



1 [Agreement Amendment - Harris & Associates, Inc. - Extending Term to May 11, 2020]

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3 **Resolution retroactively approving the Fifth Amendment to the Agreement between**  
4 **Harris & Associates, Inc., and the City and County of San Francisco, for financial**  
5 **consulting in acquisition reimbursement and cost allocations in conjunction with**  
6 **Mission Bay Development - Community Facilities District Nos. 4 and 6, extending the**  
7 **term of the agreement by three years and nine months to commence August 11, 2016,**  
8 **for a total term of August 15, 2006, through May 11, 2020, at no additional cost.**  
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10 WHEREAS, On August 15, 2006, the City and County of San Francisco entered into an  
11 agreement with Harris & Associates for financial consulting in acquisition reimbursement and  
12 cost allocations in conjunction with Mission Bay Development - Community Facilities District  
13 Nos. 4 and 6 ("Harris Agreement"); and

14 WHEREAS, Mission Bay Development is ongoing with an anticipated completion of  
15 public infrastructure, related to the development in the area, to be substantially completed by  
16 2020; and

17 WHEREAS, The Harris Agreement, was amended on March 31, 2015, with contract  
18 amount remaining at \$5,149,000 with a term ending August 11, 2016; and

19 WHEREAS, Financial consulting services continue to be needed to support the  
20 acquisition of public infrastructure in the Mission Bay Development, in concert with the pace of  
21 public and private building development, through 2020; and

22 WHEREAS, San Francisco Charter Section 9.118 requires that the Board of  
23 Supervisors approve contracts having a term of more than 10 years; and

24 WHEREAS, Harris & Associates, Inc., was selected in 2006 through a competitive  
25 process, and has continuously provided timely and experienced financial consultation services

1 in reviewing and advising San Francisco Public Works on applications for acquisition  
2 reimbursement from Community Facilities District Nos. 4 and 6 in support of public  
3 infrastructure acquisition in the Mission Bay Development; now, therefore, be it

4           RESOLVED, That the Board of Supervisors hereby approves the Fifth Amendment of  
5 the Agreement between the City and County of San Francisco and Harris & Associates, for  
6 financial consulting in acquisition reimbursement and cost allocation in conjunction with  
7 Mission Bay Development - Community Facilities District Nos. 4 and 6, extending the term of  
8 the Agreement from August 11, 2016 to May 11, 2020; and, be it

9           FURTHER RESOLVED, That within thirty (30) days of the contract amendment being  
10 fully executed by all parties, Public Works shall provide the final contracts to the Clerk of the  
11 Board for inclusion into the official file.

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City and County of San Francisco  
San Francisco Public Works  
1155 Market Street, 4<sup>th</sup> Floor  
San Francisco, CA 94103

**Fifth Amendment  
(Attachment A)**

THIS AMENDMENT (this "Amendment") is made as of \_\_\_\_\_, in San Francisco, California, by and between **Harris & Associates, Inc.** ("Contractor"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Director of the Office of Contract Administration.

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 to extend the term of the Agreement and update standard contractual clauses;

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 9, 2006 between Contractor and City, as amended by the:

First amendment,	dated August 20, 2009,
Second amendment,	dated April 23, 2010,
Third amendment,	dated February 8, 2013, and
Fourth amendment	dated March 31, 2015

**1b. Contract Monitoring Division. Contract Monitoring Division.** Effective July 28, 2012, with the exception of Sections 14B.9(D) and 14B.17(F), all of the duties and functions of the Human Rights Commission under Chapter 14B of the Administrative Code (LBE Ordinance) were transferred to the City Administrator, Contract Monitoring Division ("CMD"). Wherever "Human Rights Commission" or "HRC" appears in the Agreement in reference to Chapter 14B of the Administrative Code or its implementing Rules and Regulations, it shall be construed to mean "Contract Monitoring Division" or "CMD" respectively.

**1c. 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 3.** Section 3 "Term of the Agreement" of the Agreement currently reads as follows:

**3. Term of the Agreement**

Subject to Section 2, the term of this Agreement shall be from August 15, 2006 to August 11, 2016.

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

**3. Term of the Agreement**

Subject to Section 2, the term of this Agreement shall be from August 15, 2006 to May 11, 2020.

**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.

Modification of Agreement #4  
Consultant Contracts

This Agreement is made on March 31, 2015, in the City and County of San Francisco.

Whereas, the City & County of San Francisco and Harris & Associates, Inc. have entered into an Agreement to provide Financial Consulting in Acquisition Reimbursement and Cost Allocations in conjunction with Mission Bay Development - Community Facilities District No. 4 & No. 6; and

Whereas, the parties now desire to modify the Agreement as described in Attachment A now,

therefore the parties agree as follows:

**The City will:**

Add the sum of \$0 for changes described in the referenced attachment.

Add 455 calendar days to the original agreement or the latest modification as described in the referenced attachment.

In all other respects, the original Agreement and all modifications thereto shall remain in full force and effect.

**CITY & COUNTY OF SAN FRANCISCO**

**CONSULTANT**

Recommended:

Grace Kwak  
Contract (or Project) Manager

Harris & Associates, Inc.

Joseph Thoppil  
Division (or Bureau) Manager

1401 Willow Pass Rd., Suite 500  
Concord, CA 94520

Approved:

Fuad Sweiss  
Deputy Director  
  
Mohammed Nuru  
Director, Department of Public Works

KARL KLINGELHOFER  
Consultant

**Valid signature - Signed by Karl Klingelhofer**

Thursday, April 09, 2015 9:29:57 AM

**Valid signature - Signed by Sweiss, Fuad**

Monday, April 13, 2015 11:13:04 AM

**Valid signature - Signed by Nuru, Mohammed**

Tuesday, April 14, 2015 8:09:34 AM

*Jaci Fong*  
for *Jaci Fong*  
Director of the Office of Contract  
Administration and Purchaser

Approved as to Form:  
Dennis J. Herrera  
City Attorney

*Naomi Kelly*  
\_\_\_\_\_  
Naomi Kelly, City Administrator

*[Signature]*  
\_\_\_\_\_  
By Deputy City Attorney

END OF DOCUMENT

City and County of San Francisco  
San Francisco Public Works  
1155 Market Street, 4<sup>th</sup> Floor  
San Francisco, CA 94103

Fourth Amendment  
(Attachment A)

THIS AMENDMENT (this "Amendment") is made as of March 9, 2015, in San Francisco, California, by and between **Harris & Associates, Inc.** ("Contractor"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Director of the Office of Contract Administration.

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 to extend the term of the Agreement and update standard contractual clauses;

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 9, 2006 between Contractor and City, as amended by the:

First amendment,	dated August 20, 2009,
Second amendment,	dated April 23, 2010, and
Third amendment,	dated February 8, 2013.

1b. **Contract Monitoring Division. Contract Monitoring Division.** Effective July 28, 2012, with the exception of Sections 14B.9(D) and 14B.17(F), all of the duties and functions of the Human Rights Commission under Chapter 14B of the Administrative Code (LBE Ordinance) were transferred to the City Administrator, Contract Monitoring Division ("CMD"). Wherever "Human Rights Commission" or "HRC" appears in the Agreement in reference to Chapter 14B of the Administrative Code or its implementing Rules and Regulations, it shall be construed to mean "Contract Monitoring Division" or "CMD" respectively.

1c. **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 3.** Section 3 "Term of the Agreement" of the Agreement currently reads as follows:

3. **Term of the Agreement**

Subject to Section 2, the term of this Agreement shall be from August 15, 2006 to August 14, 2011.

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

**3. Term of the Agreement**

Subject to Section 2, the term of this Agreement shall be from August 15, 2006 to August 11, 2016.

**2b. Section 24.** Section 24 "Notices to the Parties" of the Agreement currently reads as follows:

**24. Notices to the Parties**

All notices to be given by the parties to this Agreement shall be in writing and served by depositing same in the United States Post Office, postage prepaid and registered as follows:

To City: Department of Public Works  
Division of Contract Administration  
875 Stevenson Street, Room 420  
San Francisco, CA 94103

To Contractor: Harris & Associates, Inc.  
120 Mason Circle  
Concord, CA 94520-1214

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

**24. Notices to the Parties**

Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the parties may be by U.S. mail, e-mail or by fax, and shall be addressed as follows:

To City: San Francisco Public Works  
Division of Contract Administration  
1155 Market Street, 4<sup>th</sup> Floor  
San Francisco, CA 94103

To Contractor: Harris & Associates, Inc.  
1401 Willow Pass Rd., Suite 500  
Concord, CA 94520

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

**2c. Insurance.** Section 14 is hereby replaced in its entirety to read as follows:

**14. Insurance.**

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

1) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and



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

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

4) Professional liability insurance, applicable to Contractor's profession, with limits not less than \$1,000,000 each claim with respect to negligent acts, errors or omissions in connection with the Services.

b. Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:

1) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

2) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

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

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

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

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

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

**2d. Replacing "Earned Income Credit (EIC) Forms" Section with "Consideration of Criminal History in Hiring and Employment Decisions" Section.** Section 45 "Earned Income Credit (EIC) Forms" is hereby replaced in its entirety to read as follows:

