

**AGREEMENT BETWEEN THE CITY OF SAN ANTONIO AND AT&T CORP. FOR  
COMMUNICATIONS PRODUCTS AND SERVICES AT  
CUSTOMER SPECIFIC PRICING**

This Agreement between the City of San Antonio and AT&T Corp. for Communications Products and Services at Customer Specific Pricing (hereinafter "Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_ 2018, by and between the City of San Antonio, Texas, a municipal corporation (hereinafter "City") and AT&T Corp., a Delaware corporation (hereinafter "AT&T" and collectively, the "Parties").

**WITNESSETH:**

**WHEREAS**, on July 14, 2017, the City issued a Request for Competitive Sealed Proposal ("RFCSP") for communications services to approximately 12,000 City employees located in over four hundred (400) facilities throughout San Antonio; and

**WHEREAS**, the RFCSP requested proposals from qualified vendors for the following services: (1) local voice - single and multiline; (2) 3-1-1 non-emergency reporting; (3) disaster routing and network reconfiguration services; (4) private lines; (5) WAN/LAN broadband services; (6) directory assistance services; (7) long distance voice services; (8) Internet connection services; (9) PBX and central office exchange services; and (10) other related services and products; and

**WHEREAS**, the stated purpose of the RFCSP was to reduce costs for communications services and improve efficiencies in the delivery and use of such services by consolidating existing contracts, expanding communication services, and providing more effective communication business processes for City departments; and

**WHEREAS**, public safety two-way radio services, mobile voice, mobile data and 911 emergency services are **not** included in the scope of this Agreement; and

**WHEREAS**, inherent in the scope. of services of the RFCSP is the goal of strategically partnering with one or more communications providers for the purpose of transitioning the City's communications capabilities into more advanced voice and data broadband services and functionalities; and

**WHEREAS**, in the RFCSP, the City expressed a preference to contract with a single provider for all communication service categories contained in the RFCSP Attachments J through S, but reserved the right to award each category of service individually; and

**WHEREAS**, on November 13, 2017, the City received responses from 2 two (2) qualified vendors, including AT&T; and

**WHEREAS**, on May 24, 2018, AT&T presented a Best and Final Pricing Offer ("BAFPO") to the City in which the company offered a five percent (5%) discount over all service pricing offered in its initial response to the RFCSP in exchange for receiving seventy percent (70%) of the City's business in all categories of communications services set out in the RPCSP; and

**NOW, THEREFORE**, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged and confessed, and intending to be legally bound hereby, the City and AT&T agree as follows:

## **ARTICLE I** **DEFINITIONS**

As used herein the terms set forth below shall be defined as follows:

1.1 "Affiliate" means any entity that controls, is controlled by, or is under common control with AT&T.

1.2 "Agreement" shall mean this "Agreement between the City of San Antonio and AT&T Corp. for Communications Products and Services at Customer Specific Pricing."

1.3 "City" shall mean the City of San Antonio represented by the Director appointed by the City Manager and may include such person or persons designated by him to act on his behalf with respect to certain matters pertaining to this Agreement.

1.4 RESERVED

1.5 RESERVED

1.6 "Department" shall mean the Information Technology Services Department, as applicable.

1.7 "Chief Information Officer" shall mean the City's Chief Information Officer and the Director of the Department or his designee.

1.8 "City Facilities" or "City Site" shall mean City's physical locations where AT&T will install or provide a service under this Agreement.

1.9 "Service Component" means individual component of a service provided under this Agreement.

1.10 "Effective Date" means the latest date on which this Agreement is signed by both Parties following approval of the Agreement by an ordinance of the San Antonio City Council.

1.11 "RFCSP" and "City's RFCSP" means the City's Request for Competitive Sealed Proposal ("RFCSP") for Formal Annual Contract for Telecommunications, Network Connectivity and other Telecom Services, RFCSP 6100008613.

1.12 "AT&T's Response" means AT&T's Response to the City's RFCSP on November 13, 2017, as well as Pricing schedules, SBEDA Forms, VOSBPP Tracking Form that were excluded from AT&T's Response at the City's Request.

1.13 "AT&T's Best and Final Offer" as means the letter and final pricing offer sent by AT&T to Jorge Garcia, City's Procurement Manager, dated May 24, 2018, including AT&T's Final Pricing

Schedules from RFCSP Attachment B, which were also attached to the May 24<sup>th</sup> letter.

## **ARTICLE II**

### **SCOPE OF SERVICES**

2.1 Scope of Services. The scope of services includes the following categories of communications services that will be made available by AT&T:

2.1.1 Wired Services

2.1.2 Metropolitan Ethernet Services

2.1.3 Broadband Services

2.1.4 Internet Connection Services

2.1.5 Long Distance (Inbound 800 and International), Group Conference Calling, Directory Assistance and 311 Services

2.2 General and Technical Requirements. The general and technical requirements for each service subject to this Agreement are listed in Exhibit D. AT&T is responsible for providing notice in accordance with Section 11.10 (Withdrawal of Service) and, to the extent pricing can be agreed for same between the Parties at the time of such notice, a technology migration path, for all services that may be sunset during the life of the Agreement and any applicable time frames agreed to by the Parties to transition to new services, unless time frames are otherwise specified in the Agreement. If the Parties cannot agree on the pricing of new services, then the provisions of Section 11.10 (Withdrawal of Service) shall apply to such service.

2.3 Price List. A list of prices for each category of communications services subject to this Agreement is included in Exhibit E.

2.4 Wired Services. A listing of wired services presently utilized by the City is included in Exhibit A, which was provided as part of the RFCSP and represents a snap shot picture of wired services utilized by the City at the time the inventory was prepared. The City does not warrant the accuracy of Exhibit A as of the Effective Date of this Agreement. The following wired services will be provided by AT&T under this Agreement.

2.4.1 Group 1: Small Voice

2.4.2 Group 4: Disaster Routing and Network Reconfiguration Service

2.4.3 Group 5: ISDN/Private Lines

2.4.4 Group 7: Broadband Services

2.4.5 Group 8: Directory Listing Services

2.4.6 National Calling. Long distance services within the continental United States are included in the price for each applicable group of wired services listed above as specified in Exhibit E.

2.5 Metropolitan Ethernet Services. Based upon the City's forecasted bandwidth requirements

and the availability of funding, the following metropolitan Ethernet service options may be procured by the City at any time during the term of the Agreement:

2.5.1 2 Mbps Ethernet through 100 Mbps Ethernet (Category A)

2.5.2 150Mbps Ethernet through 900 Mbps Ethernet (Category B)

2.5.3 1000 Mbps Ethernet through 10,000 Mbps Ethernet (Category C)

2.5.4 All City facilities may potentially require Metropolitan Ethernet services at any time during the term of this Agreement.

2.5.5 Provided that the City purchases ADE service for a minimum term of thirty six (36) months at the prices and quantities set forth in AT&T's Response on or prior to the date which is three years following the Effective Date, AT&T agrees to provide the five (5) Facilities identified in RFCSP Exhibit 7 with dual attached Metropolitan Ethernet service (Category C), which will require physically redundant digital service through separate building entries, and separate serving offices.

2.5.6 Notwithstanding Section 11.10 (Withdrawal of Service), provided that the City executes and delivers a pricing schedule for same contemporaneously with the Effective Date of this Agreement, the City shall be permitted to retain existing Opt-E-Man services in place for the term of such pricing schedule, up to a maximum of thirty-six (36) months, barring unforeseen circumstances.

- a. The migration of any such Opt-E-Man services to newer AT&T service offerings shall be subject to migration funding approved by the City Council of the City of San Antonio. If migration funding is not approved prior to the date which is thirty six (36) months following the Effective Date, then Section 11.10 (Withdrawal of Service) shall apply to same.
- b. If the City migrates Opt-E-Man services to Switched Ethernet on Demand (ASEoD) in accordance with the foregoing or installs new ASEoD City Sites, if the applicable sites satisfy AT&T's entrance facility construction (EFC) offer, then AT&T will construct entrance facilities associated with the new ASEoD sites for a flat fee of \$3,000.00 per City Site, and the City (or building landlord) will own the completed entrance facility and be responsible for arranging maintenance as needed. If applicable City Sites do not satisfy AT&T's entrance facility construction (EFC) offer, then AT&T shall seek an outside contractor, preferably SBEDA approved, to perform such construction, at costs to be determined on a per-site basis. Provided the City and AT&T mutually approve such costs, AT&T will use commercially reasonable efforts to cause such contractor to construct entrance facilities associated with the new ASEoD City Sites for the mutually approved amount, and the City (or building landlord) will own the completed entrance facility and be responsible for arranging maintenance as needed.

