San Francisco Water Power Sewer
Services of the San Francisco Public Utilities Commission

Infrastructure Division
525 Golden Gate Avenue, 8th Floor
San Francisco, CA 94102

June 29, 2020

David Gutierrez
GEI Consultants, Inc.
180 Grand Avenue, Suite 1410
Oakland, CA 94612
Email: dgutierrez@geiconsultants.com

RE: 1) Notice of Contract Award
2) Executed Agreement between the City and County of San Francisco Public Utilities Commission and GEI Consultants, Inc.

Dear Mr. Gutierrez,

This letter provides a ***Notice of Contract Award*** for the following task order:

Contract ID Number: PRO.0138.B (1000018353)

Contract Title: Engineering Services for Dams and Reservoirs

Effective Date: June 29, 2020 to May 19, 2031

Amount: Total value of contract not to exceed $11,000,000.00

Work may not be charged against the Contract ID Number. Invoices must be charged against specific task orders only after a *Notice to Proceed* has been issued.

Sincerely,

Rosiana Angel
Infrastructure Budget and Payment Processing

Enclosure: Executed Agreement
cc: Calvin Huey

File/ /PRO.0138.B - NCA

London N. Breed Mayor
Ann Moller Caen President
Francesca Vietor Vice President
Anson Moran Commissioner
Sophie Maxwell Commissioner
Tim Paulson Commissioner
Harlan L. Kelly, Jr. General Manager

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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

GEI Consultants, Inc.

PUC.PRO.0138.B Engineering Services for Dams and Reserviors

This Agreement is made this 5th day of May, 2020, in the City and County of San Francisco ("City), State of California, by and between GEI Consultants, Inc. located at 180 Grand Avenue, Suite 1410, Oakland, CA 94612 ("Contractor") and City.

Recitals

WHEREAS, the San Francisco Public Utilities Commission ("Department" or "SFPUC") wishes to retain the assistance of professional engineering firms to perform planning, design, and, possibly, engineering support of improvements to various SFPUC Dam and Reservoir facilities in the Water and Power Enterprises; and

WHEREAS, this Agreement was competitively procured as required by San Francisco Administrative Code Chapter 6.40 through a Request for Proposal ("RFP") issued on September 12, 2019, in which City selected Contractor as the highest qualified scorer pursuant to the RFP; and

WHEREAS, the Local Business Entity ("LBE") subcontracting participation requirement for this Agreement is 7%

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 41310-18/19 on May 20, 2019;

WHEREAS, the SFPUC awarded this Agreement to Contractor under Resolution No. 20-0029 on February 11, 2020;

WHEREAS, the San Francisco Board of Supervisors approved this Agreement by Resolution No. 135-20 on April 18, 2020;

Now, THEREFORE, the parties agree as follows:

Article 1 Definitions

The following definitions apply to this Agreement:

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

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

1.5 "Contractor" or "Consultant" means GEI Consultants, Inc. located at 180 Grand Avenue, Suite 1410, Oakland, CA 94612 .

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

1.7 "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.

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

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

1.10 "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) May 20, 2020; or (ii) the Effective Date and expire on May 19, 2031, unless earlier terminated as otherwise provided herein.

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

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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 **Eleven Million dollars and no cents ($11,000,000)**. The breakdown of charges associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. A portion of payment may be withheld until conclusion of the Agreement if agreed to by both parties as retainage, described in Appendix B. In no event shall City be liable for interest or late charges for any late payments.

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

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

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

3.3.5 **LBE Payment and Utilization Tracking System**. Contractor must submit all required payment information using the City's Financial System 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 City's Financial System with each payment request may result in the Controller withholding 20% of the payment due pursuant to that invoice until the required payment information is provided. Following City's payment of an invoice, Contractor has ten calendar days to acknowledge using the City's Financial System that all subcontractors have been paid. Self-Service Training for suppliers is located at this link: https://sfcitypartner.sfgov.org/Training/TrainingGuide.

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

(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).

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

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

3.6 **Payment of Prevailing Wages.**

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

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

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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

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the administration and enforcement of the Prevailing Wage requirements and other labor standards imposed on Public Works Contractor by the Charter and Chapter 6 of the San Francisco Administrative Code; (B) the Contractor agrees that the Labor Standards Enforcement Officer and his or her designees, in the performance of their duties, shall have the right to engage in random inspections of job sites and to have access to the employees of the Contractor, employee time sheets, inspection logs, payroll records and employee paychecks; (C) the contractor shall maintain a sign-in and sign-out sheet showing which employees are present on the job site; (D) the Contractor shall prominently post at each job-site a sign informing employees that the project is subject to the City's Prevailing Wage requirements and that these requirements are enforced by the Labor Standards Enforcement Officer; and (E) that the Labor Standards Enforcement Officer may audit such records of the Contractor as he or she reasonably deems necessary to determine compliance with the Prevailing Wage and other labor standards imposed by the Charter and this Chapter on Public Works Contractors. Failure to comply with these requirements may result in penalties and forfeitures consistent with analogous provisions of the California Labor Code, including Section 1776(g), as amended from time to time.

