

**ON CALL SERVICES AGREEMENT BETWEEN
THE CITY OF SOUTH SAN FRANCISCO AND
[NAME OF CONSULTANT]**

THIS AGREEMENT for on-call consulting services is made by and between the City of South San Francisco (“City”) and [NAME OF CONSULTANT] (“Consultant”) (together sometimes referred to as the “Parties”) as of [REDACTED] (the “Effective Date”).

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services and work products described in the Scope of Work attached as **Exhibit A** (“Services”), at the time and place and in the manner specified by the respective executed Task Orders, a sample of is attached hereto and incorporated herein as **Exhibit A-1**. In the event of a conflict in or inconsistency between the terms of this Agreement and **Exhibits A and A-1**, the Agreement shall prevail.

- 1.1 Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end on [REDACTED], unless the term of the Agreement is otherwise terminated or extended, as provided for in **Section 8**. The time provided to Consultant to complete the services required by this Agreement shall not affect the City’s right to terminate the Agreement, as provided for in **Section 8**.
- 1.2 Task Order.** Prior to execution of a Task Order, the City shall request a Task Order Scope Proposal from the Consultant. Consultant shall provide the City with a Task Order Scope Proposal, and if satisfactory, the City and Consultant shall execute a Task Order. Upon an executed Task Order, Consultant shall perform the services listed in the Task Order and in a manner consistent with this Agreement.
- 1.3 Standard of Performance.** Consultant shall perform all Services required pursuant to this Agreement in the manner and according to the standards and quality normally observed by a competent practitioner of the profession in which Consultant is engaged.
- 1.4 Assignment of Personnel.** Consultant shall assign only competent personnel consistent with Section 1.2 to perform the Services pursuant to this Agreement. In the event that City, in its sole discretion, expresses concerns to Consultant regarding the performance of Consultant personnel providing Services, Consultant shall promptly confer with City and thereafter either exercise its independent authority to implement corrective actions, including without limitation assignment of different personnel to provide Services, or terminate this Agreement pursuant to Section 8.
- 1.5 Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Sections **1.1** and **1.2** above and to satisfy Consultant’s obligations hereunder.
- 1.6 Public Works Requirements.** Because the Services include “work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work,” the services constitute a public works within the definition of Section 1720(a)(1) of the California Labor Code. As a result, Consultant is required to comply with the provisions of the Labor Code applicable to public works, to the extent set forth in **Exhibit C**, and incorporated herein. Consultant shall waive, indemnify, hold harmless, and defend City concerning any liability arising out of Labor Code Section 1720 *et seq.* Consultant shall also complete the necessary registration process with the California Department of Industrial Relations as a contractor for eligibility to perform work under this Agreement.

Section 2. COMPENSATION. This On-call Services Agreement does not guarantee any amount of work for the Consultant. Task Orders will be developed and executed as needed and provided for in this Agreement. The Consultant shall be paid by the City only for completed services rendered under each approved individual Task Order. Such payment shall be full compensation for payment shall be full compensation for work performed or services rendered and for all

labor, materials, supplies, equipment and incidentals necessary to complete the work stated in the Task Order. Notwithstanding the foregoing, Consultant shall not receive total compensation under this Agreement in an amount over ****CITY COUNCIL AUTHORIZED LIMIT AMOUNT** Dollars (\$ _____)**. In the event of a conflict between this Agreement and Consultant's proposal, regarding the amount of compensation, the Agreement shall prevail. The payments for completed work under an executed Task Order shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City in writing, Consultant shall not bill City for duplicate services performed by more than one person. Compensation specified above shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. City has no responsibility for any costs or contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible.

[The following provisions may be altered as necessary to fit the circumstances of a particular agreement. For example, if the agreement anticipates one-time payment with no invoices or retention, those sections below can be deleted.]

2.1 Invoices. Consultant shall submit invoices, not more often than once per month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information, unless otherwise waived by the Contract Administrator in writing:

- Serial identifications of progress bills (i.e., Progress Bill No. 1 for the first invoice);
- The beginning and ending dates of the billing period;
- A task summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
- At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder, as well as a separate notice when the total number of hours of work by Consultant and any individual employee, agent, or subcontractor of Consultant reaches or exceeds eight hundred (800) hours, which shall include an estimate of the time necessary to complete the Services;
- The amount and purpose of actual expenditures for which reimbursement is sought;
- The Consultant's signature.

2.2 Monthly Payment. City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for reimbursable costs as authorized under Exhibit B and actually incurred. City shall have thirty (30) days from the receipt of an invoice that complies with all of the requirements above to pay Consultant. City shall have no obligation to pay invoices submitted ninety (90) days past the performance of work or incurrence of cost.

