

File No. 230050

Committee Item No. 4

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

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee Date March 8, 2023

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 checked="" type="checkbox"/>	<input type="checkbox"/>	Budget and Legislative Analyst Report
<input type="checkbox"/>	<input type="checkbox"/>	Youth Commission Report
<input type="checkbox"/>	<input type="checkbox"/>	Introduction Form
<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 checked="" type="checkbox"/>	<input type="checkbox"/>	Form 126 – Ethics Commission
<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>Executed Agreement 6/1/2020</u>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Department of Technology Presentation 3/8/2023</u>
<input type="checkbox"/>	<input type="checkbox"/>	_____
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Completed by: Brent Jalipa Date March 2, 2023

Completed by: Brent Jalipa Date \_\_\_\_\_

1 [Agreement Amendment - AT&T dba AT&T Mobility - Wireless Communications Services - Not  
2 to Exceed \$18,582,078]

3 **Resolution authorizing the Department of Technology approving the first amendment**  
4 **with AT&T dba AT&T Mobility to purchase cellular voice and data services for City**  
5 **departments to extend the agreement term by four years and one month from May**  
6 **23, 2023, for a total term of June 1, 2020, through June 30, 2027; and increasing the**  
7 **agreement amount by \$9,082,078 for a total contract amount of \$18,582,078 pursuant to**  
8 **Charter, Section 9.118.**

9  
10 WHEREAS, On June 1, 2020, the Department of Technology ("Department") entered  
11 into an agreement ("AT&T Mobility Cellular Voice and Data Services Agreement") for the City  
12 and County of San Francisco ("City") to purchase commercial cellular voice and data  
13 services and equipment from AT&T dba AT&T Mobility ("AT&T Mobility") using the  
14 competitive procurement process of the California Network and Telecommunications  
15 (CALNET) Program, based upon the resulting CALNET Contract #C4-CVD-19-001-04 ,  
16 pursuant to Administrative Code, Section 21.16(b); and

17 WHEREAS, The AT&T Mobility Cellular Voice and Data Services Agreement ("AT&T  
18 Mobility Agreement") had an initial term of three years (through May 22, 2023) and a not to  
19 exceed amount of \$9,500,000; and

20 WHEREAS, In part due to the Covid-19 pandemic, City departments have authorized  
21 more use of commercial wireless services than the Department anticipated when it entered  
22 into the AT&T Mobility Agreement; and

23 WHEREAS, The Department has evaluated the City's needs for cellular voice and  
24 data services from AT&T Mobility during the remaining term of the AT&T Mobility Agreement;

1 the Department has determined that the City's spending under the AT&T Mobility Agreement  
2 during the term could be in excess of \$18 million; and

3 WHEREAS, The Department and AT&T Mobility have negotiated a First Amendment to  
4 the AT&T Mobility Agreement that will increase the not to exceed amount to \$18,582,078 and  
5 extend the term until June 30, 2027, a copy of the First Amendment is on file with the Clerk of  
6 the Board of Supervisors in File No. 230050; and

7 WHEREAS, Section 9.118 of the San Francisco Charter requires approval by the Board  
8 of Supervisors for contracts requiring expenditures above \$10,000,000; now, therefore, be it

9 RESOLVED, That the Board of Supervisors approves the First Amendment to the  
10 AT&T Mobility Cellular Voice and Data Services Agreement between the City and AT&T  
11 Mobility to allow City departments to continue to purchase commercial wireless services and  
12 equipment from AT&T Mobility with a not to exceed amount of \$18,582,078; and, be it

13 FURTHER RESOLVED, That within 30 days of the First Amendment being fully  
14 executed by the parties the Department of Technology shall provide a copy of it to the Clerk  
15 of the Board for inclusion in the official file.

<b>Items 4 &amp; 5</b> <b>Files 22-0050, 22-0051</b>	<b>Department:</b> Department of Technology (DT)
<b>EXECUTIVE SUMMARY</b>	
<p style="text-align: center;"><b>Legislative Objectives</b></p> <ul style="list-style-type: none"> <li>The proposed resolutions would approve the following contract amendments between the Department of Technology (DT) and AT&amp;T dba AT&amp;T Mobility: (1) the First Amendment to the cellular voice and data service contract, extending the term by approximately four years and one month through June 2027, and increasing the not-to-exceed amount by \$9,082,078, for a total not to exceed \$18,582,078 (File 22-0050); and (2) the First Amendment to the public safety-grade wireless communication services contract, increasing the amount by \$13,252,968, for a total not to exceed \$22,252,968, with no change to the contract term (File 22-0051).</li> </ul> <p style="text-align: center;"><b>Key Points</b></p> <ul style="list-style-type: none"> <li>The City has two cellular services contracts with AT&amp;T through the State of California's CALNET program: (1) a commercial contract for general use, and (2) a public safety-grade contract using the national FirstNet network. The number of AT&amp;T wireless lines between the two contracts has increased by approximately 62 percent since June 2020. This trend accelerated due to remote and hybrid work environments during the pandemic, as well as cybersecurity concerns of employees using personal phones for work purposes. The high usage has depleted contract not-to-exceed amounts much faster than DT had anticipated.</li> </ul> <p style="text-align: center;"><b>Fiscal Impact</b></p> <ul style="list-style-type: none"> <li>The proposed contract amendments would increase the two AT&amp;T contract not-to-exceed amounts by a total of \$22,335,046. The contracts are funded by the various departments that use AT&amp;T services.</li> </ul> <p style="text-align: center;"><b>Policy Consideration</b></p> <ul style="list-style-type: none"> <li>The City now has approximately 19,926 cellular lines. Although the City Administrator's Office issued a memo establishing a policy to terminate accounts that are inactive for 60 days, some Departments have requested DT not to disconnect lines or suspend service.</li> </ul> <p style="text-align: center;"><b>Recommendations</b></p> <ul style="list-style-type: none"> <li>The Board of Supervisors could consider requesting that DT staff: (1) include stronger controls in the new Citywide Mobile Device Use Policy, such as requiring departments to provide justification for lines that are kept open on underutilized accounts after 60 days; and/or (2) provide a report to the Board of Supervisors on the final COIT approved Citywide Mobile Device Use Policy, including any controls that may help reduce the number of cellular devices.</li> <li>Approve the proposed resolutions.</li> </ul>	

**MANDATE STATEMENT**

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

**BACKGROUND**

The City has five contracts with telecommunications services providers that allows the City to benefit from reduced rates and favorable terms via participation in the State of California's Integrated Telecommunications Network Program (CALNET) for Cellular Voice and Data Services. These agreements include:

1. AT&T First Net (for first responders) for \$9 million, from June 2020 to October 2025
2. AT&T (for commercial cellular services) for \$9.5 million from June 2020 to May 2023
3. Verizon<sup>1</sup> for \$30,626,500 from June 2020 to June 2027 (\$4.3M/yr.)
4. T-Mobile for \$5 Million from June 2021 to June 2023
5. Sprint for \$5 million from June 2021 to June 2023<sup>2</sup>

These telecommunications services include all cellular device services such as cell phones, Wi-Fi hot spots, vehicle modems, laptops/iPads, wireless water meters, wireless security cameras, etc. Each device may have one or multiple lines.

According to Department of Technology (DT) staff, the City has cellular services agreements with multiple providers in order to benefit from increased competition among vendors and to keep prices as low as possible. Each department chooses their own vendors and plans according to need. According to DT staff, some departments have staff with higher needs for a specific service (such as data or texting) or may need a specific carrier that has better coverage in a certain area.

DT is proposing to amend the two AT&T contracts due to higher than projected usage and spend on the contracts (as discussed below).

