



San Francisco
Water Power Sewer

Services of the San Francisco Public Utilities Commission

Contract Administration Bureau
1155 Market Street, 9th Floor
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January 26, 2012

Joel A. Faller, P.E.
Kennedy/Jenks Consultants
303 2nd Street, #300 South
San Francisco, CA 94107

RE: 1) Notice of Contract Amendment Certification – **Engineering Design Services (CS-879.C)**
2) Transmittal – Executed Agreement #2 between the City and County of San Francisco Public Utilities Commission and **Kennedy/Jenks Consultants**

Dear Joel A. Faller,

This letter provides a *notification of amendment certification* for an INCREASE in contract value for the following contracted work:

BLANKET PURCHASE ORDER NO: **BPUC08000093** – *Work may not be charged against this blanket purchase order number*

SCOPE: To provide Engineering Project Design Services.

EFFECTIVE DATE: **December 6, 2007 to December 6, 2016**

CONTRACT TO DATE: Total value of contract has been increased to **\$16,500,000.00**

Should you have any questions, please do not hesitate to contact Connie Chang at (415) 554-3497.

Enclosure: Executed Amendment #2

cc: Susan Yee
File/NCAC 879.C amend 2

Edwin M. Lee
Mayor

Anson Moran
President

Art Torres
Vice President

Ann Moller Caen
Commissioner

Francesca Vietor
Commissioner

Vince Courtney
Commissioner

Ed Harrington
General Manager



**City and County of San Francisco
San Francisco Public Utilities Commission
Contract Administration Bureau
1155 Market Street, 9th Floor
San Francisco, California 94103**

**Second Amendment between the City and County of San Francisco
(through the San Francisco Public Utilities Commission)
and
Kennedy/Jenks Consultants
CS-879C**

THIS AMENDMENT (this "Amendment") is made as of **October 15, 2011**, in San Francisco, California, by and between **Kennedy Jenks Consultants** ("Contractor"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through the San Francisco Public Utilities Commission.

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 increase the Agreement not-to-exceed amount, update standard contractual clauses, and make technical and conforming corrections to Appendices A and B of the Agreement;

WHEREAS, on July 12, 2011, per Resolution No. 11-0128, the San Francisco Public Utilities Commission approved Amendment No. 2 to Agreement No. CS-879C, increasing the Agreement not-to-exceed amount by \$2,700,000 from \$13,800,000 to \$16,500,000.

WHEREAS, On October 11, 2011, approval for this Amendment was obtained from the Board of Supervisors, per Resolution 420-11;

NOW, THEREFORE, Contractor and the City agree as follows:

1. Definitions. The following definitions shall apply to this Amendment:

a. Agreement. The term "Agreement" shall mean Agreement No. CS-879C, dated **October 9, 2007**, between Contractor and City, as amended by the **First Amendment**, dated October 20, 2009.

b. 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 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 **Thirteen Million Eight Hundred Thousand Dollars (\$13,800,000)**. The breakdown of costs associated with this Agreement appears in Appendix B-1, "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 the 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 HRC Progress Payment Form. If Progress Payment Form is not submitted with Contractor's invoice, the Controller will notify the department, the Director of HRC and Contractor of the Commission. If Contractor's failure to provide HRC 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 HRC Progress Payment Form is provided.

Following City's payment of an invoice, Contractor has ten days to file an affidavit using HRC 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 **Sixteen Million Five Hundred Thousand Dollars (\$16,500,000)**. The

breakdown of costs associated with this Agreement appears in Appendix B-1, "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.

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

2b. Submitting False Claims; Monetary Penalties. Section 8 is hereby replaced in its entirety to read as follows:

8. Submitting False Claims; Remedies.

Pursuant to Article V of Chapter 6 of the San Francisco Administrative Code, any contractor, subcontractor, supplier, consultant or subconsultant who submits a false claim may be subject to monetary penalties, investigation and prosecution and may be declared an irresponsible bidder or an unqualified consultant and debarred as set forth in that Article. The text of Article V of Chapter 6, along with the entire San Francisco Administrative Code is available on the web at http://www.amlegal.com/nxt/gateway.dll?f=templates&fn=default.htm&vid=amlegal:sanfrancisco_ca. A contractor, subcontractor, supplier, consultant or sub consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor, supplier, consultant or subconsultant: (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; or (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.

