitments shall be performed prospectively during the term of the Agreement, following issuance of the first NTP under this Agreement.

Commitments performed as part of previous contracts or prior to Contractor being awarded the Agreement cannot be used as part of Contractor's Community Benefits Commitments for this Agreement. If a Contractor has established programs or plans that are consistent with the Community Benefits areas described in the RFP, Contractor may continue those programs as part of its Community Benefits Commitments and will be given credit for activities that are performed following the issuance of the first NTP for this Agreement.

Project Team

Robert Davis shall serve as the Executive in Charge to manage the Contractor's Community Benefits Commitments and provide fiduciary oversight. The Executive in Charge shall ensure that the Community Benefits Commitments listed in the table below are delivered to the communities that they are intended to benefit in a transparent and accountable manner. The Executive in Charge shall work with the Community Benefits Coordinator, Lillie Sunday, to organize, plan, track, measure, and report on Contractor's Community Benefits Commitments. The Executive in Charge is responsible for coordinating the senior management of Contractor's subconsultants to provide benefits to the community should such subconsultants choose to participate.

Community Benefits Commitments

Contractor shall provide **$545,000** in direct financial contributions, **$255,000** in volunteer hours, and **$200,000** in in-kind contributions. Contractor commits to a minimum contribution of **$1,000,000** over the term of this contract as stated in the Community Benefits Summary Table below.

Community Benefits Summary Table

				(A)	(B)	(C)	(D)	(E)	(F)
Community Benefit Priority Area	**Description of Community Benefit Program Area or Partner**	**Expected Outcomes**	**Timetable & Duration**	**Direct Financial Contribution**	**Volunteer Hours**	**Volunteer Hourly Rate (rate is standard-ized and cannot be changed)**	**Total Value of Volunteer Hours (B x C)**	**In-Kind Contributions**	**Total Contributions (A + D + E)**
Environmental Health	3rd Street Youth Clinic	Promote health and wellness programs within Bayview schools and community	2018-2028	$75,000	200	$150	$30,000	$25,000	$130,000
Education	100% College Prep Young Community Developers (YCD)	Provide scholarship and mentorship program for Bayview Youth	2018-2028	$200,000	600	$150	$90,000	$25,000	$315,000
Innovations in Corporate Social Responsibility	Bayview Merchants' Association Bayview Renaissance Entrepreneurship Center	Develop and implement a Local Business Utilization Strategy and Campaign	2018-2028	$100,000	500	$150	$75,000	$75,000	$250,000
Innovations in Corporate Social Responsibility	TBD	Secure and renovate a "problem property" into a viable business for the neighborhood	2018-2028	$100,000	400	$150	$60,000	$75,000	$235,000
All Categories	TBD	Provide support for Bayview nonprofits	2018-2028	$70,000	TBD	$150	TBD	TBD	$70,000
TOTAL				**$545,000**	**1,700**		**$255,000**	**$200,000**	**$1,000,000**

Accountability and Deliverables

Contractors shall provide a description of the accountability methods to ensure that the proposed CB activities will be delivered in a transparent and accountable manner. To maximize transparency and accountability, a process must be proposed that will assist in independently verifying that such funds and resources were delivered to the intended beneficiaries.

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

1. Community Benefits Plan and Timeline

    - Contractor shall meet with the SFPUC External Affairs Community Benefits and Social Responsibility Manager (or his/her designee) to develop a Community Benefits Plan and Timeline within three (3) months of issuance of the first NTP. The Community Benefits Plan will provide details regarding community partnerships, expenditures, a schedule, and timelines related to the CB Submittal.

    - Contractor is invited to meet once a year thereafter or as needed with the SFPUC External Affairs Community Benefits and Social Responsibility Manager (or his/her designee) during the term of the Agreement to discuss the work plan, timelines, partners, strategic delivery, scale, and performance necessary to ensure the commitments maximize collective resources and positive impact.

