

CITY AND COUNTY OF SAN FRANCISCO  
PURCHASING DEPARTMENT

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**FOURTH AMENDMENT**

THIS AMENDMENT (this "Amendment") is made as of May 19, 2000 in San Francisco, California, by and between MOTOROLA, INC. ("Contractor"), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City"), acting by and through its Director of Purchasing.

R E C I T A L S

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;

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

1. **Definitions.** The following definitions shall apply to this Amendment:

(a) **Agreement.** The term "Agreement" shall mean the Agreement dated September 22<sup>nd</sup> 1997 between Contractor and City as modified by the First Amendment dated May 18, 1998, the Second Amendment dated September 24, 1998, and the Third Amendment dated August 11, 1999.

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

2. **Modifications to the Agreement.** The Agreement is hereby modified as follows:

(a) **Section 5.01.** Section 5.01 of the Agreement currently reads as follows:

**Master Project Schedule.** The Master Project Schedule for the Project is attached hereto as Exhibit E. The Contractor prepared the Master Project Schedule and represents and warrants to the City that it will meet all the dates specified in the Master Project Schedule and achieve Final Acceptance of the Project within nine hundred seventy-three (973) calendar days from the delivery of the initial Request to Commence by the City's Project Manager. The Contractor acknowledges and understands that the Master Project Schedule contains certain time-sensitive milestones ("**Critical Milestones**") that must be attained by certain dates; otherwise, the City will suffer financial harm. These Critical Milestones are as follows:

(1) Contractor shall complete Task No. 14.8 (TRS, MTS, SMC and RF Coverage ATP) within six hundred forty (640) calendar days from the initial Request to Commence by the City's Project Manager.

(2) Contractor shall complete Task No. 16.2.4 (CCE2 System Acceptance) within six hundred ninety-three (693) calendar days from the initial Request to Commence by the City's Project Manager.

(3) Contractor shall complete Task No. 17.2.1 (CCE1 Cut-over complete) within seven hundred forty-five (745) calendar days from the initial Request to Commence by the City's Project Manager.

(4) Contractor shall complete Task No. 19.2.1 (CCE2 Cut-over complete) within eight hundred seventy-nine (879) calendar days from the initial Request to Commence by the City's Project Manager.

(5) Contractor shall complete Task No. 25 (Final System Acceptance) within nine hundred seventy-three (973) calendar days from the initial Request to Commence by the City's Project Manager.

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

**Master Project Schedule.** The Master Project Schedule for the Project is attached hereto as Exhibit E. The Contractor prepared the Master Project Schedule and represents and warrants to the City that it will meet all the dates specified in the Master Project Schedule and achieve Final Acceptance of the Project within one thousand one hundred fifty-seven (1157) calendar days from the delivery of the initial Request to Commence by the City's Project Manager. The Contractor acknowledges and understands that the Master Project Schedule contains certain time-sensitive milestones ("**Critical Milestones**") that must be attained by certain dates; otherwise, the City will suffer financial harm. These Critical Milestones are as follows:

(1) Contractor shall complete Task No. 14.8 (TRS, MTS, SMC and RF Coverage ATP) within six hundred forty (640) calendar days from the initial Request to Commence by the City's Project Manager.

(2) Contractor shall complete Task No. 16.2.4 (CCE2 System Acceptance) within six hundred ninety-three (693) calendar days from the initial Request to Commence by the City's Project Manager.

(3) Contractor shall complete Task No. 17.2.1 (CCE1 Cut-over complete) within seven hundred forty-five (745) calendar days from the initial Request to Commence by the City's Project Manager.

(4) Contractor shall complete Task No. 19.2.1 (CCE2 Cut-over complete) within eight hundred seventy-nine (879) calendar days from the initial Request to Commence by the City's Project Manager.

(5) Contractor shall complete Task No. 25 (Final System Acceptance) within one thousand one hundred fifty-seven (1157) calendar days from the initial Request to Commence by the City's Project Manager.

(b) **Section 7.03.** Section 7.03 of the Agreement currently reads as follows:

**Section 7.03 Reliability Period.** The Reliability Period shall begin immediately after System Cutover of all user departments and shall continue for a period of ninety (90) days. If, during the Reliability Period, (1) the Project suffers a Major Failure prior to Final Project Acceptance, caused in whole or part by Contractor, Subcontractor's, or its Equipment, then Contractor shall remedy such failure and a new ninety (90) day Reliability Period shall begin only for the specific system or subsystem(s) (identified as one of the systems or subsystems under the definition of Major Failure that

has failed or (2) any of the major systems or subsystems identified in the definition of Major Failure suffers a Chronic Failure prior to Final Project Acceptance, even if such failure does not create a Major Failure as defined, then Contractor shall remedy such failure and a new ninety (90) day Reliability Period shall begin only for that specific system or subsystem which suffered such Chronic Failure (collectively the "Extended Reliability Period"); provided, however, in the event any system or subsystem failure is remedied, an Extended Reliability Period shall apply for such impacted systems or subsystems. In the event of extensive Major Failure or Chronic Failures the City may request after Contractor's remedy of such failure, re-testing such system or subsystems, and the Reliability Period for the Project re-start. Nothing herein shall be deemed to lessen Contractors responsibility for providing a fully functional Project upon Final Project Acceptance.