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

a. Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12T "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Administrative Code (Chapter 12T), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions

of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at [www.sfgov.org/olse/fco](http://www.sfgov.org/olse/fco). A partial listing of some of Contractor's obligations under Chapter 12T is set forth in this Section. Contractor is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

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

c. Contractor shall incorporate by reference in all subcontracts the provisions of Chapter 12T, and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

d. Contractor or Subcontractor shall not inquire about, require disclosure of, or if such information is received, base an Adverse Action on an applicant's or potential applicant for employment's, or employee's: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

e. Contractor or Subcontractor shall not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in subsection 45(d), above. Contractor or Subcontractor shall not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

f. Contractor or Subcontractor shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment to be performed under this Agreement, that the Contractor or Subcontractor will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

g. Contractor and Subcontractors shall post the notice prepared by the Office of Labor Standards Enforcement (OLSE), available on OLSE's website, in a conspicuous place at every workplace, job site, or other location under the Contractor or Subcontractor's control at which work is being done or will be done in furtherance of the performance of this Agreement. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the workplace, job site, or other location at which it is posted.

h. Contractor understands and agrees that if it fails to comply with the requirements of Chapter 12T, the City shall have the right to pursue any rights or remedies available under Chapter 12T, including but not limited to, a penalty of \$50 for a second violation and \$100 for a subsequent violation

for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this Agreement.

2e. **First Source Hiring Program.** Section 52 is hereby replaced in its entirety to read as follows:

**52. First Source Hiring Program**

a. **Incorporation of Administrative Code Provisions by Reference.**

The provisions of Chapter 83 of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with, and be bound by, all of the provisions that apply to this Agreement under such Chapter, including but not limited to the remedies provided therein. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83.

b. **First Source Hiring Agreement.**

As an essential term of, and consideration for, any contract or property contract with the City, not exempted by the FSHA, the Contractor shall enter into a first source hiring agreement ("agreement") with the City, on or before the effective date of the contract or property contract. Contractors shall also enter into an agreement with the City for any other work that it performs in the City. Such agreement shall:

1) Set appropriate hiring and retention goals for entry level positions. The employer shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to establish good faith efforts as to its attempts to do so, as set forth in the agreement. The agreement shall take into consideration the employer's participation in existing job training, referral and/or brokerage programs. Within the discretion of the FSHA, subject to appropriate modifications, participation in such programs maybe certified as meeting the requirements of this Chapter. Failure either to achieve the specified goal, or to establish good faith efforts will constitute noncompliance and will subject the employer to the provisions of Section 83.10 of this Chapter.

2) Set first source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to provide qualified economically disadvantaged individuals for consideration for employment for entry level positions. Employers shall consider all applications of qualified economically disadvantaged individuals referred by the System for employment; provided however, if the employer utilizes nondiscriminatory screening criteria, the employer shall have the sole discretion to interview and/or hire individuals referred or certified by the San Francisco Workforce Development System as being qualified economically disadvantaged individuals. The duration of the first source interviewing requirement shall be determined by the FSHA and shall be set forth in each agreement, but shall not exceed 10 days. During that period, the employer may publicize the entry level positions in accordance with the agreement. A need for urgent or temporary hires must be evaluated, and appropriate provisions for such a situation must be made in the agreement.

3) Set appropriate requirements for providing notification of available entry level positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of qualified economically disadvantaged individuals to participating employers. Notification should include such information as employment needs by occupational title, skills, and/or experience required, the hours required, wage scale and duration of employment, identification of entry level and training positions, identification of English language proficiency requirements, or absence thereof, and the projected schedule and procedures for hiring for each occupation. Employers should

provide both long-term job need projections and notice before initiating the interviewing and hiring process. These notification requirements will take into consideration any need to protect the employer's proprietary information.

4) Set appropriate record keeping and monitoring requirements, The First Source Hiring Administration shall develop easy-to-use forms and record keeping requirements for documenting compliance with the agreement. To the greatest extent possible, these requirements shall utilize the employer's existing record keeping systems, be nonduplicative, and facilitate a coordinated flow of information and referrals.

5) Establish guidelines for employer good faith efforts to comply with the first source hiring requirements of this Chapter. The FSHA will work with City departments to develop employer good faith effort requirements appropriate to the types of contracts and property contracts handled by each department. Employers shall appoint a liaison for dealing with the development and implementation of the employer's agreement. In the event that the FSHA finds that the employer under a City contract or property contract has taken actions primarily for the purpose of circumventing the requirements of this Chapter, that employer shall be subject to the sanctions set forth in Section 83.10 of this Chapter.

6) Set the term of the requirements.

7) Set appropriate enforcement and sanctioning standards consistent with this Chapter.

8) Set forth the City's obligations to develop training programs, job applicant referrals, technical assistance, and information systems that assist the employer in complying with this Chapter.

9) Require the developer to include notice of the requirements of this Chapter in leases, subleases, and other occupancy contracts.

**c. Hiring Decisions.**

Contractor shall make the final determination of whether an Economically Disadvantaged Individual referred by the System is "qualified" for the position.

**d. Exceptions.**

Upon application by Employer, the First Source Hiring Administration may grant an exception to any or all of the requirements of Chapter 83 in any situation where it concludes that compliance with this Chapter would cause economic hardship.

**e. Liquidated Damages.**

Contractor agrees:

1) To be liable to the City for liquidated damages as provided in this section;

2) To be subject to the procedures governing enforcement of breaches of contracts based on violations of contract provisions required by this Chapter as set forth in this section;

3) That the contractor's commitment to comply with this Chapter is a material element of the City's consideration for this contract; that the failure of the contractor to comply with the contract provisions required by this Chapter will cause harm to the City and the public which is significant and substantial but extremely difficult to quantify; that the harm to the City includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to \$5,000 for every notice of a new hire for an entry level position improperly withheld by the contractor from the first source hiring process, as determined by the FSHA during its first

investigation of a contractor, does not exceed a fair estimate of the financial and other damages that the City suffers as a result of the contractor's failure to comply with its first source referral contractual obligations.

4) That the continued failure by a contractor to comply with its first source referral contractual obligations will cause further significant and substantial harm to the City and the public, and that a second assessment of liquidated damages of up to \$10,000 for each entry level position improperly withheld from the FSHA, from the time of the conclusion of the first investigation forward, does not exceed the financial and other damages that the City suffers as a result of the contractor's continued failure to comply with its first source referral contractual obligations;

5) That in addition to the cost of investigating alleged violations under this Section, the computation of liquidated damages for purposes of this section is based on the following data:

(a) The average length of stay on public assistance in San Francisco's County Adult Assistance Program is approximately 41 months at an average monthly grant of \$348 per month, totaling approximately \$14,379; and

(b) In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least the first six months of employment was 84.4%. Since qualified individuals under the First Source program face far fewer barriers to employment than their counterparts in programs funded by the Workforce Investment Act, it is reasonable to conclude that the average length of employment for an individual whom the First Source Program refers to an employer and who is hired in an entry level position is at least one year;

Therefore, liquidated damages that total \$5,000 for first violations and \$10,000 for subsequent violations as determined by FSHA constitute a fair, reasonable, and conservative attempt to quantify the harm caused to the City by the failure of a contractor to comply with its first source referral contractual obligations.

6) That the failure of contractors to comply with this Chapter, except property contractors, may be subject to the debarment and monetary penalties set forth in Sections 6.80 et seq. of the San Francisco Administrative Code, as well as any other remedies available under the contract or at law; and

Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of \$5,000 for every new hire for an Entry Level Position improperly withheld from the first source hiring process. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the FSHA.

**f. Subcontracts.**

Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section.

**2f. Limitations on Contributions.** Section 48 is hereby replaced in its entirety as follows:

**48. Limitations on Contributions.** Through execution of this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies, or equipment, for the sale or lease of any land or building, or for a grant, loan, or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, or the board of a state agency on which an

appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Contractor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer, and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Contractor further agrees to provide to City the names of each person, entity, or committee described above.

**2g. Cooperative Drafting.** Section 57 is hereby added to the Agreement, as follows:

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

**2h. Requiring Minimum Compensation for Covered Employees.** Section 46 is hereby replaced in its entirety to read as follows:

**46. Requiring Minimum Compensation for Covered Employees**

a. Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Sections 12P.5 and 12P.5.1 of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at [www.sfgov.org/olse/mco](http://www.sfgov.org/olse/mco). A partial listing of some of Contractor's obligations under the MCO is set forth in this Section. Contractor is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

b. The MCO requires Contractor to pay Contractor's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and Contractor is obligated to keep informed of the then-current requirements. Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is Contractor's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Contractor.

c. Contractor shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within 90 days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.

d. Contractor shall maintain employee and payroll records as required by the MCO. If Contractor fails to do so, it shall be presumed that the Contractor paid no more than the minimum wage required under State law.

e. The City is authorized to inspect Contractor's job sites and conduct interviews with employees and conduct audits of Contractor.

f. Contractor's commitment to provide the Minimum Compensation is a material element of the City's consideration for this Agreement. The City in its sole discretion shall determine whether such a breach has occurred. The City and the public will suffer actual damage that will be impractical or extremely difficult to determine if the Contractor fails to comply with these requirements. Contractor agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the City and the public will incur for Contractor's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

g. Contractor understands and agrees that if it fails to comply with the requirements of the MCO, the City shall have the right to pursue any rights or remedies available under Chapter 12P (including liquidated damages), under the terms of the contract, and under applicable law. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

h. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

i. If Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000, but Contractor later enters into an agreement or agreements that cause contractor to exceed that amount in a fiscal year, Contractor shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and this department to exceed \$25,000 in the fiscal year.