**AT&T FirstNet Contract**

After the September 11<sup>th</sup> terrorist attacks, the federal government sought to build a single wireless communication network for law enforcement, firefighters, paramedics, and other public safety officials in every state. In 2012, the Middle Class Tax Relief and Job Creation Act created the First Responder Network Authority (FirstNet) to build, deploy, and operate the network. In January 2016, FirstNet issued a Request for Proposals (RFP) for the deployment of the network. In March 2017, FirstNet awarded a \$46.5 billion contract to AT&T for a 25-year term. By December 2017, all 50 states had agreed to opt into the FirstNet/AT&T network. In June 2020,

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<sup>1</sup> The Board of Supervisors approved the First Amendment to the Verizon contract in October 2022 (File 22-0790).

<sup>2</sup> According to DT staff, due to T-Mobile's acquisition of Sprint, the City's Sprint contract will be closed out by the end of this fiscal year and all remaining Sprint lines will be transferred to T-Mobile or disconnected.

the DT executed a contract with AT&T to use the FirstNet network, for a term of five years and four months, from June 23, 2020 through October 21, 2025 and an amount not to exceed \$9,000,000.

### **AT&T Commercial Contract**

CALNET, managed by the California Department of Technology (CDT), provides competitively bid contracts with standardized service levels for information technology and communication services that may be used by state and local governments. In 2018, CDT issued an Invitation for Bids (IFB) for CALNET cellular voice and data service providers. CDT received four bids and scored them, as shown in Exhibit 1 below.

#### **Exhibit 1: Bidders and Scores from IFB**

<b>Bidder</b>	<b>Non-Cost Points</b>	<b>Cost Points</b>	<b>Total Points</b>
Sprint	6,000.00	4,000.00	10,000.00
T-Mobile	4,448.28	3,877.30	8,325.58
AT&T	6,000.00	2,116.56	8,116.56
Verizon Wireless	4,655.17	2,556.18	7,211.35

Source: CDT

All four bidders met the minimum score<sup>3</sup> and were awarded contracts. DT has established contracts with all four providers using the CDT solicitation. In June 2020, DT executed a commercial cellular contract with AT&T for a term of approximately three years, from June 1, 2020 through May 22, 2023, with two 2-year options to extend through May 22, 2027, and an amount not to exceed \$9,500,000.

### **High Contract Usage**

According to Hao Xie, DT Strategic Sourcing Manager, the number of AT&T wireless lines under the FirstNet contract has increased by approximately 71 percent since June 2020, or by approximately 28 percent per year, and the number of lines under the commercial contract has increased by approximately 54 percent, or 22 percent per year. This trend accelerated due to remote and hybrid work environments during the pandemic, as well as cybersecurity concerns of employees using personal phones for work purposes.<sup>4</sup> The high usage has depleted contract not-to-exceed amounts much faster than DT had anticipated. DT and AT&T have negotiated amendments to the contracts to provide for sufficient expenditure authority in the remainder of the contract terms.

## **DETAILS OF PROPOSED LEGISLATION**

The proposed resolutions would approve the following contract amendments between DT and AT&T Mobility:

<sup>3</sup> CDT established an average baseline score of 7,884.50 points, which was the average score, excluding any high or low score that was more than 15 percent above or below the next highest or lowest score. CDT then set a minimum score of 7,096.05 points, which is 10 percent below the average baseline score.

<sup>4</sup> According to DT staff, the Department's rough estimate shows that approximately 8,000 personal devices (laptops and/or phones) accessed the City's Office 365 application (email, teams, calendar, etc.) in November 2022.

1. The First Amendment to the commercial cellular voice and data service contract, extending the term by approximately four years and one month through June 2027, and increasing the not-to-exceed amount by \$9,082,078, for a total not to exceed \$18,582,078 (File 22-0050); and
2. The First Amendment to the public safety-grade wireless communication services contract, increasing the amount by \$13,252,968, for a total not to exceed \$22,252,968, with no change to the contract term (File 22-0051).

Other contract terms would not change.

### **Services**

The scope of services for the contracts covers voice, text, and data plans on the cellular network, as well as the purchase of equipment, such as cell phones, wireless cards, vehicle modems, and cellular monitoring devices (such as water meter controllers) at set rates. According to DT staff, the benefits of the contracts include no minimum purchase commitment, no fees to terminate service, and a “most favored nation” clause, which guarantees that no other similarly situated public customer would receive lower rates for a substantially similar service. Each City department determines its ordering of cellular service and equipment. DT administers the contracts and pays monthly service charges to AT&T, which are billed back to City departments as work orders. The Airport manages its own purchases and monthly payments under the AT&T contracts.

### **Usage**

Between the two contracts, AT&T provides services for 12,053 lines, as of December 2022. Over the period of November 2022 to January 2023, each AT&T line used approximately 78.5 minutes of talk, sent 33.6 text messages, and used 3.0 GB of data per month, on average (excluding Airport usage). As noted above, the number of AT&T lines has increased by approximately 54 to 71 percent under the contracts since June 2020 (22 to 28 percent per year). DT projects that growth in future years will decline in half, to 14 percent annual growth under the FirstNet contract and 11 percent annual growth under the commercial contract.

### **AT&T Commercial Contract Term**

The term extension on the commercial contract assumes that CALNET will extend its underlying contract with AT&T. If CALNET chooses not to extend its contract, the City’s contract would be terminated on May 22, 2023.

## **FISCAL IMPACT**

The proposed contract amendments would increase the contracts as follows: (1) increase the commercial AT&T contract not-to-exceed amount by \$9,082,078, for a total not to exceed \$18,582,078 (File 22-0050); and (2) increase the FirstNet AT&T contract not-to-exceed amount by \$13,252,968, for a total not to exceed \$22,252,968 (File 22-0051). The not-to-exceed amounts are estimated using FY 2021-22 average monthly expenditures of \$166,743 for the commercial contract and \$296,556 for the FirstNet contract, with annual escalation of 11 percent on the

commercial contract and 14 percent on the FirstNet contract. Actual and projected contract expenditures are shown in Exhibit 2 below.

### Exhibit 2: Actual and Projected Contract Expenditures

	Commercial Contract (File 22-0050)	FirstNet Contract (File 22-0051)	Total
Actual Expenditures (through June 2022)	\$4,750,001	\$6,295,408	\$11,045,408
FY 2022-23 (Projected)	2,221,021	4,056,889	6,277,910
FY 2023-24 (Projected)	2,465,333	4,624,853	7,090,186
FY 2024-25 (Projected)	2,736,520	5,272,332	8,008,852
FY 2025-26 (Projected)	3,037,537	2,003,486 <sup>5</sup>	5,041,023
FY 2026-27 (Projected)	3,371,666	-	3,371,666
Total Projected Expenditures	\$13,832,077	\$15,957,560	\$29,789,638
<b>Total Actual and Projected Expenditures</b>	<b>\$18,582,078</b>	<b>\$22,252,968</b>	<b>\$40,835,046</b>

Source: DT

The contracts are funded by the various departments that use AT&T services. The departments with the highest contract expenditures in FY 2020-21 and FY 2021-22 are the Police Department (\$4,234,027), Airport (\$950,289), Department of Public Health (\$861,841), Municipal Transportation Agency (\$734,736), Human Services Agency (\$688,928), Department of Public Works (\$539,849), and Recreation and Park Department (\$466,354). Collectively, these departments account for approximately 80 percent of AT&T contract expenditures in FY 2020-21 and FY 2021-22.

