

**City and County of San Francisco  
San Francisco Public Utilities Commission  
Contract Administration Bureau  
525 Golden Gate Avenue, 8th Floor  
San Francisco, CA 94102**

**Amendment No. 3 between the City and County of San Francisco  
(through the San Francisco Public Utilities Commission)  
and  
Black & Veatch Corporation**

**Construction Management - Calaveras Dam Replacement Project  
(CS-911R)**

THIS AMENDMENT (this “Amendment”) is made as of March 2, 2015, in San Francisco, California, by and between **Black & Veatch Corporation** (“Contractor”), and the City and County of San Francisco, a municipal corporation (“City”), acting by and through the San Francisco Public Utilities Commission (“SFPUC”).

**RECITALS**

WHEREAS, City and Contractor have entered into the Agreement (as defined below); and

WHEREAS, City and Contractor desire to modify the Agreement on the terms and conditions set forth herein increasing the agreement amount by \$29,500,000, for a total not-to-exceed agreement amount of \$68,000,000, extend the agreement term by two years, 10 months, for a total agreement duration of eight years, 10 months, concluding on May 24, 2019, in order to provide continued construction management support during the extended duration of construction of the project, amend Appendix A, and replace Appendices B and B-1 in their entirety; and

WHEREAS, approval for this Amendment was obtained when the Civil Service Commission via the Department of Human Resources approved Contract number **4072-07/08** on December 15, 2014; and

WHEREAS, approval for this Amendment was obtained when the San Francisco Public Utilities Commission approved Resolution number **15-0055** on **February 24, 2015**; subject to approval by the Board of Supervisors under Charter section 9.118, and authorized the General Manager to execute this Agreement upon Board approval; and

WHEREAS, approval for this Amendment was obtained when the San Francisco Board of Supervisors approved Resolution number                      on                     , 2015;

NOW, THEREFORE, Contractor and the City agree as follows:

**1. Definitions.** The following definitions shall apply to this Amendment:

**1a. Agreement.** The term “Agreement” shall mean the Agreement dated **August 2, 2010** between Contractor and City, as amended by Amendment No. 2 dated March 1, 2015.

**1b. Other Terms.** Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

**2. Modifications to the Agreement.** The Agreement is hereby modified as follows:

**2a. Section 2 (“Term of the Agreement”)** of the Agreement currently reads as follows:

**2. Term of the Agreement.** Subject to Section 1, the term of this Agreement shall be seventy-two (72) months, or six (6) years, from the effective date as set for in Section 3.

**Such section is hereby amended in its entirety to read as follows:**

**2. Term of the Agreement.** Subject to Section 1, the term of this Agreement shall be one hundred six months (106) months, or eight (8) years and ten (10) months, from the effective date as set forth in Section 3.

**2b. Section 5 (“Compensation”)** of the Agreement currently reads as follows:

**5. Compensation.**

Compensation shall be made in monthly payments on or before the thirtieth day of each month for work, as set forth in Section 4 of this Agreement that the General Manager of the Public Utilities Commission in his or her sole discretion, concludes has been adequately performed as of the last day of the immediately preceding month. In no event shall the amount of this Agreement exceed **thirty-eight million five hundred thousand dollars (\$38,500,000)**. Appendix B, “Calculation of Charges,” attached hereto and incorporated by reference as though fully set forth herein.

As part of this contract Task Orders will be prepared in accordance with Appendix A, Section 2. Task Orders will identify a detailed project scope, sub tasks, staffing plan, LBE utilization, schedule, deliverables, budget and costs to complete the task. Each Task Order shall identify the entire amount to which the Contractor shall be entitled to fully perform and deliver to the City all work identified in that Task Order.

No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by San Francisco Public Utilities Commission as

being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement.

In no event shall City be liable for interest or late charges for any late payments.

The Controller is not authorized to pay invoices submitted by Contractor prior to Contractor's submission of CMD Progress Payment Form. If Progress Payment Form is not submitted with Contractor's invoice, the Controller will notify the department, the Director of CMD and Contractor of the omission. If Contractor's failure to provide CMD Progress Payment Form is not explained to the Controller's satisfaction, the Controller will withhold 20% of the payment due pursuant to that invoice until CMD Progress Payment Form is provided.

Following City's payment of an invoice, Contractor has ten days to file an affidavit using CMD Payment Affidavit verifying that all subcontractors have been paid and specifying the amount.

