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

First Amendment

THIS FIRST AMENDMENT ("Amendment") is made as of **[insert date]**, in San Francisco, California, by and between Xtech JV ("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); 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; and

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WHEREAS, Contractor was competitively selected pursuant to a Request for Proposals ("RFP") entitled "Formal Request for Proposals for: As-Needed IT Commodities and Professional Services (Technology Marketplace 3.0)" issued through Sourcing Event ID 0000007900 and this Amendment is consistent with the terms of the RFP and the awarded Contract; and

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WHEREAS, the Local Business Enterprise ("LBE") subcontracting participation requirement with respect to Services under this Agreement is eighteen percent (18%), and this Amendment is consistent with that requirement; and

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WHEREAS, this Amendment is consistent with an approval obtained on September 18, 2023 from the Civil Service Commission under PSC number 44539-22/23 which authorizes the award of multiple agreements, the total value of which cannot exceed $180,000,000 and the individual duration of which cannot exceed five (5) years; and

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WHEREAS, the City's Board of Supervisors approved the Agreement by Resolution No. 005-24 on January 19, 2024; and

WHEREAS, this Amendment is consistent with an approval obtained from the City's [Board of Supervisors] under [insert resolution number] approved on [insert date of Commission or Board action] in the amount of [insert Dollar Amount] for the period commencing [Insert Start Date] and ending [Insert End Date]; and

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WHEREAS, the Department has filed Ethics Form 126f4 (Notification of Contract Approval) because this Agreement, as amended herein, has a value of $100,000 or more in a fiscal year and will require the approval of the Board of Supervisors; and

Now, THEREFORE, the parties agree as follows:

Article 1 Definitions

The following definitions shall apply to this Amendment:

1.1 **Agreement.** The term "Agreement" shall mean the Agreement dated January 19, 2024 between Contractor and City.

1.2 **San Francisco Labor and Employment Code.** As of January 4, 2024, San Francisco Administrative Code Chapters 21C (Miscellaneous Prevailing Wage Requirements), 12B (Nondiscrimination in Contracts), 12C (Nondiscrimination in Property Contracts), 12K (Salary History), 12P (Minimum Compensation), 12Q (Health Care Accountability), 12T (City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions), and 12U (Sweatfree Contracting) are redesignated as Articles 102 (Miscellaneous Prevailing Wage Requirements), 131 (Nondiscrimination in Contracts), 132 (Nondiscrimination in Property Contracts), 141 (Salary History), 111 (Minimum Compensation), 121 (Health Care Accountability), 142 (City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions), and 151 (Sweatfree Contracting) of the San Francisco Labor and Employment Code, respectively. Wherever this Agreement refers to San Francisco Administrative Code Chapters 21C, 12B, 12C, 12K, 12P, 12Q, 12T, and 12U, it shall be construed to mean San Francisco Labor and Employment Code Articles 102, 131, 132, 141, 111, 121, 142, and 151, respectively.

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

Article 2 Modifications of Scope to the Agreement

The Agreement is hereby modified as follows:

2.1 **Calculation of Charges.** *Section 3.3.1 "Calculation of Charges" of the Agreement currently reads as follows:*

> **3.3.1 Calculation of Charges.** Contractor shall provide an invoice to the City for Goods delivered and/or Services completed in accordance with the accompanying Purchase Order and corresponding documents. Compensation shall be made for Goods and Services identified in the invoice that the City, in its sole discretion, concludes has been satisfactorily delivered and/or performed. In no event shall the amount of this Agreement exceed TWENTY MILLION DOLLARS ($20,000,000). The breakdown of charges associated with this Agreement appears in the accompanying Purchase Order and corresponding documents. In no event shall City be liable for interest or late charges for any late payments. City will not honor minimum service order charges for any Services and Goods covered under this Agreement.

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

3.3.1 Calculation of Charges. Contractor shall provide an invoice to the City for Goods delivered and/or Services completed in accordance with the accompanying Purchase Order and corresponding documents. Compensation shall be made for Goods and Services identified in the invoice that the City, in its sole discretion, concludes has been satisfactorily delivered and/or performed. In no event shall the amount of this Agreement exceed EIGHTY-FIVE MILLION FOURTEEN THOUSAND DOLLARS ($85,014,000). The breakdown of charges associated with this Agreement appears in the accompanying Purchase Order and corresponding documents. In no event shall City be liable for interest or late charges for any late payments. City will not honor minimum service order charges for any Services and Goods covered under this Agreement.

Article 3 Updates of Standard Terms to the Agreement

The Agreement is hereby modified as follows:

3.1 **Section 10.15 Public Access to Nonprofit Records and Meetings.** *Section 10.15 of the Agreement is replaced in its entirety to read as follows:*

10.15. Nonprofit Contractor Requirements.

10.15.1. Good Standing. If Contractor is a nonprofit organization, Contractor represents that it is in good standing with the California Attorney General's Registry of Charitable Trusts and will remain in good standing during the term of this Agreement. Contractor shall immediately notify City of any change in its eligibility to perform under the Agreement. Upon City's request, Contractor shall provide documentation demonstrating its compliance with applicable legal requirements. If Contractor will use any subcontractors to perform the Agreement, Contractor is responsible for ensuring they are also in compliance with the California Attorney General's Registry of Charitable Trusts for the duration of the Agreement. Any failure by Contractor or its subcontractors to remain in good standing with applicable requirements shall be a material breach of this Agreement.

10.15.2. Public Access to Nonprofit Records and Meetings. If Contractor is a nonprofit organization; provides Services that do not include services or benefits to City employees (and/or to their family members, dependents, or their other designated beneficiaries); and receives a cumulative total per year of at least $250,000 in City funds or City-administered funds, Contractor must comply with the City's Public Access to Nonprofit Records and Meetings requirements, as set forth in Chapter 12L of the San Francisco Administrative Code, including the remedies provided therein.

Article 4 Effective Date

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

Article 5 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:

_____
Daniel Sanchez
Procurement Manager
Office of Contract Administration

Approved as to Form:

David Chiu
City Attorney

By: _____
Dee Nguyen
Deputy City Attorney

Approved:

Sailaja Kurella
Director of the Office of Contract Administration, and Purchaser

By: _____
[name of Purchaser or "Name:_____"]

CONTRACTOR
Xtech JV

_____
[name of authorized representative]
[title]
[optional: address]
[optional: city, state, ZIP]

City Supplier number: 0000008003