



**PUBLIC UTILITIES  
REVENUE BOND OVERSIGHT COMMITTEE  
CITY AND COUNTY OF SAN FRANCISCO  
AGENDA**

**REMOTE MEETING**

**Listen/Public Call-In Phone Number  
(415) 906-4659  
Conference ID: 572 420 636 #**

**December 14, 2021 - 9:00 AM**

**Regular Meeting**

**Remote Access to Information and Participation**

On March 17, 2020, the Board of Supervisors authorized their Board and Committee meetings to convene remotely (via Microsoft Teams) and will allow remote public comment via teleconference.

Members of the public may participate by phone or may submit their comments by email to: [RBOC@sfgov.org](mailto:RBOC@sfgov.org); all comments received will be made a part of the official record. Revenue Bond Oversight Committee agendas and their associated documents are available at: <https://sfpuc.org/about-us/boards-commissions-committees/revenue-bond-oversight-committee>

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(415) 906-4659 Conference ID: 572 420 636 #

As the COVID-19 disease progresses, please visit the Board's website ([www.sfbos.org](http://www.sfbos.org)) regularly to be updated on the current situation as it affects the legislative process. For more information contact Assistant Clerk Victor Young at (415) 554-7723.

**Mission:** The Revenue Bond Oversight Committee (RBOC) monitors the expenditure of revenue bond proceeds related to the repair, replacement, upgrade and expansion of the SFPUC's water, power and sewer infrastructure. The RBOC provides independent oversight to ensure transparency and accountability. The RBOC's goal is to ensure that SFPUC revenue bond proceeds are spent for their intended purposes in accordance with legislative authorization and other applicable laws.

1. **Call to Order, Roll Call, and Agenda Changes**

Members:

Seat 1	Ettore Leale, Chair
Seat 2	Lars Kamp
Seat 3	Vacant
Seat 4	Vacant
Seat 5	Vacant
Seat 6	Christina Tang
Seat 7	Reuben Holober

2. **RBOC: Findings to Allow Teleconferenced Meetings During Declared Emergency** (*Discussion and possible action*)

Proposed Motion: ADOPT FINDINGS as required by Assembly Bill 361 that 1) the Committee has considered the circumstances of the state of emergency; 2) the state of emergency continues to directly impact the ability of policy body members to meet safely in person; and 3) state or local officials continue to impose or recommend measures to promote social distancing.

3. **Public Comment:** Members of the public may address the Revenue Bond Oversight Committee (RBOC) on matters that are within the RBOC's jurisdiction but are not on today's agenda.

4. **RBOC: Audit Update** (*Discussion and possible action*)

5. **RBOC: HKA Global Invoice No. 0000001 – for SFPUC Revenue Bond Audit from October 6, 2021 to November 9, 2021 - \$281,400.00.** (*Discussion and possible action*)(*attachment*)

6. **SFPUC: Water Infrastructure Update** (*Discussion and possible action*)

7. **SFPUC: Planning for next requests for proposal for contracts to acquire a consultant to examine project performance and other related audit services.** (*Discussion and possible action*)(*attachment*)

8. **Approval of Minutes:** November 16, 2021, Meeting Minutes. (*Discussion and possible action*) (*attachment*)

9. **Announcements, Comments, Questions, and Future Agenda Items.**  
(Discussion and possible action)

Upcoming Meeting Dates: January 11, 2022, February 8, 2022, and March 8, 2022.

Pending Issues:

- A. Request that SSIP Quarterly reports include information on Stormwater Management System and details on the bidding climate and possible cost increase)
- B. RBOC: Acquiring consultant to examine expected performance of complete projects.
- C. SFPUC: Staff Report: Environmental Justice
- D. SFPUC: Power Enterprise and Clean Power SF Update
- E. SFPUC: Mountain Tunnel Site Tour
- F. SFPUC: State Federal Loan Updates
- G. SFPUC: Oceanside Wastewater Plant Tour
- H. RBOC: Discussion on the 2015 report, entitled “Evaluation of Lessons Learned from the WSIP Program,” procedures and reporting processes taken from WSIP applied to SSIP
- I. SFPUC: Wastewater System Improvement Program Update
- J. RBOC: Discussion on the coordination of PUC Site Tours
- K. SFPUC: Water Infrastructure Update

10. **Adjournment**

### Agenda Item Information

Each item on the agenda may include: 1) Department or Agency cover letter and/or report; 2) Public correspondence; 3) Other explanatory documents. For more information concerning agendas, minutes, and meeting information, such as these documents, please contact RBOC Clerk, City Hall, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco, CA 94102 – (415) 554-5184.

Audio recordings of the meeting of the Revenue Bond Oversight Committee are available at: [http://sanfrancisco.granicus.com/ViewPublisher.php?view\\_id=97](http://sanfrancisco.granicus.com/ViewPublisher.php?view_id=97)

For information concerning San Francisco Public Utilities Commission please contact by e-mail [RBOC@sfgov.org](mailto:RBOC@sfgov.org) or by calling (415) 554-5184.

### Meeting Procedures

Public Comment will be taken before or during the Committee’s consideration of each agenda item. Speakers may address the Committee for up to three minutes on that item. During General Public Comment, members of the public may address the Committee on matters that are within the Committee’s jurisdiction and are not on the agenda.

Procedures do not permit: 1) persons in the audience to vocally express support or opposition to statements by Commissioners by other persons testifying; 2) ringing and use of cell phones, pagers, and similar sound-producing electronic devices; 3) bringing in or displaying signs in the meeting room; and 4) standing in the meeting room.

The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing electronic devices.

LANGUAGE INTERPRETERS: Requests must be received at least 48 hours in advance of the meeting to help ensure availability. Contact Wilson Ng or Arthur Khoo at (415) 554-5184. AVISO EN ESPAÑOL: La solicitud para un traductor debe recibirse antes de mediodía de el viernes anterior a la reunion. Llame a Wilson Ng o Arthur Khoo (415) 554-5184. PAUNAWA: Ang mga kahilingan ay kailangang matanggap sa loob ng 48 oras bago mag miting upang matiyak na matutugunan ang mga hiling. Mangyaring tumawag kay sa (415) 554-5184.

### Disability Access

Revenue Bond Oversight Committee meetings are held at the Public Utilities Commission, 525 Golden Gate Avenue, San Francisco, CA. The hearing rooms at the Public Utilities Commission are specified on the agenda and are wheelchair accessible. To request sign language interpreters, readers, large print agendas or other accommodations, please call (415) 554-5184. Requests made at least 48 hours in advance of the meeting will help to ensure availability.

