

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

**Fifth Amendment  
Between the City and County of San Francisco  
(through the San Francisco Public Utilities Commission) and  
Kennedy Jenks Consultants for  
Engineering Design Services  
(CS-879.C)**

THIS AMENDMENT (this “Amendment”) is made as of **[insert date]**, in San Francisco, California, by and between **Kennedy Jenks Consultants** (“Contractor”), and the City and County of San Francisco, a municipal corporation (“City”), acting by and through the San Francisco Public Utilities Commission .

**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, and increase the contract amount; and

WHEREAS, approval for this Amendment was obtained when the Civil Service Commission approved Contract number **4004-07/08** on **November 5, 2018**; and

WHEREAS, approval for this Amendment was obtained when the San Francisco Public Utilities Commission approved Resolution number **18-0165** on **October 9, 2018**; and

WHEREAS, Approval for this Amendment was obtained when the San Francisco Board of Supervisors approved Resolution number **[insert resolution]**, on **[insert date]**;

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 **October 9, 2007** between Contractor and City, as amended by the First Amendment, dated **October 20,**

**2009** and the Second amendment, dated **October 15, 2011** and the Third Amendment, dated **March 22, 2012** and the Fourth Amendment dated **October 12, 2016**.

**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 5.** Section 5 “Compensation” of the Agreement currently reads as follows:

The City shall pay Contractor 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 or designee in his or her sole discretion concludes has been adequately performed as of the last day of the immediately preceding month. In no event shall the amount of this Agreement exceed **Eighteen Million Five Hundred Thousand Dollars (\$18,500,000)**. The breakdown of costs associated with this Agreement appears in Appendix B-1, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein.

As part of this contract, the City shall prepare Task Orders in accordance with Appendix A, Section 2. Task Orders will identify a detailed project scope, sub tasks, staffing plan, LBE utilization, schedule deliverables, budget and costs to complete the task. Each Task Order shall identify the entire amount to which the Contractor shall be entitled for full performance and deliver to the City of all work identified in that Task Order.

Contractor shall incur no charges under this Agreement, and no payments shall become due to Contractor, until the City receives all reports, services, or both, required under this Agreement and the San Francisco Public Utilities Commission approves such delivery of reports or services as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which the City determines that Contractor has failed or refused to satisfy any material obligation of this Agreement.

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 a Progress Payment Form is not

submitted with the Contractor's invoice, the Controller will notify the department, the Director of CMD and Contractor of the Commission. 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 Contractor provides the CMD Progress Payment Form.

Following City's payment of an invoice, Contractor has ten days to file an affidavit using the CMD Payment Affidavit form verifying that all subcontractors have been paid and specifying the amount.

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

The City shall pay Contractor 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 or designee in his or her sole discretion concludes has been adequately performed as of the last day of the immediately preceding month. In no event shall the amount of this Agreement exceed **Twenty-Two Million (\$22,000,000)**. The breakdown of costs associated with this Agreement appears in Appendix B-1, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein.

As part of this contract, the City shall prepare Task Orders in accordance with Appendix A, Section 2. Task Orders will identify a detailed project scope, sub tasks, staffing plan, LBE utilization, schedule deliverables, budget and costs to complete the task. Each Task Order shall identify the entire amount to which the Contractor shall be entitled for full performance and deliver to the City of all work identified in that Task Order.

Contractor shall incur no charges under this Agreement, and no payments shall become due to Contractor, until the City receives all reports, services, or both, required under this Agreement and the San Francisco Public Utilities Commission approves such delivery of reports or services as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which the City determines that Contractor has failed or refused to satisfy any material obligation of this Agreement.

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 a Progress Payment Form is not submitted with the Contractor's invoice, the Controller will notify the department, the Director of CMD and Contractor of the Commission. 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 Contractor provides the CMD Progress Payment Form.

Following City's payment of an invoice, Contractor has ten days to file an affidavit using the CMD Payment Affidavit form verifying that all subcontractors have been paid and specifying the amount.

**2b. Section 2.** Section 2 “Term” of the Agreement currently reads as follows:

Subject to Section 1, the term of this Agreement shall be from **December 6, 2007** to **December 6, 2019**.

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

Subject to Section 1, the term of this Agreement shall be from **December 6, 2007** to **December 6, 2022**.

**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:

Kennedy Jenks Consultants

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

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Name of Authorized Representative

Approved as to Form:

\_\_\_\_\_  
Title

Dennis J. Herrera  
City Attorney

City supplier number: 0000017001

By: \_\_\_\_\_  
Randy Parent  
Deputy City Attorney