

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
American Messaging Services LLC

This Agreement is made this 1st day of June, 2013, in the City and County of San Francisco, State of California, by and between: American Messaging Services LLC, 1720 Lakepointe Dr. Suite 100, Lewisville, TX 75057, hereinafter referred to as "Contractor," and the City and County of San Francisco, a municipal corporation, hereinafter referred to as "City," acting by and through its Director of the Office of Contract Administration or the Director's designated agent, hereinafter referred to as "Purchasing."

Recitals

WHEREAS, the Department of Technology ("DT") wishes to procure Paging Equipment and Services necessary to meet the current and future paging needs for the City and County of San Francisco (CCSF or City); and,

WHEREAS, a Request for Proposal ("RFP") was issued on March 13, 2013, and City selected Contractor as the highest qualified scorer pursuant to the RFP; and

WHEREAS, Contractor represents and warrants that it is qualified to perform the services required by City as set forth under this Contract; and,

Now, THEREFORE, the parties agree as follows:

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 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. 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.

2. **Term of the Agreement.** Subject to Section 1, the term of this Agreement shall be from July 1, 2013 to June 30, 2016, with one mutually revocable one-year extension.
3. **Effective Date of Agreement.** This Agreement shall become effective when the Controller has certified to the availability of funds and Contractor has been notified in writing.
4. **Services Contractor Agrees to Perform.** The Contractor agrees to perform the services provided for in Appendix A, "Description of Services," attached hereto and incorporated by reference as though fully set forth herein.
5. **Compensation.** Compensation shall be made in monthly payments on or before the last day of each month for work, as set forth in Section 4 of this Agreement, that the Chief Information Officer, in his or her sole discretion, concludes has been performed as of the last day of the immediately preceding month. In no event shall the amount of this Agreement exceed Three Hundred Thousand Dollars "\$300,000". The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by Department of Technology as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement. In no event shall City be liable for interest or late charges for any late payments.
6. **Guaranteed Maximum Costs.** The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by laws governing emergency procedures, officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Commodities or Services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law. Officers and employees of the City are not authorized to offer or promise, nor is the City required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.
7. **Payment; Invoice Format.** Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller, and must include a unique invoice number. All amounts paid by City to Contractor shall be subject to audit by City. Payment shall be made by City to Contractor at the address specified in the section entitled "Notices to the Parties."
8. **Submitting False Claims; Monetary Penalties.** Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. The text of Section 21.35, along with the entire San Francisco Administrative Code is available on the web at <http://www.municode.com/Library/clientCodePage.aspx?clientID=4201>. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (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.

9. Disallowance. Left Blank by Agreement of the Parties

10. Taxes

a. Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon or as a result of this Agreement, or the services delivered pursuant hereto, shall be the obligation of Contractor.

b. Contractor recognizes and understands 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:

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;

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.

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.

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.

11. Payment Does Not Imply Acceptance of Work. The granting of any payment 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.

12. Qualified Personnel. Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor. Contractor will comply with City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall commit adequate resources to complete the project within the project schedule specified in this Agreement.

13. Responsibility for Equipment. City shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to Contractor by City.

14. Independent Contractor; Payment of Taxes and Other Expenses

a. **Independent Contractor.** 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 performs the services and work requested by City under this Agreement. 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 services and work, 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.

b. **Payment of 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 the preceding two paragraphs shall be solely for 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, should any court, arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor agrees to a reduction in City's financial liability so that City's total expenses under this Agreement are not

greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

15. Insurance

a. 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:

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

2) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

3) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

4) Professional liability insurance, applicable to Contractor's profession, with limits not less than \$1,000,000 each claim with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement.

b. Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:

1) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

2) 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 insurance applies separately to each insured against whom claim is made or suit is brought.

c. Regarding Workers' Compensation, Contractor hereby agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy 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.

d. All policies shall provide thirty days' advance written notice to the City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the City address in the "Notices to the Parties" section.

e. 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, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

f. 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.

g. 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.

h. Before commencing any operations under this Agreement, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII 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. Failure to maintain insurance shall constitute a material breach of this Agreement.

i. Any of the terms of conditions of this Section 15 may be waived by the City's Risk Manager in writing, and attached to this Agreement as Appendix C. Such waiver is fully incorporated herein. The waiver shall waive only the requirements that are expressly identified and waived, and under such terms and conditions as stated in the waiver.

16. Indemnification. Contractor shall indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor or loss of or damage to property, arising 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 in effect on or validly retroactive to the date of this Agreement, 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. 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. 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 in consequence of the use by City, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

17. Incidental and Consequential Damages. Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

18. Liability of City. CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 5 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 IN CONNECTION WITH THIS AGREEMENT.

19. Liquidated Damages. Left Blank by Agreement of the Parties. .

20. Default; Remedies

a. Each of the following shall constitute an event of default ("Event of Default") under this Agreement:

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

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| 8. Submitting False Claims; Monetary Penalties. | 37. Drug-free workplace policy |
| 10. Taxes | 53. Compliance with laws |
| 15. Insurance | 55. Supervision of minors |
| 24. Proprietary or confidential information of City | 57. Protection of private information |
| 30. Assignment | 58. Graffiti removal |

2) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, and such default continues for a period of ten days after written notice thereof from City to Contractor.

3) Contractor (a) is generally not paying its debts as they become due, (b) 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, (c) makes an assignment for the benefit of its creditors, (d) 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 (e) takes action for the purpose of any of the foregoing.

4) A court or government authority enters an order (a) 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, (b) 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 (c) ordering the dissolution, winding-up or liquidation of Contractor.

b. On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, City shall have the

right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor all damages, losses, costs or expenses incurred by City as a result of such Event of Default and any liquidated damages due from Contractor pursuant to the terms of this Agreement or any other agreement.

c. 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.

21. Termination for Convenience

a. 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.

b. Upon receipt of the notice, 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 shall include, without limitation:

- 1) Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by City.
- 2) Not placing any further orders or subcontracts for materials, services, equipment or other items.
- 3) Terminating all existing orders and subcontracts.
- 4) 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.
- 5) Subject to City's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.
- 6) Completing performance of any services or work that City designates to be completed prior to the date of termination specified by City.
- 7) 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.

c. 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:

- 1) The reasonable cost to Contractor, without profit, for all services and other work City directed Contractor to perform prior to the specified termination date, for which

services or work 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 or other work. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.

2) A reasonable allowance for profit on the cost of the services and other work described in the immediately preceding subsection (1), provided that Contractor can establish, to the satisfaction of City, that Contractor would have made a profit had all services and other work under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.

3) 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.

4) 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.

d. 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 enumerated and described in the immediately preceding subsection (c). Such non-recoverable costs include, but are not limited to, anticipated profits on 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 such subsection (c).

e. In arriving at the amount due to Contractor under this Section, City may deduct: (1) all payments previously made by City for work or other services covered by Contractor's final invoice; (2) any claim which City may have against Contractor in connection with this Agreement; (3) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (d); and (4) in instances in which, in the opinion of the City, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced amount and City's estimate of the reasonable cost of performing the invoiced services or other work in compliance with the requirements of this Agreement.

f. City's payment obligation under this Section shall survive termination of this Agreement.

22. Rights and Duties upon Termination or Expiration

This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement:

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| 8. Submitting false claims | 24. Proprietary or confidential information of City |
| 9. Disallowance | 26. Ownership of Results |
| 10. Taxes | 27. Works for Hire |
| 11. Payment does not imply acceptance of work | 28. Audit and Inspection of Records |
| 13. Responsibility for equipment | 48. Modification of Agreement. |

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| 14. Independent Contractor; Payment of Taxes and Other Expenses | 49. Administrative Remedy for Agreement Interpretation. |
| 15. Insurance | 50. Agreement Made in California; Venue |
| 16. Indemnification | 51. Construction |
| 17. Incidental and Consequential Damages | 52. Entire Agreement |
| 18. Liability of City | 56. Severability |
| | 57. Protection of private information |

Subject to the immediately preceding sentence, upon termination of this Agreement prior to expiration of the term specified in Section 2, this Agreement shall terminate and 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. This subsection shall survive termination of this Agreement.

