

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

**First Amendment**

**Planning & Design Services, Mountain Tunnel Improvements with  
Jacobs Associates, Inc. dba McMillen Jacobs Associates  
CS-249**

THIS FIRST AMENDMENT (this “Amendment”) is made as of **[insert date]**, in San Francisco, California, by and between **Jacobs Associates, Inc. dba McMillen Jacobs Associates** (“Contractor”), and the City and County of San Francisco, a municipal corporation (“City”).

**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, the Agreement was competitively procured as required by San Francisco Administrative Code Chapter 6.40 through a Request for Proposal (“RFP”) on June 17, 2015 and this modification is consistent therewith; and

WHEREAS, approval for the original Agreement was obtained on July 20, 2015 from the Civil Service Commission under PSC number 41561 – 14/15 in the amount of \$21,000,000 for the period of eleven (11) years and two (2) days; and

WHEREAS, approval for this Amendment was obtained on **[insert date of Civil Service Commission action or DHR Approval Date]** from the **Department of Human Resources on behalf of the Civil Service Commission** under PSC number 41561 – 14/15 in the amount of \$30,276,000 for the period of **[insert number of years]**; and

WHEREAS, the City’s San Francisco Public Utilities Commission approved this Agreement by **[insert resolution number]** on **[insert date of Commission or Board action]**; and

WHEREAS, approval for this Agreement was obtained from the San Francisco Board of Supervisors by Resolution Number **[insert resolution number]** on **[insert date of Board action]**.

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

**Article 1      Definitions**

The following definitions shall apply to this Amendment:

1.1      **Agreement.** The term “Agreement” shall mean the Agreement dated 1<sup>st</sup> day of February, 2016 between Contractor and City.

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

## **Article 2 Modifications of Scope to the Agreement**

The Agreement is hereby modified as follows:

2.1 **Term of the Agreement.** Article 2 Term of the Agreement of the Agreement currently reads as follows:

2.1 The term of this Agreement shall commence on the latter of: (i) **February 15, 2016; or (ii) the Effective Date and expires on February 14, 2026**, unless earlier terminated as otherwise provided herein.

2.2 The City has the option to extend this Agreement for up to three years. The City may extend this Agreement beyond the expiration date by exercising an option at the City's sole and absolute discretion and by modifying this Agreement as provided in Section 11.5, "Modification of this Agreement."

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

2.1 The term of this Agreement shall commence on the latter of: (i) **February 15, 2016; or (ii) the Effective Date and expires on February 14, 2029**, unless earlier terminated as otherwise provided herein.

2.2 Reserved.

2.2 **Payment.** Section 3.3.1 Payment of the Agreement currently reads as follows:

3.3.1 **Payment.** Contractor shall provide an invoice to the City on a monthly basis for Services completed in the immediate preceding month, unless a different schedule is set out in Appendix B, "Calculation of Charges." Compensation shall be made for Services identified in the invoice that the General Manager of the SPFUC, in his or her sole discretion, concludes has been satisfactorily performed. Payment shall be made within 30 calendar days of receipt of the invoice, unless the City notifies the Contractor that a dispute as to the invoice exists. **In no event shall the amount of this Agreement exceed Twenty-One Million Dollars (\$21,000,000.)** The breakdown of charges associated with this Agreement appears in Appendix B and B-1, "Calculation of Charges." Attached hereto and incorporated by reference as though fully set forth herein. In no event shall the City be liable for interest or late charges for any late payments except as set forth in Administrative Code Section 6.22(j).