2.3 Final Payment. City shall pay the last ten percent (10%) of the total sum due pursuant to this Agreement within sixty (60) days after completion of the services and submittal to City of a final invoice, if all services required have been satisfactorily performed.

2.4 Total Payment. City shall pay for the services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement. In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.

- 2.5 Hourly Fees.** Fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on the compensation schedule attached hereto and incorporated herein as Exhibit B.
- 2.6 Reimbursable Expenses.** Reimbursable expenses, if any, are specified in Exhibit B, and shall not exceed the amount set forth in Exhibit B. Expenses not listed in Exhibit B are not chargeable to City. Reimbursable expenses are included in the total amount of compensation provided under this Agreement under Section 2 that shall not be exceeded.
- 2.7 Payment of Taxes, Tax Withholding.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes. To be exempt from tax withholding, Consultant must provide City with a valid California Franchise Tax Board form 590 (“Form 590”), as may be amended and such Form 590 shall be attached hereto and incorporated herein as Exhibit D. Unless Consultant provides City with a valid Form 590 or other valid, written evidence of an exemption or waiver from withholding, City may withhold California taxes from payments to Consultant as required by law. Consultant shall obtain, and maintain on file for three (3) years after the termination of this Agreement, Form 590s (or other written evidence of exemptions or waivers) from all subcontractors. Consultant accepts sole responsibility for withholding taxes from any non-California resident subcontractor and shall submit written documentation of compliance with Consultant’s withholding duty to City upon request.
- 2.8 Payment upon Termination.** In the event that the City or Consultant terminates this Agreement pursuant to Section 8, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed in accordance with this Agreement as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets in order to verify costs incurred to that date.
- 2.9 Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.

Section 3. PROVISION OF SERVICES.

- 3.1 Facilities and Equipment.** Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City agrees to make available desk and conference space, as may be reasonably necessary for Consultant’s occasional use while consulting with City employees and reviewing records and other necessary information in possession of the City to provide services. The location, type, quantity, and time of furnishing those facilities shall be in the sole discretion of City. In no event shall City be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, long-distance telephone or other communication charges, vehicles, and reproduction facilities. The City is not obligated to provide any other facilities and equipment.

If necessary, the City may at its sole discretion provide Consultant access to City computer hardware or network files, or both, but only at the access level strictly necessary to provide services under this Agreement as approved by the City. In the event that Consultant is provided such access, Consultant shall comply with the Electronic Use Addendum attached hereto and incorporated herein as Exhibit F.

- 3.2 Onsite Services and Location of Work.** Consultant shall perform the Services in a manner that does not interfere with operations of the City or any other City contractors and shall protect all persons and property at its work site from damage or injury. Consultant’s work site includes all buildings, offices, and other locations where Consultant performs Services, including any access roads. Upon completion of the Services, Consultant shall leave all work sites clean and free in their original condition. Consultant shall

be solely responsible for the safe transportation and storage of all equipment and materials (whether owned or rented) in performing the Services and shall arrange for transportation and storage at its sole risk and cost. City may assume that anything left at the work site unreasonably long after said work is completed has been abandoned. Consultant further acknowledges and agrees that it shall assume the risk and is solely responsible for its owned, non-owned and hired vehicles as well as any equipment, tools, or other property utilized by Consultant in performing the Services. If City transportation, equipment, or property is made available to Consultant, such provisions are courtesy accommodations only and Consultant shall assume any and all risks and responsibilities in electing to use such provisions.

Section 4. INSURANCE REQUIREMENTS. Before beginning Services under this Agreement, Consultant, at its own cost and expense, shall procure the types and amounts of insurance required by this Section. Consultant shall maintain the insurance policies required hereunder during the Term. Consultant shall not commence with the Services or allow any subcontractor to do so until Consultant and the subcontractor have obtained all required insurance, unless otherwise waived or modified by the City.

4.1 Required Insurance. Consultant shall procure and maintain the insurance(s) **checked below** and satisfying the requirements in **Exhibit E**.

Worker's Compensation Insurance

Commercial General Liability Insurance

Automobile Liability Insurance

Professional Liability Insurance

Cyber Liability Insurance/Technology Errors and Omissions Insurance

4.2 All Policies Requirements.

4.2.1 Submittal Requirements. Prior to beginning any work under this Agreement, Consultant shall furnish City with complete copies of the following:

- a. Certificates of Liability Insurance in the amounts specified in the section, each of which shall be deemed as attached under **Exhibit E**.
- b. Additional Insured Endorsement as required for the General Commercial and Automobile Liability Policies;
- c. Waiver of Subrogation Endorsement required by **Exhibit E**; and
- d. Primary and Non-Contributory Insurance Endorsement required by **Exhibit E**.
- e. All copies of endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf. If the City does not receive the required insurance documents prior to the Consultant beginning work, it shall not waive the Consultant's obligation to provide them. The City reserves the right to require Consultant to provide copies of all required insurance policies at any time.

