

File No. 100365

Committee Item No. 10

Board Item No. \_\_\_\_\_

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Sub - Committee: Budget and Finance

Date: June 16, 2010

Board of Supervisors Meeting

Date: \_\_\_\_\_

#### Cmte Board

- |                                     |                          |  |
|-------------------------------------|--------------------------|--|
| <input type="checkbox"/>            | <input type="checkbox"/> | Motion                                       |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Resolution                                   |
| <input type="checkbox"/>            | <input type="checkbox"/> | Ordinance                                    |
| <input type="checkbox"/>            | <input type="checkbox"/> | Legislative Digest                           |
| <input type="checkbox"/>            | <input type="checkbox"/> | Budget Analyst Report                        |
| <input type="checkbox"/>            | <input type="checkbox"/> | Legislative Analyst Report                   |
| <input type="checkbox"/>            | <input type="checkbox"/> | Introduction Form (for hearings)             |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/>            | <input type="checkbox"/> | MOU  |
| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Information Form                       |
| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Budget                                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Subcontract Budget                           |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Contract/Agreement                           |
| <input type="checkbox"/>            | <input type="checkbox"/> | Award Letter                                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Application                                  |
| <input type="checkbox"/>            | <input type="checkbox"/> | Public Correspondence                        |

#### OTHER

(Use back side if additional space is needed)

- |                                     |                          |                 |
|-------------------------------------|--------------------------|-----------------|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Form 126</u> |
| <input type="checkbox"/>            | <input type="checkbox"/> | _____           |
| <input type="checkbox"/>            | <input type="checkbox"/> | _____           |
| <input type="checkbox"/>            | <input type="checkbox"/> | _____           |
| <input type="checkbox"/>            | <input type="checkbox"/> | _____           |

Completed by: Andrea S. Ausberry

Date Friday, June 11, 2010

Completed by: \_\_\_\_\_

Date \_\_\_\_\_

An asterisked item represents the cover sheet to a document that exceeds 25 pages. The complete document is in the file.



1 [Amendment to Agreement with Avaya, Inc. to Extend the Term and Increase the Amount of  
2 the Contract to \$13,367,321]

3 **Resolution retroactively authorizing the Department of Technology to enter into the**  
4 **Fourth Amendment of an agreement with Avaya, Inc. and increasing the maximum**  
5 **expenditure under the contract to \$13,367,321.**

6  
7 WHEREAS, On August 31, 2005, the City and County of San Francisco ("City"), acting  
8 through its Department of Technology ("DT") entered into an agreement with Avaya, Inc. for  
9 communication services, including service to the City's telephone hardware; and,

10 WHEREAS, The initial term of the Agreement was for a period of three years and a  
11 maximum amount of \$ 6,182,446; and,

12 WHEREAS, The DT and Avaya have amended the Agreement three times, by the First  
13 Amendment dated January 27, 2006, increasing the maximum amount of the contract to  
14 \$6,717,740; and the Second Amendment dated August 31, 2008, increasing the maximum  
15 amount of the contract to \$8,400,00; and, the third Amendment dated April 6, 2009, increasing  
16 the maximum amount of the contract to \$9,913,366 and extending the time to August 30,  
17 2009,

18 WHEREAS, In the Fourth Amendment DT and Avaya have agreed to extend the  
19 contract to June 30, 2010, and increase the maximum amount of the contract to \$13,367,321;  
20 and,

21 WHEREAS, The DT has determined that it is in the best interests of the City to extend  
22 the term of the Agreement and increase the amount of the contract so that the City may  
23 continue to receive the services from Avaya in support of the transition of the previous direct  
24 maintenance contract with Avaya to a maintenance contract provided by an Avaya partner;  
25 and,

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WHEREAS, Charter section 9.118(b), "Contract and Lease Limitations," requires Board of Supervisors approval of any amendment to a contract that would require a maximum expenditure under the contract of ten million dollars; and,

WHEREAS, The Fourth Amendment is on file with the Clerk of the Board of Supervisors in File No 100365, which is hereby declared to be a part of this motion as if set forth fully herein; and, therefore, be it

RESOLVED, That the Board of Supervisors retroactively approves the Fourth Amendment to the Agreement with Avaya, Inc.