翻譯 必須在會議前最少四十八小時提出要求  
請電 (415) 554-7719

### **Know Your Rights Under the Sunshine Ordinance**

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils, and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

For more information on your rights under the Sunshine Ordinance (San Francisco Administrative Code, Chapter 67) or to report a violation of the ordinance, contact by mail: Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco, CA 94102; phone at (415) 554-7724; fax at (415) 554-5163; or by email at [sotf@sfgov.org](mailto:sotf@sfgov.org).

Citizens may obtain a free copy of the Sunshine Ordinance by printing San Francisco Administrative Code, Chapter 67, at <http://www.sfbos.org/sunshine>.

### **Ethics Requirements**

Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Campaign & Governmental Conduct Code, Section 2.100] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the San Francisco Ethics Commission at 25 Van Ness Avenue, Suite 220, San Francisco, CA 94102; telephone (415) 252-3100; fax (415) 252-3112; web site <http://www.sfgov.org/ethics>.

Under Campaign and Governmental Conduct Code, Section 1.127, no person or entity with a financial interest in a land use matter pending before the Board of Appeals, Board of Supervisors, Building Inspection Commission, Commission on Community Investment and Infrastructure, Historic Preservation Commission, Planning Commission, Port Commission, or the Treasure Island Development Authority Board of Directors, may make a campaign contribution to a member of the Board of Supervisors, the Mayor, the City Attorney, or a candidate for any of those offices, from the date the land use matter commenced until 12 months after the board or commission has made a final decision, or any appeal to another City agency from that decision has been resolved. For more information about this restriction, visit [sfethics.org](http://sfethics.org).

### **Lobbyist Registration and Reporting Requirements**

Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Campaign & Governmental Conduct Code, Section 2.100, et. seq.] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at: 25 Van Ness Avenue, Suite 220, San Francisco, CA 94102; telephone (415) 581-3100; fax (415) 252-3112; website [www.sfgov.org/ethics](http://www.sfgov.org/ethics).



MAKING THE BEST  
POSSIBLE OUTCOMES  
A REALITY, EVERY TIME

Mark de la Rosa  
The City & County of San Francisco  
Controller's Office, Central Finance  
1 Dr. Carlton B. Goodlett Place  
City Hall, Room 482  
San Francisco, CA 94102-5408

November 19, 2021  
Project No: CPH-03530.00  
Invoice No: 0000001

Project CPH-03530.00 SFPUC Revenue Bond Audit  
**Professional Services from October 6, 2021 to November 9, 2021**

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Segment 1.0 Performance Audit

**Fee-Bill 70%** PO#0000422018 **281,400.00**  
Contract: 1000016968

Phase 1:

Fiscal Year 2019-20 Audits  
Six Revenue Bond Audits  
\$67,000/Audit (Fixed Price) x 6 audits  
Revenue Bonds to be determined.

**Total this Invoice US\$281,400.00**

Tax I.D. #81-4602170

PLEASE REMIT PAYMENT TO:

HKA Global, Inc.  
One Commerce Square  
2005 Market Street, Suite 820  
Philadelphia, PA 19103

HSBC Bank USA N.A.  
452 Fifth Avenue  
New York, NY 10018

Account Number: 104004185  
Routing Number (ACH): 022000020  
ABA Number: 021001088  
Swift Code: MRMDUS33

## Memorandum

Date: Friday, November 12, 2021

To: Massanda D'Johns

From: Dan Dawson

Cc: Hunter Wang, Paul Pocalyko, Eugene Yano

Re: SFPUC Revenue Bond Audit.  
Agreement between the City and County of San Francisco and HKA Global, Inc.  
Article B: Payment for deliverables

Massanda D'Johns,

The information below is an overview of our engagement with CSA:

### **Stage 1: Risk Assessment**

- Performed risk assessment on Water and Wastewater bonds
- Identified 3 Water and 3 Wastewater bonds to include in Phase 1 of the bond audit

### **Stage 2: Audit Fieldwork**

- Established routine checkpoints with CSA and the SFPUC audit coordinator
- Requested documentation from SFPUC Finance and Infrastructure divisions
- Held multiple discussions with SFPUC project managers, finance, engineering archives, and the acting AGM to clarify our understanding of the information
- Navigated challenging Water projects with document retention issues
- Presented status updates to the RBOC at their monthly public meetings.

### **Stage 3: Report Report**

- Communicated preliminary observations to SFPUC for comment and feedback
- Held follow-up discussions with SFPUC and CSA regarding other potential observations
- Confirmed validity of preliminary observations, reclassified as findings draft report.
- Drafted Phase 1 audit report and distributed to CSA on November 8, 2021'

**Stage 4: Final Report** *(Dates are tentative and subject to change)*

- November 17: Exit conference with CSA and RBOC to discuss the draft report
- November 23: Deliver Final Report to CSA
- December 14: RBOC monthly public meeting

Thank you for your cooperation and assistance during Phase 1 of the SFPUC bond audit.

Sincerely,



\_\_\_\_\_  
Dan Dawson,  
Project Director

11/12/2021

\_\_\_\_\_  
Date:

Received by:



\_\_\_\_\_  
Massanda D'Johns  
Lead Manager  
Office of the Controller  
City Services Auditor

11/18/21

\_\_\_\_\_  
Date:



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

**Agreement between the City and County of San Francisco and**

**HKA Global, Inc.  
Contract ID 1000016968**

This Agreement is made this Sixteenth of March 2020, in the City and County of San Francisco (“City”), State of California, by and between HKA Global, Inc., 201 California Street, Suite 411, San Francisco, CA 94111 (“Contractor”) and City.

**Recitals**

WHEREAS, the Controller’s Office (“Department”) wishes to obtain audit services; and,

WHEREAS, this Agreement was competitively procured as required by San Francisco Administrative Code Chapter 21.1 through a Request for Qualifications (“RFQ”) issued on February 20, 2018 and a Request for Quotes (“RFq”) issued on May 17, 2019, in which City selected Contractor as the highest qualified scorer pursuant to the RFq; and

WHEREAS, there is no Local Business Entity (“LBE”) subcontracting participation requirement for this Agreement; and

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

WHEREAS, the City’s Civil Service Commission approved Contract number PSC 46073-18/19 on July 15, 2019;

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

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

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

1.5 "Contractor" or "Consultant" means HKA Global, Inc., 201 California Street, Suite 411, San Francisco, CA 94111.

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

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

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

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

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

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

2.1 The term of this Agreement shall commence on March 16, 2020 and expire on March 15, 2023, unless earlier terminated as otherwise provided herein.