### POLICY CONSIDERATION

As noted above, the AT&T cellular line count has increased by 28 percent annually on the FirstNet contract and 22 percent annually on the commercial contract since June 2020. DT projects annual increases of 14 percent for the FirstNet contract and 11 percent for the commercial contract in future years after DT implements a new mobile device usage policy (discussed below). Between the AT&T, T-Mobile, and Verizon contracts, the City now has approximately 19,926 cellular lines<sup>6</sup> as of January 2023, an increase from the 13,643 cellular devices in January 2020. While DT identifies cost-effective providers and plans, administers and oversees all cellular service contracts (excluding the Airport's use of the AT&T contracts), cell phone equipment purchases, usage, and issuance decisions are made by individual departments.

In July 2020, the City Administrator's Office issued a memo establishing a policy to terminate accounts that are inactive for 60 days. According to Strategic Sourcing Manager Xie, DT generates a monthly consolidated report that tracks usage for all carriers and distributes this list to departmental finance managers and staff responsible for ordering mobile service. The reports are intended to inform departments of the usage per line and which lines may be on the wrong rate plan, as well as unused lines that are still incurring monthly service fees. According to Strategic Sourcing Manager Xie, there were approximately 3,679 cellular device units across all

<sup>5</sup> FY 2025-26 projected expenditures for the FirstNet contract are for the four-month period of July-October 2025.

<sup>6</sup> According to DT staff, as of December 2022 there were still 13 Sprint lines remaining, which would be in addition to the 19,926 cellular lines on the AT&T, T-Mobile, and Verizon contracts.



providers that were inactive over the past 60 days at a total average monthly cost of \$127,000. However, Strategic Sourcing Manager Xie added that some City Departments have requested DT not to disconnect or suspend service for the unused lines, because they may use some devices or SIMs as backups, for example, dual-SIMs for police vehicles.

According to Strategic Sourcing Manager Xie, DT is updating the Citywide Mobile Device Use Policy. DT intends to complete a draft policy by April 30, 2023 and bring forward a final policy to the Committee on Information Technology (COIT) for approval by August 30, 2023. This new policy will require departments to have a policy defining the specific need for cellular devices, the assignment of devices, and monitoring of devices. Department CFOs will be responsible for acknowledging on a quarterly basis that any unused phones are for a specific purpose (employee on medical leave, emergency device, etc.). To reduce cellular service costs, the Board of Supervisors may consider requesting that DT include stronger controls in the new policy, such as requiring departments to provide justification for lines on underutilized accounts after 60 days of inactivity. The Board of Supervisors may also consider requesting that DT staff provide a report to the Board on the final COIT approved Citywide Mobile Device Use Policy, including any controls that are intended to reduce the number of cellular devices.

If implementation of the forthcoming Citywide Mobile Device Use Policy does not reduce growth in usage of the two AT&T contracts to projected levels, expenditures may exceed current projections. Amendments to the contracts that exceed \$500,000 would require Board of Supervisors' approval.

## RECOMMENDATIONS

1. The Board of Supervisors could consider requesting that DT staff include stronger controls in the new Citywide Mobile Device Use Policy, such as requiring departments to provide justification for lines that are kept open on underutilized accounts after 60 days of inactivity.
2. The Board of Supervisors could consider requesting that DT staff provide a report to the Board of Supervisors on the final COIT approved Citywide Mobile Device Use Policy, including any controls that may help reduce the number of cellular devices.
3. Approve the proposed resolutions.

# Amendments to Two Contracts with AT&T Mobility

To: Budget and Finance Committee  
March 8, 2023

Mike Makstman, City Chief Information Security Officer  
Hao Xie, DT Strategic Sourcing Manager



# Amendment #1 - Cellular Voice & Data Services

## 1<sup>st</sup> Amendment to the AT&T Cellular Voice & Data Service Agreement

- ❑ Extend the contract term from three years to seven years and one month
- ❑ Increase the not-to-exceed amount from \$9.5M to \$18.6M (~\$2.6M/Year)
- ❑ No other change

## Contract for all City departments to use AT&T's cellular network

- ❑ Scope: voice, text & data plans through cell phones (66%) and other devices (34%, e.g., mobile Wi-Fi hotspots, laptops/iPads, barcode scanners, etc.)
- ❑ Average monthly cost: \$26.09/line
- ❑ # of lines: 5,798, increased by 22%/year since the start of the pandemic



# Amendment #2 - Public Safety-Grade Cellular Services

## 1<sup>st</sup> Amendment to the AT&T FirstNet / Public Safety-Grade Cellular Services

- ❑ Increase the not-to-exceed amount from \$9.0M to \$22.3M for the term of 5 years and 4 months (~\$4.2M/Year)
- ❑ No other change

## Contract for prioritized / preemptive cellular services for first responders

- ❑ New Services: first adopted by SFPD; new contract started in June 2020
- ❑ Scope: voice, text and data plans on a dedicated radio frequency spectrum, through cell phones (59%) and other devices (41%, e.g., routers on police vehicles, mobile Wi-Fi hotspots, laptops/iPads, etc.)
- ❑ Average monthly cost: \$48.48/line
- ❑ # of lines: 6,259, increased by 28%/year since the start of the pandemic



# Contract Usage & Policy Goals

## Contract Usage

- ❑ Equipment purchases & usage decisions are made by individual departments
- ❑ # of lines increased by 46% since the start of the pandemic

## Proposed Policy to Strengthen Cybersecurity and Control Cost

- ❑ DT will update the CCSF Mobile Device Policy (last updated in 2018) and circulate it among all City departments
- ❑ DT will develop a solution to track the ordering of all cellular services
- ❑ Departmental CFOs will be required to certify once a quarter that
  - ✓ they have reviewed the mobile device usage reports provided by DT
  - ✓ all the active lines are necessary and using the most efficient rate plans
  - ✓ all the unnecessary lines will be disconnected/suspended



# Amendments to Two Contracts with AT&T Mobility

## ***Any Questions?***

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

**First Amendment  
between the City and County of San Francisco and  
AT&T Mobility**

THIS AMENDMENT (this “Amendment”) is made as 2nd day of January 2023, in San Francisco, California, by and between AT&T Mobility National Accounts, LLC, dba AT&T Mobility (“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 term and increase the contract amount; and

WHEREAS, on March 9, 2020, the Office of Contract Administration, approved the Department’s request, made under Administrative Code Section 21.16(b), to use the competitive procurement process of the California Department of Technology (“CDT”) for Cellular Voice and Data Services issued under the California Network and Telecommunications (“CALNET”) program, based upon the new CALNET Contract C4-CVD-19-001-04 for CALNET Cellular Business Services ( Category 19.1) awarded to Contractor (available as of the Effective Date at <https://cdt.ca.gov/services/calnet-services> under the heading Category 19.1-19.2) (as now or hereafter amended, restated or otherwise modified, the “CALNET Contract”);

WHEREAS, on \_\_\_\_\_, 2023, the Office of Contract Administration, approved the Department’s request, made under Administrative Code Section 21.16(b), to *continue* to leverage the competitive procurement of the CALNET Contract; and

WHEREAS, pursuant to S.F. Charter section 9.118, the City’s Board of Supervisors approved this Agreement by Resolution XXX-XX on March XX, 2023; and

WHEREAS, professional services are not included in the scope of this Agreement; and therefor there is no Local Business Entity subcontracting participation requirement for this Agreement; and

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

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

## Article 1 Definitions

The following definitions shall apply to this Amendment:

1.1 **Agreement.** The term “Agreement” shall mean the Agreement dated June 1, 2020 between Contractor and City, as amended by the:

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

## Article 2 Modifications of Scope to the Agreement

The Agreement is hereby modified as follows:

2.1 **Article 2: Term of the Agreement.** Article 2 of the Agreement currently reads as follows:

2.1 The term of this Agreement shall commence on June 1, 2020 and expire on May 22 2023, as the CALNET Contract is currently scheduled to expire on May 22, 2023, unless earlier terminated as otherwise provided herein.

