

**City and County of San Francisco**  
**Request for Proposals No. 50353 for**  
**San Francisco International Airport**

**As-Needed Airport Acoustical Consultant Services**

Contract Nos. 50353.01 and 50353.02



Request for Proposals Issuance	October 31, 2023
Pre-Proposal Conference	November 7, 2023, 2:30 P.M. PST Microsoft Teams
Deadline for Questions	November 14, 2023, 2:00 P.M. PST
Deadline to Submit Proposals	November 28, 2023, 2:00 P.M. PST
Period for Protesting Notice of Intent to Award	Within (5) five business days of the City's issuance of a Notice of Intent to Award.
Contract Administrator	Bert Ganoung Aircraft Noise Office Manager San Francisco International Airport P.O. BOX 8097 San Francisco, CA 94128 Phone: (650)821-5100 Email: <a href="mailto:Bert.Ganoung@flysf.com">Bert.Ganoung@flysf.com</a>

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### I. INTRODUCTION AND SOLICITATION SCHEDULE

#### A. Introduction

**1. General.** San Francisco International Airport (the “Airport” or “SFO”) is operated by the City and County of San Francisco (the “City”) by and through its Airport Commission (the “Commission”). This Request for Proposals (hereinafter “Solicitation”) is being issued by the Airport. The Airport is seeking qualified suppliers (“Proposers”) to provide proposals (“Proposals”) to provide specialized acoustical engineering expertise, acoustical litigation support, quarterly noise reports, and other highly specialized technical services in support of Airport and SFO Airport/Community Roundtable projects designed to reduce the Airport’s noise impact area.

**2. Background.** Contractor(s) will be supporting the San Francisco Aircraft Noise Office (“Noise Office”) and need to be adaptable and flexible in responding to changing and new needs that may arise based on discussions with and input from the Federal Aviation Administration (“FAA”), the SFO Airport/Community Roundtable (“Community Roundtable”), and other stakeholders. All work performed must comply with all federal, state, county, local and SFO rules and regulations.

The successful Proposer will provide the Noise Office with qualified and experienced acoustical engineering consultants to support SFO in complying with state and federal requirements regarding aircraft noise. Typical support will include, but is not limited to: produce quarterly noise monitoring reports and noise contour maps as required by the California Department of Transportation airport noise standards (California Code of Regulations, Title 21, Subchapter 6); assist in achieving highest performance of the SFO Noise and Operations Monitoring System (NOMS) database and reporting capabilities; evaluate SFO noise abatement programs, monitoring and reporting; develop stakeholder outreach plans and materials for FAA, airlines, the Community Roundtable, and the public; train new Noise Office staff; and support Noise Office outreach to and engagement with internal SFO teams like planning, sustainability, operations, facilities and project management teams. In addition, SFO is seeking a consultant with expertise in development and implementation of Ground Based Augmentation System (GBAS) flight procedure changes and in providing litigation support for noise claims brought against the Airport.

**3. Selection Overview.** The City may award up to two contracts to Proposers that meet the Minimum Qualifications of this Solicitation and whose Proposals receive the highest-ranking scores.

**B. Anticipated Contract Term.** A contract awarded pursuant to this Solicitation shall be non-exclusive with an original term of five (5) years.

**C. Anticipated Contract Not to Exceed Amount.** The not to exceed (“NTE”) amount for a contract awarded pursuant to this Solicitation cannot be anticipated at the time of this Solicitation.

**D. Indefinite Quantity, As Needed Contract – Not applicable.**

**E. Cooperative Agreement.** Any other City department, public entity, or non-profit made up of multiple public entities, may use this Solicitation to obtain some or all of the services to be provided by Proposer under the same terms and conditions of any contract awarded pursuant to this Solicitation.

**F. Limitation on Communications During Solicitation.** From the date this Solicitation is issued until the date the competitive process of this Solicitation is completed (either by cancellation by final action of the Airport Commission or the Board of Supervisors), Proposers and their subcontractors, vendors, representatives and/or other parties under Proposer’s control, shall communicate solely with the Airport only through the person (“Contract Administrator”) whose name and contact information appears

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on the cover page of this Solicitation. Any attempt to communicate with any party other than the Contract Administrator – including any City official, representative or employee – is strictly prohibited. The people with whom communication is prohibited include, but are not limited to, any City and County of San Francisco elected official, member of the Airport Commission, City or Airport Commission personnel, and/or any selection panel member. Failure to comply with this communications protocol may, at the sole discretion of the Airport, result in the disqualification of the Proposer or potential Proposer from the competitive process. This protocol does not apply to communications with the City regarding business not related to this Solicitation.

**G. Solicitation Schedule.** The anticipated schedule for this Solicitation is set forth below. These dates are tentative and subject to change. It is the responsibility of the Proposer to check for any Addenda to this Solicitation or other pertinent information posted in the SF City Partner’s website.

<b>Proposal Phase</b>	<b>Tentative Date</b>
Request for Qualifications Issued	October 31, 2023
Pre-Proposal Conference	November 7, 2023 2:30 PM MS Teams  Meeting ID: <b>286 885 263 865</b> Passcode: <b>beWGC3</b>  <b>Or call in (audio only)</b> Phone: 1(650)466-0290 Phone Conference ID: <b>855 027 039#</b>  <b>Or RSVP by emailing the Contract Administrator</b>
Deadline for Written Questions	November 14, 2023, 2:00 PM
Deadline to Submit Proposals	November 28, 2023, 2:00 PM
<b>The Pre-Proposal Conference Details:</b> The Pre-Proposal Conference will begin at the time specified. Proposers’ representatives are urged to arrive on time. Topics already covered will not be repeated for the benefit of late arrivals. <b>Failure to attend the Pre-Proposal Conference shall not excuse the awarded Proposer from any obligations of a contract awarded pursuant to this Solicitation.</b> Any change or addition to the requirements contained in this Solicitation as a result of the Pre-Proposal Conference will be executed by a written Addendum to this Solicitation. It is the responsibility of the Proposer to check for any Addenda to this Solicitation or other pertinent information posted on the SF City Partner’s website: <a href="https://sfcitypartner.sfgov.org/pages/index.aspx">https://sfcitypartner.sfgov.org/pages/index.aspx</a> .	

**H. How to Register as a City Supplier.** The following requirements pertain only to Proposers not currently registered with the City as a Supplier. There is no requirement to be a City Supplier to submit a Proposal.

**Step 1:** Register as a BIDDER at SF City Partner’s website:  
<https://sfcitypartner.sfgov.org/pages/index.aspx>

**Step 2:** Follow instructions for converting your BIDDER ID to a SUPPLIER ID. This will require you to register with the City Tax Collector’s Office and submit Chapter 12B and 12C forms through the Supplier portal. Once these forms have been completed, submitted, and processed, you will be notified via email with your organization's new Supplier ID. That email will also provide instructions for completing your Supplier registration.

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**City Business Tax Registration Inquiries:** For questions regarding business tax registration procedures and requirements, contact the Tax Collector's Office at (415) 554-4400 or, if calling from within the City and County of San Francisco, 311.

**Chapter 12B and 12C Inquiries:** For questions concerning the City's Chapter 12B and 12C Equal Benefits and Non-Discrimination in Contracting requirements, go to: [www.sfgov.org/cmd](http://www.sfgov.org/cmd).

### I. Proposal Questions and Submissions

**1. Proposer Questions and Requests for Clarification.** Proposers shall address any questions regarding this Solicitation to the Contract Administrator whose name and contact information appears on the cover page of this Solicitation. Proposers who fail to submit questions concerning this Solicitation and its requirements will waive all further rights to protest based on the specifications and conditions herein. **Questions must be submitted by email to the Contract Administrator whose name and contact information appears on the cover page of this Solicitation no later than the deadline for submission of written questions or requests for clarification.** A written Addendum will be executed addressing each question and answer and posted publicly. It is the responsibility of the Proposer to check for any Addenda and other updates that will be posted on the SF City Partner's website: <https://sfcitypartner.sfgov.org/pages/Events-BS3/event-search.aspx>.

**2. Proposal Format.** Proposals must be created using a word processing software (e.g., Microsoft Word or Excel) and typed in a serif font (e.g., Times New Roman). The document must have page margins of at least 0.5" on all sides. Information must be provided at a level of detail that enables effective evaluation and comparison between Proposals. Failure to follow formatting, submission, or content requirements, as well as page limit restrictions (if any), may negatively impact the evaluation of your Proposal.

**3. Time and Place for Submission of Proposals.** Prior to the Proposal submission deadline, Proposers must submit their Proposal to the Contract Administrator whose name and contact information appears on the cover page of this Solicitation. Proposers shall submit five (5) copies of the Proposal and one copy, separately bound, of required CMD Forms in a sealed envelope clearly marked **RFP No. 50353 As-Needed Airport Acoustical Consulting Services** to the above location. You must also submit an electronic version of the Proposal on a thumb drive. Proposals that are submitted by fax will not be accepted. Late submissions will not be considered. Each original Proposal received will be screened to ensure that all content required by this Solicitation is included. Partial or complete omission of any required content may disqualify Proposals from further consideration. Failure to adhere to the above requirements may result in the complete rejection of your Proposal.

