File No. 201179 **Committee Item No.** 4
Board Item No. 11

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Committee **Date** March 3, 2021

Board of Supervisors Meeting **Date** March 9, 2021

Cmte Board

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OTHER **(Use back side if additional space is needed)**

☐	☒	Department of Technology Presentation - March 3, 2021
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Completed by: Linda Wong **Date** February 26, 2021
Completed by: Linda Wong **Date** March 5, 2021

AMENDED IN COMMITTEE
03/03/2021

FILE NO. 201179 RESOLUTION NO.

[Agreement Amendment - Retroactive - AT&T Corporation - Telecommunications Services - Total Not to Exceed $140,695,756]

Resolution retroactively authorizing the Department of Technology to enter into the Fifth Amendment of an Agreement between the City and County of San Francisco and AT&T Corporation, to extend the term of the agreement by one year for a total term of February 26, 2010, through December 31, 2021, and to increase the not to exceed amount of the agreement by $18,266,199 for a total amount of $140,695,756 pursuant to Charter, Section 9.118.

WHEREAS, The Department of Technology ("Department") procures telecommunications services for the City and County of San Francisco ("City") from AT&T Corporation ("AT&T") under an agreement that incorporates terms and conditions of the State of California's CALNET3 agreement ("Agreement"); and

WHEREAS, Under the Agreement, the City is able to purchase telecommunications services from AT&T using the best pricing available to public entities; the Agreement also allows non-profit agencies in San Francisco to purchase services directly from AT&T at the same preferred pricing; and

WHEREAS, By Ordinance No. 98-10, the Board approved the Agreement for a term of four and one-half years, beginning on March 1, 2010, with a not to exceed amount of $75,000,000 which is on file with the Clerk of the Board of Supervisors in File No. 201179;

WHEREAS, By Ordinance No. 39-15, the Board approved a Second Amendment to the Agreement to, among other things, extend the term of the Agreement to December 31, 2015, and increase the not to exceed amount to $97,953,700 which is on file with the Clerk of the Board of Supervisors in File No. 201179; and

WHEREAS, By Ordinance No. 26-16, the Board approved a Third Amendment to the Agreement to, among other things, extend the term of the Agreement to December 31, 2019, with an option to extend the term to December 31, 2020, and increase the not to exceed amount to $122,429,557 which is on file with the Clerk of the Board of Supervisors in File No. 201179; and

WHEREAS, On November 1, 2019, the Department and AT&T entered into a Fourth Amendment to the Agreement in which the City exercised the option to extend the term to December 31, 2020, which is on file with the Clerk of the Board of Supervisors in File No. 201179; and

WHEREAS, The Department has evaluated the telecommunications needs of City departments through December 31, 2021, and determined that the City's spending under the Agreement will increase by $18,266,199; and

WHEREAS, The Department and AT&T have negotiated a Fifth Amendment to the Agreement, which would extend the term of the Agreement through December 31, 2021, and increase the not to exceed amount of the Agreement to $140,695,756; and

WHEREAS, Section 9.118 of the San Francisco Charter requires approval by the Board of Supervisors for contracts in excess of ten years or requiring expenditures above $10,000,000; Section 9.118 also requires Board of Supervisors approval for modifications to such agreements that exceed $500,000; now, therefore, be it

RESOLVED, That the Board of Supervisors retroactively approves the Fifth Amendment to the Agreement to extend the term of the Agreement to December 31, 2021 and to increase the not-to-exceed amount to $140,695,756; a copy of the Fifth Amendment to the Agreement is on file with the Clerk of the Board of Supervisors in File No. 201179; and, be it

FURTHER RESOLVED, That within 30 days of the Fifth Amendment to the Agreement being fully executed by the parties the Department of Technology shall provide it to the Clerk of the Board for inclusion in the official file.

Item 4 File 20-1179 *(Referred to Committee from the 12/1/20 Board of Supervisors)*	**Department:** Department of Technology (DT)

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution authorizes DT to enter into the Fifth Amendment to the City's contract with AT&T. The Amendment extends the term of the contract for one year until December 31, 2021, and increases the not to exceed amount of the contract by $18,266,199 from $122,429,557 to $140,695,756.

Key Points

- The AT&T contract provides for telephone services, such as voice over internet protocol (VOIP), legacy and circuit telephony, long distance, and toll-free service. The agreement also provides for internet connectivity. The proposed contract continues to rely on prices negotiated by the State's California Network and Telecommunications (CALNET) Program.
- On June 30, 2020, DT depleted the approved spending authority on the AT&T contract, which expires at the end of the calendar year. Due to other priorities related to responding to the pandemic, DT did not bring this contract amendment forward prior to the depletion of the existing spending authority. The item was originally considered at the Budget & Finance Committee on November 18, 2020.

Fiscal Impact

- The Fifth Amendment provides $18.3 million spending authority, which would cover the period from July 2020 through December 2021. Projected spending on the proposed Fifth Amendment is based on a three-year average of Citywide spending on the contract plus the Airport's anticipated contract costs.
- Except for Airport purchases, the Department of Technology makes AT&T contract purchases on behalf of all City departments, which are then funded by DT's service charges to City departments.

Recommendation

- Approve the proposed resolution.

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

In May 2010, the Board of Supervisors authorized a not-to-exceed $75,000,000 master contract between the Department of Technology (DT) and AT&T from February 26, 2010 to August 31, 2014 for the purchase of telecommunications services (File 10-0251). The master contract combined all AT&T services under one Citywide master contract as part of DT's effort to consolidate information technology procurement and contracting on a Citywide basis.

The master contract allowed the City to purchase telecommunications services from AT&T under the best pricing provided by AT&T to other public entities through the State's California Network and Telecommunications (CALNET) Program. The CALNET program secures competitively bid telecommunications contracts that can be used by both state and local agencies.[1] Table 1 below shows the history of the City's existing agreement with AT&T.

Table 1: History of DT Contract with AT&T

	Term	Not to Exceed Amount	Pricing	Notes
Original Contract	2/26/2010 to 8/31/2014	$75,000,000	CALNET 2	Allowed the use of volume agreements from State of CA CALNET program and other local government.
Amendment 1	2/26/2010 to 8/31/2014	$75,000,000	CALNET 2	Allowed for project specific rates for special projects.
Amendment 2	9/1/2014 to 12/31/2015	$97,953,700	CALNET 2	Authorized the migration of rates from CALNET 2 to CALNET3
Amendment 3	1/1/2016 to 12/31/2019	$122,429,557	CALNET 3	
Amendment 4	1/1/2020 to 12/31/2020	$122,429,557	CALNET 3	Added one year to term without additional spending authority.

Source: AT&T Agreements with City

[1] Administrative Code Section 21.16 allows the Departments to rely on the competitive procurement of other public agencies when purchasing commodities or services.

In February 2016, prior to approving the Third Amendment to the AT&T contract, and based on a recommendation from the Budget and Legislative Analyst, the City Administrator and the City Services Auditor division of the Controller's Office compared rates of AT&T and the other providers participating in the CALNET program. The analysis found that AT&T's CALNET rates were generally competitive with other CALNET providers.

Exhaustion of Contract Spending Authority in June 2020

In December 2019, DT exercised an option year to extend the term of the agreement for one year without adding additional spending authority. At that time, the City's financial system showed sufficient spending authority for the rest of 2020 calendar year. DT later discovered that this was a system error and there was not sufficient spending authority for the remaining term of the existing contract, which expired at the end of calendar year (CY) 2020. DT reports that the data validity issues related to spending authority amounts have been resolved.

On June 30, 2020, DT depleted the approved spending authority on the AT&T contract, which expired at the end of CY 2020. Due to other priorities related to responding to the pandemic, such as emergency procurements to support remote work and preparing reduced budget proposals, DT did not bring this contract amendment forward prior to the depletion of the existing spending authority.

Original Consideration of Proposed Legislation

The proposed legislation was originally considered at the Budget & Finance Committee on November 18, 2020, which referred the item to the Board of Supervisors with a positive recommendation. The Board of Supervisors later referred the item back to the Budget & Finance Committee to further consider questions about reducing the City's use of AT&T services in light of the pandemic and the possibility of switching providers. According to the Department of Technology, telephone and data costs have not decreased during the pandemic because the majority of telephone and data costs are fixed, rather than based on usage, which in any case has increased during the pandemic. The Department intends to work with the Controller's Office to evaluate the new pricing schedule from the State's CALNET rate negotiation, which is expected to be available later in 2021. The Department does not believe a transition to other telephone and data providers is feasible in the meantime.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution authorizes DT to enter into the Fifth Amendment to the City's contract with AT&T. The Amendment extends the term of the contract for one year until December 31, 2021, and increases the not to exceed amount of the contract by $18,266,199 from $122,429,557 to $140,695,756. The AT&T contract provides for telephone services, such as voice over internet protocol (VOIP), legacy and circuit telephony, long distance, and toll-free service. The agreement also provides for internet connectivity.

According to Mr. Hao Xie, Strategic Sourcing Manager at the Department of Technology, the one-year contract extension through December 31, 2021 will align the end date of the City's contract with AT&T with the State's extension of the CALNET 3 contract with AT&T. The increase of

$18,266,199 in the contract amount is expected to provide sufficient contract spending authority for actual and projected contract purchases for the 18-month period retroactive to July 2020 through December 2021.

FISCAL IMPACT

Table 2 below shows actual and projected spending of $18.3 million from July 2020 through December 2021 for the proposed Fifth Amendment to the AT&T contract. Pricing for the proposed contract extension would remain at or below CALNET 3 rates. Projected spending on the proposed Fifth Amendment is based on a three-year average of Citywide spending on the contract plus the Airport's anticipated contract costs.

Table 2: Projected Spending on AT&T Contract

	FY 2020-21	FY 2021-22*	Total
Citywide	$11,177,466	$5,588,733	$16,766,199
Airport	1,000,000	500,000	1,500,000
Total	**$12,177,466**	**$6,088,733**	**$18,266,199**

Source: Department of Technology

Note: Values for FY 2021-22 represent six months of spending.

DT does not administer purchases for the Airport, which makes its own purchases on the AT&T contract. For the majority of the remaining spending, the Department of Technology makes AT&T contract purchases on behalf of all other City departments, which are then funded by DT's service charges to City departments.

RECOMMENDATION

Approve the proposed resolution.

Item 8 File 20-1179	Department: Department of Technology (DT)

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution authorizes DT to enter into the Fifth Amendment to the City's contract with AT&T. The Amendment extends the term of the contract for one year until December 31, 2021, and increases the not to exceed amount of the contract by $18,266,199 from $122,429,557 to $140,695,756.

Key Points

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Source: Department of Technology

Note: Values for FY 2021-22 represent six months of spending.

The Citywide amounts shown in Table 2 above exclude costs for the Airport, which makes its own purchases on the AT&T contract. For the majority of the remaining spending, the Department of Technology makes AT&T contract purchases on behalf of all other City departments, which are then funded by DT's service charges to City departments.

RECOMMENDATION

Approve the proposed resolution.

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

Fifth Amendment

THIS AMENDMENT (this "Amendment") is made as of November l, 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,

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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.

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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 l, 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 l, 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

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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.

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

CITY
Recommended by:

_____
Linda Gerull
Chief Information Officer
Department of Technology

Approved as to Form:

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: _____

CONTRACTOR
AT&T Corp.

DocuSigned by:
Debra Ann Szabo
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October 2, 2020 | 1

Heather Petersen
hp1858@att.com
Account executive

City Supplier number: 0000026442

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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

A T & T Corp.

This Agreement is made the twenty sixth day of February, 2010, in the City and County of San Francisco, State of California, by and between: AT&T Corp. for itself and on behalf of its Affiliates identified in this Agreement hereinafter referred to as "Contractor," and the City and County of San Francisco, a municipal corporation, hereinafter referred to as "City," acting by and through its Director of the Office of Contract Administration or the Director's designated agent, hereinafter referred to as "Purchasing."

Recitals

WHEREAS, the Department of Technology ("Department") wishes to engage Contractor for certain telecommunication services including, but not limited to internet service provider services, cellular, local toll voice services, wide area network services, cable television/media content services, disaster recovery, telecommunications consulting and other services; and,

WHEREAS, a Request for Proposal ("RFP") was issued on June 8, 2007 by the San Francisco Airport Commission, and City selected Contractor as the highest qualified scorer pursuant to the RFP; and

WHEREAS, pursuant San Francisco Administrative Code Section 21.16, the Department may utilize the results of a competitive solicitation by another City department; and,

WHEREAS, Contractor represents and warrants that it is qualified to perform the services required by City as set forth under this Agreement and will arrange to have an Affiliate identified in this Agreement provide the services in accordance with this Agreement; and,

WHEREAS, approval for this Agreement was obtained when the Civil Service Commission approved Contract number 4070-09/10 on December 21, 2009; and

WHEREAS, as of the Effective Date of this Agreement, this Agreement shall supersede and replace the Interim Agreement between the City and County of San Francisco and AT&T Corp. for Telecommunications Services at the Airport, Contract No. 8844 (Airport Agreement) with all services currently being provided by AT&T to the Airport or the Department of Public Health for the City and County of San Francisco under the Airport Agreement now being provided by Contractor under the terms and conditions of this Agreement.

WHEREAS, as of the Effective Date of this Agreement, this Agreement shall supersede and replace the Master Agreement For Provision, Installation and Maintenance of Telecommunications Service Between Pacific Bell and the City and County of San Francisco, dated June 26, 1990 (the "1990 Master

Agreement"), including Amendment 1 (dated May 30, 1997), Amendment 2 (dated November 20, 2000), Amendment 3 (dated April 6, 2007), and Amendment 4 (dated August 7, 2009); except that the term of Addenda Nos. 16, 18, 19, 20, 21, 22 and 23 shall continue as set forth in such Addenda and the term of the following agreements (collectively the "1990 Master Agreement Related Agreements") shall continue as set forth in such 1990 Master Agreement Related Agreements.

AGREEMENT	SERVICE	START DATE	END DATE
PUBLIC UTILITIES COMMISSION			
Pricing Schedule No. 2 for ILEC Services Provided Within AT&T's Franchise Territory In the State of California, Pursuant to Tariff(s) and/or Guidebooks	SF PUC - OpteMAN Pricing Schedule	4/29/2009	4/29/2012
OpteMAN and CSME Confirmation of Service Order	SF PUC - Ethernet Dedicated Internet Access (EDIA) renewal - Access Portion of service	4/30/2009	4/30/2012
AT&T PremierServ Dedicated Internet Access (DIA)	SF PUC - Ethernet Dedicated Internet Access (EDIA) renewal - Internet Port Portion of service	4/30/2009	4/30/2012
Addendum No. 23 to Master Agreement for AT&T PremierServ Dedicated Internet Access (DIA)	SF PUC EAMIS (Ethernet Managed Internet Service)	12/28/2007	12/28/2010
SFO			
AT&T Addendum No. 001 to Master Agreement - Individual Case Basis Terms & Conditions for State Local Exchange Carrier Telco Services	SFO SONET Ring Terms & Conditions	8/30/2007	8/30/2012
AT&T Telecommunications Services - State Tariff Services Within AT&T's Franchise Territory in the State of California - ICB Pricing Schedule	SFO SONET Ring - Pricing Schedule	8/30/2007	8/30/2012
AT&T Telecommunications Services - State Tariff Services Within AT&T's Franchise Territory in the State of California - ICB Pricing Schedule - AMENDMENT NO. 1	SFO SONET Ring - Amendment to Pricing Schedule (correction)	11/6/2008	8/30/2012
AT&T SFO EDIA - Internet Port Contract (Pleasanton POP)	30M EDIA (Ethernet Internet access) for SFO. This is the Internet Port portion of the service	9/18/2008	9/18/2009
AT&T SFO EDIA - Internet Access Contract (Pleasanton POP)	30M EDIA (Ethernet Internet access) for SFO. This is the Internet Access portion of the service	9/18/2008	9/18/2009
AT&T SFO EDIA - Internet Port Contract (San Francisco POP)	30M EDIA (Ethernet Internet access) for SFO. This is the Internet Port portion of the service	9/18/2008	9/18/2009

AT&T SFO EDIA - Internet Access Contract (San Francisco POP)	30M EDIA (Ethernet Internet access) for SFO. This is the Internet Access portion of the service	9/18/2008	9/18/2009
AT&T Managed Internet Service Pricing Schedule	150M EAMIS (Ethernet Internet Service) for SFO.	8/19/2009	8/19/2012
Department of Public Health			
Addendum No. 22 to the Master Agreement for Provision, Installation and Maintenance of Telecommunications Service, Effective June 26, 1990	16 Site OPT-E-MAN Pricing Schedule	7/16/2009	7/16/2012
Public Library			
Pricing Schedule for AT&T ILEC Services within AT&T's Franchise Territory in the State of CA Pursuant to Tariff, Guidebook or Catalog]	Consolidates existing OPT-E-MAN locations, and adds 8 service location, changes	1/22/2010	1/22/2013
Addendum 22 to Master Agreement for AT&T PremierServ Dedicated Internet Access (DIA)	SF PL EDIA service (Internet Port portion of service)	3/25/2008	3/25/2011
AT&T Telecommunications Services State Tariff Services within AT&T Franchise Territory in the State of CA- ICB Pricing Schedule	E-Rate funding Year 10 - installing 10 OPT-E-MAN locations	2/7/2007	2/7/2010
Amendment No. 001 to AT&T's Franchise Territory in the State of CA - ICB Pricing Schedule for Regulated/Telco Service(s)	Amendment to Y10 OPT-E-MAN adding additional Location	3/25/2008	3/25/2011
Pricing Schedule for AT&T ILEC Services within AT&T's Franchise Territory in the State of CA Pursuant to Tariff, Guidebook or Catalog	Amendment to Y10 OPT-E-MAN adding additional Location	11/16/2007	2/07/2011
Pricing Schedule for AT&T ILEC Services within AT&T's Franchise Territory in the State of CA Pursuant to Tariff, Guidebook or Catalog	E-Rate funding Year 11 - installing 2 OPT-E-MAN locations	2/7/2008	2/7/2011
Amendment to Pricing Schedule for State Tariff Services	Amendment to Year 11 OPT-E-MAN - changing address of one location	10/30/2008	10/30/2011
Pricing Schedule for AT&T ILEC Services within AT&T's Franchise Territory in the State of CA Pursuant to Tariff, Guidebook or Catalog	E-Rate funding Year 12 - installing 4 OPT-E-MAN locations	2/12/2009	2/12/2012
Amendment No. 001 to AT&T CA - E Rate Rider	Amendment to Year 12 Funding option	4/10/2009	4/10/2012
Amendment to Pricing Schedule for ILEC Services within AT&T's Franchise Territory in the State of CA	Amendment to Year 12 changing four service location addresses	6/26/2009	6/26/2012

In addition to the 1990 Master Agreement Related Agreements listed above, the following agreements which incorporate the 1990 Master Agreement by reference are pending execution. Once these agreements become effective, whether before or after the execution of this Agreement, they will become a part of this Agreement and treated as a 1990 Master Agreement Related Agreement.

AGREEMENT	SERVICE	START DATE	END DATE
Police Department			
Amendment No, 24 to Pricing Schedule for AT&T ILEC Services within AT&T's Franchise Territory in the State of CA Pursuant to Tariff, Guidebook or Catalog [36 month term]	OPT-E-MAN Pricing Schedule for 15 new locations		
Department of Public Health			
Amendment No, 1 to Pricing Schedule Addendum No. 22 for AT&T ILEC Services within AT&T's Franchise Territory in the State of CA Pursuant to Tariff, Guidebook or Catalog [36 month term	Installing additional OPT-E-MAN services at existing location		
Public Library			
Amendment No. 25 to Addendum to Master Agreement for AT&T PremierServ Dedicated Internet Access (DIA)	SF PL EDIA service (Internet Port portion of service)		

Now, THEREFORE, the parties agree as follows:

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 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. 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.

2. **Term of the Agreement**. Subject to Section 1, the term of this Agreement shall commence on the Effective Date and terminate four and one-half years following the Effective Date; provided, however, that the term of the specific agreements incorporated herein shall be as set forth within each incorporated

agreement. Under this Agreement, "Term" shall refer, as the context reasonably dictates, to both the Term of this Agreement and the Term set forth in the incorporated agreements.

3. **Effective Date of Agreement.** This Agreement shall become effective following signature by both parties when the Controller has certified to the availability of funds and Contractor has been notified in writing.

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

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

b. All Services obtained by City and provided by Contractor during the Term that are available to the City under the WSCA Mobility Agreement (defined below), will continue to be available to the City, and will be so obtained and provided in accordance with the corresponding terms and conditions of that WSCA Mobility Agreement, the pertinent sections of which are attached hereto as Exhibit C. For the purposes of this Agreement, the term "WSCA Mobility Agreement" means, collectively, that certain Western States Contracting Alliance Agreement, # 1523, dated October 10, 2006, as amended, by and between AT&T Mobility National Accounts LLC ("AT&T Mobility") and the State of Nevada, successor contract to that certain Western States Contracting Alliance Agreement #10-00115 dated July 1, 2001, as amended, by and between AT&T Mobility and the State of New Mexico, and the corresponding Participating Agreement between AT&T Mobility and the California State Compensation Insurance Fund dated June 25, 2005, as amended. The San Francisco Airport is an authorized Participating Entity under the WSCA Mobility Agreement.

c. City currently receives optical "SONET" services for the benefit of the Airport from Contractor pursuant to a 96A contract dated August 30, 2007, on file with the California Public Utility Commission, attached hereto as Exhibit D (hereinafter the "96A Filing"). This 96A Filing reflects the respective responsibilities, obligations, terms and conditions with respect to these services and shall continue to govern existing SONET services for the City during the Term.

d. Network Integration products and services, including but not limited to customer owned networking equipment, installation and maintenance are available to political subdivisions of the State of California, including City, under several state agreements. To the extent available under Calnet 2, City agrees to purchase such products and services pursuant to Calnet 2 and subject to the terms and conditions of Calnet 2. If the desired Services are not available under Calnet 2, City agrees to purchase the desired Services pursuant to the Fast Open Contracts Utilization Services (FOCUS II), agreement between County of Merced and AT&T dated July 21, 2009, contract # 2009177, attached hereto as Exhibit F (herein after FOCUS"). The decision to purchase products and services through the FOCUS Agreement

shall be within the sole discretion of City. Services purchased under FOCUS will be purchased in accordance with the processes established under the agreement and be subject to the FOCUS terms and conditions. Any Services not available under Calnet 2 or FOCUS will be provided pursuant to paragraph (e) below.

e. During the Term of the Agreement, if the City determines it wishes to purchase services that are not available under the agreements 4.a-d above, City, in its sole discretion, will engage Contractor for such services by executing a Contractor MSA ("MSA") in the form of the sample MSA attached hereto as Exhibit G, an applicable Pricing Schedule(s) to be negotiated by the parties, and the applicable Service Guide, Tariff, Guidebook or Catalog.

(i) Pricing Schedules. During the term of the Agreement, if the City determines it wishes to purchase Services that are not available under the agreements set forth in sections 4 a-d above, City, in its sole discretion, will engage Contractor for such Services by executing appropriate "Pricing Schedules" (including any related exhibits) to the agreed upon MSA which shall identify the Services, set forth the agreed upon price for each Services and the term during which such prices are in effect (the "Pricing Schedule Term"). The Pricing Schedule may also contain mutually agreed upon terms and conditions which are applicable to the Services made the basis of the particular Pricing Schedule.

(ii) Tariffs, Guidebooks, Catalogs and Service Guides. In addition to the terms and conditions set forth in the agreed upon MSA and the Pricing Schedule, Services provided by Contractor under this section will be provided pursuant to the applicable Tariffs, Guidebooks, Catalogs and Service Guides. "Tariffs" are documents containing the descriptions, pricing, and other terms and conditions for a Service that are on file with and approved by appropriate regulatory agencies of the state and federal government. "Guidebooks" or "Catalogs" are documents containing the Service descriptions, pricing, and other terms and conditions for a Service that were, but no longer are, subject to regulatory approval, but may still be subject to certain regulatory restrictions or controls. Tariffs, Guidebooks and Catalogs may be found at http://www.att.sbc.com/search/tariffs.jsp; http://www.serviceguide.att.com/ABS/ext/index.cfm, or other locations Contractor may designate. The description, pricing, and other terms and conditions for the Services not made the subject of a Tariff, Guidebook or Catalog are contained within the applicable AT&T Service Guide, which is available at http://www.new.serviceguide.att.com, or such other locations Contractor may designate.

Calnet 2, the WSCA Mobility Agreement, the 96A Filing, FOCUS and the MSA are hereinafter referred to collectively the "Identified Agreement(s)".

f. City is responsible for all Services provided under this Agreement to City agencies or departments identified in Exhibit H. City may add or delete agencies or departments from the list, subject to Contractor's agreement, which shall not be unreasonably withheld. Contractor shall begin to provide service to the added agency or department as soon as reasonably possible. If Contractor provides Services under this Agreement to any entity not identified in Exhibit H, the default by such entity of any obligation to Contractor shall not operate as a default of this Agreement by City as further set forth below. Contractor will notify Department if a new agency or department seeking services under this Agreement requests connection.

g. This Agreement, and any exhibit, addendum, authorization to order, or other attachment thereto or document incorporated therein, are intended to be read together and integrated as a whole, and shall be construed and interpreted in a manner so as to avoid any conflict to the maximum extent possible.

Supplemental provisions in the above documents shall not be deemed to be in conflict. However, except as specifically set forth to the contrary within the above referenced agreements, or prohibited by such agreement or law, the provisions of this Agreement shall control in the event of any unavoidable conflict with the provisions of any other document. In addition, in the event City orders Services under the Identified Agreements, the ordering documents (i.e. ATO for Calnet 2 purchases; purchase order under FOCUS and WSCA; and Pricing Schedule under the MSA) (hereinafter collectively or individually referred to as "Ordering Document(s)"), the Identified Agreement, and this Agreement will prevail in that order.

5. Compensation to Contractor.

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

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

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

In no event shall City be liable for interest or late charges for any late payments.

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

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

6. Guaranteed Maximum Costs. Consistent with Section 5 above, the City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by laws governing emergency procedures, officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Commodities or Services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law. Officers and employees of the City are not authorized to offer or promise, nor is the City required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

Force Majeure. Neither Party will be liable to the other Party for any failure of performance, where such failure of performance could not have been avoided by the Party's exercise of reasonable care and diligence due to any of the following causes that are beyond that Party's reasonable control: including Acts of God, fire, explosion, vandalism, terrorism, storm, national emergencies declared by the President of the United States of America, insurrections, riots, wars, strikes, supplier failures, breaches by the other Party.

7. **Payment; Invoice Format.** Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller, and must include a unique invoice number. All amounts paid by City to Contractor shall be subject to audit by City. Payment shall be made by City to Contractor at the address specified in the section entitled "Notices to the Parties."

8. **Submitting False Claims; Monetary Penalties.** Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for three times the amount of damages which the City sustains because of the false claim. A contractor, subcontractor or consultant who submits a false claim shall also be liable to the City for the costs, including attorneys' fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the City for a civil penalty of up to $10,000 for each false claim. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (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.

9. **Disallowance.** Omitted by agreement of the parties.

10. **Taxes.** Prices set forth in a Pricing Schedule are exclusive of, and Customer will pay, all current and future taxes (excluding those on AT&T's net income), surcharges, recovery fees, custom clearances, duties, levies, shipping charges, and other similar charges (and any associated interest and penalties resulting from Customer's failure to timely pay such taxes and 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.

a. Contractor shall bill City, and City shall pay for all taxes and fees required or authorized by the appropriate regulatory bodies (such as California Public Utilities Commission and Federal Communications Commission), which have jurisdiction over the telecommunications services provided under this Agreement. City shall not be responsible for such taxes and fees from which it is exempt, or which are not applicable

b. Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon or as a result of this Agreement, or the services delivered pursuant hereto, shall be the obligation of Contractor.

c. Contractor recognizes and understands 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:

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;

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

3) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., 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 to the County Assessor, the State Board of Equalization or other public agency as required by law.

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

11. Payment Does Not Imply Acceptance of Work. The granting of any payment by City, or the receipt thereof by Contractor, shall in no way lessen the liability of Contractor to replace unsatisfactory work, equipment, or materials, although the unsatisfactory character of such work, equipment or materials may not have been apparent or detected at the time such payment was made. Materials, equipment, components, or workmanship that do not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay.

12. Qualified Personnel. Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor. Contractor will comply with City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall commit adequate resources to complete the project within the project schedule specified in this Agreement.

13. Responsibility for Equipment. Services may include use of certain equipment owned by Contractor that is located at the Site ("Contractor Equipment"), but title to the Contractor Equipment will remain with Contractor. City must provide electric power for the Contractor Equipment and keep the Contractor Equipment physically secure and free from liens and encumbrances. City will bear the risk of loss or damage to Contractor Equipment (other than ordinary wear and tear) except to the extent caused by Contractor or its agents.

"Site" means City's physical location, including City's collocation space on Contractor's, its Affiliate's, or subcontractor's property, where Contractor installs or provides a Service.

14. Independent Contractor; Payment of Taxes and Other Expenses.

a. **Independent Contractor.** 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 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 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. 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.

b. 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. 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 purposed 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 taxes 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.

d. 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).

e. A determination of employment status pursuant to the preceding two paragraphs shall be solely for 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, should any court, arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor agrees to a reduction in City's financial liability so that City's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

15. Insurance.

a. 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:

1) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than $1,000,000 each accident, injury, or illness; and

2) Commercial General Liability Insurance with limits not less than $1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

3) Commercial Automobile Liability Insurance with limits not less than $1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

4) Professional liability insurance, applicable to Contractor's profession, with limits not less than $1,000,000 each claim with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement.

b. Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:

1) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

2) 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 insurance applies separately to each insured against whom claim is made or suit is brought.

c. Regarding Workers' Compensation, Contractor hereby agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

d. All policies shall provide thirty days' advance written notice to the City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the City address in the "Notices to the Parties" section.

e. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

f. 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.

g. 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.

h. Before commencing any operations under this Agreement, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement.

i. Contractor may elect to self-insure any of the required coverages set forth above. If Contractor elects to self-insure, Contractor shall provide proof of self insurance and, to the extent authorized by the State of California, proof of such authorization. Approval of the insurance by City shall not relieve or decrease the liability of Contractor hereunder.

j. If a subcontractor will be used to complete any portion of this agreement, the Contractor shall ensure that the subcontractor shall provide all necessary insurance and shall name the City and County of San Francisco, its officers, agents and employees and the Contractor listed as additional insureds.

16. Indemnification. Contractor agrees to defend, indemnify and hold harmless the City and County of San Francisco, its officers, employees and agents, from any and all acts, claims, omissions, liabilities and losses by whomever asserted arising out of acts or omissions of Contractor in the performance any Services provided under this Agreement except those arising by reason of the sole negligence of the City, its officer, employees and agents.

City agrees to defend, indemnify and hold harmless Contractor, its officer, employees, and agents, from any and all acts, claims, liabilities and losses by whomever asserted arising out of acts of omissions of the City in its obligations under this Agreement except those arising by reason of the sole negligence of Contractor, its officers, employees, and agents.

In the event of concurrent negligence of City, its officers, employees and agents, and Contractor and its officers, employees and agents, the liability for any and all claims for injuries or damages to persons and/or property shall be apportioned under the California theory of comparative negligence as presently established or as may hereafter be modified.