2.7 Broadband Services. Based upon the City's forecasted bandwidth requirements and availability of funding, the following broadband services may be procured by the City at any time during the term of the Agreement: Sub-Ethernet (3-20Mbps) (Category D).

2.8 Internet Connection Services. The general and technical requirements applicable to these services are included in Exhibit D:

2.8.1 AT&T will provide the following Internet connection services as required at the following City addresses/facilities in San Antonio:

- 515 S. Frio Street 1000 Mbps Service
- 8130 Inner Circle Brooks 1000 Mbps Service
- 600 Soledad 1000 Mbps Service
- 9800 Airport Blvd. 1000 Mbps Service
- 900 E. Market Street 1000 Mbps Service
- Additional City Facilities 3-20 Mbps Service

2.8.2 If City operations are moved to a previously unserved location, then AT&T will reasonably evaluate its ability to provide the Mbps Service requested by the City at the new location at the price and terms and conditions set out in the Agreement, and advise the City accordingly.

2.9 Long Distance (Inbound 800 and International); Group Conference Calling, Directory Assistance and 311 Services. The general and technical requirements applicable to these services are included in Exhibit D.

2.10 New Fiber-Based City Sites. City shall be permitted to order fiber-based services to new City Sites, provided that the Parties understand and agree that fiber-based services to new City Sites may be subject to special construction charges, which the Parties shall agree to in writing, together with any other applicable installation or other terms, prior to the initiation of such construction and/or service(s).

2.11 Electronic Billing. AT&T shall provide comprehensive billing services that are aligned and closely integrated with the City's internal billing systems in place as of the Effective Date. All billings will be submitted to the City in an electronic format, and billing in a printed format will be provided upon request by the City. The electronic and paper billings will reflect the same service period and billing amount. AT&T has agreed to change from convergent billing to multiple consolidated bills. Reports generated from Business Direct and Business Center may differ from Electronic or Paper bills.

2.12 Audit and Inventory. Within 120 days after the Effective Date, AT&T will provide a complete audit and inventory of the City's current communications services to be replaced by AT&T's services under this Agreement. Audit and inventory results shall be made available to the City in an Excel spreadsheet format. AT&T will also perform an annual audit and inventory to assist the City in identifying services no longer being utilized or in service. All audit data will be submitted to the Chief Information Officer or his designee. This audit provision is not intended as a substitute for the City conducting an authorized review of access line reporting requirements pursuant to section 283.056 (C) of the Texas Local Government Code, Texas Public Utility Commission Substantive Rule 26.469 and other applicable laws and regulations

2.13 RFCSP Transitional Requirements under the Agreement. The Parties will cooperate in order to achieve the following transitional requirements required by the City including the following features:

2.13.1 Transition of Wired Services. Transition from existing wired services to metropolitan Ethernet services and broadband services. The City reserves the right to add and/or disconnect wired services on a monthly basis as needed. Any disconnected wired service shall not be subject to the termination and/or cancellation charges set forth in this Agreement.

2.13.2 Transition of Metropolitan Ethernet Services. For metropolitan Ethernet services, the City reserves the right to add and/or disconnect metropolitan Ethernet services on an "as-needed" basis, and agrees to a thirty-six (36) month minimum service period for each service address from the original installation date of service, including installations provided by AT&T that predate the Agreement.

2.13.3 Transition of Broadband Services. For broadband services, the City reserves the right to add and/or disconnect broadband services on an "as-needed" basis, and agrees to a twelve (12) month service period for each service address from the original installation date of service, including installations provided by AT&T that predate the Agreement.

2.13.4 No Disconnection of Service. Because the City is a public safety entity, AT&T agrees not to disconnect contracted services serving a public safety City Site at any time during the term of the Agreement for any administrative reason, including billing disputes.

2.13.5 Management of Agreement. Management of the Agreement must be centralized, both by the City and AT&T. City's Chief Information Officer or his designee will be able to add and disconnect services under the Agreement. Likewise, any concerns or issues, including trouble calls, on behalf of the City must be able to be handled through a single telephone number with a single or very limited number of assigned account representatives.

2.13.6 Procedures for Adds, Moves and Changes. City shall follow any procedure for adding, disconnecting or requesting changes in communication services that is reasonably set forth by AT&T from time to time.

2.13.7 Account/Project Manager. AT&T will assign a dedicated Account/Project Manager to oversee and manage the implementation of services under this Agreement. The City reserves the right to request a change in Account/Project Manager or any assigned staff should any incompatibilities arise.

2.13.8 National Account Services Manager. AT&T will provide a National Account Services Manager to which any issue under the Agreement can be escalated at any time in order to resolve any service issue the City may be experiencing.

2.14 Service Level Agreements. Service level agreements ("SLAs") are included in Exhibit F for each service under this Agreement. Exhibit F represents AT&T's current SLAs for the services under this Agreement, and AT&T reserves the right to update the SLAs, but only to the extent that such update(s) would represent a service upgrade to the City and do not increase the cost of service. The current SLAs are consistent with the following minimum requirements for reliability and availability:

2.14.1 Reliability and availability must be provided on a per-City Facility basis, not aggregated across the entire network.

2.14.2 Aggregated Mean Time between Failure (MTBF) for each City Facility of not less than two (2) months. A failure is defined as a "major" or "critical" event, as described below.

2.14.3 Component MTBF of not less than six (6) months. Successive failure of a component or one of a group of components, at a single site must be addressed and should include steps for remediation and/or financial penalty.

2.14.4 Mean Time to Restore (MTTR) at any site of not greater than 24 hours. Repair time

will be measured from the initial notification (telephone call, e-mail, or page) to restoration of 100% of nominal usable bandwidth and utilization of a network link.

2.14.5 The target availability at each site for each category of service will be in excess of the availability specified in Exhibit D.

The response times applicable to the SLA's in this Agreement shall run from and after the time that the City submits a trouble ticket to AT&T (in accordance with the terms set forth in Exhibit F), provided that the City shall indicate at the time of its notice whether such site is deemed CRITICAL to the City.

2.15 Network and Circuit Trouble. Definitions of levels of network and circuit trouble are defined in the following three (3) classifications of trouble:

2.15.1 MINOR network trouble is defined as any partial or complete failure that:

- 2.15.1.1 Impacts five percent (5%) or less of the users at a site, or of a service,
- 2.15.1.2 Can be permanently or temporarily resolved within fifteen (15) minutes or less, *and*
- 2.15.1.3 Does not affect all services delivered to a single site or multiple sites.
- 2.15.1.4 Examples would be failure of a single port on a switch, a "low battery" indicator on a UPS, loss of a few channels at a wireless repeater, or similar situation.

2.15.2 MAJOR network trouble is defined as any partial or complete equipment failure that:

- 2.15.2.1 Impacts greater than five percent (5%) of the users at a site, or of a service,
- 2.15.2.2 Requires replacement or reconfiguration of a network component, *or*
- 2.15.2.3 Affects more than one service delivered to a single site or multiple sites.
- 2.15.2.4 Examples would be a cable cut, failed router, loss of a redundant route at a dual-served site, loss of a repeater site, etc.

2.15.3 CRITICAL network trouble is defined as MAJOR network trouble that occurs at any of the following facilities, or that is capable of propagating through the network between sites, or that renders the City entirely without a given service such as Network data, Internet connectivity, etc. AT&T at its discretion may request a police escort to sites that AT&T deems a safety risk when dispatching employees and contractors to the City Facilities set out below, and subject to the terms of this Agreement, shall not otherwise delay dispatch to City Facilities in existence as of the Effective Date beyond the SLA periods contemplated for CRITICAL network trouble:

- 515 S. Frio Street
- 8130 Inner Circle Dr.
- 600 Soledad Street
- 9800 Aviation Blvd.
- 900 E. Market Street
- All Police and Fire Stations, and other critical public safety

locations, as indicated in Exhibit H (Critical Public Safety Locations).

2.16 Network Alerts. AT&T will alert the City of any and all network situations that could affect the City's service. In the event that the City experiences more than three (3) MAJOR or CRITICAL network problems affecting the same service in any twelve (12) month period, the following escalation response will be required by AT&T:

2.16.1 **First Stage** - A written report is prepared detailing the reason for the problems, the planned solutions and the timetables for implementing these solutions. If the network problems persist, escalate to Second Stage.

2.16.2 **Second Stage** - A written plan is prepared and presented to Chief Information Officer explaining why the First Stage plans have not been effective and what will be done in the next 60 days to correct the problems. Agreements on monetary adjustments to billing will be made. If the network problem persists, escalate to Third Stage.