**J. Contract Terms and Negotiations.** Contractor will be required to enter into an Agreement substantially in the form of the Agreement attached hereto as Appendix A - Agreement for Professional Services (form AIR-600). If a satisfactory contract(s) cannot be negotiated in a reasonable time, the City, in its sole discretion, may terminate negotiations. Upon termination of negotiations, City may begin negotiation with the Proposer that meets the Minimum Qualifications of this Solicitation whose Proposal receives the next highest-ranking score.

**K. Proposal Selection and Contract Award.** The acceptance and/or selection of any Proposal(s) shall not imply acceptance by the City of all terms of the Proposal(s), which may be subject to further approvals before the City may be legally bound thereby.

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### L. Protest Procedures

**1. Protest of Non-Responsiveness Determination.** Within five (5) business days of the City's issuance of a Notice of Non-Responsiveness, a Proposer may submit a written Notice of Protest of Non-Responsiveness. The Notice of Protest must include a written statement specifying in detail each and every one of the grounds asserted for the protest. The Notice of Protest must be signed by an individual authorized to represent the Proposer, and must cite the law, rule, local ordinance, procedure or Solicitation provision on which the protest is based. In addition, the Notice of Protest must specify facts and evidence sufficient for the City to determine the validity of the protest.

**2. Protest of Non-Responsible Determination.** Within five (5) business days of the City's issuance of a Notice of Non-Responsibility, a Proposer may submit a written Notice of Protest of Non-Responsibility. The Notice of Protest must include a written statement specifying in detail each and every one of the grounds asserted for the protest. The Notice of Protest must be signed by an individual authorized to represent the Proposer, and must cite the law, rule, local ordinance, procedure or Solicitation provision on which the protest is based. In addition, the Notice of Protest must specify facts and evidence sufficient for the City to determine the validity of the protest.

**3. Protest of Contract Award.** Within five (5) business days of the City's issuance of a Notice of Intent to Award, a Proposer may submit a written Notice of Protest of Contract Award. The Notice of Protest must include a written statement specifying in detail each and every one of the grounds asserted for the protest. The Notice of Protest must be signed by an individual authorized to represent the Proposer, and must cite the law, rule, local ordinance, procedure or Solicitation provision on which the protest is based. In addition, the Notice of Protest must specify facts and evidence sufficient for the City to determine the validity of the protest.

**4. Delivery of Protests.** A Notice of Protest must be written. Protests made orally (e.g., by telephone) will not be considered. A Notice of Protest must be delivered by mail or email to the Contract Administrator whose name and contact information appears on the cover page of this Solicitation and received by the due dates stated above. A Notice of Protest shall be transmitted by a means that will objectively establish the date the City received the Notice of Protest. If a Notice of Protest is mailed, the protestor bears the risk of non-delivery within the deadlines specified herein.

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### II. SCOPE OF WORK

The services listed in this Scope of Work do not guarantee any particular type of work will be assigned. Any services performed under this scope will require prior written authorization from the Airport and a mutually signed task order with detailed project scope, deliverables, schedule for performance, and cost. This Scope of Work is to be used as a general guide and is not intended to be a complete list of all work to be performed under the contract(s) resulting from this RFP.

The successful Proposer (Contractor) will provide a broad range of services to the San Francisco Aircraft Noise Office (“Noise Office”) in the areas of aviation, acoustics, noise abatement, federal and state noise regulations, flight procedure design, community engagement, and aircraft noise and operations monitoring systems. These services shall include the following:

1. Prepare quarterly Noise Contours and Quarterly Reports the Airport is required to file under Title 21, Subchapter 6, SubSection 5021 of the California Code of Regulations for the duration of the contract. Contractor will complete this task using the FAA’s Aviation Environmental Design Tool (“AEDT”). Preparation of the quarterly noise contours will commence 15 calendar days after the end of each calendar quarter and be completed and delivered to Airport 20 calendar days after commencement to allow the County of San Mateo to review and deliver the completed report to the State of California per the Title 21 regulations within 75 days after the end of each calendar quarter.
2. Provide support for implementation of the Ground Based Augmentation System (GBAS) procedures for the duration of the Airport’s GBAS implementation program. Contractor will support Noise Office staff in working with the FAA, Airport management and staff, the Community Roundtable, and public on GBAS procedures by performing the following tasks:
  - a. Develop and produce FAA compliant submissions to the FAA Instrument Flight Procedures Gateway.
  - b. Provide Community Flight Procedure Packages (“CFPPs”), community noise impacts analysis, and answers to community questions for posting on the Noise Office GBAS website.
  - c. Provide Noise Monitoring reports for GBAS procedure implementation.
  - d. Host virtual and/or in-person GBAS briefings with supporting documents, graphics and presentations to the FAA, Airlines, Airport Staff, SFO/Community Roundtable and public.
  - e. Host and/or attend virtual or in-person informational meetings, at The Airport’s direction at GBAS industry events.
  - f. Collaborate with Airport’s GBAS system vendor, at the Airport’s direction on current and future GBAS needs and updates.
3. Provide Airport noise litigation support. On an as-needed basis, Contractor will provide litigation support for noise claims filed against the Airport. This may include review of noise claims, conducting noise analysis, development of strategies, preparation of exhibits, and serving as an expert witness in court proceedings.
4. Conduct peer review of materials related to Airport noise issues. Contractor may also conduct peer review of work submitted by other airport acoustical consultant(s), as requested by the Airport. The purpose of peer review is to achieve the most accurate and sound information. In its roles as peer reviewer, Contractor will not be liable for modeling assumptions and input, but for review and feedback of reports and models provided.
5. Assist in the preparation or advancement of specialized acoustical studies and support Airport staff on a project-by-project basis. This may include performing the following tasks:

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- a. Evaluate aircraft noise monitoring and flight tracking system for the purpose of defining enhanced system parameters for the correlation of aircraft flights and noise measurements.
- b. Evaluate effective measurements, noise monitoring system parameters, and methods of mitigating low frequency departing aircraft noise in areas behind the aircraft.
- c. Evaluate the Airport's current aircraft noise abatement programs and procedures to identify potential enhancements, including reductions of aircraft departure noise.
- d. Provide analytical support for information dashboards and reports on operations, noise levels, and aircraft mix. Identify criteria and assumptions to assist in automating reporting. Identify best practices to improve data grooming and repetitive Noise Office staff activities.
- e. Develop educational documents, videos, and webinars for internal and external public education and community outreach.
- f. Support staff preparing Fly Quiet Program reports, Portable Noise Monitoring reports and Airport Director's reports by furnishing information regarding industry best practices.
- g. Update the national fleet quality database used for Fly Quiet Program reports.



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### III. MINIMUM QUALIFICATIONS DOCUMENTATION (PASS/FAIL)

Proposers must provide documentation that clearly demonstrates each Minimum Qualification (MQ) listed below has been met.

Minimum Qualification documentation should be clearly marked as “MQ1”, MQ2”, etc.... to indicate which MQ it supports. Each Proposal will be reviewed for initial determination on whether Proposer meets the MQs referenced in this section. **This screening is a pass or fail determination and a Proposal that fails to meet the Minimum Qualifications will not be eligible for further consideration in the evaluation process.** The City reserves the right to request clarifications from Proposers prior to rejecting a Proposal for failure to meet the Minimum Qualifications.

MQ #	Description
MQ1	Proposer must have at least four (4) years of experience within the last seven (7) years in providing acoustical engineering and/or consulting services to three (3) or more commercial airports, one (1) of which must have been in California.
MQ2	Proposer must have at least four (4) years of experience within the last seven (7) years producing quarterly noise monitoring reports that meet the requirements of the State of California, Title 21 of the California Code of Regulations pertaining to airport noise regulations.

Any Proposal that does not demonstrate that the Proposer meets these minimum requirements by the deadline for submittal of Proposals will be considered non-responsive and will not be eligible for award of the contract.

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### IV. WRITTEN PROPOSALS AND SCORING CRITERIA

In addition to submitting documents supporting each Minimum Qualification as required by this Solicitation, Proposers shall also submit a complete Proposal consisting of each item set forth below. *The content of all Proposals must consist of the information specified below, in the order outlined below, in order to be deemed responsive.* Proposal cover page and table of contents are optional and will not count against the page limit.

**A. Introduction and Executive Summary (0 Points, up to 3 Pages).** Provide a brief description of the Proposer's size and organization structure, including:

1. Submit a letter of introduction and executive summary of the Proposal. The letter must be signed by a person authorized by your firm to obligate your firm to perform the commitments contained in the Proposal. Submission of the letter will constitute (1) a representation by the Proposer that it is willing and able to perform the commitments contained in the Proposal and (2) an acknowledgement and certification of compliance with the requirements of RFP Section I. F. Limitation on Communications During Solicitation.

2. If Proposer is a Joint Venture (JV), include a description of the organization and relationships as well as the responsibilities of all Partners in the JV. The Lead JV Partner shall demonstrate proven experience in managing and leading.

3. A listing and description of any lawsuit(s) resulting from (a) any public project undertaken by the Proposer or by its subcontractors where litigation is still pending or has occurred within the last five years or (b) any type of project where claims or settlements were paid by the Proposer or its insurers within the last five years.

4. Submit documentation that clearly demonstrates each Minimum Qualification (MQ) listed in Section III. Minimum Qualifications Documentation.. The MQ documentation will not count against the three-page limit for this section A.

