

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

Second Amendment

THIS SECOND AMENDMENT (this “Amendment”) is made as of **[insert date]**, in San Francisco, California, by and between **Brown and Caldwell** (“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 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) issued on April 1, 2013 and this modification is consistent therewith; and

WHEREAS, approval for the original Agreement was obtained on May 6, 2013 from the Civil Service Commission under PSC number 4110-12/13 in the amount of \$80,000,000 for the period of ten(10) years and 47 weeks ; and

WHEREAS, approval for this Amendment was obtained on **[insert date of Civil Service Commission action or DHR Approval Date]** from the **[Civil Service Commission or Department of Human Resources on behalf of the Civil Service Commission]** under PSC number **[insert PSC number]** in the amount of **[insert Dollar Amount]** for the period of **[insert number of years]**; and

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

WHEREAS, the City’s **Board of Supervisors** approved this Amendment by **[insert resolution number]** on **[insert date of Commission or Board action]**.

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

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 June 13, 2013 between Contractor and City, as amended by the:

First Amendment, dated May 22, 2017, and

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

2. Term of the Agreement. Subject to Section 1, the term of this Agreement shall be twelve (12) years and a half years from **July 29, 2013 to December 31, 2025.**

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 **sixteen (16) years from July 29, 2013 to July 28, 2029.**

2b. Compensation. Section 5 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 **One Hundred Fifty Three Million Five Hundred Thousand Dollars (\$153,500,000)**. 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.

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 **Two Hundred Eight Million Five Hundred Thousand Dollars (\$208,500,000)**. 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.

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.

2c. Withholding. Section 14 is hereby added to "Taxes" to read as follows:

14.c. 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.

2d. Limitations on Contributions. Section 42 of the Agreement currently reads 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, or the board of a state agency 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.

Such section is hereby amended 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.

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:

Brown and Caldwell

Dennis J. Herrera
General Manager
San Francisco Public Utilities Commission

Tracy Stigers, PE, BCEE
Vice President

City vendor number: **03786**

Approved as to Form:

David Chiu
City Attorney

By: _____
Tyson Arbuthnot
Deputy City Attorney