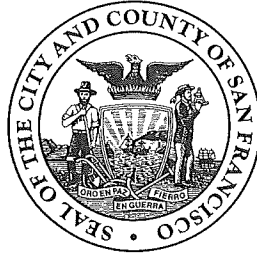


BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

BUDGET AND FINANCE COMMITTEE

SAN FRANCISCO BOARD OF SUPERVISORS

TO: Supervisor Malia Cohen, Chair
Budget and Finance Committee

FROM: Linda Wong, Assistant Clerk

DATE: December 10, 2018

SUBJECT: **COMMITTEE REPORT, BOARD MEETING**
Tuesday, December 11, 2018

The following file should be presented as a **COMMITTEE REPORT** at the Board meeting on Tuesday, December 11, 2018, at 2:00 p.m. This item was acted upon at the Committee Meeting on Thursday, December 6, 2018, at 10:00 a.m., by the votes indicated.

Item No. 55 File No. 181136

Resolution approving Amendment No. 5 to Water Enterprise, Water System Improvement Program-funded Agreement No. CS-879.C, Engineering Project Design Services, with Kennedy/Jenks Consultants, for continued engineering design and engineering services during construction for the Regional Groundwater Storage and Recovery Project and the San Francisco Groundwater Supply Project; and authorizing the General Manager to execute this amendment increasing the agreement by \$3,500,000 for a total not to exceed agreement amount of \$22,000,000 and extending the duration by three years for a total agreement duration of 15 years from December 6, 2007, through December 6, 2022, subject to the Board of Supervisors approval pursuant to Charter, Section 9.118.

RECOMMENDED AS A COMMITTEE REPORT

Vote: Supervisor Malia Cohen - Aye
Supervisor Sandra Lee Fewer - Aye
Supervisor Catherine Stefani - Aye

c: Board of Supervisors
Angela Calvillo, Clerk of the Board
Jon Givner, Deputy City Attorney
Alisa Somera, Legislative Deputy Director

File No. 181136

Committee Item No. 2

Board Item No. 55

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Committee

Date December 4, 2018

Board of Supervisors Meeting

Date December 11, 2018

Cmte Board

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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Budget and Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Introduction Form |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Department/Agency Cover Letter and/or Report |
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| <input type="checkbox"/> | <input type="checkbox"/> | Grant Information Form |
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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Form 126 – Ethics Commission |
| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
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Completed by: Linda Wong Date November 30, 2018

Completed by: Linda Wong Date December 10, 2018

1 [Contract Amendment - Kennedy/Jenks Consultants - Engineering Design and Services - Not
2 to Exceed \$22,000,000]

3 **Resolution approving Amendment No. 5 to Water Enterprise, Water System**
4 **Improvement Program-funded Agreement No. CS-879.C, Engineering Project Design**
5 **Services, with Kennedy/Jenks Consultants, for continued engineering design and**
6 **engineering services during construction for the Regional Groundwater Storage and**
7 **Recovery Project and the San Francisco Groundwater Supply Project; and authorizing**
8 **the General Manager to execute this amendment increasing the agreement by**
9 **\$3,500,000, for a total not to exceed agreement amount of \$22,000,000 and extending**
10 **the duration by three years for a total agreement duration of 15 years from December 6,**
11 **2007, through December 6, 2022, subject to the Board of Supervisors approval**
12 **pursuant to Charter, Section 9.118.**

13
14 WHEREAS, On October 9, 2007, pursuant to Resolution No. 07-0175, the San
15 Francisco Public Utilities Commission (SFPUC) awarded Water System Improvement
16 Program (WSIP)-funded Agreement No. CS-879.C, Engineering Project Design Services to
17 Kennedy/Jenks Consultants, and authorized the General Manager of the SFPUC to
18 negotiate and execute a professional services agreement in the amount of \$9,000,000 and
19 with a duration of seven years; and

20 WHEREAS, On July 28, 2009, pursuant to Resolution 09-0130, the SFPUC approved
21 Amendment No. 1 for \$4,800,000, increasing the total not-to-exceed agreement amount to
22 \$13,800,000, and with a time extension of two years, for a total contract duration of nine
23 years, in order to provide engineering services for additional scopes of work and
24 engineering support during construction; and

1 WHEREAS, The Board of Supervisors adopted Resolution No. 404-09 on October
2 20, 2009, pursuant to Charter Section 9.118, authorizing Amendment No. 1 to the
3 agreement; and

4 WHEREAS, On July 12, 2011, pursuant to Resolution No. 11-0128, the SFPUC
5 approved Amendment No. 2 for \$2,700,000, increasing the total not-to-exceed agreement
6 amount to \$16,500,000, with no change to the agreement duration, in order to provide
7 continued engineering services for support during construction due to additional scopes of
8 work; and

9 WHEREAS, The Board of Supervisors adopted Resolution No. 420-11 on October 4,
10 2011, pursuant to Charter Section 9.118, authorizing Amendment No. 2 to the agreement;
11 and

12 WHEREAS, On March 22, 2012, pursuant to the General Manager's authority
13 bestowed by the SFPUC under SFPUC Resolution No. 09-0017, the General Manager
14 approved Amendment No. 3, with no change to the total not-to-exceed amount, and with no
15 change to the agreement duration, to identify the Peninsula Pipelines Seismic Upgrade as a
16 specific project assigned to Kennedy/Jenks Consultants under the contract; and

17 WHEREAS, On June 14, 2016, pursuant to Resolution No. 16-0117, the SFPUC
18 approved Amendment No. 4 for \$2,000,000, increasing the total not-to-exceed agreement
19 amount to \$18,500,000, and with a time extension of three years, for a total agreement
20 duration of 12 years, in order to provide continued engineering design and engineering
21 services during construction for the Regional Groundwater Storage and Recovery (GSR)
22 Project and the San Francisco Groundwater Supply (SFGW) Project; and

23 WHEREAS, The Board of Supervisors adopted Resolution No. 423-16 on September
24 27, 2016, pursuant to Charter Section 9.118, authorizing Amendment No. 4 to the
25 agreement; and

1 WHEREAS, Amendment No. 5 is being requested for \$3,500,000, increasing the total
2 not-to-exceed agreement amount to \$22,000,000, and with a time extension of three years,
3 for a total agreement duration of 15 years, in order to provide continued engineering design
4 and engineering services during construction for the Regional Groundwater Storage and
5 Recovery (GSR) Project and the San Francisco Groundwater Supply (SFGW) Project; and
6 to provide fluoride compliance evaluation for the SFGW Project; and

7 WHEREAS, A Contract Monitoring Division (CMD) subconsulting requirement of 10%
8 Local Business Enterprise participation (of the total value of services to be provided) has
9 been established for this agreement; and

10 WHEREAS, Funds for this amendment are available from the Regional GSR Project
11 (CUW30103) and SFGW Project (CUW30102); now, therefore, be it

12 RESOLVED, That the Board of Supervisors hereby approves Amendment No. 5 to
13 Water Enterprise, Water System Improvement Program-funded Agreement No. CS-879.C,
14 Engineering Project Design Services, with Kennedy/Jenks Consultants, for continued
15 engineering design and engineering services during construction for the GSR Project and
16 the SFGW Project , and to provide fluoride compliance evaluation for the SFGW Project,
17 and authorizes the General Manager of the SFPUC to execute this amendment, increasing
18 the agreement by \$3,500,000, for a total agreement amount of \$22,000,000, and with a time
19 extension of three years, for a total agreement duration of 15 years from December 6, 2007,
20 through December 6, 2022, subject to Board of Supervisors approval pursuant to Charter
21 Section 9.118.

<p>Item 2 File 18-1136</p>	<p>Department: Public Utilities Commission (PUC)</p>
<p>EXECUTIVE SUMMARY</p>	
<p style="text-align: center;">Legislative Objectives</p>	
<ul style="list-style-type: none"> The proposed resolution would authorize SFPUC General Manager to execute Amendment No. 5 to the Agreement with Kennedy/Jenks for continued engineering design services to the for the Regional Groundwater Storage and Recovery Project Phase 2 and San Francisco Groundwater Supply Project. The amendment would increase the agreement by \$3,500,000 to a total amount not to exceed \$22,000,000 and extend the term by three years through December 2022, for total agreement duration of 15 years. 	
<p style="text-align: center;">Key Points</p>	
<ul style="list-style-type: none"> The Regional Groundwater Storage and Recovery Project Phase 2 and San Francisco Groundwater Supply Project Phase 2 are part of the SFPUC’s \$4.8 billion Water System Improvement Program (WSIP). Kennedy/Jenks was selected to provide engineering services to these projects through a competitive request for qualifications. The agreement between SFPUC and Kennedy/Jenks has been amended four times. 	
<p style="text-align: center;">Fiscal Impact</p>	
<ul style="list-style-type: none"> In February 2018, the SFPUC allocated supplemental funding of \$3,500,000 in the 10-Year Water Enterprise Capital Improvement Program (CIP) for both the Regional Groundwater Storage and Recovery Project (allocated through the WSIP) and the San Francisco Groundwater Project. Of the additional \$3,500,000, \$500,000 would be allocated to the San Francisco Groundwater Supply Project and \$3,000,000 to the Regional Groundwater Storage and Recovery Project. 	
<p style="text-align: center;">Policy Consideration</p>	
<ul style="list-style-type: none"> Although the agreement with Kenney/Jenks has been extended from the original 7 years to the proposed 15 years, and the agreement amount has been increased from the original amount of \$9 million to the proposed amount of \$22 million, SFPUC considers that issuing a Request for Proposals/Request for Qualifications to competitively select new engineering firms for projects that are near completion is not practical or efficient. According to SFPUC, several major factors contributed to the delays on both the Regional Groundwater Storage and Recovery Project and the San Francisco Groundwater Supply Project. First, both the design and construction of multiple well stations were complicated by addition of groundwater treatment and water quality monitoring station upgrades. The second major factor is related to startup, commissioning and testing of the well stations. The third major factor is related to the retirement of key in-house resources. Furthermore, acquisition of two proposed well sites that were identified in the original project did not materialize. In addition, there were issues related to acquisition of permanent right of way easements for access and utilities with BART, coordination with PG&E, and reduction in water demand resulting from the last drought. 	
<p style="text-align: center;">Recommendation</p>	
<ul style="list-style-type: none"> Approve the proposed resolution. 	

MANDATE STATEMENT

City Charter Section 9.118(b) states that any agreement entered into by a department, board or commission that requires a modification of more than \$500,000 is subject to Board of Supervisors approval.

BACKGROUND

The San Francisco Public Utilities Commission's (SFPUC) s Water System Improvement Program (WSIP) is a multi-year capital program to repair, replace, and seismically upgrade the Hetch Hetchy water system's aging pipelines, tunnels, pumps, tanks, reservoirs, and dams. Current total estimated costs for all WSIP projects are \$4.79 billion.

On October 9, 2007, as the result of a competitive request for qualifications process, SFPUC awarded Agreement No. CS-789.C to Kennedy/Jenks Consultants (Kennedy/Jenks) to provide as-needed engineering design services to the WSIP-funded Harry Tracy Water Treatment Plant Long-Term Improvements Project, the San Francisco Groundwater Supply Project, and the Regional Groundwater Storage and Recovery Project.

- Harry Tracy Water Treatment Plant Long-Term Improvements Project: This project increased the treatment plant sustainable capacity and provided seismic reliability following a major seismic event. This project was completed in 2014.
- San Francisco Groundwater Supply Project: This project includes all facilities required to produce and deliver groundwater from the Westside Basin in San Francisco to the existing Sunset and Sutro reservoirs. The first phase included four new groundwater well stations. The second phase includes improvements of two irrigation well stations in Golden Gate Park, which would be converted to potable use when recycled water is available to replace irrigation needs. This project is forecast to be completed by March 2021.
- Regional Groundwater Storage and Recovery Project: The original scope of the project includes the construction of up to 16 groundwater wells and well stations to be used as a regional dry-year water supply. Phase 1 includes the construction of 13 well stations, and the original scope of Phase 2 includes the construction of 2 additional well stations in the San Bruno area. The modified scope of Phase 2 (approved in April 2018) includes the construction of up to three test wells. The groundwater production wells will be connected to three wholesale customer water systems on the Upper Peninsula (the Cities of Daly City and San Bruno, and California Water Service Company) and to the SFPUC transmission system. Disinfection will be required for all wells and treatment is included at some of the well stations to meet water quality standards. This project is scheduled to be completed by December 2021.

The agreement between SFPUC and Kennedy/Jenks has been amended four times. The original agreement between SFPUC and Kennedy/Jenks was for a not-to-exceed amount of \$9,000,000 with a term of seven years, from December of 2007 through December of 2014. Because the agreement did not exceed the \$10,000,000 and ten-year thresholds established in City Charter Section 9.118(b), it was not subject to approval by the Board of Supervisors. In October 2009

the Board of Supervisors approved Amendment No. 1 to this agreement for an additional \$4,800,000, increasing the not-to-exceed amount to \$13,800,000 and extending the agreement term by two years through December 2016 for a total contract duration of nine years (File 09-1068). In October 2011, the Board of Supervisors approved Amendment No. 2 to this agreement for an additional \$2,700,000, increasing the not-to-exceed amount to \$16,500,000 with no change in the agreement duration (File 11-0872). Amendment No. 3 revised the task orders but did not change the agreement amount or term.

In September 2016, the Board of Supervisors approved Amendment No. 4 to this agreement for an additional \$2,000,000 to a total amount not to exceed \$18,500,000 and extended the term by three years through December 2019, for a total agreement duration of 12 years (File 16-0926). Amendment No. 4 was for continued engineering design services to the Regional Groundwater Storage and Recovery Project and the San Francisco Groundwater Supply Project. As of November 28, 2018, SFPUC has paid Kennedy/Jenks \$17,162,791.

Table 1 below summarizes the four amendments to the agreement.

Table 1: Summary of Amendments to Agreement between SFPUC and Kennedy/Jenks

	Year	Increased Amount	Total Not-To-Exceed Amount	Increased Duration (Years)	Total Duration (Years)
Original Agreement	2007		\$9,000,000		7
Amendment No. 1	2009	\$4,800,000	13,800,000	2	9
Amendment No. 2	2011	2,700,000	16,500,000	0	9
Amendment No. 3	2012	-	-	0	9
Amendment No. 4	2016	2,000,000	18,500,000	3	12

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would authorize SFPUC General Manager to execute Amendment No. 5 to the Agreement with Kennedy/Jenks for continued engineering design services to the for the Regional Groundwater Storage and Recovery Project Phase 2 and San Francisco Groundwater Supply Project. The amendment would increase the agreement by \$3,500,000 to a total amount not to exceed \$22,000,000 and extend the term by three years through December 2022, for a total agreement duration of 15 years.

The amendment has been requested for:

- San Francisco Groundwater Supply Project Phase 2: Additional engineering services to coordinate project controls during construction for the start-up and testing of Phase 2.
- Regional Groundwater Storage and Recovery Project Phase 2: Specialized engineering design services and extended contract duration to allow for the implementation of the revised Phase 2 scope of work.

FISCAL IMPACT

In February 2018, the SFPUC allocated supplemental funding in the 10-Year Water Enterprise Capital Improvement Program (CIP) for both the Regional Groundwater Storage and Recovery Project (allocated through the WSIP) and the San Francisco Groundwater Project. The funds for the proposed amendment were included in these budgets which were approved by the Board of Supervisors in during the annual budget review. Of the additional \$3,500,000, \$500,000 would be allocated to the San Francisco Groundwater Supply Project and \$3,000,000 to the Regional Groundwater Storage and Recovery Project.

Table 2 below summarizes the breakdown of the requested additional \$3,500,000 under the proposed resolution.

Table 2: Summary of Additional Funding Uses

<i>San Francisco Groundwater Supply Project</i>	
Operation and Maintenance	\$50,000
Control Strategy*	50,000
<u>Water Quality & Operations Support Evaluation</u>	<u>400,000</u>
San Francisco Groundwater Subtotal	500,000
<i>Regional Groundwater Storage and Recovery Project</i>	
Operation and Maintenance	195,000
Control Strategy	360,000
Startup and operational support	225,000
Engineering support during design and construction	1,700,000
<u>Water Quality & Operations Support Evaluation</u>	<u>450,000</u>
Regional Groundwater Subtotal	2,930,000
San Francisco and Regional Groundwater SUBTOTAL	3,430,000
<u>Contingency (2%)</u>	<u>70,000</u>
TOTAL	\$3,500,000

*Modifications to the control strategy for operation and monitoring of the Regional Groundwater Storage and Recovery (Regional) and San Francisco Groundwater Systems (San Francisco) include changes to the process controls and programmable logic controller at the individual Regional well sites. It also includes the installation and programming of a new programmable logic controller to communicate to each Regional well station and to pass necessary information to and from the San Francisco Master control located at the Lake Merced Well Station.

