

Robert E. Shannon
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
Telephone (562) 570-2200

1 AGREEMENT

2 **29035**

3 THIS AGREEMENT ("Agreement") is made and entered, in duplicate, as of
4 the 1st day of February, 2005, for reference purposes only, pursuant to Resolution
5 No. C-28351 adopted by the City Council of the City of Long Beach at its meeting held on
6 the 6th day of April, 2004, between VERIZON CALIFORNIA INC., a California corporation,
7 with a business address of 112 Lakeview Canyon Road, Thousand Oaks, California
8 91362-3811 ("Contractor") and the CITY OF LONG BEACH, a municipal corporation
9 ("City").

10 WHEREAS, the City has a need for telecommunications equipment and
11 maintenance services; and

12 WHEREAS, Section 1802 of the Long Beach City Charter permits the City
13 to make purchases of telecommunications equipment ("Equipment") and maintenance
14 services ("Services") under the purchasing contracts of other governmental agencies when
15 authorized by a resolution; and

16 WHEREAS, the State of California ("State") has approved a program
17 ("CMAS" Program") pursuant to which governmental entities may purchase Equipment
18 from various vendors, including Contractor, under a CMAS Agreement ("CMAS
19 Agreement") between the State and each such vendor;

20 WHEREAS, the State has eight (8) CMAS Agreements for Equipment, copies
21 of which are attached as Exhibit "A" and incorporated herein by this reference. City
22 understands that the list of vendors, and the pricing for Equipment under existing CMAS
23 Agreements may change during the term of this Agreement and Contractor agrees to
24 advise City in writing of any such changes to its CMAS Agreement Schedules. Prices shall
25 not exceed the pricing provided by Contractor for Equipment under existing CMAS
26 Agreements. In addition, Contractor shall at the request of City provide City with the
27 information necessary for City to access the price schedule of each vendor; and

28 WHEREAS, on April 6, 2004 the City Council adopted Resolution

1 No. C-28351 authorizing the City to purchase Equipment from Contractor under the CMAS
2 Agreements.

3 NOW, THEREFORE, in consideration of the terms and conditions contained
4 herein, it is mutually agreed by and between the parties hereto as follows:

5 1. The CMAS Agreements are hereby incorporated herein, as referenced in
6 Exhibit "A" and the same terms and conditions contained in the CMAS Agreements shall
7 be applicable to City and Contractor for the purchase and sale of Equipment and Services
8 shall be provided to City by Contractor pursuant to the terms of Exhibit "B", attached
9 hereto and incorporated in its entirety by this reference. This Agreement, Exhibit "A" and
10 Exhibit "B" shall govern the purchase of Equipment and the provision of Services,
11 respectively, except as follows:

12 a. The term of this Agreement shall be deemed to have commenced
13 upon execution of this Agreement by both parties (the "Effective Date") and, except for
14 Services which shall be provided for a three (3) year period commencing on the Effective
15 Date, shall expire on the expiration or earlier termination of the CMAS Agreements
16 (Exhibit "A") as the same may be modified, superceded, extended or renewed and as will
17 be reflected in a written notice from Contractor; provided, however, that City may terminate
18 this Agreement at any time on thirty (30) days written notice to Contractor.

19 b. Whenever the CMAS Agreements refer to the State of California, they
20 shall be deemed to refer to the City.

21 c. Whenever the CMAS Agreements refer to State Auditor, they shall be
22 deemed to refer to the City Auditor of the City of Long Beach.

23 d. Whenever the CMAS Agreements refer to the Chief Executive Officer,
24 they shall be deemed to refer to the City Manager of the City.

25 e. Whenever the CMAS Agreements refer to the State Chief of
26 Procurement, they shall be deemed to refer to the Manager of the City's Infrastructure
27 Services Bureau.

28 f. Whenever the CMAS Agreements refer to the United States

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1 Government, they shall be deemed to refer to the City Council of the City.

2 g. All invoices required under the CMAS Agreements shall be submitted
3 to the following address:

4 City of Long Beach
5 Telecommunications Division
6 333 West Ocean Boulevard
7 Lower Level
8 Long Beach, California 90802
9 Attn: John Duplissis

10 h. With respect to Equipment, to the extent that the provisions of the
11 CMAS Agreement and this Agreement are inconsistent, the provisions of the CMAS
12 Agreement shall govern. With respect to Services, to the extent that the provisions of
13 Exhibit "B" and this Agreement are inconsistent, the provisions of Exhibit "B" shall govern.