17. Liability of City. (a) Contractor's entire liability, and customer's exclusive remedy, for damages arising out of mistakes, omissions, interruption, delays, errors or defects in the services, and not caused by customer's negligence, shall in no event exceed the applicable credits specified in a service publication or pricing schedule, or if no credits are specified, an amount equivalent to the proportionate charge to customer for the period of service during which such mistake, omission, interruption, delay, error or defect in the services occurs and continues in no event shall any other liability attach to Contractor.

(b) Section 17(a) will not apply to:

(i) Bodily injury, death, or damage to real or tangible property directly caused by AT&T's negligence.

(ii) Breach of Section (23) (Confidential information), or Section (63) (Trademarks);

(iii) Settlement, defense or payment obligations under Section (16) (Indemnification); or

(iv) Damages arising from Contractor's gross negligence or willful misconduct; (v) Penalties resulting from the failure of Contractor to satisfy statutory obligations related to the provision of Service under this Agreement.

(c) Neither party shall be liable to the other for any indirect, incidental, punitive, exemplary, special or consequential damages (including without limitation damages related to lost profits, loss of use, and loss of data, or failure to realize savings and benefits) arising under this Agreement, even if advised of the possibility of such loss.

18. Liquidated Damages. Omitted by Agreement of the parties.

19. Default; Remedies.

a. Each of the following shall constitute an event of default ("Event of Default") under this Agreement:

1) Contractor, or City as appropriate, fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement:

8.	Submitting False Claims; Monetary Penalties.	36.	Drug-free workplace policy
10.	Taxes	52.	Compliance with laws
15.	Insurance		
23.	Proprietary or confidential information of City	56.	Protection of private information
29.	Assignment	57.	Graffiti removal

2) A party fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, and such default continues for a period of thirty days after written notice thereof from non-defaulting party to the defaulting party.

3) A party (a) is generally not paying its debts as they become due, (b) 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, (c) makes an assignment for the benefit of its creditors, (d) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of a party or of any substantial part of a party's property or (e) takes action for the purpose of any of the foregoing.

4) A court or government authority enters an order (a) appointing a custodian, receiver, trustee or other officer with similar powers with respect to a party or with respect to any substantial part of a party's property, (b) 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 (c) ordering the dissolution, winding-up or liquidation of a party.

5) Fraud or Abuse. Contractor may temporarily suspend an affected Service by providing City with as much advance notice as is reasonably practicable under the circumstances if the Services are being used (i) to commit a fraud upon Contractor, (ii) to commit a fraud upon another party, (iii) unlawfully, or (iv) in a fashion that interferes with another customer's use of Contractor's network or services. AT&T will exercise good faith efforts to only suspend that portion of the affected Service that is contributing to the prohibited activities. Once the offending activity has stopped and reasonable steps taken to reasonably prevent a repeat of the offending activity, the suspended Service will be restored consistent with the terms of this Agreement. Contactor will work with City to minimize the period of suspension for any affected Service.

b. On and after any Event of Default, a non-defaulting party shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate the affected Service or if the default implicates the entire Agreement, terminate the entire Agreement or to seek specific performance of all or any part of this Agreement. In addition, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all reasonable costs and expenses incurred by City in effecting a commercially reasonable cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor all damages, losses, costs or expenses incurred by City as a result of such Event of Default and any liquidated damages due from Contractor pursuant to the terms of this Agreement or any other agreement.

c. 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.

20. Termination for Convenience.

In arriving at the amount due to Contractor under this Section, City may deduct: (1) all payments previously made by City for work or other services covered by Contractor's final invoice; (2) any claim which City may have against Contractor in connection with this Agreement; and (3) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection.

a. City shall have the option, in its sole discretion, to terminate any affected Ordering Document and, if all Ordering Document are affected, to terminate this Agreement and all Ordering Documents, at any time for convenience and without cause. City shall exercise this option by giving Contractor ninety (90) days written notice, subject to the following terms and conditions:

i. If any Service is terminated prior to cutover of Contractor's Service ("Cutover Date") provided under the applicable Ordering Document, the City will pay Contractor's recurring and nonrecurring costs of labor, engineering, nonreusable materials, interest, transportation, storage, manufacturer's cancellation charges (if any) and any other reasonable costs incurred by Contractor or its subcontractors prior to City's termination notice, including those expenses incurred in preparation for start of installation or upgrade, and City shall not be responsible for the termination charges set forth in subsection (ii) below. Within thirty (30) days after the City-specified termination

date, Contractor shall submit to the City an invoice for the above expenses incurred in this event. For the purposes of this Agreement, Cutover Date is defined as the date that the Service is first installed and available for City's use at any one location.

ii. If, after Cutover of Service, or if no installation or upgrade of Service is involved, after the effective date of an Ordering Document, City terminates any Ordering Document prior to the initial term set forth herein in such Addendum for any reason, except as set forth in Section 6 (Force Majeure), City shall be required to pay the termination charges set forth in such Ordering Document.

b. Upon receipt of a termination notice from City, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of the relevant Ordering Document on the date specified by City and to minimize the liability of Contractor and City to third parties as a result of termination. All such actions by Contractor and its subcontractors performed after receipt of City's termination notice shall be subject to the prior approval of City, and City agrees to pay Contractor for all such reasonable expenses incurred by Contractor for the approved work. Nothing in the foregoing shall affect City's obligation to pay or not pay termination charges as set forth in subsections (i) and (ii) above. In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by City, except for those costs specifically enumerated and described in this Section.

c. City may, for its own convenience, terminate a service-specific Ordering Document pursuant to the early termination fees provided for in such Ordering Document, if any.

21. Rights and Duties upon Termination or Expiration.

This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement:

8.	Submitting false claims	23.	Proprietary or confidential information of City
9.	Disallowance	25.	Ownership of Results
10.	Taxes		
11.	Payment does not imply acceptance of work	27.	Audit and Inspection of Records
13.	Responsibility for equipment	47.	Modification of Agreement.
14.	Independent Contractor; Payment of Taxes and Other Expenses	48.	Administrative Remedy for Agreement Interpretation.
15.	Insurance	49.	Agreement Made in California; Venue
16.	Indemnification	50.	Construction
		51.	Entire Agreement
		55.	Severability
		56.	Protection of private information

Subject to the immediately preceding sentence, upon termination of this Agreement prior to expiration of the term specified in Section 2, this Agreement shall terminate and be of no further force or effect. Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City. This subsection shall survive termination of this Agreement. Materials produced for the exclusive use of City as expressly ordered under this Agreement may become property of City; all other materials shall remain the exclusive property of Contractor.

22. Conflict of Interest. Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

23. Proprietary or Confidential Information of City. Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Contractor may have access to private or confidential information, which may be owned or controlled by City, and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Contractor agrees that all information disclosed by City to Contractor shall be held in confidence and used only in performance of 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 data. Further:

a. **Use of Confidential Information.** During the Term, each Party may obtain Confidential Information from the other Party. Written or other tangible confidential Information must at the time of disclosure be identified and labeled as Confidential Information belonging to the disclosing Party. When disclosed orally or visually, Confidential information must be identified as confidential at the time of the disclosure, with subsequent confirmation in writing within 15 days after disclosure. Neither Party may during the Term and for three (3) years thereafter disclose any of the other Party's confidential

Information to any third party. Neither Party may use the other Party's Confidential Information except to perform its duties under the Agreement. The Confidential Information restrictions will not apply to Confidential Information that is (i) already know to the receiving party; (ii) becomes publicly available through no wrongful act of the receiving Party; (iii) independently developed by the receiving Party without benefit of the disclosing Party's Confidential Information; (iv) disclosed by the disclosing Party to a third party without an obligation of confidentiality; or (v) must be made available under the San Francisco Sunshine Ordinance. Upon termination of this Agreement, each Party will return the other Party's confidential information.

b. **Privacy Laws.** Each party is responsible for complying with the privacy laws applicable to its business. if City does not want Contractor personnel to comprehend City data to which they may have access in performing Services, City should encrypt such data so that it will be unintelligible. Until directed otherwise by City in writing, if Contractor designates a dedicated account representative as City's primary contact with Contractor, City authorizes that representative to discuss and disclose City's customer proprietary network information (CPNI) to any employee or agent of City without a need for further authentication or authorization.

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

To City: Ms. Kendall W. Gary
Director of Technology Procurement
Department of Technology
City & County of San Francisco
One South Van Ness Ave 2nd Floor
San Francisco, Ca. 94103
Email - Kendall.Gary@sfgov.org;
Facsimile – (415) 581-3970

To Contractor: Account Manager for the City and County of San Francisco,
AT&T, 2600 Camino Ramon – Room 1S156
San Ramon, CA 94583
Email - mp5984@att.com ;
Facsimile – (925) 327-0260

Any notice of default must be sent by registered mail.

25. Ownership of Results. Only those drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors for the exclusive use of City as expressly ordered under this Agreement shall become the property of and will be transmitted to City. However, Contractor may retain and use copies for reference and as documentation of its experience and capabilities. All other materials shall remain the exclusive property of Contractor.

26. Works for Hire. Left blank by agreement of the parties.

27. 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 work under this Agreement. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this

Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon City by this Section. Such inspection shall be made only upon reasonable notice and shall be limited to the matters directly arising under the Agreement. Such inspection shall be at the sole cost of City and shall occur no more than is reasonably necessary.

28. Subcontracting. Contractor is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is first approved by City in writing. Notwithstanding the foregoing, the requirements under this Section 28 apply only to Subcontracted work that is specifically targeted and limited to functions under this Agreement. City acknowledges and agrees that this Section 28 does not apply to Contractor's Affiliates, or any other Subcontract that is entered into by Contractor for a purpose that is not specifically aimed at supporting this Agreement. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

29. Assignment. (a) The services performed by Contractor are personal in character and neither this Agreement nor any duties or obligations, including but not limited to the selection or use of sub's by Contractor, hereunder may be assigned or delegated by Contractor unless first approved by City by written instrument executed and approved by the CIO or designee, acting in his or her sole discretion. Contractor may, however, assign the agreement and/or delegate duties or obligations to Affiliates without the prior written consent of City, but will remain primarily responsible for such obligations or duties.

(b) In countries where Contractor does not have an Affiliate to provide Service, Contractor may assign its rights and obligations related to a Service to a local service provider, but Contractor will remain responsible to Customer for such obligations. In certain countries, Customer may be required to contract directly with the local service provider.

(c) Any assignment other than as permitted by this Section is void.

30. 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.

31. Earned Income Credit (EPIC) Forms. Administrative Code section 120 requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EPIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found. Contractor shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty days following the date on which this Agreement becomes effective (unless Contractor has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by Contractor; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement. Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Contractor of the terms of this Agreement. If, within thirty days after Contractor receives written notice of such a breach, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty days, Contractor fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Agreement or under applicable law. Any Subcontract entered into by Contractor shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this section. Capitalized

terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 120 of the San Francisco Administrative Code.

32. Local Business Enterprise Utilization; Liquidated Damages.

a. **The LBE Ordinance.** Contractor, shall comply with this Section 32 and all the requirements of the Local Business Enterprise and Non-Discrimination in Contracting Ordinance set forth in Chapter 14B of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the "LBE Ordinance"), provided such amendments do not materially increase Contractor's obligations or liabilities, or materially diminish Contractor's rights, under this Agreement, and provided that the LBE Ordinance and this Section 32 does not apply to Services provided by AT&T under the existing contracts identified in the Recitals and Subsections 4 a – d above. Such provisions of the LBE Ordinance are incorporated by reference and made a part of this Agreement as though fully set forth in this section. In the event of a conflict between this Section 32 and the LBE Ordinance, this Section 32 shall prevail. Contractor's willful failure to comply with any applicable provisions of this Section 32 and the LBE Ordinance is a material breach of Contractor's obligations under this Agreement and shall entitle City, subject to any applicable notice and cure provisions set forth in this Agreement, to exercise any of the remedies provided for under this Agreement, under the LBE Ordinance or otherwise available at law or in equity, which remedies shall be cumulative unless this Agreement expressly provides that any remedy is exclusive. In addition, Contractor shall comply fully with all other applicable local, state and federal laws prohibiting discrimination and requiring equal opportunity in contracting, including subcontracting.

b. **Compliance and Enforcement.**

1) **Enforcement.** If Contractor willfully fails to comply with any of the provisions of this Agreement pertaining to LBE participation, Contractor shall be liable for liquidated damages in an amount equal to Contractor's net profit on this Agreement, or 10% of the total amount of this Agreement, or $1,000, whichever is greatest. The Director of the City's Human Rights Commission or any other public official authorized to enforce the LBE Ordinance (separately and collectively, the "Director of HRC") may also impose other sanctions against Contractor authorized in the LBE Ordinance, including declaring the Contractor to be irresponsible and ineligible to contract with the City for a period of up to five years or revocation of the Contractor's LBE certification. The Director of HRC will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to Administrative Code §14B.17. By entering into this Agreement, Contractor acknowledges and agrees that any liquidated damages assessed by the Director of the HRC shall be payable to City upon demand. Contractor further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to Contractor on any contract with City. Contractor agrees to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination or expiration of this Agreement, and shall make such records available for audit and inspection by the Director of HRC or the Controller upon request.

2) **Subcontracting Goals.** Consistent with Subsection 32.a above, the LBE subcontracting participation goal for each new contract executed by the parties pursuant to Subsection 4.e above and incorporated into this Agreement is 10.0%, provided that the identified percentage is warranted based on the nature of the services being provided by AT&T under the new contract and the availability of certified LBEs with skill sets relevant to the services being provided. Contractor shall not participate in any back contracting to the Contractor or lower-tier subcontractors, as defined in the LBE Ordinance, for any purpose inconsistent with the provisions of the LBE Ordinance, its implementing rules and regulations, or this Section.

3) **Subcontract Language Requirements.** Contractor shall incorporate the LBE requirements of this Agreement into each subcontract made in the fulfillment of Contractor's obligations under this Agreement and require each subcontractor to agree and comply with provisions of the ordinance applicable to subcontractors. Contractor shall include in all subcontracts with LBEs made in fulfillment of Contractor's obligations under this Agreement, a provision requiring Contractor to

compensate any LBE subcontractor for damages for breach of contract or liquidated damages equal to 5% of the subcontract amount, whichever is greater, if Contractor does not fulfill its commitment to use the LBE subcontractor as specified in the bid or proposal, unless Contractor received advance approval from the Director of HRC and contract awarding authority to substitute subcontractors or to otherwise modify the commitments in the bid or proposal. Such provisions shall also state that it is enforceable in a court of competent jurisdiction. Subcontracts shall require the subcontractor to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination of this contract and to make such records available for audit and inspection by the Director of HRC or the Controller upon request.

4) **Payment of Subcontractors.** Contractor shall pay its subcontractors consistent with the terms of its subcontract.

33. Nondiscrimination; Penalties.

a. **Contractor Shall Not Discriminate.** In the performance of this Agreement, Contractor agrees not to discriminate against any employee, City and County employee working with such contractor or subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

b. **Subcontracts.** Contractor shall incorporate by reference in all subcontracts the provisions of §§12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from Purchasing) and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

c. **Nondiscrimination in Benefits.** 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 bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in §12B.2(b) of the San Francisco Administrative Code.

d. **Condition to Contract.** As a condition to this Agreement, Contractor shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

e. **Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to §§12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of $50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

34. **MacBride Principles—Northern Ireland.** Pursuant to San Francisco Administrative Code §12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Contractor acknowledges and agrees that he or she has read and understood this section.

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

36. **Drug-Free Workplace Policy.** Contractor acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. Contractor agrees that any violation of this prohibition by Contractor, its employees, agents or assigns will be deemed a material breach of this Agreement.

37. **Resource Conservation.** Chapter 5 of the San Francisco Environment Code ("Resource Conservation") is incorporated herein by reference. Failure by Contractor to comply with any of the applicable requirements of Chapter 5 will be deemed a material breach of contract.

38. **Compliance with Americans with Disabilities Act.** Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

39. **Sunshine Ordinance.** In accordance with San Francisco Administrative Code §67.24(e), contracts, contractors' bids, responses to solicitations and all other records of communications between City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

40. **Public Access to Meetings and Records.** If the Contractor receives a cumulative total per year of at least $250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, Contractor shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Agreement, the Contractor agrees to open its meetings and records to the public in the manner set forth in §§12L.4 and 12L.5 of the Administrative Code. Contractor further agrees to make-good faith efforts to promote community membership on its Board of Directors in the manner set forth in §12L.6 of the Administrative Code. The Contractor acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. The Contractor further acknowledges that such material breach of the Agreement shall be grounds for the City to terminate and/or not renew the Agreement, partially or in its entirety.

41. **Limitations on Contributions.** Through execution of this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with 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, or for a grant, loan or

loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Contractor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of $50,000 or more. Contractor further acknowledges that 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 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Contractor further agrees to provide to City the names of each person, entity or committee described above.

42. Requiring Minimum Compensation for Covered Employees.

a. Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at www.sfgov.org/olse/mco. A partial listing of some of Contractor's obligations under the MCO is set forth in this Section. Contractor is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

b. The MCO requires Contractor to pay Contractor's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and Contractor is obligated to keep informed of the then-current requirements. Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is Contractor's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Contractor.

c. Contractor shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within 90 days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.

d. Contractor shall maintain employee and payroll records as required by the MCO. If Contractor fails to do so, it shall be presumed that the Contractor paid no more than the minimum wage required under State law.

e. The City is authorized to inspect Contractor's job sites and conduct interviews with employees and conduct audits of Contractor

f. Contractor's commitment to provide the Minimum Compensation is a material element of the City's consideration for this Agreement. The City in its sole discretion shall determine whether such a breach has occurred. The City and the public will suffer actual damage that will be impractical or extremely difficult to determine if the Contractor fails to comply with these requirements. Contractor agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the City and the public will incur for Contractor's noncompliance.

The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

g. Contractor understands and agrees that if it fails to comply with the requirements of the MCO, the City shall have the right to pursue any rights or remedies available under Chapter 12P (including liquidated damages), under the terms of the contract, and under applicable law. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

h. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

i. If Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than $25,000, but Contractor later enters into an agreement or agreements that cause contractor to exceed that amount in a fiscal year, Contractor shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and this department to exceed $25,000 in the fiscal year.

43. Requiring Health Benefits for Covered Employees.

Unless exempt, Contractor agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at www.sfgov.org/olse. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

a. 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..

b. Notwithstanding the above, if the Contractor is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.

c. Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Contractor if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

d. Any Subcontract entered into by Contractor shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Contractor shall notify City's Office of Contract Administration when it enters into such a Subcontract and shall certify to the Office of Contract Administration that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Contractor shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Contractor based on the Subcontractor's failure to comply,

provided that City has first provided Contractor with notice and an opportunity to obtain a cure of the violation.

e. Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Contractor's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

f. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

g. Contractor shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City Contract.

h. Contractor shall keep itself informed of the current requirements of the HCAO.

i. Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

j. Contractor shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least ten business days to respond.

k. Contractor shall allow City to inspect Contractor's job sites and have access to Contractor's employees in order to monitor and determine compliance with HCAO.

l. City may conduct random audits of Contractor to ascertain its compliance with HCAO. Contractor agrees to cooperate with City when it conducts such audits.

m. If Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than $25,000 ($50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause Contractor's aggregate amount of all agreements with City to reach $75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Contractor and the City to be equal to or greater than $75,000 in the fiscal year.

44. First Source Hiring Program.

a. Incorporation of Administrative Code Provisions by Reference.

The provisions of Chapter 83 of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with, and be bound by, all of the provisions that apply to this Agreement under such Chapter, including but not limited to the remedies provided therein. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83.

b. First Source Hiring Agreement.

As an essential term of, and consideration for, any contract or property contract with the City, not exempted by the FSHA, the Contractor shall enter into a first source hiring agreement ("agreement") with the City, on or before the effective date of the contract or property contract. Contractors shall also enter into an agreement with the City for any other work that it performs in the City. Such agreement shall:

1) Set appropriate hiring and retention goals for entry level positions. The employer shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to establish good faith efforts as to its attempts to do so, as set forth in the agreement. The agreement shall take into consideration the employer's participation in existing job training, referral and/or brokerage programs.

Within the discretion of the FSHA, subject to appropriate modifications, participation in such programs maybe certified as meeting the requirements of this Chapter. Failure either to achieve the specified goal, or to establish good faith efforts will constitute noncompliance and will subject the employer to the provisions of Section 83.10 of this Chapter.

2) Set first source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to provide qualified economically disadvantaged individuals for consideration for employment for entry level positions. Employers shall consider all applications of qualified economically disadvantaged individuals referred by the System for employment; provided however, if the employer utilizes nondiscriminatory screening criteria, the employer shall have the sole discretion to interview and/or hire individuals referred or certified by the San Francisco Workforce Development System as being qualified economically disadvantaged individuals. The duration of the first source interviewing requirement shall be determined by the FSHA and shall be set forth in each agreement, but shall not exceed 10 days. During that period, the employer may publicize the entry level positions in accordance with the agreement. A need for urgent or temporary hires must be evaluated, and appropriate provisions for such a situation must be made in the agreement.

3) Set appropriate requirements for providing notification of available entry level positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of qualified economically disadvantaged individuals to participating employers. Notification should include such information as employment needs by occupational title, skills, and/or experience required, the hours required, wage scale and duration of employment, identification of entry level and training positions, identification of English language proficiency requirements, or absence thereof, and the projected schedule and procedures for hiring for each occupation. Employers should provide both long-term job need projections and notice before initiating the interviewing and hiring process. These notification requirements will take into consideration any need to protect the employer's proprietary information.

4) Set appropriate record keeping and monitoring requirements. The First Source Hiring Administration shall develop easy-to-use forms and record keeping requirements for documenting compliance with the agreement. To the greatest extent possible, these requirements shall utilize the employer's existing record keeping systems, be nonduplicative, and facilitate a coordinated flow of information and referrals.

5) Establish guidelines for employer good faith efforts to comply with the first source hiring requirements of this Chapter. The FSHA will work with City departments to develop employer good faith effort requirements appropriate to the types of contracts and property contracts handled by each department. Employers shall appoint a liaison for dealing with the development and implementation of the employer's agreement. In the event that the FSHA finds that the employer under a City contract or property contract has taken actions primarily for the purpose of circumventing the requirements of this Chapter, that employer shall be subject to the sanctions set forth in Section 83.10 of this Chapter.

6) Set the term of the requirements.

7) Set appropriate enforcement and sanctioning standards consistent with this Chapter.

8) Set forth the City's obligations to develop training programs, job applicant referrals, technical assistance, and information systems that assist the employer in complying with this Chapter.

9) Require the developer to include notice of the requirements of this Chapter in leases, subleases, and other occupancy contracts.

c. **Hiring Decisions.**

Contractor shall make the final determination of whether an Economically Disadvantaged Individual referred by the System is "qualified" for the position.

d. **Exceptions.**

Upon application by Employer, the First Source Hiring Administration may grant an exception to any or all of the requirements of Chapter 83 in any situation where it concludes that compliance with this Chapter would cause economic hardship.

e. **Liquidated Damages.**

Contractor agrees:

1) To be liable to the City for liquidated damages as provided in this section;

2) To be subject to the procedures governing enforcement of breaches of contracts based on violations of contract provisions required by this Chapter as set forth in this section;

3) That the contractor's commitment to comply with this Chapter is a material element of the City's consideration for this contract; that the failure of the contractor to comply with the contract provisions required by this Chapter will cause harm to the City and the public which is significant and substantial but extremely difficult to quantity; that the harm to the City includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to $5,000 for every notice of a new hire for an entry level position improperly withheld by the contractor from the first source hiring process, as determined by the FSHA during its first investigation of a contractor, does not exceed a fair estimate of the financial and other damages that the City suffers as a result of the contractor's failure to comply with its first source referral contractual obligations.

4) That the continued failure by a contractor to comply with its first source referral contractual obligations will cause further significant and substantial harm to the City and the public, and that a second assessment of liquidated damages of up to $10,000 for each entry level position improperly withheld from the FSHA, from the time of the conclusion of the first investigation forward, does not exceed the financial and other damages that the City suffers as a result of the contractor's continued failure to comply with its first source referral contractual obligations;

5) That in addition to the cost of investigating alleged violations under this Section, the computation of liquidated damages for purposes of this section is based on the following data:

(a) The average length of stay on public assistance in San Francisco's County Adult Assistance Program is approximately 41 months at an average monthly grant of $348 per month, totaling approximately $14,379; and

(b) In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least the first six months of employment was 84.4%. Since qualified individuals under the First Source program face far fewer barriers to employment than their counterparts in programs funded by the Workforce Investment Act, it is reasonable to conclude that the average length of employment for an individual whom the First Source Program refers to an employer and who is hired in an entry level position is at least one year;

Therefore, liquidated damages that total $5,000 for first violations and $10,000 for subsequent violations as determined by FSHA constitute a fair, reasonable, and conservative attempt to quantify the harm caused to the City by the failure of a contractor to comply with its first source referral contractual obligations.

6) That the failure of contractors to comply with this Chapter, except property contractors, may be subject to the debarment and monetary penalties set forth in Sections 6.80 et seq. of

the San Francisco Administrative Code, as well as any other remedies available under the contract or at law; and

Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of $5,000 for every new hire for an Entry Level Position improperly withheld from the first source hiring process. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the FSHA.

f. **Subcontracts.**

Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section.

45. **Prohibition on Political Activity with City Funds.** In accordance with San Francisco Administrative Code Chapter 12.G, Contractor may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. Contractor agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Contractor violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit Contractor from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider Contractor's use of profit as a violation of this section.

46. **Preservative-treated Wood Containing Arsenic.** Omitted by agreement of the parties.

47. **Modification of Agreement.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement. Contractor shall cooperate with Department to submit to the Director of HRC any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20% (HRC Contract Modification Form).

48. **Administrative Remedy for Agreement Interpretation.** Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to Purchasing who shall decide the true meaning and intent of the Agreement in a timely manner. The interpretation by Purchasing is not binding on Contractor and if Contractor does not agree with the interpretation by Purchasing interpretation, Contractor may pursue any and all rights and remedies, including litigation, afforded Contractor under this Agreement and laws of the State of California.

49. **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.

50. **Construction.** All paragraph captions are for reference only and shall not be considered in construing this Agreement. The terms and conditions governing the Services that Contractor provides to City are set forth in this Agreement, the following additional documents, and any other documents executed by the parties and referencing this Agreement.

51. **Entire Agreement.** This contract sets forth the entire agreement between the parties with respect to the services provided under this Agreement. Except for the Identified Agreements, the identified Addenda to the 1990 Master Agreement, and the 1990 Master Agreement Related Agreements, this Agreement supersedes all other agreements, proposals, representations, statements or understandings, whether written or oral, concerning the services or the rights and obligations relating to the services, and the parties disclaim any reliance thereon. The City understands that AT&T's standard service offerings are described in Contractor's Tariffs, Guidebooks and Service Guides. Tariffs are filed by AT&T with

regulatory commissions. The Tariffs, Guidebooks and Service Guides can be found at "att.com/servicepublications". This Agreement takes precedence over the Tariffs, Guidebooks and Service Guides, which are only referenced as a supplemental description of standard service descriptions, parameters and processes for Contractor's Services provided hereunder. This contract may be modified only as provided in Section 47, "Modification of Agreement."

52. **Compliance with Laws.** Each party shall keep itself fully informed of the City's Charter, codes, ordinances 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. Contractor is under the jurisdiction of the FCC and CPUC for certain Services provided hereunder. In the event that the provision of any Service provided under this Agreement requires a regulatory filing, Contractor shall make such filing in a timely manner in accordance with all FCC and/or CPUC requirements.

53. **Services Provided by Attorneys.** Omitted by Agreement of the parties.

54. **Supervision of Minors.** Omitted by Agreement of the parties.

55. **Severability.** 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 (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) 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 and (c) if required, the parties will negotiate in good faith to substitute for such invalid, illegal, or unenforceable provision a mutually acceptable provision consistent with the original intention of the parties.

56. **Protection of Private Information**. Contractor has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Contractor agrees that any failure of Contactor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract, bring a false claim action against the Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Contractor.

57. **Graffiti Removal.** In performing under this Agreement, Contractor shall comply with the applicable provisions of the Graffiti Removal and Abatement Ordinance, San Francisco Public Works Code Section 1300 et seq. All written notices to Contractor under the Graffiti Removal and Abatement Ordinance shall be sent to the following:

AT&T
Director of Property Management
2600 Camino Ramon, Room 3E451
San Ramon, CA 94583

58. **Food Service Waste Reduction Requirements.** Omitted by Agreement of the parties.

59. **Slavery Era Disclosure**. Omitted by agreement of the parties.

60. **Cooperative Drafting.**

This Agreement has been drafted through a cooperative effort of both parties, 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.

61. **City Information; Access and Safe Working Environment.**

City shall provide Contractor with timely access to City information, facilities or equipment as Contractor reasonably requires to provide the Services and keep Contractor informed on developments in City's business or operations that may impact Services. City shall endeavor to maintain any City owned or leased work sites used by Contractor to provide Services under this Agreement in a suitable and safe working environment, free of Hazardous Materials. City shall ensure that such work sites are free of Hazardous Materials prior to Contractor's entry onto the premises. Contractor shall not use, bring on site or store Hazardous Materials at any City site. Contractor will not handle, remove or dispose of, nor does Contractor accept any liability for, any Hazardous Materials at any City owned or leased sites that are not brought to the site by Contractor. City shall indemnify Contractor for any damages, costs, fines or penalties Contractor incurs as result of the presence or release of such Hazardous Materials to the extent such materials were present at the site prior to Contractor's initial access. Contractor shall indemnify City for any damages, costs, fines or penalties City incurs as result of the presence or release of such Hazardous Materials to the extent such materials are present on the site due to the conduct or activities of Contractor. If Contractor encounters any such Hazardous Materials, Contractor may suspend performance at the affected Site until City removes and cleans up at its expense Hazardous Materials in accordance with this Agreement and applicable law. For purposes hereof, "Hazardous Materials" means any substance whose use, transport, storage, handling, disposal, or release is regulated to any law related to pollution, protection of air, water, or soil, or health and safety.

City will furnish any conduit, holes, wireways, wiring, plans, equipment, space, power/utilities, and other items reasonably required to perform installation of the Services, and obtain any necessary licenses, permits and consents (including easements and rights-of-way). City will have the Site ready for Contractor to perform its work according to a mutually agreed schedule. Contractor will waive subrogation for workers' comp.

62. **Additional Provisions.**

Resale of Services. City may not resell the Services to third parties, as Resale is defined within 47 U.S.C 251 and CPUC Decision 95-12-057, without Contractor's written consent. City's ability to extend the Services provided under this Agreement to City agencies or departments as described in Section 4.g above and Exhibit H below, is not limited by this Section on the "Resale of Services".

63. Trademarks.

Each party agrees not to display or use, in advertising or otherwise, any of the other party's trade names, logos, trademarks, service marks or other indicia of origin without the other party's prior written consent, which consent may be revoked at any time by notice.

64. Injunctive Relief.

Nothing in this Agreement is intended, or should be construed, to limit a party's right to seek preliminary or permanent injunctive relief from a court of competent jurisdiction for a breach of any provision of this Agreement.

65. No Third Party Beneficiaries.

This Agreement is for the benefit of City and Contractor, and does not provide any third party (including Users) the right to enforce or bring an action for any remedy, claim, liability, reimbursement, cause of action or other right or privilege.

66. Counterparts.

For convenience, the signatures of the parties to this Agreement may be executed and acknowledged on separate pages and may be executed in counterparts, including by facsimile which, when attached to this Agreement, shall constitute this as one complete Agreement. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same Agreement.

67. Exhibits.

The following exhibits are incorporated by reference into this Agreement.