POLICY CONSIDERATION

SFPUC selected Kennedy/Jenks to provide engineering services to the WSIP through a Request for Qualifications in 2007. The original agreement was for seven years to approximately December 2014. The agreement has been extended two times through December 2019, and approval of the proposed resolution would extend the agreement three times through December 2022, resulting in an agreement of 15 years or 8 years more than anticipated in the original Request for Qualifications. The increase in the agreement term to December 2022 and the agreement amount to \$22 million is due to project delays. According to Mr. Dan Wade, WSIP Director at the SFPUC, issuing a Request for Proposals/Request for Qualifications to

competitively select new engineering firms for projects that are near completion is not practical or efficient.

Regional Groundwater Storage and Recovery Project Phase 2 and San Francisco Groundwater Supply Project

When the Board of Supervisors approved Amendment No. 4 to the agreement between SFPUC and Kennedy/Jenks, SFPUC reported that that the agreement extension and amount were sufficient to complete Phase 2 of the Regional Groundwater Storage and Recovery Project and the San Francisco Groundwater Supply Project and that no further agreement extensions would be needed.¹ SFPUC is now requesting an additional \$2.9 million to complete the Regional Groundwater Storage and Recovery Project and \$500,000 to complete the San Francisco Groundwater Supply Project and an additional three-year agreement extension through December 2022.

According to Mr. Wade, several major factors contributed to the delays on both the Regional Groundwater Storage and Recovery Project and the San Francisco Groundwater Supply Project. The first major factor is that both the design and construction of multiple well stations were complicated by addition of groundwater treatment and water quality monitoring station upgrades that were requested during construction of multiple well stations that were required to meet new Water Quality Division and future anticipated regulatory requirements, which proved to be significantly more complicated than originally anticipated and needed to be designed and constructed in such a way that would satisfy operational requirements and constraints. The second major factor is related to startup, commissioning and testing of the well stations that has proven to be significantly more challenging than initially anticipated, partially due to this is the first time the SFPUC has incorporated the operation and maintenance of groundwater wells into the regional and local water systems. The startup and commissioning phase has been extended for many months due to fine tuning, checking, testing and re-testing of not only the new systems, but also the newly integrated system of the existing and new systems combined. The third major factor is related to key in-house resources that have retired over the last two years that had knowledge and expertise in groundwater systems design and operation. Mobilizing replacement resources with the necessary background and experience has been a major challenge and caused some delay. Furthermore, the project has required substantial additional ongoing support from consultants, including Kennedy Jenks, that have the experience and expertise to provide specialized engineering support for integration of the new groundwater wells into the existing regional and local water systems.

Additional causes of delay and increased cost on one or both projects summarized below:

- Acquisition of two proposed well sites that were identified in the original project scope located in Golden Gate National Cemetery did not materialize. National cemeteries are owned and managed by the US Department of Veterans Affairs (VA). As the land owner and manager, the VA denied access and development of the well locations on their property without unacceptable concessions from the SFPUC. VA's denial became necessary to search for new potential well site locations which took

¹ Budget and Legislative Analyst's report to the September 21, 2016 Budget and Finance Committee

more than a year to identify these sites. This required additional funding, resources, and significant extension of time to identify and construct the three test wells that are now part of Phase 2 of the Regional Groundwater Storage and Recovery Project. The additional cost for this delay could not be anticipated when Amendment 4 was executed as we were not able to identify the new sites until 2017.

- There were significant delays in acquisition of permanent right of way easements for access and utilities with BART for two well station facilities that are part of the Regional Groundwater wells. Due to backlog with BART, response from BART took much longer than anticipated. Furthermore, a recent re-development plan in the City of South San Francisco adjacent to one of the well sites resulted a delay until the plan is finalized, which could not be anticipated since we only learned about the development plan this year.
- Coordination with PG&E contributes to delays of both projects. During construction, PG&E representatives took longer to respond to requests for coordination and services due to resource constraints, largely due to the need to address power services to locations impacted by fires in California the last two years. This delay was not factored in Amendment No. 4 approved by the Board of Supervisors in 2016 since the fires that affected the projects occurred after 2016.
- The reduction in water demand resulting from the last drought prompted the need to perform additional water quality and operations support evaluations to meet water quality standards. The reduction in water demand took place in 2016/2017, which is after Board of Supervisors approval of Amendment No. 4.
- Besides staff shortages caused by turnover and retirement, the SFPUC requested that Kennedy/Jenks perform some of the specialized engineering services which SFPUC do not have the expertise to perform in-house such as geotechnical investigations; control strategy design; and preparation of standard operating procedures, startup, and testing plans for groundwater wells.

Budget and Legislative Analyst's Recommendations

Because continued engineering services by Kennedy/Jenks are necessary to complete the Regional Groundwater Storage and Recovery Project Phase 2 and San Francisco Groundwater Supply Project, the Budget and Legislative Analyst recommends approval of the proposed resolution.

RECOMMENDATION

Approve the proposed resolution.

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

**Fifth Amendment
Between the City and County of San Francisco
(through the San Francisco Public Utilities Commission) and
Kennedy Jenks Consultants for
Engineering Design Services
(CS-879.C)**

THIS AMENDMENT (this “Amendment”) is made as of **[insert date]**, 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 extend the performance period, and increase the contract amount; and

WHEREAS, approval for this Amendment was obtained when the Civil Service Commission approved Contract number **4004-07/08** on **November 5, 2018**; and

WHEREAS, approval for this Amendment was obtained when the San Francisco Public Utilities Commission approved Resolution number **18-0165** on **October 9, 2018**; and

WHEREAS, Approval for this Amendment was obtained when the San Francisco Board of Supervisors approved Resolution number **[insert resolution]**, on **[insert date]**;

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 **October 9, 2007** between Contractor and City, as amended by the First Amendment, dated **October 20,**

2009 and the Second amendment, dated **October 15, 2011** and the Third Amendment, dated **March 22, 2012** and the Fourth Amendment dated **October 12, 2016**.

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 5. Section 5 “Compensation” of the Agreement currently reads as follows:

The City shall pay Contractor 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 or designee 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 **Eighteen Million Five Hundred Thousand Dollars (\$18,500,000)**. 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, the City shall prepare Task Orders 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 for full performance and deliver to the City of all work identified in that Task Order.

Contractor shall incur no charges under this Agreement, and no payments shall become due to Contractor, until the City receives all reports, services, or both, required under this Agreement and the San Francisco Public Utilities Commission approves such delivery of reports or services as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which the City determines that Contractor has failed or refused to satisfy any material obligation of 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 a Progress Payment Form is not

submitted with the Contractor's invoice, the Controller will notify the department, the Director of CMD and Contractor of the Commission. 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 Contractor provides the CMD Progress Payment Form.

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

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

The City shall pay Contractor 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 or designee 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-Two Million (\$22,000,000)**. 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, the City shall prepare Task Orders 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 for full performance and deliver to the City of all work identified in that Task Order.

Contractor shall incur no charges under this Agreement, and no payments shall become due to Contractor, until the City receives all reports, services, or both, required under this Agreement and the San Francisco Public Utilities Commission approves such delivery of reports or services as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which the City determines that Contractor has failed or refused to satisfy any material obligation of 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 a Progress Payment Form is not submitted with the Contractor's invoice, the Controller will notify the department, the Director of CMD and Contractor of the Commission. 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 Contractor provides the CMD Progress Payment Form.

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

2b. Section 2. Section 2 “Term” of the Agreement currently reads as follows:

Subject to Section 1, the term of this Agreement shall be from **December 6, 2007** to **December 6, 2019**.

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

Subject to Section 1, the term of this Agreement shall be from **December 6, 2007** to **December 6, 2022**.

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

CONTRACTOR

Recommended by:

Kennedy Jenks Consultants

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

Signature of Authorized Representative

Name of Authorized Representative

Approved as to Form:

Title

Dennis J. Herrera
City Attorney

City supplier number: 0000017001

By: _____

Randy Parent
Deputy City Attorney

PUBLIC UTILITIES COMMISSION

City and County of San Francisco

RESOLUTION NO. 16-0117

WHEREAS, On October 9, 2007, this Commission awarded Water System Improvement Program (WSIP)-funded Agreement No. CS-879.C, Engineering Project Design Services, and authorized the General Manager of the San Francisco Public Utilities Commission (SFPUC) to negotiate and execute a professional services agreement in the amount of \$9,000,000 and with a duration of seven years, concluding on December 6, 2014, with Kennedy/Jenks Consultants; and

WHEREAS, Amendment No. 1 was issued for \$4,800,000, increasing the total not-to-exceed agreement amount to \$13,800,000, and with a time extension of two years, for a total contract duration of nine years, in order to provide engineering services for additional scopes of work and engineering support during construction; and

WHEREAS, Amendment No. 2 was issued for \$2,700,000, increasing the total not-to-exceed agreement amount to \$16,500,000, with no change to the agreement duration, in order to provide continued engineering services for support during construction due to additional scopes of work; and

WHEREAS, Amendment No. 3 modified the agreement to identify the Peninsula Pipelines Seismic Upgrade as a specific project assigned to Kennedy/Jenks Consultant; and

WHEREAS, Amendment No. 4 is being requested for \$2,000,000, increasing the total not-to-exceed agreement amount to \$18,500,000, and with a time extension of three years, for a total agreement duration of 12 years, in order to provide continued engineering design and engineering services during construction for the Regional Groundwater Storage and Recovery (GSR) Project and the San Francisco Groundwater Supply (SFGW) Project; and

WHEREAS, A Contract Monitoring Division (CMD) subconsulting requirement of 10% Local Business Enterprise participation (of the total value of services to be provided) has been established for this agreement; and

WHEREAS, Funds for this amendment are available from the GSR Project and the SFGW Project; now, therefore, be it

RESOLVED, That this Commission hereby approves Amendment No. 4 to Water Enterprise, WSIP-funded Agreement No. CS-879.C, Engineering Project Design Services, with Kennedy/Jenks Consultants, for continued engineering design and engineering services during construction for the Regional GSR Project and the SFGW Project, and authorizes the General Manager of the SFPUC to execute this amendment, increasing the agreement by \$2,000,000, for a total agreement amount of \$18,500,000, and with a time extension of three years, for a total agreement duration of 12 years, subject to Board of Supervisors approval pursuant to Charter Section 9.118.

I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting of June 14, 2016.



Secretary, Public Utilities Commission



**San Francisco
Water Power Sewer**
Services of the San Francisco Public Utilities Commission

Contract Administration Bureau
525 Golden Gate, 8th Floor
San Francisco, CA 94102
T 415.551.4603
F 415.554.3225

November 22, 2016

Joel Faller
Kennedy Jenks Consultants
622 Folsom Street
San Francisco, CA 94107
Email: JoelFaller@kennedyjenks.com

- RE:** 1) Notice of Contract Amendment Certification - Engineering Design Services (CS-879.C)
2) Transmittal - Executed Agreement #4 between City and County of San Francisco Public Utilities Commission and Kennedy Jenks Consultants

Dear Mr. Faller:

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

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

SCOPE: Engineering Project Design Services

EFFECTIVE DATE: December 20, 2007 to December 6, 2019

CONTRACT TO DATE: Total value of contract not to exceed
\$18,500,000.00

Invoices must be charged against specific task orders only after a *Notice to Proceed* has been issued.

Should you have any questions, please do not hesitate to contact Rosiana Angel at (415) 554-1549.

Enclosure: Executed Amendment #4

cc: Susan Yee
File/NCAC-CS-879.C Amendment #4

- Edwin M. Lee
Mayor
Anson Moran
President
Ike Kwon
Vice President
Ann Moller Caen
Commissioner
Francesca Vietor
Commissioner
Vince Courtney
Commissioner
Harlan L. Kelly, Jr.
General Manager



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

**Fourth Amendment
Between the City and County of San Francisco
(through the San Francisco Public Utilities Commission) and
Kennedy Jenks Consultants for
Engineering Design Services
(CS-879.C)**

THIS AMENDMENT (this "Amendment") is made as of **October 12, 2016**, 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 extend the performance period, increase the contract amount, and update standard contractual clauses; and

WHEREAS, Approval for this Amendment was obtained when the Civil Service Commission approved Contract number 4004-07/08 on **July 20, 2016**; and

WHEREAS, Approval for this Amendment was obtained when the San Francisco Public Utilities Commission approved Resolution number 16-0117 on **June 14, 2016**; and

WHEREAS, Approval for this Amendment was obtained when the San Francisco Board of Supervisors approved Resolution number 423-16 on **October 7, 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 **October 9, 2007** between Contractor and City, as amended by the First Amendment, dated **October 20, 2009** and the Second amendment, dated **October 15, 2011** and the Third Amendment, dated **March 22, 2012**.

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 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 **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.

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:

The City shall pay Contractor 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 or designee 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 **Eighteen Million Five Hundred Thousand Dollars (\$18,500,000)**. 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, the City shall prepare Task Orders 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 for full performance and deliver to the City of all work identified in that Task Order.

Contractor shall incur no charges under this Agreement, and no payments shall become due to Contractor, until the City receives all reports, services, or both, required under this Agreement and the San Francisco Public Utilities Commission approves such delivery of reports or services as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which the City determines that Contractor has failed or refused to satisfy any material obligation of 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 a Progress Payment Form is not submitted with the Contractor's invoice, the Controller will notify the department, the Director of CMD and Contractor of the Commission. 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 Contractor provides the CMD Progress Payment Form.

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

2b. Section 2. Section 2 "Term" of the Agreement currently reads as follows:

Subject to Section 1, the term of this Agreement shall be from December 6, 2007 to December 6, 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 December 6, 2007 to December 6, 2019.

2c. Insurance. Section 15 is hereby replaced in its entirety to read as follows:

15. Insurance.

a. Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

1) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and

2) Commercial General Liability Insurance with limits not less than \$2,000,000 each occurrence and \$4,000,000 general aggregate for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

3) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence, "Combined Single Limit" for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable; and

4) Professional liability insurance, applicable to Contractor's profession, with limits not less than \$5,000,000 each claim with respect to negligent acts, errors or omissions in connection with the Services.

b. Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:

1) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

2) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

c. All policies shall be endorsed to provide thirty (30) days' advance written notice to the City of cancellation for any reason, intended non-renewal, or reduction in coverages. Notices shall be sent to the City address set forth in the Section entitled "Notices to the Parties."

d. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

e. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

f. Before commencing any Services, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Approval of the insurance by City shall not relieve or decrease Contractor's liability hereunder.

g. The Workers' Compensation policy(ies) shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

h. If Contractor will use any subcontractor(s) to provide Services, Contractor shall require the subcontractor(s) to provide all necessary insurance and to name the City and County of San Francisco, its officers, agents and employees and the Contractor as additional insureds.

i. Should any of the required insurance be provided under a form of coverage that includes a general aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregate limit shall be double the occurrence or claims limits specified above.

2d. Replacing "Earned Income Credit (EIC) Forms" Section with "Consideration of Criminal History in Hiring and Employment Decisions" Section. Section 32 "Earned Income Credit (EIC) Forms" is hereby replaced in its entirety to read as follows:

32. Consideration of Criminal History in Hiring and Employment Decisions.

a. Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12T "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Administrative Code (Chapter 12T), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at www.sfgov.org/olse/fco. A partial listing of some of Contractor's obligations under Chapter 12T is set forth in this Section. Contractor is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

b. The requirements of Chapter 12T shall only apply to a Contractor's or Subcontractor's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, shall apply only when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco, and shall not apply when the application in a particular context would

conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

c. Contractor shall incorporate by reference in all subcontracts the provisions of Chapter 12T, and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

d. Contractor or Subcontractor shall not inquire about, require disclosure of, or if such information is received, base an Adverse Action on an applicant's or potential applicant for employment's, or employee's: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

e. Contractor or Subcontractor shall not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in subsection 32(d), above. Contractor or Subcontractor shall not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

f. Contractor or Subcontractor shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment to be performed under this Agreement, that the Contractor or Subcontractor will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

g. Contractor and Subcontractors shall post the notice prepared by the Office of Labor Standards Enforcement (OLSE), available on OLSE's website, in a conspicuous place at every workplace, job site, or other location under the Contractor or Subcontractor's control at which work is being done or will be done in furtherance of the performance of this Agreement. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the workplace, job site, or other location at which it is posted.

h. Contractor understands and agrees that if it fails to comply with the requirements of Chapter 12T, the City shall have the right to pursue any rights or remedies available under Chapter 12T, including but not limited to, a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this Agreement.