2.2 The City has one (1) option to renew the Agreement for a period of up to two (2) years. The City may extend this Agreement beyond the expiration date by exercising an option at the City'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; Termination in the Event of Non-Appropriation.** This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of

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

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

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

**3.3 Compensation.**

**3.3.1 Payment.** Contractor shall provide an invoice to the City on a monthly basis for Services completed in the immediate preceding month, unless a different schedule is set out in Appendix B, "Calculation of Charges." Compensation shall be made for Services identified in the invoice that the Controller, in his or her reasonable discretion, concludes has been satisfactorily performed. Payment shall be made within 30 calendar days of receipt of the invoice, unless the City notifies the Contractor that a dispute as to the invoice exists. In no event shall the amount of this Agreement exceed one million three hundred twenty-six thousand dollars (\$1,326,000). The breakdown of charges associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. A portion of payment may be withheld until conclusion of the Agreement if agreed to by both parties as retainage, described in Appendix B. In no event shall City be liable for interest or late charges for any late payments.

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

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

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

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

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

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

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

3.4 **Audit and Inspection of Records.** Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its Services. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not fewer than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later, but in no event longer than seven (7) years. The State of California or any Federal agency having an interest in the subject matter of this Agreement shall have the same rights as conferred upon City by this Section. Contractor shall include the same audit and inspection rights and record retention requirements in all subcontracts.

3.5 **Submitting False Claims.** The full text of San Francisco Administrative Code Chapter 21, Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Pursuant to San Francisco Administrative Code §21.35, any contractor or subcontractor who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to the City if the contractor or subcontractor: (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 Services stated in Appendix A, "Scope of Services." Officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Services beyond the Scope of Services listed in Appendix A, unless Appendix A is modified as provided in Section 11.5, "Modification of this Agreement."

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

### 4.3 **Subcontracting.**

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

4.3.2 There is no LBE subcontracting requirement for this contract.

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

4.4.1 **Independent Contractor.** For the purposes of this Section 4.4, "Contractor" shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to

control the means or the method by which Contractor performs work under this Agreement. Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor's compliance with this section. Should City determine that Contractor, or any agent or employee of Contractor, is not performing in accordance with the requirements of this Agreement, City shall provide Contractor with written notice of such failure. Within five (5) business days of Contractor's receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor, or any agent or employee of Contractor, warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

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

**4.5 Assignment.** The Services to be performed by Contractor are personal in character. Neither this Agreement, nor any duties or obligations hereunder, may be directly or indirectly assigned, novated, hypothecated, transferred, or delegated by Contractor, or, where the Contractor is a joint venture, a joint venture partner, (collectively referred to as an "Assignment") unless first approved by City by written instrument executed and approved in the same manner as this Agreement in accordance with the Administrative Code. The City's approval of any such Assignment is subject to the Contractor demonstrating to City's reasonable satisfaction that the proposed transferee is: (i) reputable and capable, financially and otherwise, of performing each of Contractor's obligations under this Agreement and any other documents to be assigned, (ii) not forbidden by applicable law from transacting business or entering into contracts with City; and (iii) subject to the jurisdiction of the courts of the State of California. A change of ownership or control of Contractor or a sale or transfer of substantially all of the assets of Contractor shall be deemed an Assignment for purposes of this Agreement. Contractor shall immediately notify City about any Assignment. Any purported Assignment made in violation of this provision shall be null and void.

**4.6 Warranty.** Contractor warrants to City that the Services will be performed with the degree of skill and care that is required by current, good and sound professional procedures

and practices, and in conformance with generally accepted professional standards prevailing at the time the Services are performed so as to ensure that all Services performed are correct and appropriate for the purposes contemplated in this Agreement.

## **Article 5 Insurance and Indemnity**

### **5.1 Insurance.**

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

- (a) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and
- (b) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and
- (c) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence, "Combined Single Limit" for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.
- (d) Professional Liability Insurance, applicable to Contractor's profession, with limits not less than \$2,000,000 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)**

**5.1.2** Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

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

**5.1.4** All policies shall be endorsed to provide thirty (30) days' advance written notice to the City of cancellation for any reason, intended non-renewal, or reduction in coverages. Notices shall be sent to the City address set forth in Section 11.1, entitled "Notices to the Parties."

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

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

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

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

**5.1.9 Reserved. (Waiver of Subrogation).**

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

**5.2 Indemnification.** Contractor shall indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them from and against any and all claims, demands, losses, damages, costs, expenses, and liability (legal, contractual, or otherwise) arising from or in any way connected with any: (i) injury to or death of a person, including employees of City or Contractor; (ii) loss of or damage to property; (iii) violation of local, state, or federal common law, statute or regulation, including but not limited to privacy or personally identifiable information, health information, disability and labor laws or regulations; (iv) strict liability imposed by any law or regulation; or (v) losses arising from Contractor's execution of subcontracts not in accordance with the requirements of this Agreement applicable to subcontractors; so long as such injury, violation, loss, or strict liability (as set forth in subsections (i) – (v) above) arises directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, Contractor's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except to the extent such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors, or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City.

In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time



such claim is tendered to Contractor by City and continues at all times thereafter, provided, however, that City shall reimburse Contractor for the costs and fees it incurs in providing such defense if and to the extent both City and Contractor concur or a court of law determines that the City is responsible for the claim for which Contractor has provided defense under this provision.

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 to the extent arising directly or indirectly from the receipt by City, or any of its officers or agents, of Contractor's Services.

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

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

**6.1.2 Liability of Contractor.** NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, CONTRACTOR'S CUMULATIVE DAMAGE LIABILITY UNDER THIS AGREEMENT, SHALL BE LIMITED TO THREE TIMES PROFESSIONAL FEES PAID TO CONTRACTOR UNDER THE CONTRACT. EXCEPT WITH RESPECT TO INCIDENTAL, INDIRECT, SPECIAL AND CONSEQUENTIAL DAMAGES (WHICH SHALL BE LIMITED AS PROVIDED HEREIN), CONTRACTOR'S LIABILITY LIMIT SET FORTH HEREIN SHALL NOT APPLY TO (1) DAMAGES CAUSED BY CONTRACTOR'S GROSS NEGLIGENCE, RECKLESS CONDUCT OR WILLFUL MISCONDUCT, (2) LIMIT CLAIMS OR GENERAL DAMAGES THAT FALL WITHIN THE INSURANCE COVERAGE REQUIRED UNDER THIS AGREEMENT, (3) STATUTORY FINES, EXPENSES, DAMAGES CAUSED BY CONTRACTOR'S VIOLATION OF FEDERAL, STATE AND/OR LOCAL LAWS, IN PARTICULAR THOSE INCLUDED IN THIS AGREEMENT, (4) CONTRACTOR'S OBLIGATION TO INDEMNIFY AND DEFEND CITY PURSUANT TO THE GENERAL INDEMNIFICATION CLAUSE AND FOR INTELLECTUAL PROPERTY INFRINGEMENT, AND (5) WRONGFUL DEATH CAUSED BY CONTRACTOR.

**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.** Subject to the limitation of liability established in Section 6.1.2, Contractor shall be responsible for incidental and consequential damages to the extent resulting from Contractor's acts or omissions.