14 i. Whenever Exhibit "B" refers to the Agreement such reference shall be
15 deemed to refer to Exhibit "B", and its associated attachments.

16 j. Pricing provided for Equipment pursuant to the CMAS Agreements is
17 subject to change. However, such revised pricing shall not exceed the prices set forth in
18 the applicable CMAS Agreement(s). Contractor may, at its sole discretion offer reduced
19 prices to City for Equipment, from time to time, during the term of this Agreement. Pricing
20 provided for Services shall be set out in Exhibit "B", and shall remain firm for the three-year
21 term of Exhibit "B".

22 2. City agrees to purchase and Contractor agrees to sell the Equipment and
23 Services for an aggregate amount not to exceed Four Hundred Fifty Thousand Dollars
24 (\$450,000.00) per year during the term of this Agreement. City reserves the right to
25 purchase only that Equipment and such Services that meet its needs and requirements.
26 Contractor shall pay all transportation and packaging costs for the Equipment.

27 3. Prior to execution of this Agreement and without limiting the indemnity provisions
28 set forth herein to the full extent as permitted by law, Contractor, at its sole cost, shall
procure and maintain in full force and effect the following policies of insurance from a
company or companies listed on the California List of Eligible Surplus Lines Insurers

1 (http://www.sla-cal.org/carrier_info/lesli/) with a current rating from A.M. Best Company of
2 A:VIII or better:

3 a. General Liability. Commercial general liability insurance which affords
4 coverage at least as broad as Insurance Services Office (ISO) Commercial General
5 Liability coverage form ISO CG 00 01 11 85 with minimum limits of not less than
6 \$5,000,000 per occurrence.

7 b. Automobile Liability. Commercial automobile liability insurance with
8 coverage at least as broad as ISO CA 00 01 06 92 covering Symbol 1 ("Any Auto"), with
9 minimum limits of \$2,000,000 combined single limits.

10 c. Worker's Compensation. Worker's Compensation insurance, as required
11 by the State of California, and Employer's Liability insurance, with a minimum limit of
12 \$1,000,000 per accident or occupational illness for bodily injury or disease.

13 d. Professional or Errors and Omissions Liability Insurance. For professions
14 requiring licensure, as applicable to the Equipment and Services provided under the
15 Agreement including, but not limited to engineers and architects, shall be required to
16 maintain professional liability insurance, applicable to their respective professions, in an
17 amount not less than \$1,000,000 per claim, without environmental restrictions, for a period
18 whose prior acts coverage shall be no later than the first date of this Agreement and whose
19 extended reporting coverage period shall be at least three years from the time that all work
20 under this Agreement is completed.

21 The policy or policies of insurance required for General Liability and Automobile
22 Liability shall be endorsed as follows:

23 a. The indemnified parties, while acting within the scope of their authority,
24 shall be additional insureds, such insurance is to be primary and not contributing with any
25 other insurance or self-insurance maintained by said additional insureds. For General
26 Liability, the additional insured endorsement shall be equivalent in coverage scope to ISO
27 CG 20 10 11 85.

28 b. In the event of one insured, whether named or additional, incurring liability

1 to any other of the insured, whether named or additional, the policy shall cover the insured
2 against whom claim is or may be made in the same manner as if separate policies had
3 been issued to each insured, except that the limits of insurance shall not be increased
4 thereby.

5 c. The same shall not be canceled or the coverage reduced until a thirty (30)
6 day written notice of cancellation (or ten (10) days, for nonpayment of premium only) has
7 been served upon the City Risk Manager by registered or certified mail.

8 d. Such insurance is primary and any other insurance-, deductible, retention
9 or self-insurance maintained by the indemnified parties shall not contribute with such
10 primary insurance.

11 e. Any failure by the named insured to comply with reporting provisions of
12 the policy or breaches or violations of warranties shall not affect coverage provided to the
13 insureds added by this endorsement.

14 In addition, the policy or policies of insurance, as identified below, shall be endorsed
15 as follows:

16 a. A waiver of subrogation stating that the insurer waives indemnifications
17 from the City applies to General Liability and Worker's Compensation.

18 b. The policy or policies shall not be canceled or the coverage reduced until
19 a thirty (30)-day written notice of cancellation has been served upon the City Risk Manager
20 by registered or certified mail applies to Worker's Compensation and Professional or
21 Errors and Omissions Liability Insurance.

