

**City and County of San Francisco
525 Golden Gate Avenue
San Francisco, CA 94102**

First Amendment

PUC.PRO.0120

Engineering Services for Sunol Valley Water Treatment Plant Ozonation

THIS **FIRST** AMENDMENT (“Amendment”) is made as of **November 26, 2024**, in San Francisco, California, by and between **CDM Smith, Inc.** (“Contractor”), and the City and County of San Francisco, a municipal corporation (“City”).

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 performance period, increase the contract amount, and update the standard terms; and

WHEREAS, San Francisco Public Utilities Commission (SFPUC) competitively selected Contractor pursuant to a Request for Proposals entitled Engineering Services for Sunol Valley Water Treatment Plant Ozonation, issued through Sourcing Event ID PUC.PRO.0120, with an Effective Date of February 20, 2020, and this Amendment is consistent with the terms of the RFP and the awarded Contract; and

WHEREAS, this Agreement is in support of the construction project under contract WD-2897, and an extra one-year extension is required beyond the option period provided in the original Agreement due to unanticipated delays in commencement of this related construction project.

WHEREAS, this is a contract for Services, there is a Local Business Enterprise (“LBE”) subcontracting participation requirement, and this Amendment is consistent with that requirement; and

WHEREAS, this Amendment is consistent with an approval obtained on April 1, 2024 from the Civil Service Commission under PSC number DHRPSC0002001 in the amount of \$38,000,000 for the period of ten (10) years and thirteen (13) weeks; and

WHEREAS, this Amendment is consistent with an approval obtained from City’s San Francisco Public Utilities Commission under 25-0009 approved on January 14, 2025 in the amount of \$24,600,000; and

WHEREAS, this Amendment is consistent with an approval obtained from the City’s [Board of Supervisors] under [insert resolution number] approved on [insert date of Commission or Board action] in the amount of [insert Dollar Amount] for the period commencing [Insert Start Date] and ending [Insert End Date]; and

Now, THEREFORE, the parties agree as follows:

Article 1 Definitions

The following definitions shall apply to this Amendment:

1.1 **Agreement.** The term “Agreement” shall mean the Agreement dated February 5, 2020 between Contractor and City.

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

Article 2 Modifications of Scope to the Agreement

The Agreement is hereby modified as follows:

2.1 Terms of the Agreement. **Section 2.1** of the Agreement currently reads as follows:

The term of this Agreement shall commence on the later of (i) February 10, 2020; or (ii) the Effective Date and expire on February 10, 2026, unless earlier terminated as otherwise provided herein.

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

The term of this Agreement shall commence on the February 20, 2020 and expire on February 20, 2030, unless earlier terminated as otherwise provided herein.

2.2 Terms of the Agreement. **Section 2.2** of the Agreement currently reads as follows:

The City has an option to renew the Agreement for three (3) additional years, for a total term of up to nine (9) years. The City may extend this Agreement beyond the expiration date by exercising an option at the City’s sole and absolute discretion and by modifying this Agreement as provided in Section 11.5, “Modification of this Agreement.”

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

Reserved.

2.3 Payment. **Section 3.3.1** of the Agreement currently reads as follows:

Contractor shall provide an invoice to the City on a monthly basis for Services completed in the immediate preceding month, unless a different schedule is set out in Appendix B, "Calculation of Charges." Compensation shall be made for Services identified in the invoice that the General Manager of the SFPUC, in his or her sole discretion, concludes has been satisfactorily performed. Payment shall be made within 30 calendar days of receipt of the invoice, unless the City notifies the Contractor that a dispute as to the invoice exists. In no event shall the amount of this Agreement exceed fifteen million dollars and no pennies (\$15,000,000.00). The breakdown of charges associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. A portion of payment may be withheld until conclusion of the Agreement if agreed to by both parties as retainage, described in Appendix B. In no event shall City be liable for interest or late charges for any late payments.

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

Contractor shall provide an invoice to the City on a monthly basis for Services completed in the immediate preceding month, unless a different schedule is set out in Appendix B, "Calculation of Charges." Compensation shall be made for Services identified in the invoice that the General Manager of the SFPUC, in his or her sole discretion, concludes has been satisfactorily performed. Payment shall be made within 30 calendar days of receipt of the invoice, unless the City notifies the Contractor that a dispute as to the invoice exists. In no event shall the amount of this Agreement exceed twenty-four million dollars six hundred thousand dollars and no pennies (**\$24,600,000.00**). The breakdown of charges associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. A portion of payment may be withheld until conclusion of the Agreement if agreed to by both parties as retainage, described in Appendix B. In no event shall City be liable for interest or late charges for any late payments.

