

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

Fourth Amendment

THIS **FOURTH** AMENDMENT (“Amendment”) is made as of **January 30, 2024** in San Francisco, California, by and between **COWI and OLMM Joint Venture** (“Contractor”), and the City and County of San Francisco, a municipal corporation (“City”), acting by and through the Port of San Francisco, effective as of January 3, 2024.

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; and

WHEREAS, Contractor was competitively selected pursuant to Chapter 6 of the San Francisco Administrative Code through a Request for Proposals issued on August 5, 2016 and this Amendment is consistent with the terms of the RFP and the awarded Contract; and

WHEREAS, this is a contract for Services, there is a Local Business Enterprise (“LBE”) subcontracting participation requirement, and this Amendment is consistent with that requirement; and

WHEREAS, approval for the original Agreement was obtained on June 20, 2016 from the Civil Service Commission under PSC number 44753 – 15/16 in the amount of \$8,000,000 for the period commencing May 1, 2016 and ending May 1, 2021; and

WHEREAS, this Amendment is consistent with an approval obtained on August 15, 2022 from the Civil Service Commission under PSC number 44753 – 15-16 in the amount of \$8,000,000 for the period commencing April 13, 2022 and ending June 30, 2026, and

WHEREAS, this Amendment is consistent with an approval obtained from the City’s Port Commission under Resolution 23-54 approved on December 12, 2023 for the period commencing January 4, 2024 and ending June 16, 2026; and

WHEREAS, the term of the Agreement expired as of January 3, 2024;

WHEREAS, City and Contractor, each by their conduct, continued their contractual relationship consistent with the Agreement, despite the passing of the expiration date;

WHEREAS, City and Contractor desire to memorialize their continued contractual relationship by entering into this Fourth Amendment extending the same terms and conditions as the Agreement; and

WHEREAS, City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to extend the performance period and compensation paid.

Now, THEREFORE, the parties 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 June 3, 2017 between Contractor and City, as amended by the:

First Amendment, dated October 25, 2017, and
Second Amendment, dated August 17, 2018, and
Third Amendment, dated January 1, 2022, and

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 Article 2. Section 2.1 of the Agreement currently reads as follows:

The term of this Agreement shall commence on the latter of: (i) January 3, 2017; or (ii) Effective Date and expire on January 3, 2024, unless earlier terminated as otherwise provided herein.

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

The term of this Agreement shall commence on the latter of: (i) January 3, 2017; or (ii) Effective Date and expire on June 16, 2026, unless earlier terminated as otherwise provided herein.

Article 3 Updates of Standard Terms to the Agreement

The Agreement is hereby modified as follows:

3.1 **Section 10.15 Public Access to Nonprofit Records and Meetings.** *Section 10.15 of the Agreement is replaced in its entirety to read as follows:*

10.15. Nonprofit Contractor Requirements.

10.15.1. Good Standing. If Contractor is a nonprofit organization, Contractor represents that it is in good standing with the California Attorney General’s Registry of Charitable Trusts and will remain in good standing during the term of this Agreement. Contractor shall immediately notify City of any change in its eligibility to perform under the Agreement. Upon City’s request, Contractor shall provide documentation demonstrating its compliance with applicable legal requirements. If Contractor will use any subcontractors to perform the Agreement, Contractor is responsible for ensuring they are also

in compliance with the California Attorney General’s Registry of Charitable Trusts for the duration of the Agreement. Any failure by Contractor or its subcontractors to remain in good standing with applicable requirements shall be a material breach of this Agreement.

10.15.2. Public Access to Nonprofit Records and Meetings. If Contractor is a nonprofit organization; provides Services that do not include services or benefits to City employees (and/or to their family members, dependents, or their other designated beneficiaries); and receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds, Contractor must comply with the City’s Public Access to Nonprofit Records and Meetings requirements, as set forth in Chapter 12L of the San Francisco Administrative Code, including the remedies provided therein.

3.2 **Article 13 Data and Security. Section 11.15 of the Agreement (Management of Private, Proprietary or Confidential Information and City Data) is hereby deleted in its entirety. Article 13 is hereby added to read as follows:**

13.1 Nondisclosure of Private, Proprietary 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 City Data; Confidential Information. In the performance of Services, Contractor may have access to, or collect on City’s behalf, City Data, which may include proprietary or Confidential Information that if disclosed to third parties may damage City. If City discloses proprietary or Confidential Information to Contractor, or Contractor collects such information on City’s behalf, 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 proprietary or Confidential Information.

13.2 Reserved.

13.3 Reserved.

13.4 Management of City Data.

13.4.1 Use of City Data. Contractor agrees to hold City Data received from, or created or collected on behalf of, City, in strictest confidence. Contractor shall not use or disclose City Data except as permitted or required by the Agreement or as otherwise authorized in writing by City. Any work by Contractor or its authorized subcontractors using, or sharing or storage of, City Data outside the continental United States is prohibited, absent prior written authorization by City. Access to City Data must be strictly controlled and limited to Contractor’s staff assigned to this project on a need-to-know basis only. City Data shall not be distributed, repurposed or shared across other applications, environments, or business units of Contractor. Contractor is provided a limited non-exclusive license to use City Data 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 City Data, by implication, estoppel or

otherwise, under copyright or other intellectual property rights, to any third-party. Unauthorized use of City Data 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.

13.4.2 Disposition of City Data. Upon request of City or termination or expiration of this Agreement, Contractor shall promptly, but in no event later than thirty (30) calendar days, return all City Data given to, or collected or created by Contractor on City’s behalf, which includes all original media. Once Contractor has received written confirmation from City that City Data has been successfully transferred to City, Contractor shall within ten (10) business days clear or purge all City Data from its servers, any hosted environment Contractor has used in performance of this Agreement, including its subcontractor’s environment(s), 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. Secure disposal shall be accomplished by “clearing,” “purging” or “physical destruction,” in accordance with National Institute of Standards and Technology (NIST) Special Publication 800-88 or most current industry standard.

13.5. Ownership of City Data. The Parties agree that as between them, all rights, including all intellectual property rights, in and to City Data and any derivative works of City Data is the exclusive property of City.

13.6 Loss or Unauthorized Access to City’s Data; Security Breach Notification. Contractor shall comply with all applicable laws that require the notification to individuals in the event of unauthorized release of PII, PHI, or other event requiring notification. Contractor shall notify City of any actual or potential exposure or misappropriation of City Data (any “Leak”) within twenty-four (24) hours of the discovery of such, but within twelve (12) hours if the Data Leak involved PII or PHI. Contractor, at its own expense, will reasonably cooperate with City and law enforcement authorities to investigate any such Leak and to notify injured or potentially injured parties. The remedies and obligations set forth in this subsection are in addition to any other City may have. City shall conduct all media communications related to such Leak.

Article 4 Effective Date

Each of the modifications set forth in Articles 2 and 3 shall be effective on and after January 22, 2024.

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.

[SIGNATURES ON FOLLOWING PAGE]

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

CITY

Recommended by:

DocuSigned by:
Uday Prasad
96F54B9756EC4DD...
Uday Prasad
Acting Chief Harbor Engineer
Port of San Francisco

DocuSigned by:
Elaine Forbes
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Elaine Forbes
Executive Director
Port of San Francisco

Approved as to Form:

David Chiu
City Attorney

By: DocuSigned by:
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Richard E. Robinson
Deputy City Attorney

CONTRACTOR

COWI and OLMM Joint Venture

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City Supplier number: 13932