

20150323-8471

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

Second Amendment

THIS AMENDMENT (this "Amendment") is made as of September 1, 2014, in San Francisco, California, by and between AT&T Corp. ("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;

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

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

1a. Agreement. The term "Agreement" shall mean the Agreement dated February 26, 2010 between Contractor and City.

1b. Other Terms. Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement, as amended by the:

First amendment, dated April 26, 2013.

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

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

2. Term of the Agreement. Subject to Section 1, the term of this Agreement shall commence on the Effective Date and terminate four and one half years following the Effective Date; provided, however, that the term of the specific agreements incorporated herein shall be as set forth within each incorporated agreement. Under this Agreement, "Term" shall refer, as the context reasonably dictates, to both the Term of this Agreement and the Term set forth in the incorporated agreements.

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

2. Term of the Agreement. Subject to Section 1, the term of this Agreement shall commence on the Effective Date and terminate on December 31, 2015; provided, however, that the term of the specific agreements incorporated herein shall be as set forth within each incorporated agreement. Under this Agreement, "Term" shall refer, as the

context reasonably dictates, to both the Term of this Agreement and the Term set forth in the incorporated agreements.

2b. Section 4(a). Services Contractor Agrees to Perform. Section 4(a) of the Agreement currently reads as follows:

4. Services Contractor Agrees to Perform. Consistent with the terms of this Agreement, the Contractor agrees to perform the services, including but not limited to those services listed in Exhibit A, "Description of Services," attached hereto and incorporated by reference as though fully set forth herein.

a. All Services obtained by City during the Term, which are available under the contract between the State of California Department of Technology Services and Contractor, executed by the State Department of Technology on or about January 24, 2007, which can be found at <https://ebiznet.sbc.com/calnetinfoji> ("Calnet 2"), will be obtained and provided in accordance with Calnet 2 and shall be subject to the terms and conditions set forth therein. Pursuant to Calnet 2, when authorized to do so by the State of California, City may procure Services provided under the terms and conditions of Calnet 2 by executing a Calnet 2 Contract "Authorization to Order Under State Contract" for Module 1 Services (Voice, Data, and Video Services) and/or a Calnet 2 "Authorization to Order Under State Contract" for Module 2 Services (Long Distance and Network Based Services). The City and Contractor entered into an Authorization to Order Under State Contract ("ATOs") for both Module 1 and Module 2 Services, effective July 8, 2007, both of which are attached hereto as Exhibit B and incorporated herein by this reference. These ATOs superseded and replaced the Calnet 1 Contract B-4 Authorization to Order executed by the parties in December of 2003 in its entirety.

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

4. Services Contractor Agrees to Perform. Consistent with the terms of this Agreement, the Contractor agrees to perform the services, including but not limited to those services listed in Exhibit A, "Description of Services," attached hereto and incorporated by reference as though fully set forth herein. All references to Calnet shall be to Calnet 2 and Calnet 3.

a. All Services obtained by City during the Term, which are available under the contract between the State of California Department of Technology Services and Contractor, dated January 30, 2007, which can be found at <https://ebiznet.sbc.com/calnetinfoji> ("Calnet 2"), will be obtained and provided in accordance with Calnet 2 and shall be subject to the terms and conditions set forth therein. Calnet 2 is currently scheduled to expire on January 29, 2016. The City and Contractor entered into an Authorization to Order Under State Contract for both Module 1 and Module 2 Calnet 2 Services, effective July 8, 2007, both of which are attached hereto as Exhibit B and incorporated herein by this reference. All Services obtained by City during the Term, which are available under the contracts between the State of California and Contractor (Contract for CALNET 3 Statewide Contract A (SWC-A), C3-A-12-10-TS-01, dated November 15, 2013 and Contract for CALNET 3 Statewide Contract B (SWC-B), C3-B-12-10-TS-01, dated April 1, 2014), which can be found at <http://marketing.dts.ca.gov/calnet3/> (collectively referred to herein as "Calnet 3"), will be obtained and provided in accordance with Calnet 3 and shall be subject to the terms and conditions set forth therein. Pursuant to Calnet 3, when authorized to do so by the State of California, City may procure Services provided under the terms and conditions of Calnet 3 by executing a Calnet 3 "Authorization to Order Under State Contract" for 1 Services under Calnet 3 C3-A-12-10-TS-01 or under Calnet 3 C3-B-12-10-TS-01. Upon execution of any Calnet 3 Authorization to Order by the

Parties, this Agreement shall be amended to include the Authorization to Order(s) as an Exhibit(s).

2c. Section 5 Compensation. Section 5 of the Agreement currently reads as follows:

5. Compensation to Contractor.

Compensation shall be made to Contractor by City within forty five (45) days from date of invoice. City will make best efforts to pay within forty-five (45) days from date of invoice.