2.16.3 **Third Stage-** Meeting with the Chief Information Officer to discuss the terms and conditions of contract cancellation, in part or in whole, should problems not be resolved in the next 30 days. City reserves the right to deposit payment for the affected services into escrow fund that shall not be released to AT&T until the problems have been resolved.

2.16.4 **Fourth Stage** - City will inform AT&T of contract cancellation and migration plans.

2.17 Response Time to Network Trouble. Provided that the SLA's established in Exhibit F shall control in the event of any conflict with the following provisions, AT&T will abide by the following response times, restoration times, including callback, on-site, after-hours and weekends/holidays:

2.17.1 MINOR - Four (4) hour callback, eight (8) hour on-site. Restoration within sixteen (16) hours.

2.17.2 MAJOR- Thirty (30) minute callback, four (4) hour on-site. Restoration within eight (8) hours.

2.17.3 CRITICAL- Fifteen (15) minute callback, two (2) hour on-site (as appropriate). Restoration within four (4) hours.

### **ARTICLE III** **OBLIGATIONS OF AT&T**

3.1 Quality Service and Products. AT&T will provide to the City the services and products listed in Section 2.1 and the general and technical requirements outlined in Exhibit D.

3.2 General Compliance Standards. AT&T agrees that it will:

3.2.1 conform to all security regulations at any time promulgated by the City with respect to City Facilities where it may install communications services and/or equipment's; and will cause its officers, employees, agents, affiliates, subcontractors and invitees at all times to abide by and conform to those regulations;

3.2.2 not use City Facilities in any way that improperly interferes with the operations of the



## City Facilities

3.2.3 when providing broadband Internet access services to the City, except to the extent expressly required, authorized or waived pursuant to this Agreement, and subject to reasonable network management, (a) not block lawful content, applications, services, or non-harmful devices used by the City; (b) not throttle or discriminate in the transmission of the City's Internet traffic based on the content of such traffic; (c) not degrade network performance based on content; and (d) comply with all State and Federal laws and regulations applicable to the provision of broadband Internet access services; provided that nothing in this Section 3.2 limits (e) AT&T's ability to address the needs of law enforcement, public safety, or national security authorities consistent with applicable law, (f) AT&T's ability to protect its network, the City and/or other customers from security threats, or (g) the City's ability to purchase service plans with specified quantities of high-speed data.

3.3 Employees, Affiliates and Contractors. AT&T shall at all times comply with the following requirements regarding its personnel, affiliates and contractors:

3.3.1 AT&T will ensure that its employees, affiliated personnel, and contractors responsible for the installation, operation, maintenance and/or management of communications services and products at City Facilities wear uniforms or identification badges that clearly identify the employee or contractor by name and affiliation.

3.3.2 AT&T shall immediately after receipt of written notice from the City remove any AT&T employee or other representative from any City Facility who participates in improper or illegal acts in the facility; who violates City Facility rules and regulations or any provision of this Agreement; or whose continued presence in a City Facility is, in the opinion of City, inconsistent with good order or the welfare of the facility.

3.4 Fixed Prices. AT&T agrees to the prices and discounts for communications services and products contained in the Pricing Schedules attached as Exhibit E. AT&T shall not alter the prices and discounts contained in the Pricing Schedules to the detriment of the City during the term of the Agreement without the written consent of the Chief Information Officer or his designee.

3.5 Telecommunications Fees and Taxes. The following provisions will apply to AT&T's assessment of telecommunications fees and taxes to services under this Agreement.

3.5.1 Telecommunications Fees and Surcharges. Any currently applicable Federal and State telecommunications fees and surcharges, with the exception of 9-1-1 fees, municipal franchise fees, and the Texas Gross Receipts Assessment fee, have been included in the Pricing Schedules attached as Exhibit E. AT&T reserves the right to bill separately as line items on the City's bill 9-1-1 fee, municipal franchise fee, and the Texas Gross Receipts Assessment fee. To the extent there are changes in state or federal law that create a new telecommunications fee or surcharge, AT&T may also bill that fee. However, the City reserves the right to seek a ruling from the governing regulatory body or other legal authority whether a municipality is exempt from paying the fee because of its status as a governmental entity. If the ruling is that a municipality is exempt from the fee, AT&T will not hold the City

responsible for the fee.

3.5.2 Tax Exempt Status. AT&T acknowledges that the City is exempt from state sales, use and excise taxes pursuant to Section 151.309 of the Texas Tax Code, and the Federal Excise Tax under Sections 4253 (i) and (j), Title 26 of the United States Code. The City will provide evidence of exemption upon request.

3.5.3 Credit of Regulatory Fees and Taxes. In acknowledgment of AT&T's legacy billing system, which cannot suppress regulatory fees and taxes on the City's monthly bills, AT&T agrees to credit on a monthly basis regulatory fees and taxes appearing on the City's previous month's bill, with the exception of 9-1-1 fees, municipal franchise fee, and the Texas Gross Receipts Assessment.

#### **ARTICLE IV OBLIGATIONS OF THE CITY**

4.1 Access to City Facilities. City will allow AT&T and its authorized personnel and contractors reasonable access to City Facilities at all times during normal business hours. City's normal business hours are Monday-Friday 8:00AM to 5:00PM, CST. AT&T's access to City Facilities shall be subject in each instance to the reasonable security requirements and reasonable rules and regulations from time to time in effect at the facilities. In the event AT&T requires access to a City Facility outside of normal business hours in order to address a network emergency, the City shall provide AT&T with a telephone number that will be answered twenty- four (24) hours per day, seven (7) days per week whereby AT&T may arrange for immediate access to the facility. Access to the City Facilities at other times will be granted only to those people designated by AT&T. Entry to City Facilities by AT&T outside normal business hours may require that City and/or security guard personnel accompany AT&T's designated representatives.

4.2 Access to Inside Wire and Conduit. The City will provide access to AT&T to any existing communications facilities which it controls within City Facilities necessary for AT&T services contracted by the City, including inside wire and conduits where appropriate, but consistent with the City's designation of the point of demarcation for the particular City Facility.

4.3 Technical Drawings. The City will provide AT&T with access to existing drawings of the City Facilities that may detail information regarding the inside wire, communications equipment, power sources, communications conduit, and any other technical information that may facilitate the installation of communications services and products under this Agreement.

4.4 Equipment Rooms. Subject to approval from the Chief Information Officer, the City will provide AT&T space in existing communications and electrical equipment rooms in City Facilities where AT&T may install equipment associated with communications service and products provided under this Agreement.

4.5 Electrical Service. The City will provide, at its expense, electrical service for installed equipment; provided any expenses associated with installing, repairing, maintaining and replacing additional electric service lines necessary for such equipment shall be the responsibility of AT&T where the equipment will be owned by AT&T, but housed in a City Facility.

4.6 Safe Working Environment. The City will ensure that the City Facilities at which AT&T installs, maintains or provides services under this Agreement is a suitable and safe working environment, free of hazardous materials. The term "hazardous materials" means any substance of 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, protection of air, water, or soil, or health and safety. AT&T will not handle, remove or dispose of hazardous materials, and AT&T will have no obligation to preform work at a City Facility that is not a suitable and safe working environment. AT&T will not be liable for any hazardous materials.

4.7 Telecommunications Services Expenditure Allocation. In consideration of the rate discounts represented by the Pricing Schedules incorporated in Exhibit E, the City will commit to purchase at least seventy percent (70%) of its communications services from AT&T under the terms of this Agreement. This commitment will be referred to as the Telecommunications Services Expenditure Allocation ("TSEA"), which means the annual amount represented by seventy percent (70%) of all expenditures by the City to any and all telecommunications providers and Internet Service Providers ("ISP") for the same or similar services as those covered by this Agreement. TSEA calculations shall exclude expenditures related to the City's owned communication infrastructure and services subject to HB 2128 provisions. The City shall commit to the TSEA, on an annual basis, for the term of the Agreement. The purchase of 10 Gigabit Internet Connect Service by the City from another provider(s) will not count in the calculation of the 70% service requirement. In addition, redundant network devices, equipment and services purchased by the City from other providers to ensure network reliability will not count against the 70% service requirement.