2e. **Cooperative Drafting.** Section 61 is hereby added to the Agreement, as follows:

61. 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.

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.

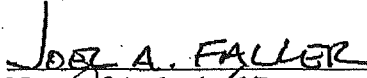
CITY

CONTRACTOR

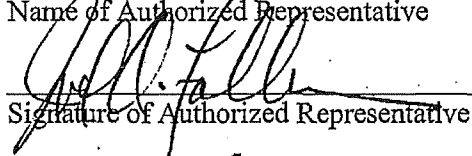
Kennedy Jenks Consultants



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



Name of Authorized Representative



Signature of Authorized Representative

VICE PRESIDENT

Title

Approved as to Form:

Dennis J. Herrera
City Attorney

City vendor number: 10547

By:



Randy Parent
Deputy City Attorney

1 [Engineering Design Agreement Amendment - Kennedy/Jenks Consultants - Water System
2 Improvement Program - Not to Exceed \$18,500,000]

3 **Resolution authorizing the General Manager of the San Francisco Public Utilities**
4 **Commission to execute Amendment No. 4 to Engineering Project Design Services**
5 **Agreement No. CS-879C for Water System Improvement Program-funded projects**
6 **between the City and County of San Francisco and Kennedy/Jenks Consultants, to**
7 **extend the contract for three years to commence December 6, 2016, for a total term of**
8 **December 6, 2007, through December 6, 2019, for an additional amount of \$2,000,000 for a**
9 **total amount not to exceed \$18,500,000.**

10
11 WHEREAS, On October 9, 2007, the San Francisco Public Utilities Commission
12 (SFPUC) awarded Agreement No. CS-879C, Engineering Project Design Services, and
13 authorized the General Manager to execute a professional services agreement, in the amount
14 of \$9,000,000, and with a duration of seven (7) years, concluding on December 6, 2014, with
15 Kennedy/Jenks Consultants; and

16 WHEREAS, On July 28, 2009, pursuant to Resolution No. 09-0130, the SFPUC
17 approved Amendment No. 1 for \$4,800,000 increasing the total not-to-exceed amount to
18 \$13,800,000, and extending the agreement term by two (2) years for a total contract duration
19 of nine (9) years, to provide engineering services for additional scopes of work and
20 engineering support during construction, subject to Board of Supervisors approval pursuant to
21 Charter, Section 9.118; and

22 WHEREAS, This Board of Supervisors adopted Resolution No. 404-09 on
23 October 20, 2009, pursuant to Charter, Section 9.118, authorizing Amendment No. 1 to the
24 Agreement; and
25

1 WHEREAS, On July 12, 2011, pursuant to Resolution No. 11-0128, the SFPUC
2 approved Amendment No. 2 for \$2,700,000 increasing the total not-to-exceed amount to
3 \$16,500,000 with no change to the agreement duration, to continue providing engineering
4 design and construction support for projects subject to Board of Supervisors approval
5 pursuant to Charter, Section 9.118; and

6 WHEREAS, This Board of Supervisors adopted Resolution No. 420-11 on
7 October 4, 2011, pursuant to Charter, Section 9.118, authorizing Amendment No. 2 to the
8 Agreement; and

9 WHEREAS, On March 22, 2012, pursuant to SFPUC Resolution No. 09-0017, the
10 General Manager approved Amendment No. 3, with no change to the total not-to-exceed
11 amount, and with no change to the agreement duration, to identify the Peninsula Pipelines
12 Seismic Upgrade as a specific project assigned to Kennedy/Jenks Consultants; and

13 WHEREAS, Amendment No. 4 is being requested for \$2,000,000 increasing the total
14 not-to-exceed agreement to \$18,500,000 and extending the agreement term by three (3)
15 years for a total contract duration of twelve (12) years, to continue providing engineering
16 design and engineering services during construction for the Regional Groundwater Storage
17 and Recovery (GSR) Project and the San Francisco Groundwater Supply (SFGW) Project;
18 and

19 WHEREAS, A Human Rights Commission (HRC) subconsulting goal of 10% Local
20 Business Enterprise (LBE) participation has been established for this agreement; and

21 WHEREAS, Funds for this amendment are available from the following projects:
22 Regional Groundwater Storage and Recovery (GSR) Project and the San Francisco
23 Groundwater Supply (SFGW) Project; and

24 WHEREAS, On June 14, 2016, by its Resolution No. 16-0117, the SFPUC approved
25 Amendment No. 4 to the Water Enterprise, Water System Improvement Program-funded

1 Agreement No. CS-879C, Engineering Project Design Services, with Kennedy/Jenks
2 Consultants to provide continued engineering services for WSIP Projects; and authorized the
3 General Manager to execute this amendment, increasing the agreement by \$2,000,000 for a
4 total agreement amount of \$18,500,000 and extending the agreement term by three (3) years
5 for a total contract duration of twelve (12) years, subject to Board of Supervisors Approval
6 pursuant to Charter, Section 9.118; now, therefore, be it

7 RESOLVED, That this Board of Supervisors hereby approves and authorizes the
8 General Manager of the SFPUC to execute Amendment No. 4 to Engineering Project Design
9 Services Agreement No. CS-879C, with Kennedy/Jenks Consultants, to increase the
10 agreement by \$2,000,000 for a total amount of \$18,500,000 and to extend the agreement
11 term by three (3) years for a total contract duration of twelve (12) years, in substantially the
12 form on file with the Clerk of the Board of Supervisors in File No. 160926 and in such final
13 form as approved by the General Manager and the City Attorney; and, be it

14 FURTHER RESOLVED, That within thirty (30) days of the Amendment No. 4 being
15 fully executed by all parties, the SFPUC shall provide the final document to the Clerk of the
16 Board of Supervisors for inclusion into the official file.



City and County of San Francisco

Tails
Resolution

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA, 94102-4689

File Number: 160926

Date Passed: September 27, 2016

Resolution authorizing the General Manager of the San Francisco Public Utilities Commission to execute Amendment No. 4 to Engineering Project Design Services Agreement No. CS-879C for Water System Improvement Program-funded projects between the City and County of San Francisco and Kennedy/Jenks Consultants, to extend the contract for three years to commence December 6, 2016, for a total term of December 6, 2007, through December 6, 2019, for an additional amount of \$2,000,000 for a total amount not to exceed \$18,500,000.

September 21, 2016 Budget and Finance Committee - RECOMMENDED


September 27, 2016 Board of Supervisors - ADOPTED

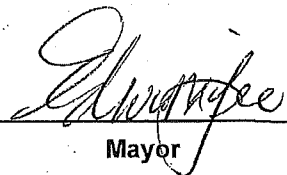
Ayes: 10 - Breed, Campos, Cohen, Farrell, Kim, Mar, Peskin, Tang, Wiener and Yee

Excused: 1 - Avalos

File No. 160926

I hereby certify that the foregoing Resolution was ADOPTED on 9/27/2016 by the Board of Supervisors of the City and County of San Francisco.


Angela Calvillo
Clerk of the Board


Mayor

10/7/2016
Date Approved



San Francisco Water Power Sewer

Services of the San Francisco Public Utilities Commission

Contract Administration Bureau
1155 Market Street, 9th Floor
San Francisco, CA 94103
T 415.551-4603
F 415.554.3225

June 13, 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 #3 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 the Change of Scope only 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 Rosiana Angel at (415) 554-1549.

Enclosure: Executed Amendment #3

cc: Susan Yee
File/NCAC 879.C amend 3

- 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

Third 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 **March 22, 2012**, 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 make technical and conforming clarifications to Appendix A of the Agreement.

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** and the **Second Amendment**, dated **October 15, 2011**.

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

4. Task Orders

Performance of the **Engineering Project Design Services** will be executed according to a task order process. The SFPUC Project Manager will initially identify tasks and request the

contractor to propose a project scope, sub tasks, staffing plan, LBE utilization, schedule, deliverables, budget and costs to complete the task. A final task order scope proposal will be negotiated between the SFPUC Project Manager and the Contractor and then submitted to Bureau Manager for approval. Labor rates, overhead rates and certain other unit costs or prices, including profit will be accordance with Appendix B. However, as provided in the RFQ, the budget identified for tasks in Appendix B is an estimate, and the City reserves the right to modify the budget allocated to any task as more specific information concerning the task order scope becomes available. The RFQ, including all Addenda, is incorporated by reference as though fully set forth herein, to the extent not in conflict with this Agreement.

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

4. Task Orders

Performance of the **Engineering Project Design Services** will be executed according to a task order process. The SFPUC Project Manager will initially identify tasks and request the contractor to propose a project scope, sub tasks, staffing plan, LBE utilization, schedule, deliverables, budget and costs to complete the task. A final task order scope proposal will be negotiated between the SFPUC Project Manager and the Contractor and then submitted to Bureau Manager for approval. Labor rates, overhead rates and certain other unit costs or prices, including profit will be accordance with Appendix B. However, as provided in the RFQ, the budget identified for tasks in Appendix B is an estimate, and the City reserves the right to modify the budget allocated to any task as more specific information concerning the task order scope becomes available. The RFQ, including all Addenda, is incorporated by reference as though fully set forth herein, to the extent not in conflict with this Agreement. The projects listed in the RFQ that have been specifically assigned to Kennedy Jenks include Harry Tracy Water Treatment Plant - Long Term Improvements Project (HTWTP - LT) and Groundwater Projects. During design of HTWTP - LT, it was determined that an additional project is needed to meet WSIP level of service goals and objectives. This project, Peninsula Pipelines Seismic Upgrade, is to improve three transmission lines coming out of the HTWTP and crossing the Serra Fault. This project is also incorporated by reference as though fully set forth herein.

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.

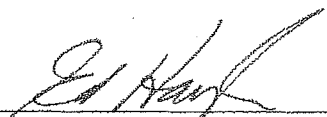
IN WITNESS WHEREOF, Contractor and City have executed this Amendment as of the date first referenced above.

CITY

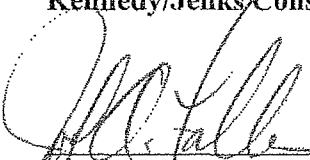
CONTRACTOR

Recommended by:

Kennedy/Jenks Consultants



Ed Harrington
General Manager
San Francisco Public Utilities Commission



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



San Francisco
Water Power Sewer
 Services of the San Francisco Public Utilities Commission

Contract Administration Bureau
 1155 Market Street, 9th Floor
 San Francisco, CA 94103
 T 415.551-4603
 F 415.554.3225

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

Vinca 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.

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.

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.

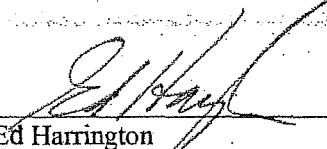
IN WITNESS WHEREOF, Contractor and City have executed this Amendment as of the date first referenced above.

CITY

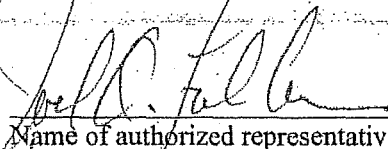
CONTRACTOR

Recommended by:

Kennedy/Jenks Consultants



Ed Harrington
General Manager
San Francisco Public Utilities Commission




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

1 [Engineering Design Agreement No. CS-879C - Water System Improvement Program - Not to
2 Exceed \$16,500,000]

3 **Resolution authorizing the General Manager of the San Francisco Public Utilities**
4 **Commission to execute amendments to increase Engineering Project Design Services**
5 **Agreement No. CS-879C for Water System Improvement Program (WSIP)-funded**
6 **projects with total revised agreement amounts not to exceed \$16,500,000 pursuant to**
7 **Charter Section 9.118.**

8
9 WHEREAS, On October 9, 2007 the San Francisco Public Utilities Commission
10 (SFPUC) awarded Agreement No. CS-879C, Engineering Project Design Services, and
11 authorized the General Manager to execute a professional services agreement, in the amount
12 of \$9,000,000, and with a duration of seven (7) years, concluding on December 6, 2014, with
13 Kennedy/Jenks Consultants; and

14 WHEREAS, On July 28, 2009, pursuant to Resolution No. 09-0130, the SFPUC
15 approved Amendment No. 1 for \$4,800,000, increasing the total not-to-exceed agreement
16 amount to \$13,800,000, and extending the agreement term by two (2) years for a total
17 contract duration of nine (9) years, to provide engineering services for additional scopes of
18 work and engineering support during construction in order to accommodate contract closeout
19 and potential claims settlement, subject to Board of Supervisors approval pursuant to Charter
20 Section 9.118; and

21 WHEREAS, This Board of Supervisors adopted Resolution No. 404-09 on October 20,
22 2009, pursuant to Charter Section 9.118, authorizing Amendment No. 1 to the Agreement;
23 and

24 WHEREAS, Amendment No. 2 is being requested for \$2,700,000, increasing the total
25 not-to-exceed agreement amount to \$16,500,000, with no change to the agreement duration,

1 to provide continued engineering services for support during construction due to additional
2 scopes of work; and

3 WHEREAS, A Human Rights Commission (HRC) subconsulting goal of 10% Local
4 Business Enterprise (LBE) participation has been established for this agreement; and

5 WHEREAS, Funds for this amendment are available from the following projects: Harry
6 Tracy Water Treatment Plant (HTWTP) Long-Term Improvements and Regional and San
7 Francisco Groundwater projects; and

8 WHEREAS, On July 12, 2011, by its Resolution No. 11-0128, the SFPUC approved
9 Amendment No. 2 to Water Enterprise, Water System Improvement Program-funded
10 Agreement No. CS-879C, Engineering Project Design Services, with Kennedy/Jenks
11 Consultants to provide continued engineering services for WSIP Projects; and authorized the
12 General Manager to execute this amendment, increasing the agreement by \$2,700,000, for a
13 total agreement amount of \$16,500,000, with no change to the agreement duration, subject to
14 Board of Supervisors approval pursuant to Charter Section 9.118; now, therefore, be it

15 RESOLVED, That this Board of Supervisors hereby approves and authorizes the
16 General Manager of the SFPUC to execute Amendment No. 2 to Engineering Project Design
17 Services Agreement No. CS-879C, with Kennedy/Jenks Consultants, to increase the
18 agreement by \$2,700,000 for a total amount of \$16,500,000, with no change to the agreement
19 duration, in substantially the form on file with the Clerk of the Board and in such final form as
20 approved by the General Manager and the City Attorney.



City and County of San Francisco
Tails
Resolution

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 110872

Date Passed: October 04, 2011

Resolution authorizing the General Manager of the San Francisco Public Utilities Commission to execute amendments to increase Engineering Project Design Services Agreement No. CS-879C for Water System Improvement Program (WSIP) funded projects with total revised agreement amounts not to exceed \$16,500,000 pursuant to Charter Section 9.118.

September 28, 2011 Budget and Finance Committee - RECOMMENDED

October 04, 2011 Board of Supervisors - ADOPTED

Ayes: 11 - Avalos, Campos, Chiu, Chu, Cohen, Elsbernd, Farrell, Kim, Mar, Mirkarimi and Wiener

File No. 110872

I hereby certify that the foregoing
Resolution was ADOPTED on 10/4/2011 by
the Board of Supervisors of the City and
County of San Francisco.

