

City and County of San Francisco
Municipal Transportation Agency
One South Van Ness Ave. 7th floor
San Francisco, California 94103

8th Amendment to the Design Agreement between the City and County of San Francisco and HNTB-B&C JV for Architectural and Engineering Services for the Final Design and Construction of the San Francisco Municipal Transportation Agency Central Subway Project

and

Assignment and Assumption Agreement between Transit Systems Engineering, Inc. and B&C Transit, Inc. and the San Francisco Municipal Transportation Agency

**(Third Street Light Rail Project, Phase 2), SFMTA Contract No. CS-155-3.
Design Package #3**

This 8th Amendment to the Design Agreement between the City and County of San Francisco and HNTB-B&C JV for Architectural and Engineering Services for the Final Design and Construction of the San Francisco Municipal Transportation Agency Central Subway Project and Assignment and Assumption Agreement between Transit Systems Engineering, Inc., B&C Transit, Inc., HNTB – B&C JV and the San Francisco Municipal Transportation Agency (this “Amendment”) is dated for convenience as August 13, 2018, in San Francisco, California, by and between B&C Transit, Inc. (“Assignor”) and Transit Systems Engineering, Inc. (“Assignee”), approved by the City and County of San Francisco, by and through its Municipal Transportation Agency (“City” or “SFMTA”) and HNTB – B&C JV.

RECITALS

WHEREAS, Assignor is a party to the Design Agreement (as defined below); and

WHEREAS, Assignor desires to assign its obligations under the Design Agreement, and Assignee desires to assume those obligations, each on the terms and conditions set forth herein; and

WHEREAS, Assignor is a member of an unregistered joint venture partnership, HNTB – B&C JV, which is contracted with the SFMTA to provide professional engineering services for the design of the Central Subway Project trackway and control systems, under the Design Agreement, SFMTA Contract CS-155-3, dated February 16, 2010; and

WHEREAS, under the Design Agreement, the joint venture partners of HNTB-B&C JV are jointly and severally liable for the joint venture’s performance of the Design Agreement; and

WHEREAS, Assignee will replace Assignor as a member of the joint venture, which will in the future be called “HNTB – TSE JV,” which shall be an unregistered joint venture between HNTB and Assignee; and

THEREFORE, in consideration of the promises and the mutual covenants contained in this Assignment Agreement, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Assignor and Assignee agree as follows:

1. **Definitions.** The following definitions shall apply to this Amendment:

(a) **Design Agreement.** The term "Design Agreement" shall mean the "Agreement between the City and County of San Francisco, a municipal corporation, acting through its Municipal Transportation Agency (City or Agency) and HNTB-B&C JV, A Joint Venture between HNTB Corporation and B&C Transit, Inc. for Architectural and Engineering Services for the Final Design and Construction of the San Francisco Municipal Transportation Agency Central Subway Project (Third Street Light Rail Project, Phase 2) Systems Design, SFMTA Contract No. CS-155-3, dated February 16, 2010. The term "Design Agreement" shall include the seven prior amendments to the Design Agreement, which are listed in Section 12 of this Amendment, which are incorporated by reference here.

(b) **Effective Date.** "Effective Date" shall mean the date this Amendment is approved by the SFMTA, as indicated on the signature page of this Amendment, below.

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

2. **Assignment Agreement.** Assignor hereby assigns, transfers and conveys to Assignee all of Assignor's right, title and interest in and to the Design Agreement and all of Assignor's duties and obligations thereunder, to the extent arising on or after the Effective Date.

3. **Assumption.** Assignee hereby accepts the assignment transfer and conveyance set forth in Section 2 and agrees to perform all of Assignor's duties and obligations under the Agreement, to the extent arising on or after the Effective Date.

4. **Mutual Indemnities**

(a) **Assignor.** Assignor shall indemnify, defend and protect Assignee, and hold Assignee harmless from and against, any and all liabilities, losses, damages, claims, costs or expenses (including attorneys' fees) arising out of (a) any failure of Assignor to convey its interest pursuant to Section 2, free and clear of all third-party liens, claims or encumbrances or (b) any breach by Assignor of the Design Agreement or any other failure to perform or observe any of the duties or obligations of Assignor thereunder, to the extent such breach or failure arises prior to the Effective Date.

(b) **Assignee.** Assignee shall indemnify, defend and protect Assignor, and hold Assignor harmless from and against, any and all liabilities, losses, damages, claims, costs or expenses (including attorneys' fees) arising out of any breach by Assignee of the Design Agreement or any other failure to perform or observe any of the duties or obligations thereunder assumed by Assignee pursuant to this Amendment.

5. **Assignor is Guarantor.** Assignor agrees that it shall fully warrant and guarantee without limitation the work and performance of Assignee's obligations under the Design Agreement.

