

THIS PRINT COVERS CALENDAR ITEM NO.: 10.7

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Streets

BRIEF DESCRIPTION:

Authorizing the Director of Transportation to execute SFMTA Contract No. CS-189, Contract Management and Project Controls Services for the SFMTA Potrero Yard Modernization Project, with Arup US, Inc. in amount not to exceed \$6,000,000 and a term of four years and six months.

SUMMARY:

- The Potrero Yard Modernization Project (Project) is a joint development that includes an “Infrastructure Facility,” consisting of a new bus maintenance and storage facility and shared infrastructure for proposed housing and commercial developments.
- In summer 2024, the San Francisco Municipal Transportation Agency (SFMTA) assumed project management responsibilities from San Francisco Public Works (Public Works).
- As part of this transition, the SFMTA took over awarding and administering a Contract Management and Project Controls Services contract (Contract) with Arup US, Inc. (Arup) to assist with the administration and oversight of the design and construction phase of the Infrastructure Facility, which is being delivered under the City’ first public-private partnership (P3) contract.
- Public Works had previously conducted a full and open competition for the Contract, issuing a Request for Proposals (RFP) on September 15, 2023 and selecting Arup as the highest-ranked proposer on January 10, 2024.
- Given the complexity and scale of the Infrastructure Facility and its P3 contract, the SFMTA requires specialized contract management and project controls services.
- Arup has extensive experience in assisting public agencies in managing P3 contracts of similar scale and complexity.
- Staff recommends authorizing the Director of Transportation to execute the Contract with Arup.

ENCLOSURES:

1. SFMTAB Resolution
2. SFMTA Contract No. CS-189 Consultant Agreement

APPROVALS:

	DATE
DIRECTOR 	<u>July 10, 2025</u>
SECRETARY 	<u>July 9, 2025</u>

ASSIGNED SFMTAB CALENDAR DATE: July 15, 2025

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PURPOSE

Authorizing the Director of Transportation to execute SFMTA Contract No. CS-189, Contract Management and Project Controls Services for the SFMTA Potrero Yard Modernization Project, with Arup US, Inc. in amount not to exceed \$6,000,000 and a term of four years and six months.

STRATEGIC PLAN GOALS AND TRANSIT FIRST POLICY PRINCIPLES

This action is consistent with the following SFMTA Strategic Plan Goals:

- Goal 5: Deliver reliable and equitable transportation services.
- Goal 6: Eliminate pollution and greenhouse gas emissions by increasing use of transit, walking and bicycling.
- Goal 8: Deliver quality projects on-time and on-budget.
- Goal 9: Fix things before they break and modernize systems and infrastructure.
- Goal 10: Position the agency for financial success.

This action is consistent the following Transit First Policy Principles:

- To ensure quality of life and economic health in San Francisco, the primary objective of the transportation system must be the safe and efficient movement of people and goods.
- Public transit, including taxis and vanpools, is an economically and environmentally sound alternative to transportation by individual automobiles. Within San Francisco, travel by public transit, by bicycle and on foot must be an attractive alternative to travel by private automobile.
- New transportation investment should be allocated to meet the demand for public transit generated by new public and private commercial and residential developments.
- The ability of the City and County to reduce traffic congestion depends on the adequacy of regional public transportation. The City and County shall promote the use of regional mass transit and the continued development of an integrated, reliable, regional public transportation system.
- The City and County shall encourage innovative solutions to meet public transportation needs wherever possible and where the provision of such service will not adversely affect the service provided by the Municipal Railway.

DESCRIPTION

Project Background

Originally built in 1915, the existing Potrero Yard is situated on 4.4 acres bounded by Bryant, 17th, Hampshire, and Mariposa Streets. The Potrero Yard, including its existing two-story bus facility was originally designed for early 20th-century streetcar technology, and built to house 100 streetcars of this era. Over the course of 110 years the Potrero Yard has seen an increase in bus storage and maintenance capacity of approximately 156 modern 40-foot and 60-foot electric trolley buses.

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Due to the age and less-than-adequate capacity of the existing bus facility, and because modern bus fleet maintenance technology and practices have rendered it functionally obsolete, the Potrero Yard Modernization Project (Project) was initiated as part of the Building Progress Program to replace and modernize the Potrero Yard.

The Project is a joint development that consists of:

1. The Bus Yard Component – a new bus storage and maintenance facility for SFMTA’s trolley bus fleet;
2. The Housing and Commercial Component – up to four affordable housing projects and limited commercial space; and
3. The Common Infrastructure – shared infrastructure serving both components.

The Bus Yard Component and Common Infrastructure together form the Infrastructure Facility, which will be delivered under a Public-Private Partnership (P3). The Housing and Commercial Component will be contracted and managed separately from the Infrastructure Facility.

The Bus Yard Component would replace the existing two-story building and bus yard with a modern, four-story, bus maintenance and storage facility that meets current industry standards for operational safety and efficiency. The Bus Yard Component would support the SFMTA’s growing fleet as it transitions to battery electric vehicles and serve as a consolidated site for Muni Operator Training and Muni Street Operations. It would provide open, naturally lit, and well-ventilated working conditions for employees, ensure resiliency to climate change and natural disasters, and improve transit service by reducing vehicle breakdowns, increasing on-time performance, and reducing passenger overcrowding. The Bus Yard Component would increase the maintenance and storage capacity by approximately 68 percent. When completed, the Bus Yard Component will become a beacon of the SFMTA’s commitment to workspace improvements for its employees.

P3 Project Delivery and Infrastructure Facility Project Agreement

The Infrastructure Facility will be the City’s first project to utilize a P3 project delivery method. Under this approach, the SFMTA will enter into an Infrastructure Facility Project Agreement (IF Project Agreement) that may follow either of the following structures: design, build, finance, operate, and maintain (DBFOM), or design, build, and finance (DBF), excluding operations and maintenance. The SFMTA will enter the IF Project Agreement with either:

- a special purpose vehicle (Principal Project Company) established by the Project’s Lead Developer, with Plenary Americas as the sole equity member; or
- a non-profit entity used to facilitate the issuance of tax-exempt debt for the project.

If a non-profit entity serves as the contracting party, the Principal Project Company will assume responsibility for all substantive obligations under the IF Project Agreement—except for issuing

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tax-exempt debt—through a separate implementation agreement.

On December 3, 2024, under Resolution No. 241203-140, the SFMTA Board of Directors authorized the Director of Transportation to request from the Board of Supervisors:

1. Conditional approval of a Form IF Project Agreement based on the DBFOM structure, subject to final pricing;
2. Delegation of authority under Charter Section 9.118 for the SFMTA Board to approve final pricing within the parameters specified in the resolution; and
3. Authorization for the Director of Transportation to execute the final IF Project Agreement, incorporating final pricing and the terms of a Draft Small Business Enterprise/Disadvantaged Business Enterprise Plan.

On December 10, 2024, under Resolution No. 625-24, the Board of Supervisors instead opted to endorse the Form IF Project Agreement in principle and defer formal approval until final pricing is determined.

The SFMTA anticipates finalizing pricing and securing final approvals of the IF Project Agreement by Summer 2025. The final project structure, either DBFOM or DBF, will be determined based on affordability and pricing outcomes following further engagement with the Lead Developer’s design-build contractor to refine risk allocation and commercial provisions.

Need for Contract Management and Project Controls Services

For the design and construction portion of the Infrastructure Facility, the SFMTA requires specialized contract management and project controls services (CM/PC Services) to support the administration and oversight of the IF Project Agreement. To provide these CM/PC Services, the SFMTA plans to retain a separate Contractor (i.e., the consultant providing CM/PC Services) prior to finalizing the IF Project Agreement. For avoidance of doubt, the Contractor will oversee only the design and construction of the Bus Yard Component and Common Infrastructure. The Contractor will have no role in the management of design and construction of the Housing and Commercial Component.

Procurement Process

On September 15, 2023, San Francisco Public Works (Public Works) issued a Request for Proposals (RFP) seeking a qualified contractor to perform the CM/PC Services for the Infrastructure Facility. By October 27, 2023, Public Works received proposals from four contractor teams led by the following firms: AECOM Technical Services, Inc. (AECOM), Anser Advisory Consulting, LLC (Anser), Arup US, Inc. (Arup), and Motive Power Inc. (Motive Power).

An initial screening of proposals was performed by Public Works staff to determine if the Minimum Qualifications stated in the RFP had been satisfied. It was determined that the team led by Motive Power did not meet the Minimum Qualifications, and on November 15, 2023, Motive

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Power was notified of this finding and that they were not eligible for further consideration in the evaluation process.

A selection committee consisting of staff from San Francisco Airport, San Francisco Public Utilities Commission, and San Francisco Unified School District evaluated the three remaining proposals. The selection committee ranked these three firms in the following order:

1. Arup
2. AECOM
3. Anser

All three firms demonstrated extensive experience in providing services similar to the CM/PC Services on projects of scale and complexity similar to the Infrastructure Facility. On January 10, 2024, a Notice of Intent to Award was sent to Arup to begin negotiations.

In summer 2024, the SFMTA assumed project management responsibilities for the Project, including oversight of the Contract. As part of this transition, Public Works and the SFMTA mutually agreed to transfer award and administration of the Contract to SFMTA. The SFMTA successfully completed final negotiations with Arup and now seeks approval to award Arup the Contract.