2.4 Community Benefits Commitments. **Appendix A Section 1.5(3)** of the Agreement currently reads as follows:

Contractor shall provide \$96,000 in direct financial contributions, \$72,000 in volunteer hours, and \$19,500 in in-kind contributions. Contractor commits to a minimum contribution of \$187,500 over the term of this Agreement as stated in the Community Benefits Summary Table on the following page

Community Benefits Summary Table

Community Benefit Priority Area	Description of Community Benefit Program Area or Partner	Expected Outcomes	Timetable & Duration	Direct Financial Contribution	(B) Volunteer Hours	(C) Volunteer Hourly Rate (rate is standardized and cannot be changed)	(D) Total Value of Volunteer Hours (B x C)	(E) In-Kind Contributions	(F) Total Contributions (A + D + E)
Workforce Development	Fellowship Program for STEM Teachers (Ignited or other program)	<ul style="list-style-type: none"> - Enhance teacher confidence and enthusiasm by providing opportunities for teachers to gain real-world experience learning from and working with professionals in STEM fields - Improve teacher efficacy and student academic performance - Increase student engagement and long-term career potential in STEM careers for youth from communities such as Sunol, Hayward, Fremont, Union City, and Newark 	4 fellowships during the contract period estimated to be a six-year term	\$64,000	0 hrs	\$150/hr	\$0	\$15,000	\$79,500
Education	Alameda County Resource Conservation District	<ul style="list-style-type: none"> - Improve opportunities to learn about the principles of the working landscape, conservation and enhancement, and the local agricultural heritage of Alameda County - Provide hands-on educational opportunities for school children on topics related to the Alameda Creek Watershed, the water system, and sustainable agriculture 	Throughout full contract period estimated to be a six-year term	\$32,000	240 hrs	\$150/hr	\$36,000	\$2,000	\$70,000
	Engineers Alliance for the Arts	<ul style="list-style-type: none"> - Inspire students to pursue careers in the structural engineering and technical professions, and gain an understanding of the importance of creativity and aesthetics by teaching engineering and architectural skills in local classrooms within Alameda County 							
	Sunol Glen Unified School District or other area schools	<ul style="list-style-type: none"> - Introduce K through 8th grade school students to STEM through hands-on learning activities and real-life examples 							
Environmental Justice Programs	Volunteer labor and materials to support disadvantaged communities	<ul style="list-style-type: none"> - Improve environmental or health conditions and promote environmental stewardship in disadvantaged communities through activities such as trash removal, tree planting, invasive plant removal, or education in the communities of Sunol, Hayward, Fremont, Union City, or Newark 	Throughout full contract period estimated to be a six-year term		240 hrs.	\$150/hr	\$36,000	\$2,000	\$38,000
TOTAL				\$96,000	480 hrs	\$150/hr.	\$72,000	\$19,500	\$187,500

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

Contractor shall provide \$31,980 in direct financial contributions and \$118,080 in volunteer hours. Contractor commits to a minimum total contribution of \$307,500 over the term of the Agreement as stated in Contractor’s Community Benefits (CB) or Social Impact Partnership (SIP) Proposal Response Form and the Social Impact Partnership Commitments Table below.

SIP Program Area	Direct Financial Contributions	Volunteer Hours	Value of Volunteer Hours (Fixed Rate \$150/h)	In Kind	Total Contribution
Job Exposure, Training, and Internships	\$104,960.00	0.00	\$0.00	\$25,420.00	\$130,380.00
Small Business Support	\$0.00	0.00	\$0.00	\$0.00	\$0.00
Public Education	\$52,480.00	393.60	\$59,040.00	\$3,280.00	\$114,800.00
Environment and Community Health	\$0.00	393.60	\$59,040.00	\$3,280.00	\$62,320.00
TOTOL COMMITMENTS					\$307,500.00

If the SFPUC modifies or amends the Agreement with resulting increase to the total value of the Agreement, Contractor shall propose an increase to its SIP Commitment. Such increase shall be (1) proportional to the increase in contract value under the amendment(s) or modification(s) and (2) consistent with San Francisco Administrative Code Section 21F.4, and not increase the costs for delivery of the SIP Commitments to the SFPUC.

Article 3 Updates of Standard Terms to the Agreement

The Agreement is hereby modified as follows:

3.1 Section 10.15 Public Access to Nonprofit Records and Meetings. *Section 10.15 of the Agreement is replaced in its entirety to read as follows:*

10.15. Nonprofit Contractor Requirements.

10.15.1. Good Standing. If Contractor is a nonprofit organization, Contractor represents that it is in good standing with the California Attorney General’s Registry of Charitable Trusts and will remain in good standing during the term of this Agreement. Contractor shall immediately notify City of any change in its eligibility to perform under the Agreement. Upon City’s request, Contractor shall provide documentation

demonstrating its compliance with applicable legal requirements. If Contractor will use any subcontractors to perform the Agreement, Contractor is responsible for ensuring they are also in compliance with the California Attorney General’s Registry of Charitable Trusts for the duration of the Agreement. Any failure by Contractor or its subcontractors to remain in good standing with applicable requirements shall be a material breach of this Agreement.

10.15.2. Public Access to Nonprofit Records and Meetings. If Contractor is a nonprofit organization; provides Services that do not include services or benefits to City employees (and/or to their family members, dependents, or their other designated beneficiaries); and receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds, Contractor must comply with the City’s Public Access to Nonprofit Records and Meetings requirements, as set forth in Chapter 12L of the San Francisco Administrative Code, including the remedies provided therein.

