

1 [Design Professional Services Agreement - Mark Cavagnero Associates - Water Enterprise  
 2 City Distribution Division Facilities - 2000 Marin Street - \$27,800,000 - Grant of Exemption to  
 Behested Payment Prohibition in Campaign and Governmental Conduct Code]

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 4 **Ordinance approving a Design Professional Services Agreement with Mark Cavagnero**  
 5 **Associates for the new San Francisco Public Utilities Commission (SFPUC) Water**  
 6 **Enterprise City Distribution Division facilities at 2000 Marin Street for a total cost not to**  
 7 **exceed \$27,800,000 with a term of five years; exempting San Francisco officers and**  
 8 **employees from the prohibition on behested payments in the Campaign and**  
 9 **Governmental Conduct Code, for any involvement regarding the Social Impact**  
 10 **Partnership (SIP) program obligations included in the Agreement; and authorizing the**  
 11 **SFPUC to include its SIP program in the Agreement notwithstanding that prohibition.**

12 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.  
 13 **Additions to Codes** are in *single-underline italics Times New Roman font*.  
 14 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.  
 15 **Board amendment additions** are in double-underlined Arial font.  
 16 **Board amendment deletions** are in ~~strikethrough Arial font~~.  
 17 **Asterisks (\* \* \* \*)** indicate the omission of unchanged Code  
 subsections or parts of tables.

18 Be it ordained by the People of the City and County of San Francisco:

19 Section 1. Background and Findings.

20 (a) The San Francisco Public Utilities Commission (SFPUC) is constructing new  
 21 facilities for the Water Enterprise's City Distribution Division (CDD) at 2000 Marin Street in San  
 22 Francisco.

23 (b) CDD operates and maintains the entire water distribution system within the City  
 24 and County of San Francisco. The current CDD campus located at 1990 Newcomb Avenue  
 25 has served as CDD's main facilities for almost six decades. Due to the exponential growth of

1 service demands over the decades and challenges with maintaining operations at a facility  
2 that has exceeded its useful life, there is an acute need for the design and construction of a  
3 new headquarters to alleviate overcrowding, address building code and safety issues,  
4 eliminate inefficiencies, and accommodate CDD's current and future operational needs.

5 (c) The SFPUC seeks to retain a qualified firm to provide architectural, engineering,  
6 and consulting services to design the new CDD facilities under Agreement No. PRO.0232 (the  
7 Agreement).

8 (d) The design services have an estimated duration of five years. Funds for the  
9 Agreement will be available for individual task order awards from Project Number 21396-New  
10 CDD Headquarters at 2000 Marin. The Water Enterprise Capital Improvement Program will  
11 fund the Agreement.

12 (e) SFPUC has a longstanding Community Benefits program to address the  
13 negative impacts of SFPUC operations on San Francisco residents and businesses. A  
14 component of the Community Benefits program is the Social Impact Partnership (SIP)  
15 program. Under the SIP, proposers competing for certain SFPUC contracts may submit a plan  
16 to donate money and/or time to community-based organizations; the plan is evaluated and  
17 scored as part of the competitive process and becomes an obligation under an awarded  
18 contract.

19 (f) On September 17, 2021, SFPUC published a Request For Proposals for  
20 PRO.0232 that included the SIP program. On October 14, 2021, SFPUC accepted proposals  
21 that included SIP proposals. SFPUC staff and Contract Monitoring Division (CMD) review of  
22 the selection panel's evaluation of the proposals and interviews resulted in the establishment  
23 of Mark Cavagnero Associates (MCA) as the only responsive and qualified proposer. CMD  
24 established a 13% Local Business Enterprise (LBE) subconsultant participation requirement  
25 for the Agreement, and MCA committed to LBE subconsultant participation of 32.45%.

