

File No. 211089

Committee Item No. 8

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee Date December 1, 2021

Board of Supervisors Meeting Date _____

Cmte Board

- Motion
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OTHER (Use back side if additional space is needed)

- Network Rates Evaluation Report 6/11/21
- _____
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Completed by: Brent Jalipa Date November 22, 2021

Completed by: Brent Jalipa Date _____

1 [Agreement - AT&T Corporation - Telecommunication Services - Not to Exceed \$80,000,000]

2
3 **Resolution authorizing the Department of Technology to enter into an agreement**
4 **with AT&T Corporation to purchase wired voice and data network and**
5 **telecommunication services, with a not to exceed amount of \$80,000,000 for a six**
6 **and one-half year term of January 1, 2022, through June 30, 2028, and with one five-**
7 **year option to extend, pursuant to Charter, Section 9.118.**

8
9 WHEREAS, Since 2001, the Department of Technology (“Department”) has been
10 procuring telecommunications services for the City and County of San Francisco (“City”)
11 from AT&T Corporation (“AT&T”) under a series of contracts that were approved by the
12 Board of Supervisors; those contracts have all incorporated the terms and conditions of the
13 State of California’s Integrated Telecommunications Network agreements (“CALNET
14 contracts”); and

15 WHEREAS, The City’s existing agreement with AT&T to purchase those services
16 was entered into in 2010 after approval from the Board of Supervisors; that agreement,
17 which was amended five times with Board of Supervisors approval, will expire on
18 December 31, 2021; and

19 WHEREAS, The State of California has entered into a new set of CALNET contracts
20 with AT&T that are known as the CALNET-Next Generation contracts; and

21 WHEREAS, Under the CALNET-Next Generation contracts, State agencies and local
22 governments are able to purchase modern wired voice and data network services from
23 AT&T at the lowest rates; the State’s procurement process and buying power ensures that
24 the best pricing is available to public entities; and

1 WHEREAS, Pursuant to Administrative Code, Section 21.16(b), the City may utilize
2 the results of a competitive solicitation by another public agency; and

3 WHEREAS, The Department has negotiated a new agreement with AT&T that would
4 allow City departments to purchase these telecommunications services using the pricing
5 and other terms and conditions contained in the CALNET-Next Generation contracts
6 (“Agreement”); and

7 WHEREAS, The initial term of the Agreement is for six and a half years, but under
8 the Agreement DT has an option to extend the term of an additional five years, with Board
9 of Supervisors approval, unless the State terminates the CALNET-Next Generation
10 contracts before that date; and

11 WHEREAS, A number of City departments are presently purchasing certain legacy
12 telecommunications services from AT&T that are not available under the CALNET-Next
13 Generation contracts; and

14 WHEREAS, DT has determined that AT&T is a sole source for these legacy
15 services; and

16 WHEREAS, The Office of Contract Administration has approved the waiver of the
17 competitive solicitation requirements for these legacy services; and

18 WHEREAS, The Department has evaluated the wired voice and data network and
19 telecommunication services needs of City departments from January 1, 2022, through June
20 30, 2028; the Department has determined that the City’s spending under the Agreement
21 during its six and one-half year term will be \$80,000,000; and

22 WHEREAS, Section 9.118 of the Charter requires approval by the Board of Supervisors
23 for contracts in excess of ten years or requiring expenditures above \$10,000,000; now,
24 therefore, be it

1 RESOLVED, That the Board of Supervisors approves the Agreement between the City
2 and AT&T to allow City departments to purchase wired voice and data network and
3 telecommunication services for a term of six and one-half years beginning on January 1, 2022,
4 with a not to exceed amount of \$80,000,000; a copy of the Agreement is on file with the Clerk of
5 the Board of Supervisors in File No. 211089; and, be it

6 FURTHER RESOLVED, That within 30 days of the Agreement being fully executed
7 by the parties the Department of Technology shall provide it to the Clerk of the Board for
8 inclusion in the official file.

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Item 8 File 21-1089	Department: Department of Technology
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EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution authorizes DT to enter into a new agreement with AT&T to provide the City with telecommunication services for an amount not-to-exceed \$80,000,000 over six and one-half years, beginning January 1, 2022 and ending June 30, 2028. The agreement includes one, five-year option to extend the agreement, which would be subject to future Board of Supervisors’ approval if the amount increases by more than \$500,000.
- Services provided under this agreement are classified as voice and data transport technology that includes telephone services such as long distance and toll-free calling, support for legacy telecommunications, voice over internet protocol services, and internet services.

Key Points

- DT’s current agreement with AT&T for these services, which began in 2010, expires December 31, 2021.
- The proposed agreement with AT&T utilizes terms and service rates established by the State’s CALNET Program, which recently established a new set of contracts, “CALNET-Next Generation,” which replaces the CALNET-3 rates that the City currently uses. The new CALNET rates are generally the same as the prior rates.
- In June 2021 Gartner, an information technology research and consulting company, evaluated DT’s telecommunications contract rates and found that its rates are 23 percent below market compared with other state and local prices.
- Gartner concluded that DT’s use of CALNET contract rates for telecommunications services can achieve optimum pricing for the City. If DT decided to competitively bid out these services, Gartner estimated that this would result in additional one-time costs of between \$2.4 million to \$5.3 million associated with the transfer of services to a new provider.

Fiscal Impact

- DT projects that annual expenditures for the AT&T agreement will total \$11.1 million per year, or approximately \$72.1 million over the 6.5 years of the contract. The agreement also includes an estimated \$7.9 million in contingency, for an estimated total of \$80 million.

Recommendation

- Approve the proposed resolution.

MANDATE STATEMENT

City Charter Section 9.118(b) states that any contract entered into by a department, board or commission that (1) has a term of more than ten years, (2) requires expenditures of \$10 million or more, or (3) requires a modification of more than \$500,000 is subject to Board of Supervisors approval.

BACKGROUND

The Department of Technology (DT) has contracted with AT&T since 2001, with Board approval, to provide telecommunication services to the City and County of San Francisco. The current agreement with AT&T expires on December 31, 2021. This current agreement with AT&T was initially approved beginning on February 26, 2010, and subsequently amended five times. The 2010 agreement combined all AT&T landline services under one citywide master contract in an effort to consolidate information technology procurement and contracting on a citywide basis. The telecommunication services provided to departments under this contract include telephone services, such as voice over internet protocol (VoIP), legacy and circuit telephony, long distance, and toll-free service as well as internet connectivity.

The current contract utilizes terms and service rates established by the California Department of Technology's California Network and Telecommunications (CALNET) Program, which provides competitively bid telecommunications rates for use by state and local agencies. The State recently concluded a negotiation with telecommunications providers and established a new set of rates, "CALNET-Next Generation," which replaces the CALNET-3 rates that the City relied upon for its current agreement with AT&T. The new CALNET rates are generally the same as the prior rates.

Using rates from the CALNET Program is permissible under Administrative Code Section 21.16(b), which allows DT to rely on the competitive procurement of other public agencies when purchasing commodities or services.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would authorize DT to enter into a new agreement with AT&T to provide the City with telecommunication services for an amount not-to-exceed \$80,000,000 over six and one-half years, beginning January 1, 2022 and ending June 30, 2028. The agreement includes one, five-year option to extend the agreement, which would be subject to future Board of Supervisors' approval if the amount increases by more than \$500,000.

Services Provided

DT has negotiated a new agreement with AT&T using the most recent CALNET terms and services of the State's "CALNET Next Generation Contracts." These contract terms provide the City with what staff believes to be the best pricing for telecommunication services given that it utilizes the State's procurement process and buying power. The agreement with AT&T covers 14 categories

of services as defined in the CALNET contracts. Each of these services can be classified as voice and data transport technology that includes telephone services such as long distance and toll-free calling, support for legacy telecommunications, voice over internet protocol services, and internet services.

Legacy Services

The contract also covers Tariff and Guidebook services for legacy and voice services that are not offered through the CALNET Next Generation Contracts but were previously offered by CALNET-3. These services are no longer part of CALNET as they are considered older and being phased out; however, DT staff report that while these are older technologies that they are trying to decommission, they do not want to migrate away from them as they are still utilized by certain departments. DT staff determined that AT&T is the sole source for these legacy services still used by some City departments. The Office of Contract Administration has approved the waiver for competitive solicitation for these services.

Professional Services

According to DT's Strategic Sourcing Manager, the services provided under this new agreement exclude professional/consultancy services, which was included in the prior agreements to provide consulting services to departments and Airport helpdesk services. If DT determines that these professional services are needed, they will be competitively bid out for. The agreement also excludes certain network services purchased under commercial terms, such as the Airport's Sonet Ring and Police Netbond Services. DT reports that they anticipate competitively bidding out these services through existing data transport service contracts that the Office of Contract Administration and DT established in 2020.¹

Evaluation of Rates

In June 2021 Gartner, an information technology research and consulting company, completed a report for DT that analyzed the rates paid by DT for telecommunication services provided through the AT&T contract. Gartner's evaluation found that across the telecommunications services it analyzed, the current prices for DT's telecommunications contract rates are 23 percent below market compared with other state and local prices. However, there were a few areas where DT's prices were slightly higher for legacy services.

Gartner's report recommended that DT consider stop using legacy data transport technologies, such as telephone and older data circuits that operate at low speeds. These services comprise 20 percent of the City's telecommunications spending and are eight percent more expensive than modern, faster services. DT reports that it continues modernizing circuits and migrating telephony services to Voice over internet protocol (VoIP) through an ongoing project, which is anticipated to be completed by the end of 2025. The legacy telephony circuits will be turned off

¹ The Data Transport Service contracts established a pool of vendors in 2020 that consists of Wave, AT&T, Zayo and Comcast. These vendors will be used for data circuit project bids as determined by departments and DT.

when DT migrates all departments to VoIP. The Department reports that cost savings from the VoIP migration will likely be offset increased data usage.

Finally, Gartner concluded that DT's use of CALNET contract rates for telecommunications services can achieve optimum pricing for the City. Gartner also concludes that if DT decided to competitively bid out these services, the Department would require funding for one-time costs of between \$2.4 million to \$5.3 million associated with the transfer of services to a new provider.

FISCAL IMPACT

DT's agreement with AT&T is for a not-to-exceed amount of \$80 million over six and one-half years, January 1, 2022 until June 30, 2028. DT determined the \$80 million not to exceed amount by reviewing the prior four fiscal years of spending.

As shown below in Exhibit 1, DT determined that over the past four fiscal years (FY 2017-18 through FY 2020-21) the average expenditures on the contract were \$11,592,566.

Exhibit 1: AT&T contract expenditures, FY 2017-18 through FY 2020-21

Department*	2018	2019	2020	2021	Total
Airport	\$1,828,700	\$1,148,856	\$1,352,067	\$956,625	\$5,286,249
Children, Youth and Their Families	10,553				10,553
Emergency Management			10,409		10,409
Public Health	35,400	29,830	42,138	(31,838)	75,530
Juvenile Probation	5,608	4,626	(323)		9,910
Library	13,348				13,348
Technology	10,714,765	9,135,195	10,482,451	10,631,857	40,964,267
<i>Total Expenditures</i>	<i>\$12,608,373</i>	<i>\$10,318,506</i>	<i>\$11,886,742</i>	<i>\$11,556,644</i>	<i>\$46,370,266</i>
Average Annual Contract Expenditures					\$11,592,566

Source: Department of Technology

*The Airport is the only department that makes purchases directly with AT&T on this contract; however, there are instances over the past four fiscal years when other departments have made purchases without going through DT. This practice is being phased out as seen in the decrease in number of purchases made by other departments over this time period.