## **Article 7 Payment of Taxes**

7.1 **Contractor to Pay All Taxes.** Except for any applicable California sales and use taxes charged by Contractor to City, Contractor shall pay all taxes, including possessory interest taxes levied upon or as a result of this Agreement, or the Services delivered pursuant hereto. Contractor shall remit to the State of California any sales or use taxes paid by City to Contractor under this Agreement. Contractor agrees to promptly provide information requested by the City 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, though it is not the intention of the parties to create any such possessory interest by entering this Agreement. 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 later determined to have been 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 all amounts earned by Contractor (calculated on an hourly rate basis for any audit that has not been completed) under the terms of this Agreement up to the effective date of the termination.

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

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

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

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

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

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

3.3.2	Payment Limited to Satisfactory Services	9.2	Works for Hire
3.4	Audit and Inspection of Records	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
9.1	Ownership of Results		

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.** Subject to Section 9.3, any interest of Contractor or its subcontractors, in the Deliverables, including any drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors for the purposes of this agreement, shall become the property of and will be transmitted to City. However, unless expressly prohibited elsewhere in this Agreement, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

9.2 **Works for Hire.** Subject to Section 9.3, if, in connection with Services, Contractor or its subcontractors creates Deliverables including, without limitation, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes, or any other original works of authorship, whether in digital or any other format, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works shall be the property of the City. If any Deliverables created by Contractor or its subcontractor(s) under this Agreement are ever determined not to be works for hire under U.S. law, Contractor hereby assigns all Contractor's copyrights to such Deliverables to the City, agrees to provide any material and execute any documents necessary to effectuate such assignment, and agrees to include a clause in every subcontract imposing the same duties upon subcontractor(s). With City's prior written approval, Contractor and its subcontractor(s) may retain and use copies of such works for reference and as documentation of their respective experience and capabilities.

9.3 **Working Papers.** Notwithstanding anything in this Agreement to the contrary, all programs, working papers, files, and other draft materials of the Contractor made pursuant to this Agreement shall remain the property of the Contractor. The term "working papers" shall have the meaning provided in 16 C.C.R. § 68.1. The City will have access to this material at any

time and be entitled to make copies of the Contractor's working papers at its expense. The Contractor shall not disclose to any third party the contents of the programs, working papers, files, or any other material without the prior written approval of the City. The reports issued by the Contractor shall become the property of the City.

## **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/](http://www.amlegal.com/codes/client/san-francisco_ca/) .

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

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

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

### **10.5 Nondiscrimination Requirements.**

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

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

**10.6 Local Business Enterprise and Nondiscrimination 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.

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

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

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

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



**10.11 Limitations on Contributions.** By executing this Agreement, Contractor acknowledges its obligations under section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of the City for the rendition of personal services, for the furnishing of any material, 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 Slavery Era Disclosure.** Contractor shall comply with San Francisco Administrative Code Chapter 12Y, San Francisco Slavery Era Disclosure Ordinance, including but not limited to Contractor's affirmative duty to research and disclose evidence of Contractor, its parent or subsidiary entity, or its Predecessor Company's Participation in the Slave Trade or receipt of Profits from the Slave Trade. Contractor is subject to the enforcement and penalty provisions in Chapter 12Y.

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

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

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

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

would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

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

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

10.17 **Reserved. (Distribution of Beverages and Water.)**

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

## **Article 11 General Provisions**

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

To City: Central Contracts  
Controller's Office  
1 Dr. Carlton B. Goodlett Place, #306  
San Francisco, CA 94102  
CentralContracts@sfgov.org

To Contractor: Paul Pocalyko,  
HKA Global, Inc.  
201 California Street, Suite 411,  
San Francisco, CA 94111

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

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

11.3 **Incorporation of Recitals.** The matters recited above are hereby incorporated into and made part of this Agreement.

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

11.5 **Modification of this Agreement.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except as noted in Section 11.1, "Notices to Parties," regarding change in personnel or place, and except by written instrument executed and approved in the same manner as this Agreement. Contractor shall cooperate with Department to

submit to the Director of CMD any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20% (CMD Contract Modification Form).

#### 11.6 **Dispute Resolution Procedure.**

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

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

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

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

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

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

**11.11 Severability.** Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (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 RFq, and Contractor's proposal dated June 14, 2019. The RFq 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 RFq and the Contractor's proposal. If the Appendices to this Agreement include any standard printed terms from the Contractor, Contractor agrees that in the event of discrepancy, inconsistency, gap, ambiguity, or conflicting language between the City's terms and Contractor's printed terms attached, the City's terms shall take precedence, followed by the procurement issued by the department, Contractor's proposal, and Contractor's printed terms, respectively.

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

## **Article 12 Department Specific Terms**

**12.1 Representation Regarding Previous Expert Services.** Contractor hereby represents, warrants, and covenants that by performing the services required by this Agreement it will not be participating or assisting in an audit or investigation of any issue, matter, or question as to which Contractor has previously rendered compensated advice or services to any individual, corporation, department of the City other than the Controller, or any other entity. All representations, warranties and covenants made in this section are deemed to be material. If City determines at any time that any such representation or warranty is not true: (a) upon written notice from City, this Agreement shall be deemed void, and Contractor shall immediately return to City any and all compensation received from City under this Agreement; (b) City may immediately terminate this Agreement by written notice to Contractor without any additional cost or obligations on the part of City; (c) City may commence debarment proceedings against Contractor; or (d) City may exercise any other legal or equitable remedies available to the City. The remedies provided herein may be exercised individually or in combination. The exercise of any remedy shall not be deemed to preclude or waive the exercise of any other remedy. The provisions of Section Fl.I 12(b) of the City Charter are incorporated in this section by reference

and made a part of this Agreement as though fully set forth herein. This section shall survive the expiration or any termination of this Agreement.

## **Article 13 Data and Security**

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

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

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

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

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

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

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

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

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

#### **Article 14 MacBride And Signature**

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

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

**CITY**

**CONTRACTOR**

Recommended by:

HKA Global, Inc.

DocuSigned by:  
*Todd Rydstrom*  
DCFF5DC8EE3449D...  
Todd Rydstrom  
Deputy Controller  
Controller's Office

DocuSigned by:  
*Frank Giunta*  
5E7CAD5ADA68401...  
Frank Giunta  
Partner  
HKA Global, Inc.  
201 California Street, Suite 411,  
San Francisco, CA 94111

Approved as to Form:

City supplier number: 0000029924

Dennis J. Herrera  
City Attorney

By: *Gustin Guibert*  
D39D934F443D4CB...  
Gustin Guibert  
Deputy City Attorney

Approved:

Alaric Degrafinried  
Acting Director of the Office of Contract  
Administration, and Purchaser

By: *Shawn Peeters*  
C13CDA276251449...  
Shawn Peeters  
Supervising Purchaser

**Appendices**

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

## **APPENDIX A – Services to Be Provided by Contractor**

**Introduction:** This scope of work is a general guide to the work the City and County of San Francisco’s (City) expects to be performed and is not a complete listing of all services that may be required or desired.

