

**City and County of San Francisco  
San Francisco Public Utilities Commission  
Contract Administration Bureau  
525 Golden Gate Ave, 8<sup>th</sup> Floor  
San Francisco, CA 94102**

**Third Amendment between City and County of San Francisco and  
Hatch Mott MacDonald for  
Construction Management Services New Irvington Tunnel Project  
(CS-918)**

THIS AMENDMENT (this “Amendment”) is made as of **January \_\_, 2016**, in San Francisco, California, by and between **Hatch Mott MacDonald** (“Contractor”), and the City and County of San Francisco, a municipal corporation (“City”), acting by and through its San Francisco Public Utilities Commission.

**RECITALS**

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

WHEREAS, Approval for this Amendment was obtained when the Civil Service Commission approved **via the Department of Human Resources** Contract number **4103-08/09** on **Month \_\_, 2016**; and

WHEREAS, Approval for this Amendment was obtained when the San Francisco Public Utilities Commission approved Resolution number **15-0262** on **December 8, 2015**; subject to approval by the Board of Supervisors under Charter section 9.118, and authorized the General Manager to execute this Agreement upon Board approval; and

WHEREAS, Approval for this Amendment was obtained when the San Francisco Board of Supervisors approved Resolution number **###-##** on **January \_\_, 2016**.

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 1, 2009** between Contractor and City, as amended by the First Amendment, dated **October 15, 2011**, and the Second Amendment, dated **April 14, 2015**.

**1b. 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 2.** Section 2 (“Term of the Agreement”) of the Agreement currently reads as follows:

Subject to Section 1, the term of this Agreement shall be from **August 1, 2009 to July 31, 2016.**

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

Subject to Section 1, the term of this Agreement shall be from **August 1, 2009 to October 31, 2016.**

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

Compensation shall be made in monthly payments on or before the thirtieth day of each month for work, as set forth in Section 4 of this Agreement that the General Manager of the Public Utilities Commission in his or her sole discretion, concludes has been adequately performed as of the last day of the immediately preceding month. In no event shall the amount of this Agreement exceed **Nineteen Million Five Hundred Thousand Dollars (\$19,500,000)**. The breakdown of costs associated with this Agreement appears in Appendix B, “Calculation of Charges,” attached hereto and incorporated by reference as though fully set forth herein. As part of this contract Task Orders will be prepared in accordance with Appendix A, Section 2. Task Orders will identify a detailed project scope, sub tasks, staffing plan, LBE utilization, schedule, deliverables, budget and costs to complete the task. Each Task Order shall identify the entire amount to which the Contractor shall be entitled to fully perform and deliver to the City all work identified in that Task Order.

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

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

The Controller is not authorized to pay invoices submitted by Contractor prior to Contractor’s submission of CMD Progress Payment Form. If Progress Payment Form is not submitted with Contractor’s invoice, the Controller will notify the department, the Director of CMD and Contractor of the omission. If Contractor’s failure to provide CMD Progress Payment

Form is not explained to the Controller's satisfaction, the Controller will withhold 20% of the payment due pursuant to that invoice until CMD Progress Payment Form is provided.

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

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

Compensation shall be made in monthly payments on or before the thirtieth day of each month for work, as set forth in Section 4 of this Agreement that the General Manager of the Public Utilities Commission in his or her sole discretion, concludes has been adequately performed as of the last day of the immediately preceding month. In no event shall the amount of this Agreement exceed **Twenty Million Five Hundred Thousand Dollars (\$20,500,000)**. The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. As part of this contract Task Orders will be prepared in accordance with Appendix A, Section 2. Task Orders will identify a detailed project scope, sub tasks, staffing plan, LBE utilization, schedule, deliverables, budget and costs to complete the task. Each Task Order shall identify the entire amount to which the Contractor shall be entitled to fully perform and deliver to the City all work identified in that Task Order.

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

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

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

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

**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.

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

**CITY**

**CONTRACTOR**

Recommended by:

Hatch Mott MacDonald

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

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

\_\_\_\_\_  
Title

City vendor number: 66089

Approved as to Form:

Dennis J. Herrera  
City Attorney

By: \_\_\_\_\_  
**Name of Deputy City Attorney**  
Deputy City Attorney