The Contract has a term of four years and six months and a not-to-exceed amount of \$6,000,000 over the contract term. The Contract Monitoring Division established a Local Business Enterprise (LBE) subcontracting participation requirement of 10 percent. Arup committed 20 percent to LBEs.

Scope of Services

The Contract's base scope of services for contract management generally includes the quality assurance oversight of Principal Project Company's execution and implementation of all design and construction activities required to be performed under the IF Project Agreement (i.e., for the Bus Yard Component and Common Infrastructure). The Contract's base scope of services for project controls generally includes cost controls, schedule controls, and producing progress status reports that reflect performance metrics across various project performance categories. The Contract does not include any oversight or management activities related to the implementation of the City's Standard Construction Measures for public works projects, mitigation measures and improvement measures applicable to the Project, which are described in the Potrero Yard Modernization Project Final Environmental Impact Report (Final EIR) and Mitigation Monitoring and Reporting Program (MMRP).

Upon execution of the IF Project Agreement by the SFMTA and the Principal Project Company (or the non-profit entity used to facilitate the issuance of tax-exempt debt for the project), SFMTA will issue Arup an authorization to proceed with the base scope of services.

The Contract's scope of services allows for additional, related services to be incrementally

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authorized on an as-needed basis. If SFMTA determines that additional as-needed services are needed, the SFMTA project manager will prepare detailed scopes of work to be authorized through as-needed task orders. The project manager will review the resulting task order proposals from Arup and negotiate final pricing for each task order.

The total fees for the Contract’s base scope of services plus the budget for potential future as-needed task orders will not exceed \$6,000,000. The total Contract amount is summarized as follows:

Base Scope of Services	\$ 5,591,514	Lump sum for base scope contained in Appendix A to the Agreement
As-Needed Services	\$ 408,486	For potential future Task Orders (currently unassigned)
TOTAL Contract Amount	\$ 6,000,000	

STAKEHOLDER ENGAGEMENT

Prior to issuing the RFP on September 15, 2023, Public Works performed outreach to at least eight local and national consultant firms that have performed similar contract management and project controls services for complex capital projects delivered within San Francisco.

On September 28, 2023, Public Works held a pre-proposal conference for prospective proposers. Following the pre-proposal conference, the RFP process allowed for prospective proposers to submit formal questions or clarifications on the RFP. All questions and responses to the questions were publicly distributed through the public procurement portal.

On October 13, 2023, RFP Addendum 1 was issued on the public procurement portal with changes to the RFP that reflect responses to questions or clarifications.

ALTERNATIVES CONSIDERED

One alternative considered was performing the contract management and project controls services using existing SFMTA staff. However, this option is not feasible due to the lack of available internal staffing resources with the necessary expertise and capacity.

Given the complexity of the project, which involves the SFMTA’s P3 for a bus facility, the SFMTA requires dedicated contract management and project controls support to ensure compliance with project requirements, mitigate risks, and maintain effective oversight.

Without this specialized, external support, the SFMTA would face significant challenges in meeting its contractual obligations under the IF Project Agreement, potentially resulting in

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project delays, increased costs, and insufficient quality assurance oversight of project controls and project performance.

Given these constraints, moving forward with Arup—a firm that has demonstrated extensive experience in managing and administering P3 projects of this scale and complexity—is the most practical and effective solution to ensure successful project delivery.

FUNDING IMPACT

The capital funds for this agreement are Proposition L funds.

Uses

Scope	Amount
Base Scope of Services	\$ 5,591,514
As-Needed Services	\$ 408,486
TOTAL Contract Amount	\$ 6,000,000

Sources

Funding Source	Amount
Prop L Res 24-023	\$ 6,000,000

ENVIRONMENTAL REVIEW

The Potrero Yard Modernization Project Final Environmental Impact Report (Final EIR) was certified by the San Francisco Planning Commission on January 11, 2024. A subsequent Note to File (NTF) for the Final EIR was completed on October 25, 2024. On December 23, 2024, the Federal Transportation Administration determined that the Potrero Yard Modernization Project qualifies as a categorical exclusion under 23 CFR part 771.118(c)(9) of the National Environmental Policy Act (NEPA). Authorizing the Director of Transportation to execute Contract No. CS-189 with Arup US, Inc. for Contract Management and Project Controls Services for the SFMTA Potrero Yard Modernization Project, would not result in a direct or reasonably foreseeable indirect physical change to the environment beyond the scope analyzed in the Final EIR, NTF or NEPA categorical exclusion.

Copies of the CEQA and NEPA determinations are on file with the Secretary to the SFMTA Board of Directors and is incorporated herein by reference.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The City’s Civil Service Commission approved this Agreement under PSC Number 49492-23/24 on November 20, 2023.

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The approval of Arup's responsiveness to the LBE Program requirements was provided by the Contract Monitoring Division.

The City Attorney has reviewed this calendar item.

RECOMMENDATION

Staff recommends that the SFMTA Board of Directors Authorize the Director of Transportation to execute SFMTA Contract No. CS-189, Contract Management and Project Controls Services for the SFMTA Potrero Yard Modernization Project, with Arup US, Inc. in amount not to exceed \$6,000,000 and a term of four years and six months.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The San Francisco Municipal Transportation Agency (SFMTA) is undertaking the Potrero Yard Modernization Project (Project), a joint development that includes an “Infrastructure Facility”— a new bus maintenance and storage facility with shared infrastructure for proposed housing and commercial developments; and,

WHEREAS, The SFMTA initially retained San Francisco Public Works (Public Works) as the project manager, consistent with Public Works’ role in delivering major capital projects for City departments; and,

WHEREAS, In summer 2024, the SFMTA assumed project management responsibilities from Public Works, including the award and administration of a contract management and project controls contract (Contract) with Arup US, Inc. (Arup) to support the design and construction phase of the Infrastructure Facility, which is being delivered under the City’ first public-private partnership (P3) contract; and,

WHEREAS, Public Works previously conducted an open competitive procurement for the Contract, issuing a request for proposals on September 15, 2023 (Sourcing Event ID 8520), and issuing a notice of intent to award the Contract to Arup, the highest-ranked proposer, on January 10, 2024; and,

WHEREAS, Given the complexity and scale of the Infrastructure Facility and the P3 contract, the SFMTA requires specialized contract management and project controls support during the project’s design and construction phase; and,

WHEREAS, Arup has extensive experience in assisting public agencies in managing P3 contracts of similar scale and complexity; and,

WHEREAS, The Contract requires 20% Local Business Enterprise (LBE) subcontracting participation and was approved by the City’s Civil Service Commission on November 20, 2023, under PSC Number 49492-23/24; and,

WHEREAS, on January 11, 2024, the San Francisco Planning Commission certified the Potrero Yard Modernization Project Final Environmental Impact Report (Final EIR); a subsequent Note to File (NTF) for the Final EIR was completed on October 25, 2024; on December 23, 2024, the Federal Transportation Administration determined that the Potrero Yard Modernization Project qualifies as a categorical exclusion under 23 CFR part 771.118(c)(9) of the National Environmental Policy Act (NEPA); and,

WHEREAS, Authorizing the Director of Transportation to execute Contract No. CS-189 with Arup US, Inc. for Contract Management and Project Controls Services for the SFMTA

Potrero Yard Modernization Project, would not result in a direct or reasonably foreseeable indirect physical change to the environment beyond the scope analyzed in the Final EIR, NTF or NEPA categorical exclusion; and,

WHEREAS, copies of the CEQA and NEPA determinations are on file with the Secretary to the SFMTA Board of Directors, and is incorporated herein by reference; now, therefore be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Director of Transportation execute SFMTA Contract No. CS-189, Contract Management and Project Controls Services for the SFMTA Potrero Yard Modernization Project, with Arup US, Inc. in amount not to exceed \$6,000,000 and a term of four years and six months.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of July 15, 2025.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

**City and County of San Francisco
Municipal Transportation Agency
One South Van Ness Ave., 7th Floor
San Francisco, California 94103**

Agreement between the City and County of San Francisco and

Arup US, Inc.

Contract No. CS-189

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**City and County of San Francisco
Municipal Transportation Agency
One South Van Ness Ave., 7th Floor
San Francisco, CA 94103**

Agreement between the City and County of San Francisco

and

Arup US, Inc.

Contract No. CS-189

This Agreement is made this _____, in the City and County of San Francisco (“City”), State of California, by and between Arup US, Inc. (“Contractor”) and City, a municipal corporation, acting by and through its Municipal Transportation Agency (“SFMTA”).

Recitals

A. The SFMTA wishes to retain Contractor for contract management and project controls services (“Services”) for the SFMTA Potrero Yard Modernization Project (“Project”), including “Base Services” and “As-Needed Services” (each, term defined in Article 1).

B. The SFMTA initially engaged San Francisco Public Works (Public Works) as project manager for the Project, consistent with Public Works’ role in delivering major capital projects for City departments.

C. Public Works competitively selected Contractor as the highest-ranked proposer for this Agreement pursuant to a request for proposals Public Works issued September 15, 2023 (Sourcing Event ID 8520), under San Francisco Administrative Code Section 6.40 through Section 6.42.

