

CITY AND COUNTY OF SAN FRANCISCO
PURCHASING DEPARTMENT

COPY

FIFTH AMENDMENT

THIS AMENDMENT (this "Amendment") is made as of November 21, 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.

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;

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 22nd 1997 between Contractor and City as modified by the First Amendment dated May 18, 1998, the Second Amendment dated September 24, 1998, the Third Amendment dated August 11, 1999, and the Fourth Amendment dated May 19, 2000.

(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 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.

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 two hundred seventy-seven (1277) 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 two hundred seventy-seven (1277) calendar days from the initial Request to Commence by the City's Project Manager.

(b) **Section 15.02.** Section 15.02 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 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.

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 eight (8) months 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.

(c) **Article 18.** Article 18 of the Agreement is hereby amended by the addition of the following Section:

Section 18.28 Earned Income Credit Forms. Administrative Code section 120 requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found.

(a) Contractor shall provide the EIC Forms to each Eligible Employee at each of the following times: (i) within thirty (30) days following the date on which the applicable Contract or Contract Amendment becomes effective (unless Contractor has already provided such EIC Forms at least once during the calendar year in question); (ii) promptly after any Eligible Employee is hired by Contractor; and (iii) annually between January 1 and January 31 of each calendar year during the term of the Contract.

(b) Failure to comply with the foregoing requirement shall constitute a material breach by Contractor of the terms of the Contract.

(c) If within thirty (30) days after the Contractor receives written notice of such a breach, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, Contractor fails to commence efforts to cure within such period, or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under the terms of the Contract or under applicable law.

(d) **Exhibit E:** Exhibit E Master Project Schedule Revision 1.24 is hereby replaced in its entirety with Exhibit E Master Project Schedule Revision 1.25 which is attached to this Amendment and is hereby incorporated by reference.

(e) **Exhibit D:** Exhibit D Project Cost Itemization Schedule is hereby amended by the addition of Page DS-9 Approved Change Orders Page Two which is attached to this Amendment and is hereby incorporated by reference


3. **Effective Date.** Each of the modifications set forth in Section 2 shall be effective on and after November 21, 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

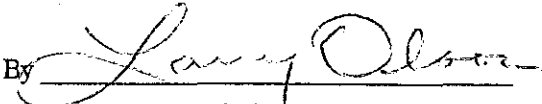
Recommended by:



Signature for Department
L. D. Fraijo
Printed Name
Chief of Staff ECS
Title and Department

CONTRACTOR

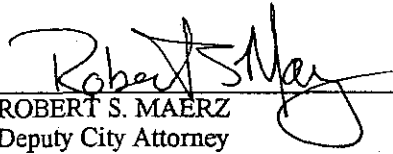
MOTOROLA, INC.

By 

Title LARRY OLSON
VICE PRESIDENT, SALES
DATE: NOV 30, 2000

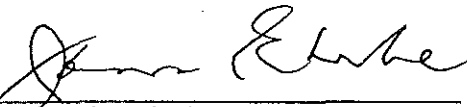
Approved as to Form:

Louise H. Renne
City Attorney

By 

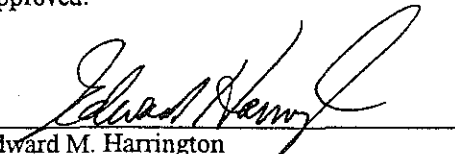
ROBERT S. MAERZ
Deputy City Attorney

Approved:



Director of Purchasing

Approved:



Edward M. Harrington
Controller

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

CO No.	Date	Document No.	Description	Change Order PH I	Change Order PH II	Total
	5/19/00	Amendment 4	Revised total contract value from Exhibit D Page DS-7			\$ 40,711,738.19
MCO-29	5/24/00	MOT-226	Purchase 2310 additional batteries and misc accessories for SFPD		\$ 208,809.77	\$ 40,920,547.96
MCO-30	4/20/00	BCO-8	Construction change order #8	\$ 97,054.35		\$ 41,017,602.31
MCO-31	6/5/00	MOT-221	Purchase & install Centracom Elite console for DPW (replaces smartzone terminal)		\$ 32,012.95	\$ 41,049,615.26
MCO-32	6/30/00	MOT-228	Reduction in schedule extension "not to exceed" costs (see MCO-28)	\$ (182,646.00)		\$ 40,866,969.26
MCO-33	7/5/00	MOT-229	Purchase of 88 six unit charger wall mount brackets for Police		\$ 1,394.01	\$ 40,868,363.27
MCO-34	7/5/00	MOT-230	Adjustment to credit for DTIS mobile and control station installs (see MCO-26)		\$ 5,100.00	\$ 40,873,463.27
MCO-35	7/5/00	MOT-231	Adjustment to credit for Fire mobile installs (see MCO-17)		\$ 11,500.00	\$ 40,884,963.27
MCO-36	9/5/00	SAC-03	Special Areas of Coverage additional work		\$ 16,929.84	\$ 40,901,893.11
MCO-37	8/7/00	MOT-232	800 Belt loops for SFPD		\$ 7,603.68	\$ 40,909,496.79
MCO-38	9/21/00	MOT-235	RTS/CTS reconfiguration		\$ 19,229.00	\$ 40,928,725.79
MCO-39	9/29/00	MOT-237	Spare Elite console equipment and "shrouded" emergency buttons		\$ 36,492.22	\$ 40,965,218.01
MCO-40	10/26/00	SAC-04	Special Areas of Coverage additional work	\$ 82,786.80		\$ 41,048,004.81
MCO-41	10/27/00	MOT-233	Purchase/Install 3 additional control stations (EMS)		\$ 24,949.76	\$ 41,072,954.57
MCO-42	11/6/00	MOT-239	Paging option and upgraded hardware for Full Vision console		\$ 19,773.61	\$ 41,092,728.18
MCO-43	11/21/00	Exhibit D Pg DS-8	NOT TO EXCEED COST for extension of CERS Final Acceptance from Novemer 22, 2000 to March 22, 2001. Includes: dedicated Project Manager, dedicated Project Engineer, delayed Final Acceptance payment, delayed Final Acceptance plus one year payment, system technologist, and on-site infrastructure response.	\$ 442,034.67		\$ 41,534,762.85
MCO-44	11/21/00	Exhibit D Pg DS-8	Upgrade onsite infrastructure response from 8X5 response time to 7X24 response time during the period November 22, 2000 to March 22, 2001.	\$ 14,400.00		\$ 41,549,162.85

Total Change Orders (this sheet): \$ 453,629.82 \$ 383,794.84 \$ 837,424.66
Adjusted Total: \$ 41,549,162.85