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

3.7 **Apprentices.**

3.7.1 Contractor and its subcontractors of every tier that provide Covered Services under this Agreement (as defined in Section 10.20 above) shall, as a material term of the Agreement, comply with the requirements of the State Apprenticeship Program (as set forth in the California Labor Code, Division 3, Chapter 4 [commencing at Section 3070], and Section 1777.5 of the Labor Code) and Administrative Code Section 6.22(n). Contractor shall be solely responsible for securing compliance with Labor Code Section 1777.5 for all apprenticeable occupations.

3.7.2 Contractor shall include in all of its subcontracts the obligation for subcontractors to comply with the requirements of the State Apprenticeship Program.

3.7.3 Should Contractor fail to comply with the apprenticeship requirements of Labor Code section 1777.5, Contractor shall be subject to the penalties prescribed in Labor Code Section 1777.7. The interpretation and enforcement of Labor Code Section 1777.5 shall be in accordance with rules and procedures prescribed by the California Apprenticeship Council.

3.7.4 Contractor, if not signatory to a recognized apprenticeship training program under Labor Code, Chapter 4, shall provide to the City with all progress payment requests, starting with the second such request, satisfactory evidence that it has contributed

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to the appropriate apprenticeship fund(s). Contractor shall require its subcontractors who are not signatories to provide such evidence to the City as a condition precedent for qualifying for payment from the City.

3.7.5 Contractor shall comply with all requests by the City to provide proof that Contractor and all of its subcontractors at every tier providing Covered Services are in compliance with the State Apprenticeship Program, including proof that Contractor and all of its subcontractors at any tier providing Covered Services contributed to the appropriate apprenticeship fund(s).

Article 4 Services and Resources

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

4.2 **Qualified Personnel**. Contractor shall 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.

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

4.4.1 **Independent Contractor**. For the purposes of this Section 4.4, "Contractor" shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its

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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 this Section 4.4 shall be solely limited to the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, Contractor agrees to indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorneys' fees, arising from this section.

4.5 **Assignment**. The Services to be performed by Contractor are personal in character. Neither this Agreement, nor any duties or obligations hereunder, may be directly or indirectly assigned, novated, hypothecated, transferred, or delegated by Contractor, or, where the Contractor is a joint venture, a joint venture partner, (collectively referred to as an "Assignment") unless first approved by City by written instrument executed and approved in the same manner as this Agreement in accordance with the Administrative Code. The City's approval of any such Assignment is subject to the Contractor demonstrating to City's reasonable satisfaction that the proposed transferee is: (i) reputable and capable, financially and otherwise,

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of performing each of Contractor's obligations under this Agreement and any other documents to be assigned, (ii) not forbidden by applicable law from transacting business or entering into contracts with City; and (iii) subject to the jurisdiction of the courts of the State of California. A change of ownership or control of Contractor or a sale or transfer of substantially all of the assets of Contractor shall be deemed an Assignment for purposes of this Agreement. Contractor shall immediately notify City about any Assignment. Any purported Assignment made in violation of this provision shall be null and void.

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

Article 5 Insurance and Indemnity

5.1 **Insurance.**

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

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

(b) Commercial General Liability Insurance with limits not less than $5,000,000 each occurrence 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 $1,000,000 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 for 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 name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

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

5.1.4 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

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in coverages, except for non-payment for which no less than ten (10) days' notice. Notices shall be sent to the City address set forth in Section 11.1, entitled "Notices to the Parties."

5.1.5 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.

5.1.6 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.

5.1.7 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.

5.1.8 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.

5.1.9 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.

5.1.10 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 and Defense Obligations For Design Professionals**.

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

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Contractor's proportionate percentage of fault as determined by a Court of competent jurisdiction.

5.2.2 **Indemnity Obligations**. To the fullest extent permitted by law, Contractor shall indemnify and hold harmless Indemnitees from and against any and all Liabilities, including but not limited to those for Damages or Litigation Expenses specified in Section 5.2.1.

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

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

Article 6 Liability of the Parties

6.1 **Liability of City**. CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 3.3.1, "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 **Liability for Incidental and Consequential Damages**. Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions.

Article 7 Payment of Taxes

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

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to verify Contractor's compliance with any State requirements for reporting sales and use tax paid by City under this Agreement.

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

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

7.2.2 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a "change in ownership" for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor 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.

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

Article 8 Termination and Default

8.1 Termination for Convenience

8.1.1 City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term 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.

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

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

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

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

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

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

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

8.1.3 Within 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

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specifically listed in Section 8.1.3. Such non-recoverable costs include, but are not limited to, anticipated profits on the Services under this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under Section 8.1.3.

