

**City and County of San Francisco
San Francisco Public Utilities Commission
525 Golden Gate Avenue
San Francisco, California 94102**

Second Amendment

**Between the City and County of San Francisco and
Moffatt and Nichol-AGS, JV
Engineering Services for South Ocean Beach Coastal Erosion and Wastewater
Infrastructure Protection
PUC.PRO.0092**

THIS AMENDMENT (this “Amendment”) is made as of June 21, 2021, in San Francisco, California, by and between **Moffatt and Nichol-AGS, JV** (“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 extend the performance period, increase the contract amount, and update standard contractual clauses; and

WHEREAS, the San Francisco Public Utilities Commission (“SFPUD”) competitively procured the Agreement as required by San Francisco Administrative Code Chapter 6.40 through RFP issued April 25, 2018 and this Second Amendment is consistent therewith; and

WHEREAS, the Civil Service Commission this Second Amendment when it approved Contract number 46784-16/17 on June 7, 2021; and

WHEREAS, the City’s San Francisco Public Utilities Commission approved this Agreement by 21-0056 on April 13, 2021.

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 July 24, 2018 between Contractor and City, as amended by the:

First Amendment, dated December 17, 2018, and

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

Article 2 Modifications to the Agreement.

The Agreement is hereby modified as follows:

2.1 Definitions. *The Parties agree to add the following Definition to Article 1 of the Agreement:*

1.10 “Confidential Information” means confidential City information including, but not limited to, personally-identifiable information (“PII”), protected health information (“PHI”), or individual financial information (collectively, “Proprietary or Confidential Information”) that is subject to local, state or federal laws restricting the use and disclosure of such information, including, but not limited to, Article 1, Section 1 of the California Constitution; the California Information Practices Act (Civil Code § 1798 et seq.); the California Confidentiality of Medical Information Act (Civil Code § 56 et seq.); the federal Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801(b) and 6805(b)(2)); the privacy and information security aspects of the Administrative Simplification provisions of the federal Health Insurance Portability and Accountability Act (45 CFR Part 160 and Subparts A, C, and E of part 164); and San Francisco Administrative Code Chapter 12M (Chapter 12M).

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

2.1 The term of this Agreement shall commence on the later of: (i) August 1, 2018; or (ii) the Effective Date and expire on July 30, 2023, unless earlier terminated as otherwise provided herein.

The Parties agree to amend Section 2.1 in its entirety to read as follows:

2.1 The term of this Agreement shall commence on the later of: (i) August 1, 2018; or (ii) the Effective Date and expire on July 30, 2027, unless earlier terminated as otherwise provided herein.

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

3.3.1 **Payment.** Consultant 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." City shall compensate Consultant for Services identified in the invoice that the General Manager of the SFPUC, in his or her sole discretion, concludes have been satisfactorily performed. City shall issue payment within 30 calendar days of receipt of the invoice unless the City notifies the Consultant that a dispute as to the invoice exists. In no event shall the amount of this Agreement exceed **Three Million Seven Hundred Fifty Thousand Dollars and no cents (\$3,750,000.00)**. 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. City may withhold a portion of any payment until conclusion of the Agreement if agreed to by both parties as retainage, described in Appendix B. In no event shall the City be liable for interest or late charges for any late payments except as set forth in Administrative Code Section 6.22(j).

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

3.3.1 **Payment.** Consultant shall provide an invoice to the City on a monthly basis for Services completed in the immediately preceding month, unless a different schedule is set out in Appendix B, "Calculation of Charges." City shall compensate Consultant for Services identified in the invoice that the General Manager of the SFPUC, in his or her sole discretion, concludes have been satisfactorily performed. City shall issue payment within 30 calendar days of receipt of the invoice unless the City notifies the Consultant that a dispute as to the invoice exists. In no event shall the amount of this Agreement exceed **Five Million Seven Hundred Fifty Thousand Dollars and no cents (\$5,750,000.00)**. 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. City may withhold a portion of any payment until conclusion of the Agreement if agreed to by both parties as retainage, described in Appendix B. In no event shall the City be liable for interest or late charges for any late payments except as set forth in Administrative Code Section 6.22(j).

2.4 Assignment. Section 4.5 of the agreement currently reads as follows:

4.5 Assignment. Consultant's Services under this Agreement are personal in character. Consultant shall not assign or delegate this Agreement nor any duties or obligations hereunder unless first approved by City by written instrument executed and approved in the same manner as this Agreement. Any purported assignment made in violation of this provision shall be null and void.

