

CITY AND COUNTY OF SAN FRANCISCO
PURCHASING DEPARTMENT

THIRD AMENDMENT

THIS AMENDMENT (this "Amendment") is made as of August 11, 1999 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 and the Second Amendment dated September 24, 1998.

(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 6.03 (a) Section 6.03 (a) of the Agreement currently reads as follows:

(a) From time to time, the City shall have the right to submit a Change Order to Contractor. Within ten (10) Days of receiving a proposed Change Order, Contractor shall submit to DTIS a written cost estimate, which shall include any adjustments to the Project Price, the Master Project Schedule, Acceptance Test Plan or other obligations of the Contractor, as applicable. Should an adjustment to the Project Price be necessary, Contractor shall base such adjustment on the prices and costs contained in the Project Cost Itemization Schedule, the Additional Equipment Price Schedule and Labor Rate Schedule. Contractor shall not proceed with any work contemplated in any Change Order until it receives written notification to commence such work from the General Manager. All Change Orders resulting in an increase in the Project Price must be pre-approved, in writing, by the Controller and the Purchaser. Contractor shall commence the Work contemplated by the Change Order in accordance with the Master Project Schedule upon receiving written notice from DTIS. Contractor must proceed with the work contemplated by the Change Order even if the Parties disagree on the effect that such Change Order will have on Project Price, Master Project Schedule or the Acceptance Test Plan, provided the City has delivered to Contractor a written statement of its good faith estimate of the fair value of the cost of Change Order and its effect on the Master Project Schedule and Acceptance Test Plan. In such instance, the City agrees, upon completion of the work, to pay the Contractor the amount of the good faith estimate and Contractor's sole remedy as to the additional amounts is to file a claim against the City or submit the matter to arbitration pursuant to the terms of the Master Agreement. Any changes to the Statement of Work and Services necessary to ensure that the Project will meet the Performance Specification and pass all aspect of the Acceptance Test Plan will not be subject to this Change Order procedure. Such changes shall be made pursuant to Section 7.04 hereof.

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

(a) From time to time, the City shall have the right to submit a Change Order to Contractor. Within ten (10) Days of receiving a proposed Change Order, Contractor shall submit to DTIS a written cost estimate, which shall include any adjustments to the Project Price, the Master Project Schedule, Acceptance Test Plan or other obligations of the Contractor, as applicable. Should an adjustment to the Project Price be necessary, Contractor shall base such adjustment on the prices and costs contained in the Project Cost Itemization Schedule, the Additional Equipment Price Schedule and Labor Rate Schedule. Contractor shall not proceed with any work contemplated in any Change Order until it receives written notification to commence such work from the E-911 Project Director. The E-911 Project Director may approve issuance of Change Orders which do not cumulatively increase the Project Price by more than \$2 million dollars in any fiscal year. Any Change Orders which result in a cumulative increase in the Project Price of more than \$2 million dollars in any fiscal year, must be pre-approved, in writing, by the Controller and the Purchaser. Contractor shall commence the Work contemplated by the Change Order in accordance with the Master Project Schedule upon receiving written notice from DTIS. Contractor must proceed with the work contemplated by the Change Order even if the Parties disagree on the effect that such Change Order will have on Project Price, Master Project Schedule or the Acceptance Test Plan, provided the City has delivered to Contractor a written statement of its good faith estimate of the fair value of the cost of Change Order and its effect on the Master Project Schedule and Acceptance Test Plan. In such instance, the City agrees, upon completion of the work, to pay the Contractor the amount of the good faith estimate and Contractor's sole remedy as to the additional amounts is to file a claim against the City or submit the matter to arbitration pursuant to the terms of the Master Agreement. Any changes to the Statement of Work and Services necessary to ensure that the Project will meet the Performance Specification and pass all aspect of the Acceptance Test Plan will not be subject to this Change Order procedure. Such changes shall be made pursuant to Section 7.04 hereof.

(b) 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. The foregoing warranty shall be effective for one (1) year commencing on the date of Final Project Acceptance. 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, 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.

(c) Exhibit A. Exhibit A Performance Specifications Revision 3 is hereby replaced in its entirety with Exhibit A Performance Specifications (Sections 1-5) Revision 4 and Performance Specifications (Section 6) Revision 5 which is attached to this Amendment and is hereby incorporated by reference.

(d) Exhibit B. Exhibit B Statement of Work and Services Revision 1 is hereby replaced in its entirety with Exhibit B Statement of Work and Services Revision 2.1 and Exhibit B1 Statement of Work and Services for the Wireless Data Network Revision 1 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 August 11, 1999.

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

CONTRACTOR

Recommended by:

MOTOROLA, INC.

Nick Yastis
Signature for Department

By *Mark d. Moon*

Nick Yastis
Printed Name

Title *V.P., SYSTEMS INTEGRATION*

Director
Title and Department

[Signature] APPROVED AS TO FORMS *8/25/99*
RICHARD F. RYAN DATE
MOTOROLA

Approved as to Form:

Louise H. Renne
City Attorney

By *[Signature]*
ROBERT S. MAERZ
Deputy City Attorney

Approved:

[Signature]
Edwin M. Lee
Director of Purchasing

Approved:

[Signature]
Steven D. Nelson
Director of Administrative Services