Exhibit A	Description of Services
Exhibit B	CalNet 2 Authorizations to Order
Exhibit C	WSCA Mobility / Participating Addendum
Exhibit D	96A Filing (Sonet)
Exhibit E	Intentionally Left Blank
Exhibit F	FOCUS
Exhibit G	MSA
Exhibit H	City Agencies and Departments
Exhibit I	AT&T Affiliates

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

CITY

Recommended by:

Chris A. Vein
CIO/Executive Director
City and County of San Francisco
Department of Technology

Approved as to Form:

Dennis J. Herrera
City Attorney

By: _____
Margarita Gutierrez
Deputy City Attorney

Approved:

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

CONTRACTOR

AT&T Corp.

AT&T acknowledges it's agreement to Section 35, "McBride Principles – Northern Ireland" and Section 42, "Requiring Minimum Compensation for Covered Employees" as set forth above in the Agreement

By: _____
GABRIELA RATULOWSKI
LEAD - CUSTOMER CONTRACTS

Title: _____

City vendor number: 14037

Appendix A

Services to be provided by Contractor

The services to be provided under this Agreement include, but are not limited to, the following:

- Digital and Analog Trunks
- Basic Telephone Service
- Centrex Service
- Frame Relay
- Asynchronous Transfer Mode (ATM) Transport
- Internet Connectivity
- Local Calling
- LATA Toll Calling
- Long Distance Calling
- International Calling
- 800/888 Services
- Video Conferencing
- Calling Card Services
- Disaster and Business Continuity Planning
- Voice services network security analysis and consulting
- Bill reconciliation
- All associated professional services, hardware and software that are required from time to time for the execution of the functions outline above.
- Managed Internet Services
- Network Security Services
- Telecommunication Consulting/Professional Services
- Wireless Services
- MPOE / WAN Services
- Mobility
- Media Content
- Contractor and City agree that such services may include future telecommunications related services that become available during the term of the Agreement, as mutually negotiated by parties and added to this Agreement.

Exhibit B

CALNET 2 – Authorization To Order (ATO)

20070801-0531

STATE OF CALIFORNIA

TELECOMMUNICATIONS SERVICE REQUEST

(Attach additional information as needed)

1. AGENCY REQUEST NO:

2. DATE: JULY 5 2007

3. REQUEST IS FOR: ☒ SERVICE ☐ EQUIPMENT (needs a Form 99) ☐ OTHER

4. AGENCY INFORMATION

DEPARTMENT	DIVISION, BUREAU, ETC	PERSON TO CONTACT FOR ACCESS
CITY + COUNTY SAN FRANCISCO		MICHAEL LEVY

E-MAIL ADDRESS	TELEPHONE NO.	FAX NO
MICHAEL.LEVY@SFGOV.ORG	415-550-2780	

ADDRESS OF PRESENT SERVICE (Include City, Zip Code, Room #'s)

ADDRESS OF REQUESTED SERVICE (Include City, Zip Code, Room #'s)

BILLING ADDRESS (Include City, Zip Code, Room #s): 901 RANKIN STREET, SAN FRANCISCO, CA 94103

CBO Account Number

TELEPHONE NUMBER(S) INVOLVED | UTILITY PRIMARY BILL NO | REQUESTED DATE OF SERVICE | GENERAL SERVICES AGENCY CODE

5. ELIGIBILITY

☐ STATE AGENCY

Must complete Authorization to Order (ATO) to obtain eligibility prior to first Form 20 request

☐ NON-PROFIT & TAX-SUPPORTED ☒ LOCAL GOVERNMENT (i.e. city, county)

☐ FEDERAL ☐ JOINT POWERS AGREEMENT

6. CHECK TYPE OF REQUEST (Describe in Section 7)

☒ BUSINESS SERVICE ☒ CENTREX SERVICE

☐ SINGLE LINE ☐ KEY SYSTEM ☐ SINGLE LINE (s) ☐ ISDN (Integrated Services Digital Network)

☐ PBX ☐ TRUNKS ☐ ACD (Automatic Call Distribution)

☒ DATA SERVICE ☒ CALNET CALLING CARD (Please TD-967) ☒ LONG DISTANCE SERVICE ☒ LOCAL TOLL SERVICE

☒ CELLULAR TELEPHONE ☐ OTHER (Please Describe) MSA 4 PRODUCT LIST

☒ DGS-TD MASTER CONSULTING CONTRACT SEE ATTACHED MSA 2 PRODUCT LIST

7. ADDITIONAL INFORMATION

BRIEFLY DESCRIBE PRESENT SERVICE (Attach page as needed)

BRIEFLY DESCRIBE SERVICE REQUESTED (Attach page as needed.)

SERVING UTILITY

TOTAL COST OF REQUESTED SERVICE

RECURRING NON-RECURRING

METHOD OF ACQUISITION

☐ PURCHASE ☐ INSTALLMENT PURCHASE ☐ RENT ☐ OTHER (Describe)

8. CATR/ATR INFORMATION

NAME (PLEASE PRINT)	E-MAIL ADDRESS	TELEPHONE NO.
SHAWN ALLISON		CALNET

ADDRESS	CITY	STATE	ZIPCODE	PUBLIC
875 STEVENSON ST, 5TH FLOOR	SAN FRANCISCO	CA	94103	415-554-0852

TITLE

DATE: JULY 5 2007

SIGNATURE "This request complies with SAM Chapter 4500, and state telecommunications policies."

X Shawn Allison

*SAM = State Administrative Manual *STMM = State Telecommunications Management Manual *ATR = Agency Telecommunications Representative STD. 20 Instructions

STD 20 (REV. 8-84)

EXHIBIT A-2

AUTHORIZATION TO ORDER UNDER STATE CONTRACT

SBC Global Services, Inc. dba AT&T Global Services on behalf of Pacific Bell Telephone Company dba AT&T California ("AT&T") ("Contractor") and the State of California ("State") have entered into a Contract for California Integrated Information Network (CALNET) II ("CALNET II") Module 2 Services dated January 30, 2007 ("Contract"), for a term of five years. The State may, at its sole option, elect to extend the Contract term for up to two (2) additional periods of one (1) year each. Pursuant to the Contract, which is incorporated herein by reference, any public agency as defined in Government Code Section 11541 is allowed to order services and products solely as set forth in the Contract ("Service(s)").

A non-State public Agency (herein "Non-State Agency") shall also be required to complete and submit this Authorization to Order Under State Contract (ATO) prior to ordering Services. A description of the Service(s), applicable rates and charges and the specific terms and conditions under which the Service(s) will be provided to a Non-State Agency are fully set forth in the Contract. Access to the Contract is available at www.stnd.dts.ca.gov .

City and County of San Francisco ("Non-State Agency") desires to order Service(s) and Contractor agrees to provide such Service(s) as identified in the State of California, Telecommunications Service Request (STD. 20), pursuant to the terms and conditions and rate tables contained in the Contract.

1. This ATO shall become effective upon execution by Non-State Agency, Contractor, and the Department of Technology Services, Statewide Telecommunications and Network Division (DTS/STND) ("Effective Date"). No Service(s) shall be ordered by Non-State Agency or provided by Contractor until this ATO has been executed by both parties and approved by DTS/STND.

2. With respect to Services ordered under this ATO, Non-State Agency hereby agrees to obtain such Services exclusively through the Contract and this ATO for a two (2) year commitment period starting from the Effective Date of the ATO, provided that such commitment does not extend beyond the Term of the Contract, including any extension periods. Any Services ordered subsequent to the end of the two (2) year commitment period shall not extend the two (2) year commitment period.

3. Upon expiration of the two (2) year commitment period, this ATO shall continue in effect through the remainder of the Term of the Contract, unless earlier terminated by Non-State Agency. The Non-State Agency will automatically continue to receive Services at Contract terms and conditions when the two year commitment period completes, and may add, delete or change Services without penalty or additional commitment periods (unless a specific Service requires a term per the Contract).

4. Subject to paragraph 5 below, Non-State Agency may terminate this ATO, for specific Service(s) or in total, prior to termination of the Contract by providing the Contractor with thirty (30) calendar days written notice of cancellation.

5. If Non-State Agency elects to terminate Service prior to completion of the two (2) year commitment period, a termination charge may apply. The termination charge may not exceed sixty-five percent (65%) of the Non-State Agency's average monthly bill for the disconnected Service(s)

multiplied by the number of full months remaining in the two (2) year commitment period. If Service(s) are terminated after the two (2) year commitment period, no termination liability shall apply.

6. No termination charge will be assessed when Non-State Agency transfers Service(s) to a like Service offered under this Contract, or from one CALNET II Module to another, if the Contractor is the same for both Modules or is affiliated with the Contractor for the other Module.

7. By executing this ATO, Non-State Agency agrees to subscribe to and Contractor agrees to provide Service(s) in accordance with the terms and conditions of this ATO and the Contract. Within seven (7) business days after execution of this ATO by Non-State Agency and Contractor, Contractor shall deliver this ATO to DTS/STND for review and approval.

8. The DTS/STND will provide Contract management and oversight, and upon request by the Non-State Agency or Contractor, will advocate to resolve Contract service issues. The ATO and any resulting STD. 20 is a Contract between the Non-State Agency and the Contractor. The State will not represent the Non-State Agency in resolution of litigated disputes between the parties.

9. Non-State Agency, upon execution of this ATO, certifies that Non-State Agency understands that Contractor and the State may, from time to time and without Non-State Agency's consent, amend the terms and conditions of the Contract thereby affecting the terms of service Non-State Agency receives from Contractor.

10. Non-State Agency, upon execution of this ATO, certifies that Non-State Agency has reviewed the terms and conditions, including the rates and charges, of the Contract.

11. Non-State Agency, upon execution of this ATO, certifies the Non-State Agency understands that billing invoices for Service(s) subscribed to under the Contract are subject to review and/or audit by the State pursuant to provisions of the Contract.

12. All Service(s) ordered under this ATO will be submitted using the STD. 20, signed by the Non-State Agency's authorized signatory. Any additions or deletions to Service(s) shall likewise be accomplished by submission of a STD. 20, noting changes.

13. Non-State Agency may, by placing Service orders issued by its duly authorized representative with Contractor, order any of the Service(s) listed in the Contract. Contractor shall bill Non-State Agency, and Non-State Agency shall pay Contractor according to the terms and conditions and rate tables set forth in the Contract for such Service(s).

14. If the Service(s) ordered under a STD. 20 are installed, and after the first fiscal year funds are not appropriated to enable the Non-State Agency to continue paying for services, or universal service discounts are not received, the Non-State Agency may terminate impacted Service(s) without penalty.

15. Whenever any notice or demand is to be given under this Contract to Contractor or Non-State Agency, the notice shall be in writing and addressed to the following:

Non-State Agency:	Contractor:
City and County of San Francisco	AT&T
901 Rankin Street	610 Sequoia Pacific Blvd.
San Francisco, CA 94103	Sacramento, CA 95814
Attn: Michael Levy	Attn: Contract Program Manager

Notices delivered by overnight courier service shall be deemed delivered on the day following mailing. Notices mailed by U.S. Mail, postage prepaid, registered or certified with return receipt requested, shall be deemed delivered five (5) days after mailing. Notices delivered by any other method shall be deemed given upon receipt.

IN WITNESS WHEREOF, the parties hereto have caused this ATO to be executed on the date shown below by their respective duly authorized representatives

Contractor: AT&T

By:

Title: KATHLEEN JENKINS
Contract Management

Date Signed: 7-2-07

Non-State Agency:

By: CHRIS VEIN

Title: CIO & Executive Director

Date Signed: 7/3/07

Non-State Agency:

By:

Title: Deputy City Attorney
Approved as to form

Date Signed:

Non-State Agency:

By: Barbara Jones

Title: Assistant Director Purchasing CCSF

Date Signed:

Approved By:
Department of Technology Services,
Statewide Telecommunications and Network Division

By: Patricia Adams

Title: AGPA

Date Signed: 8-8-07

CITY AND COUNTY OF SAN FRANCISCO MSA 2 ATTACHMENT 1

Selected Services	Long Distance - Voice Services	Customer Initials
X	Long Distance Calling Services	
X	900 Services	
X	Automatic Call Distributor (ACD) Services	
X	Network Based Interactive Voice Response (IVR) Services	
X	Computer Telephone Integration (CTI) for Network Based ACD	
X	Toll Free Services	
X	International Toll Free Services	
X	Calling Card Services	
X	Pre-Paid Calling Services	
X	Network Audio Conferencing Service	
X	Network Conferencing (Web Conferencing)	
Included Services	**Other Services - Long Distance Voice Services**	**Automatic Coverage**
X	Bldg. Wiring Services (Automatic Service Coverage on CII Svcs) Jacks/Wiring	

20070801-0635

STATE OF CALIFORNIA

TELECOMMUNICATIONS SERVICE REQUEST

(Attach additional information as needed)

1. AGENCY REQUEST NO.

2. DATE JULY 5 2007

3. REQUEST IS FOR: ☒ SERVICE ☐ EQUIPMENT (needs a Form 65) ☐ OTHER

4. AGENCY INFORMATION

DEPARTMENT	DIVISION, BUREAU, ETC.	PERSON TO CONTACT FOR ACCESS
CITY + COUNTY SAN FRANCISCO		MICHAEL LEVY
E-MAIL ADDRESS	**TELEPHONE NO.**	**FAX NO.**
MICHAEL.LEVY@SFGOV.ORG	415-550-2780	

ADDRESS OF **PRESENT** SERVICE (Include City, Zip Code, Room #'s)

ADDRESS OF **REQUESTED** SERVICE (Include City, Zip Code, Room #'s)

BILLING ADDRESS (Include City, Zip Code, Room #s)
901 RANKIN STREET,
SAN FRANCISCO, CA 94103

C60 Account Number

TELEPHONE NUMBER(S) INVOLVED	UTILITY PRIMARY BILL NO.	REQUESTED DATE OF SERVICE	GENERAL SERVICES AGENCY CODE

5. ELIGIBILITY

☐ STATE AGENCY

Must complete Authorization to Order (ATO) to obtain eligibility prior to first Form 20 request

☐ NON-PROFIT & TAX-SUPPORTED ☒ LOCAL GOVERNMENT (i.e. city, county)

☐ FEDERAL ☐ JOINT POWERS AGREEMENT

6. CHECK TYPE OF REQUEST (Describe in Section 7)

☒ BUSINESS SERVICE
☐ SINGLE LINE ☐ KEY SYSTEM ☐ PBX ☐ TRUNKS

☒ CENTREX SERVICE
☐ SINGLE LINE (s) ☐ ISDN (Integrated Services Digital Network) ☐ ACD (Automatic Call Distribution)

☒ DATA SERVICE

☒ CALNET CALLING CARD (Include TD-907)

☒ LONG DISTANCE SERVICE

☒ LOCAL TOLL SERVICE

☒ CELLULAR TELEPHONE

☒ DGS-TD MASTER CONSULTING CONTRACT

☐ OTHER (Please Describe)
SEE ATTACHED MSA 4 PRODUCT LIST MSA 2 PRODUCT LIST

7. ADDITIONAL INFORMATION

BRIEFLY DESCRIBE **PRESENT** SERVICE (Attach page as needed)

BRIEFLY DESCRIBE SERVICE **REQUESTED** (Attach page as needed.)

SERVING UTILITY

TOTAL COST OF REQUESTED SERVICE		METHOD OF ACQUISITION	
RECURRING	NON-RECURRING	☐ PURCHASE	☐ INSTALLMENT PURCHASE
		☐ RENT	☐ OTHER (Describe)

8. CATR/ATR INFORMATION

NAME (PLEASE PRINT)	E-MAIL ADDRESS	TELEPHONE NO.
SHAWN ALLISON		CALNET:
ADDRESS / CITY / STATE / ZIPCODE		PUBLIC:
875 STEVENSON ST, 5TH FLOOR, SAN FRANCISCO CA 94103		415-554-0852
TITLE		DATE JULY 5 2007

SIGNATURE "This request complies with SAM Chapter 4500, and state telecommunications policies."

Shawn Allison

*SAM = State Administrative Manual *STMM = State Telecommunications Management Manual *ATR = Agency Telecommunications Representative STD. 20 Instructions

STD. 20 (REV. 8-04)

EXHIBIT A-2

AUTHORIZATION TO ORDER UNDER STATE CONTRACT

SBC Global Services, Inc. dba AT&T Global Services on behalf of Pacific Bell Telephone Company dba AT&T California ("AT&T") ("Contractor") and the State of California ("State") have entered into a Contract for California Integrated Information Network (CALNET) II ("CALNET II") Module 1 Services dated January 30, 2007 ("Contract"), for a term of five years. The State may, at its sole option, elect to extend the Contract term for up to two (2) additional periods of one (1) year each. Pursuant to the Contract, which is incorporated herein by reference, any public agency as defined in Government Code Section 11541 is allowed to order services and products solely as set forth in the Contract ("Service(s)").

A non-State public Agency (herein "Non-State Agency") shall also be required to complete and submit this Authorization to Order Under State Contract (ATO) prior to ordering Services. A description of the Service(s), applicable rates and charges and the specific terms and conditions under which the Service(s) will be provided to a Non-State Agency are fully set forth in the Contract. Access to the Contract is available at www.stnd.dts.ca.gov .

City and County of San Francisco ("Non-State Agency") desires to order Service(s) and Contractor agrees to provide such Service(s) as identified in the State of California, Telecommunications Service Request (STD. 20), pursuant to the terms and conditions and rate tables contained in the Contract.

1. This ATO shall become effective upon execution by Non-State Agency, Contractor, and the Department of Technology Services, Statewide Telecommunications and Network Division (DTS/STND) ("Effective Date"). No Service(s) shall be ordered by Non-State Agency or provided by Contractor until this ATO has been executed by both parties and approved by DTS/STND.

2. With respect to Services ordered under this ATO, Non-State Agency hereby agrees to obtain such Services exclusively through the Contract and this ATO for a two (2) year commitment period starting from the Effective Date of the ATO, provided that such commitment does not extend beyond the Term of the Contract, including any extension periods. Any Services ordered subsequent to the end of the two (2) year commitment period shall not extend the two (2) year commitment period.

3. Upon expiration of the two (2) year commitment period, this ATO shall continue in effect through the remainder of the Term of the Contract, unless earlier terminated by Non-State Agency. The Non-State Agency will automatically continue to receive Services at Contract terms and conditions when the two year commitment period completes, and may add, delete or change Services without penalty or additional commitment periods (unless a specific Service requires a term per the Contract).

4. Subject to paragraph 5 below, Non-State Agency may terminate this ATO, for specific Service(s) or in total, prior to termination of the Contract by providing the Contractor with thirty (30) calendar days written notice of cancellation.

5. If Non-State Agency elects to terminate Service prior to completion of the two (2) year commitment period, a termination charge may apply. The termination charge may not exceed sixty-five percent (65%) of the Non-State Agency's average monthly bill for the disconnected Service(s)

multiplied by the number of full months remaining in the two (2) year commitment period. If Service(s) are terminated after the two (2) year commitment period, no termination liability shall apply.

6. No termination charge will be assessed when Non-State Agency transfers Service(s) to a like Service offered under this Contract, or from one CALNET II Module to another, if the Contractor is the same for both Modules or is affiliated with the Contractor for the other Module.

7. By executing this ATO, Non-State Agency agrees to subscribe to and Contractor agrees to provide Service(s) in accordance with the terms and conditions of this ATO and the Contract. Within seven (7) business days after execution of this ATO by Non-State Agency and Contractor, Contractor shall deliver this ATO to DTS/STND for review and approval.

8. The DTS/STND will provide Contract management and oversight, and upon request by the Non-State Agency or Contractor, will advocate to resolve Contract service issues. The ATO and any resulting STD. 20 is a Contract between the Non-State Agency and the Contractor. The State will not represent the Non-State Agency in resolution of litigated disputes between the parties.

9. Non-State Agency, upon execution of this ATO, certifies that Non-State Agency understands that Contractor and the State may, from time to time and without Non-State Agency's consent, amend the terms and conditions of the Contract thereby affecting the terms of service Non-State Agency receives from Contractor.

10. Non-State Agency, upon execution of this ATO, certifies that Non-State Agency has reviewed the terms and conditions, including the rates and charges, of the Contract.

11. Non-State Agency, upon execution of this ATO, certifies the Non-State Agency understands that billing invoices for Service(s) subscribed to under the Contract are subject to review and/or audit by the State pursuant to provisions of the Contract.

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13. Non-State Agency may, by placing Service orders issued by its duly authorized representative with Contractor, order any of the Service(s) listed in the Contract. Contractor shall bill Non-State Agency, and Non-State Agency shall pay Contractor according to the terms and conditions and rate tables set forth in the Contract for such Service(s).

14. If the Service(s) ordered under a STD. 20 are installed, and after the first fiscal year funds are not appropriated to enable the Non-State Agency to continue paying for services, or universal service discounts are not received, the Non-State Agency may terminate impacted Service(s) without penalty.

15. Whenever any notice or demand is to be given under this Contract to Contractor or Non-State Agency, the notice shall be in writing and addressed to the following:

Non-State Agency:	Contractor:
City and County of San Francisco	AT&T
901 Rankin Street	610 Sequoia Pacific Blvd.
San Francisco, California, 94103	Sacramento, CA 95814
Attn: Michael Levy	Attn: Contract Program Manager

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IN WITNESS WHEREOF, the parties hereto have caused this ATO to be executed on the date shown below by their respective duly authorized representatives

Contractor: AT&T

By:

Title: KATHLEEN JENKINS Contract Management

Date Signed: 7-2-07

Non-State Agency:

By: C

Chris Vein

Title: CFO & Executive Director

Date Signed: 7/3/07

Non-State Agency:

By:

~~Title:~~ Approved as to form

Deputy City Attorney

Date Signed:

_____

Non-State Agency:

_____

By:

Title: Assistant Director of Purchasing

Office of Contracts and Administration

Date Signed:

_____

Approved By:
Department of Technology Services,
Statewide Telecommunications and Network Division

By: Patricia Adam

Title: AGPA

Date Signed: 8-8-07

CITY AND COUNTY OF SAN FRANCISCO MSA 1 ATTACHMENT 1

Selected Services	Voice Services - Core Services Products	Customer Initials
X	**Bus Access Lines**	
X	**Central Office Exchange Basic Services** (Centrex)	
X	**Central Office Trunk Services** (SuperTrunk/PBX/DID)	
	Locally Based Automatic Call Distribution (ACD) (Available Option w/CII Centrex)	
X	**Interactive Voice Response (IVR)**	
X	**Specialized Call Routing (Call Router)**	
X	**Computer Telephone Integration (CTI)** (Compucall)	
X	**Voice Mail Services** (Available Option w/CII Exchange Svcs)	
Selected Services	**Data Services - Core Services Products**	**Customer Initials**
X	**Data Transmission Services** (Analog Service, Carrier DS0 (ADN),Carrier DS1 (Hicap/T1),Carrier DS3)	
X	**Gigabit Ethernet Metropolitan Area Network (MAN)** (GigaMAN, MON, OPT-E-MAN, CSME,EPLS-WAN, ESS-MAN)	
X	**Multi Protocol Label Switching (MPLS)** (AVPN, Network Based Firewall, ANIRA)	
X	**Synchronous Optical Network (SONET)** (Point-Point SONET, Ethernet-over SONET, SONET Ring ICB)	
X	**ISDN (BRI)**	
X	**ISDN (PRI)** (PBX/DID)	
	Switched 56/Switched Digital Services (SDS)	
X	**Frame Relay & ATM** (Managed or Non Managed)	
X	**Internet**	
X	**DSL** Agency Hosted (DSL)	
X	**DSL** DSL Virtual Private Network (AVPN, Network Based Firewall, ANIRA)	
Included Services	**Other Services - Core Services Products**	**Automatic Coverage**
X	**IntraLata Calling (Local Usage) (Included on CII Exchange Services)**	
X	**Bldg. Wiring Services (Automatic Service Coverage on CII Svcs)** Jacks/Wiring Inside Wire Repair Plan(Voice)(If subscribed to) Inside Wire Repair Plan(Data)(If subscribed to)	

Exhibit C

WSCA – Mobility / Participating Addendum

EXHIBIT C
WSCA – Mobility / Participating Addendum

PARTICIPATING ADDENDUM
FOR: State Compensation Insurance Fund
UNDER THE
WESTERN STATES CONTRACTING ALLIANCE
WIRELESS COMMUNICATION SERVICES AND EQUIPMENT
MASTER PRICE AGREEMENT
10-00115

1. Scope:

Unless otherwise defined, all capitalized terms in this Participating Addendum shall have the meanings ascribed to them in the Western States Contracting Alliance, Wireless Communication Services and Equipment Master Price Agreement, # 10-00115 (the "WSCA Master Agreement").

The following are authorized Purchasing Entities under this Participating Addendum: All government entities within the state of CA, including all state agencies and local public bodies including the cities, courts, counties, public safety, public schools and institutions of higher education are authorized Purchasing Entities under this Participating Addendum, and may purchase products and services under the terms and conditions of the price agreement.

2. Changes: None

3. Lease Agreements: NONE

4. Primary Contact: Participating Entity's primary contact for this Participating Addendum is:

Name:	Bryan Townsend
Address:	1275 Market Street, 13th FL, San Francisco, CA 94103
Telephone:	415-565-3821
Fax:	415-565-1818
E-mail:	bctownsend@scif.com

5. Subcontractors: The following subcontractor(s) are authorized to perform services: NONE.

6. Price Agreement Number: All Purchase Orders issued by Purchasing Entities within the jurisdiction of this Participating Addendum shall include WSCA Master Agreement number: 10-00115

7. Purchase Orders: All Purchasing Entities issuing valid Purchase Orders will be bound by the terms and conditions of the WSCA Master Agreement including, without limitation, the obligation to pay Contractor for Service and Equipment provided. The parties acknowledge and agree that orders submitted to Contractor from a Purchasing Entity through the Purchasing Entity's Business Procurement Card are authorized Purchase Orders under the WSCA Master Agreement.

8. Order of Precedence: The parties acknowledge and agree that:

(a) In the event of a conflict between the terms contained in the WSCA Master Agreement and this Participating Addendum, the terms and conditions of this Participating Addendum will control as between Contractor and the Participating Entity; and

(b) This §8 specifically supercedes §5 of the WSCA Master Agreement

This Participating Addendum and the WSCA Master Agreement together with its exhibits, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Participating Addendum and the WSCA Master Agreement, together with its exhibits, shall not be added to or incorporated into this Participating Addendum or the WSCA Master Agreement and its exhibits, by any subsequent Purchase Order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Participating Addendum and the WSCA Master Agreement and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms.

IN WITNESS WHEREOF, the parties have executed this Participating Addendum as of the date of execution by both parties below.

Participating Entity: State Comp Ins Fd	Contractor: New Cingular Wireless National Accounts, LLC
By:	By:
Name:	Name: Cynthia L. Evans
Title: K.B. Wells, C.P.M., Principal Buyer	Title: Sr. Mgr Contracts
Date: 6/24/05	Date: 9/25/05

CT 176211

WSCA Cingular Template PA

Attachment DD

Standard Contract Terms and Conditions
Western States Contracting Alliance

Note: Although some of the following terms and conditions are duplicates of the standard State of Nevada terms and conditions, they are required by the WSCA by-laws.

PARTICIPANTS: Western States Contracting Alliance (herein WSCA) is a cooperative group-contracting consortium for state government departments, institutions, agencies and political subdivisions (i.e., colleges, school districts, counties, cities, etc.,) for the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Minnesota, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington and Wyoming ("Participant(s)" or "Participating State(s)"). Obligations under this Contract are limited to those Participating States who have signed (and not revoked) an Intent to Contract at the time of award, or who have executed a Participating Addendum where contemplated by the solicitation. Financial obligations of Participating States are limited to the orders placed by the departments or other state agencies and institutions having available funds. Participating States incur no financial obligations on behalf of political subdivisions. Unless otherwise specified in the solicitation, the resulting award(s) will be permissive. The term "Participating Entity" means a Participating State or other legal entity authorized by a Participating State to contract for the purchase of Service, Equipment and related goods and services in connection with the corresponding Participating Addendum.

CONTRACTOR: AT&T Mobility National Accounts LLC is the "Contractor" under the Contract. Contractor may also be referred to as AT&T or "Cingular" at times throughout the Contract.

CONTRACT: The term "Contract" means the entire collection of documents associated with WSCA RFP No. 1523 and Contractor's response thereto including, without limitation, the Request for Proposal, Contractor's response, and Attachments AA-DD, as amended.

PRECEDENCE: Notwithstanding anything to the contrary elsewhere in the Contract, with respect to any Participating Addendum between Contractor and a Participant, this Attachment DD, together with all its Exhibits, will take precedence amongst the Contract documents over the terms and conditions of the Contract For Services of Independent Contractor between the State of Nevada and Contractor.

QUANTITY ESTIMATES: WSCA does not guarantee to purchase any amount under the Contract to be awarded. Estimated quantities are for bidding purposes only and are not to be construed as a guarantee to purchase any amount.

SPECIFICATIONS: Any deviation from specifications must be clearly indicated by Contractor; otherwise, it will be considered that the bid is in strict compliance. When BRAND NAMES or manufacturers' numbers are stated in the specifications they are intended to establish a standard only and are not restrictive unless the bid states "No substitute". Bids will be considered on other makes, models or brands having comparable quality, style, workmanship and performance characteristics. Alternate bids offering lower quality or inferior performance will not be considered.

ACCEPTANCE OR REJECTION OF BIDS: WSCA reserves the right to accept or reject any or all bids or parts of bids, and to waive informalities therein.

BID SAMPLES: Generally, when required, samples will be specifically requested in the bid invitation. Samples, when required, are to be furnished free of charge. Except for those samples destroyed or mutilated in testing, samples will be returned at a Contractor's request, transportation collect.

CASH DISCOUNT TERMS: Vendor may quote a cash discount based upon early payment; however, discounts offered for less than 30 days will not be considered in making the award. The date from which discount time is calculated shall be the date a correct invoice is received or receipt of shipment, whichever is later; except that if testing is performed, the date shall be the date of acceptance of the merchandise.

TAXES: Bid prices shall be exclusive of state sales and federal excise taxes. Where the state government entities are not exempt from sales taxes on sales within their state, the Contractor shall add the sales taxes on the billing invoice as a separate entry.

MODIFICATION OR WITHDRAWAL OF BIDS: Bids may be modified or withdrawn prior to the time set for the opening of bids. After the time set for the opening of bids no bid may be modified or withdrawn.

PATENTS, COPYRIGHTS, ETC.: The Contractor shall release, indemnify and hold the Participating Entity, its officers, agents and employees harmless from liability of any kind or nature, including the Contractor's use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in the performance of this Contract.

AWARD: The award will be made to the lowest responsive and responsible vendor meeting specifications and all bid terms and conditions. Unless stated in the bid requirements or special terms and conditions, WSCA reserves the right to award items separately or by grouping items, or by total lot.

NON-COLLUSION: By signing the bid the vendor certifies that the bid submitted, has been arrived at independently and has been submitted without collusion with, and without any agreement, understanding or planned common course of action with, any other vendor of materials, supplies, equipment or services described in the invitation to bid, designed to limit independent bidding or competition.

CANCELLATION: Unless otherwise stated in the special terms and conditions, any contract entered into as a result of this bid may be canceled by either party upon 60 days notice, in writing, prior to the effective date of the cancellation. Further, any Participating State may cancel its participation upon 30-days written notice, unless otherwise limited or stated in the special terms and conditions of the solicitation. Cancellation may be in whole or in part. Any cancellation under this provision shall not effect the rights and obligations attending orders outstanding at the time of cancellation, including any right of any Participating Entity to indemnification by the Contractor, rights of payment for goods/services delivered and accepted, and rights attending any warranty or default in performance in association with any order. Cancellation of the Contract due to Contractor default may be immediate.

