

File No. 110487

Committee Item No. 1

Board Item No. \_\_\_\_\_

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance FULL-Committee Date: May 26, 2011

Board of Supervisors Meeting

Date \_\_\_\_\_

#### Cmte Board

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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Resolution                                   |
| <input type="checkbox"/>            | <input type="checkbox"/> | Ordinance                                    |
| <input type="checkbox"/>            | <input type="checkbox"/> | Legislative Digest                           |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Budget and Legislative Analyst Report        |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Ethics Form 126                              |
| <input type="checkbox"/>            | <input type="checkbox"/> | Introduction Form (for hearings)             |
| <input type="checkbox"/>            | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/>            | <input type="checkbox"/> | MOU  |
| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Information Form                       |
| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Budget                                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Subcontract Budget                           |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Contract/Agreement                           |
| <input type="checkbox"/>            | <input type="checkbox"/> | Award Letter                                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Application                                  |

#### OTHER

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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | *Agreement with En Ponte Technology Sales, Inc. 1/1/2009 |
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Completed by: Victor Young

Date: May 20, 2011

Completed by: Victor Young

Date: \_\_\_\_\_

An asterisked item represents the cover sheet to a document that exceeds 25 pages. The complete document is in the file.

1 [Authorizing the Office of Contract Administration to Amend its Contract with En Pointe  
2 Technology Sales Inc., to Increase the Contract Amount to \$28,000,000]

3 **Resolution authorizing the Office of Contract Administration to enter into the First**  
4 **Amendment between the City and En Pointe Technology Sales Inc. ("En Pointe",**  
5 **part of the Technology Store procurement vehicle), in which the amendment shall**  
6 **increase the contract amount from \$24,000,000 to \$28,000,000 and update certain**  
7 **standard contractual clauses.**

8  
9  
10 WHEREAS, the Office of Contract Administration, by competitive bidding,  
11 developed the Technology Store procurement method for the purchase of products and  
12 services related to Information Technology; and

13 WHEREAS, En Pointe is one of the three products vendors who are part of the  
14 Technology Store; and,

15 WHEREAS, the original contract with En Pointe is dated January 1, 2009; has a  
16 term of three years, through December 31, 2011, with possible extensions through  
17 December 31, 2013, and has a contract amount of \$24 million; and

18 WHEREAS, the Board of Supervisors approved the original contract on December  
19 9, 2008 by Resolution #508-08.

20 WHEREAS, the Office of Contract Administration estimates that the money  
21 projected to be spent with En Pointe could reach the contract's contract amount in the  
22 reasonably near future; and

23 WHEREAS, Charter section 9.118, "Contract and Lease Limitations," subsection  
24 (b), requires Board of Supervisors approval of any contract estimated to exceed \$10  
25

million in expenditures or amendments exceeding \$500,000 to such contracts; now, therefore, be it

RESOLVED, that the Board of Supervisors authorizes the Office of Contract Administration to enter into the First amendment to the contract with En Pointe to update the standard contractual clauses; and be it

FURTHER RESOLVED, that said Amendment shall increase the contract amount for the contract with En Pointe from \$24 million to \$28 million.

CITY AND COUNTY OF SAN FRANCISCO  
OFFICE OF CONTRACT ADMINISTRATION  
PURCHASING DIVISION

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
2011 APR 28 AM 9:30  
BY YK

**First Amendment**

THIS AMENDMENT (this "Amendment") is made as of May 1, 2011, in San Francisco, California, by and between **En Pointe Technology Sales, Inc.**, ("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, The Board of Supervisors approved an agreement with Contractor on December 10, 2008 by resolution number 508-08

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 increase the contract amount and update standard contractual clauses.

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.

**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 \$24,000,000 (twenty four million 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 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 \$28,000,000 (twenty eight million 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.