4.2.2 Subcontractors/Subconsultants. Consultant shall ensure all of its subcontractors maintain and provide certificates of insurance and endorsements in accordance with the insurance requirements under this Agreement.

4.2.3 Wasting Policy. No insurance policy required by Section 4 shall include a "wasting" policy limit except professional liability insurance. The policies afforded Additional Insureds shall provide

defense of covered claims without eroding the policy limits.

- 4.2.4 Excess Insurance.** If Consultant maintains higher limits than the minimum amounts required by this Agreement, City shall be entitled to coverage for the higher limits maintained by Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.
- 4.2.5 Waiver of Subrogation.** Consultant hereby agrees to waive subrogation against the City which any insurer or contractor may require from Consultant by virtue of the payment of any loss. Consultant agrees to obtain any endorsements that may be necessary to affect this waiver of subrogation.
- 4.3 Remedies.** In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any additional remedies available to it at law or equity.
- 4.4 Notice of Claim.** Consultant shall immediately notify City of any claim or loss against Consultant arising out of the Services under this Agreement. City assumes no obligation or liability by such notice but has the right to monitor the handling of any such claim.

Section 5. INDEMNIFICATION AND CONSULTANT’S RESPONSIBILITIES.

- 5.1 General Requirement.** To the fullest extent permitted by law, Consultant shall indemnify, defend with counsel approved by the City, and hold harmless the City and its officials, officers, employees, agents, and volunteers (collectively, “City Indemnitees”) from and against any and all causes of action, losses, liability, claims, suits, actions, damages, expenses and costs ((including without limitation, attorney’s fees, and costs and fees of litigation) (collectively, “Liability”) of every nature arising out of or in connection with Consultant’s performance of the Services under this Agreement, or its failure to comply with any of its obligations contained in this Agreement, or its failure to comply with any applicable law or regulation.

The foregoing obligation of Consultant shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the gross negligence or willful misconduct of the City or its officers, officials, employees, agents, or volunteers and (2) the actions of Consultant or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law.

It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. With respect to third party claims against Consultant, Consultant waives any and all rights of any type to express or implied indemnity against the Indemnitees.

Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

Consultant’s obligation to defend and indemnify shall not be excused because of the Consultant’s inability to evaluate Liability or because Consultant evaluates Liability and determines that the Consultant is not liable to the claimant. Consultant must respond within 30 days to the tender of any claim for defense

and indemnity by the City, unless this time has been extended by the City in writing. If Consultant fails to accept or reject a tender of defense and indemnity within 30 days, in addition to any other remedy authorized by law, so much of the money due the Consultant under and by virtue of this Agreement as shall reasonably be considered necessary by the City, may be retained by the City until disposition has been made of the claim or suit for damages, or until the Consultant accepts or rejects the tender of defense, whichever occurs first. This requirement for acceptance or rejection of a tender of defense shall apply regardless of the application of any theories of comparative fault.

- 5.2 CalPERS Indemnification.** In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (CalPERS) to be eligible for enrollment in CalPERS as an employee of City or to be entitled to additional service credit for the period in which Services were provided, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for CalPERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.
- 5.3 Design Professionals.** Notwithstanding Sections 5.1 and 5.2, to the extent that the services under this Agreement include design professional services subject to California Civil Code Section 2782.8, as may be amended from time to time, Consultant's duty to indemnify shall only be to the maximum extent permitted by California Civil Code Section 2782.8. The duty of a "design professional" to indemnify and defend the City is limited to claims that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of the design professional, under Civ. Code § 2782.8. Except as otherwise authorized by Civ. Code § 2782.8, the cost to defend charged to any "design professional" shall not exceed the design professional's proportionate percentage fault. Consultant shall furnish to the City, upon request in writing, any necessary information for determining whether Consultant qualifies as a "design professional" for the purposes for Civ. Code § 2782.8.
- 5.4 Construction Contracts.** Notwithstanding Sections 5.1 and 5.2, to the extent this Agreement is a "construction contract" as defined by California Civil Code Section 2782, as may be amended from time to time, such duties of Consultant to indemnify shall not apply when to do so would be prohibited by California Civil Code Section 2782.

Section 6. STATUS OF CONSULTANT.