22 In the event any of the insurance coverages required to be furnished by Contractor
23 have deductible or self-insured provisions, Contractor shall fully protect the indemnified
24 parties in the same manner as those interests would have been protected had the policy
25 not contained the deductible or self-insured provision. The deductible or self-insured
26 amount shall be shown on an "evidence of insurance" provided to the City, and the City
27 reserves the right to limit said amount and to review Contractor's financial statements if the
28 amount exceeds a level acceptable to the City.

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1 Contractor shall deliver ACORD certificates of insurance coverage or endorsement
2 forms furnished by the City ("evidence of insurance") for approval as to sufficiency by the
3 City Risk Manager and approval as to form by the City Attorney, which shall not be
4 unreasonably withheld. The endorsements are to be signed by a person authorized by that
5 insurer to bind coverage on its behalf. If Worker's Compensation coverage is placed with
6 the State Compensation Insurance Fund, a State Compensation Fund Certificate of
7 coverage will be acceptable if endorsed in accordance with this Agreement.

8 Should Contractor fail to maintain policies with the coverage and limits specified
9 herein, in full force and effect at all times, the City shall have the right to withhold any
10 payment due Contractor or to suspend Contractor's operations until Contractor has fully
11 complied with these provisions and furnished the required evidence of insurance. In the
12 event that Contractor's operations are suspended for failure to maintain acceptable
13 insurance coverage, Contractor shall not be entitled to an extension of time for completion
14 of the work.

15 All subcontractors shall be included as additional insureds under Contractor's
16 policies, or Contractor shall be responsible for causing subcontractors to purchase the
17 appropriate insurance in compliance with the terms of this specification. All coverages and
18 endorsements of coverages for subcontractors shall be subject to all of the requirement
19 stated herein.

20 4. All notices or demands required or permitted to be given or made under this
21 Agreement shall be in writing and shall be hand delivered or mailed by first-class registered
22 or certified mail, postage prepaid, addressed as follows:

23 If to City: City of Long Beach
24 333 West Ocean Boulevard, 13th floor
25 Long Beach, California 90802
26 Attn: City Manager

27 If to Contractor: Verizon California Inc.
28 2801 Townsgate Road, Suite 200
Thousand Oaks, California 91361
Attn: Keith Puls

5. All reports required of Contractor under the CMAS Agreements shall be delivered

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1 to City at the address set forth in Section 4 above.

2 6. Unless otherwise defined in this Agreement, all capitalized terms shall have
3 the meanings ascribed to them in the CMAS Agreements.

4 IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly
5 executed with all of the formalities required by law as of the date first stated above.

6 VERIZON CALIFORNIA INC., a California
7 corporation

8 Dated February 9, 2005

By TJ McCallion
9 Name Timothy J. McCallion
10 Title President

11 Dated February 8, 2005

By Lawrence A. Valdivieso
Name Lawrence A. Valdivieso
12 Title Assistant Secretary

13 **FORM APPROVED**

14 for Vz: CIB

15 **ATTORNEY**

16 DATE 2/8/05

17 "CONTRACTOR"

18 CITY OF LONG BEACH, a municipal corporation

19 Dated 2.28., 2005

By [Signature]
20 City Manager

21 "CITY"

22 This Agreement is hereby approved as to form on this 23rd day of
23 February, 2005.

24 ROBERT E. SHANNON, City Attorney

By [Signature]
25 Deputy

26 ELG:rjr:eg 01/24/05 #04-00964 (FINAL)

27 L:\APPS\CtyLaw32\WPDOCS\D014\004\00068340.WPD

Exhibit "A"

EXHIBIT A



Applicable CMAS Agreements

The eight CMAS Agreements for Equipment as identified below and copies of which are attached hereto are incorporated herein by this reference to the Agreement. The terms and conditions of the CMAS Agreement shall govern the purchase of Equipment under the Agreement. The CMAS Agreements shall be deemed to terminate under this Agreement on the expiration date of the affected CMAS Agreement unless terminated sooner in accordance with the CMAS Agreement or the Agreement.