In no event shall the total amount paid under this Agreement exceed Seventy Five Million Dollars (\$75,000,000.00) during the Term of the Agreement, unless otherwise agreed to by the Parties in writing; provided, however, that City is responsible for services authorized by the CIO or his designee provided by Contractor under this Agreement.

No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by the Director of the Department of Technology or designee 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.

The Controller is not authorized to pay invoices submitted by Contractor before Contractor's submission of HRC Progress Payment Form. If Progress Payment Form is not submitted with Contractor's invoice, the Controller will notify the department, the Director of HRC and Contractor of the Commission.

Following City's payment of an invoice, Contractor shall, within ten days, file an affidavit using HRC Payment Affidavit verifying that all subcontractors have been paid and specifying the amount.

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

5. Compensation to Contractor.

Compensation shall be made to Contractor by City within forty five (45) days from date of invoice. City will make best efforts to pay within forty-five (45) days from date of invoice.

In no event shall the total amount paid under this Agreement exceed Ninety-Seven Million Nine Hundred and Fifty Three Thousand Seven Hundred Dollars (\$97,953,700) during the Term of the Agreement, unless otherwise agreed to by the Parties in writing; provided, however, that City is responsible for services authorized by the CIO or his designee provided by Contractor under this Agreement.

No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by the Director of the Department of Technology or designee 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.

The Controller is not authorized to pay invoices submitted by Contractor before Contractor's submission of HRC Progress Payment Form. If Progress Payment Form is not

submitted with Contractor's invoice, the Controller will notify the department, the Director of HRC and Contractor of the Commission.

Following City's payment of an invoice, Contractor shall, within ten days, file an affidavit using HRC Payment Affidavit verifying that all subcontractors have been paid and specifying the amount.

2d. Replacing "Earned Income Credit (EIC) Forms" Section with "Consideration of Criminal History in Hiring and Employment Decisions" Section. Section 31 "Earned Income Credit (EIC) Forms," is hereby replaced in its entirety to read as follows:

31. Consideration of Criminal History in Hiring and Employment Decisions

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

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

c. Contractor shall incorporate by reference in all subcontracts the provisions of Chapter 12T, 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.

d. Contractor or Subcontractor shall not inquire about, require disclosure of, or if such information is received, base an Adverse Action on an applicant's or potential applicant for employment's, or employee's: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the

date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

e. Contractor or Subcontractor shall not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in subsection 31(d), above. Contractor or Subcontractor shall not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

f. Contractor or Subcontractor shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment to be performed under this Agreement, that the Contractor or Subcontractor will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

g. Contractor and Subcontractors shall post the notice prepared by the Office of Labor Standards Enforcement (OLSE), available on OLSE's website, in a conspicuous place at every workplace, job site, or other location under the Contractor or Subcontractor's control at which work is being done or will be done in furtherance of the performance of this Agreement. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the workplace, job site, or other location at which it is posted.

h. Contractor understands and agrees that if it fails to comply with the requirements of Chapter 12T, the City shall have the right to pursue any rights or remedies available under Chapter 12T, including but not limited to, a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this Agreement.

2d. Procurement Qualification. Section 68 is hereby added to the Agreement, as follows:

If the Contractor and/or its subcontractor enter into a consulting agreement with City for the explicit purpose to develop/recommend a specific solution and/or scope of work for a future procurement to be conducted separate and apart from the consulting arrangement, then the Contractor and/or its subcontractor is disqualified from bidding on or being directly or indirectly involved in supporting a subsequent bid on that future procurement. The disqualification shall apply only to the extent that the services to develop/recommend a specific solution and/or scope of work for a future procurement are actually incorporated into the future procurement and will result in a contract award for the provision of services, the procurement of goods or supplies, or any other related action.

Contractor acknowledges and agrees that the phrase "develop/recommend a specific solution and/or scope of work for a future procurement" as used in the preceding paragraph shall include but not limited to the development of estimates, specifications, selection criteria, equipment lists

or other bid documents. The phrase "future procurement" includes the bidding or other competitive process and award of a contract to a contractor, vendor, or supplier. The prohibition defined in the preceding paragraph shall extend to precluding Contractor and/or its subcontractor from assisting or participating with or receiving any compensation or other benefit from a third party bidder, contractor, or vendor responding to the future procurement or providing services, goods or supplies under a contract awarded pursuant to the future procurement.

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.

This Amendment shall be void if not executed by the City and received by AT&T within 30 days of the date AT&T executed the Amendment, or if the City alters, adds or deletes any of the provisions in the version executed by AT&T.


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

CITY

CITY

**CONTRACTOR
AT&T Corp.**

Recommended by:



Miguel A. Gamiño Jr., CPA
COO, Deputy CIO/Director and Chief of Staff
Department of Technology
City and County of San Francisco

City

By: 

GABRIELA RATULOWSKI
Contract Management
City vendor number: 14037 3123115

Approved as to Form:

Dennis J. Herrera
City Attorney

By: 

Margarita Gutierrez
Deputy City Attorney

Approved:



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