2. Community Benefits Commitments and Reporting

    - Contractor shall deliver the proposed Community Benefits Commitments specified in the CB Submittal and the Community Benefits Plan. Any proposed changes to the Community Benefits Commitments as set forth in the final Agreement shall be submitted in writing for review by the SFPUC External Affairs Community Benefits and Social Responsibility Manager.

    - Contractor shall submit biannual progress reports to the SFPUC External Affairs Community Benefits and Social Responsibility Manager, which detail the geographic scope of commitment, activities and outcomes, key metrics, and the total number of hours, dollars, etc. contributed to-date. Progress reports are submitted on the last business day of the month following the close of 2nd and 4th business quarters. As part of the progress reports, Contractor shall also submit documents to substantiate that the Community Benefits Commitments and any funds associated therewith were delivered to the communities they were intended to benefit. These reporting requirements may be adjusted over the duration of the program due to system improvements.

    - Contractor shall submit an annual report documenting the culmination of their Community Benefits Commitments, beneficiaries, and outcomes for the year.

Statements of Understanding

Contract acknowledges that they agree to the following statements:

- Any of the Community Benefits Commitments that Contractor voluntarily commits to should directly benefit the communities, neighborhoods, and/or residents served by or impacted by the SFPUC.
- Commitments must support nonprofit, charitable, or related activities.
- Commitments shall not go to, nor benefit any City employee.
- Commitments must be delivered at zero-dollar cost to the SFPUC.
- Commitments are separate from and in addition to any regulatory or legal requirements related to the Agreement.
- The total commitment amount listed in the Community Benefits Summary Table in the final Agreement is considered binding.
- Only activities commenced after the first NTP for this Agreement is issued will count towards the fulfillment of Contractor's Commitments.
- Contractor commits to complying with SFPUC's reporting requirements.
- Contractor commits to the Terms and Conditions set forth in this section and in the Agreement.

Contractor shall provide all of the Community Benefits Commitments consistent with all of the terms of Contractor's Community Benefits Proposal dated **November 28, 2017**, which is incorporated herein by this reference. Should there be any conflicts or discrepancies between the language of this Agreement and the Contractor's Community Benefits Proposal, the terms of the language of the Agreement shall prevail as Contractor and SFPUC's final mutual understanding and agreement.

All written Deliverables, including any copies, shall be submitted on recycled paper and printed on double-sided pages to the maximum extent possible.

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

3. Department Liaison. In performing the Services provided for in this Agreement, Contractor's liaison with the SFPUC will be **Alan Johanson** ("SSIP Deputy Director of Construction").

Task Orders. Performance of the service under this Agreement will be executed according to a task order process, and Contractor is required to provide adequate quality control processes and Deliverables in conformance with the technical requirements of the task order. The SSIP Deputy Director of Construction will initially identify tasks and request the Contractor to propose a project scope, sub tasks, staffing plan, LBE utilization, schedule, deliverables, budget and costs to

complete the task in accordance with Appendix B. All costs associated with the development of the scope of work for each task order shall be borne by Contractor. A final task order will be negotiated between the SSIP Deputy Director of Construction and the Contractor and then submitted for approval. However, as provided in the RFP, the budget, if applicable, identified for tasks is an estimate, and the City reserves the right to modify the applicable budget allocated to any task as more specific information concerning the task order scope becomes available.

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

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

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

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

Appendix B
Calculation of Charges

As part of Contractor's proposal dated **November 28, 2017**, Contractor submitted proposed billing rates, attached hereto as Appendix B-1, Fee Schedule, for the requested tasks identified in Appendix A, Scope of Services which are incorporated herein by this reference.

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

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

1. Billing Rates. Contractor's billing rates and each and every staff classification as stated in Appendix B-1 will be the billing rates for the listed individuals. The billing rate may not exceed the lowest rate charged to any other governmental entity except the City and County of San Francisco. Billing rates will be fixed for the first two years of the contract, and may be adjusted annually thereafter. The first adjustment may be made no earlier than the second anniversary of the effective start date as indicated in the original Notice of Contract Award letter. The amount of the adjustment is limited to a maximum of the CPI annual percentage change increase (San Francisco Bay Area for Urban Wage Earners and Clerical Workers) for the previous calendar year. No increase, including the annual CPI adjustment, is allowed to billing rates exceeding **$220 per hour**, unless the SSIP Deputy Director of Construction authorizes an increase to the rate in writing. Additionally, no increase, including the annual CPI adjustment, is allowed to billing rates exceeding **$240 per hour** for the following three (3) Key Team Members: SEP Program Construction Management Consultant Manager, SEP Construction Controls Manager, and SEP Construction Contracts Manager.