D. On January 10, 2024, Public Works issued a notice of intent to award to Contractor, initiating contract negotiations.

E. Following Contractor’s selection, the SFMTA assumed project management responsibilities for the Project, including the award and administration of this Agreement.

F. Contractor has committed to 20% of Local Business Enterprise participation for this Agreement.

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

H. The City’s Civil Service Commission approved Contract Number 49492-23/24 for this Agreement on November 20, 2023.

Now, **THEREFORE**, the parties agree as follows:

Article 1 Definitions

The following definitions apply to this Agreement:

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

1.2 “As-Needed Services” means the scope of work, if any, that is a necessary extension of or integral to the Base Services and that the Contractor performs pursuant to a Task Order issued under this Agreement. As-Needed Services may include, without limitation, supplemental technical analysis, additional project controls support, expanded reviews of project deliverables, risk assessments, financial and schedule modeling, or other advisory services that directly support and enhance the performance of the Base Services.

1.3 “Base Services” means the defined and pre-determined scope of work described in Appendix A, “Scope of Services – Base Services,” that the Contractor is obligated to perform under this Agreement, including all services, labor, supervision, materials, equipment, actions, and other requirements necessary for Contractor to provide these Base Services.

1.4 “CCO” means the SFMTA Contract Compliance Office.

1.5 “City” or “the City” means the City and County of San Francisco, a municipal corporation, acting by and through its **San Francisco Municipal Transportation Agency**.

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

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

1.8 “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). Confidential Information includes, without limitation, City Data.

1.9 “Contractor” or “Consultant” means Arup US, Inc. located at 560 Mission Street, Suite 700, San Francisco, CA 94105.

1.10 “Deliverables” means Contractor’s work product, including any partially-

completed work product and related materials, resulting from the Services provided by Contractor to City during the course of Contractor's performance of the Agreement, including without limitation, the work product described in the "Scope of Services – Base Services" attached as Appendix A.

1.11 "Effective Date" means the date the SFMTA notifies Contractor through a purchase order that the Controller has certified the availability of funds for this Agreement as provided in Section 3.1.

1.12 "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.

1.13 "Notice to Proceed" means written notice to the Contractor specifying the date on which it shall commence performance of the Base Services or, as applicable, any As-Needed Services authorized under an individual Task Order. A Notice to Proceed for Base Services shall authorize the Contractor to begin work on the defined scope set forth in Appendix A, while a Notice to Proceed for As-Needed Services shall be issued separately for each Task Order, specifying the authorized scope, schedule, and any applicable terms.

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

1.15 "San Francisco Municipal Transportation Agency" or "SFMTA" means the agency of City with jurisdiction over all surface transportation in San Francisco, as provided under Article VIIIA of the City's Charter.

1.16 "Services" means the contract management and project controls services for the SFMTA Potrero Yard Modernization Project. The Services include the Base Services and As-Needed Services.

1.17 "Task" "Task" means any distinct Base Services activity specified in Section B.2 (Project Cost) of Appendix B (Calculation of Charges) for which the Parties have agreed to a fixed, lump-sum fee and a predetermined duration. Each Task represents a discrete scope component or group of scope components of the overall Base Services outlined in Appendix A (Scope of Services).

1.18 "Task Order" means a written directive from the SFMTA to the Contractor to perform As-Needed Services, issued under the procedures described in Section 4.2 (Task Order Procedures).

Article 2 Term of the Agreement

2.1 The term of this Agreement shall commence on the Effective Date and expire on the date four years and six months (1,643 calendar days) from the Effective Date, unless earlier terminated as otherwise provided herein.

2.2 The City may extend this Agreement beyond the expiration date at the Director of Transportation's sole and absolute discretion and by modifying this Agreement as provided in Section 11.5, "Modification of this Agreement."

Article 3 Financial Matters

3.1 Certification of Funds; Budget and Fiscal Provisions

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

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

3.1.2 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."

3.2 Authorization to Commence Work. Contractor shall not commence work on the Base Services or any As-Needed Services under this Agreement until the City has issued the corresponding, written authorization to proceed, such as a purchase order, Task Order or Notice to Proceed. Such authorization may be for a partial or full scope of work.

3.3 Compensation.

3.3.1 General. Compensation to Contractor under this Agreement shall be determined as follows:

(a) Base Services. For Base Services, compensation shall be based on the lump sum prices for each Task, as specified in Section B.2 (Project Cost) of Appendix B (Calculation of Charges). In no event shall the amount of Base Services shall exceed five million five hundred ninety one thousand five hundred fourteen dollars (\$5,591,514).

(b) As-Needed Services. For As-Needed Services provided under Task Orders, compensation shall be based on either: (i) a negotiated lump sum price for the Task Order; or (ii) a negotiated number of hours per Task Order subject to a not to exceed dollar amount. In either case, compensation shall be based on the fully

burdened hourly labor rates set forth in Section B.4 (Contractor's Fully Burdened Hourly Labor Rates and Key Personnel) of Appendix B. These fully burdened hourly labor rates include all direct labor costs, indirect/overhead costs, and services such as reproduction, administrative staff assistance, etc. The Contractor may request increases to these fully burdened hourly labor rates in accordance with Section B.3 (Price and Rate Adjustments) of Appendix B. In no event shall the amount of As-Needed Services shall exceed four hundred eight thousand four hundred eighty six dollars (\$408,486).

(c) Out-of-Pocket Expenses. Any direct out-of-pocket expenses incurred by the Contractor or its subconsultants—such as meals, travel, City-requested reports, drawings, couriers, mailings, permit fees, and similar costs—while providing As-Needed Services or other Services in connection with any modification to this Agreement shall be reimbursed at cost, provided they are approved by the SFMTA Project Manager. (See Section B.6 (Travel Reimbursement Policy) of Appendix B). These reimbursement provisions do not apply to any similar expenses incurred as part of the Base Services.

(d) Task Orders Services Performed by Subconsultants and Outside Firms. For services performed by subconsultants under Task Orders, Contractor may charge a mark-up of 5% for a maximum of two tiers of subconsultants. For other services performed by outside firms, such as laboratories, Contractor may charge a mark-up of 5%.

(e) Not to Exceed Amount. In no event shall the amount of this Agreement exceed six million dollars (\$6,000,000).

3.3.2 Calculation of Charges. The breakdown of charges for the Services is set forth in Appendix B. Contractor shall provide an invoice to the City on a monthly basis for Services completed in the immediately preceding month, calculated in accordance with Section B.5 (Invoicing) of Appendix B. Compensation shall be made for Services identified in the invoice that the City, in its sole discretion, concludes have been satisfactorily performed.

3.3.3 Payment Limited to Satisfactory Services. Contractor is not entitled to any payments from City until City approves the Services delivered pursuant to this Agreement. Payments to Contractor by City shall not excuse Contractor from its obligation to replace unsatisfactory Services even if the unsatisfactory character may not have been apparent or detected at the time such payment was made. Services delivered pursuant to this Agreement 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.

3.3.4 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.

3.3.5 Invoice Format. Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller and the SFMTA and must include a unique invoice number and a specific invoice date. Payment shall be made by

City as specified in Section 3.3.10, or in such alternate manner as the Parties have mutually agreed upon in writing. All invoices must clearly separate Base Services from any As-Needed Services, and must show the information, below. Invoices that do not include all required information or contain inaccurate information will not be processed for payment:

- (a) Contract Number
- (b) Purchase Order Number
- (c) PeopleSoft Supplier Name and ID
- (d) Description of the Services performed, by Task or as-needed Task Order, with a clear distinction between Base Services and As-Needed Services
- (e) For Base Services and As-Needed Services performed on a lump sum pricing basis, the lump sum amount per Task or Task Order invoiced shall be per Section B.5 of Appendix B.
- (f) For As-Needed Services billed on an hourly basis, the invoice should include:
 - (i) Name, position, firm, hourly rate, and hours worked of employee(s) whose labor is invoiced
 - (ii) Timesheets
- (g) Other direct costs, if applicable
- (h) Receipts for reimbursable expenses invoiced, if applicable
- (i) Sales/use tax, if applicable
- (j) Total costs
- (k) SFMTA Certificate of Progress Payment Form
- (l) SFMTA Application of Progress Payment Form
- (m) FORM 7: CMD Progress Payment Form: The Controller is not authorized to pay invoices submitted by Contractor prior to Contractor's submission of the Progress Payment Form. If the Progress Payment Form is not submitted with Contractor's invoice, the Controller will notify the SFMTA and Contractor of the omission. If Contractor's failure to provide the Progress Payment Form is not explained to the Controller's satisfaction, the Controller will withhold 20 percent of the payment due pursuant to that invoice until the Progress Payment Form is provided.
- (n) Monthly Progress Report

3.3.6 LBE Payment and Utilization Tracking System. If LBE

Subcontracting Participation Requirements apply to this Agreement, Contractor shall: (a) within three business days of City's payment of any invoice to Contractor, pay LBE subcontractors as provided under Chapter 14B.7(H)(9); and (b) within ten business days of City's payment of any invoice to Contractor, confirm its payment to subcontractors using the B2GNow System (<https://sfmta.diversitycompliance.com/>) unless instructed otherwise by CCO. Failure to submit all required payment information into the B2GNow System with each payment request may result in the withholding of 20% of subsequent payments due.