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

**Section 7.03 Reliability Period.** The Reliability Period shall begin in accordance with the Master Project Schedule and shall continue for a period of ninety (90) days. If, during the Reliability Period, (1) the Project suffers a Major Failure prior to Final Project Acceptance, caused in whole or part by Contractor, Subcontractor's, or its Equipment, then Contractor shall remedy such failure and a new ninety (90) day Reliability Period shall begin only for the specific system or subsystem(s) (identified as one of the systems or subsystems under the definition of Major Failure that has failed or (2) any of the major systems or subsystems identified in the definition of Major Failure suffers a Chronic Failure prior to Final Project Acceptance, even if such failure does not create a Major Failure as defined, then Contractor shall remedy such failure and a new ninety (90) day Reliability Period shall begin only for that specific system or subsystem which suffered such Chronic Failure (collectively the "Extended Reliability Period"); provided, however, in the event any system or subsystem failure is remedied, an Extended Reliability Period shall apply for such impacted systems or subsystems. In the event of extensive Major Failure or Chronic Failures the City may request after Contractor's remedy of such failure, re-testing such system or subsystems, and the Reliability Period for the Project re-start. Nothing herein shall be deemed to lessen Contractors responsibility for providing a fully functional Project upon Final Project Acceptance.

(c) **Section 15.02 (a).** Section 15.02 (a) of the Agreement currently reads as follows:

(a) **General.** Contractor warrants that all Equipment and materials in the Project shall be free from defects in material, design, workmanship, and be of the kind and quality that performs in the manner described in the Statement of Work and Services, the published Equipment specifications, and any or all applicable Standards and Recommendations specified in the Statement of Work and Services. Exclusive of Wireless Data Network Fixed Network Equipment, the foregoing warranty shall be effective for one (1) year commencing on the date of Final Project Acceptance. For Wireless Data Network Fixed Network Equipment only, the foregoing warranty shall be effective for one (1) year commencing on the date of Wireless Data Network Final Acceptance as defined in the Wireless Data Network Statement of Work and Services and the approved Wireless Data Network Acceptance Test Procedures. This one-year warranty shall not effect or limit any standard manufacturer's warranty for any item of Equipment in the Project.

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

(a) **General.** Contractor warrants that all Equipment and materials in the Project shall be free from defects in material, design, workmanship, and be of the kind and quality that performs in the manner described in the Statement of Work and Services, the published Equipment specifications, and any or all applicable Standards and Recommendations specified in the Statement of Work and Services. Exclusive of Wireless Data Network Fixed Network Equipment and User Equipment, the foregoing warranty shall be effective for one (1) year commencing on the date of Final Project Acceptance. For Wireless Data Network Fixed Network Equipment only, the foregoing warranty shall be effective for one (1) year commencing on the date of Wireless Data Network Final Acceptance as defined in the Wireless Data Network Statement of Work and Services and the approved Wireless Data Network Acceptance Test Procedures. For User Equipment only, the foregoing warranty shall be effective for one (1) year commencing on the later of: (1) the User Departments Beneficial Use of such User Equipment or (2) May 22, 2000. This one-year warranty shall not effect or limit any standard manufacturer's warranty for any item of Equipment in the Project.

(d) **Section 15.02 (f).** Section 15.02 (f) of the Agreement currently reads as follows:

(f) **Subcontractor Warranty.** Contractor hereby warrants all labor, workmanship, materials and Equipment provided by any Subcontractors on any Project. This Subcontractor warranty shall be effective for one (1) year, commencing on the date of Final Project Acceptance. This warranty shall not effect or limit any warranty provided by the Subcontractor.

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

(f) **Subcontractor Warranty.** Contractor hereby warrants all labor, workmanship, materials and Equipment provided by any Subcontractors on the Project. Exclusive of radio site development work as defined in the Statement of Work and Services, this Subcontractor warranty shall be effective for one (1) year, commencing on the date of Final Project Acceptance. Subcontractor Warranty for radio site development work only shall be effective for one (1) year commencing on May 22, 2000. This warranty shall not effect or limit any warranty provided by the Subcontractor.

(e) **Exhibit E:** Exhibit E Master Project Schedule Revision 1.1 is hereby replaced in it's entirety with Exhibit E Master Project Schedule Revision 1.24 which is attached to this Amendment and is hereby incorporated by reference.