| CMAS Agreement # | CMAS Term | Products Covered |
|------------------|-------------------------|--|
| 3-01-58-0012P | 5/1/2001 – 4/30/2006 | PictureTel Video Conferencing Equipment PictureTel Voice Conferencing Equipment |
| 3-01-58-0012L | 1/1/2001 – 12/31/2005 | Bay Networks, Norstar, Nortel, ACE Equipment, KSU, Telephone Sets |
| 3-01-58-0012M | 10/1/2000 – 9/30/2005 | Polycom Video Conferencing Equipment |
| 3-03-70-0116X | 10/31/2003 – 6/30/2007 | Dell LAN System and Components, PC Monitor, WAN System and Components Network Components |
| 3-01-70-0116V | 12/22/2000 – 12/21/2005 | APC, Digital Link, Fujitsu, Marconi, PictureTel Call Accounting System, EDC LAN Component and System, WAN System EDC Hubs |
| 3-02-70-0116Y | 10/15/2002 – 12/31/2004 | Alcatel, APC Data Comm Equipment |
| 3-01-58-0012N | 12/12/2002 – 12/11/2005 | APC, Cabletron, Cisco, Fore, HP, EDP Concentrators Servers, Ethernet Products, Hubs, Routers, Repeaters, LAN Components |
| 3-02-00-0006L | 10/15/2002 – 10/29/2004 | Belden, Cisco, Wire Communications, Service Telecom Cabling |

Exhibit A: CMAS Terms and Conditions

City's purchase of Equipment and Contractor's sale of Equipment shall be governed by the terms and conditions of CMAS Agreement between the State of California and Verizon California Inc., effective May 21, 2001. The terms and conditions of such CMAS Agreement are attached hereto in this Exhibit A.

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
CONTRACT TERMS AND CONDITIONS
VERIZON CALIFORNIA INC.**

This agreement shall provide the State, at its discretion, the right to procure the products and services offered by the Contractor as identified in the Contractor's California Multiple Award Schedule; subject to the availability of funds, unless earlier terminated by the State in accordance with the termination provisions contained herein, or the purchase order.

All CMAS terms and conditions (including cover page provisions) are hereby incorporated by reference into individual purchase orders issued against the contract.

Agency changes to the CMAS terms and conditions which result in increase risk or liability to the State are not acceptable.

1. APPROPRIATION OF FUNDS

- a. If the term of this contract extends into fiscal years subsequent to that in which it is approved, such continuation of the contract is subject to the appropriation of funds for such purpose by the Legislature. If funds to effect such continued payment are not appropriated, Contractor agrees to take back any affected equipment and software furnished under this contract, terminate any services supplied to the State under this contract, and relieve the State of any further obligation therefor.
- b. State agrees that if Provision a above is invoked, equipment shall be returned to contractor in substantially the same condition in which it was delivered to the State, subject to normal wear and tear. State further agrees to pay for packing, crating, transportation to contractor's nearest facility and for reimbursement to the contractor for expenses incurred for their assistance in such packing and crating.

2. DRUG-FREE WORKPLACE CERTIFICATION

By signing this contract, the Contractor hereby certifies under penalty of perjury under the laws of the State of California that the Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:

- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
- b. Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:
 - 1) the dangers of drug abuse in the workplace;
 - 2) the person's or organization's policy of maintaining a drug-free workplace;
 - 3) any available counseling, rehabilitation and employee assistance programs; and,
 - 4) penalties that may be imposed upon employees for drug abuse violations.
- c. Provide, as required by Government Code Section 8355 (c), that every employee who works on the proposed contract:
 - 1) will receive a copy of the company's drug-free policy statement; and,
 - 2) will agree to abide by the terms of the company's statement as a condition of employment on the contract.

Failure to comply with these requirements may result in suspension of payments under the contract or termination of the contract or both and the Contractor may be ineligible for award of any future State contracts if the department determines that any of the following has occurred: (1) the Contractor has made false certification, or (2) violates the certification by failing to carry out the requirements as noted above.

3. NATIONAL LABOR RELATIONS BOARD CERTIFICATION

By signing hereon the Contractor swears under penalty of perjury that no more than one final, unappealable finding of

contempt of court by a Federal court has been issued against the Contractor within the immediately preceding two-year period because of the Contractor's failure to comply with an order of the National Labor Relations Board. This provision is required by, and shall be construed in accordance with Public Contract Code Section 10296.

4. STATEMENT OF COMPLIANCE

The Contractor's signature affixed hereon and dated shall constitute a certification under the penalty of perjury under the laws of the State of California that the Contractor has, unless exempted, complied with the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.