8.1.5 In arriving at the amount due to Contractor under this Section, City may deduct: (i) all payments previously made by City for Services covered by Contractor's final invoice; (ii) any claim which City may have against Contractor in connection with this Agreement; (iii) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection 8.1.4; and (iv) in instances in which, in the opinion of 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	10.13	Working with Minors
Article 5	Insurance and Indemnity	11.10	Compliance with Laws
Article 7	Payment of Taxes	Article 13	Data and Security

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

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

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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(a)	Grant Funded Contracts – Disallowance		9.2	Works for Hire

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3.4	Audit and Inspection of Records		11.6	Dispute Resolution Procedure
3.5	Submitting False Claims		11.7	Agreement Made in California; Venue
Article 5	Insurance and Indemnity		11.8	Construction
6.1	Liability of City		11.9	Entire Agreement
6.3	Liability for Incidental and Consequential Damages		11.10	Compliance with Laws
Article 7	Payment of Taxes		11.11	Severability
8.1.6	Payment Obligation		Article 13	Data and Security

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

Article 9 Rights In Deliverables

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

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

Article 10 Additional Requirements Incorporated by Reference

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

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reference in this Article and elsewhere in the Agreement ("Mandatory City Requirements") are available at http://www.amlegal.com/codes/client/san-francisco_ca/ .

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

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

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

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 Sections12B.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.

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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 12.0% of the Services except as otherwise authorized in writing by the Director of CMD. Contractor shall incorporate the requirements of the LBE Ordinance in each subcontract made in the fulfillment of Contractor's LBE subcontracting commitments.

10.7 **Minimum Compensation Ordinance**. If Administrative Code Chapter 12P applies to this contract, Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P, including a minimum hourly gross compensation, compensated time off, and uncompensated time off. Contractor is subject to the enforcement and penalty provisions in Chapter 12P. Information about and the text of the Chapter 12P is available on the web at http://sfgov.org/olse/mco. Contractor is required to comply with all of the applicable provisions of 12P, irrespective of the listing of obligations in this Section. By signing and executing this Agreement, Contractor certifies that it complies with Chapter 12P.

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

10.9 **First Source Hiring Program.** Contractor must comply with all of the provisions of the First Source Hiring Program, 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 its obligations under section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of the City for the rendition of personal services, for the furnishing of any material,

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

10.12 **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 (Distribution of Beverages and Water.)**

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

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use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

10.19 **Reserved (Preservative Treated Wood Products.)**

Article 11 General Provisions

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

To City: Calvin Huey
San Francisco Public Utilities Commission
525 Golden Gate Avenue
San Francisco, CA 94102
chuey@sfwater.org

To Contractor: David Gutierrez
GEI Consultants, Inc.
180 Grand Avenue, Suite 1410
Oakland, CA 94612
dgutierrez@geiconsultants.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 **Incorporation of Recitals.** The matters recited above are hereby incorporated into and made part of this Agreement.

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

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

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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 (i) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (ii) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

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

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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 October 21, 2019. 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. If the Appendices to this Agreement include any standard printed terms from the Contractor, Contractor agrees that in the event of discrepancy, inconsistency, gap, ambiguity, or conflicting language between the City's terms and Contractor's printed terms attached, the City's terms shall take precedence, followed by the procurement issued by the department, Contractor's proposal, and Contractor's printed terms, respectively.

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

Article 12 Department Specific Terms

12.1 **Reserved**.

Article 13 Data and Security

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

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

13.1.2 **Confidential Information.** 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.)**

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

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13.4.1 **Access to City Data**. City shall at all times have access to and control of all data given to Contractor by City in the performance of this Agreement ("City Data" or "Data"), and shall be able to retrieve it in a readable format, in electronic form and/or print, at any time, at no additional cost.

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

13.4.3 **Disposition of Confidential Information**. Upon termination of Agreement or request of City, Contractor shall within forty-eight (48) hours return all Confidential Information which includes all original media. Once Contractor has received written confirmation from City that Confidential Information has been successfully transferred to City, Contractor shall within ten (10) business days purge all Confidential Information from its servers, any hosted environment Contractor has used in performance of this Agreement, work stations that were used to process the data or for production of the data, and any other work files stored by Contractor in whatever medium. Contractor shall provide City with written certification that such purge occurred within five (5) business days of the purge.

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

DocuSigned by:
F4A5909EE839451...

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

CONTRACTOR

GEI Consultants, Inc.

DocuSigned by:
EE8674D5837444F...

David Gutierrez
Project Manager

City Supplier Number: _____

Approved as to Form:

Dennis J. Herrera
City Attorney

By: DocuSigned by:
0BC11F915778410...

