

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

**First 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 **January 5, 2017**, 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 extend the term of the Agreement, increase the contract amount, and update standard contractual clauses;

WHEREAS, Approval for this Amendment was obtained when the Civil Service Commission approved Contract number **44408-13/14** on **December 5, 2016**;

WHEREAS, Approval for this Amendment was obtained when the San Francisco Public Utilities Commission approved Resolution number **16-0225** on **October 25, 2016**;

WHEREAS, approval for this Agreement was obtained from the San Francisco Board of Supervisors by Resolution Number 513-16 on **December 6, 2016**;

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.

**1b. 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 **six (6) years from December 1, 2014 to November 30, 2020**. Set forth current text of Section.

**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 **nine (9) years from December 1, 2014 to November 30, 2023**.

**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 **Fourteen Million Dollars (\$14,000,000)**. 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 **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.

**2c. Insurance.** Section 15 is hereby replaced in its entirety to read as follows:

**15. Insurance.**

a. Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

1) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and

2) Commercial General Liability Insurance with limits not less than \$5,000,000 each occurrence and \$5,000,000 general aggregate for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

3) Commercial Automobile Liability Insurance with limits not less than \$2,000,000 each occurrence, "Combined Single Limit" for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

4) Professional liability insurance, applicable to Contractor's profession, with limits not less than \$10,000,000 each claim with respect to negligent acts, errors or omissions in connection with the Services.

b. Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:

1) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

2) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

c. All policies shall be endorsed to provide thirty (30) days' advance written notice to the City of cancellation for any reason, intended non-renewal, or reduction in coverages. Notices shall be sent to the City address set forth in the Section entitled "Notices to the Parties."

d. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

e. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

f. Before commencing any Services, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Approval of the insurance by City shall not relieve or decrease Contractor's liability hereunder.

g. The Workers' Compensation policy(ies) shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

h. If Contractor will use any subcontractor(s) to provide Services, Contractor shall require the subcontractor(s) to provide all necessary insurance and to name the City and County of San Francisco, its officers, agents and employees and the Contractor as additional insureds.

i. Should any of the required insurance be provided under a form of coverage that includes a general aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregate limit shall be double the occurrence or claims limits specified above.

**2e. Limitations on Contributions. Section 42 Limitations on Contributions** 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, 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.

**2f. Notices to the Parties .** Section 25 **Notices to the Parties** is hereby replaced in its entirety as follows :

**25. Notices to the Parties.** Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the parties may be by U.S. mail, or by e-mail, and shall be addressed as follows:

**To City:** Victor Shih  
San Francisco Public Utilities Commission  
525 Golden Gate Avenue, 12<sup>th</sup> Floor  
San Francisco, CA 94102  
Tel.: 415-551-4843  
email: vshih@sfgwater.org

**To Contractor:** Carollo Engineers, Inc.  
Jim Hagstrom, P.E., Executive VP  
870 Market Street, Suite 728  
San Francisco, California 94102  
Tel.: 415-399-1601  
Fax: 415-399-9414  
Email: jhagstrom@carollo.com

Any notice of default must be sent by registered mail. Either party may change the address to which notice is to be sent by giving written notice thereof to the other party. If email notification is used, the sender must specify a receipt notice.

**3. Effective Date.** Each of the modifications set forth in Section 2 shall be effective on and after Effective Date.

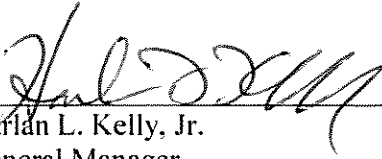
**4. Legal Effect.** Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

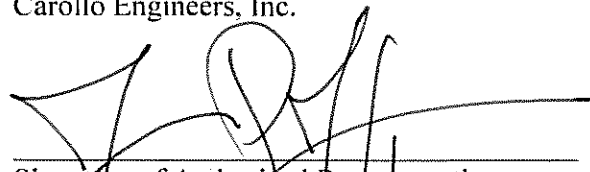
IN WITNESS WHEREOF, Contractor and City have executed this Amendment as of the date first referenced above.

**CITY**

**CONTRACTOR**

Carollo Engineers, Inc.

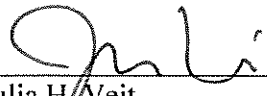
  
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Harlan L. Kelly, Jr.  
General Manager  
San Francisco Public Utilities Commission

  
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Signature of Authorized Representative  
James Garstholm  
\_\_\_\_\_  
Name of Authorized Representative  
Executive Vice President  
\_\_\_\_\_  
Title

Approved as to Form:

Dennis J. Herrera  
City Attorney

City vendor number: 57794

By:   
\_\_\_\_\_  
Julia H. Veit  
Deputy City Attorney

