

GIFT AGREEMENT

THIS GIFT AGREEMENT (this "Agreement"), dated for reference purposes only as of March 12, 2014, is made by and between the CITY AND COUNTY OF SAN FRANCISCO ("City"), a municipal corporation, acting by and through its DEPARTMENT OF TECHNOLOGY ("DT"), and MICROSOFT.

RECITALS

A. Microsoft has offered the City a gift ("Gift") to enable the City to migrate its email service platform from an enterprise level to a government level.

B. Microsoft would provide the services provided for the migration, and there is no expectation that Microsoft will incur any expense on its own beyond the Gift for the migration consultant services.

C. Subject to the approval of the San Francisco Board of Supervisors, DT would receive the Gift forth in and in accordance with the terms herein.

ACCORDINGLY, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and subject to the Board of Supervisors' authorization, the City and Microsoft hereby agree as follows:

Section 1. Gift to the City. Microsoft shall provide the gratuitous services described in Exhibit A incorporated herein for the City to implement the Email migration project as described in Section 2, below. The market value for the delivery of these gratuitous services (the "Gift") is one hundred and thirty three thousand dollars (\$133,000.00)

Section 2. City's Use of the Gift. The City shall use the Gift to implement the Migration Project as described in and in accordance with the Gratuitous Services Letter attached as Exhibit 1 and incorporated herein ("GSL"), including the Statement of Work incorporated therein and attached hereto as Attachment A.

Section 3. Gratuitous Services Letter between Microsoft and City. The City acknowledges that the Gratuitous Services Letter attached as Exhibit 1, which includes Attachments A and B and Exhibit A thereto (collectively, the "GSL"), contains certain conditions and specifies certain obligations imposed on the City. The GSL also specifies the City's rights in the service deliverables and Microsoft's responsibilities and obligations in performance of the services. To that end, the GSL is incorporated into this Agreement as Exhibit 1. The City agrees it is obligated to, and will be bound by, the GSL to the extent such terms and conditions are expressly applicable to the City's rights and obligations under the GSL.

Section 4. Term. The services will commence upon the effective date of this Agreement and continue until the services are completed in accordance with the GSL unless terminated earlier in accordance with this Agreement or upon the mutual agreement of the parties.

Section 5. Conflicts of Interest. Through its execution of this Agreement, Microsoft acknowledges that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Sections 87100 *et seq.* and Sections 1090 *et seq.* of the Government Code of the State of California. Each party hereby confirms that it does not know of any facts which would constitute a violation of said provisions, and each agrees that if it becomes aware of any such fact(s) during the term of this Agreement it shall immediately notify the other party.

Section 6. Notices. Except as otherwise expressly provided herein, any notices given under this

Agreement shall be effective only if in writing and given by delivering the notice in person, by sending it first class mail or certified mail, with a return receipt requested, or overnight courier, return receipt requested, with postage prepaid, addressed as follows:

City: City and County of San Francisco
Department of Technology
One South Van Ness Avenue
San Francisco, California 94102
Attn: Chief Information Officer

and

City and County of San Francisco
Office of the City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4682
Attn: Energy/Telecommunications Team

Microsoft
Microsoft Corporation
Legal and Corporate Affairs
One Microsoft Way
Redmond, WA 98052
Attn: U.S. Public Sector Legal

Notices herein shall be deemed given two (2) days after the date when it shall have been mailed if sent by first class, certified or overnight courier, or upon the date personal delivery is made.

Section 7. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

Section 8. Insurance. The City is self-insured. Microsoft shall maintain the insurance coverage set forth in Section 10 of Attachment B to Exhibit 1.

Section 9. Reserved

Section 10. Proprietary or Confidential Information of City. This Agreement shall handle confidential and proprietary information in accordance with Section 6 of Attachment B to Exhibit 1 which is herein incorporated by reference.

Section 11. Protection of Private Information. Notwithstanding anything in Section 6 of Attachment B to the contrary and in addition to such confidentiality obligations, Microsoft shall not disclose Private Information to any person or entity unless specifically authorized to do so by the subject individual or by this Agreement or where required by Federal or State law or judicial order. Microsoft acknowledges the City is prohibited from disclosing Private Information to any person or entity unless specifically authorized to do so by the subject individual or by Contract or where required by Federal or State law or judicial order. To the extent the City is so authorized, the City shall limit its disclosure of Private Information to Microsoft to that which is required for Microsoft to perform the services described herein. Neither Microsoft nor its subcontractor(s), if any, may disclose Private Information received from the City under this Agreement to a subcontractor or any other person or entity, unless Microsoft (or its subcontractor(s), if any) has first received written approval from the City's Contracting Department to disclose such information, or the disclosure is expressly required by judicial order. The disclosure and the use

of Private Information shall be in accordance with any conditions or restrictions stated in the Agreement or the Contracting Department's approval and shall not be used except as necessary in the performance of the obligations under the Agreement. The department head or the department head's designee shall sign any approvals of the Contracting Department.

For purposes of this Section, "Private Information" shall mean any information that (1) could be used to identify an individual, including without limitation name, address, social security number, medical information, financial information, date and location of birth, and names of relative; or (2) the law forbids any person from disclosing.

Any breach of this provision shall be a material breach which is incapable of cure.

Section 12. Entire Agreement. This Agreement sets forth the entire agreement between the parties, and supersedes all other oral or written provisions. If any provision of this Agreement is held to be unenforceable, this Agreement shall be construed without such provision.

Section 13. Modification. 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.

Section 14. Counterparts. The parties may execute this Agreement in counterparts, including facsimile, PDF, and other electronic copies, which taken together will constitute one instrument.

Section 15. Termination. Each party has the right to terminate this Agreement if the other party materially breaches or is in default of any material obligation hereunder, which default is incapable of cure or which, being capable of cure, has not been cured within seven (7) calendar days after the day of receipt of written notice of such default from the nondefaulting party or within such additional cure period as the nondefaulting party may authorize.

Section 16. Board of Supervisors Approval. The City shall submit to the Board of Supervisors ("Board") legislation authorizing City to accept the Gift. Notwithstanding anything herein to the contrary, Microsoft understands and agrees that no officer or employee of the City has authority to commit City to this Agreement unless and until the Board shall have duly approved the acceptance of the Gift in accordance with all applicable laws. The Board may approve or reject the Gift in its sole discretion. In the event the Board authorizes the City to accept the Gift, the effective date of the legislation shall be the effective date of this Agreement (the "Effective Date"). In the event the Board does not approve the acceptance of the Gift, then this Agreement shall terminate.

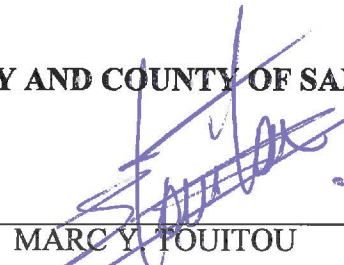
IN WITNESS WHEREOF, City and Microsoft have executed this Agreement as of the date first referenced above.

MICROSOFT

By: 

DAVID GALLAGHER
Director of Contracts


CITY AND COUNTY OF SAN FRANCISCO



By: MARC Y. FOUTOU

Its: DIRECTOR/CHIEF INFORMATION OFFICER
DEPARTMENT OF TECHNOLOGY

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: 

Margarita Gutierrez
Deputy City Attorney

Exhibit 1: Gratuitous Services Letter Agreement

Attachment A: Tenant Migration Services Statement of Work