4.7.1 Quarterly Reporting. During the term of the Agreement, the City shall disclose on a quarterly basis in a form acceptable to both the City and AT&T all telecommunications and ISP expenditures for that previous quarter (excluding expenditures related to the City's communications infrastructure and HB 2128 discount circuits). These reviews will serve as milestones for both Parties. Subject to the text below, if there is a shortfall at the end of any fiscal year, the City shall be responsible for making up the difference by making a one-time payment in the amount of the outstanding shortfall during the preceding 12 months. The amount of the outstanding shortfall payment shall equal the difference between the TSEA and the actual expenditure by the City with AT&T for services provided pursuant to this Agreement, less any shortfall payments previously advanced in respect of such amount. However, if a quarterly report reveals a shortfall, during the preceding quarter, the City shall remedy the shortfall during the same fiscal year that the quarterly report is received in, except that if the shortfall is in respect of the last fiscal quarter of the year, then the City shall be permitted to make up such shortfall from the last quarter during the first quarter of the following fiscal year. For purposes of the TSEA, "fiscal year" shall refer to the City's fiscal year.

4.8 Prompt Payment Act. Both the City and AT&T will comply with the applicable provisions of the Texas Prompt Payment Act, Chapter 2251 of the Texas Government Code. Without limitation to the foregoing, the City will pay bills for services under this Agreement on a monthly basis in accordance with the Texas Prompt Payment Act.

4.8.1 Late Payment Charges. Late payment interest on overdue payments will be calculated in accordance with the Prompt Payment Act.

## **ARTICLE V**

### **TERM**

5.1 Term. The Term of this Agreement shall commence on the Effective Date and terminate at midnight local time on the date which is six (6) years from the Effective Date, unless sooner terminated in accordance with the terms and conditions of this Agreement. City may renew or extend the term of this Agreement in accordance with Section 5.3 (Extension Option), but is under no obligation to do so.

5.2 Condition Precedent. The delivery by AT&T to City of (i) the insurance certificate required by Section 8.1 (Certificate of Insurance) hereof, and (ii) copies of any permits and licenses required for the lawful provision of the telecommunications services in accordance with the terms hereof is a condition precedent to the effectiveness of this Agreement notwithstanding the execution of this Agreement by both Parties hereto. AT&T is obligated to procure the insurance required hereunder prior to conducting any activity under this Agreement. If such certificate has not been delivered at the time AT&T delivers executed counterparts of this Agreement to the City, then AT&T must deliver said items to City within ten (10) days.

5.3 Extension Option. Provided that City is not in default under this Agreement, or in threat of default, City shall have the option to renew for up to two (2) periods of two (2) years each without City Council approval. Such extension must be approved by the Chief Information Officer based upon his determination that the exercise of such extension is in the best interest of the City. Renewal of this Agreement will be subject to the following process: One year prior to the expiration date of the original term and/or the first renewal term, upon City's request therefore, AT&T shall prepare a written price review report and provide it to the Chief Information Officer or designee. This report shall set forth and compare the services and prices in the Agreement to AT&T's then available equipment and services (including new technology) and current prices and costs. After reviewing the report, the City may extend this Agreement subject to its then-current terms, with updated prices and costs upon written notice to AT&T delivered no less than eight months prior to the expiration of the then-current term or permit the Agreement to expire in accordance with its terms or any such alternate terms as the Parties may agree in writing.

## **ARTICLE VI**

### **OWNERSHIP AND RETENTION OF PUBLIC RECORDS**

6.1 Public Records. In accordance with Texas law, AT&T acknowledges and agrees that all local government records created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Thus, no such local government records produced by or on the behalf of City pursuant to this Agreement shall be the subject of any copyright or proprietary claim by AT&T.

6.1.1 Exception to Public Records. The Parties, however, acknowledge that AT&T's

internal documents associated with AT&T's service ordering processes may be subject to claims of confidentiality or proprietary information by AT&T. Any such documents identified by AT&T, in whole or in part, as confidential or proprietary in nature will be treated as such by the City, subject to the applicability of the Public Information Act, Chapter 552 of the Texas Government Code.

6.2 Nature of Local Government Records. The term "local government record" as used herein shall mean any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the state, created or received by a local government or any of its officials or employees pursuant to law including an ordinance, or in the transaction of official business. AT&T acknowledges and agrees that all local government records, as described in herein, produced in the course of the work required by this Agreement, will belong to and be the property of City.

6.2.1 Exception to Local Government Record. To the extent a local government record includes information that AT&T considers confidential or proprietary, it will identify such information as such when providing the local government record to the City. Any information identified as confidential or proprietary by AT&T will be treated as such by the City, subject to the applicability of the Public Information Act, Chapter 552 of the Texas Government Code.

6.3 Compliance with Records Retentions Laws. In accordance herewith, AT&T agrees to comply with all applicable federal, state and local laws, rules and regulations governing documents and ownership, access and retention thereof.

6.4 AT&T Personnel. AT&T shall employ and make available at reasonable times an adequate number of appropriately qualified and trained personnel, familiar with City's operations and use of telecommunications services, to provide and support City's use of the Services in accordance with the terms of this Agreement.

## **ARTICLE VII**

### **INTELLECTUAL PROPERTY**

7.1 Compliance with Intellectual Property Laws. AT&T agrees to abide by the following regarding intellectual property rights:

7.1.1 Indemnity of City for Infringement Claims. Concerning any software and any other intellectual property to which AT&T holds a license in the ordinary course of business, AT&T warrants that it will pay all associated royalties and licensing fees. **AT&T agrees at its expense to defend or settle any third-party claim against the City, and to pay all compensatory damages that a court may finally award against such parties to the extent the claim alleges that a service provided to the City under this Agreement infringes any patent, trademark, copyright, or trade secret, but not in circumstances where the claimed infringement arises out of or results from: (a) the City's, or a user's content; (b) modifications to an AT&T service by the City, or third parties, or combinations of an AT&T service with any services or products not provided by AT&T; (c) AT&T's adherence to City's written requirements; or (d) use of an AT&T service in violation of this Agreement.** Whenever AT&T is liable under this Section, AT&T may at its option

either procure the right for the City to continue using, or may replace or modify, the alleged infringing service so that the service becomes non-infringing. If neither of the options described in this Section are reasonably available, AT&T may terminate the affected service without liability other than as stated in this Section, provided, however, that suspension of service will be limited to the City Site that is causing the infringement of non-compliance with intellectual property laws, and under no circumstances will AT&T suspend service to a public safety City Site without the consent of the City. The City will notify AT&T 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 AT&T is prejudiced thereby. The City will allow AT&T to control the defense and settlement of the claim and will reasonably cooperate with the defense; but AT&T will use counsel reasonably experienced in the subject matter at issue, and will not settle a claim without the consent of the City, which consent will not be unreasonably withheld or delayed, except that no consent will be required where relief on the claim is limited to monetary damages that are paid by AT&T under this Section.

7.1.2 General Compliance. In accordance herewith, AT&T agrees to comply with all applicable federal and state laws, rules and regulations governing the protection of intellectual property.

7.1.3 Undisclosed Features. AT&T warrants to the best of its knowledge that the code and software provided to the City under this Agreement does not contain any undisclosed features or functions that would impair or might impair the City's use of the equipment, code or software. Specifically, but without limiting the previous representation, AT&T warrants that to the best of its knowledge, there is no "Trojan Horse," lock, "time bomb," backdoor or similar routine, except as expressly disclosed in the corresponding specifications for any such equipment, code or software. This Agreement shall not now nor will it hereafter be subject to the self-help provisions of the Uniform Computer Information Transactions Act or any other law. The City specifically disclaims any unilateral self-help remedies.

## **ARTICLE VIII**

### **INSURANCE**

8.1 Certificate of Insurance. Prior to the commencement of any work under this Agreement, AT&T shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the Department, which shall be clearly labeled "**Formal Annual Contract for Telecommunications, Network Connectivity and other Telecom Services, RFCSP 6100008613**" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binders as proof of insurance. The certificate(s) must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the Department, Attn: Chief Information Officer. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

8.2 Review of Insurance Requirements. The City reserves the right to review the insurance

requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits once per Term when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereupon City may incur increased risk.

8.3 Insurance Amounts. AT&T's financial integrity is of interest to the City; therefore, subject to AT&T's right to maintain reasonable self-insured retentions as declared to the City, AT&T shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at AT&T's sole expense, insurance coverage written on an occurrence basis, by companies eligible to do business in the State of Texas and with an

A.M Best's rating of no less than A- (VII), in the following types and for an amount listed below:

TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory \$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises operations  b. Products/completed operations c. Personal/Advertising Injury  e. Contractual Liability Coverage as per form ISO CG 001 0or equivalent	For Bodily Injury and Property Damage of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per accident
5. Professional Liability (Claims-made basis) To be maintained and in effect for no less than two years subsequent to the completion of professional service.	\$1,000,000 per claim and in the aggregate, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services.
6. Builder's Risk (if applicable)	All Risk Policy written on an occasion basis for 100% replacement cost during construction phase of any new or existing structure. AT&T may self insure this coverage.

