

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

Xtech, JV

Third Amendment

THIS AMENDMENT (this "Amendment") is made as of 02/14, 2017, 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, City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to increase the not-to-exceed amount from \$56,000,000 to \$94,000,000; and

WHEREAS, approval for this Third Amendment was obtained when the Board of Supervisors approved resolution number 40-17 on 02/14/2017.

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, and as amended by the Second Amendment dated June 24, 2016.

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 **fifty-six million dollars and no cents (\$56,000,000.00)**. 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 **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.

2b. Insurance. Subsection 15(l), to Section 15. Insurance, is hereby added to the Agreement, as follows:

15(l). The Parties hereby agree that the City reserves the right to increase insurance coverage amounts if it deems such increases to be necessary.

2c. Notices to the Parties. Section 25 of the Agreement currently reads as follows:

25. Notices to the Parties. Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the parties may be by U.S. mail, e-mail or by fax, and shall be addressed as follows:

To City: Patrick Rice
Office of Contract Administration
1 Dr. Carlton B. Goodlett Place
City Hall, Room 430
San Francisco, CA 94102
email: patrick.rice@sfgov.org

To Contractor: Patricia Eaton
Xtech, JV
1275 Fairfax Avenue, Suite 201
San Francisco, CA 94124
email: peaton@XtechJV.com

Azhar Mahmood
Xtech, JV
1390 Market Street, Suite 1202
San Francisco, CA 94102
email: Azhar.Mahmood@XtechJV.com

Either party may change the address to which notice is to be sent by giving written notice thereof to the other party. If e-mail notification is used, the sender must specify a Receipt notice. Any notice of default must be sent by registered mail.

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

25. Notices to the Parties. Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the parties may be by U.S. mail, e-mail or by fax, and shall be addressed as follows:

To City: Robert Henning
Assistant Director
Office of Contract Administration
1 Dr. Carlton B. Goodlett Place
City Hall, Room 430
San Francisco, CA 94102
email: robert.henning@sfgov.org

To Contractor: Patricia Eaton
Xtech, JV
890 Cowan Rd, Suite C
Burlingame, CA 94010
email: peaton@XtechJV.com

Azhar Mahmood
Xtech, JV
1330 Broadway, Suite 1530
Oakland, CA 94612
email: Azhar.Mahmood@XtechJV.com

Either party may change the address to which notice is to be sent by giving written notice thereof to the other party. If e-mail notification is used, the sender must specify a Receipt notice. Any notice of default must be sent by registered mail.

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

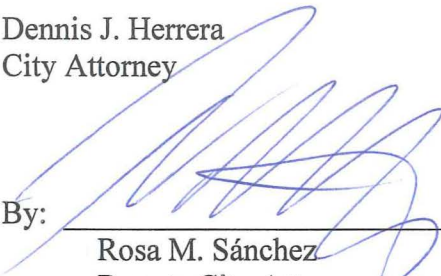


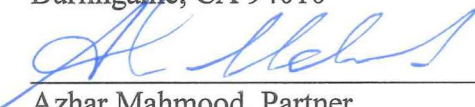
Robert Henning
Assistant Director
Office of Contract Administration



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

Approved as to Form:

Dennis J. Herrera
City Attorney

By: _____
Rosa M. Sánchez
Deputy City Attorney



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

City vendor number: 64607

Approved:



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