(f) **Exhibit D:** Exhibit D Project Cost Itemization Schedule is hereby amended by the addition of Pages DS-7 Approved Change Orders and DS-8 Schedule Extension Costs which are attached to this Amendment and are hereby incorporated by reference.

3. **Effective Date.** Each of the modifications set forth in Section 2 shall be effective on and after May 19, 2000.

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:

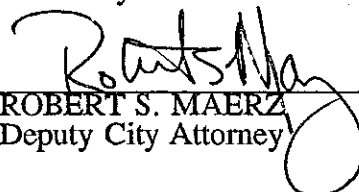
  
\_\_\_\_\_  
Signature for Department

\_\_\_\_\_  
Printed Name


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Title and Department

Approved as to Form:

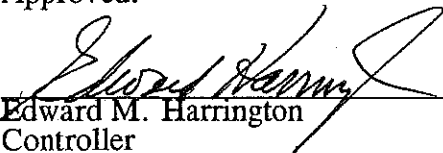
Louise H. Renne  
City Attorney

By   
\_\_\_\_\_  
ROBERT S. MAERZ  
Deputy City Attorney

Approved:

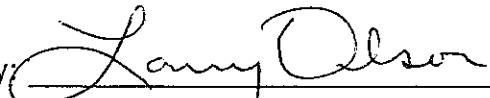
  
\_\_\_\_\_  
Edwin M. Lee  
Director of Purchasing

Approved:

  
\_\_\_\_\_  
Edward M. Harrington  
Controller

**CONTRACTOR**

MOTOROLA, INC.

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

Name: Larry Olson

Title : Vice-President - Sales

Date: May 17, 2000

**EXHIBIT D: PROJECT COST ITEMIZATION SCHEDULE  
APPROVED CHANGE ORDERS**

CO No.	Date	Document No.	Description	Change Order PH I	Change Order PH II	Total
MCO-1	4/3/98	MOT-092	Cost reduction due to Detail Design equipment changes	\$ (444,023.91)	\$ (442,113.36)	\$ (886,137.27)
MCO-2	5/11/98	MOT-103	Deletion of microwave hop to BOA	\$ (89,940.00)		\$ (976,077.27)
MCO-3	9/18/98	MOT-128	Special areas of Coverage Detailed Design equipment changes	\$ 649,208.16		\$ (326,869.11)
MCO-4	11/20/98	BCO-1	Construction Change Order #1	\$ 169,899.75		\$ (156,969.36)
MCO-5	11/24/98	MOT-139	Voice Over Wire	\$ 4,383.50		\$ (152,585.86)
MCO-6	12/18/98	BCO-2	Construction Change Order #2	\$ 137,398.50		\$ (15,187.36)
MCO-7	12/10/98	MOT-143	Increased amount of Phase II radios at Phase II Request to Commence		\$ 709,909.91	\$ 694,722.55
MCO-8	1/25/99	MOT-150	Change microwave dishes to high performance	\$ 16,453.00		\$ 711,175.55
MCO-9	3/12/99	BCO-3	Construction Change Order # 3	\$ 86,004.00		\$ 797,179.55
MCO-10	3/15/99	MOT-154	Reduction in cost for high performance microwave dishes	\$ (3,120.00)		\$ 794,059.55
MCO-11	5/13/99	BCO-4	Construction Change Order #4	\$ 75,933.00		\$ 869,992.55
MCO-12	6/8/99	MOT-174	Additional coverage for 2nd floor of Jail learning center (special areas of coverage)	\$ 3,840.00		\$ 873,832.55
MCO-13	6/30/99	BCO-5	Construction Change Order #5	\$ 36,792.00		\$ 910,624.55
MCO-14	7/30/99	BCO-6	Construction Change Order #6	\$ 322,501.95		\$ 1,233,126.50
MCO-15	8/18/99	MOT-189	Modify six control stations for tone operation (SFIA)		\$ 4,890.00	\$ 1,238,016.50
MCO-16	9/29/99	MOT-196	Additional accessories for DPT, SD, Fire		\$ 109,837.53	\$ 1,347,854.03
MCO-17	10/7/99	MOT-198	Credit for deducting Fire (& DPH) mobile installs		\$ (148,500.00)	\$ 1,199,354.03
MCO-18	10/20/99	MOT-203	CECC work requested by DPW/BOA PCO179 & 152B	\$ 23,377.00		\$ 1,222,731.03
MCO-19	10/18/99	SAC-01	Special areas of coverage Change Order 1	\$ 216,265.46		\$ 1,438,996.49
MCO-20	11/4/99	MOT-205	CECC work requested by DPW/BOA PCO 177 & 188	\$ 12,059.00		\$ 1,451,055.49
MCO-21	12/17/99	BCO-7	Construction Change Order #7	\$ 101,722.55		\$ 1,552,778.04
MCO-22	1/31/00	MOT-214	Additional control stations for CECC (\$78,909.66) SUPERCEDED.			\$ 1,552,778.04
MCO-23	1/31/00	MOT-214	Add digital encryption for 65 Police and Fire portables		\$ 73,452.05	\$ 1,626,230.09
MCO-24	1/31/00	MOT-214	48V power upgrade at CRS (\$35,704.43) SUPERCEDED			\$ 1,626,230.09
MCO-22a	2/4/00	MOT-216	(5) Additional control stations for CECC.		\$ 63,303.41	\$ 1,689,533.50
MCO-25	2/4/00	MOT-217	Upgrade 60 Fire XTS Model I encrypted to yellow ruggedized.		\$ 51,136.44	\$ 1,740,669.94
MCO-24a	3/7/00	MOT-220	48V power upgrade at CRS (revised cost)	\$ 40,239.43		\$ 1,780,909.37
MCO-26	3/21/00	MOT-223	MOT-223 credit for deducting DTIS mobile and control station installs		\$ (20,000.00)	\$ 1,760,909.37
MCO-27	3/31/00	SAC-02	Special areas of coverage Change Order 2	\$ 93,545.82		\$ 1,854,455.19
MCO-28	5/19/00	Exhibit D Pg DS-8	NOT TO EXCEED COST for extension CERS Final Acceptance from May 22, 2000 to November 22, 2000	\$ 608,334.00		\$ 2,462,789.19