**B. Project Team (20 Points, up to 4 Pages).** Provide the following information for Proposer's Project Team.

#### 1. Key/Lead Team Members.

a. Identify and provide resumes for all staff who will serve as the key/lead team members to deliver the Scope of Work.

At a minimum, please provide resumes for the following key/lead Team members: Airport Acoustical Engineering lead; Peer Review consultant lead; Noise Litigation consultant lead; and Airspace Flight Operations Engineering lead. Resumes will not count against the page limit.

b. Upload a letter of commitment from each key/lead team member. Each letter of commitment shall be signed by the applicable individual and dated within five (5) days of the date that Proposals are due. Each letter of commitment must include a statement by the applicable individual that, if the City awards a contract to the Proposer, they intend to perform work for the contract and at the percentage of work time specified in the Proposal for the duration of the contract. Proposals lacking commitment letters from each key/lead team member may be rejected as non-responsive. The information required in this section for key/lead team members applies to all key/lead team members identified by the Proposer. Letters of commitment shall not count against the page limit for this section of a Proposal.

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**2. Team Organization Chart.** Attach an Organizational Chart that illustrates the team structure (include the integration/interaction with City project team staff). Note the Proposer name and title/role for each team member.

**C. Qualifications Summary (10 Points, up to 2 Pages).** Proposer must demonstrate corporate qualifications, commitment, strength, and technical capabilities to fulfill all services specified and required to successfully accomplish the work. If Proposer is a JV, include a description of the organization, relationships, and defined responsibilities of all Partners in the JV. Describe any previous project-specific associations of the JV Partners. The Lead JV Partner shall demonstrate proven experience in managing and leading.

**D. Past Projects (50 Points, up to 14 Pages).** Proposer must describe two of the most recent projects previously managed by the Proposer or, if applicable, JV Partners within the last 10 years.

**1. Similar Size and Scope:** Each project must be of the type and scope of services specified in this Solicitation.

**2. Project Details:** The descriptions shall include each item listed below:

- a. Project name;
- b. Project scope summary;
- c. Dates when the project was performed;
- d. Project costs;
- e. Proposer's role and responsibilities in the project;
- f. Proposer's performance on delivering the project on schedule and on budget;
- g. Proposer staff members who worked on the project; and
- h. Client name, reference, and contact info.

**3. Provide five samples of work performed on routine and as-needed reports and/or analysis.** Proposers may include work samples as an appendix to this section and they will not count against the total page limit.

**E. Description of Proposed Services and Work Approach (20 Points, up to 4 Pages).** Proposer shall provide a description of services and work approach being proposed in response to this Solicitation. Proposer must describe how the key/lead team members (identified in Section B above) will approach to executing the work required to complete each task outlined in this Solicitation.

For example, the Airport Acoustical Engineering lead's work scope and approach may cover, but is not limited to, timely preparation of the quarterly California Title 21 Noise Report, including the noise exposure contour map. Describe how knowledge of AEDT and aircraft modeling would be used in approaching this task. Describe the approach for representing a large hub airport, on how to prepare, document, report, present, and answer questions in virtual and/or in-person community meetings. Describe the use of regulatory knowledge such as FAR Part 150 and the San Francisco Airport Land Use Compatibility Plan (ALUCP) would be used in tasks.

For example, the Peer Review consultant lead's work scope and approach may cover, but is not limited to, the general knowledge and skills of the acoustical airport engineer listed above. Describe how one would approach interacting with peers (staff, consultants and vendors), and facilitate complicated discussion regarding corrections and changes on on-going and completed task approach, assumptions, final product.

For example, the Noise Litigation consultant lead's work scope and approach may cover, but is not limited to, experience and approach on case review, courtroom speaking experience, noise litigation best practices, and airport noise strategies. Describe how one would provide this service for the Airport as well as the work approach.

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For example, the Airspace Flight Operations Engineer lead's work scope and approach, may cover, but is not limited to, experience in leading, presenting to, and coordinating stakeholders in airspace and procedures design. Describe the range of stakeholder interactions including, but not limited to, various FAA lines of business, multiple airlines, and the airport community. Describe how one would approach creating community information packets for flight procedure proposals, and virtual and/or in-person community presentations and Q&A sessions. Describe how one would develop procedure proposals with FAA approved modelling software and submission of compliant flight procedures to the FAA Instrument Flight Procedure Gateway.

The task scopes and work approach descriptions need to demonstrate how the team will divide the work up into manageable segments. The description provided for each task should include, as appropriate, the following information:

1. Approach for coordinating and managing all work activities, including coordination and communication with City staff; State and Federal agencies; and other Noise Office contractors to meet project milestones and deliverable due dates.
2. Processes and measures for controlling cost and schedule, tracking delivery and performance, and maximizing quality.
3. Approach for monitoring expended labor hours and tracking various factors affecting task costs. Include description (frequency, days after timesheet submittal) of project manager's access to reports on staff labors hours and other cost items.
4. Processes for internal and external notification and resolution of technical conflicts and cost and schedule variances.
5. Understanding of potential project and task issues and constraints, and approach to managing project-specific challenges to complete tasks on schedule and within budget.

**F. Price Proposal (0 Points, 1Page).** Proposer shall provide a Price Proposal in a sealed envelope that includes the following:

1. Hourly rates for all team members. Hourly rates and itemized costs may be used to negotiate changes in the Scope of Work, if necessary.

The Price Proposal shall not be scored but will be used as a basis of negotiating final contract rates with the successful Proposer(s).

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**VI. REQUIRED SUPPORTING DOCUMENTATION**

Proposers must provide each Required Supporting Documentation (“RSD”) identified below with their Proposal. Failure to do so may result in the Proposal being deemed Non Responsive.

<b>RSD1</b>	<p><b>Completed Proposal Attachments:</b></p> <ul style="list-style-type: none"><li><input type="checkbox"/> CMD Form 2A: LBE Participation Form</li><li><input type="checkbox"/> CMD Form 3: CMD Compliance Affidavit</li><li><input type="checkbox"/> CMD Form 4: Joint Venture Form (if applicable)</li><li><input type="checkbox"/> CMD Form 5: Employment Form</li><li><input type="checkbox"/> Appendix B: Price Proposal Form</li><li><input type="checkbox"/> Appendix C: First Source Hiring Form</li></ul> <p><b>CMD Forms</b> can be found here: <a href="https://sfgov/resource/2022/lbe-contract-requirements-cmd-attachments">https://sfgov/resource/2022/lbe-contract-requirements-cmd-attachments</a> :</p>
<b>RSD2</b>	<p><b>Non Profit Entities:</b> If a Proposer is a non-profit entity that receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the S.F. Administrative Code, the Proposer must comply with Chapter 12L and include in its Proposal:</p> <ol style="list-style-type: none"><li>1. A statement describing its efforts to comply with the Chapter 12L provisions regarding public access to Proposer’s meetings and records, and</li><li>2. A summary and disposition of all complaints concerning the Proposer’s compliance with Chapter 12L that were filed with the City in the last two years and deemed by the City to be substantiated. If no such complaints were filed, the Proposer shall include a statement to that effect.</li><li>3. Failure to comply with the reporting requirements of Chapter 12L or material misrepresentation in Proposer’s Chapter 12L submissions shall be grounds for rejection of the Proposal and/or termination of any subsequent Agreement reached on the basis of the Proposal.</li></ol>

**VII. INSURANCE AND BONDS**

**A. Insurance.** Prior to award, Contractor will be required to furnish evidence of insurance as outlined in Appendix A - Agreement for Professional Services (form AIR-600).

**B. Performance Bond – Not applicable.**

**C. Fidelity Bond – Not applicable.**

**D. Failure to Provide Insurance.** Unless otherwise stated, within ten business days of the receipt of a notice of award, the Proposer to whom the contract is awarded shall deliver the specified insurance certificates to City. If the Proposer fails or refuses to furnish the insurance within ten days after receiving notice from the Airport, the Airport may, at its option, determine that this Proposer has abandoned its Proposal. Thereupon the award of said contract to this Proposer shall be canceled. The foregoing in no way limits the damages which are recoverable by City whether or not defined elsewhere in the contract documents.

**VIII. TERMS AND CONDITIONS FOR RECEIPT OF PROPOSALS**

**A. Solicitation Errors and Omissions.** Proposers are responsible for reviewing all portions of this Solicitation. Proposers are to promptly notify the Contract Administrator (name and contact information on Solicitation cover page) in writing if the Proposer discovers any ambiguity, discrepancy, omission, or other error in the Solicitation. Any such notification should be directed to the City promptly after discovery, but in no event later than the deadline for questions. Modifications and clarifications will be made by Addenda as provided below.

**B. Objections to Solicitation Terms.** Should a Proposer object on any ground to any provision or legal requirement set forth in this Solicitation, the Proposer must, no later than the deadline for questions, provide written notice to the Contract Administrator and set forth with specificity the grounds for the objection. The failure of a Proposer to object in the manner set forth in this paragraph shall constitute a complete and irrevocable waiver of any such objection.

**C. Solicitation Addenda.** The City may modify this Solicitation, prior to the Proposal due date, by issuing an Addendum to the Solicitation, which will be posted on the San Francisco Supplier Portal. Every Addendum will create a new version of the Sourcing Event and Proposers must monitor the event for new versions. **The Proposer shall be responsible for ensuring that its Proposal reflects any and all Solicitation Addenda issued by the City prior to the Proposal due date regardless of when the Proposal is submitted.** Therefore, the City recommends that the Proposer consult the website frequently, including shortly before the Proposal due date, to determine if the Proposer has downloaded all Solicitation Addenda. It is the responsibility of the Proposer to check for any Addenda, Questions and Answers documents, and updates, which may be posted to the subject Solicitation.