- 6.1 Independent Contractor.** It is the intent of the Parties that at all times during the term of this Agreement, Consultant shall be an independent contractor and neither Consultant nor any of its employees, subcontractor, or agents shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement; however, otherwise City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in CalPERS) as an employee of City, additional service credit in CalPERS for the period in which Services are provided, or entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.
- 6.2 Consultant Not Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent or to bind City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

- 7.1 **Governing Law.** The laws of the State of California shall govern this Agreement. Any action to enforce or interpret this Agreement shall be brought in a court of competent jurisdiction in the County of Contra Costa, California.
- 7.2 **Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the Services hereunder. Consultant's failure to comply with any law(s) or regulation(s) applicable to the performance of the work hereunder shall constitute a breach of contract.
- 7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.
- 7.4 **Licenses and Permits; Business License.** Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals, of every nature that are required to practice their respective professions(together "Qualifications"). Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement all such Qualifications. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses from City.
- 7.5 **Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, genetic information, marital status, sex or sexual orientation, gender or gender identity, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Section 8. TERMINATION AND MODIFICATION.

- 8.1 **Termination.** City may cancel this Agreement at any time and without cause upon written notification to Consultant.
- Consultant may cancel this Agreement for cause upon 30 days' written notice to City and shall include in such notice the reasons for cancellation.
- In the event of termination, Consultant shall be entitled to compensation for services performed to the date of notice of termination; City, however, may condition payment of such compensation upon Consultant delivering to City all materials described in Section 9.1.
- 8.2 **Extension.** City may, in its sole and exclusive discretion, extend the Term identified in Subsection 1.1 by written amendment. Consultant understands and agrees that, if City grants such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement or to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.
- 8.3 **Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.

- 8.4 Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein, or to subcontract any portion of the Services to a subcontractor not included in Exhibit A, without the prior written approval of the Contract Administrator.
- 8.5 Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.
- 8.6 Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, the following:
- 8.6.1** Immediately terminate the Agreement;
 - 8.6.2** Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;
 - 8.6.3** No remedy mentioned in this Agreement is intended to be exclusive of any other right or remedy permitted by law. Neither the failure or any delay on the part of the City to exercise any such rights and remedies shall operate as a waiver thereof, nor shall any single or partial exercise by the City of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.

Section 9. KEEPING AND STATUS OF RECORDS.

- 9.1 Records Created as Part of Consultant's Performance.** All final versions of reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder (collectively "Work Products") shall be the property of City. Consultant hereby agrees to deliver the Work Products to City upon termination of the Agreement, and City may use, reuse or otherwise dispose of them without Consultant's permission. It is understood and agreed that the Work Products are prepared specifically for the City and are not necessarily suitable for any future or other use. Until final approval by City, all Work Products are confidential and will not be released to third parties without prior written consent of both parties unless required by law.

However, notwithstanding the foregoing, Consultant shall retain all rights, titles, and interests, including but not limited to all ownership and intellectual property rights, in all inventions, improvements, discoveries, methodologies, models, formats, software, algorithms, processes, procedures, designs, specifications, findings, and other intellectual properties developed, gathered, compiled or produced by Consultant prior to or independently of any of its services under this Agreement ("Background IP"), including such Background IP that Consultant may employ in the performance of this Agreement, or may incorporate into any part of the Work Products. Consultant grants City an irrevocable, non-exclusive, transferable, royalty-free license in perpetuity to use, disclose, and derive from such Background IP, but only as an inseparable part of the Work Products. Third-party content that may be used or incorporated in the Work Products shall not become the property of City. Consultant shall secure all licenses necessary to any third-party content incorporated into Consultant's Work Product for City to utilize Consultant's services and the Work Product for their intended purposes.

- 9.2 Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible.
- 9.3 Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement.
- 9.4 Records Submitted in Response to City Solicitation.** This Agreement and all responses to a Request for Proposals (RFP) or invitation to bid issued by the City for this Agreement are the exclusive property of the City. In selecting Consultant's proposal and awarding this Agreement, Consultant's proposal(s) become a matter of public record and will be treated as such, with the exception of those elements in each proposal that are defined by Consultant and plainly marked as "Confidential," "Business Secret" or "Trade Secret." The City will not be liable or in any way responsible for the disclosure of any such proposal or portions thereof, if Consultant has not plainly marked it as a "Trade Secret" or "Business Secret." Further, Consultant acknowledges and agrees that the City is not in a position to establish that any of Consultant's information constitutes a trade or business secret under the California Public Records Act or other freedom of information laws. Thus, if a request is made for information marked "Trade Secret" or "Business Secret," and the requester takes legal action seeking release of the materials it believes does not constitute trade secret information, Consultant shall indemnify, defend and hold harmless the City Indemnitees (defined under Section 5) from any judgment, fines, penalties, and award of attorney's fees awarded against the City in favor of the party requesting the information, and any and all costs connected with that defense. Consultant agrees that this indemnification survives the City's award of contract and for as long as the trade secret information is in City's possession, which includes a minimum retention period for such documents.