**2b. Submitting False Claims Monetary Penalties.** Section 8 of the Agreement, "Submitting False Claims Monetary Penalties," is hereby replaced in its entirety to read as follows:

## **8. Submitting False Claims; Monetary Penalties**

Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. The text of Section 21.35, along with the entire San Francisco Administrative Code is available on the web at <http://www.municode.com/Library/clientCodePage.aspx?clientID=4201>. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

**2c. Insurance.** Section 15 of the Agreement, "**Insurance**," is hereby replaced in its entirety to read as follows:

**15. Insurance**

a. Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

1) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and

2) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

3) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

b. Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:

1) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

2) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

c. Regarding Workers' Compensation, Contractor hereby agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

d. All policies shall provide thirty days' advance written notice to the City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the City address in the "Notices to the Parties" section.

e. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

f. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

g. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

h. Before commencing any operations under this Agreement, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement.

i. Approval of the insurance by City shall not relieve or decrease the liability of Contractor hereunder.

j. If a subcontractor will be used to complete any portion of this agreement, the Contractor shall ensure that the subcontractor shall provide all necessary insurance and shall name the City and County of San Francisco, its officers, agents and employees and the Contractor listed as additional insureds.

**2d. Limitations on Contributions.** Section 42 of the Agreement, "**Limitations on Contributions**," is hereby replaced in its entirety to read as follows:

**42. Limitations on Contributions.** Through execution of this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with 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, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Contractor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Contractor further acknowledges that 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 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Contractor further agrees to provide to City the names of each person, entity or committee described above.

**2e. Requiring Minimum Compensation for Covered Employees.** Section 43 of the Agreement, "**Requiring Minimum Compensation for Covered Employees**," is hereby replaced in its entirety to read as follows:

### **43. Requiring Minimum Compensation for Covered Employees**

a. Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Sections 12P.5 and 12P.5.1 of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at [www.sfgov.org/olse/mco](http://www.sfgov.org/olse/mco). A partial listing of some of Contractor's obligations under the MCO is set forth in this Section. Contractor is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

b. The MCO requires Contractor to pay Contractor's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and Contractor is obligated to keep informed of the then-current requirements. Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is Contractor's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Contractor.

c. Contractor shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within 90 days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.

d. Contractor shall maintain employee and payroll records as required by the MCO. If Contractor fails to do so, it shall be presumed that the Contractor paid no more than the minimum wage required under State law.

e. The City is authorized to inspect Contractor's job sites and conduct interviews with employees and conduct audits of Contractor

f. Contractor's commitment to provide the Minimum Compensation is a material element of the City's consideration for this Agreement. The City in its sole discretion shall determine whether such a breach has occurred. The City and the public will suffer actual damage that will be impractical or extremely difficult to determine if the Contractor fails to comply with these requirements. Contractor agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the City and the public will incur for Contractor's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

g. Contractor understands and agrees that if it fails to comply with the requirements of the MCO, the City shall have the right to pursue any rights or remedies available under Chapter 12P (including liquidated damages), under the terms of the contract, and under applicable law. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these



remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

h. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

i. If Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000, but Contractor later enters into an agreement or agreements that cause contractor to exceed that amount in a fiscal year, Contractor shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and this department to exceed \$25,000 in the fiscal year.

**2f. Requiring Health Benefits for Covered Employees.** Section 44 of the Agreement, "Requiring Health Benefits for Covered Employees," is hereby replaced in its entirety to read as follows:

**44. Requiring Health Benefits for Covered Employees**

Contractor agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of section 12Q.5.1 of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at [www.sfgov.org/olse](http://www.sfgov.org/olse). Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

a. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

b. Notwithstanding the above, if the Contractor is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.

c. Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Contractor if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

d. Any Subcontract entered into by Contractor shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Contractor shall notify City's Office of Contract Administration when it enters into such a Subcontract and shall certify to the Office of Contract Administration that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Contractor shall be responsible for its

Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Contractor based on the Subcontractor's failure to comply, provided that City has first provided Contractor with notice and an opportunity to obtain a cure of the violation.

e. Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Contractor's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

f. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

g. Contractor shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City Contract.

h. Contractor shall keep itself informed of the current requirements of the HCAO.

i. Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

j. Contractor shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least ten business days to respond.

k. Contractor shall allow City to inspect Contractor's job sites and have access to Contractor's employees in order to monitor and determine compliance with HCAO. City may conduct random audits of Contractor to ascertain its compliance with HCAO. Contractor agrees to cooperate with City when it conducts such audits.

l. If Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause Contractor's aggregate amount of all agreements with City to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Contractor and the City to be equal to or greater than \$75,000 in the fiscal year.

**2g. First Source Hiring.** Section 45 of the Agreement, "First Source Hiring," is hereby replaced in its entirety to read as follows:

#### **45. First Source Hiring Program**

a. **Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapter 83 of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with, and be bound by, all of the provisions that apply to this Agreement under such Chapter,

including but not limited to the remedies provided therein. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83.

**b. First Source Hiring Agreement.** As an essential term of, and consideration for, any contract or property contract with the City, not exempted by the FSHA, the Contractor shall enter into a first source hiring agreement ("agreement") with the City, on or before the effective date of the contract or property contract. Contractors shall also enter into an agreement with the City for any other work that it performs in the City. Such agreement shall:

1) Set appropriate hiring and retention goals for entry level positions. The employer shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to establish good faith efforts as to its attempts to do so, as set forth in the agreement. The agreement shall take into consideration the employer's participation in existing job training, referral and/or brokerage programs. Within the discretion of the FSHA, subject to appropriate modifications, participation in such programs maybe certified as meeting the requirements of this Chapter. Failure either to achieve the specified goal, or to establish good faith efforts will constitute noncompliance and will subject the employer to the provisions of Section 83.10 of this Chapter.

2) Set first source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to provide qualified economically disadvantaged individuals for consideration for employment for entry level positions. Employers shall consider all applications of qualified economically disadvantaged individuals referred by the System for employment; provided however, if the employer utilizes nondiscriminatory screening criteria, the employer shall have the sole discretion to interview and/or hire individuals referred or certified by the San Francisco Workforce Development System as being qualified economically disadvantaged individuals. The duration of the first source interviewing requirement shall be determined by the FSHA and shall be set forth in each agreement, but shall not exceed 10 days. During that period, the employer may publicize the entry level positions in accordance with the agreement. A need for urgent or temporary hires must be evaluated, and appropriate provisions for such a situation must be made in the agreement.

3) Set appropriate requirements for providing notification of available entry level positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of qualified economically disadvantaged individuals to participating employers. Notification should include such information as employment needs by occupational title, skills, and/or experience required, the hours required, wage scale and duration of employment, identification of entry level and training positions, identification of English language proficiency requirements, or absence thereof, and the projected schedule and procedures for hiring for each occupation. Employers should provide both long-term job need projections and notice before initiating the interviewing and hiring process. These notification requirements will take into consideration any need to protect the employer's proprietary information.

4) Set appropriate record keeping and monitoring requirements. The First Source Hiring Administration shall develop easy-to-use forms and record keeping requirements for documenting compliance with the agreement. To the greatest extent possible, these requirements shall utilize the employer's existing record keeping systems, be non-duplicative, and facilitate a coordinated flow of information and referrals.

5) Establish guidelines for employer good faith efforts to comply with the first source hiring requirements of this Chapter. The FSHA will work with City departments to develop

employer good faith effort requirements appropriate to the types of contracts and property contracts handled by each department. Employers shall appoint a liaison for dealing with the development and implementation of the employer's agreement. In the event that the FSHA finds that the employer under a City contract or property contract has taken actions primarily for the purpose of circumventing the requirements of this Chapter, that employer shall be subject to the sanctions set forth in Section 83.10 of this Chapter.

