

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

**First Amendment
Power Scheduling Coordination and Related Support Services
(CS-344)**

THIS AMENDMENT (this "Amendment") is made as of **January 26, 2016** 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 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 increase the contract amount, and update standard contractual clauses; and

WHEREAS, Approval for this Amendment was obtained when the San Francisco Public Utilities Commission approved Resolution number **15-0207** on **October 13, 2015**; and

WHEREAS, Approval for this Amendment was obtained when the Civil Service Commission approved Personal Services Contract number **45401-13/14** on **November 2, 2015**; and

WHEREAS, Approval for this Amendment was obtained when the Board of Supervisors approved Resolution number **518-15** on **December 9, 2015**;

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 June 16, 2015 between Contractor and City.

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:

Compensation to Contractor shall be made in monthly payments for work, as set forth in Section 4 of this Agreement and Appendix A and C that the General Manager of the SFPUC, 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 compensation for Services set forth in Appendix A exceed **Two Million, One Hundred Thousand Dollars (\$2,100,000)** and the amount of this Agreement shall not exceed **Five Million Dollars (\$5,000,000)**. No charges shall be incurred under this Agreement for the Services set forth in Appendix A and C nor shall any payments become due to Contractor for such Services until reports, Services, or both, required under this Agreement are received from Contractor and approved by the SFPUC as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement. In no event shall City be liable for interest or late charges for any late payments.

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

5. Compensation for Services and CAISO Payments.

a. Compensation to Contractor shall be made in monthly payments for work, as set forth in Section 4 and Appendix A and C of this Agreement, that the General Manager of the SFPUC, 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 compensation for Services set forth in Appendix A exceed Two Million, One Hundred Thousand Dollars (\$2,100,000) and the total amount of compensation for Appendix A Services and any Task Orders executed by the Parties pursuant to Appendix C of this Agreement shall not exceed **Five Million Dollars (\$5,000,000.)** No charges shall be incurred under this Agreement for the Services set forth in Appendix A and C nor shall any payments become due to Contractor for such Services until reports, Services, or both, required under this Agreement are received from Contractor and approved by the SFPUC as being in accordance with this Agreement. City may withhold payment for such Services until reports, Services, or both, required under this Agreement are received from Contractor and approved by the SFPUC as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement. In no event shall City be liable for interest or late charges for any late payments.

b. Payment of CAISO Pass-Through Charges. As part of the SC Services set forth in Appendix A, §6, 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 One Hundred Two Million and Nine Hundred Thousand Dollars (**\$102,900,000**) ("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 5(a) of this Agreement or any other right, obligation, or duty of either Party.

2b. 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 \$1,000,000 each occurrence and \$2,000,000 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 \$1,000,000 each occurrence, "Combined Single Limit" for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

4) Errors and Omissions Liability insurance, applicable to Contractor's profession, with limits not less than \$1,000,000 each claim with respect to negligent acts, errors or omissions in connection with the services.

5) Technology Errors and Omissions Liability coverage, with limits of \$1,000,000 each occurrence and each loss, and \$2,000,000 general aggregate. The policy shall at a minimum cover professional misconduct or lack of the requisite skill required for the performance of services defined in the contract and shall also provide coverage for the following risks:

(a) Liability arising from theft, dissemination, and/or use of confidential information, including but not limited to, bank and credit card account information or personal information, such as name, address, social security numbers, protected health information or other personally identifying information, stored or transmitted in electronic form;

(b) Network security liability arising from the unauthorized access to, use of, or tampering with computers or computer systems, including hacker attacks; and

(c) Liability arising from the introduction of any form of malicious software including computer viruses into, or otherwise causing damage to the City's or third person's computer, computer system, network, or similar computer related property and the data, software, and programs thereon.

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.

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.

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

CITY

CONTRACTOR

Recommended by:

APX, Inc.



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



Name of Authorized Representative

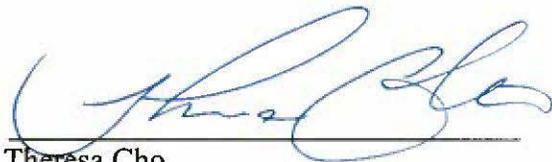


Title

Approved as to Form:

City vendor number: 69757

Dennis J. Herrera
City Attorney

By: 

Theresa Cho
Deputy City Attorney