Section 10 MISCELLANEOUS PROVISIONS.

- 10.1 Attorneys' Fees.** If a party to this Agreement brings any action, including arbitration or an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Contra Costa or in the United States District Court for the Northern District of California.
- 10.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision.
- 10.4 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.

- 10.5 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 10.6 **Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.7 **Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a “conflict of interest,” as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.* Consultant shall not employ any City official in the work performed pursuant to this Agreement nor shall any City officer or employee have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Consultant was an employee, agent, appointee, or official of the City in the previous twelve (12) months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et. seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

- 10.8 **Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.
- 10.9 **Contract Administration.** This Agreement shall be administered by [redacted] ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.
- 10.10 **Notices.** All notices and other communications which are required or may be given under this Agreement shall be in writing and shall be deemed to have been duly given when: (i) upon receipt, if personally delivered; (ii) upon receipt, if delivered by overnight, next-day, or certified/registered mail with return receipt requested; or (iii) upon receipt if sent electronically before 5:00 p.m. on a business day (or if not, the next business day after delivery). Notice shall be sent to the following physical or email addresses:

Consultant: [redacted]
 [redacted]
 [redacted]
 [redacted]

City: City of South San Francisco
 [redacted]
 [redacted]

- 10.11 **Integration.** This Agreement, including all Exhibits attached hereto, and incorporated herein, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral pertaining to the matters herein.
- 10.12 **Counterparts.** This Agreement may be executed in counterparts and electronically. Each counterpart

shall be deemed an original, and together with other signed counterpart, shall constitute one Agreement, which shall be binding upon and effective as to all Parties.

10.13 Construction. The headings in this Agreement are for the purpose of reference only and shall not limit or otherwise affect any of the terms of this Agreement. The parties have had an equal opportunity to participate in the drafting of this Agreement; therefore any construction as against the drafting party shall not apply to this Agreement.

10.14 Force Majeure. Consultant is not liable for any delay in performance or non-performance caused by acts of God, war, civil disturbance, government action, labor dispute, pandemic, government imposed travel restrictions or quarantine, trade embargoes, border closures, or another event that is beyond Consultant's reasonable control or reasonable ability to foresee, and that cannot be mitigated with due diligence. The time of performance shall be extended for the duration of the above force majeure event necessary to proceed with or complete services. This provision does not otherwise relieve Consultant of applicable obligations not impacted by said force majeure event.

The Parties have executed this Agreement as of the Effective Date.

CITY OF SOUTH SAN FRANCISCO

Consultant

[INSERT NAME]
[INSERT TITLE]

[INSERT NAME]
[INSERT TITLE]

Attest:

[INSERT NAME]
City Clerk

Approved as to Form:

[INSERT NAME]
City Attorney

EXHIBIT A

SCOPE OF SERVICES

EXHIBIT A-1

**TASK ORDER # [REDACTED]
On-Call Services Agreement**

Date [REDACTED]
[Consultant/Contractor Recipient Information]

Subject: Project # Project Title
Authorization and Notice-to-Proceed for Services per Agreement per Resolution No. XXXXX
Between the City of South San Francisco and Consultant Company

Dear Mr/s. Last Name:

This letter shall serve as written authorization for Task Order No. XX (Description of Task order) and **Notice-to-Proceed** for the work and the cost associated with Consultant Company (Company) to [describe work here].

This work shall be done under the Agreement between Consultant and the City of South San Francisco executed on Month Day, YYYY per City Council Resolution No. XXXX. The Not-to-Exceed amount for Task Order. XX shall be \$X,XXX.XX, based on the authorized tasks in the attached proposal dated Month Day, YYYY. A breakdown of this work and the work authorized to date under this Agreement is as follows:

TASK ORDER NO. XXXXX
[INSERT SCOPE UNDER THIS TASK ORDER]

The summary of Task Order(s) that have been issued and amount authorized under this Agreement is as follows:

| Work Authorized for Agreement (Agreement NTE Amount \$XXXXXX) | Date Authorized | Amount Authorized |
|--|------------------------|--------------------------|
| Task Order No. 1 (Description of Task Order) | X/X/XXXX | \$XXXX |
| Task Order No. 2 (Description of Task Order) [If applicable] | X/X/XXXX | \$XXXX |
| Task Order No. 3 (Description of Task Order) [If applicable] | X/X/XXXX | \$XXXX |
| Total Authorized (All Task Orders) | | \$XXXX |
| Amount Remaining in Agreement | | \$XXXX |

