

Jan. 6. 2011 3:59PM GSA-OCA CITY HALL

No. 1762 P. 2

City and County of San Francisco  
Office of Contract Administration  
Purchasing Department  
City Hall, Room 430  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4685



# Contract Modification 2

## Ductile Iron Pipe & Fittings

Groeniger & Company  
Scott Silverthorn  
Post Office Box 3629  
Hayward, CA 94540-3629  
E-mail: [ssilverthorn@groeniger.com](mailto:ssilverthorn@groeniger.com)

Date: December 15, 2010  
Buyer Name: Howard Tevelson  
Term contract: 76041  
City Blanket No. BPSF00003434  
Type: Indefinite quantity  
Not-to-exceed amount: \$ 3,250,000

The history of this contract and its modifications is as follows:


Modification	Start date	End date	Amount	Other changes
Original contract	03-01-08	02-28-10	\$ 2,000,000	
1	03-01-10	02-28-11	2,250,000	increases NTE by \$ 250,000
2	03-01-11	02-29-12	3,250,000	increases NTE by \$ 1,000,000, Updates contract conditions, and increases prices :

This modification 2 changes the contract as follows:

It extends the contract from March 01, 2011 TO February 29, 2012, increases the NTE amount to \$ 3,250,000, updates Contract conditions: Electronic Payments, #29 Submitting False Claims: Monetary Penalties, #37 Contract Extension ( At the end of the first two years) #59 First source Hiring agreement, (see attachment A), and increases prices on 4 (four) items (see attachment B).

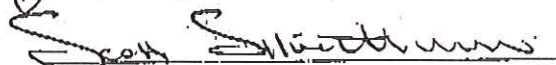
All other prices and terms and conditions remain the same.

Approved by the City:

  
\_\_\_\_\_  
Naomi Kelly, Director of OCA and Purchaser

1/5/2011  
Date

Approved by Contractor:

  
\_\_\_\_\_  
Signature

1/11/11  
Date

Name and title:

Scott Silverthorn District Sales

Attachment A  
Contract no. 76041  
Contract Modification No. 2  
Groeniger & Company  
Date: December 15, 2010

**Add the following to the Bid and Contract Conditions:**

**Electronic payment.** The City and County of San Francisco (City) uses Bank of America's PayMode-X system to pay invoices **electronically and not by check** whenever possible. The City makes PayMode-X payments every business day, **but starting November 17, 2010 will process, print and mail paper checks only one day a week.** So the City encourages you – and it is greatly to your benefit – to enroll in PayMode-X now.

There is no cost to you to enroll in PayMode-X, and you get the same information electronically from PayMode-X that you would get on the City's check stub.

For more information, please visit the Controller's website at:

<http://sfcontroller.org/index.aspx?page=85>

If you have questions, please call:

Steve W. Lee, Controller's Office (415) 554-7591

**Note the following Bid and Contract Condition # 29 is hereby deleted and replaced with:**

**29. Submitting False Claims; Monetary Penalties.** Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. The text of Section 21.35, along with the entire San Francisco Administrative Code is available on the web at <http://www.municode.com/Library/clientCodePage.aspx?clientID=4201>. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

**Note the following General Contract Condition # 37 is hereby deleted and replaced with:**

**Contract Extension: (At the end of the first 2 year period).**

This contract may be extended, all or in part, for a period or periods up to one year by mutual agreement in writing. The maximum contract period shall not be more than 5 years.

In the event of a mutual agreement between City and contractor to extend the contract beyond the initial period upon which prices are firm and fixed, prices for products provided may be escalated or de-escalated for each period of extension in accordance with the following formula:

Prices for pipe and fittings will change based on the percent change in the American Metal Market Pricing, the index that will be used is "shredded auto scrap". The increase or decrease will be based upon the prior average 12 months published price index compared to one year earlier. Thirty-percent (30%) of the change in the index is applied to ductile iron pipe and eight percent (8%) to applied to fittings

Example: Average is \$270.00/ ton (ton=2,000lbs) for the 12 full prior months average. Average for the current full 12 months is \$297.00.

$297/270 = 10\%$  increase: If 8" DI pipe is on contract for \$13.00/ft at the end of the contract period, the new price would be:  $\$13.00 (1 + 10\% \times 30\%) = \$13.39$ ; and for DI fitting at \$120.00/ea  $\$120.00 (1 + 10\% \times 8\%) = \$120.96$

The vendor must provide copies of the index to support all changes. Vendor will provide such documentation at no charge to City.