### **1. GENERAL PROJECT DESCRIPTION**

The San Francisco Public Utilities Commission (SFPUC) provides retail drinking water and wastewater services to San Francisco, wholesale water to three Bay Area counties, green hydroelectric and solar power to Hetch Hetchy electricity customers, and power to San Francisco residents and businesses through the CleanPowerSF program. SFPUC is governed by a five-member commission (Commission) who is responsible for the operational oversight in areas such as rates and charges for services, approval of contracts, and organizational policy. The Commission is empowered by the San Francisco Charter to issue water, clean water, and power revenue bonds. Such bonds are to reconstruct, replace, expand, repair, or improve water facilities, clean water facilities, power facilities, or combinations of water, clean water, and power facilities under SFPUC’s jurisdiction. In fiscal year 2018-19 SFPUC has over 30 outstanding revenue bond series in its three service enterprises, totaling \$3.8 billion.

Given the City’s significant investment in these bonds, the San Francisco Public Utilities Revenue Bond Oversight Committee (RBOC) was formed in November 2003 to provide oversight to ensure that proceeds from revenue bonds for capital improvements are expended in accordance with the authorizing bond resolution and applicable law.

The Office of the Controller (Department), City Services Auditor (CSA), in conjunction with RBOC, is requesting the contractor to conduct audits of public utility revenue bonds for capital improvement. The objective of the audits is to determine whether bond funds are spent in accordance with the stated purposes and permissible uses of such bonds and determine whether bond funds were used for impermissible administrative expenses. The City and County of San Francisco (City) requires that the requested audits be conducted and delivered as performance audits defined by the U.S. Government Accountability Office in its Government Auditing Standards.

### **2. PROJECT DEFINITIONS**

**Agreement** – The Agreement between the Contractor and the City

**City** – The City and County of San Francisco

**City Services Auditor (CSA)** – A division of the Office of the Controller

**CSA Audits** – Audit division of the City Services Auditor; for this Agreement, the project staff will be:

- Controller’s Team:

*Mark de la Rosa* – Acting Chief Audit Executive

*Nicole Kelley* – Controller’s Project Lead



*Hunter Wang* – Controller’s Project Associate

**Controller’s Office (Controller)** – The City and County of San Francisco’s Office of the Controller

**Contractor** – HKA Global, Inc.

**Contractor’s Primary Project Team** –

*Paul Pocalyko*, Project Principal – Contractor’s Project Lead

*Eugene Yano* – Project Principal

*Dan Dawson* – Project Director/Associate Project Director

*Kathleen Yoshii* – Senior Project Analyst/Project Analyst

**GAGAS** – Generally Accepted Government Auditing Standards, published as *Government Auditing Standards: 2018 Revision*

**GAO** – U.S. Government Accountability Office

**Project** – San Francisco Public Utilities’ Revenue Bonds Audits, the scope of services to be performed under this agreement as set forth in this Appendix A – Services to Be Provided by Contractor

**RBOC** - San Francisco Public Utilities Revenue Bond Oversight Committee

### **3. PROJECT APPROACH**

**3.1 Project Staffing:** The City, in its sole discretion, has the right to approve or disapprove Contractor’s personnel, including subcontractor personnel, assigned to perform the services under this Agreement at any time throughout the term of this Agreement.

The City shall have the right to interview and review the qualifications of any new personnel proposed by Contractor. Any change to Contractor’s personnel must be approved in writing by the City at least fourteen (14) days in advance of assignment of such personnel by Contractor. Such approval by the City shall not be unreasonably withheld. Should the City disapprove of Contractor’s new personnel, the City shall extend the project within a reasonable timeframe with no penalty if an existing Contractor’s personnel shall need to serve double duty. If the City approved of Contractor’s new personnel, the City shall approve a revised deadline.

**3.2 Project Roles and Responsibilities:** Contractor’s Project Lead shall manage Contractor’s Team to ensure that it completes all work and obligations described in this Agreement.

The Controller’s Project Lead, along with the Controller’s Project Associates, will provide oversight of the Project to ensure that Contractor meets staffing, timeline, budget, and work product targets and deliverables described in this Agreement, will approve contract payments in accordance with Appendix B, and provide oversight of all contract administration matters.

**3.3 Project Management and Communications:** The Project requires effective project management, including, but not limited to, the following:

- Contractor's Team shall schedule and coordinate biweekly conference calls/meetings with the Controller's Project Lead or, as deemed necessary, by the City. At minimum, Contractor's Team Project Lead shall participate in each conference call/meeting. As part of these meetings, Contractor's Team shall report on its progress (including labor hours, expenses, and deadlines) on Project tasks and deliverables for review, input, decision-making, and approval by the Controller's Project Lead.
- Written Project progress reports and updates shall be provided to the Controller's Project Lead upon request throughout the term of the Agreement and in accordance with Appendix B to this Agreement.

**3.4 Government Auditing Standards:** The City requires that the requested services be conducted and delivered as performance audits as defined by GAO's Government Auditing Standards.

**3.5 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.

#### **4. TASKS AND DELIVERABLES**

**4.1 Overall Tasks:** Contractor's deliverables shall be professionally organized and presented. Contractor's Team shall provide the Controller's Project Lead with deliverables in accordance with Appendices A and B.

The deliverables review process may be iterative and may, at the City's discretion, require face-to-face meetings of the Controller's and Contractor's Teams before the City's final approval of work products and deliverables. Contractor shall submit draft materials to the Controller's Team for review and incorporate City feedback.

Contractor shall provide the City prompt access to any data or documents relied on, or created by, Contractor in the performance of work for inspection. Upon completion of the project, Contractor shall provide all final work papers and documentation to the City.

The timely submission of all reports is an essential and material term and condition of this Agreement. Upon request, reports shall be submitted on recycled paper and printed on double-sided pages to the maximum extent possible.

**4.2 Conduct Performance Audits:** Contractor shall conduct audits, in accordance with GAGAS, of public utility revenue bonds for capital improvement. The objective of the audits is to determine whether bond funds are spent in accordance with the stated purposes and permissible uses of such bonds and determine whether bond funds were used for impermissible administrative expenses.

Contractor's scope of work shall entail a full risk assessment of all public utility revenue bonds in year one to determine an appropriate sample methodology to select bonds for audit, and perform the audits, as approved by the City and RBOC. The methodology of the risk assessment shall be shared with the City and RBOC for feedback and review. The risk assessment should be reviewed in year two and three to determine if an update to assessment is necessary based on the population of bonds and if any significant changes affected the risk criteria of any bonds. After identifying the sample, Contractor shall audit expenditures to determine whether they were spent in accordance with the stated purposes and permissible uses of the bond fund. Contractor will hold a meeting with the City to obtain approval of the audit work plan before proceeding with actual audit work. Contractor and the City may discuss and implement written changes to the audit procedures before and during the work performed under this Agreement.