23. Conflict of Interest. Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

24. Proprietary or Confidential Information of City. Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Contractor agrees that all information disclosed by City to Contractor shall be held in confidence and used only in performance of 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 data.

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

To City: Michael Magliulo
 Department of Technology
 One South Van Ness Ave., 2nd Floor
 San Francisco, CA 94103
 Email: Michael.magliulo@sfgov.org

To Contractor: Michelle Olds
 1720 Lakepointe Drive, Suite 100
 Lewisville, Texas 75057

Any notice of default must be sent by registered mail.

26. Ownership of Results. Any interest of Contractor or its Subcontractors, in drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors in connection with services to be performed under this Agreement, shall become the property of and will be transmitted to City. However, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

27. Works for Hire. If, in connection with services performed under this Agreement, Contractor or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the City. If it is ever determined that any works created by Contractor or its subcontractors under this Agreement are not works for hire under U.S. law, Contractor hereby assigns all copyrights to such works to the City, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of the City, Contractor may retain and use copies of such works for reference and as documentation of its experience and capabilities.

28. 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 work under this Agreement. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon City by this Section.

29. Subcontracting. Contractor is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is first approved by City in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

30. Assignment. The services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Contractor unless first approved by City by written instrument executed and approved in the same manner as this Agreement.

31. 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.

32. Earned Income Credit (EIC) Forms. Administrative Code section 120 requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these

forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found. Contractor shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty days following the date on which this Agreement becomes effective (unless Contractor has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by Contractor; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement. Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Contractor of the terms of this Agreement. If, within thirty days after Contractor receives written notice of such a breach, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty days, Contractor fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Agreement or under applicable law. Any Subcontract entered into by Contractor shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.

33. Local Business Enterprise Utilization; Liquidated Damages

a. **The LBE Ordinance.** Contractor, shall comply with all the requirements of the Local Business Enterprise and Non-Discrimination in Contracting Ordinance set forth in Chapter 14B of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the "LBE Ordinance"), provided such amendments do not materially increase Contractor's obligations or liabilities, or materially diminish Contractor's rights, under this Agreement. Such provisions of the LBE Ordinance are incorporated by reference and made a part of this Agreement as though fully set forth in this section. Contractor's willful failure to comply with any applicable provisions of the LBE Ordinance is a material breach of Contractor's obligations under this Agreement and shall entitle City, subject to any applicable notice and cure provisions set forth in this Agreement, to exercise any of the remedies provided for under this Agreement, under the LBE Ordinance or otherwise available at law or in equity, which remedies shall be cumulative unless this Agreement expressly provides that any remedy is exclusive. In addition, Contractor shall comply fully with all other applicable local, state and federal laws prohibiting discrimination and requiring equal opportunity in contracting, including subcontracting.

b. Compliance and Enforcement

1) . If Contractor willfully fails to comply with any of the provisions of the LBE Ordinance, the rules and regulations implementing the LBE Ordinance, or the provisions of this Agreement pertaining to LBE participation, Contractor shall be liable for liquidated damages in an amount equal to Contractor's net profit on this Agreement, or 10% of the total amount of this Agreement, or \$1,000, whichever is greatest. The Director of the City's Human Rights Commission or any other public official authorized to enforce the LBE Ordinance (separately and collectively, the "Director of HRC") may also impose other sanctions against Contractor authorized in the LBE Ordinance, including declaring the Contractor to be irresponsible and ineligible to contract with the City for a period of up to five years or revocation of the Contractor's LBE certification. The Director of HRC will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to

Administrative Code §14B.17. By entering into this Agreement, Contractor acknowledges and agrees that any liquidated damages assessed by the Director of the HRC shall be payable to City upon demand. Contractor further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to Contractor on any contract with City. Contractor agrees to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination or expiration of this Agreement, and shall make such records available for audit and inspection by the Director of HRC or the Controller upon request.

34. Nondiscrimination; Penalties

a. **Contractor Shall Not Discriminate.** In the performance of this Agreement, Contractor agrees not to discriminate against any employee, City and County employee working with such contractor or subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

b. **Subcontracts.** Contractor shall incorporate by reference in all subcontracts the provisions of §§12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from Purchasing) and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

c. **Nondiscrimination in Benefits.** 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 bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in §12B.2(b) of the San Francisco Administrative Code.

d. **Condition to Contract.** As a condition to this Agreement, Contractor shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

e. **Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to §§12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of \$50 for each person for

each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

35. MacBride Principles—Northern Ireland. Pursuant to San Francisco Administrative Code §12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Contractor acknowledges and agrees that he or she has read and understood this section.

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

37. Drug-Free Workplace Policy. Contractor acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. Contractor agrees that any violation of this prohibition by Contractor, its employees, agents or assigns will be deemed a material breach of this Agreement.

38. Resource Conservation. Chapter 5 of the San Francisco Environment Code (“Resource Conservation”) is incorporated herein by reference. Failure by Contractor to comply with any of the applicable requirements of Chapter 5 will be deemed a material breach of contract.

39. Compliance with Americans with Disabilities Act. Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

40. Sunshine Ordinance. In accordance with San Francisco Administrative Code §67.24(e), contracts, contractors’ bids, responses to solicitations and all other records of communications between City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization’s net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

41. Public Access to Meetings and Records. If the Contractor receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, Contractor shall comply with and be bound by all the applicable provisions of that Chapter. By executing

this Agreement, the Contractor agrees to open its meetings and records to the public in the manner set forth in §§12L.4 and 12L.5 of the Administrative Code. Contractor further agrees to make-good faith efforts to promote community membership on its Board of Directors in the manner set forth in §12L.6 of the Administrative Code. The Contractor acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. The Contractor further acknowledges that such material breach of the Agreement shall be grounds for the City to terminate and/or not renew the Agreement, partially or in its entirety.

42. Limitations on Contributions. Through execution of this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with 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, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Contractor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Contractor further acknowledges that 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 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Contractor further agrees to provide to City the names of each person, entity or committee described above.

43. Requiring Minimum Compensation for Covered Employees

a. Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Sections 12P.5 and 12P.5.1 of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at www.sfgov.org/olse/mco. A partial listing of some of Contractor's obligations under the MCO is set forth in this Section. Contractor is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

b. The MCO requires Contractor to pay Contractor's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and Contractor is obligated to keep informed of the then-current requirements. Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is Contractor's

obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Contractor.

c. Contractor shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within 90 days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.

d. Contractor shall maintain employee and payroll records as required by the MCO. If Contractor fails to do so, it shall be presumed that the Contractor paid no more than the minimum wage required under State law.

e. The City is authorized to inspect Contractor's job sites and conduct interviews with employees and conduct audits of Contractor

f. Contractor's commitment to provide the Minimum Compensation is a material element of the City's consideration for this Agreement. The City in its sole discretion shall determine whether such a breach has occurred. The City and the public will suffer actual damage that will be impractical or extremely difficult to determine if the Contractor fails to comply with these requirements. Contractor agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the City and the public will incur for Contractor's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

g. Contractor understands and agrees that if it fails to comply with the requirements of the MCO, the City shall have the right to pursue any rights or remedies available under Chapter 12P (including liquidated damages), under the terms of the contract, and under applicable law. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

h. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

i. If Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000, but Contractor later enters into an agreement or agreements that cause contractor to exceed that amount in a fiscal year, Contractor shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and this department to exceed \$25,000 in the fiscal year.

