**BDO USA, LLP (“BDO”)
SAN FRANCISCO HOUSING AUTHORITY (“SFHA”)**

**KEY ISSUES LIST
AS OF AUGUST 5, 2022**

NOTE: BDO has reviewed the San Francisco Housing Authority’s Contract Form (the “Contract”). Upon award, we look forward to agreeing to mutually acceptable terms that meet the needs of both SFHA and BDO. In accordance with the instructions in the RFP, we have identified the following issues with respect to the Contract. We have also included additional provisions that BDO would like to add to the Contract. Upon award, we are confident that we can reach mutual agreement.

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| Section/Title | Description of Provision/Issue | BDO Issue/Position |
| 2.1 Scope of Services | Loose wording re definition of services | BDO proposes that the “services” be defined as that set forth in the Contract and Appendices. Any changes to the services (including the addition or removal of services) should require mutual agreement. |
| 2.3.1 Contract Value | SFHA has the right to increase/decrease the NTE amount | BDO accepts SFHA’s ability to adjust the NTE amount, but BDO should have the right to suspend services if further work would cause BDO’s fees to exceed the NTE amount. |
| 2.5 Time Performance | SFHA has the right to determine the time for performance of each assigned task | BDO proposes that the time period for completing each assigned task should be as agreed by the parties. |
| 4.3 Compliance with Federal and State Laws7.1 Compliance with Federal and State Laws | Work performed by BDO shall be done in accordance with all applicable laws, regulations, codes and ordinancesProvision is duplicated | BDO would like to clarify that it will comply with all statutory laws, regulations, codes and ordinances applicable to BDO in its performance of the services. |
| 4.4 Insurance Requirements | Sets forth insurance requirements for BDO | BDO needs to adjust the requirements to reflect the technical details of BDO’s insurance policies. Please see Exhibit 1. |
| 5.0 Modification10.1 Remedies for Contractor Breach | SFHA has broad ability to amend the Contract | BDO proposes that, consistent with the HUD regulations, any amendment that affects the rights or responsibilities of the parties should require mutual agreement. If this change is made, the reference in Section 10.1 to SFHA’s right to issue addendums should be made subject to Section 5.0. |
| 7.2 Jurisdiction of Law9.1.3 Arbitration | It is unclear that arbitration is intended to apply to ALL disputes, not just billing disputes | BDO would like to confirm and clarify that ALL disputes are subject to arbitration. |
| 11.9 Work on Authority Property | This provision includes an indemnification by BDO against all loss which may result from Contractors acts or omissions | This should be revised and clarified to state that BDO will indemnify SFHA against losses arising out of bodily injury or death, or damage to real or tangible personal property that is caused by BDO’s acts of omissions (or that of its agents, employees, or subcontractors) in the performance of the services. |
| 11.19 Indemnification | This provision includes the indemnification obligations of BDO | BDO requires this language to be adjusted to reflect industry-standard indemnification obligations. Please see Exhibit 2. |
| 12.0 Section 3 ClauseAppendix 4 | Incorporates language from Section 3 of HUD | This provision and the related Appendix should be deleted, because Section 3 of HUD is not applicable to BDO because BDO is providing specialized professional services. |
| Additional provisions required in all BDO contracts | BDO requires certain provisions in all of its contracts, as a result of BDO’s status as an independent public accounting firm. These can be discussed during the negotiation period. In the event of an award of work to BDO, we look forward to a successful contracting process with SFHA. BDO’s required provisions are set forth in Exhibit 3. In the event SFHA rejects the inclusion of any of these provisions, BDO reserves the right, in its reasonable discretion, to withdraw its proposal to provide services to SFHA. |

**APPENDIX 1
INSURANCE PROVISION REDLINES**

* 1. **Insurance Requirements.**

**4.4.1 Indemnity.** The complete indemnity requirements are detailed within Section 11.19 herein.

* + 1. **Insurances.** In this regard, the Contractor shall maintain the following insurance coverage during the effective term(s) of this contract:

**4.4.2.1 General Liability Insurance.** General Liability Insurance.  An original certificate evidencing General Liability coverage, listing the Authority as an additional insured (on a blanket basis), together with the appropriate endorsement to said policy reflecting the listing of the Authority as an additional insured under said policy ($1,000,000 each occurrence, general aggregate limit of $1,000,000, together with damage to premises and fire damage of $50,000 and medical expenses any one person of $5,000), with a commercially reasonable deductible (e.g. “commercially reasonable,” meaning not greater than 1% of the “general aggregate” of the policy, with a maximum deductible amount of $50,000;

**4.4.2.2 Professional Liability Insurance.** An original certificate showing the proposer's professional liability and/or "errors and omissions" coverage ($1,000,000 each claim, general aggregate limit of $1,000,000);

**4.4.2.3** **Automobile Liability Insurance.** Automobile Liability coverage in a combined single limit of $1,000,000. For every vehicle utilized during the term of this contract, when not owned by the entity, each vehicle must have evidence of automobile insurance coverage with limits of no less than $100,000/$300,000 and medical pay of $5,000.