DEFAULT AND REMEDIES: Any of the following events shall constitute cause for WSCA to declare Contractor in default of the Contract: 1. Nonperformance of contractual requirements; 2. A material breach of any term or condition of this Contract WSCA shall issue a written notice of default providing a period in which Contractor shall have an opportunity to cure. Time allowed for cure shall not diminish or eliminate Contractor's liability for liquidated or other damages. If the default remains, after Contractor has been provided the opportunity to cure, WSCA may do one or more of the following: 1. Exercise any remedy provided by law; 2. Terminate this Contract and any related contracts or portions thereof; 3. Impose liquidated damages; 4. Suspend Contractor from receiving future bid solicitations.

LAWS AND REGULATIONS: Any and all supplies, services and equipment bid and furnished shall comply fully with all applicable Federal and State laws and regulations.

CONFLICT OF TERMS: In the event of any conflict between these standard terms and conditions and any special terms and conditions contained in a Participating Addendum, the special terms and conditions of such Participating Addendum shall govern. The terms and conditions of the Contract for Services of Independent Contractor between the State of Nevada and Contractor do not apply to Participating Entities, with the exception of those terms and conditions specific to the administration of the WSCA wireless contract.

REPORTS: The Contractor shall submit quarterly reports to the WSCA Contract Administrator showing the quantities and dollar volume of purchases by each agency.

HOLD HARMLESS: The Contractor shall release, protect, indemnify and hold WSCA and the respective states and their officers, agencies, employees, harmless from and against any damage, cost or liability, including reasonable attorney's fees for any or all injuries to persons, property or claims for money damages arising from acts or omissions of the Contractor, his employees or subcontractors or volunteers. Contractor shall not be liable for damages that are the result of negligence or willful misconduct by the Participating Entity, its respective agencies, and/or its respective employees.

LIMITED LIABILITY: Contract liability of both Contractor and Participating Entity shall not be subject to punitive damages. In no event shall Contractor be liable for inability of users to access 911 or E911 service. In no event shall either Contractor or Participating Entity be liable for any indirect, special, consequential or incidental damages, however caused, which are incurred by the other party and which arise out of a any act or failure to act relating to this agreement, even if such party has been advised of the claim or potential claim or of the possibility of such damages, and in no event shall either party be liable to the other party for punitive damages.

ORDER NUMBERS: Contract order and purchase order numbers shall be clearly shown on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence.

GOVERNING LAW AND VENUE: This procurement shall be governed and the resulting contract(s) construed in accordance with the laws of Nevada. The construction and effect of any Participating Addendum or order against the contract(s) shall be governed by and construed in accordance with the laws of the Participating Entity's State. Venue for any claim, dispute or action concerning the construction and effect of the contract(s) shall be in the Lead State. Venue for any claim, dispute or

action concerning an order placed against the contract(s) or the effect of a Participating Addendum or shall be in the Participating Entity's State.

DELIVERY: The prices bid shall be the delivered price to any WSCA state agency or political subdivision. All deliveries shall be F.O.B. destination with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage shall remain the Contractor until final inspection and acceptance when responsibility shall pass to the Participating Entity except as to latent defects, fraud and Contractor's warranty obligations. The minimum shipment amount will be found in the special terms and conditions. Any order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice. Any portion of an order to be shipped without transportation charges that is back ordered shall be shipped without charge.

WARRANTY:

a. General Warranty. Contractor warrants that all services, deliverables, and/or work product under this Contract shall be completed in a workmanlike manner consistent with standards in the trade, profession, or industry.

b. System Compliance. Contractor warrants that any information system application(s) shall not experience abnormally ending and/or invalid and/or incorrect results from the application(s) in the operating and testing of the business of the State. This warranty includes, without limitation, century recognition, calculations that accommodate same century and multicentury formulas and data values and date data interface values that reflect the century. Pursuant to NRS 41.0321, the State is immune from liability due to any failure of any incorrect date being produced, calculated or generated by a computer or other information system.

AMENDMENTS: The terms of this Contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the WSCA Contract Administrator.

ASSIGNMENT/SUBCONTRACT: To the extent that any assignment of any right under this Contract changes the duty of either party, increases the burden or risk involved, impairs the chances of obtaining the performance of this Contract, attempts to operate as a novation, or includes a waiver or abrogation of any defense to payment by State, such offending portion of the assignment shall be void, and shall be a breach of this Contract. Neither party may assign this Contract or any rights hereunder, without the prior written consent of the other party, which consent shall not be unreasonably withheld, except that Contractor may assign this Contract to any parent, subsidiary or affiliate of Contractor or to any purchaser of all or substantially all its assets upon written notification to Participating Entity.

NONDISCRIMINATION: Contractor agrees to abide by the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (42 USC 2000e), which prohibit discrimination against any employee or applicant for employment, or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age, and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. Contractor further agrees to furnish information and repots to requesting State(s), upon request, for the purpose of determining compliance with these

statutes. Vendor agrees to comply with each individual state's certification requirements, if any, as stated in the special terms and conditions. This Contract may be canceled if Contractor fails to comply with the provisions of these laws and regulations. Contractor must include this provision in very subcontract relating to purchases by the States to insure that subcontractors and vendors are bound by this provision.

SEVERABILITY: If any provision of this Contract is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected; and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular provision held to be invalid.

INSPECTIONS: Goods furnished under this Contract shall be subject to inspection and test by the Participating Entity at times and places determined by the Participating Entity. If the Participating Entity finds goods furnished to be incomplete or in compliance with bid specifications, the Participating Entity may reject the goods and require Contractor to either correct them without charge or deliver them at a reduced price, which is equitable under the circumstances. If Contractor is unable or refuses to correct such goods within a time deemed reasonable by the Participating Entity, the Participating Entity may cancel the order in whole or in part. Nothing in this paragraph shall adversely affect the Participating Entity's rights including the rights and remedies associated with revocation of acceptance under the Uniform Commercial Code.

PAYMENT: Payment for completion of a contract is normally made within 30 days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. After 45 days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance. Payments will be remitted by mail. Payments may be made via a State or political subdivision "Purchasing Card".

FORCE MAJEURE: Neither party to this Contract shall be held responsible for delay or default caused by fire, riot, acts of God and/or war, which is beyond that party's reasonable control. WSCA may terminate this Contract after determining such delay or default will reasonably prevent successful performance of the Contract.

HAZARDOUS CHEMICAL INFORMATION: The Contractor will provide one set of the appropriate material safety data sheet(s) and container label(s) upon delivery of a hazardous material to the user agency. All safety data sheets and labels will be in accordance with each participating state's requirements.

FIRM PRICE: Unless otherwise stated in the special terms and conditions, for the purpose of award, offers made in accordance with this solicitation must be good and firm for a period of ninety (90) days from the date of bid opening. Bid prices must remain firm for the full term of the Contract.

EXTENSION OF PRICES: In the case of error in the extension of prices in the bid, the unit prices will govern.

BID PREPARATION COSTS: WSCA is not liable for any costs incurred by the vendor in proposal preparation.

CONFLICT OF INTEREST: Contractor certifies that it has not offered or given any gift or compensation prohibited by the state laws of any WSCA participants to any officer or employee of WSCA or participating sates to secure favorable treatment with respect to being awarded this Contract.

INDEPENDENT CONTRACTOR: Contractor shall be an independent contractor, and as such shall have no authorization, express or implied to bind WSCA or the respective states to any agreements, settlements, liability or understanding whatsoever, and agrees not to perform any acts as agent for WSCA or the states, except as expressly set forth herein.

POLITICAL SUBDIVISION PARTICIPATION: Participation under this Contract by political subdivisions (i.e., colleges, school districts, counties, cites, etc.,) of the WSCA participating states shall be voluntarily determined by the political subdivision. The Contractor agrees to supply the political subdivisions based upon the same terms, conditions and prices.

DEBARMENT: The CONTRACTOR certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (Contract) by any governmental department or agency. If the CONTRACTOR cannot certify this statement, attach a written explanation for review by WSCA.

RECORDS ADMINISTRATION: The Contractor will maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the Contractor for costs authorized by this Contract. These records will be retained by the Contractor for at least four years after the Contract terminates, or until all audits initiated within the four years have been completed, whichever is later.

AUDIT OF RECORDS: The Contractor agrees to allow WSCA, State and Federal auditors, and state agency staff access to all the records to this Contract, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.

PROGRAM DESCRIPTION: Service will be provided by Contractor in accordance with the Program Description attached hereto as Exhibit "A", together with any and all related products and services Attachments incorporated therein. Participating Entities acknowledge and agree that the Program Description and related Attachments may be modified by Contractor from time to time with the prior approval of the WSCA Contract Administrator, which shall not be unreasonably withheld.

Signed:

AT&T Mobility National Accounts LLC	8/30/07 Date
State of Nevada, on behalf of WSCA	9-4-07 Date

EXHIBIT "A"

PROGRAM DESCRIPTION

1. **Service and Service Discount.** Contractor, through its Carriers, will provide Service to authorized Participating Entities and their respective CRUs and IRUs.

1.1 Service Discount. Contractor will provide Participating Entities' CRUs with an MSC Service Discount of twenty percent (20%). Contractor will provide Participating Entities' IRUs with an MSC Service Discount of fifteen percent (15%); provided, however, that IRUs (a) receiving Service under Participating Addenda executed on or before December 31, 2006; and (b) that activated Service on or before December 31, 2006, will be provided an MSC Service Discount of fifteen percent (15%). Contractor may restrict certain Plans or certain other discount programs from qualifying for the Service Discount, and it will advise SNDP when such restrictions apply.

1.1.1 Restrictions. Contractor will **not** apply the MSC Service Discount to: (a) other monthly service charges such as monthly recurring charges for features; and/or (b) any other charges under the Agreement.

2. **Equipment and Accessories.** Subject to the restrictions set forth in this §2, Contractor will provide Participating Entities with an Equipment Discount of 50% off the prices of select Equipment found at the "Equipment" page found at the Program Website, as may be modified by Contractor from time to time. Contractor will only provide Equipment with Service activated. The Equipment Discount will not apply to upgrade purchases and may not be combined with any other equipment offer.

3. **Financial Responsibility.**

3.1 Participating Entities. Participating Entities must pay for all charges incurred by CRUs under their corresponding Participation Addendum. Participating Entities are not liable for any charges incurred by IRUs.

3.2 Contractor. Contractor will pay the applicable WSCA Administration Fees associated with End Users on Service hereunder, regardless of whether such End Users are CRUs or IRUs.

4. **Billing Services.** Each Participating Entity will receive certain billing analysis tools using WIN Advantage® software.

5. **Payment and Charges.**

5.1 Payment. Participating Entities must pay all Service charges incurred in accordance with Plans, including, without limitation, charges for airtime, recurring monthly access (or monthly service), activation, features, voice mail access, voice mail delivery, data usage, text and multi-media messages, downloadables, alerts, roaming, long distance, directory and operator assistance, Equipment, premium content, and charges for other goods and services that are charged through Participating Entities' or CRUs' bill(s). Participating Entities may be billed for multiple types of usage simultaneously. Participating Entities must also pay Taxes and any license fees, late payment fees, and any Regulatory Cost Recovery Fee/Regulatory Programs Fee. For any termination (including when a Number is switched to another carrier), Participating Entity will be responsible for payment of all fees and charges through the end of the billing cycle in which termination occurs. Payment is due upon receipt of the invoice. Monthly service and certain other charges for Service using the Cingular Wireless network and related systems are billed in advance, and there is no proration of such charges if Service is terminated on other than the last day of the applicable billing cycle. Monthly service and certain other charges for Service using certain legacy networks and related systems are billed in arrears. In either case, to the extent Participating Entity receives invoices

for Service combined with a landline phone bill (where available), Participating Entity will be billed in advance as provided above.

5.1.1 Taxes. Taxes include any applicable sales, public utilities, gross receipts, or other taxes, surcharges, fees and assessments imposed by governments (regardless of whether they are imposed on a Participating Entity, CRU, Contractor or a Carrier) including, without limitation, assessments to defray costs for government programs such as universal connectivity, enhanced 911 service, local number portability, and number pooling relating to Service, Equipment, goods or services purchased, and/or the wireless network.

5.1.2 Participating Entities Tax-Exempt Status. Contractor acknowledges that in certain instances Participating Entities may be tax-exempt. Contractor will accord the proper tax-exempt status to each Participating Entity that properly establishes such status. Notwithstanding this tax-exempt status, each Participating Entity must pay any Taxes not covered by its tax-exempt status.

5.1.3 Regulatory Cost Recovery Fee/Regulatory Programs Fee. In addition to other charges, Contractor may assess a Regulatory Cost Recovery Fee/Regulatory Programs Fee, which is a monthly charge with respect to each CRU, that is created, assessed and collected by Contractor to help defray Contractor's costs for compliance with various regulatory requirements which include, but are not limited to, the capability to provide wireless number portability, number pooling and 911 enhancements in Cingular Wireless' network. Some of these programs may not yet be available to Participating Entities or End Users. The Regulatory Cost Recovery Fee/Regulatory Programs Fee is not a tax or government required charge. Contractor may change the amount of the Regulatory Cost Recovery Fee/Regulatory Programs Fee without notice.

5.2 Charges.

5.2.1 Generally. Unless otherwise provided in the corresponding sales information, if a selected Plan includes a predetermined allotment of services (for example, a predetermined amount of airtime, data, megabytes or text messages), any unused allotment of such services from one billing cycle will not carry over to any other billing cycle. Service may be billed in a subsequent month due to delayed reporting between Carriers and will be charged as if used in the month billed. Billing cycle end dates may change from time to time. When a billing cycle covers less than or more than a full month, Contractor may make reasonable adjustments and prorations. Service charges may differ by Service Area. Contractor's additional products and services may incur charges in a different manner than set forth herein, and Contractor will advise SNDP of any such differences in the corresponding Sales Information.

5.2.2 Voice Service Charges. On all Contractor networks, Voice Service on each call is billed in full minute increments, with partial minutes of use rounded up to the next full minute. Contractor will charge 800, 866, 877, 888 and other "toll free" calls at domestic airtime or roaming rates. Puerto Rico residents will be billed for these calls based on the corresponding Plan, feature(s) and/or promotion. If an incoming call has been forwarded to another Number, Participating Entities will be charged for the entire time that Contractor's switch handles the call. Calls that begin in one rate period and end in another rate period may be billed in their entirety at the rates for the period in which the call began. All outgoing calls on the Contractor's network for which Contractor's systems receive answer supervision or which have at least thirty (30) seconds of airtime or other measured usage shall incur a minimum of one (1) minute airtime charge. Answer supervision is generally received when a call is answered; however, answer supervision may also be generated by voice mail systems, private branch exchanges, and interexchange switching equipment. Airtime and other measured usage may (a) include time for Contractor to recognize that only one party has disconnected from the call, time to clear the channels in use, and ring time, and (b) occur from other uses of our facilities, including by way of example, voice mail deposits and retrievals, and call transfers.

5.2.3 **Wireless Data Service Charges.** Wireless Data Service will be calculated and billed in full kilobyte increments. One kilobyte equals 1024 bytes. One megabyte equals 1024 kilobytes. Utilizing compression solutions may or may not impact the amount of kilobytes for which a Participating Entity is billed. Wireless Data Service usage for each billing record will be rounded up to the next kilobyte and the charge will be rounded up to the nearest cent. Participating Entity is responsible for all Wireless Data Service usage sent through Contractor's network and associated with Equipment regardless of whether the Equipment actually receives the information. Network overhead, software update requests, and resend requests caused by network errors can increase measured kilobytes. If a Participating Entity or a CRU chooses to connect Equipment to a PC for use as a wireless modem, standard Wireless Data Service charges will apply in accordance with the corresponding Plan. Wireless Data Service usage is compiled as often as once per hour or only once every 24 hours. Contractor's system will then create a billing record representing (a) the Wireless Data Service usage for each data gateway or service accessed (e.g. WAP, RIM) while on Contractor's network; (b) the usage for each Carrier's domestic network; and (c) the Wireless Data Service usage for each international network. In some situations billing for Wireless Data Service usage may be delayed; any delayed usage will create additional billing records for the actual day of the usage.

6. **Plans.** Participating Entities may choose from Plans found in the Program Website, as may be modified by Contractor from time to time. All Plans are subject to their terms and conditions set forth in their corresponding brochures and related materials, all of which are incorporated herein by this reference. Each Participating Entity must comply with all of the terms and conditions related to the Plans. Rates, terms and conditions are subject to change. Any provisions in the terms and conditions governing the Plans, which, by their terms, are to exist for a specified period of time, will survive any termination or expiration of any corresponding Participating Addendum.

7. **Resale and Other Prohibited Uses.** Participating Entities and their respective End Users are not permitted to resell, reproduce, retransmit, or disseminate Service or any other program components to third parties whether directly or indirectly including, without limitation, through machine to machine transmissions.

8. **Employee Benefit Program.** Participating Entities Employees may participate in the Employee Benefit Program. All such Employees participating in the Employee Benefit Program will be IRUs hereunder. Participating Entities acknowledge and agree that Employees must be validated in order to participate in the Employee Benefit Program, and that any Employees not so validated will not be IRUs hereunder and will not receive corresponding program benefits.

8.1 **Employee Benefit Program Activation Processes and Procedures.** Each IRU participating in the Employee Benefit Program: (a) must enter into, and be individually responsible for complying with a two-year IRU Service Agreement including, without limitation, the corresponding obligations to comply with all of the terms and conditions of the chosen Plan and to pay all charges incurred under the IRU Service Agreement; and (b) must follow the activation, validation, migration, upgrade and related policies, procedures and processes established by Contractor from time to time.

8.2 **Employee Benefit Program Features.** Under the Employee Benefit Program: (a) IRUs may choose from select Service Plans available to Participating Entities within each Cingular Market (provided they qualify for the chosen Plan); (b) IRUs will receive the MSC Service Discount in accordance herewith; and (c) IRUs will receive the Equipment Discount in accordance herewith. Notwithstanding the foregoing, or anything else to the contrary elsewhere in the Contract, Participating Entities and Contractor hereby expressly acknowledge and agree that Contractor may at any time, in its sole discretion, modify or terminate the MSC Service Discount and/or the Equipment Discount with respect to IRUs participating in this Employee Benefit Program. In the event Contractor takes such action, it will notify the Participating Entities.

8.3 **WIN Advantage® Exclusion.** IRUs' account information is not included in the WIN

Advantage® software.

8.4 Marketing Assistance. Participating Entities will participate with Contractor in efforts to obtain eligible Employees' participation in the Employee Benefit Program.

9. Additional Products, Services, Equipment and Programs. Contractor may make additional products, services, equipment and/.or programs ("Additional Products") available to Participating Entities. To the extent a Participating Entity orders, pays for, or otherwise receives the benefit of any Additional Products, such Participating Entity is bound by the Additional Product's respective terms and conditions found at the Program Website, as such terms and conditions may be modified by Contractor from time to time, all of which are incorporated herein by reference. Any and all references to "Customer" in the terms and conditions for the Additional Products shall mean the corresponding Participating Entity.

10. Definitions. In addition to terms defined elsewhere in Attachment DD, these terms have the following meanings herein:

10.1 "Carrier" or "Carriers" means a Contractor-related, licensed entity that operates commercial mobile radio telecommunications systems in the geographic areas covered by the Contract.

10.2 "Contractor Markets" means a geographic area served by affiliates under common control with Contractor.

10.3 "CRU" and "Corporate Responsibility User" mean an Employee receiving Service under a Participating Entity's account.

10.4 "Employees" means Participating Entity's current, validated employees receiving Federal W-2 or K-1 tax treatment.

10.5 "Equipment" means the wireless receiving and transmitting equipment, SIM (Subscriber Identity Module) Card or any accessories that Contractor has authorized to be programmed with a Number or Identifier.

10.6 "Equipment Discount" means a discount on select Equipment found at the Program Website, as described herein.

10.7 "End Users" means CRUs and IRUs, collectively.

10.8 "IRU" and "Individual Responsibility User" mean an Employee receiving Service under an individual account in accordance with the Sponsorship Program.

10.9 "IRU Service Agreement" means a separate two (2) year agreement between an IRU and Cingular for Service, Equipment and related matters.

10.10 "Monthly Service Charge" means a Plan's monthly wireless access charges (i.e., the set fee charged monthly for use of a particular Plan).

10.11 "MSC Service Discount" or "Monthly Service Charge Discount" means the Service Discount applied to an eligible End User's Monthly Service Charge as described herein. Unless otherwise specified, the term "Service Discount" found in any Attachments incorporated herein means the MSC Service Discount with respect to End Users in Contractor Markets.

10.12 **"Number" or "Identifier"** means any number, IP address, e-mail address or other identifier provisioned by Carriers, their agents or the Equipment manufacturer to be used with Service.

10.13 **"Plan"** means a Cingular Wireless calling plan, Service plan or rate plan.

10.14 **"Program Website"** means www.att.com/WSCATerms

10.15 **"Service"** means commercial mobile radio service, including Voice Service and Wireless Data Service.

10.16 **"Service Discount"** means a monthly discount on Service, applied to an End User's Monthly Service Charge as described herein.

10.17 **"Voice Service"** means wireless voice telecommunications services.

10.18 **"WIN Advantage®"** means the Wireless Information Navigator Advantage™ software, together with all updates and modifications thereto.

10.19 **"Wireless Data Service"** means wireless data telecommunications services.

Exhibit D

96A Filing – (Sonet)

AT&T California - ICB Pricing Schedule for State Tariff Services	Master Agreement date last signed 00/00/1990

AT&T Telecommunications Services
State Tariff Services Within AT&T's Franchise Territory in the State of California - ICB Pricing Schedule

CUSTOMER ("Customer")	AT&T Global Services ("AT&T")	AT&T Sales Contact Name ☐ Primary Contact
San Francisco International Airport	SBC Global Services, Inc. dba AT&T Global Services on behalf of its Affiliates	Name: Mark Phigler
CUSTOMER Address	**AT&T Address**	**AT&T Sales Contact Information and for Contract Notices**
Street Address: P.O. Box 8097 City: San Francisco State: CA Zip Code: 94128	One AT&T Plaza Dallas, Texas 75202	Street Address: 795 Folsom St Rm MB35 City: San Francisco State: CA Zip Code: 94107 Fax: 415-545-1805 Email: mp5984 Sales/Branch Manager: Lori Kingshott SCVP/RVP Name: Vacant
CUSTOMER Contact	**CUSTOMER Billing Address**	**AT&T Authorized Agent or Representative Information (if applicable) ☐ Primary Contact**
Name: John Payne Title: CIO Telephone: 650-821-3375 Fax: Email: john.payne@flysfo.com	Street Address: P.O. Box 8097 City: San Francisco State: CA Zip Code: 94128	Name: Company Name: Agent Address: City: State: Zip Code: Telephone: Fax: Email: Agent Code

This Individual Case Basis (ICB) Pricing Schedule ("Schedule") is an attachment to Addendum 001 between AT&T and Customer referenced above, and is part of the Agreement.

AT&T Affiliate: Pacific Bell Telephone Company dba AT&T California

SO AGREED by the parties' respective authorized signatories:

CUSTOMER - SFO

By: _____

Typed or Printed Name: JOHN PAYNE

Title: AIRPORT CIO

Date: 7/7/07

AT&T GLOBAL SERVICES

By: _____

Typed or Printed Name: LAURA SPEAR

Title: AUTHORIZED REPRESENTATIVE OR AGENT

Date: 08/30/2007

CONFIDENTIAL INFORMATION

This agreement is for use by authorized employees of the parties hereto only and is not for general distribution within or outside their companies.

AT&T California - ICB Pricing Schedule for State Tariff Services	Master Agreement date last signed 00/00/1990

GENERAL TERMS AND CONDITIONS

The following terms and conditions apply to the Services subscribed to by Customer under this Pricing Schedule. ICB pricing is offered to Customer pursuant to this Pricing Schedule because of the unique size or configuration of these business services.

1. GENERAL DESCRIPTION OF SERVICE TO BE PROVISIONED, INSTALLED AND MAINTAINED.

The Service(s) described below is provisioned solely by AT&T, and is not jointly provisioned with any other carrier.

Service	Description
SRAS	SONET Ring and Access Service ("SRAS" or "Service") provides dedicated bandwidth capacity (bit rate capacity or bit speed) over self healing ring and two point (a.k.a. circuit service) facility configurations for a single customer. Connecting facilities carry synchronous and asynchronous transmissions. The service includes enhanced survivability and network management per SONET (Synchronous Optical Network) technology. Service hand-offs on SONET are synchronous at OC-3c, (155 Mbps), OC-12 (622 Mbps), OC-48 (2.4 Gbps), or OC-192 (9.953 Gbps). Asynchronous services at T1 (1.5 Mbps) and DS3 (45 Mbps) are carried over SONET in 51 Mbps STS-1 packages. A SONET Ring is composed of two fiber strands, connected at one or more customer premises and at one or more AT&T serving wire centers with add/drop multiplexing nodes. Nodes are equipped with access ports that define the facility interfaces (T1, DS3, OC-3c, OC-12, or OC-48). Two fibers each carry 1/2 of the ring's total transmission traffic plus a protection path of the other fiber's transmissions in opposite directions around the ring. In the event of a fiber cut or node failure anywhere on the ring, service is immediately (within 50 milliseconds of detection) switched to a "collapsed" ring, carrying the full traffic to all the nodes Interoffice AT&T SONET is on fiber routes that are generally diverse and redundant. Customer-specific SONET rings are on redundant fibers, but diversity (including diverse entrance facilities and/or diversity of the local loop to the serving wire center) if not currently part of the fiber routing, will require special construction at the customer's expense. **Ethernet over SONET (EoS)** Ethernet over SONET is Ethernet data mapped to a SONET payload and carried over a synchronous optical network. EoS contains minimal SONET payload, so it provides you the necessary bandwidth for LAN-to-LAN interconnection. We implement EoS through ingress and egress ports on SONET Ring Service. The Ethernet interfaces include 100BASE-T (offering 50 Mbps and 100 Mbps) and 1000BASE-SX and LX (offering 50 Mbps, 150 Mbps, 600 Mbps, and 1000 Mbps). The total number of circuits and total usable bandwidth depend on the transport speed you need as well as the specific traffic patterns you choose. We need to identify all the Ethernet interfaces before provisioning them so we can configure each node on the network with the appropriate port interface card. We will work with you to appropriately size and engineer the network to help ensure optimal performance. To do so, we monitor and forecast your Ethernet bandwidth to match the corresponding SONET bandwidth so it supports Ethernet frames across SONET. We will install, maintain, and monitor SONET carrying Ethernet traffic.

AT&T California - ICB Pricing Schedule for State Tariff Services	Master Agreement date last signed 00/00/1990

2. PRICING SCHEDULE TERM AND EFFECTIVE DATES

Pricing Schedule Term and Term Start Date
The term of this Pricing Schedule shall begin upon Cutover but if regulatory approval is required, in no event shall Cutover occur prior to the date of approval by the California Public Utilities Commission (CPUC), and will continue for **sixty (60)** months ("Pricing Schedule Term"). No rates or discounts shall be applied prior to Cutover. Upon the expiration of the Pricing Schedule Term, any rates or discounts provided hereunder will no longer apply.

Effective Date of Rates and Discounts	Pricing Schedule Term Start Date

3. GROWTH / ADDITIONAL SERVICES, INSTALLATION, ADDS, MOVES AND CHANGES

If the equipment and facilities (such as outside plant, cable, capacity and memory) are available, Customer may add additional Service provided herein at the monthly rates as provided in Section 4.2. Early termination liability as identified in the Addendum/Agreement applies for all Services.

The price in Section 4.1 below also includes the non-recurring charge to initially provision and install the new quantities of Service(s) as set forth in Section 4.2.

Unless otherwise stated herein, for all other installations, adds, moves and changes of any Service provided hereunder, Customer will pay the prevailing tariff non-recurring charge.

3.1 Growth pricing is same as contract monthly unit pricing. Growth pricing does not apply for customer specific or location specific contracts. Installation is at prevailing tariff plus non-recurring burden. Growth pricing assumes that facilities exists and no extraordinary costs are to be incurred in provisioning the service.

Total Growth quantities for DS1s and DS3s will not exceed the Total column of the attached growth matrix.
Each new addition will carry the same 60 months term of the contract.
Contract can automatically be renewed for a similar term or less.
Addition of NODES will require design and cost assessment through NSS/CPE and also requires ICB considerations.

Service /Site	Year 1	Year 2	Year 3	Year 4	Total
Colma DS-1	14	14	14	14	**56**
Colma DS-3	1	0	1	0	**2**
San Bruno DS-1	14	14	14	14	**56**
San BrunoDS-3	0	1	0	1	**2**

4. REVENUE COMMITMENT AND RATES

4.1. Revenue Commitment

AT&T California - ICB Pricing Schedule for State Tariff Services	Master Agreement date last signed 00/00/1990

Monthly Quantity Commitment	$10,848.00
Customer has elected to pay on a monthly basis for the term of this Pricing Schedule. The monthly price set forth above is for the minimum quantity of Service as set forth and described in Section 4.2 below. The price includes the monthly service charge for the minimum quantities. If Customer elects to decrease the Service to less than the minimum quantities described in Section 4.2 below, Customer will continue to pay the monthly price set forth above.	

4.2. Rates:

Service Components, Quantities, Monthly Rates

Service	Description – Service Components	USOC	Quantity New	Quantity Existing	Monthly Recurring Rate, Each	Non Recurring Rate Each
SRAS	OC12 Central Office Node	PC5DX	2		$ 1,257.00	
SRAS	OC12 Customer Premise Node, Initial (per address)	FP5DX	2		$ 1,848.00	
SRAS	Mileage, per mile - OC12	1YAZX	28		$132.00	
SRAS	Ports - OC12 Node - DS1	SPRGX	30		$ 27.00	
SRAS	Ports - OC12 Node - DS3	SPRCX	2		$ 66.00	
SRAS	Nonrecurring - Shared Network Arrgmt.	NRBOP				$30.00
SRAS	Administrative Charge – Per Service Order (DS1, DS3, and EOF)	ORCMX				$50.00
SRAS	Design & C.O. Charge – Per OC circuit	NRBCL				$600.00

End this Section – Locations follow

AT&T California - ICB Pricing Schedule for State Tariff Services	Master Agreement date last signed 00/00/1990

AT&T TELECOMMUNICATION SERVICES PRICING SCHEDULE INCLUDES PRICING FOR SERVICES PROVIDED AT THE CUSTOMER LOCATIONS NOTED BELOW

San Francisco International Airport

5. SERVICE LOCATIONS IN CALIFORNIA

LOCATION A
36 S. McDonnel Rd, San Francisco
620 West Field Rd. San Francisco

End of Document

CONFIDENTIAL INFORMATION

This agreement is for use by authorized employees of the parties hereto only and is not for general distribution within or outside their companies.