Angela Calvillo
Clerk of the Board

Mayor Edwin Lee

Date Approved

PUBLIC UTILITIES COMMISSION

City and County of San Francisco

RESOLUTION NO. 11-0128

WHEREAS, On October 9, 2007 this Commission awarded Agreement No. CS-879C, Engineering Project Design Services, and authorized the General Manager to execute a professional services agreement, in the amount of \$9,000,000, and with a duration of seven (7) years, concluding on December 6, 2014, with Kennedy/Jenks Consultants; and

WHEREAS, On July 28, 2009, pursuant to Resolution No. 09-0130, this Commission approved Amendment No. 1 for \$4,800,000, increasing the total not-to-exceed agreement amount to \$13,800,000, and extending the agreement term by two (2) years for a total contract duration of nine (9) years, to provide engineering services for additional scopes of work and engineering support during construction in order to accommodate contract closeout and potential claims settlement; and

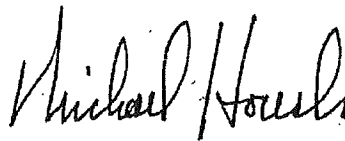
WHEREAS, Amendment No. 2 is being requested for \$2,700,000, increasing the total not-to-exceed agreement amount to \$16,500,000, with no change to the agreement duration, to provide continued engineering services for support during construction due to additional scopes of work; and

WHEREAS, A Human Rights Commission (HRC) subconsulting goal of 10% Local Business Enterprise participation has been established for this agreement; and

WHEREAS, Funds for this amendment are available from the following projects: Harry Tracy Water Treatment Plant (HTWTP) Long-Term Improvements and Regional and San Francisco Groundwater projects; now, therefore, be it

RESOLVED, That this Commission hereby approves Amendment No. 2 to Water Enterprise, Water System Improvement Program-funded Agreement No. CS-879C, Engineering Project Design Services, with Kennedy/Jenks Consultants to provide continued engineering services for WSIP Projects; and authorizes the General Manager to execute this amendment, increasing the agreement by \$2,700,000, for a total agreement amount of \$16,500,000, with no change to the agreement duration, subject to Board of Supervisors approval pursuant to Charter Section 9.118.

I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting of July 12, 2011



Secretary, Public Utilities Commission

1 [Approve amendments to four SFPUC professional engineering services agreements.]

2
3 **Resolution authorizing the General Manager of the San Francisco Public Utilities**
4 **Commission to execute amendments to increase four professional engineering**
5 **services agreements for Water System Improvement Program (WSIP) funded projects**
6 **with total revised agreement amounts in excess of \$10,000,000 each, pursuant to**
7 **Charter Section 9.118.**

8
9 WHEREAS, On October 9, 2007, the San Francisco Public Utilities Commission, by
10 Resolution No. 07-0175, awarded Water System Improvement Program-funded Agreements
11 CS-879 A through D, Engineering Project Design Services, pursuant to a Request for
12 Qualifications, to MWH/AGS/Lee JV, URS Corporation, Kennedy/Jenks Consultants, and
13 Camp Dresser & McKee Inc. and authorized the General Manager of the San Francisco
14 Public Utilities Commission to execute four professional services agreements for \$9,000,000
15 each, with a term of seven (7) years, to provide design services, including preparation of plans
16 and specification packages for multiple WSIP projects; and

17 WHEREAS, While a significant portion of the design work has been completed under
18 the existing contracts, MWH/AGS/Lee JV, URS Corporation, Kennedy/Jenks Consultants, and
19 Camp Dresser & McKee Inc. will continue to be needed to complete the designs for projects
20 with expanded scope, and to provide design support services during construction for the
21 projects listed in the original Request for Qualifications; and

22 WHEREAS, The SFPUC, by Resolution No. 09-0130, adopted on July 28, 2009
23 approved Amendment No. 1 to Water System Improvement Program-funded Agreement Nos.
24 CS-879 A through D, Engineering Project Design Service, with MWH/AGS/Lee JV, URS
25 Corporation, Kennedy/Jenks Consultants, and Camp Dresser & McKee Inc. for engineering

San Francisco Public Utilities Commission
BOARD OF SUPERVISORS

1 design services for WSIP projects, and authorized the General Manager of the San Francisco
2 Public Utilities Commission to execute an amendment, increasing the agreements by:
3 \$2,000,000 for MWH/AGS/Lee Inc. JV for a total amount of \$11,000,000; \$5,000,000 for URS
4 Corporation for a total amount of \$14,000,000; \$4,800,000 for Kennedy/Jenks Consultants for
5 a total amount of \$13,800,000; and \$3,500,000 for Camp Dresser & McKee Inc for a total
6 amount of \$12,500,000, and extending the agreements by 2 years for a total duration of 9
7 consecutive years, subject to Board of Supervisors approval pursuant to Charter Section
8 9.118; and the proposed amendments to these agreements are on file with the Clerk of the
9 Board of Supervisors in File No. 091068 ; and

10 WHEREAS, A Human Rights Commission (HRC) subconsulting goal of 10% Local
11 Business Enterprise (LBE) participation, of the total value of services to be provided, has been
12 established for these agreements; and

13 WHEREAS, Funds for these agreements are available from individual projects,
14 including: CUW38101, Sunol Valley Water Treatment Plant (SVWTP) Expansion and Treated
15 Water Reservoir (Sunol Region), CUW35302, Seismic Upgrade of Bay Division 3&4 at
16 Hayward Fault Crossing (Bay Division Region), CUW37101, Crystal Springs/San Andreas
17 Transmission Upgrade (Peninsula Region), CUW36701, Harry Tracy Water Treatment Plant
18 Long-Term Improvements (Peninsula Region), CUW30103, Regional Groundwater Storage
19 and Recovery (San Francisco Regional Region), CUW30101, Lake Merced Water Level
20 Restoration (San Francisco Local Region), and CUW30102 San Francisco Groundwater
21 Supply (San Francisco Local Region); now, therefore, be it

22 RESOLVED, That this Board of Supervisors hereby approves and authorizes the
23 General Manager of the SFPUC to execute Amendment No. 1 to Professional Service
24 Agreements Nos. CS 879 A, B, C and D, to increase the amount of those professional
25 services agreement by: \$2,000,000 for MWH/AGS/Lee Inc. JV for a total amount of

1 \$11,000,000; \$5,000,000 for URS Corporation for a total amount of \$14,000,000; \$4,800,000
2 for Kennedy/Jenks Consultants for a total amount of \$13,800,000; and \$3,500,000 for Camp
3 Dresser & McKee Inc for a total amount of \$12,500,000, pursuant to Charter Section 9.118, in
4 substantially the form on file with the Clerk of the Board, and in such final form as approved by
5 the General Manager and the City Attorney.
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City and County of San Francisco

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Tails

Resolution

File Number: 091068

Date Passed:

Resolution authorizing the General Manager of the San Francisco Public Utilities Commission to execute amendments to increase four professional engineering services agreements for Water System Improvement Program (WSIP) funded projects with total revised agreement amounts in excess of \$10,000,000 each, pursuant to Charter Section 9.118.

October 20, 2009 Board of Supervisors — ADOPTED

Ayes: 8 - Avalos, Chiu, Chu, Daly, Dufty, Elsbernd, Mar, Maxwell

Noes: 2 - Campos, Mirkarimi

Excused: 1 - Alioto-Pier

File No. 091068

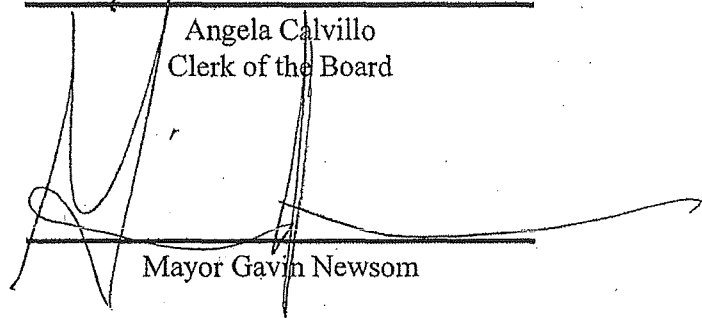
I hereby certify that the foregoing Resolution was ADOPTED on October 20, 2009 by the Board of Supervisors of the City and County of San Francisco.



Angela Calvillo
Clerk of the Board

10-29-09

Date Approved



Mayor Gavin Newsom

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

**First 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 20, 2009**, 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 its General Manager of the San Francisco California

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 standard contractual clauses;

WHEREAS, approval for said Agreement was obtained from the San Francisco Public Utilities Commission Resolution Number 07-0175 on October 9, 2007;

WHEREAS, on July 28, 2009, per Resolution No. 09-0130, the Public Utilities Commission approved Amendment No. 1 to Agreement No. CS-879C to continue professional engineering project design services, increasing the original agreement amount by \$4,800,000 to \$13,800,000 and extending the agreement term by two years to December 6, 2016.

WHEREAS, approval for this Amendment was obtained when the Civil Service Commission approved Contract number 4004-07/08 on August 17, 2009;

WHEREAS, On October 20, 2009, approval for Amendment 1 was obtained from the Board of Supervisors, per Resolution 0404-09;

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 October 9, 2007 between Contractor and City:

1b. 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. **The Introductory Paragraph of the Agreement currently reads as follows:**

This Agreement is made this **9th day of October, 2007**, in the City and County of San Francisco, State of California, by and between: **Kennedy/Jenks Consultants**, hereinafter referred to as "Contractor," and the City and County of San Francisco, a municipal corporation, hereinafter referred to as "City," acting by and through its Director of the Office of Contract Administration or the Director's designated agent, hereinafter referred to as "Purchasing."

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

This Agreement is made this **9th day of October, 2007**, in the City and County of San Francisco, State of California, by and between: **Kennedy/Jenks Consultants**, hereinafter referred to as "Contractor," and the City and County of San Francisco, a municipal corporation, hereinafter referred to as "City," acting by and through the San Francisco Public Utilities Commission.

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

Subject to Section 1, the term of this Agreement shall be **84 months** from the effective date as set forth in Section 3.

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

Subject to Section 1, the term of this Agreement shall be from December 6, 2007 to December 6, 2016.

2c. **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 **Nine Million Dollars (\$9,000,000)**. 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 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 omission. 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 **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 omission. 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.

2d. Insurance. Section 15. is hereby replaced in its entirety to read as follows:

15. Insurance

a. Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

(1) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and

(2) Commercial General Liability Insurance with limits not less than \$2,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

(3) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

(4) Professional liability insurance, applicable to Contractor's profession, with limits not less than \$5,000,000 each claim with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement.

b. Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:

(1) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

(2) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

c. Regarding Workers' Compensation, Contractor hereby agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

d. All policies shall provide thirty days' advance written notice to the City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the City address in the "Notices to the Parties" section.

e. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

f. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

g. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If

insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

h. Before commencing any operations under this Agreement, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement.

i. Approval of the insurance by City shall not relieve or decrease the liability of Contractor hereunder.

j. If a subcontractor will be used to complete any portion of this agreement, the Contractor shall ensure that the subcontractor shall provide all necessary insurance and shall name the City and County of San Francisco, its officers, agents and employees and the Contractor listed as additional insureds.

2e. Limitations on Contributions. Section 42 is hereby replaced in its entirety to read as follows:

42. Limitations on Contributions. Through execution of this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Contractor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Contractor further agrees to provide to City the names of each person, entity or committee described above.

2f. Requiring Minimum Compensation for Covered Employees. Section 43 is hereby replaced in its entirety to read as follows:

43. Requiring Minimum Compensation for Covered Employees

a. Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 12P are incorporated herein by reference and made a part of this

Agreement as though fully set forth. The text of the MCO is available on the web at www.sfgov.org/olse/mco. A partial listing of some of Contractor's obligations under the MCO is set forth in this Section. Contractor is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

b. The MCO requires Contractor to pay Contractor's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and Contractor is obligated to keep informed of the then-current requirements. Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is Contractor's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Contractor.

c. Contractor shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within 90 days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.

d. Contractor shall maintain employee and payroll records as required by the MCO. If Contractor fails to do so, it shall be presumed that the Contractor paid no more than the minimum wage required under State law.

e. The City is authorized to inspect Contractor's job sites and conduct interviews with employees and conduct audits of Contractor.

f. Contractor's commitment to provide the Minimum Compensation is a material element of the City's consideration for this Agreement. The City in its sole discretion shall determine whether such a breach has occurred. The City and the public will suffer actual damage that will be impractical or extremely difficult to determine if the Contractor fails to comply with these requirements. Contractor agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the City and the public will incur for Contractor's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

g. Contractor understands and agrees that if it fails to comply with the requirements of the MCO, the City shall have the right to pursue any rights or remedies available under Chapter 12P (including liquidated damages), under the terms of the contract, and under applicable law. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, 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, the City shall have the right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

h. 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 MCO.

i. If Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000, but Contractor later enters into an agreement or agreements that cause contractor to exceed that amount in a fiscal year, Contractor shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and this department to exceed \$25,000 in the fiscal year.

2g. **First Source Hiring Program.** Section 45 is hereby replaced in its entirety to read as follows:

45. First Source Hiring Program

a. **Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapter 83 of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with, and be bound by, all of the provisions that apply to this Agreement under such Chapter, including but not limited to the remedies provided therein. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83.

b. **First Source Hiring Agreement.** As an essential term of, and consideration for, any contract or property contract with the City, not exempted by the FSHA, the Contractor shall enter into a first source hiring agreement ("agreement") with the City, on or before the effective date of the contract or property contract. Contractors shall also enter into an agreement with the City for any other work that it performs in the City. Such agreement shall:

(1) Set appropriate hiring and retention goals for entry level positions. The employer shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to establish good faith efforts as to its attempts to do so, as set forth in the agreement. The agreement shall take into consideration the employer's participation in existing job training, referral and/or brokerage programs. Within the discretion of the FSHA, subject to appropriate modifications, participation in such programs may be certified as meeting the requirements of this Chapter. Failure either to achieve the specified goal, or to establish good faith efforts will constitute noncompliance and will subject the employer to the provisions of Section 83.10 of this Chapter.

(2) Set first source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to provide qualified economically disadvantaged individuals for consideration for employment for entry level positions. Employers shall consider all applications of qualified economically disadvantaged individuals referred by the System for employment; provided however, if the employer utilizes nondiscriminatory screening criteria, the employer shall have the sole discretion to interview and/or hire individuals referred or certified by the San Francisco Workforce Development System as being qualified economically disadvantaged individuals. The duration of the first source interviewing requirement shall be determined by the FSHA and shall be set forth in each agreement, but shall not exceed 10 days. During that period, the employer may publicize the entry level positions in accordance with the agreement. A need for urgent or temporary hires must be evaluated, and appropriate provisions for such a situation must be made in the agreement.

(3) Set appropriate requirements for providing notification of available entry level positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of qualified economically disadvantaged individuals to participating

employers. Notification should include such information as employment needs by occupational title, skills, and/or experience required, the hours required, wage scale and duration of employment, identification of entry level and training positions, identification of English language proficiency requirements, or absence thereof, and the projected schedule and procedures for hiring for each occupation. Employers should provide both long-term job need projections and notice before initiating the interviewing and hiring process. These notification requirements will take into consideration any need to protect the employer's proprietary information.

(4) Set appropriate record keeping and monitoring requirements. The First Source Hiring Administration shall develop easy-to-use forms and record keeping requirements for documenting compliance with the agreement. To the greatest extent possible, these requirements shall utilize the employer's existing record keeping systems, be nonduplicative, and facilitate a coordinated flow of information and referrals.

~~(5) Establish guidelines for employer good faith efforts to comply with the first source hiring requirements of this Chapter. The FSHA will work with City departments to develop employer good faith effort requirements appropriate to the types of contracts and property contracts handled by each department. Employers shall appoint a liaison for dealing with the development and implementation of the employer's agreement. In the event that the FSHA finds that the employer under a City contract or property contract has taken actions primarily for the purpose of circumventing the requirements of this Chapter, that employer shall be subject to the sanctions set forth in Section 83.10 of this Chapter.~~

(6) Set the term of the requirements.

(7) Set appropriate enforcement and sanctioning standards consistent with this Chapter.

(8) Set forth the City's obligations to develop training programs, job applicant referrals, technical assistance, and information systems that assist the employer in complying with this Chapter.

