

**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**

NOVATION AGREEMENT

THIS NOVATION AGREEMENT (“Novation”) is made as of **[insert date]**, in San Francisco, California, by and between **[insert name of Transferor]**, a corporation duly organized and existing under the laws of **[insert State]** with its principal office in **[insert city]** (“Transferor”), **[insert name of Transferee]**, a corporation duly organized and existing under the laws of **[insert State]** with its principal office in **[insert city]** (“Transferee”), and City and County of San Francisco, a municipal corporation (“City”).

Recitals

WHEREAS, Transferor is a party to the Agreement (as defined below); and

WHEREAS, Transferor desires to transfer the Agreement, and Transferee desires to assume the Agreement in full, each on the terms and conditions set forth herein; and

WHEREAS, Transferor warrants that Transferee is able to fully perform all obligations that may exist under the Agreement, and

WHEREAS, Transferee warrants that it is able to fully perform all obligations that may exist under this Agreement, and

WHEREAS, It is consistent with the City’s interest to recognize the Transferee as the successor party to the Agreement, and

WHEREAS, Transferor has transferred to the Transferee all the assets of the Transferor that are used for the performance of the Agreement and documents evidencing of the above transfer has been filed with the City, and

WHEREAS, the City consents to the transfer of the Agreement based on Transferor’s warranties stated herein and under the terms below.

NOW, THEREFORE, in consideration of the promises and the mutual covenants contained in this Novation, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Transferor and Transferee agree as follows:

Article 1 Definitions

The following definitions apply to this Novation:

1.1 “Agreement”

“Agreement” means the agreement dated **[insert date of Agreement]** between Transferor and City and County of San Francisco, a municipal corporation **[use the rest of the sentence if applicable]**, as amended by the first amendment of **[insert date of amendment, the second etc.]**. The Agreement and any amendments or modifications **[is/are]** attached to this Novation as Appendix A.

“Agreement” means the Agreement dated **[insert date of Contract]** between **[insert name of party to original Contract]** (the “Original Contractor”) and City and County of San Francisco, a municipal corporation, as transferred by a transfer dated **[insert date of transfer]** between the Original Contractor and **[Transferor or insert name of first Transferee of original contractor]**, **[insert if there is more than one transfer]** as further transferred by a transfer dated **[insert date of transfer]** between **[insert name of the most recent Transferor]** and Transferor. The term “Agreement” also encompasses the first amendment of **[insert date of amendment]**, **[the second etc.]**. The Agreement and any amendments or modifications **[is/are]** attached to this Novation as Appendix A.

1.2 “Effective Date” means **[the first day in which the Transferor is obligated to perform the services and assumes obligations as prescribed in the Agreement]**.

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

Article 2 Transfer of Agreement

2.1 **Transfer.** Transferor hereby assigns, transfers and conveys to Transferee all of Transferor’s rights, title and interest in and to the Agreement and all of Transferor’s duties and obligations thereunder.

2.2 **Acceptance.** Transferee hereby accepts the transfer and conveyance set forth in Article 2.1 and agrees to perform all of Transferor’s duties and obligations under the Agreement.

2.3 **Rights to Enforce.** Subject to the terms of the Agreement, this Novation shall be binding upon, and inure to the benefit of, the parties hereto and their successors and transferees. Nothing in this Novation, whether express or implied, shall be construed to give any person or entity (other than City and the parties hereto and their respective successors and Transferees) any legal or equitable right, remedy or claim under or in respect of this Novation or any covenants, conditions or provisions contained herein.

2.4 **Consent of City.** The City consents to the transfer described in this Article 2 based on the evidence provided below, which indicates that Transferee is in a position to fully perform all obligations that may and will exist under the Agreement. All the evidence is attached to this Novation as Appendix B. Further, each of Transferor and Transferee acknowledges that the prior written consent of City to this Novation is required under the terms of the Agreement. City shall have the right to enforce this Novation.

2.4.1 An authenticated copy of instrument effecting the transaction between the Transferor and Transferee, together with attorney opinion letters with a statement that the transaction was properly affected under the applicable state law.

2.4.2 Additional documents required, depending on the nature of the transfer:

(a) A certificate dated [insert date], signed by the Secretary of State of [insert State], to the effect that Transferor merged into the Transferee and the Transferee is the surviving corporation as of [insert date];

(b) A signed and authenticated document or excerpts of a document describing the proposed transaction, which precisely describes the specifics of the transactional relationship, including the description of all the transfers of the assets used to perform the Agreement, between the Transferor and Transferee;

(c) The Opinion of the Corporate Secretary for Transferee, dated [insert date], opining that [insert type of agreement, i.e. merger, stock purchase] agreement was properly affected under applicable law and that the Transferee controls the company and employees, and is able to assume all liabilities and obligations of the Agreement as set forth above;

(d) Certified copies of Board Resolutions and Stockholders Meetings Minutes authorizing and approving transfer of assets, both for the Transferor and Transferee.

2.4.3 An authenticated copy of the Transferee's certificate and articles of incorporation.

2.4.4 Balance sheets for the Transferee with independent auditor report if available to prove that the Transferee has enough assets to perform the Agreement.