**D. Proposal Term.** Submission of a Proposal signifies that the proposed products, services and prices are valid for 180 calendar days from the Proposal due date and that the quoted prices are genuine and not the result of collusion or any other anti-competitive activity. At Proposer's election, the Proposal may remain valid beyond the 180-day period in the circumstance of extended negotiations.

**E. Revision to Proposal.** A Proposer may revise a Proposal on the Proposer's own initiative at any time before the deadline for submission of Proposals. The Proposer must submit the revised Proposal in the same manner as the original. A revised Proposal must be received on or before, but no later than the Proposal due date and time. In no case will a statement of intent to submit a revised Proposal, or commencement of a revision process, extend the Proposal deadline for any Proposer. At any time during the Proposal evaluation process, the City may require a Proposer to provide oral or written clarification of its Proposal. The City reserves the right to make an award without further clarifications of Proposals received.

**F. Proposal Errors and Omissions.** Failure by the City to object to an error, omission, or deviation in the Proposal will in no way modify the Solicitation or excuse the Proposer from full compliance with the specifications of this Solicitation or any contract awarded pursuant to this Solicitation.

**G. Financial Responsibility.** The City accepts no financial responsibility for any costs incurred by a Proposer in responding to this Solicitation. Proposers acknowledge and agree that their submissions in response to this Solicitation will become the property of the City and may be used by the City in any way deemed appropriate.

**H. Proposer's Obligations under the Campaign Reform Ordinance**

1. Proposers must comply with Section 1.126 of the S.F Campaign and Governmental Conduct Code. Local law prohibits City elected officials from soliciting or accepting contributions from any person or entity seeking to enter into a contract or grant worth \$100,000 or more with the City, if the

## RFP 50353 for As-Needed Airport Acoustical Consultant Services

contract or grant requires their approval or the approval of their appointees to the board of a state agency. This restriction applies to the party seeking the contract or grant, the party's board of directors, chairperson, chief executive officer, chief financial officer, chief operating officer, any person with an ownership interest greater than ten percent, and any political committees controlled or sponsored by the party, as well as any subcontractors listed in the awarded contract or Proposal. The law both prohibits the donor from giving contributions and prohibits the elected official from soliciting or accepting them.

2. A person or entity that contracts with the City may not make a campaign contribution to an elected official if the contract would require approval by that official, a board on which the official serves, or a board of a state agency on which an appointee of the official sits. The people and entities listed in the preceding paragraph may not make a campaign contribution to the elected official at any time from the submission of a Proposal for a contract until either: (1) negotiations are terminated and no contract is awarded or no grant is approved; or (2) twelve months have elapsed since the award of the contract or approval of the grant.

3. A violation of Section 1.126 may result in the criminal, civil, or administrative penalties. For further information, Proposers should contact the San Francisco Ethics Commission at [\(415\) 252-3100](tel:4152523100).

**I. Reservations of Rights by the City.** The issuance of this Solicitation does not constitute a guarantee by the City that a contract will be awarded or executed by the City. The City expressly reserves the right at any time to:

Waive or correct any defect or informality in any response, Proposal, or Proposal procedure;

1. Reject any or all Proposals;

2. Reissue the Solicitation;

3. Prior to submission deadline for Proposals, modify all or any portion of the selection procedures, including deadlines for accepting responses, the specifications or requirements for any materials, equipment or services to be provided under this Solicitation, or the requirements for contents or format of the Proposals;

4. Procure any materials, equipment or services specified in this Solicitation by any other means;

or

5. Determine that the subject goods or services are no longer necessary.

**J. No Waiver.** No waiver by the City of any provision of this Solicitation shall be implied from the City's failure to recognize or take action on account of a Proposer's failure to comply with this Solicitation.

**K. Other**

1. The City may make such investigation, as it deems necessary, prior to the award of this contract to determine the conditions under which the goods are to be delivered or the work is to be performed. Factors considered by the City shall include, but not be limited to:

a. Any condition set forth in this Solicitation;

b. Adequacy of Proposer's plant facilities and/or equipment, location and personnel location to properly perform all services called for under the Purchase Order; and

c. Delivery time(s).



## **RFP 50353 for As-Needed Airport Acoustical Consultant Services**

2. City reserves the right to inspect an awarded Proposer's place of business prior award of and/or at any time during the contract term (or any extension thereof) to aid City in determining an awarded Proposer's capabilities and qualifications.

3. Failure to timely execute a contract, or to furnish any and all insurance certificates and policy endorsements, surety bonds or other materials required in the contract, shall be deemed an abandonment of a contract offer. The City, in its sole discretion, may select another Proposer and may proceed against the original selectee for damages.

4. City reserves the right to reject any Proposal on which the information submitted by Proposer fails to satisfy City and/or if Proposer is unable to supply the information and documentation required by this Solicitation within the period of time requested.

5. Any false statements made by a Proposer or any related communication/clarification may result in the disqualification of its Proposal from receiving further evaluation and a contract award.

**L. Sunshine Ordinance.** In accordance with S.F. Administrative Code Section 67.24(e), contractors' bids, responses to RFPs and all other records of communications between the City and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefits until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

### **M. Conflicts of Interest**

1. Contractor will be required to agree to comply fully with and be bound by the applicable provisions of state and local laws related to conflicts of interest, including Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California. Contractor will be required to acknowledge that it is familiar with these laws; certify that it does not know of any facts that constitute a violation of said provisions; and agree to immediately notify the City if it becomes aware of any such fact during the term of the Agreement.

2. Individuals who will perform work for the City on behalf of Contractor might be deemed consultants under state and local conflict of interest laws. If so, such individuals will be required to submit a Statement of Economic Interests, California Fair Political Practices Commission Form 700, to the City within ten calendar days of the City notifying Contractor that the City has selected the proposer.

## IX. CITY AND AIRPORT'S SOCIAL POLICY REQUIREMENTS

The San Francisco Municipal Code establishes a number of requirements for people seeking to do business with the City ("Social Policy Requirements"). These Social Policy Requirements can be found in Appendix A, City's Proposed Agreement Terms. The Social Policy Requirements set forth below are NOT intended to be a complete list of all Social Policy Requirements applicable to this Solicitation and any contracts awarded from it. Proposers are encouraged to carefully review the Social Policy Requirements applicable to this Solicitation contained in Appendix A, City's Proposed Agreement Terms.

### A. Proposers Unable to do Business with the City

**1. Generally.** Proposers that do not comply with laws set forth in San Francisco's Municipal Codes may be unable to enter into a contract with the City. Laws applicable to this Solicitation are set forth below and in Appendix A, City's Proposed Agreement Terms.

**2. Administrative Code Chapter 12B.** A Proposer selected pursuant to this Solicitation may not, during the term of the 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 bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in §12B.2(b) of the San Francisco Administrative Code. *Refer to Appendix A, City Proposed Agreement Terms for additional details related to the application of this Ordinance to a contract awarded pursuant to this Solicitation.*

**B. Prevailing Wage Ordinance.** Services to be performed by a Proposer selected pursuant to this Solicitation may involve the performance of trade work covered by the provisions of Section 6.22(e) [Prevailing Wages] of the Administrative Code or Section 21C [Miscellaneous Prevailing Wage Requirements] (collectively, "Covered Services"). The provisions of Section 6.22(e) and 21C of the Administrative Code are incorporated as provisions of the Agreement awarded as part of this Solicitation as though fully set forth therein and will apply to any Covered Services performed by the awarded Proposer and its subcontractors. *Refer to Appendix A, City Proposed Agreement Terms for additional details related to the application of this Ordinance to a contract awarded pursuant to this Solicitation.*

**C. Health Care Accountability Ordinance.** A Proposer selected pursuant to this Solicitation shall comply with the requirements of Chapter 12Q. For each Covered Employee, an awarded Proposer shall provide the appropriate health benefit set forth in Section 12Q.3 of the Health Care Accountability Ordinance (HCAO). If a Proposer selected pursuant to this Solicitation 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 and the Health Commission's minimum standards available at <http://sfgov.org/olse/hcao>. Any Subcontract entered into by Proposer shall also be required to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this section. *Refer to Appendix A, City Proposed Agreement Terms for additional details related to the application of this Ordinance to a contract awarded pursuant to this Solicitation.*

**D. Minimum Compensation Ordinance.** A Proposer selected pursuant to this Solicitation shall comply with Administrative Code Chapter 12P. A Proposer selected pursuant to this Solicitation shall pay covered employees no less than the minimum compensation required by San Francisco

**RFP 50353 for As-Needed Airport Acoustical Consultant Services**

Administrative Code Chapter 12P, including a minimum hourly gross compensation, compensated time off, and uncompensated time off. A Proposer selected pursuant to this Solicitation 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>. Refer to Appendix A, City Proposed Agreement Terms for additional details related to the application of this Ordinance to a contract awarded pursuant to this Solicitation.