3.3.7 Getting paid by the City for Services.

(a) The City and County of San Francisco utilizes a commercial product through its banking partner to pay City contractors electronically. Contractor shall sign up to receive electronic payments to be paid under this Agreement. To sign up for electronic payments, visit [SF City Partner at sfgov.org](https://sfcitypartner.sfgov.org).

(b) At the option of the City, Contractor may be required to submit invoices directly in the City's financial and procurement system. Refer to <https://sfcitypartner.sfgov.org/pages/training.aspx> for more information.

3.3.8 Reserved. (Grant Funded Contracts.)

3.3.9 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). This provision does not create a private right of action against the City.

3.3.10 Payment Terms

(a) **Payment Due Date:** Unless City notifies the Contractor that a dispute exists, payment shall be made within 30 calendar days, measured from (1) the rendering of services or (2) the date of receipt of the invoice, whichever is later. Payment is deemed to be made on the date on which City has issued a check to Contractor or, if Contractor has agreed to electronic payment, the date on which City has posted electronic payment to Contractor. In no event shall City be liable for interest or late charges for any late payments. City will not honor minimum service order charges for any services covered by this Agreement.

(b) Reserved. (Payment Discount Terms)

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

3.5 Submitting False Claims. 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 Reserved. (Payment of Prevailing Wages)

Article 4 Services and Resources

4.1 Services Contractor Agrees to Perform. Contractor agrees to perform the Base Services described in Appendix A (Scope of Services) and As-Needed Services under individual Task Orders issued, if at all, in accordance with Section 4.2. Officers and employees of the City are not authorized to request, and the City is not required to reimburse Contractor for, any Services beyond the Base Services, unless Appendix A is modified as provided in Section 11.5 (Modification of this Agreement) or the SFMTA issues a corresponding Task Order for As-Needed Services.

4.2 Task Order Procedures. The SFMTA may, at its sole discretion, issue Task Orders on an as-needed basis for As-Needed Services in accordance with the process set forth below. Nothing in this Agreement shall be construed as obligating the SFMTA to issue any Task Orders, and the Contractor shall have no expectation of receiving a minimum number of Task Orders or a minimum amount of compensation beyond the Base Services.

4.2.1 Task Order Requirements.

(a) Scope of Work. The scope of work, cost, and estimated time to perform Task Orders for As-Needed Services will be agreed upon in advance of starting work, in accordance with the terms and conditions of this Agreement. The cost of preparing invoices, including required LBE forms, and the Contractor Task Order proposal must be incorporated into the fully burdened hourly labor rates set forth in Appendix B, "Calculation of Charges." Separate from overhead, Project management time required by a particular Task Order may incorporate, but not be limited to, preparation of meeting materials, summary of meeting notes, a task monitoring system (e.g., bi-weekly project reports or monthly status updates).

(b) Presentations. In the performance of assigned tasks, the Contractor, if requested by City, shall prepare graphic and written presentations, and

participate in presentations of said material to various City departments, commissions, and interested community groups.

(c) Current Workload and Available Resources. The Contractor covenants that its current workload and the workload of its subcontractors will not affect the commencement and the progress of the work under a Task Order. The Contractor shall have all the necessary professional, technical and support personnel, including those of the subcontractors, available, ready and mobilized to perform actual work within two weeks of the receipt of Notice to Proceed on a particular Task Order. In addition, the Contractor shall make good faith efforts to have any necessary subcontracts signed with subcontractors within three weeks of NTP for the overall Agreement. Contractor shall provide copies of said subcontracts to the SFMTA upon request.

4.2.2 Task Order Request. The SFMTA will define task requirements and provide to Contractor a Task Order request. The Task Order request will include: (a) a description of the scope of the As-Needed Services the SFMTA seeks, including specific Deliverables, if any; (b) the deadline to respond to the Task Order request; and (c) the expected timeline (including specific milestones, if any) to complete the As-Needed Services.

4.2.3 Contractor Request for Information. Upon receiving a Task Order request, Contractor shall request in writing any information or data it requires to complete the proposal and perform the As-Needed Services under the Task Order. The Parties will reach agreement as to the availability and delivery time for this data and information during initial task negotiations.

4.2.4 Contractor Proposal. By no later than the deadline set forth in the Task Order request, Contractor shall prepare and submit to the SFMTA a Task Order proposal that includes, at minimum, the following items:

(a) A work plan that includes the following: (i) a detailed description, by task, and, if applicable, subtask of the scope of As-Needed Services to be performed under the Task Order; (ii) Contractor's approach to perform the As-Needed Services and complete the Task Order; and (iii) any information or data Contractor requires to perform the Task Order.

(b) A schedule to complete the Task Order, including key milestone dates to complete each task, subtask, and Deliverable, as applicable.

(c) A list of personnel and subcontractors Contractor proposes to work on each Task Order; and, for each personnel and subcontractor, a description of the task(s) or subtask(s) they will perform, and a resume indicating the personnel or subcontractor is qualified to perform that work. Resumes shall describe experience performing similar work.

(d) A detailed cost estimate for each task, subtask or Deliverable showing:

(i) Estimated number of hours and fully burdened hourly labor rates (as listed in Section B.4 of Appendix B) for all Contractor and subcontractor personnel

proposed to work on the Task Order. The following labor costs are not allowed, and shall not be included in Contractor's cost estimates: labor to prepare monthly invoices, labor to fill out required LBE forms, and labor to manage subcontractors. Overtime labor hours will not be allowed without prior written approval. If overtime is approved, it will be billed at the billing rates listed and not at one and one-half times the billing rate;

(iii) Estimated reasonable out-of-pocket expenses.

4.2.5 Negotiation of Cost. The SFMTA Project Manager will review the Task Order proposal and negotiate with Contractor pricing for the Task Order, which shall be either: (a) a negotiated lump sum price for the Task Order; or (b) a negotiated number of hours per Task Order subject to a not to exceed dollar amount, along with any City-approved out-of-pocket expenses.

4.2.6 Record of Negotiations. The SFMTA Project Manager will document the negotiations and any agreement in a Record of Negotiations.

4.2.7 LBE Subcontracting Participation Requirement. Upon completion of negotiations, Contractor shall provide Project Manager a memo describing the proposed LBE subcontracting participation requirement associated with the Task Order. The memo shall include a table that lists (1) all firms performing work on the Task Order, (2) if the firm is an LBE, (3) the dollar value and percentage of work attributed with each firm, and (4) the overall calculated LBE subcontracting participation requirement for the Task Order. CCO will review the final negotiated Task Order scope and Contractor's subcontracting participation requirement memo, approve or deny the LBE subcontracting participation requirement, and issue a memo to file by CCO. The LBE subcontracting participation requirement assigned to each Task Order shall be tracked by the CCO as part of the overall LBE commitment the Contractor made at time of proposal and as set forth in the Agreement. The Contractor must in good faith comply with the following:

(a) The individual LBE subcontracting participation requirement set for each Task Order.

(b) The overall LBE subcontracting participation that it committed to (which includes the commitments the Contractor made to each of its listed LBE subcontractors at time of proposal). See Section 10.6 (Local Business Enterprise Program) for more information on the LBE Program.

4.2.8 Notice to Proceed. The SFMTA will issue and send to Contractor a written Notice to Proceed, and Task Order number. Contractor shall not commence work under any Task Order until it receives a corresponding Notice to Proceed from the SFMTA. Contractor shall use this Task Order number when submitting invoices to the SFMTA's Project Manager for payment under the Task Order.

4.2.9 Changes to Task Order Pricing. Task Order pricing shall not be modified unless there is a material change in the Task Order's scope of Services, in which case a new Task Order proposal, pricing negotiation, record of negotiations, and Notice to Proceed shall be required before SFMTA approves the change in pricing.

4.2.10 Failure to Agree on Terms of Task Order. In the event that the SFMTA and Contractor cannot reach agreement on the terms of the Task Order, the SFMTA may either

cancel the Task Order and have the work accomplished through other available sources, or may direct the Contractor to proceed with the task under such conditions as City may require to assure quality and timeliness of the task performance. Under no circumstances may the Contractor refuse to undertake a City-ordered task.

4.3 Qualified Personnel.

4.3.1 Contractor represents and warrants that it is qualified to perform the services required by the City, and that all Services will be performed by competent personnel with the degree of skill, care, and diligence required by current and sound professional procedures and practices and in conformance with generally accepted professional standards prevailing at the time the Services are performed. All personnel, including those assigned at the City's request, must be supervised by Contractor. Contractor shall commit sufficient resources for timely completion the Services within the project schedule.

4.3.2 The SFMTA may, upon reasonable notice and after consultation with the Contractor, require the Contractor to reassign any individual on the Contractor's project team if, in the SFMTA's reasonable discretion, the individual fails to demonstrate the required qualifications or expertise, materially fails to perform their duties, or is otherwise performing unsatisfactorily. The Contractor shall have a reasonable period, not to exceed 60 days, to replace the individual with a suitably qualified substitute, subject to the SFMTA's approval, which shall not be unreasonably withheld. The SFMTA reserves the right to review and approve any replacement of team members, and the right to reject invoices related to work performed by replacement team members that the SFMTA did not approve.