AT&T Addendum No.001 to Master Agreement
Individual Case Basis Terms & Conditions For State Local Exchange Carrier Telco Services

CUSTOMER Legal Name	**AT&T Contact Information**
Customer Name ("Customer"): **San Francisco International Airport** Street Address: P.O. Box 8097 City: San Francisco State / Province: CA Country: USA Domestic / International Zip Code: 94128	**AT&T** **AT&T Global Services ("AT&T")** One AT&T Plaza Dallas, Texas 75202 Email: masl@att.com
CUSTOMER Contact	**AT&T Sales Contact**
Name: John Payne Title: CIO Telephone: 650-821-3375 Fax: Email: john.payne@flysfo.com	Name: Mark Phigler Street Address: 795 Folsom St Rm MB35 City: San Francisco, State: CA Zip Code: 94107 Telephone: Email: mp5984 Fax: Sales/Branch Manager: Lori Kingshott
CUSTOMER Signature	**AT&T Signature**
Authorized Agent or Representative	Authorized Agent or Representative
John Payne, CIO	LAURA SPEAR AUTHORIZED REPRESENTATIVE OR AGENT
Print Name and Title	Print Name and Title
7/7/07	08/30/2007
Date	Date

This Addendum outlines Individual Case Basis Terms & Conditions For State Local Exchange Telco Services ("Addendum"), and is part of the Master Agreement between AT&T and Customer referenced above (the "Agreement"). In the event of an inconsistency or conflict between the Agreement, this Addendum and AT&T's tariffs, and *notwithstanding the order of precedence set forth in the Master Agreement,* the governing order of precedence shall be (1) the ICB Pricing Schedule (2) this Addendum, (3) the applicable tariff, and (4) the Agreement, except in Connecticut where the order of precedence shall be 1) the ICB tariffs, 2) the ICB Pricing Schedule, 3) this Addendum; 4) the Agreement.

1. THE SERVICE; DEFINITIONS

1.1 Services

A. SBC Global Services, Inc. dba AT&T Global Services on behalf of its Affiliate(s) named below which provide local exchange service ("AT&T"), will provide the Services to Customer under this Addendum which are identified in the Pricing Schedules and applicable Tariffs or Catalogs ("Tariffs").

B. The pricing, service descriptions and other provisions relating to the Services will be as set forth in: (i) this Addendum (including, the attached Pricing Schedules); (ii) the Agreement's Terms and Conditions; and (iii) the appropriate section of the Tariffs.

C. This Addendum shall remain in effect until all Pricing Schedules provided under this Addendum have expired.

1.2 AT&T Affiliates

Illinois Bell Telephone Company dba AT&T Illinois; Indiana Bell Telephone Company, Incorporated dba AT&T Indiana; Michigan Bell Telephone Company, dba AT&T Michigan; The Ohio Bell Telephone Company dba AT&T Ohio; Wisconsin Bell, Inc. dba AT&T Wisconsin; Southwestern Bell Telephone, L.P. dba in the states of Arkansas, Kansas, Missouri, Oklahoma and Texas as AT&T Arkansas, AT&T Kansas, AT&T Missouri, AT&T Oklahoma and AT&T Texas, respectively; Pacific Bell Telephone Company dba AT&T California, Nevada Bell Telephone Company, dba AT&T Nevada; The Woodbury Telephone Company dba AT&T Woodbury; and The Southern New England Telephone Company dba AT&T Connecticut

1.3 Definitions

CONFIDENTIAL INFORMATION
Except with respect to Services provided in Ohio, this agreement is for use by authorized employees of the parties hereto only and is not for general distribution within or outside their companies.

AT&T Master Agreement date last signed

AT&T Addendum No.001 to Master Agreement
Individual Case Basis Terms & Conditions For State Local Exchange Carrier Telco Services

"Cutover" is when the Service is first provisioned or otherwise available for Customer's use at any single Site at the rates provided in this Pricing Schedule.

"Effective Date" of a Pricing Schedule is the date on which the last party signs this Addendum or, for a subsequently added Pricing Schedule, the date on which the last party signs the Pricing Schedule. If the rules of a regulatory authority having jurisdiction respecting a Service would require a later date, or an applicable tariff filing would require a later date, then the Effective Date of the applicable Pricing Schedule shall be in accordance with such rules.

"Pricing Schedule" means an ICB pricing schedule to this Addendum, either appended hereto or subsequently signed by the parties and referencing this Addendum.

"Pricing Schedule Term" is the period of time stated in the applicable Pricing Schedule.

"Service" means collectively all of the Service Components Customer orders under a Pricing Schedule.

"Service Component" means the individual components of a Service that Customer orders under a Pricing Schedule.

2. TERMINATION

The following termination provisions are only applicable to Services provided pursuant to an ICB Pricing Schedule.

2.1 If a Service or a Service Component is terminated, Customer must pay all charges incurred as of the effective date of termination.

2.2 If Customer terminates a Service or a Service Component for material breach by AT&T, Customer shall not be liable for any Termination Charges.

2.3 Termination for Convenience. If Customer terminates a Service with a specified term or term commitment ("Term"), in whole or in part, for convenience or AT&T terminates for Customer's default, on or after Cutover but before the scheduled completion of the Term, Customer shall pay the termination liability (i) specified in the Pricing Schedule; or (ii) if no termination liability is specified, an amount equal to (a) all unpaid non-recurring charges (excluding non-recurring charges that were waived or incorporated into the monthly recurring rates), (b) fifty percent (50%) of the recurring monthly charges rate for the terminated Service as set forth in the Pricing Schedule, multiplied by the number of months remaining in the term for the applicable Service at the point of termination, and (c) any special construction liabilities.

3. PRICING

3.1 Pricing Schedule
For custom priced Services, unless otherwise stated in a Pricing Schedule and except in Connecticut (where custom prices are not only set forth in the Pricing Schedule but also contained in ICB Tariffs), the rates and charges stated in the Pricing Schedule are stabilized until the end of the Pricing Schedule Term, and apply in lieu of the corresponding rates and charges set forth in the Tariffs. For Services provided per Tariff pricing, during the Term, rates will not increase above monthly rates set forth in the Pricing Schedule and rate decreases will automatically be applied to the monthly rates. Pricing for any Services that are not listed in a Pricing Schedule will be as described in the Tariffs.

3.2 Discounts
Any discounted rates set forth or referenced in a Pricing Schedule are the only discounted rates applicable to the Services and will be applied to the Services in the manner and to the extent specified in the Tariffs.

3.3 Promotions/Credits/Waivers
Customer is eligible only for promotions, credits or waivers identified in the applicable Pricing Schedule. Unless otherwise stated in this Addendum or the applicable Pricing Schedule, any additional promotions, credits or waivers set out in the Tariffs will not apply.

3.4 Charges
For Services provided under a custom pricing plan, Customer shall pay the non-recurring charge and/or monthly rate which shall commence upon Cutover as listed in the applicable Pricing Schedule.

CONFIDENTIAL INFORMATION
Except with respect to Services provided in Ohio, this agreement is for use by authorized employees of the parties hereto only and is not for general distribution within or outside their companies.

AT&T Master Agreement date last signed

AT&T Addendum No.001 to Master Agreement
Individual Case Basis Terms & Conditions For State Local Exchange Carrier Telco Services

4. TARIFF AND REGULATORY REGULATIONS

Each Pricing Schedule may be subject to the jurisdiction of a regulatory commission and will be subject to changes or modifications as the controlling commission may direct from time to time in the exercise of its jurisdiction. Therefore, for this purpose, each Pricing Schedule will be deemed to be a separate agreement with respect to the Services offered in a particular jurisdiction.

AT&T will, subject to the availability and operational limitations of the necessary systems, facilities, and equipment, provide the Services pursuant to the terms and conditions in the Tariffs. This Addendum and each Pricing Schedule may be filed with the appropriate state commission. If approval is required and not obtained, then this Addendum and/or the applicable Pricing Schedule will immediately terminate, and Customer shall receive a refund of any non-recurring charge paid and pre-paid amounts for Services not received.

5. SERVICES AND JURISDICTION CERTIFICATION

Customer acknowledges and certifies that the interstate traffic (including Internet traffic) constitutes **ten percent (10%) or less** of the total traffic on any non-switched circuit(s) purchased under any ICB Pricing Schedule associated with this Addendum. In California, Nevada, Illinois, Indiana, Michigan, Ohio and Wisconsin this clause is not applicable when AT&T DS1 or DS3 Service is used solely for the transport portion of AT&T local access ISDN Primary Rate Interface (PRI) service or AT&T Digital Transport Service-Enhanced channel(s).

6. INSTALLATION AND CUTOVER

Cutover of Service hereunder requires the installation of certain equipment and facilities on AT&T's side of the demarcation point. Customer shall be responsible for providing adequate space and power, as determined by AT&T, for equipment requirements at the designated locations. If Cutover is delayed due to changes, acts, or omissions of Customer, or Customer's contractor, or due to any force majeure event as defined in the "Force Majeure" provision of the Agreement, AT&T shall have the right to extend Cutover for a reasonable period of time equal to at least the period of such delay and consequences.

If Customer cancels this Addendum or a Pricing Schedule before the Service is Cutover for reasons not excused herein, Customer shall reimburse AT&T for all expenses incurred in processing the order and in installing the required equipment and facilities completed up to the date of cancellation as specified in the Tariffs.

All equipment, facilities and lines furnished by AT&T are the sole property of AT&T and are provided upon condition that they will be installed, relocated, removed, changed and maintained exclusively by AT&T as it deems appropriate in its sole discretion.

7. SERVICE AND MAINTENANCE OBLIGATIONS

AT&T represents to Customer that, for the Pricing Schedule Term, the applicable Services shall operate substantially and materially in accordance with the specifications in the Tariffs. If, under normal and proper use, the Service fails to perform substantially as specified above, and Customer notifies AT&T within the Term, AT&T shall correct such Service degradations or failures without charge to Customer, in accordance with the terms of this Addendum. Customer may report service and feature problems seven (7) days per week and twenty-four (24) hours per day. AT&T's repair obligation does not include damage, defects, malfunctions, service degradations or failures caused by Customer's or third party's abuse, intentional misuse, unauthorized use or negligent acts or omissions. In addition, the foregoing repair obligation applies only if Customer provides AT&T with access on its side of the demarcation point to enable AT&T to perform maintenance or repair work.

In the event of a Service interruption, a credit allowance will be made for the affected portion of the Service to the extent specified by the Tariffs. No other liability shall attach to AT&T as a result of such interruption to Service.

Equipment and facilities furnished by AT&T on Customer's premises, or furnished on any other property, shall be returned to AT&T in good condition, reasonable wear and tear thereof excepted. In case of damage, loss or destruction of any of AT&T's equipment or facilities, and not due to the negligence of AT&T or to fire, storm or other like casualty, Customer shall pay to AT&T the lesser of the value of the equipment, facility or line damaged, lost or destroyed, or the cost of restoring it to its original condition, as the case may be, less ordinary wear and tear.

The TAC (Transport Analysis Center) provides 24x7 surveillance for the AT&T Interoffice Network. Surveillance responsibility includes all Central Office Transport Equipment, Remote Terminal Transport Equipment, Interoffice

fiber and cable, and all interoffice facilities. The TAC maintains responsibility for all SONET equipment located in Central Offices, Remote Terminals, and at Customer locations. The TAC receives alarms indicating service failures, errors and protection switches on SONET Rings. Depending on the type of trouble and/or errors the SONET Ring will perform an automatic switch to protection. Customers will continue to experience uninterrupted service while the primary side of the ring is repaired. When the ring does not automatically switch to protection, TAC personnel will work to remotely correct the trouble. This may involves switching a card(s) to protection, dispatching for replacement of equipment, restoring the ring to full duplex service.

8. Terms and Conditions only applicable to Pricing Schedules with custom priced Services in California. If Customer is not purchasing Services in California under an ICB Pricing Schedule under this Addendum, then this section does not apply to Customer.

8.1 Confidentiality. Customer requests that its identity be kept confidential and not be publicly disclosed in connection with any required regulatory filings by AT&T or the California Public Utilities Commission (CPUC), unless required by law.

8.2 IntraLATA Usage. Customer's locations with average monthly inbound and outbound intraLATA usage volumes equal to or greater than 8000 minutes of use, are defined as High Volume Locations. All other Locations are defined as Low Volume Locations. AT&T California will provide a list of the High Volume Locations to Customer prior to the Effective Date of the Pricing Schedule. All new locations are assumed to be Low Volume Locations until AT&T California evaluates the actual usage volumes. The Locations List and all new locations shall be evaluated and updated on the anniversary date of this Pricing Schedule or as otherwise mutually agreed to insure that Locations are in the proper category.

8.3 Direct Dialed Calling Card. The Direct Dialed Calling Card "per message" service and pay phone charges set forth in AT&T California's Tariff Schedule D.11 shall also apply. Calling card calls that originate outside of AT&T California's franchise territory or are operator assisted are not included in this Addendum and such calls will be billed at the prevailing tariff price.

8.4 The IntraLATA Local Toll and Direct Dial Local (Zone) 3 Service provided under the Pricing Schedule shall be billed in initial increments of eighteen seconds and subsequent increments of one second. Direct Dial Local and Zone Usage Measurement Service (Zone 1 and 2) provided under the Pricing Schedule shall be billed in increments of one minute. Custom 8 service shall be billed in 1/1000th of an hour increments. Customer will be charged the prevailing monthly recurring charge associated with a Regular Business Line and a Dedicated Access Line, and the nonrecurring installation charges for both a Regular Business Line and a Dedicated Access Line, in accordance with the prevailing Custom 8 tariff.

8.5 Customer must maintain a minimum annual average message (call) length of one minute for the following California Services provided hereunder: IntraLATA Toll, Direct Dialed Calling Card and/or IntraLATA Local Toll and Direct Dial Local (Zone) 3 Service. If Customer fails to maintain an annual one minute average call length for any of the Services, Customer will be charged the difference between the price(s) for the actual call length average and the price(s) for the one minute average. The discount prices will take effect within fifteen days of the Commencement Date of the Pricing Schedule, except that the discount price for billed telephone numbers ("BTNs") installed in the forty-five day period prior to the Commencement Date or anytime thereafter will take effect on the next bill round date after the Commencement Date.

8.6 *Unless otherwise stated in the Pricing Schedule, the prices set forth in the Pricing Schedules do not include applicable Federal Access End User Common Line Charges, local number portability charges, CPUC or FCC mandated surcharges or applicable taxes, toll usage, directory listings or other miscellaneous Tariff charges. Applicable Federal Access End User Common Line Charges, local number portability charges, tariff prices, surcharges and taxes will be billed on a monthly basis. AT&T California's Tariff Schedule Cal. P.U.C. No. A2.1.33, surcharges/surcredits, are not applicable to the prices set forth in the Pricing Schedules.*

8.7 Except if specified in a Pricing Schedule, the Services set forth in the Pricing Schedules do not include intrabuilding network cable, Simple Inside Wire, repair services for such cable and wire, wiring associated with Customer-provided terminal equipment, Off-premises station mileage, or usage associated with Foreign Exchange Service, Data Lines, or Tie Lines.

8.8 Customer acknowledges and warrants that it lacks requisite regulatory authority such as Certificates of Public Convenience and Necessity ("CPCN") or other like authorization to resell services, and Customer is prohibited from reselling the Service provided pursuant to this Schedule to any other customers. However, Customer may make the Services provided hereunder available to its own subsidiaries or to legally affiliated entities. If Customer obtains regulatory authority to resell

services and attempts to resell the Services provided hereunder, AT&T may, on ten days written notice, terminate any Schedule or portion of a Schedule for regulated local exchange telco Services in California.

9. Terms and Conditions only applicable to Pricing Schedules with custom priced Services in Ohio. If Customer is not purchasing Services in Ohio under an ICB Pricing Schedule under this Addendum, then this section does not apply to Customer.

To the extent this Addendum relates to regulated Services provided in Ohio:

9.1 Inclusion of termination liability in this Addendum or any Pricing Schedule does not constitute a determination by the Public Utilities Commission of Ohio (PUCO) that the termination liability is approved or sanctioned. The Customer is free to pursue its legal remedies should a dispute arise.

9.2 Approval of limitation of liability language by the PUCO does not constitute a determination by the Commission that the limitation of liability imposed by the company should be upheld in a court of law. Approval by the Commission merely recognizes that since it is a court's responsibility to adjudicate negligence and consequential damage claims, it is also the court's responsibility to determine the validity of the exculpatory clause.

9.3 In Ohio, Customer is not precluded from disclosing the terms and conditions of the Master Agreement or this Addendum or any Ohio Pricing Schedule to another entity.

10. ENTIRE AGREEMENT

This Addendum (including Pricing Schedules and attachments), the Agreement, and the Tariff(s) are the entire and exclusive agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, proposals or understandings, whether written or oral. This Addendum may not be modified except by a writing signed by both parties.

End of Document

Exhibit E

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Exhibit F

FOCUS

MERCED COUNTY

Board of Supervisors

John Pedrozo
Supervisor, District One

Hubert "Hub" Walsh, Jr.
Supervisor, District Two

Michael G. Nelson
Supervisor, District Three

Deidre F. Kelsey
Supervisor, District Four

Jerry O'Banion
Supervisor, District Five

Demitrios O. Tatum
County Executive Officer

Merced County
Administration Building
2222 "M" Street
Merced, CA 95340
(209) 385-7366
(209) 726-7977 Fax
www.co.merced.ca.us

Equal Opportunity Employer

Striving for Excellence

July 21, 2009

To: All Federal, State and Local Governmental Entities

After a comprehensive, formal request for proposal process, the County of Merced is proud to announce the Fast Open Contracts Utilization Services (FOCUS) Program contract with AT&T DataComm, Inc. This contract, as authorized by the Board of Supervisors, is available for use through July 20, 2011, by any federal, state, county, city, school or special district public jurisdiction able to exercise a joint powers relationship with our County.

This special relationship brings together government and a premier telecommunications technology solutions provider, AT&T DataComm, Inc., in a joint effort to offer entities, nationally, the opportunity to procure their technology needs through a pre-established flexible procurement contract. FOCUS Contract No. 2009177 is specifically designed to be a long term alliance so as to ensure that your systems and service needs will continue to be met well into the future.

The County of Merced and AT&T DataComm, Inc. are dedicated and committed to assisting you in creating the most cost effective, efficient, and performance telecommunications technology solutions for your jurisdiction. Our standard is excellence in systems, services, and customer satisfaction.

Sincerely,

Deidre F. Kelsey, Chairman
Supervisor, District Four

CONFIDENTIAL

AGREEMENT FOR PUBLIC-PRIVATE JOINT VENTURE

MERCED COUNTY
CONTRACT NO. 2009177

THIS AGREEMENT, is made and entered into by and between the County of Merced, a political subdivision of the State of California, (hereinafter referred to as "County"), and AT&T DataComm, Inc., (hereinafter referred to as "Contractor").

WHEREAS, the County desires to retain Contractor to perform the services in connection with the Fast Open Contracts Utilization Services (FOCUS), pursuant to Government Code Sections 25330-25338; and,

WHEREAS, the Contractor represents it has considerable knowledge and experience relating to the performance of such services; and,

WHEREAS, the parties desire to set forth herein the terms and conditions under which said services shall be furnished.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, the parties hereby agree as follows:

1. SCOPE OF WORK

1.1 FOCUS Program Overview

The purpose of this FOCUS Contract will be to provide the means for counties, cities, schools, special districts and other governmental entities in California and nationally to purchase their needed telecommunications technology solutions through a formally bid contractual relationship. FOCUS also provides the means for governments to reduce their costs of procurement while leveraging their dollars with other governments to achieve greater buying power. FOCUS offers the possibility of choosing more than one provider in each category. Further, this competitively bid program offers an alternative to existing non-competitively bid programs that may charge the buyer for administrative handling.

Merced County may use any qualified vendor in appropriate categories for its purchases during the term of contract operation.

Merced County may select multiple vendors in each category (if possible) for use by other governmental entities. This will allow agencies to pick and choose vendors that best suit their specific needs.

1.2 FOCUS Program Design for Contractor

First, the program design shall incorporate the principles as they apply to the following awarded telecommunications technology categories:

Communications Services:
1.1 Call Center Solutions (with ACD)
1.2 Emergency Notification Solutions (Reverse 911)
1.3 Engineering/Consulting Services
1.4 Integrated Voice Response (IVR)
1.5 Internet Protocol (IP) Solutions

1.5.1 Voice over Internet Protocol (VOIP)
1.5.2 Unified Messaging (UM)
1.6 Voice Calling Plans
1.6.1 Long Distance Services (Switched, Dedicated)
1.7 Telecommunications Systems (PBX)
1.7.1 Telephone Handsets
1.8 Voice Mail Solutions
1.9 Wireless Voice Communication Services

Application Development:
2.1 Enterprise Application Development & Conversion Tools
2.2 Application Installation Solutions
2.3 Application Version Control Solutions

Infrastructure:
3.1 Battery Backup Systems
3.2 Cabling Services
3.3 Energy Auditing, Management, Conservation & Alternative Solutions
3.4 Engineering/Consulting Services
3.5 Enterprise Mobility Solutions
3.7 Maintenance Services
3.8 Network Host & Enterprise Security Solutions
3.8.1 Firewall & Virtual Private Network (VPN) Solutions
3.8.2 Intrusion Detection/Prevention Solutions
3.9 Network, Host & Enterprise Management Solutions
3.11 Transport Solutions (PRI, MPLS, Supertrunks, CO Business Lines, Optical, Satellite, Wireless)
3.12 Video Solutions
3.13 Web Monitoring & Filtering Products
3.14 Wireless Solutions

E-Government:
4.1 Web Site Analytics
4.2 Web Site Content Management Solutions
4.3 Web Site Design, Development, Hosting Services
4.4 Web Site Development Tools
4.5 Web Site Intranet Solutions
4.6 Web Site Portal Solutions

Enterprise Systems:
5.1 Anti-Virus, Spam, Spyware Solutions
5.2 Consulting Services
5.3 Data Encryption Products & Services
5.4 Enterprise Mobility Solutions
5.7 Hosting Services and Applications
5.8 Radio Frequency Identification (RFID)
5.9 Storage & Data Management Products
5.10 Training Solutions

Second, FOCUS vendor partners are authorized to add new product lines and replace discontinued product lines. Merced County will be notified of such product changes (with pricing) as they occur. Pricing will always reflect the most recent discounts. Additional discounting, such as promotional pricing, may be offered when available. Products will have a percentage discount or cost plus discount in most cases. In some cases, pricing is contracted through a catalog and/or GSA schedule. Pricing for new products and services will be contracted through pricing offered at General Services Administration (GSA) "Advantage!". Replacement of discontinued

product lines will be contracted by maintaining the pricing level discounts current under contract. For the replacement of discontinued product lines under a catalog pricing schedule, replacement products and services will be contracted at General Services Administration (GSA) "Advantage!" pricing. At least once per fiscal quarter, a product and service catalog will be updated and delivered electronically by Contractor.

Third, Not Specifically Priced Items (NSP) – FOCUS users may order non-contracted products and services that are in support of the contracted items listed on the Purchase Order. Any NSP items must be peripheral and subordinate to the contracted items. The total value of all NSP items shall not exceed 10% of the total price of the Purchase Order.

Fourth, Merced County reserves the right to receive and process all orders at a future date.

FIFTH, VENDORS NOT SELECTED FOR A FOCUS CONTRACT MAY NOT USE ANOTHER FIRM'S FOCUS CONTRACT TO QUALIFY FOR OTHER POLITICAL JURISDICTION CONTRACTS OR SALES AUTHORITY WITHOUT THE EXPRESS WRITTEN CONSENT FROM THE COUNTY OF MERCED.

1.3 Services

Contractor shall provide such services in a good and professional manner in accordance with the terms and conditions stated herein, and any specifically referenced attachments hereto. The following exhibits are specifically incorporated by reference, attached hereto, and made a part hereof, except when in conflict with this Agreement or modified herein:

Exhibit A -	County's Request for Joint Venture Proposal
Exhibit B -	Contractor's Responding Proposal
Exhibit C -	Contractor's Equipment and Services Agreement ("ESA") for FOCUS users

Services shall include all activities of Contractor necessary to its performance of the work included in the scope herein described and shall perform all services as an independent contractor; not as an agent or employee of the County.

In the performance of Contractor's duties to perform such services, Contractor's services include, but are not limited to, the following:

1. Provide telecommunications products and services, using a competitively bid procurement tool, to public entities nationally.

2. Offer superior products and services, at competitively bid prices, to insure public entity telecommunications goals are being achieved.

3. Help agencies meet State of California small, certified business requirements.

4. Service FOCUS needs in specifically awarded telecommunications technology categories as listed in Section 1.2.

1.4 Contractor Commitments

1. Corporate level management support and resource commitment to the FOCUS.

2. Corporate level dedication to at least a California marketing program.

3. Corporate level commitment to their sales force in promoting the FOCUS and rewarding successes.

4. An aggressive marketing strategy.

5. Excellence in customer support and service.

6. A commitment to use local providers and/or contracted services where a corporate presence does not exist.

7. A commitment to include Merced County in semi-annual FOCUS planning/strategy meetings.

8. A commitment to meet on FOCUS progress each quarter.

9. A product and service quality assurance program that meets or exceeds industry excellence standards.

10. The most competitive pricing given to a state/local government agency for the array of products and/or services offered. NOTE: Pricing offered must reflect across the board percentage of discount or cost plus for every item/service submitted. Bidder must state in their proposal what percentage of discount or cost plus is being offered in their proposal.

11. An ability to include industry leaders in the corporate and product suites offered through subcontractor relationships.

12. An effort to develop an on-line order placement/tracking system for immediate input or retrieval of information/acknowledgments.

13. An on-line and e-mail communications system to handle routine and/or emergency discussions and actions.

14. A customer help desk (800 number/on-line access) to assist customer technical and administrative issues.

15. Product, service, and installation excellence to any location that meets industry's highest standards.

16. The availability and inclusion of product supplies, product training, networking services (if appropriate), and product maintenance.

17. All product installations and modifications performed by supplier will be by manufacturer-authorized personnel and meet manufacturer-documented specifications, unless otherwise specifically stated in the purchase order/Statement of Work.

18. All telecommunications services must be certified by the California Public Utilities Commission (CPUC) to offer those services. Evidence of certification from CPUC is required.

19. All products must meet or exceed the specifications of the referenced brands.

1.5 Mandatory Administrative Requirements

1. A system to immediately notify Merced County of all sales made under FOCUS.

2. Quarterly and annual sales accountability.

3. A product/service document, paper or electronic — to be produced at least 4 times per year. NOTE: Electronic documents shall be updated immediately for price reductions. The document must show the array of product/service offerings, product/service descriptions, and pricing schedules based on single item purchases. If appropriate, greater price reductions are expected as volume on identical items is increased.

4. Price increase/price decline policies (Note: all price reduction changes must be published within 72 hours).

5. Administration, marketing, and management fees for Merced County.

6. Subcontractor list (See Contract Attachment 1).

7. Ordering, reporting, and reconciliation procedures (See Contract Attachment 2).

2. TERM

The term of this Agreement shall commence on the 21st day of July, 2009, and continue until the 20th day of July, 2011, unless sooner terminated in accordance with Sections, "TERMINATION FOR CAUSE" and/or "TERMINATION AT WILL" as set forth elsewhere in this Agreement. Through mutual agreement, the contract may be extended for additional terms.

3. ADMINISTRATION, MARKETING, AND MANAGEMENT FEES

Contractor agrees to pay Merced County administration, marketing, and management fees in accordance with Attachment 3 on a quarterly basis. Payment is to be made not later than 30 days following the end of the quarter (April 30, July 31, October 31, January 31). NOTE: The amount/percentage of compensation is CONFIDENTIAL PROPRIETARY INFORMATION and not releasable to the general public, except to the extent permitted by law.

4. PUBLIC AGENCY PARTICIPATION

Any public agency, i.e., city, district, public authority, public agency, municipality and other political subdivision or a public corporation of California (hereinafter referred to as public agency) located in the State of California or any other state shall have the option of participating in any award made as a result of this proposal at the same prices, F.O.B. destination, and terms and conditions of Exhibit C (and as amended from time to time). The public agency shall make purchases in their own name, have deliveries made to their facilities, and be responsible for tax liability and payments directly to the Contractor. The public agency will hold harmless the County from all claims, demands, actions, or causes of actions of every kind resulting directly or indirectly, arising out of, or in any way connected with use of this Contract and in accordance with the terms and conditions of Exhibit C ("ESA").

Public Agencies may not qualify vendors for their contract offerings by using FOCUS Terms and Conditions.

5. PROGRAM UTILIZATION REQUIREMENTS

In order for a public agency to utilize FOCUS contracts, the public agency must first complete a joint powers agreement with Merced County. Agreements are accomplished by referencing vendor's specific FOCUS contract number on each public agency's purchase order, forwarding original to Contractor, and providing an information copy to the Merced County Department of Commerce, Aviation & Economic Development via U.S. Mail, facsimile, or e-mail. For ordering, reporting, and reconciliation procedures, see Contract Attachment 2.

6. NON-FOCUS VENDORS

Vendors not selected for a FOCUS contract may not use another firm's FOCUS contract to qualify for other political jurisdiction contracts or sales authority without the express written consent from the County of Merced.

7. REPORTS AND INFORMATION

Contractor shall furnish County such periodic reports as County may request pertaining to the work or services undertaken pursuant to the Agreement, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Agreement.

As a minimum, Contractor agrees to provide quarterly sales reports delineating state and regional sales activities and quarterly/annual reports specifying sales totals and the names of clients using the FOCUS program.

8. TERMINATION FOR CAUSE

If Contractor shall fail to comply with any of the Contractor's obligations under this Agreement or otherwise breach this Agreement, County may, in addition to any other remedies it may have, terminate for cause, this Agreement by giving ten (10 calendar days written notice to Contractor in the manner set forth under Section "NOTICES". In the event of any proceedings by or against the Contractor, i.e. bankruptcy, insolvency, appointment of a receiver or trustee, or any assignment for the benefit of creditors, the County shall exercise its right of cancellation under this section.

9. TERMINATION FOR CONVENIENCE

This Agreement, not withstanding anything to the contrary hereinabove or hereinafter set forth, may be terminated by either party at any time without cause or legal excuse by providing the other party with thirty (30) calendar days written notice of such termination. Upon effective date of termination, County shall have no further liability to Contractor except for payment for actual services incurred during the performance hereunder or deliverables or products ordered before the effective date of termination to the time specified in said notice. Such liability is further limited to the extent such costs are actual, necessary, reasonable, and verifiable costs and have been incurred by Contractor prior to, and in connection with, discontinuing the work hereunder.

10. MODIFICATION OF THE AGREEMENT

Notwithstanding any of the provisions of the Agreement, the parties may agree to amend this Agreement. No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto. No oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.

11. INSURANCE

A. Prior to commencement of work, and as a precondition to this contract, Contractor shall purchase and maintain the following types of insurance for the stated minimum limits indicated during the term of this Agreement. Contractor shall provide a certificate of insurance including additional insured languages for items 1 and 2 below. The insurance carrier shall endeavor to give County notice of cancellation or non renewal at least 10 days prior to the cancellation or non renewal of any required coverage. Each certificate of insurance shall specify if Contractor has a SIR,.

1. Commercial General Liability: $1,000,000 per occurrence and $2,000,000 annual aggregate covering bodily injury, personal injury and property damage and

including contractual liability coverage. The County and its officers, employees, and agents shall be included on the required Commercial General Liability policy as additional insured, using ISO form CG2026 or an alternate form that is at least as broad as form CG2026.

2. Automobile Liability: $1,000,000 per accident for bodily injury and property damage, or split limits of $500,000 per person/$1,000,000 per accident for bodily injury and $250,000 per accident for property damage.

3. Workers Compensation: Statutory coverage, if and as required according to the California Labor Code, including Employers' Liability limits of $1,000,000 per accident/disease/policy limits. To the fullest extent allowable by law the policy shall include a waiver the insurer's subrogation rights against the County.