**E. First Source Hiring Program.** A Proposer selected pursuant to this Solicitation shall 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 an awarded Proposer is subject to the enforcement and penalty provisions in Chapter 83. Refer to Appendix A, City Proposed Agreement Terms for additional details related to the application of this Ordinance to a contract awarded pursuant to this Solicitation.

**F. LBE Subcontracting Requirement(s) and Good Faith Efforts.** The requirements of the Local Business Enterprise and Non-Discrimination in Contracting Ordinance set forth in Chapter 14B of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the “LBE Ordinance”) shall apply to this RFP.

**1. LBE Subcontracting Participation Requirement(s) – Waived by CMD.**

**2. LBE Good Faith Efforts – Not Applicable.**

**G. Local Business Enterprise Rating Bonus.** The Local Business Enterprise (LBE) Program (Administrative Code, Chapter 14B) rating bonuses shall apply to the procurement of the goods or services, as applicable, being procured through this Solicitation in the manner described below. The rating bonus, as the case may be, apply at each phase of the selection process.

**1. Rating Bonus for General and Professional Services**

Estimated Contract Value	Small/Micro LBEs Rating Bonus	Small Business Administration LBEs Rating Bonus
Greater than \$10,000 but less than or equal to \$400,000	10%	0%
Greater than \$400,000 but less than or equal to \$10,000,000.	10%	5% <i>So long as it does not adversely affect a Small or Micro-LBE Proposer’s participation or, for Professional Services, an JV Proposer’s participation.</i>
Greater than \$10,000,000 but less than or equal to \$20,000,000.	2%	2%

**2. Rating Bonus for Professional Services by Joint Ventures (JVs)**

Estimated Contract Value	Small/Micro LBE Participation Level	Rating Bonus
Greater than \$10,000 but less than or equal to \$10,000,000.	Equals or exceeds 35%, but less than 40%	5%

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	Equals or exceeds 40%, but less than 100%	7.5%
	100%	10%
<p>If applying for an LBE rating discount as a JV, the Micro and /or Small-LBE must be an active partner in the JV and perform work, manage the job and take financial risks in proportion to the required level of participation stated in the Proposal, and must be responsible for a clearly defined portion of the work to be performed and share in the ownership, control, management responsibilities, risks, and profits of the JV. The portion of the Micro and/or Small-LBE JV’s work shall be set forth in detail separately from the work to be performed by the non-LBE JV. The Micro and/or Small-LBE JV’s portion of the contract must be assigned a commercially useful function.</p>		

**3. CMD Attachment 2:** All response packages submitted must include the following CMD Forms which can be found here: <https://sfgov/resource/2022/lbe-contract-requirements-cmd-attachments>:

- (a) CMD Form 2A: LBE Participation Form
- (b) CMD Form 3: CMD Compliance Affidavit
- (c) CMD Form 4: Joint Venture Form (if applicable)
- (d) CMD Form 5: Employment Form

Failure to complete, sign and submit each of the required CMD Forms may result in the response package being deemed non-responsive and rejected.

**4. CMD Compliance Officer.** The CMD Compliance Officer (CCO) for this project is: Diane Mai-Tran, Contract Monitoring Division, City and County of San Francisco, Tel: 650-821-9477, Email: [Diane.Mai-Tran@sfgov.org](mailto:Diane.Mai-Tran@sfgov.org), Website: [www.sfgov.org/cmd](http://www.sfgov.org/cmd).

**5. LBE Payment and Utilization Tracking – Not applicable.**

**H. Airport Intellectual Property.** Pursuant to Resolution No. 01-0118, adopted by the Airport Commission on April 18, 2001, the Airport Commission affirmed that it will not tolerate the unauthorized use of its intellectual property, including the SFO logo, CADD designs, and copyrighted publications. All proposers, bidders, contractors, tenants, permittees, and others doing business with or at the Airport (including subcontractors and subtenants) may not use the Airport intellectual property, or any intellectual property confusingly similar to the Airport intellectual property, without the Airport Director’s prior consent.

**I. Labor Peace / Card Check Rule.** Without limiting the generality of other provisions herein requiring Contractor to comply with all Airport Rules, Contractor shall comply with the Airport’s Labor Peace/Card Check Rule, adopted on February 1, 2000, pursuant to Airport Commission Resolution No.00-0049 (the “Labor Peace/Card Check Rule”). Capitalized terms not defined in this provision are defined in the Labor Peace/Card Check Rule. To comply with the Labor Peace Card Check Rule, Contractor shall, among other actions: (a) Enter into a Labor Peace/Card Check Agreement with any Labor Organization which requests such an agreement and which has registered with the Airport Director or his/her designee, within thirty (30) days after the Labor Peace/Card Check Agreement has been requested; (b) Not less than thirty (30) days prior to the modification of this Agreement, Contractor shall provide notice by mail to any Labor Organization or federation of labor organizations which have registered with the Director or his/her designee (“registered labor organization”), that Contractor is seeking to modify or extend this Agreement; (c) Upon issuing any request for proposals, invitations to bid, or similar notice, or in any event not less than thirty (30) days prior to entering into any Subcontract,

## RFP 50353 for As-Needed Airport Acoustical Consultant Services

Contractor shall provide notice to all registered Labor Organizations that Contractor is seeking to enter into such Subcontract; and (d) Contractor shall include in any subcontract with a Subcontractor performing services pursuant to any covered Contract, a provision requiring the Subcontractor to comply with the requirements of the Labor/Peace/Card Check Rule. If Airport Director determines that Contractor shall have violated the Labor/Peace/Card Check Rule, Airport Director shall have the option to terminate this Agreement, in addition to exercising all other remedies available to him / her.

**J. Airport's Small Business Participation Requirements.** SFO has developed outreach initiatives to promote access opportunities for small, local, woman and minority-owned businesses with a view toward increasing participation of local and small businesses across the Airport. Contractor will be required to participate in one or more of the following Airport-sponsored capacity building events during the term of the Agreement with the Airport:

1. "Doing Business at SFO" Annual Event
2. Small Business Town Halls
3. "Meet the Prime" Networking Events

**K. Sweatfree Procurement.** This Solicitation is subject to the City's Sweatfree Contracting Ordinance, Chapter 12U of the San Francisco Administrative Code ("Ordinance" or "Chapter 12U"). The City's selection decision will depend on a Proposer and a Proposer's subcontractors' proposed compliance with the Ordinance, based on the information provided in the forms described below. *Refer to Appendix A, City Proposed Agreement Terms for additional details related to the application of this Ordinance to a contract awarded pursuant to this Solicitation.*

**1. Information about Contractor and Subcontractors.** Proposers selected pursuant to this Solicitation must complete and return two forms.

a. "Sweatfree Contracting Compliance Form," Form P-12U-C: This form shall be submitted with Proposer's Proposal. In this form, the Proposer specifies those Ordinance requirements with which Proposer and its subcontractors shall comply during the contract term. Failure to complete and return Form P-12U-C may result in rejection of the Proposal as non-responsive.

b. "Sweatfree Ordinance Information Form," Form P-12U-I: This form shall be submitted with Proposer's Proposal and again prior to the commencement of any work if selected through this Solicitation. In this form, the Proposer identifies all subcontracts that are covered by the Ordinance. A selected Proposer must submit Form P-12U-I to the Office of Labor Standards Enforcement (OLSE) prior to commencing work.

**2. Information from Potential Subcontractors.** Proposers are responsible for requesting all required information from their potential subcontractors. When a Proposer identifies a potential subcontract that is covered by the Ordinance, the Proposer shall ask the potential subcontractor to review the Ordinance and the required forms. This process should continue through lower tiers of potential subcontractors, stopping only when a subcontractor makes no purchases that qualify as subcontracts under the Ordinance.

**3. Subcontracts and Subcontractors.** The definitions of "subcontract" and "subcontractor" in Chapter 12U affect how the prime contractor and subcontractors complete Forms P-12U-C and P-12U-I.

a. First-Tier Subcontract: The Ordinance defines a "First-Tier Subcontract" as a subcontract of any amount for any work pursuant to the prime contractor's contract with the City.

b. Lower-Tier Subcontract: The Ordinance defines a "Lower-Tier Subcontract" as an agreement between a first-tier (or lower) subcontractor and a second-tier (or lower) subcontractor for work for the City contract, except that the subcontract must be at least \$25,000, or at least 10% of the higher-tier subcontract, whichever is less ("10%/\$25K Test"). The 10%/\$25K test applies only to the amount of product being purchased by a subcontractor to fill the City's order. For example, prime contractor A issues a \$50,000 subcontract to company B to help fill a City purchase order. B in turn buys

## **RFP 50353 for As-Needed Airport Acoustical Consultant Services**

\$4,000 worth of cloth to fill that order. The \$4,000 purchase is part of a \$25,000 order to B's usual cloth manufacturer, company C. The \$25,000 order from B to C is not a covered subcontract under the Ordinance because the \$4,000 portion of the order attributable to the City work does not meet the 10%/\$25K test.

### **L. Conflicts of Interest**

1. Contractor will be required to agree to comply fully with and be bound by the applicable provisions of state and local laws related to conflicts of interest, including Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California. Contractor will be required to acknowledge that it is familiar with these laws; certify that it does not know of any facts that constitute a violation of said provisions; and agree to immediately notify the City if it becomes aware of any such fact during the term of the Agreement.