**2i. Protection of Private Information.** Section 55 is hereby replaced in its entirety, as follows:

**55. Protection of Private Information.** Contractor has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Contractor agrees that any failure of Contractor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract, bring a false claim action against the Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Contractor.

**2j. Food Service Waste Reduction Requirements.** Section 58 is hereby added to the Agreement, as follows:

**58. Food Service Waste Reduction Requirements.** Contractor agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines

and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Contractor agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of one hundred dollars (\$100) liquidated damages for the first breach, two hundred dollars (\$200) liquidated damages for the second breach in the same year, and five hundred dollars (\$500) liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply with this provision.

**2k. Slavery Era Disclosure.** Section 59 is hereby added to the Agreement, as follows:

**59. Slavery Era Disclosure**

a. Contractor acknowledges that this contract shall not be binding upon the City until the Director receives the affidavit required by the San Francisco Administrative Code's Chapter 12Y, "San Francisco Slavery Era Disclosure Ordinance." The affidavit is posted on the Office of Contract Administration's website at [www.sfgov.org/site/oca](http://www.sfgov.org/site/oca) under the "Slavery Era Disclosure" banner.

b. In the event the Director of Administrative Services finds that Contractor has failed to file an affidavit as required by Section 12Y.4(a) and this contract, or has willfully filed a false affidavit, the Contractor shall be liable for liquidated damages in an amount equal to the Contractor's net profit on the Contract, 10 percent of the total amount of the Contract, or \$1,000, whichever is greatest as determined by the Director of Administrative Services. Contractor acknowledges and agrees that the liquidated damages assessed shall be payable to the City upon demand and may be set off against any monies due to the Contractor from any Contract with the City.

c. Contractor shall maintain records necessary for monitoring their compliance with this provision.

**2L. Health Care Accountability Ordinance.** Section 47 is hereby replaced in its entirety to read as follows:

**47. Health Care Accountability Ordinance.**

Contractor agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of section 12Q.5.1 of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at [www.sfgov.org/olse](http://www.sfgov.org/olse). Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

a. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

b. Notwithstanding the above, if the Contractor is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.

c. Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Contractor if such a breach has occurred. If, within 30 days after receiving



City's written notice of a breach of this Agreement for violating the HCAO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

d. Any Subcontract entered into by Contractor shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Contractor shall notify City's Office of Contract Administration when it enters into such a Subcontract and shall certify to the Office of Contract Administration that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Contractor shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Contractor based on the Subcontractor's failure to comply, provided that City has first provided Contractor with notice and an opportunity to obtain a cure of the violation.

e. Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Contractor's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

f. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

g. Contractor shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City Contract.

h. Contractor shall keep itself informed of the current requirements of the HCAO.

i. Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

j. Contractor shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least ten business days to respond.

k. Contractor shall allow City to inspect Contractor's job sites and have access to Contractor's employees in order to monitor and determine compliance with HCAO.

l. City may conduct random audits of Contractor to ascertain its compliance with HCAO. Contractor agrees to cooperate with City when it conducts such audits.

m. If Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause Contractor's aggregate amount of all agreements with City to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Contractor and the City to be equal to or greater than \$75,000 in the fiscal year.

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.

# Modification of Agreement #3

## Consultant Contracts

This Agreement is made this 8<sup>th</sup> day of February, 2013, in the City and County of San Francisco.

Whereas, the City & County of San Francisco and Harris & Associates, Inc. have entered into an Agreement to provide financial consulting services to advise the department on the interpretation of existing agreements, the determination of reimbursable expenses, the setting of cost allocation and acquisition reimbursement protocols, the review of reimbursement requests, and the recommendation of payments for the San Francisco Community Facilities Districts No. 4 & No.6 (Mission Bay Development) and

Whereas, the parties now desire to modify the Agreement as described in Attachments A and A-1, now, therefore the parties agree as follows.

**The City will:**

Add     Deduct the sum of \$ \$1,900,000 for changes described in the referenced attachment.

Add     Subtract 457 calendar days To  From  the original Agreement or the latest modification as described in the referenced attachment.

In all other respects, the original Agreement and all modifications thereto shall remain in full force and effect.

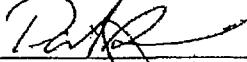
**CITY & COUNTY OF SAN FRANCISCO**

**CONSULTANT**

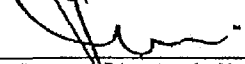
Recommended:

  
 \_\_\_\_\_  
 Grace Kwak, Contract Manager

Harris & Associates, Inc.  
 Name of Consultant Firm

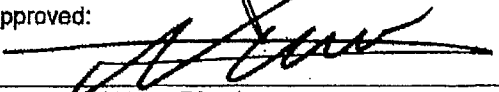
  
 \_\_\_\_\_  
 Patrick Rivera, Division Manager,  
 Infrastructure Design & Construction

1401 Willow Pass Road, Suite 500  
 Address

  
 \_\_\_\_\_  
 Fuad Sweiss, Deputy Director & City Engineer  
 Department of Public Works

Concord, CA 94520  
 City, State, Zip

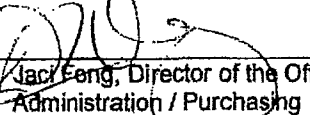
Approved:

  
 \_\_\_\_\_  
 Mohammed Nuru, Director  
 Department of Public Works

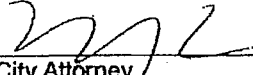
  
 \_\_\_\_\_  
 By (Signature)

  
 \_\_\_\_\_  
 Naomi Kelly, City Administrator

Michael A. Motil Sr. V.P.  
 Name & Title

  
 \_\_\_\_\_  
 Jaci Feng, Director of the Office of Contract  
 Administration / Purchasing

Approved as to Form:  
 Dennis J. Herrera  
 City Attorney

  
 \_\_\_\_\_  
 By Deputy City Attorney

## ATTACHMENT A – Modification #3

Pursuant to Section 3 (*Term of the Agreement*), Section 6 (*Compensation*), and Section 34 (*Modification of Agreement*) of the Agreement (DPW Order No.: 176,288) between the City and County of San Francisco and Harris & Associates, Inc., to provide financial consulting in acquisition reimbursement and cost allocations in conjunction with Mission Bay Development – Community Facilities District no. 4 and No. 6, the term of the Agreement shall be extended by Four Hundred Fifty Seven (457) days, and the amount of the Agreement shall be increased by One Million Nine Hundred Thousand Dollars (\$1,900,000) for additional services as referenced herein as Attachments A and A-1.

The total contract amount as modified shall not exceed \$5,149,000 and completion date is to be extended through May 14, 2015.

Attachment A stipulates that the following section (below) shall be incorporated into the Agreement between the City and County of San Francisco and Harris & Associates, Inc.

63. Automated Clearing House (ACH) “electronic” payments

The City will issue payments to Contractor through the City's electronic payment system called PayMode-X®. Contractor acknowledges and agrees to receive payment electronically through this system. Contractor shall not be entitled to any additional cost or charge under this Contract for using or failing to use the electronic payment system. Nor shall Contractor be entitled to any additional cost or charge for delays or failures of the electronic payment system to complete a payment transaction.

***THIS SECTION INTENTIONALLY LEFT BLANK***



**Harris & Associates**  
*Shaping the Future. One Project at a Time.*

February 8, 2013

Ms. Grace Kwak, Project Manager  
Mission Bay Task Force  
30 Van Ness Avenue, Suite 4200  
San Francisco, CA 94102

**Re: Proposal for Modification to Professional Services Agreement PSC# 176288  
for the Mission Bay Development Reimbursement Audit Services**

Dear Ms. Kwak:

As discussed, an increase in the authorized amount for our Mission Bay Development Services agreement is needed so that we can continue to provide reimbursement audit services on this important project. The total allowable compensation under our current agreement (thru Modification #2) is \$3,249,000 and the completion date is February 11, 2014. To date we have invoiced the City a total of \$3,208,132.84.

