

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

Third Amendment

to the Agreement between the City and County of San Francisco and APX Inc.

PRO.0152 Power Scheduling Coordination and Related Support Services

THIS THIRD AMENDMENT (“Amendment”) is made as of March 18, 2025, 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 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 increase the contract amount and term and update standard contract provisions; and

WHEREAS, Contractor was competitively selected pursuant to a Request for Proposals entitled Power Scheduling Coordination and Related Support Services issued through Sourcing Event ID PUC.PRO.0152 and this Amendment is consistent with the terms of the RFP and the awarded Contract; and

WHEREAS, there is no Local Business Enterprise (“LBE”) subcontracting participation requirement for this Agreement; and

WHEREAS, the City’s Civil Service Commission approved PSC number DHRPSC0005166 on April 21, 2025 in the amount of \$7,347,800 for the period of eight years; and

WHEREAS, this Amendment is consistent with an approval obtained from City’s San Francisco Public Utilities Commission under [resolution number] approved on [date of approval] in the amount of [dollar amount] for a period of [insert duration]; and

WHEREAS, this Amendment is consistent with an approval obtained from the City’s Board of Supervisors under [resolution number] approved on [date of Board action] in the amount of [dollar amount] for a period of [insert duration]; and

WHEREAS, the Department has filed Ethics Form 126f4 (Notification of Contract Approval) because this Agreement, as amended herein, has a value of \$100,000 or more in a fiscal year and will require the approval of the Board of Supervisors; and

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 May 26, 2022 between Contractor and City, as amended by the:

First Amendment, dated January 6, 2023, and
Second Amendment, dated March 22, 2023.

1.2 **San Francisco Labor and Employment Code.** As of January 4, 2024, San Francisco Administrative Code Chapters 21C (Miscellaneous Prevailing Wage Requirements), 12B (Nondiscrimination in Contracts), 12C (Nondiscrimination in Property Contracts), 12K (Salary History), 12P (Minimum Compensation), 12Q (Health Care Accountability), 12T (City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions), and 12U (Sweatfree Contracting) are redesignated as Articles 102 (Miscellaneous Prevailing Wage Requirements), 131 (Nondiscrimination in Contracts), 132 (Nondiscrimination in Property Contracts), 141 (Salary History), 111 (Minimum Compensation), 121 (Health Care Accountability), 142 (City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions), and 151 (Sweatfree Contracting) of the San Francisco Labor and Employment Code, respectively. Wherever this Agreement refers to San Francisco Administrative Code Chapters 21C, 12B, 12C, 12K, 12P, 12Q, 12T, and 12U, it shall be construed to mean San Francisco Labor and Employment Code Articles 102, 131, 132, 141, 111, 121, 142, and 151, respectively.

1.3 **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 Scope of the Agreement

The Agreement is hereby modified as follows:

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

2.1 The term of this Agreement shall commence on the latter of (i) May 26, 2022; or Effective Date, and expire 5 years after commencement, unless earlier terminated as otherwise provided herein.

2.2 The City has options(s) to renew the Agreement for a period of up to three years. The City may extend this Agreement beyond the expiration date by exercising an option at the City’s sole and absolute discretion and by modifying this Agreement as provided in Section 11.5, “Modification of this Agreement.”

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

2.1 The Term of this Agreement shall commence on May 31, 2022 and expire 8 years after commencement, unless earlier terminated as otherwise provided herein.

2.2 Reserved.

2.2 3.3 Compensation. Section 3.3 of the Agreement currently reads as follows:

3.3.1 Calculation of Charges. 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 General Manager of the SFPUC, in his or her sole discretion, concludes has been satisfactorily performed. In no event shall the amount of this Agreement exceed Four Million Two Hundred Forty Two Thousand and Eight Hundred Dollars, \$4,242,800. The breakdown of charges associated with this Agreement appears in Appendix B, "Calculation of Charges." A portion of payment may be withheld until conclusion of the Agreement if agreed to by both Parties as retainage, described in Appendix B. In no event shall City be liable for interest or late charges for any late payments. City will not honor minimum service order charges for any services covered by this Agreement.

3.3.2 Payment of CAISO Pass-Through Charges. As part of the SC Services set forth in Appendix A, 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 Eight Hundred Ninety One Million Five Hundred Thousand Dollars (\$891,500,000) ("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 3.3.1 of this Agreement or any other right, obligation, or duty of either Party.

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

3.3.1 Calculation of Charges. 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 General Manager of the SFPUC, in his or her sole discretion, concludes has been satisfactorily performed. In no event shall the amount of this Agreement exceed Seven Million Three Hundred Forty Seven Thousand and Eight Hundred Dollars, \$7,347,800. The breakdown of charges associated with this Agreement appears in Appendix B, "Calculation of Charges." A portion of payment may be withheld until conclusion of the Agreement if agreed to by both Parties as retainage, described in Appendix B. In no event shall City be liable for interest or late charges for any late payments. City will not honor minimum service order charges for any services covered by this Agreement.

3.3.2 Payment of CAISO Pass-Through Charges. As part of the SC Services set forth in Appendix A, 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 Billion Two Hundred Fifty Four Million One Hundred Forty Four Thousand Two Hundred and Twenty One Dollars and Eighty Cents (\$1,254,144,221.80) ("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 3.3.1 of this Agreement or any other right, obligation, or duty of either Party.

Article 3 Updates of Standard Terms to the Agreement

The Agreement is hereby modified as follows:

3.1 **Section 4.2 Personnel.** *Section 4.2 of the Agreement is replaced in its entirety to read as follows:*

4.2 Qualified Personnel. Contractor represents and warrants that it is qualified to perform the Services required by City, and that all Services will be performed by competent personnel with the degree of skill and care required by current and sound professional procedures and practices. Contractor will comply with City's reasonable requests regarding assignment and/or removal of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall commit sufficient resources for timely completion within the project schedule

3.2 **Section 4.5 Assignment.** *Section 4.5 of the Agreement is replaced in its entirety to read as follows:*

4.5 Assignment. Services to be performed by Contractor are personal in character. This Agreement may not be directly or indirectly assigned, novated, or otherwise transferred 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.

3.3 **Article 13 Data and Security.** *Article 13 of the Agreement is replaced in its entirety 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 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 the date of this Amendment.

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.

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

CITY
Recommended by:

CONTRACTOR
APX Inc.

Dennis J. Herrera
General Manager
San Francisco Public Utilities Commission

Brian Fellon
CCO
City Supplier number: 0000026457

Approved as to Form:

David Chiu
City Attorney

By: _____
Margarita Gutierrez
Deputy City Attorney

Approved:

Sailaja Kurella
Director of the Office of Contract
Administration, and Purchaser

By: _____
Sailaja Kurella