(9) Require the developer to include notice of the requirements of this Chapter in leases, subleases, and other occupancy contracts.

c. Hiring Decisions. Contractor shall make the final determination of whether an Economically Disadvantaged Individual referred by the System is "qualified" for the position.

d. Exceptions. Upon application by Employer, the First Source Hiring Administration may grant an exception to any or all of the requirements of Chapter 83 in any situation where it concludes that compliance with this Chapter would cause economic hardship.

e. Liquidated Damages. Contractor agrees:

(1) To be liable to the City for liquidated damages as provided in this section;

(2) To be subject to the procedures governing enforcement of breaches of contracts based on violations of contract provisions required by this Chapter as set forth in this section;

(3) That the contractor's commitment to comply with this Chapter is a material element of the City's consideration for this contract; that the failure of the contractor to comply with the contract provisions required by this Chapter will cause harm to the City and the public which is significant and substantial but extremely difficult to quantify; that the harm to the City includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to \$5,000 for every notice of a new hire for an entry level position improperly withheld by the contractor from the first source hiring process, as determined by the FSHA during its first investigation of a contractor, does not exceed a fair estimate of the financial and other damages that the City suffers as a result of the contractor's failure to comply with its first source referral contractual obligations.

(4) That the continued failure by a contractor to comply with its first source referral contractual obligations will cause further significant and substantial harm to the City and the public, and that a second assessment of liquidated damages of up to \$10,000 for each entry level position improperly withheld from the FSHA, from the time of the conclusion of the first investigation forward, does not exceed the financial and other damages that the City suffers as a result of the contractor's continued failure to comply with its first source referral contractual obligations;

(5) That in addition to the cost of investigating alleged violations under this Section, the computation of liquidated damages for purposes of this section is based on the following data:

A. The average length of stay on public assistance in San Francisco's County Adult Assistance Program is approximately 41 months at an average monthly grant of \$348 per month, totaling approximately \$14,379; and

B. In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least the first six months of employment was 84.4%. Since qualified individuals under the First Source program face far fewer barriers to employment than their counterparts in programs funded by the Workforce Investment Act, it is reasonable to conclude that the average length of employment for an individual whom the First Source Program refers to an employer and who is hired in an entry level position is at least one year;

therefore, liquidated damages that total \$5,000 for first violations and \$10,000 for subsequent violations as determined by FSHA constitute a fair, reasonable, and conservative attempt to quantify the harm caused to the City by the failure of a contractor to comply with its first source referral contractual obligations.

(6) That the failure of contractors to comply with this Chapter, except property contractors, may be subject to the debarment and monetary penalties set forth in Sections 6.80 et seq. of the San Francisco Administrative Code, as well as any other remedies available under the contract or at law; and

Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of \$5,000 for every new hire for an Entry Level Position improperly withheld from the first source hiring process. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the FSHA.

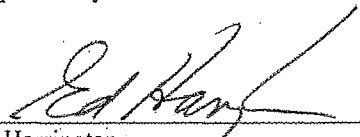
f. Subcontracts. Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section.

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


Approved by:



Ed Harrington
General Manager
San Francisco Public Utilities Commission

CONTRACTOR

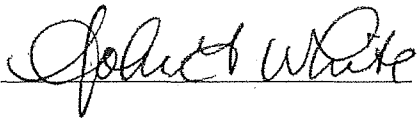
Kennedy/Jenks Consultants



Joel A. Fallof, PE
Vice President
City vendor number: 075042

Approved as to Form:

Dennis J. Herrera
City Attorney

By: 

Deputy City Attorney

PUBLIC UTILITIES COMMISSION

City and County of San Francisco

RESOLUTION NO. 09-0130

WHEREAS, On October 9, 2007, this Commission awarded a group of Agreements CS-879A through D, Engineering Project Design Services, and authorized the General Manager of the San Francisco Public Utilities Commission to execute four professional services agreements for \$9,000,000 each, totaling \$36,000,000, and with a term of seven (7) years with MWH/AGS/Lee JV, URS Corporation, Kennedy/Jenks Consultants; and Camp Dresser & McKee, Inc., and

WHEREAS, Amendment No. 1 is being requested to increase the total agreement amount by \$15,300,000 to \$51,300,000 (the not to exceed amounts for MWH/AGS/Lee JV is \$11,000,000; for URS Corporation is \$14,000,000; for Kennedy/Jenks Corporation is \$13,800,000; and for Camp Dresser & McKee Inc is \$12,500,000) in order to accommodate additional scopes of work and extend the agreement term by 2 years to 9 years to accommodate contract closeout and potential claims settlement; and

WHEREAS, A Human Rights Commission (HRC) subconsulting goal of 10% Local Business Enterprise (LBE) participation (of the total value of services to be provided) has been established for the agreements; and

WHEREAS, Funds for these agreements are available from individual projects; now, therefore, be it

RESOLVED, That this Commission hereby approves Amendment No. 1 to Water System Improvement Program-funded Agreement No. CS-879A through D, Engineering Project Design Service, with MWH/AGS/Lee JV, URS Corporation, Kennedy/Jenks Consultants, and Camp Dresser & McKee Inc. for engineering design services for WSIP projects, and authorizes the General Manager of the San Francisco Public Utilities Commission to execute this amendment, increasing the agreements by:

\$2,000,000 for MWH/AGS/Lee Inc. JV for a total amount of \$11,000,000;

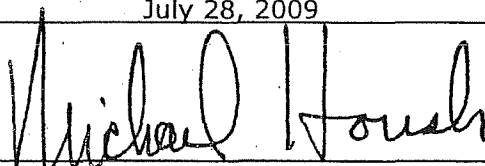
\$5,000,000 for URS Corporation for a total amount of \$14,000,000;

\$4,800,000 for Kennedy/Jenks Consultants for a total amount of \$13,800,000; and

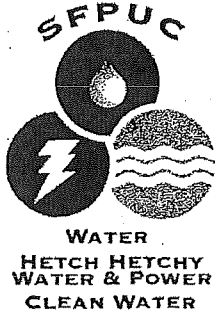
\$3,500,000 for Camp Dresser & McKee Inc for a total amount of \$12,500,000.

for a total increase of \$15,300,000 and a total group agreement not to exceed amount of \$51,300,000, and extending the agreement by 2 years for a total agreement duration of 9 consecutive years, subject to Board of Supervisors approval pursuant to Charter Section 9.118 since the not to exceed amount is over \$10 million.

I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting of _____ *July 28, 2009*



Secretary, Public Utilities Commission



SAN FRANCISCO PUBLIC UTILITIES COMMISSION



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

Agreement between the City and County of San Francisco and

**Kennedy/Jenks Consultants
CS-879C**

This Agreement is made this **9th day of October, 2007**, in the City and County of San Francisco, State of California, by and between: **Kennedy/Jenks Consultants**, hereinafter referred to as "Contractor," and the City and County of San Francisco, a municipal corporation, hereinafter referred to as "City," acting by and through its Director of the Office of Contract Administration or the Director's designated agent, hereinafter referred to as "Purchasing."

Recitals

WHEREAS, the San Francisco Public Utilities Commission ("Department") wishes to retain the services of **Kennedy/Jenks Consultants** to provide **Engineering Project Design Services**; and,

WHEREAS, a Request for Qualifications ("RFQ") was issued on **August 3, 2007**, and City selected Contractor as the highest qualified scorer pursuant to the RFQ; and

WHEREAS, Contractor represents and warrants that it is qualified to perform the services required by City as set forth under this Contract; and,

WHEREAS, approval for said Agreement was obtained from a Civil Service Commission Notice of Action for Contract Number 4004-07/08 on September 4, 2007;

WHEREAS, approval for said Agreement was obtained from the San Francisco Public Utilities Commission Resolution Number 07-0175 on October 9, 2007;

Now, THEREFORE, the parties agree as follows:

1. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation

This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization.

This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated.

City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

2. Term of the Agreement

Subject to Section 1, the term of this Agreement shall be **84 months** from the effective date as set forth in Section 3.

3. Effective Date of Agreement

This Agreement shall become effective when the Controller has certified to the availability of funds and Contractor has been notified in writing.

4. Services Contractor Agrees to Perform

The Contractor agrees to perform the services provided for in Appendix A, "Description of Services," attached hereto and incorporated by reference as though fully set forth herein.

5. Compensation

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 **Nine Million Dollars (\$9,000,000)**. 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 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 omission. 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.

6. Guaranteed Maximum Costs

- a. The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification.
- b. Except as may be provided by laws governing emergency procedures, officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Commodities or Services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law.
- c. Officers and employees of the City are not authorized to offer or promise, nor is the City required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller.
- d. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

7. Payment; Invoice Format

Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller, and must include the contract number, the task number (and title, if applicable), document reference number and funding source number. All amounts paid by City to Contractor shall be subject to audit by City.

Payment shall be made by City to Contractor at the address specified in the section entitled "Notices to the Parties."

8. Submitting False Claims; Monetary Penalties

Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for three times the amount of damages which the City sustains because of the false claim. A contractor, subcontractor or consultant who submits a false claim

shall also be liable to the City for the costs, including attorneys' fees, of a civil action brought to recover any of those penalties or damages; and may be liable to the City for a civil penalty of up to \$10,000 for each false claim. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (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.

9. Disallowance – Left blank by agreement of the parties

10. Taxes

a. Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon or as a result of this Agreement, or the services delivered pursuant hereto, shall be the obligation of Contractor.

b. Contractor recognizes and understands that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:

(1) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest;

(2) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a "change in ownership" for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.

(3) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code section 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

(4) Contractor further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

11. Payment Does Not Imply Acceptance of Work

The granting of any payment by City, or the receipt thereof by Contractor, shall in no way lessen the liability of Contractor to replace unsatisfactory work, equipment, or materials, although the unsatisfactory character of such work, equipment or materials may not have been apparent or detected at the time such payment was made. Materials, equipment, components, or workmanship that do not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay.

12. Qualified Personnel

Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor. Contractor will comply with City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall commit adequate resources to complete the project within the project schedule specified in this Agreement.

13. Responsibility for Equipment

City shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to Contractor by the City.

14. Independent Contractor; Payment of Taxes and Other Expenses

a. **Independent Contractor.** Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor.

Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement.

b. **Payment of Taxes and Other Expenses.** Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority.

Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability).

A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor agrees to a reduction in City's financial liability so that City's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

15. Insurance

a. Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

(1) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and

(2) Commercial General Liability Insurance with limits not less than \$2,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

(3) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

(4) Professional liability insurance with limits not less than \$5,000,000 each claim with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement.

b. Commercial General Liability and Commercial Automobile Liability Insurance policies must provide the following:

(1) Name as Additional Insured the City and County of San Francisco, the San Francisco Public Utilities Commission, their respective officers, agents, and employees.

(2) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

c. All policies shall provide thirty (30) days' advance written notice to City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the following address:

City And County of San Francisco
San Francisco Public Utilities Commission

Contract Administration Bureau
1155 Market Street, 9th Floor
San Francisco, CA 94103

d. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

e. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

f. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

g. Before commencing any operations under this Agreement, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement.

Approval of the insurance by City shall not relieve or decrease the liability of Contractor hereunder.

i. If a subcontractor will be used to complete any portion of this agreement, the Contractor shall ensure that the subcontractor shall provide all necessary insurance and shall name the City and County of San Francisco, the San Francisco Public Utilities Commission, their respective officers, agents and employees and the Contractor listed as additional insureds.

16. Indemnification

a. General Indemnity

To the fullest extent permitted by law, Contractor shall assume the defense of, indemnify and save harmless the City, its boards, commissions, officers, and employees (collectively "Indemnitees"), from any claim, loss, damage, injury (including, without limitation, injury to or death of an employee of the Contractor or its subconsultants) and liabilities of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney's fees and costs of investigation), that arise directly or indirectly, in whole or in part, from (1) the services under this Agreement, or any part of such services, and (2) any negligent, reckless, or willful act or omission of the Contractor and subconsultant to the Contractor, anyone directly or indirectly employed by them, or anyone that they control (collectively, "Liabilities"), subject to the provisions set forth herein.

b. Limitations

(1) No insurance policy covering the Contractor's performance under this Agreement shall operate to limit the Contractor's liability under this provision. Nor shall the amount of insurance coverage operate to limit the extent of such liability.

(2) The Contractor assumes no liability whatsoever for the sole negligence or willful misconduct of any Indemnitee or the contractors of any Indemnitee.

(3) 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.

c. 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.

17. Incidental and Consequential Damages

Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

18. Liability of City

CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 5 OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

19. Liquidated Damages - Left blank by agreement of the parties.

20. Default; Remedies

a. Each of the following shall constitute an event of default ("Event of Default") under this Agreement:

(1) Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement: 8, 10, 15, 24, 30, 37, 53, 55, 57, or 58.

(2) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, and such default continues for a period of ten days after written notice thereof from City to Contractor.

(3) Contractor (a) is generally not paying its debts as they become due; (b) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction; (c) makes an assignment for the benefit of its creditors; (d) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property; or (e) takes action for the purpose of any of the foregoing.

(4) A court or government authority enters an order (a) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property; (b) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction; or (c) ordering the dissolution, winding-up or liquidation of Contractor.

b. On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor all damages, losses, costs or expenses incurred by City as a result of such Event of Default and any liquidated damages due from Contractor pursuant to the terms of this Agreement or any other agreement.

c. All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

21. Termination for Convenience

a. City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective.

b. Upon receipt of the notice, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by City and to minimize the liability of Contractor and City to third parties as a result of termination. All such actions shall be subject to the prior approval of City. Such actions shall include, without limitation:

(1) Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by City.

(2) Not placing any further orders or subcontracts for materials, services, equipment or other items.

(3) Terminating all existing orders and subcontracts.

(4) At City's direction, assigning to City any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, City shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

(5) Subject to City's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.

(6) Completing performance of any services or work that City designates to be completed prior to the date of termination specified by City.

(7) Taking such action as may be necessary, or as the City may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which City has or may acquire an interest.

c. Within 30 days after the specified termination date, Contractor shall submit to City an invoice, which shall set forth each of the following as a separate line item:

(1) The reasonable cost to Contractor, without profit, for all services and other work City directed Contractor to perform prior to the specified termination date, for which services or work City has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Contractor's direct costs for services or other work. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.

(2) A reasonable allowance for profit on the cost of the services and other work described in the immediately preceding subsection (1), provided that Contractor can establish, to the satisfaction of City, that Contractor would have made a profit had all services and other work under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.

(3) The reasonable cost to Contractor of handling material or equipment returned to the vendor, delivered to the City or otherwise disposed of as directed by the City.

(4) A deduction for the cost of materials to be retained by Contractor, amounts realized from the sale of materials and not otherwise recovered by or credited to City, and any other appropriate credits to City against the cost of the services or other work.

d. In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by City, except for those costs specifically enumerated and described in the immediately preceding subsection (c). Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such subsection (c).

e. In arriving at the amount due to Contractor under this Section, City may deduct: (1) all payments previously made by City for work or other services covered by Contractor's final invoice; (2) any claim which City may have against Contractor in connection with this Agreement; (3) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (d); and (4) in instances in

which, in the opinion of the City, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced amount and City's estimate of the reasonable cost of performing the invoiced services or other work in compliance with the requirements of this Agreement.

f. City's payment obligation under this Section shall survive termination of this Agreement.

22. Rights and Duties upon Termination or Expiration

a. This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement: 8 through 11, 13 through 18, 24, 26, 27, 28, 48 through 52, 56, and 57.

b. Subject to the immediately preceding subsection (a), upon termination of this Agreement prior to expiration of the term specified in Section 2, this Agreement shall terminate and be of no further force or effect. Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City. This subsection shall survive termination of this Agreement.

23. Conflict of Interest

Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

24. Proprietary or Confidential Information of City

Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Contractor agrees that all information disclosed by City to Contractor shall be held in confidence and used only in performance of 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 data.

25. Notices to the Parties

Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the parties may be by U.S. mail, e-mail or by fax, and shall be addressed as follows:

To City: Susan Yee
San Francisco Public Utilities Commission
1155 Market Street, 7th Floor
San Francisco, CA 94103
(tel.) 415-551-4886
(fax) 415-551-4836
email: syee@sfgwater.org

To Contractor: Joel A. Faller, P.E.
Kennedy/Jenks Consultants
622 Folsom Street
San Francisco, CA 94107
(tel.) 415-243-2150
(fax) 415-896-0999
email: JoelFaller@KennedyJenks.com

Any notice of default must be sent by registered mail.