6. **Governing Law.** This Amendment shall be governed by the laws of the State of California, without regard to its conflict of laws principles.

7. **Headings.** All section headings and captions contained in this Amendment are for reference only and shall not be considered in construing this Amendment.

8. **Entire Agreement.** This Amendment sets forth the entire agreement between Assignor and Assignee relating to the assignment of the Design Agreement and supersedes all other oral or written provisions.

9. **Further Assurances.** From and after the date of this Amendment, Assignor and Assignee agree to do such things, perform such acts, and make, execute, acknowledge and deliver such documents as may be reasonably necessary to complete the conveyance contemplated by this Amendment or as may be required by City.

10. **Severability.** Should the application of any provision of this Amendment 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 Amendment 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 Assignor, Assignee and City.

11. **Successors; Third-Party Beneficiaries.** Subject to the terms of the Agreement, this Amendment shall be binding upon, and inure to the benefit of, the parties hereto and their successors and assigns. Except as set forth in Section 12, nothing in this Amendment, whether express or implied, shall be construed to give any person or entity (other than City and the parties hereto and their respective successors and assigns) any legal or equitable right, remedy or claim under or in respect of this Amendment or any covenants, conditions or provisions contained herein.

12. **Notices.** All notices, consents, directions, approvals, instructions, requests and other communications regarding this Amendment or the Design Agreement shall be in writing, shall be addressed to the person and address set forth below and shall be (a) deposited in the U.S. mail, first class, certified with return receipt requested and with appropriate postage, (b) hand delivered or (c) sent via facsimile (if a facsimile number is provided below). All communications sent in accordance with this Section shall become effective on the date of receipt. From time to time Assignor, Assignee or City may designate a new address for purposes of this Section by notice to the other signatories to this Amendment.

If to Assignor:

Alberto Fernandez
President
B&C Transit, Inc.
7955 Edgewater Drive
Oakland, CA 94621
bcntransit.com

with a copy to:

Darlene Gee
Principal in Charge
HNTB & B&C JV
1111 Broadway, Suite 900
Oakland, CA 94607

If to Assignee:

Alberto Fernandez, President
Transit Systems Engineering, Inc.

2200 Powell St., Suite 300
Emeryville, CA 94608
510.285.6639

If to City:

Shahnam Farhangi
Division Deputy for Contract Administration,
Capital Projects and Construction Division
SFMTA
1 South Van Ness Avenue, 3rd floor
San Francisco, CA 94103
shahnam.farhangi@sfmta.com

with a copy to:

Albert Hoe
Program Manager
Central Subway Program
1 South Van Ness Avenue, 7th floor
San Francisco, CA 94103
albert.hoe@sfmta.com

12. Consent of City; No Release of Assignor; Waivers.

- a. Each of Assignor and Assignee acknowledges that the prior written consent of City to this Amendment is required under the terms of the Agreement. City shall be a third party beneficiary of this Amendment (other than Section 4) and shall have the right to enforce this Amendment. Neither this Amendment nor the consent of City set forth below shall release Assignor in whole or in part from any of its obligations or duties under the Design Agreement if Assignee fails to perform or observe any such obligation or duty.
- b. Assignor has entered into this Amendment and obtained such consent of City based solely upon Assignor's independent investigation of Assignee's financial condition and ability to perform under the Agreement, and Assignor assumes full responsibility for obtaining any further information with respect to Assignee or the conduct of its business after the date of this Amendment. Assignor waives any right to require City to (a) proceed against any person or entity including Assignee, (b) proceed against or exhaust any security now or hereafter held in connection with the Agreement, or (c) pursue any other remedy in City's power.
- c. Assignor waives any defense arising by reason of any disability or other defense of Assignee or any other person, or by reason of the cessation from any cause whatsoever of the liability of Assignee or any other person. Assignor shall not have and hereby waives any right of subrogation to any of the rights of City against Assignee or any other person and Assignor waives any right to enforce any remedy of Assignor against Assignee (including, without limitation, Section 4(b)) or against any other person unless and until all obligations to City under the Design Agreement and this Amendment have been paid and satisfied in full.

- d. Assignor waives any benefit of any right to participate in any collateral or security whatsoever now or hereafter held by City with respect to the obligations under the Agreement.
- e. Assignor authorizes City, without notice or demand and without affecting Assignor's liability hereunder or under the Design Agreement to: (i) renew, modify or extend the time for performance of any obligation under the Agreement; (ii) take and hold security for the payment of any obligation under the Design Agreement and exchange, enforce, waive and release such security; and (iii) release or consent to an assignment by Assignee of all or any part of the Design Agreement.