2. Individuals who will perform work for the City on behalf of Contractor might be deemed consultants under state and local conflict of interest laws. If so, such individuals will be required to submit a Statement of Economic Interests, California Fair Political Practices Commission Form 700, to the City within ten calendar days of the City notifying Contractor that the City has selected the proposer.

**M. Other Social Policy Provisions.** Appendix A, City's Proposed Agreement Terms, identifies the City's applicable social policy provisions related to a contract awarded pursuant to this Solicitation. Proposers are encouraged to carefully review these terms and ensure they are able to comply with them.

**Appendix A  
Agreement for Professional Services (form AIR-600)**

**City and County of San Francisco  
Airport Commission  
P.O. Box 8097  
San Francisco, California 94128**

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

**[insert name of contractor]**

**Contract No. 50353.XX**

This Agreement is made this [insert day] day of [insert month], 20 [insert year], in the City and County of San Francisco, State of California, by and between: [insert name and address of contractor] (the “Contractor”) and the City and County of San Francisco, a municipal corporation (the “City”), acting by and through its Airport Commission (the “Commission”).

**Recitals**

- A. The Commission wishes to provide specialized acoustical consultant services on an as-needed basis for the San Francisco International Airport (the “Airport”); and
- B. The Commission is authorized to enter into all contracts which relate to matters under its jurisdiction; and
- C. On October 31, 2023, the Commission issued a Request for Proposals (“RFP”) procured as required by San Francisco Administrative Code (“Administrative Code”) Section 21.1, and as a result of the selection process prescribed in the RFP and upon the recommendation of the Airport Director, the Commission determined that the Contractor was one of the three qualified proposers receiving the highest evaluation scores; and
- D. On [insert date], by Resolution No. [insert resolution number], the Commission awarded this Agreement to the Contractor [insert term and not-to-exceed amount]; and
- E. There is no Local Business Enterprise (“LBE”) subcontracting participation requirement for this Agreement; and
- F. The Contractor represents and warrants that it is qualified to perform the Services required by City under this Agreement; and
- G. Approval for this Agreement was obtained when the Civil Service Commission approved PSC No. \_\_\_\_\_ on \_\_\_\_\_.

Now, THEREFORE, the Parties agree as follows:

**Article 1 Definitions**

The following definitions apply to this Agreement:



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

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, referred to as “Purchasing,” or the Director’s designated agent, the Commission.

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

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

1.5 Confidential Information

1.5.1 “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 Administrative Code Chapter 12M (“Chapter 12M”).

1.5.2 “Confidential Information” also means any and all nonpublic information, whether written, electronic, or oral, concerning or relating to Airport technology, computer, or data systems, processes, or procedures, or Critical Infrastructure Information or Protected Critical Infrastructure Information as defined under the Homeland Security Act of 2002 and 6 CFR §29.2, which information or access to such information is supplied by the Airport or on behalf of the Airport to Contractor or otherwise acquired by Contractor during the course of dealings with the Airport. Additionally, “Confidential Information” includes security or security-related information, whether or not such information constitutes sensitive security information (“SSI”) as provided under 49 CFR Part 1520. In the event Contractor acquires SSI, it shall treat such information in conformance with federal law and the provisions of this Agreement.

1.5.3 “Confidential Information” is confidential regardless of whether such information is in its original form, a copy, or a derivative product. “Derivative” means written or electronic material created from or with, or based on Confidential Information (i.e., a report analyzing Confidential Information shall also be considered Confidential Information). Confidential Information shall also mean proprietary, trade secret or other protected information, identified as Confidential Information by the Airport.

1.6 “Contractor” means [insert name and address of contractor].

1.7 “Deliverables” means Contractor’s work product resulting from the Services that are provided by Contractor to City during the course of Contractor’s performance of the Agreement,

including without limitation, the work product described in the “Scope of Services” attached as Appendix A.

1.8 “Digital Signature” means an electronic identifier, created by computer, intended by the party using it to have the same force and effect as the use of a manual signature.

1.9 “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.

1.10 “Party” and “Parties” mean the City and Contractor either collectively or individually.

1.11 “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 January 1, 2024 and expire on December 31, 2028, unless earlier terminated as otherwise provided in 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 under this Agreement 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 BOS. 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 Calculation of Charges.** Contractor shall provide an invoice to the City on a monthly basis for goods delivered and/or Services completed in the immediately 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 City, in its sole discretion, concludes has been satisfactorily performed. In no event shall the amount of this Agreement exceed [insert whole dollar amount in numbers and words -- no pennies and no ".00"]. The breakdown of charges associated with this Agreement appears in Appendix B, "Calculation of Charges." 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. City will not honor minimum service order charges for any Services covered by this Agreement.

**3.3.2 Payment Limited to Satisfactory Services and Delivery of Goods.** Contractor is not entitled to any payments from City until the Commission approves the goods and/or Services delivered under this Agreement. Payments to Contractor by City shall not excuse Contractor from its obligation to replace unsatisfactory delivery of goods and/or Services even if the unsatisfactory character may not have been apparent or detected at the time such payment was made. Goods and/or Services delivered under this Agreement that do not conform to the requirements of this Agreement may be rejected by the 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 goods and/or Services consistent 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 in this Agreement.

**3.3.4 Invoice Format.** Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller and City and include a unique invoice number and a specific invoice date. Payment shall be made by City as specified in Section 3.3.6, or in such alternate manner as the Parties have mutually agreed upon in writing. All invoices must show the City's financial and procurement system ("PeopleSoft") Purchase Order ID Number, PeopleSoft Supplier Name and ID, Item numbers (if applicable), complete description of goods delivered or Services performed, sales/use tax (if applicable), contract payment terms and contract price. Invoices that do not include all required information or contain inaccurate information will not be processed for payment.

**3.3.5 LBE Payment and Utilization Tracking System – Not applicable.**

**3.3.6 Getting Paid by the City for Goods and/or Services.**

(a) The City and County of San Francisco utilizes the Paymode-X<sup>®</sup> service offered by Bank of America Merrill Lynch to pay City contractors. Contractor must sign up to receive electronic payments to be paid under this Agreement. To sign up for electronic payments, visit [http://portal.paymode.com/city\\_countyofsanfrancisco](http://portal.paymode.com/city_countyofsanfrancisco).

(b) At the option of the City, Contractor may be required to submit invoices directly in PeopleSoft via eSettlement. Refer to <https://sfcitypartner.sfgov.org/pages/training.aspx> for more information on eSettlement. For access to PeopleSoft eSettlement, submit a request through [sfemployeeportalsupport@sfgov.org](mailto:sfemployeeportalsupport@sfgov.org).

**3.3.7 Grant Funded Contracts – Not applicable.**

**3.3.8 Payment Terms.**

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

(b) **Payment Discount Terms – Not applicable.**

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

**3.5 Submitting False Claims.** The full text of Administrative Code Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Under Administrative Code Section 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 Payment of Prevailing Wages**

**3.6.1 Covered Services.** Services to be performed by Contractor under this Agreement may involve the performance of trade work covered by the provisions of Administrative Code Section 6.22(e) [Prevailing Wages] or Section 21C [Miscellaneous Prevailing Wage Requirements] (collectively, “Covered Services”). The provisions of Administrative Code Sections 6.22(e) and 21C are incorporated as provisions of this Agreement as if fully set forth in this Agreement and will apply to any Covered Services performed by Contractor and its subcontractors.

**3.6.2 Wage Rates.** The latest prevailing wage rates for private employment on public contracts as determined by the BOS and the Director of the California Department of Industrial Relations, as such prevailing wage rates may be changed during the term of this Agreement, are hereby incorporated as provisions of this Agreement, as applicable. For trade work covered by the provisions of Administrative Code Section 21C, Contractor agrees that it shall pay not less than the prevailing wage rates, as fixed and determined by the BOS, to all workers employed by Contractor who perform such Covered Services under this Agreement. Copies of such rates are available from the Office of Labor Standards and

Enforcement (“OLSE”) and on the Internet at <https://sfgov.org/olse/prevaling-wage-non-construction> . For trade work covered by the provisions of Administrative Code Section 6.22(e), Contractor agrees that it shall pay not less than the prevailing wage rates as fixed and determined by the California Department of Industrial Relations for the County of San Mateo to all workers employed by Contractor who perform Covered Services under this Agreement. Copies of such rates are available from the OLSE and on the Internet at <http://www.dir.ca.gov/DLSR/PWD>.

## 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.”

All work under this Agreement shall be requested by City through the issuance of a written task order. Refer to Appendix A for details.

4.2 **Qualified Personnel.** Contractor shall use 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” and Article 13 “Data and Security” 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 Contractor will not employ subcontractors.

### 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, Federal Insurance Contributions Act, 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 consistent with the requirements of this Agreement, City shall provide Contractor with written notice of such failure. Within five business days of Contractor's receipt of such notice, and consistent 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 under 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 under this Agreement, 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 consistent 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.

4.7 **Liquidated Damages.** By entering into this Agreement, Contractor agrees that in the event the Services are delayed beyond the scheduled milestones and timelines as provided in Appendix A, City will suffer actual damages that will be impractical or extremely difficult to determine. Contractor agrees that the sum of [insert whole dollar amount in words and numbers -- no pennies and no “.00”] per calendar day for each day of delay beyond scheduled milestones and timelines is not a penalty, but is a reasonable estimate of the loss that City will incur based on the delay, established in light of the circumstances existing at the time this Agreement was awarded. City may deduct a sum representing the liquidated damages from any money due to Contractor under this Agreement or any other contract between City and Contractor. Such deductions shall not be considered a penalty, but rather agreed upon monetary damages sustained by City because of Contractor’s failure to furnish deliverables to City within the time fixed or such extensions of time permitted in writing by City.