4.3.3 Key Personnel. Contractor shall advise SFMTA immediately if any of the individuals designated as Key Personnel in Section B.4 of Appendix B deviates from their committed role or time (e.g., is assigned to another project). The SFMTA may, in turn, require Contractor to provide a remedy and/or corrective actions for such deviations.

4.4 Subcontracting.

4.4.1 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.

4.4.2 City's execution of this Agreement constitutes its approval of the following subcontractors:

- Hollins Consulting, Inc. (LBE)
- Laura Blake Architect (LBE)
- Revel Architecture and Design

- FM Insight Consulting

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

4.5.1 Independent Contractor. For the purposes of this Section 4.5, “Contractor” shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor’s performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor’s work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement. Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor’s compliance with this Section. Should City determine that Contractor, or any agent or employee of Contractor, is not performing in accordance with the requirements of this Agreement, City shall provide Contractor with written notice of such failure. Within five (5) business days of Contractor’s receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor, or any agent or employee of Contractor, warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

4.5.2 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.

4.6 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, 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.

4.7 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) **Commercial General Liability** Insurance with limits not less than \$1,000,000 each occurrence and \$2,000,000 general aggregate for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations.

(b) **Commercial Automobile Liability** Insurance with limits not less than \$1,000,000 each occurrence, "Combined Single Limit" for Bodily Injury and

Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

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

(d) **Professional Liability Insurance**, applicable to Contractor's profession, with limits not less than \$1,000,000 for each claim with respect to negligent acts, errors or omissions in connection with the Services.

(e) **Reserved. (Technology Errors and Omissions Coverage).**

(f) **Reserved. (Cyber and Privacy Coverage).**

(g) **Reserved. (Pollution Liability Insurance).**

5.1.2 Additional Insured Endorsements

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

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

(c) **Reserved. (Pollution Auto Liability Insurance Additional Insured Endorsement).**

5.1.3 Waiver of Subrogation

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

5.1.4 Primary Insurance Endorsements

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

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

(c) **Reserved. (Pollution Liability Insurance Primary Insurance Endorsement).**

5.1.5 Other Insurance Requirements

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

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

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

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

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

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

5.2 Indemnification.

5.2.1 Contractor shall indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them from and against any and all liabilities (legal, contractual, or otherwise), losses, damages, costs, expenses, or claims for injury or damages (collectively, "Claims"), arising from or in any way connected with Contractor's performance of the Agreement, including but not limited to, any: (i) injury to or death of a person, including employees of City or Contractor; (ii) loss of or damage to property; (iii) violation of local, state, or federal common law, statute or regulation, including but not limited to privacy or personal identifiable information, health information, disability and labor laws or regulations; (iv) strict liability imposed by any law or regulation; or (v) losses arising from Contractor's execution of subcontracts not in accordance with the requirements of this Agreement applicable to subcontractors; except to the extent such indemnity is void or otherwise unenforceable under applicable law, and except where such Claims are the result of the active negligence or willful misconduct of City and are not contributed to by any act of, or by any omission to perform some duty

imposed by law or agreement on, Contractor, its subcontractors, or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants, experts, and related costs, and City's costs of investigating any claims against the City.

5.2.2 In addition to Contractor's obligation to indemnify City under Section 5.2.1 above, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such Claim is tendered to Contractor by City and continues at all times thereafter.

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

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

Article 6 Liability of the Parties

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

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

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

6.4 Liability of Contractor. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, CONTRACTOR'S TOTAL LIABILITY UNDER THIS AGREEMENT FOR ANY AND ALL LOSSES, INJURIES, CLAIMS, EXPENSES, OR DAMAGES, INCLUDING INCIDENTAL AND CONSEQUENTIAL DAMAGES, SHALL NOT EXCEED THE LIMITS FOR THE AVAILABLE INSURANCE. CONTRACTOR'S LIABILITY LIMIT SET FORTH

HEREIN SHALL NOT APPLY TO (1) DAMAGES CAUSED BY CONTRACTOR'S GROSS NEGLIGENCE, RECKLESS CONDUCT, OR WILLFUL ACTS OR OMISSIONS, (2) WRONGFUL DEATH CAUSED BY CONTRACTOR, (3) CONTRACTOR'S OBLIGATION TO INDEMNIFY AND DEFEND CITY PURSUANT TO THE GENERAL INDEMNIFICATION CLAUSE AND FOR INTELLECTUAL PROPERTY INFRINGEMENT, (4) STATUTORY FINES, DAMAGES, OR EXPENSES CAUSED BY CONTRACTOR'S VIOLATION OF FEDERAL, STATE AND/OR LOCAL LAWS, (5) CONTRACTOR'S WARRANTIES UNDER THIS AGREEMENT, AND (6) PUNITIVE DAMAGES.

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 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.

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 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	Reserved. (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 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 Default Remedies. On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, where applicable, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City 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 in accordance with Article 11.

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

8.4 Rights and Duties upon Termination or Expiration.

8.4.1 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)	Reserved. (Grant Funded Contracts – Disallowance)	9.2	Works for Hire
3.4	Audit and Inspection of Records	11.6	Dispute Resolution Procedure
3.5	Submitting False Claims	11.7	Agreement Made in California; Venue
Article 5	Insurance and Indemnity	11.8	Construction
6.1	Liability of City	11.9	Entire Agreement
6.3	Liability for Incidental and Consequential Damages	11.10	Compliance with Laws
Article 7	Payment of Taxes	11.11	Severability
8.1.6	Payment Obligation	Article 13	Data and Security
8.2.2	Default Remedies		

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

of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City.

Article 9 Rights In Deliverables

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

9.2 Works for Hire. All copyrights in Deliverables that are considered works for hire under Title 17 of the United States Code shall be the property of the City. If any such Deliverables are ever determined not to be works for hire under federal law, Contractor hereby assigns all Contractor's copyrights to such Deliverables to 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 subcontractors. With City's prior written approval, Contractor and its subcontractors may retain and use copies of such works for reference and as documentation of their respective experience and capabilities provided that any such use is in conformance with the confidentiality provisions of this Agreement.

Article 10 Additional Requirements Incorporated by Reference

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

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 Labor and Employment Code Article 141, 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 Article 141. Information about and the text of Article 141 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 Article 141, irrespective of the listing of obligations in this Section.

10.5 Nondiscrimination Requirements.

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

10.5.2 Nondiscrimination in the Provision of Employee Benefits. San Francisco Labor and Employment Code Article 131.2 applies to this Agreement. Contractor does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for 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 Labor and Employment Code Article 131.2.

10.6 Local Business Enterprise and Non-Discrimination in Contracting Ordinance. Contractor shall comply with all applicable provisions of Chapter 14B (“LBE Ordinance”). Contractor is subject to the enforcement and penalty provisions in Chapter 14B. Contractor shall meet the LBE subcontracting commitment percentage(s) made in its RFP submittal documents. 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. Labor and Employment Code Article 111 applies to this contract. Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Labor and Employment Code Article 111, including a minimum hourly gross compensation, compensated time off, and uncompensated time off. Contractor is subject to the enforcement and penalty provisions in Article 111. Information about and the text of Article 111 is available on the web at <http://sfgov.org/olse/mco>. Contractor is required to comply with all of the applicable provisions of Article 111, irrespective of the listing of obligations in this Section. By

signing and executing this Agreement, Contractor certifies that it complies with Article 111.

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

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

10.10 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, 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 Article 142, “City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions,” of the San Francisco Labor and Employment Code (“Article 142”), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Article 142 are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of Article 142 is available on the web at <http://sfgov.org/olse/fco>. Contractor is required to comply with all of the applicable provisions of Article 142, 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 Article 142.

10.14.2 The requirements of Article 142 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. Article 142 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 Nonprofit Contractor Requirements

10.15.1 Good Standing. If Contractor is a nonprofit organization, Contractor represents that it is in good standing with the California Attorney General’s Registry of Charitable Trusts and will remain in good standing during the term of this Agreement. Contractor shall immediately notify City of any change in its eligibility to perform under the Agreement. Upon City’s request, Contractor shall provide documentation demonstrating its compliance with applicable legal requirements. If Contractor will use any subcontractors to perform the Agreement, Contractor is responsible for ensuring they are also in compliance with the California Attorney General’s Registry of Charitable Trusts for the duration of the Agreement. Any failure by Contractor or its subcontractors to remain in good standing with applicable requirements shall be a material breach of this Agreement.

10.15.2 Public Access to Nonprofit Records and Meetings. If Contractor is a nonprofit organization that provides Services that do not include services or benefits for City employees (and/or to their family members, dependents, or their other designated beneficiaries); and receives a cumulative total per year of at least \$250,000 in City or City-administered funds, then Contractor must comply with the City’s Public Access to Nonprofit Records and Meetings requirements, as set forth in Chapter 12L of the

San Francisco Administrative Code, including the remedies provided therein.

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

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: Tim Kempf
Project Manager
SFMTA
1 South Van Ness Avenue, 8th Floor
San Francisco, CA 94102
tim.kempf@sfmta.com

To Contractor: Ignacio Barandiaran
Principal
Arup US, Inc.
560 Mission Street, Suite 700
San Francisco, CA 94105
ignacio.barandiaran@arup.com

Any notice of default or data breach must be sent by certified mail or other trackable written communication, and also by e-mail, with the sender using the receipt notice feature. Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party at least ten days prior to the effective date of such change. If email notification is used, the sender must specify a receipt notice.