If you have any questions or need additional information, please contact (Project Manager) by phone at (###) ###-#### or via email at email address

Sincerely,

Name,
[Title]

Attachment:

EXHIBIT B

COMPENSATION SCHEDULE AND REIMBURSABLE EXPENSES (IF ANY)

See instructions above regarding Section 1.5 and Exhibit C

EXHIBIT C

**PROVISIONS REQUIRED FOR PUBLIC WORKS CONTRACTS
PURSUANT TO CALIFORNIA LABOR CODE SECTION 1720 *ET SEQ.***

[INTENTIONALLY OMITTED]

EXHIBIT D
FORM 590 (IF APPLICABLE)

EXHIBIT E

INSURANCE REQUIREMENTS AND CONSULTANT'S CERTIFICATES

Consultant shall meet the corresponding requirements identified in this exhibit, for the type(s) of insurance identified and checked in Section 4 of the Agreement.

1.1 Workers' Compensation.

1.1.1 Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance in statutory limits and Employer's Liability Insurance for any and all persons employed by Consultant. The Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000) each accident, ONE MILLION DOLLARS (\$1,000,000) by disease-policy limit, and ONE MILLION DOLLARS (\$1,000,000) by disease-each. In the alternative, Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the Assistant City Manager and Consultant shall furnish information necessary for the Assistant City Manager to make such determination upon request.

1.1.2 The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, contractors, agents, representatives, and volunteers for loss arising from work performed under this Agreement. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

1.1.3 The requirement to maintain Statutory Workers' Compensation and Employer's Liability Insurance may be waived by the City upon written verification that Consultant does not have any employees. Consultant shall furnish information necessary for the Assistant City Manager to make such determination upon request and shall complete and submit to the City a Worker's Compensation Waiver Affidavit form attached hereto and incorporated herein as Exhibit H.

1.2 Commercial General Liability Insurance.

1.2.1 General requirements. Consultant, at its own cost and expense and for the entire term and duration of this Agreement, shall maintain Commercial General Liability insurance in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, TWO MILLION DOLLARS (\$2,000,000.00) general aggregate, and ONE MILLION DOLLARS (\$1,000,000.00) products and completed operations aggregate. The Commercial General Liability Insurance general aggregate shall apply separately to the work (project or location) to be performed under this Agreement, or the general aggregate limit shall be double. Such coverage shall include, but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting there from, and damage to property resulting from activities performed under this Agreement. The policy shall provide and be endorsed to include a waiver of subrogation in favor of the City and its officers, officials, employees, agents, and volunteers. Coverage shall state that Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

1.2.2 Automobile Liability Insurance. Automobile Liability insurance in an amount not less than

ONE MILLION DOLLARS (\$1,000,000.00) each accident combined single limit including the use of owned, non-owned, and hired automobiles (any auto), or, if Consultant does not own vehicles for professional use, hired and non-owned automobiles. The policy shall provide and be endorsed that the City and its officers, officials, employees, and agents are included or named as additional insureds. The policy shall provide and be endorsed to include a waiver of subrogation in favor of the City and its officers, officials, employees, agents, and volunteers.

- 1.2.3 Minimum scope of coverage.** Commercial general liability coverage shall be at least as broad as Insurance Services Office (ISO Commercial General Liability occurrence form CG 00 01 (most recent edition) covering Commercial General Liability on an “occurrence” basis. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 00 01 (equivalent to the most recent edition) covering any auto (Code 1), or if Consultant has no owned autos, hired (code 8) and non-owned autos (Code 9). No endorsement shall be attached limiting the coverage. The limits of liability for commercial general liability and automobile liability may be provided through a combination of primary and umbrella or excess liability policies provided each policy complies with the requirements set forth in this agreement. Umbrella or excess policies shall be follow-form to the underlying policies and shall include City and its officers, officials, employees, agents, and volunteers as additional insured.
- 1.2.4 Additional requirements.** Each of the following shall be included in the insurance coverage required hereunder or added as a certified endorsement to the policy:
- a. The Commercial General and Automobile Liability insurances shall cover on an occurrence or an accident basis, and not on a claims-made basis.
 - b. City, its officers, officials, employees, agents, and volunteers shall be covered as additional insureds as respects: liability arising out of work or operations on behalf of the Consultant, including materials, parts, or equipment furnished in connection with such work or operations; or automobiles owned, leased, hired, or borrowed by the Consultant. Coverage can be provided in the form of an endorsement to the Consultant’s insurance at least as broad as (1) CG 20 07, for design professionals; or (2) both ISO form CG 20 10.
 - c. For any claims related to this Agreement or the work hereunder, the Consultant’s insurance covered shall allow and be endorsed primary and non-contributory (at least as broad as ISO CG 20 01 04 13) with respect to the City, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents, or volunteers shall be excess of the Consultant’s insurance and shall not contribute with it. This requirement shall also apply to any Excess or Umbrella policies.
 - d. Any failure of Consultant to comply with reporting provisions of the policy shall not affect coverage provided to City and its officers, officials, employees, agents, and volunteers.
 - e. Any available insurance proceeds broader than, or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to the additional insureds. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured; whichever is greater. No representation is made that the minimum insurance requirements are sufficient to cover the obligations of the Consultant.