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

3.3.1 **Payment.** Contractor shall provide an invoice to the City on a monthly basis for Services completed in the immediate preceding month, unless a different schedule is set out in Appendix B, "Calculation of Charges." Compensation shall be made for Services identified in the invoice that the General Manager of the SPFUC, in his or her sole discretion, concludes has been satisfactorily performed. Payment shall be made within 30 calendar days of receipt of the invoice, unless the City notifies the Contractor that a dispute as to the invoice exists. **In no event shall the amount of this Agreement exceed Twenty-Eight Million Seven Hundred Eighty Thousand Dollars (\$28,780,000.)** The breakdown of charges associated with this Agreement appears in Appendix B and B-1, "Calculation of Charges." Attached hereto and incorporated by

reference as though fully set forth herein. In no event shall the City be liable for interest or late charges for any late payments except as set forth in Administrative Code Section 6.22(j).

### **Article 3 Updates of Standard Terms to the Agreement**

The Agreement is hereby modified as follows:

3.1 **Definitions.** *The following is hereby added to the Agreement as a Definition in Article 1:*

1.10 “Confidential Information” means confidential City information including, but not limited to, personally-identifiable information (“PII”), protected health information (“PHI”), or individual financial information (collectively, “Proprietary or Confidential Information”) that is subject to local, state or federal laws restricting the use and disclosure of such information, including, but not limited to, Article 1, Section 1 of the California Constitution; the California Information Practices Act (Civil Code § 1798 et seq.); the California Confidentiality of Medical Information Act (Civil Code § 56 et seq.); the federal Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801(b) and 6805(b)(2)); the privacy and information security aspects of the Administrative Simplification provisions of the federal Health Insurance Portability and Accountability Act (45 CFR Part 160 and Subparts A, C, and E of part 164); and San Francisco Administrative Code Chapter 12M (Chapter 12M).

3.2 **Assignment.** *The following is hereby added to Article 4 of the Agreement, replacing the previous Section 4.5 in its entirety:*

4.5 **Assignment.** The Services to be performed by Contractor are personal in character. Neither this Agreement, nor any duties or obligations hereunder, may be directly or indirectly assigned, novated, hypothecated, transferred, or delegated by Contractor, or, where the Contractor is a joint venture, a joint venture partner, (collectively referred to as an “Assignment”) unless first approved by City by written instrument executed and approved in the same manner as this Agreement in accordance with the Administrative Code. The City’s approval of any such Assignment is subject to the Contractor demonstrating to City’s reasonable satisfaction that the proposed transferee is: (i) reputable and capable, financially and otherwise, of performing each of Contractor’s obligations under this Agreement and any other documents to be assigned, (ii) not forbidden by applicable law from transacting business or entering into contracts with City; and (iii) subject to the jurisdiction of the courts of the State of California. A change of ownership or control of Contractor or a sale or transfer of substantially all of the assets of Contractor shall be deemed an Assignment for purposes of this Agreement. Contractor shall immediately notify City about any Assignment. Any purported Assignment made in violation of this provision shall be null and void.

3.3 **Withholding.** *The following is hereby added to Article 7 of the Agreement:*

7.3 **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.

**3.4 Consideration of Salary History.** *The following is hereby added to Article 10 of the Agreement, replacing the previous Section 10.4 in its entirety:*

**10.4 Consideration of Salary History.** Contractor shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or “Pay Parity Act.” Contractor is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Agreement or in furtherance of this Agreement, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in the City or on City property. The ordinance also prohibits employers from (1) asking such applicants about their current or past salary or (2) disclosing a current or former employee’s salary history without that employee’s authorization unless the salary history is publicly available. Contractor is subject to the enforcement and penalty provisions in Chapter 12K. Information about and the text of Chapter 12K is available on the web at <https://sfgov.org/olse/consideration-salary-history>. Contractor is required to comply with all of the applicable provisions of 12K, irrespective of the listing of obligations in this Section.

**3.5 Limitations on Contributions.** *The following is hereby added to Article 10 of the Agreement, replacing the previous Section 10.11 in its entirety:*

**10.11 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.

**3.6 Notification of Legal Requests.** *The following section is hereby added and incorporated in Article 11 of the Agreement:*

**11.13 Notification of Legal Requests.** Contractor shall immediately notify City upon receipt of any subpoenas, service of process, litigation holds, discovery requests and other legal requests (“Legal Requests”) related to all data given to Contractor by City in the performance of this Agreement (“City Data” or “Data”), or which in any way might reasonably require access to City’s Data, and in no event later than 24 hours after it receives the request. Contractor shall not respond to Legal Requests related to City without first notifying City other than to notify the requestor that the information sought is potentially covered under a non-disclosure agreement.