**FORM SFEC-126:  
NOTIFICATION OF CONTRACT APPROVAL  
(S.F. Campaign and Governmental Conduct Code § 1.126)**

<b>City Elective Officer Information</b> <i>(Please print clearly.)</i>	
Name of City elective officer(s):  Members, San Francisco Board of Supervisors	City elective office(s) held:  Members, San Francisco Board of Supervisors

<b>Contractor Information</b> <i>(Please print clearly.)</i>	
Name of contractor: <b>Avaya, Inc.</b>	
<p><i>Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary.</i> (1) Members of the Board of Directors: Charlie Giancarlo—Chairman of the Board; Kevin Kennedy, Gene Frantz, John Marren, Greg Mondre, Dave Roux, Kevin Rollins; (2) Chief Executive Officer—Kevin Kennedy; Chief Financial Officer—Anthony Masetti; Chief Operating Officer—James Chirico, Senior Vice President &amp; Chief of Restructure Officer and President, Operations; (3) No individual owns 20% or more of Avaya, Inc.; (4) No subcontractors are relevant; (5) Political Committee sponsored or controlled by contractor—None.</p>	
Contractor address: 4120 Dublin Blvd 1st Floor, Dublin, CA 94568	
Date that contract was approved:	Amount of contract:
Describe the nature of the contract that was approved: Maintenance and Service Coverage of Voice Mail (VM) and PBX equipment for the City's communication systems.	
Comments:	

This contract was approved by (check applicable):

- the City elective officer(s) identified on this form (Mayor, Gavin Newsom)
- a board on which the City elective officer(s) serves San Francisco Board of Supervisors  
Print Name of Board
- the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits  
  
Print Name of Board

<b>Filer Information</b> <i>(Please print clearly.)</i>	
Name of filer:	Contact telephone number: 0
Address:	E-mail:

\_\_\_\_\_  
Signature of City Elective Officer (if submitted by City elective officer)

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk)

\_\_\_\_\_  
Date Signed

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

**Fourth Amendment**

THIS AMENDMENT (this "Amendment") is made as of August 31, 2009, in San Francisco, California, by and between Avaya, Inc. ("Contractor"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Director of the Office of Contract Administration.

RECITALS

WHEREAS, City and Contractor have entered into the Agreement (as defined below); and

WHEREAS, City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to extend the performance period, increase the contract amount, and update standard contractual clauses;

WHEREAS, approval for this Amendment was obtained when the Civil Service Commission approved Contract number 4041-08/09 on August 3, 2009;

NOW, THEREFORE, Contractor and the City agree as follows:

1. **Definitions.** The following definitions shall apply to this Amendment:

a. **Agreement.** The term "Agreement" shall mean the Agreement dated August 31, 2005 between Contractor and City, as amended by the:

**First Amendment**, dated January 27, 2006.

**Second Amendment**, dated August 31, 2008.

**Third Amendment**, dated April 6, 2009.

b. **Other Terms.** Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

2. **Modifications to the Agreement.** The Agreement is hereby modified as follows:

a. **Section 2.** Section 2. Term of the Agreement of the Agreement currently reads as follows:

Subject to Section 1, the term of this Agreement shall be from September 1, 2005 to August 31, 2009.

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

Subject to Section 1, the term of this Agreement shall be from September 1, 2005 to June 30, 2010.

b. **Section 5.** Section 5. Compensation of the Agreement currently reads as follows:

**5. Compensation.**

Contractor will invoice the applicable monthly Fee for Maintenance Services in advance. Payment of said Fees is due within forty-five (45) days from the date of Contractor's invoice. In no event shall the amount of this Agreement exceed eight million, four hundred thousand, seven hundred forty dollars (\$8,400,740). The breakdown of Fees associated with this Agreement appears in Appendix C (Equipment List) and Appendix D (Calculation of Charges) attached hereto and incorporated by reference as though fully set forth herein. Fees for renewal terms beyond the initial term of this Agreement will be at Contractor's then current prices unless otherwise agreed to in writing.

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

**5. Compensation.**

Contractor will invoice the applicable monthly Fee for Maintenance Services in advance. Payment of said Fees is due within forty-five (45) days from the date of Contractor's invoice. In no event shall the amount of this Agreement exceed thirteen million dollars one and sixty seven thousand three hundred and twenty one dollars and no cents (\$13,167,321). The calculation of fees for the term from September 1, 2009 through June 30, 2010 is approximately two million, five hundred thousand dollars and no cents (2, 500, 00). Fees for renewal terms beyond the initial term of this Agreement will be at Contractor's then current prices unless otherwise agreed to in writing.

**3. Effective Date.** Each of the modifications set forth in Section 2 shall be effective on and after the date of this Amendment.

**4. Legal Effect.** Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, Contractor and City have executed this Amendment as of the date first referenced above.

**CITY**

**CONTRACTOR**

Recommended by:

**Avaya, Inc.**

\_\_\_\_\_  
Chris A. Vein  
CIO, City and County of San Francisco  
Executive Director, DT

\_\_\_\_\_  
Jeff Laurenti  
Sales Director  
8744 Lucent Boulevard  
Highlands Ranch, CO 80129

City vendor number: 55863

Approved as to Form:

Dennis J. Herrera  
City Attorney

By:

\_\_\_\_\_  
Margarita Gutierrez  
Deputy City Attorney

Approved:

\_\_\_\_\_  
Naomi Kelly  
Director of the Office of Contract Administration,  
and Purchaser