1 (g) In December, 2021, the City enacted Ordinance No. 232-21 (File No. 201132)  
2 prohibiting City officials from soliciting behested payments from interested parties as defined  
3 in that legislation (the “New Behested Payment Ordinance”). Under the New Behested  
4 Payment Ordinance, a proposer seeking an SFPUC contract in a competitive selection  
5 process is an “interested party” and City officials may not solicit any donation from a proposer,  
6 including donations made under the SIP program. The effective date of the New Behested  
7 Payment Ordinance was January 23, 2022.

8 (h) On February 22, 2022, the SFPUC awarded Agreement No. PRO.0232 to MCA,  
9 with the express condition that the SIP program provisions of the Agreement would be subject  
10 to the Board of Supervisors granting an exemption by ordinance to the New Behested  
11 Payment Ordinance, and subject to Board of Supervisors approval under Charter Section  
12 9.118.

13 (i) As its SIP commitments under the Agreement, MCA voluntarily committed to  
14 delivering \$51,000 in direct financial contributions for paid internships providing exposure to  
15 the engineering field for Southeast residents, supplying 1,153 volunteer hours for pro bono  
16 architectural, engineering, and consulting services for Bayview Hunters Point Community  
17 Advocates (which MCA’s proposal states is a non-profit organization that promotes  
18 environmental justice and community health for Southeast neighborhoods), supporting test  
19 fitting studies of a proposed community-owned co-op grocery store, and educating San  
20 Francisco students about the environmental and building design fields.

21 (j) SFPUC seeks an exemption for City officers and employees from the New  
22 Behested Payment Ordinance for their involvement in the SFPUC SIP program contract  
23 obligations or SIP contributions made through Agreement No. PRO.0232. SFPUC received  
24 proposals for Agreement No. PRO.0232 before the enactment or the effective date of the New  
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1 Behested Payment Ordinance, but conditionally awarded the Agreement after the effective  
2 date.

3 (k) The Agreement does not fall within the definition of a “project” under the  
4 California Environmental Quality Act (CEQA) Guidelines Section 15378 because work under  
5 the agreement will consist of design and support services only, and no support during Start-  
6 up, Construction, and Closeout services will be initiated under this contract until CEQA review  
7 is complete and until the SFPUC has reviewed and considered the CEQA determination and  
8 has approved the project. Approval of individual task orders under this contract for activities  
9 such as geotechnical investigations would require compliance with CEQA prior to initiation of  
10 ground-disturbing activities.

11 Section 2. Authorization of the Agreement. The Board of Supervisors approves  
12 SFPUC Agreement No. PRO.0232 under Charter Section 9.118, and authorizes the General  
13 Manager of the San Francisco Public Utilities Commission to execute the agreement with  
14 Mark Cavagnero Associates in an amount not to exceed \$27,800,000 and with a term of five  
15 years for design services for the New City Distribution Division Campus at 2000 Marin Street.

16 Section 3. Exemption from New Behested Payment Ordinance. Notwithstanding the  
17 restrictions in Campaign and Governmental Conduct Code Sections 3.600, *et seq.*, that would  
18 otherwise apply, the Board of Supervisors authorizes City officers and employees to include,  
19 execute, administer, and enforce the Social Impact Partnership program provisions in  
20 Agreement No. PRO.0232, without any potential personal liability for their involvement, and  
21 authorizes the San Francisco Public Utilities Commission to include and implement the  
22 program provisions in that Agreement.

23 Section 4. Submission of Executed Contract. Within thirty days of the execution of the  
24 Agreement, the General Manager of the San Francisco Public Utilities Commission shall  
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1 provide the signed contract to the Clerk of the Board of Supervisors for inclusion in the official  
2 file.

3 Section 5. Effective Date. This ordinance shall become effective 30 days after  
4 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
5 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
6 of Supervisors overrides the Mayor's veto of the ordinance.

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8 APPROVED AS TO FORM:  
9 DAVID CHIU, City Attorney

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10 By:  /s/ \_\_\_\_\_  
11 SHERYL L. BREGMAN  
Deputy City Attorney

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