Note: Negative charges reflect corrections made to charge the appropriate project.

As shown below in Exhibit 2, DT determined the estimated annual cost by subtracting the costs for system consulting and certain data circuits that will not be included in the proposed contract from the average annual expenditure total for FY 2017-18 through FY 2020-21. This anticipated annual expenditure less the consulting and circuit changes was multiplied by 6.5 to determine the total cost of \$72,102,069 over the upcoming six and one-half years of the proposed agreement term. DT included an additional \$7,931,228 for contract contingency. The total not-to-exceed amount was rounded to \$80 million.

Exhibit 2: Determination of the \$80 million not-to-exceed amount

Description	Amount
Current Average Annual Expenditures	\$11,592,566
Removal of Professional Services (Consulting Services)*	(307,200)
Migration of Airport private telecom network charges (Sonet Ring)*	(175,260)
Migration of Police Data Circuit charges (Netbond)*	(17,480)
<i>Subtotal Projected Annual Expenditures</i>	<i>\$11,092,626</i>
Projected Expenditures over 6.5 years (Agreement Term)	72,102,069
11 percent Contingency	7,931,228
Total Projected Expenditures	\$80,033,297
Not-to-Exceed Amount in the Agreement	\$80,000,000

Source: Department of Technology

*These charges were determined through manual calculations from departments that were provided to DT

For the majority of spending on the AT&T contract, DT purchases on behalf of all other City departments, which are then funded by DT's service charges to City departments. DT does not administer purchases for the Airport, which makes its own purchases on the AT&T contract. Other departments, as seen in Exhibit 1, have occasionally made purchases directly on the AT&T contract. However, this is a practice that DT reports is being phased out so that all departments other than the Airport are making purchases through DT.

RECOMMENDATION

Approve the proposed resolution.

**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

AT&T Corp. dba AT&T

AGREEMENT

This Agreement is made this ___ day of _____ 2021, in the City and County of San Francisco, State of California, by and between AT&T Corp. dba AT&T, headquartered at One AT&T Way, Bedminster, New Jersey 07921 and City.

Recitals

WHEREAS, the City through its Department of Technology (“Department” or “DT”) and Contractor wish to establish a master agreement for the purchase of certain telecommunications services and equipment;

WHEREAS, an Invitation for Bid (“IFB”) was issued by the California Department of Technology (“CDT”) for various telecommunications and network services pursuant to the California Network and Telecommunications (“CALNET”) Program in 2020; and Contractor was selected as a qualified firm pursuant to the IFB;

WHEREAS, pursuant San Francisco Administrative Code Section 21.16(b), the Department may utilize the results of a competitive solicitation by another public agency;

WHEREAS, the Department conducted an analysis and determined that the use of CDT’s CALNET competitive solicitation and the resulting CALNET Contract would be in the City’s best interest;

WHEREAS, the Department has determined that Contractor is a sole source for certain Tariff and Guidebook Services that are still be used by certain City departments;

WHEREAS, the Office of Contract Administration has approved the waiver of the competitive solicitation requirements for these Tariff and Guidebook Services;

WHEREAS, pursuant to S.F. Charter section 9.118, the Board of Supervisors in Resolution No. _____ authorized the Department to enter into this Agreement;

WHEREAS, the Contract Monitoring Division has determined there are no Local Business Entity subcontracting participation requirements for this Agreement; and

WHEREAS, Contractor represents and warrants that it is qualified to perform the Services required by City as set forth under this Agreement.

Now, THEREFORE, the parties agree as follows:

Article 1 Definitions

The following definitions apply to this Agreement:

1.1 “Agreement” means this contract document, including all attached appendices, and all applicable City Ordinances and Mandatory City Requirements specifically incorporated into this Agreement by reference as provided herein.

1.2 “CALNET Contract” means the CALNET Categories 15-18 Contract and/or the CALNET Categories 20-30 Contract, as applicable. Without limitation, the CALNET Contract is more fully described in Appendix B, CALNET Contract.

1.3 “CALNET Categories 15-18 Contract” means the set of contract documents and amendments between the California Department of Technology and Contractor for that certain CALNET Next Generation Service Categories 15 -18 available as of the Effective Date at <https://cdt.ca.gov/services/calnet-services> which are applicable to the goods and/or services described in such contract documents and amendments and ordered by the City from time to time. Upon the effectiveness thereof, the CALNET Categories 15-18 Contract includes, without limitation, any contractual instrument required by the CALNET Categories 15-18 Contract to confirm the City’s acceptance of and adherence to its terms, including any “Authorization to Order Under State Contract.”

1.4 “CALNET Categories 20-30 Contract” means the set of contract documents and amendments between the California Department of Technology and Contractor for that certain CALNET Next Generation Service Categories 20-30 available as of the Effective Date at <https://cdt.ca.gov/services/calnet-services> which are applicable to the goods and/or services described in such contract documents and amendments and ordered by the City from time to time. Upon the effectiveness thereof, the CALNET Categories 20-30 Contract includes, without limitation, any contractual instrument required by the CALNET Categories 20-30 Contract to confirm the City’s acceptance of and adherence to its terms, including any “Authorization to Order Under State Contract.”

1.5 “CALNET Services” means the services the Contractor will make available to City described in the CALNET Agreement and described in Appendix A, “Available Services”.

1.6 “City” or “the City” means the City and County of San Francisco, a municipal corporation, acting by and through both its Director of the Office of Contract Administration or the Director’s designated agent, hereinafter referred to as “Purchasing” and all City Departments authorized to utilize this Agreement for the purpose of securing the goods and services described herein.

1.7 “CMD” means the Contract Monitoring Division of the City.

1.8 “Confidential Information” means confidential City information including, but not limited to, personally-identifiable information (“PII”), protected health information (“PHI”), or individual financial information (collectively, “Proprietary or Confidential Information”) that is subject to local, state or federal laws restricting the use and disclosure of such information, including, but not limited to, Article 1, Section 1 of the California Constitution; the California Information Practices Act (Civil Code § 1798 et seq.); the California Confidentiality of Medical

Information Act (Civil Code § 56 et seq.); the federal Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801(b) and 6805(b)(2)); the privacy and information security aspects of the Administrative Simplification provisions of the federal Health Insurance Portability and Accountability Act (45 CFR Part 160 and Subparts A, C, and E of part 164); and San Francisco Administrative Code Chapter 12M (Chapter 12M).

1.9 “Contractor” means AT&T Corp. dba AT&T.

1.10 “Effective Date” means the date upon which the City’s Controller certifies the availability of funds for this Agreement as provided in Section 3.1.

1.11 “Guidebooks” are documents (designated as Guidebooks or Price Lists) containing the descriptions, pricing and other terms and conditions for a Service that were but no longer are filed with regulatory authorities. Guidebooks can be found at att.com/service publications or other locations AT&T may designate.

1.12 “Mandatory City Requirements” means those City laws set forth in the San Francisco Municipal Code, including the duly authorized rules, regulations, and guidelines implementing such laws that impose specific duties and obligations upon Contractor.

1.13 “Party” and “Parties” mean the City and Contractor either collectively or individually.

1.14 “Service Charges” means the monthly recurring charges together with any one-time, non-recurring charges or fees the City agrees to pay to Contractor in exchange for the Services ordered pursuant to this Agreement.

1.15 “Services” means the CALNET Services and the Tariff and Guidebook Services.

1.16 “Tariffs” are documents containing the descriptions, pricing and other terms and conditions for a service that AT&T or its affiliates file with regulatory authorities. Tariffs can be found at att.com/service publications or other locations AT&T may designate.

1.17 “Tariff and Guidebook Services” means those legacy voice and legacy data services that (a) were previously offered under legacy agreements between CALNET and AT&T or AT&T affiliate(s) that were effective prior to the Effective Date, (b) are no longer offered agreement(s) between CALNET and AT&T or AT&T affiliate(s) in effect as of the Effective Date, (c) were procured by the City from AT&T or AT&T affiliate(s) prior to the Effective Date and (d) are offered by AT&T or AT&T affiliate(s) pursuant to Tariff(s) or Guidebook(s) as of the Effective Date.

Article 2 Term of the Agreement

2.1 **Term.** The term of this Agreement shall be for an initial term of six and a half (6.5) years, commencing on **January 1, 2022** and expiring on **June 30, 2028**, unless earlier terminated as otherwise provided herein.

2.2 **Options.** The City has the option to extend this Agreement for a period of **five (5) additional years**, for a total contract term of eleven and a half (11.5) years. The City may extend this Agreement beyond the expiration date by exercising an option at the City’s sole and absolute discretion and by providing no less than sixty (60) days’ prior written notice to Contractor. In such event Contractor shall reasonably cooperate with City to modify this

Agreement as provided in Section 11.5, "Modification of this Agreement;" provided Contractor's failure to do so shall not affect the validity of such extended term.

2.3 Expiration or Sooner Termination of CALNET Contract. If a CALNET Contract expires or is terminated prior to the expiration or sooner termination of this Agreement, then this Agreement shall likewise terminate with respect to the goods and services purchased using same, as of the effective date of the expiration or sooner termination of such CALNET Contract.

Article 3 Financial Matters

3.1 Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation. This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue (and Contractor's requirements to provide goods and/or services will begin) only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated, provided that in such case any applicable terms for addressing the non-appropriation of funds in the CALNET Contract shall apply. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

3.2 Guaranteed Maximum Costs. The City's payment obligation to Contractor cannot at any time exceed the amount certified by City's Controller for the purpose and period stated in such certification. Absent an authorized Emergency per the City Charter or applicable Code, no City representative is authorized to offer or promise, nor is the City required to honor, any offered or promised payments to Contractor under this Agreement in excess of the certified maximum amount without the Controller having first certified the additional promised amount and the Parties having modified this Agreement as provided in Section 11.5, "Modification of this Agreement."

3.3 Compensation.

3.3.1 Payment and Agreement Maximum Amount. Contractor shall provide an invoice to the City on a monthly basis for goods delivered and/or Services completed in the immediate preceding month. Compensation shall be made for goods and/or Services identified in the invoice that the City, in his or her sole discretion, concludes has been satisfactorily performed. Payment shall be made within 30 calendar days of receipt of the invoice, unless the City notifies the Contractor that a dispute as to the invoice exists. In no event shall the amount of this Agreement exceed **Eighty Million Dollars (\$80,000,000.00)**. In no event shall City be liable for interest or late charges for any late payments.

3.3.2 **Payment Limited to Satisfactory Services and Delivery of Goods.**

Contractor is not entitled to any payments from City until the Department approves the goods and/or Services delivered pursuant to this Agreement. Payments to Contractor by City shall not excuse Contractor from its obligation to replace unsatisfactory delivery of goods and/or Services even if the unsatisfactory character may not have been apparent or detected at the time such payment was made. Goods and/or Services delivered pursuant to this Agreement that do not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay at no cost to the City.