44. Requiring Health Benefits for Covered Employees

Contractor agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same

may be amended from time to time. The provisions of section 12Q.5.1 of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at www.sfgov.org/olse. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

a. 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.

b. Notwithstanding the above, if the Contractor is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.

c. Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Contractor if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

d. Any Subcontract entered into by Contractor shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Contractor shall notify City's Office of Contract Administration when it enters into such a Subcontract and shall certify to the Office of Contract Administration that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Contractor shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Contractor based on the Subcontractor's failure to comply, provided that City has first provided Contractor with notice and an opportunity to obtain a cure of the violation.

e. Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Contractor's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

f. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

g. Contractor shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City Contract.

h. Contractor shall keep itself informed of the current requirements of the HCAO.

i. Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

j. Contractor shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least ten business days to respond.

k. Contractor shall allow City to inspect Contractor's job sites and have access to Contractor's employees in order to monitor and determine compliance with HCAO.

l. City may conduct random audits of Contractor to ascertain its compliance with HCAO. Contractor agrees to cooperate with City when it conducts such audits.

m. If Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause Contractor's aggregate amount of all agreements with City to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Contractor and the City to be equal to or greater than \$75,000 in the fiscal year.

45. First Source Hiring Program

a. Incorporation of Administrative Code Provisions by Reference.

The provisions of Chapter 83 of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with, and be bound by, all of the provisions that apply to this Agreement under such Chapter, including but not limited to the remedies provided therein. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83.

b. First Source Hiring Agreement.

As an essential term of, and consideration for, any contract or property contract with the City, not exempted by the FSHA, the Contractor shall enter into a first source hiring agreement ("agreement") with the City, on or before the effective date of the contract or property contract. Contractors shall also enter into an agreement with the City for any other work that it performs in the City. Such agreement shall:

1) Set appropriate hiring and retention goals for entry level positions. The employer shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to establish good faith efforts as to its attempts to do so, as set forth in the agreement. The agreement shall take into consideration the employer's participation in existing job training, referral and/or brokerage programs. Within the discretion of the FSHA, subject to appropriate modifications, participation in such programs maybe certified as meeting the requirements of this Chapter. Failure either to achieve the specified goal, or to establish good faith efforts will constitute noncompliance and will subject the employer to the provisions of Section 83.10 of this Chapter.

2) Set first source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to provide qualified economically disadvantaged individuals for consideration for employment for entry level positions. Employers shall consider all applications of qualified economically disadvantaged individuals referred by the System for employment; provided however, if the employer utilizes nondiscriminatory screening criteria, the employer shall have the sole

discretion to interview and/or hire individuals referred or certified by the San Francisco Workforce Development System as being qualified economically disadvantaged individuals. The duration of the first source interviewing requirement shall be determined by the FSHA and shall be set forth in each agreement, but shall not exceed 10 days. During that period, the employer may publicize the entry level positions in accordance with the agreement. A need for urgent or temporary hires must be evaluated, and appropriate provisions for such a situation must be made in the agreement.

3) Set appropriate requirements for providing notification of available entry level positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of qualified economically disadvantaged individuals to participating employers. Notification should include such information as employment needs by occupational title, skills, and/or experience required, the hours required, wage scale and duration of employment, identification of entry level and training positions, identification of English language proficiency requirements, or absence thereof, and the projected schedule and procedures for hiring for each occupation. Employers should provide both long-term job need projections and notice before initiating the interviewing and hiring process. These notification requirements will take into consideration any need to protect the employer's proprietary information.

4) Set appropriate record keeping and monitoring requirements. The First Source Hiring Administration shall develop easy-to-use forms and record keeping requirements for documenting compliance with the agreement. To the greatest extent possible, these requirements shall utilize the employer's existing record keeping systems, be nonduplicative, and facilitate a coordinated flow of information and referrals.

5) Establish guidelines for employer good faith efforts to comply with the first source hiring requirements of this Chapter. The FSHA will work with City departments to develop employer good faith effort requirements appropriate to the types of contracts and property contracts handled by each department. Employers shall appoint a liaison for dealing with the development and implementation of the employer's agreement. In the event that the FSHA finds that the employer under a City contract or property contract has taken actions primarily for the purpose of circumventing the requirements of this Chapter, that employer shall be subject to the sanctions set forth in Section 83.10 of this Chapter.

6) Set the term of the requirements.

7) Set appropriate enforcement and sanctioning standards consistent with this Chapter.

8) Set forth the City's obligations to develop training programs, job applicant referrals, technical assistance, and information systems that assist the employer in complying with this Chapter.

9) Require the developer to include notice of the requirements of this Chapter in leases, subleases, and other occupancy contracts.

c. **Hiring Decisions**

Contractor shall make the final determination of whether an Economically Disadvantaged Individual referred by the System is "qualified" for the position.

d. **Exceptions**

Upon application by Employer, the First Source Hiring Administration may grant an exception to any or all of the requirements of Chapter 83 in any situation where it concludes that compliance with this Chapter would cause economic hardship.

e. **Liquidated Damages.**

Contractor agrees:

- 1) To be liable to the City for liquidated damages as provided in this section;
- 2) To be subject to the procedures governing enforcement of breaches of contracts based on violations of contract provisions required by this Chapter as set forth in this section;
- 3) That the contractor's commitment to comply with this Chapter is a material element of the City's consideration for this contract; that the failure of the contractor to comply with the contract provisions required by this Chapter will cause harm to the City and the public which is significant and substantial but extremely difficult to quantify; that the harm to the City includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to \$5,000 for every notice of a new hire for an entry level position improperly withheld by the contractor from the first source hiring process, as determined by the FSHA during its first investigation of a contractor, does not exceed a fair estimate of the financial and other damages that the City suffers as a result of the contractor's failure to comply with its first source referral contractual obligations.
- 4) That the continued failure by a contractor to comply with its first source referral contractual obligations will cause further significant and substantial harm to the City and the public, and that a second assessment of liquidated damages of up to \$10,000 for each entry level position improperly withheld from the FSHA, from the time of the conclusion of the first investigation forward, does not exceed the financial and other damages that the City suffers as a result of the contractor's continued failure to comply with its first source referral contractual obligations;
- 5) That in addition to the cost of investigating alleged violations under this Section, the computation of liquidated damages for purposes of this section is based on the following data:
 - (a) The average length of stay on public assistance in San Francisco's County Adult Assistance Program is approximately 41 months at an average monthly grant of \$348 per month, totaling approximately \$14,379; and
 - (b) In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least the first six months of employment was 84.4%. Since qualified individuals under the First Source program face far fewer barriers to employment than their counterparts in programs funded by the Workforce Investment Act, it is reasonable to conclude that the average length of employment for an individual whom the First Source Program refers to an employer and who is hired in an entry level position is at least one year;

Therefore, liquidated damages that total \$5,000 for first violations and \$10,000 for subsequent violations as determined by FSHA constitute a fair, reasonable, and conservative attempt to quantify the harm caused to the City by the failure of a contractor to comply with its first source referral contractual obligations.

6) That the failure of contractors to comply with this Chapter, except property contractors, may be subject to the debarment and monetary penalties set forth in Sections 6.80 et seq. of the San Francisco Administrative Code, as well as any other remedies available under the contract or at law; and

Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of \$5,000 for every new hire for an Entry Level Position improperly withheld from the first source hiring process. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the FSHA.

f. **Subcontracts.**

Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section.

46. Prohibition on Political Activity with City Funds. In accordance with San Francisco Administrative Code Chapter 12.G, Contractor may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. Contractor agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Contractor violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit Contractor from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider Contractor's use of profit as a violation of this section.

47. Preservative-treated Wood Containing Arsenic. Contractor may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Contractor may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Contractor from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

48. Modification of Agreement. This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement. Contractor shall cooperate with Department to submit to the Director

of HRC any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20% (HRC Contract Modification Form).

49. Administrative Remedy for Agreement Interpretation. Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to Purchasing who shall decide the true meaning and intent of the Agreement.

50. 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.

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

52. Entire Agreement. This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This contract may be modified only as provided in Section 48, "Modification of Agreement."

53. Compliance with Laws. Contractor shall keep itself fully informed of the City's Charter, codes, ordinances 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.

54. Services Provided by Attorneys. Any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. No invoices for services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will be paid unless the provider received advance written approval from the City Attorney.

55. Left blank by Agreement of the Parties

56. 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.

57. Protection of Private Information. Contractor has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Contractor agrees that any failure of Contractor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract, bring a false claim action against the Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Contractor.