* + - 1. **Worker's Compensation Insurance.** Worker’s compensation coverage evidencing carrier and coverage amount, and Employment Practices Liability insurance, including sexual harassment coverage ($1,000,000 per occurrence).
			2. **Certificates/Endorsements.** The Contractor shall provide to the Authority with current certificate(s)/endorsement(s) evidencing the insurance coverage referenced above. Failure to maintain the above-reference insurance coverage, including listing the Authority as an additional insured (where appropriate) during the term(s) of this contract shall constitute a material breach thereof. Insurance certificate(s) and endorsement(s) shall be delivered to the following person representing the Authority:

**Housing Authority of the City and County of San Francisco**

**Attention: [NAME, TITLE]**

**[STREET ADDRESS], San Francisco, CA [ZIP]**

**APPENDIX 2
INDEMNIFICATION REDLINES**

* 1. **Indemnification.**
		1. The Contractor shall indemnify, defend, and hold the Authority (and its Commissioners, officers, and employees) harmless from and against any and all claims, damages, losses, suits, actions, decrees, judgments, attorney’s fees, court costs and other expenses of any kind or character, brought by a third party against the Authority (or its Commissioners, officers, or employees) which are caused by, arise out of, or occur due to (1) Contractor’s fraud or intentional misconduct, (2) any failure of the Contractor to abide by applicable law as provided herein, or (3) any failure of the Contractor to ensure that the any subcontractors abide by the applicable terms of this provision and this contract; provided, however, that Contractor will not be required to indemnify the Authority against any loss or damage which was specifically caused by the Authority providing inaccurate information to the Contractor, failing to provide necessary and requested information to the Contractor, or refusal to abide by any recommendation of the Contractor.
		2. In this connection, it is expressly agreed that the Contractor shall, at its own expense, defend the Authority, its Commissioners, officers, and employees, against any and all claims, suits or actions which may be brought by a third party against them, or any of them, as a result of, or by reason of, or arising out of, or on account of, or in consequence of any act or failure to act the consequences of which the Contractor has indemnified the Authority. If the Contractor shall fail to do so, the Authority shall have the right, but not the obligation, to defend the same and to charge reasonable out-of-pocket costs of such defense to the Contractor including reasonable attorney’s fees and court costs.