2.2 If CDT executes an extension of the existing CALNET Contract with Contractor, the City shall have two (2) optional extensions to renew the Agreement for a period of two years per each extension (provided that notwithstanding the foregoing, any extended term of this Agreement shall be limited so as not to exceed the term of the CALNET Contract). The City may extend this Agreement beyond the expiration date by exercising these options at the City’s sole and absolute discretion by providing no less than sixty (60) days’ prior written notice to Contractor. In such event Contractor shall reasonably cooperate with City to modify this Agreement to reflect such extended term as provided in Section 11.5, “Modification of this Agreement;” provided Contractor’s failure to do so shall not affect the validity of such extended term.

2.3 If the CALNET Contract is terminated prior to its scheduled termination, this Agreement shall likewise terminate as of the effective date of such CALNET Contract termination.

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

2.1 The term of this Agreement shall commence on June 1, 2020 and expire on June 30 2027, as the CALNET Contract is currently scheduled to expire on June 30, 2027, unless earlier terminated as otherwise provided herein.

2.2 If the CALNET Contract is terminated prior to its scheduled termination, this Agreement shall likewise terminate as of the effective date of such CALNET Contract termination.



**2.2 Payment and Agreement Maximum Amount.** Section 3.3.1 of the Agreement, Payment and Agreement Maximum Amount, currently reads as follows:

**3.3.1 Payment and Agreement Maximum Amount.** Contractor shall provide an invoice to the City on a monthly basis for Services completed in the immediate preceding month, unless a different schedule is set out in Appendix C, "Calculation of Charges." Compensation shall be made for Services identified in the invoice that the Chief Information Officer of City, or his or her designee, in his or her sole discretion, concludes has been satisfactorily performed. Payment shall be made within 30 calendar days of the invoice date unless the City notifies the Contractor that a dispute as to the invoice exists. In no event shall the amount of this Agreement exceed **\$9,500,000** (Nine Million and Five Hundred Thousand Dollars). If the compensation cap will be reached prior to the expiration of the contract, the City will work in good faith to increase the compensation cap. The breakdown of charges associated with this Agreement appears in Appendix C, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. In no event shall City be liable for interest or late charges for any late payments.

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

**3.3.1 Payment and Agreement Maximum Amount.** Contractor shall provide an invoice to the City on a monthly basis for Services completed in the immediate preceding month, unless a different schedule is set out in Appendix C, "Calculation of Charges." Compensation shall be made for Services identified in the invoice that the Chief Information Officer of City, or his or her designee, in his or her sole discretion, concludes has been satisfactorily performed. Payment shall be made within 30 calendar days of the invoice date unless the City notifies the Contractor that a dispute as to the invoice exists. In no event shall the amount of this Agreement exceed **\$18,582,078 (Eighteen Million and Five Hundred Eighty-Two Thousand and Seventy-Eight Dollars)**. If the compensation cap will be reached prior to the expiration of the contract, the City will work in good faith to increase the compensation cap. The breakdown of charges associated with this Agreement appears in Appendix C, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. In no event shall City be liable for interest or late charges for any late payments.

### **Article 3 Updates of Standard Terms to the Agreement (Reserved)**

#### **Article 4 Effective Date**

Each of the modifications set forth in Article 2 shall be effective on and after the date of this Amendment.

#### **Article 5 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:

AT&T DBA AT&T Mobility

\_\_\_\_\_  
Linda Gerull  
City Chief Information Officer  
Department of Technology

DocuSigned by:  
  
\_\_\_\_\_  
F733E4B47217445  
Jack Wildermuth  
Senior Contract Manager  
2700 Watt Avenue, Room 2110-064  
Sacramento, CA 95821  
(916) 296-2200  
Jw8001@att.com

January 11, 2023 | 2:

Approved as to Form:

David Chiu  
City Attorney

City Supplier number: 0000024955

By: \_\_\_\_\_  
William Sanders  
Deputy City Attorney

Approved:

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

By: \_\_\_\_\_  
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Director of the Office of Contract  
Administration, and Purchaser

**City and County of San Francisco  
Office of Contract Administration  
Purchasing Division  
City Hall, Room 430  
1 Dr. Carlton B. Goodlett Place  
San Francisco, California 94102-4685**

**Agreement between the City and County of San Francisco and  
AT&T Mobility dba AT&T Mobility or AT&T**

This Agreement is made as of this 1<sup>st</sup> day of June , 2020, in the City and County of San Francisco, State of California, by and between AT&T Mobility National Accounts, LLC, dba AT&T Mobility (“Contractor”) and the City and County of San Francisco (“City”).

**Recitals**

WHEREAS, the Department of Technology (“Department”) wishes to engage Contractor for the purchase of recurring cellular voice and data services and wireless telecommunications equipment including but not limited to mobile handsets and tablets; and,

WHEREAS, on March 9, 2020, the Office of Contract Administration, approved the Department’s request, made under Administrative Code Section 21.16(b), to use the competitive procurement process of the California Department of Technology (“CDT”) for Cellular Voice and Data Services issued under the California Network and Telecommunications (CALNET) program, based upon the new CALNET Contract C4-CVD-19-001-04 for CALNET Cellular Business Services ( Category 19.1) awarded to Contractor (available as of the Effective Date at <https://cdt.ca.gov/services/calnet-services> under the heading *Category 19.1-19.2*) (as now or hereafter amended, restated or otherwise modified, the “CALNET Contract”);

WHEREAS, the CALNET Contract includes, without limitation, those certain:

- *General Provisions – CALNET IFB C4CVD18 - Appendix A-1 for Category 19 CALNET Cellular Voice and Data Services Subcategory 19.1 Cellular Voice and Data Services Subcategory 19.2 First Responders Cellular Services Addendum 5* (available as of the Effective Date at <https://cdt.ca.gov/services/wp-content/uploads/sites/2/sites/2/2019/11/CALNET-General-Provisions-CALNET-Cellular-Addm-5-20190103.pdf>) (the “General Provisions”); and,
- *IFB C4CVD18 for Category 19 CALNET Cellular Voice and Data Services Subcategory 19.1 Cellular Business Services Subcategory [; Subcategory] 19.2 First Responders Cellular Services Statement of Work SOW Business Requirements* (available as of the Effective Date at <https://cdt.ca.gov/services/wp-content/uploads/sites/2/sites/2/2019/09/CALNET-IFB-CELL-Business-Requirements.pdf>) (the “SOW Business Requirements”); and

WHEREAS, there is no Local Business Entity (“LBE”) subcontracting participation requirement for this Agreement; and

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

Now, THEREFORE, the parties agree as follows:

## **Article 1      Definitions**

Any capitalized terms used but not defined in this Agreement shall take the meanings assigned to such terms by the CALNET Contract. The following definitions apply to this Agreement:

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

1.2      "City" or "the City" means the City and County of San Francisco, a municipal corporation, acting by and through both its Director of the Office of Contract Administration or the Director's designated agent, hereinafter referred to as “Purchasing” and the “Department of Technology” or “Department”.

1.3      "CMD" means the Contract Monitoring Division of the City.

1.4      "Confidential Information" means confidential City information including, but not limited to, personally-identifiable information (“PII”), protected health information (“PHI”), or individual financial information (collectively, "Proprietary or Confidential Information") that is subject to local, state or federal laws restricting the use and disclosure of such information, including, but not limited to, Article 1, Section 1 of the California Constitution; the California Information Practices Act (Civil Code § 1798 et seq.); the California Confidentiality of Medical Information Act (Civil Code § 56 et seq.); the federal Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801(b) and 6805(b)(2)); the privacy and information security aspects of the Administrative Simplification provisions of the federal Health Insurance Portability and Accountability Act (45 CFR Part 160 and Subparts A, C, and E of part 164); and San Francisco Administrative Code Chapter 12M (Chapter 12M).