All other items covered by the contract shall be escalated upward or downward based on the percent change in the U.S. Department of Labor, Bureau of Labor Statistics, Producer Price Index for All Commodities Series no. WPU00000000, for the prior twelve months ending October of the year in which the contract ends.

Example:

PPI for October 2009 is 225.6

PPI for October 2008 is 220.4

Index Point Change = 5.2

Divided by Index for October 2008 = .0236

Equals percent change 2.36%

**Note the following General Contract Condition # 59 is hereby deleted and replaced with:**

### **First Source Hiring Program**

**a. Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapter 83 of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with, and be bound by, all of the provisions that apply to this Agreement under such Chapter, including but not limited to the remedies provided therein. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83.

**b. First Source Hiring Agreement.** As an essential term of, and consideration for, any contract or property contract with the City, not exempted by the FSHA, the Contractor shall enter into a first source hiring agreement ("agreement") with the City, on or before the effective date of the contract or property contract. Contractors shall also enter into an agreement with the City for any other work that it performs in the City. Such agreement shall:

(1) Set appropriate hiring and retention goals for entry level positions. The employer shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to

establish good faith efforts as to its attempts to do so, as set forth in the agreement. The agreement shall take into consideration the employer's participation in existing job training, referral and/or brokerage programs. Within the discretion of the FSHA, subject to appropriate modifications, participation in such programs may be certified as meeting the requirements of this Chapter. Failure either to achieve the specified goal, or to establish good faith efforts will constitute noncompliance and will subject the employer to the provisions of Section 83.10 of this Chapter.

(2) Set first source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to provide qualified economically disadvantaged individuals for consideration for employment for entry level positions. Employers shall consider all applications of qualified economically disadvantaged individuals referred by the System for employment; provided however, if the employer utilizes nondiscriminatory screening criteria, the employer shall have the sole discretion to interview and/or hire individuals referred or certified by the San Francisco Workforce Development System as being qualified economically disadvantaged individuals. The duration of the first source interviewing requirement shall be determined by the FSHA and shall be set forth in each agreement, but shall not exceed 10 days. During that period, the employer may publicize the entry level positions in accordance with the agreement. A need for urgent or temporary hires must be evaluated, and appropriate provisions for such a situation must be made in the agreement.

(3) Set appropriate requirements for providing notification of available entry level positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of qualified economically disadvantaged individuals to participating employers. Notification should include such information as employment needs by occupational title, skills, and/or experience required, the hours required, wage scale and duration of employment, identification of entry level and training positions, identification of English language proficiency requirements, or absence thereof, and the projected schedule and procedures for hiring for each occupation. Employers should provide both long-term job need projections and notice before initiating the interviewing and hiring process. These notification requirements will take into consideration any need to protect the employer's proprietary information.

(4) Set appropriate record keeping and monitoring requirements. The First Source Hiring Administration shall develop easy-to-use forms and record keeping requirements for documenting compliance with the agreement. To the greatest extent possible, these requirements shall utilize the employer's existing record keeping systems, be nonduplicative, and facilitate a coordinated flow of information and referrals.

(5) Establish guidelines for employer good faith efforts to comply with the first source hiring requirements of this Chapter. The FSHA will work with City departments to develop employer good faith effort requirements appropriate to the types of contracts and property contracts handled by each department. Employers shall appoint a liaison for dealing with the development and implementation of the employer's agreement. In the event that the FSHA finds that the employer under a City contract or property contract has taken actions primarily for the purpose of circumventing the requirements of this Chapter, that employer shall be subject to the sanctions set forth in Section 83.10 of this Chapter.

(6) Set the term of the requirements.

(7) Set appropriate enforcement and sanctioning standards consistent with this Chapter.

(8) Set forth the City's obligations to develop training programs, job applicant referrals, technical assistance, and information systems that assist the employer in complying with this Chapter.

(9) Require the developer to include notice of the requirements of this Chapter in leases, subleases, and other occupancy contracts.

**c. Hiring Decisions.** Contractor shall make the final determination of whether an Economically Disadvantaged Individual referred by the System is "qualified" for the position.

**d. Exceptions.** Upon application by Employer, the First Source Hiring Administration may grant an exception to any or all of the requirements of Chapter 83 in any situation where it concludes that compliance with this Chapter would cause economic hardship.