Harris is recommending an increase of \$1,900,000 which is an estimate of the effort we anticipate may be required for the next two years (through May, 2015) and is based on the following:

- Harris has completed reimbursement audits on more than \$208 million in projects since January, 2007, an average of \$2.9 million per month. Our average billing during the contract period to date has been an average of \$53,100 per month.
- For 2012, Harris recommended \$23.3 million in reimbursements to Mission Bay Development Group (MBDG) based upon the submittals we reviewed, and it is anticipated that this level of submittals will continue in the coming months.
- Many of the reimbursement request submitted this past year included older mixed-facility soft-cost and Exhibit C reviews that are very complex and take additional research and time to review.
- Based on the historical level of effort required, taking into consideration the complexity of some of the remaining submittals, the higher level of staff required for these complex reviews, it is estimated that the level of effort which may be required through mid-May 2015 could be \$1,900,000. This is based upon the following assumptions, total remaining reimbursement audits to be submitted of up to \$95 million and a maximum level of effort of approximately \$70,000 per month based upon our historical costs. Actual costs will be based upon the number of reimbursement audits actually submitted and the reimbursement amount(s) requested by Mission Bay Development Group (MBDG).

Therefore, we would request that our current agreement be amended to provide a total allowable compensation not to exceed \$5,149,000 which is an increase of \$1,900,000. We would also request that the agreement period be extended until May, 2015.

If you have any questions or need any additional information, please contact me at 800-827-4901 x2326 or at [kklingelhofer@harris-assoc.com](mailto:kklingelhofer@harris-assoc.com).

Sincerely,

**Harris & Associates**

K. Dennis Klingelhofer, PE  
Manager of Financial Engineering

# Modification of Agreement - #2

## Consultant Contracts

This Agreement is made this 23<sup>rd</sup> day of April 2010, in the City and County of San Francisco.

Whereas, the City & County of San Francisco and Harris & Associates, Inc. have entered into an Agreement to provide financial consulting services to advise the department on the interpretation of existing agreements, the determination of reimbursable expenses, the setting of cost allocation and acquisition reimbursement protocols, the review of reimbursement requests, and the recommendation of payments for the San Francisco Community Facilities Districts No. 4 & No. 6 (Mission Bay Development) and

Whereas, the parties now desire to modify the Agreement as described in Attachments A and A-1, now, therefore the parties agree as follows.

### The City will:

Add  Deduct the sum of \$ 1,900,000 for changes described in the referenced attachment.

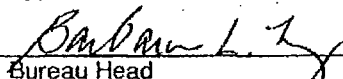
Add  Subtract 0 calendar days To  From  the original Agreement or the latest modification as described in the referenced attachment.

In all other respects, the original Agreement and all modifications thereto shall remain in full force and effect.

### CITY & COUNTY OF SAN FRANCISCO

### CONSULTANT

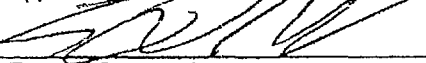
Approved

  
Barbara L. Ly  
Bureau Head

Harris & Associates, Inc.

Name of Consultant Firm

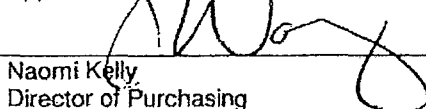
Approved

  
Edward D. Reiskin  
Director of Public Works

1401 Willow Pass Road, Suite 500

Address

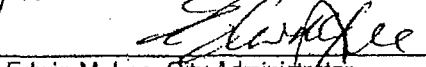
Approved

  
Naomi Kelly  
Director of Purchasing

Concord, CA 94520

City, State, Zip

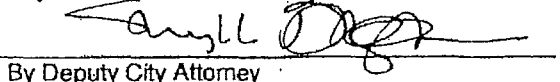
Approved


  
Edwin M. Lee, City Administrator

By (Signature)

Approved as to Form:

Dennis J. Herrera  
City Attorney

  
By Deputy City Attorney

  
By (Signature)  
Byron G. Tobey, Jr., PE, Vice President  
Type Name & Title



**Harris & Associates**  
*Shaping the Future, One Project at a Time.*

April 22, 2010

Ms. Grace Kwak, Project Manager  
Mission Bay Task Force  
30 Van Ness Avenue, Suite 4200  
San Francisco, CA 94102

**Re: Proposal for Modification to Professional Services Agreement PSC# 176,288  
for the Mission Bay Development Reimbursement Audit Services**

Dear Ms. Kwak: *Grace*

As we have discussed, an increase in the authorized amount for our Mission Bay Development Services agreement is needed.

Harris is recommending an increase of \$1,900,000 which is an estimate of the effort required for the next two years and is based on the following:

- Harris recommended \$54.4 million in audited costs in calendar year 2009 and invoiced the City \$513,000 for these services.
- Mission Bay Development Group (MBDG) is estimating \$80 million in reimbursements to be audited and recommended in 2010, which is a 50% increase in recommended amount over 2009.
- Parts of the audit backlog are older mixed-facility soft-cost reviews that are very complex and take additional time to review.
- Based on the above, taking into consideration the complexity of some of the remaining submittals, the higher level of staff required for these complex reviews and the cost of living increases in future years, it is estimated that this year's \$80 million in recommendations will require approximately \$923,400 in effort (\$513,000 x 1.5 workload increase x 1.2 in staff time = \$923,400).
- If the same effort is required in the following year, then the effort is estimated at \$923,400 x 1.1 in cost of living increases = \$1,015,740.

Therefore, for the combined two years of effort, it is estimated that \$1,923,140 is required, or roughly \$1,900,000. This amount would take us through April 2012.

Our team is excited about the opportunity of continuing our working relationship with the City and County of San Francisco on this challenging project. If you have any questions or need any additional information, please contact me at 800-827-4901 x2337 or at [jcox@harris-assoc.com](mailto:jcox@harris-assoc.com).

Sincerely,

**Harris & Associates**

Joan E. Cox, PE  
Vice President  
Manager of Financial Engineering

## **ATTACHMENT A – Modification #2**

Pursuant to Section 3 (*Term of the Agreement*), Section 6 (*Compensation*), and Section 34 (*Modification of Agreement*) of the Agreement (DPW Order No.: 176,288) between the City and County of San Francisco and Harris & Associates, Inc., to provide financial consulting in acquisition reimbursement and cost allocations in conjunction with Mission Bay Development – Community Facilities District No. 4 and No. 6, the term of the Agreement shall be extended by zero (0) days, and the amount of the Agreement shall be increased by One Million Nine Hundred Dollars (\$1,900,000), for additional services as referenced herein as Attachment A-1.

The total contract amount as modified shall not exceed \$3,249,000 and completion date is to remain as February 11, 2014.

***THIS SECTION INTENTIONALLY LEFT BLANK***



# Modification of Agreement

## Consultant Contracts

This Agreement is made this 20<sup>th</sup> day of August 2009, in the City and County of San Francisco.

Whereas, the City & County of San Francisco and Harris & Associates, Inc. have entered into an Agreement to provide financial consulting services to advise the department on the interpretation of existing agreements, the determination of reimbursable expenses, the setting of cost allocation and acquisition reimbursement protocols, the review of reimbursement requests, and the recommendation of payments for the San Francisco Community Facilities Districts No. 4 & No. 6 (Mission Bay Development) and

Whereas, the parties now desire to modify the Agreement as described in Attachment A, now, therefore the parties agree as follows.

### The City will:

Add  Deduct the sum of \$ 449,000 for changes described in the referenced attachment.

Add  Subtract 912 (2.5yrs) calendar days To  From  the original Agreement or the latest modification as described in the referenced attachment.

In all other respects, the original Agreement and all modifications thereto shall remain in full force and effect.

### CITY & COUNTY OF SAN FRANCISCO

### CONSULTANT

Approved

Barbara L. Terry  
Bureau Head

Harris & Associates, Inc.

Name of Consultant Firm

Approved

Edward D. Reiskin  
Edward D. Reiskin  
Director of Public Works

120 Mason Circle

Address

Approved

Naomi Kelly  
Naomi Kelly  
Director of Purchasing

Concord, CA 94520-1214

City, State, Zip

Approved

Edwin M. Lee  
Edwin M. Lee, City Administrator

By (Signature)

Approved as to Form:

Dennis J. Herrera

City Attorney

Dennis J. Herrera  
By Deputy City Attorney

David SeEVERS, PE Vice President

DAVID SEEVERS, VICE PRESIDENT

Type Name & Title

## ATTACHMENT A – Modification #1

Pursuant to Section 3 (*Term of the Agreement*), Section 6 (*Compensation*), and Section 34 (*Modification of Agreement*) of the Agreement (DPW Order No.: 176,288) between the City and County of San Francisco and Harris & Associates, Inc., the term of the Agreement shall be extended by 912 days, and the amount of the Agreement shall be increased by \$449,000 for additional financial consulting services for facilities acquisition in conjunction with Mission Bay Development – Community Facilities Districts No. 4 and No. 6.

Total contract amount not to exceed \$1,349,000 and new completion date is February 11, 2014.

Attachment A stipulates that the following sections (below) shall be incorporated into the Agreement between the City and County of San Francisco and Harris & Associates, Inc.

57. Services Provided by Attorneys

Any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. No invoices for services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will be paid unless the provider received advance written approval from the City Attorney.

58. Severability

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

59. Food Service Waste Reduction Requirements

Effective June 1, 2007, Contractor agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Contractor agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of one hundred dollars (\$100) liquidated damages for the first breach, two hundred dollars (\$200) liquidated damages for the second breach in the same year, and five hundred dollars (\$500) liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City

will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply with this provision.