Randy Parent
Deputy City Attorney

Appendices
A: Scope of Services
B: Calculation of Charges

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Appendix A
Scope of Services

1. Description of Services. Contractor agrees to perform the following dam and reservoir planning and engineering design Services:

1. Civil Engineering
2. Electrical Engineering
3. Mechanical Engineering
4. Structural Engineering
5. Pipeline Engineering
6. Geotechnical/Geologic Engineering
7. Tunnel Engineering
8. Cost Estimating
9. Utilities Mapping and Coordination
10. Photogrammetry/Surveys
11. Materials Testing/Special Inspections
12. Quality Assurance Review
13. Peer Review/Independent Technical Review
14. PFMA and Risk Assessments
15. Other Specialized Services

Project Name: Cherry Valley Dam Spillway

Project Description

Cherry Valley Dam was built in 1956. The spillway includes a 334-feet wide ogee-type concrete weir that discharges into an unlined adjacent channel. The original design documents indicate that the spillway is rated for 52,000 cubic feet per second (cfs). However, significant erosion damage has been experienced below the dam with spillway releases below 1,800 cfs. This has included large scale erosion outside the lower portion of the spillway channel, as well as flooding of the Cherry Power Tunnel Adit and a campground downstream, creating a potentially hazardous condition for the dam, personnel and the public. SFPUC performed a recent condition assessment of the spillway, and a re-assessment of the Probable Maximum Flood (PMF) event shows a significant increase compared to the previous PMF estimate. The objective of this project is to improve the capacity of the existing spillway to provide safe passage of the new PMF.

Scope of work: The Consultant(s) will review all pertinent background information, NAR, and outlet works rehabilitation construction contract. The Consultant(s) will provide planning and design engineering support as authorized by the SFPUC to complete the AAR and CER in the Planning Phase including hydrologic, hydraulic, geotechnical, geologic, structural and seismic analysis, Design Phase deliverables, and environmental support documentation. Additional potential work elements include the confirmation and/or updates to the assumptions and recommendations made with the NAR (e.g., reservoir storage capacity curves above El. 4700, existing spillway discharge capacity, mapping of the rock slopes in the upper spillway channel, and existence of planar joint features beneath the ogee), realignment of the existing spillway, modifying access roads, dam security and maintenance. The project may also involve

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structural/seismic stability analysis of the outlet tower and other possible safety improvements and appurtenant facilities.

Project Name: Early Intake Dam Rehabilitation
Project Description
Early Intake Dam is a single-curvature concrete arch structure. It was constructed between 1923 and 1924 to divert Hatch Hetchy water from the Tuolumne River into the Mountain Tunnel. Within a few years of the dam's completion, significant cracking was observed at several locations, most likely due to the absence of contraction joints in the structure. In addition, widely distributed and progressively worsening distributed cracking has been observed throughout the dam and spillway structure over the years. The dam is reaching the end of its design life. SFPUC has identified an interim mitigation alternative to install a liner on the upstream face of the dam to reduce the rate of expansion and deterioration caused by the alkali aggregate reaction. This interim measure may extend the useful life of the dam by 20-25 years.
Scope of work: The Consultant(s) will review all pertinent background information and previous condition assessment reports. The Consultant(s) will provide planning and design engineering support as authorized by the SFPUC to complete the AAR and CER in the Planning Phase, structural and seismic analysis, Design Phase deliverables, and environmental support documentation.

Project Name: Eleanor Dam Rehabilitation
Project Description
Eleanor Dam is a multiple arch reinforced concrete dam that was constructed in the 1920's. The 2015-2016 NAR identified deterioration and aging of the structure, as well as performance concerns. Specifically, SFPUC has identified structural/seismic concerns regarding the Eleanor Bridge, which is an integral part of the arch dam, including cracking and spalling of concrete, exposed rebar, multiple significant leakage through the arch barrels, and cracks and erosion of the spillway concrete. SFPUC has prioritized projects to rehabilitate the dam by degree of risk. Rehabilitation may include some or all of the following: installation of a liner on the upstream face of the dam, pressure grouting, concrete repairs, valve replacement, and installation of concrete lining and riprap.
Scope of work: The Consultant(s) will review all pertinent background information and previous inspection and needs assessment reports. The Consultant(s) will provide planning and design engineering support as authorized by the SFPUC to complete the AAR and CER in the Planning Phase, geotechnical investigation, hydrology/hydraulic analysis, structural and seismic analysis of the existing bridge and dam, Design Phase deliverables, and environmental support documentation.

Project Name: Eleanor Dam Bridge Rehabilitation
Project Description
Eleanor Bridge is a critical asset that needs to be repaired or replaced due to multiple structural deficiencies, including corroded reinforcement, concrete cracking, and tripping hazards. The bridge is integral to the dam structure and provides strength and stability during a seismic event. The bridge also provides critical non-redundant access for HHWP personnel, Yosemite National Park personnel, and recreational public users.