## **Article 5 Insurance and Indemnity**

### **5.1 Insurance.**

5.1.1 **Required Coverages.** Without in any way limiting Contractor’s liability under Section 5.2, “Indemnification” of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

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

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

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

(d) Professional Liability Insurance with limits not less than \$1,000,000 each claim with respect to negligent acts, errors, or omissions in connection with professional services to be provided under this Contract.

(e) Cyber and Privacy Insurance – Not applicable.

(f) Pollution Liability Insurance – Not applicable.

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

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

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

(c) The Commercial Automobile Liability Pollution Additional Insured Endorsement – Not applicable.

#### 5.1.3 Waiver of Subrogation Endorsements.

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

#### 5.1.4 Primary Insurance Endorsements.

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

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

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

#### 5.1.5 Other Insurance Requirements.

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

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

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

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



If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

(e) Before commencing any Services, Contractor shall furnish to City certificates of insurance 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 under this Agreement.

(f) If Contractor will use any subcontractor(s) to provide Services, Contractor shall require the subcontractor(s) to provide all necessary insurance and to name the City and County of San Francisco, 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: (a) injury to or death of a person, including employees of City or Contractor; (b) loss of or damage to property; (c) 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; (d) strict liability imposed by any law or regulation; or (e) losses arising from Contractor's execution of subcontracts not consistent with the requirements of this Agreement applicable to subcontractors; so long as such injury, violation, loss, or strict liability (as set forth in subsections (a) – (e) above) arises directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, Contractor's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors, or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City.

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.

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

## Article 6 Liability of the Parties

6.1 **Liability of City.** CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 3.3.1, "CALCULATION OF CHARGES," OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY

SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

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

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

## 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 under this Agreement. Contractor shall remit to the State of California any sales or use taxes paid by City to Contractor under this Agreement. Contractor agrees to promptly provide information requested by the City to verify Contractor's compliance with any State requirements for reporting sales and use tax paid by City under this Agreement.

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

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

7.2.2 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a "change in ownership" for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor 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 California 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., California Revenue and Taxation Code Section 64, as amended from time to time). Contractor 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. Under San Francisco Business and Tax Regulations Code Section 6.10-2, 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 of this Agreement, 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 thirty (30) days after the specified termination date, Contractor shall submit to City an invoice, which shall set forth each of the following as a separate line item:

- (a) The reasonable cost to Contractor, without profit, for all Services prior to the specified termination date, for which Services City has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of

Contractor’s direct costs for Services. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.

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

(c) The reasonable cost to Contractor of handling material or equipment returned to the supplier, 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 under 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:

8.2.2 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

(a) 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 into this Agreement by reference, and such default is not cured within ten days after written notice of such default 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.

(b) 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.

(c) 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.

8.2.3 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 under 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. This Section 8.2.2 shall survive termination of this Agreement.

8.2.4 All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available under this Agreement 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.

8.2.5 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 of this Agreement 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.

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 Service and Delivery of Goods	9.1	Ownership of Results
---	---	9.2	Works for Hire
3.4	Audit and Inspection of Records	11.6	Dispute Resolution Procedure
3.5	Submitting False Claims	11.7	Agreement Made in California; Venue
Article 5	Insurance and Indemnity	11.8	Construction
6.1	Liability of City	11.9	Entire Agreement
6.3	Liability for Incidental and Consequential Damages	11.10	Compliance with Laws
Article 7	Payment of Taxes	11.11	Severability
8.1.6	Payment Obligation	Article 13	Data and Security
8.2.2	Exercise of Default Remedies	---	---

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

**Article 9 Rights in Deliverables**

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

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

**Article 10 Additional Requirements Incorporated by Reference**

10.1 **Laws Incorporated by Reference.** The full text of the laws listed in this Article 10, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by 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 Administrative Code Chapter 12G (“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 Administrative Code Chapter 12K (“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 Chapter 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 Administrative Code Chapters 12B and 12C. Contractor shall incorporate by reference in all subcontracts the provisions of Administrative Code Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 and shall require all subcontractors to comply with such provisions. Contractor is subject to the enforcement and penalty provisions in Administrative Code Chapters 12B and 12C.

10.5.2 **Nondiscrimination in the Provision of Employee Benefits.** 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 Administrative Code Section 12B.2.

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

**10.7 Minimum Compensation Ordinance.** If Administrative Code Chapter 12P (“Chapter 12P”) applies to this contract, Contractor shall pay covered employees no less than the minimum compensation required by 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 Chapter 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 (“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 Administrative Code Section 12Q.3. 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 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, Administrative Code Chapter 83 (“Chapter 83”), 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 (“Section 1.1.126”), 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 Administrative Code Chapter 12Y (“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 (as such capitalized terms are defined in Chapter 12Y). Contractor is subject to the enforcement and penalty provisions in Chapter 12Y.

**10.13 Working with Minors – Not applicable.**

**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 Administrative Code Chapter 12T (“Chapter 12T”), “City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions,” 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 in this Agreement. 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 Chapter 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 which excludes Airport property. 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 Public Access to Nonprofit Records and Meetings – Not applicable.**

**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 provided remedies for noncompliance.

**10.17 Distribution of Beverages and Water.**

10.17.1 **Sugar-Sweetened Beverage Prohibition.** Contractor agrees that it shall not sell, provide, or otherwise distribute Sugar-Sweetened Beverages, as defined by Administrative Code Chapter 101, as part of its performance of this Agreement.

10.17.2 **Packaged Water Prohibition.** Contractor agrees that it shall not sell, provide, or otherwise distribute Packaged Water, as defined by San Francisco Environment Code Chapter 24, as part of its performance of this Agreement.

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

10.18.1 Contractor shall comply with San Francisco Environment Code Chapter 8 (“Chapter 8”), which provides that except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code, Contractor shall not provide any items to the City in performance of this Agreement which are tropical hardwoods, tropical hardwood wood products, virgin redwood or virgin redwood wood products. Contractor is subject to the penalty and enforcement provisions of Chapter 8.

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

## Article 11 General Provisions

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

To City: [insert name or title of department contact person, name of department, mailing address, phone number, and email address]

To Contractor: [insert name of contractor, mailing address, phone number, and email address]

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

11.1.1 The Parties consent to the use of Digital Signatures, affixed using the City’s DocuSign platform, to execute this Agreement and all subsequent modifications.

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 Section 6250 *et. seq.*), and the San Francisco Sunshine Ordinance, (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, under 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 consistent with this 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 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 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 Agreement sets forth the entire agreement between the Parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Section 11.5, "Modification of this Agreement."

11.10 **Compliance with Laws.** Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and duly adopted rules and regulations of the City and of all state, and federal laws in

any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

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

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

11.13 **Order of Precedence.** Contractor agrees to perform the Services consistent with the terms and conditions of this Agreement, implementing task orders, the RFP, and Contractor's proposal dated [Insert Date of Proposal]. The RFP and Contractor's proposal are incorporated by reference as though fully set forth in this Agreement. Should there be a conflict of terms or conditions, this Agreement and any implementing task orders shall control over the RFP and the Contractor's proposal.

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 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 consistent 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 Requirements For Airport Contracts

12.1 **Airport Commission Rules and Regulations.** Contractor agrees to comply with the Airport Commission's Rules and Regulations for the San Francisco International Airport as amended from time to time. A copy of the current Rules and Regulations can be found at: <http://www.flysfo.com/about-sfo/the-organization/rules-and-regulations>.

12.2 **Airport Intellectual Property.** Under Resolution No. 01-0118, adopted by the Airport Commission on April 18, 2001, the Airport Commission affirmed that it will not tolerate the unauthorized use of its intellectual property, including the SFO logo, CADD designs, and copyrighted publications. No proposers, bidders, contractors, tenants, permittees, and others doing business with or at the Airport (including subcontractors and subtenants) may use the Airport intellectual property, or any intellectual property confusingly similar to the Airport intellectual property, without the Airport Director's prior written consent.

12.3 **Labor Peace/Card Check Rule.** Without limiting the generality of other provisions in this Agreement requiring Contractor to comply with all Airport Rules and Regulations, for all Covered Contracts, Contractor shall comply with the Airport's Labor Peace/Card Check Rule, a revised version of which was adopted as Rule 12.1 on February 7, 2023 by Airport Commission Resolution No. 23-0018 (as

amended the “Labor Peace/Card Check Rule”). To comply with the Labor Peace/Card Check Rule, each Covered Employer shall comply with the Labor Peace/Card Check Rule, Section C, Covered Employer Duties, Items 1-13. If the Airport determines that Contractor violated the Labor Peace/Card Check Rule, the Airport shall have the option to terminate this Agreement, in addition to exercising all other remedies available to the Airport. Capitalized terms not defined in this provision are defined in the Labor Peace/Card Check Rule.