Up to 18 audits will be included in this Agreement. The audit projects and scope may change, at the City's sole and absolute discretion, depending on prioritization, available funding, or other factors. There is no guarantee of a minimal amount of work for this contract. The audit period for each audit will be determined by the City and will range from one to three years. Contractor must obtain the City's approval for the specific audit period.

The Contractor hereby covenants and agrees to provide prompt notice to the RBOC of any representation or new engagement which could reasonably interfere, directly or indirectly, with its ability to provide unbiased and objective advice to CSA and RBOC in accordance with the scope of services hereunder. The existence of any actual or potential conflict must be promptly reported by Contractor to CSA and RBOC and resolved to the satisfaction of CSA and RBOC before such representation proceeds. Willful failure to make such disclosure to CSA and RBOC by the Contractor shall constitute grounds for cancellation and termination of this Agreement by the City.

**4.3 Description of Services:** Upon commencement of each audit, Contractor shall perform the following services:

**4.3.1. Task 1: Audit Planning and Survey**

Upon receiving a notice to proceed, the Contractor shall initiate the planning process by obtaining background documents and other relevant information to fully understand the City's public revenue bond programs, contact SFPUC to conduct a preliminary survey that includes a risk assessment, establish an appropriate scope and objectives that address engagement objectives and risk, and provide ongoing communication with CSA related to the engagement status. As part of the planning process, Contractor shall schedule and conduct an entrance conference with SFPUC and CSA.

Task 1 deliverables may include, but are not limited to, the following:

- a. Entrance conference agenda and meeting notes.
- b. Information request to SFPUC.
- c. Statement of Scope and Objectives.
- d. Presentation of risk methodology to city staff and RBOC.
- e. Risk Assessment results with sample selection.

- f. Written report on audit status, including oral presentation to CSA and RBOC, reporting on the results of the planning and survey phase.
- g. Audit plan.

**4.3.2. Task 2: Audit Fieldwork**

Contractor shall submit a detailed field work plan to CSA for approval. Once the plan is approved, Contractor shall gather and analyze data and information based on the procedures detailed in the field work plan to address objectives identified in the audit's planning and survey phase. The work conducted during this phase shall produce audit evidence that Contractor will use to formulate findings, conclusions, and recommendations.

Task 2 deliverables may include, but are not limited to, the following:

- a. Finalized work plan.
- b. Written summary of findings and recommendations at the end of the field work phase for bonds audited, including oral presentation to city staff and RBOC.

**4.3.3. Task 3: Draft Report**

Based on the collected information and analyses performed, Contractor shall develop a draft audit report for each bond audited, which will determine whether bond funds were expended in compliance with applicable legal requirements and established criteria, if adequate project monitoring processes exist, and whether bond-funded activities are being reported accurately and timely including recommendations as appropriate. Contractor shall provide draft reports to CSA and RBOC for review and approval. As part of the reporting and quality control review process, Contractor shall schedule and conduct an exit conference with SFPUC and CSA.

Task 3 deliverables may include, but are not limited to, the following:

- a. Finding and Recommendations Outline
- b. Draft report for bonds audited during the year.
- c. Exit meeting agenda and notes.
- d. Presentation of draft reports at the RBOC meeting.

**4.3.4. Task 4: Final Report**

Contractor shall provide a final report for bonds audited, which will include all agreed-upon revisions specified by CSA and/or RBOC, which will issue the report. Contractor shall prepare final deliverables and work papers in accordance with this Agreement. Contractor shall provide the report to the CSA in an electronic format that will allow CSA to issue the report under the CSA's cover, with the CSA's summary. Upon completion of the project, Contractor shall provide all final work papers and documentation to CSA electronically.

Contractor shall also be expected to participate in a presentation of results to RBOC, if necessary, and possibly one or more presentations to the City's Board of Supervisors or a committee thereof.

Task 4 deliverables may include, but are not limited to, the following:

- a. Final report for bonds audited during the year.
- b. Final work papers.
- c. Presentation of findings to SFPUC and/or RBOC, if necessary, and possibly one or more presentations to the City's Board of Supervisors.

**4.3.5. Task 5: Meetings, Negotiations, and Service Coordination**

Contractor shall participate in all meetings and negotiations related to the scope of services provided herein, as requested by the City, and keep the City appropriately informed of the status, issues, and any information impacting the status of the project. Contractor shall take such steps as are appropriate to ensure that the scope of services described herein is properly coordinated.

In addition to the reports specified above, Contractor shall provide written status reports as requested by the City. The City will determine the format for the content of any as-needed reports.

Task 5 deliverables may include, but are not limited to, the following:

- a. Bi-weekly written status reports, including tasks performed, actual and milestone dates, and any performance/completion issues
- b. Agendas, materials, and notes for each meeting, as requested by the City.

**5. AS-NEEDED SERVICES**

Contractor shall provide additional services on an as-needed basis, as determined and requested by the City, which may consist of additional audit, analytical, and other procedures, above and beyond those outlined in the approved audit program, which may be required to fully analyze and document audit findings or related issues developed during Contractor's completion of the scope of work outlined in the approved audit program.

Any as-needed services are subject to the City's review and approval of scope and budget, including staffing, timeline, deliverables, and costs. In accordance with the terms and conditions of the solicitation under which Contractor was selected for these services, costs shall be negotiated for a fixed, not-to-exceed price based on the hourly rates submitted by Contractor in its proposal or response. Such hourly rates shall apply to all services provided through this Agreement.

## **Appendix B Calculation of Charges**

In accordance with Article 3 of this Agreement, Contractor's total compensation under this Agreement is detailed below, inclusive of all costs required to complete all work specified in Appendix A. In no event shall the total costs under this Agreement exceed the amount provided in Article 3 of this Agreement.

**Project** – SFPUC Revenue Bond Audit

**Payment Requests** should be sent to:

The City & County of San Francisco Controller's Office, Central Finance  
Attention: Mark de la Rosa  
1 Dr. Carlton B. Goodlett Place, City Hall, Room 482  
San Francisco, CA 94012

**Electronic invoices** should be sent to: [CentralFinance@sfgov.org/](mailto:CentralFinance@sfgov.org)

**eSettlement Suppliers** will receive separate invoicing instructions.

**Insurance Documentation** should be sent to via e-mail to: [CentralContracts@sfgov.org](mailto:CentralContracts@sfgov.org).