1.3 Professional Liability Insurance.

1.3.1 General requirements. Consultant, at its own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance covering errors and omissions in the performance of work pursuant to this Agreement in an amount not less than TWO MILLION DOLLARS (\$2,000,000) per claim and in the aggregate covering the licensed professionals' negligent errors and omissions in the performance of the Services hereunder. Any deductible or self-insured retention shall not exceed ONE HUNDRED FIFTY THOUSAND DOLLARS \$150,000 per claim.

1.3.2 Claims-made limitations. The following provisions shall apply if the professional liability coverage is written on a claims-made form:

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
- b. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Agreement or the work.
- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant must provide extended reporting coverage for a minimum of five (5) years after completion of the Agreement or the work.
- d. A copy of the claim reporting requirements must be submitted to the City upon request with reasonable notice in writing to Consultant.

10.15 Cyber Liability Insurance/Technology Errors and Omissions Insurance. *[Retain this section where the scope of work involves data sharing; handling sensitive information like personally identifiable information, health information, financial information, or permit or inspection records; providing IT services, relying on software to provide services, or utilizing cyber networks and electronic transmittal of work product. If the services do not involve the foregoing or similar digital activities (such as conventional maintenance services), then this section may be removed.]*

10.15.1 General Requirements. Consultant, at its own cost and expense, shall maintain for the period covered by this Agreement cyber liability/technology errors and omissions insurance appropriate to the work/services under this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000) per claim and in the aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Consultant in this Agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, personally identifiable information (PII), alteration of electronic information, extortion and network security. The policy shall provide coverage for liabilities for financial loss resulting or arising from acts, errors, or omissions, in rendering technology services, as follows:

- a. Violation or infringement of any right of privacy, including breach of security and breach of security/privacy laws, rules or regulations globally, now or hereinafter constituted or amended;
- b. Data theft, damage, unauthorized disclosure, destructions, or corruption, including without limitation, unauthorized access, unauthorized use, identity theft, theft of

personally identifiable information or confidential City information in whatever form, transmission of a computer virus or other type of malicious code; and participation in a denial of service attack on third party computer systems;

- c. Loss or denial of service; and
- d. The policy shall not contain a cyber terrorism exclusion.

The cyber liability insurance/technology errors and omissions insurance coverage required herein must include errors and omissions coverage including breach of contract, privacy and security liability, privacy regulatory defense and payment of civil fines, payment of credit card provider penalties, and breach response costs, including without limitation, notification costs, forensics, credit protection services, call center services, identity theft protection services, and crisis management/public relations services.

10.15.2 Security Breach Notification and Reporting. Consultant shall have policies and procedures in place for the effective management of Security Breaches, as defined below, which shall be made available to the City upon request. In the event of any actual security breach or reasonable belief of an actual security breach the Consultant either suffers or learns of that either compromises or could compromise the City's data (a "Security Breach"), Consultant shall notify the City within 48 hours of its discovery.

Consultant shall immediately determine the nature and extent of the Security Breach, contain the incident by stopping the unauthorized practice, recover records, shut down the system that was breached, revoke access and/or correct weaknesses in physical security. Following the initial notice, Consultant shall provide a root cause analysis report to the City identifying:

- i. The nature of the Security Breach;
- ii. The City data used or disclosed;
- iii. Who made the unauthorized use or received the unauthorized disclosure;
- iv. What the Consultant has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure; and
- v. What corrective action the Consultant has taken or shall take to prevent future similar unauthorized use or disclosure. Consultant shall provide such other information, including a written report, as reasonably requested by the City. Consultant shall analyze and document the incident and provide all notices required by applicable law.

1.4 All Policies Requirements.

1.4.1 Acceptability of insurers. All insurance required by this Exhibit is to be placed with insurers with a Bests' rating of no less than A:VII.