**12.4 Federal Fair Labor Standards Act.** This Agreement incorporates by reference the provisions of 29 USC §201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers. Contractor has full responsibility to monitor compliance to the referenced statute or regulation. Contractor must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

**12.5 Occupational Safety and Health Act of 1970.** This Agreement incorporates by reference the requirements of 29 CFR §1910 with the same force and effect as if given in full text. Contractor must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. Contractor retains full responsibility to monitor its compliance and their subcontractor’s compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (29 CFR §1910). Contractor must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

**12.6 Federal Nondiscrimination Requirements.** During the performance of this Agreement, Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as “Contractor”) agrees as follows:

**12.6.1 Compliance with Regulations.** Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts And Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.

**12.6.2 Nondiscrimination.** Contractor, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

**12.6.3 Solicitations for Subcontracts.** Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by Contractor of Contractor’s obligations under this Agreement and the Nondiscrimination Acts And Authorities on the grounds of race, color, or national origin.

**12.6.4 Information and Reports.** Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Airport or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor

is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Airport or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

**12.6.5 Sanctions for Noncompliance.** In the event of a Contractor's noncompliance with the Non-discrimination provisions of this Agreement, the Airport will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

(a) Withholding payments to the contractor under the contract until the contractor complies; and/or

(b) Cancelling, terminating, or suspending a contract, in whole or in part.

**12.6.6 Incorporation of Provisions.** Contractor will include the provisions of paragraphs 12.6.1 through 12.6.6 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. Contractor will take action with respect to any subcontract or procurement as the Airport or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, Contractor may request the Airport to enter into any litigation to protect the interests of the Airport. In addition, Contractor may request the United States to enter into the litigation to protect the interests of the United States.

**12.6.7 Title VI List of Pertinent Nondiscrimination Acts and Authorities.** During the performance of this Agreement, Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC §2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 USC §4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 USC. §794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended (42 USC §6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC §471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §12131 –

12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38 and the Department of Justice regulations at 28 CFR, parts 35 and 36;

- The Federal Aviation Administration’s Non-discrimination statute (49 USC §47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 CFR at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC §1681 *et seq.*).

12.7 **Quality Standards Program.** This Agreement is subject to the Airport’s Quality Standards Program (“QSP”). The Airport’s Employment and Quality Standards (EQS) office oversees the QSP which is applicable to Service Providers (as defined in the QSP) at the Airport whose employees are involved in performing services that have an impact on Airport security and safety. More information may be found at: <http://www.flysfo.com/about-sfo/the-organization/rules-and-regulations>. EQS may be contacted at (650) 821-1003.

## Article 13 Data and Security

### 13.1 Nondisclosure of City Data, Private 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 Administrative Code Chapter 12M (“Chapter 12M”), Contractor and subcontractor shall use such information only consistent 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, or collect on City’s behalf, City Data and /or Confidential Information, the disclosure of which to third parties may damage City. If City discloses City Data or Confidential Information to Contractor, or Contractor collects such information on City’s behalf, such information must be held by Contractor in confidence and used only in performing the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own confidential information.

### 13.2 Payment Card Industry (“PCI”) Requirements – Not applicable.

### 13.3 Business Associate Agreement – Not applicable.

### 13.4 Management of City Data and Confidential Information

13.4.1 **Use of City Data and Confidential Information.** Contractor agrees to hold City Data received from, or collected on behalf of, the City, in strictest confidence. Contractor shall not use or disclose City Data except as permitted or required by the Agreement or as otherwise authorized in

writing by the City. Any work using, or sharing or storage of, City Data outside the United States is subject to prior written authorization by the City. Access to City Data must be strictly controlled and limited to Contractor's staff assigned to this project on a need-to-know basis only. Contractor is provided a limited non-exclusive license to use the City Data solely for performing its obligations under the Agreement and not for Contractor's own purposes or later use. Nothing in this Agreement 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 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.

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

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

## **Article 14 MacBride And Signature**

**14.1 MacBride Principles -Northern Ireland.** The provisions of Administrative Code Chapter 12F are incorporated 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.

<p><b>CITY</b>                  AIRPORT COMMISSION                  CITY AND COUNTY OF                  SAN FRANCISCO</p> <p>By: _____                  Ivar C. Satero, Airport Director</p> <p>Attest:</p> <p>By _____                  Kantrice Ogletree, Secretary                  Airport Commission</p> <p>Resolution No: _____</p> <p>Adopted on: _____</p> <p>Approved as to Form:</p> <p>David Chiu                  City Attorney</p> <p>By _____                  Courtney Davis                  Deputy City Attorney</p>	<p><b>CONTRACTOR</b></p> <p>_____</p> <p>Authorized Signature</p> <p>_____</p> <p>Printed Name</p> <p>_____</p> <p>Title</p> <p>_____</p> <p>Company Name</p> <p>_____</p> <p>City Supplier Number</p> <p>_____</p> <p>Address</p> <p>_____</p> <p>City, State, ZIP</p> <p>_____</p> <p>Telephone Number</p> <p>_____</p> <p>Federal Employer ID Number</p>
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**Appendices**

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

## **Appendix A Scope of Services**

### **1. As-Needed Services – Task Orders**

Contractor shall perform all Services under this Agreement on an as-needed basis. All Services shall be requested by City through the issuance of a written task order signed by City and Contractor, which task order shall be made a part of and incorporated into the Agreement as though fully set forth in this Agreement without the need for a formal amendment to the Agreement.

Each task order shall include a description of the as-needed Services, the deliverables, schedule for performance, cost, and method and timing of payment.

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

Contractor may be asked to perform the following services:

1. Prepare quarterly Noise Contours and Quarterly Reports the Airport is required to file under Title 21, Subchapter 6, Subsection 5021 of the California Code of Regulations for the duration of the contract. Contractor will complete this task using the FAA’s Aviation Environmental Design Tool (“AEDT”). Preparation of the quarterly noise contours will commence 15 calendar days after the end of each calendar quarter and be completed and delivered to Airport 20 calendar days after commencement to allow the County of San Mateo to review and deliver the completed report to the State of California per the Title 21 regulations within 75 days after the end of each calendar quarter.
2. Provide support for implementation of the Ground Based Augmentation System (GBAS) procedures for the duration of the Airport’s GBAS implementation program. Contractor will support Noise Office staff in working with the FAA, Airport management and staff, the Community Roundtable, and public on GBAS procedures by performing the following tasks:
  - a. Develop and produce FAA compliant submissions to the FAA Instrument Flight Procedures Gateway.
  - b. Provide Community Flight Procedure Packages (“CFPPs”), community noise impacts analysis, and answers to community questions for posting on the Noise Office GBAS website.
  - c. Provide Noise Monitoring reports for GBAS procedure implementation.
  - d. Host virtual and/or in-person GBAS briefings with supporting documents, graphics and presentations to the FAA, Airlines, Airport Staff, SFO/Community Roundtable and public.
  - e. Host and/or attend virtual or in-person informational meetings, at The Airport’s direction at GBAS industry events.
  - f. Collaborate with Airport’s GBAS system vendor, at the Airport’s direction on current and future GBAS needs and updates.
3. Provide Airport noise litigation support. On an as-needed basis, Contractor will provide litigation support for noise claims filed against the Airport. This may include review of noise claims, conducting noise analysis, development of strategies, preparation of exhibits, and serving as an expert witness in court proceedings.
4. Conduct peer review of materials related to Airport noise issues. Contractor may also conduct peer review of work submitted by other airport acoustical consultant(s), as requested by the Airport. The purpose of peer review is to achieve the most accurate and sound information. In its roles as peer

reviewer, Contractor will not be liable for modeling assumptions and input, but for review and feedback of reports and models provided.

5. Assist in the preparation or advancement of specialized acoustical studies and support Airport staff on a project-by-project basis. This may include performing the following tasks:
  - a. Evaluate aircraft noise monitoring and flight tracking system for the purpose of defining enhanced system parameters for the correlation of aircraft flights and noise measurements.
  - b. Evaluate effective measurements, noise monitoring system parameters, and methods of mitigating low frequency departing aircraft noise in areas behind the aircraft.
  - c. Evaluate the Airport's current aircraft noise abatement programs and procedures to identify potential enhancements, including reductions of aircraft departure noise.
  - d. Provide analytical support for information dashboards and reports on operations, noise levels, and aircraft mix. Identify criteria and assumptions to assist in automating reporting. Identify best practices to improve data grooming and repetitive Noise Office staff activities.
  - e. Develop educational documents, videos, and webinars for internal and external public education and community outreach.
  - f. Support staff preparing Fly Quiet Program reports, Portable Noise Monitoring reports and Airport Director's reports by furnishing information regarding industry best practices.
  - g. Update the national fleet quality database used for Fly Quiet Program reports.

### **3. 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. Reports.**

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

### **5. Department Liaison.**

In performing the Services provided for in this Agreement, Contractor's liaison with the Airport will be the person identified in Agreement at Section 11.1, Notices to the Parties. Such individual shall be the Contractor's primary point of contact for all purposes under this Agreement.

**Appendix B  
Calculation of Charges**

**[Negotiated rates based on the RFP Appendix C “Hourly Rates Form” to be inserted here.]**





**RFP 50353 for As-Needed Airport Acoustical Consultant Services**

**Appendix C  
First Source Hiring Agreement**

The First Source Hiring Agreement can be downloaded online at:

[http://oewd.org/sites/default/files/Documents/professional\\_services\\_fsha.pdf](http://oewd.org/sites/default/files/Documents/professional_services_fsha.pdf)