

**COOPERATIVE PROCUREMENT CONTRACT BETWEEN
THE CITY OF SAN DIEGO
AND
AT&T CORPORATION
FOR THE PROVISION OF TELECOMMUNICATIONS, VOICE AND DATA
SERVICES**

I. RECITALS

A. San Diego Municipal Code (SDMC) section 22.3208 authorizes the City of San Diego, a municipal corporation (City), to use a cooperative procurement contract awarded by another agency where the City's Purchasing Agent certifies in writing that the cooperative procurement contract is in the City's best interests, to the City's economic advantage, and the agency's contract was awarded using a process that complies with the policies, rules, and regulations developed and implemented by the City Manager.

B. The State of California's Department of Technology (Agency) issued a notice for a cooperative contract opportunity for the provision of telecommunications, voice and data services by posting the solicitation on "Cal eProcure", the State of California's electronic procurement website on March 15, 2018, at least ten days before the bid or proposal was due.

C. On January 3, 2019, based on the results of the competitive process, Agency awarded a contract to AT&T Corporation (Contractor) and executed the agreement for Telecommunications, Voice and Data Services with Contractor, identified as C4-LEG-12-TS-01, (Agency Agreement), attached as Exhibit 1; and

D. On September 30, 2021, the City's Purchasing Agent certified in writing that the Agency Agreement meets the requirements set forth in SDMC section 22.3208.

E. Contractor has agreed to provide to City the same pricing offered to Agency for goods and services consistent with the terms and conditions in the Agency Agreement except as modified herein.

II. GENERAL PROVISIONS

In consideration of the above recitals and mutual covenants and conditions set forth in this Contract, and for good and valuable consideration, the sufficiency of which is hereby acknowledged, City and Contractor hereby agree to the terms and conditions as set forth in the Agency Agreement with the exception of the following modifications:

1. Incorporation. This Contract shall fully incorporate the Recitals which the parties agree are true and correct.

2. Effective Date. This Contract is effective on the last date that this Contract is signed by City and Contractor and approved by the City Attorney and is valid through the following dates based on each of the Contract categories:

Category 15 - All Category 15 services have a base term through January 2, 2026, with three (3) one-year options to extend with the exception of Section 15.2.2 (Carrier DS0 Service) which has a base term through January 2, 2022, with two (2) one-year options to extend.

Category 16 – All Category 16 services have a base term through January 2, 2024, with five (5) one-year options to extend.

Category 17 - All Category 17 services have a base term through January 2, 2024, with five (5) one-year options to extend.

Category 18 - All Category 18 services have a base term through January 2, 2026, with three (3) one-year options to extend with the exception of Section 18.3.1.1 (Analog Service) which has a base term through January 2, 2022, with two (2) one-year options to extend.

The total duration of this Contract, including the exercise of any options under this section, shall not exceed five (5) years without approval of the City of San Diego Council by Ordinance.

3. Early Termination. Contractor will provide reasonably prompt written notice of the date in which the Agency Agreement is terminated to the Contract Administrator identified in Section III, below. Such written notice must explain the basis for termination and the date upon which the termination is effective.

4. Compliance with Controlling Laws. Contractor shall comply with all applicable local, state, and federal laws and regulations.

5. Governing Law. The Contract shall be deemed to be made under, construed in accordance with, and governed by the laws of the State of California without regard to the conflicts or choice of law provisions thereof.

6. Jurisdiction and Venue. The venue for any suit concerning this Contract, the interpretation of application of any of its terms and conditions, or any related disputes shall be in the County of San Diego, State of California.

III. CONTRACT ADMINISTRATOR

1. Contract Administrator. The Department of Information Technology (Department) is the Contract Administrator for this Agreement. Contractor shall provide the Services under the direction of a designated representative of the Department as follows:

Department of Information Technology
Attn: Ryan Ermert, Network Manager
1200 3rd Avenue Suite 1800
San Diego, CA 92101
(619) 533-3059
REmert@sandiego.gov

2. Notices. Unless otherwise specified, in all cases where written notice is required under this Contract, service shall be deemed sufficient if the notice is personally delivered or deposited in the United States mail, with first class postage paid, attention to the Requesting

Department. Proper notice shall be effective on the date of personal delivery or five (5) days after deposit in the United States postal mailbox. Notices shall be sent to:

Notices to City:

Department of Information Technology
Attn: Mr. Shawn Killpack, Deputy Director
City of San Diego
1200 3rd Avenue, Suite 1800
San Diego, CA 92101
(619) 533-3059
SKillpack@sandiego.gov

Notices to Contractor:

AT&T Corp.
ATTN: Mark Roese
2700 Watt Ave, Suite 1213
Sacramento, CA 95821

IV. COMPENSATION

1. City shall pay Contractor for the goods or services provided in accordance with this Contract in an amount not to exceed \$3,000,000. Contractor is not obligated to provide goods or services in excess of this amount, and does so at its own risk, unless this Contract is amended in writing duly executed by City and Contractor increasing this Not to Exceed amount.