58. Graffiti Removal. Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti. Contractor shall remove all graffiti from any real property owned or leased by Contractor in the City and County of San Francisco within forty eight (48) hours of the earlier of Contractor's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require a Contractor to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

Any failure of Contractor to comply with this section of this Agreement shall constitute an Event of Default of this Agreement.

59. Food Service Waste Reduction Requirements. Effective June 1, 2007, Contractor agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Contractor agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of one hundred dollars (\$100) liquidated damages for the first breach, two hundred dollars (\$200) liquidated damages for the second breach in the same year, and five hundred dollars (\$500) liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply with this provision.

60. Left blank by Agreement of the Parties

a. Contractor acknowledges that this contract shall not be binding upon the City until the Director receives the affidavit required by the San Francisco Administrative Code's Chapter 12Y, "San Francisco Slavery Era Disclosure Ordinance."

b. In the event the Director of Administrative Services finds that Contractor has failed to file an affidavit as required by Section 12Y.4(a) and this Contract, or has willfully filed a false affidavit, the Contractor shall be liable for liquidated damages in an amount equal to the Contractor's net profit on the Contract, 10 percent of the total amount of the Contract, or \$1,000, whichever is greatest as determined by the Director of Administrative Services. Contractor acknowledges and agrees that the liquidated damages assessed shall be payable to the City upon demand and may be set off against any monies due to the Contractor from any Contract with the City.

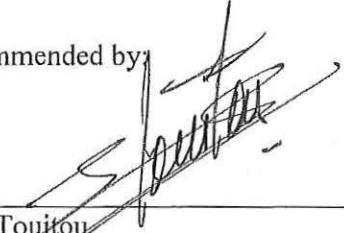
c. Contractor shall maintain records necessary for monitoring their compliance with this provision.

61. Cooperative Drafting. This Agreement has been drafted through a cooperative effort of both parties, 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.

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

CITY

Recommended by:




Marc Touitou
CIO, Director
Department of Technology

Approved as to Form:


Dennis J. Herrera
City Attorney

By:



Margarita Gutierrez
Deputy City Attorney

Approved:



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

Appendices


- A: Services to be provided by Contractor
- B: Calculation of Charges

CONTRACTOR

American Messaging Services, LLC

By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.

I have read and understood paragraph 35, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.



Jeff Chalmers Vice President & CFO 1720
Lakepointe Drive, Suite 100 Lewisville,
Texas 75057
City vendor number: 71522

Appendix A
Services to be provided by Contractor

1. Description of Services

A. Definitions

American Messaging acknowledges the definitions as written by the City and County of San Francisco.

B. Repair and Replacement Procedures

American Messaging has included a Sample Transition Plan within the appendix of this response that will be customized to meet the City and County of San Francisco's requirements for the initial rollout of paging equipment.

As needed throughout the term of the agreement, American Messaging will exchange paging equipment that stops working due to normal wear and tear at no additional charge to the City and County of San Francisco.

American Messaging will provide spare paging equipment to the City and County of San Francisco to retain in stock to be used for immediate activations and exchanges. The City and County of San Francisco will have the ability to activate or exchange paging equipment by contacting Customer Service or utilizing My Paging Account.

As equipment shipments are needed, the City and County of San Francisco will have the ability to place orders through Customer Service or through My Paging Account. American Messaging deploys automated order fulfillment as soon as the City and County of San Francisco orders a new or replacement pager. As an element of our excellent Customer Service, a representative can initiate the shipping order and prioritize it to meet the City and County of San Francisco's needs for the pager(s) to arrive at the desired location and time. Orders should be placed by 3:00pm (CST) to ensure same day shipping. Overnight and expedited shipping options are available upon request.

Hospital Visits:

American Messaging will assign a dedicated Account Manager who will work with the City and County of San Francisco (or the hospitals directly) to schedule visits to Laguna Honda Hospital and San Francisco General Hospital.

C. Paging Equipment Safety Rating

All of the devices being proposed are intrinsically safe and UL approved.

A. Pager Types

American Messaging acknowledges the equipment requirements detailed by the City and County of San Francisco. All proposed pagers will comply with the following: pocket sized, include a battery and belt clip/holster, antenna enclosed within pager, audible and/or vibrate alarms. Controls for the pager will include power, reset, message scrolling and alert tone/vibration mode selection. American Messaging provides multiple voicemail options that will work with any of the proposed paging plans.

1. Numeric Pagers

American Messaging will provide numeric pagers that meet the requirements detailed by the City and County of San Francisco. Numeric Paging is the perfect solution when a phone number is all that is needed to stay in touch. Complete pager specifications are included below:

Features	Benefits
FLEXTM Capable	Offers users the latest and most efficient technology affording extended battery life and page reliability.
Message Slots: 30	Plenty of memory to receive and store all your important messages so you can refer to them when needed.
Shows Time and Date	Pager provides added convenience since it also acts as a watch and calendar.
Message Time and Datestamping	Helps you prioritize your messages by knowing exactly what date and time they were received.
Alarm	Built-in alarm clock great for organizing a busy schedule.
User Selectable Alerts	Choose a favorite, or change your alert so you can differentiate your pager from others. (8 melodies and 4 beep tones)
Vibrating Alert	You can be alerted of incoming messages in a noisy environment or discreetly alerted when you do not want to disturb those around you with a loud alert.
Message Lock	Lock up to 14 important messages so they will not be accidentally erased.
Selective Erase	Allows you to erase messages that are no longer needed, thereby keeping your pager's memory organized.
Erase All	Keep your memory slots organized by easily erasing all unlocked messages when you no longer need to save them.
Memory Retention	Don't accidentally erase important messages by turning off your pager - the messages are retained when the pager is off.
Low Battery Alarm	Notifies you that your battery is getting low and needs to be replaced - helping to ensure that you don't miss any messages.
Duplicate Message	Duplicate Messages are stored in the same memory slot as original message - saving memory space for new messages. The latest timestamp is used and a Duplicate prompt is displayed when the message is read.
Message Full Indicator	Let's you know when your message slots are full.
E-Luma-Glow Display	Soft blue display for superior readability in low-light conditions.
Battery: 1 AAA	Battery is small, lightweight and replacements readily available.
Removable Beltclip	Wear your pager with the clip out, change clip colors, or take the clip off and slip it easily into your pocket or purse.

2. Alphanumeric Pagers

American Messaging will provide alphanumeric pagers that meet the requirements detailed by the City and County of San Francisco. Alphanumeric Paging provides full text messaging capability and potentially eliminates the need for a return phone call. Alphanumeric paging also allows the receipt of messages from email via www.MyAirMail.com, or to <10-digit pager #>@MyAirMail.com. Complete pager specifications are included below:

Features	Benefits
Electra Light Display	Providing exceptional clarity and optimum readability in low-light conditions.
34 Message Memory	Plenty of memory to receive and store all your important messages and up to 15 different information services.
Message Lock	Lock important messages so they will not be accidentally erased.
Information Services Capable	Allows user to receive information services such as sports, weather, headline news, stocks.
Date and Time Display	Helps you prioritize your messages by knowing exactly what date and time they were received.
Private Time	Provides the ability to turn off all pager alerts during specified times and still receive your messages.
Alarm Clock	You can set your pager to wake you up in the morning or to remind you of that important appointment.
Audible and Vibrating Alerts	You can be alerted of incoming messages in a noisy environment or discreetly alerted when you do not want to disturb those around you with a loud alert.
Reminder Alert	A short friendly alert reminds you when you have not reviewed your messages.
Selective Erase or Erase All	Allows you to erase messages that are no longer needed, thereby keeping your pager's memory organized or Keep your memory slots organized by easily erasing all unlocked messages when you no longer need to save them.
Notebook Entries	Use the notebook entries to store any messages containing names and phone numbers of friends, family, or business associates for easy reference.
Message Preview	Allows you to view the first line of each message for quick reference.
Zoom from 4 Lines to 2	Zoom in from 4 lines to 2 lines for a larger view of your messages.
Memory Retention when Power Off	Don't accidentally erase important messages by turning off your pager - the messages are retained when the pager is off.
Battery Gauge and Battery Backup	Lets you know when your battery is getting low and maintains information while replacing the battery.
Specifications	
Color:	Black
Dimensions:	3.0" x 2.0" x .05"
Weight:	3 oz with battery
Battery Type:	1 AA
Protocol:	Flex

3. Two-way Pagers

American Messaging will provide two-way pagers that meet the requirements detailed by the City and County of San Francisco. Two-way Paging provides the ability to send and receive messages and reply to incoming messages. Responding messages can be sent to another two-way device, to any email address, or a text-enabled mobile phone. Two-way paging also ensures that the message is received accurately. If the pager receives a garbled message, the pager will automatically request that the network resend the message. If the pager is still unable to receive the message, the network will store the message for up to 96 hours while it continues to try to locate the pager to deliver the message. If the pager is turned off, changes coverage area, or is out of the local coverage area, the system will deliver the stored messages once it locates the pager or after the pager returns to a designated local coverage area. A total of 25 stored messages can be delivered based on a first in, first out methodology. Undeliverable messages stored within the system for longer than 96 hours will be deleted.