26. Ownership of Results

Any interest of Contractor or its Subcontractors, in drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors in connection with services to be performed under this Agreement, shall become the property of and will be transmitted to City. However, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

27. Works for Hire

If, in connection with services performed under this Agreement, Contractor or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the City. If it is ever determined that any works created by Contractor or its subcontractors under this Agreement are not works for hire under U.S. law, Contractor hereby assigns all copyrights to such works to the City, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of the City, Contractor may retain and use copies of such works for reference and as documentation of its experience and capabilities.

28. Audit and Inspection of Records

Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its work under this Agreement. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than three years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon City by this Section.

29. Subcontracting

Contractor is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is first approved by City in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

30. Assignment

The services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Contractor unless first approved by City by written instrument executed and approved in the same manner as this Agreement.

31. Non-Waiver of Rights

The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

32. Earned Income Credit (EIC) Forms

Administrative Code section 12O requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found.

a. Contractor shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty days following the date on which this Agreement becomes effective (unless Contractor has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by Contractor; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement.

b. Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Contractor of the terms of this Agreement. If, within thirty days after Contractor receives written notice of such a breach, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty days, Contractor fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Agreement or under applicable law.

c. Any Subcontract entered into by Contractor shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this section.

d. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.

33. Local Business Enterprise Utilization; Liquidated Damages

a. The LBE Ordinance

Contractor, shall comply with all the requirements of the Local Business Enterprise and Non-Discrimination in Contracting Ordinance set forth in Chapter 14B of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the "LBE Ordinance"), provided such amendments do not materially increase Contractor's obligations or liabilities, or materially diminish Contractor's rights, under this Agreement. Such provisions of the LBE Ordinance are incorporated by reference and made a part of this Agreement as though fully set forth in this section. Contractor's willful failure to comply with any applicable provisions of the LBE Ordinance is a material breach of

Contractor's obligations under this Agreement and shall entitle City, subject to any applicable notice and cure provisions set forth in this Agreement, to exercise any of the remedies provided for under this Agreement, under the LBE Ordinance or otherwise available at law or in equity, which remedies shall be cumulative unless this Agreement expressly provides that any remedy is exclusive. In addition, Contractor shall comply fully with all other applicable local, state and federal laws prohibiting discrimination and requiring equal opportunity in contracting, including subcontracting.

b. Compliance and Enforcement

(1) Enforcement

If Contractor willfully fails to comply with any of the provisions of the LBE Ordinance, the rules and regulations implementing the LBE Ordinance, or the provisions of this Agreement pertaining to LBE participation, Contractor shall be liable for liquidated damages in an amount equal to Contractor's net profit on this Agreement, or 10% of the total amount of this Agreement, or \$1,000, whichever is greatest. The Director of the City's Human Rights Commission or any other public official authorized to enforce the LBE Ordinance (separately and collectively, the "Director of HRC") may also impose other sanctions against Contractor authorized in the LBE Ordinance, including declaring the Contractor to be irresponsible and ineligible to contract with the City for a period of up to five years or revocation of the Contractor's LBE certification. The Director of HRC will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to Administrative Code §14B.17.

By entering into this Agreement, Contractor acknowledges and agrees that any liquidated damages assessed by the Director of the HRC shall be payable to City upon demand. Contractor further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to Contractor on any contract with City.

Contractor agrees to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination or expiration of this Agreement, and shall make such records available for audit and inspection by the Director of HRC or the Controller upon request.

(2) Subcontracting Goals

The LBE subcontracting participation goal for this contract is **10 %**. Contractor shall fulfill the subcontracting commitment made in its bid or proposal. Each invoice submitted to City for payment shall include the information required in the HRC Progress Payment Form and the HRC Payment Affidavit. Failure to provide the HRC Progress Payment Form and the HRC Payment Affidavit with each invoice submitted by Contractor shall entitle City to withhold 20% of the amount of that invoice until the HRC Payment Form and the HRC Subcontractor Payment Affidavit are provided by Contractor.

Contractor shall not participate in any back contracting to the Contractor or lower-tier subcontractors, as defined in the LBE Ordinance, for any purpose inconsistent with the provisions of the LBE Ordinance, its implementing rules and regulations, or this Section.

(3) Subcontract Language Requirements

Contractor shall incorporate the LBE Ordinance into each subcontract made in the fulfillment of Contractor's obligations under this Agreement and require each subcontractor to agree and comply with provisions of the ordinance applicable to subcontractors.

Contractor shall include in all subcontracts with LBEs made in fulfillment of Contractor's obligations under this Agreement, a provision requiring Contractor to compensate any LBE subcontractor for damages for breach of contract or liquidated damages equal to 5% of the subcontract amount, whichever is greater, if Contractor does not fulfill its commitment to use the LBE subcontractor as specified in the bid or proposal, unless Contractor received advance approval from the Director of HRC and contract awarding authority to substitute subcontractors or to otherwise modify the commitments in the bid or proposal. Such provisions shall also state that it is enforceable in a court of competent jurisdiction.

Subcontracts shall require the subcontractor to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination of this contract and to make such records available for audit and inspection by the Director of HRC or the Controller upon request.

(4) Payment of Subcontractors

Contractor shall pay its subcontractors within three working days after receiving payment from the City unless Contractor notifies the Director of HRC in writing within ten working days prior to receiving payment from the City that there is a bona fide dispute between Contractor and its subcontractor and the Director waives the three-day payment requirement, in which case Contractor may withhold the disputed amount but shall pay the undisputed amount.

Contractor further agrees, within ten working days following receipt of payment from the City, to file the HRC Payment Affidavit with the Controller, under penalty of perjury, that the Contractor has paid all subcontractors. The affidavit shall provide the names and addresses of all subcontractors and the amount paid to each. Failure to provide such affidavit may subject Contractor to enforcement procedure under Administrative Code §14B.17.

34. Nondiscrimination; Penalties

a. Contractor Shall Not Discriminate

In the performance of this Agreement, Contractor agrees not to discriminate against any employee, City and County employee working with such contractor or subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

b. Subcontracts

Contractor shall incorporate by reference in all subcontracts the provisions of §§12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from

Purchasing) and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

c. Nondiscrimination in Benefits

Contractor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in §12B.2(b) of the San Francisco Administrative Code.

d. Condition to Contract

As a condition to this Agreement, Contractor shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

e. Incorporation of Administrative Code Provisions by Reference

The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to §12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

35. MacBride Principles—Northern Ireland

Pursuant to San Francisco Administrative Code §12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Contractor acknowledges and agrees that he or she has read and understood this section.

36. Tropical Hardwood and Virgin Redwood Ban

Pursuant to §804(b) of the San Francisco Environment Code, the City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

37. Drug-Free Workplace Policy

Contractor acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. Contractor agrees that any violation of this prohibition by Contractor, its employees, agents or assigns will be deemed a material breach of this Agreement.

38. Resource Conservation

Chapter 5 of the San Francisco Environment Code ("Resource Conservation") is incorporated herein by reference. Failure by Contractor to comply with any of the applicable requirements of Chapter 5 will be deemed a material breach of contract.

39. Compliance with Americans with Disabilities Act

Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

40. Sunshine Ordinance

In accordance with San Francisco Administrative Code §67.24(e), contracts, contractors' bids, responses to solicitations and all other records of communications between City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

41. Public Access to Meetings and Records

If the Contractor receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, Contractor shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Agreement, the Contractor agrees to open its meetings and records to the public in the manner set forth in §§12L.4 and 12L.5 of the Administrative Code. Contractor further agrees to make-good faith efforts to promote community membership on its Board of Directors in the manner set forth in §12L.6 of the Administrative Code. The Contractor acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. The Contractor further acknowledges that such material breach of the Agreement shall be grounds for the City to terminate and/or not renew the Agreement, partially or in its entirety.

42. Limitations on Contributions

Through execution of this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Contractor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

43. Requiring Minimum Compensation for Covered Employees

Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at <http://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 12P. Consistent with the requirements of the MCO, Contractor agrees to all of the following:

a. For each hour worked by a Covered Employee during a Pay Period on work funded under the City contract during the term of this Agreement, Contractor shall provide to the Covered Employee no less than the Minimum Compensation, which includes a minimum hourly wage and compensated and uncompensated time off consistent with the requirements of the MCO. For the hourly gross compensation portion of the MCO, Contractor shall pay a minimum of \$10.77 an hour for the term of this Agreement; provided, however, that Contractors that are Nonprofit Corporations or public entities shall pay a minimum of \$9 an hour for the term of this Agreement.

If a Covered Employee of a Nonprofit Corporation works in San Francisco, then that employee is covered by San Francisco's Minimum Wage Ordinance, which is Chapter 12R of the Administrative Code. As of January 1, 2007, Chapter 12R's minimum wage is \$9.14 per hour.

b. Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the City with regard to Contractor's compliance or anticipated compliance with the requirements of the MCO, for opposing any practice proscribed by the MCO, for participating in proceedings related to the MCO, or for seeking to assert or enforce any rights under the MCO by any lawful means.

c. Contractor understands and agrees that the failure to comply with the requirements of the MCO shall constitute a material breach by Contractor of the terms of this Agreement. The City, acting through the Contracting Department, shall determine whether such a breach has occurred.

d. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, 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, the City, acting through the Contracting Department, shall have the right to pursue the following rights or remedies and any rights or remedies available under applicable law:

(1) The right to charge Contractor an amount equal to the difference between the Minimum Compensation and any compensation actually provided to a Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law;

(2) The right to set off all or any portion of the amount described in Subsection (d)(1) of this Section against amounts due to Contractor under this Agreement;

(3) The right to terminate this Agreement in whole or in part;

(4) In the event of a breach by Contractor of the covenant referred to in Subsection (b) of this Section, the right to seek reinstatement of the employee or to obtain other appropriate equitable relief; and

(5) The right to bar Contractor from entering into future contracts with the City for three years.

Each of the rights provided in this Subsection (d) shall be exercisable individually or in combination with any other rights or remedies available to the City. Any amounts realized by the City pursuant to this subsection shall be paid to the Covered Employee who failed to receive the required Minimum Compensation.

e. 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 MCO.

f. Contractor shall keep itself informed of the current requirements of the MCO, including increases to the hourly gross compensation due Covered Employees under the MCO, and shall provide prompt written notice to all Covered Employees of any increases in compensation, as well as any written communications received by the Contractor from the City, which communications are marked to indicate that they are to be distributed to Covered Employees.

g. Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the City under the MCO, including reports on subcontractors.

h. The Contractor shall provide the City with access to pertinent records after receiving a written request from the City to do so and being provided at least five (5) business days to respond.

i. The City may conduct random audits of Contractor. Random audits shall be (i) noticed in advance in writing; (ii) limited to ascertaining whether Covered Employees are paid at least the minimum compensation required by the MCO; (iii) accomplished through an examination of pertinent records at a mutually agreed upon time and location within ten days of the written notice; and (iv) limited to one audit of Contractor every two years for the duration of this Agreement. Nothing in this Agreement is intended to preclude the City from investigating any report of an alleged violation of the MCO.

j. Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. A subcontract means an agreement between the Contractor and a third party which requires the third party to perform all or a portion of the services covered by this Agreement. Contractor shall notify the Department of Administrative Services when it enters into such a subcontract and shall certify to the Department of Administrative Services that it has notified the subcontractor of the obligations under the MCO and has imposed the requirements of the MCO on the subcontractor through the provisions of the subcontract. It is Contractor's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Contractor.

k. Each Covered Employee is a third-party beneficiary with respect to the requirements of subsections (a) and (b) of this Section, and may pursue the following remedies in the event of a breach by Contractor of subsections (a) and (b), but only after the Covered Employee has provided the notice, participated in the administrative review hearing, and waited the 21-day period required by the MCO. Contractor understands and agrees that if the Covered Employee prevails in such action, the Covered Employee may be awarded: (1) an amount equal to the difference between the Minimum Compensation and any compensation actually provided to the Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law; (2) in the event of a breach by Contractor of subsections (a) or (b), the right to seek reinstatement or to obtain other appropriate equitable relief; and (3) in the event that the Covered Employee is the prevailing party in any legal action or proceeding against Contractor arising from this Agreement, the right to obtain all costs and expenses, including reasonable attorney's fees and disbursements, incurred by the Covered Employee. Contractor also understands that the MCO provides that if Contractor prevails in any such action, Contractor may be awarded costs and expenses, including reasonable attorney's fees and disbursements, from the Covered Employee if the court determines that the Covered Employee's action was frivolous, vexatious or otherwise an act of bad faith.

l. If Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause contractor to exceed that amount in a fiscal year, Contractor shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and this department to exceed \$25,000 (\$50,000 for nonprofits) in the fiscal year.

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 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 <http://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.

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.

g. 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.

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

m. 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.

45. First Source Hiring Program

a. Incorporation of Administrative Code Provisions by Reference

The provisions of Chapter 83 of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with, and be bound by, all of the provisions that apply to this Agreement under such Chapter, including but not limited to the remedies provided therein. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83.

b. First Source Hiring Agreement

As an essential term of, and consideration for, any contract or property contract with the City, not exempted by the FSHA, the Contractor shall enter into a first source hiring agreement ("agreement") with the City, on or before the effective date of the contract or property contract. Contractors shall also enter into an agreement with the City for any other work that it performs in the City. Such agreement shall:

(1) Set appropriate hiring and retention goals for entry level positions. The employer shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to establish good faith efforts as to its attempts to do so, as set forth in the agreement. The agreement shall take into consideration the employer's participation in existing job training, referral and/or brokerage programs. Within the discretion of the FSHA, subject to appropriate modifications, participation in such programs maybe certified as meeting the requirements of this Chapter. Failure either to achieve the specified goal, or to establish good faith efforts will constitute noncompliance and will subject the employer to the provisions of Section 83.10 of this Chapter.

(2) Set first Source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to provide qualified economically disadvantaged individuals for consideration for employment for entry level positions. Employers shall consider all applications of qualified economically disadvantaged individuals referred by the System for employment; provided however, if the employer utilizes nondiscriminatory screening criteria, the employer shall have the sole discretion to interview and/or hire individuals referred or certified by the San Francisco Workforce Development System as being qualified economically disadvantaged individuals. The duration of the first source interviewing requirement shall be determined by the FSHA and shall be set forth in each agreement, but shall not exceed 10 days. During that period, the employer may publicize the entry level positions in accordance with the agreement. A need for urgent or temporary hires must be evaluated, and appropriate provisions for such a situation must be made in the agreement.

(3) Set appropriate requirements for providing notification of available entry level positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of qualified economically disadvantaged individuals to participating employers. Notification should include such information as employment needs by occupational title, skills, and/or experience required, the hours required, wage scale and duration of employment, identification of entry level and training positions, identification of English language proficiency requirements, or absence thereof, and the projected schedule and procedures for hiring for each occupation. Employers should provide both long-term job need projections and notice before initiating the interviewing and hiring process. These notification requirements will take into consideration any need to protect the employer's proprietary information.

(4) Set appropriate record keeping and monitoring requirements. The First Source Hiring Administration shall develop easy-to-use forms and record keeping requirements for documenting compliance with the agreement. To the greatest extent possible, these requirements shall utilize the employer's existing record keeping systems, be nonduplicative, and facilitate a coordinated flow of information and referrals.

(5) Establish guidelines for employer good faith efforts to comply with the first source hiring requirements of this Chapter. The FSHA will work with City departments to develop employer good faith effort requirements appropriate to the types of contracts and property contracts handled by each department. Employers shall appoint a liaison for dealing with the development and implementation of the employer's agreement. In the event that the FSHA finds that the employer under a City contract or property contract has taken actions primarily for the purpose of circumventing the requirements of this Chapter, that employer shall be subject to the sanctions set forth in Section 83.10 of this Chapter.

(6) Set the term of the requirements.

(7) Set appropriate enforcement and sanctioning standards consistent with this Chapter.

(8) Set forth the City's obligations to develop training programs, job applicant referrals, technical assistance, and information systems that assist the employer in complying with this Chapter.