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

4.5 Assignment. The Services to be performed by Contractor are personal in character. Neither this Agreement, nor any duties or obligations hereunder, may be directly or indirectly assigned, novated, hypothecated, transferred, or delegated by Contractor, or, where the Contractor is a joint venture, a joint venture partner, (collectively referred to as an Assignment") unless first approved by City by written instrument executed and approved in the same manner as this Agreement in accordance with the Administrative Code. The City's approval of any such Assignment is subject to the Contractor demonstrating to City's reasonable satisfaction that the proposed transferee is: (i) reputable and capable, financially and otherwise, of performing each of Contractor's obligations under this Agreement and any other documents to be assigned, (ii) not forbidden by applicable law from transacting business or entering into contracts with City; and (iii) subject to the jurisdiction of the courts of the State of California. A change of ownership or control of Contractor or a sale or transfer of substantially all of the assets of Contractor shall be deemed an Assignment for purposes of this Agreement. Contractor shall immediately notify City about any Assignment. Any purported Assignment made in violation of this provision shall be null and void.

2.5 Withholding. *The Parties agree to add the following Section 7.3 to Article 7 of the Agreement:*

7.3 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.

2.6 Consideration of Salary History. *The Parties agree to add the following Section 10.4 to Article 10 of the Agreement, replacing the previous Section 10.4 in its entirety:*

10.4 Consideration of Salary History. Contractor shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or “Pay Parity Act.” Contractor is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Agreement or in furtherance of this Agreement, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in the City or on City property. The ordinance also prohibits employers from (1) asking such applicants about their current or past salary or (2) disclosing a current or former employee’s salary history without that employee’s authorization unless the salary history is publicly available. Contractor is subject to the enforcement and penalty provisions in Chapter 12K. Information about and the text of Chapter 12K is available on the web at <https://sfgov.org/olse/consideration-salary-history>. Contractor is required to comply with all of the applicable provisions of 12K, irrespective of the listing of obligations in this Section.

2.7 Limitations on Contributions. Article 10 of the Agreement currently reads as follows:

10.11 Limitations on Contributions. By executing this Agreement, Consultant acknowledges that it is familiar with section 1.126 of the City’s Campaign and Governmental Conduct Code, which prohibits any person who contracts with 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, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. The prohibition on contributions applies to each prospective party to the contract; each member of Consultant’s board of directors; Consultant’s chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Consultant; any subconsultant listed in the bid or contract; and any committee that is sponsored or controlled by Consultant. Consultant must inform each such person of the limitation on contributions imposed by Section 1.126 and provide the names of the persons required to be informed to City.

The Parties agree to amend Section 10.11 in its entirety to read as follows:

10.11 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.

2.8 Reserved. (Distribution of Beverages and Water.)

2.9 Notification of Legal Requests. *The Parties agree to add the following Section 11.14 to Article 11 of the Agreement:*

11.14 Notification of Legal Requests. Contractor shall immediately notify City upon receipt of any subpoenas, service of process, litigation holds, discovery requests and other legal requests ("Legal Requests") related to all data given to Contractor by City in the performance of this Agreement ("City Data" or "Data"), or which in any way might reasonably require access to City's Data, and in no event later than 24 hours after it receives the request. Contractor shall not respond to Legal Requests related to City without first notifying City other than to notify the requestor that the information sought is potentially covered under a non-disclosure agreement. Contractor shall retain and preserve City Data in accordance with the City's instruction and requests, including, without limitation, any retention schedules and/or litigation hold orders provided by the City to Contractor, independent of where the City Data is stored.

2.10 Management of City Data and Confidential Information. *The Parties agree to add the following sections to Article 13 of the Agreement:*

13. 4 Management of City Data and Confidential Information.

13.4.1 Use of City Data and Confidential Information. Contractor agrees to hold City's Confidential Information received from or created on behalf of the City in strictest confidence. Contractor shall not use or disclose City's Data or Confidential Information except as permitted or required by the Agreement or as otherwise authorized in writing by the City. Any work using, or sharing or storage of, City's Confidential Information outside the United States is subject to prior written authorization by the City. Access to City's Confidential Information must be strictly controlled and limited to Contractor's staff assigned to this project on a need-to-know

basis only. Contractor is provided a limited non-exclusive license to use the City Data or Confidential Information 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 the City Data or Confidential Information, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third party. Unauthorized use of City Data or Confidential Information 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 Confidential Information. Upon termination of Agreement or request of City, Contractor shall within forty-eight (48) hours return all Confidential Information which includes all original media. Once Contractor has received written confirmation from City that Confidential Information has been successfully transferred to City, Contractor shall within ten (10) business days purge all Confidential Information from its servers, any hosted environment Contractor has used in performance of this Agreement, 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.

Article 3 Effective Date

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

Article 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

Recommended by:

DocuSigned by:
Michael Carlin
360EAE264D6E47C...
Michael Carlin
Acting General Manager
San Francisco Public Utilities Commission

CONTRACTOR

Moffatt and Nichol-AGS, JV

DocuSigned by:
Dilip Trivedi
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Dilip Trivedi
Vice President

City Supplier number: 12725

Approved as to Form:

Dennis J. Herrera
City Attorney

By: DocuSigned by:
Randy Parent
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Randy Parent
Deputy City Attorney