60. Slavery Era Disclosure

a. Contractor acknowledges that this contract shall not be binding upon the City until the Director receives the affidavit required by the San Francisco Administrative Code's Chapter 12Y, "San Francisco Slavery Era Disclosure Ordinance."

b. In the event the Director finds that Contractor has failed to file an affidavit as required by Section 12Y.4(a) and this Contract, or has willfully filed a false affidavit, the Contractor shall be liable for liquidated damages in an amount equal to the Contractor's net profit on the Contract, 10 percent of the total amount of the Contract, or \$1,000, whichever is greatest as determined by the Director. Contractor acknowledges and agrees that the liquidated damages assessed shall be payable to the City upon demand and may be set off against any monies due to the Contractor from any Contract with the City.

c. Contractor shall maintain records necessary for monitoring their compliance with this provision.

61. Supervision of Minors

"Left blank by agreement of the parties"

62. Cooperative Drafting

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

***THIS SECTION INTENTIONALLY LEFT BLANK***

CITY AND COUNTY OF SAN FRANCISCO  
DEPARTMENT OF PUBLIC WORKS

AGREEMENT BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO AND

Harris & Associates, Inc.

This Agreement is made this 9th day of August, 2006, in the City and County of San Francisco, State of California, by and between:

Harris & Associates, Inc.  
120 Mason Circle  
Concord, CA 94520-1214

hereinafter referred to as "Contractor," and City and County of San Francisco, a municipal corporation, hereinafter referred to as "City," acting by and through its Director of Public Works, hereinafter referred to as "Director."

**Recitals**

WHEREAS, the Department of Public Works wishes to utilize the services of a consultant to advise on the interpretation of existing agreements, the determination of reimbursable expenses, the setting of cost allocation and acquisition reimbursement protocols, the review of reimbursement requests, and the recommendation of payments for the San Francisco Community Facilities Districts No. 4 & No. 6 (Mission Bay); and,

WHEREAS, a Request for Proposal ("RFP") was issued on May 27, 2006, and City selected Contractor as the highest qualified scorer pursuant to the RFP; and

WHEREAS, Contractor represents and warrants that it is qualified to perform the services required for City as set forth under this contract; and,

WHEREAS, approval for said Agreement was obtained from the Civil Service Commission by Resolution No. PSC #4120-05/06 dated May 15, 2006

Now, THEREFORE, the parties agree as follows:

1. Definitions

Where any word or phrase defined below, or a pronoun used in place thereof, is used in any part of this Agreement and Specifications, it shall have the meaning herein set forth.

AUTHORIZATION	Contract Order of the City and County of San Francisco properly executed by the Director, Director of Purchasing, and Director of Administrative Services, and certified by the Controller for the specific funding of this Agreement or any modification thereof.
CITY ADMINISTRATOR	City Administrator of the City and County of San Francisco.
CITY	City and County of San Francisco, a municipal corporation.
CONTRACTOR	Harris & Associates, Inc.
CONTROLLER	Controller of the City and County of San Francisco.
DIRECTOR	Director of Public Works of the City and County of San Francisco.
WORK	The work to be done in providing the services as described and specified in Appendix A.

Whenever the words "as directed", "as required", "as permitted", or words of like effect are used, it shall be understood as the direction, requirement, or permission of the Department of Public Works. The words "sufficient", "necessary",

or "proper", and the like, mean: efficient, necessary or proper in the judgment of the Department of Public Works. The words "approval", "acceptable", "satisfactory", or words of like import, shall mean approved by, or acceptable to, or satisfactory to the Department of Public Works, unless otherwise indicated by the context.

## 2. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation

This Agreement is subject to the budget and fiscal provisions of the Charter of City. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization.

This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year in the event funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated.

City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

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

## 3. Term of the Agreement

Subject to Section 2, the term of this Agreement shall be from August 15, 2006 to August 14, 2011.

## 4. Effective Date of Agreement

This Agreement shall become effective when the Controller has certified to the availability of funds and Contractor has been notified in writing.

## 5. Services Contractor Agrees to Perform

The Contractor agrees to perform the services provided for in Appendix A, "Services to be Provided by Contractor," attached hereto and incorporated by reference as though fully set forth herein.

## 6. Compensation

Compensation shall be made in monthly payments on or before the 15<sup>th</sup> day of each month for work, as set forth in Section 5 of this Agreement, that the Director of Public Works, in his or her sole discretion, concludes has been performed as of the 15<sup>th</sup> day of the immediately preceding month. In no event shall the amount of this contract exceed \$900,000.00 (NINE-HUNDRED THOUSAND DOLLARS). The breakdown of costs associated with this contract is provided for in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein.

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 the Department of Public Works as being in accordance with 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 HRC Form 7 (or Form 8 for final payment). If HRC Form 7 (or Form 8 for final payment) is not submitted with Contractor's invoice, the Controller will notify the department, the Director of HRC and Contractor of the omission. If Contractor's failure to provide HRC Form 7 (or Form 8 for final payment) is not explained to the Controller's satisfaction, the Controller will withhold 20% of the payment due pursuant to that invoice until HRC Form 7 (or Form 8 for final payment) is provided.

Following City's payment of an invoice, Contractor has ten days to file an affidavit using HRC Form 9, verifying that all subcontractors have been paid and specifying the amount.

## Method of Payment

Invoices furnished by Contractor under this Agreement must be in a form acceptable to Director of Purchasing and Controller. All amounts paid by City to Contractor shall be subject to audit by City.

Payment shall be made by City to Contractor at the address stated hereinabove.

#### 8. Disallowance

In the event Contractor claims or receives payment from City for a service, reimbursement for which is later disallowed by City or State of California or United States Government, Contractor shall promptly refund the disallowed amount to City upon City's request. At its option, City may offset the amount disallowed from any payment due or to become due to Contractor under this Agreement or any other Agreement.

In the event that this Agreement is federally funded, Contractor certifies that Contractor is not suspended, debarred or otherwise excluded from participation in federal assistance programs. Contractor acknowledges that this certification of eligibility to receive federal funds is a material term of the Agreement.

#### 9. Taxes

Payment of any taxes, including California Sales and Use Taxes, levied upon this Agreement, the transaction, or the services delivered pursuant hereto, shall be the obligation of Contractor. Contractor recognizes and understands that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:

- a. Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest;
- b. Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a "change in ownership" for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.
- c. Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code section 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.
- d. Contractor further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

#### 10. Payment Does Not Imply Acceptance of Work

The granting of any progress payment by City, or the receipt thereof by Contractor, shall in no way lessen the liability of Contractor to replace unsatisfactory work or material although the unsatisfactory character of such work or material may not have been apparent or detected at the time such payment was made. Materials, components, or workmanship which do not conform to the Specifications will be rejected and shall be replaced by Contractor without delay.

#### 11. Qualified Personnel

Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor. Contractor will conform with City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City's request, shall be supervised by Contractor. Contractor shall commit adequate resources to complete the project within the project schedule specified in this Agreement.

## 12. Responsibility for Equipment

City shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to Contractor by City. The acceptance or use of such equipment by Contractor or any of its employees shall be construed to mean that Contractor accepts full responsibility for and agrees to exonerate, indemnify, defend and save harmless City from and against any and all claims for any damage or injury of any type arising from the use, misuse or failure of such equipment, whether such damage be to the contractor, its employees, City employees or third parties, or to property belonging to any of the above.

## 13. Independent Contractor

Contractor shall be deemed at all times to be an independent Contractor and shall be wholly responsible for the manner in which Contractor performs the service required of Contractor by the terms of this Agreement. Contractor shall be liable for the acts and omissions of it, its employees and its agents. Nothing contained herein shall be construed as creating an employment or agency relationship between City and Contractor. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor.

Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement.

Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority.

Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability).

A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor agrees to a reduction in City's financial liability so that City's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

## 14. Insurance

a. Without in any way limiting Contractor's liability pursuant to Section 15, "Indemnification and General Liability," of this Agreement, Contractor will maintain in force, during the full term of the Agreement, insurance in the following amounts and coverage:

- (1) Workers' Compensation, in statutory amounts, with Employers' Liability limits not less than \$1,000,000 each accident; and
- (2) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and
- (3) Commercial Automobile Liability Insurance with not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as

applicable.

(4) Professional liability insurance with limits not less than \$1,000,000 each claim and in the aggregate with respect to negligent acts, errors or omissions, and any deductible not to exceed \$50,000 each claim.

b. Commercial General Liability and Commercial Automobile Liability Insurance policies shall be endorsed to provide the following:

(1) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

(2) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this contract, and that insurance applies separately to each insured against whom claim is made or suit is brought.

c. All policies shall be endorsed to provide:

Thirty (30) days' advance written notice to City of cancellation or non-renewal, mailed to the following address:

**Contract Clerk**  
Department of Public Works  
Division Of Contract Administration  
875 Stevenson Street, Room 420  
San Francisco, CA 94103

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

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

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

g. Before commencing any services or operations under this Agreement, Contractor shall furnish to City certificates of insurance, and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Contractor shall furnish complete copies of policies of any or all of the above-listed insurance policies promptly upon City request. Failure to maintain insurance shall constitute a material breach of this Agreement.

h. Approval of the insurance by City shall not relieve or decrease the liability of Contractor hereunder.