(9) Require the developer to include notice of the requirements of this Chapter in leases, subleases, and other occupancy contracts.

c. Hiring Decisions

Contractor shall make the final determination of whether an Economically Disadvantaged Individual referred by the System is "qualified" for the position.

d. Exceptions

Upon application by Employer, the First Source Hiring Administration may grant an exception to any or all of the requirements of Chapter 83 in any situation where it concludes that compliance with this Chapter would cause economic hardship.

e. Liquidated Damages

Contractor agrees:

- (1) To be liable to the City for liquidated damages as provided in this section;
- (2) To be subject to the procedures governing enforcement of breaches of contracts based on violations of contract provisions required by this Chapter as set forth in this section;
- (3) That the contractor's commitment to comply with this Chapter is a material element of the City's consideration for this contract; that the failure of the contractor to comply with the contract provisions required by this Chapter will cause harm to the City and the public which is significant and substantial but extremely difficult to quantify; that the harm to the City includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to \$5,000 for every notice of a new hire for an entry level position improperly withheld by the contractor from the first source hiring process, as determined by the FSHA during its first investigation of a contractor, does not exceed a fair estimate of the financial and other damages that the City suffers as a result of the contractor's failure to comply with its first source referral contractual obligations.
- (4) That the continued failure by a contractor to comply with its first source referral contractual obligations will cause further significant and substantial harm to the City and the public, and that a second assessment of liquidated damages of up to \$10,000 for each entry level position improperly withheld from the FSHA, from the time of the conclusion of the first investigation forward, does not exceed the financial and other damages that the City suffers as a result of the contractor's continued failure to comply with its first source referral contractual obligations;
- (5) That in addition to the cost of investigating alleged violations under this Section, the computation of liquidated damages for purposes of this section is based on the following data:
 - A. The average length of stay on public assistance in San Francisco's County Adult Assistance Program is approximately 41 months at an average monthly grant of \$348 per month, totaling approximately \$14,379; and
 - B. In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least the first six months of employment was 84.4%. Since qualified individuals under the First Source program face far fewer barriers to employment than their counterparts in programs funded by the Workforce Investment Act, it is reasonable to conclude that the average length of employment for an individual whom the First Source Program refers to an employer and who is hired in an entry level position is at least one year; therefore, liquidated damages that total \$5,000 for first violations and \$10,000 for subsequent violations as determined by FSHA constitute a fair, reasonable, and conservative attempt to quantify the harm caused to the City by the failure of a contractor to comply with its first source referral contractual obligations.
- (6) That the failure of contractors to comply with this Chapter, except property contractors, may be subject to the debarment and monetary penalties set forth in Sections 6.80 et seq. of the San Francisco Administrative Code, as well as any other remedies available under the contract or at law; and
- (7) That in the event the City is the prevailing party in a civil action to recover liquidated damages for breach of a contract provision required by this Chapter, the contractor will be liable for the City's costs and reasonable attorneys fees.

Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of \$5,000 for every new hire for an Entry Level Position improperly withheld from the first source hiring process. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the FSHA.

f. Subcontracts

Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section.

46. Prohibition on Political Activity with City Funds

In accordance with San Francisco Administrative Code Chapter 12.G, Contractor may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. Contractor agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Contractor violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit Contractor from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider Contractor's use of profit as a violation of this section.

47. Preservative-treated Wood Containing Arsenic

Contractor may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Contractor may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Contractor from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

48. Modification of Agreement

This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement. Contractor shall cooperate with the Department to submit to the Director of HRC any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20% (HRC Contract Modification Form).

49. Administrative Remedy for Agreement Interpretation

Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to Purchasing who shall decide the true meaning and intent of the Agreement.

50. Agreement Made in California; Venue

The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

51. Construction

All paragraph captions are for reference only and shall not be considered in construing this Agreement.

52. Entire Agreement

This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This contract may be modified only as provided in Section 48.

53. Compliance with Laws

Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

54. 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.

55. Supervision of Minors – Left blank by agreement of the parties

56. 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.

57. Protection of Private Information

Contractor has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code

Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Contractor agrees that any failure of Contractor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract, bring a false claim action against the Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Contractor.

58. Graffiti Removal

Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti.

Contractor shall remove all graffiti from any real property owned or leased by Contractor in the City and County of San Francisco within forty eight (48) hours of the earlier of Contractor's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require a Contractor to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

Any failure of Contractor to comply with this section of this Agreement shall constitute an Event of Default of this Agreement.

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 – Left blank by agreement of the parties

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

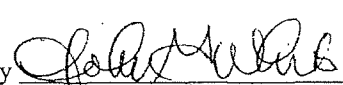
CITY

Approved: 


Susan Leal
General Manager
San Francisco Public Utilities Commission

Approved as to Form:

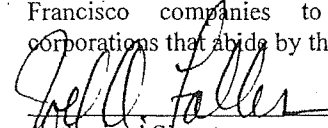
Dennis J. Herrera
City Attorney

By 
Deputy City Attorney

CONTRACTOR

By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.

I have read and understood paragraph 35, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.


Authorized Signature

JOELLA. FALLOR
Printed Name

VICE PRESIDENT
Title

KENNEDY/HENKS CONSULTANTS, INC.
Company Name

075042
City Vendor Number

622 FOLSOM ST., SF, 94107
Address

94-2147007
Federal Employer ID Number

APPENDICES

- A. Services to be Provided by Contractor
- B. Calculation of Charges

Appendix A
Services to be Provided by Contractor

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

1. Description of Services

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

2. Reports

The Contractor shall submit written reports as requested by the SFPUC Project Manager. Reports shall be thorough, competent and professional. Draft reports submitted for review shall be analyzed for technical content; clarity, language or technical content shall be grounds for resubmission as referred to in contract Item 11 describing "Acceptance of Work". The SFPUC Project Manager shall determine the format for the content of such reports. Submission of all reports shall be in accordance with the schedule set forth in individual task orders. The reports, including any copies, shall be submitted on recycled paper and printed on double-sided pages to the maximum extent possible.

3. Department Liaison

In performing the services provided for in this Agreement, the Contractor's liaison with the SFPUC will be the Project Manager, **Susan Yee**.

4. Task Orders

Performance of the **Engineering Project Design Services** will be executed according to a task order process. The SFPUC Project Manager will initially identify tasks and request the contractor to propose a project scope, sub tasks, staffing plan, LBE utilization, schedule, deliverables, budget and costs to complete the task. A final task order scope proposal will be negotiated between the SFPUC Project Manager and the Contractor and then submitted to Bureau Manager for approval. Labor rates, overhead rates and certain other unit costs or prices, including profit will be accordance with Appendix B. However, as provided in the RFQ, the budget identified for tasks in Appendix B is an estimate, and the City reserves the right to modify the budget allocated to any task as more specific information concerning the task order scope becomes available. The RFQ, including all Addenda, is incorporated by reference as though fully set forth herein, to the extent not in conflict with this Agreement.

The task order request will be processed for Controller certification of funding, after which a *Notice to Proceed* will be issued. The Contractor is hereby notified that work cannot commence until the Contractor receives a written Notice to Proceed in accordance with Chapter 6 of the San Francisco Administrative Code. *Any work performed without a Notice to Proceed will be at the Contractor's own commercial risk.* The calculations of costs and methods of compensation for all task orders under this contract shall be in accordance with the negotiated master contract and billing rates set forth in Appendix B.

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

- A. **Civil, Electrical or Mechanical Engineering:** Design and analysis for water conveyance, water/wastewater treatment and power projects; computer aided drafting.
- B. **Water/Wastewater Treatment Process Engineering:** Design and analysis of chemical handling and processes, filtration, piping, control and instrumentation of water/wastewater treatment facilities.
- C. **Structural Engineering:** Structural design and analysis of new and existing structures. Structures may be buildings, bridges, pump stations, water treatment plants, reservoirs, tanks, hydraulics structures, and equipment anchorage. Design and analysis including but not limited to special moment-resistant frames, fluid structure-foundation interaction, seismic risk analysis, plate/shell analysis, passive dampers, nonlinear analysis and push-over analysis.
- D. **Pipeline Engineering:** Design, analyze, evaluate pipe stresses, pipe welding and connections.
- E. **Geotechnical Engineering:** Geotechnical investigation to determine rock and soil properties. Recommend design pressures for static and seismic conditions; evaluate mitigation for geotechnical hazards. Investigate and identify fault traces.
- F. **Cost Estimating:** Cost estimate for construction of projects using local rates and current market conditions.
- G. **Computer Aided Drafting:** Prepare engineering drawings and other graphic material using computer-aided drafting and or manual drafting.
- H. **Pipeline Fault Crossing Engineering:** Design and analysis for large diameter (greater than 48" diameter) pipelines crossing active seismic faults, including soil-pipe interaction and non-linear pipe stress analysis.
- I. **System Engineering Services:** System Engineering studies and analyses to provide modeling, analysis, and discussions with WSIP teams, and Operations staff to interpret objectives; provide project alternatives that optimize meeting multiple program objectives, including scope, schedule and budget.
- J. **Hydraulic Modeling Services:** The SFPUC's Hydraulic Model of the Transmission System was developed using SynerGEE Water, Version 4.2 software. It is used to evaluate both steady-state and extended period simulated hydraulic conditions. This model is being updated with WSIP improvements, and it is being calibrated to provide more accurate response for both the current and post-WSIP configurations. Services may be requested to use this model, or other hydraulic models such as computational fluid dynamics, to evaluate conditions that may affect project designs or operations.
- K. **Water Quality Bureau Support:** Perform studies, investigations, field inspections, and write reports to assist projects with process control and/or regulatory compliance assessments; review existing and proposed regulations; review preliminary designs, cost estimates, reports, design drawings and specifications for water quality, regulatory and/or process control issues.

- L. **Communications Systems:** Design and installation of microwave and radio links to bypass telephone lines currently used for SCADA or computer data lines, including upgrading communications systems.
- M. **Acoustical/Vibration Engineering:** Investigate, evaluate, analyze equipment selection for minimizing noise and vibration.
- N. **Utilities Mapping and Coordination:** Determine location of existing utilities and ensure that there is no interference with projects.
- O. **Corrosion Engineering:** Analyze and recommend protection for pipeline, tank, reservoir, and other structures. Recommend coatings and surface preparation.
- P. **Photogrammetry/Surveys:** Surface and aerial photography and surveying with the use of latest technology and equipment.
- Q. **Materials Testing/Inspection:** Materials sampling and determination of material chemical and engineering properties; evaluation of hazardous materials.
- R. **Quality Assurance Review:** Quality Assurance Review of design plans, specifications, calculations, reports and engineering documents to assure that they meet project requirements, applicable codes and regulatory standards.
- S. **Value Engineering Review:** Technical Review directed at analyzing the functions of systems, equipment, facilities, services, and supplies for the purpose of achieving the essential functions at the lowest life-cycle cost consistent with required performance, reliability, quality, and safety.
- T. **Environmental Mitigation Engineering:** Design, analyze, evaluate environmental mitigations.

In addition to the scope of services listed above, the contractor will also be required to do the following:

- a. Ensure the timely delivery of quality services and within budget;
- b. Provide adequate quality control processes and deliverables in conformance with the technical requirements of the contract and task order;
- c. Maintain liaison and direct communications with SFPUC staff and promptly resolve any questions and issues that may arise;
- d. Submit invoices with proper supporting documentation in accordance with the terms of this agreement;
- e. Provide reports and deliverables as requested by SFPUC staff;

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.

5. Contractor Responsibilities

OCA/P-500 (9-07)
SFPUC/P-500 (9-07)

In addition to services identified above, the Contractor may also be asked to provide: According to SFPUC system needs and priorities, the Contractor will assist SFPUC staff in CS-879C to provide **Engineering Project Design Services** during the agreement period. The primary Contractor may also be asked to perform the following functions:

- Make presentations to the SFPUC, the Board of Supervisors, and neighborhood or community meetings.
- Perform professional consultations and peer review;
- Perform field inspections and field or crisis management at project sites. Confined space entry may be required; and
- Provide emergency response.

6. **Performance Evaluation**

Performance evaluations support the SFPUC's objective of continuously improving the quality of Contractor services. The SFPUC may or may not, at its sole discretion, conduct evaluation/s of Contractor's performance. Ratings are ultimately the decision of the SFPUC and are not subject to negotiation with the Contractor. However, the Contractor may provide comments on a performance evaluation form if an evaluation is performed. In the event that the SFPUC conducts performance evaluation/s of the Contractor, such performance evaluation/s shall not confer any express or implied rights upon Contractor, nor shall they shift any liability to the SFPUC for the Contractor's performance of the contract.

Appendix B Calculation of Charges

As part of Contractor's proposal, submitted on **August 28, 2007**, Contractor submitted an effective project multiplier for the requested tasks listed in the Request for Qualifications. The Contractor, with the assistance of the SFPUC, will be required to define the detailed scope for the tasks under this agreement. All costs associated with the development of the scope of work shall be borne by the Contractor.

As provided in the RFQ, the budget identified for tasks in Appendix B is an estimate, and the City reserves the right to modify the budget allocated to any task as more specific information concerning the task order scope becomes available.

Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or contractor who submits a false claim shall be liable to the City for three times the amount of damages which the City sustains because of the false claim. A contractor, subcontractor or contractor who submits a false claim shall also be liable to the City for the costs, including attorneys' fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the City for a civil penalty of up to \$10,000 for each false claim. A contractor, subcontractor or contractor will be deemed to have submitted a false claim to the City if the contractor, subcontractor or contractor: (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.

1. Billing Rate & Effective Project Multiplier

Contractor shall submit revised billing rates based on the submitted effective project multiplier listed below and the scope of work assigned to them by the SFPUC. Direct labor payroll rates may be adjusted annually. The amount of the adjustment is limited to a maximum of the CPI annual percent change increase (San Francisco Bay Area for Urban Wage Earners and Clerical Workers) for the previous year. The Effective Project Multiplier will apply to the billing rate of all individuals not listed in the Fee Schedule, including but not limited to substitute, unnamed staff, and subconsultants assigned later. The Effective Project Multiplier will apply to all contract Amendments. Contractor's billing rates are not subject to audit with respect to the makeup or composition of the rates but actual salary must be verifiable by certified payroll records. Adjustments for individual Contractor employees may exceed the maximum provided that the total adjustment dollars for Contractor employees dedicated to this contract does not exceed the maximum dollars based on the total direct salary paid on the contract for the previous year plus the CPI. In the event the maximum billing rate exceeds \$220/hour Contractor must obtain written pre-authorization by the SFPUC Project Manager and Bureau/Division Manager. Any adjustments would be made once per year, except those who are allowed to exceed the cap will keep the rate for the life of the contract.

The billing rate for each listed individual may not exceed the lowest rate charged to any other governmental entity except the City and County of San Francisco. Additionally, billing rates shall not exceed Federal Acquisition Regulations (FAR) or Generally Accepted Accounting Principles (GAAP) rate; whichever is applicable, if both, whichever is lowest.

- Direct Labor is limited to actual salaries of project personnel
- Effective Project Multiplier: 3.0

2. Staff Changes

The SFPUC Project Manager must approve the assignment of staff prior to beginning a task order as well as any staff changes proposed by Contractor. The SFPUC Project Manager must also approve in writing any personnel changes proposed by Contractor after Notice to Proceed has been issued.

3. Additional Subcontractors

Second-tier and pass-through subcontracting is prohibited. However, in the event that the prime contractor and its approved subcontractors lack the necessary skills or expertise to perform requested services that are within the scope of the contract, additional subcontractors may be added to the contractor team after obtaining pre-authorization by the SFPUC Project Manager and Bureau/Division Manager. In such circumstances, the SFPUC or HRC Compliance Officer may suggest firms capable of performing the work and submit a proposal to the contractor.

4. Other Direct Costs (ODC)

Direct reimbursable expenses (ODC's – Other Direct Costs) shall include actual direct costs (with no mark up) of expenses directly incurred in performing the work. All ODCs are subject to pre-approval in writing by the SFPUC Project Manager.