### **Payments for Deliverables**

- Payments for audit deliverables will be as indicated in the Cost Estimate table below, and will be paid on a fixed price basis per audit. Contractor is expected to track its actual hours of work on each deliverable listed in the Cost Estimate below. Contractor shall perform its audit obligations under the Agreement for the fixed price amounts listed in the Cost Estimate table below.
- As-Needed work will be paid on an hourly basis at the rates indicated in the Cost Estimate table below, but not to exceed \$10,000 per audit. In the event that additional effort beyond the Estimated Budget Hours is expected to be required, Contractor must obtain written preapproval from the City before beginning further work. After obtaining approval, Contractor shall track actual hours of work in developing the audit deliverable, and shall be entitled to be compensated for any excess hours beyond the Estimated Budget Hours through application of the As-Needed deliverable line item, but not to exceed \$10,000 per audit.
- The Not-to-Exceed Deliverable Budget is the maximum amount the City will pay Contractor for all audit deliverables. Additional and separate cost reimbursement for travel expenses will not be provided by the City.
- Partial payments will not be made for deliverables that are not approved by the City or that are not deemed completed by the City, provided the City acts reasonably in evaluating the completeness of the deliverable and approving the deliverable.

Payments will be made by the City to Contractor within 30 days after the City has received Contractor's payment request, provided that:

1. The City has accepted as satisfactory, in the City's reasonable exercise of its discretion, the services rendered by Contractor to the City in accordance with this Agreement;
2. A written status report has been provided to the City by Contractor as part of Contractor's payment request documenting completion of each task in accordance with Appendix A and associated deliverable/task or activity in accordance with the amounts below for which payment is requested (each status report shall be signed by the Controller's Project Lead or Controller's Project Manager indicating his/her agreement with Contractor's description of completion in the status report);
3. For As-Needed work only, a written summary of the estimated amount of hours per deliverable and the actual amount of hours and actual direct costs per deliverable spent by Contractor, is provided to the City;
4. Insurance documentation is current in accordance with Article 5 of the Agreement.
5. Each invoice must include the Contract ID#, PO ID#, Invoice Period, and Date of Invoice.

### Cost Estimate:

Deliverable	Audit Project Description <sup>1</sup>	Estimated Budget Hours	Target Completion Date		Payments		Not-to-Exceed Deliverable Budget
			Draft Report	Final Report	Draft Report <sub>2</sub>	Final Report <sup>3</sup>	
<b>Fiscal Year 2019-20 Audits</b>							
1-6	Six Revenue Bonds Audits \$67,000/audit (Fixed Price) x 6 audits <i>Revenue Bonds to be determined</i>	1600 hrs	8/14/20	10/25/20	70% of fixed price per audit	30% of fixed price per audit	\$402,000
<b>Fiscal Year 2020-21 Audits</b>							
1-6	Six Revenue Bonds Audits \$67,000/audit (Fixed Price) x 6 audits <i>Revenue Bonds to be determined</i>	1600 hrs	8/13/21	10/22/21	70% of fixed price per audit	30% of fixed price per audit	\$402,000
<b>Fiscal Year 2021-22 Audits</b>							
1-6	Six Revenue Bonds Audits \$67,000/audit (Fixed Price) x 6 audits <i>Revenue Bonds to be determined</i>	1600 hrs	8/12/22	10/24/22	70% of fixed price per audit	30% of fixed price per audit	\$402,000
<b>As-Needed Work</b>							

As requested, pursuant to Section 5 of Appendix A		<b>\$120,000</b>
Contractor's rates for all As-Needed work will be billed pursuant to the following schedule:		
<i>Position</i>	<i>Hourly Rates</i>	
Project Principal	\$450	
Associate Project Director/ Project Director	\$275-\$325	
Project Analyst/Senior Project Analyst	\$225-\$250	
<b>Total for Agreement</b>		<b>\$1,326,000</b>

- <sup>1</sup> There is no guarantee of a minimal amount of work for this contract.
- <sup>2</sup> Contractor may bill the City 70% of the audit fixed price upon completion of each draft audit report.
- <sup>3</sup> Contractor may bill the City 30% of the audit fixed price upon completion of each final audit report.



## **RBOC's Mission & Goal**

The Revenue Bond Oversight Committee (RBOC) monitors the expenditure of revenue bond proceeds related to the repair, replacement, upgrade and expansion of the SFPUC's water, power and sewer infrastructure. The RBOC provides independent oversight to ensure transparency and accountability. The goal of the RBOC is to ensure that San Francisco Public Utilities Commission (SFPUC) revenue bond proceeds are spent for their intended purposes in accordance with legislative authorization and other applicable laws.

## **Background**

The San Francisco Public Utilities Commission (SFPUC) provides retail drinking water and wastewater services in San Francisco, wholesale water to 26 water suppliers in three Bay Area counties, green hydroelectric and solar power to Hetch Hetchy electricity customers, and power to San Francisco residents and businesses through the CleanPowerSF Program. The Commission is empowered by the San Francisco Charter to issue water, clean water, and power revenue bonds. Such bonds are to reconstruct, replace, expand, repair, or improve water facilities, clean water facilities, power facilities, or combinations of water, clean water, and power facilities under SFPUC's jurisdiction. Currently, the SFPUC has over 30 outstanding revenue bond series in its three service enterprises, totaling \$3.8 billion. Given the City's significant investment in these bonds, the San Francisco Public Utilities Revenue Bond Oversight Committee (RBOC) was formed in accordance with the City Charter in November 2003 to provide oversight to ensure that proceeds from revenue bonds for capital improvements are expended in accordance with the authorizing bond resolution and applicable law.

## **Draft Objective of Potential New Audit**

The RBOC is interested in hiring a consultant to perform an audit focused on the performance of the capital assets completed and funded by the SFPUC's revenue bonds. The objective of the audit is to determine whether these capital assets are performing services consistent with the purposes stated in the associated bond indenture and other documents, and therefore to determine whether the revenue bond proceeds funded by the water users are being spent in accordance with their intended purposes.



**PUBLIC UTILITIES  
REVENUE BOND OVERSIGHT COMMITTEE  
CITY AND COUNTY OF SAN FRANCISCO  
MINUTES - DRAFT**

**REMOTE MEETING**

**November 16, 2021 - 9:00 AM**

**Regular Meeting**

**Remote Access to Information and Participation**

On March 17, 2020, the Board of Supervisors authorized their Board and Committee meetings to convene remotely (via Microsoft Teams) and will allow remote public comment via teleconference.

Members of the public may participate by phone or may submit their comments by email to: [RBOC@sfgov.org](mailto:RBOC@sfgov.org); all comments received will be made a part of the official record. Revenue Bond Oversight Committee agendas and their associated documents are available at: <https://sfpuc.org/about-us/boards-commissions-committees/revenue-bond-oversight-committee>

As the COVID-19 disease progresses, please visit the Board's website ([www.sfbos.org](http://www.sfbos.org)) regularly to be updated on the current situation as it affects the legislative process. For more information contact Assistant Clerk Victor Young at (415) 554-5163.

