

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

Fifth Amendment

THIS AMENDMENT (this “Amendment”) is made as of November 1, 2020, in San Francisco, California, by and between AT&T Corp. (“Contractor”), and the City and County of San Francisco, a municipal corporation (“City”), acting by and through its Director of the Office of Contract Administration.

Recitals

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

WHEREAS, City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to extend the term and increase the funding; and

WHEREAS, approval for this Amendment was obtained when the Civil Service Commission approved Contract number 4070-09/10 on March 2, 2020; and

WHEREAS, the City’s Board of Supervisors approved this Amendment by Resolution ___ on _____, 2020;

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 February 26, 2010 between Contractor and City, as amended by the:

- First Amendment dated April 26, 2013, and
- Second Amendment dated September 1, 2014, and
- Third Amendment dated November 9, 2015, and
- Fourth Amendment dated November 1, 2019.

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 to the Agreement.

The Agreement is hereby modified as follows:

2.1 **Definitions.** *The following is hereby added to the Agreement as a Definition in Article 1:*

1.10 “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).

2.2 Notification of Legal Requests and Management of City Data and Confidential Information *The following sections are hereby added and incorporated in Section 57 of the Agreement:*

57. Management of Private, Proprietary or Confidential Information and City Data.

a. **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.

b. **Confidential Information.** In the performance of Services, Contractor may have access to City's proprietary or Confidential Information, the disclosure of which to third parties may damage City. If City discloses proprietary or Confidential Information to Contractor, such information must be held by Contractor in confidence and used only in performing the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary or Confidential Information.

c. **Access to City Data.** City shall at all times have access to and control of all data given to Contractor by City in the performance of this Agreement (“City Data” or “Data”), and shall be able to retrieve it in a readable format, in electronic form and/or print, at any time, at no additional cost.

d. **Use of City Data and Confidential Information.** Contractor agrees to hold City's Confidential Information received from or created on behalf of the City in strictest confidence. Contractor shall not use or disclose City's Data or Confidential Information except as permitted or required by the Agreement or as otherwise authorized in writing by the City. Any work using, or sharing or storage of, City's Confidential Information outside the United States is subject to prior written authorization by the City. Access to City's Confidential Information must be strictly controlled and limited to Contractor's staff assigned to this project on a need-to-know basis only. Contractor is provided a limited non-exclusive license to use the City Data or Confidential Information solely for performing its obligations under the Agreement and not for Contractor's own purposes or later use. Nothing herein shall be construed to confer any license or right to the City Data or Confidential Information, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third-party. Unauthorized use of City Data or Confidential Information by Contractor, subcontractors or other third-parties is prohibited. For purpose of this requirement, the phrase “unauthorized use” means the data mining or processing of data, stored or transmitted by the service, for commercial purposes, advertising or advertising-related purposes, or for any purpose other than security or service delivery analysis that is not explicitly authorized.

e. **Disposition of Confidential Information.** Upon termination of Agreement or request of City, Contractor shall promptly return all Confidential Information which includes all original media. Once Contractor has received written confirmation from City that Confidential Information has been successfully transferred to City, Contractor shall within ten (10) business days purge all Confidential Information from its servers, any hosted environment Contractor has used in performance of this Agreement, work stations that were used to process the data or for production of the data, and any other work files stored by Contractor in whatever medium, unless the retention is required by the Agreement or by law or regulation. Contractor shall provide City with written certification that such purge occurred.

f. **Notification of Legal Requests.** 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 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. 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. 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.

2.3 *Section 2 of the Agreement currently reads as follows:*

2. **Term of the Agreement.** Subject to Section 1, the term of this Agreement shall commence on the Effective Date and terminate on December 31, 2020; provided, however, that the term of the specific agreements incorporated herein shall be as set forth within each incorporated agreement. Under this Agreement, “Term” shall refer, as the context reasonably dictates, to both the Term of this Agreement and the Term set forth in the incorporated agreements.

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

2. **Term of the Agreement.** Subject to Section 1, the term of this Agreement shall commence on the Effective Date and terminate on December 31, 2021; provided, however, that the term of the specific agreements incorporated herein shall be as set forth within each incorporated agreement. Under this Agreement, “Term” shall refer, as the context reasonably dictates, to both the Term of this Agreement and the Term set forth in the incorporated agreements.

2.4 *Section 5 of the Agreement currently reads as follows:*

5. Compensation to Contractor.

Compensation shall be made to Contractor by City within forty five (45) days from date of invoice. City will make best efforts to pay within forty-five (45) days from date of invoice. In no event shall the total amount paid under this Agreement exceed One-hundred and Twenty Two Million Four Hundred and Twenty-Nine Thousand Five Hundred and Fifty Seven Dollars (\$122,429,557) during the Term of the Agreement, unless otherwise agreed to by the Parties in writing; provided, however, that City is responsible for services authorized by the CIO or his designee provided by Contractor under this Agreement.

No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from

Contractor and approved by the Director of the Department of Technology or designee as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement. In no event shall City be liable for interest or late charges for any late payments.

The Controller is not authorized to pay invoices submitted by Contractor before Contractor's submission of HRC Progress Payment Form. If Progress Payment Form is not submitted with Contractor's invoice, the Controller will notify the department, the Director of HRC and Contractor of the Commission. Following City's payment of an invoice, Contractor shall, within ten days, file an affidavit using HRC Payment Affidavit verifying that all subcontractors have been paid and specifying the amount.

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

5. Compensation to Contractor.

Compensation shall be made to Contractor by City within forty five (45) days from date of invoice. City will make best efforts to pay within forty-five (45) days from date of invoice. In no event shall the total amount paid under this Agreement exceed One-hundred and Forty Million Six Hundred and Ninety-Five Thousand Seven Hundred and Fifty Six Dollars (\$140,695,756) during the Term of the Agreement, unless otherwise agreed to by the Parties in writing; provided, however, that City is responsible for services authorized by the CIO or his designee provided by Contractor under this Agreement.

No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by the Director of the Department of Technology or designee as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement. In no event shall City be liable for interest or late charges for any late payments.

The Controller is not authorized to pay invoices submitted by Contractor before Contractor's submission of HRC Progress Payment Form. If Progress Payment Form is not submitted with Contractor's invoice, the Controller will notify the department, the Director of HRC and Contractor of the Commission. Following City's payment of an invoice, Contractor shall, within ten days, file an affidavit using HRC Payment Affidavit verifying that all subcontractors have been paid and specifying the amount.

Article 3 Effective Date

Each of the modifications set forth in Section 2 shall be effective on and after November 1, 2020.

Article 4 Legal Effect

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

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

CITY
Recommended by:

CONTRACTOR
AT&T Corp.

Linda Gerull
Chief Information Officer
Department of Technology

DocuSigned by:
Debra Ann Szabo
5DE4D6243E4A492...

Heather Petersen
hp1858@att.com
Account executive

October 2, 2020 | 1

Approved as to Form:

City Supplier number: 0000026442

Dennis J. Herrera
City Attorney

By: _____
William K. Sanders
Deputy City Attorney

Approved:

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

By: _____