11.2 Compliance with Laws Requiring Access for People with Disabilities.

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

11.2.2 Reserved. (Information and Communication Technology Accessibility)

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 by written instrument executed and approved in the same manner as this Agreement. Contractor must submit the Contract Modification Form (CMD Form 10) along with the supporting documentation to CCO and obtain prior CCO approval for any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20%.

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. Disputes will not be subject to binding arbitration. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of 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 including the appendices sets forth the entire Agreement between the Parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Section 11.5, "Modification of this Agreement."

11.10 Compliance with Laws. Contractor shall keep itself fully informed of 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 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 27, 2023**. 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 any City Data under this Agreement, and in no event later than 24 hours after Contractor receives the request. Contractor shall not respond to Legal Requests related to City without first notifying City other than to notify the requestor that the information sought is potentially covered under a non-disclosure agreement. Contractor shall retain and preserve City Data in accordance with 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 Large Vehicle Driver Safety Training Requirements

12.1.1 Contractor agrees that before any of its employees and subcontractors drive large vehicles within the City and County of San Francisco, those

employees and subcontractors shall successfully complete either (a) the SFMTA's Large Vehicle Urban Driving Safety training program or (b) a training program that meets the SFMTA's approved standards for large vehicle urban driving safety. The SFMTA's approved standards for large vehicle urban driving safety is available for download at www.SFMTA.com/largevehicletainingstandards. This requirement does not apply to drivers providing delivery services who are not employees or subcontractors of the Contractor. For purposes of this section, "large vehicle" means any single vehicle or combination of vehicle and trailer with an unladen weight of 10,000 pounds or more, or a van designed to carry 10 or more people.

12.1.2 By entering into this Agreement, Contractor agrees that in the event the Contractor fails to comply with the Large Vehicle Driver Safety Training Requirements, the City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of up to One Thousand Dollars (\$1,000) per employee or subcontractor who is permitted to drive a large vehicle in violation of these requirements is not a penalty, but is a reasonable estimate of the loss that City will incur based on the Contractor's failure to comply with this requirement, established in light of the circumstances existing at the time this Contract was awarded. City may deduct a sum representing the liquidated damages from any money due to Contractor. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply.

Article 13 Data and Security

13.1 Nondisclosure of Private, Proprietary or Confidential Information.

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

13.1.2 City Data; Confidential Information. In the performance of Services, Contractor may have access to, or collect on City's behalf, City Data, which may include proprietary or Confidential Information that if disclosed to third parties may damage City. If City discloses proprietary or Confidential Information to Contractor, or Contractor collects such information on City's behalf, such information must be held by Contractor in confidence and used only in performing the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary or Confidential Information.

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

13.3 Reserved. (Business Associate Agreement).

13.4 Management of City Data and Confidential Information

13.4.1 Use of City Data. Contractor agrees to hold City's Data received from or created or collected on behalf of, the City, in strictest confidence. Contractor shall not use or disclose City's Data except as permitted or required by the

Agreement or as otherwise authorized in writing by the City. Any work by Contractor or its authorized subcontractors using, or sharing or storage of, City's Data outside the United States is prohibited, absent prior written authorization by the City. Access to City's Data must be strictly controlled and limited to Contractor's staff assigned to this project on a need-to-know basis only. City Data shall not be distributed, repurposed, or shared across other applications, environments, or business units of Contractor. Contractor is provided a limited non-exclusive license to use the City Data 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, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third-party. Unauthorized use of City Data by Contractor, subcontractors or other third-parties is prohibited. For purpose of this requirement, the phrase "unauthorized use" means the data mining or processing of data, and/or machine learning from the data, stored or transmitted by the service, for unrelated commercial purposes, advertising or advertising-related purposes, or for any purpose that is not explicitly authorized other than security or service delivery analysis.

13.4.2 Disposition of City Data. Upon request of City or termination or expiration of this Agreement, and pursuant to any document retention period required by this Agreement, Contractor shall promptly, but in no event later than thirty (30) calendar days, return all City Data given to or collected or created by Contractor on City's behalf, which includes all original media. Once Contractor has received written confirmation from City that City Data has been successfully transferred to City, Contractor shall within ten (10) business days clear or purge all City Data from its servers, any hosted environment Contractor has used in performance of this Agreement, including its subcontractors environment(s), work stations that were used to process the data or for production of the data, and any other work files stored by Contractor in whatever medium. Contractor shall provide City with written certification that such purge occurred within five (5) business days of the purge. Secure disposal shall be accomplished by "clearing," "purging" or "physical destruction," in accordance with National Institute of Standards and Technology (NIST) Special Publication 800-88 or most current industry standard.

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

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

Article 14 MacBride And Signature

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

[Signatures on following page.]

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

CITY	CONTRACTOR
<p>San Francisco Municipal Transportation Agency</p> <hr/> <p>Julie Kirschbaum Director of Transportation</p> <p>Authorized By:</p> <p>SFMTA Board of Directors</p> <p>Resolution No: _____</p> <p>Adopted: _____</p> <p>Attest: _____ Secretary, to the Board</p> <p>Approved as to Form:</p> <p>David Chiu City Attorney</p> <p>By: _____ Isidro A. Jiménez Deputy City Attorney</p>	<p>Arup US, Inc.</p> <hr/> <p>Ignacio Barandiaran Principal 560 Mission St., Suite 700 San Francisco, CA 94105</p> <p><u>Acknowledgement of Large Vehicle Driver Safety Training Requirements:</u></p> <p>By signing this Agreement, Contractor acknowledges that it has read and understands Section 12.1: Large Vehicle Driver Safety Training Requirements.</p> <p>City Supplier Number: 0000049238</p>

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Appendices:

- A Scope of Services
- B Calculation of Charges

Appendix A Scope of Services

A.1 Scope of Services

a. Base Services

The Contractor, with its team of sub-consultants, shall provide the following Base Services:

- i. Support City Project Management/Construction Management Team in the management and administration of the IF DBFOM Agreement. The City Project Management/Construction Management Team and Contractor's support role to be structured and staffed as shown in Attachment 4 of the request for proposal issued by the City.
- ii. Review and provide comments on the project management plan (PMP) prepared by PPC detailing the milestones and deliverables, establishing the communication, decision-making and reporting protocols.
- iii. Review and provide comments on PPC's project management deliverables, including design management plans, construction quality plans, utility coordination plans, closeout procedures, operations and maintenance quality management plans, warranties, and training manuals.
- iv. Provide oversight of PPC's quality assurance and quality control processes and systems during design and construction, and support with third party utility coordination.
- v. Manage submittal tracking, distribution, reviewing, and reporting for required submittals as per the IF DBFOM Agreement. For the documents which are reviewed by the City third-party technical consultant, the third-party consultant will receive and distribute PPC's documents to the reviewers, collect comments, and resolve any conflicting or duplicated comments. Conducting and managing such design reviews is excluded from the Contractor's scope and assumed to be conducted by the City's consultants.
- vi. Provide oversight of the PPC's key performance indicators (KPIs) established in the IF DBFOM Agreement. Monitor PPC's progress and review their monthly technical and financial progress and performance measurement and audit reports for compliance with the IF DBFOM Agreement. In collaboration with the City's Project Manager and PPC, agree corrective actions based on KPI and performance review results.
- vii. Produce monthly reports on PPC's progress including commercial and financial topics. Liaise with the City's team to include their input on the technical and legal matters in these reports.
- viii. Provide oversight of the design deliverable review process in conformance with the Project IF DBFOM Agreement and its Technical Requirements.

- ix. The Contractor will review and provide comments on PPC's proposed information technology and communication (ITC) systems design at 50% DD, 100% DD, 50% CD, and 90% CD packages focusing on adherence to specifications developed by PPC and/or provided by the City to PPC. It is assumed the Contractor will undertake one ITC systems review at each milestone. The Contractor will attend meetings with PPC and the City. In addition to these reviews, the Contractor price assumes up to 20 hours for virtual meetings plus two site visits (up to one day each). The Contractor scope excludes:
- ITC system design or specifications;
 - performance specifications for electronic security (CCTV, Access Control System);
 - the procurement, supply and installation of ITC systems or equipment; and
 - coordinating the scope interfaces between the City and ITC.
- x. The Contractor will review and provide comments on PPC's proposed Office, Admin and Training Spaces Furniture, Fixture and Equipment (FF&E) design, focusing on adherence to specifications developed by PPC and/or provided by the City to PPC. It is assumed the Contractor will undertake one Office, Admin and Training Spaces FF&E review of up to three sets of design submittals. In addition to these reviews, the Contractor price assumes up to 12 hours for virtual meetings plus attending three visits to furniture showrooms (up to 2 hours for each tour). The Contractor scope excludes:
- inventory of City-Furnished Equipment;
 - the procurement, supply and installation of Office, Admin and Training Spaces FF&E;
 - the development of specifications and requirements for Office, Admin and Training Spaces FF&E;
 - the industrial shop equipment specifications and requirements which will be delivered by other City consultants; and
 - user surveys or focus groups.
- xi. Provide robust and rigorous review and analysis of PPC schedule submittals including complex baseline schedules and monthly project schedule updates, under an accelerated delivery timeline and date-certain terms commensurate with public-private partnership delivery objectives. Analyze the critical path with overlay of .XER files for any deviations, opportunities and changes being proposed. Facilitate discussions with PPC to address schedule related issues and delays including delay events in accordance with the IF DBFOM Agreement. In collaboration with the City's Project Manager and PPC, propose corrective actions.