Complete pager specifications are included below:

Features and Benefits

Display

- Zoom from 4 lines to 2
- Optimax® EL Electra Light Display
- Lighted QWERTY Keyboard
- Shows Time of Day and Date

Indicators/Alert Features

- Built-In Alarm Clock
- User Selectable Alerts
- Quiet Mode Vibrating Alert
- Reminder Alert On/Off
- Low Battery Indicator
- Service Indicators

Messaging Features

- 2way Messaging Capability
- Holds up to 250 Addressess
- Separate In/Outbox
- Automatic Signature Capability
- Locked Message & Message Memory
- Message Management (multiple or individual address)
- Message Time and Date Stamping
- Mailboxes (Personal and Information Services) (01)
- Separate Folders to Save Important Messages
- Erase All
- Selective Erase
- Saves Messages When Off or Changing the Battery
- Emoticons

Technology

- FLEX® protocol for Advanced Paging Reliability
- Information Services Capable (01)

- Information on Demand Capable (01)
Control Features
- Private Time
- Quiet Mode

B. Pager Telephone Numbers

American Messaging will provide local toll free numbers to the City and County of San Francisco. These numbers will be direct and will not require any additional identification.

C. Direct Paging Controller Access

The City and County of San Francisco will have access to perform transactions through My Paging Account. My Paging Account is American Messaging's premiere self-service application that is available virtually any time, day or night. There is no charge to access your account, and you can enjoy the ease of these transactions:

- View and print your billing statement (including historical statements)
- Make a payment using a credit card or draft from your checking account
- Set up your account on our Automatic Payment Plan (APP)
- Order a new pager or exchange one on an existing account
- Add Enhanced Services, such as Voice Mail or PageSaver™
- Activate a pager from the Spare pager inventory at your company
- Track your pager Order
- View a pager Profile (pager number, serial number, capcode, and statement description)

American Messaging will also provide pager programming equipment that can be used to program group capcodes onto pagers in the City and County of San Francisco's possession.

D. Leased Line Connectivity

American Messaging provides the following methods to send messages to an American Messaging Alphanumeric or Two-Way pager:

- **Internet:** www.MyAirMail.com
- **Email:** any email program can dispatch alphanumeric messages to American Messaging Paging customers using <10-digit pager #>@MyAirMail.com
- **Alpha Paging Software:** stand-alone and network-based versions are available
- **Operator Dispatch:** messages are phoned in to the American Messaging national dispatch center
- **SNPP (Simple Network Paging Protocol):** via "telnet" to the American Messaging server
- **WCTP (Wireless Communication Transfer Protocol):** used for the secure transmission from automated, server-based systems
 - Messages are transmitted into an American Messaging switch, regardless of how or where the messages originate. Once in the switch, American Messaging routes the message via the appropriate Flex or ReFlex network, which then delivers the message to the pager.

E. Pager Radio Coverage-General

American Messaging provides paging on nationwide frequencies and numerous local frequencies, with coverage in all 50 states, 98 of the top 100 major metro markets, and beyond. *

- **Local** – includes one or more Metropolitan Statistical Areas (MSAs)
- **Wide Area – Statewide** – includes major MSAs within a state. Please ask your Account Representative about availability in your area.
- **Regional / Multi-State**
- **Nationwide**

*Actual coverage may vary due to terrain, weather, building density, interference, and equipment failures. No wireless coverage is 100% accurate at all times. Coverage Maps have been provided within this response.

Outage Notification

We utilize a network trouble ticketing and notification system. Our system called phaseware allows us to more effectively communicate during network outage situations. This system improves our mean time to restore which reduces the duration of any potential service interruptions. It also allows our customers to receive automated information and updates related to network problems which impact their account specifically. Designated teams have been created to ensure proper notification to mission critical customers during a system outage. Levels of notification are business hours, after hours, and 24 hours.

Manual Notification via phone call or email is available for all local and nationwide outages.

Notification of the local outage is given to the on-call local representative responsible for your area at the initial discovery of the outage. Nationwide communications are provided at initial discovery of the issue and at least every 2 hours after until the issue is resolved. Local communications are provided at initial discovery and at least every 4 hours until resolution.

American Messaging has provided pricing for local, statewide, regional and nationwide coverage options within the Flat Fee Rate Proposal section of this response.

1. Pager Coverage – San Francisco General Hospital

American Messaging currently has coverage enhancement equipment located at San Francisco General Hospital. American Messaging will work with the City and County of San Francisco to conduct testing throughout the San Francisco General Hospital location to evaluate coverage abilities and discuss options of additional enhancements if necessary.

2. Pager Coverage – Tuolumne County

American Messaging is the current paging provider for CSSF Water Department. Coverage is limited in Tuolumne County, American Messaging will work with the City and County of San Francisco to evaluate coverage abilities and discuss options of additional enhancements if necessary.

3. Pager Coverage – Municipal Railway Tunnel System

American Messaging will work with the City and County of San Francisco, to conduct testing throughout the MUNI Tunnel System to evaluate coverage abilities and discuss options.

4. Pager Coverage – San Francisco International Airport

American Messaging has previously worked with the City and County of San Francisco to conduct testing within the SF International Airport. At that time it was determined through the City that coverage was adequately provided. American Messaging will work with the City and County of San Francisco to conduct testing throughout the SF International Airport location to evaluate coverage abilities and discuss options of additional enhancements if necessary.

5. Pager Coverage – Sheriff's Department

American Messaging has conducted preliminary testing in the areas around San Bruno Jail and it has been determined that street level coverage is available. American Messaging will work with the City and County of San Francisco to conduct testing throughout the San Bruno Jail location to evaluate coverage abilities and discuss options of additional enhancements if necessary.

F. Flat Rate in Home Area

The paging services purchased pursuant to this Contract shall be for paging units and service covering the 415, 408, 510, 530, 650, 925, 209, and 707 area codes (Home Area). Area code splits or overlays shall not affect the geographic boundaries of the Home Area for purposes of this Contract.

G. Recycling of Pager Phone Numbers

American Messaging will make reasonable efforts not to recycle numbers for a minimum of six (6) months upon termination to that pager phone number.

H. Transition Plan for Conversions

American Messaging understands the importance of a smooth transition to a new paging Carrier. We have developed a step-by-step Transition Plan that will be customized to City and County of San Francisco's application, and our staff will work diligently to get your paging service started off right. The Sample Transition Plan has been provided within the Appendix of this response.

I. Experience in Similar Contracts

American Messaging provides paging services to numerous similar size customers and public organizations. American Messaging values the privacy of our customers and requires that written permission be obtained from all potential references; therefore, American Messaging has included four references and contact information that can be used to obtain evaluation information regarding our services within this response.