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

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

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

3. Effective Overhead and Profit Rate. The Effective Overhead and Profit Rate (EOPR) for PRO.0104 is **2.468**. The EOPR or Individual Firm Overhead and Profit Rate will apply to the

billing rate of all individuals not listed in Appendix B-1. The EOPR will also apply to all amendments to the Agreement. If a new subcontractor is added during the duration of the Agreement, the new individual firm multiplier can be no more than the EOPR.

4. Other Direct Costs (ODC). Direct reimbursable expenses shall include actual direct costs (with no markup) of expenses directly incurred in performing the work. All ODCs are subject to pre-approval in writing by the SSIP Deputy Director of Construction.

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

- Task-specific out-of-town travel as requested by SFPUC ("out-of-town" shall mean outside the nine Bay Area counties: San Francisco, Alameda, Marin, Santa Clara, Sonoma, Contra Costa, Napa, San Mateo, and Solano). Out-of-town travel must be non-routine;
  - Rental vehicle: Traveler must select the most economical contractor and type of vehicle available and acquire any commercial rate or government discount available when the vehicle is rented;
  - Personal vehicle use: The contractor will be paid per mile as established by the United State Internal Revenue Service and only for that portion of travel that is outside the nine Bay Area counties and non-routine. Should the travel begin or end on a normal workday, the contractor shall subtract commuting mileage from total mileage to calculate reimbursable mileage. The contractor shall submit to the City an approved mileage log and expense report with its monthly invoices;
  - Project vehicle rental/lease cost, gasoline, tolls and parking. The project vehicle must be requested and pre-authorized by the SFPUC staff. The SFPUC will only reimburse the business portion of the vehicle use. Vehicle mileage log and expense report are required for consideration of reimbursement. Since auto insurance is already part of the contract, no additional insurance will be reimbursed. Commuting to Moccasin from contractor's temporary home is not eligible for reimbursement;
- Specialty printing ("specialty" as used herein shall mean large volume printing and color printing and requires prior written approval by SFPUC project staff and documentation of the written approval by the SFPUC must be included with the invoice);
- Task-related permit fees;
- Task-specific safety equipment and expedited courier services when requested by SFPUC staff; and
- Specialty services and items[1] used solely for the benefit of the SEP Program, such as field trailer maintenance and phone/internet services, golf carts for SEP transportation between construction projects, noise/dust/vibration monitoring equipment and maintenance services, two-way radios, etc. All such services and items must receive

[1] These reimbursements are contingent upon City accounting policies.

prior written approval by SFPUC project staff and documentation of the written approval by the SFPUC must be included with the invoice.

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

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

5. Subcontractor make-up and documentation. Second-tier and pass-through subcontracting is prohibited. Additional subcontractors may be added to the Contractor team after obtaining pre-authorization by the SSIP Deputy Director of Construction and the Contract Monitoring Division (CMD).

6. Subcontractor Fees:

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

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

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

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

the SFPUC.