**APPENDIX 3
ADDITIONAL PROVISIONS**

1. **Definitions; Russia Sanctions.** The Authority is referred to herein as “Client” or “you” and the Contractor is referred to herein as “BDO” or “we”. References in these terms to an “SOW” shall refer to the agreed-upon Scope of Work attached to the contract, and references to this “Agreement” shall refer to the contract. By executing this Agreement, Client represents that it is not owned or controlled, directly or indirectly, by one or more Russian citizen(s), Russian national(s), persons physically located in Russia or entity(s) organized under the laws of Russia. Client agrees that if at any time while BDO is providing services to Client the foregoing representation is no longer true, Client will immediately notify BDO.
2. **Termination.** Each party shall have the right to terminate this Agreement and/or any SOW, as applicable, at any time by giving written notice to the other party not less than 30 business days before the proposed effective date of termination. If this Agreement terminates or is terminated while one or more SOWs (or Services not covered by a SOW) remain outstanding, the terms of this Agreement shall continue to apply to the SOW and any other outstanding Services, and this Agreement shall be deemed finally terminated only upon termination of all outstanding SOWs, or completion of the Services thereunder. Termination of one or more SOWs will not automatically terminate this Agreement. In addition, BDO may terminate this Agreement and/or any SOW and outstanding Services immediately if BDO reasonably determines that it must do so to comply with applicable professional standards, applicable laws or regulations (e.g., a conflict of interest arises). Those provisions in this Agreement and any SOW hereunder that, by their very nature, are intended to survive termination shall survive after the termination of this Agreement or any SOW, including, but not limited to, the parties’ obligations related to any of the following provisions: indemnification, limitations on liability, confidentiality, dispute resolution, payment and reimbursement obligations, limitations on use or reliance, and non-solicitation. If this Agreement and/or any SOW is terminated (or any other Services not covered by a SOW are terminated), Client agrees to compensate BDO for the Services performed and expenses incurred through the effective date of termination.
3. **Indemnification and Limitation of Liability.** Except to the extent finally determined to have resulted from BDO Group’s fraud or intentional misconduct, BDO Group’s aggregate liability to Client shall not exceed the amount of fees paid by Client to BDO during the 12 months preceding the date of the claim pursuant to the applicable SOW under which the Claim arose. In no event shall BDO Group be liable for consequential, special, indirect, incidental, punitive, or exemplary losses or damages, loss of profits or losses resulting from loss of data, business or goodwill relating to the Agreement, regardless of whether BDO has been advised of the possibility of such damages. As used herein, “BDO Group” means BDO and its partners, principals, employees, affiliates, contractors and agents.
4. **Third Parties and Use.** All Services and deliverables hereunder shall be solely for Client’s use and benefit pursuant to our client relationship. This engagement does not create privity between BDO and any person or party other than Client and is not intended for the express or implied benefit of any third party. No third party is entitled to rely, in any manner or for any purpose, on the Services or deliverables of BDO hereunder.
5. **BDO Responsibilities.** BDO’s Services will not constitute an audit, review, compilation, examination or other form of attest engagement. BDO shall have no responsibility to address any legal matters or questions of law. After completion of the Services, BDO will have no responsibility to update its advice, recommendations or work product for changes or modifications to the law and regulations or for subsequent events or transactions, unless Client separately engages BDO in writing to do so.
6. **Client Materials.** BDO shall be entitled to rely on and assume, without independent verification, that all representations, assumptions, information and data supplied by or on behalf of Client, its personnel, representatives, and agents (the “Client Materials”) are complete and accurate. Client is responsible for ensuring that all Client Materials provided to BDO may be transferred to BDO and processed in accordance with the terms of this Agreement and applicable laws, and that to the extent required thereunder Client has obtained all consents required for BDO’s receipt and use of the Client Materials. Client agrees that it will not transmit or make accessible to BDO in any manner personally identifiable information unless reasonably required for BDO’s performance of the Services. BDO will not audit or otherwise verify the accuracy or completeness of the data you submit, although we may need to ask you for clarification of some of the information. Client shall be responsible for maintenance and retention of its records. Unless otherwise agreed to by the parties, BDO shall not assume any responsibility for any financial reporting with respect to the Services.
7. **Ownership of Working Papers.** In connection with the performance of the Services, we will prepare records and deliverables as set forth in the SOW. We also will prepare documents that support our work and include items such as work programs and analyses that do not constitute part of Client’s records (“Working Papers”). The Working Papers prepared pursuant to this Agreement are the property of BDO. The Working Papers constitute confidential, proprietary, and trade secret information, and will be retained by BDO in accordance with our policies and procedures and all applicable laws.
8. **Late Payments.** If BDO’s fees are not paid by Client in a timely manner, we then reserve the right to suspend our Services or withhold delivery of any deliverables. If any collection action is required, you agree to reimburse us for all our costs of collection, including without limitation, attorneys’ fees.
9. **Conflicts of Interest.** BDO is not aware of any conflicts of interest with respect to any of the names Client has provided. BDO is not responsible for continuously monitoring other potential conflicts that could arise during the course of the engagement, although we will inform Client promptly should any come to our attention. We reserve the right to resign from this engagement at any time if conflicts of interest arise or become known to us. Additionally, our engagement by Client will in no way preclude us from being engaged by any other party in the future. Notwithstanding anything contained in confidentiality provisions set forth herein, BDO shall be permitted to disclose that it is engaged to provide the Services to Client under this Agreement if BDO in its reasonable professional judgment determines that such disclosure is required in connection with BDO’s provision of services on behalf of other clients of BDO, including, without limitation, professional services engagements under which BDO personnel act as professionals in legal proceedings that require disclosures, arbitrators in post-acquisition disputes or act as expert witnesses.
