

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

Second Amendment

THIS AMENDMENT (this "Amendment") is made as of August 17, 2018, in San Francisco, California, by and between COWI and OLMM Joint Venture, whose principal place of business is located at 1300 Clay Street #700, Oakland, CA 94612 ("Contractor"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through the Port Executive Director or the Executive Director's designated agent, hereinafter referred to as "Designee".

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 value of the contract by \$785,166 resulting in an amended contract amount not to exceed \$4,766,535; and

WHEREAS, the Agreement was competitively procured as required by San Francisco Administrative Code Chapter 21.1 a Request for Proposal ("RFP") issued on August 5, 2016 and this modification is consistent therewith; and

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 January 3, 2017 between Contractor and City as amended by the:

First Amendment, dated October 25, 2018

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:

Section 4.3 Section 4.3 Subcontracting of the Agreement currently reads as follows:

4.3 Subcontracting. Contractor may subcontract portions of the Services only upon prior written approval of City. Contractor is responsible for its subcontractors throughout the course of the work required to perform the Services. All Subcontracts must incorporate the terms of Article 10 “Additional Requirements Incorporated by Reference” of this Agreement, unless inapplicable. Neither Party shall, on the basis of this Agreement, contract on behalf of, or in the name of, the other Party. Any agreement made in violation of this provision shall be null and void. City's execution of this Agreement constitutes its approval of the subcontractors listed below

RES Engineers, Inc.

M Lee Corporation

Jacobs Engineering Group

ESA Inc.

Adavant Consulting

LCW Consulting

Pacific EcoRisk

Robin Chiang & Company

Geotechnical Consultants, Inc

Boudreau Associates LLC

Orion Environmental Associates

HRA Consulting Engineers

MHC Engineers, Inc

Surface Design

F3 & Associates

eTrac, Inc.

Lotus Water

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

4.3 Subcontracting. Contractor may subcontract portions of the Services only upon prior written approval of City. Contractor is responsible for its subcontractors throughout the course of

the work required to perform the Services. All Subcontracts must incorporate the terms of Article 10 "Additional Requirements Incorporated by Reference" of this Agreement, unless inapplicable. Neither Party shall, on the basis of this Agreement, contract on behalf of, or in the name of, the other Party. Any agreement made in violation of this provision shall be null and void. City's execution of this Agreement constitutes its approval of the subcontractors listed below

- RES Engineers, Inc.**
- M Lee Corporation**
- Jacobs Engineering Group**
- ESA Inc.**
- Adavant Consulting**
- LCW Consulting**
- Pacific EcoRisk**
- Robin Chiang & Company**
- Geotechnical Consultants, Inc**
- Boudreau Associates LLC**
- Orion Environmental Associates**
- HRA Consulting Engineers**
- MHC Engineers, Inc**
- Surface Design**
- F3 & Associates**
- eTrac, Inc.**
- Lotus Water**
- Mott McDonald**
- Integral Consulting Inc.**

Handwritten calculation on a yellow sticky note:

$$\begin{array}{r} \text{ORIGINAL} \rightarrow \$4,113,722 \\ \text{Amendment} \rightarrow \quad 785,166 \\ \hline 4,898,888 \\ \hline \rightarrow 4,766,535 \\ - \quad 785,166 \\ \hline 3,981,369 \end{array}$$

Section 3.3.1. Section 3.3.1 Payment of the Agreement currently reads as follows:

3.3.1 Payment. Contractor shall provide an invoice to the City on a monthly basis for Services completed in the immediate preceding month, unless a different schedule is set out in Appendix B, "Calculation of Charges". Compensation shall be made for Services identified in the invoice that the Executive Director of the Port of San Francisco, in his or her sole discretion, concludes has been satisfactorily performed. Payment shall be made within 30 calendar days of receipt of the invoice, unless the City notifies the Contractor that a dispute as to the invoice

exists. In no event shall the amount of this Agreement exceed three million nine hundred eighty one thousand and three hundred sixty nine dollars (\$3,981,369). The breakdown of charges associated with this Agreement appears in Appendix B, "Calculation of Charges", attached hereto and incorporated by reference as though fully set forth herein. 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:

3.3.1 Payment. Contractor shall provide an invoice to the City on a monthly basis for Services completed in the immediate preceding month, unless a different schedule is set out in Appendix B-1, "Calculation of Charges". Compensation shall be made for Services identified in the invoice that the Executive Director of the Port of San Francisco, in his or her sole discretion, concludes has been satisfactorily performed. Payment shall be made within 30 calendar days of receipt of the invoice, unless the City notifies the Contractor that a dispute as to the invoice exists. In no event shall the amount of this Agreement exceed four million seven hundred sixty six thousand and five hundred thirty five dollars (\$4,766,535). The breakdown of charges associated with this Agreement appears in Appendix B-1, "Calculation of Charges", attached hereto and incorporated by reference as though fully set forth herein. In no event shall City be liable for interest or late charges for any late payments.

2b. Replacing "Earned Income Credit (EIC) Forms" Section with "Consideration of Criminal History in Hiring and Employment Decisions" Section. Section 32 "Earned Income Credit (EIC) Forms" is hereby replaced in its entirety to read as follows:

32. Consideration of Criminal History in Hiring and Employment Decisions.

a. Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12T "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Administrative Code (Chapter 12T), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at www.sfgov.org/olse/fco. A partial listing of some of Contractor's obligations under Chapter 12T is set forth in this Section. Contractor is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

b. The requirements of Chapter 12T shall only apply to a Contractor's or Subcontractor's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, shall apply only when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco, and shall not apply when the application in a particular context would

conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

c. Contractor shall incorporate by reference in all subcontracts the provisions of Chapter 12T, and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

d. Contractor or Subcontractor shall not inquire about, require disclosure of, or if such information is received, base an Adverse Action on an applicant's or potential applicant for employment's, or employee's: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

e. Contractor or Subcontractor shall not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in subsection 32(d), above. Contractor or Subcontractor shall not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

f. Contractor or Subcontractor shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment to be performed under this Agreement, that the Contractor or Subcontractor will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

g. Contractor and Subcontractors shall post the notice prepared by the Office of Labor Standards Enforcement (OLSE), available on OLSE's website, in a conspicuous place at every workplace, job site, or other location under the Contractor or Subcontractor's control at which work is being done or will be done in furtherance of the performance of this Agreement. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the workplace, job site, or other location at which it is posted.

h. Contractor understands and agrees that if it fails to comply with the requirements of Chapter 12T, the City shall have the right to pursue any rights or remedies available under Chapter 12T, including but not limited to, a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this Agreement.

3. Effective Date. Each of the modifications set forth in Section 2 shall be effective on and after August 17, 2018.

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:

COWI and OLMM Joint Venture



Rod Iwashita
Chief Harbor Engineer
Port of San Francisco



Hamid Fatehi
COWI Marine North America
Senior Engineer
1300 Clay St #700
Oakland, CA 94612



Elaine Forbes
Executive Director
Port of San Francisco

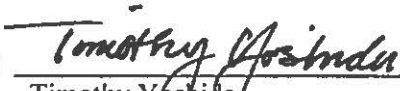


Sunil Gupta
OLMM Consulting Engineers
Principal
156 Ellis Street, 2nd Floor
San Francisco, CA 94102

Approved as to Form:

City vendor number: 98166

Dennis J. Herrera
City Attorney

By: 

Timothy Yoshida
Deputy City Attorney