

**City and County of San Francisco
San Francisco Public Utilities Commission
Contract Administration Bureau
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
URS Corporation**

THIS AMENDMENT (this “Amendment”) is made as of _____, ____ **2014**, in San Francisco, California, by and between **URS Corporation** (“Contractor” or “Consultant,” used interchangeably), 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, On June 10, 2003, per Resolution No. 03-0117, the Public Utilities Commission awarded Agreement No. CS-716, Engineering Services, Calaveras Dam Replacement Project, to Contractor to provide engineering and environmental support services in the amount of \$4,000,000, and with a term of four years, concluding on September 10, 2007; and

WHEREAS, on July 26, 2005, per Resolution No. 08-0041, the Public Utilities Commission approved Amendment No. 1 to Agreement No. CS-716 to continue professional engineering and environmental services for detailed and final design, increasing the original agreement amount by \$8,000,000 to \$12,000,000 and extending the agreement term by two years to September 10, 2009; and

WHEREAS, On September 6, 2005, approval for Amendment No. 1 was obtained from the Civil Service Commission per PSC# 4098-02/03; and

WHEREAS, on September 20, 2005, approval for Amendment No. 1 was obtained from the Board of Supervisors, per Resolution 674-05; and

WHEREAS, on March 11, 2008, per Resolution No. 08-0041, the San Francisco Public Utilities Commission approved Amendment No. 2 to Agreement No. CS-716, to provide additional professional services for the final design as well as environmental support services to facilitate the completion of CEQA and NEPA documents and obtain required environmental permits, increasing the agreement amount by \$1,900,000 to \$13,900,000; and

WHEREAS, On April 15, 2008, approval for Amendment No. 2 was obtained from the Board of Supervisors, per Resolution 182-08; and

WHEREAS, On April 23, 2008, approval for Amendment No. 2 was obtained from the Civil Service Commission per Notice of Action per PSC# 4098-02/03; and

WHEREAS, on May 12, 2009, per Resolution No. 09-0079, the San Francisco Public Utilities Commission approved Amendment No. 3 to Agreement No. CS-716, Engineering Services, Calaveras Dam Replacement Project to increase the agreement amount by \$10,100,000 to \$24,000,000 and extend the agreement term by seven years to September 10, 2016, in order to: provide additional design, environmental and permitting services needed prior to construction to address the naturally occurring asbestos (NOA) and fisheries issues; provide designs to mitigate impacts associated with the Calaveras Dam Replacement Project to be implemented under the Habitat Reserve Program; provide supplemental dam safety engineering analyses requested by the California Division of Safety of Dams (DSOD); provide ongoing permitting support; and provide engineering support during construction, start-up, and commissioning of the project; and

WHEREAS on May 12, 2009, the San Francisco Public Utilities Commission authorized the General Manager to split Amendment Three into two parts, Amendment 3A and Amendment 3B. Amendment 3A, dated June 17, 2009, increased the existing Agreement by \$410,337 to allow the Contractor to continue essential critical services while Amendment 3B was pending approval from the Board of Supervisors; and

WHEREAS, On June 15, 2009, approval for Amendment No. 3 (including Amendments 3A and 3B) was obtained from the Civil Service Commission per PSC# 4098-02/03; and

WHEREAS, On July 28, 2009, approval for Amendment 3 was obtained from the Board of Supervisors, per Resolution 316-09; and

WHEREAS, on May 27, 2014, per Resolution No. 14-0087, the San Francisco Public Utilities Commission approved Amendment No. 4 to Agreement No. CS-716, to provide additional engineering support during construction, start-up, and commissioning of the project, increasing the agreement amount by \$4,500,000 to \$28,500,000 and extend the agreement term by two (2) years, nine (9) months for a total agreement term of fifteen (15) years and nine (9) months; and

WHEREAS, On June 16, 2014, approval for Amendment No. 4 was obtained from the Civil Service Commission per PSC# 4098-02/03; and

WHEREAS, On _____, 2014, approval for Amendment 4 was obtained from the Board of Supervisors, per Resolution _____ - _____; and