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The project will implement steps to reduce risks associated with failure of aging infrastructure. This will include a complete alternatives analysis to determine the best way to extend the life of the bridge and ensure full functionality of all system components.
Scope of work: The Consultant(s) will review all pertinent background information and previous bridge inspection and needs assessment reports. The Consultant(s) will provide planning and design engineering support as authorized by the SFPUC to complete the AAR and CER in the Planning Phase, structural and seismic analysis, Design Phase deliverables, and environmental support documentation.

Project Name: Priest Condition Assessment & Monitoring Project
Project Description
Priest Dam is an earth and rock filled dam located just east of Moccasin located on Rattlesnake Creek in Tuolumne County. The dam was built between 1921 and 1923, and is approximately 168 feet tall and 1,000 feet wide with a crest width of 20 ft. Priest Dam has a long history of issues related to settlement and deflection, and needs a condition assessment and stability analysis using current standards and analysis techniques. The project will include installation of new instrumentation to monitor and document the movement of the dam under different storage conditions. SFPUC will use the results to determine whether a future capital improvement project is required.
Scope of work: The Consultant(s) will review all pertinent background information, previous analyses, construction documents for the project and provide planning and design engineering support as authorized by the SFPUC.

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

Community Benefits

A) ***Terms and Conditions***
The Contractor shall provide the CB Commitments detailed in its CB Submittal during the term of the 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.

Providing community benefits is a deliverable, zero-dollar task. No hours or dollars should be allocated or included in the Contractor's costs for the services under this Agreement in order to perform or deliver the voluntarily proposed CB Commitments. The Contractor shall fund the CB Commitments independently and such funding shall neither be tied to, nor dependent upon, SFPUC funds or sources of funding, receivable from SFPUC, including retention associated with this Agreement. This requirement of independent funding includes direct financial contributions and any funding related to the performance or delivery of the CB Commitments. The provision of CB Commitments does not entitle the Contractor to additional work beyond the services specified within the Agreement.

The Contractor shall commence performance of the CB Commitments promptly after issuance of the first Notice to Proceed (NTP) for this Agreement. CB Commitments performed as part of

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

B) ***Project Team***

Matt Powers shall serve as the Executive in Charge to manage the Contractor's CB Commitments and provide fiduciary oversight. The Executive in Charge shall ensure that the CB Commitments listed in the Community Benefits Commitments 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, Nellie Reyna, to organize, plan, track, measure, and report on Contractor's CB 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.

C) ***Community Benefits Commitments***

Contractor shall provide a minimum of $145,200 in financial contributions, volunteer hours or in-kind contributions over the term of this Agreement as stated in the Community Benefits Commitments Table below.

Community Benefits Summary Table

				(A)	(B)	(C)	(D)	(E)	(F)
Community Benefit Priority Area	**Community Benefit Initiative or Partner**	**Expected Outcomes**	**Timetable & Duration**	**Direct Financial Contribution**	**Volunteer Hours**	**Volunteer Hourly Rate (rate is standardized and cannot be changed)**	**Total Value of Volunteer Hours (B x C)**	**In-Kind Contributions**	**Total Contributions (A + D + E)**
Environmental Justice	**Youth Outdoor Education in Upcountry Counties**	Youth development for at-risk children from communities that have had very little interaction with nature	Duration of the 11-year contract	**$0**	**528 Hrs**	**$150/hr**	**$79,200**	**$0**	**$79,200**
Education	**High School in Upcountry Counties**	Enhancement of high school student STEAM education experience through volunteer tutoring, real-world project	Duration of the 11-year contract	**$0**	**440 Hrs.**	**$150/hr**	**$66,000**	**$0**	**$66,000**

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		exposure, and development of new, curriculum encouraging hands on and project based learning.							
TOTAL				**$0**	**968 Hrs**		**$145,200**	**$0**	**$145,200**

D) ***Accountability and Deliverables***

The Contractor shall provide a detailed description of the accountability methods to ensure that the proposed CB Commitments will be delivered in a transparent and accountable manner. The Contractor shall detail a clear internal plan for tracking, monitoring, and reporting on a regular basis to enable the SFPUC to easily verify that the Contractor's CB Commitments are delivered as intended throughout the life of the contract.

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

i. Community Benefits Plan and Timeline

- Contractor shall develop a Community Benefits Plan 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' Social Impact Partnership Manager 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.

ii. Community Benefits Commitments and Reporting

- Contractor shall deliver the proposed CB Commitments specified in the CB Submittal and the Community Benefits Plan. Any proposed changes to the CB Commitments as set forth herein shall be submitted in writing for review by the SFPUC External Affairs' Social Impact Partnership Manager.
- Contractor shall submit biannual progress reports to the SFPUC External Affairs' Social Impact Partnership 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 must be 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 also must submit documents to substantiate that the CB 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 also submit an annual newsletter documenting the culmination of their CB Commitments, beneficiaries, and outcomes for the year.