1.5      "Contractor" means AT&T Mobility dba and also known as AT&T Mobility or AT&T.

1.6      "Deliverables" shall take the meaning assigned to such term by Section 1(i) (“Deliverables”) of the General Provisions.

1.7      "Effective Date" means the date upon which the City's Controller certifies the availability of funds for this Agreement as provided in Section 3.1.

1.8      “Goods” shall take the meaning assigned to such term by Section 1(i) (“Deliverables”) of the General Provisions.

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

1.10 "Party" and "Parties" mean the City and Contractor either collectively or individually.

1.11 "Services" shall take the meaning assigned to such term by Section 1(x) ("Services") of the General Provisions.

## **Article 2 Term of the Agreement**

2.1 The term of this Agreement shall commence on June 1, 2020 and expire on May 22 2023, as the CALNET Contract is currently scheduled to expire on May 22, 2023, unless earlier terminated as otherwise provided herein.

2.2 If CDT executes an extension of the existing CALNET Contract with Contractor, the City shall have two (2) optional extensions to renew the Agreement for a period of two years per each extension (provided that notwithstanding the foregoing, any extended term of this Agreement shall be limited so as not to exceed the term of the CALNET Contract). The City may extend this Agreement beyond the expiration date by exercising these options at the City's sole and absolute discretion by providing no less than sixty (60) days' prior written notice to Contractor. In such event Contractor shall reasonably cooperate with City to modify this Agreement to reflect such extended term as provided in Section 11.5, "Modification of this Agreement;" provided Contractor's failure to do so shall not affect the validity of such extended term.

2.3 If the CALNET Contract is terminated prior to its scheduled termination, this Agreement shall likewise terminate as of the effective date of such CALNET Contract termination.

## **Article 3 Financial Matters**

3.1 **Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation.** This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue (and Contractor's requirements to provide goods and/or services will begin) only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated, provided that in such case the terms of Section 25 (Termination for Non-Appropriation of Funds) of the General Provisions shall apply. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

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

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

**3.3 Compensation.**

**3.3.1 Payment and Agreement Maximum Amount.** Contractor shall provide an invoice to the City on a monthly basis for Services completed in the immediate preceding month, unless a different schedule is set out in Appendix C, "Calculation of Charges." Compensation shall be made for Services identified in the invoice that the Chief Information Officer of City, or his or her designee, in his or her sole discretion, concludes has been satisfactorily performed. Payment shall be made within 30 calendar days of the invoice date unless the City notifies the Contractor that a dispute as to the invoice exists. In no event shall the amount of this Agreement exceed **\$9,500,000** (Nine Million and Five Hundred Thousand Dollars). If the compensation cap will be reached prior to the expiration of the contract, the City will work in good faith to increase the compensation cap. The breakdown of charges associated with this Agreement appears in Appendix C, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. In no event shall City be liable for interest or late charges for any late payments.

**3.3.2 Payment Limited to Satisfactory Services.** Contractor is not entitled to any payments from City for goods or services prior to the Acceptance of same. Acceptance standards and procedures are set forth in Section 21 (Acceptance, Testing and Rejection) and Subsection (c) (Acceptance Payments) of Section 39 (Invoices and Payments) of the General Provisions, which the Parties agree to follow.

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

**3.3.4 Invoice Format.** Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller and City, and must include a unique invoice number. Payment shall be made by City as specified in 3.3.6 or in such alternate manner as the Parties have mutually agreed upon in writing.

**3.3.5 LBE Payment and Utilization Tracking System. [Reserved]**

**3.3.6 Getting paid by the City for goods and/or services.**

(a) All City vendors receiving new contracts, contract renewals, or contract extensions must sign up to receive electronic payments through the City's Automated

Clearing House (ACH) payments service/provider. Electronic payments are processed every business day and are safe and secure. To sign up for electronic payments, visit [www.sfgov.org/ach](http://www.sfgov.org/ach).

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

### **3.3.7 Grant Funded Contracts. [Reserved]**

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

**3.5 Submitting False Claims.** The full text of San Francisco Administrative Code Chapter 21, Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Pursuant to San Francisco Administrative Code §21.35, any contractor or subcontractor who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to the City if the contractor or subcontractor: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

### **3.6 Payment of Prevailing Wages. [Reserved]**

## **Article 4 Services and Resources**

**4.1 Services Contractor Agrees to Perform.** Without limitation to the CALNET Contract, Contractor agrees to perform the Services stated in Appendix B, "Scope of Services." All Goods and Services provided by Contractor under this Agreement shall be provided to the City under, and will be so obtained and provided in accordance with, the corresponding terms and conditions of the CALNET Contract.

**4.2 Qualified Personnel.** Contractor shall utilize only competent personnel under the supervision of, and in the employment of, Contractor (or Contractor's authorized subcontractors) to perform the Services. Contractor will comply with City's reasonable requests regarding assignment and/or removal of personnel, but all personnel, including those assigned at City's

request, must be supervised by Contractor. Contractor shall commit adequate resources to allow timely completion within the project schedule specified in this Agreement.

4.3 **Subcontracting.** The Parties agree to follow the terms set forth in Section 84 (Subcontractors) of the General Provisions.

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

4.4.1 **Independent Contractor.** Without limitation to Section 8 (Independent Contractor) of the General Provisions, the parties agree as follows:

(a) For the purposes of this Section 4.4, "Contractor" shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all legally applicable 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.

(b) 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.

(c) Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor's compliance with this section. Such audit shall occur on Contractor premises, all material would have employee or other sensitive information redacted and no original material or copies of original material may leave the premise.

(d) Should City determine that Contractor, or any agent or employee of Contractor, is not performing in accordance with the requirements of this Agreement, City shall provide Contractor with written notice of such failure. Within five (5) business days of Contractor's receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor, or any agent or employee of Contractor, warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.



**4.4.2 Payment of Employment Taxes and Other Expenses.** Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to this Section 4.4 shall be solely limited to the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, Contractor agrees to indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorneys' fees, arising from this section based on a third party claim or finding that Contractor is an employee of City.

**4.5 Assignment.** The parties agree to follow the terms set forth in Section 12 (Assignment) of the General Provisions.

**4.6 Warranty.** The parties agree to follow Section 22 (Warranty) of the General Provisions and to the extent applicable, Section C.3.11 (Warranty) of the SOW Business Requirements.

**4.7 Liquidated Damages. [Reserved]**

**4.8 Bonding Requirements. [Reserved]**

## **Article 5 Insurance and Indemnity**

**5.1 Insurance.** Supplementing and without limitation to Section 24 (Insurance) of the General Provisions, the parties agree as follows:

**5.1.1 Required Coverages.** Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

(a) Workers' Compensation, in statutory amounts, with Employers' Liability Limits of \$1,000,000 each accident, each disease policy limit, each disease each employee; and

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

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

(d) Professional Liability Insurance, applicable to Contractor's profession, with limits of \$2,000,000 for each claim and in the aggregate with respect to negligent acts, errors or omissions in connection with the Services.

(e) Technology Errors and Omissions Liability coverage under Contractor's Professional Liability Insurance, with limits of \$2,000,000 for each claim and in the aggregate. The policy shall cover professional misconduct or lack of the requisite skill required for the performance of services defined in the contract and shall also provide coverage for the following risks:

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

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

(f) **Cyber and Privacy Insurance Coverage: [Reserved]**

5.1.2 Commercial General Liability and Commercial Automobile Liability Insurance policies must include as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees by endorsement as respects this Agreement.