The following items will be eligible for reimbursement as ODCs:

- Out-of-town travel (“out-of-town” shall mean outside the nine Bay Area counties: San Francisco, Alameda, Marin, Santa Clara, Sonoma, Contra Costa, Napa, San Mateo, Solano).
 - Rental vehicle: traveler must select the most economical contractor and type of vehicle available and acquire any commercial rate or government discount available when the vehicle is rented.
 - Personal vehicle use: Contractor will be paid per mile as established by the United State Internal Revenue Service and only for that portion of travel that is outside the nine Bay Area counties and non-routine. Should the travel begin or end on a normal work day, the Contractor shall subtract commuting mileage from total mileage to calculate reimbursable mileage. The Contractor shall submit to the City an approved mileage log with its monthly invoices.
- Specialty printing (“specialty” as used herein shall mean large volume printing and color printing. Documentation of the written approval by the SFPUC must be included with the invoice);
- Specialty computer hardware and software. Documentation of the written approval by the SFPUC must be included with the invoice);
- Permit fees;
- Expedited courier services when requested by SFPUC staff;
- Special services, used solely for the benefit of this project and not performed by the Prime Contractor or by the Subcontractors, such as electrical testing, hazardous material testing, training, deliveries, diving services, office and field office setups and maintenance, and telephone and network installations and maintenance.

Documentation of the written approval by the SFPUC must be included with the invoice.

Everything not listed above is not eligible for reimbursement and include but are not limited to:

- All other travel expenses such as parking, bridge tolls, public transit, vehicle mileage within the nine Bay Area Counties, travel from Contractor's home office to SFPUC facilities;
- Contractor staff relocation costs;
- Any labor charges or pass-throughs, including but not limited to, administrative and clerical staff time;
- Telephone calls and faxes originating in the firm's home office, standard computer use charges, computer hardware or software, communication devices, and electronic equipment;
- All meals, including refreshments and working lunches with SFPUC staff;
- Equipment to be used by SFPUC staff;
- Postage and courier services which are not requested by SFPUC staff; and
- Costs of preparing the proposal.

5. Subcontractor Fees

- Subject to above restrictions
- Shall be subject to written pre-approval by the SFPUC Project Manager
- Subcontractor administration markup is limited to *actual cost not to exceed 5%*

6. Retention

Five percent (5%) of each invoice payment will be withheld for each task order. When the work for the task order or defined critical milestones has been completed to the satisfaction of the SFPUC Project Manager and all work products have been received and approved by the SFPUC Project Manager, the Contractor may request that the retention be released. In lieu of money retention, an irrevocable letter of credit acceptable to the City will be accepted.

7. Invoice Requirements

The contractor shall submit one original invoice package with the appropriate HRC reporting forms and supporting documentation to substantiate services provided and allowable ODCs. Contractor will work with City Staff to establish an invoice format that will correlate with appropriate City scheduling software and will be used thereafter. Each invoice submission must include an HRC Form 7 to identify the participation and amount payable to the subcontractors. Timesheets, cards or logs must include a brief description of when and what work was performed memorializing the day's progress. Mileage logs must include the beginning and ending mileage to substantiate the variable portal-to-portal distance and local driving required while performing the work. Any "Other Direct Costs" must be substantiated with receipts including a brief description for each receipt memorializing the purpose. All invoices must include the contract number, the task number (and title, if applicable), document reference number and funding source number. Complete invoice packages should be sent directly to:

San Francisco Public Utilities Commission
Contract Administration Bureau – Payment Processing Unit
1155 Market Street, 9th Floor
San Francisco, CA 94103

HRC Form 9 must be sent to the Contract Administration Bureau Payment Processing Unit within ten (10) days of receiving payment for each invoice to document the subcontractor's payment by the prime contractor.

HRC Form 8 must be sent to the Contract Administration Bureau Payment Processing Unit with the final invoice for each task order to authenticate the total subcontractor participation and close out the Purchase Order Release.

8. Audit

All costs submitted for payment by Contractor are subject to audit. In the event that an audit is conducted and the actual overhead and profit rates are less than those included in the Effective Project Multiplier, the Contractor will pay the cost of the audit and be subject to any applicable remedies available to the City as provided for in this Agreement and as available by law. In the event that an audit is conducted and the actual overhead and profit rates are equal to or greater than those included in the Effective Project Multiplier, the City shall pay for the cost of the audit.

PUBLIC UTILITIES COMMISSION

City and County of San Francisco

RESOLUTION NO. 07-0175

WHEREAS, The SFPUC requires professional engineering design services necessary for the design and construction of improvements to various WSIP projects; and

WHEREAS, It is necessary to procure the services of qualified Engineering Consultant firms to provide specialized Engineering Design Services to supplement SFPUC staff; and

WHEREAS, The estimated cost of services is \$36,000,000; and

WHEREAS, The proposal was advertised on August 3, 2007; and

WHEREAS, Services are anticipated to begin in November 2007 and end in November 2014 and the duration of this agreement is 2555 consecutive calendar days; and

WHEREAS, SFPUC staff and HRC review of the proposals resulted in the establishment of MWH/AGS, Inc./Lee Incorporated Joint Venture; URS Corporation; Kennedy/Jenks Consultants; and Camp Dresser & McKee Inc. as the best qualified consulting firms; and

WHEREAS, An HRC subconsulting goal of 10% LBE participation has been established and approved for this agreement by the HRC Contract Compliance Officer assigned to the SFPUC. MWH/AGS, Inc./Lee Incorporated Joint Venture, URS Corporation, Kennedy/Jenks Consultants, and Camp Dresser & McKee Inc. are committed to meet the LBE goal submitted in its bid which meet the HRC goal established; and

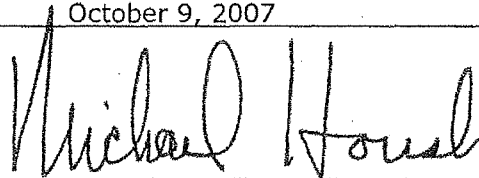
WHEREAS, Failure to reach successful agreement on contract terms and conditions within 30 days of the date of the Commission award may result in award of the contract to the next highest ranked proposer, or re-advertising and re-selecting consultants at the discretion of the City; and

WHEREAS, The firms being awarded a contract by the SFPUC must be in compliance with the Equal Benefits Provisions of Chapter 12B of the City's Administrative Code either at the time of the award, or within 2 weeks of the date of the Commission award; failure of the bidder to obtain compliance certification from HRC may, in the General Manager's sole discretion, result in award of the agreement to the next highest ranked proposer, or re-advertising and re-selecting consultants at the discretion of the City; and

WHEREAS, Funds for each task order will come from individual projects; therefore, be it

RESOLVED, That this Commission hereby approves the selection of MWH/AGS, Inc./Lee Incorporated Joint Venture, URS Corporation, Kennedy/Jenks Consultants, and Camp Dresser & McKee Inc.; awards Water Enterprise Water System Improvement Program-funded Agreement No. CS-879, Engineering Project Design Services, to provide engineering design services for WSIP Projects; and authorizes the General Manager of the San Francisco Public Utilities Commission to negotiate and execute a professional services agreement with MWH/AGS, Inc./Lee Incorporated Joint Venture; URS Corporation; Kennedy/Jenks Consultants; and Camp Dresser & McKee Inc. for an amount not to exceed \$9 million per firm, and with a duration of 7 years, or, in the event negotiations are not successful or City requirements are not satisfied, to negotiate and execute a professional services agreement with the next highest ranked proposer (s).

I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting of _____ *October 9, 2007*



Secretary, Public Utilities Commission



San Francisco Water Power Sewer

Services of the San Francisco Public Utilities Commission

525 Golden Gate Avenue, 13th Floor
San Francisco, CA 94102
T 415.554.3155
F 415.554.3161
TTY 415.554.3488

TO: Angela Calvillo, Clerk of the Board
FROM: Christopher Whitmore, Policy and Government Affairs
DATE: November 9, 2018
SUBJECT: Resolution approving Amendment No. 5 to Water Enterprise, Water System Improvement Program-funded Agreement No. CS-879.C, Engineering Project Design Services, with Kennedy/Jenks Consultants

Attached please find a resolution approving an SFPUC contract amendment (Amendment No. 5) with Kennedy/Jenks Consultants for continued engineering design and engineering services during construction for the Regional Groundwater Storage and Recovery Project and the San Francisco Groundwater Supply Project; and authorizing the General Manager to execute this amendment increasing the agreement by \$3,500,000, for a total not-to-exceed agreement amount of \$22,000,000, and extending the duration by three years for a total agreement duration of 15 years, subject to the Board of Supervisors approval pursuant to Charter Section 9.118.

The following is a list of accompanying documents (2 sets):

1. Board of Supervisors Resolution
2. SFPUC Resolution 07-0175
3. CS-879C Contract Agreement
4. SFPUC Resolution 09-0130
5. CS-879C Amendment 1
6. BOS File No. 091068
7. SFPUC Resolution 11-0128
8. CS-879C Amendment 2
9. BOS File No. 110872
10. CS-879C Amendment 3
11. SFPUC Resolution 16-0117
12. CS-879C Amendment 4
13. BOS File No. 160926
14. Draft CS-879C Amendment 5
15. Form SFEC-126

2018 NOV -9 AM 11:36
BOARD OF SUPERVISORS
SAN FRANCISCO

Please contact Christopher Whitmore at 415-934-3906 if you need any additional information on these items.

- Mark Farrell**
Mayor
- Ike Kwon**
President
- Vince Courtney**
Vice President
- Ann Moller Caen**
Commissioner
- Francesca Vietor**
Commissioner
- Anson Moran**
Commissioner
- Harlan L. Kelly, Jr.**
General Manager

OUR MISSION: To provide our customers with high-quality, efficient and reliable water, power and sewer services in a manner that values environmental and community interests and sustains the resources entrusted to our care.



**FORM SFEC-126:
NOTIFICATION OF CONTRACT APPROVAL
(S.F. Campaign and Governmental Conduct Code § 1.126)**

City Elective Officer Information <i>(Please print clearly.)</i>	
Name of City elective officer(s): Members, Board of Supervisors	City elective office(s) held: Members, Board of Supervisors

Contractor Information <i>(Please print clearly.)</i>
Name of contractor: Kennedy/Jenks Consultants (CS-879.C)

Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary.

Items 1 & 2:

Keith A. London	Director, President, CEO,
Laura Kennedy	Director, Vice President, COO IEBU
Gary M. Carlton	Director, Vice President
Joe Wojslaw	Director, Vice President
Joshua Sales	Director, Vice President
Dawn Taffler	Director, Vice President
Raymond F. Messer	Director
Paul Brown	Director
Laurie Bishop	CFO
Harold Glaser	COO WIBU, Vice President

Item 3: No person owns 20% or more.

Item 4: Subcontractors:

Balance Hydrologics
 BASELINE Environmental Consulting
 CADNET (LBE)
 CDM Smith
 Chaudhary Associates, Inc.
 CHS Consulting (LBE)
 CM Pros (LBE)
 Curtis & Tompkins
 Davis & Associates (LBE)
 Degenkolb
 Environment Water Management
 Exponent
 Flow Science
 Fugro West
 G&E Engineering
 GEI Engineering
 Geotechnical Consultants, Inc. (LBE)
 HJW GeoSpatial, Inc.
 Inspection Services, Inc.
 Jacobs Associates
 Luhdorff & Scalmanini Consulting Engineers
 Michael Willis Architects
 Saylor Consulting Group (LBE)
 SCA Environmental (LBE)
 Schiff Associates
 SRT Consultants (LBE)
 Stillwater Sciences

STRUCTUS, Inc. (LBE) Subtronic TRA Environmental Trussell Technologies William Lettis & Associates Wilson, Ihrig & Associates Winzler & Kelly YEI Engineers Item 5: None	
Contractor address: 303 Second Street, Suite 300 South, San Francisco, CA 94107	
Date that contract was approved: Original Contract: 9 October 2007	Amount of contract: Current: \$18,500,000 Amendment 5: \$3,500,000 Total: \$22,000,000
Describe the nature of the contract that was approved: Engineering Project Design Services	
Comments: None	

This contract was approved by (check applicable):

the City elective officer(s) identified on this form

a board on which the City elective officer(s) serves San Francisco Board of Supervisors
Print Name of Board

the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Relocation Appeals Board, and Local Workforce Investment Board) on which an appointee of the City elective officer(s) identified on this form sits

Print Name of Board

Filer Information <i>(Please print clearly.)</i>	
Name of filer: Angela Calvillo, Clerk of the Board	Contact telephone number: (415) 554-5184
Address: City Hall, Room 244, 1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102	E-mail: Board.of.Supervisors@sfgov.org

 Signature of City Elective Officer (if submitted by City elective officer)

 Date Signed

 Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk)

 Date Signed

File # 181136
Received in Committee
12/6/18
jm



Services of the San Francisco Public Utilities Commission

Engineering Project Design Services Agreement No. CS-879.C with Kennedy Jenks Consultants Amendment No. 5

**Daniel L. Wade, Director
Water Capital Projects & Programs**

**San Francisco Board of Supervisors
Budget & Finance Committee
December 6, 2018**



Contract Background

- Kennedy/Jenks was awarded Agreement No. CS-789.C to provide as-needed engineering design services in October 2007
- Projects include Harry Tracy Water Treatment Plant Long-Term Improvements Project, Peninsula Pipeline Seismic Upgrade, San Francisco Groundwater Supply Project, and Regional Groundwater Storage and Recovery Project
- Original Agreement was \$9M for 7 years
- Amendment Nos. 1 to 4 were issued to increase contract cost and time, and add assignment of Peninsula Pipeline Seismic Upgrade Project to Kennedy Jenks



Previous Amendments

Amendment No.	Date of BOS Approval	Cost Increase	Duration Increase	Projects
1	20-Oct-09	\$4.8M	2 years	HTWTP Plant-Long Term Improvements
2	4-Oct-11	\$2.7M	none	HTWTP Plant-Long Term Improvements
3	NA	\$0	none	Peninsula Pipeline Seismic Upgrade
4	27-Sep-16	\$2.0M	3 years	Groundwater Projects



Ongoing Groundwater Projects

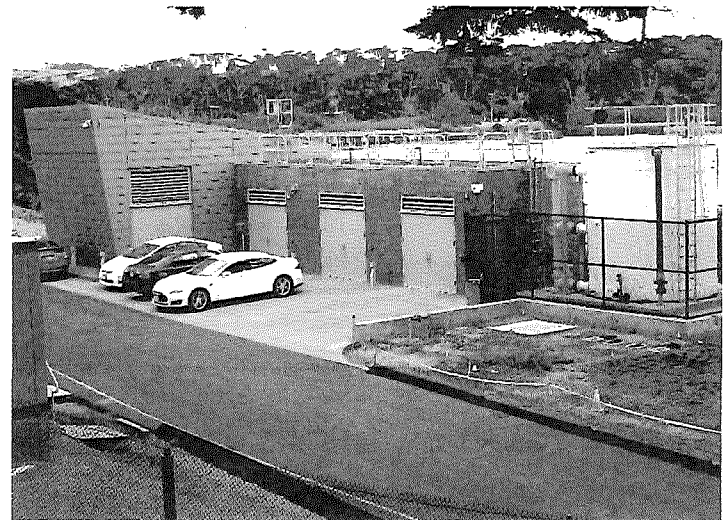
Regional Groundwater Storage & Recovery Project

- Phase 1 – Construction Phase - includes 13 wells
- Phase 2 – Planning Phase – includes 1 production well station, and up to 3 test wells



San Francisco Groundwater Supply Project

- Phase 1 – Construction Phase - includes 4 wells
- Phase 2 – Construction Phase– includes 2 wells





Major Reasons for Recent Cost & Duration Increases

- Design and construction of well stations were significantly more challenging than originally anticipated
- Extensive startup, commissioning and testing of the well stations, and integration of new and existing water systems is more complex than originally anticipated
- In-house resources retired that had knowledge and expertise in design and operation of groundwater systems; ongoing expertise from Kennedy Jenks is needed to replace this in-house expertise and support the completion of both projects



Amendment No. 5 Scope of Work

Planned Scope of Work	Request
San Francisco Groundwater	\$0.5M
Standard Operating Procedures/Operation and Maintenance	
Control Strategy	
Water Quality & Operations Support Evaluation	
Regional Groundwater	\$3.0M
Standard Operating Procedures/Operation and Maintenance	
Control Strategy	
Startup and operational support	
Engineering support during design and construction	
Water Quality & Operations Support Evaluation	
Total	\$3.5M



SFPUC Request

Approve Amendment No. 5 to Contract CS-879.C with Kennedy Jenks Consultants:

- Increase amount by \$3,500,000
- Increase duration by 36 months
- Approval of Amendment No. 5 will allow Kennedy Jenks to provide ongoing specialized engineering support for design and construction of both the Regional Groundwater and San Francisco Groundwater projects