#### 15. Indemnification

a. To the fullest extent permitted by law, the Contractor shall assume the defense of, indemnify and save harmless the City and its officers and employees (collectively "Indemnitees") from any claim, loss, damage, injury (including, without limitation, injury to or death of an employee of the Contractor or its subcontractors) and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorneys' fees and costs of investigation) that arise directly or indirectly, in whole or in part, from: (1) the services under this Agreement, or any part thereof, (2) any act or omission of Contractor, and subcontractor to the Contractor, anyone directly or indirectly employed by them, or anyone that they control (collectively "Liabilities"), even if such Liabilities are caused in part by the negligence of any Indemnitee, subject to the provisions set forth below in this Section.

b. The Contractor assumes no liability whatsoever for the sole negligence or willful misconduct of any Indemnitee or



the contractors of any Indent

The Contractor's indemnification obligations for claims involving "Professional Liability" (claims involving acts, errors, or omissions in the rendering of professional services) and "Economic Loss Only" (claims involving economic loss which are not connected with bodily injury or physical damage to property) shall be limited to the proportionate extent of Contractor's negligence or other breach of duty.

16. Incidental and Consequential Damages

Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions. Nothing in this Agreement shall constitute a waiver or limitation or any rights which City may have under applicable law.

17. Liability of City

City's obligations under this contract shall be limited to the payment of the compensation provided for in Section 6 of this Agreement. Notwithstanding any other provision of this Agreement, in no event shall City be liable, regardless of whether any claim is based on contract or tort, for Contractor's own special, consequential, indirect or incidental damages, including, but not limited to, lost profits, arising out of or in connection with this Agreement or the services performed in connection with this Agreement.

18. Liquidated Damages

Not Applicable

19. Termination For Cause

a. Each of the following shall constitute an event of default ("Event of Default") under this Agreement:

- (1) Contractor fails or refuses to perform or observe any term, covenant or condition contained in this Agreement, and such default continues for a period of ten days after written notice from City to Contractor.
- (2) Contractor (A) is generally not paying its debts as they become due, (B) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (C) makes an assignment for the benefit of its creditors, (D) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property or (E) takes action for the purpose of any of the foregoing.
- (3) A court or government authority enters an order (A) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (B) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (C) ordering the dissolution, winding-up or liquidation of Contractor.

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

c. All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

Termination For Convenience

- a. City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective.
- b. Upon receipt of the notice, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by City and to minimize the liability of Contractor and City to third parties as a result of termination. All such actions shall be subject to the prior approval of City. Such actions shall include, without limitation:
- (1) Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by City.
  - (2) Not placing any further orders or subcontracts for materials, services, equipment or other items.
  - (3) Terminating all existing orders and subcontracts.
  - (4) At City's direction, assigning to City any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, City shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
  - (5) Subject to City's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.
  - (6) Completing performance of any services or work that City designates to be completed prior to the date of termination specified by City.
  - (7) Taking such action as may be necessary, or as the City may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which City has or may acquire an interest.
- c. Within 30 days after the specified termination date, Contractor shall submit to City an invoice, which shall set forth each of the following as a separate line item:
- (1) The reasonable cost to Contractor, without profit, for all services and other work City directed Contractor to perform prior to the specified termination date, for which services or work City has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Contractor's direct costs for services or other work. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.
  - (2) A reasonable allowance for profit on the cost of the services and other work described in the immediately preceding subsection (1), provided that Contractor can establish, to the satisfaction of City, that Contractor would have made a profit had all services and other work under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.
  - (3) The reasonable cost to Contractor of handling material or equipment returned to the vendor, delivered to the City or otherwise disposed of as directed by the City.
  - (4) A deduction for the cost of materials to be retained by Contractor, amounts realized from the sale of materials and not otherwise recovered by or credited to City, and any other appropriate credits to City against the cost of the services or other work.

- d. In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by City, except for those costs specifically enumerated and described in the immediately preceding subsection (c). Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such subsection (c).
- e. In arriving at the amount due to Contractor under this Section, City may deduct: (1) all payments previously made by City for work or other services covered by Contractor's final invoice; (2) any claim which City may have against Contractor in connection with this Agreement; (3) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (d); and (4) in instances in which, in the opinion of the City, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced amount and City's estimate of the reasonable cost of performing the invoiced services or other work in compliance with the requirements of this Agreement.
- f. City's payment obligation under this Section shall survive termination of this Agreement.

**21. Rights and Duties Upon Termination or Expiration**

Subject to the immediately preceding subsection (a), upon termination of this Agreement prior to expiration of the term specified in Section 2, this Agreement shall terminate and be of no further force or effect. Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City. This subsection shall survive termination of this Agreement.

**22. Conflict of Interest**

Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provision of §15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and §87100 et seq. and §1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

**23. Proprietary or Confidential Information of City**

Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Contractor agrees that all information disclosed by City to Contractor shall be held in confidence and used only in performance of the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

**24. Notices to the Parties**

All notices to be given by the parties to this Agreement shall be in writing and served by depositing same in the United States Post Office, postage prepaid and registered as follows:

To City:                    Department of Public Works  
                                   Division of Contract Administration  
                                   875 Stevenson Street, Room 420  
                                   San Francisco, CA 94103

To Contractor:         Harris & Associates, Inc.  
                                   120 Mason Circle  
                                   Concord, CA 94520-1214

25. Ownership of Results; Works For Hire

Any interest of Contractor or its Subcontractors, in drawings, plans, specifications, studies, reports, memoranda, computation sheets or other documents prepared by Contractor or its Subcontractors in connection with services to be performed under this Agreement shall become the property of and will be transmitted to City. However, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

If, in connection with services performed under this Agreement, Contractor or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the City. If it is ever determined that any works created by Contractor or its subcontractors under this Agreement are not works for hire under U.S. law, Contractor hereby assigns all copyrights to such works to the City, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of the City, Contractor may retain and use copies of such works for reference and as documentation of its experience and capabilities.

26. Audit and Inspection of Records

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

27. Subcontracting

Contractor is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is approved by written instrument executed and approved in the same manner as this Agreement. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An Agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

28. Assignment

The services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder shall be assigned or delegated by Contractor unless approved by written instrument executed and approved in the same manner as this Agreement.

29. Disadvantaged Business Enterprise Utilization; Liquidated Damages

a. The DBE Ordinance

Contractor, shall comply with all the requirements of the Disadvantaged Business Enterprise Ordinance set forth in Chapter 14A of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the "DBE Ordinance"), provided such amendments do not materially increase Contractor's obligations or liabilities, or materially diminish Contractor's rights, under this Agreement. Such provisions of the DBE Ordinance are incorporated by reference and made a part of this Agreement as though fully set forth in this section. Contractor's willful failure to comply with any applicable provision of the DBE Ordinance is a material breach of Contractor's obligations under this Agreement and shall entitle City, subject to any applicable notice and cure provisions set forth in this Agreement, to exercise any of the remedies provided for under this Agreement, under the DBE Ordinance or otherwise available at law or in equity, which remedies shall be cumulative unless this Agreement expressly provides that any remedy is exclusive. In addition, Contractor shall comply fully with all other applicable local, state and federal laws prohibiting discrimination and requiring equal opportunity in contracting, including subcontracting.

b. Compliance and Enforcement

1. Enforcement

If Contractor willfully fails to comply with any of the provisions of the DBE Ordinance, the rules and regulations implementing the DBE Ordinance, or the provisions of this Agreement pertaining to DBE participation, Contractor shall be liable for liquidated damages in an amount equal to Contractor's net profit on this Agreement, or 10% of the total amount of this Agreement, or \$1,000, whichever is greatest. The Director of the City's Human Rights Commission or any other public official authorized to enforce the DBE Ordinance (separately and collectively, the "Director of HRC") may also impose other sanctions against Contractor authorized in the DBE Ordinance, including declaring the Contractor to be irresponsible and ineligible to contract with the City for a period of up to five years or revocation of the Contractor's DBE certification. The Director of HRC will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to Administrative Code §14A.13(B).

By entering into this Agreement, Contractor acknowledges and agrees that any liquidated damages assessed by the Director of the HRC shall be payable to City upon demand. Contractor further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to Contractor on any contract with City.

Contractor agrees to maintain records necessary for monitoring its compliance with the DBE Ordinance for a period of three years following termination or expiration of this Agreement, and shall make such records available for audit and inspection by the Director of HRC or the Controller upon request.

30. Compliance with South Africa Divestment Ordinance; Liquidated Damages

Not applicable.

31. MacBride Principles—Northern Ireland

Pursuant to San Francisco Administrative Code §12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Contractor acknowledges and agrees that he or she has read and understood this section.

32. Drug-Free Workplace Policy

This section does not apply as Federal funds are not involved under this contract.

33. Non-Waiver of Rights

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

34. Modification of Agreement

This Agreement may not be modified, nor may compliance with any of its terms waived, except by written instrument executed and approved in the same manner as this Agreement. Contractor shall cooperate with Department to submit to the Director of HRC any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20%.