4. Professional Liability: $1,000,000 limit per claim or wrongful act and $5,000,000 annual aggregate limit covering Contractor's wrongful acts, errors and omissions.

5. Deductibles: Contractor shall disclose on the insurance certificate and be responsible for any deductibles and shall not look to County for recovery from any loss under Contractor's self insured retention, self-insurance or insurance coverages. Permission is granted to Contractor to self insure any of the required coverages.

B. Insurance Conditions

1. The County requires insurance carriers to maintain during the contract term, a Best Key Rating of A-VII or higher, which shall be fully disclosed and entered on the Certificate of Insurance.

2. Each Insurers of each of the required policies, noted above, shall endeavor to provide the County with 30 days prior written notice of cancellation. The County is not liable for the payment of premiums or assessments on the policy. No cancellation provisions in the insurance policy shall be construed in derogation of the continuing duty of Contractor to furnish insurance during the term of this Agreement.

3. These requirements assume that standard insurance policy forms, terms, and conditions will apply to cover the expected risk exposures for the intended "Scope of Work".

4. Failure to Maintain Coverage: If the Contractor fails to maintain any of the insurance coverage required herein, County may declare the Contractor in breach, suspend or terminate the Contract.

12. INDEMNIFICATION

Contractor has the contracted duty (hereinafter "the duty") to indemnify, defend and hold harmless, County, its Board of Supervisors, officers, employees, agents and assigns from and against any and all claims, demands, liability, judgments, awards, interest, attorney's fees, costs, experts' fees and expenses of whatsoever kind or nature, at any time arising out of or in any way connected with the performance of this Agreement, whether in tort, contract or otherwise. This duty shall include, but not be limited to, claims for bodily injury, property damage, personal injury, and contractual damages or otherwise alleged to be caused to any person or entity including, but not limited to employees, agents and officers of Contractor.

Contractor's liability for indemnity under this Agreement shall apply, regardless of fault, to any acts or omissions, willful misconduct or negligent conduct of any kind, on the part of the Contractor, its agents, subcontractors and employees. The duty shall extend to any allegation or claim of liability except in circumstances found by a jury or judge to be the sole and legal result of the willful misconduct of County. This duty shall arise at the first claim or allegation of liability against County. Contractor will on request and at its expense, defend any action suit or proceeding arising hereunder. This clause for indemnification shall be interpreted to the broadest extent permitted by law.

Contractor shall not be liable under this Section "INDEMNIFICATION" for damages caused by service or equipment that is not furnished by Contractor under this Agreement.

13. INDEPENDENT CONTRACTOR

It is mutually understood and agreed that Contractor is an independent contractor in the performance of the work duties and obligations devolving upon Contractor under this Agreement. County shall neither have, nor exercise any control or direction over the methods by which Contractor shall perform his professional work and functions. The sole interest and responsibility of the County is to assure that the services covered by this Agreement shall be performed and rendered in a competent, efficient and satisfactory manner.

It is mutually understood and agreed that no employer-employee relationship is created and Contractor shall hold County harmless and be solely responsible for withholding, reporting and payment of any federal, state or local taxes, contributions or premiums imposed or required by workers' compensation, unemployment insurance, social security, income tax, other statutes or codes applying to Contractor, or its subcontractors and employees, if any.

It is mutually agreed and understood that Contractor, its subcontractors and employees, if any, shall have no claim under this Agreement or otherwise against the County for vacation pay, sick leave, retirement or social security benefits, occupational or non-occupational injury, disability or illness, or loss of life or income, by whatever cause.

Contractor shall insure that all its personnel and employees, its subcontractors and their employees, used to perform the contracted services are aware and expressly agree that County is not responsible for any benefits, coverage, or payment for their efforts.

14. RECORDS AND INSPECTIONS

Contractor shall maintain full and accurate records with respect to all matters covered under this Agreement. To the extent permitted by law, County shall have free access at all proper times or until the expiration of four (4) years after the furnishing of services to such records, and the right to examine and audit the same and to make transcripts there from, and to inspect all data, documents, proceedings, and activities pertaining to this Agreement.

15. OWNERSHIP OF DOCUMENTS

The physical copy of a document provided to end user, shall be the ownership of the end user, otherwise AT&T and its Suppliers retain Intellectual Property rights.

16. QUALITY OF SERVICE

Contractor shall perform its services with care, skill, and diligence, in accordance with the applicable professional standards currently recognized by such profession, and shall be responsible for the professional quality, technical accuracy, completeness, and coordination of all

reports, designs, drawings, plans, information, specifications, and other items and services furnished under the Agreement.

Warranty will be provided as contained in Exhibit C.

17. PERSONAL SATISFACTION AS A CONDITION PRECEDENT

The obligations of County as provided in this Agreement are expressly conditioned upon Contractor's compliance with the provisions of the contract or those specifications included in a statement of work.

18. ENTIRE AGREEMENT

This Agreement and any additional or supplementary document or documents incorporated herein by specific reference contain all the terms and conditions agreed upon by the parties hereto, and no other contracts, oral or otherwise, regarding the subject matter of the Agreement or any part thereof shall have any validity or bind any of the parties hereto.

19. COUNTY NOT OBLIGATED TO THIRD PARTIES

The County shall not be obligated or liable hereunder to any party other than Contractor.

20. COMPLIANCE WITH STATE LAWS AND REGULATIONS

The Contractor and the County agree to comply with all State laws and regulations that pertain to construction, health and safety, labor, minimum wage, fair employment practice, equal opportunity, and all other matters applicable to the Contractor and County, their subgrantees, contractors, or subcontractor, and their work.

21. COUNTY'S RIGHTS NOT WAIVED BY PAYMENTS

In no event shall the making, by the County, of any payment to Contractor constitute, or be construed as, a waiver by the County of any breach of covenant, or any default which may then exist, on the part of Contractor. The making of any such payment by the County while any such breach or default shall exist, shall not be construed as acceptance of substandard or careless work or as relieving Contractor from its full responsibility under the Agreement.

22. PRICING

If the FOCUS partnering contractor's prices decline, or should Contractor, at any time during the term of this Agreement, provide the same or similar goods or services under similar quantity and delivery conditions and terms and conditions of purchase to the State of California or any county, municipality or district of the state at prices below those set forth in this Agreement, then such lower prices shall be immediately extended to Merced County and the FOCUS users up to and including date of shipment from Contractor's shipping point.

23. LEASING

The parties agree that FOCUS users have the option to enter into a lease to purchase (LTOP) or an operational lease (with or without residual buy-out value at the conclusion of the lease term, including bundled services) for all products and services covered under this Agreement.

24. PROMOTIONAL PRICING

Products offered under Manufacturer's promotions will be sold at the promotional list price if the promotional price is less than the contracted discount price.

25. PERSONNEL

Contractor represents that it has, or will secure at its own expense, all personnel required in performing the services under this Agreement. All of the services required hereunder will be performed by Contractor or under its supervision, and all personnel engaged in the work shall be qualified to perform such services.

26. NOTICES

All notices, requests, demands, or other communications under this Agreement shall be in writing. Notice shall be sufficiently given for all purposes as follows:

A. Personal Delivery. When personally delivered to the recipient, notice is effective upon delivery.

B. First Class Mail. When mailed first class

C. Certified Mail. When mailed by certified mail, return receipt requested. Notice is effective upon receipt, if delivery is confirmed by a return receipt.

D. Overnight Delivery. When delivered by an overnight delivery service, charges prepaid or charged to the sender's account, notice is effective on delivery, if delivery is confirmed by the delivery service.

E. Facsimile Transmission. When sent by fax to the last fax number of the recipient known to the party giving notice, notice is effective upon receipt, provided that: a) a duplicate copy of the notice is promptly given by first class mail or certified mail or by overnight delivery, or b) the receiving party delivers a written confirmation of receipt. Any notice given by fax shall be deemed received on the next business day if received after 5:00 p.m. (recipient's time) or on a non-business day.

Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that the notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messengers, or overnight delivery service.

Information for notice to the parties to this Agreement at the time of endorsement of this Agreement is as follows:

County:	Contractor
Director, Commerce, Aviation,	AT&T / Virginia Del Rey, RVP
and Economic Development	16755 Von Karman
Merced County	Suite 100
2507 Heritage Drive	Irvine, CA 92606
Atwater, CA 95301	

Any party may change its address or fax numbers by giving the other party notice of the change in any manner permitted by this Agreement.

27. APPLICABLE LAW; VENUE

All parties agree that this Agreement and all documents issued or executed pursuant hereto and the rights and obligations of the parties hereunder are subject to and governed by the laws of the State of California in all respects as to interpretation, construction, operation, effect and performance. No interpretation of any provision of this Agreement, except by a court of law, shall be binding upon County unless agreed in writing by County and counsel for County.

Notwithstanding any other provisions of this Agreement, any dispute involving Merced County concerning any question of fact or law arising under this Agreement or any litigation or arbitration arising out of this Agreement, shall be tried in Merced County, or in the Federal District Court having jurisdiction for Merced County unless the parties agree otherwise or are otherwise required by law.

28. WAIVER

Waiver by either party of any default, breach, or condition precedent shall not be construed as a waiver of any other default, breach, or condition precedent, or any other right hereunder.

29. BREACH OF CONTRACT

Upon breach of the Agreement by Contractor, County shall have all remedies available to it both in equity and/or at law.

30. REMEDY FOR BREACH AND RIGHT TO CURE

"Notwithstanding anything else in this Agreement to the contrary, if Contractor fails to perform any obligation of this Agreement, the County may invoke this remedy for breach clause. County will provide Contractor with at least 30 days prior written notice specifying the obligations required to be performed and describing the action the County intends to take to cure such performance should Contractor fail to do so including, but not limited to, the County itself performing, or causing the performance of, such agreement or obligation. In the event County must take action to cure the breach, Contractor will, on written demand, fully reimburse County for all such expenditures, subject to Section "BREACH OF CONTRACT".

Disputes and remedies that result with end user will be resolved as provided in Exhibit C.

31. SUCCESSORS IN INTEREST

All the terms, covenant, and conditions of the Agreement shall be binding and in full force and effect and inure to the benefit of the successors in interest and assigns of the parties hereto. This paragraph shall not be deemed as a waiver of any of the conditions against assignment set forth herein.

32. CONFLICT OF INTEREST

Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of this Agreement. Contractor shall make all reasonable efforts to ensure that no conflict of interest exists between its officers, employees, or subcontractors, and the County. Contractor shall make all reasonable efforts to ensure that no County officer or employee, whose position in the County enables them to influence this Agreement, shall have any direct or indirect financial interest resulting from this Agreement or shall have any relationship to the Contractor or officer or employee of the Contractor, nor that any such person will be employed by Contractor in the performance of this Agreement without immediate divulgence or such fact to the County.

33. NONDISCRIMINATION IN EMPLOYMENT, SERVICES, BENEFITS, AND FACILITIES

Contractor and any subcontractors shall comply with all applicable federal, state, and local anti-discrimination laws, regulations, and ordinances and shall not unlawfully discriminate, harass, or allow harassment against any employee, applicant for employment, employee or agent of County, or recipient of services contemplated to be provided or provided under this Agreement, because of race, ancestry, marital status, color, religious creed, political belief, national origin, ethnic group identification, sex, sexual orientation, age (over 40), medical condition (including HIV and AIDS),

or physical or mental disability. Contractor shall ensure that the evaluation and treatment of its employees and applicants for employment, the treatment of County employees and agents, and recipients of services are free from such discrimination and harassment.
Contractor represents that it is in compliance with and agrees that it will continue to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the Fair Employment and Housing Act (Government Code §§ 12900 et seq.), and regulations and guidelines issued pursuant thereto.

Contractor agrees to compile data, maintain records and submit reports to permit effective enforcement of all applicable anti-discrimination laws and this provision.

Contractor shall include this nondiscrimination provision in all subcontracts related to this Agreement.

34. CAPTIONS

The captions of each paragraph in the Agreement are inserted as a matter of convenience and reference only, and in no way define, limit, or describe the scope or intent of the Agreement or in any way affect it.

35. SUBCONTRACTS – ASSIGNMENT

Contractor shall not subcontract or assign this Agreement, or any part thereof, or interest therein, directly or indirectly, voluntarily or involuntarily, to any person without obtaining the prior written consent, "except that Contractor reserves the right to assign this Agreement directly to an Affiliated entity with prior notice to County." Contractor remains legally responsible for the performance of all contract terms including work performed by third parties under subcontracts. Any subcontracting will be subject to all applicable provisions of this Agreement. Contractor shall be held responsible by County for the performance of any subcontractor whether approved by County or not.

36. SEVERABILITY

If a court of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable or invalid, in whole or in part, for any reason, the validity and enforceability of the remaining provisions, or portion of them, will not be affected. Compensation due to Contractor from the County may, however, be adjusted in proportion to the benefit received despite the removal of the effected provision.

37. DUPLICATE COUNTERPARTS

This Agreement may be executed in duplicate counterparts, each of which shall be deemed a duplicate original. The Agreement shall be deemed executed when it has been signed by both parties.

38. DISPUTES

In the event of any dispute arising out of or relating to this Agreement, the parties shall attempt, in good faith, to promptly resolve the dispute mutually between themselves. If the dispute cannot be resolved by mutual agreement, nothing herein shall preclude either party's right to pursue remedy or relief by civil litigation, pursuant to the laws of the State of California.

39. LICENSES AND PERMITS

Contractor shall possess and maintain all necessary licenses, permits, certificates, and credentials required by the laws of the United States, the State of California, County of Merced,

and all other appropriate governmental agencies, including any certification and credentials required by County. Failure to maintain the licenses, permits, certificates, and credentials shall be deemed a breach of this Agreement and constitutes grounds for the termination of this Agreement by County.

County of Merced

By _____
Signature

DEIDRE F. KELSEY JUL 2 1 2009
Name

CHAIRMAN, BOARD OF SUPERVISORS
Title

APPROVED AS TO FORM
JAMES N. FINCHER
COUNTY COUNSEL

By _____

Pacific Bell Telephone Company, d.b.a. AT&T DataComm

By _____
Signature

Jim Harari
Name

Executive Director of Sales
Title

ATTACHMENT 1

SUBCONTRACTORS

Adtran
AMX
APC
Aruba Networks
AT Comm
Avaya
AXIS
BenQ
Blue Coat
Checkpoint
Cisco Systems
Cistera Networks
Commscope
Crown
Dell
Draper
EMC
Extreme Networks
Extron
F5
Fatpipe
Fluke
Global Knowledge
Haivision
HP
Ironport
Juniper Networks
Kramer
Lifesize
LG
Middle Atlantic
NetApp
Nokia
Nortel Networks
ONNSI
Packeteer
Peerless
Pelco
Polycom
Quintum
Radvision
Riverbed
RDL
Sanyo
ShoreTel
Skyline
Sony
Sonicwall
Spectralink
Tandberg
Telco Systems
3Com
Tripp Lite
VBrick
Vidyo
VTel

ATTACHMENT 2

ORDERING, REPORTING, AND RECONCILIATION PROCEDURES

Ordering: Customer will contact its local AT&T sales representative who will work with the customer to determine the customer's needs and establish pricing based on the pricing and discounts listed under this agreement. Customer will issue a purchase order that will, at a minimum, contain the following information:

- Date
- Contract designation: i.e. County of Merced Telecommunications Contract
- Customer Purchase Order number
- Customer name
- Customer billing address
- Customer ship to address
- Customer contact name, address, fax and telephone number;
- Agency billing code, if applicable
- List of equipment and services to be ordered, detailing the exact product code numbers as they appear on the electronic catalog

State agencies must use a Standard Form 65 purchase order, while non-state agencies may use their own form of purchase order. Customer will be required to certify that all orders placed under the contract follow Department of General Services guidelines (State Customer), or local procurement rules (Non-State Public Sector Customer).

Reporting: AT&T's Program Manager will prepare a written sales and revenue report monthly, for review by the County of Merced at the quarterly meetings with AT&T. Reports will detail the order status and actual/projected compensation due to the County. Reports may be adjusted upward or downward in the event of a change order or order termination. Taxes and shipping will not be reflected in the order totals, and will be billed to customer on a separate line item basis.

Reconciliation: Reconciliation reports will be prepared for the County of Merced that will enable the County accurately project monthly revenues earned from the contract. Fees due the County will be calculated based upon order total and payment date fields, in accordance with the fee calculations stated in Attachment D of this response.

All reports will be maintained by the AT&T Program Manager, and will be generated by AT&T's accounting department. The quarterly report will be forwarded to AT&T's designated Program Manager who will review all information and authorize payment to be made to the County of Merced.

ATTACHMENT 3

MERCED COUNTY COMPENSATION

(The information below is "Confidential Proprietary Information" and may not be disclosed without proper authority.)

A straight fee of one-half of one percent (.0050) will be paid to Merced County on all FOCUS based orders.

Exhibit G

Master Services Agreement

AT&T MA Reference No.



MASTER SERVICES AGREEMENT

Customer	**AT&T**
Customer Legal Name Street Address: City: State/Province: Zip Code: Country:	AT&T Corp. or enter the International Affiliate Name
Customer Contact (for notices)	**AT&T Contact (for notices)**
Name: Title: Street Address: City: State/Province: Zip Code: Country: Telephone: Fax: Email:	Street Address: City: State/Province: Zip Code: Country: With a copy to: AT&T Corp. One AT&T Way Bedminster, NJ 07921-0752 ATTN: MSA Support Team Email: mast@att.com

This Master Services Agreement ("MSA"), between the customer named above ("Customer") and the AT&T entity named above ("AT&T"), is effective when signed by both Customer and AT&T.

Customer (by its authorized representative)	**AT&T** (by its authorized representative)
By:	By:
Name:	Name:
Title:	Title:
Date:	Date:

1. INTRODUCTION

1.1 **Overview of Documents**. This MSA and the following additional documents (collectively, the "Agreement") shall apply to all services and equipment AT&T provides Customer pursuant to this Agreement ("Services") and shall continue in effect so long as Services are provided under this Agreement:

(a) **Pricing Schedules**. A "Pricing Schedule" means a pricing schedule (including related attachments) or other document that is attached to or is later executed by the parties and references this MSA. A Pricing Schedule includes the Services, the pricing (including discounts and commitments, if applicable) and the pricing schedule term ("Pricing Schedule Term").

(b) **Tariffs and Guidebooks**. "Tariffs" are documents containing the descriptions, pricing and other terms and conditions for a Service that AT&T or its Affiliates file with regulatory authorities. "Guidebooks" are documents (designated as Guidebooks or Price Lists) containing the descriptions, pricing and other terms and conditions for a Service that were but no longer are filed with regulatory authorities. Tariffs and Guidebooks can be found at att.com/servicepublications or other locations AT&T may designate.

(c) **Acceptable Use Policy**. AT&T's Acceptable Use Policy ("AUP") applies to Customer's and Users' use of (i) Services provided over or accessing the Internet and (ii) wireless (*i.e.*, cellular) data and messaging Services. The AUP can be found at att.com/aup or other locations AT&T may designate.

(d) **Service Guides**. The descriptions, pricing and other terms and conditions for a Service not covered by a Tariff or Guidebook may be contained in a Service Guide, which can be found at att.com/servicepublications or other locations AT&T may designate.

1.2 **Priority of Documents**. The order of priority of the documents that form this Agreement is: Pricing Schedules; this MSA; the AUP; and Tariffs, Guidebooks and Service Guides; provided that, Tariffs will be first in priority in any jurisdiction where applicable law or regulation does not permit contract terms to take precedence over inconsistent Tariff terms.

1.3 **Revisions to Documents**. Subject to Section 8.2(a) (Materially Adverse Impact), AT&T may revise Service Publications at any time.

1.4 **Execution by Affiliates**. An AT&T Affiliate or Customer Affiliate may sign a Pricing Schedule in its own name, and such Affiliate contract will be a separate but associated contract incorporating the terms of this Agreement. Customer and AT&T will cause their respective Affiliates to comply with any such separate and associated contract.

2. AT&T DELIVERABLES

2.1 **Services**. AT&T will either provide or arrange to have an AT&T Affiliate provide Services to Customer, subject to the availability and operational limitations of systems, facilities and equipment. Where required, an AT&T Affiliate authorized by the appropriate regulatory authority will be the service provider.

2.2 **AT&T Equipment**. Services may be provided using equipment owned by AT&T that is located at the Site ("AT&T Equipment"), but title to the AT&T Equipment will remain with AT&T. Customer must provide electric power for the AT&T Equipment and keep the AT&T Equipment physically secure and free from liens and encumbrances. Customer will bear the risk of loss or damage to the AT&T Equipment (other than ordinary wear and tear) except to the extent caused by AT&T or its agents.

2.3 **Software**. Any software that AT&T furnishes to Customer will be governed by the written terms and conditions applicable to such software. Title to such software remains with AT&T or its supplier. Customer must comply with all such terms and conditions, and they take precedence over this Agreement as to such software.

3. CUSTOMER'S COOPERATION

3.1 **Access Right**. Customer will allow AT&T access to property and equipment that Customer controls as reasonably required by AT&T for the Services. In addition, if Customer does not obtain at Customer's expense timely access reasonably required by AT&T to property that Customer does not control (other than public property), AT&T may delay or terminate the Service Components dependent upon such access and may recover any applicable termination charges. Access rights mean the right to construct, install, repair, maintain, replace and remove access lines and network facilities and the right to use ancillary equipment space within a building for Customer's connection to AT&T's network. Customer must provide AT&T timely information and access to Customer's facilities and equipment as AT&T reasonably requires for the Services, subject to Customer's reasonable security policies. Customer will furnish any conduit, holes, wireways, wiring, plans, equipment, space, power/utilities and other items as AT&T reasonably requires for the Services and will obtain any necessary licenses, permits and

consents (including easements and rights-of-way). Customer will have the Site ready for AT&T to perform its work according to a mutually agreed schedule.

3.2 **Safe Working Environment**. Customer will ensure that the location at which AT&T installs, maintains or provides Services is a safe working environment, free of Hazardous Materials and reasonably suitable for the Services. "Hazardous Materials" mean any substance or material capable of posing an unreasonable risk to health, safety or property or whose use, transport, storage, handling, disposal or release is regulated by any law related to pollution, to protection of air, water or soil or to health and safety. AT&T shall have no obligation to perform work at a location that is not a suitable and safe working environment or to handle, remove or dispose of Hazardous Materials.

3.3 **Users**. "User" means anyone who uses or accesses any Service provided to Customer. Customer will cause Users to comply with this Agreement and is responsible for Users' use of any Service unless expressly provided to the contrary in an applicable Service Publication.

3.4 **Resale of Services**. Customer may not resell the Services to third parties without AT&T's written consent.

4. PRICING AND BILLING

4.1 **Pricing and Pricing Schedule Term; Terms Applicable After End of Pricing Schedule Term.** The prices listed in a Pricing Schedule are stabilized until the end of the Pricing Schedule Term and will apply in lieu of the corresponding prices set forth in the applicable Service Publication. No promotion, credit or waiver set forth in a Service Publication will apply. At the end of the Pricing Schedule Term, Customer may continue Service (subject to any applicable notice or other requirements in a Service Publication to terminate a Service Component) under a month-to-month service arrangement at the prices, terms and conditions in effect on the last day of the Pricing Schedule Term. AT&T may change such prices, terms or conditions on 30 days' prior notice to Customer.

4.2 **Additional Charges and Taxes**. Prices set forth in a Pricing Schedule are exclusive of and Customer will pay all taxes (excluding those on AT&T's net income), surcharges, recovery fees, customs clearances, duties, levies, shipping charges and other similar charges (and any associated interest and penalties resulting from Customer's failure to timely pay such taxes or 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. To the extent required by law, Customer may withhold or deduct any applicable income taxes from payments due to AT&T, provided that Customer will use reasonable commercial efforts to minimize any such taxes to the extent allowed by law or treaty and will furnish AT&T with such evidence as may be required by relevant taxing authorities to establish that such tax has been paid so that AT&T may claim any applicable credit.

4.3 **Billing**. Unless a Service Publication specifies otherwise, Customer's obligation to pay for a Service Component begins upon availability of the Service Component to Customer. Customer will pay AT&T without deduction, setoff or delay for any reason (except for withholding taxes as provided in Section 4.2 – Additional Charges and Taxes or in Section 4.5 – Delayed Billing; Disputed Charges). At Customer's request, but subject to AT&T's consent (which may not be unreasonably withheld or withdrawn), Customer's Affiliates may be invoiced separately, and AT&T will accept payment from such Affiliates. Customer will be responsible for payment if Customer's Affiliates do not pay charges in accordance with this Agreement. AT&T may require Customer or its Affiliates to tender a deposit if AT&T determines, in its reasonable judgment, that Customer or its Affiliates are not creditworthy, and AT&T may apply such deposit to any charges owed.

4.4 **Payments**. Payment is due within 30 days after the date of the invoice (unless another date is specified in an applicable Tariff or Guidebook) and must refer to the invoice number. Charges must be paid in the currency specified in the invoice. Restrictive endorsements or other statements on checks are void. Customer will reimburse AT&T for all costs associated with collecting delinquent or dishonored payments, including reasonable attorneys' fees. AT&T may charge late payment fees (a) for Services contained in a Tariff or Guidebook at the rate specified therein, or (b) for all other Services at the lower of 1.5% per month (18% per annum) or the maximum rate allowed by law for overdue payments.

4.5 **Delayed Billing; Disputed Charges**. Customer will not be required to pay charges for Services invoiced more than 6 months after close of the billing period in which the charges were incurred, except for calls assisted by an automated or live operator. If Customer disputes a charge, Customer will provide notice to AT&T specifically identifying the charge and the reason it is disputed within 6 months after the date of the affected invoice, or Customer waives the right to dispute the charge. The portion of charges in dispute may be withheld until AT&T completes its investigation of the dispute. If disputed charges are

withheld, Customer will incur late payment fees commencing on the due date of the original invoice in accordance with Section 4.4 (Payments) except to the extent that the parties agree or a court or regulatory authority determines that the disputed charges were invoiced in error.

4.6 **MARC**. Minimum Annual Revenue Commitment ("MARC") means an annual revenue commitment set forth in a Pricing Schedule that Customer agrees to satisfy during each 12-consecutive-month period of the Pricing Schedule Term. If Customer fails to satisfy the MARC for any such 12-month period, Customer will be invoiced a shortfall charge in an amount equal to the difference between the MARC and the total of the applicable MARC-Eligible Charges incurred during such 12-month period, and AT&T may withhold contractual credits until Customer pays the shortfall charge.

4.7 **Adjustments to MARC**.

(a) In the event of a business downturn beyond Customer's control, or a corporate divestiture, merger, acquisition or significant restructuring or reorganization of Customer's business, or network optimization using other Services, or a reduction of AT&T's prices, or a force majeure event, any of which significantly impairs Customer's ability to meet a MARC, AT&T will offer to adjust the affected MARC to reflect Customer's reduced usage of Services (with a corresponding adjustment to the prices, credits or discounts available at the reduced MARC level). If the parties reach agreement on a revised MARC, AT&T and Customer will amend the affected Pricing Schedule prospectively. This Section 4.7 will not apply to a change resulting from Customer's decision to use service providers other than AT&T. Customer will provide AT&T notice and evidence of the conditions Customer believes will require the application of this provision. This provision does not constitute a waiver of any charges, including monthly recurring charges and shortfall charges, Customer incurs prior to amendment of the affected Pricing Schedule.

(b) If Customer, through merger, consolidation, acquisition or otherwise, acquires a new business or operation, Customer and AT&T may agree in writing to include the new business or operation under this Agreement. Such agreement will specify the impact, if any, of such addition on Customer's MARC or other volume or growth discounts and on Customer's attainment thereof.

5. CONFIDENTIAL INFORMATION

5.1 **Confidential Information**. Confidential Information means: (a) information the parties or their Affiliates share with each other in connection with this Agreement or in anticipation of providing Services under this Agreement (including pricing or other proposals), but only to the extent identified as Confidential Information in writing; and (b) except as may be required by applicable law or regulation, the terms of this Agreement.

5.2 **Obligations**. A disclosing party's Confidential Information will, for a period of 3 years following its disclosure to the other party (except in the case of software, for which the period is indefinite): (a) not be disclosed, except to the receiving party's employees, agents and contractors having a need-to-know (but only if such agents and contractors are not direct competitors of the other party and agree in writing to use and disclosure restrictions as restrictive as this Section 5) or to the extent authorized to be revealed by law, governmental authority or legal process (but only if such disclosure is limited to that which is so authorized and prompt notice is provided to the disclosing party to the extent practicable and not prohibited by law, governmental authority or legal process); (b) be held in confidence; and (c) be used only for purposes of using the Services, evaluating proposals for new services or performing this Agreement (including in the case of AT&T to detect fraud, to check quality and to operate, maintain and repair the Services).

5.3 **Exceptions**. The restrictions in this Section 5 will not apply to any information that: (a) is independently developed by the receiving party without use of the disclosing party's Confidential Information; (b) is lawfully received by the receiving party free of any obligation to keep it confidential; or (c) becomes generally available to the public other than by breach of this Agreement.

5.4 **Privacy Laws**. Each party is responsible for complying with the privacy laws applicable to its business. If Customer does not want AT&T to comprehend Customer data to which it may have access in performing Services, Customer must encrypt such data so that it will be unintelligible. Customer is responsible for obtaining consent from and giving notice to its Users, employees and agents regarding AT&T's processing the User, employee or agent information in connection with providing Service. Unless otherwise directed by Customer in writing, if AT&T designates a dedicated account representative as Customer's primary contact with AT&T, Customer authorizes that representative to discuss and disclose Customer's customer proprietary network information to any employee or agent of Customer without a need for further authentication or authorization.

6. LIMITATIONS OF LIABILITY AND DISCLAIMERS

6.1 **Limitation of Liability.**

(a) EITHER PARTY'S ENTIRE LIABILITY AND THE OTHER PARTY'S EXCLUSIVE REMEDY FOR DAMAGES ON ACCOUNT OF ANY CLAIM ARISING OUT OF AND NOT DISCLAIMED UNDER THIS AGREEMENT SHALL BE:

(i) FOR BODILY INJURY, DEATH OR DAMAGE TO REAL PROPERTY OR TO TANGIBLE PERSONAL PROPERTY PROXIMATELY CAUSED BY A PARTY'S NEGLIGENCE, PROVEN DIRECT DAMAGES;

(ii) FOR BREACH OF SECTION 5 (Confidential Information), SECTION 10.1 (Publicity) OR SECTION 10.2 (Trademarks), PROVEN DIRECT DAMAGES;

(iii) FOR ANY THIRD-PARTY CLAIMS, THE REMEDIES AVAILABLE UNDER SECTION 7 (Third Party Claims);

(iv) FOR CLAIMS ARISING FROM THE OTHER PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, PROVEN DAMAGES; OR

(v) FOR CLAIMS OTHER THAN THOSE SET FORTH IN SECTION 6.1(a)(i)-(iv), PROVEN DIRECT DAMAGES NOT TO EXCEED, ON A PER CLAIM OR AGGREGATE BASIS DURING ANY TWELVE (12) MONTH PERIOD, AN AMOUNT EQUAL TO THE TOTAL NET CHARGES INCURRED BY CUSTOMER FOR THE AFFECTED SERVICE IN THE RELEVANT COUNTRY DURING THE THREE (3) MONTHS PRECEDING THE MONTH IN WHICH THE CLAIM AROSE.

(b) EXCEPT AS SET FORTH IN SECTION 7 (Third Party Claims) OR IN THE CASE OF A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, RELIANCE OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOST PROFITS, ADVANTAGE, SAVINGS OR REVENUES OR FOR INCREASED COST OF OPERATIONS.

