

**City and County of San Francisco
San Francisco Public Utilities Commission
525 Golden Gate Avenue, 8th Floor
San Francisco, California 94102**

**NOVATION AGREEMENT
Planning and Engineering Services
Central Bayside System Improvement Project
(CS-169)**

THIS NOVATION AGREEMENT (this "Novation") is made as of **June __, 2017**, in San Francisco, California, by and between MWH Americas, Inc. ("Transferor") and Stantec Consulting Services, Inc. ("Transferee"), and the City and County of San Francisco, a municipal corporation (the "City"), acting through its Public Utilities Commission.

RECITALS

WHEREAS, Transferor is a party to the Agreement (as defined below); and

WHEREAS, Transferor desires to transfer the Agreement, and Transferee desires to assume the Agreement, each on the terms and conditions set forth herein; and

WHEREAS, Approval for this Novation was obtained when the Public Utilities Commission approved Resolution Number **17-0066** on **April 11, 2017**; and

NOW, THEREFORE, in consideration of the promises and the mutual covenants contained in this Novation, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Transferor and Transferee agree as follows:

1. **Definitions.** The following definitions shall apply to this Novation:

(a) **Agreement.** The term "Agreement" shall mean the **February 28, 2012**, Agreement No. **CS-169** between MWH Americas, Inc. and the City and County of San Francisco, a municipal corporation. The term "Agreement" shall include any amendments or modifications set forth in Appendix A, attached hereto and made a part hereof.

(b) **Effective Date.** "Effective Date" shall mean the date of this Novation.

(c) **Other Terms.** Terms used and not defined in this Novation shall have the meanings assigned to such terms in the Agreement.

2. **The parties agree to the following facts:**

(a) The City, by and through its San Francisco Public Utilities Commission, entered into the Agreement with Transferor as defined above and attached as Appendix A and incorporated in this Novation by reference.

(b) As of January 1, 2017, the Transferor has transferred to the Transferee all the assets of the Transferor by virtue of an Agreement and Plan of Merger between the Transferor and Transferee.

(c) The Transferee has acquired all the assets of the Transferor by virtue of the above transfer.

(d) The Transferee has assumed all obligations and liabilities of the Transferor under the Agreement by virtue of the above transfer.

(e) The Transferee is in a position to fully perform all obligations that may exist under the Agreement. The City has determined that the Transferee is a responsible contractor who possesses the necessary, skill, expertise, experience, qualifications and financial fitness to perform the services according to the existing terms and conditions of the Agreement.

(f) It is consistent with the City's interest to recognize the Transferee as the successor party to the Agreement.

(g) Evidence of the above transfer has been filed with the City, including copies of the following, which are attached hereto as Appendix B:

(i) A certificate dated December 23, 2016, signed by the Department of State of the State of New York, to the effect that Transferor merged into the Transferee and the Transferee is the surviving corporation as of January 1, 2017;

(ii) A certificate of the Merger of Transferor into Transferee filed with the Secretary of State of the State of California, dated December 28, 2016;

(iii) The Agreement and Plan of Merger dated December 15, 2015; and

(iv) The Opinion of Legal Counsel for Transferee, dated January 1, 2017, opining that the merger was properly affected under applicable law as of January 1, 2017.

3. In consideration of these facts, the parties agree that by this Novation:

(a) The Transferor confirms the transfer to the Transferee, and waives any claims and rights against the City that it now has or may have in the future in connection with the Agreement.

(b) The Transferee agrees to be bound by and to perform the Agreement in accordance with the conditions contained in the Agreement. The Transferee also assumes all obligations and liabilities of, and all claims against, the Transferor under the Agreement as if the Transferee were the original party to the Agreement.

(c) The Transferee ratifies all previous actions taken by the Transferor with respect to the Agreement, with the same force and effect as if the action has been taken by the Transferee.

(d) The City recognizes the Transferee as the Transferor's successor in interest in and to the Agreement. The Transferee by this Novation becomes entitled to all rights, titles, and interests of the Transferor in and to the Agreement as if the Transferee were the original party to the Agreement. Following the Effective Date of this Novation, the term "Contractor," as used in the Agreement, shall refer to the Transferee.