- 6) Set the term of the requirements.
- 7) Set appropriate enforcement and sanctioning standards consistent with this Chapter.
- 8) Set forth the City's obligations to develop training programs, job applicant referrals, technical assistance, and information systems that assist the employer in complying with this Chapter.
- 9) Require the developer to include notice of the requirements of this Chapter in leases, subleases, and other occupancy contracts.

**c. Hiring Decisions.** Contractor shall make the final determination of whether an Economically Disadvantaged Individual referred by the System is "qualified" for the position.

**d. Exceptions.** Upon application by Employer, the First Source Hiring Administration may grant an exception to any or all of the requirements of Chapter 83 in any situation where it concludes that compliance with this Chapter would cause economic hardship.

**e. Liquidated Damages.** Contractor agrees:

- 1) To be liable to the City for liquidated damages as provided in this section;
- 2) To be subject to the procedures governing enforcement of breaches of contracts based on violations of contract provisions required by this Chapter as set forth in this section;
- 3) That the contractor's commitment to comply with this Chapter is a material element of the City's consideration for this contract; that the failure of the contractor to comply with the contract provisions required by this Chapter will cause harm to the City and the public which is significant and substantial but extremely difficult to quantify; that the harm to the City includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to \$5,000 for every notice of a new hire for an entry level position improperly withheld by the contractor from the first source hiring process, as determined by the FSHA during its first investigation of a contractor, does not exceed a fair estimate of the financial and other damages that the City suffers as a result of the contractor's failure to comply with its first source referral contractual obligations.
- 4) That the continued failure by a contractor to comply with its first source referral contractual obligations will cause further significant and substantial harm to the City and the public, and that a second assessment of liquidated damages of up to \$10,000 for each entry level position improperly withheld from the FSHA, from the time of the conclusion of the first investigation forward,

does not exceed the financial and other damages that the City suffers as a result of the contractor's continued failure to comply with its first source referral contractual obligations;

5) That in addition to the cost of investigating alleged violations under this Section, the computation of liquidated damages for purposes of this section is based on the following data:

(a) The average length of stay on public assistance in San Francisco's County Adult Assistance Program is approximately 41 months at an average monthly grant of \$348 per month, totaling approximately \$14,379; and

(b) In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least the first six months of employment was 84.4%. Since qualified individuals under the First Source program face far fewer barriers to employment than their counterparts in programs funded by the Workforce Investment Act, it is reasonable to conclude that the average length of employment for an individual whom the First Source Program refers to an employer and who is hired in an entry level position is at least one year;

Therefore, liquidated damages that total \$5,000 for first violations and \$10,000 for subsequent violations as determined by FSHA constitute a fair, reasonable, and conservative attempt to quantify the harm caused to the City by the failure of a contractor to comply with its first source referral contractual obligations.

6) That the failure of contractors to comply with this Chapter, except property contractors, may be subject to the debarment and monetary penalties set forth in Sections 6.80 et seq. of the San Francisco Administrative Code, as well as any other remedies available under the contract or at law; and

Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of \$5,000 for every new hire for an Entry Level Position improperly withheld from the first source hiring process. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the FSHA.

**f. Subcontracts.** Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section.

**2h. Cooperative Drafting.** Section 61 is hereby added to the Agreement as follows:

**61. Cooperative Drafting.** This Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

**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**

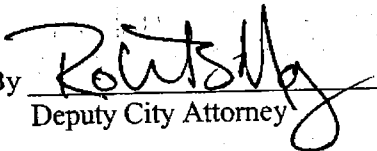
Recommended by:

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Galen Leung  
Manager IT Purchasing  
Office of Contract Administration

Approved as to Form:

Dennis J. Herrera  
City Attorney

By   
Deputy City Attorney

Approved:

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Jaci Fong  
Acting Director  
Office of Contract Administration

**CONTRACTOR**

**En Pointe Technology Sales, Inc.**

---

Mac McConnell  
Sales Manager  
En Pointe Technology Sales, Inc.  
1 California Street, Suite 2800  
San Francisco, CA. 94111

City vendor number 58893

City and County of San Francisco  
Office of Contract Administration  
Purchasing Division  
City Hall, Room 430  
1 Dr. Carlton B. Goodlett Place  
San Francisco, California 94102-4685

Agreement between the City and County of San Francisco and

En Pointe Technology Sales, Inc.