3.3.3 **Withhold Payments.** If Contractor fails to provide goods and/or Services in accordance with Contractor's obligations under this Agreement, the City will promptly provide notice to Contractor specifically identifying the charge and the reason it is disputed. The City may withhold any and all payments for the affected Services due Contractor until such failure to perform is cured, and Contractor shall not stop work as a result of City's withholding of payments as provided herein.

3.3.4 **Invoice Format.** Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller and City, and must include a unique invoice number. Payment shall be made by City as specified in Section 3.3.7, or in such alternate manner as the Parties have mutually agreed upon in writing. All invoices must show the People Soft Contract ID Number, People Soft Supplier ID, contract item number, complete description of Services performed, contract payment terms and contract price. City, on services covered by this Agreement, will honor no minimum service order charges. Contractor must accept and process, without any extra charges, orders for any service as requested by City. Failure to submit invoices with all the required information, or invoices that contain inaccurate information will not be processed for payment. All discount periods will begin only when City receives a properly completed invoice containing all the required information.

3.3.5 **Reserved. (Prompt Payment Discounts – Terms of Payment).**

3.3.6 **Reserved. (LBE Payment and Utilization Tracking System).**

3.3.7 **Getting Paid by the City for Goods and Services.**

(a) The City and County of San Francisco utilizes the Paymode-X[®] service offered by Bank of America Merrill Lynch to replace paper check payments. All City vendors receiving new contracts, contract renewals, or contract extensions should sign up to receive electronic payments. Electronic payments are processed every business day and are safe and secure. To sign up for electronic payments, visit http://portal.paymode.com/city_countyofsanfrancisco.

(b) The following information is required to sign up: (i) The enroller must be their company's authorized financial representative, (ii) the company's legal name, main telephone number and all physical and remittance addresses used by the company, (iii) the company's U.S. federal employer identification number (EIN) or Social Security number (if they are a sole proprietor), and (iv) the company's bank account information, including routing and account numbers.

(c) Contractor will make a good faith effort to sign up to receive electronic payments via Paymode-X from City, a CALNET customer.

3.3.8 **Reserved. (Federal and/or State Funded Contracts).**

3.3.9 Payment Does Not Imply Acceptance of Work. The granting of any payments by City, or the receipt thereof by Contractor, shall in no way lessen the liability of Contractor to replace unsatisfactory work, equipment or materials, although the unsatisfactory character of such work, equipment or materials may not have been apparent or detected at the time such payment was made. Materials, equipment, components, or workmanship that do not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay

3.4 Audit and Inspection of Records. Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its Services and the goods delivered pursuant to this Agreement. The City may, at reasonable places and times, audit the books and records of a City contractor under any contract to the extent that such books and records relate to the performance of such contract. Such books and records shall be maintained by the contractor for five years from the date of final payment under the contract, unless a shorter period is otherwise authorized in writing.

3.5 Submitting False Claims. The full text of San Francisco Administrative Code Chapter 21, Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Pursuant to San Francisco Administrative Code §21.35, any contractor or subcontractor who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to the City if the contractor or subcontractor: (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.

3.6 Reserved. (Payment of Prevailing Wages).

Article 4 Goods and Services

4.1 Reserved. (Primary and Secondary Contractors).

4.2 Reserved (Goods).

4.3 Services.

4.3.1 Services Contractor Agrees to Perform. Contractor agrees to perform any of the Services ordered by the City under the CALNET Categories 15-18 Contract, CALNET Categories 20-30 Contract or as Tariff and Guidebook Services, and identified in Appendix A, Available Services.

4.3.2 Subcontracting. Contractor may subcontract portions of the Services only upon prior written approval of City. Contractor is responsible for its subcontractors throughout the course of the work required to perform the Services. All Subcontracts must incorporate the terms of Article 10 “Additional Requirements Incorporated by Reference” of this Agreement, unless inapplicable. Neither Party shall, on the basis of this Agreement, contract on behalf of, or

in the name of, the other Party. Any agreement made in violation of this provision shall be null and void.

4.3.3 **Reserved. (Awarded Services).**

4.4 **Qualified Personnel.** Contractor shall utilize only competent personnel under the supervision of, and in the employment of, Contractor (or Contractor's authorized subcontractors) to deliver the goods and/or Services. Contractor will comply with City's reasonable requests regarding assignment and/or removal of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall commit adequate resources to allow timely completion within the project schedule specified in this Agreement.

4.5 **Independent Contractor; Payment of Employment Taxes and Other Expenses.**

4.5.1 **Independent Contractor.** For the purposes of this Section 4.5, "Contractor" shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it delivers the goods and/or Services required by this Agreement and work requested by City under this Agreement. Contractor, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing any of the obligations pursuant to this Agreement, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement. Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor's compliance with this section. Should City determine that Contractor, or any agent or employee of Contractor, is not performing in accordance with the requirements of this Agreement, City shall provide Contractor with written notice of such failure. Within five (5) business days of Contractor's receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor, or any agent or employee of Contractor, warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

4.5.2 **Payment of Employment Taxes and Other Expenses.** Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State

Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past Services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to this Section 4.5 shall be solely limited to the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, Contractor agrees to indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorneys' fees, arising from this section .

4.6 **Assignment.** Neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by Contractor unless first approved by City by written instrument executed and approved in the same manner as this Agreement. Any purported assignment made in violation of this provision shall be null and void.

4.7 **Warranty.** Contractor warrants to City that the manufacturer's warranty and service will be passed on to the City at the time of delivery.

4.8 **Reserved. (Liquidated Damages).**

4.9 **Reserved. (Performance Bond).**

4.10 **Reserved. (Fidelity Bond).**

4.11 **Reserved. (Emergency - Priority 1 Service.)**

4.12 **Reserved. (Usage Spend Reports by Contractor.)**

Article 5 Insurance and Indemnity

5.1 Insurance.

5.1.1 **Required Coverages.** 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:

(a) Commercial General Liability Insurance per ISO form CG 00 01 or its equivalent with limits of \$1,000,000 each occurrence and \$2,000,000 in the aggregate for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations.

(b) Commercial Automobile Liability Insurance with limits of \$1,000,000 each occurrence, "Combined Single Limit" for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

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

(d) Reserved. (Professional Liability Coverage).

(e) Technology Errors and Omissions Liability coverage, with limits of \$10,000,000 for each claim and each loss. The policy shall at a minimum cover professional misconduct or lack of the requisite skill required for the performance of services defined in the Agreement and shall also provide coverage for the following risks:

(i) Network security liability arising from the unauthorized access to, use of, or tampering with computers or computer systems, including hacker attacks; and

(ii) Liability arising from the introduction of any form of malicious software including computer viruses into, or otherwise causing damage to the City's or third person's computer, computer system, network, or similar computer related property and the data, software, and programs thereon.

(f) Cyber and Privacy coverage with limits of \$7,500,000 per claim and in the aggregate. Such insurance shall include coverage for liability arising from theft, dissemination, and/or use of confidential information, including but not limited to bank and credit card account information or personal information, such as name, address, social security numbers, protected health information or other personally identifying information, stored or transmitted in electronic form.

(g) Reserved (Pollution Liability Insurance Coverage).

5.1.2 **Additional Insured Endorsements**

(a) The Commercial General Liability policy must be endorsed to include as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees as respects this Agreement.

(b) The Commercial Automobile Liability Insurance policy must be endorsed to include as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees as respects this Agreement.

(c) Reserved. (Pollution Auto Liability Insurance Additional Insured Endorsement).

5.1.3 **Waiver of Subrogation Endorsements**

(a) The Workers' Compensation policy(ies) 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.

5.1.4 **Primary Insurance Endorsements**

(a) The Commercial General Liability policy shall provide 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 the insurance applies separately to each insured against whom claim is made or suit is brought.

(b) The Commercial Automobile Liability Insurance policy shall provide 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 the insurance applies separately to each insured against whom claim is made or suit is brought.

(c) Reserved. (The Pollution Liability Insurance).

5.1.5 Other Insurance Requirements

(a) Thirty (30) days' advance written notice shall be provided to the City of cancellation or non-renewal, except for non-payment for which no less than ten (10) days' notice shall be provided to City unless replaced. Notices shall be sent to the City address set forth in Section 11.1 entitled "Notices to the Parties."

(b) 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, or an extended reporting period will be exercised, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the Agreement term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

(c) 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.

(d) 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.

(e) Before commencing any Services, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VII 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. Approval of the insurance by City shall not relieve or decrease Contractor's liability hereunder.

(f) If Contractor will use any subcontractor(s) to provide Services, Contractor shall require the subcontractor(s) to provide all necessary insurance and to include the City and County of San Francisco, its officers, agents and employees and the Contractor as additional insureds.

5.2 Indemnification.

5.2.1 Contractor shall indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them from and against any and all claims, demands, losses, damages, costs, expenses, and liability (legal, contractual, or otherwise) of every kind, including but not limited to claims for: (i) injury to or death of a person, including employees of City or Contractor; (ii) loss of or damage to tangible or intangible property; (iii) violation of local, state, or federal common law, statute or regulation, including but not limited to privacy or personally identifiable information, health information, disability and labor laws or regulations; (iv) strict liability imposed by any law or regulation; or (v) losses arising from Contractor's execution of subcontracts not in accordance with the requirements of this

Agreement applicable to subcontractors; so long as such injury, violation, loss, or strict liability (as set forth in subsections (i) – (v) above) arises directly or indirectly from Contractor’s performance of this Agreement, including, but not limited to, Contractor’s use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors, or either’s agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City’s costs of investigating any claims against the City.

5.2.2 In addition to Contractor’s obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter.

5.2.3 Contractor shall indemnify and hold City harmless from all loss and liability, including attorneys’ fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons arising directly or indirectly from the receipt by City, or any of its officers or agents, of Contractor’s Services and/or delivery of goods pursuant to this Agreement.

Article 6 Liability of the Parties

6.1 **Liability of City.** CITY’S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 3.3.1, “PAYMENT,” OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED OR GOODS DELIVERED IN CONNECTION WITH THIS AGREEMENT

6.2 **Liability for Use of Equipment.** City shall not be liable for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or any of its subcontractors, or by any of their employees, even though such equipment is furnished, rented or loaned by City.

6.3 **Liability of Contractor for Incidental and Consequential Damages.**

6.3.1 Contractor shall not be liable for incidental and consequential damages except as provided herein. Contractor’s liability for damages to the City for any cause whatsoever, and regardless of the form of action, whether in Contract or in tort, shall be limited, per claim (or in the aggregate during any twelve month period) to the total amounts actually

paid to Contractor for the Services under the Order giving rise to the liability in the twelve (12) month period immediately preceding the event giving rise to such liability.

6.3.2 The foregoing limitation of liability shall not apply (i) to any liability relating to “Compliance with Statutes and Regulations;” (ii) to liability for infringement of third party intellectual property rights; (iii) to claims arising under provisions herein calling for indemnification for third party claims against the City for death, bodily injury to persons or damage to real or tangible personal property or attorney’s fees that the City becomes entitled to recover as a prevailing party in any action, arising from the gross negligence or willful misconduct of Contractor in connection with the Contract.

6.3.3 In no event will be Contractor be liable for consequential, incidental, indirect, special, or punitive damages, even if notification has been given as to the possibility of such damages, except in the event of third party claims under sections 6.3.2(ii) and 6.2.3(iii), or in the event of Contractor’s gross negligence or willful misconduct.