35. Administrative Remedy for Agreement Interpretation

Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to the Director of Public Works who shall decide the true meaning and intent of the Agreement.

36. Agreement Made in California: Venue

The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California, excluding its conflict of laws rules. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

37. Construction

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

38. Entire Agreement

This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This contract may be modified only as provided in Section 34.

39. Tropical Hardwood and Virgin Redwood Ban

Pursuant to §804(b) of the San Francisco Environment Code, the City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

40. Ownership of Equipment

Any equipment vehicles, computer programs (software licenses and media), etc. purchase by the Contractor or its subcontractors in connection with services to be performed under this Agreement shall become property of and will be transmitted to the City.

41. Guaranteed Maximum Costs

- a. The City's obligations hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification.
- b. Except as may be provided by laws governing emergency procedures, officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for Commodities or Services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law.
- c. Officers and employees of the City are not authorized to offer or promise, nor is the City required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller.
- d. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

42. Sunshine Ordinance

In accordance with San Francisco Administrative Code §67.24(e), Contracts, contractor's bids, responses to requests for proposals and all other records of communications between the department and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this subdivision will be made available to the public upon request.

43. Non-Discrimination in City Contracts and Benefits Ordinance

- a. Contractor Shall Not Discriminate. In the performance of this Agreement, Contractor agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with Contractor, in any of Contractor's operations within the United States, or against any

person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Contractor.

- b. **Subcontracts.** Contractor shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.
- c. **Non-Discrimination in Benefits.** Contractor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco or where the work is being performed for the City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.
- d. **Condition to Contract.** As a condition to this Agreement, Contractor shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.
- e. **Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

#### 44. Submitting False Claims; Monetary Penalties

Any contractor, subcontractor or consultant who commits any of the following acts shall be liable to the City for three times the amount of damages which the City sustains because of the act of that contractor, subcontractor or consultant. A contractor, subcontractor or consultant who commits any of the following acts shall be liable to the City for the costs, including attorney's fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the City for a civil penalty of up to \$10,000 for each false claim: (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. (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.

#### 45. Earned Income Credit (EIC) Forms

- (a) Contractor shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty (30) days following the date on which this Agreement becomes effective (unless Contractor has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by Contractor; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement.
- (b) Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Contractor of the terms of this Agreement. If within thirty (30) days after Contractor receives written notice of such a breach, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, Contractor fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Agreement or under applicable law.

- (c) Any Subcontract entered in by Contractor shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this Section.
- (d) Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 120 of the San Francisco Administrative Code.

46. Requiring Minimum Compensation for Employees

Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at [www.ci.sf.ca.us/MCO](http://www.ci.sf.ca.us/MCO). Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12P. Consistent with the requirements of the MCO, Contractor agrees to all of the following:

- (a) For each hour worked by a Covered Employee during a Pay Period on work funded under the City contract during the term of this Agreement, Contractor shall provide to the Covered Employee no less than the Minimum Compensation, which includes a minimum hourly wage and compensated and uncompensated time off consistent with the requirements of the MCO. For the hourly gross compensation portion of the MCO, Contractor shall pay a minimum of \$10.77 an hour beginning January 1, 2005 and for the remainder of the term of this Agreement; provided, however, that Contractors that are Nonprofit Corporations or public entities shall pay a minimum of \$9 an hour for the term of this Agreement.
- (b) Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the City with regard to Contractor's compliance or anticipated compliance with the requirements of the MCO, for opposing any practice proscribed by the MCO, for participating in proceedings related to the MCO, or for seeking to assert or enforce any rights under the MCO by any lawful means.
- (c) Contractor understands and agrees that the failure to comply with the requirements of the MCO shall constitute a material breach by Contractor of the terms of this Agreement. The City, acting through the Contracting Department, shall determine whether such a breach has occurred.
- (d) If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City, acting through the Contracting Department, shall have the right to pursue the following rights or remedies and any rights or remedies available under applicable law:
  - (1) The right to charge Contractor an amount equal to the difference between the Minimum Compensation and any compensation actually provided to a Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law;
  - (2) The right to set off all or any portion of the amount described in Subsection (d)(1) of this Section against amounts due to Contractor under this Agreement;
  - (3) The right to terminate this Agreement in whole or in part;
  - (4) In the event of a breach by Contractor of the covenant referred to in Subsection (b) of this Section, the right to seek reinstatement of the employee or to obtain other appropriate equitable relief; and
  - (5) The right to bar Contractor from entering into future contracts with the City for three (3) years.

Each of the rights provided in this Subsection (d) shall be exercisable individually or in combination with any other rights or remedies available to the City. Any amounts realized by the City pursuant to this subsection shall be paid to the Covered Employee who failed to receive the required Minimum Compensation.
- (e) Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.
- (f) Contractor shall keep itself informed of the current requirements of the MCO, including increases to the hourly



gross compensation due Covered Employees under the MCO, and shall provide prompt written notice to all Covered Employees of any increases in compensation, as well as any written communications received by the Contractor from the CITY, which communications are marked to indicate that they are to be distributed to Covered Employees.

- (g) Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the City under the MCO, including reports on subcontractors.
- (h) The Contractor shall provide the City with access to pertinent records after receiving a written request from the City to do so and being provided at least five (5) business days to respond.
- (i) The City may conduct random audits of Contractor. Random audits shall be (i) noticed in advance in writing; (ii) limited to ascertaining whether Covered Employees are paid at least the minimum compensation required by the MCO; (iii) accomplished through an examination of pertinent records at a mutually agreed upon time and location within ten (10) days of the written notice; and (iv) limited to one audit of Contractor every two years for the duration of this Agreement. Nothing in this Agreement is intended to preclude the City from investigating any report of an alleged violation of the MCO.
- (j) Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. A subcontract means an agreement between the Contractor and a third party which requires the third party to perform all or a portion of the services covered by this Agreement. Contractor shall notify the Department of Administrative Services when it enters into such a subcontract and shall certify to the Department of Administrative Services that it has notified the subcontractor of the obligations under the MCO and has imposed the requirements of the MCO on the subcontractor through the provisions of the subcontract. It is Contractor's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Contractor.
- (k) Each Covered Employee is a third-party beneficiary with respect to the requirements of subsections (a) and (b) of this Section, and may pursue the following remedies in the event of a breach by Contractor of subsections (a) and (b), but only after the Covered Employee has provided the notice, participated in the administrative review hearing, and waited the 21-day period required by the MCO. Contractor understands and agrees that if the Covered Employee prevails in such action, the Covered Employee may be awarded: (1) an amount equal to the difference between the Minimum Compensation and any compensation actually provided to the Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law; (2) in the event of a breach by Contractor of subsections (a) or (b), the right to seek reinstatement or to obtain other appropriate equitable relief; and (3) in the event that the Covered Employee is the prevailing party in any legal action or proceeding against Contractor arising from this Agreement, the right to obtain all costs and expenses, including reasonable attorney's fees and disbursements, incurred by the Covered Employee. Contractor also understands that the MCO provides that if Contractor prevails in any such action, Contractor may be awarded costs and expenses, including reasonable attorney's fees and disbursements, from the Covered Employee if the court determines that the Covered Employee's action was frivolous, vexatious or otherwise an act of bad faith.
- (l) If Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause contractor to exceed that amount in a fiscal year, Contractor shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and this department to exceed \$25,000 (\$50,000 for nonprofits) in the fiscal year.

#### 47. Requiring Health Benefits for Covered Employees

Unless exempt, Contractor agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at <http://www.sfgov.org/oca/lwlh.htm>. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

- a. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission..
- b. Notwithstanding the above, if the Contractor is a small business as defined in Section 12Q.3(d) of the HCAO, it shall have no obligation to comply with part (a) above.
- c. Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Contractor if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5(f)(1-5). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.
- d. Any Subcontract entered into by Contractor shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Contractor shall notify City's Office of Contract Administration when it enters into such a Subcontract and shall certify to the Office of Contract Administration that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Contractor shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Contractor based on the Subcontractor's failure to comply, provided that City has first provided Contractor with notice and an opportunity to obtain a cure of the violation.
- e. Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Contractor's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.
- f. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.
- g. Contractor shall keep itself informed of the current requirements of the HCAO.
- h. Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.
- i. Contractor shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least five business days to respond.
- j. City may conduct random audits of Contractor to ascertain its compliance with HCAO. Contractor agrees to cooperate with City when it conducts such audits.
- k. If Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause Contractor's aggregate amount of all agreements with City to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Contractor and the City to be equal to or greater than \$75,000 in the fiscal year.

#### 48. Limitations on Contributions

Through execution of this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services or for the furnishing of any material, supplies or equipment to the City, whenever such transaction would require approval by a City elective officer of the board on which that City elective officer serves, from making any campaign contribution to the officer at any time from the commencement of negotiations for the contract until the later of either (1) the termination of negotiations for such contract or (2) three months after the date the contract is approved by the City elective officer or the board on which that City elective officer serves.