**Mission:** The Revenue Bond Oversight Committee (RBOC) monitors the expenditure of revenue bond proceeds related to the repair, replacement, upgrade and expansion of the SFPUC’s water, power and sewer infrastructure. The RBOC provides independent oversight to ensure transparency and accountability. The RBOC’s goal is to ensure that SFPUC revenue bond proceeds are spent for their intended purposes in accordance with legislative authorization and other applicable laws.

1. **Call to Order, Roll Call, and Agenda Changes**

Members:

- Seat 1 Ettore Leale, Chair
- Seat 2 Lars Kamp
- Seat 3 Vacant
- Seat 4 Vacant
- Seat 5 Vacant
- Seat 6 Christina Tang
- Seat 7 Reuben Holober

Chair Leale called the meeting to order at 9:02 a.m. On the call of the roll, Chair Leale and Members Kamp, Tang, and Holober were noted present. A quorum was present.

There were no agenda changes.

2. **RBOC: Findings to Allow Teleconferenced Meetings During Declared Emergency**

**Chair Leale, seconded by Member Holober, moved to ADOPT FINDINGS as required by Assembly Bill 361 that 1) the Committee has considered the circumstances of the state of emergency; 2) the state of emergency continues to directly impact the ability of policy body members to meet safely in person; and 3) state or local officials continue to impose or recommend measures to promote social distancing.**

Public Comment:

David Pilpel noted that the RBOC should have written finding on the motion.

**The motion PASSED by the following vote:**

Ayes: Leale, Kamp, Tang, Holober

Noes: None

3. **Public Comment:** Members of the public may address the Revenue Bond Oversight Committee (RBOC) on matters that are within the RBOC’s jurisdiction but are not on today’s agenda.

Public Comment:

David Pilpel provided a reminder of his public records request from the last minutes of the RBOC regarding contracting information “copy of agreements involving audit work from the PUC and expressed concerns whether the audit report will be available for public review ahead of the RBOC November 16, 2021, meeting”.

**4. RBOC: Audit Update**

Hunter Wang (Office of the Controller); Paul Pocalyko (HKA Global); provided an update on the Audit and responded to questions from the Committee.

**Chair Leale, seconded by Member Tang, moved that the item be CONTINUED to the RBOC December 14, 2021, meeting.**

Public Comment:

David Pilpel noted that there was no backup material for review and pose other questions.

**The motion PASSED by the following vote:**

Ayes: Leale, Kamp, Tang, Holober

Noes: None

**5. RBOC: 2020 Annual Report - January 2020 through June 2021**

Chair Leale provided an update on the Annual report. It was requested that the Annual Report be amended to:

- Add term dates for Member Tang
- Add the reporting period to the cover page - January 2020 through June 2021.

Mike Brown (SFPUC); provided an overview on the status of the draft annual report and responded to questions throughout the discussion. Mr. Brown noted that approval of the certification letter was still pending.

**Member Tang, seconded by Member Holober, moved that approved Annual Report amended.**

Public Comment:

David Pilpel suggested corrections to the cover page and suggested adding date of approval. Mr. Pilpel suggested updating the link to website of SFPUC; stating “reporting period” instead of just “period”; and consolidating appendixes for committee membership and meeting schedule.

**The motion PASSED by the following vote:**

Ayes: Leale, Kamp, Tang, Holober

Noes: None

6. **SFPUC:** Planning for next requests for proposal for contracts to acquire a consultant to examine project performance and other related audit services.

Member Tang provided a summary of the possible contracting methods for the RBOC and noted 3 possibilities: 1) continue to work with CSA; 2) work with SF Contract Administration (who are currently short staffed); or 3) hire part-time staff to administer the contract process.

The RBOC discussed the matter and suggested a short written summary of the objectives of the process be created with the help of SFPUC.

Mike Brown (SFPUC), responded to questions from the Committee.

**Chair Leale, seconded by Member Kamp, moved that the item be CONTINUED to December 14, 2021, RBOC meeting.**

Public Comment:

David Pilpel expressed concern with CSA confidentiality provisions and suggested using LAFCO practices regarding contracts and possibility for part time assistance.

**The motion PASSED by the following vote:**

Ayes: Leale, Kamp, Tang, Holober

Noes: None

7. **Approval of Minutes:** October 19, 2021, Meeting Minutes.

**Member Holober, seconded by Member Tang, moved to APPROVE the minutes as presented.**

Public Comment:

David Pilpel suggested edits page 2, item 2 , to add a roll call vote; page 3, item 4, to add a roll call vote; page 4, item 6, 3rd paragraph to revise the paragraph for completeness.

**Member Kamp withdrew their motion to approve with the agreement of the second, Chair Leale.**

**Member Kamp, seconded by Chair Leale, moved to delegate Chair Leale and Clerk Young to incorporate the suggested changes as they deem appropriate for the final minutes.**

**The motion PASSED by the following vote:**

Ayes: Leale, Kamp, Tang, Holober

Noes: None

## 8. **Announcements, Comments, Questions, and Future Agenda Items.**

Upcoming Meeting Dates: December 14, 2021, January 11, 2022, February 8, 2022, and March 8, 2022.

### **Matters to be scheduled at the December 13, 2021 RBOC meeting.**

- **RBOC:** Audit Update
- **RBOC/SFPUC:** Planning for next requests for proposal for contracts to acquire a consultant to examine project performance and other related audit services. (Summary to be prepared by Member Tang and SFPUC)
- **RBOC:** Approval of Minutes

### Pending Issues:

- A. Request that SSIP Quarterly reports include information on Stormwater Management System and details on the bidding climate and possible cost increase)
- B. RBOC: Acquiring consultant to examine expected performance of complete projects.
- C. SFPUC: Staff Report: Environmental Justice
- D. SFPUC: Power Enterprise and Clean Power SF Update (*Discussion and possible action*)
- E. SFPUC: Mountain Tunnel Site Tour
- F. SFPUC: State Federal Loan Updates
- G. SFPUC: Oceanside Wastewater Plant Tour
- H. RBOC: Discussion on the 2015 report, entitled "Evaluation of Lessons Learned from the WSIP Program," procedures and reporting processes taken from WSIP applied to SSIP
- I. SFPUC: Wastewater System Improvement Program Update (*Discussion and possible action*)(January)
- J. RBOC: Discussion on the coordination of PUC Site Tours

### Public comment

David Pilpel commented on LAFCo and their contracted hired person.

## 9. **Adjournment**

The meeting adjourned at 10:02 a.m.

*N.B. The Minutes of this meeting set forth all actions taken by the Revenue Bond Oversight Committee on the matters stated but not necessarily in the chronological sequence in which the matters were taken up.*

Approved by the RBOC: DRAFT