10. **External Computing Options.** If, at the Client’s request, any member of the BDO Group agrees to use certain external commercial services, including but not limited to services for cloud storage, remote access, third party software and/or file sharing options (collectively “External Computing Options”), that are outside of BDO’s standard security protocol, the Client acknowledges that such External Computing Options may be associated with heightened security and privacy risks. Accordingly, BDO Group disclaims, and the Client agrees to release BDO Group from, and indemnify BDO Group for, all liability arising out of or related to the use of such External Computing Options.
11. **Confidentiality.** Each of the parties hereto shall treat and keep all the “Confidential Information” as confidential, with at least the same degree of care as it accords to its own confidential information, but in no event less than a reasonable degree of care. Each party shall disclose the Confidential Information only to its employees, partners, contractors, agents or its legal or other advisors, provided that they have: (i) each been informed of the confidential, proprietary and secret nature of the Confidential Information, or are subject to a binding, preexisting obligation of confidentiality no less stringent than the requirements of this Agreement and (ii) a demonstrable need to review such Confidential Information. “Confidential Information" means all non-public information that is marked as “confidential” or “proprietary” or has commercial value in the party’s business and is obtained by one party (the “Receiving Party”) from the other party (the “Disclosing Party”). All terms of this Agreement are considered Confidential Information. Notwithstanding the foregoing, Confidential Information shall not include any information that was or is: (a) known to the Receiving Party prior to disclosure by the Disclosing Party; (b) as of the time of its disclosure, or thereafter becomes, part of the public domain through a source other than the Receiving Party; (c) made known to the Receiving Party by a third person who is not subject to any confidentiality obligation known to Receiving Party and such third party does not impose any confidentiality obligation on the Receiving Party with respect to such information; (d) required to be disclosed pursuant to governmental authority, professional obligation, law, decree regulation, subpoena or court order; or (e) independently developed by the Receiving Party. If disclosure is required pursuant to subsection (d) above, the Receiving Party shall (other than in connection with routine supervisory examinations by regulatory authorities with jurisdiction and without breaching any legal or regulatory requirement), to the extent legally permissible, provide prior written notice thereof to allow the Disclosing Party to seek a protective order or other appropriate relief. Upon the request of the Disclosing Party, the Receiving Party shall return or destroy all of the Confidential Information except for: (y) copies retained in work paper files retained to comply with a party’s professional or legal obligations; and (z) such Confidential Information retained in accordance with the Receiving Party’s normal data back-up procedures.
12. **Restricted Federal Data.** The parties agree that the Services are not intended to involve the processing of Restricted Data, defined as data subject to laws, regulations or government-wide policies that require safeguarding or dissemination controls, including the Federal Acquisition Regulations (“FAR”), the Defense Federal Acquisition Regulation Supplement (“DFARS”), the International Traffic in Arms Regulation (“ITAR”), the Export Administration Regulations (“EAR”), and the Arms Export Control Act (“AECA”).  For clarity, and without limiting the foregoing, controlled unclassified information (“CUI”) shall be included in the definition of Restricted Data.  Client shall not provide or otherwise make available Restricted Data to BDO unless expressly agreed to in advance in writing by BDO.  If Client becomes aware that any known or suspected Restricted Data will be or has been disclosed to BDO by Client or otherwise in connection with the Services, Client will immediately notify BDO in writing to regulatedgovtdata@bdo.com and will cease any further transfer of such data unless and until BDO expressly agrees in writing. Client will fully cooperate with BDO in the investigation of and response to any known or suspected Restricted Data that Client has disclosed to BDO notwithstanding the foregoing.  Client further agrees that it will be responsible for all fees, costs and expenses associated with processing of Restricted Data, including without limitation additional fees, costs and expenses related to compliance with obligations with respect to such Restricted Data.
13. **Intellectual Property.** BDO shall retain the right to reuse the ideas, concepts, know-how, and techniques derived from the rendering of the Services so long as it does not require the disclosure of any of Client’s Confidential Information (as defined above). BDO shall be entitled to all protections afforded under State and Federal statutory or common law with respect to any report, computer program (source code and object code) or programming and/or material documentation, manual, chart, specification, formula, database architecture, template, system model, copyright, diagram, description, screen display, schematic, blueprint drawing, tape, license, listing, invention, record, development frameworks, code libraries, best practices, general knowledge, skills and experience, or other materials preexisting the execution of this Agreement (“BDO Intellectual Property”). Unless otherwise specifically stated in this Agreement, the reproduction, distribution or transfer, by any means or methods, whether direct or indirect, of any of BDO’s or its agents’ Intellectual Property or proprietary information by the Client is strictly prohibited.
14. **Licensing Representation.** To the extent necessary for BDO to perform its obligations described in an applicable SOW, Client represents and warrants that it will obtain, maintain and comply with all of the licenses, consents, permits, approvals and authorizations that are necessary to allow BDO and its employees, contractors and subcontractors to access and use the services or software provided for the benefit of Client under Client’s third-party services contracts, licenses or other contracts granting Client the right to access, use or receive services or software (each a “Licensing Representation”). Upon BDO’s request, Client will provide BDO any references available evidencing the Licensing Representation (e.g., order number, customer support identifier). Tools subject to this Licensing Representation are hereby deemed External Computing Options (as defined in this Agreement). Client hereby releases BDO Group from all claims and liabilities resulting from (i) BDO’s reliance on a Licensing Representation and (ii) the functionality of any third-party software or services used or accessed by BDO.
15. **Non-CPA Notice Requirement.** BDO is owned by professionals who hold CPA licenses. Depending on the nature of the Services being provided, from time-to-time non-CPA personnel may be involved in providing certain Services hereunder.