

**City and County of San Francisco
Airport Commission
P.O. Box 8097
San Francisco, California 94128**

Modification No. 4

**Contract No. 10072.41
Project Management Support Services for
the Courtyard 3 Connector Project**

THIS MODIFICATION (this "Modification") is made effective as of March 1, 2020, in San Francisco, California, by and between **PGH Wong & Partners JV**, a joint venture between PGH Wong Engineering, Inc. and Avila and Associates Consulting Engineers, Inc. ("Contractor"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Airport Commission, hereinafter referred to as "**Commission.**"

RECITALS

- A. City and Contractor have entered into the Agreement for the San Francisco International Airport (the "Airport" or "SFO") (as defined below); and
- B. The Commission is authorized to enter into all contracts which relate to matters under its jurisdiction; and
- C. On December 19, 2017, by Resolution No. 17-0321, the Commission awarded this Agreement to the Contractor for an amount not to exceed \$3,250,000 for the first year of services; and
- D. On September 1, 2018, City and Contractor administratively modified the Agreement to update the Contractor's overhead rates through Modification No. 1; and
- E. On February 19, 2019, by Resolution No. 19-0030, the Commission approved Modification No. 2 to increase the contract amount by \$5,000,000, for a new not-to-exceed amount of \$8,250,000, and to extend the term of the contract through March 12, 2020; and
- F. On August 1, 2019, City and Contractor administratively modified the Agreement to amend Appendix B, Calculation of Charges and to update the direct labor rates through Modification No. 3; and
- G. On November 5, 2019, by Resolution No. 19-0273, the Commission approved Modification No. 4 to increase the contract amount by \$9,000,000, for a new total not-to-exceed amount of \$17,250,000, to extend the term of the contract for services through June 30, 2022, and to seek Board of Supervisors approval of Modification No.4; and
- H. After the Commission adopted Resolution No. 19-0273, PGH Wong & Partners JV informed the Airport that joint venture member CFWright Consulting, LLC had resigned from the joint venture, and therefore, Staff neither executed nor sought Board of Supervisors approval of Modification No. 4; and
- I. City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to increase the contract amount, extend the term of the contract, and update the Agreement to maintain consistency with statutory, Code and other applicable standard changes to City contracts that occurred since execution of the Agreement; and

J. On February 18, 2020, by Resolution No. 20-0028, the Commission approved this Modification No. 4 to increase the contract amount by \$1,500,000, for a new total not-to-exceed amount of \$9,750,000 and to extend the term of the contract for services through June 30, 2022; and

K. Approval for this Agreement was obtained when the Civil Service Commission approved PSC No. 47501-16/17 on August 7, 2017; and

L. The Contractor represents and warrants that it is qualified to perform the services required by City under this Agreement;

Now, THEREFORE, City and the Contractor agree as follows:

1. Article 1. Definitions is amended as follows:

a. Section 1.1. Agreement has been revised. The definition "Agreement" shall mean the Agreement dated December 19, 2017 between Contractor and City, as amended by the:

Modification No. 1,	dated September 1, 2018,
Modification No. 2,	dated February 19, 2019, and
Modification No. 3,	dated August 1, 2019.

b. New Section 1.11 "City Data" or "Data" is hereby added to the Agreement to read as follows:

1.11 "City Data" or "Data" includes, but is not limited to, all data collected, used, maintained, processed, stored, or generated by or on behalf of the City in connection with this Agreement. This includes data that is provided by a third-party for use under this Agreement.

c. New Section 1.12 Confidential Information is hereby added to the Agreement to read as follows:

1.12 **Confidential Information.** The term "Confidential Information" means confidential City information including, but not limited to, personally-identifiable information ("PII"), protected health information ("PHI"), or individual financial information (collectively, "Proprietary or Confidential Information") that is subject to local, state or federal laws restricting the use and disclosure of such information, including, but not limited to, Article 1, Section 1 of the California Constitution; the California Information Practices Act (Civil Code § 1798 et seq.); the California Confidentiality of Medical Information Act (Civil Code § 56 et seq.); the federal Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801(b) and 6805(b)(2)); the privacy and information security aspects of the Administrative Simplification provisions of the federal Health Insurance Portability and Accountability Act (45 CFR Part 160 and Subparts A, C, and E of Part 164); and San Francisco Administrative Code Chapter 12M (Chapter 12M).

2. Article 2. Term of the Agreement, Section 2.1 is hereby amended to extend the term of the contract for a new ending date of June 30, 2022.

3. Article 3. Financial Matters, 3.3. Compensation, Section 3.3.1 Payment is hereby amended to increase the total compensation payable by One Million Five Hundred Thousand Dollars (**\$1,500,000**) for a new total not-to-exceed amount of Nine Million Seven Hundred Fifty Thousand Dollars (**\$9,750,000**).