**Such section is hereby amended in its entirety to read as follows:**

#### **5. Compensation.**

Contractor may invoice the San Francisco Public Utilities Commission semi-monthly and compensation shall be made as expeditiously as possible, but in no less than monthly payments on or before the thirtieth day of each month for work, as set forth in Section 4 of this Agreement that the General Manager of the Public Utilities Commission in his or her sole discretion, concludes has been adequately performed as of the last day of the immediately preceding month. In no event shall the amount of this Agreement exceed **sixty-eight million dollars (\$68,000,000)**. Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein.

As part of this contract Task Orders will be prepared in accordance with Appendix A, Section 2. Task Orders will identify a detailed project scope, sub tasks, staffing plan, LBE utilization, schedule, deliverables, budget and costs to complete the task. Each Task Order shall identify the entire amount to which the Contractor shall be entitled to fully perform and deliver to the City all work identified in that Task Order.

No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by San Francisco Public Utilities Commission as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement.

In no event shall City be liable for interest or late charges for any late payments.

The Controller is not authorized to pay invoices submitted by Contractor prior to Contractor's submission of CMD Progress Payment Form. If Progress Payment Form is not submitted with Contractor's invoice, the Controller will notify the department, the Director of CMD and Contractor of the omission. If Contractor's failure to provide CMD Progress Payment Form is not explained to the Controller's satisfaction, the Controller will withhold 20% of the payment due pursuant to that invoice until CMD Progress Payment Form is provided.

Following City's payment of an invoice, Contractor has ten days to file an affidavit using CMD Payment Affidavit verifying that all subcontractors have been paid and specifying the amount.

**2c. Appendix A, Section 1 (Description of Services):** The second paragraph of Appendix A, Section 1, Description of Services, currently reads as follows:

The WSIP CM Plan, as well as the Request for Proposals (CS-911R) dated February 22, 2010 (including all addenda), are hereby incorporated into this Agreement as if fully set forth herein.

**Such paragraph is hereby amended in its entirety to read as follows:**

The WSIP CM Plan, as it may be amended from time to time during the term of this Agreement, is hereby incorporated into this Agreement as if fully set forth herein.

**2d. Appendix B.** Revised Appendix B (March 2, 2015) "Calculation of Charges," a copy of which is attached hereto as **Exhibit A** and incorporated herein by reference, hereby replaces Appendix B "Calculation of Charges" of the Agreement in its entirety.

**2e. Revised Appendix B-1.** Revised Appendix B-1 "Billing Rate Schedule (March 2, 2015)," a copy of which is attached hereto as **Exhibit B** and incorporated herein by reference, hereby replaces Appendix B-1 "Rate Schedule" of the Agreement in its entirety.

**3. Effective Date.** Each of the modifications set forth in Section 2 shall be effective on and after the date of this Amendment.

**4. Legal Effect.** Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, Contractor and City have executed this Amendment as of the date first referenced above.

**CITY**

**CONTRACTOR**

Recommended by:

Black & Veatch Corporation

\_\_\_\_\_  
Harlan L. Kelly, Jr.  
General Manager  
San Francisco Public Utilities Commission

\_\_\_\_\_  
Name of Authorized Representative

\_\_\_\_\_  
Title

Approved as to Form:

City vendor number: 49916

Dennis J. Herrera  
City Attorney

By: \_\_\_\_\_  
Julia H. Veit  
Deputy City Attorney

Attached:  
Exhibit A: Revised Appendix B Dated March 2, 2015  
Exhibit B: Revised Appendix B-1: Billing Rate Schedule Dated March 2, 2015

**Exhibit A**  
**Revised Appendix B (March 2, 2015)**  
**Calculation of Charges**

As part of Contractor's proposal dated **April 8, 2010**, Contractor submitted billing rates, attached hereto as part of Appendix B-1. The Overhead and Profit Schedule, which list the requested tasks is hereby incorporated by reference. All costs associated with the development of the scope of work shall be borne by Contractor. The Contractor, with the assistance of the SFPUC, will be required to define the detailed scope for the tasks under this Agreement.

As provided in the RFP, the budget identified for tasks in Appendix B is an estimate, and the City reserves the right to modify the budget allocated to any task as more specific information concerning the task order scope becomes available.