3.2 **Section 4.2 Personnel.** *Section 4.2 of the Agreement is replaced in its entirety to read as follows:*

4.2 Qualified Personnel. Contractor represents and warrants that it is qualified to perform the Services required by City, and that all Services will be performed by competent personnel with the degree of skill and care required by current and sound professional procedures and practices. Contractor will comply with City’s reasonable requests regarding assignment and/or removal of personnel, but all personnel, including those assigned at City’s request, must be supervised by Contractor. Contractor shall commit sufficient resources for timely completion within the project schedule

3.3 **Section 4.5 Assignment.** *Section 4.5 of the Agreement is replaced in its entirety to read as follows:*

4.5 Assignment. Services to be performed by Contractor are personal in character. This Agreement may not be directly or indirectly assigned, novated, or otherwise transferred unless first approved by City by written instrument executed and approved in the same manner as this Agreement. Any purported assignment made in violation of this provision shall be null and void.

3.4 **Article 13 Data and Security.** *Article 13 of the Agreement is replaced in its entirety to read as follows:*

13.1 Nondisclosure of Private, Proprietary or Confidential Information.

13.1.1 Protection of Private Information. If this Agreement requires City to disclose “Private Information” to Contractor within the meaning of San Francisco Administrative Code Chapter 12M, Contractor and subcontractor shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the Services. Contractor is subject to the enforcement and penalty provisions in Chapter 12M.

13.1.2 City Data; Confidential Information. In the performance of Services, Contractor may have access to, or collect on City’s behalf, City Data, which may include proprietary or Confidential Information that if disclosed to third parties may damage City. If City discloses proprietary or Confidential Information to Contractor, or Contractor collects such information on City’s behalf, such information must be held by Contractor in confidence and

used only in performing 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 or Confidential Information.

13.2 Reserved.

13.3 Reserved.

13.4 Management of City Data.

13.4.1 Use of City Data. Contractor agrees to hold City Data received from, or created or collected on behalf of, City, in strictest confidence. Contractor shall not use or disclose City Data except as permitted or required by the Agreement or as otherwise authorized in writing by City. Any work by Contractor or its authorized subcontractors using, or sharing or storage of, City Data outside the United States is prohibited, absent prior written authorization by City. Access to City Data must be strictly controlled and limited to Contractor's staff assigned to this project on a need-to-know basis only. City Data shall not be distributed, repurposed or shared across other applications, environments, or business units of Contractor. Contractor is provided a limited non-exclusive license to use City Data solely for performing its obligations under the Agreement and not for Contractor's own purposes or later use. Nothing herein shall be construed to confer any license or right to City Data, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third-party. Unauthorized use of City Data by Contractor, subcontractors or other third-parties is prohibited. For purpose of this requirement, the phrase "unauthorized use" means the data mining or processing of data, stored or transmitted by the service, for commercial purposes, advertising or advertising-related purposes, or for any purpose other than security or service delivery analysis that is not explicitly authorized.

13.4.2 Disposition of City Data. Upon request of City or termination or expiration of this Agreement, Contractor shall promptly, but in no event later than thirty (30) calendar days, return all City Data given to, or collected or created by Contractor on City's behalf, which includes all original media. Once Contractor has received written confirmation from City that City Data has been successfully transferred to City, Contractor shall within ten (10) business days clear or purge all City Data from its servers, any hosted environment Contractor has used in performance of this Agreement, including its subcontractor's environment(s), work stations that were used to process the data or for production of the data, and any other work files stored by Contractor in whatever medium. Contractor shall provide City with written certification that such purge occurred within five (5) business days of the purge. Secure disposal shall be accomplished by "clearing," "purging" or "physical destruction," in accordance with National Institute of Standards and Technology (NIST) Special Publication 800-88 or most current industry standard.

13.5. Ownership of City Data. The Parties agree that as between them, all rights, including all intellectual property rights, in and to City Data and any derivative works of City Data is the exclusive property of City.

13.6 Loss or Unauthorized Access to City's Data; Security Breach Notification. Contractor shall comply with all applicable laws that require the notification to individuals in the event of unauthorized release of PII, PHI, or other event requiring notification. Contractor shall notify City of any actual or potential exposure or misappropriation of City Data (any "Leak") within

twenty-four (24) hours of the discovery of such, but within twelve (12) hours if the Data Leak involved PII or PHI. Contractor, at its own expense, will reasonably cooperate with City and law enforcement authorities to investigate any such Leak and to notify injured or potentially injured parties. The remedies and obligations set forth in this subsection are in addition to any other City may have. City shall conduct all media communications related to such Leak.

Article 4 Effective Date

Each of the modifications set forth in Articles 2 and 3 shall be effective on and after the date of this Amendment.

Article 5 Legal Effect

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

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

CITY
Recommended by:

Dennis J. Herrera
General Manager
San Francisco Public Utilities Commission

Approved as to Form:

David Chiu
City Attorney

By: _____
Tyson Arbuthnot
Deputy City Attorney

CONTRACTOR
CDM Smith, Inc.

Servando Molina, PE
Senior Vice President
2300 Clayton Road, Suite 950
Concord, CA 94520

City Supplier number: 0000023206