2.4.5 A statement by the Transferee to confirm that the price and the personnel of the Agreement will remain unchanged.

2.5 **Successor.** The City recognizes the Transferee as the Transferor's successor in interest in and to the Agreement. The Transferee by this Novation becomes liable for all responsibilities and entitled to all rights, titles, and interests of the Transferor in and to the Agreement. The City will treat the Transferee as if the Transferee were the original party to the Agreement. Following the Novation, the term "Contractor," as used in the Agreement, shall refer to the Transferee. The Agreement shall remain in full force and effect, except as modified by this Novation. Each party has executed this Novation as of the day and year first above written.

2.6 **Further Assurances.** From and after the date of this Novation, Transferor and Transferee agree to do such things, perform such acts, and make, execute, acknowledge and deliver such documents as may be reasonably necessary or proper and usual to complete the conveyance contemplated by this Novation or as may be required by City.

Article 3 Obligations and Liabilities

3.1 **Transfer, Waiver, and Assumption.** The Transferor confirms the transfer to the Transferee, and waives any claims and rights against the City that it now has or may have in the future in connection with the Agreement. The Transferee agrees to be bound by and to perform the Agreement in accordance with the conditions contained therein. The Transferee also assumes all obligations and liabilities of, and all claims against, the Transferor under the Agreement as if the Transferee were the original party to the Agreement. The Transferee ratifies all previous actions taken by the Transferor with respect to the Agreement, with the same force

and effect as if the action has been taken by the Transferee. Except as expressly provided in this Novation, nothing in it shall be construed as a waiver of any rights of the City against the Transferor.

3.2 **Past Payments.** All payments and reimbursements previously made by City to the Transferor, and all other previous actions taken by City under the Agreement, shall be considered to have discharged those parts of City's obligations thereunder. All payments and reimbursements made by City after the date of this Novation in the name of or to the Transferor shall have the same force and effect as if made to the Transferee, and shall constitute a complete discharge of City's obligations under the Agreement, to the extent of the amounts paid or reimbursed. The Transferor and the Transferee agree and confirm that City is not obligated to pay or reimburse either of them for, or otherwise give effect to, any costs, taxes, or other expenses, or any related increases, directly or indirectly arising out of or resulting from the transfer of this Novation, other than those that City in the absence of this transfer would have been obligated to pay or reimburse under the terms of the Agreement.

Article 4 Insurance and Indemnification

4.1 **Insurance Certificates.** For this Novation to be effective, Transferee shall provide to City insurance certificates and endorsements for the identical type and amount of coverage currently required under the Agreement.

4.2 **City.** Transferor and Transferee shall, to the fullest extent permitted by law, indemnify, defend and protect City, and hold City harmless from and against any and all liabilities, losses, damages, claims, costs or expenses (including attorneys' fees) arising out of Transferor and/or Transferee's failure to comply with any term or obligation of this Novation or the Agreement. Defense obligations under this Section 4.2 shall be provided immediately following a tender of defense.

Article 5 General Provisions

5.1 **Governing Law.** This Novation shall be governed by the laws of the State of California, without regard to its conflict of laws principles.

5.2 **Headings.** All section headings and captions contained in this Novation are for reference only and shall not be considered in construing this Novation.

5.3 **Notices.** All notices, consents, directions, approvals, instructions, requests and other communications regarding this Novation or the Agreement shall be in writing, shall be addressed to the person and address set forth below and shall be (i) deposited in the U.S. mail, first class, certified with return receipt requested and with appropriate postage, (ii) hand delivered or (iii) sent via email with a return receipt. All communications sent in accordance with this Section shall become effective on the date of receipt. From time to time Transferor, Transferee or City may designate a new address for purposes of this Section by notice to the other signatories to this Novation.

If to Transferor:

[Insert name of Transferor, Name of Contact Person, mailing address, and e-mail address]

If to Transferee:

[Insert name of Transferee, Name of Contact Person, mailing address, and e-mail address]

If to City:

[Insert name or title of department contact person, name of department, mailing address, and e-mail address]

5.4 **Entire Agreement.** This Novation sets forth the entire agreement between Transferor and Transferee relating to the Agreement and supersedes all other oral or written provisions.

5.5 **Severability.** Should the application of any word, phrase, clause, sentence, paragraph and/or provision of this Novation to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (i) the validity of other words, phrases, clauses, sentences, paragraphs and/or provisions of this Novation shall not be affected or impaired thereby and (ii) such words, phrases, clauses, sentences, paragraphs and/or provisions shall be enforced to the maximum extent possible so as to effect the intent of Transferor, Transferee and City.

IN WITNESS WHEREOF, Transferor and Transferee have each duly executed this Novation as of the date first referenced above.

TRANSFEROR

TRANSFEEE

[INSERT NAME OF TRANSFEROR]
[INSERT CITY SUPPLIER NUMBER]

[INSERT NAME OF TRANSFEEE]
[INSERT CITY SUPPLIER NUMBER]

By

By

Title

Title

City hereby consents to the transfer described in Article 2 of this Novation.

Recommended by:

Approved:

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

Signature for Department

Name:

Title :

Department:

By:

[name of Purchaser or
"Name:_____"]

Approved as to Form:

Dennis J. Herrera
City Attorney

By _____

[name of Deputy City Attorney]
Deputy City Attorney

Attached:

Appendix A: Agreement

Appendix B: Documentation of Transfer

APPENDIX A - Agreement

The Agreement dated **[insert date of Contract]** between Contractor and City, as amended by the:

[First amendment], dated **[insert date of the first amendment]**, and
[Second amendment], dated **[insert date of second amendment]**.

is attached on the following pages.

APPENDIX B – Documentation of Transfer