#### 49. Prohibiting Use of City Funds for Political Activity

No funds appropriated by the City and County of San Francisco for any contract, grant agreement or loan agreement may be expended for participating in, supporting, or attempting to influence a political campaign for any candidate or measure. Recipients of city funds will cooperate in audits conducted by the Controller to verify that no City funds were used for political purposes.

In accordance with San Francisco Administrative Code Chapter 12.G, Contractor may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. Contractor agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Contractor violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit Contractor from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider Contractor's use of profit as a violation of this section.

#### 50. Resource Conservation

Chapter 5 of the San Francisco Environment Code ("Resource Conservation") is incorporated herein by reference. Failure by Contractor to comply with any of the applicable requirements of Chapter 5 will be deemed a material breach of contract.

#### 51. Compliance with Americans with Disabilities Act

Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

#### 52. First Source Hiring Program

##### a. Incorporation of Administrative Code Provisions by Reference

The provisions of Chapter 83 of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with, and be bound by, all of the provisions that apply to this Agreement under such Chapter, including but not limited to the remedies provided therein. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83.

##### b. First Source Hiring Agreement.

- (1) Contractor will comply with First Source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the exclusive opportunity to initially provide Qualified Economically Disadvantaged Individuals for consideration for employment for Entry Level Positions. The duration of the First Source interviewing requirement shall be ten (10) days, unless business necessity requires a shorter period of time;
- (2) Contractor will comply with requirements for providing timely, appropriate notification of available Entry Level Positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of Qualified Economically Disadvantaged Individuals to participating Employers;
- (3) Contractor agrees to use good faith efforts to comply with the First Source hiring requirements. A Contractor may establish its good faith efforts by filling: 1) its first available Entry Level Position with a job applicant referred through the First Source Program; and, 2) fifty percent (50%) of its subsequent available Entry Level Positions with job applicants referred through the San Francisco Workforce Development System. Failure to meet this target, while not imputing bad faith, may result in a review of the Contractor's employment records.

##### c. Hiring Decisions.

Contractor shall make the final determination of whether an Economical Disadvantaged Individual referred by the System is "qualified" for the position.

d. Exceptions

Upon application by Employer, the First Source Hiring Administration may grant an exception to any or all of the requirements of Chapter 83 in any situation where it concludes that compliance with this Chapter would cause economic hardship.

e. Liquidated Damages

Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of \$5,000 for every new hire for an Entry Level Position improperly withheld from the first source hiring process. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the FSHA.

f. Subcontracts

Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section.

53. Preservative-treated Wood Containing Arsenic

Contractor may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Contractor may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Contractor from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

54. Compliance with Laws

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

55. Nondisclosure of Private Information

As of March 5, 2005, Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12M of the San Francisco Administrative Code (the "Nondisclosure of Private Information Ordinance"), including the remedies provided. The provisions of the Nondisclosure of Private Information Ordinance are incorporated herein by reference and made a part of this Agreement as though fully set forth. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in the Nondisclosure of Private Information Ordinance. Consistent with the requirements of the Nondisclosure of Private Information Ordinance, Contractor agrees to all of the following:

- (a) Neither Contractor nor any of its Subcontractors shall disclose Private Information obtained from the City in the performance of this Agreement to any other Subcontractor, person, or other entity, unless one of the following is true:
  - (i) The disclosure is authorized by this Agreement;
  - (ii) The Contractor received advance written approval from the Contracting Department to disclose the information; or
  - (iii) The disclosure is required by law or judicial order.

- (b) Any disclosure or use of Private Information authorized by this Agreement shall be in accordance with any conditions or restrictions stated in this Agreement. Any disclosure or use of Private Information authorized by a Contracting Department shall be in accordance with any conditions or restrictions stated in the approval.
- (c) Private Information shall mean any information that: (1) could be used to identify an individual, including without limitation, name, address, social security number, medical information, financial information, date and location of birth, and names of relatives; or (2) the law forbids any person from disclosing.
- (d) Any failure of Contractor to comply with the Nondisclosure of Private Information Ordinance shall be a material breach of this Agreement. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate this Agreement, debar Contractor, or bring a false claim action against Contractor.

#### 56. Graffiti Removal

Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti.

Contractor shall remove all graffiti from any real property owned or leased by Contractor in the City and County of San Francisco within forty eight (48) hours of the earlier of Contractor's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require a Contractor to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

Any failure of Contractor to comply with this section of this Agreement shall constitute an Event of Default of this Agreement.

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

(I) CITY

Recommended by: Barbara Moy

Barbara L. Moy  
Signature

Barbara Moy, Bureau of Street Use & Mapping  
Name

Approved as to Form:  
Dennis J. Herrera  
City Attorney

By Dennis J. Herrera  
Deputy City Attorney

Approved:

Fred V. Abadi  
Fred V. Abadi, Ph.D.,  
Director of Public Works

Approved:

Edwin M. Lee  
Edwin M. Lee, City Administrator

Approved:

Naomi K. Kaur  
Naomi Kaur  
Director of Office of Contract Administration/Purchaser

CONTRACTOR

Harris & Associates, Inc.  
Name

120 Mason Circle  
Address

Concord, CA 94520-1214  
City State Zip

I have read and understood Sec. 32, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.

By Robert S. Guletz  
Signature  
Robert S. Guletz, V.P.  
Name Title

925-827-4900 x114  
Area Code Phone Number

94-2385238  
Federal Employer Number



## APPENDIX A

### SCOPE OF WORK

RFQ or RFP or PROPOSAL shall mean the City's Request For Qualifications or Proposals for professional (design) services for this Project and the (Architect's or Engineer's or Consultant's) proposal to provide such services. All requirements of the RFQ or RFP and the representations made in the (Architect's or Engineer's or Consultant's) proposal, that are not in conflict with provisions of this contract are hereby incorporated by reference and made an integral part of the contract as though fully set forth herein. With respect to any conflict or ambiguity between this Agreement and the RFQ or RFP or the proposal, this Agreement shall control except where the RFQ or RFP or the proposal refers to services not otherwise mentioned in this Agreement, then and to such extent the RFQ or RFP proposal shall control.

#### General

The consultant's responsibilities will be to advise the Department of Public Works on the interpretation of existing agreements, the determination of reimbursable expenses, the setting of cost allocation and acquisition reimbursement protocols, and the review of reimbursement requests and recommendation of payments.

#### Task Description

1. Review and interpret existing agreements between the Agency and Developer to identify all costs that CFD No. 4 & No. 6 is obligated to reimburse. In areas where the agreements are ambiguous or unclear, the consultant shall provide information of industry practices and/or applicable law and an assessment of the potential range of exposure.
2. Represent the Department of Public Works in meetings or negotiations to determine reimbursable expenses, define discrete acquisition facility components, set reimbursement schedules, and establish cost allocation and reimbursement protocols.
3. Review contract change orders to assess the obligation to reimburse Developer for costs for changes.
4. Review acquisition reimbursement applications to verify consistency with agreements and negotiated protocols; review and verify payroll records, invoices and other documentation submitted in support of acquisition reimbursement applications; and represent the Department of Public Works in negotiations of acquisition reimbursement applications with Developer.



APPENDIX B

CALCULATION OF CHARGES

Harris & Associates, Inc.  
Schedule of Hourly rates

Project Director / Project Advisor.....	\$250 / hour
Project Manager.....	\$200 / hour
Deputy Project Manager.....	\$190 / hour
Project Engineer.....	\$110 - \$170 / hour
Construction Manager.....	\$110 - \$170 / hour
Project Analyst / Jr. Project Engineer.....	\$81.50 - \$96.50 / hour
Project Technician.....	\$66.50 - \$76.50 / hour
Administrative Staff.....	\$66.50 / hour

All Hourly rates include indirect expenses (such as mileage, equipment usage, duplicating and postage.)



Infrastructure Task Force

November 14, 2016

Edwin M. Lee  
Mayor

Mohammed Nuru  
Director

Jerry Sanguinetti  
Manager

Street Use and Mapping  
1155 Market St., 3rd floor  
San Francisco, CA 94103  
tel 415-554-5810

sfpublicworks.org  
facebook.com/sfpublicworks  
twitter.com/sfpublicworks

Angela Calvillo, Clerk of the Board  
Board of Supervisors  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, CA 94102

RE: Agreement Amendment – Harris & Associates, Inc.  
Extending Term to May 11, 2020 at No Additional Cost

Dear Ms. Calvillo:

Attached please find one (1) original and four (4) copies of the Resolution for Board of Supervisors approval which will approve the Fifth Amendment to the Agreement between the City and County of San Francisco and Harris & Associates, Inc., for financial consulting in acquisition reimbursement and cost allocations in conjunction with Mission Bay Development.

I respectfully request that this Acceptance be put on the agenda for the next available meeting. Please feel free to contact me if you have any questions regarding this matter.

Sincerely,

Barbara L. Moy  
Manager, Infrastructure Task Force  
San Francisco Public Works  
[barbara.moy@sfdpw.org](mailto:barbara.moy@sfdpw.org)  
415-558-4050

Attachments

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
2016 NOV 14 AM 11:13  
BY