

**City and County of San Francisco
Office of Contract Administration
Purchasing Division**

**Second Amendment
Between the City and County of San Francisco and
Carollo Engineers, Inc.
Planning and Engineering Services Southeast Plant
New 250 MGD Headworks Facility
(CS-389)**

THIS AMENDMENT (this “Amendment”) is made as of **[insert date]**, in San Francisco, California, by and between **Carollo Engineers, Inc.** (“Contractor”), and the City and County of San Francisco, a municipal corporation (“City”), acting by and through its Director of the Office of Contract Administration.

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 amount by \$21,000,000 and extend the performance period by two years, for a total not-to-exceed agreement amount of \$54,500,000 and a total agreement duration of eleven years;

WHEREAS, approval for this Amendment was obtained when the Civil Service Commission approved Contract number **[insert PSC number]** on July 6, 2020;

WHEREAS, the City’s San Francisco Public Utilities Commission (“SFPUC”) approved this Amendment by Resolution No. **[insert resolution number]** on June 9, 2020;

WHEREAS, the City’s **Board of Supervisors (BOS)** approved this Amendment by Resolution No. **[insert resolution number]** on **[insert date of Commission or Board action]**;

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 **November 3, 2014** between Contractor and City, as amended by the first amendment, dated **January 5, 2017**.

1b. Contract Monitoring Division. Effective July 28, 2012, with the exception of Sections 14B.9(D) and 14B.17(F), all of the duties and functions of the Human Rights Commission under Chapter 14B of the Administrative Code (LBE Ordinance) were transferred to the City Administrator, Contract Monitoring Division (“CMD”). Wherever “Human Rights Commission” or “HRC” appears in the Agreement in reference to Chapter 14B of the Administrative Code or its implementing Rules and Regulations, it shall be construed to mean “Contract Monitoring Division” or “CMD” respectively.

1c. Other Terms. Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

2. Modifications to the Agreement. The Agreement is hereby modified as follows:

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

2. Term of the Agreement. Subject to Section 1, the term of this Agreement shall be nine (9) years from **December 1, 2014** to **November 30, 2023**.

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 eleven (11) years from **December 1, 2014** to **November 30, 2025**.

2b. Section 5. Section 5 Compensation of the Agreement currently reads 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 **Thirty-Three Million Five Hundred Thousand Dollars (\$33,500,000)**. 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. If Contractor fails to provide Services in accordance with Contractor's obligations under this Agreement, the City may, in addition to any other remedies allowed by law and/or this Agreement, withhold any and all payments due Contractor until such failure is cured. In no event shall Contractor stop work as a result of the City's withholding of payments.

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 Administrative Code.

The Controller is not authorized to pay invoices submitted by Contractor prior to Contractor's submission of CMD Progress Payment Form. If Progress Payment Form is not submitted with Contractor's invoice, the Controller will notify the department, the Director of CMD and Contractor of the omission. If Contractor's failure to provide CMD Progress Payment Form is not explained to the Controller's satisfaction, the Controller will withhold 20% of the payment due pursuant to that invoice until CMD Progress Payment Form is provided. Following City's payment of an invoice, Contractor has ten days to file an affidavit using CMD Payment Affidavit verifying that all subcontractors have been paid and specifying the amount.

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

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 **Fifty-Four Million Five Hundred Thousand Dollars (\$54,500,000)**. 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. If Contractor fails to provide Services in accordance with Contractor's obligations under this Agreement, the City may, in addition to any other remedies allowed by law and/or this Agreement, withhold any and all payments due Contractor until such failure is cured. In no event shall Contractor stop work as a result of the City's withholding of payments.

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 Administrative Code.

The Controller is not authorized to pay invoices submitted by Contractor prior to Contractor's submission of CMD Progress Payment Form. If Progress Payment Form is not submitted with Contractor's invoice, the Controller will notify the department, the Director of CMD and Contractor of the omission. If Contractor's failure to provide CMD Progress Payment Form is not explained to the Controller's satisfaction, the Controller will withhold 20% of the payment due pursuant to that invoice until CMD Progress Payment Form is provided. Following City's payment of an invoice, Contractor has ten days to file an affidavit using CMD Payment Affidavit verifying that all subcontractors have been paid and specifying the amount.

2d. Limitations on Contributions. Section 42 Limits on Contribution is hereby replaced in its entirety as follows:

42. Limitations on Contributions. By executing this Agreement, Contractor acknowledges its obligations under section 1.126 of the City’s Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of 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, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. 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 10% in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

2e. Withholding. Section 10.a. Withholding is hereby added to “Taxes” to read as follows:

10.a. Withholding. Contractor agrees that it is obligated to pay all amounts due to the City under the San Francisco Business and Tax Regulations Code during the term of this Agreement. Pursuant to Section 6.10-2 of the San Francisco Business and Tax Regulations Code, Contractor further acknowledges and agrees that City may withhold any payments due to Contractor under this Agreement if Contractor is delinquent in the payment of any amount required to be paid to the City under the San Francisco Business and Tax Regulations Code. Any payments withheld under this paragraph shall be made to Contractor, without interest, upon Contractor coming back into compliance with its obligations.

2g. 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.

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:

Carollo Engineers, Inc. Consultants

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

[name of authorized representative]
[title]
[optional: address]
[optional: city, state, ZIP]

City vendor number: 57794

Approved as to Form:

Dennis J. Herrera
City Attorney

By: _____
Randy Parent
Deputy City Attorney