Notwithstanding the forgoing, AT&T may, in its sole discretion, self-insure any of the required insurance under the same terms as required by this Agreement. In the event AT&T elects to self-insure its obligation under this Agreement to include Owner as an additional insured, the following

conditions apply: (i) Owner shall promptly and no later than thirty (30) days after notice thereof provide AT&T with written notice of any claim, demand, lawsuit, or the like for which it seeks coverage pursuant to this Section and provide AT&T with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like; (ii) Owner shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of AT&T; and (iii) Owner shall fully cooperate with AT&T in the defense of the claim, demand, lawsuit, or the like.

8.4 Subcontractor Insurance Requirements. AT&T agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the reasonable and prudent coverage and limits, and provide a certificate of insurance and endorsement that names AT&T and the City as additional insureds. It is understood that AT&T may require different coverage and limits from subcontractors based upon scope of work provided by Subcontractor. AT&T shall provide the City with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the Agreement for all purposes.

8.5 Copy of Insurance Documents. As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of all endorsements thereto and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of such policies). AT&T shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. AT&T shall pay any costs incurred resulting from said changes.

City of San Antonio  
Attn: Information Technology Services Department  
P.O. Box 839966  
San Antonio, Texas 78283-3966

8.6 Required Endorsements. AT&T agrees that with respect to the above required insurance, all required insurance policies are to contain or be endorsed to contain the following provisions:

8.6.1 Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities except for workers' compensation and professional liability policies.

8.6.2 Provide that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured covered on the policy.

8.6.3 To the extent allowed by law, Workers' compensation and employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.

8.6.4 AT&T will provide at least thirty (30) calendar days advance written notice directly



to City of cancellation, non-renewal of any required coverage that is not replaced, and not less than ten (10) calendar days advance notice for nonpayment of premium.

8.7 Insurance Cancellation. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

8.8 Additional Remedies. In addition to any other remedies the City may have upon AT&T's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order AT&T to stop work hereunder, and/or withhold any payment(s) which become due to AT&T hereunder until AT&T demonstrates compliance with the requirements.

8.9 No Limit on Liability Stemming from Insurance Requirements. The insurance requirements herein shall not be construed as limiting in any way the extent to which AT&T may be held responsible for payments under this Agreement for payments of damages to persons or property resulting from AT&T's or its subcontractors' performance of the work covered under this Agreement. In addition, AT&T and any of its subcontractors will be responsible for all damage to their own equipment and/or property.

8.10 AT&T Provides Primary Insurance. It is agreed that AT&T's required general and auto liability insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City for liability arising out of operations and services delivered under this Agreement.

8.11 Insurance Is Stand Alone Obligation. It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided.

## **ARTICLE IX**

### **INDEMNIFICATION AND DISCLAIMER OF LIABILITY**

9.1 AT&T's Indemnification of the City. **AT&T shall indemnify and hold the City and the elected officials, employees, officers, directors, volunteers and representatives of the City, individually and collectively, harmless against damages arising out of third party claims resulting from injury to or death of any person (including injury to or death of their respective subcontractors or employees) or loss of or damage to tangible real or tangible personal property, to the extent that such liability, loss, damage or expense was proximately caused by the negligent act or omission or the willful or intentional misconduct by AT&T, its agents, employees or subcontractors, in connection with the provision or use of services provided under this Agreement. AT&T shall not be liable under this Section for damages caused by service or equipment that is not furnished by AT&T under this Agreement.**

**IN THE EVENT AT&T AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF**

## **THE PARTIES UNDER TEXAS LAW.**

9.2 Indemnify for Benefit of Parties. The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. AT&T shall advise the City in writing within 24 hours of any claim or demand against the City or AT&T known to AT&T related to or arising out of AT&T's activities under this Agreement and shall see to the investigation and defense of such claim or demand at AT&T's cost. The City shall have the right, at its option and at its own expense, to participate in such defense without relieving AT&T of any of its obligations under this paragraph.

### 9.3 Disclaimers and Limitations of Liability.

9.3.1 Disclaimer of Warranties. AT&T MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, OR ANY WARRANTY ARISING BY USAGE OF TRADE OR COURSE OF DEALING, EXCEPT FOR THOSE EXPLICITLY MADE IN THIS AGREEMENT CONCERNING THE SCOPE OF SERVICES, GENERAL AND TECHNICAL REQUIREMENTS OF SERVICES AND PRODUCTS, AND SERVICE LEVEL AGREEMENTS. 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), OR 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 CONFIDENTIAL INFORMATION.

#### 9.3.2 Limitation of Liability.

(a) AT&T'S ENTIRE LIABILITY, AND CITY'S EXCLUSIVE REMEDY, FOR DAMAGES ARISING OUT OF MISTAKES, OMISSIONS, INTERRUPTIONS, DELAYS, ERRORS OR DEFECTS IN THE SERVICES, AND NOT CAUSED BY THE CITY'S NEGLIGENCE, SHALL IN NO EVENT EXCEED DOUBLE THE PRORATED VALUE OF THE SERVICE 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 AT&T.

(b) SECTION 9.3.2(a) WILL NOT APPLY TO:

- (i) BODILY INJURY, DEATH, OR DAMAGE TO REAL OR TANGIBLE PROPERTY DIRECTLY CAUSED BY AT&T'S NEGLIGENCE;
- (ii) SETTLEMENT, DEFENSE OR PAYMENT OBLIGATIONS UNDER Article VII (Intellectual Property); OR

(iii) DAMAGES ARISING FROM AT&T'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

(c) 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 INCREASED COST OF OPERATIONS.

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

9.3.4 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 and whether damages were foreseeable, 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 will survive failure of any exclusive remedies provided in this Agreement.

## **ARTICLE X**

### **SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA)**

10.1 SBEDA Program. The City has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 2016-05-19-0367 and as amended, also referred to as "SBEDA" or "the SBEDA Program"), which is posted on the City's Economic Development Department (EDD) website page and is also available in hard copy format upon request to the CITY. The SBEDA Ordinance Compliance Provisions contained in this Section of the Agreement are governed by the terms of the SBEDA Ordinance, as well as by the terms of the SBEDA Ordinance Policy & Procedure Manual established by the CITY pursuant to this Ordinance, and any subsequent amendments to this referenced SBEDA Ordinance and SBEDA Policy & Procedure Manual that are effective as of the date of the execution of this Agreement. Unless defined in a contrary manner herein, terms used in this Section of the Agreement shall be subject to the same expanded definitions and meanings as given those terms in the SBEDA Ordinance and as further interpreted in the

## SBEDA Policy & Procedure Manual.

10.2 SBEDA Program Compliance – General Provisions. AT&T acknowledges that the terms of the City's SBEDA Ordinance, as amended, together with all requirements, guidelines, and procedures set forth in the City's SBEDA Policy & Procedure Manual are in furtherance of the City's efforts at economic inclusion and, moreover, that such terms are part of AT&T's scope of work as referenced in the City's formal solicitation that formed the basis for contract award and subsequent execution of this Agreement. These SBEDA Ordinance requirements, guidelines and procedures are hereby incorporated by reference into this Agreement, and are considered by the Parties to this Agreement to be material terms. AT&T voluntarily agrees to fully comply with these SBEDA program terms as a condition for being awarded this Agreement by the City. Without limitation, AT&T further agrees to the following terms as part of its contract compliance responsibilities under the SBEDA Program:

10.2.1. AT&T shall cooperate fully with the Small Business Office and other City departments in their data collection and monitoring efforts regarding AT&T's utilization and payment of Subcontractors, S/M/WBE firms, and HUBZone firms, as applicable, for their performance of Commercially Useful Functions on this Agreement including, but not limited to, the timely submission of completed forms and/or documentation promulgated by SBO, through the Originating Department, pursuant to the SBEDA Policy & Procedure Manual, timely entry of data into monitoring systems, and ensuring the timely compliance of its subcontractors with this term;

10.2.2. AT&T shall cooperate fully with any City or SBO investigation (and shall also respond truthfully and promptly to any City or SBO inquiry) regarding possible non-compliance with SBEDA requirements on the part of AT&T or its subcontractors or suppliers;

10.2.3. AT&T shall permit the SBO, upon reasonable notice, to undertake inspections as necessary including, but not limited to, contract-related correspondence, records, documents, payroll records, daily logs, invoices, bills, cancelled checks, and work product, and to interview Subcontractors and workers to determine whether there has been a violation of the terms of this Agreement;

10.2.4. AT&T shall notify the SBO, in writing on the Change to Utilization Plan form, through the Originating Department, of any proposed changes to AT&T's Subcontractor / Supplier Utilization Plan for this Agreement, with an explanation of the necessity for such proposed changes, including documentation of Good Faith Efforts made by AT&T to replace the Subcontractor / Supplier in accordance with the applicable Affirmative Procurement Initiative. All proposed changes to the Subcontractor / Supplier Utilization Plan including, but not limited to, proposed self-performance of work by AT&T of work previously designated for performance by Subcontractor or supplier, substitutions of new Subcontractors, terminations of previously designated Subcontractors, or reductions in the scope of work and value of work awarded to Subcontractors or suppliers, shall be subject to advanced written approval by the Originating Department and the SBO.

