

**City and County of San Francisco  
Office of Contract Administration  
Contract Administration Bureau  
525 Golden Gate Avenue, 8<sup>th</sup> Floor  
San Francisco, California 94102**

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

THIS AMENDMENT (this “Amendment”) is made as of **February 1, 2020**, 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 extend the performance period, increase the contract amount, and update standard contractual clauses;

WHEREAS, approval for this Amendment was obtained when the Civil Service Commission approved Contract number **45401-13/14** on **December 19, 2019**;

WHEREAS, the City’s San Francisco Public Utilities Commission approved this Agreement by Resolution **20-0023** on **January 28, 2020**;

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:

**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, as amended by the **First Amendment** dated **January 26, 2016**.

**1b. 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:

2(a) **Section 2.** Section 2, Term of the Agreement, currently reads as follows:

**2. Term of the Agreement.** Subject to Section 1, the term of this Agreement shall be from the Effective Date to 12:00 AM on the fifth annual anniversary of the Effective Date.

**Section 2 is hereby amended in its entirety to read as follows:**

**2. Term of the Agreement.** Subject to Sections 1 and 20, the term of this Agreement shall be from the Effective Date to 12:00 AM on the seventh annual anniversary of the Effective Date.

2(b) **Section 5.** Section 5, Compensation, currently reads 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.

**Section 5 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, Nine Hundred Forty Thousand Dollars (\$2,940,000) 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 **Seven Million Dollars (\$7,000,000)**. 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 Forty Two Million and Nine Hundred Thousand Dollars (**\$142,900,000**) ("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.

**2(c) Section 40.** Section 40, Limitations on Contributions, is hereby replaced in its entirety as follows:

**40. 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.

**2(d). Section 10.** New Section 10c, Withholding, is hereby added to Section 10, Taxes, to read as follows:

c. 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.

**2(e) Appendix A, Section 7.1.** Appendix A, Section 7.1, Compensation for Services, currently reads as follows:

7.1 Contractor's compensation for the Services set forth in this Appendix A shall not exceed two million one hundred thousand dollars (\$2,100,000).

**Appendix A Section 7.1 is hereby amended in its entirety to read as follows:**

7.1 \_\_\_ Contractor's compensation for the Services set forth in this Appendix A shall not exceed two million nine hundred forty thousand dollars (\$2,940,000).

**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:

APX, Inc.

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

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

\_\_\_\_\_  
Title

Approved as to Form:

City supplier number: 0000026457

Dennis J. Herrera  
City Attorney

By: \_\_\_\_\_  
Theresa Cho  
Deputy City Attorney