**e. Liquidated Damages.** Contractor agrees:

(1) To be liable to the City for liquidated damages as provided in this section;

(2) To be subject to the procedures governing enforcement of breaches of contracts based on violations of contract provisions required by this Chapter as set forth in this section;

(3) That the contractor's commitment to comply with this Chapter is a material element of the City's consideration for this contract; that the failure of the contractor to comply with the contract provisions required by this Chapter will cause harm to the City and the public which is significant and substantial but extremely difficult to quantify; that the harm to the City includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to \$5,000 for every notice of a new hire for an entry level position improperly withheld by the contractor from the first source hiring process, as determined by the FSHA during its first investigation of a contractor, does not exceed a fair estimate of the financial and other damages that the City suffers as a result of the contractor's failure to comply with its first source referral contractual obligations.

(4) That the continued failure by a contractor to comply with its first source referral contractual obligations will cause further significant and substantial harm to the City and the public, and that a second assessment of liquidated damages of up to \$10,000 for each entry level position improperly withheld from the FSHA, from the time of the conclusion of the first investigation forward, does not exceed the financial and other damages that the City suffers as a result of the contractor's continued failure to comply with its first source referral contractual obligations;

(5) That in addition to the cost of investigating alleged violations under this Section, the computation of liquidated damages for purposes of this section is based on the following data:

A. The average length of stay on public assistance in San Francisco's County Adult Assistance Program is approximately 41 months at an average monthly grant of \$348 per month, totaling approximately \$14,379; and

B. In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least the first six months of employment was 84.4%. Since qualified individuals under the First Source program face far fewer barriers to employment than their counterparts in programs funded by the Workforce Investment Act, it is reasonable to conclude that the average length of employment for an individual whom the First Source Program refers to an employer and who is hired in an entry level position is at least one year;

therefore, liquidated damages that total \$5,000 for first violations and \$10,000 for subsequent violations as determined by FSHA constitute a fair, reasonable, and conservative attempt to quantify the harm caused to the City by the failure of a contractor to comply with its first source referral contractual obligations.

(6) That the failure of contractors to comply with this Chapter, except property contractors, may be subject to the debarment and monetary penalties set forth in Sections 6.80 et seq. of the San Francisco Administrative Code, as well as any other remedies available under the contract or at law; and

Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of \$5,000 for every new hire for an Entry Level Position improperly withheld from the first source hiring process. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the FSHA.

**f. Subcontracts.** Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section

Attachment B  
Contract no. 76041  
Contract Modification No. 2  
Groeniger & Company  
Date: December 15, 2010

New prices for line 001 will be effective March 01, 2011

1a: PIPE

	ITEM	Old Prices/ FT	New Prices/Ft
A.	4"	\$ 9.82	\$ 9.82 (no change)
B.	6"	10.23	11.46
C.	8"	14.05	15.74
D.	12"	23.05	25.82
E.	16"	34.27	38.38

Jan. 27. 2010 11:50AM

No. 7978 P. 2/2

City and County of San Francisco  
 Office of Contract Administration  
 Purchasing Department  
 City Hall, Room 430  
 1 Dr. Carlton B. Goodlett Place  
 San Francisco, CA 94102-4685



# Contract Modification 1

## Ductile Iron Pipe & Fittings

**Groeniger & Company**  
 Mr. Scott Silverthorn  
 Post Office Box 3629  
 Hayward, CA 94540-3629  
 E-mail: ssliverthorn@groeniger.com

Date: January 20, 2010  
 Buyer Name: Gwen Williams  
 Term contract: 76041  
 City Blanket No. BPSF00003434  
 Type: Indefinite quantity  
 Not-to-exceed amount: \$ 2,250,000

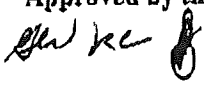
The history of this contract and its modifications is as follows:

Modification	Start date	End date	Amount	Other changes
Original contract	03-01-08	02-28-10	\$2,000,000	
1	03-01-10	02-28-11	\$2,250,000	Increased NTE by \$250,000

This modification 1 changes the contract as follows:

It extends the contract from March 1, 2010 through February 28, 2011, and increases the "Not to Exceed" amount by \$250,000 on the Blanket Purchase Order.

All other prices, terms and conditions remain the same.

Approved by the City:  Naomi Kelly, Director of OCA and Purchaser 1/26/10  
 Date

Approved by Contractor: Scott Silverthorn 1-27-10  
 Signature Date  
 Name and title: Scott Silverthorn  
 DISTRICT SALES

Sign and return one original. The duplicate original is for your files.

P-280 (11/20-09)