E) ***Statements of Understanding***

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Contractor acknowledges that they agree with the following statements:

- All instructions for the CB Submittal have been followed.
- Any of the CB Commitments that the Proposer voluntarily commits to should directly benefit the communities, neighborhoods, and/or residents served by or impacted by the SFPUC.
- CB Commitments must support nonprofit, charitable, or related activities.
- CB Commitments shall not go to, nor benefit, any City department or employee.
- CB Commitments are separate from and in addition to any regulatory or legal requirements related to the Agreement.
- CB Commitments must be delivered at zero dollar cost to the SFPUC.
- 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 Proposer's CB Commitments.
- Proposer commits to complying with SFPUC's reporting requirements.
- Proposer commits to the Terms and Conditions set forth in this section and in the Agreement.

Contractor shall provide all of the CB Commitments, consistent with all of the terms of Contractor's Community Benefits Submittal dated **October 21, 2019**, which is incorporated herein by this reference. Should there be any conflicts or discrepancies between the language in this section and the Contractor's Community Benefits Submittal, the terms of the language of this section shall prevail as Contractor and SFPUC's final mutual understanding and agreement.

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

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

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

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applicable budget allocated to any task as more specific information concerning the task order scope becomes available.

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

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

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

7. Standard of Care for Design Professionals. 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.

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Appendix B
Calculation of Charges

As part of Contractor's proposal dated **October 21, 2019**, 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. Billing rates will be fixed for the first year of the contract, and may be adjusted annually thereafter. The first adjustment may be made no earlier than the first anniversary of the effective start date as indicated in the original Notice of Contract Award letter. The amount of the adjustment is limited to a maximum of the CPI annual percentage change increase (San Francisco Bay Area for Urban Wage Earners and Clerical Workers) for the previous calendar year. No increase, including the annual CPI adjustment, is allowed to billing rates exceeding $250 per hour, unless Project Manager and Bureau Manager authorize an increase to the rate in writing.

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

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

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

3. Effective Overhead and Profit Rate. The Effective Overhead and Profit Rate (EOPR) for PRO.0138.A is **3.04**. The EOPR or Individual Firm Overhead and Profit Rate will apply to

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

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

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

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

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

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

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

6. Subcontractor Fees:

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

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

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

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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.

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Appendix B-1
Fee Schedule

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FEE SCHEDULE for PUC.PRO.0138: Engineering Services for Dams and Reservoirs

GEI Consultants, Inc.

OVERHEAD AND PROFIT SCHEDULE

(all Proposers to complete)

Firms	Staff Classification/Title	Name of Proposed Staff Person	Base Rate ($/hour)	Firm's Overhead and Profit Rate (OPR, or "multiplier")	Billing Rate ($/hour, *not to exceed $250/hour*)	Estimated Participation per CMD Form 2 or 2A (% of Contract)	Contribution to Effective Overhead and Profit Rate
[A]	[B]	[C]	[D]	[E]	[F]=[D]x[E]	[G]	[H]=[G]x[E]
GEI Consultants	Project Manager	Dave Gutierrez	$ 97.00	3.05	$250.00	51.0%	155.55%
	Lead Civil Dam Design Engineer	Alberto Pujol	$ 103.40		$250.00		
	Lead Geotechnical Engineer	Mark Freitas	$ 91.40		$250.00		
	Lead Engineering Geologist	Todd Crampton	$ 77.00		$234.85		
	Civil / Geotechnical Engineer	Len Sansone	$ 79.84		$243.51		
	PFMA / Risk Assessments	William Rettberg	$ 101.56		$250.00		
	Technical Review / QA/QC	Craig Hall	$ 95.84		$250.00		
	Senior Consultant./ ITR / Peer Review	Steve Verigin	$ 121.24		$250.00		
	Civil / Structural Engineer	Mike Monaghan	$ 81.36		$248.15		
	Civil / Structural Engineer	Krishna Amerineni			$0.00		
	Senior Civil Engineer	Mark Hargrove	$ 65.44		$199.59		
	Senior Civil Engineer	Matt Powers	$ 74.56		$227.41		
	Senior Civil Engineer	Enrico Rufini	$ 64.96		$198.13		
	Senior Geologist	Graham Bradner	$ 84.32		$250.00		
	Senior Hydraulics Engineer	Mark Fortner	$ 82.88		$250.00		
	Geotechnical Engnieer	Annmarie Behan	$ 62.52		$190.69		
	Geotechnical Engnieer	Joe De Larios	$ 64.48		$196.66		
	Senior Hydraulics Engineer	Chris Ferrari	$ 73.28		$223.50		
	Senior Civil Engineer	Mutaz Mihyar	$ 67.32		$205.33		
	Civil Engineer	Emilie Singleton	$ 58.04		$177.02		
	Senior Civil Engineer	Kris Van Sant	$ 60.44		$184.34		
	Senior Hydraulics Engineer	Katherine Maher	$ 56.96		$173.73		
	PFMA / Risk Assessments	Cory Miiyamoto	$ 53.56		$163.36		
	Civil Engineer	Isabel Rawlings	$ 49.72		$151.65		
	Civil Engineer	Hugo Velazquez	$ 49.72		$151.65		
	Civil Engineer	Tim Haynes	$ 51.52		$157.14		
	Civil Engineer	Elliott Ticen	$ 50.28		$153.35		
	Staff Engineer	Chris Krage	$ 44.04		$134.32		
	Staff Engineer	Maydel Uzcategui	$ 41.64		$127.00		
	Staff Engineer	Faith Moore	$ 36.44		$111.14		
	Staff Engineer	Angela Marino	$ 38.48		$117.36		
	Staff Engineer	Stephen Oldemeyer	$ 52.28		$159.45		
	Engineering Geoogist	Chris Slack	$ 59.48		$181.41		
	Staff Geologist	Scott Yahl	$ 36.08		$110.04		