(c) THE LIMITATIONS IN THIS SECTION 6.1 SHALL NOT LIMIT CUSTOMER'S RESPONSIBILITY FOR THE PAYMENT OF ALL PROPERLY DUE CHARGES UNDER THIS AGREEMENT.

6.2 **Disclaimer of Liability**. EXCEPT TO THE EXTENT CAUSED BY ITS GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, AT&T WILL NOT BE LIABLE FOR ANY DAMAGES ARISING OUT OF OR RELATING TO: INTEROPERABILITY, ACCESS OR INTERCONNECTION OF THE SERVICES WITH APPLICATIONS, DATA, EQUIPMENT, SERVICES, CONTENT OR NETWORKS PROVIDED BY CUSTOMER OR THIRD PARTIES; SERVICE DEFECTS, SERVICE LEVELS, DELAYS OR ANY SERVICE ERROR OR INTERRUPTION, INCLUDING INTERRUPTIONS OR ERRORS IN ROUTING OR COMPLETING ANY 911 OR OTHER EMERGENCY RESPONSE CALLS OR ANY OTHER CALLS OR TRANSMISSIONS, (EXCEPT FOR CREDITS EXPLICITLY SET FORTH IN THIS AGREEMENT); LOST OR ALTERED MESSAGES OR TRANSMISSIONS; OR UNAUTHORIZED ACCESS TO OR THEFT, ALTERATION, LOSS OR DESTRUCTION OF CUSTOMER'S (OR ITS AFFILIATES', USERS' OR THIRD PARTIES') APPLICATIONS, CONTENT, DATA, PROGRAMS, INFORMATION, NETWORKS OR SYSTEMS.

6.3 **Disclaimer of Warranties**. AT&T MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT AND SPECIFICALLY DISCLAIMS ANY WARRANTY ARISING BY USAGE OF TRADE OR BY COURSE OF DEALING. FURTHER, AT&T MAKES NO REPRESENTATION OR WARRANTY THAT TELEPHONE CALLS OR OTHER TRANSMISSIONS WILL BE ROUTED OR COMPLETED WITHOUT ERROR OR INTERRUPTION (INCLUDING CALLS TO 911 OR ANY SIMILAR EMERGENCY RESPONSE NUMBER) AND MAKES NO GUARANTEE REGARDING NETWORK SECURITY, THE ENCRYPTION EMPLOYED BY ANY SERVICE, THE INTEGRITY OF ANY DATA THAT IS SENT, BACKED UP, STORED OR SUBJECT TO LOAD BALANCING OR THAT AT&T'S SECURITY PROCEDURES WILL PREVENT THE LOSS OR ALTERATION OF OR IMPROPER ACCESS TO CUSTOMER'S DATA AND INFORMATION.

6.4 **Application and Survival**. The disclaimer of warranties and limitations of liability set forth in this Agreement will apply regardless of the form of action, whether in contract, equity, tort, strict liability or otherwise, of whether damages were foreseeable and of whether a party was advised of the possibility of such damages and will apply so as to limit the liability of each party and its Affiliates and their respective employees, directors, subcontractors and suppliers. The limitations of liability and disclaimers set out in this Section 6 will survive failure of any exclusive remedies provided in this Agreement.

7. THIRD PARTY CLAIMS

7.1 **AT&T's Obligations**. AT&T agrees at its expense to defend and either to settle any third-party claim against Customer, its Affiliates and its and their respective employees and directors or to pay all Damages that a court finally awards against such parties for a claim alleging that a Service provided to Customer under this Agreement infringes any patent, trademark, copyright or trade secret, but not where the claimed infringement arises out of or results from: (a) Customer's, its Affiliate's or a User's content; (b) modifications to the Service by Customer, its Affiliates or third parties, or combinations of the Service with any non-AT&T services or products; (c) AT&T's adherence to Customer's or its Affiliate's written requirements; or (d) use of a Service in violation of this Agreement.

7.2 **Customer's Obligations**. Customer agrees at its expense to defend and either to settle any third-party claim against AT&T, its Affiliates and its and their respective employees, directors, subcontractors and suppliers or to pay all Damages that a court finally awards against such parties for a claim that: (a) arises out of Customer's, its Affiliate's or a User's access to or use of the Services and the claim is not the responsibility of AT&T under Section 7.1; (b) alleges that a Service infringes any patent, trademark, copyright or trade secret and falls within the exceptions in Section 7.1; or (c) alleges a breach by Customer, its Affiliates or Users of a software license agreement governing software provided in connection with the Services.

7.3 **Infringing Services**. Whenever AT&T is liable under Section 7.1, AT&T may at its option either procure the right for Customer to continue using, or may replace or modify, the Service so that it is non-infringing.

7.4 **Notice and Cooperation**. The party seeking defense or settlement of a third-party claim under this Section 7 will provide notice to the other party promptly upon learning of any claim for which defense or settlement may be sought, but failure to do so will have no effect except to the extent the other party is prejudiced by the delay. The party seeking defense or settlement will allow the other party to control the defense and settlement of the claim and will reasonably cooperate with the defense. The defending party will use counsel reasonably experienced in the subject matter at issue and will not settle a claim without the written consent of the party being defended, which consent will not be unreasonably withheld or delayed, except that no consent will be required to settle a claim where relief against the party being defended is limited to monetary damages that are paid by the defending party under this Section 7.

8. SUSPENSION AND TERMINATION

8.1 **Termination of Agreement**. This Agreement may be terminated immediately upon notice by either party if the other party becomes insolvent, ceases operations, is the subject of a bankruptcy petition, enters receivership or any state insolvency proceeding or makes an assignment for the benefit of its creditors.

8.2 **Termination or Suspension of Services**. The following additional termination provisions apply:

(a) **Material Breach**. If either party fails to perform or observe any material term or condition of this Agreement, including non-payment of charges, and such failure continues unremedied for 30 days after receipt of receipt of notice, the aggrieved party may terminate the affected Service Components and, if the breach implicates the entire Agreement, terminate the entire Agreement. If Customer is in breach, AT&T may elect to suspend (and later terminate) the affected Service Components and, if the breach implicates the entire Agreement, suspend (and later terminate) the entire Agreement.

(b) **Materially Adverse Impact**. If AT&T revises a Service Publication, the revision has a materially adverse impact on Customer and AT&T does not effect revisions that remedy such materially adverse impact within 30 days after notice from Customer, then Customer may, as Customer's sole remedy, elect to terminate the affected Service Components on 30 days' notice to AT&T, given not later than 90 days after Customer first learns of the revision to the Service Publication. "Materially adverse impacts" do not include changes to non-stabilized pricing, changes required by governmental authority, or assessment of or changes to additional charges such as surcharges or taxes.

(c) **Internet Services**. If Customer fails to rectify a violation of the AUP within 5 days after receiving notice from AT&T, AT&T may suspend the affected Service Components. AT&T reserves the right, however, to suspend or terminate immediately when: (i) AT&T's suspension or termination is in response to multiple or repeated AUP violations or complaints; (ii) AT&T is acting in response to a court order or governmental notice that certain conduct must be stopped; or (iii) AT&T reasonably determines that (a) it may be exposed to sanctions, liability, prosecution or other adverse consequences under applicable law if AT&T were to allow the violation to continue; (b) such violation may harm or interfere with the integrity, normal operations or security of AT&T's network or networks with which AT&T is

interconnected or may interfere with another customer's use of AT&T services or the Internet; or (c) such violation otherwise presents an imminent risk of harm to AT&T, AT&T's customers or its or their respective employees.

(d) **Fraud or Abuse**. AT&T may terminate or suspend an affected Service or Service Component and, if the activity implicates the entire Agreement, terminate or suspend the entire Agreement, immediately by providing Customer with as much advance notice as is reasonably practicable under the circumstances if Customer: (i) commits a fraud upon AT&T; (ii) uses the Service to commit a fraud upon another party; (iii) unlawfully uses the Service; (iv) abuses or misuses AT&T's network or Service; or (v) interferes with another customer's use of AT&T's network or services.

(e) **Infringing Services**. If the options described in Section 7.3 (Infringing Services) are not reasonably available, AT&T may at its option terminate the affected Services or Service Components without liability other than as stated in Section 7.1 (AT&T's Obligations).

(f) **Hazardous Materials**. If AT&T encounters any Hazardous Materials at the Site, AT&T may terminate the affected Services or Service Components or may suspend performance until Customer removes and remediates the Hazardous Materials at Customer's expense in accordance with applicable law.

8.3 **Effect of Termination**.

(a) Termination or suspension by either party of a Service or Service Component does not waive any other rights or remedies a party may have under this Agreement and will not affect the rights and obligations of the parties regarding any other Service or Service Component.

(b) If a Service or Service Component is terminated, Customer will pay all amounts incurred prior to the effective date of termination.

8.4 **Termination Charges**.

(a) If Customer terminates this Agreement or an affected Service or Service Component for cause in accordance with the Agreement or if AT&T terminates a Service or Service Component other than for cause, Customer will not be liable for the termination charges set forth in this Section 8.4.

(b) If Customer terminates a Service or Service Component prior to Cutover other than as set forth in Section 8.4(a), Customer (i) will pay any termination or cancellation charges set out in a Pricing Schedule or Service Publication, or (ii) in the absence of such specified charges, will reimburse AT&T for time and materials incurred prior to the effective date of termination, plus any third party charges resulting from the termination.

(c) If Customer terminates a Service or Service Component after Cutover other than as set forth in Section 8.4(a) or if AT&T terminates a Service or Service Component for cause, Customer will pay applicable termination charges as follows: (i) 50% (unless a different percentage is specified in the Pricing Schedule) of the monthly recurring charges for the terminated Service or Service Component multiplied by the months remaining in an applicable Minimum Payment Period; (ii) if termination occurs before the end of an applicable Minimum Retention Period, any associated waived or unpaid non-recurring charges; and (iii) any charges incurred by AT&T from a third party (*i.e.*, not an AT&T Affiliate) due to the termination. The charges set forth in Sections 8.4(c)(i) and (ii) will not apply if a terminated Service Component is replaced with an upgraded Service Component at the same Site, but only if the Minimum Payment Period or Minimum Retention Period, as applicable, (the "Minimum Period") and associated charge for the replacement Service Component are equal to or greater than the corresponding Minimum Period and associated charge for the terminated Service Component, respectively, and if the upgrade is not restricted in the applicable Service Publication.

(d) In addition, if Customer terminates a Pricing Schedule that has a MARC, Customer will pay an amount equal to 50% of the unsatisfied MARC for the balance of the Pricing Schedule Term.

9. IMPORT/EXPORT CONTROL

Neither party will use, distribute, transfer or transmit any equipment, services, software or technical information provided under this Agreement (even if incorporated into other products) except in compliance with all applicable import and export laws, conventions and regulations.

10. MISCELLANEOUS PROVISIONS

10.1 **Publicity**. Neither party may issue any public statements or announcements relating to the terms of this Agreement or to the provision of Services without the prior written consent of the other party.

10.2 **Trademarks**. Each party agrees not to display or use, in advertising or otherwise, any of the other party's trade names, logos, trademarks, service marks or other indicia of origin without the other party's prior written consent, which consent may be revoked at any time by notice.

10.3 **Force Majeure**. Except for payment of amounts due, neither party will be liable for any delay, failure in performance, loss or damage due to fire, explosion, cable cuts, power blackout, earthquake, flood, strike, embargo, labor disputes, acts of civil or military authority, war, terrorism, acts of God, acts of a public enemy, acts or omissions of carriers or suppliers, acts of regulatory or governmental agencies or other causes beyond such party's reasonable control.

10.4 **Amendments and Waivers**. Any supplement to or modification or waiver of any provision of this Agreement must be in writing and signed by authorized representatives of both parties. A waiver by either party of any breach of this Agreement will not operate as a waiver of any other breach of this Agreement.

10.5 **Assignment and Subcontracting**.

(a) Customer may, without AT&T's consent but upon notice to AT&T, assign in whole or relevant part its rights and obligations under this Agreement to a Customer Affiliate. AT&T may, without Customer's consent, assign in whole or relevant part its rights and obligations under this Agreement to an AT&T Affiliate. In no other case may this Agreement be assigned by either party without the prior written consent of the other party (which consent will not be unreasonably withheld or delayed). In the case of any assignment, the assigning party shall remain financially responsible for the performance of the assigned obligations.

(b) AT&T may subcontract to an Affiliate or a third party work to be performed under this Agreement but will remain financially responsible for the performance of such obligations.

(c) In countries where AT&T does not have an Affiliate to provide a Service, AT&T may assign its rights and obligations related to such Service to a local service provider, but AT&T will remain responsible to Customer for such obligations. In certain countries, Customer may be required to contract directly with the local service provider.

10.6 **Severability**. If any portion of this Agreement is found to be invalid or unenforceable or if, notwithstanding Section 10.10 (Governing Law), applicable law mandates a different interpretation or result, the remaining provisions will remain in effect and the parties will negotiate in good faith to substitute for such invalid, illegal or unenforceable provision a mutually acceptable provision consistent with the original intention of the parties.

10.7 **Injunctive Relief**. Nothing in this Agreement is intended to or should be construed to prohibit a party from seeking preliminary or permanent injunctive relief in appropriate circumstances from a court of competent jurisdiction.

10.8 **Legal Action**. Any legal action arising in connection with this Agreement must be filed within 2 years after the cause of action accrues, or it will be deemed time-barred and waived. The parties waive any statute of limitations to the contrary.

10.9 **Notices**. Any required notices under this Agreement shall be in writing and shall be deemed validly delivered if made by hand (in which case delivery will be deemed to have been effected immediately), or by overnight mail (in which case delivery will be deemed to have been effected one (1) business day after the date of mailing), or by first class pre-paid post (in which case delivery will be deemed to have been effected five (5) days after the date of posting), or by facsimile or electronic transmission (in which case delivery will be deemed to have been effected on the day the transmission was sent). Any such notice shall be sent to the office of the recipient set forth on the cover page of this Agreement or to such other office or recipient as designated in writing from time to time.

10.10 **Governing Law**. This Agreement will be governed by the law of the State of New York, without regard to its conflict of law principles, unless a regulatory agency with jurisdiction over the applicable Service applies a different law. The United Nations Convention on Contracts for International Sale of Goods will not apply.

10.11 **Compliance with Laws**. Each party will comply with all applicable laws and regulations and with all applicable orders issued by courts or other governmental bodies of competent jurisdiction.

10.12 **No Third Party Beneficiaries**. This Agreement is for the benefit of Customer and AT&T and does not provide any third party (including Users) the right to enforce it or to bring an action for any remedy, claim, liability, reimbursement or cause of action or any other right or privilege.

10.13 **Survival**. The respective obligations of Customer and AT&T that by their nature would continue beyond the termination or expiration of this Agreement, including the obligations set forth in Section 5 (Confidential Information), Section 6 (Limitations of Liability and Disclaimers) and Section 7 (Third Party Claims), will survive such termination or expiration.

10.14 **Agreement Language**. The language of this Agreement is English. If there is a conflict between this Agreement and any translation, the English version will take precedence.

10.15 **Entire Agreement**. This Agreement constitutes the entire agreement between the parties with respect to its subject matter. Except as provided in Section 2.3 (Software), this Agreement supersedes all other agreements, proposals, representations, statements and understandings, whether written or oral, concerning the Services or the rights and obligations relating to the Services, and the parties disclaim any reliance thereon. This Agreement will not be modified or supplemented by any written or oral statements, proposals, representations, advertisements, service descriptions or purchase order forms not expressly set forth in this Agreement.

11. DEFINITIONS

"**Affiliate**" of a party means any entity that controls, is controlled by or is under common control with such party.

"**Cutover**" means the date Customer's obligation to pay for Services begins.

"**Damages**" means collectively all injury, damage, liability, loss, penalty, interest and expense incurred.

"Effective Date" of a Pricing Schedule means the date on which the last party signs the Pricing Schedule unless a later date is required by regulation or law.

"**MARC-Eligible Charges**" means the recurring and usage charges (including amounts owed under Section 8.4(c)(i)), after deducting applicable discounts and credits (other than outage or SLA credits), that AT&T charges Customer for the Services identified in the applicable Pricing Schedule as MARC-contributing. The following are not MARC-Eligible Charges: (a) charges for or in connection with Customer's purchase of equipment; (b) taxes; and (c) charges imposed in connection with governmentally imposed costs or fees (such as USF, PICC, payphone service provider compensation, E911 and deaf relay charges).

"**Minimum Payment Period**" means the Minimum Payment Period identified for a Service Component in a Pricing Schedule or Service Publication during which Customer is required to pay recurring charges for the Service Component.

"Minimum Retention Period" means the Minimum Retention Period identified for a Service Component in a Pricing Schedule or Service Publication during which Customer is required to maintain service to avoid the payment (or repayment) of certain credits, waived charges or amortized charges.

"**Service Component**" means an individual component of a Service provided under this Agreement.

"Service Publications" means Tariffs, Guidebooks, Service Guides and the AUP.

"**Site**" means Customer's physical location, including Customer's collocation space on AT&T's or its Affiliate's or subcontractor's property, where AT&T installs or provides a Service.

Exhibit H

City Agency and Departments

EXHIBIT H

CITY AGENCIES AND DEPARTMENTS

CCSF-ADMIN SVCS
CCSF-ADULT & AGING
CCSF-ADULT PROBATION
CCSF-ANIMAL CARE
CCSF-ART COMMISSION
CCSF-ASIAN ART
CCSF-ASSESSOR/RECORDER
CCSF-BOARD OF SUPERVISORS
CCSF-BUILDING INSPEC
CCSF-CHILD SUPPORT SVCS
CCSF-CHILDREN, YOUTH & FAMILIES
CCSF-CITY ATTORNEY
CCSF CIVIL SERVICE COMMISSION
CCSF-CITY PLANNING
CCSF-CONVENTION FACILITIES
CCSF-CONTROLLER
CCSF-DISTRICT ATTORNEY
CCSF-PUBLIC HEALTH
CCSF-ECONOMIC DEVLPMT
CCSF-ELECTIONS
CCSF-EMERGENCY COMMO
CCSF-ENTERTAINMENT COMMISSION
CCSF-ENVIRONMENT

CCSF-ETHICS COMM
CCSF-FIRE
CCSF-HETCH HETCHY
CCSF-HUMAN RESOURCES
CCSF-HUMAN RIGHTS COMM
CCSF-HUMAN SERVICES
CCSF-JUVENILE PROBATION
CCSF-LAGUNA HONDA HOSPITAL
CCSF-LAW LIBRARY
CCSF-LIBRARY
CCSF-LIGHT, HEAT & POWER
CCSF-MAYOR
CCSF-MEDICAL EXAMINER
CCSF-MENTAL HEALTH
CCSF-MUNI
CCSF-REC & PARK
CCSF-PARKING & TRAFFIC
CCSF-PERMIT APPEALS
CCSF-POLICE
CCSF-PORT COMMISSION
CCSF-PUBLIC ADMIN/GUARDIAN
CCSF-PUBL DEFENDER
CCSF-PUBL UTIL COMM
CCSF PUBLIC WORKS
CCSF-PURCHASING
CCSF-REAL ESTATE

CCSF-REDEVELOPMENT AGENCY
CCSF RENT BOARD
CCSF RETIREMENT
CCSF-SAN FRAN GENERAL
CCSF SHERIFF
CCSF-STATUS OF WOMEN
CCSF-TAXICAB COMM
CCSF-TECHNOLOGY
CCSF-TREAS TAX COLL
CCSF-TRIAL COURTS
CCSF-WAR MEMORIAL
CCSF-WATER
CCSF-SAN FRANCISCO AIRPORT

Exhibit I

AT&T Affiliates

AT&T Corp. for Long Distance Data Services, AT&T Local Network Services Voice DNA , Local Frame Relay, ATM, Customer Network Management Service (CNMS), DSL Access to Frame Relay Option), AT&T Audio Conference Services, AT&T Video Conference Services, AT&T Web Conference Services, Managed Router Solutions, Frame Relay and ATM

AT&T DataComm, Inc., formerly known as SBC DataComm, Inc., for cable, wiring, and CPE

AT&T Mobility National Accounts, LLC, d/b/a AT&T Mobility for wireless services

Pacific Bell Telephone Company, d/b/a AT&T California and d/b/a AT&T DataComm, for local voice service, data service, cable and wiring

Pacific Bell Information Services, d/b/a AT&T Messaging, for Voice Messaging, Enterprise Messaging Service (EMS) and IVR in California

SBC Advanced Solutions, Inc., now know as AT&T Corp., d/b/a AT&T Advanced Solutions for Frame Relay and ATM

SBC Global Services, Inc., d/b/a AT&T Global Services

SBC Long Distance, LLC, d/b/a/ AT&T Long Distance and formerly known as SBC Long Distance, Inc. for Inter and Intrastate Data Service

20130313-2397

NON MA

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

First Amendment

THIS AMENDMENT (this "Amendment") is made as of April 26, 2013, in San Francisco, California, by and between: AT&T Corp. for itself and on behalf of its Affiliates ("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 update a form attached to the master agreement:

WHEREAS, approval for this Amendment was obtained when the Civil Service Commission approved Contract number 4070-09/10 on December 21, 2009;

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

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

a. **Agreement.** The term "Agreement" shall mean the Agreement dated February 6, 2010 between Contractor and City.

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

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

a. **Exhibit G.** Exhibit G is hereby replaced in its entirety with the Exhibit G attached hereto.

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

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

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

CITY

Recommended by:

Kenneth Bukowski
Acting Chief Information Officer
Director, Department of Technology

CONTRACTOR

AT&T Corp.

3/13/2013

City vendor number: 14037

Approved as to Form:

Dennis J. Herrera
City Attorney

By:
Margarita Gutierrez
Deputy City Attorney

Approved:

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

AT&T MA Reference No.

at&t

MASTER SERVICES AGREEMENT

Customer	AT&T
Customer Legal Name Street Address: City: State/Province: Zip Code: Country:	AT&T Corp. or enter the International Affiliate Name
Customer Contact (for notices)	**AT&T Contact (for notices)**
Name: Title: Street Address: City: State/Province: Zip Code: Country: Telephone: Fax: Email:	Street Address: City: State/Province: Zip Code: Country: With a copy to: AT&T Corp. One AT&T Way Bedminster, NJ 07921-0752 ATTN: MSA Support Team Email: mast@att.com

This Master Services Agreement ("MSA"), between the customer named above ("Customer") and the AT&T entity named above ("AT&T"), is part of the Agreement between the City and County of San Francisco and AT&T Corp. made February 26, 2010 ("Master") and is effective when signed by both Customer and AT&T.

Customer (by its authorized representative)	AT&T (by its authorized representative)
By:	By:
Name:	Name:
Title:	Title:
Date:	Date:

Approved as to Form:
Dennis J. Herrera
City Attorney

By: _____
[name of Deputy City Attorney]
Deputy City Attorney

1. INTRODUCTION

1.1 **Overview of Documents.** This MSA and the following additional documents (collectively, the "Agreement") shall apply to all services and equipment AT&T provides Customer pursuant to this Agreement ("Services") and shall continue in effect so long as Services are provided under this Agreement:

(a) **Pricing Schedules.** A "Pricing Schedule" means a pricing schedule (including related attachments) or other document that is attached to or is later executed by the parties and references this MSA. A Pricing Schedule includes the Services, the pricing (including discounts and commitments, if applicable) and the pricing schedule term ("Pricing Schedule Term").

(b) **Tariffs and Guidebooks.** "Tariffs" are documents containing the descriptions, pricing and other terms and conditions for a Service that AT&T or its Affiliates file with regulatory authorities. "Guidebooks" are documents (designated as Guidebooks or Price Lists) containing the descriptions, pricing and other terms and conditions for a Service that were but no longer are filed with regulatory authorities. Tariffs and Guidebooks can be found at att.com/servicepublications or other locations AT&T may designate.

(c) **Acceptable Use Policy.** AT&T's Acceptable Use Policy ("AUP") applies to Customer's and Users' use of (i) Services provided over or accessing the Internet and (ii) wireless (*i.e.*, cellular) data and messaging Services. The AUP can be found at att.com/aup or other locations AT&T may designate.

(d) **Service Guides.** The descriptions, pricing and other terms and conditions for a Service not covered by a Tariff or Guidebook may be contained in a Service Guide, which can be found at att.com/servicepublications or other locations AT&T may designate.

1.2 **Priority of Documents.** The order of priority of the documents that form this Agreement is: Pricing Schedules; this MSA; the Master; the AUP; and Tariffs, Guidebooks and Service Guides; provided that, Tariffs will be first in priority in any jurisdiction where applicable law or regulation does not permit contract terms to take precedence over inconsistent Tariff terms.

1.3 **Revisions to Documents.** Subject to Section 8.2(a) (Materially Adverse Impact), AT&T may revise Service Publications at any time.

1.4 **Execution by Affiliates.** An AT&T Affiliate or Customer Affiliate may sign a Pricing Schedule in its own name, and such Affiliate contract will be a separate but associated contract incorporating the terms of this Agreement. Customer and AT&T will cause their respective Affiliates to comply with any such separate and associated contract.

2. AT&T DELIVERABLES

2.1 **Services.** AT&T will either provide or arrange to have an AT&T Affiliate provide Services to Customer, subject to the availability and operational limitations of systems, facilities and equipment. Where required, an AT&T Affiliate authorized by the appropriate regulatory authority will be the service provider.

2.2 **AT&T Equipment.** See Section 13 of the Master.

2.3 **Software.** Any software that AT&T furnishes to Customer will be governed by the written terms and conditions applicable to such software. Title to such software remains with AT&T or its supplier. Customer must comply with all such terms and conditions, and they take precedence over this Agreement as to such software.

3. CUSTOMER'S COOPERATION

3.1 **Access Right.** Customer will allow AT&T access to property and equipment that Customer controls as reasonably required by AT&T for the Services. In addition, if Customer does not obtain at Customer's expense timely access reasonably required by AT&T to property that Customer does not control (other than public property), AT&T may delay or terminate the Service Components dependent upon such access and may recover any applicable termination charges. Access rights mean the right to construct, install, repair, maintain, replace and remove access lines and network facilities and the right to use ancillary equipment space within a building for Customer's connection to AT&T's network. Customer must provide AT&T timely information and access to Customer's facilities and equipment as AT&T reasonably requires for the Services, subject to Customer's reasonable security policies. Customer will furnish any conduit, holes, wireways, wiring, plans, equipment, space, power/utilities and other items as AT&T reasonably requires for the Services and will obtain any necessary licenses, permits and consents (including easements and rights-of-way). Customer will have the Site ready for AT&T to perform its work according to a mutually agreed schedule.

3.2 **Safe Working Environment.** See Section 61 of the Master.

3.3 **Users.** "User" means anyone who uses or accesses any Service provided to Customer. Customer will cause Users to comply with this Agreement and is responsible for Users' use of any Service unless expressly provided to the contrary in an applicable Service Publication.

3.4 **Resale of Services.** See Section 62 of the Master.

4. **PRICING AND BILLING**

4.1 **Pricing and Pricing Schedule Term; Terms Applicable After End of Pricing Schedule Term.** The prices listed in a Pricing Schedule are stabilized until the end of the Pricing Schedule Term and will apply in lieu of the corresponding prices set forth in the applicable Service Publication. No promotion, credit or waiver set forth in a Service Publication will apply. At the end of the Pricing Schedule Term, Customer may continue Service (subject to any applicable notice or other requirements in a Service Publication to terminate a Service Component) under a month-to-month service arrangement at the prices, terms and conditions in effect on the last day of the Pricing Schedule Term. AT&T may change such prices, terms or conditions on 30 days' prior notice to Customer.

4.2 **Additional Charges and Taxes.** See Section 10 of the Master.

4.3 **Billing.**

Unless a Service Publication specifies otherwise, Customer's obligation to pay for a Service Component begins upon availability of the Service Component to Customer. At Customer's request, but subject to AT&T's consent (which may not be unreasonably withheld or withdrawn), Customer's Affiliates may be invoiced separately, and AT&T will accept payment from such Affiliates. Customer will be responsible for payment if Customer's Affiliates do not pay charges in accordance with this Agreement. AT&T may require Customer or its Affiliates to tender a deposit if AT&T determines, in its reasonable judgment, that Customer or its Affiliates are not creditworthy, and AT&T may apply such deposit to any charges owed.

4.4 **Payments.** Payment is due within 30 days after the date of the invoice (unless another date is specified in an applicable Tariff or Guidebook) and must refer to the invoice number. Charges must be paid in the currency specified in the invoice. Restrictive endorsements or other statements on checks are void. Customer will reimburse AT&T for all costs associated with collecting delinquent or dishonored payments, including reasonable attorneys' fees.

4.5 **Delayed Billing; Disputed Charges.** Customer will not be required to pay charges for Services invoiced more than 6 months after close of the billing period in which the charges were incurred, except for calls assisted by an automated or live operator. If Customer disputes a charge, Customer will provide notice to AT&T specifically identifying the charge and the reason it is disputed within 6 months after the date of the affected invoice, or Customer waives the right to dispute the charge. The portion of charges in dispute may be withheld until AT&T completes its investigation of the dispute. If disputed charges are withheld, Customer will incur late payment fees commencing on the due date of the original invoice in accordance with Section 4.4 (Payments) except to the extent that the parties agree or a court or regulatory authority determines that the disputed charges were invoiced in error.

4.6 **MARC.** Minimum Annual Revenue Commitment ("MARC") means an annual revenue commitment set forth in a Pricing Schedule that Customer agrees to satisfy during each 12-consecutive-month period of the Pricing Schedule Term. If Customer fails to satisfy the MARC for any such 12-month period, Customer will be invoiced a shortfall charge in an amount equal to the difference between the MARC and the total of the applicable MARC-Eligible Charges incurred during such 12-month period, and AT&T may withhold contractual credits until Customer pays the shortfall charge.

4.7 **Adjustments to MARC.**

(a) In the event of a business downturn beyond Customer's control, or a corporate divestiture, merger, acquisition or significant restructuring or reorganization of Customer's business, or network optimization using other Services, or a reduction of AT&T's prices, or a force majeure event, any of which significantly impairs Customer's ability to meet a MARC, AT&T will offer to adjust the affected MARC to reflect Customer's reduced usage of Services (with a corresponding adjustment to the prices, credits or discounts available at the reduced MARC level). If the parties reach agreement on a revised MARC, AT&T and Customer will amend the affected Pricing Schedule prospectively. This Section 4.7 will not apply to a change resulting from Customer's decision to use service providers other than AT&T. Customer will provide AT&T notice and evidence of the conditions Customer believes will require the application of this

provision. This provision does not constitute a waiver of any charges, including monthly recurring charges and shortfall charges, Customer incurs prior to amendment of the affected Pricing Schedule.

(b) If Customer, through merger, consolidation, acquisition or otherwise, acquires a new business or operation, Customer and AT&T may agree in writing to include the new business or operation under this Agreement. Such agreement will specify the impact, if any, of such addition on Customer's MARC or other volume or growth discounts and on Customer's attainment thereof.

5. **CONFIDENTIAL INFORMATION.** See Section 23 of the Master.

6. **LIMITATIONS OF LIABILITY AND DISCLAIMERS**

6.1 **Limitation of Liability.** See Section 17 of the Master.