This Agreement is made this 1st day of January, 2009, in the City and County of San Francisco, State of California, by and between: **En Pointe Technology Sales, Inc., 1 California Street, Suite 2800, San Francisco, CA. 94111**, hereinafter referred to as "Contractor," and the City and County of San Francisco, a municipal corporation, hereinafter referred to as "City," acting by and through its Director of the Office of Contract Administration or the Director's designated agent, hereinafter referred to as "Purchasing."

**Recitals**

WHEREAS, the Office of Contract Administration ("Department") wishes to procure computer hardware, software, and associated manufacturer's warranty or support packages and other technology products; and,

WHEREAS, a Request for Proposal ("RFP") was issued on April 8, 2008, and City selected Contractor as one of the four highest qualified scorers pursuant to the RFP; and

WHEREAS, Contractor represents and warrants that it is qualified to perform the services required by City as set forth under this Contract; and,

WHEREAS, approval for this Agreement was obtained when the Board of Supervisors approved resolution number 500-08 on December 10, 2008.

Now, THEREFORE, the parties agree as follows:

**DEFINITIONS:**

**AUTHORIZATION**

Purchase Order or Blanket Purchase Order or Release against a Blanket Order of the City properly executed by City and certified by the Controller for the specific funding of an Order or any modification thereof.

**CHANGE ORDER**

A written instrument authorized in accordance with the requirements established by City that modifies an Order through an adjustment to one or more of the following: (i) the price, (ii) the product (iii) project schedule, (iv) the project scope of work, or (v) the acceptance criteria.

**FORM SFEC-126:**  
**NOTIFICATION OF CONTRACT APPROVAL**  
(S.F. Campaign and Governmental Conduct Code § 1.126)

<b>City Elective Officer Information</b> <i>(Please print clearly.)</i>	
Name of City elective officer(s): Members, Board of Supervisors	City elective office(s) held: Members, Board of Supervisors
<b>Contractor Information</b> <i>(Please print clearly.)</i>	
Name of contractor: En Pointe Technologies Sales, Inc.	
<i>Please list the names of</i> (1) members of the contractor's board of directors :BobDin and Naureen Din. (2) the contractor's chief executive officer, chief financial officer and chief operating office: Bob Din, CEO, Javed Latif, CFO and Dr. Shahzad Munawwar CIO (En Pointe has no COO). (3) any person who has an ownership of 20 percent or more in the contractor: none (4) any subcontractor listed in the bid or contract: none (5) any political committee sponsored or controlled by the contractor: none.	
Contractor address: 1 California St., Ste. 2800, San Francisco, CA 94111	
Date that contract was approved: December 9, 2008 (By the SF Board of Supervisors)	Amount of contract: \$24,000,000
Describe the nature of the contract that was approved: Technology Store Contract – Category Two, IT Products	
Comments: Contract #95256	

This contract was approved by (check applicable):

☐ the City elective officer(s) identified on this form

☒ a board on which the City elective officer(s) serves: San Francisco Board of Supervisors  
Print Name of Board

☐ the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits

Print Name of Board

<b>Filer Information</b> <i>(Please print clearly.)</i>	
Name of filer: Angela Calvillo, Clerk of the Board	Contact telephone number: ( 415 ) 554-5184
Address: City Hall, Room 244, 1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102	E-mail: Board.of.Supervisors@sfgov.org

Signature of City Elective Officer (if submitted by City elective officer)

Date Signed

Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk)

Date Signed



**Item 1**  
**File 11-0487**

**Department:**  
Office of Contract Administration (OCA)

## **EXECUTIVE SUMMARY**

### **Legislative Objective**

- Resolution authorizing the Office of Contract Administration (OCA) to execute the First Amendment to an existing agreement between the City and En Pointe Technology Sales Inc. (En Pointe), increasing the not-to-exceed amount by \$4,000,000, from \$24,000,000 to \$28,000,000.