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	Geotechnical Engnieer	Matthew Weil	$ 58.04		$177.02		
	Civil Engineer / Deputy Project Manger	Josh Zupan	$ 62.52		$190.69		
McMillen Jacobs Associates	Peer Review / ITR	Mort McMillen	$ 89.54	3.05	$250.00	32.0%	97.60%
	Peer Review / ITR	Don Jarrett	$ 89.54		$250.00		
	Quality Assurance Review	Mike Manwaring	$ 89.54		$250.00		
	PFMA / Risk Assessments	Catrin Bryan	$ 86.66		$250.00		
	PFMA / Risk Assessments	Rick Scott	$ 86.66		$250.00		
	Stuctural Engineer, Senior	Mark Merklein	$ 86.66		$250.00		
	Structural Engineer, Staff	Grant Horeczy	$ 59.76		$182.27		
	Structural Engineer, Staff	Taylor Bowen	$ 59.76		$182.27		
	Structural Engineer, Junior	Zack Autin	$ 42.73		$130.33		
	Mechanical Engineer, Senior	Kyl DeSomber	$ 84.14		$256.63		
	Mechanical Engineer, Senior	Eric Wolfe	$ 84.14		$256.63		
	Mechanical Engineer, Senior	James Boag	$ 84.14		$256.63		
	Mechanical Engineer, Senior	Matthew Moughamian	$ 84.14		$256.63		
	Mechanical Engineer, Staff	Joe Carson	$ 46.84		$142.86		
	Mechanical Engineer, Staff	Sean Ellison	$ 46.84		$142.86		
	Civil Engineer, Senior	Vincent Autier	$ 74.25		$226.46		
	Civil Engineer, Staff	Jerry Otto	$ 57.65		$175.83		
	Civil Engineer, Staff	Jodi Burns	$ 57.65		$175.83		
	Hydraulic Engineer, Senior	Nathan Cox	$ 57.81		$176.32		
	Hydraulic Engineer, Staff	Noah Hornsby	$ 50.51		$154.06		
	Hydraulic Engineer, Staff	Jake Woodbury	$ 50.51		$154.06		
	Hydraulic Engineer, Junior	Andrew Leman	$ 40.85		$124.59		
	Electrical Engineer, Senior	Matthew Lawson	$ 67.56		$206.06		
	Electrical Engineer, Senior	John Bakken	$ 67.56		$206.06		
	Electrical Engineer, Senior	Chris Curtis	$ 67.56		$206.06		
	Electrical Engineer, Staff	Mitch Skelton	$ 42.79		$130.51		
	Electrical Engineer, Staff	Matthew Chan, EIT	$ 42.79		$130.51		
	Geotechnical Engineer, Senior	Paul Richards	$ 62.50		$190.63		
	Geotechnical Engineer, Junior	Alyssa Herperger	$ 38.47		$117.33		
	Cost Estimating, Senior	Curtis Neibaur	$ 64.14		$195.63		
	Cost Estimating, Staff	Paul Radar	$ 44.20		$134.81		
	Cost Estimating, Staff	Matt McDowell	$ 50.48		$153.96		
	Principal	Troy Page	$ 98.02		$250.00		
	Principal	Keith Abey	$ 95.82		$250.00		
	Senior Associate	Yiming Sun	$ 85.20		$250.00		
	Lead Associate	Jamie Schick	$ 61.61		$187.91		
	Lead Associate	Jamie Schick	$ 61.61		$187.91		
	Lead Associate	Shawn Spreng	$ 66.40		$202.52		
	Senior Associate	Tom Pennington	$ 87.75		$250.00		
	Principal	Glenn Boyce	$ 99.25		$250.00		
	Principal	Renee Fippin	$ 123.89		$250.00		
	Principal	Mark Havekost	$ 108.04		$250.00		
	Lead Associate	Rachel Martin	$ 67.45		$205.72		
					$0.00		
	Partner, Cost Estimating	Steve McDonald	$ 100.00		$250.00		
	Scheduling	Dave Ewing	$ 100.00		$250.00		