4. **New Section 3.3.7 Subcontractor Prompt Payment** is hereby added to the Agreement to read as follows:

3.3.7 **Subcontractor Prompt Payment.** Except as otherwise required by Chapter 14B of the Administrative Code, and consistent with the provisions of Section 6.42(f) of the Administrative Code, Contractor shall pay its subcontractors within seven calendar days after receipt of each progress payment from the City, unless otherwise agreed to in writing by both Contractor and the subcontractor. In the event that there is a good faith dispute over all or any portion of the amount due on a progress payment from Contractor to a subcontractor, the Contractor may withhold the disputed amount, but shall pay the undisputed amount. If Contractor violates the provisions of Section 6.42(f), then Contractor shall pay to the subcontractor directly the penalty specified in Section 6.42(f).

5. **New Section 7.3 Withholding** is hereby added to the Agreement to read as follows:

7.3 **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.

6. **Section 8.2.1(a)** is hereby amended to include **Article 13. Data and Security** in the table of contractual provisions the breach of which shall constitute an immediate event of default under the Agreement.

7. **Section 8.4.1** is hereby amended to include **Article 13. Data and Security** in the table of contractual provisions that shall survive termination or expiration of the Agreement.

8. **Section 10.7 Minimum Compensation Ordinance** is hereby deleted in its entirety and replaced with **New Section 10.7 Minimum Compensation Ordinance** to read as follows:

10.7 **Minimum Compensation Ordinance.** If Administrative Code Chapter 12P applies to this contract, Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P, including a minimum hourly gross compensation, compensated time off, and uncompensated time off. Contractor is subject to the enforcement and penalty provisions in Chapter 12P. Information about and the text of the Chapter 12P is available on the web at <http://sfgov.org/olse/mco>. Contractor is required to comply with all of the applicable provisions of 12P, irrespective of the listing of obligations in this Section. By signing and executing this Agreement, Contractor certifies that it complies with Chapter 12P.

9. **Section 10.8 Health Care Accountability Ordinance** is hereby deleted in its entirety and replaced with **New Section 10.8 Health Care Accountability Ordinance** to read as follows:

10.8 **Health Care Accountability Ordinance.** If Administrative Code Chapter 12Q applies to this contract, Contractor shall comply with the requirements of Chapter 12Q. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission. Information about and the text of the Chapter 12Q, as well as the Health Commission's minimum standards, is available on the web at <http://sfgov.org/olse/hcao>. Contractor is subject to the enforcement and penalty provisions in Chapter 12Q. Any Subcontract entered

into by Contractor shall require any Subcontractor with 20 or more employees to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section.

10. New Section 10.20 Consideration of Salary History is hereby added to the Agreement to read as follows:

10.20 Consideration of Salary History. Contractor shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or "Pay Parity Act." Contractor is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Agreement or in furtherance of this Agreement, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in the City or on City property. The ordinance also prohibits employers from (1) asking such applicants about their current or past salary or (2) disclosing a current or former employee's salary history without that employee's authorization unless the salary history is publicly available. Contractor is subject to the enforcement and penalty provisions in Chapter 12K. Information about and the text of Chapter 12K is available on the web at <https://sfgov.org/olse/consideration-salary-history>. Contractor is required to comply with all of the applicable provisions of 12K, irrespective of the listing of obligations in this Section.

11. Section 10.21 Limitations on Contributions is hereby deleted in its entirety and replaced with **New Section 10.21 Limitations on Contributions** to read as follows:

10.21 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.

11. Section 11.13 Order of Precedence is hereby deleted in its entirety and replaced with **New Section 11.13 Order of Precedence** to read as follows:

11.13 Order of Precedence. Contractor agrees to perform the services described below in accordance with the terms and conditions of this Agreement, implementing task orders, the Request for Qualifications/Request for Proposals (RFQ/RFP), and Contractor's proposal dated September 25, 2017. The RFQ/RFP and Contractor's proposal are incorporated by reference as though fully set forth herein. Should there be a conflict of terms or conditions, this Agreement and any implementing task orders shall control over the RFQ/RFP and the Contractor's proposal. If the Appendices to this Agreement include any standard printed terms from the Contractor, Contractor agrees that in the event of discrepancy, inconsistency, gap,

ambiguity, or conflicting language between the City's terms and Contractor's printed terms attached, the City's terms shall take precedence, followed by the procurement issued by the department, Contractor's proposal, and Contractor's printed terms, respectively.

12. New Section 11.14 Incorporation of Recitals is hereby added to the Agreement to read as follows:

11.14 **Incorporation of Recitals.** The matters recited above are hereby incorporated into and made part of this Agreement.

13. New Section 11.15 Notification of Legal Requests is hereby added to the Agreement to read as follows:

11.15 **Notification of Legal Requests.** Contractor shall immediately notify City upon receipt of any subpoenas, service of process, litigation holds, discovery requests and other legal requests ("Legal Requests") related to all data given to Contractor by City in the performance of this Agreement ("City Data" or "Data"), or which in any way might reasonably require access to City's Data, and in no event later than 24 hours after it receives the request. Contractor shall not respond to Legal Requests related to City without first notifying City other than to notify the requestor that the information sought is potentially covered under a non-disclosure agreement. Contractor shall retain and preserve City Data in accordance with the City's instruction and requests, including, without limitation, any retention schedules and/or litigation hold orders provided by the City to Contractor, independent of where the City Data is stored.