Invoice Supporting Documentation:

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

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

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

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

Appendix B-1
Fee Schedule

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Task Number	Task Summary	Staff Position/Role	Name of Proposed Staff Person	Firm	SFPUC Estimated Number of Hours	Base Hourly Rate ($/hour)	Base Labor Cost ($) = [F]*[G]	Firm Overhead and Profit Rate (OPR, or "Multiplier") – one per firm	Billing Rate ($/hour) = [G]*[I]	Actual Labor Cost ($) = [F]*[J]
[A]	[B]	[C]	[D]	[E]	[F]	[G]	[H]	[I]	[J]	[K]
1	SEP Construction Management	SEP PCM Consultant Manager	Randall Bryan	Parsons	14,352	$85.71	$1,230,167	2.800	$240	$3,444,469
		ADCS*	Flora Haghi	EMS	9,216	$60.00	$552,960	2.400	$144	$1,327,104
		Process Engineer	Don Stern	Parsons	4,440	$65.26	$289,754	2.800	$183	$811,312
				TASK 1 TOTAL	28,008	–	$2,072,882	–	–	$5,582,885
2	SEP Construction Controls Management	SEP Construction Controls Manager	Wahid Mansour	EMS	10,764	$100.00	$1,076,400	2.400	$240	$2,583,360
				TASK 2 TOTAL	10,764	–	$1,076,400	–	–	$2,583,360
3	SEP Construction Contracts Management	SEP Construction Contracts Manage	Emad Mansour	EMS	14,256	$100.00	$1,425,600	2.400	$240	$3,421,440
				TASK 3 TOTAL	14,256	–	$1,425,600	–	–	$3,421,440
4	SEP Construction Risk Management	SEP Construction Controls Manager	Wahid Mansour	EMS	3,588	$100.00	$358,800	2.400	$240	$861,120
				TASK 4 TOTAL	3,588	–	$358,800	–	–	$861,120
5	Safety Management	Safety Manager (No. 1)	Ernie Schulze	Parsons	15,320	$70.00	$1,072,400	2.800	$196	$3,002,720
		Safety Manager (No. 2)	Steve Nash	EMS	10,080	$87.00	$876,960	2.400	$209	$2,104,704
				TASK 5 TOTAL	25,400	–	$1,949,360	–	–	$5,107,424
6	Environmental Compliance Services	Environmental Compliance Manager	Brenda Peters	Parsons	15,840	$75.24	$1,191,817	2.800	$211	$3,337,089
		Environmental Inspector	Charlie Rome	Albion	15,840	$85.00	$1,346,400	1.500	$128	$2,019,600
		Specialty Environmental Monitor	T'shaka Toure	Sonika	4,000	$85.23	$340,920	2.200	$188	$750,024
				TASK 6 TOTAL	35,680	–	$2,879,137	–	–	$6,106,713
7	Public Outreach and Communications	Senior Outreach Liaison	Nicole Ziman	The Their Group	14,640	$57.66	$844,142	2.700	$156	$2,279,184
		Junior Outreach Liaison	Nicolas Townes	Katz and Associates	14,640	$41.61	$609,170	2.900	$121	$1,766,594
				TASK 7 TOTAL	29,280	–	$1,453,313	–	–	$4,045,779
8	SEP Supplier Quality Surveillance	ADCS*	Flora Haghi	EMS	6,144	$60.00	$368,640	2.400	$144	$884,736
				TASK 8 TOTAL	6,144	–	$368,640	–	–	$884,736
				TOTAL	153,120	–	$11,584,132	–	–	$28,593,456

*Note: ADCS = Administrative Document Control Specialist

Effective Overhead and Profit Rate *(EOPR, or Average Multiplier)* 2.468

(= Total Actual Labor Cost / Total Base Labor Cost)

Maximum Allowable Effective Overhead and Profit Rate = 2.70

Examples of Other Direct Costs (ODCs):

	Description
1	Travel expenses within San Francisco (example only)
2	Field trailer maintenance services (example only)
3	Field trailer phone and internet services (example only)
4	Specialty computer hardware or software (example only)
5	Field equipment (example only)
6	Reprographics and mail (example only)
7	Laboratory tests (example only)

TOTAL COST BREAKDOWN

Total Actual Labor Cost:	$28,593,456
Total Other Direct Costs (ODCs):	$1,000,000
Total Costs for Additional Unanticipated Services:	$4,500,000
Markup on Subconsultant Actual Labor Cost: (Maximum Allowable: 5% of subconsultant actual labor costs)	$899,889
TOTAL COST (NOT TO EXCEED $35,000,000)	**$34,993,345**