

# 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. Moy  
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***