J. Network Flexibility

If necessary, American Messaging can provide additional equipment to City and County of San Francisco to enhance paging coverage; subject to a separately negotiated agreement. American Messaging has successfully used many different methods of attaining building penetration in areas such as basements, computer rooms and tunnels. The different methods are as follows:

- Low Power Transmitter - This is a small 1 to 2 watt transmitter located in a problem area of the respective facility and will eliminate any intermittent paging.
- Down Tilt Antenna - This is an antenna, which will send a signal at a more direct position to a problem area. For example, if American Messaging has a nearby transmitter and pages are not being received in a basement, the antenna could be tilted down for better reception.
- Full Power Transmitter on City and County of San Francisco's location - This would most likely resolve any paging reception problem within the building.

K. Help Desk

American Messaging will provide the City and County of San Francisco an **Account Team** composed of professionals with unparalleled experience in the paging and messaging industry. This Team will serve as a single point of contact for concerns related to managing the City and County of San Francisco's paging service, and will work in earnest to provide satisfaction to its end-users. In the spirit of continuous improvement, we always welcome feedback from customers and their employees.

American Messaging staffs an inbound queue of Customer Service Representatives (CSRs) and off-line CSRs for additional support. **Telephone support** hours are from 7:00AM to 7:00PM CST with after hour support from 7:00PM to 7:00AM. Offline support is available from 6:30 AM to 5:00PM CST. Additionally, we offer **Customer Self Service Options** that are available 24 hours a day, seven days a week.

Customer Service representatives are monitored up to fifteen (15) times per month internally by both supervisors and a specialized quality assurance team. Additionally, American Messaging utilizes a third party vendor to provide feedback to ensure our customers are receiving outstanding customer service.

Customer Service Contact Numbers:

Phone: 1-888-223-4123

Fax: 1-866-804-9383

IVR/Self-Serve: 1-888-247-7890

L. Single Point of Contact (SPC) / Account Manager

American Messaging will also designate a specific **Major Account Executive** to uphold all aspects of paging services for the City and County of San Francisco. The Account Executive will coordinate the rollout and continue to support the City and County of San Francisco on a local level.

Account Manager (Business Hours 8am – 5pm)

Name: Michelle Olds

Phone: 925-337-2647

Fax: 925-447-7111

Pager: 925-931-5150

Email: michelle.olds@americanmessaging.net

Vice President – Sales (Business Hours 8am – 5pm)

Name: Rick Darling

Phone: 636-386-3334

Fax: 636-386-0388

Cell: 314-941-0404

Email: rick.darling@americanmessaging.net

Michelle Olds, your dedicated Account Manager has worked as an Account Manager for American Messaging and predecessor companies for more than 14 years. American Messaging has included four references within this response, which are currently being serviced by Michelle.

In an effort to keep our employees as current and up to date as possible on industry expansion; American Messaging provides on-going training and refresher courses to all of its employees.

M. Modifying Service Features

The City and County of San Francisco will have access to an **Account Team** composed of professionals with unparalleled experience in the paging and messaging industry. This Team will serve as a single point of contact for concerns related to managing City and County of San Francisco's paging service, and will work in earnest to provide satisfaction to its end-users. **Telephone support** hours are from 7:00AM to 7:00PM CST with after hour support from 7:00PM to 7:00AM.

American Messaging also offers the Self-Service Options as described within this response to allow the City and County of San Francisco the freedom to perform transactions at their convenience.

Most service features can be added, changed or deleted immediately upon request.

N. Pager Ordering and Activity Procedures

American Messaging will work with the City and County of San Francisco to develop mutually agreeable ordering and activity procedures. American Messaging will allow the City and County of San Francisco the ability to list authorized contacts and levels of authority. The City and County of San Francisco will have access to place orders by contacting the Platinum Account Team or by utilizing My Paging Account or the IVR, the Self-Service Options described within this response.

Activity Reports will be provided upon request.

O. Replacing Paging Equipment (Lost, Stolen, or Damaged)

American Messaging will provide a minimum of 5% spare pagers to the City and County of San Francisco to retain in stock for immediate activations, replacements, or exchanges.

In the event that an order needs to be placed for a replacement pager, American Messaging deploys automated order fulfillment as soon as City and County of San Francisco orders a new or

replacement pager. As an element of our excellent Customer Service, a representative can initiate the shipping order and prioritize it to meet City and County of San Francisco's needs for the pager(s) to arrive at the desired location and time. Cut-off time for orders to be sent out the same day is **3:00pm, Central Standard Time**, and American Messaging will pass on any charges that are incurred for shipping and handling.

As an option, we offer our **Pager Replacement Program (PRP)** at a low monthly rate per unit, which will expediently replace any pager that is lost, stolen, or damaged beyond repair for the prices listed below.

PAGER REPLACEMENT PROGRAM RATES

Service	Monthly Rate	Loss Fee with PRP	Loss Fee without PRP
Numeric	\$0.50	\$15.00	\$34.95
Alphanumeric	\$0.50	\$35.00	\$69.95
Two-way	\$0.50	\$80.00	\$99.00

Note: American Messaging reserves the right to change or discontinue equipment models during an Agreement.

P. City Stock

American Messaging will provide a minimum of 5% spare pagers to the City and County of San Francisco to retain in stock for immediate activations or exchanges. The City and County of San Francisco will not be charged a monthly fee for these units until they are activated.

The City and County of San Francisco will have access to Customer Service as well as the Self-Service Options in the event that additional spare equipment needs to be ordered. American Messaging will also provide at no charge to City and County of San Francisco return labels for leased equipment that must be returned.

Q. Equipment Maintenance and Customer Support

1. Replacement of Lost, Stolen, or Damaged Pagers

The City and County of San Francisco will have access to Customer Service as well as the Self-Service Options to report lost, stolen, or damaged pagers.

American Messaging will provide a minimum of 5% spare pagers to the City and County of San Francisco to retain in stock for immediate activations, replacements, or exchanges.

In the event that an order needs to be placed for a replacement pager, American Messaging deploys automated order fulfillment as soon as City and County of San Francisco orders a new or replacement pager. As an element of our excellent Customer Service, a representative can initiate the shipping order and prioritize it to meet City and County of San Francisco's needs for the pager(s) to arrive at the desired location and time. Cut-off time for orders to be sent out the same day is **3:00pm, Central Standard Time**, and American Messaging will pass on any charges that are incurred for shipping and handling.

2. Pager Repair

American Messaging is proposing leased equipment to the City and County of San Francisco. As part of this lease, American Messaging will exchange any equipment that stops working due to normal wear and tear at no additional charge.

3. Battery Type

American Messaging agrees and will comply that all numeric and alphanumeric pagers use either Type AA or AAA batteries.

4. Replacement Batteries

American Messaging will supply the City and County of San Francisco with batteries upon request on a quarterly basis at no charge.

R. Equipment Specifications

1. User Operating Manual and Other User Documentation

American Messaging will provide reference cards and operation/instruction manuals with new orders and as needed upon request. User manuals can also be downloaded at www.americanmessaging.net.

2. New or Reconditioned Pagers

American Messaging will provide new equipment for all new activation requests. Throughout the term of the agreement American Messaging may provide new or like-new equipment for replacement and pager exchanges.

3. Model Equipment Substitution

Throughout the term of this agreement, American Messaging may substitute equipment models with similar models that meet or exceed the specifications as the units listed within this response.

4. Equipment Samples

American Messaging will provide demonstration equipment to the City and County of San Francisco to be utilized for testing purposes, upon request. This equipment will remain the property of American Messaging and shall be returned in good condition, normal wear and tear accepted.

5. Description of Features

American Messaging acknowledges the features that the City and County considers minimum requirements for the paging models and will work with the City and County of San Francisco to provide equipment that meets and/or exceeds these expectations.

A. Monthly Service Billing Process

1. All monthly service rates are billed from the 1st to the 30th or 31st of each month.
2. Monthly invoices will be available to the City and County of San Francisco by the 10th of each month.
3. American Messaging has assigned a Billing Account Representative that will work as the Single Point of Contact for managing invoice issues, including billing escalations.