13. **Included Amendments.** The Agreement and the following seven amendments to the Design Agreement are hereby incorporated by reference to this Amendment. The Amendments to the Design Agreement are assigned under this Amendment and in the same manner as the original Design Agreement:

- 1. First Amendment to the Agreement, dated January 17, 2012
- 2. Second Amendment to the Agreement, dated March 7, 2012
- 3. Third Amendment to the Agreement, dated May 4, 2012
- 4. Fourth Amendment to the Agreement, dated July 11, 2012
- 5. Fifth Amendment to the Agreement, dated April 24, 2013
- 6. Sixth Amendment to the Agreement, dated June 11, 2014 (retroactively approved on June 28, 2018)
- 7. Seventh Amendment to the Agreement, dated April 20, 2015

The remainder of this page is intentionally left blank.

In signing this Eighth Amendment, each signatory certifies that each he or she is authorized to execute this Amendment and thereby bind the party he or she represents.

ASSIGNOR

B&C Transit Inc.

City Vendor No. 24824

By: 
Alberto Fernandez
President

ASSIGNEE


Transit Systems Engineering, Inc.

City Vendor No. 98887

By: 
Alberto Fernandez
President

HNTB – B&C JV

HNTB – B&C JV acknowledges and agrees that this Amendment shall not relieve HNTB or HNTB – B&C JV of any obligation stated in the Design Agreement, and that it fully consents to the assignment of all obligations of B&C Transit under the Design Agreement to Transit Systems Engineering, Inc.

Agreed: 
Darlene Gee
Principal in Charge
HNTB – B&C JV


CITY

Subject to Section 12 of this Amendment, City hereby consents to the assignment and assumption, as described in Sections 2 and 3 of this Assignment Agreement.

Approved:

Edward D. Reiskin
Director of Transportation
Date of Approval: _____

Approved as to Form:

Dennis J. Herrera
City Attorney

Robert K. Stone
Deputy City Attorney

In signing this Eighth Amendment, each signatory certifies that each he or she is authorized to execute this Amendment and thereby bind the party he or she represents.

ASSIGNOR

B&C Transit Inc.
City Vendor No. 24824

By: 
Alberto Fernandez
President

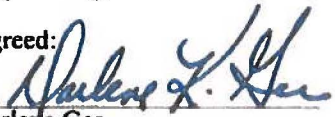
ASSIGNEE

Transit Systems Engineering, Inc.
City Vendor No. 98867

By: 
Alberto Fernandez
President


HNTB – B&C JV


HNTB – B&C JV acknowledges and agrees that this Amendment shall not relieve HNTB or HNTB – B&C JV of any obligation stated in the Design Agreement, and that it fully consents to the assignment of all obligations of B&C Transit under the Design Agreement to Transit Systems Engineering, Inc.

Agreed: 
Darlene Gee
Principal in Charge
HNTB – B&C JV

CITY

Subject to Section 12 of this Amendment, City hereby consents to the assignment and assumption, as described in Sections 2 and 3 of this Assignment Agreement.

Approved:

Edward D. Reiskin
Director of Transportation
Date of Approval: 9/20/2018

Approved as to Form:
Dennis J. Herrera
City Attorney

Robert K. Stone
Deputy City Attorney

Certificate Of Completion

Envelope Id: 1A8A90207CF345D5AFB4EDCA1415A969
 Subject: Please DocuSign: CS-155-3 - Mod#8.pdf
 Source Envelope:
 Document Pages: 7
 Certificate Pages: 1
 AutoNav: Enabled
 Envelopeld Stamping: Disabled
 Time Zone: (UTC-08:00) Pacific Time (US & Canada)

Status: Completed

Envelope Originator:
 Michelle Lim
 1 South Van Ness, 3rd Floor
 San Francisco, CA 94103
 Michelle.Lim@sfmta.com
 IP Address: 75.10.236.1

Record Tracking

Status: Original
 9/20/2018 2:36:22 PM

Holder: Michelle Lim
 Michelle.Lim@sfmta.com

Location: DocuSign

Signer Events

Edward D. Reiskin
 Ed.Reiskin@sfmta.com
 OK

Signature



Timestamp

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 Signed: 9/20/2018 2:53:41 PM

SFMTA
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 (None)

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Editor Delivery Events

Status

Timestamp

Agent Delivery Events

Status

Timestamp

Intermediary Delivery Events

Status

Timestamp

Certified Delivery Events

Status

Timestamp

Carbon Copy Events

Status

Timestamp

Sophia Simpliciano
 sophia.simpliciano@sfmta.com
 Executive Secretary to the SFMTA DOT
 San Francisco Municipal Transportation Agency
 Security Level: Email, Account Authentication
 (None)

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Sent: 9/20/2018 2:42:17 PM

Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

Notary Events

Signature

Timestamp

Envelope Summary Events

Status

Timestamps

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Status

Timestamps