Article 7 Payment of Taxes

7.1 **Contractor Responsibility for Taxes.** Contractor shall pay all taxes, including possessory interest taxes levied upon or as a result of this Agreement, or the Services delivered pursuant hereto. Contractor shall remit to the State of California any sales or use taxes paid by City to Contractor under this Agreement. Contractor agrees to promptly provide information requested by the City to verify Contractor’s compliance with any State requirements for reporting sales and use tax paid by City under this Agreement.

7.2 **City Responsibility for Taxes.** Where required by law or as provided in the applicable service guide, City will pay all applicable current and future taxes (excluding those on AT&T’s net income), surcharges, recovery fees, custom clearances, duties, levies, and other similar charges relating to the sale, transfer of ownership, installation, license, use or provision of the Services, except to the extent City/Customer provides satisfactory proof of a valid tax exemption prior to the delivery of Services.

7.3 **Possessory Interest Taxes.** Contractor acknowledges that this Agreement may create a “possessory interest” for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply.

7.3.1 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest.

7.3.2 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a “change in ownership” for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.

7.3.3 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax.

Code section 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

7.3.4 Contractor further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

7.4 **Withholding.** Contractor agrees that it is obligated to pay all amounts due to the City under the San Francisco Business and Tax Regulations Code during the term of this Agreement. Contractor further acknowledges and agrees that payments due to Contractor under this Agreement may be subject to San Francisco Business and Tax Regulations Code Section 6.10-2, if Contractor is delinquent in the payment of any amount required to be paid to the City under the San Francisco Business and Tax Regulations Code and the other conditions of Section 6.10-2 are satisfied.

Article 8 Termination and Default

8.1 Termination for Convenience

8.1.1 City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective.

8.1.2 Upon receipt of the notice of termination, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by City and to minimize the liability of Contractor and City to third parties as a result of termination. All such actions shall be subject to the prior approval of City. Such actions may include any or all of the following, without limitation:

(a) Halting the performance of all Services under this Agreement on the date(s) and in the manner specified by City.

(b) Terminating all existing orders and subcontracts, and not placing any further orders or subcontracts for materials, Services, equipment or other items.

(c) At City's direction, assigning to City any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, City shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

(d) Subject to City's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.

(e) Completing performance of any Services that City designates to be completed prior to the date of termination specified by City.

(f) Taking such action as may be necessary, or as the City may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which City has or may acquire an interest.

8.1.3 Within 30 days after the specified termination date, Contractor shall submit to City an invoice, which shall set forth each of the following as a separate line item:

(a) The reasonable cost to Contractor, without profit, for all Services prior to the specified termination date, for which Services City has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Contractor’s direct costs for Services. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.

(b) A reasonable allowance for profit on the cost of the Services described in the immediately preceding subsection (a), provided that Contractor can establish, to the satisfaction of City, that Contractor would have made a profit had all Services under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.

(c) The reasonable cost to Contractor of handling material or equipment returned to the vendor, delivered to the City or otherwise disposed of as directed by the City.

(d) A deduction for the cost of materials to be retained by Contractor, amounts realized from the sale of materials and not otherwise recovered by or credited to City, and any other appropriate credits to City against the cost of the Services or other work.

8.1.4 In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by City, except for those costs specifically listed in Section 8.1.3. Such non-recoverable costs include, but are not limited to, anticipated profits on the Services under this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys’ fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under Section 8.1.3.

8.1.5 In arriving at the amount due to Contractor under this Section, City may deduct: (i) all payments previously made by City for Services covered by Contractor’s final invoice; (ii) any claim which City may have against Contractor in connection with this Agreement; (iii) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection 8.1.4; and (iv) in instances in which, in the opinion of the City, the cost of any Service performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected Services, the difference between the invoiced amount and City’s estimate of the reasonable cost of performing the invoiced Services in compliance with the requirements of this Agreement.

8.1.6 City’s payment obligation under this Section shall survive termination of this Agreement.

8.2 Termination for Default; Remedies.

8.2.1 Each of the following shall constitute an immediate event of default (“Event of Default”) under this Agreement:

(a) Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement:

3.5	Submitting False Claims.	10.10	Alcohol and Drug-Free Workplace
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4.6	Assignment	10.13	Working with Minors
Article 5	Insurance and Indemnity	11.10	Compliance with Laws
Article 7	Payment of Taxes	Article 13	Data and Security

(b) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, including any obligation imposed by ordinance or statute and incorporated by reference herein, and such default is not cured within ten days after written notice thereof from City to Contractor. If Contractor defaults a second time in the same manner as a prior default cured by Contractor, City may in its sole discretion immediately terminate the Agreement for default or grant an additional period not to exceed five (5) days for Contractor to cure the default.

(c) Contractor (i) is generally not paying its debts as they become due; (ii) files, or consents by answer or otherwise to the filing against it of a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction; (iii) makes an assignment for the benefit of its creditors; (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property; or (v) takes action for the purpose of any of the foregoing.

(d) A court or government authority enters an order (i) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (ii) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (iii) ordering the dissolution, winding-up or liquidation of Contractor.

8.2.2 All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

8.2.3 Any notice of default must be sent by registered mail to the address set forth in Article 11.

8.3 Non-Waiver of Rights.

The omission by either Party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other Party at the time designated, shall not be a waiver of any such default or right to which the Party is entitled, nor shall it in any way affect the right of the Party to enforce such provisions thereafter.

8.4 Rights and Duties upon Termination or Expiration.

8.4.1 This Section and the following Sections of this Agreement listed below, shall survive termination or expiration of this Agreement:

3.3.2	Payment Limited to Satisfactory Services and Delivery of Goods	9.2	Works for Hire
3.3.8	Federal and/or State Funded Contracts	11.6	Dispute Resolution Procedure
3.4	Audit and Inspection of Records	11.7	Agreement Made in California; Venue
3.5	Submitting False Claims	11.8	Construction
Article 5	Insurance and Indemnity	11.9	Entire Agreement
6.1	Liability of City	11.10	Compliance with Laws
6.3	Liability for Incidental and Consequential Damages	11.11	Severability
Article 7	Payment of Taxes	Article 12	Department Specific Terms
8.1.6	Payment Obligation	Article 13	Data and Security
9.1	Ownership of Results		

8.4.2 Subject to the survival of the Sections identified in Section 8.4.1, above, if this Agreement is terminated prior to expiration of the term specified in Article 2, this Agreement shall be of no further force or effect. Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City.

Article 9 Reserved. (Rights In Deliverables).

9.1 **Reserved. (Ownership of Results).**

9.2 **Reserved. (Works for Hire).**

Article 10 Additional Requirements Incorporated by Reference

10.1 **Laws Incorporated by Reference.** The full text of the laws listed in this Article 10, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Article and elsewhere in the Agreement (“Mandatory City Requirements”) are available at http://www.amlegal.com/codes/client/san-francisco_ca/.

10.2 **Conflict of Interest.** By executing this Agreement, Contractor certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City’s Charter; Article III, Chapter 2 of City’s Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 *et seq.*), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 *et seq.*), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Agreement.

10.3 **Prohibition on Use of Public Funds for Political Activity.** In performing the Services or delivering the goods, Contractor shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a

candidate or for a ballot measure. Contractor is subject to the enforcement and penalty provisions in Chapter 12G.

10.4 Consideration of Salary History. Contractor shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or “Pay Parity Act.” Contractor is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Agreement or in furtherance of this Agreement, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in the City or on City property. The ordinance also prohibits employers from (1) asking such applicants about their current or past salary or (2) disclosing a current or former employee’s salary history without that employee’s authorization unless the salary history is publicly available. Contractor is subject to the enforcement and penalty provisions in Chapter 12K. Information about and the text of Chapter 12K is available on the web at <https://sfgov.org/olse/consideration-salary-history>. Contractor is required to comply with all of the applicable provisions of 12K, irrespective of the listing of obligations in this Section.

10.5 Nondiscrimination Requirements

10.5.1 Nondiscrimination in Contracts. Contractor shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Contractor shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Contractor is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

10.5.2 Nondiscrimination in the Provision of Employee Benefits. San Francisco Administrative Code 12B.2. Contractor does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

10.6 Local Business Enterprise and Non-Discrimination in Contracting Ordinance. Contractor shall comply with all applicable provisions of Chapter 14B (“LBE Ordinance”). Contractor is subject to the enforcement and penalty provisions in Chapter 14B.

10.7 Minimum Compensation Ordinance. If Administrative Code Chapter 12P applies to this Agreement, Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P, including a minimum hourly gross compensation, compensated time off, and uncompensated time off. Contractor is subject to the enforcement and penalty provisions in Chapter 12P. Information about and the text of the Chapter 12P is available on the web at <http://sfgov.org/olse/mco>. Contractor is required to comply with all of the applicable provisions of 12P, irrespective of the listing of obligations in this Section. By signing and executing this Agreement, Contractor certifies that it complies with Chapter 12P.

10.8 Health Care Accountability Ordinance. If Administrative Code Chapter 12Q applies to this Agreement, Contractor shall comply with the requirements of Chapter 12Q. 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. Information about and the text of the Chapter 12Q, as well as the Health Commission's minimum standards, is available on the web at <http://sfgov.org/olse/hcao>. Contractor is subject to the enforcement and penalty provisions in Chapter 12Q. Any Subcontract entered into by Contractor shall require any Subcontractor with 20 or more employees to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section.

10.9 First Source Hiring Program. Contractor must comply with all of the provisions of the First Source Hiring Program, Chapter 83 of the San Francisco Administrative Code, that apply to this Agreement, and Contractor is subject to the enforcement and penalty provisions in Chapter 83.

10.10 Alcohol and Drug-Free Workplace. City reserves the right to deny access to, or require Contractor to remove from, City facilities personnel of any Contractor or subcontractor who City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs City's ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol while performing City work.

If Contractor is informed prior to issuance of an Authorization Document that it will be paid with federal or state funds, Contractor agrees in the performance of this Agreement to maintain a drug-free workplace by notifying employees that unlawful drug use is prohibited and specifying what actions will be taken against employees for violations; establishing an on-going drug-free awareness program that includes employee notification and, as appropriate, rehabilitation. Contractor can comply with this requirement by implementing a drug-free workplace program that complies with the Federal Drug-Free Workplace Act of 1988 (41 U.S.C. § 701) and California Drug-Free Workplace Act of 1990 Cal. Gov. Code, § 8350 et seq.

10.11 Limitations on Contributions. By executing this Agreement, Contractor acknowledges its obligations under Section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of 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, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date

the City approves the contract. To the extent applicable, 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 10% in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

10.12 Reserved. (Slavery Era Disclosure).

10.13 Reserved. (Working with Minors).

10.14 Consideration of Criminal History and Employment Decisions.

10.14.1 Unless pre-empted by Federal or State law, Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12T, "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Administrative Code ("Chapter 12T"), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at . Contractor is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

10.14.2 The requirements of Chapter 12T shall only apply to a Contractor's or Subcontractor's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

10.15 Reserved. (Public Access to Nonprofit Records and Meetings).

10.16 Food Service Waste Reduction Requirements. Contractor shall comply with the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including but not limited to the remedies for noncompliance provided therein.