1.4.2 Notice of Reduction in or Cancellation/Non-Renewal of Coverage. Each insurance policy required by this Exhibit shall be endorsed to state that coverage shall not be canceled by either party, except after 30 days' prior written notice has been provided to the City. If a carrier will not provide the required notice of cancellation, the Consultant shall provide written notice to the City of a cancellation no later than 10 business days before cancellation. Consultant shall notify City within 14 days of notification from Consultant's insurer if such coverage is suspended, voided or reduced in coverage or in limits.

1.4.3 Additional insured; primary insurance. City and its officers, officials, employees, agents, and volunteers shall be covered as additional insureds with respect to each of the following: liability arising out of ongoing operations and activities performed by or on behalf of Consultant,

including the insured's general supervision of Consultant; products and completed operations of Consultant, as applicable; premises owned, occupied, or used by Consultant; and automobiles owned (or hired if no owned autos), leased, or used by the Consultant in the course of providing services pursuant to this Agreement. The coverage shall be at least as broad as ISO CG 20 10 Scheduled form, or Automatic form CG 20 38 for "ongoing operations", and at least as broad as ISO CG 20 37 Scheduled form, or Automatic form CG 20 40, for "completed operations" be pursuant to standard endorsement forms CG 20 10 and CG 20 37 and contain no special limitations on the scope of protection afforded to City or its officers, officials, employees, agents, or volunteers.

All certified endorsement forms, as required herein must be attached to the certificate of insurance to evidence that all Additional Insured coverage is primary insurance with respect to the City and its officers, officials, employees and volunteers, and that no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage, and provide waiver of subrogation coverage in favor of the City and its officers, officials, employees and volunteers.

- 1.4.4 Deductibles and Self-Insured Retentions.** Consultant shall disclose to and obtain the approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement. Further, if the Consultant's insurance policy includes a self-insured retention that must be paid by a named insured as a precondition of the insurer's liability, or which has the effect of providing that payments of the self-insured retention by others, including additional insureds or insurers do not serve to satisfy the self-insured retention, such provisions must be modified by special endorsement so as to not apply to the additional insured coverage required by this Agreement so as to not prevent any of the parties to this agreement from satisfying or paying the self-insured retention required to be paid as a precondition to the insurer's liability. Additionally, the certificates of insurance must note whether the policy does or does not include any self-insured retention and also must disclose the deductible.

During the period covered by this Agreement, only upon the prior express written authorization of the Assistant City Manager, Consultant may increase such deductibles or self-insured retentions with respect to City, its officers, employees, agents, and volunteers. The Assistant City Manager may condition approval of an increase in deductible or self-insured retention levels with a requirement that Consultant procure a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to each of them.

EXHIBIT F

Electronic Use Addendum Pursuant to Section 3.1

Pursuant to Section 3.1, if Consultant is provided access to City computer hardware or network files, or both, pursuant to this Agreement to provide services, Consultant shall agree to and comply with the following provisions:

- 1) The City's electronic communication equipment and resources (including but not limited to tablets, computers, laptops, fax, photocopier, phone, radio, other electronic or communications equipment, software, cloud storage, and internet access) are provided for the purpose of conducting City business and shall not be used for personal purposes.
- 2) All electronic communications that are created, received, transferred to or from the City, or maintained on City computer systems or other City electronic communication equipment and resources are the property of the City. If Consultant uses the City's electronic communication equipment and resources, Consultant will not have an expectation or right of privacy in such uses. The City reserves the right to monitor the use of such equipment and resources to ensure that they are being used for business purposes. Any use of the City's electronic equipment and resources constitutes consent to have such use monitored by the City at its discretion.
- 3) Reasonable care should be taken to prevent equipment loss or damage. Consultant shall be responsible for the cost of intentional damage or reckless loss of assigned communications equipment.
- 4) If Consultant is granted access to City network files or cloud storage, Consultant shall not access or retrieve, or attempt to access or retrieve, files or network drives and folders to which Consultant is not specifically authorized to do so. Consultant shall not make copies, download, or otherwise duplicate (or make attempts to do so), any City files, cloud storage, or network drive data. In no event shall Consultant download or install hardware or software on any City computer or network drive, nor shall Consultant store any files on City cloud storage.
- 5) Consultant shall not have access to any privileged communication, including attorney-client privileged communications, at any time.
- 6) Consultant shall not use equipment or resources to access secured websites without authorization. Nor shall Consultant use the equipment or resources without the knowledge or permission of City management to enter any secured on-line websites in which the City has a membership and/or an account. This includes all forms of hacking, or using another person's login name or password without authorization to access such websites.
- 7) Consultant shall comply with all federal, state, local laws and regulations, and all applicable City policies in accessing electronic communication equipment and resources.

EXHIBIT H

Worker's Compensation Exemption Affidavit

[ATTACH EXEMPTION FORM HERE]