10.2.5. AT&T shall immediately notify the Originating Department and SBO of any transfer or assignment of its contract with the City, as well as any transfer or change in its ownership or business structure.

10.2.6. AT&T shall retain all records of its Subcontractor payments for this contract for a minimum of four years or as required by state law, following the conclusion of this Agreement or, in the event of litigation concerning this Agreement, for a minimum of four years or as required by state law following the final determination of litigation, whichever is later.

10.2.7. In instances wherein the SBO determines that a Commercially Useful Function is not actually being performed by the applicable S/M/WBE or HUBZone firms listed in a AT&T's Subcontractor / Supplier Utilization Plan, AT&T shall not be given credit for the participation of its S/M/WBE or HUBZone Subcontractor(s) or joint venture partner(s) toward attainment of S/M/WBE or HUBZone firm utilization goals, and AT&T and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

10.2.8. AT&T acknowledges that the City will not execute an Agreement or issue a Notice to Proceed for this project until the AT&T for this project have registered and/or maintained active status in the City's Centralized Vendor Registration System (CVR), and AT&T has represented to City which primary commodity codes each Subcontractor will be performing under for this Agreement. City recommends all Subcontractors to be registered in the CVR.

10.3. **SBEDA Program Compliance – Affirmative Procurement Initiatives.** The City has applied the following contract-specific Affirmative Procurement Initiatives to this contract. AT&T acknowledges and agrees that the selected API requirement shall also be extended to any change order or subsequent Agreement modification and, absent SBO's granting of a waiver, that its full compliance with the following API terms and conditions are material to its satisfactory performance under this Agreement:

10.3.1. **SBE Subcontracting Program.** In accordance with SBEDA Ordinance Section III.D.7.(f), this Agreement is also being awarded pursuant to the SBE Subcontracting Program. AT&T agrees to subcontract at least **ten percent (10%)** of its prime contract value to certified SBE firms headquartered or having a Significant Business Presence within the San Antonio Metropolitan Statistical Area.

10.3.2. **Incorporation by Reference.** The Subcontractor/Supplier Utilization Plan which AT&T submitted to City with its response for this Agreement and that contains the names of the certified SBE Subcontractors to be used by AT&T on this Agreement, the respective percentages of the total prime contract dollar value to be awarded and performed by each SBE Subcontractor, and documentation including a description of each SBE Subcontractor's scope of work and confirmation of each SBE Subcontractor's commitment to perform such scope of work for an agreed upon dollar amount is hereby attached as Exhibit G and is incorporated by reference for all purposes into the Agreement.

**10.3.3. Failure to Attain SBE Subcontracting Goal.** In the absence of a waiver granted by the SBO, failure of AT&T to attain this SBE subcontracting goal as required in the solicitation shall render its response non-Responsive. Also, in the absence of a waiver granted by the SBO, failure of AT&T to attain a subcontracting goal for SBE participation in the performance of its contract or otherwise comply with the provisions of this API shall be considered a material breach of contract, grounds for termination of that contract with the City and shall be subject to any penalties and sanctions available under the terms of the SBEDA Ordinance, its Agreement with the City or by law.

**10.4. Commercial Nondiscrimination Policy Compliance.** As a condition of entering into this Agreement, AT&T represents and warrants that it has complied with throughout the course of this solicitation and contract award process, and will continue to comply with, the City's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance. As part of such compliance, AT&T shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or, on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of Subcontractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. AT&T shall provide equal opportunity for Subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the City's Relevant Marketplace. AT&T understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in City contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. AT&T's certification of its compliance with this Commercial Nondiscrimination Policy as submitted to the City pursuant to the solicitation for this Agreement is hereby incorporated into the material terms of this Agreement. AT&T shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to City contracts.

**10.5. Prompt Payment.** AT&T agrees to submit to City accurate progress payment information with each invoice regarding each of its Subcontractors, including HUBZone Subcontractors, to ensure that AT&T's reported subcontract participation is accurate. AT&T shall pay its Subcontractors in compliance with Chapter 2251, Texas Government Code (the "Prompt Payment Act"). In the event of AT&T's noncompliance with these prompt payment provisions, no final retainage on the Agreement shall be released to AT&T, and no new City contracts shall be issued to AT&T until the City's audit of previous subcontract payments is complete and payments are verified to be in accordance with the specifications of the Agreement.

**10.6. Violations, Sanctions and Penalties.** In addition to the above terms, AT&T acknowledges and agrees that it is a violation of the SBEDA Ordinance and a material breach of this Agreement to:

10.6.1. Fraudulently obtain, retain, or attempt to obtain, or aid another in fraudulently obtaining, retaining, or attempting to obtain or retain Certification status as an SBE, MBE, WBE, M/WBE, HUBZone firm, Emerging M/WBE, or ESBE for purposes of benefitting from the SBEDA Ordinance;

10.6.2. Willfully falsify, conceal or cover up by a trick, scheme or device, a material fact or make any false, fictitious or fraudulent statements or representations, or make use of any false writing or document, knowing the same to contain any false, fictitious or fraudulent statement or entry pursuant to the terms of the SBEDA Ordinance;

10.6.3. Willfully obstruct, impede or attempt to obstruct or impede any authorized official or employee who is investigating the qualifications of a business entity which has requested Certification as an S/M/WBE or HUBZone firm;

10.6.4. Fraudulently obtain, attempt to obtain or aid another person fraudulently obtaining or attempting to obtain public monies to which the person is not entitled under the terms of the SBEDA Ordinance; and

10.6.5. Make false statements to any entity that any other entity is, or is not, certified as an S/M/WBE for purposes of the SBEDA Ordinance.

10.7. Violations. AT&T agrees that violation the provisions of this Section shall be subject to the provisions of Section III. E. 13. of the SBEDA Ordinance and any other penalties, sanctions and remedies available under law including, but not limited to:

10.7.1. Suspension of Agreement;

10.7.2. Withholding of funds;

10.7.3. Rescission of Agreement based upon a material breach of contract pertaining to

10.7.4. Refusal to accept a response or proposal; and

10.7.5. Disqualification of AT&T or other business firm from eligibility for providing goods or services to the City for a period not to exceed two years (upon City Council approval).

## **ARTICLE XI**

### **SUSPENSION AND TERMINATION**

11.1 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.

11.2 Termination - 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 following written notice by the other Party and a reasonable opportunity to cure not to exceed for thirty (30) days in duration, then the non-breaching Party may terminate the affected service(s) and, as applicable, this Agreement.

11.3 Termination-Notice. Subject to Section 11.12 (Termination and Cancellation Charges), City may terminate this Agreement, in whole or in part, without cause. City shall be required to give AT&T notice one hundred eighty days (180) days prior to the date of termination of the Agreement without cause.

11.4 Termination-Funding. City retains the right to terminate this Agreement at the expiration of each of City's budget periods. This Agreement is conditioned on a best efforts attempt by City to obtain and appropriate funds for payment of any debt due by City herein.

11.5 CIO Termination. Termination by City may be effected by Chief Information Officer, without further action by the San Antonio City Council. Regardless of the provisions herein, AT&T will not knowingly suspend or terminate service to a public safety City Site without the consent of the City.

11.6 No Termination of Public Safety City Sites. Regardless of the provisions herein, AT&T will not suspend or terminate service to a public safety City Site without the consent of the City.