14. Article 13 Data and Security is hereby deleted in its entirety and replaced with **New Article 13 Data and Security** to read as follows:

Article 13 Data and Security

13.1. Nondisclosure of City Data, Private or Confidential Information.

13.1.1 **Protection of Private Information.** If this Agreement requires City to disclose "Private Information" to Contractor within the meaning of San Francisco Administrative Code Chapter 12M, Contractor and subcontractor shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the Services. Contractor is subject to the enforcement and penalty provisions in Chapter 12M.

13.1.2 **Confidential Information.** In the performance of Services, Contractor may have access to City Data and /or City's Confidential Information, the disclosure of which to third parties may damage City. If City discloses City Data or Confidential Information to Contractor, such information must be held by Contractor in confidence and used only in performing the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own Confidential Information.

13.2 Payment Card Industry ("PCI") Requirements. - Not Applicable.

13.3 Business Associate Agreement. – Not Applicable.

13.4 Management of City Data and Confidential Information

13.4.1 **Access to City Data.** City shall at all times have access to and control of all data given to Contractor by City in the performance of this Agreement ("City Data" or "Data"), and shall be able to retrieve it in a readable format, in electronic form and/or print, at any time, at no additional cost.

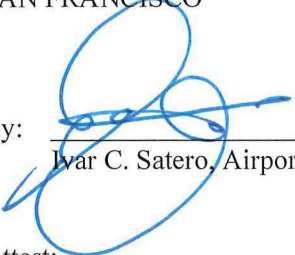



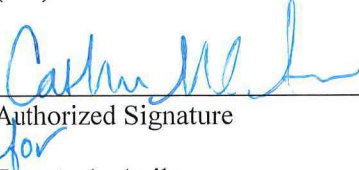
13.4.2 Use of City Data and Confidential Information. Contractor agrees to hold City's Confidential Information received from or created on behalf of the City in strictest confidence. Contractor shall not use or disclose City's Data or Confidential Information except as permitted or required by the Agreement or as otherwise authorized in writing by the City. Any work using, or sharing or storage of, City's Confidential Information outside the United States is subject to prior written authorization by the City. Access to City's Confidential Information must be strictly controlled and limited to Contractor's staff assigned to this project on a need-to-know basis only. Contractor is provided a limited non-exclusive license to use the City Data or Confidential Information solely for performing its obligations under the Agreement and not for Contractor's own purposes or later use. Nothing herein shall be construed to confer any license or right to the City Data or Confidential Information, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third-party. Unauthorized use of City Data or Confidential Information by Contractor, subcontractors or other third-parties is prohibited. For purpose of this requirement, the phrase "unauthorized use" means the data mining or processing of data, stored or transmitted by the service, for commercial purposes, advertising or advertising-related purposes, or for any purpose other than security or service delivery analysis that is not explicitly authorized.

13.4.3 Disposition of Confidential Information. Upon termination of Agreement or request of City, Contractor shall within forty-eight (48) hours return all Confidential Information which includes all original media. Once Contractor has received written confirmation from City that Confidential Information has been successfully transferred to City, Contractor shall within ten (10) business days purge all Confidential Information from its servers, any hosted environment Contractor has used in performance of this Agreement, work stations that were used to process the data or for production of the data, and any other work files stored by Contractor in whatever medium. Contractor shall provide City with written certification that such purge occurred within five (5) business days of the purge.

15. Joint Venture Member Change. City hereby recognizes that CFWright Consulting, LLC is no longer a member of the joint venture PGH Wong & Partners JV. The joint venture now consists of only two members, PGH Wong Engineering, Inc. and Avila and Associates Consulting Engineers, Inc.

16. Legal Effect. Except as expressly changed by this Modification, 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 Modification as of the date first referenced above.

<p>CITY AIRPORT COMMISSION CITY AND COUNTY OF SAN FRANCISCO</p> <p>By:  Ivar C. Satero, Airport Director</p> <p>Attest:</p> <p>By  C. Corina Monzón, Secretary Airport Commission</p> <p>Resolution No: <u>20-0028</u></p> <p>Adopted on: <u>February 18, 2020</u></p> <p>Approved as to Form:</p> <p>Dennis J. Herrera City Attorney</p> <p>By  Daniel A. Edington Deputy City Attorney</p>	<p> Authorized Signature</p> <p>Clifford S. M. Wong President PGH Wong Engineering, Inc. 182 2nd Street, Suite 500 San Francisco, California 94105 (415) 566-0800</p> <p> Authorized Signature for</p> <p>Ernesto A. Avila President Avila and Associates Consulting Engineers, Inc. 490 Post Street, Suite 1415 San Francisco, CA 94102 (415) 576-1230</p> <p>City Supplier Number: 0000029434</p> <p>Federal Employer ID Number: 82-3487026</p>
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