5. EXAMINATION AND AUDIT

a. State Auditor Audit

The contracting parties shall be subject to the examination and audit of the State Auditor for a period of three (3) years after final payment under the contract in accordance with Government Code Section 8546.7. The examination and audit shall be confined to those matters connected with the performance of the contract including, but not limited to, the costs of administering the contract.

b. Disabled Veteran Business Enterprise Audit

Contractor agrees that the awarding department, or its delegatee, will have the right to review, obtain, and copy all records pertaining to performance of the contract. Contractor agrees to provide the awarding department, or its delegatee, with any relevant information requested and shall permit the awarding department, or its delegatee, access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with Military and Veterans Code, Section 999 et seq. and Title 2, California Code of Regulations, Section 1896.60 et seq. Contractor further agrees to maintain such records for a period of three (3) years after final payment under the contract.

6. CONTRACTOR'S LICENSE REQUIREMENTS

Contracts which include installation, or the wording "Furnish and Install" require at the time of contract award that suppliers possess a valid California State Contractor's License. If sub-contractors are used, they must also possess a valid California State Contractor's License. All businesses which construct or alter any building, highway, road, parking facility, railroad, excavation, or other structure in California must be licensed by the California State License Board (CSLB) if the total cost (labor and materials) of the project is \$500.00 or more. Failure to be licensed or to keep the license current and in good standing shall be grounds for contract revocation.

7. SPECIAL CONDITIONS - PUBLIC WORKS REQUIREMENTS (APPLICABLE TO INSTALLATION ONLY)

a. Prior to the commencement of performance, the Contractor must obtain and provide to the State, a payment bond, on Standard Form 807, when the contract involves a public works expenditure (labor/installation costs) in excess of \$5,000. Such bond shall be in a sum not less than one hundred percent (100%) of the contract price. Forms shall be provided to the contractor.

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
CONTRACT TERMS AND CONDITIONS
VERIZON CALIFORNIA INC.**

- b. In accordance with the provisions of Section 1773 of the California Labor Code, the Contractor shall, conform and stipulates to the general prevailing rate of wages, including employer benefits as defined in Section 1773.1 of the California Labor Code, applicable to the classes of labor to be used for public works such as at the delivery site for the assembly and installation of the equipment or materials under the contract. Pursuant to Section 1770 of the California Labor Code, the Department of Industrial Relations has ascertained the general prevailing rate of wages in the county in which the work is to be done, to be as listed in the Department of Transportation booklet entitled General Prevailing Wage Rates. The booklet is compiled monthly and copies of the same are available from the Department of Industrial Relations, Prevailing Wage Unit at (415) 972-8628. The booklet is required to be posted at the job site.
- c. The Contractor hereby certifies by signing this contract that:
- 1) Contractor has met or will comply with the standards of affirmative compliance with the Non-Discrimination Clause Requirements included herein.
 - 2) Contractor is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workmen's compensation or to undertake self-insurance in accordance with the provisions of that Code, and Contractor will comply with such provisions before commencing the performance of the work of this contract.
- d. Laws to be Observed
- 1) Labor

Pursuant to Section 1775 of the California Labor Code the Contractor shall, as a penalty to the State or Political subdivision on whose behalf the contract is made or awarded, forfeit not more than fifty (\$50.00) for each calendar day, or portions thereof, for each worker paid by him or subcontractor under him, less than the prevailing wage so stipulated; and in addition, the Contractor further agrees to pay to each workman the difference between the actual amount paid for each calendar day, or portions thereof, and the stipulated prevailing wage rate for the same. This provision shall not apply to properly indentured apprentices.

Pursuant to Sections 1810-1815 of the California Labor Code, inclusive, it is further agreed that the maximum hours a worker is to be employed is limited to eight hours a day and forty hours a week and the Contractor shall forfeit, as a penalty to the State, twenty-five (\$25) for each worker employed in the execution of the contract for each calendar day during which a workman is required or permitted to labor more than eight hours in any calendar day or more than forty hours in any calendar week, in violation of California Labor Code Sections 1810-1815, inclusive.
 - 2) Worker's Compensation Insurance

The Contractor will be required to secure the payment of compensation to its employees in accordance with the provisions of Labor Code Section 3700.
 - 3) Travel and Subsistence Payments

Travel and subsistence payments shall be paid to each worker needed to execute the work, as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed in accordance with Labor Code Section 1773.8.
 - 4) Apprentices

Special attention is directed to Sections 1777.5, 1777.6, and 1777.7 of the California Labor Code and Title 8, California Administrative Code Section 200 et seq. Each Contractor and/or subcontractor must, prior to commencement of the public works contract, contact the Division of Apprenticeship Standards, 525 Golden Gate Avenue, San Francisco, CA, or one of its branch offices to insure compliance and complete understanding of the law regarding apprentices and specifically the required ratio thereunder. Responsibility for compliance with this section lies with the prime contractor.
- 5) Payroll

The contractor shall keep an accurate payroll record showing the name, social security account, work classification specific and straight time and overtime hours worked by each employee. A certified copy of the employee's payroll record shall be available for inspection as specified in section 1776 of the California Labor Code.