6.2 **Disclaimer of Liability.** EXCEPT TO THE EXTENT CAUSED BY ITS GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, AT&T WILL NOT BE LIABLE FOR ANY DAMAGES ARISING OUT OF OR RELATING TO: INTEROPERABILITY, ACCESS OR INTERCONNECTION OF THE SERVICES WITH APPLICATIONS, DATA, EQUIPMENT, SERVICES, CONTENT OR NETWORKS PROVIDED BY CUSTOMER OR THIRD PARTIES; SERVICE DEFECTS, SERVICE LEVELS, DELAYS OR ANY SERVICE ERROR OR INTERRUPTION, INCLUDING INTERRUPTIONS OR ERRORS IN ROUTING OR COMPLETING ANY 911 OR OTHER EMERGENCY RESPONSE CALLS OR ANY OTHER CALLS OR TRANSMISSIONS, (EXCEPT FOR CREDITS EXPLICITLY SET FORTH IN THIS AGREEMENT); LOST OR ALTERED MESSAGES OR TRANSMISSIONS; OR UNAUTHORIZED ACCESS TO OR THEFT, ALTERATION, LOSS OR DESTRUCTION OF CUSTOMER'S (OR ITS AFFILIATES', USERS' OR THIRD PARTIES') APPLICATIONS, CONTENT, DATA, PROGRAMS, INFORMATION, NETWORKS OR SYSTEMS.

6.3 **Disclaimer of Warranties.** AT&T MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT AND SPECIFICALLY DISCLAIMS ANY WARRANTY ARISING BY USAGE OF TRADE OR BY COURSE OF DEALING. FURTHER, AT&T MAKES NO REPRESENTATION OR WARRANTY THAT TELEPHONE CALLS OR OTHER TRANSMISSIONS WILL BE ROUTED OR COMPLETED WITHOUT ERROR OR INTERRUPTION (INCLUDING CALLS TO 911 OR ANY SIMILAR EMERGENCY RESPONSE NUMBER) AND MAKES NO GUARANTEE REGARDING NETWORK SECURITY, THE ENCRYPTION EMPLOYED BY ANY SERVICE, THE INTEGRITY OF ANY DATA THAT IS SENT, BACKED UP, STORED OR SUBJECT TO LOAD BALANCING OR THAT AT&T'S SECURITY PROCEDURES WILL PREVENT THE LOSS OR ALTERATION OF OR IMPROPER ACCESS TO CUSTOMER'S DATA AND INFORMATION.

6.4 **Application and Survival.** The disclaimer of warranties and limitations of liability set forth in this Agreement will apply regardless of the form of action, whether in contract, equity, tort, strict liability or otherwise, of whether damages were foreseeable and of whether a party was advised of the possibility of such damages and will apply so as to limit the liability of each party and its Affiliates and their respective employees, directors, subcontractors and suppliers. The limitations of liability and disclaimers set out in this Section 6 will survive failure of any exclusive remedies provided in this Agreement.

7. **THIRD PARTY CLAIMS**

7.1 **Reciprocal Indemnification.** See Section 16 of the Master.

7.2 **Patent, Trademark, Copyright or Trade Secret Infringement.** The following provisions apply:

(a) **AT&T's Obligations.** AT&T agrees at its expense to defend and either to settle any third-party claim against Customer, its Affiliates and its and their respective employees and directors or to pay all Damages that a court finally awards against such parties for a claim alleging that a Service provided to Customer under this Agreement infringes any patent, trademark, copyright or trade secret, but not where the claimed infringement arises out of or results from: (a) Customer's, its Affiliate's or a User's content; (b) modifications to the Service by Customer, its Affiliates or third parties, or combinations of the Service with any non-AT&T services or products; (c) AT&T's adherence to Customer's or its Affiliate's written requirements; or (d) use of a Service in violation of this Agreement.

(b) **Customer's Obligations.** Customer agrees at its expense to defend and either to settle any third-party claim against AT&T, its Affiliates and its and their respective employees, directors, subcontractors and suppliers or to pay all Damages that a court finally awards against such parties for a claim that: (a) arises out of Customer's, its Affiliate's or a User's access to or use of the Services and the claim is not the responsibility of AT&T under Section 7.2; (b) alleges

that a Service infringes any patent, trademark, copyright or trade secret and falls within the exceptions in Section 7.2; or (c) alleges a breach by Customer, its Affiliates or Users of a software license agreement governing software provided in connection with the Services.

(c) **Infringing Services.** Whenever AT&T is liable under Section 7.2(a), AT&T may at its option either procure the right for Customer to continue using, or may replace or modify, the Service so that it is non-infringing.

7.3 **Notice and Cooperation.** The party seeking defense or settlement of a third-party claim under this Section 7 will provide notice to the other party promptly upon learning of any claim for which defense or settlement may be sought, but failure to do so will have no effect except to the extent the other party is prejudiced by the delay. The party seeking defense or settlement will allow the other party to control the defense and settlement of the claim and will reasonably cooperate with the defense. The defending party will use counsel reasonably experienced in the subject matter at issue and will not settle a claim without the written consent of the party being defended, which consent will not be unreasonably withheld or delayed, except that no consent will be required to settle a claim where relief against the party being defended is limited to monetary damages that are paid by the defending party under this Section 7.

8. SUSPENSION AND TERMINATION

8.1 **Termination of Agreement.** See Sections 19.a.3 and 4 of the Master.

8.2 **Termination or Suspension of Services.** The following additional termination provisions apply:

(a) **Material Breach.** either party fails to perform or observe any material term or condition of this Agreement, including non-payment of charges, and such failure continues unremedied for 30 days after receipt of receipt of notice, the aggrieved party may terminate the affected Service Components and, if the breach implicates the entire Agreement, terminate the entire Agreement. If Customer is in breach, AT&T may elect to suspend (and later terminate) the affected Service Components and, if the breach implicates the entire Agreement, suspend (and later terminate) the entire Agreement.

(b) **Materially Adverse Impact.** If AT&T revises a Service Publication, the revision has a materially adverse impact on Customer and AT&T does not effect revisions that remedy such materially adverse impact within 30 days after notice from Customer, then Customer may, as Customer's sole remedy, elect to terminate the affected Service Components on 30 days' notice to AT&T, given not later than 90 days after Customer first learns of the revision to the Service Publication. "Materially adverse impacts" do not include changes to non-stabilized pricing, changes required by governmental authority, or assessment of or changes to additional charges such as surcharges or taxes.

(c) **Internet Services.** If Customer fails to rectify a violation of the AUP within 5 days after receiving notice from AT&T, AT&T may suspend the affected Service Components. AT&T reserves the right, however, to suspend or terminate immediately when: (i) AT&T's suspension or termination is in response to multiple or repeated AUP violations or complaints; (ii) AT&T is acting in response to a court order or governmental notice that certain conduct must be stopped; or (iii) AT&T reasonably determines that (a) it may be exposed to sanctions, liability, prosecution or other adverse consequences under applicable law if AT&T were to allow the violation to continue; (b) such violation may harm or interfere with the integrity, normal operations or security of AT&T's network or networks with which AT&T is interconnected or may interfere with another customer's use of AT&T services or the Internet; or (c) such violation otherwise presents an imminent risk of harm to AT&T, AT&T's customers or its or their respective employees.

(d) **Fraud or Abuse.** See Section 19.A.5 of the Master.

(e) **Infringing Services.** If the options described in Section 7.2(c) (Infringing Services) are not reasonably available, AT&T may at its option terminate the affected Services or Service Components without liability other than as stated in Section 7.2(a).

(f) **Hazardous Materials.** See Section 61 of Master.

8.3 **Effect of Termination.**

(a) See Section 19.c of the Master.

(b) If a Service or Service Component is terminated, Customer will pay all amounts incurred prior to the effective date of termination.

8.4 **Termination Charges.**

(a) If Customer terminates this Agreement or an affected Service or Service Component for cause in accordance with the Agreement or if AT&T terminates a Service or Service Component other than for cause, Customer will not be liable for the termination charges set forth in this Section 8.4.

(b) If Customer terminates a Service or Service Component prior to Cutover other than as set forth in Section 8.4(a), Customer will reimburse AT&T for time and materials incurred prior to the effective date of termination, plus any third party charges resulting from the termination.

(c) Except as specifically set forth to the contrary in an approved Pricing Schedule, if Customer terminates a Service or Service Component after Cutover other than as set forth in Section 8.4(a) or if AT&T terminates a Service or Service Component for cause, Customer will pay applicable termination charges as follows: (i) 50% (unless a different percentage is specified in the Pricing Schedule) of the monthly recurring charges for the terminated Service or Service Component multiplied by the months remaining in an applicable Minimum Payment Period; (ii) if termination occurs before the end of an applicable Minimum Retention Period, any associated waived or unpaid non-recurring charges; and (iii) any charges incurred by AT&T from a third party (*i.e.*, not an AT&T Affiliate) due to the termination. The charges set forth in Sections 8.4(c)(i) and (ii) will not apply if a terminated Service Component is replaced with an upgraded Service Component at the same Site, but only if the Minimum Payment Period or Minimum Retention Period, as applicable, (the "Minimum Period") and associated charge for the replacement Service Component are equal to or greater than the corresponding Minimum Period and associated charge for the terminated Service Component, respectively, and if the upgrade is not restricted in the applicable Service Publication.

(d) In addition, if Customer terminates a Pricing Schedule that has a MARC, Customer will pay an amount equal to 50% of the unsatisfied MARC for the balance of the Pricing Schedule Term.

9. **IMPORT/EXPORT CONTROL**

Neither party will use, distribute, transfer or transmit any equipment, services, software or technical information provided under this Agreement (even if incorporated into other products) except in compliance with all applicable import and export laws, conventions and regulations.

10. **MISCELLANEOUS PROVISIONS**

10.1 **Publicity.** Neither party may issue any public statements or announcements relating to the terms of this Agreement or to the provision of Services without the prior written consent of the other party.

10.2 **Trademarks.** See Section 63 of the Master.

10.3 **Force Majeure.** See Section 6 of the Master.

10.4 **Amendments and Waivers.** See Sections 30 and 47 of the Master.

10.5 **Assignment and Subcontracting.** See Section 29 of the Master, provided that AT&T may subcontract to a third party work to be performed under this Agreement but will remain financially responsible for the performance of such obligations.

10.6 **Severability.** See Section 55 of the Master.

10.7 **Injunctive Relief.** See Section 64 of the Master.

10.8 **Legal Action.** Any legal action arising in connection with this Agreement must be filed within 2 years after the cause of action accrues, or it will be deemed time-barred and waived. The parties waive any statute of limitations to the contrary.

10.9 **Notices.** See Section 24 of the Master, provided that notices shall be deemed validly delivered if made by hand (in which case delivery will be deemed to have been effected immediately), or by overnight mail (in which case delivery will be deemed to have been effected one (1) business day after the date of mailing), or by first class pre-paid post (in which case delivery will be deemed to have been effected five (5) days after the date of posting), or by facsimile or electronic transmission (in which case delivery will be deemed to have been effected on the day the transmission was sent).

10.10 **Governing Law.** See Section 49 of the Master.

10.11 **Compliance with Laws.** See Section 52 of the Master.

10.12 **No Third Party Beneficiaries.** See Section 65 of the Master.

10.13 **Survival.** See Section 21 of the Master.

10.14 **Agreement Language.** Omitted by Agreement of the Parties.

10.15 **Entire Agreement.** See Section 51 of the Master, provided that consistent with Section 2.3 (Software) above the written terms and conditions applicable to software shall remain binding on the parties.

10.16 **Local Business Enterprise Utilization; Liquidated Damages.** The applicability of LBE to each service provided under this MSA shall be consistent with Section 32.b of the Master and shall be defined in the relevant Pricing Schedule for such service.

11. DEFINITIONS

"Affiliate" of a party means any entity that controls, is controlled by or is under common control with such party.

"Cutover" means the date Customer's obligation to pay for Services begins.

"Damages" means collectively all injury, damage, liability, loss, penalty, interest and expense incurred.

"Effective Date" of a Pricing Schedule means the date on which the last party signs the Pricing Schedule unless a later date is required by regulation or law.

"MARC-Eligible Charges" means the recurring and usage charges (including amounts owed under Section 8.4(c)(i)), after deducting applicable discounts and credits (other than outage or SLA credits), that AT&T charges Customer for the Services identified in the applicable Pricing Schedule as MARC-contributing. The following are not MARC-Eligible Charges: (a) charges for or in connection with Customer's purchase of equipment; (b) taxes; and (c) charges imposed in connection with governmentally imposed costs or fees (such as USF, PICC, payphone service provider compensation, E911 and deaf relay charges).

"Minimum Payment Period" means the Minimum Payment Period identified for a Service Component in a Pricing Schedule or Service Publication during which Customer is required to pay recurring charges for the Service Component.

"Minimum Retention Period" means the Minimum Retention Period identified for a Service Component in a Pricing Schedule or Service Publication during which Customer is required to maintain service to avoid the payment (or repayment) of certain credits, waived charges or amortized charges.

"Service Component" means an individual component of a Service provided under this Agreement.

"Service Publications" means Tariffs, Guidebooks, Service Guides and the AUP.

"Site" is defined as set forth in Section 13 of the Master.

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

Second Amendment

THIS AMENDMENT (this "Amendment") is made as of September 1, 2014, in San Francisco, California, by and between AT&T Corp. ("Contractor"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Director of the Office of Contract Administration.

RECITALS

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

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

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

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

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

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

First amendment, dated April 26, 2013.

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

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

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

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

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

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

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

> 4. Services Contractor Agrees to Perform. Consistent with the terms of this Agreement, the Contractor agrees to perform the services, including but not limited to those services listed in Exhibit A, "Description of Services," attached hereto and incorporated by reference as though fully set forth herein.
>
> a. All Services obtained by City during the Term, which are available under the contract between the State of California Department of Technology Services and Contractor, executed by the State Department of Technology on or about January 24, 2007, which can be found at https://ebiznet.sbc.com/calnetinfoii ("Calnet 2"), will be obtained and provided in accordance with Calnet 2 and shall be subject to the terms and conditions set forth therein. Pursuant to Calnet 2, when authorized to do so by the State of California, City may procure Services provided under the terms and conditions of Calnet 2 by executing a Calnet 2 Contract "Authorization to Order Under State Contract" for Module 1 Services (Voice, Data, and Video Services) and/or a Calnet 2 "Authorization to Order Under State Contract" for Module 2 Services (Long Distance and Network Based Services). The City and Contractor entered into an Authorization to Order Under State Contract ("ATOs") for both Module 1 and Module 2 Services, effective July 8, 2007, both of which are attached hereto as Exhibit B and incorporated herein by this reference. These ATOs superseded and replaced the Calnet 1 Contract B-4 Authorization to Order executed by the parties in December of 2003 in its entirety.

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

> 4. Services Contractor Agrees to Perform. Consistent with the terms of this Agreement, the Contractor agrees to perform the services, including but not limited to those services listed in Exhibit A, "Description of Services," attached hereto and incorporated by reference as though fully set forth herein. All references to Calnet shall be to Calnet 2 and Calnet 3.
>
> a. All Services obtained by City during the Term, which are available under the contract between the State of California Department of Technology Services and Contractor, dated January 30, 2007, which can be found at https://ebiznet.sbc.com/calnetinfoii ("Calnet 2 "), will be obtained and provided in accordance with Calnet 2 and shall be subject to the terms and conditions set forth therein. Calnet 2 is currently scheduled to expire on January 29, 2016. The City and Contractor entered into an Authorization to Order Under State Contract for both Module 1 and Module 2 Calnet 2 Services, effective July 8, 2007, both of which are attached hereto as Exhibit B and incorporated herein by this reference. All Services obtained by City during the Term, which are available under the contracts between the State of California and Contractor (Contract for CALNET 3 Statewide Contract A (SWC-A), C3-A-12-10-TS-01, dated November 15, 2013 and Contract for CALNET 3 Statewide Contract B (SWC-B), C3-B-12-10-TS-01, dated April 1, 2014), which can be found at http://marketing.dts.ca.gov/calnet3/ (collectively referred to herein as "Calnet 3"), will be obtained and provided in accordance with Calnet 3 and shall be subject to the terms and conditions set forth therein. Pursuant to Calnet 3, when authorized to do so by the State of California, City may procure Services provided under the terms and conditions of Calnet 3 by executing a Calnet 3 "Authorization to Order Under State Contract" for 1 Services under Calnet 3 C3-A-12-10-TS-01 or under Calnet 3 C3-B-12-10-TS-01. Upon execution of any Calnet 3 Authorization to Order by the

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

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

5. Compensation to Contractor.

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

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

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

In no event shall City be liable for interest or late charges for any late payments.

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

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

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

5. Compensation to Contractor.

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

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

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

In no event shall City be liable for interest or late charges for any late payments.

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

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

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

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

31. Consideration of Criminal History in Hiring and Employment Decisions

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

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

c. Contractor shall incorporate by reference in all subcontracts the provisions of Chapter 12T, and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CITY

CITY

Recommended by:

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

CONTRACTOR
AT&T Corp.

By: _____

Title: GABRIELA RATULOWSKI
Contract Management

City vendor number: 14037

3/23/15

Approved as to Form:

Dennis J. Herrera
City Attorney

By: _____
Margarita Gutierrez
Deputy City Attorney

Approved:

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

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

Third Amendment

THIS AMENDMENT (this "Amendment") is made as of November 9, 2015, in San Francisco, California, by and between AT&T Corp. ("Contractor"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Director of the Office of Contract Administration.

RECITALS

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

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

WHEREAS, approval for this Amendment was obtained when the Civil Service Commission approved a modification to the approval granted Contract number 4070-09/10 on December 7, 2015;

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

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

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

First amendment,	dated April 26, 2013; and
Second amendment,	dated September 1, 2014.

1b. Contract Monitoring Division. Effective July 28, 2012, with the exception of Sections 14B.9(D) and 14B.17(F), all of the duties and functions of the Human Rights Commission under Chapter 14B of the Administrative Code (LBE Ordinance) were transferred to the City Administrator, Contract Monitoring Division ("CMD"). Wherever "Human Rights Commission" or "HRC" appears in the Agreement in reference to Chapter 14B of the Administrative Code or its implementing Rules and Regulations, it shall be construed to mean "Contract Monitoring Division" or "CMD" respectively.

1c. Other Terms. Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

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

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

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

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, 2019 with the option to extend for one additional year to 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.

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

5. Compensation to Contractor.

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

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

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

In no event shall City be liable for interest or late charges for any late payments.

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

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

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 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.

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

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

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

CITY

Recommended by:

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

CONTRACTOR
AT&T Corp.

By: Cheryl Wankowski

Title: Associate Director - Customer Contracts

City vendor number: 14037

cl448f

Approved as to Form:

Dennis J. Herrera
City Attorney

By:
Margarita Gutierrez
Deputy City Attorney

Approved:

(for) 3/4/16

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

RECEIVED
16 FEB 29 PM 2:22

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

Fourth Amendment

THIS AMENDMENT (this "Amendment") is made as of November 1, 2019, in San Francisco, California, by and between AT&T Corp. ("Contractor"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Director of the Office of Contract Administration.

RECITALS

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

WHEREAS, City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to [extend the performance period; and

WHEREAS, approval for this Amendment was obtained when the Civil Service Commission approved Contract number 4070-09/10 on September 12, 2019;

WHEREAS, the City's Board of Supervisors approved this Amendment by Ordinance 26-16 on February 23, 2016;

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

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

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

First amendment,	dated April 26, 2013, and
Second amendment,	dated September 1, 2014, and
Third amendment,	dated November 9, 2015.

1b. Contract Monitoring Division. Effective July 28, 2012, with the exception of Sections 14B.9(D) and 14B.17(F), all of the duties and functions of the Human Rights Commission under Chapter 14B of the Administrative Code (LBE Ordinance) were transferred to the City Administrator, Contract Monitoring Division ("CMD"). Wherever "Human Rights Commission" or "HRC" appears in the Agreement in reference to Chapter 14B of the Administrative Code or its implementing Rules and Regulations, it shall be construed to mean "Contract Monitoring Division" or "CMD" respectively.

1c. Other Terms. Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

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

2a. Section 2. Section 2 – Term of the Agreement 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, 2019 with the option to extend for one additional year to 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, 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.

2b. Withholding. Section 10(d) is hereby added to "Taxes" to read as follows:

d. Withholding. Contractor agrees that it is obligated to pay all amounts due to the City under the San Francisco Business and Tax Regulations Code during the term of this Agreement. Contractor acknowledges that the City may exercise its rights under Section 6.10-2 of the San Francisco Business and Tax Regulations Code.,

2c. Limitations on Contributions. Section 41 is hereby replaced in its entirety as follows:

41. 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 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. 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.

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

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

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

CITY
Recommended by:

Linda Gerull
City Chief Information Officer
Department of Technology

CONTRACTOR
AT&T Corp.

By: Debra Ann Galvo

Title: Sr. Solutions Architect 11/1/2019

City Supplier Number: 0000026442 HD091V

Approved as to Form:

Dennis J. Herrera
City Attorney

By:
Margarita Gutierrez
Deputy City Attorney

Approved

Alaric Degrafinried
Director of the Office of Contract Administration, and Purchaser

Received By:
NOV 19 '19 PM 3:09
Purchasing Department

SAN FRANCISCO
DEPARTMENT OF
TECHNOLOGY

Date: October 19, 2020

To: Clerk of the Board of Supervisors

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

Re: Approval of 5th Amendment to Master Agreement with AT&T
Supplier ID: 0000026442

The Department of Technology (DT) maintains a citywide master agreement (MA) with AT&T for the provision of wired voice and data telecommunications services. DT is seeking approval of an amendment to this agreement that would extend the term of this agreement by one year, to December 31, 2021, and raise the not to exceed (NTE) amount to $140,695,756. All pricing and other terms of the agreement would remain the same as in the Third Amendment approved by the Board of Supervisors in Ordinance 26-16. The MA continues to leverage the favorable volume pricing from the State of California's Integrated Telecommunications Network Agreement (CALNET).

This amendment is necessary for two reasons: (1) the State of California has extended the underlying CALNET-3 contract by one year while it negotiates a new agreement with AT&T and (2) the City must raise the NTE amount because the contract value has been depleted. While we understand that this short extension will require DT to seek Board approval of another AT&T contract in another year, this is unavoidable because the pricing and other terms of the next CALNET agreement are likely to differ substantively from the current agreement.

Consequently, DT is requesting that the Board approve the Fifth Amendment to the MA that would:

1.) Extend term by 12 months from 12/31/2020 to 12/31/2021, coterminous with the underlying CALNET agreement.
2.) Add $18,266,199 to the NTE for a total of $140,695,756.

DT is not seeking to waive any Administrative Code or other requirements, so we are seeking approval of this amendment through the accompanying resolution.

To provide context for this Fifth Amendment, here is a brief summary of original MA and its subsequent amendments:

- Original Master Agreement: to consolidate citywide purchases of telecommunications services under one contract, DT entered into the Original MA with AT&T in 2010.
    - The total value of this agreement was $75,000,000
    - The term of the agreement was 4 years and six months (from March 1, 2010 to August 31, 2014)
    - The Board approved this contract in Ordinance 98-10.
- First Amendment: to allow for project specific rates for special projects, known as Individual Case Basis (ICB) pricing . This amendment did not change the duration or amount of the contract. Board approval was not required.
- Second Amendment: authorized the City to transition from the underlying State CALNET-2 to CALNET-3 contract. In addition, the amendment:
    - Increased the NTE from $75 million to $97,953,700;
    - Extended the term by 15 months to December 31,2015;
    - The Board approved this amendment in Ordinance 39-95.
- Third Amendment: extended the term of the 2010 agreement by four years to December 31, 2019, with the option to extend for one additional year. The amendment also:
    - Increased the NTE from $97,953,700 to $122,429,557, sufficient for four years of anticipated spending.
    - The Board approved this amendment in Ordinance 26-16.
- Fourth Amendment: exercised the option to extend the contract by one year as authorized by the Third Amendment and Ordinance 26-16.

SAN FRANCISCO
DEPARTMENT OF
TECHNOLOGY

October 19, 2020

Angela Calvillo, Clerk of the Board
Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102

Dear Ms. Calvillo:

Attached please find an original pdf copy and an electronic copy of the proposed Resolution for the Board of Supervisors approval, which would approve the 5th amendment to an agreement with AT&T Corporation for providing wireline telecommunications services. This is the 5th amendment to this agreement.

The following is a list of accompanying documents:

- DT Memo Re 5th Amendment to AT&T Telecommunications Agreement
- Form 126
- 5th Amendment to AT&T Agreement
- 4th Amendment to AT&T Agreement
- 3rd Amendment to AT&T Agreement
- 2nd Amendment to AT&T Agreement
- 1st Amendment to AT&T Agreement
- Original AT&T Telecommunications Agreement

The current agreement expires by the end of 2020

The following person may be contacted regarding this matter:

Brian Roberts
Policy Analyst
Brian.roberts@sfgov.org

Sincerely,

Linda J. Gerull
City CIO
Executive Director | Department of Technology

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Incomplete - Pending Signature

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 . www.sfethics.org

Received On:

File #: 201179

Bid/RFP #:

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

TYPE OF FILING	DATE OF ORIGINAL FILING (*for amendment only*)
Original	
AMENDMENT DESCRIPTION – Explain reason for amendment	

2. CITY ELECTIVE OFFICE OR BOARD

OFFICE OR BOARD	NAME OF CITY ELECTIVE OFFICER
Board of Supervisors	Members

3. FILER'S CONTACT

NAME OF FILER'S CONTACT	TELEPHONE NUMBER
Angela Calvillo	415-554-5184
FULL DEPARTMENT NAME	**EMAIL**
Office of the Clerk of the Board	Board.of.Supervisors@sfgov.org

4. CONTRACTING DEPARTMENT CONTACT

NAME OF DEPARTMENTAL CONTACT	DEPARTMENT CONTACT TELEPHONE NUMBER
Fan-Wa Wong	628-652-5251
FULL DEPARTMENT NAME	**DEPARTMENT CONTACT EMAIL**
TIS Dept of Technology	fan-wa.wong@sfgov.org

DocuSign Envelope ID: 88DAA49D-1F93-4D28-B4D6-18EA8AE84AE8

Incomplete - Pending Signature

5. CONTRACTOR	
NAME OF CONTRACTOR AT&T Corp.	**TELEPHONE NUMBER** 415-794-4422
STREET ADDRESS (including City, State and Zip Code) One AT&T Way, Bedminster, NJ 07921	**EMAIL** heather.petersen@att.com

6. CONTRACT		
DATE CONTRACT WAS APPROVED BY THE CITY ELECTIVE OFFICER(S)	**ORIGINAL BID/RFP NUMBER**	**FILE NUMBER (*If applicable*)** 201179
DESCRIPTION OF AMOUNT OF CONTRACT $140,695,756		
NATURE OF THE CONTRACT *(Please describe)* DT maintains a citywide telecommunications master agreement (MA) with AT&T for the provision of voice and data connection services. This master agreement has always leveraged the favorable volume pricing from the State of California's Integrated Telecommunications Network Agreement (known as the CALNET program). The Department of Technology (DT) wishes to continue the purchase of wired telecom services from AT&T under the State of California's CALNET 3 program. The State of CA's CALNET 3 contracts with AT&T have been extended to December 31, 2021		

7. COMMENTS
Proposed 5th Amendment and Resolution 1.) Supplier: AT&T 2.) Term: 03/1/2010 -12/31/2021 3.) Not-to-Exceed Amount: $122,429,557+$18,266,199= $140,695,756 4.) Purpose: Add contract dollar for 18 months in the amount of $18,266,199. Extend T

8. CONTRACT APPROVAL	
This contract was approved by:	
☐	**THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM**
☒	**A BOARD ON WHICH THE CITY ELECTIVE OFFICER(S) SERVES** Board of Supervisors
☐	**THE BOARD OF A STATE AGENCY ON WHICH AN APPOINTEE OF THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM SITS**

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Incomplete - pending signature

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 L.	Board of Directors
2	Hatch	G. Troy	Board of Directors
3	Chow	Anne	CEO
4	Dumas	Jeston B.	CFO
5	AT&T Inc.		Shareholder
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Incomplete - pending signature

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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Incomplete - pending signature

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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☐	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 BOS Clerk of the Board	**DATE SIGNED**

From:	Roberts, Brian (TIS)
To:	BOS Legislation, (BOS)
Cc:	Wong, Fan-Wa (TIS); Gerull, Linda (TIS); Xie, Hao (TIS)
Subject:	Introduction of Resolution Approving AT&T Contract
Date:	Monday, October 19, 2020 11:25:44 AM
Attachments:	image001.png 4th_Amendment_FULLY_EXECUTED.pdf 5thAmendment to ATT Master Agreement Finalized- Vendor Signed.pdf AT&T Third Amendment 1-28 AMENDED FINAL - Executed with Wet Signature(f).pdf ATT First Amendment.pdf DT Memo Amendment to ATT Telecom Agmt 2020.pdf DT_Intro Letter AT&T Agreement.pdf Fully Signed Second Amendment(f).pdf Master AT&T Agreement dated March 2010 Original with over 103 pages.pdf Proposed Resolution Approving AT&T Agreement 2020.docx Proposed Resolution Approving AT&T Agreement 2020.pdf SFEC_Form_126f4BOS---Notification_of_Contract for 5th Amendment.pdf

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Dear BOS, the Department of Technology would like to introduce the attached resolution. Please see the introduction memo for a list of the supporting documents.

SAN FRANCISCO
DEPARTMENT OF
TECHNOLOGY

Brian Roberts

Policy Analyst

1 South Van Ness Ave., 2nd Floor

(628) 652-5161 direct

www.sfgov.org/dt

President, National Assoc. of
Telecommunications Officers and Advisors
(NATOA)

SAN FRANCISCO
DEPARTMENT OF
TECHNOLOGY

Agreement with AT&T Fifth Amendment



To: Budget and Finance Committee
March 3, 2021

Hao Xie, DT Strategic Sourcing Manager

Overview

Fifth Amendment to extend the term of existing Agreement with AT&T

- Extend the Agreement for one additional year through December 31, 2021
- Increase the total not-to-exceed amount by $18.3M
- No other major change to the existing agreement



Contract for telephone & network services to all City departments

- Telephone Services (49%): include fixed monthly fees, plus variable cost for teleconference, toll free and long distance
- Circuits (48%): link two or more locations with dedicated, high-speed connection
- Incidental Professional Services (<3%): install and maintain networking equipment and circuits

Benefits of Agreement

Savings

- 65% discount - piggyback on State of California's CALNET 3 volume purchase agreement, leveraging the collective buying power and extensive competitive process of the entire State



Effectiveness

- Consolidate all purchases under one Citywide master agreement, resulting in better control and vendor management

Support to Local Communities

- Commitment to First Source Hiring and 10% LBE subcontracting goal
- 3 stores, 400+ employees in San Francisco
- 41 open jobs in the City are currently posted on the AT&T website

Questions from the Board on 12/1/2020

Q1: as many employees work from home during the Covid-19 pandemic, should it result in a reduced cost for AT&T services?

Answer: The pandemic did not result in a reduced cost because most employees are still using the AT&T telephony infrastructure when they are telecommuting. In particular, forwarding City calls to personal cell phones or landlines takes up two lines per call, resulting in an increased usage.



Q2: How do we know that the contract pricing, based on the State's Calnet contract, is the best available pricing?

Answer: The Calnet contract contains a Most Favored Nation clause, which guarantees the City the lowest pricing of any public or private entity.

Q3: Can we use other vendors to reduce cost? Should we put these services out to bid?

Answer: Yes. DT is only seeking a one-year extension through this contract amendment, so that we have time to explore different options.

SAN FRANCISCO
DEPARTMENT OF
TECHNOLOGY

Agreement with AT&T
Fifth Amendment

Any Questions?