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 between The City and County of San Francisco and URS Corporation To Furnish Engineering Design Services For The Conceptual Engineering For Calaveras Dam, CS-716,” dated September 11, 2003, between Contractor and City, as amended by the:

First Amendment, dated July 26, 2005;
Second Amendment, dated April 15, 2008;
Amendment Three A (3A), dated June 17, 2009; and
Amendment Three B (3B), dated July 28, 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 2. Section 2 Term of the Agreement currently reads as follows:

The effective date of this Agreement is the original date of its certification by the Controller. The term of this agreement shall be from September 11, 2003 to September 10, 2016. The Conceptual Engineering shall be completed within the first eighteen (18) months from the effective date. During the remaining term of the agreement, the Contractor shall complete and provide Detailed Design and Final Design, as well as engineering and technical support for the completion of the environmental review process (CEQA/NEPA).

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

2. Term of the Agreement. Subject to Section 1, the term of this Agreement shall be from **September 11, 2003 to May 24, 2019.**

2b. Section 5. Section 5 Compensation of the Agreement currently reads as follows:

Compensation shall be made in monthly payments on or before the thirtieth day of each month for work, as set forth in Section 4 of this Agreement, that the General Manager, in his or her sole discretion, concludes has been performed as of the last day of the immediately preceding month. In no event shall the amount of this Agreement exceed Twenty Four Million Dollars (\$24,000,000), which sum includes nine million six-hundred eighty-nine thousand six-hundred sixty-three dollars (\$9,689,663) under Amendment No. 3B to provide additional design, environmental and permitting services for the Calaveras Dam Replacement Project. The calculation of charges associated with this Amendment appears in Appendix B-4, “Amendment 3B Calculation of Charges,” attached hereto and incorporated by reference as though fully set

forth herein. Appendix B-3 and Appendix B-4 combined will be the total budget for Amendment 3.

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

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

The Controller is not authorized to pay invoices submitted by the Contractor prior to the Contractor's submission of HRC Form 7, "Prime Contractor/Joint Venture Partner(s) and Sub-contractor Participation Report." If HRC Form 7 is not submitted with the Contractor's invoice, the Controller will notify the department, the Director of HRC and the Contractor of the omission. If the Contractor's failure to provide HRC Form 7 is not explained to the Controller's satisfaction, the Controller will withhold 20% of the payment due pursuant to that invoice until HRC Form 7 is provided.

Following City's payment of an invoice, the Contractor has ten days to file an affidavit using HRC Form 9, "Sub-Contractor 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:

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 performed as of the last day of the immediately preceding month. In no event shall the amount of this Agreement exceed **Twenty Eight Million Five Hundred Thousand Dollars (\$28,500,000)**. The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. 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 Consultant 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 except as set forth in Section 6.22(J)(7) of the San Francisco Administrative Code.

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

CMD and Contractor of the omission. If Consultant's failure to provide CMD Progress Payment Form is not explained to the Controller's satisfaction, the Controller will withhold 20% of the payment due pursuant to that invoice until CMD Progress Payment Form is provided. Following City's payment of an invoice, Consultant has ten days to file an affidavit using CMD Payment Affidavit verifying that all subcontractors have been paid and specifying the amount.

2c. Submitting False Claims. Section 37 of the Agreement 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. 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.

2d. Indemnification. Section 11 of the Agreement is hereby replaced in its entirety to read as follows:

16. Indemnification.

a. General. To the fullest extent permitted by law, Consultant 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 Consultant 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 wilful misconduct of the Consultant, any subconsultant, anyone directly or indirectly employed by them, or anyone that they control (collectively, "Liabilities").

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

c. Copyright infringement. Consultant 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 Consultant'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.

2e. Limitations on Contributions. Section 56 is hereby replaced in its entirety 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.

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.

///
///
///

DRAFT

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

CITY

CONTRACTOR

Recommended by:

URS Corporation

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

Signature of Authorized Representative

Title

Approved as to Form:

City vendor number: 19103

Dennis J. Herrera
City Attorney

By: _____
John G. White
Deputy City Attorney

Approved:

Jaci Fong
Purchaser & Director, Office of Contract
Administration