- xii. Provide robust and rigorous cost consulting to maintain a fixed price of the IF DBFOM Agreement during design and construction, under an accelerated delivery timeline commensurate with public-private partnership delivery objectives.
- xiii. Review, analyze, and provide recommendations on complex change requests; provide independent cost estimating analysis on additional scope items. Assist the City Project Manager in decision making regarding the change orders, documentation, and approval of changes.
- xiv. Review, analyze, and provide recommendations regarding proposed delay and/or relief events in accordance with the IF DBFOM Agreement.
- xv. Advise the City and implement financial and technical adjustments to the availability payment regime and the payment mechanism as contemplated and allowed by the IF DBFOM Agreement.
- xvi. In collaboration with the City's Project Manager and PPC, identify potential risks and develop mitigation strategies via PPC's Risk Register. Review risk mitigation and contingency plans and provide guidance on risk related decisions. Monitor risk exposure and communicate risk status.
- xvii. Develop and maintain a project controls dashboard to regularly monitor PPC's progress, including monitoring actuals against budget, conducting variance analyses and reporting of project financials.
- xviii. Attend the Weekly Project Coordination Meetings and Monthly Progress Meetings with the City and PPC to discuss the project progress.
- xix. Provide the following design review support through the IF DBFOM Agreement phase to complement the City's capabilities:
 - Design Guidelines Review: coordinate the City's review of the 50% Design Development (DD) submission related to the Infrastructure Facility's architectural design requirements in Division 2 of Exhibit 18 of the IF DBFOM Agreement. Prepare a Design Guideline review report and coordinate it with the design review reports prepared by other consultants, and then attend a working meeting with PPC to clarify and discuss comments as needed. In addition, attend up to two working meetings during Design Development (DD).
 - Noise and Vibration Review:
 - Prepare checklists for assessment of the 50% DD submission, which will be based on requirements listed in Division 4 of Exhibit 18 of the IF DBFOM Agreement.
 - Review the 50% DD submission. Review the acoustic and vibration report presented by the PPC and provide completed checklist, provide written evaluation and comments on apparent conformance with Division 4 requirements, and comment on risks where the architecture and engineering design may not be coordinated with the acoustics and vibration report.

- As required, undertake peer-review calculation estimates (not full calculations) as part of this assessment of the PPC approach to meet acoustics and vibration requirements.
- If necessary, prepare questions to the PPC related to acoustics and vibration and attend up to two (2) meetings with the PPC and/or the PPC's acoustic and vibration consultant.
- Geotechnical Review: review and comment on the incorporation of geotechnical recommendations developed during the Predevelopment Agreement (PDA) phase into the Seismic Resilience Review and the PPC's 50% DD submittals. Conduct detailed review of geotechnical inputs, implemented in civil plans and structural plans/calculations, but focusing on where deviations from agreed baseline assumptions may exist and require interpretation of risk sharing agreements. Geo-seismic review associated with earthquake ground shaking needed for the Seismic Resilience Review is included in this scope.
- Seismic Resilience Review: act as the City's peer reviewer throughout the design process to verify progress toward the objectives, as established in Division 4 of Exhibit 18 (Technical Requirements).
 - Review drawings and written documents and conduct limited independent analysis to confirm general conformance with the criteria established in Division 4 of the Technical Requirements at each of the four design submissions (50% DD, 100% DD, 50% CD and 90% CD).
 - Meet with PPC to discuss their approach.
 - Document and track the resolution of comments in a written log; and
 - Report to the City on the status of comment resolution at each milestone.

The scope of construction-phase peer review (i.e., after completion of the 90% CD), is excluded from the scope.

- xx. The Contractor review of the Infrastructure Facility Maintenance (IFM) specifications includes the adequacy, including format and elements, of the provided templates and the completeness and structure of the provided renewal work plan and maintenance schedules. The review will not comment on the technical adequacy such as the renewal or maintenance schedule, adherence to law or general best practice which are the responsibility of PPC.
- xxi. The Contractor will provide technical support for reviewing PPC's adherence to the Testing and Commissioning requirements in Division 6 of Exhibit 18 of the IF DBFOM Agreement. This will entail reviewing the Commissioning Plan, the functional testing protocol, and the Commissioning Report. It is anticipated that the Contractor attends approximately 10% of testing and commissioning activities on site.

b. Scope of As-Needed Services

- xxii. The Contract will provide other “As-Needed Services,” which means the scope of work, if any, that is a necessary extension of or integral to the Base Services and that the Contractor performs pursuant to a Task Order issued under this Agreement. As-Needed Services may include, without limitation, supplemental technical analysis, additional project controls support, expanded reviews of project deliverables, risk assessments, financial and schedule modeling, or other advisory services that directly support and enhance the performance of the Base Services.

A.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.

A.3 Deliverables

The Contractor shall provide each of the following Deliverables in writing to the City for review and approval to achieve the project objectives.

- a. **Deliverable 1:** for all Technical Requirements Division 1 submittals pertaining to contract management (e.g., design management, construction management, quality management, submittal management, traffic management, utilities and third party management, project meetings, progress status reports, etc.), provide: (i) written memoranda with summary of findings and a recommended submittal response status; (ii) submittal review comments for each submittal and submittal revision captured in a comment log.
- b. **Deliverable 2:** for all Technical Requirements Division 1 submittals pertaining to project schedule deliverables (e.g., Initial Schedule, Project Schedule, Revised Project Schedules, Proposed Recovery Schedules, Project Schedule Monthly Updates, As-Built Schedule, Final Schedule Report, etc.), provide: (i) written memoranda with summary of findings and a recommended submittal response status; (ii) submittal review comments for each submittal and submittal revision captured in a comment log.
- c. **Deliverable 3:** for all compensable and non-compensable delay claims and extra work change orders, provide written memoranda that addresses the claims documentation including justification for the claim, extra cost pricing proposal, schedule documentation and time impact analysis submittal. Written memoranda shall include a summary of findings, an analysis of justification, pricing, and schedule impacts, a markup of the claims documentation, pricing, and time impact analysis, and recommendations to City regarding disposition and next steps.

- d. **Deliverable 4:** for all Technical Requirements Division 1 submittals pertaining to proprietary design review, and for Division 3 technical submittals, report on City design review progress, new critical comments made by City and City's other technical consultants, and resolution of previous critical comments. In this instance, critical means having (i) a material impact on schedule or cost; or (ii) a potential to create a change order.
- e. **Deliverable 5:** for all Technical Requirements Division 6 submittals pertaining to Testing & Commissioning, provide: (i) written memoranda with summary of findings and a recommended submittal response status; (ii) submittal review comments for each submittal and submittal revision captured in a comment log.
- f. **Deliverable 6:** for all Technical Requirements Division 7 submittals pertaining to Infrastructure Facility Maintenance, provide: (i) written memoranda with summary of findings and a recommended submittal response status; (ii) submittal review comments for each submittal and submittal revision captured in a comment log that are associated with IFM availability payment.
- g. **Deliverable 7:** for all Technical Requirements Division 10 submittals pertaining to General Requirements for Construction that have "review/comment" indicated as City submittal action, provide: (i) written memoranda with summary of findings and a recommended submittal response status; (ii) submittal review comments for each submittal and submittal revision captured in a comment log from the Contractor, City, and other third-party subject matter experts.
- h. **Deliverable 8:** regular project status and progress reports utilizing a project controls dashboard that summarizes performance metrics addressing scope, schedule, and budget; assume monthly reports.
- i. **Deliverable 9:** for all technical submittals described in Section A.1.a, item (ix), pertaining to ITC systems, provide: (i) written memoranda with summary of findings and a recommended submittal response status; (ii) submittal review comments for each submittal and submittal revision captured in a comment log.
- j. **Deliverable 10:** for all technical submittals described in Section A.1.a, item (x), pertaining to FF&E systems, provide: (i) written memoranda with summary of findings and a recommended submittal response status; (ii) submittal review comments for each submittal and submittal revision captured in a comment log.
- k. **Deliverable 11:** for all technical submittals described in Section A.1.a, item (xix), pertaining to Design Guidelines, noise and vibration, geotechnical design, and structural seismic design, provide: (i) written memoranda with summary of findings and a recommended submittal response status; (ii) submittal review comments for each submittal and submittal revision captured in a comment log.

- I. Deliverable 12:** as referenced in Section A.1.a, items (xv) and (xx), a revised payment mechanism and IFM specifications reflecting the “as built” condition, as necessitated by changes during design and construction, to reflect technical and financial adjustments as contemplated and allowed by the IF DBFOM Agreement.

A.4 Reports

Contractor shall submit written reports and memoranda as generally described under Section A.1 Base Services and as further described above under Section A.3, Deliverables. Format for the content of such reports shall be agreed between the City and the Contractor. The timely submission of all reports is a necessary and material term and condition of this Agreement. The reports shall be submitted electronically via email.