Funds for services over the Not to Exceed Amount shall require approval by the City Council and City shall use its best efforts to promptly seek such approval. City understands that Contractor may continue billing for services subject to this Contract after the Not to Exceed Amount is met until such time as this Contract is terminated by either party in accordance with the terms of this Contract. If the Not to Exceed Amount is exceeded and the City obtains the approval from such authority to increase the Not to Exceed Amount for funds for services over the Not to Exceed Amount, then City shall pay Contractor for such services, provided however, that City shall not be liable for any fees or penalties associated with the late payment of any and all amounts billed in excess of the Not to Exceed Amount which were assessed prior to the date of such approval. If such approval to amend the Not to Exceed Amount is denied, City shall notify Contractor within two (2) days of such denial. At any time after City exceeds the Not to Exceed Amount, Contractor reserves the right to terminate this Contract with fourteen (14) calendar days advance written notice to City; however City shall not be liable for any non-payment, late payment, fee, penalty, or other expense of any billed service in excess of the Not to Exceed Amount, nor shall City's failure to pay any such amounts be deemed a material breach of this Contract. City shall be responsible for tracking its total expenditures under the Contract as long as the Contract remains in effect. Contractor assumes no responsibility for tracking this dollar amount.

V. CONTRACT

1. Contract Documents. This Contract consists of this Contract and its Exhibits, Solicitation C4A1LEG18 for Telecommunications, Voice and Data Services, the Contractor's Response to Solicitation C4A1LEG18, and the Resulting Contract C4-LEG-12-TS-01 between Contractor and Agency, including Amendments, which are attached as Exhibits hereto and incorporated by reference (collectively, and as such documents may be now or hereafter restated, amended, or otherwise modified in accordance with their terms, the "Contract Documents"). These documents together contain all the terms and conditions of the Contract between City and Contractor.

2. Contract Interpretation. The Contract Documents completely describe the goods and/or services to be provided. Words or phrases which have a well-known technical or construction industry trade meaning and are used to describe goods or services will be interpreted in accordance with that meaning unless a different definition has been provided in the Contract Documents.

3. Precedence. In resolving conflicts resulting from errors or discrepancies in any of the Contract Documents, City and Contractor will use the order of precedence as set forth below. The document in highest order of precedence controls. Inconsistent provisions in the Contract Documents that address the same subject, are consistent, and have different degrees of specificity, are not in conflict and the more specific language will control. The order of precedence from highest to lowest is as follows:

- | | |
|-----------------|---|
| 1 st | This Contract |
| 2 nd | Agency Contract |
| 3 rd | Contractor's Response to Solicitation C4A1LEG18 |
| 4 th | Agency's Solicitation C4A1LEG18 and any Addenda |

4. Counterparts. This Contract may be executed in counterparts which, when taken together, shall constitute a single signed original as though all parties executed the same page.

VI. CITY'S ADDITIONAL TERMS

1. ADA Certification. Contractor shall comply with the City's Americans with Disabilities Act Compliance/City Contracts requirements as set forth in Council Policy 100-04, which is incorporated into this Contract by reference.

2. Non-Discrimination Ordinance. Contractor shall not discriminate on the basis of race, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of subcontractors, vendors, or suppliers. Contractor shall provide equal opportunity for subcontractors to participate in subcontracting opportunities.

3. Compliance with the City's Equal Employment Opportunity Outreach Program (EOCP): Contractor shall comply with the City's EOCP requirements. Contractor shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Contractor shall provide equal opportunity in all employment practices. Prime Contractors shall

ensure that their subcontractors comply with this program. Nothing in this Section shall be interpreted to hold a prime Contractor liable for any discriminatory practice of its subcontractors.

4. Business Tax Certificate. Unless the City Treasurer determines in writing that a contractor is exempt from the payment of business tax, any contractor doing business with the City of San Diego is required to obtain a Business Tax Certificate and to provide a copy to the City before any contract is executed.

5. Product Endorsement. Contractor shall comply with Council Policy 000-41 which requires that other than listing the City as a client and other limited endorsements, any advertisements, social media, promotions or other marketing referring to the City as a user of a product or service will require prior written approval of the Mayor or designee. Use of the City Seal or City logos is prohibited.

IN WITNESS WHEREOF, this Contract is executed by City and Contractor acting by and through their authorized officers.

AT&T CORP.

By:  _____

Name: Chris Congo

Title: Assistant Vice President

Date: Oct 12, 2021

THE CITY OF SAN DIEGO

By:  _____

Name: Claudia Abarca

Title: Director, Purchasing & Contracting

Date: Nov 17, 2021

Adobe Sign Transaction Number: CBJCHBCAABAA-hprhHw708lesMkl7CRk4N_e3qTQVCUg

Approved as to form this 17 day of
November, 2021.

MARA W. ELLIOTT, City Attorney

By:  _____
Deputy City Attorney

Print Name: Steven Lastomirsky

Adobe Sign Transaction Number: CBJCHBCAABAA-hprhHw708lesMkl7CRk4N_e3qTQVCUg

EXHIBIT 1
AGENCY AGREEMENT C4-LEG-12-TS-01

EXHIBIT 2
SOLICITATION C4A1LEG18 FOR TELECOMMUNICATIONS, VOICE AND DATA
SERVICES

EXHIBIT 3
CONTRACTOR'S RESPONSE TO SOLICITATION C4A1LEG18