Contractor shall retain and preserve City Data in accordance with the City's instruction and requests, including, without limitation, any retention schedules and/or litigation hold orders provided by the City to Contractor, independent of where the City Data is stored.

**3.7 Management of Private, Proprietary or Confidential Information and City Data.**  
*The following is hereby added and incorporated into Article 11 of the Agreement:*

**11.14 Management of Private, Proprietary or Confidential Information and City Data.**

**11.14.1 Protection of Private Information.** If this Agreement requires City to disclose "Private Information" to Contractor within the meaning of San Francisco Administrative Code Chapter 12M, Contractor and subcontractor shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the Services. Contractor is subject to the enforcement and penalty provisions in Chapter 12M.

**11.14.2 Confidential Information.** In the performance of Services, Contractor may have access to, or collect on City's behalf, City's proprietary or Confidential Information, the disclosure of which to third parties may damage City. If City discloses proprietary or Confidential Information to Contractor, or Contractor collects such information on City's behalf, such information must be held by Contractor in confidence and used only in performing 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 or Confidential Information.

**11.14.3 Use of City Data and Confidential Information.** Contractor agrees to hold City's Data received from, or collected on behalf of, the City, in strictest confidence. Contractor shall not use or disclose City's Data except as permitted or required by the Agreement or as otherwise authorized in writing by the City. Any work using, or sharing or storage of, City's Data outside the United States is subject to prior written authorization by the City. Access to City's Data must be strictly controlled and limited to Contractor's staff assigned to this project on a need-to-know basis only. Contractor is provided a limited non-exclusive license to use the City Data solely for performing its obligations under the Agreement and not for Contractor's own purposes or later use. Nothing herein shall be construed to confer any license or right to the City Data or Confidential Information, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third-party. Unauthorized use of City Data by Contractor, subcontractors or other third-parties is prohibited. For purpose of this requirement, the phrase "unauthorized use" means the data mining or processing of data, stored or transmitted by the service, for commercial purposes, advertising or advertising-related purposes, or for any purpose other than security or service delivery analysis that is not explicitly authorized.

**11.14.4 Disposition of Confidential Information.** Upon request of City or termination or expiration of this Agreement, and pursuant to any document retention period required by this Agreement, Contractor shall promptly, but in no event later than thirty (30) calendar days, return all data given to or collected by Contractor on City's behalf, which includes all original media. Once Contractor has received written confirmation from City that City's Data has been successfully transferred to City, Contractor shall within ten (10) business days clear or purge all City Data from its servers, any hosted environment Contractor has used in performance of this Agreement, including its subcontractors environment(s), work stations that were used to

process the data or for production of the data, and any other work files stored by Contractor in whatever medium. Contractor shall provide City with written certification that such purge occurred within five (5) business days of the purge. Secure disposal shall be accomplished by “clearing,” “purging” or “physical destruction,” in accordance with National Institute of Standards and Technology (NIST) Special Publication 800-88 or most current industry standard.

#### **Article 4      Effective Date**

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

#### **Article 5      Legal Effect**

Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

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

CITY  
Recommended by:

CONTRACTOR  
Jacobs Associates, Inc. dba McMillen  
Jacobs Associates

\_\_\_\_\_  
Dennis J. Herrera  
General Manager  
San Francisco Public Utilities Commission

\_\_\_\_\_  
Dan Adams  
Chief Executive Officer

City Supplier number: 0000017963

Approved as to Form:

David Chiu  
City Attorney

By: \_\_\_\_\_  
Tyson Arbuthnot  
Deputy City Attorney