A.5 Project Schedule

The Contractor’s schedule is anticipated as follows:

Anticipated Milestone	Date
1. Notice to Proceed	April 2025
2. Authorization of Base Services, concurrent with Financial Close of the IF DBFOM Agreement. Scope for Base Services described in Appendix A and based on a 40-month Design and Construction duration from Financial Close through Final Acceptance (each of those terms as defined in the IF DBFOM Agreement).	October 2025
3. Authorization of potential As-Needed Services Task Orders (scope and budget to be determined in accordance with this Agreement)	April 2025 – October 2029
4. End of this Agreement (54 months)	October 2029

Appendix B Calculation of Charges

B.1 General

No invoices for services provided by law firms or attorneys, including, without limitation, as subconsultants of Contractor, will be paid unless the law firm receives advanced written approval from the City Attorney.

All craft/trade positions that are under the purview of the California Department of Industrial Relations are required to be paid prevailing wage rates.

Administrative and clerical support services are included in overhead and will not be charged separately.

B.2 Project Cost

Contractor's total compensation under this Agreement is detailed below, inclusive of all costs required to complete all Services specified in Appendix A, Scope of Services, and based on the assumptions stated therein.

Task	Scope	Assumed Duration	Contractor Price
1. General Contract Management	Appendix A, Section A.1.a, items i, ii, iii, iv, v, vi, viii	Oct 2025 through Jan 2029 (40 months)	\$2,548,609
2. Cost Controls	Appendix A, Section A.1.a, items xii, xiii, xiv, xvi	Oct 2025 through Jan 2029 (40 months)	\$693,197
3. Schedule Controls	Appendix A, Section A.1.a, item xi	Oct 2025 through Jan 2029 (40 months)	\$576,884
4. General Project Controls: Meetings and Reporting	Appendix A, Section A.1.a, items vii, xvii, xviii	Oct 2025 through Jan 2029 (40 months)	\$858,047
5. Financial Adjustments and IFM Specifications Review	Appendix A, Section A.1.a, items xv, xx	Oct 2025 through Jan 2029 (40 months)	\$524,979
6. ITC Support	Appendix A, Section A.1.a, item ix	Oct 2025 through Mar 2027 (18 months)	\$95,097
7. FF&E Support	Appendix A, Section A.1.a, item x	Oct 2025 through Mar 2027 (18 months)	\$54,003

8. Design Review Support	Appendix A, Section A.1.a, item xix	Oct 2025 through Jan 2029 (18 months)	\$123,311
9. Testing and Commissioning	Appendix A, Section A.1.a, item xxi	Oct 2025 through Jan 2029 (40 months)	\$117,387
Base Services TOTAL			\$5,591,514
Potential As-Needed Services Task Orders	To be determined	Apr 2025 through Oct 2029	\$408,486
Total Contract Amount			\$6,000,000

See Invoicing (Section B.5) below for how Contractor will invoice.

B.3 Price and Rate Adjustments for potential As-Needed Services

Pricing for potential As-Needed Services requested by the City will be negotiated by the Parties based on Contractor’s fully burdened hourly labor rates, shown in Section B.4, below. Contractor may request increases to its labor rates in accordance with the paragraph below.

The fully burdened hourly labor rates are fixed negotiated rates and shall not change for the first 12 months after the Effective Date of this Agreement. Thereafter, during the term of this Agreement, Contractor may request annual escalation based on the annual percentage change in the Consumer Price Index (CPI) for the San Francisco Bay Area for Urban Wage Earners and Clerical Workers. No hourly rate may be increased without prior written approval of the SFMTA. Contractor must request any escalation of these hourly labor rates no later than 30 Days before the anniversary of the Effective Date of this Agreement, and failure to timely do so may result in a denial of the request. Any requests for escalation of direct hourly labor rates must be supported by the U.S. Department of Labor’s most recently published, **non-preliminary** Consumer Price Index (CPI) for the San Francisco Bay Area for Urban Wage Earners and Clerical Workers, published at the time of Contractor’s request, and an updated Section B.4 for the SFMTA’s approval. The SFMTA will review all requests for escalation of hourly labor rates within 30 Days of receipt and notify Contractor of either an approval or denial. If approved, the new rates will become effective as of the date that a contract modification is executed, but no earlier than the anniversary of the Effective Date of this Agreement. In no event will the start of the new rates be backdated. Subsequent rate escalations will be effective no less than one year after the most recent prior rate escalation.

B.4 Contractor Fully Burdened Hourly Labor Rates and Key Personnel

The Contractor’s fully burdened hourly rates are as follows. Personnel designated KP are subject to the Key Personnel requirements of Section 4.3.

Firm	Personnel	Title / Position	Fully Burdened Hourly Rate
Arup US, Inc.	Ignacio Barandiaran (KP) Doug Balmer Jane Goslett	Principal	\$542
Arup US, Inc.	Orion Fulton (KP) Marjan Gholamalipour (KP) Alfonso Mendez (KP) Sanjay Upadhyay	Associate Principal	\$493
Arup US, Inc.	Adam Finkin Fernanda Freitas Mani Manivannan Nataka White	Senior Manager	\$426
Arup US, Inc.	Arvan Anderson Pawan Kumar	Manager	\$350
Arup US, Inc.	Emily Steinkamp	Senior Consultant	\$306
Arup US, Inc.	TBD	Consultant	\$275
Arup US, Inc.	TBD	Senior Analyst	\$256
Arup US, Inc.	TBD	Analyst	\$236
Hollins Consulting, Inc.	Brook Mebrahtu (KP)	Principal-in- Charge	\$293
Hollins Consulting, Inc.	Brendan Goggins (KP)	Cost Estimator	\$234
Hollins Consulting, Inc.	Victor Green	Scheduler	\$242
Hollins Consulting, Inc.	Adriaen Baniias	Project Controls / Change Management	\$224
Laura Blake Architect	Laura Blake (KP)	Principal	\$216
Revel Architecture and Design	TBD	Principal	\$257
Revel Architecture and Design	TBD	Senior Project Manager	\$216

Revel Architecture and Design	TBD	Architect/Senior Designer	\$195
FM Insights Consulting	Michel Theriault	Principal	\$278

B.5 Invoicing

The Contractor’s price for Base Services will be invoiced monthly according to the work performed for the respective Task during that monthly pay period, summing up to its respective total fee lump sum for that Task, except that Tasks 1 through 5 as shown in Section B.2 shall be invoiced monthly in uniform amounts equal to the total fee for each Task divided equally by their assumed duration (e.g. 40 months).

Invoicing for potential As-Needed Services will be based on agreed upon payment structure during negotiations of the Task Orders.

B.6 Travel Reimbursement Policy

- 1) Travel Within the Nine Bay Area Counties: Travel within the nine Bay Area counties (Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano and Sonoma) between the Contractor or subconsultant’s office and Project Site shall be considered part of the Contractor or subconsultant’s overhead and will not be reimbursed by the City, regardless of the location of the Contractor’s or subconsultant’s regular work sites. All tolls and parking fees within the nine Bay Area counties will not be reimbursed.
- 2) Required Travel Outside of the Nine Bay Area Counties: If the needs of the project require the Contractor or its subconsultants to travel outside of the nine Bay Area counties, and if agreed to in writing prior to initiation of work, the City will reimburse the Contractor for the actual travel expenses incurred to and from their regular work site(s) to the Project Site. If the Contractor or subconsultant maintain their regular work site(s) outside of the nine Bay Area counties, reimbursement will be limited to the lesser of (1) the actual expenses incurred to and from the regular work site, or (2) the equivalent travel expenses to and from San Francisco.
 - a) All travel must be approved in advance by the City Contract Manager or City Project Manager. Advanced travel approvals must include estimated amounts for the approval(s) being given.
 - b) The associated Travel Time will be similarly reimbursed for the lesser of (i) the actual travel time incurred to and from the regular work site, or (ii) the equivalent travel time to and from San Francisco.
 - c) Mileage shall be subject to the Internal Revenue Service (IRS) standard mileage rate for business use of an automobile. No markup applies.

This rate is subject to change, yearly.

- d)** For all travel within the continental United States, travel expenses will be reimbursed according to the federal maximum lodging and per Diem rates by locality. Any exceptions to the Federal rates must be approved in advance by the City Contract Manager or City Project Manager. Federal rates for lodging can be found at: <http://www.gsa.gov/> > Per Diem Rates
- e)** Advanced travel approvals and receipts must be included in reimbursements requests. Minor discrepancies between the estimate and actual amounts may be approved by the City Contract Manager or City Project Manager at the time of payment request.
- f)** Air travel fares shall be based on lowest Economy Class ticket prices and will be reimbursed based on actual expenditures.
- g)** Taxi, shuttle, rail, and rental car fares will be reimbursed based on actual expenditures. Rail expenses shall be based on lowest Economy Class ticket prices (or equivalent.) Rental car expenses shall be based on the rate for either the Economy or Compact class of car or its equivalent. No upgrades on these forms of transportation will be reimbursed.
- h)** Tolls and parking fees associated with approved travel will be reimbursed based on the actual cost.
- i)** If public transportation is used, submit receipt/proof-of-purchase for approved travel.