Pursuant to Article V of Chapter 6 of the San Francisco Administrative Code, any contractor, subcontractor, supplier, consultant or subconsultant who submits a false claim may be subject to monetary penalties, investigation and prosecution and may be declared an irresponsible bidder or an unqualified consultant and debarred as set forth in that Article. The text of Article V of Chapter 6, along with the entire San Francisco Administrative Code is available on the web at [http://www.amlegal.com/nxt/gateway.dll?f=templates&fn=default.htm&vid=amlegal:sanfrancisco\\_ca](http://www.amlegal.com/nxt/gateway.dll?f=templates&fn=default.htm&vid=amlegal:sanfrancisco_ca). A contractor, subcontractor, supplier, consultant or sub consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor, supplier, consultant or subconsultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

1. Compensation under this contract will be provided as: a) labor related costs by hourly billing rates for hours worked, and b) separately billed direct reimbursable expenses (ODCs). (Markups on ODCs are not allowable)
  - a) Hourly billing rates shall be the actual hourly base salary rate of each employee utilized for the work multiplied by the firm(s) individual firm Overhead and Profit Rate, or effective Overhead and Profit Rate (for substituted firms or substituted individual contractors). The individual firm Effective Overhead and Profit Schedule shall include all miscellaneous and incidental costs of work other than those as specifically defined below as direct reimbursable expenses.
  - b) Direct reimbursable expenses (ODCs – Other Direct Costs) shall include actual direct costs (with no mark up) of expenses directly incurred in performing the work. All ODCs are subject to written consent by the SFPUC Project Manager.

**2. Billing Rates & Overhead and Profit Schedule.**

The Contractor's billing rates and individual firm overhead and profit rates provided in the Overhead and Profit Schedule and Appendix B-1 shall not be negotiable during the Agreement award process and the duration of the Agreement. The individual firm overhead and profit rates shall apply to the

billing rate of all individuals not listed in the Overhead and Profit Schedule (i.e., substitute staff and staff assigned later). The individual firm overhead and profit rates and Effective Overhead and Profit rate shall also apply to all amendments to the Agreement. If a new subconsultant is added during the duration of the Agreement, the new individual firm overhead and profit rate can be no more than the Proposal Effective Overhead and Profit Rate.

If an Individual Contractor listed in the Overhead and Profit Schedule is later replaced or substituted after the Contract is executed, the billing rate of any new Individual Contractor shall not exceed the billing rate in the Overhead and Profit Schedule for the position. If the Individual Contractor is replaced or substituted with a Prime or Sub-consultant employee at an hourly payroll rate, the firm overhead and profit rate applied to the replacement individual's hourly payroll rate must not exceed the Effective Overhead and Profit Rate. The Individual Contractor's hourly pay rate shall be verifiable by an executed written contract with the Contractor. Mark-up on an Individual Contractor shall be limited to 5% of the Individual Contractor's billing rate.

Contractor's billing rates stated in Revised Appendix B-1 (March 2, 2015) will be the billing rate for the listed individuals. Billing rates may be adjusted annually on the anniversary of the effective date of this Agreement as indicated in the Notice of Contract Award letter. The amount of any annual adjustment to billing rates is limited to a maximum of the CPI annual percent change increase (San Francisco Bay Area for Urban Wage Earners and Clerical Workers) for the previous calendar year, if the Index declines or shows no increase, billing rates will not be increased. Any increases in billing rates will be applied on a prospective basis only. The maximum hourly billing rate is **\$220 per hour**. In the event the maximum billing rate is to exceed \$220 per hour, the Contractor must obtain written pre-authorization from the SFPUC Project Manager and Bureau/Division Manager. Those who are allowed to exceed the maximum billing rate will keep the rate for the duration of the contract. No annual adjustment is allowed to billing rates exceeding \$220 per hour. Billing rates for staff in any position will apply regardless of whether it is straight time, premium time or overtime.

The billing rate for each listed individual may not exceed the lowest rate charged to any other governmental entity except the City and County of San Francisco. Additionally, billing rates shall not exceed Federal Acquisition Regulations (FAR) or Generally Accepted Accounting Principles (GAAP) rate; whichever is applicable, if both, whichever is lowest.

- Direct Labor is limited to actual salaries of project personnel
- Effective Overhead and Profit Rate: 1.98

3. **Staff Changes:** The SFPUC Regional Project Manager must approve the assignment of staff prior to beginning a task order as well as any staff changes proposed by Contractor. The SFPUC Regional Project Manager must also approve in writing any personnel changes proposed by Contractor after Notice to Proceed has been issued.

The Contractor should note that the City will only approve project staff substitutions when that change in personnel is requested by the City and/or beyond the control of the Contractor. Individuals listed in the Overhead and Profit Schedule and for whom resumes and qualifications have been submitted as part of the proposal are expected to be provided to the project team.