5.1.3 Contractor's Commercial General Liability and Commercial Automobile Liability Insurance policies shall provide that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that the insurance applies separately to each insured against whom claim is made or suit is brought.

5.1.4 Contractor shall provide at least thirty (30) days' advance written notice to the City of cancellation for any reason, intended non-renewal, or reduction in coverages below the limits required in this Agreement, unless replaced. Notices shall be sent to the City address set forth in Section 11.1, entitled "Notices to the Parties."

5.1.5 Should any of the required insurance be provided under a claims-made form, Contractor warrants that continuous coverage will be maintained or an extended reporting period will be exercised for a total period of three years.

5.1.6 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.

5.1.7 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.

5.1.8 Before commencing any Services, Contractor shall furnish to City certificates of insurance and the required additional insured policy endorsements with insurers with ratings comparable to A-, VII or higher, that are eligible to do business in the State of California.

5.1.9 The Workers' Compensation policy(ies) shall be endorsed with a waiver of subrogation with respect to the City for all work performed by the Contractor, its employees.

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

5.2 **Indemnification.** The parties agree to follow Section 38 (Indemnification) and Section 50 (Patent, Copyright and Trade Secret Indemnity) of the General Provisions.

## **Article 6 Liability of the Parties**

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

6.2 **Liability of Contractor.** CONTRACTOR'S LIABILITY UNDER THIS AGREEMENT SHALL BE LIMITED AS AND TO THE EXTENT SET FORTH IN SECTION 30 (LIMITATIONS OF LIABILITY) OF THE GENERAL TERMS.

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

6.4 **Liability for Incidental and Consequential Damages.** See Section 30 (Limitations of Liability) of the General Provisions.

## **Article 7 Payment of Taxes**

7.1 **Contractor to Pay All Taxes.** Where required by law or as provided in the applicable service guide, City will pay, all applicable current and future taxes (excluding those on AT&T's net income), surcharges, recovery fees, custom clearances, duties, levies, and other similar charges relating to the sale, transfer of ownership, installation, license, use or provision of the Services, except to the extent Customer provides satisfactory proof of a valid tax exemption prior to the delivery of Services. Contractor shall pay all taxes, including possessory interest taxes levied upon or as a result of this Agreement, or the Services delivered pursuant hereto. Contractor shall remit to the State of California any sales or use taxes paid by City to Contractor under this Agreement.

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

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

**7.2.2** 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 California Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.

**7.2.3** Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of beneficial ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Cal. 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 (as described in Cal. Rev. & Tax. Code section 64) to the County Assessor, the State Board of Equalization or other public agency as and to the extent required by law.

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

## **Article 8 Termination and Default**

**8.1 Termination for Convenience.** The parties agree to follow Section 26 (Termination for Convenience of the State) of the General Provisions.

### **8.2 Termination for Default; Remedies.**

**8.2.1** The parties agree to follow to Section 27 (Termination for Default) and Section 29 (Rights and Remedies of State for Default) of the General Provisions. Without limitation to such provisions, however, each of the following shall constitute an immediate event of default (“Event of Default”) under this Agreement:

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

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

(b) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement following any applicable notice and cure period, including any obligation imposed by ordinance or statute and incorporated by reference herein.

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

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

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

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

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

#### 8.4 **Rights and Duties upon Termination or Expiration.**

8.4.1 Without limitation to Section 7 (Severability/Survival Clause) of the General Provisions, this Section and the following Sections of this Agreement listed below, shall survive termination or expiration of this Agreement:

3.3.2	Payment Limited to Satisfactory Services	9.1	Ownership of Results
3.3.7(a)	Grant Funded Contracts – Disallowance	9.2	Works for Hire
3.4	Audit and Inspection of Records	11.6	Dispute Resolution Procedure

3.5	Submitting False Claims		11.7	Agreement Made in California; Venue
Article 5	Insurance and Indemnity		11.8	Construction
6.1	Liability of City		11.9	Entire Agreement
6.3	Liability for Incidental and Consequential Damages		11.10	Compliance with Laws
Article 7	Payment of Taxes		11.11	Severability
8.1.6	Payment Obligation		Article 13	Data and Security

8.4.2 Subject to the survival of the Sections identified in Section 8.4.1, above, if this Agreement is terminated prior to expiration of the term specified in Article 2, this Agreement shall be of no further force or effect.

### **Article 9 Rights In Deliverables**

9.1 **Ownership of Results.** The parties agree to follow Section 88 (Rights in Work Product) of the General Provisions.

9.2 **Works for Hire.** The parties agree to follow Section 88 (Rights in Work Product) of the General Provisions.

### **Article 10 Additional Requirements Incorporated by Reference**

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

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

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

10.4 **Consideration of Salary History.** Contractor shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or "Pay Parity Act." Contractor is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Agreement or in furtherance of this Agreement, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in the City or on City property. The ordinance also prohibits employers from (1) asking such applicants about their current or past

salary or (2) disclosing a current or former employee's salary history without that employee's authorization unless the salary history is publicly available. Contractor is subject to the enforcement and penalty provisions in Chapter 12K. Information about and the text of Chapter 12K is available on the web at <https://sfgov.org/olse/consideration-salary-history>. Contractor is required to comply with all of the applicable provisions of 12K, irrespective of the listing of obligations in this Section.

#### **10.5 Nondiscrimination Requirements.**

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

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

**10.6 Local Business Enterprise and Non-Discrimination in Contracting Ordinance.** Contractor shall comply with all applicable provisions of Chapter 14B of the San Francisco Administrative Code ("LBE Ordinance"). Contractor is subject to the enforcement and penalty provisions in San Francisco Administrative Code Section Chapter 14B.

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

**10.8 Health Care Accountability Ordinance.** If Administrative Code Chapter 12Q applies to this contract, Contractor shall comply with the requirements of Chapter 12Q. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission. Information about and the text of the Chapter 12Q, as well as the Health Commission's minimum standards, is available on the web at <http://sfgov.org/olse/hcao>. Contractor is subject to the enforcement and penalty provisions in Chapter 12Q. Any Subcontract entered into by Contractor shall require any Subcontractor with 20 or more employees to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section.

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

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

**10.11 Limitations on Contributions.** By executing this Agreement, Contractor acknowledges its obligations under section 1.126 of the City's Campaign and Governmental Conduct Code, which in many cases prohibits any person who contracts with, or is seeking a contract with, any department of the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. To the extent applicable, the prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 10% in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

**10.12 Slavery Era Disclosure. [Reserved]**

**10.13 Working with Minors. [Reserved]**

**10.14 Consideration of Criminal History in Hiring and Employment Decisions.**

10.14.1 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 text of the Chapter 12T is available on the web at <http://sfgov.org/olse/fco>. Contractor is required to comply with all of the applicable provisions of 12T, irrespective of the listing of



obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

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

**10.15 Public Access to Nonprofit Records and Meetings. [Reserved]**

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

**10.17 Distribution of Beverages and Water. [Reserved]**

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

**10.19 Preservative Treated Wood Products. [Reserved] .**

**Article 11 General Provisions**

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

To City: **Michael Magliulo**  
**Department of Technology**  
**One South Van Ness Ave, 2<sup>nd</sup> Floor**  
**San Francisco, CA 94103**  
**628-652-5077**  
**Michael.magliulo@sfgov.org**

To Contractor: **Heather Petersen**  
**5001 Executive Parkway**  
**Room Shared**  
**San Ramon, CA 94582**  
**415-794-4422**  
**HP1858@att.com**

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

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

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

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

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

**11.6 Dispute Resolution Procedure.**

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

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

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

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

**11.9 Entire Agreement.** See Section 15.1.2 (Contract Integration) below.

**11.10 Compliance with Laws.** Without limitation to Section 10 (Compliance with Statutes and Regulations) of the General Provisions, Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and duly adopted rules and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

**11.11 Severability.** Supplementing Section 7 (Severability/Survival Clause) of the General Provisions, 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 (i) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (ii) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

**11.12 Cooperative Drafting.** This Agreement has been drafted through a cooperative effort of City and Contractor, and both Parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No Party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the Party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

**11.13 Order of Precedence.** See Section 15.1.1 (Order of Precedence in view of CALNET Contract) below.

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

## **Article 12 Department Specific Terms**

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

## **Article 13 Data and Security**

### **13.1 Nondisclosure of Private, Proprietary or Confidential Information.**

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

**13.1.2 Confidential Information.** The parties agree to follow Section 44 (Confidentiality of Data) of the General Provisions and by Section C.2.1.3 (Customer Proprietary Network Information (CPNI)) of the SOW Business Requirements.