### **Key Points**

- OCA administers a number of agreements with various firms for as-needed technology products and related computer services through the City's Technology Store. Subsequent to a competitive bidding process to identify multiple vendors to offer technology products to City Departments through the City's Technology Store, OCA awarded an agreement to En Pointe in a not-to-exceed amount of \$24,000,000, with a term of three years, from January 1, 2009 through December 31, 2011.
- Technology product purchases are funded by monies appropriated by the Board of Supervisors in the annual various Departmental budgets by the Board of Supervisors. Although the proposed first amendment would increase the not-to-exceed amount of the existing agreement by \$4,000,000, from \$24,000,000 to \$28,000,000, such increased funds must be previously appropriated by the Board of Supervisors.

### **Fiscal Impact**

- Over the first 27 months of the 36-month agreement with En Pointe from January 1, 2009 through March 31, 2011, or 75 percent of the term, actual expenditures have totaled \$20,922,806, or 87.2 percent of the current not-to-exceed amount of \$24,000,000.
- The proposed First Amendment would increase the not-to-exceed authorization in the En Pointe agreement by \$4,000,000, or 16.7 percent from \$24,000,000 to \$28,000,000. All purchases through the subject En Pointe agreement are funded through City Departmental budgeted funds, as previously appropriated by the Board of Supervisors.

### **Recommendation**

- Approve the proposed resolution.

**MANDATE STATEMENT & BACKGROUND****Mandate Statement**

In accordance with Charter Section 9.118, any amendment of over \$500,000 to an agreement over \$10,000,000 in anticipated expenditures is subject to Board of Supervisors approval.

**Background**

The Office of Contract Administration (OCA) administers a number of agreements with various private firms for as-needed technology products and related services for all City Departments, through the City's Technology Store. Agreements are awarded to such firms for either:

- (a) as-needed technology products, or
- (b) as-needed technology services (such as software programming, software customization, or network security services) and products related to such services.

Departments requiring technology products and technology services are required to purchase such items through the City's Technology Store's vendors, who were previously pre-qualified under a competitive Request for Proposals (RFP) process, without undergoing another separate independent competitive process, with some exceptions made for products which are only sold directly through the manufacturer, federally funded purchases, or specific projects which are large enough to require a separate RFP process. However, for purchases in excess of \$100,000, Departments are required to obtain bids from no fewer than three pre-qualified vendors from the City's Technology Store, and then purchase technology products from the lowest bidding vendor.

On April 8, 2008, OCA issued a Request for Proposals (RFP) to pre-qualify various vendors for the City's Technology Store. On December 9, 2008, subsequent to this competitive RFP process, the Board of Supervisors approved the award of \$120,000,000<sup>1</sup> for seven technology agreements (Resolution No. 508-08), for a term of three years, from January 1, 2009 through December 31, 2011, with options to extend the terms by two additional years, or through December 31, 2013 including:

- (a) three agreements totaling \$72,000,000, each in an equal amount of \$24,000,000, for as-needed technology products only (no services are available under such agreements) with En Pointe Technology Sales Inc. (En Pointe), Xtech Joint Venture, and ComputerLand, and
- (b) four agreements totaling \$48,000,000, each in an equal amount of \$12,000,000, for as-needed technology services and products related to such services with En Pointe, ComputerLand, Cornerstone Technology Partners, and Xtech Joint Venture.

