

**City and County of San Francisco
Office of Contract Administration
Purchasing Division**

**Agreement between the City and County of San Francisco and
APX Inc.**

**PRO.0152
Power Scheduling Coordination and Related Support Services**

Second Amendment

THIS AMENDMENT (this “Amendment”) is made as of **[insert date]**, in San Francisco, California, by and between **APX 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 increase the contract amount for power pass-through charges by \$ 636,000,000 and update standard contractual clauses; and

WHEREAS, the Agreement was competitively procured as required by San Francisco Administrative Code Chapter 21.1 through Request for Proposal (“RFP”) on July 16, 2021 and this modification is consistent therewith; and

WHEREAS, approval for the original Agreement was obtained on April 4, 2022 from the Civil Service Commission under PSC number 49372 – 21/22 in the amount of \$136,500,000 for the period of 5 years; and

WHEREAS, the City’s San Francisco Public Utilities Commission approved this Agreement by Resolution Number 23-0025 on January 24, 2023; and

WHEREAS, the City’s **Board of Supervisors** approved this Agreement by **[insert resolution number]** on **[insert date of Commission or Board action]**.

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

Article 1 Definitions

The following definitions shall apply to this Amendment:

1.1 **Agreement.** The term “Agreement” shall mean the Agreement dated May 26, 2022 between Contractor and City, as amended by the:

First Amendment, dated January 6, 2023.

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

Article 2 Modifications of Scope to the Agreement

The Agreement is hereby modified as follows:

2.1 Compensation. Section 3.3.2 Payment of CAISO Pass-Through Charges of the Agreement currently reads as follows:

3.3.2 As part of the SC Services set forth in Appendix A, Contractor is responsible for processing payments of the City's CAISO Pass-Through Charges through the designated Clearing Account for the City in accordance with the CAISO Tariff. The total amount of City's CAISO Pass-Through Charges settled through this Agreement shall not exceed Two Hundred Fifty Five Million, Five Hundred Thousand Dollars (\$255,500,000) ("Pass-Through Charge Amount"). The Pass-Through Charge Amount represents the value of City's CAISO Pass-Through Charges only, and does not alter the amount of compensation due to Contractor under Section 3.3.1 of this Agreement or any other right, obligation, or duty of either Party.

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

3.3.2 As part of the SC Services set forth in Appendix A, Contractor is responsible for processing payments of the City's CAISO Pass-Through Charges through the designated Clearing Account for the City in accordance with the CAISO Tariff. The total amount of City's CAISO Pass-Through Charges settled through this Agreement shall not exceed Eight Hundred Ninety One Million Five Hundred Thousand Dollars (\$891,500,000) ("Pass-Through Charge Amount"). The Pass-Through Charge Amount represents the value of City's CAISO Pass-Through Charges only, and does not alter the amount of compensation due to Contractor under Section 3.3.1 of this Agreement or any other right, obligation, or duty of either Party.

2.2 Appendix B. Section 7 Retention of the Agreement currently reads as follows:

7. Retention. Five percent (5%) of each invoice payment will be withheld for each task order. When the work for the task order or defined critical milestones has been completed to the satisfaction of the SFPUC Project Manager and all work products have been received and approved by the SFPUC Project Manager, the Contractor may request that the retention be released. In lieu of money retention, an irrevocable letter of credit acceptable to the City will be accepted.

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

7. Retention. (Reserved)

Article 3 Reserved.

Article 4 Effective Date

Each of the modifications set forth in Articles 2 and 3 shall be effective on and after the date of this Amendment.

Article 5 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
Recommended by:

CONTRACTOR
APX Inc.

Dennis J. Herrera
General Manager
San Francisco Public Utilities Commission

Brian Fellon
CCO
City Supplier number: 0000026457

Approved as to Form:

David Chiu
City Attorney

By: _____
Margarita Gutierrez
Deputy City Attorney

Approved:

Sailaja Kurella
Director of the Office of Contract Administration, and Purchaser

By: _____
Name: _____