

**City and County of San Francisco
Office of Contract Administration
Purchasing Division**

Seventh Amendment

THIS AMENDMENT (this "Amendment") is made as of _____, 2013, in San Francisco, California, by and between **Xtech Joint Venture**, ("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) when the Board of Supervisors approved Resolution No. 508-08 on December 9, 2008;

WHEREAS, the Board of Supervisors approved the First Amendment by Resolution No. 458-10 on September 28, 2010 modifying the Agreement to increase the not-to-exceed amount from \$24,000,000 to \$41,000,000;

WHEREAS, the Director of the Office of Contract Administration and the Purchaser approved the Second Amendment on November 21, 2012 to extend the Agreement through December 31, 2012;

WHEREAS, the Board of Supervisors approved the Third Amendment by Resolution No. 3-12 on January 10, 2012 modifying the Agreement to increase the not-to-exceed amount from \$41,000,000 to \$51,000,000;

WHEREAS, the Director of the Office of Contract Administration and Purchaser approved the Fourth Amendment on June 28, 2012 modifying the Agreement to increase the not-to-exceed amount from \$51,000,000 to \$51,490,000;

WHEREAS, the Board of Supervisors approved the Fifth Amendment by Resolution No. 353-12 on September 25, 2012 modifying the Agreement to increase the not-to-exceed amount from \$51,490,000 to \$67,890,000 and to extend the Agreement through December 31, 2013;

WHEREAS, the Director of the Office of Contract Administration and Purchaser approved the Sixth Amendment on July 02, 2013 modifying the Agreement to increase the not-to-exceed amount from \$67,890,000 to \$68,380,000; and

WHEREAS, City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to increase the amount from \$68,380,000 to \$79,830,000.

WHEREAS, approval for this Amendment was obtained when the Board of Supervisors approved Resolution No. _____ on _____, 2013; and

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

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

1a. **Agreement.** The term “Agreement” shall mean the Agreement dated January 1, 2009 between Contractor and City, as amended by the:

First Amendment, dated September 1, 2010, and
Second Amendment, dated November 21, 2011, and
Third Amendment, dated January 17, 2012, and
Fourth Amendment, dated June 28, 2012, and
Fifth Amendment, dated October 5, 2012, and the
Sixth Amendment, dated July 02, 2013.

1b. **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:

2a. **Compensation.** Section 5 of the Agreement, “**Compensation**”, currently reads as follows:

5. Compensation

Compensation shall be made by ordering departments in accordance with the terms of each authorization for an order. In no event shall the amount of this agreement exceed **\$68,380,000 (Sixty eight million, three hundred and eighty thousand dollars).**

No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by the Ordering Department or Purchasing as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement.

In no event shall City be liable for interest or late charges for any late payments.

The Controller is not authorized to pay invoices submitted by Contractor prior to Contractor’s submission of HRC Progress Payment Form. If Progress Payment Form is not submitted with Contractor’s invoice, the Controller will notify the department, the Director of HRC and Contractor of the omission. If Contractor’s failure to provide HRC Progress Payment Form is not explained to the Controller’s satisfaction, the Controller will withhold 20% of the payment due pursuant to that invoice until HRC Progress Payment Form is provided.

Following City’s payment of an invoice, Contractor has ten days to file an affidavit using HRC Payment Affidavit verifying that all subcontractors have been paid and specifying the amount.

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

5. Compensation

Compensation shall be made by ordering departments in accordance with the

terms of each authorization for an order. In no event shall the amount of this agreement exceed **\$79,830,000 (Seventy nine million, eight hundred and thirty thousand dollars)**.

No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by the Ordering Department or Purchasing as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement.

In no event shall City be liable for interest or late charges for any late payments.

The Controller is not authorized to pay invoices submitted by Contractor prior to Contractor's submission of CMD Progress Payment Form. If Progress Payment Form is not submitted with Contractor's invoice, the Controller will notify the department, the Director of CMD and Contractor of the omission. If Contractor's failure to provide CMD Progress Payment Form is not explained to the Controller's satisfaction, the Controller will withhold 20% of the payment due pursuant to that invoice until CMD Progress Payment Form is provided.

Following City's payment of an invoice, Contractor has ten days to file an affidavit using CMD Payment Affidavit verifying that all subcontractors have been paid and specifying the amount.

3. Effective Date. Each of the modifications set forth in Section 2 shall be effective on and after the date of this Amendment.

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:

Xtech Joint Venture

Bill Jones
IT Purchasing Manager
OCA / Purchasing

Patricia Eaton, Partner

Azhar Mahmood, partner

Approved as to Form:

Xtech Joint Venture
1275 Fairfax Avenue, Suite 201
San Francisco, CA 94124

Dennis J. Herrera
City Attorney

City vendor number: 64607

By: _____
Rosa M. Sánchez
Deputy City Attorney

Approved:

Jaci Fong
Director of the Office of Contract Administration,
and Purchaser