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<sup>1</sup> According to Ms. Jaci Fong, Acting Director of OCA, the \$120,000,000 total for the agreements was based on the total technology store purchases over the prior three years including (a) \$72,000,000 in technology products and (b) \$48,000,000 in technology services and related products.

### One of the Three \$24,000,000 Agreements Was Increased to \$41,000,000

On September 28, 2010, the Board of Supervisors approved a \$17,000,000 increase in the as-needed technology products only agreement awarded to Xtech Joint Venture, from a not-to-exceed \$24,000,000 to a not-to-exceed \$41,000,000 (Resolution No. 458-10). This increase was approved because actual expenditures incurred during the first 18 months or 50 percent of the term of the 36-month agreement with Xtech Joint Venture, from January 1, 2009 through June 30, 2010, totaled \$20,403,941, or 85.0 percent of the original not-to-exceed amount of \$24,000,000. Based on the \$17,000,000 increase in Xtech Joint Venture's not-to-exceed amount to a not-to exceed \$41,000,000 amount, the current total not-to-exceed amount for the three as-needed technology products only agreements is \$89,000,000 (\$24,000,000 for two agreements plus \$41,000,000 for one agreement).

### DETAILS OF PROPOSED LEGISLATION

The proposed resolution would authorize OCA to execute the First Amendment to the existing as-needed technology products only agreement between the City and En Pointe, increasing the not-to-exceed amount by \$4,000,000, from \$24,000,000 to \$28,000,000. The proposed First Amendment would not impact the existing three-year term of the agreement, from January 1, 2009 through December 31, 2011. As previously noted, the existing agreement has an option to extend the term by two additional years through December 31, 2013.

### FISCAL IMPACT

The proposed resolution would authorize OCA to execute the First Amendment to an existing agreement between the City and En Pointe, increasing the not-to-exceed amount by \$4,000,000, or 16.7 percent from \$24,000,000 to \$28,000,000.

As shown in Table 1 below, from January 1, 2009 through March 31, 2011, or over 27 months, City Departments expended a total of \$62,261,315 out of the total previously authorized combined not-to-exceed amount of \$89,000,000 (\$24,000,000 per agreement x two agreements plus \$41,000,000 for the third agreement) for technology products. As also shown in Table 1 below, 33.6 percent of technology product purchases were made by City Departments under the En Pointe agreement, as compared to 21.4 percent of purchases from ComputerLand and 45.0 percent of purchases from Xtech Joint Venture, the other two pre-qualified technology product vendors.

<b>Vendor</b>	<b>Expenditures from January 1, 2009 through March 31, 2011</b>	<b>Percent of Total Product Expenditures</b>
En Pointe	\$20,922,806	33.6%
ComputerLand	13,345,071	21.4%
Xtech Joint Venture	27,993,438	45.0%
<b>Total</b>	<b>\$62,261,315</b>	<b>100.0%</b>

As shown in Table 2 below, the current average En Pointe expenditure rate is \$774,919 per month over the first 27 months of its existing agreement with the City. Based on this average monthly expenditure of \$774,919, En Point expenditures are estimated to exceed the current not-to-exceed amount of \$24,000,000 by July 31, 2011. As also shown in Table 2 below, based on a continued average monthly expenditure rate of \$774,919, over the 36-month term of the agreement, En Pointe expenditures are projected to total \$27,897,084 by the agreement's termination date of December 31, 2011. Ms. Fong stated that the total estimated expenditures of \$27,897,075 were rounded up to the requested \$28,000,000 amount under the proposed resolution.