**Total Change Orders:** \$ 2,060,873.21    \$ 401,915.98    \$ 2,462,789.19  
**Project Price at Contract Signing:** \$ 24,356,345.55    \$ 12,191,019.45    \$ 36,547,365.00  
**Adjusted Total:** \$ 26,417,218.76    \$ 12,592,935.43    \$ 39,010,154.19

**Other Adjustments**

	4/7/98	MOT-095	Optional Phase 3 purchase (MOSCAD)			\$ 630,485.00
	12/7/98	MOT-142	Optional Wireless Data Network			\$ 1,201,099.00
	11/5/99	MOT-206	Liquidated damages assessed for failure to complete CCE1 cutover			\$ (130,000.00)

**Revised Total contract value:** \$ 26,417,218.76    \$ 12,592,935.43    \$ 40,711,738.19

**EXHIBIT D: PROJECT COST ITEMIZATION SCHEDULE  
SCHEDULE EXTENSION COSTS**

(for extension of CERS Final Acceptance from May 22, 2000 to November 22, 2000)

Description	Cost Per Day	Cost Per Month	Extension (months)	Total
Dedicated Project Manager	\$ 952	\$ 20,944	6	\$ 125,664.00
Dedicated Project Engineer	\$ 992	\$ 21,824	3	\$ 65,472.00
Delayed Final Acceptance Payment (on \$4M)	0.0253%	\$ 30,833	6	\$ 184,998.00
Delayed Final Acceptance plus one year payment (on \$400K)	0.0253%	\$ 3,083	6	\$ 18,498.00
Extended Warehousing	\$ 60.90	\$ 1,826	3	\$ 5,478.00
FNE Warranty Extension Includes dedicated on site System Technologist	n/a	\$ 26,154	6	\$ 156,924.00
Warranty Extension for Police User Equipment (423 mobiles and 771 Portable radios)		\$ 5,100	3	\$ 15,300.00
On Site FNE technical response (8X5 M-F)		\$ 12,000.00	3	\$ 36,000.00
<b>Total:</b>		<b>\$ 121,764</b>		<b>\$ 608,334</b>

The above costs are NOT TO EXCEED costs and will not begin accruing until the City Project Manager certifies that the following tasks have been completed:

1. Delivery and acceptance of all as built documentation. City must have a minimum of 10 working day review period after receipt of materials.
2. Delivery of final inventory list for equipment which has been accepted by the City.
3. Delivery and acceptance of CERS 30 day confidence period test report. City must have a minimum of 10 working day review period after receipt of materials.
4. Open CERS "category 1" punch list items have been corrected.
5. Technical training for MOSCAD and Special Areas of Coverage has been scheduled (first session of training for each category to be completed no later than June 30, 2000 unless City elects to postpone).
6. All archival copies and documentation for Project Software has been delivered.
7. All spare parts has been delivered and inventoried.

Optional Costs	Cost Per Day	Cost Per Month		
24 Hour System Monitoring, after hours consultation with City technical staff, weekly availability reports, service call tracking		\$ 11,975		
System Technologist	\$ 992	\$ 21,824		
Construction Manager	n/a	\$ 15,378		