

**City and County of San Francisco
525 Golden Gate Avenue
San Francisco, CA 94102**

Second Amendment

PRO.0164 Lower Alemany Area Stormwater Improvements Project

THIS **SECOND** AMENDMENT (“Amendment”) is made as of [insert date], in San Francisco, California, by and between **McMillen Jacobs Associates (dba Delve Underground)** (“Contractor”), and the City and County of San Francisco, a municipal corporation (“City”).

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 duration, increase the contract amount, and update standard contractual clauses; and

WHEREAS, SFPUC competitively selected Contractor pursuant to a Request for Proposals entitled PRO.0164, Engineering Services for the Lower Alemany Area Stormwater Improvements issued through Sourcing Event ID PRO.0164 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, this Amendment is consistent with an approval obtained on [insert date of Civil Service Commission action or DHR approval date if under \$100K] from the [Civil Service Commission or Department of Human Resources on behalf of the Civil Service Commission] under PSC number [insert PSC number] in the amount of [insert Dollar Amount] for the period of [insert number of years]; and

WHEREAS, this Amendment is consistent with an approval obtained from City’s San Francisco Public Utilities Commission under [insert resolution number] approved on [insert date of Commission action] in the amount of [insert Dollar Amount] for the period commencing [Insert Start Date] and ending [Insert End Date]; and

WHEREAS, this Amendment is consistent with an approval obtained from the City’s Board of Supervisors under [insert resolution number] approved on [insert date of Commission or Board action] in the amount of [insert Dollar Amount] for the period commencing [Insert Start Date] and ending [Insert End Date]; 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 November 19, 2021 between Contractor and City, as amended by the:

First Amendment, dated March 12, 2024

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

The term of this Agreement shall commence on November 19, 2021 or (ii) the Effective Date and expire six (6) years later, 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 November 19, 2021 or (ii) the Effective Date and expire nine (9) years later, unless earlier terminated as otherwise provided herein.

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

The City has sole discretion to renew the Agreement for a period of three (3) years for a total Agreement duration of (9) 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:

Reserved.

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

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.

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 nine million five hundred thousand dollars and no pennies (\$9,500,000.00). 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.

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

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. 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 thirteen million eight hundred thousand dollars and no pennies (\$17,800,000.00). 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.

Article 3 Updates of Standard Terms to the Agreement

The Agreement is hereby modified as follows:

3.1 Confidential Information. *The following **Section 1.10** is hereby added to the Agreement as a Definition in Article 1:*

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).

3.2 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.

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:

Dennis J. Herrera
General Manager
San Francisco Public Utilities Commission

CONTRACTOR

McMillen Jacobs Associates (dba Delve Underground)

[name of authorized representative]
[title]

City Supplier number: 0000037873

Approved as to Form:

David Chiu
City Attorney

By: _____
Tyson Arbuthnot
Deputy City Attorney