11.7 Intentionally Omitted.

11.8 Internet Services. If the City fails to rectify a violation of AT&T's AUP for services provided over or accessing the Internet, within five (5) working days after receiving written notice from AT&T, AT&T may suspend the applicable portion of the service at the infringing City Site. AT&T has the right; however, to suspend or terminate the applicable portion of the service immediately when: (i) AT&T's suspension or termination is in response to multiple or repeated AUP violations or complaints and the City has failed to cure the situation following written notice; (ii) AT&T is acting in response to a court order or governmental notice that certain conduct must be stopped; or (iii) AT&T has notified the City in writing of its reasonable determination: (a) that 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) that such violation may cause harm to or interfere with the integrity or normal operations or security of AT&T's network or networks with which AT&T is interconnected or interfere with another customer's use of AT&T services or the Internet; or (c) that such violation otherwise presents imminent risk of harm to AT&T or AT&T's customers or their respective employees.

11.9 Materially Adverse Change. If AT&T revises a Service Publication and the revision has a materially adverse impact on City, and AT&T does not affect revisions that remedy such materially adverse impact within 30 days after notice from City, then City may, as City's sole remedy, elect to terminate the affected Service Components on 30 days' notice to AT&T, given not later than 120 days after City first learns of the revision to the Service Publication. However, a revision to a Service Publication will not be considered materially adverse to City if it changes prices that are not fixed (stabilized) in a Pricing Schedule or if the price change was mandated by a governmental authority. In addition to the termination rights herein, AT&T will work with the City to transition affected services to alternative services or otherwise reconfigure City services to meet the needs of the City consistent with the terms of this Agreement. In no event will the City be liable for any termination charges, special charges, build out costs, or other extraordinary charges as a result of the transition to alternative services or reconfiguration of City services necessitated by this Section. For purposes of this Agreement, "Service Publications" is defined as Service Guides, the AUP, guidebooks and tariffs.

11.10 Withdrawal of Services. Notwithstanding the Pricing Schedules found in Exhibit E, and unless applicable law or regulation mandates otherwise; AT&T may discontinue providing a service upon 12 months' notice, or a service component upon 120 days' notice, but only where AT&T generally discontinues providing the service or service component to similarly-situated customers. In



such case, AT&T will work with the City to migrate affected services to an alternative service or otherwise reconfiguration of City services to meet the needs of the City within the notice period, and will not discontinue the service or service component until the transition to an alternative service has been accomplished. In no event will the City be liable for any termination charges, special charges, build-out costs, or other extra ordinary charges as a result of the transition to alternative services or reconfiguration of City services necessitated by this Section. Alternative service will be provided pursuant to the terms and conditions of this Agreement, including by being subject to being included in the calculation of any applicable overall pricing discount set forth in this Agreement.

11.11 Effect of Termination. Termination by either Party of a service does not waive any other rights or remedies a Party may have under this Agreement. Termination or suspension of a service will not affect the rights and obligations of the Parties regarding any other service. If a service or service component is terminated by AT&T causing a material adverse impact of City services, the City will pay all amounts incurred prior to the effective date of termination, subject to the remedies and procedure outlined in Section 11.9 (Material Adverse Change) and Section 11.10 (Withdrawal of Services).

11.12 Termination and Cancellation Charges. Termination and cancellation charges will apply as provided in the Pricing Schedules attached in Exhibit E (Cancellation Charges). While the Parties agree that the termination and cancellation charges set forth in Exhibit E (Cancellation Charges) apply, for convenience of reference the Parties reproduce below those termination charges in effect as of the Effective Date. In the event of conflict between the charges below and the charges set forth in Exhibit E (Cancellation Charges), the charges set forth in Exhibit E (Cancellation Charges) shall control.

**11.12.1 IPFlex** 50% of Monthly Service Fees due upon Termination prior to completion of Minimum Payment Period.

**11.12.2 MIS** 50% of Monthly Service Fees due upon Termination prior to completion of Minimum Payment Period.

**11.12.3 AT&T Dedicated Internet** 50% of Monthly Service Fees due upon Termination prior to completion of Minimum Payment Period.

**11.12.4 AT&T VPN** 100% of Monthly Service Fees due upon Termination prior to completion of Minimum Payment Period. Opt-E-MAN 100% of waived One-Time Charges within 24 months, 50% of any waived OTCs after 24 months and before 36 months. 100% of Special Construction charges related to terminated service, and 100% of all Monthly Recurring Charges remaining in the initial twelve months of the term.

**11.12.5 ASE On Demand** 50% of Monthly Service Fees due upon Termination prior to completion of Minimum Payment Period. plus any waived non-recurring charges

**11.12.6 ADE:** 50% of Monthly Service Fees due upon Termination prior to completion of Minimum Payment Period. and, if AT&T installs Customer Premises Support Structure facilities for AT&T Dedicated Ethernet service at any site, an additional \$9,200 for such site to recover facility costs

11.13 Appropriations: Funding. By executing this Agreement, the City warrants that it has funds appropriated and available to pay all amounts due thereunder through the end of the City's current fiscal period. The City further agrees to request all appropriations and funding necessary to pay for the services for each subsequent fiscal period through the end of the term of the Agreement. In the event the City is unable to obtain the necessary appropriations or funding for the services provided under this Agreement, the City may terminate the Agreement without liability for the termination

charges otherwise applicable upon the following conditions: (i) the City has taken all actions necessary to obtain adequate appropriations or funding; (ii) despite the City's best efforts funds have not been appropriated and are otherwise unavailable to pay for the services; and (iii) the City has negotiated in good faith with AT&T to develop revised terms, an alternative payment schedule or a new Agreement to accommodate the City's budget. The City must provide AT&T thirty (30) days' written notice of its intent to terminate the Agreement under this Section. Termination of the Agreement for failure to obtain necessary appropriations or funding shall be effective as of the last day for which funds were appropriated or otherwise made available. If the City terminates this Agreement under this Section, the City agrees as follows: (i) it will pay all amounts due for services incurred through date of termination, and reimburse all unrecovered non-recurring charges; and (ii) upon re-appropriation of funds by the City Council, services will be reinstated pursuant to this Agreement.

## **ARTICLE XII**

### **MISCELLANEOUS PROVISIONS**

12.1 Assignment. AT&T shall not assign this Agreement or any right or privilege contained herein or mortgage, pledge or hypothecate any interest or right granted by this Agreement or grant any of the foregoing without the prior written consent of City and any such grant of any of the foregoing shall be void and of no effect. The City acknowledges, however, that certain affiliated companies of AT&T will provide services and products to the City under this Agreement and their participation in the provision of services and products will not be deemed an assignment of rights under the Agreement.

12.2 Relationship of Parties. The relationship of City and AT&T established by this Agreement is that of independent contractors, and nothing contained in this Agreement shall be construed to (a) constitute City and AT&T, or City and any AT&T representative, as partners, joint venturers, co-owners or otherwise as participants in a joint or common undertaking, or (b) except to the extent expressly set forth in this Agreement, allow any Party hereto to create or assume any obligation on behalf of another Party hereto for any purpose whatsoever.

12.3 Agreement Documents. This Agreement shall consist of the following documents: (1) This Agreement; (2) Exhibit A- List of Wired Services Used by City (as provided in the RFCSP); (3) Exhibit B -List of City Facilities Eligible for Ethernet Service (as provided in the RFCSP); (4) Exhibit C- List of City Facilities Eligible for Broadband Service (as provided in the RFCSP); (5) Exhibit D- General and Technical Requirements of Communications Services and Products; (6) Exhibit E - Price List for Communications Services and Products; (7) Exhibit F - Service Level Agreements (as provided in AT&T's Response); (8) Exhibit G - AT&T's SBEDA Plan; (9) Exhibit H –Critical Public Safety Locations. The terms and conditions governing the service provided by AT&T to the City are set forth in this Agreement and the following additional documents:

12.3.1 Pricing Schedules. A Pricing Schedule (including related attachments) identifies the services AT&T has contracted to provide the City under the Agreement as set out in Exhibit E.

12.3.2 Tariffs and Guidebooks. "Tariffs" are documents containing the standard description, pricing, and other terms and conditions for a service that

AT&T files with regulatory commissions. "Guidebooks" are documents containing the standard descriptions, pricing, and other conditions for a service that were, but no longer are, filed with regulatory commissions. Tariffs and Guidebooks may be found at [att.com/service](http://att.com/service) publications or other locations AT&T may designate.

12.3.3 Acceptable Use Policy. AT&T's Acceptable Use Policy ("AUP") applies to services provided over or accessing the Internet. The AUP may be found at [att.com/aup](http://att.com/aup), or other locations AT&T may designate.

12.3.4 Service Guides. The description, pricing, and other terms and conditions for the services not covered by a Tariff or Guidebook may be contained in a Service Guide, which may be found at [att.com/service](http://att.com/service) sub locations or other locations AT&T may designate.