(e) Except as expressly provided in this Novation, nothing in it shall be construed as a waiver of any rights of the City against the Transferor.

(f) All payments and reimbursements previously made by City to the Transferor, and all other previous actions taken by City under the Agreement, shall be considered to have discharged those parts of City's obligations under the Agreement. All payments and reimbursements made by City after the date of this Novation in the name of or to the Transferor shall have the same force and effect as if made to the Transferee, and shall constitute a complete discharge of City's obligations under the Agreement, to the extent of the amounts paid or reimbursed.

(g) The Transferor and the Transferee agree that City is not obligated to pay or reimburse either of them for, or otherwise give effect to, any costs, taxes, or other expenses, or any related increases, directly or indirectly arising out of or resulting from the transfer of this Novation, other than those that City in the absence of this transfer or Novation would have been obligated to pay or reimburse under the terms of the Agreement.

(h) The Transferor guarantees payment of all liabilities and the performance of all obligations that the Transferee:

(i) Assumes under this Novation; or

(ii) May undertake in the future should this Agreement be modified under their terms and conditions. The Transferor waives notice of, and consents to, any such future modifications.

(i) The Agreement shall remain in full force and effect, except as modified by this Novation. Each party has executed this Novation as of the day and year first above written.

4. **Governing Law.** This Novation shall be governed by the laws of the State of California, without regard to its conflict of laws principles.

5. **Headings.** All section headings and captions contained in this Novation are for reference only and shall not be considered in construing this Novation.

6. **Entire Agreement.** This Novation sets forth the entire agreement between Transferor and Transferee relating to the Agreement and supersedes all other oral or written provisions.

7. **Further Assurances.** From and after the date of this Novation, Transferor and Transferee agree to do such things, perform such acts, and make, execute, acknowledge and deliver such documents as may be reasonably necessary or proper and usual to complete the conveyance contemplated by this Novation or as may be required by City.

8. **Insurance Certificates.** For this Novation to be effective, Transferee shall provide to City insurance certificates and endorsements for the identical type and amount of coverage currently required under the Agreement.

9. **Severability.** Should the application of any provision of this Novation 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 Novation 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 Transferor, Transferee and City.

10. **Successors; Third-Party Beneficiaries.** Subject to the terms of the Agreement, this Novation shall be binding upon, and inure to the benefit of, the parties hereto and their successors and assigns. Nothing in this Novation, whether express or implied, shall be construed to give any person or entity (other than City and the parties hereto and their respective successors

and assigns) any legal or equitable right, remedy or claim under or in respect of this Novation or any covenants, conditions or provisions contained herein.

11. **Notices.** All notices, consents, directions, approvals, instructions, requests and other communications regarding this Novation and/or the Agreement shall be in writing, shall be addressed to the person and address set forth below and shall be (a) deposited in the U.S. mail, first class, certified with return receipt requested and with appropriate postage, (b) hand delivered or (c) sent via facsimile (if a facsimile number is provided below). All communications sent in accordance with this Section shall become effective on the date of receipt. From time to time Transferor or City may designate a new address for purposes of this Section by notice to the other signatories to this Novation.

If to Transferee:

Stephen Robinson
Area Manager
2121 N. California Blvd, Suite 600
Walnut Creek, CA 94596
(tel.) 925-627-4558
email: stephen.robinson@stantec.com

If to City:

Manfred Wong, Project Management Bureau
San Francisco Public Utilities Commission
525 Golden Gate Ave., 9 th Floor
San Francisco, CA 94102
(tel.) 415-551-4625
email: mwong@sfgwater.org

CITY

TRANSFEROR

MWH Americas, Inc.

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

Name

Title

Approved as to Form:

Dennis J. Herrera
City Attorney

TRANSFeree

Stantec Consulting Services, Inc.

By: _____
Julia H. Veit
Deputy City Attorney

Name

Title

City vendor number: 37212

Appendix A: Agreement and Amendments
Appendix B: Merger Documents

APPENDIX A

Agreement and Amendments

Agreement, dated February 28, 2012

APPENDIX B
Merger Documents