10.17 Reserved. (Distribution of Beverages and Water).

10.18 Tropical Hardwood and Virgin Redwood Ban. Pursuant to San Francisco Environment Code Section 804(b), the City urges Contractor not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

10.19 Reserved. (Preservative Treated Wood Products).

10.20 Reserved. (Sweat Free Procurement).

- 10.21 **Reserved. (Environment Code Chapter 5, Resource Conservation Ordinance).**
- 10.22 **Reserved. (Printing Services and/or Writing Paper Products).**
- 10.23 **Reserved. (Collection of Recyclable Materials).**
- 10.24 **Reserved. (Prop J Approval).**
- 10.25 **Reserved. (Use of City Opinion).**
- 10.26 **Reserved. (Displaced Worker Protection Act.)**

Article 11 General Provisions

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

To City:	Hao Xie Strategic Sourcing Manager City and County of San Francisco Department of Technology One South van Ness Ave 2 nd Floor San Francisco, CA 94102 Email: Hao.Xie@sfgov.org Phone: 628-652-5166
To Contractor:	Name: Heather Petersen Title: Account Executive Company: AT&T Address: 5001 Executive Parkway, Room Shared San Ramon, CA 94583 Email: Hp1858@att.com Phone:415-794-4422

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

11.2 **Compliance with Americans with Disabilities Act.** Contractor shall provide the Services and/or goods in a manner that complies with the Americans with Disabilities Act (ADA), including but not limited to Title II’s program access requirements, and all other applicable federal, state and local disability rights legislation.

11.3 **Incorporation of Recitals.** The matters recited above are hereby incorporated into and made part of this Agreement.

11.4 **Sunshine Ordinance.** Contractor acknowledges that this Agreement and all records related to its formation, Contractor’s performance of Services or delivery of the goods, and City’s payment are subject to the California Public Records Act, (California Government Code §6250 et. seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.

11.5 Modification of this Agreement. This Agreement may not be modified, nor may compliance with any of its terms be waived, except as noted in Section 11.1, “Notices to Parties,” regarding change in personnel or place, and except by written instrument executed and approved in the same manner as this Agreement.

11.6 Dispute Resolution Procedure.

11.6.1 Negotiation; Alternative Dispute Resolution. The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of Services or delivery of the goods under this Agreement. If the Parties are unable to resolve the dispute, then, pursuant to San Francisco Administrative Code Section 21.36, Contractor may submit to the Contracting Officer a written request for administrative review and documentation of the Contractor’s claim(s). Upon such request, the Contracting Officer shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing the Contractor of its right to judicial review. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. If the Parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of the City. Neither Party will be entitled to legal fees or costs for matters resolved under this section.

11.6.2 Government Code Claim Requirement. No suit for money or damages may be brought against the City until a written claim therefor has been presented to and rejected by the City in conformity with the provisions of San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq. Nothing set forth in this Agreement shall operate to toll, waive or excuse Contractor’s compliance with the California Government Code Claim requirements set forth in San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq.

11.7 Agreement Made in California; Venue. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

11.8 Construction. All paragraph captions are for reference only and shall not be considered in construing this Agreement.

11.9 Entire Agreement. The terms contained in this Agreement, including all exhibits, addendums, purchase orders, or other attachments thereto or document incorporated therein, together with the CALNET Contract and any applicable Tariff or Guidebooks, will constitute the entire integrated agreement between City and Contractor with regard to the subject matter hereof. This Agreement supersedes all prior oral and written communications, agreements and understandings of the Parties, if any, with respect hereto, except for the CALNET Contract and any applicable Tariff or Guidebook Services, purchase order or similar instrument placed pursuant to this Agreement.

11.10 Compliance with Laws. Contractor shall keep itself fully informed of the City’s Charter, codes, ordinances and duly adopted rules and regulations of the City and of all state, and

federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

11.11 Severability. Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the Parties and shall be reformed without further action by the Parties to the extent necessary to make such provision valid and enforceable.

11.12 Cooperative Drafting. This Agreement has been drafted through a cooperative effort of City and Contractor, 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.

11.13 Order of Precedence. Contractor agrees to perform the Services in accordance with the terms and conditions of this Agreement, the Appendices to this Agreement, and implementing task orders; provided that if the subject matter of any clause of this Agreement, Appendix to this Agreement or implementing task order is covered by the CALNET Contract, Tariff or Guidebook, respectively, then the terms of such CALNET Contract, Tariff or Guidebook shall supersede such term of this Agreement, Appendix to this Agreement or implementing task order. If the Appendices to this Agreement include any standard pre-printed terms from the Contractor, Contractor agrees that in the event of discrepancy, inconsistency, gap, ambiguity, or conflicting language between the City's terms and Contractor's pre-printed terms attached, the City's terms in this Agreement shall take precedence, followed by the CALNET Contract, Tariff or Guidebook.

11.14 Notification of Legal Requests. Except as may be required by applicable law, Contractor shall immediately notify City upon receipt of any subpoenas, service of process, litigation holds, discovery requests and other legal requests ("Legal Requests") related to all data given to Contractor by City in the performance of this Agreement ("City Data" or "Data"), or which in any way might reasonably require access to City's Data, and in no event later than 24 hours after it receives the request. Except as may be required by applicable law, Contractor shall not respond to Legal Requests related to City without first notifying City other than to notify the requestor that the information sought is potentially covered under a non-disclosure agreement. Except as may be required by applicable law, Contractor shall retain and preserve City Data in accordance with the City's instruction and requests, including, without limitation, any retention schedules and/or litigation hold orders provided by the City to Contractor, independent of where the City Data is stored.

11.15 Reserved. (Cooperative Agreement.)

Article 12 Department Specific Terms

12.1 Third Party Beneficiaries.

No third parties are intended by the Parties hereto to be third party beneficiaries under this Agreement, and no action to enforce the terms of this Agreement may be brought against either Party by any person who is not a party hereto.

12.2 Reserved. (Exclusion Lists and Employee Verification.)

12.3 Incorporation of the CALNET Contract or Tariff. This Agreement is pursuant to and hereby incorporates by reference the terms and conditions of the applicable CALNET Contract or the Tariff or Guidebook that the Service is procured under, except to the extent modified or supplemented herein in accordance with Section 11.13 (Order of Precedence).

12.4 Use of CALNET Contract ATOs and Tariff or Guidebook-Defined Means to Order Services.

12.4.1 Pursuant to the CALNET Contract, to the extent authorized to do so by the State of California, City may procure goods and Services offered under the CALNET Contract subject to the terms of this Agreement by executing a CALNET Contract “Authorization to Order Under State Contract,” a copy of which form(s) are referenced in Appendix B.

12.4.2 Likewise, pursuant to any applicable Tariff or Guidebook, to the extent authorized to do so in accordance with the terms of such Tariff or Guidebook, City may procure goods and Services offered under such Tariff subject to the terms of this Agreement by complying with the terms set forth in such Tariff to do so.

12.4.3 Any City department seeking to purchase Services or Equipment under this Agreement must obtain a Purchase Order authorized by the Department of Technology or the San Francisco International Airport. Contractor agrees that only DT and Airport may authorize the release of Purchase Orders under the Agreement. The City will not honor any Purchase Order unless it has been authorized by DT or the San Francisco International Airport. Failure to adhere to this requirement may result in termination of the Agreement.

12.5 Quarterly Meetings and Compensation Cap.

12.5.1 The Parties shall meet on a quarterly basis to identify the then current spend towards the compensation cap and will exercise all good faith efforts to estimate when the compensation cap may be reached based on the historical spend levels. If the compensation cap will be reached prior to the expiration of the original term, the City will work in good faith to increase the compensation cap or reduce the City’s spend levels so that the compensation cap is not exceeded. Contractor shall not be required to continue Service if the compensation cap is exceeded.

Article 13 Data and Security

13.1 Nondisclosure of Private, Proprietary or Confidential Information.

13.1.1 **Protection of Private Information.** If this Agreement requires City to disclose “Private Information” to Contractor within the meaning of San Francisco Administrative Code Chapter 12M, Contractor and subcontractor shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the Services or delivery of the goods under this Agreement. Contractor is subject to the enforcement and penalty provisions in Chapter 12M.

13.1.2 **Confidential Information.** In the performance of Services or delivery of the goods pursuant to this Agreement, Contractor may have access to City’s proprietary or Confidential Information, the disclosure of which to third parties may damage City. If City discloses proprietary or Confidential Information to Contractor, such information must be held

by Contractor in confidence and used only in performing the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary or Confidential Information.

13.1.3 Reserved. (Payment Card Industry (“PCI”) Requirements).

13.2 Reserved. (Business Associate Agreement).

13.3 Reserved. (Protected Health Information).

13.4 Management of City Data and Confidential Information

13.4.1 Use of City Data and Confidential Information. Contractor agrees to hold City’s Confidential Information received from or created on behalf of the City in strictest confidence. Contractor shall not use or disclose City’s Data or Confidential Information except as permitted or required by the Agreement or as otherwise authorized in writing by the City. Any work using, or sharing or storage of, City’s Confidential Information outside the United States is subject to prior written authorization by the City. Access to City’s Confidential Information must be strictly controlled and limited to Contractor’s staff assigned to this project on a need-to-know basis only. Contractor is provided a limited non-exclusive license to use the City Data or Confidential Information solely for performing its obligations under the Agreement and not for Contractor’s own purposes or later use. Nothing herein shall be construed to confer any license or right to the City Data or Confidential Information, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third-party. Unauthorized use of City Data or Confidential Information by Contractor, subcontractors or other third parties is prohibited. For purpose of this requirement, the phrase “unauthorized use” means the data mining or processing of data, stored or transmitted by the service, for commercial purposes, advertising or advertising-related purposes, or for any purpose other than security or service delivery analysis that is not explicitly authorized.

13.4.2 Disposition of Confidential Information. Upon termination of the Agreement or request of City, Contractor shall within forty-eight (48) hours return all Confidential Information which includes all original media. Once Contractor has received written confirmation from City that Confidential Information has been successfully transferred to City, Contractor shall within ten (10) business days purge all Confidential Information from its servers, any hosted environment Contractor has used in performance of this Agreement, work stations that were used to process the data or for production of the data, and any other work files stored by Contractor in whatever medium. Contractor shall provide City with written certification that such purge occurred within five (5) business days of the purge.

Article 14 MacBride And Signature

14.1 MacBride Principles -Northern Ireland.

The provisions of San Francisco Administrative Code §12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, Contractor confirms that Contractor has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day first mentioned above.

CITY

CONTRACTOR

Recommended by:

AT&T

DocuSigned by:

DocuSigned by:
Linda Gerull
5F172D9980A04F7...

Brandon Trotter
D486D59A7FE6400...