All staff provided whether proposed in the Contractor's proposal or proposed as a substitution or a staff change shall meet the qualifications for the position as stated in Section IV.3 of the RFP

4. **Potential Delays to Project Schedule; Key/Lead Team Member Availability.**

The construction schedule is an estimate; the SFPUC cannot guarantee an exact start date for CM services. There are potential uncertainties that could delay the start of construction, which in turn could delay the start of services or result in the temporary suspension of services under this Agreement. Potential uncertainties include, but are not limited to: delays in completing the environmental review process under the California Environmental Quality Act ("CEQA"), delays in the review and permitting processes required by Local, State and Federal resource agencies and delays in the availability of equipment and/or materials. In addition, until the CEQA review process is completed, the City retains sole and absolute discretion to, among other things, modify the project to mitigate significant environmental impacts, or elect not to proceed with the project based upon information generated by the environmental review process.

If there is a delay to the start of construction, the SFPUC may, depending on the reason(s) for and timing of the delay, elect not to issue a Notice to Proceed ("NTP") for Task 2 services (see Appendix A to Agreement, above) or temporarily suspend services at some point after issuing NTP for Task 2.

In light of the potential delay or temporary suspension of services under the Agreement, Contractor agrees to the following conditions:

- If a delay to the start of construction either delays the start of services or results in temporary suspension of services under the Agreement, the selected Contractor will guarantee the availability of the Key/Lead Team members identified in its proposal for a delay or suspension period of up to 6 months. For a delay in issuing NTP for Task No. 2 services, the 6-month delay period will commence upon receipt of the Notice of Award of contract. For any suspension of services after issuance of NTP for Task No. 2, the 6-month suspension period will commence upon the receipt of a notice of suspension from the SFPUC.
- If any construction schedule-related delay or suspension period extends beyond 6 months, the selected Contractor may substitute Key/Lead Team members. The SFPUC will have the right to approve any substitutions, which approval will not be unreasonably withheld. Proposed substitute personnel must meet all applicable qualification requirements set forth in the Request for Proposals dated February 22, 2010
- Any construction schedule-related delay or suspension period will count toward the annual rate adjustment process described in Paragraph 1, above.

5. **Additional Subcontractors:** Second-tier and pass-through subcontracting is prohibited. However, in the event that the prime Contractor and its approved subcontractors lack the necessary skills or expertise to perform requested services that are within the scope of the contract, additional subcontractors may be added to the Contractor team after obtaining pre-authorization by the SFPUC Regional Project Manager and Bureau/Division Manager.



## 6. Other Direct Costs (ODC).

Direct reimbursable expenses (ODCs – Other Direct Costs) shall include actual direct costs (with no mark up) of expenses directly incurred in performing the work. All ODCs are subject to written consent by the SFPUC Project Manager.

The following items will be eligible for reimbursement as ODCs from the provisional sum item 2 ODCs as indicted in the Overhead and Profit Schedule:

- Out-of-town travel for project related business (“out-of-town” shall mean outside the nine Bay Area counties: San Francisco, Alameda, Marin, Santa Clara, Sonoma, Contra Costa, Napa, San Mateo, Solano. For project related business travel within the nine Bay Area Counties, approved leased vehicles will be used);
- Out- of town meal, and lodging expenses for project-related business trips. Meal and lodging expenses shall be reasonable and actual but limited to Federal government per diem rates;
- Rental vehicle: traveler must select the most economical contractor and type of vehicle available and acquire any commercial rate or government discount available when the vehicle is rented. Rental Vehicle will be on an as needed basis and will require prior written approval of the SFPUC Project Manager;
- Personal vehicle use: Contractor will be paid per mile as established by the CDRP and State Internal Revenue Service and only for that portion of travel that is outside the nine Bay Area counties and non-routine. If the Contractor needs to use personal Vehicles for Project related business within the nine Bay Area Counties a prior written approval from the SFPUC Project Manager is required. Should the travel begin or end on a normal workday, the Contractor shall subtract commuting mileage from total mileage to calculate reimbursable mileage. The Contractor shall submit to the City an approved mileage log with its monthly invoices;
- Lease payments, fuel, maintenance, insurance, parking, and other associated vehicle expenses for Project Vehicles approved by SFPUC;
- Specialty printing (“specialty” as used herein shall mean large volume printing and color printing and requires written consent by SFPUC project staff and documentation of the written approval by the SFPUC must be included with the invoice);
- Specialty computer hardware and software (only with written consent by SFPUC project staff and documentation of the written approval by the SFPUC must be included with the invoice – all hardware and software will be the property of the City);
- Courier services that are project related and originated from the project site offices;
- Cell phones for CM team members as required to perform direct work related to the project;
- Permit fees;
- Expedited courier services when requested by SFPUC staff;
- Safety equipment;