2c. Indemnification. Section 16 of the Agreement is hereby amended in its entirety to read as follows:

a. General. To the fullest extent permitted by law, Contractor shall assume the defense of (with legal counsel subject to approval of the City), indemnify and save harmless the City, its boards, commissions, officers, and employees (collectively "Indemnitees"), from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of the Contractor or its subconsultants), expense and liability of every kind, nature, and description (including, without limitation, incidental and consequential damages, court costs, attorneys' fees, litigation expenses, fees of expert consultants or witnesses in litigation, and costs of investigation), that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of the Contractor, any subconsultant, anyone directly or indirectly employed by them, or anyone that they control (collectively, "Liabilities").

b. Limitations. No insurance policy covering the Contractor's performance under this Agreement shall operate to limit the Contractor's Liabilities under this provision. Nor shall the amount of insurance coverage operate to limit the extent of such Liabilities. The Contractor assumes no liability whatsoever for the sole negligence, active negligence, or willful misconduct of any Indemnitee or the contractors of any Indemnitee.

c. The Contractor's indemnification obligations of 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 extent of the Contractor's negligence or other breach of duty.

d. Copyright infringement. Contractor shall also indemnify, defend and hold harmless all Indemnitees from all suits or claims for infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark, or any other proprietary right of any person or persons in consequence of the use by the City, or any of its boards, commissions, officers, or employees of articles or services to be supplied in the performance of Contractor's services under this Agreement. Infringement of patent rights, copyrights, or other proprietary rights in the performance of this Agreement, if not the basis for indemnification under the law, shall nevertheless be considered a material breach of contract.

2d. Requiring Health Benefits for Covered Employees. Section 44 is hereby replaced in its entirety to read as follows:

44. Requiring Health Benefits for Covered Employees.

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. 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.

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

l. 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.

2e. Appendix A, Services to be Provided by Contractor. The introductory paragraph of Appendix A currently reads as follows:

Contractor agrees to perform said services all in accordance with the terms of this Agreement.

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

Contractor agrees to perform services under this Agreement in accordance with the terms of this Agreement, the Request for Proposals for CS-879 dated August 3, 2007 ("RFP"), and its proposal dated August 28, 2007. The RFP and Contractor's proposal are incorporated by reference into this Agreement as though fully set forth herein. In the event of an inconsistency or conflict between the RFP and Contractor's proposal, the RFP shall

take precedence. This Agreement shall take precedence over the RFP and Contractor's proposal.

2f. Appendix A, Services to be Provided by Contractor, Section 1. Section 1 of Appendix A, Description of Services, currently reads as follows:

Contractor agrees to perform the following services: Engineering Project Design Services

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

Contractor agrees to perform the following services: Engineering Project Design Services, as set forth in Paragraph 4, below, for the Water System Improvement Program ("WSIP") projects identified in the RFP.

2g. Appendix A, Services to be Provided by Contractor, Section 4. The third paragraph of Section 4 of Appendix A, Task Orders, currently reads as follows:

The primary role of the prime contractor will be to provide qualified individuals to assist in the performance of the following scope of services:

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

This primary role of the prime contractor will be to provide qualified individuals to assist in the performance of the following scope of services for WSIP projects identified in the RFP:

2h. Appendix A, Services to be Provided by Contractor, Section 4. The last paragraph of Section 4 of Appendix A, Task Orders, currently reads as follows:

Project work will be assigned at the SFPUC's sole discretion. Contractor will be eligible for the award of Task Order work, but will not be guaranteed either the award of work for the not-to-exceed value of \$9 million dollars or the award of any minimum amount of work.

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

Project work will be assigned at the SFPUC's sole discretion. Contractor will be eligible for the award of Task Order work, but will not be guaranteed either the award of work for the not-to-exceed amount of the Agreement or the award of any minimum amount of work.

2i. Appendix B, Calculation of Charges. Replace the third paragraph of Appendix B in its entirety so that it reads as follows:

Pursuant to Article V of Chapter 6 of the San Francisco Administrative Code, any contractor, subcontractor, supplier, consultant or subconsultant who submits a false claim may be subject to monetary penalties, investigation and prosecution and may be declared an irresponsible bidder or an unqualified consultant and debarred as set forth in that Article. The text of Article V of Chapter 6, along with the entire San Francisco

Administrative Code is available on the web at http://www.amlegal.com/nxt/gateway.dll?f=templates&fn=default.htm&vid=amlegal:sanfrancisco_ca . A contractor, subcontractor, supplier, consultant or sub consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor, supplier, consultant or subconsultant: (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; or (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.

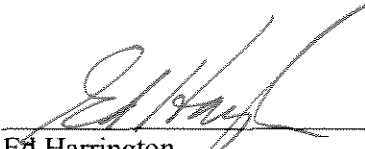
3. Effective Date. Each of the modifications set forth in Section 2 shall be effective on and after the date of this Amendment.

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.

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

CITY

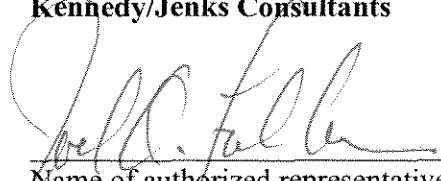
Recommended by:



Ed Harrington
General Manager
San Francisco Public Utilities Commission

CONTRACTOR

Kennedy/Jenks Consultants



Name of authorized representative
JOEL A. FALLER
VICE PRESIDENT

Title

City vendor number: 075042

Approved as to Form:

Dennis J. Herrera
City Attorney

By: 

John G. White
Deputy City Attorney