Linda Gerull
City Chief Information Officer
Department of Technology

Brandon Trotter
Contract Specialist BT904T

Supplier ID: 0000026442

Approved as to Form:

Dennis J. Herrera
City Attorney

By _____
William K. Sanders
Deputy City Attorney

Approved by:

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

A	AVAILABLE SERVICES
B	CALNET CONTRACT AND "AUTHORIZATION TO ORDER UNDER STATE CONTRACT"

APPENDIX A

AVAILABLE SERVICES

The Services available under this Agreement include the following:

1.) CALNET Services for Categories 15 -18 and Categories 20-30;

<https://cdt.ca.gov/services/links/>

- Category 15: Dedicated Transport
- Category 16: Long Distance
- Category 17: Toll-Free Calling
- Category 18: Legacy Telecommunications
- Category 20: MPLS Data Network
- Category 21: Standalone VoIP Services
- Category 22: Cloud Hosted VoIP Service
- Category 23: Metropolitan Area Network Ethernet
- Category 24: Flat Rate Internet Service
- Category 25: Sustained Bandwidth Internet Service
- Category 27: Standard Contact Center Services
- Category 28: Custom Contact Center
- Category 29: Converged VoIP Services
- Category 30: Broadband with Internet Service
- AT&T and City agree that Services may include future telecommunications-related services that become available during the term of the Agreement, as mutually negotiated by the parties and made available under CALNET

2.) Tariff and Guide Services: for legacy voice and data services that were previously offered by CALNET

APPENDIX B

CALNET CONTRACT AND “AUTHORIZATION TO ORDER UNDER STATE CONTRACT”

- 1.) CALNET Next Generation Contract in general can be found as of the Effective Date at <https://cdt.ca.gov/services/calnet-services>.
- 2.) The California Department of Technology and AT&T entered into that certain CALNET Next Generation Services Contracts for Categories 15 -18 and Categories 20-30 (the “CALNET Contract”) available as of the Effective Date at <https://cdt.ca.gov/services/calnet-services>.
- 3.) CALNET Contract Documents and Amendments, Categories 15, 16, 17 and 18 can be found as of the Effective Date at: <https://cdt.ca.gov/services/links>.
- 4.) CALNET Contract Documents and Amendments, Categories 20 to 30 can be found as of the Effective Date at: <https://cdt.ca.gov/services/links>.
- 5.) Authorization to Order under State Contract Category 15-18 can be found as of the Effective Date at: <https://cdt.ca.gov/services/calnet-services/calnet-ordering>.
- 6.) Authorization to Order under State Contract : Categories 20 to 30 can be found as of the Effective Date at: <https://cdt.ca.gov/services/calnet-services/calnet-ordering>.

A Report for San Francisco Department of Technology

Network Rates Evaluation

11 June 2021

Engagement: 330071272

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Executive Summary

The City and County of San Francisco Dept of Technology (CCSF DT) maintains a citywide telecom infrastructure contract for legacy voice and data transport services with AT&T Corp., leveraging contract rates from the State of CA's Integrated Telecommunications Network agreements known as the CALNET program.

CCSF DT wants to conduct due diligence on the published rates of AT&T and its competitors in the CALNET NextGen program.

To satisfy CCSF's request, Gartner has performed telecom rate evaluation focused on the following questions.

- How does the contract pricing under the State of CA's CALNET Next Generation Contracts compare to market price ranges?
- Should CCSF 1.) to bid out the City's book of business for telecom infrastructure services (both legacy telephone services + data transport services) Or 2.) leverage contract rates for telecommunication services under the CALNET contracts, migrating from CALNET 3 to CALNET Next Generation contract rates?
- What would be the pros and cons of each solution?
- Which rates and vendors offer the most price advantage?
- What areas should CCSF DT negotiate with AT&T to lower rates further?

Competitiveness

Gartner evaluated the CCSF DT Telecommunications contract spending of approximately \$896,000 monthly, based on April 2021 invoices.

Gartner scope of analysis included the following:

CCSF DT circuits for CALNET-3 rates:

- Sub-Category 1. 1: Dedicated Services
- Sub-Category 1.2 : MPLS
- Sub-Category 3: Metropolitan Area Network
- Sub-Category 5: Managed Internet Services
- Sub-Category 6.1 Hosted IVR/ACD Services

items evaluated as best effort:

- Sub-Category 1.4: Long Distance
- Sub-Category 1.5 : Toll Free
- Sub-Category 1.6 : Legacy Telecommunications

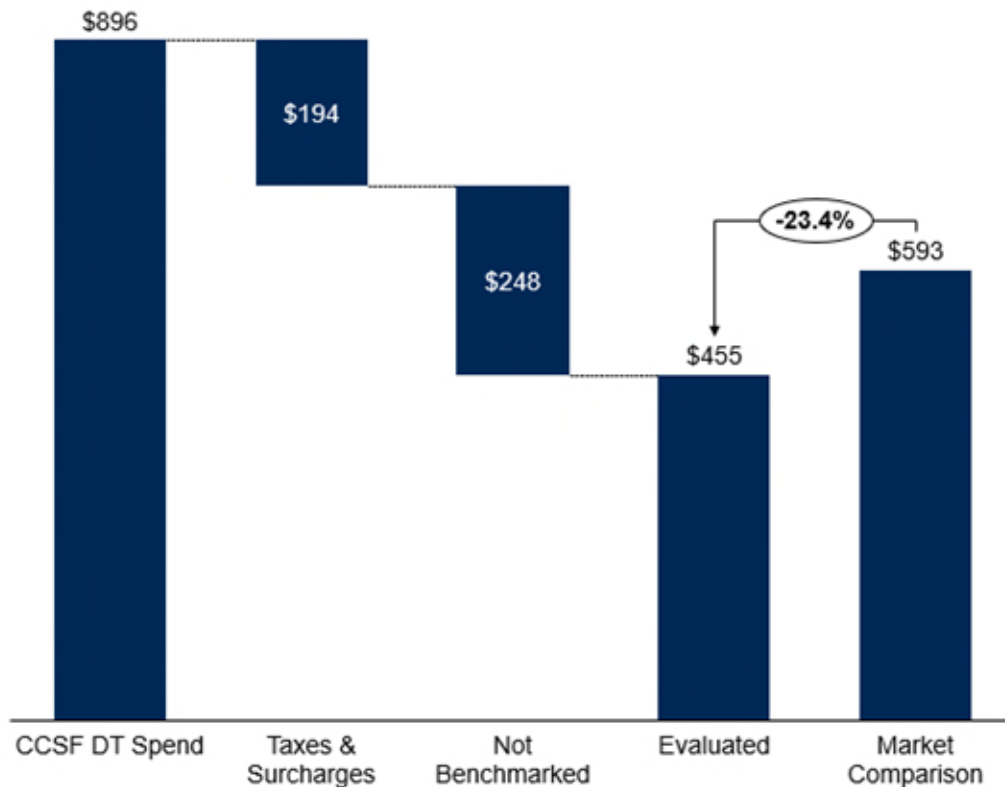
Gartner compared the invoice data to market rates in our Network Price Benchmark Database, which contains current market pricing for telecommunication voice and data circuits. The database was augmented with publicly available State and Local contracts as needed to support the analysis.

Our analysis focused on three market segments: 1) State and Local, 2) CALNET and 3) Commercial rates. The comparisons provided in the Executive Summary are based on State and Local contract pricing. Additional detail on CALNET and Commercial rates is provided in the Service Comparison section of this report.

The analysis benchmarked 66% of the CCSF DT Telecommunications spend contract excluding Taxes and Surcharges (\$194K). The Not Benchmarked (\$248K) component accounts for approximately 30% of the services and include elements, primarily Telephony, that were not available within the Gartner database.

Our analysis indicated CCSF DT Telecommunications spending is approximately 23% below competitive market rates.

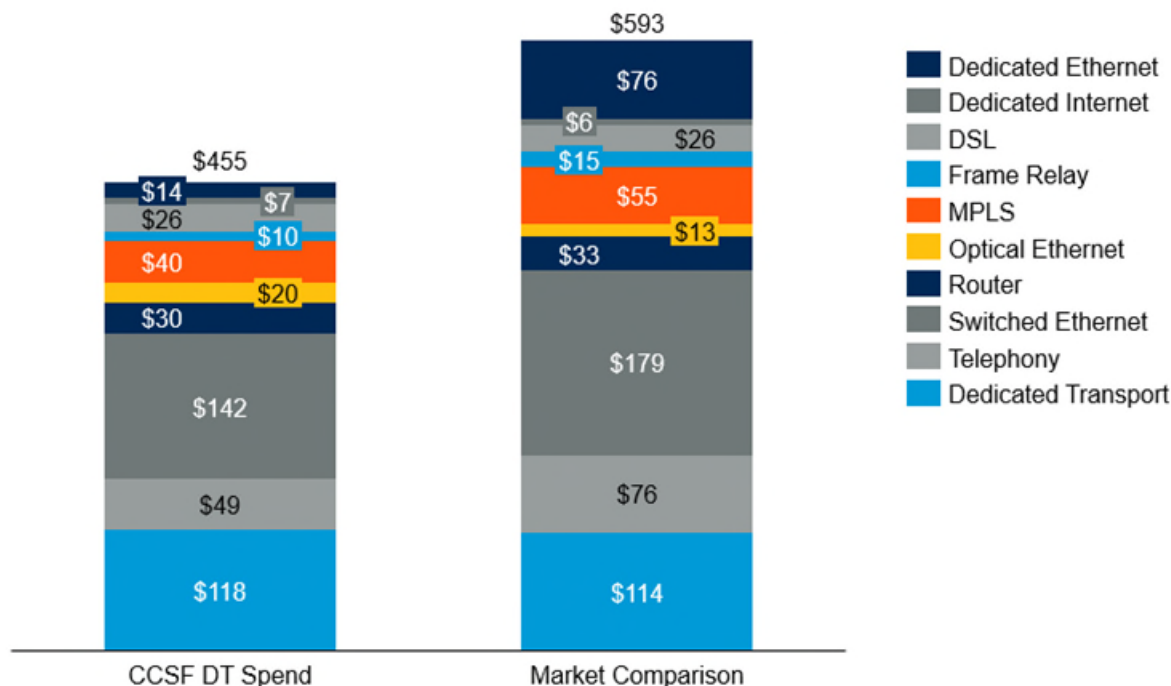
Figure 1. CCSF DT Spending Compared to Market Rates (\$K Monthly)



Opportunities to Align to Market Rates

Gartner analysis evaluated unit rates for individual telecommunications technologies. The following chart depicts CCSF DT spending vs market for each technology.

Figure 2. CCSF DT Spending Compared to Market Rates by Technology (\$K Monthly)



Opportunity for Cost Improvement

Optical Ethernet and Dedicated Transport (DS0, DS1, DS3, ISDN) represent approximately 20% of the CCSF DT Telecommunications spend and are approximately 8% above competitive market prices.

Conclusion

Gartner evaluated market competitiveness and total costs of sourcing. Current Prices for current CCSF DT requirements are below market (23%) and competitively aligned with CALNET 4 pricing. Opportunities exist to optimize pricing with the current agreement and to modernize services to leverage newer technologies, which may provide better services at a comparable cost. Gartner believes CCSF DT can achieve optimum price and service alignment by leveraging contract rates for telecommunication services under the CALNET contracts

Should CCSF DT desire to recompetete telecommunications services in an open market procurement, CCSF DT should consider increased market rates for services and the Total cost of Sourcing of \$2.4M to \$5.3M in one-time costs (further detail enumerated in Total Cost of Sourcing Considerations Section below).

Gartner Methodology

Gartner uses a two-phase approach to perform the Network Analysis. This approach is our standard and robust methodology that has been used consistently and successfully across all contract price benchmarks.

In Phase 1 comparative contracts are identified based on the size and scope of the CCSF – DT requirements. In this analysis, three peer groups were considered: State & Local contracts, CALNET 4, and commercial contracts.

