**City and County of San Francisco**

**Office of Contract Administration**

**Purchasing Division**

**[Insert “First,” “Second,” “Third,” etc.] Amendment**

THIS AMENDMENT (this “Amendment”) is made as of **[insert date]**, in San Francisco, California, by and between **[insert name of Contractor, in bold]** (“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 [give a general description of what the Amendment is doing, such as “extend the performance period, increase the contract amount, and update standard contractual clauses”]; and

WHEREAS, the Agreement was competitively procured as required by San Francisco Administrative Code Chapter 21.1 through [specify the procurement vehicle such as RFP or RFQ and date issued, or state the exception to competitive procurement and date granted] and this modification is consistent therewith; and

**🠞If this amendment increases the amount originally approved by the Civil Service Commission by 50% or more, then insert the following Whereas clause. Otherwise, do not insert it.**

WHEREAS, approval for this Amendment was obtained when the Civil Service Commission approved Contract number [insert PSC number] on [insert date of Civil Service Commission action];

WHEREAS, the City’s [name of Commission or Board of Supervisors] approved this Agreement by [insert resolution number] on [insert date of Commission or Board action];

**🠞Insert additional WHEREAS clauses as appropriate.**

NOW, THEREFORE, Contractor and the City agree as follows:

1. **Definitions**

The following definitions shall apply to this Amendment:

* 1. **Agreement.** The term “Agreement” shall mean the Agreement dated [insert date of Agreement] between Contractor and City, as amended by the:

[First amendment], dated [insert date of the first amendment], and

[Second amendment], dated [insert date of second amendment].

**🠞**LIST ALL AMENDMENTS PRIOR TO THIS AMENDMENT.

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

1. **Modifications to the Agreement.**

**🠞If the Agreement is based on the P-600 (4-19) version, DO NOT include the additional sections concerning: Definitions, Data and Security, Assignment, Withholding, Consideration of Salary History, Limitations on Contributions, or Distribution of Beverages and Water, as they are already in the P-600 (4-19) version.**

The Agreement is hereby modified as follows:

* 1. **Definitions.** *The following 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).

**🠞Different language for 2.2 regarding Data and Security should be added depending on the date of the Agreement. There are two alternative versions. If the Agreement is based on the P-600 (1-17 or 2-17) version, use the following text (and delete the alternative).**

* 1. **Notification of Legal Requests** *and* **Management of City Data and Confidential Information** *The following sections are hereby added and incorporated in Articles 11 and 13 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.

13. 4 **Management of City Data and Confidential Information**

13. 4.1 **Access to City Data**. City shall at all times have access to and control of all data given to Contractor by City in the performance of this Agreement (“City Data” or “Data”), and shall be able to retrieve it in a readable format, in electronic form and/or print, at any time, at no additional cost.

13.4.2 **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.

13.4.3 **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.

**🠞If the Agreement is based on an earlier version of the P-600 (before 1-17) or does not contain an Article 13, use the following alternate text for 2.2 and delete the prior 2.2 if you haven’t already. Otherwise, delete.**

2.2**Management of Private, Proprietary or Confidential Information and City Data.** *The following is hereby added and incorporated into Article 11 of the Agreement:*

11.15 **Management of Private, Proprietary or Confidential Information and City Data.**

11.15.1 **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.

11.15.2 **Confidential Information.** In the performance of Services, Contractor may have access to City's proprietary or Confidential Information, the disclosure of which to third parties may damage City. If City discloses proprietary or Confidential Information to Contractor, 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.

11.15.3 **Access to City Data**. City shall at all times have access to and control of all data given to Contractor by City in the performance of this Agreement (“City Data” or “Data”), and shall be able to retrieve it in a readable format, in electronic form and/or print, at any time, at no additional cost

11.15.4 **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.

11.15.5 **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.

11.15.6 **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.

* 1. **Assignment.** *The following is hereby added to Article 4 of the Agreement, replacing the previous Section 4.5 in its entirety:*

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.

* 1. **Withholding.** *The following is hereby added 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.

* 1. **Limitations on Contributions**. *The following is hereby added to Article 10 of the Agreement, replacing the previous Section 10.11 in its entirety:*

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.

**🠞If the scope of services in this Agreement includes sale, provision, or distribution of water or beverages, include the following section.**

* 1. **Distribution of Beverages and Water.** *The following is hereby added to Article 10 of the Agreement, replacing the previous Section 10.17 in its entirety:*

10.17 **Distribution of Beverages and Water.**

**10.17.1 Sugar-Sweetened Beverage Prohibition**. Contractor agrees that it shall not sell, provide, or otherwise distribute Sugar-Sweetened Beverages, as defined by San Francisco Administrative Code Chapter 101, as part of its performance of this Agreement.

**10.17.2 Packaged Water Prohibition.** Contractor agrees that it shall not sell, provide, or otherwise distribute Packaged Water, as defined by San Francisco Environment Code Chapter 24, as part of its performance of this Agreement.

**🠞 Use the following sections as needed to modify the text of the existing agreement. If amendments require more changes, continue to use the numbering system above (2.8, 2.9, 2.10, etc.) for all modifications. Examples and placeholders are provided as starting points. If you wish to modify your Appendices, minor changes can be made within this Article 2, but larger changes should result in the Appendix being replaced entirely and attached. Delete unneeded sections.**

* 1. **[Insert Section title].**  *Section [insert section number and title] of the Agreement currently reads as follows:*

**🠞** Set forth current text of Section. (If you cut and paste the current text, note that it should be pasted either "unformatted" - or as "Body Text" to avoid interfering with the Amendment's auto-numbering system.)

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

**🠞** Set forth revised text of Section.

* 1. **[Insert Section title].** *Section [insert section number and title] of the Agreement currently reads as follows:*

**🠞** Set forth current text of Section.

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

**🠞** Set forth revised text of Section.

* 1. **[Insert Section title].** *Section [insert section number and title] of the Agreement currently reads as follows:*
  2. **[Insert Section title].** *Section [insert section number and title] of the Agreement currently reads as follows:*

🠞 Use the following if you wish to replace an Appendix. Make sure to include the revised Appendix as an attachment.

* 1. **Appendix [letter].** Appendix [letter] is hereby replaced in its entirety by Appendix [letter]-1, attached to this Amendment and fully incorporated within the Agreement.

1. **Effective Date**

Each of the modifications set forth in Section 2 shall be effective on and after [specify either “the date of this Amendment” or other effective date].

1. **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:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[name]

[title]

[department]

Approved as to Form:

Dennis J. Herrera

City Attorney

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[name of Deputy City Attorney]

Deputy City Attorney

Approved:

Alaric Degrafinried

Director of the Office of Contract Administration, and Purchaser

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[name of Purchaser or “Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_”]

CONTRACTOR

[company name]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[name of authorized representative]

[title]

[optional: address]

[optional: city, state, ZIP]

City Supplier number: [Supplier number]

**Attached Appendices: [If Any]**

**🠞** Be sure to change the # in the footer to indicate the total number of pages in the amendment as of this signature page.

Appendix A-1 [Example]