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McGovern McDonald Engineers	Structural Engineering	Loren Weinbrennen	$ 85.00	2.72	$231.20	3.5%	9.52%
	Civil Engineer, GIS	Mariah Schoch	$ 55.00		$149.60		
	Civil Engineer	Allison Petsche	$ 62.00		$168.64		
					$0.00		
Meridian Surveying	Licensed Engineer / Surveyor	Stanley Gray	$ 113.30	3.00	$250.00	2.0%	6.00%
	Project Surveyor	Keith Robichaud	$ 50.00		$150.00		
	Project Surveyor	Tim Robinson	$ 50.00		$150.00		
	Project Manager	Nathan Foley	$ 45.00		$135.00		
	Technician/CAD Operator	Ron Kuehn	$ 38.00		$114.00		
	Office/Project Accounting	Emily Thomas	$ 35.00		$105.00		
	Junior Engineer / Surveyor	Daniel Henry	$ 35.00		$105.00		
	Junior Engineer / Surveyor	Emily Thomas	$ 38.00		$114.00		
	Junior Engineer / Surveyor	Eric Ward	$ 34.00		$102.00		
	Field Chief (Prevailing Wage)	Varies	$ 76.08		$228.24		
	Field Rodman (Prevailing Wage)	Varies	$ 70.11		$210.33		
					$0.00		
Maffei Structural Engineers	Bridge Engineer	Noelle Yuen, SE	$ 81.90	2.84	$232.60	2.0%	5.7%
	Principal Structural Engineer	Joe Maffei, SE, PhD	$ 96.63		$250.00		
	Structural Engineer	Karl Telleen, SE	$ 69.23		$196.61		
	Structural Engineer	Andreas Schellenberg, SE	$ 60.10		$170.68		
	Senior Civil / Structural Designer	Lawrence Burkett	$ 55.29		$157.02		
	Senior Structural Consultant	Alidad Hashemi	$ 75.94		$215.67		
Beyaz & Patel	Lead Structural Engineer, Principal	Subhash Patel, SE	$ 100.00	2.84	$250.00	2.0%	5.7%
	Senior Structural Engineer		$ 75.70		$214.99		
	Senior Engineer		$ 59.51		$169.01		
	Engineer		$ 49.65		$141.01		
					$0.00		
					$0.00		
AGS	Senior Civil Engineer	Stefan Hoffmeister, PE	$ 65.00	2.55	$165.75	2.5%	6.4%
	Staff Engineer	Michael Ngo	$ 35.50		$90.53		
	Senior Geotechnical Engineer	Keyvan Fotoohi, Phd, GE	$ 69.00		$175.95		
	Staff Geotechnical Engineer	Jana Pearson, PhD	$ 45.00		$114.75		
					$0.00		
					$0.00		
Divis Consulting, Inc	Principal	Christian J Divis	$ 110.00	2.42	$250.00	2.0%	4.8%
	Senior Associate	TBD	$ 95.00		$230.19		
	Associate	Marcos Pinheiro/Pat Drumm	$ 85.00		$205.96		
	Project Engineer	TBD	$ 75.00		$181.73		
	Senior Staff Engineer	TBD	$ 60.00		$145.38		
	Staff Engineer	Mackenzie Garrison	$ 52.50		$127.21		
Achievement Engineering Corp	Principal-In-Charge	Arash Firouzjael	$ 119.00	2.10	$249.90	2.0%	4.2%
	Engineering Manager	Farshad Safaian	$ 71.00		$149.10		
	Geotechnical Engineer	Amir Zand	$ 95.00		$199.50		
	Deputy Technical Manager - PM	Sina Hooshdar	$ 71.00		$149.10		
	Field Supervisor	Ali Tahmasbi	$ 60.00		$126.00		
	Laboratory Supervisor	Hadi Abedi	$ 60.00		$126.00		
	Admin	Mobin Mahmoudi	$ 25.00		$52.50		
	NDT Level III Supervisor	Johnny Thompson	$ 80.00		$168.00		
	Field NACE Level II Inspector	James Lumley	$ 80.00		$168.00		
	Field Special Inspector	Amin Rasoulian	$ 60.00		$126.00		
	Field Special Inspector	Arash Amirkhansarie	$ 60.00		$126.00		
	Field Special Inspector	Brian Holck	$ 60.00		$126.00		

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	Field Special Inspector	Chris England	$ 60.00		$126.00		
	Field Special Inspector	Emad Aryamanesh	$ 60.00		$126.00		
Quest Structures	Principal Engineer	Yusof Ghanaat, PE, PhD	$ 97.40	3.00	$250.00	1.0%	3.00%
	Senior Engineer	Zachary Harper	$ 53.57		$160.71		
					$0.00		

Effective Project Overhead & Profit Rate (EOPR): **2.98**

Maximum Allowable Effective Project Multiplier = 3.20