<b>Table 2: Total Estimated En Pointe Expenditures</b>	
Expenditures from January 1, 2009 through March 31, 2011	\$20,922,806
Amount of Agreement Term Elapsed	÷27months
<b>Average Monthly Expenditures</b>	<b>\$774,919</b>
Total Term from January 1, 2009 through December 31, 2011	x 36 months
<b>Estimated Total Expenditures</b>	<b>\$27,897,084</b>
Requested Amended Not-To-Exceed Amount (rounded up to \$28,000,000)	\$28,000,000

## POLICY CONSIDERATION

### **The Budget and Legislative Analyst Estimates that the Current \$89,000,000 in Technology Product Agreements Will be Sufficient to Cover Departmental Purchases Currently Estimated to total \$82,807,549.**

As shown in Table 3 below, over the 27-month period from January 1, 2009 through March 31, 2011, or 75 percent of the total three-year (36 month) term of each agreement, actual City expenditures, under all three technology products only agreements combined, total \$62,261,315 or 70.0 percent of the combined current not-to-exceed amount of \$89,000,000. If the \$62,261,315 in technology product only expenditures during the first 27 months of these agreements continues at the same average monthly expenditure rate of \$2,305,975 over the entire 36 month period of the agreement (\$62,261,315 divided by 27 months) for the last nine months of these agreements, the Budget and Legislative Analyst projects that the City would expend an estimated total of \$83,015,100 (\$2,305,975 x 36 months) over the three year (36-month) terms of the three as-needed technology product only agreements, which is (a) \$5,984,900 or 6.7 percent less than the currently authorized \$89,000,000 not-to-exceed total under the three agreements, and (b) \$9,984,900 less than the proposed combined \$93,000,000 not-to-exceed amount for the three technology products only agreements (\$89,000,000 plus the subject requested additional \$4,000,000).

<b>Table 3: Rates of Expenditure for the Three as-Needed Technology Product Only Agreements</b>			
<b>Vendor</b>	<b>Expenditures from January 1, 2009 through March 31, 2011</b>	<b>Not-To-Exceed Amount</b>	<b>Percent of Not-To-Exceed Amount Expended</b>
En Pointe	\$20,922,806	\$24,000,000	87.2%
ComputerLand	13,345,071	24,000,000	55.6
Xtech Joint Venture	27,993,438	41,000,000	68.3
<b>Total</b>	<b>\$62,261,315</b>	<b>\$89,000,000</b>	<b>70.0%</b>

As noted above, the Board of Supervisors previously authorized an increase to one of the three technology product only agreements, Xtech Joint Venture, from a not to exceed amount of \$24,000,000 to a not to exceed amount of \$41,000,000. This has resulted in a total not to exceed amount for the three technology product only vendors of \$89,000,000 as previously authorized by the Board of Supervisors. Although this previously authorized not-to-exceed amount of \$89,000,000 for all three technology products only agreements is sufficient to cover the latest total costs of \$83,015,100 as projected by the Budget and Legislative Analyst, for the remainder of the three-year term of the three agreements, Ms. Fong advises that it is necessary to increase En Pointe's previously authorized not to exceed agreement amount of \$24,000,000 by the subject requested not to exceed amount of \$4,000,000 to a not to exceed agreement amount of \$28,000,000 based on projected expenditures of \$27,897,084 by the agreement end date of December 31, 2011. Further, according to Mr. Fong, without the requested \$4,000,000 increase, En Pointe would no longer be able to compete for City business, thus resulting in decreased overall competition with the City Technology Store's other two technology product only vendors. Therefore, OCA is requesting the proposed not-to-exceed \$4,000,000 increase in the En Pointe agreement from the existing not-to-exceed limit of \$24,000,000 to a new not-to-exceed total of \$28,000,000, in order to maintain sufficient competition with the other two technology product only vendors for future Departmental technology product only purchases to be made through the City's Technology Store.

While the proposed increase in the not-to-exceed amount of \$4,000,000 for the technology product only agreement with En Pointe, from a not-to-exceed amount of \$24,000,000 to a not-to-exceed amount of \$28,000,000, provides a not to exceed \$4,000,000 increased expenditure authorization in the subject agreement's not-to-exceed amount, all expenditures for such technology only product purchases are subject to separate appropriation approval by the Board of Supervisors.

## RECOMMENDATION

Approve the proposed resolution.