- Special services, used solely for the benefit of this project and not performed by the Prime Contractor or by the Sub-consultants, such as electrical testing, hazardous material testing, training, deliveries, diving services, office and field office setups and maintenance, and telephone and network installations and maintenance. All such service must receive prior written approval of SFPUC project staff and documentation of the written approval by the SFPUC must be included with the invoice.

Anything not listed above is not eligible for reimbursement. They include, but are not limited to:

- All other project business related travel expenses such as parking, bridge tolls, public transit, travel from Consultant's residence or home office to SFPUC facilities, unless otherwise approved in writing by the SFPUC Project Manager;
- Contractor personnel relocation costs;
- Any home office labor charges or pass-through, including but not limited to, administrative and clerical personnel time;
- Personnel relocation and temporary assignment expenses;
- Entertainment expenses;
- Home office expenses;
- Telephone calls and faxes originating in the firm's home office, standard computer use charges, computer hardware or software, communication devices, and electronic equipment;
- Meal expenses which are not related to project-related business trips, including refreshments and working lunches with SFPUC staff;
- Postage and courier services which are not requested by SFPUC staff; and
- Costs of preparing the proposal.

Office facilities (two work stations) will be provided by SFPUC in San Francisco at 525 Golden Gate Avenue for pre-construction phase services until the project field or the office is available. Project field offices will be provided by each individual construction contractor within thirty (30) days of the construction contract NTP. Both offices will include office furnishings, telephone services and equipments, internet connection, copy machine, printer and fax machine, to include maintenance and supplies.

**7. Subcontractor Fees:**

- a . Subject to above restrictions
- b. Shall be subject to written pre-approval by the SFPUC Regional Project Manager
- c. Subcontractor administration markup is limited to five percent (5%) of *subconsultants' actual labor costs.*

**8. Retention is not required under this contract - Left blank by Agreement of the Parties.**

## 9. Invoice Requirements:

The SFPUC is automating its contracting and invoice payment processes with online software systems (SOLIS). The following processes are being automated: Contract Certification, Insurance Compliance, Task Order Certification, Timekeeping, Invoice Approval, and Invoice Payment. As part of its contracting obligations, the Contractor is required to 1) become an authorized user of these systems, 2) attend user training for these systems; and 3) utilize these systems for the purposes for which they are intended. Contractor shall not bill the SFPUC to use these systems. Contractor shall not charge SFPUC to send appropriate personnel to user training.

Contractor shall follow the invoicing and supporting documentation instructions as detailed in the SOLIS training or otherwise prescribed by the SFPUC.

The contractor shall submit one original invoice package with the appropriate CMD reporting forms and supporting documentation to substantiate services provided and allowable ODCs. Original invoices should be sent directly to:

San Francisco Public Utilities Commission  
Contract Administration Bureau – Centralized Invoice Processing Unit  
525 Golden Gate Avenue, 8th Floor  
San Francisco, CA 94102

Contractor will work with City Staff to establish an invoice format that will correlate with appropriate City reporting requirements and will be used thereafter.

All invoices must include the following information:

Contract number;  
Task Order Number;  
Purchase Order Number(s);  
Index Code(s);  
Billing Start Date; and  
Billing Ending Date.

Invoice Supporting Documentation:

All labor hours must be substantiated by timesheet summaries extracted from the Contractor's accounting system. Each timesheet summary shall include the staff person's name, company, dates of the days worked, and the number of hours worked each day.

Mileage ODCs must be accompanied by mileage logs providing the beginning and ending mileage to substantiate the variable portal-to-portal distance and local driving required while performing the work. All other ODCs must be substantiated with copies of original receipts including a brief description for each receipt memorializing the purpose.

CMD Form 7 "Progress Payment Form" must be included with each invoice to identify the participation and amount payable to the subcontractors.

CMD Form 9 "Payment Affidavit" must be sent to the Contract Administration Bureau's Centralized Invoice Processing Unit within ten (10) days of receiving payment for each invoice to document the subcontractor's payment by the prime contractor.