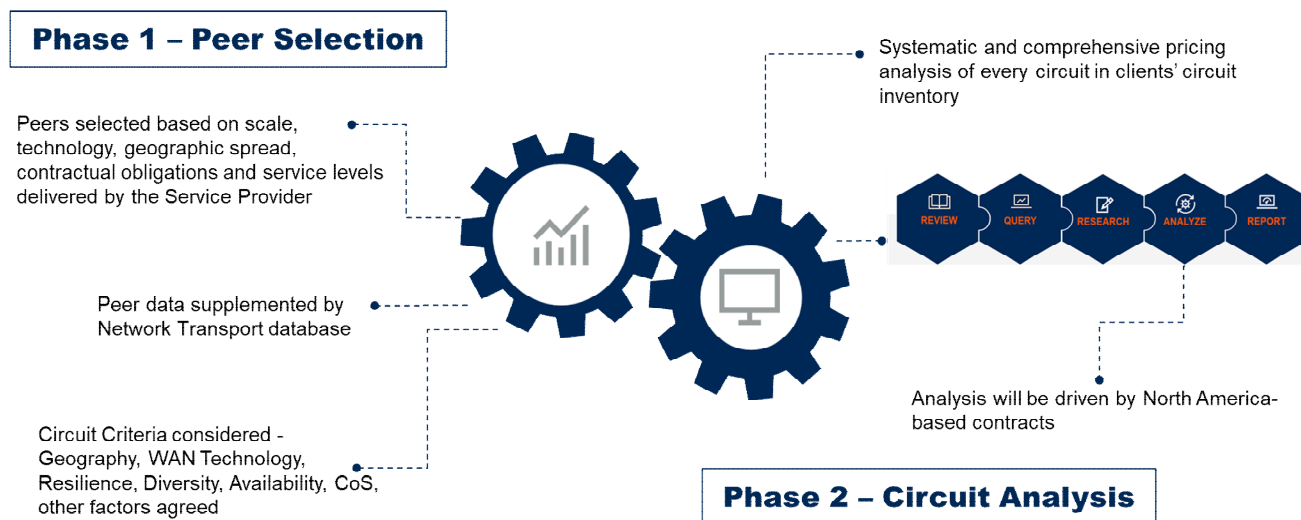
In Phase 2 of the process Gartner developed an inventory of CCSF DT voice and data services currently procured under the CALNET3 contract and compared these services to available contract pricing in the peer groups.

The peer group of State and Local contracts is the primary peer price comparisons for the analysis. To ensure accurate depiction of the State and Local market for these services Gartner leveraged the following contract characteristics:

- Current contract pricing during the previous 12 months
- State and Local contracts that supported similar organizational size
- Minimum of four (4) contract rates for each circuit rate

Our analysis further evaluates the additional internal sourcing and provider costs required to achieve the operational state for the environment. This component provides a “Total cost of Sourcing” view from service initiation to operational state.

Figure 3. Gartner Network Price Benchmark Methodology

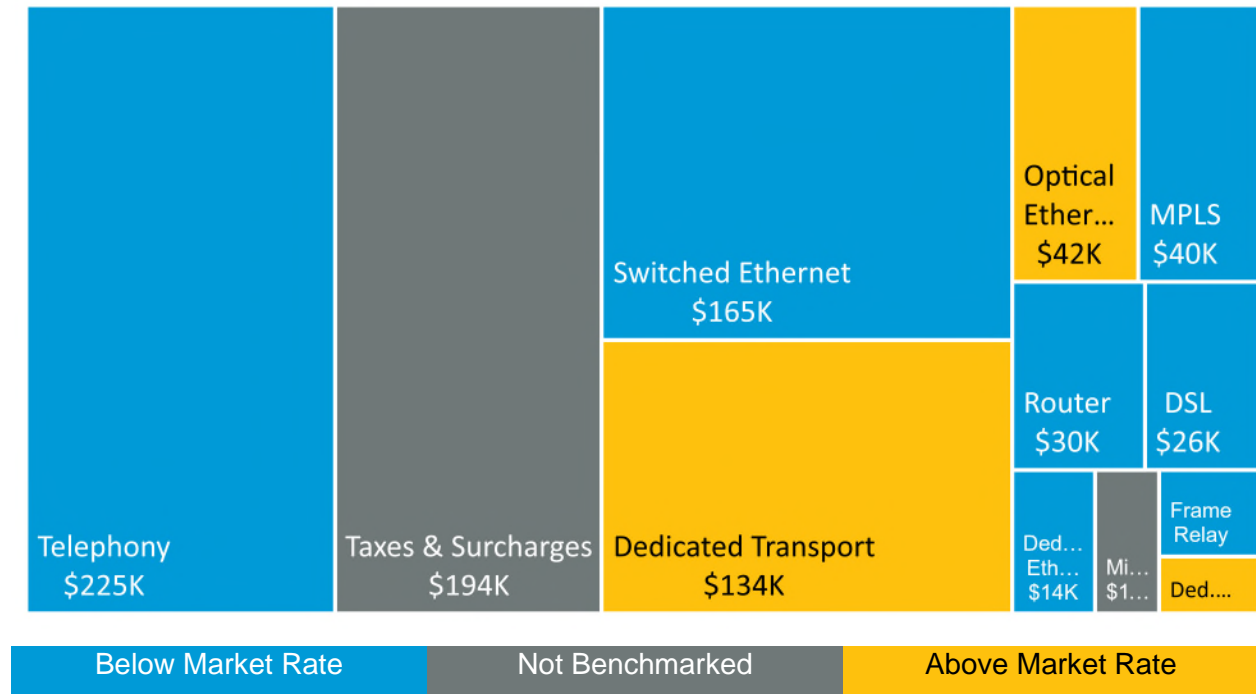


Telecommunications Contract Rate Comparisons

State and Local Contract Rates

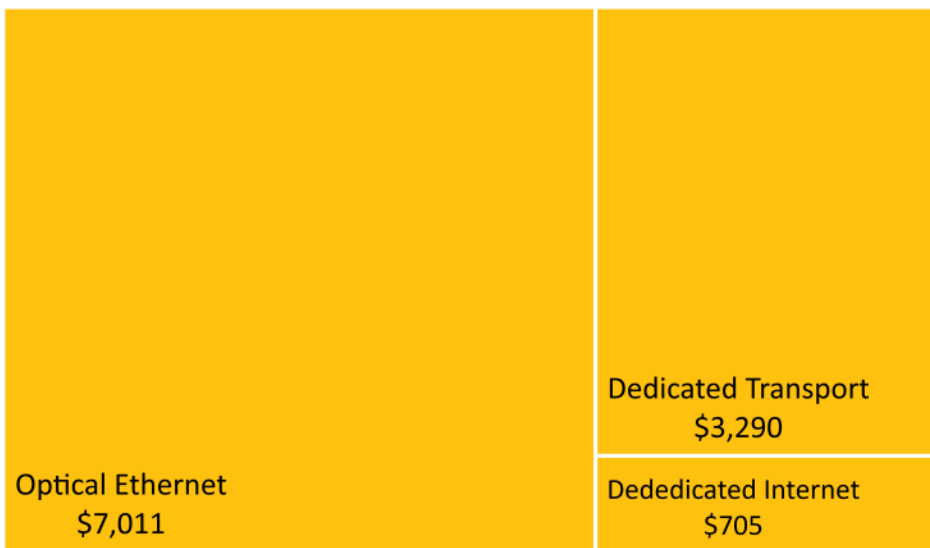
CCSF DT total Monthly Charges by network technology are depicted below

Figure 4. CCSF DT Total Monthly Spending by Technology with Variance Overlay



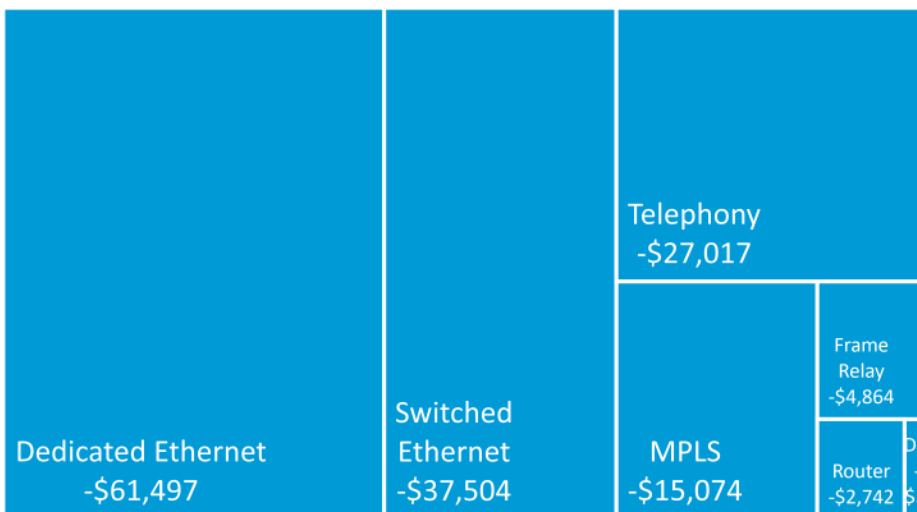
The following areas are Above Market rates, which represent \$11K of potential savings.

Figure 5. CCSF DT Spending Technologies Above Market



The following areas are Below Market rates, which represent \$149K variance.

Figure 6. CCSF DT Spending Technologies Below Market



Dedicated and Switched Ethernet represent the largest variance from market rates. Dedicated Ethernet variance is primarily driven by large 10G circuit pricing. Switched Ethernet pricing variance is primarily driven by 1G circuit pricing which is offset by 100M circuits which are 15% above the median market rate.

The following table summarizes the spending and variances by technology for CCSF DT contract when compared to other State and Local Contracts.

Figure 7. CCSF DT Spending versus Market Rates

Technology	CCSF DT		Market Rates	Variance from Market	
	Monthly Spend	Evaluated Spend		%	Monthly \$
Dedicated Ethernet	\$14K	\$14K	\$76K	-81%	-\$61K
Dedicated Internet	\$7K	\$7K	\$6K	11%	\$1K
DSL	\$26K	\$26K	\$26K	-3%	-\$1K
Frame Relay	\$10K	\$10K	\$15K	-33%	-\$5K
Mileage	\$11K	\$0K	\$0K	0%	\$0K
MPLS	\$40K	\$40K	\$55K	-27%	-\$15K
Optical Ethernet	\$42K	\$20K	\$13K	55%	\$7K
Router	\$30K	\$30K	\$33K	-8%	-\$3K
Switched Ethernet	\$165K	\$142K	\$179K	-21%	-\$38K
Telephony	\$225K	\$49K	\$76K	-36%	-\$27K
Taxes & Surcharges	\$194K	\$0K	\$0K	0%	\$0K
Dedicated Transport	\$134K	\$118K	\$114K	3%	\$3K
Total	\$896K	\$455K	\$593K	-23%	-\$138K

CALNET4 Contract rates

Gartner compared current CCSF DT rates (April 2021) to CALNET4. The analysis focused on Dedicated Ethernet, MPLS, Switched Ethernet and Dedicated Transport. Overall, the current CCSF DT rates are aligned with CALNET4. The table below represents the comparisons.

Figure 8. CCSF DT Spending Versus CALNET4 Rates

Technology	CCSF DT		Variance
	Monthly Spend	CALNET4	
Dedicated Ethernet	\$13.8K	\$13.8K	0.0%
MPLS	\$10.5K	\$10.5K	0.0%
Switched Ethernet	\$110.1K	\$109.2K	0.8%
Dedicated Transport	\$95.3K	\$95.2K	0.1%

Commercial Contract rates

Gartner considered Commercial Contract rates in its evaluation and found the rates to be higher than State and Local Contracts. Based on CCSF DT's position against the State and Local peer group, additional Commercial contract analysis was not performed.