4. If an invoice needs to be revised, American Messaging will create a corrected invoice, upon request.
5. American Messaging will work with the City and County of San Francisco to ensure that any potential past due payment issues are resolved and that they will not impact services and order placements.
6. American Messaging agrees to waive late payment fees. American Messaging agrees that payment will be due 30 days from the bill availability date.
7. American Messaging will work with the City and County of San Francisco to ensure that the necessary fields are included on the electronic invoices.
8. The City and County of San Francisco will receive electronic invoices once registered through My Paging Account. My Paging Account will also provide access to reporting.
9. American Messaging acknowledges
10. American Messaging will make reasonable efforts to provide two months notice if formatting changes will occur.
11. The City and County of San Francisco will have access to pull reports and invoicing reports from My Paging Account.

B. Single Point of Contact (SPC), Billing Account Manager, Billing Account Representative

American Messaging will provide the City and County of San Francisco with a dedicated Account Manager and the Customer Service Support Team who will serve as the points of contact for billing related issues. American Messaging will also provide access to a single point of contact that can work with the City and County of San Francisco with problems specifically related to Electronic Billing.

American Messaging will also assign a Billing Account Manager and Representative to the City and County of San Francisco, who currently oversee multiple major government accounts.

<u>Billing Account Representative (Business Hours 7am – 4pm)</u>
Name: Danielle Aldrich Phone: 888-699-9014 ext 5280 Fax: 866-486-7345 Email: Danielle.aldrich@americanmessaging.net

<u>Billing Account Manager (Business Hours 7am – 4pm)</u>
Name: Donna Hedlund Phone: 214-222-6350 Fax: 866-486-7345 Email: donna.hedlund@americanmessaging.net

In an effort to keep our employees as current and up to date as possible on industry expansion; American Messaging provides on-going training and refresher courses to all of its employees.

Section 5: Invoice / Billing

American Messaging Services
 PO BOX 293450
 LEWISVILLE, TX 75029
 Billing Inquiries : 888 247-7890
 Sales Inquiries: 800 624-7868

Account Name: Customer Name
 Account Number: F1-222222
 PAYMENT DUE: 10/15/2005

Please send written correspondence that is not payment related to the address above.

Invoice Number	Invoice Date	Prior Balance	Payments & Credits	Current Charges	Amount Due
F1222222FJ	10/1/2005	\$0.00	\$	\$12.32	\$12.32

Number	Description	Account Activity	Amount
913-555-1212	ALPHANUMERIC PAGING	SERVICE FROM 10/01/05 TO 10/31/05	\$11.45
	STATE SALES TAX		\$0.61
	CITY OF TOPEKA TAX		\$0.11
	AMS UNIV SVC CHG		\$0.14
	AMS REGULATORY CHARGE		\$0.01
	mpot ge		
	*** Cu: vice	188822****	

Thank you for your prompt payment. American Messaging appreciates your business.

RETURN THE LOWER PORTION WITH YOUR PAYMENT

American Messaging
 PO BOX 5749
 Carol Stream, IL 60197

Invoice Date	Account Number	Amount Due
10/1/2005	F1-222222	\$12.32

Customer Name
 Customer Address
 City, St (Zipcode)
 Customer Phone Number

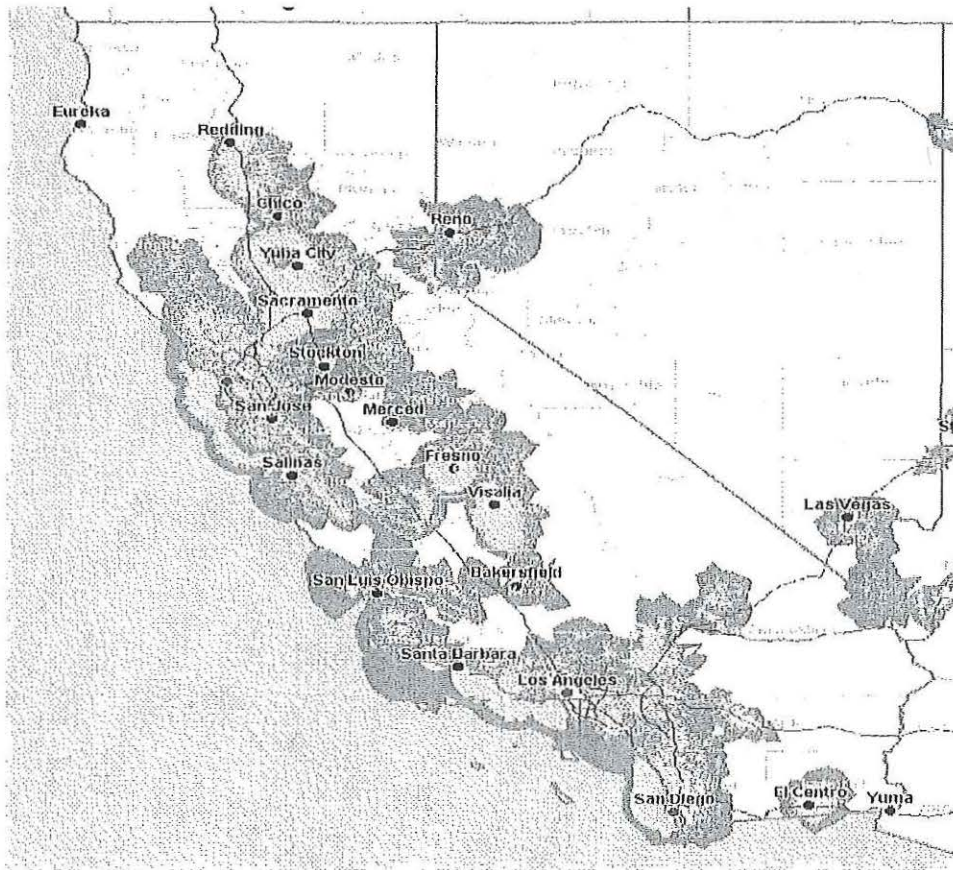
SAMPLE CALLCOUNT/USAGE REPORT

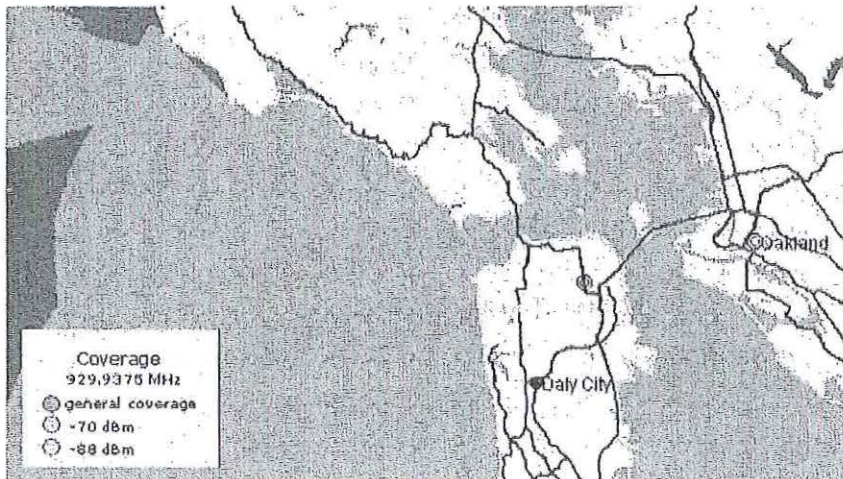
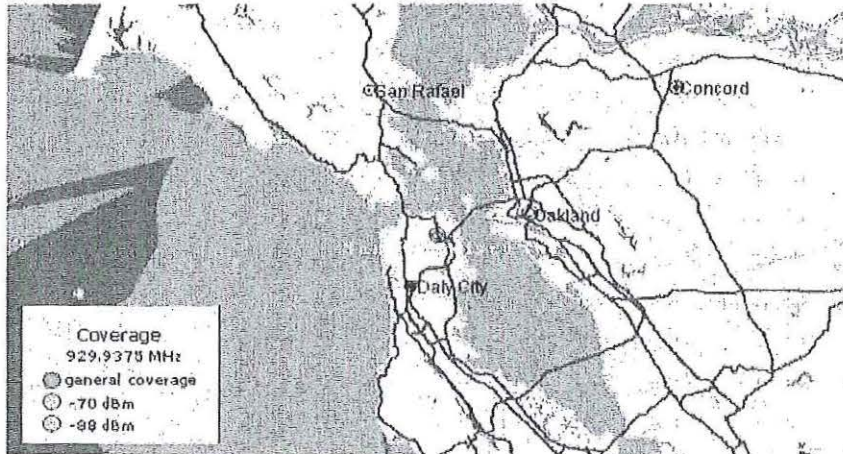
SS-RCALLE Call Count Report by Account Page: 1
4/2/2013 AMERICAN MESSAGING 01:54 PM

