

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

**Xtech, JV**

**Fifth Amendment**

THIS AMENDMENT (this “Amendment”) is made as of \_\_\_\_\_, 2018, 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, a Request for Proposal (“RFP”) was issued on **September 27, 2013**, and City selected Contractor pursuant to the RFP;

WHEREAS, approval for this Agreement was obtained when the Civil Service Commission approved Contract number **PSC 4062-13/14** on **January 6, 2014**;

WHEREAS, City and Contractor have entered into the Agreement (as defined below) when the Board of Supervisors approved **Resolution No. 362-14** on **September 23, 2014**;

WHEREAS, the Board of Supervisors approved the First Amendment by **Resolution No. 260-15** on **July 14, 2015** modifying the Agreement to increase the not-to-exceed amount from \$12,000,000 to \$32,000,000;

WHEREAS, the Board of Supervisors approved the Second Amendment by **Resolution No. 236-16** on **June 14, 2016** modifying the Agreement to increase the not-to-exceed amount from \$32,000,000 to \$56,000,000;

WHEREAS, the Board of Supervisors approved the Third Amendment by **Resolution No. 40-17** on **February 14, 2017** modifying the Agreement to increase the not-to-exceed amount from \$56,000,000 to \$94,000,000;

WHEREAS, The Director of Purchasing approved the Fourth Amendment on September 1, 2017, modifying the Agreement to extend it through to September 30, 2018.

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 October 1, 2014 between Contractor and City as amended by the First Amendment dated July 17, 2015, as amended by the Second Amendment dated June 24, 2016, as amended by the Third Amendment dated February 14, 2017, and as amended by the Fourth Amendment dated September 1, 2017.

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 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 **ninety-four million dollars and no cents (\$94,000,000.00)**. 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, limited to the total of the Order that gave rise to such event. 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.

**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 **one hundred and nine million dollars and no cents (\$109,000,000.00)**. 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, limited to the total of the Order that gave rise to such event. 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, JV

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Robert Henning  
Assistant Director  
Office of Contract Administration

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Patricia Eaton, Partner  
Xtech, JV  
890 Cowan Rd, Suite C  
Burlingame, CA 94010

Approved as to Form:

Dennis J. Herrera  
City Attorney

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Azhar Mahmood, Partner  
Xtech, JV  
1330 Broadway, Suite 1530  
Oakland, CA 94612

City vendor number: 64607

By: \_\_\_\_\_

Rosa M. Sánchez  
Deputy City Attorney

Approved:

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