Total Cost of Sourcing Considerations



Framework and Analysis

Gartner leverages a Total Cost of Sourcing framework that evaluates key variables which impact an organization’s cost to move services to a new provider and the costs of providers to support the pre-operations requirements. Our framework establishes guidance as a percentage of the first-year contract value. The estimates are based on Gartner experience and research.

Figure 9. Total Cost of Sourcing Estimate

Annual CCSF- DT Contract Value	\$10,757K	
Gartner Range	Low	High
Team	2%	5%
Transaction	5%	7%
Transition	10%	20%
Transfer	0%	5%
Transformation	0%	5%
Contingency	5%	7%
Potential costs range	\$2,367K	\$5,271K

Definitions

Team Costs

incremental on-going internal costs required to manage Supplier(s) and internal stakeholders

Transaction Costs

One-time costs to execute the sourcing strategy

Transition Costs

One-time costs needed to conduct knowledge transfer and move existing service to the new vendor

Termination Costs

One-time cost to exit existing contracts including potential circuit termination

Transfer Costs

One-time costs regarding staff, contracts and assets (if any)

Transformation Costs

One-time costs and investments required to automate operations

Contingency Costs

Contingency Costs – pool for unknown activities and risk mitigation

Technology Considerations

During the evaluation Gartner compared pricing for the services as currently procured. Our analysis identified several legacy technologies that CCSF DT should consider or continue to exit from the network environment. Many of these services have lower cost with increase service features or capabilities available from Network providers.

Voice Telephony

Pricing for CCSF DT Centrex and Business access lines are competitively priced. Service Features (e.g., Call Waiting, Call Forwarding, Unpublished Number) were not evaluated by Gartner and Represent approximately \$50K of monthly expenses. CCSF DT should continue migration to VoIP/SIP services to further reduce voice telephony costs.

Data Circuits

CCSF DT currently utilizes Dedicated Transport (DS0, DS1, DS3, ISDN), Frame Relay and DSL. Many of these circuits (approximately 1,400) are below 3 Mbps port speed. Competing technologies, such as Dedicated Internet and Switched Ethernet, are likely more cost-efficient solutions offering greater port speed. Additionally, as CCSF DT consider migration to CALNET4, it is likely the providers will offer Flat Rate Internet with a minimum of 5 Mbps.

**Any questions regarding this Report
should be addressed to:**

Ralph Baxter
Expert Partner
Gartner, Inc.
1201 Wilson Blvd.
Arlington, VA 22209

Telephone: +1 703 387 5636
Email: Ralph.Baxter@gartner.com

**This Report was prepared for
San Francisco Department of Technology:**

Hao Xie
Strategic Sourcing Manager
San Francisco Department of Technology
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San Francisco CA 94103-0948

Telephone: +1 628 652 5199
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San Francisco Ethics Commission

25 Van Ness Avenue, Suite 220, San Francisco, CA 94102

Phone: 415.252.3100 . Fax: 415.252.3112

ethics.commission@sfgov.org . www.sfethics.org

Received On:

File #: 211089

Bid/RFP #:

Notification of Contract Approval

SFEC Form 126(f)4

(S.F. Campaign and Governmental Conduct Code § 1.126(f)4)

A Public Document

Each City elective officer who approves a contract that has a total anticipated or actual value of \$100,000 or more must file this form with the Ethics Commission within five business days of approval by: (a) the City elective officer, (b) any board on which the City elective officer serves, or (c) the board of any state agency on which an appointee of the City elective officer serves. For more information, see: <https://sfethics.org/compliance/city-officers/contract-approval-city-officers>

1. FILING INFORMATION

TYPE OF FILING	DATE OF ORIGINAL FILING (for amendment only)
Original	
AMENDMENT DESCRIPTION – Explain reason for amendment	

2. CITY ELECTIVE OFFICE OR BOARD

OFFICE OR BOARD	NAME OF CITY ELECTIVE OFFICER
Board of Supervisors	Members

3. FILER'S CONTACT

NAME OF FILER'S CONTACT	TELEPHONE NUMBER
Angela Calvillo	415-554-5184
FULL DEPARTMENT NAME	EMAIL
office of the clerk of the Board	Board.of.Supervisors@sfgov.org

4. CONTRACTING DEPARTMENT CONTACT

NAME OF DEPARTMENTAL CONTACT	DEPARTMENT CONTACT TELEPHONE NUMBER
Fan-wa Wong	628-652-5251
FULL DEPARTMENT NAME	DEPARTMENT CONTACT EMAIL
TIS Dept of Technology	fan-wa.wong@sfgov.org

5. CONTRACTOR	
NAME OF CONTRACTOR AT&T Corporation	TELEPHONE NUMBER 415-794-4422
STREET ADDRESS (including City, State and Zip Code) One AT&T Way, Bedminster, NJ 07921	EMAIL heather.petersen@att.com

6. CONTRACT		
DATE CONTRACT WAS APPROVED BY THE CITY ELECTIVE OFFICER(S)	ORIGINAL BID/RFP NUMBER	FILE NUMBER (If applicable) 211089
DESCRIPTION OF AMOUNT OF CONTRACT \$80,000,000		
NATURE OF THE CONTRACT (Please describe) DT maintains a citywide infrastructure and telecommunications agreement (MA) with AT&T for the provision of voice and data network services. This master agreement has always leveraged the favorable volume pricing from the State of California's Integrated Telecommunications Network Agreement (known as the CALNET program). The Department of Technology (DT) wishes to continue the purchase of wired telecom services from AT&T under the State of California's CALNET Next Generation Contracts. Term: 1/1/2022- 6/30/2028 a base term of 6.5 years and \$80,000,000.		

7. COMMENTS
Proposed New CALNET Agreement and Resolution 1.) Supplier: AT&T 2.) Term: 1/1/2022-6/30/2028 3.) Not-to-Exceed Amount: \$80,000,000.00 4.) Purpose: to maintain the citywide voice and data network services at a discount rate.

8. CONTRACT APPROVAL	
This contract was approved by:	
<input type="checkbox"/>	THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM
<input checked="" type="checkbox"/>	A BOARD ON WHICH THE CITY ELECTIVE OFFICER(S) SERVES Board of Supervisors
<input type="checkbox"/>	THE BOARD OF A STATE AGENCY ON WHICH AN APPOINTEE OF THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM SITS

9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor's board of directors; (B) the contractor's principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
1	Dial	Debra L	Board of Directors
2	Hatch	G. Troy	Board of Directors
3	Chow	Anne	CEO
4	Dumas	Jeston B	CFO
5	AT&T Inc	N/A	Shareholder
6			
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9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor’s board of directors; (B) the contractor’s principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
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9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor’s board of directors; (B) the contractor’s principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
39			
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Check this box if you need to include additional names. Please submit a separate form with complete information. Select “Supplemental” for filing type.

10. VERIFICATION

I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information I have provided here is true and complete.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

<p>SIGNATURE OF CITY ELECTIVE OFFICER OR BOARD SECRETARY OR CLERK</p> <p>BOS Clerk of the Board</p>	<p>DATE SIGNED</p>
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City & County of San Francisco
London N. Breed, Mayor



Office of the City Administrator
Carmen Chu, City Administrator
Linda J. Gerull, CIO & Executive Director
Department of Technology

Date: October 12, 2021

To: Clerk of the Board of Supervisors

From: Linda Gerull
City CIO, Executive Director
Department of Technology

**Re: Approval of new Master Agreement with AT&T for Voice and Data Network and Telecommunication Services
Supplier ID: 0000026442; Contract ID: 1000023340**

The Department of Technology (DT) manages a citywide master agreement (MA) with AT&T for the provision of wired voice and data network and telecommunication services. The City currently spends an average of \$11.6 million dollars per year under this citywide MA. The proposed new master agreement shall be for a period of 6.5 years with an option to renew for an additional 5 years, with an initial not-to-exceed amount of \$80,000,000. The City has been purchasing such network and telecommunication services from AT&T under a MA since 1990.

In order to obtain the most competitive pricing, the City has been purchasing these services off the competitively bid contract between State of California and AT&T since 2001, leveraging the significantly discounted rates from the State of California's Integrated Telecommunications Network agreements known as the CALNET contracts. These CALNET contracts are available exclusively to local government entities, school districts and State agencies. Every eight to ten years or so, the State of California would conduct a new round of public solicitations and award a new set of CALNET contracts. CALNET-Next Generation is the most recent set of CALNET contracts, replacing CALNET-3.

DT wishes to continue the purchase of wired voice and data network services from AT&T under the CALNET-Next Generation contract. In addition, our existing contract with AT&T covers a very small number of legacy services, which are no longer available under CALNET. DT has sought, and OCA has approved a sole source waiver to carry forward these legacy services to the proposed new contract.

Gartner Analysis of the CALNET Next Generation Contract Rates: Cost Savings

In order to ascertain that the CALNET-Next Generation contract rates offer the City the best pricing, DT retained the services of Gartner, a leading research and consulting firm in telecommunication and IT industry, to conduct a benchmarking analysis of AT&T's CALNET-Next Generation rates. Gartner's key findings are as follow:

1. The CALNET-Next Generation rates are similar to the CALNET-3 rates currently paid by the City. The CALNET-3 contracts, however, are coming to end of life on December 31, 2021
2. CALNET-Next Generation rates are 23% below than State and local government market rates in the United States.
3. It would cost the City \$2.4-5.3M to conduct its own solicitation or switch to a different vendor, and it is very unlikely that solicitation would lead to lower rates.

Gartner concludes that it is to the City's best interest to continue to leverage the contracts rates for telecommunication services under the State of California CALNET-Next Generation contracts.

Other Advantages of the State of California CALNET Contracts:

In addition to the cost savings, there are other benefits to continuing to leverage the State CALNET contracts with AT&T:

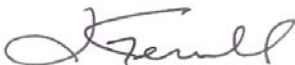
- 1.) Month to month term – Departments can add and delete services as needed without financial penalty. For example, during this year the City opened several pop-up clinics due to COVID that only needed temporary services. The month-to-month term available under CALNET provides the City with the flexibility to establish and disconnect service without any penalty.
- 2.) No commitment of spend, quantity or minimum purchase of any kind
- 3.) No early termination charges
- 4.) Includes "Most Favored Nation" Status of State clause (specific to CALNET)
AT&T agrees that no other similarly situated public customer of the Contractor or any of its Affiliates will receive rates for a substantially similar Service, or suite of Services, offered under substantially similar terms and conditions that are lower than the statewide rates provided in CALNET contract when the volume of business from the other public customer is equal to or less than the volume of the business delivered under this Contract

In conclusion, DT recommends that the City:

1. Continue to rely upon the competitive solicitation process of the State of California and leverage the CALNET-Next Generation rates offered by AT&T.
2. Continue to purchase network and telecommunication services from AT&T by way of a new master agreement with AT&T for a base term of 6.5 years, from January 1, 2022 to June, 30, 2028.

Thank you for your consideration.

Sincerely,



Linda Gerull
City CIO | Executive Director
Department of Technology