Call Counts for R1-987654: Company Name
Extract Dates: 01/01/13 - 02/28/13

Phone Number	Capcode	Call Count
123 456-0564	E000111222	557
123 456-0662	E4567891011	1620
123 456-0683	E987654444	537
123 456-0733	E123456789	917

Coverage Maps







Sample Transition Plan

ASSIGNMENT	RESPONSIBLE PARTY	TIME
Procedures approved by the City and County of San Francisco and AMS, then disseminated by the City and County of San Francisco and AMS to the respective business units of both companies.	Both	2 days
Obtain the City and County of San Francisco key contact list of those involved in the exchange process, listing the locations they manage. This list will be forwarded to AMS for aligning locations with the AMS representative.	City and County of San Francisco	2 days
Meeting set with the key contacts of City and County of San Francisco to determine the specific pager needs for each business unit. Coverage, Alpha Dispatching Devices, enhancements and Billing format will be determined. AMS will provide City and County of San Francisco a list of AMS contacts for each business unit/local office.	AMS	2 days
City and County of San Francisco to notify employees that AMS will be the new paging vendor and establish the transition period.	City and County of San Francisco	2 days
Order pagers for City and County of San Francisco via AMS Contract Evolution process, setting bill rates, programming and delivery requirements. With consideration to delivery dates from the manufacturer, AMS will report delivery dates for each City and County of San Francisco business unit.	AMS	4 days or less
City and County of San Francisco to provide AMS a detailed list of all current pager user names and types of pager (numeric or alphanumeric).	City and County of San Francisco	2 days
AMS to provide City and County of San Francisco with all new pager numbers (if applicable) 2 weeks prior to deactivation from City and County of San Francisco's current paging vendor.	AMS	2 days
Pagers delivered to the City and County of San Francisco key contacts. Pagers will be sent with complete instructions, belt clips/holsters, and initial batteries.	AMS	3-5 days

Supply the City and County of San Francisco key contacts with City and County of San Francisco Support and escalation information, an inventory of pager clips, battery doors and spare pagers for minor repairs; quantity based on units per location.	AMS	Time of Conv.
Train each key contact on the Customer Service process, paging software and Internet paging methods.	AMS	Time of Conv.
Schedule a two-week and one-month follow-up meeting to ensure that the implementation process has been successful, making any necessary adjustments.	AMS	Time of Conv.
AMS will periodically schedule meetings for continual quality service performance reviews with City and County of San Francisco, maintaining high performance standards of paging equipment, transmission and service. This process will be on going; updating City and County of San Francisco of new offerings, ensuring provisions, terms and conditions are being met.	AMS	As Needed

**Appendix B
Calculation of Charges**

Flat Fee Rate Proposal

NUMERIC 1-WAY PAGING

Service	Monthly Rate (Includes Lease)	Page Allowance Per Month	Charge Per Page Over Allowance
Local*	\$ 1.95 per month	Unlimited	N/A
Statewide*	\$ 1.95 per month	Unlimited	N/A
Regional	\$ 5.00 per month	Unlimited	N/A
Nationwide	\$ 9.45 per month	Unlimited	N/A

*Local service includes one or more Metropolitan Statistical Areas (MSAs).

Statewide service includes major MSAs within a state.

ALPHANUMERIC 1-WAY PAGING

Service	Monthly Rate (Includes Lease)	Page Allowance Per Month**	Charge Per Page Over Allowance
Local*	\$ 3.50 per month	Unlimited	N/A
Statewide*	\$ 3.50 per month	Unlimited	N/A
Regional	\$ 10.00 per month	Unlimited	N/A
Nationwide	\$ 14.00 per month	Unlimited	N/A

*Local service includes one or more Metropolitan Statistical Areas (MSAs).

Statewide service includes major MSAs within a state. ** Two hundred forty (240) character limit per page.

2-WAY PAGING

Service	Monthly Rate (Includes Lease)	Packet Allowance	Charge Per Packet Over
Nationwide	\$17.95 per month	Unlimited	N/A

Third Party Carrier Pricing:

In certain instances, American Messaging may utilize third party carriers to provide paging services. The pricing contained herein is based on services provided directly by American Messaging. If we determine that the use of a third-party carrier is necessary, the associated service costs will be negotiated separately.

ENHANCED SERVICE OPTIONS

Group Paging	\$ 4.95 per month, unlimited
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Voice Mail Pkg. A (5 msgs / 60 sec / 24 hr ret)	\$ 2.50 per month
Voice Mail Pkg. B (10 msgs /60 sec /24 hr ret)	\$ 1.50 per month
Secondary 800/888/877 Number	\$ 4.00 per month
Custom Greeting	\$ 0.50 per month
Operator Dispatch	Starting at \$ 12.90 per month
PageSaver™ Numeric Retrieval	No Charge
Page Forwarding	\$ 0.50 per month
Alpha Paging Software	Starting at \$ 29.95 per copy
PageCopy	\$ 2.50 per address / per month
IntelliMessage (Desktop and/or Mobile)	No Charge w/active pager
Standalone IntelliMessage (Desktop and/or	\$ 3.50 per month

EQUIPMENT MAINTENANCE & REPLACEMENTS

American Messaging will exchange leased paging units at no additional charge that are defective or stop working due to normal wear and tear. As an option, we offer our **Pager Replacement Program (PRP)** at a low monthly rate per unit, which will expediently replace any pager that is lost, stolen, or damaged beyond repair for the prices listed below.

PAGER REPLACEMENT PROGRAM RATES

Service	Monthly Rate	Loss Fee with PRP	Loss Fee without PRP
Numeric	\$ 0.50	\$15.00	\$34.95
Alphanumeric	\$ 0.50	\$35.00	\$69.95
Two-way	\$ 0.50	\$80.00	\$99.00

* Replacement cost of equipment without PRP is based on current retail rates for similar equipment and/or accessories.

MISCELLANEOUS CHARGES, TAXES AND FEES SHIPPING CHARGES

American Messaging deploys automated order fulfillment as soon as the City and County of San Francisco orders a new or replacement pager. As an element of our excellent Customer Service, a representative can initiate the shipping order and prioritize it to meet the City and County of San Francisco's needs for the pager(s) to arrive at the desired location and time. American Messaging will pass on any charges that are incurred for shipping and handling.

TAXES AND FEES

Prices stated in this Proposal do not include state and local sales tax, and other applicable taxes, fees, charges, or pass-through assessments.

Please note: If any federal, state or local government tax, fee, duty, or surcharge (collectively referred to as a "Tax") is required by applicable law to be collected from Customer by Carrier, then (a) Carrier shall bill Customer for such Tax, (b) Customer shall timely remit such Tax to Carrier, and (c) Carrier shall, where applicable, remit such collected Tax to the appropriate taxing authority. If Carrier does not collect a Tax because Customer has provided Carrier with evidence of exemption, and if such as an exemption is later determined to be inadequate, then, as between Carrier and Customer, Customer shall be liable for such uncollected Tax and for all interest, penalties and additions to Tax which are determined to be due with respect to such uncollected Tax.

2. Reports

Contractor shall submit written reports as requested by the Department of Technology. Format for the content of such reports shall be determined by the Department of Technology. The timely submission of all reports is a necessary and material term and condition of this Agreement. The reports, including any copies, shall be submitted on recycled paper and printed on double-sided pages to the maximum extent possible.

3. Department Liaison

In performing the services provided for in this Agreement, Contractor's liaison with the Department of Technology will be Michael Magliulo.