### **13.2 Business Associate Agreement. [Reserved]**

**13.3 Management of City Data and Confidential Information.** See Section 44 (Confidentiality of Data) of the General Provisions and by Section C.2.1.3 (Customer Proprietary Network Information (CPNI)) of the SOW Business Requirements.

## **Article 14 MacBride And Signature**

**14.1 MacBride Principles - Northern Ireland.** By signing this Agreement, Contractor confirms that Contractor has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles as described in San Francisco Administrative Code §12F, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

## **Article 15 Relationship between this Agreement and the CALNET Contract**

**15.1 Incorporation and Supplementation of CALNET Contract.** This Agreement is pursuant to and hereby incorporates by reference the terms and conditions of the CALNET Contract, except to the extent modified or supplemented below in accordance with Section 43 (Contract Modification) of the General Provisions. The Parties agree that, pursuant to Section 43 (Contract Modification) of the General Provisions, the provisions of this Agreement are amendments to the CALNET Contract, only as the CALNET Contract applies to the City. Nothing in this Section is intended to imply that Contractor intends to amend the CALNET Contract with respect to the State of California or any entity that signs an Authorization to Order other than the City.

**15.1.1 Order of Precedence in view of CALNET Contract.** Contractor agrees to perform the Services in accordance with the terms and conditions of this Agreement, the Appendices to this Agreement, and implementing task orders. If the Appendices to this Agreement include any standard pre-printed terms from the Contractor, Contractor agrees that in the event of discrepancy, inconsistency, gap, ambiguity, or conflicting language between the City's terms and Contractor's pre-printed terms attached, the City's terms in this Agreement shall take precedence, followed by the CALNET Contract. For the avoidance of any doubt, the Parties agree that, pursuant to Section 43 (Contract Modification) of the General Provisions of the CALNET Contract, the provisions of this Agreement are amendments to the General Provisions only of the purpose of this Agreement. Nothing in this Section is intended to amend the CALNET Contract with respect to the State of California or any entity other than the City. In the

event the foregoing fails as a matter of contract interpretation under applicable law, then the parties agree that this Agreement shall constitute a Scope of Work under the CALNET Contract and shall be incorporated by this reference into each Service order placed under the CALNET Contract.

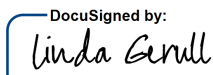
**15.1.2 Contract Integration.** The terms contained in this Agreement, including all exhibits, addendums, purchase orders, or other attachments thereto or document incorporated therein, together with the CALNET Contract, will constitute the entire integrated agreement between City and Contractor with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

**15.2 Use of CALNET Contract ATOs to Order Services; Contractor Notification and Reporting Requirements.** Pursuant to the CALNET Contract, to the extent authorized to do so by the State of California, City may procure Services offered under the CALNET Contract subject to the terms of this Agreement by executing a CALNET Contract “Authorization to Order Under State Contract,” a copy of which form is attached at Appendix A. AT&T shall comply with the notification and reporting requirements set forth on Appendix B with regard to Services procured by City under this Agreement.

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

**CITY**

Recommended by:

DocuSigned by:  
  
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Linda Gerull  
City Chief Information Officer  
Department of Technology

**CONTRACTOR**

**AT&T Mobility**

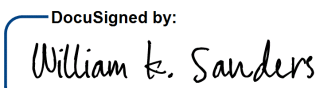
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**Jack Wildermuth**  
**Senior Contract Manager**  
Date: June 17, 2020 | 10:40 AM PDT

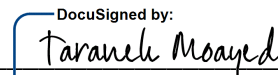
City Supplier Number: 0000024955

Approved as to Form:

Dennis J. Herrera  
City Attorney

DocuSigned by:  
  
By: C2F0C304F8F846C...  
William Sanders  
Deputy City Attorney

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

DocuSigned by:  
  
By: 9AEA44694D514E7...

**Appendices**

- A: CALNET Contract and "Authorization to Order Under State Contract"
- B: Scope of Services
- C: Calculation of Charges and Administration

## Appendix A

### CALNET Contract and “Authorization to Order Under State Contract”

- 1.) CALENT Contract in general can be found at <https://cdt.ca.gov/services/calnet-services/>
- 2.) *General Provisions – CALNET IFB C4CVD18 - Appendix A-1 for Category 19 CALNET Cellular Voice and Data Services Subcategory 19.1 Cellular Voice and Data Services Subcategory 19.2 First Responders Cellular Services Addendum 5* (available as of the Effective Date at <https://cdt.ca.gov/services/wp-content/uploads/sites/2/sites/2/2019/11/CALNET-General-Provisions-CALNET-Cellular-Addm-5-20190103.pdf>) (the “General Provisions”); and,
- 3.) *IFB C4CVD18 for Category 19 CALNET Cellular Voice and Data Services Subcategory 19.1 Cellular Business Services Subcategory [; Subcategory] 19.2 First Responders Cellular Services Statement of Work SOW Business Requirements* (available as of the Effective Date at <https://cdt.ca.gov/services/wp-content/uploads/sites/2/sites/2/2019/09/CALNET-IFB-CELL-Business-Requirements.pdf>) (the “SOW Business Requirements”); and
- 4.) Authorization to Order Under State Contract: <https://cdt.ca.gov/services/wp-content/uploads/sites/2/sites/2/2019/08/CALNET-ATT-19.1-ATO-Form.pdf>

## **Appendix B Scope of Services**

The cellular voice, text and data services (i.e., wireless service) supplied by Contractor shall be as reliable and robust as Contractor can reasonably provide in accordance with the CALNET Contract service level requirements.

Contractor understands that City relies on the cellular services and the mobile equipment for essential public services functions. The Parties shall address any issue in good faith, with the intent to mitigate costs or limit damage and avoid or minimize service reductions or terminations to the extent contemplated by this Agreement.

Contractor will provision the cellular voice, text and data plans authorized by the City, in the form and manner indicated by City's primary cellular phone program administrator ("Administrator").

Contractor will supply the equipment authorized by City, in the form and manner indicated by City's program administrator, Michael Magliulo ("Administrator").