12.4 Priority of Documents. The order of priority of the documents is as follows: the Agreement; AT&T's Pricing Schedules, the AUP; and Tariffs, Guidebooks and Service Guides. In the event of a conflict between this Agreement and the terms of a Pricing Schedule, and other documents referenced therein, the Agreement will control.

12.5 Execution by Affiliates. An AT&T Affiliate may sign a Pricing Schedule referencing this Agreement in its own name and such Affiliate contract will be a separate, but associated, contract incorporating the terms of this Agreement with respect to that Pricing Schedule. AT&T will arrange to have its respective Affiliates comply with this Agreement regardless of whether an Affiliate has signed a Pricing Schedule.

12.6 Advertising of Names. Except as otherwise permitted by this Agreement, AT&T shall not itself and shall not permit any of its subsidiaries or affiliates to advertise or promote in any way its own name or business or the name or business of any of its subsidiaries or affiliates in City Facilities or on the streets and sidewalks adjacent to City Facilities or use the name of City Facilities once identified or any variations thereof in any advertising, promotional or informational material, literature or publicity or on any letterhead or in any way advertise or publicize this Agreement, the transactions provided for herein and the relationships created thereby without City's prior written approval. No public announcement, to the press, or otherwise, of the transactions provided for herein shall be made by AT&T or City unless the same shall have been previously approved in writing by both AT&T and City.

12.7.1 Notices. Notwithstanding any other provision contained in this Agreement, notices, approvals or other communications provided for herein shall be validly given or made if in writing and delivered by hand or mailed registered or certified return receipt requested (postage prepaid, and with a copy mailed simultaneously by first class mail) as follows:

To AT&T:

AT&T Corp.

Attn: Account Team for City of San Antonio

1010 North Saint Mary's Street San Antonio, Texas 78215

To City:

City of San Antonio

Information Technology Services Department Attn: Kevin Goodwin

P.O. Box 839966  
San Antonio, Texas 78283-3966

With Copy to:  
City Clerk  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966

Alternatively, notice shall be mailed to such other address or addresses as may be specified by either Party hereto by written notice delivered to the other as provided herein. Any such notice if sent in accordance with this section shall be deemed delivered in all events within five (5) days following the deposit thereof in the U.S. mails as above provided.

12.8 Non-Waiver. A waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained.

Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either Party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the Party to be charged. In case of City, such changes must be approved by the San Antonio City Council. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

12.9 Force Majeure. "Force Majeure" means any event (other than economic hardship, changes in market conditions, or insufficiency of funds) that is beyond its reasonable control and could not have been prevented or avoided by its exercise of due diligence, that prevents a Party from complying with any of its obligations under this Agreement, including due to acts of God (such as, but not limited to, fires, explosions, earthquakes, drought, tidal waves and floods); war, hostilities (whether war be declared or not), invasion, act of foreign enemies, mobilization, requisition, or embargo; rebellion, revolution, insurrection, or military or usurped power, or civil war; contamination by radio-activity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component of such assembly; riot, commotion, strikes, go slows, lock outs or disorder; or acts or threats of terrorism. A Party affected by a Force Majeure event shall be relieved of the duty to perform such obligation until such time as the Force Majeure event has been alleviated; provided, that upon the removal of the Force Majeure event, the obligation prevented from being fulfilled will be automatically reinstated without the necessity of any notice whatsoever.

12.10 Non-Binding Mediation. Prior to filing suit, the Parties to this Agreement shall use non-binding mediation to resolve any controversy, claim or dispute arising under this Agreement, expressly excluding disputes involving the applicability or effect of superior laws, the constitutionality of any requirement in this Agreement or the preemptive effect of federal law.

12.10.1 Initiation of Mediation. To initiate non-binding mediation, a Party shall give written notice to the other Party. In the mediation process, the Parties will try to resolve their differences voluntarily with the aid of an impartial mediator, who will attempt to facilitate negotiations. The mediator will be selected by agreement of the Parties. If the Parties cannot agree on a mediator, a mediator shall be designated by JAMS/Endispute at the request of either Party. Any mediator so designated must be acceptable to both Parties.

12.10.2 Mediation Process. The mediation will be conducted as specified by the mediator and agreed upon by the Parties. The Parties agree to discuss their differences in good faith and to attempt with the assistance of the mediator, to reach an amicable resolution of the dispute. Any findings by the mediator shall be a non-binding determination. The mediation will be treated as a settlement discussion and therefore will be confidential in accordance with Texas Civil Practices and Remedies Code, Section 154.073. The mediator may not testify for either Party in any later proceeding relating to the dispute. No recording or transcript shall be made of the mediation proceedings. Each Party will bear its own costs in the mediation. The fees and expenses of the mediator will be shared equally by the parties.

12.11 Governing Law and Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of Texas. Any legal action or proceeding arising out of or relating to this Agreement or the transactions it contemplates (“Judicial Action”) shall be brought only in a United States District Court sitting in Bexar County, Texas or in any Texas state court sitting in Bexar County, Texas, and each Party consents to the exclusive jurisdiction of such courts (and of the appropriate appellate courts) in any such Judicial Action and waives any claim of forum non conveniens in connection therewith and objection to venue laid therein. The choice of forum above shall not prohibit the enforcement of any judgment obtained in that forum or any other appropriate forum.

12.12 Partial Invalidity. If any term or provision of this Agreement is determined to be invalid, illegal or unenforceable by a court of competent jurisdiction, the remaining terms and provisions of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall remain valid and be enforceable to the fullest extent permitted by law.

12.13 Terminology. All personal pronouns used in this Agreement, whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural; and the plural shall include the singular. Titles of Articles and Sections in this Agreement are for convenience only, and neither limit nor amplify the provisions of this Agreement, and all references in this Agreement to Articles, Sections or Subsections thereof shall refer to the corresponding Article, Section or Subsection of this Agreement unless specific reference is made to the articles, sections or subsection of another document or instrument. The word “include” in every form means to include without limitation by virtue of enumeration and a derivative of a defined term shall have the meaning appropriate to the context of its use.

12.14 City Approval. Whenever in this Agreement a provision calls for the approval of the City or any decision or other exercise of discretion by the City, it is hereby expressly agreed unless provided otherwise that such approval, decision or discretion shall mean the approval, decision or discretion of the Chief Information Officer, or his designee.

12.15 Conflict of Interest. The City of San Antonio Ethics Code prohibits contracts between the City and its local public officials, employees and agents from being either officers or employees of City or any City agency such as City-owned utilities. It further prohibits AT&T's officers, employees and agents from having a prohibited financial interest in an Agreement with the City. A prohibited financial interest means a City officer or employee, his or her parent, child or spouse, a business entity in which the officer or employee, or his or her parent, child or spouse, directly or indirectly, owns ten percent ( 10%) or more of the voting stock or shares of the business entity; or ten percent ( 10%) or more of the fair market value of the business entity; or a business entity of which any individual or entity above listed is a subcontractor on a City contract, a partner, or a parent or subsidiary business entity. AT&T warrants that it has disclosed whether there are any existing or potential conflicts of interest related to this provision and that it has completed a Discretionary Contracts Disclosure Form as required by the RFCSP.

12.16 Counterparts. This Agreement may be executed in two counterparts, each of which shall be deemed an original and constitute one and the same instrument.

12.17 Legal Authority. The signer of this Agreement for AT&T represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of the AT&T and to bind AT&T to all of the terms, conditions, provision and obligations herein contained.

12.18 Entire Agreement. This Agreement contains the entire understanding between the Parties and may not be modified except by written instrument executed by both Parties hereto. No prior or contemporaneous oral or written agreements, bid solicitation, bid responses or other materials shall be binding on the Parties unless expressly incorporated herein by reference.

EXECUTED in multiple counterparts, each of which shall be deemed an original as of the \_\_\_\_ day of \_\_\_\_\_, 2018.

CITY OF SAN ANTONIO, TEXAS  
A MUNICIPAL CORPORATION

AT&T CORP.  
A New York Corporation

By: \_\_\_\_\_

By: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

ATTACHMENTS:

EXHIBIT "A" – List of Wired Services Used by City  
EXHIBIT "B" – List of City Facilities Eligible for Ethernet Service  
EXHIBIT "C" – List of City Facilities Eligible for Broadband Service

EXHIBIT “D” – General and Technical Requirements of Services and Products

EXHIBIT “E” – Price List for Services and Products

EXHIBIT “F” – Service Level Agreements for Services and Products

EXHIBIT “G” – AT&T’s SBEDA Plan

EXHIBIT “H” – Fire and Police Stations, and  
other Critical Public Safety Locations.