### Appendix C Calculation of Charges and Administration

Popular Wireless Plans	AT&T Custom CALNET Pricing
Discount	at least a discount of 25%
<b>VOICE PLANS</b>	
\$0.00/\$0.06 National Flat Rate Plan	\$0.00 Flat Rate/\$0.06-minute
Unlimited Voice	\$ 49.99
<b>Smartphone Plans: VOICE/TEXT/DATA</b>	
Unlimited Voice, Data with Tethering, Messaging Plan Bundle for Smartphone (CUSTOM)	\$ 50.00
Unlimited Data for Smartphones with Tethering	\$ 28.40
Unlimited Data for Smartphones	\$ 23.40
Unlimited Text/Messaging	\$ 8.00
<b>DATA ONLY Device Plans</b>	
Unlimited Data for Data-only devices	\$ 37.50
CALNET Administrative Fee	2.5% fee to customers
Equipment discounts	Vary by device
Mandatory Order Portal	AT&T Premier portal
Other provisions	No activation Fee No upgrade fee No early termination fee Unlimited Penny Suspend Option for \$0.01/month No Split billing

**National Flat Rate Plan \$0.00 Monthly Recurring Charge and \$0.06 per call** above covers a special pricing offer for a National Flat Rate (NFR) or Custom Service Plan (CSP) extended to the City. No equipment subsidy is available for feature phones offered as part of this IPRA.

Smartphone subsidies will be subject to existing terms. The City is responsible for the full retail price of new feature phones ordered during the term of this agreement. In accordance with the CALNET Contract IPR terms and conditions, no additional rate plan discounts, activation credits, device pricing, or changes to this IPR are permitted and must be proposed and agreed to under a new IPRA.

## **ADMINISTRATION**

Contractor, on the basis of its best efforts, will notify City's Dept of Technology by email to [Michael.Magliulo@sfgov.org](mailto:Michael.Magliulo@sfgov.org) (or such other party as City may designate in writing from time to time) before any of the following services are performed:

- .Orders for service activations over 50 lines per individual department. Orders placed by City users known by Contractor to be non-authorized (Michael Magliulo maintains the City's authorized user list).

## **Reporting Requirements**

The parties will use reasonable efforts to mutually agree to reasonable regular reports that satisfy City's requirements. City currently desires the following reports; Contractor will endeavor to reasonably agree from time to time with City's requirements taking into account the resources necessary to provide such reports:

- Monthly Usage Report cost per line (i.e. voice/data/text/total cost).
- Weekly activation report listing all new activations during the preceding week.
- Quarterly account summary with details itemized as follows for each City department:
  - Non-use (voice/data/text) if applicable to any subscriber
  - High usage (voice/data/text) for each subscriber



## San Francisco Ethics Commission

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

Phone: 415.252.3100 . Fax: 415.252.3112

[ethics.commission@sfgov.org](mailto:ethics.commission@sfgov.org) . [www.sfethics.org](http://www.sfethics.org)

Received On:

File #: 230050

Bid/RFP #: N/A

### Notification of Contract Approval

SFEC Form 126(f)4

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

A Public Document

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

#### 1. FILING INFORMATION

<b>TYPE OF FILING</b>	<b>DATE OF ORIGINAL FILING (for amendment only)</b>
original	
<b>AMENDMENT DESCRIPTION – Explain reason for amendment</b>	

#### 2. CITY ELECTIVE OFFICE OR BOARD

<b>OFFICE OR BOARD</b>	<b>NAME OF CITY ELECTIVE OFFICER</b>
Board of Supervisors	Members

#### 3. FILER'S CONTACT

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

#### 4. CONTRACTING DEPARTMENT CONTACT

<b>NAME OF DEPARTMENTAL CONTACT</b>	<b>DEPARTMENT CONTACT TELEPHONE NUMBER</b>
Fan-Wa Wong	628-652-5251
<b>FULL DEPARTMENT NAME</b>	<b>DEPARTMENT CONTACT EMAIL</b>
TIS Department of Technology	fan-wa.wong@sfgov.org

5. CONTRACTOR	
<b>NAME OF CONTRACTOR</b>  AT&T Mobility	<b>TELEPHONE NUMBER</b>  415-794-4422
<b>STREET ADDRESS (including City, State and Zip Code)</b>  One AT&T Way, Bedminster, NJ 07921	<b>EMAIL</b>  hp1858@att.com

6. CONTRACT		
<b>DATE CONTRACT WAS APPROVED BY THE CITY ELECTIVE OFFICER(S)</b>  	<b>ORIGINAL BID/RFP NUMBER</b>  N/A	<b>FILE NUMBER (If applicable)</b>  230050
<b>DESCRIPTION OF AMOUNT OF CONTRACT</b>  \$18,582,078		
<b>NATURE OF THE CONTRACT (Please describe)</b>  Approval of 1st amendment to the citywide Master Agreement with AT&T Mobility for Commercial Cellular Service and Equipment  The Department of Technology (DT) manages a citywide master agreement (MA) with AT&T Mobility for the purchase of cellular voice & data services and equipment.  Proposed Modification:  Contract Not-to-Exceed Amount: \$18,582,078 Term: June 1, 2020 – June 30, 2027 Contract Rates: CALNET Rates with AT&T Mobility under Category 19.1		

7. COMMENTS
This amendment will: (1) Extend term by 4 years and 1 month, so that the expiration date will be extended from May 23, 2023, to June 30, 2027. (2) Add an additional \$9,082,078 million to increase the contract maximum amount from \$9,500,000 to \$18,582,07

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

**9. AFFILIATES AND SUBCONTRACTORS**

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

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
1	Dial	Debra	Board of Directors
2	Hatch	G. Troy	Board of Directors
3	Stankey	John	CEO
4	Desroches	Pascal	CFO
5	AT&T Inc	N/A	Shareholder
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			

**9. AFFILIATES AND SUBCONTRACTORS**

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

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

**10. VERIFICATION**

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

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

**SIGNATURE OF CITY ELECTIVE OFFICER OR BOARD SECRETARY OR CLERK**

**DATE SIGNED**

BOS Clerk of the Board



Date: January 20, 2023

To: Clerk of the Board of Supervisors

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

**Re: Approval of 1<sup>st</sup> amendment to the citywide Master Agreement with AT&T Mobility for Commercial Cellular Service and Equipment  
Supplier ID: 0000024955; Contract ID: 1000017986**

The Department of Technology (DT) manages a citywide master agreement (MA) with AT&T Mobility for the purchase of cellular voice & data services and equipment, with an initial term of three years (June 1, 2020 to May 22, 2023) and a not-to-exceed (NTE) amount of \$9,500,000, using the favorable pricing and terms of California Network and Telecommunications (CALNET) program.

Benefits of the State of California's CALNET Contract:

- 1.) No commitment for a minimum purchase in dollars, quantity of services or any other measure.
- 2.) No fees to terminate service.
- 3.) Includes "Most Favored Nation" clause  
no other similarly situated public customer will receive rates, for a substantially similar service, lower than the statewide rates provided in CALNET contract

Ordering of cellular service and equipment is decentralized and determined by individual departments. DT administers the contract and is responsible for the payment of the citywide cellular service costs. Each individual City department is responsible for the payment of the costs of its equipment.

The number of AT&T commercial wireless devices has increased by 55%, or 22% per year, since the start of the pandemic. As of June 30, 2022, approximately \$4.75 million or 50% of the existing \$9.5 million contract NTE amount has been depleted, leaving a contract balance of \$4.75 million. DT is seeking approval of an amendment to this agreement that would extend the term of the agreement for four additional years and one month (from May 23, 2023 to June 30, 2027)<sup>1</sup>, and increase the NTE by an additional \$9,082,078<sup>2</sup> to \$18,582,078. All pricing and other terms of the MA would remain in effect.

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<sup>1</sup> If CALNET chooses not to extend its underlying contract, the City contract will terminate at the same time.

<sup>2</sup> DT assumes the annual growth rate will reduce by half to 11% after the pandemic, and the estimated cost for the additional four years and one month (June 2023 – June 2027) would be \$11.6M. DT asks for \$9.1M after deducting \$2.5M that is expected to remain in the original agreement when it expires on May 22, 2023.



Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Gerull", with a stylized, cursive script.

/s/ Linda Gerull  
City CIO | Executive Director  
Department of Technology