8. DISPUTES

- a. The parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute persists, contractor shall submit to the Department Director or designee a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to or involving this contract, unless the State, on its own initiative, has already rendered such a final decision. Contractor's written demand shall be fully supported by factual information, and if such demand involves a cost adjustment to the contract, contractor shall include with the demand a written statement signed by an authorized person indicating that the demand is made in good faith, that the supporting data are accurate and complete and that the amount requested accurately reflects the contract adjustment for which contractor believes the State is liable. If the contractor is not satisfied with the decision of the Department Director or designee, the contractor may appeal the decision to the Department of General Services, Deputy Director, Procurement Division. In the event that this contract is for information technology goods and/or services, the decision may be appealed to an Executive Committee of State and contractor personnel, in accordance with established procedures.
- b. Pending the final resolution of any dispute arising under, related to or involving this contract, contractor agrees to diligently proceed with the performance of this contract, including the delivery of goods or providing of services in accordance with the State's instructions. Contractor's failure to diligently proceed in accordance with the State's instructions shall be considered a material breach of this contract.
- c. Any final decision of the State shall be expressly identified as such, shall be in writing, and shall be signed by the Department Director or designee or Deputy Director, Procurement Division if an appeal was made. If the State fails to render a final decision within 90 days after receipt of contractor's demand, it shall be deemed a final decision adverse to contractor's contentions. The State's final decision shall be conclusive and binding regarding the dispute unless contractor commences an action in a court of competent jurisdiction to contest such decision within 90 days following the date of the final decision

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or one (1) year following the accrual of the cause of action, whichever is later.

9. CONTRACTOR EVALUATION (CONSULTING SERVICE CONTRACTS OVER \$5,000)

In accordance with the California Government Code, Contractor performance evaluation will be completed within the guidelines of the State Administrative Manual, Section 1283. The State contracting agency, upon contract completion, will complete and forward the contractor evaluation to the Department of General Services.

10. CONTRACTS IN EXCESS OF \$200,000 (APPLIES TO SERVICE CONTRACTS ONLY)

Contractor shall give priority consideration in filling vacancies in positions funded by this contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 (Public Contract Code 10353).

11. ASSIGNMENT OF ANTITRUST ACTIONS

The following provision of Government Code Section 4552, 4553, and 4554 (Statutes of 1978, Ch. 414) shall be applicable to the Contractor.

In signing this contract, the Contractor agrees that it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. sec. 15) or under the Cartwright Act [Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code], arising from purchases of goods, materials, or services by the Contractor for sale to the purchasing body pursuant to the contract. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the Contractor.

If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the contract price, less the expenses incurred in obtaining that portion of the recovery.

Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action.

12. REQUIRED PAYMENT DATE

Payment will be made in accordance with the provisions of the California Prompt Payment Act, Government Code Section 927 et. seq. Unless expressly exempted by statute, the Act requires state agencies to pay properly submitted, undisputed invoices not more than 45 days after (i) the date of acceptance of goods or performance of services; or (ii) receipt of an undisputed invoice, whichever is later.

13. NONDISCRIMINATION CLAUSE

a. During the performance of this contract, Contractor and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Contractors and subcontractors shall insure that the evaluation and

treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this contract by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

b. This Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract.

14. VENDOR DATA RECORD

Each Contractor doing business with the State of California must indicate their residency status along with their vendor identification number. Contractors are required to provide a completed Vendor Data Record, Std. 204 (attached), to the DGS Procurement Division before entering into this contract.

15. DEBARMENT CERTIFICATION (FEDERALLY FUNDED SERVICE CONTRACTS OVER \$10,000)

The prospective recipient of Federal assistance funds is required to certify (attached), that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. The Contractor is required to complete the attached certification before entering into this contract.

16. TERMINATION OF CONTRACT

a. The State may terminate this contract at any time upon one month prior written notice.

b. If the Contractor's GSA Multiple Award Schedule is terminated within the term of the California Multiple Award Schedule, the California schedule shall also be considered to be terminated on the same date.

c. Upon termination or other expiration of this contract, each party will assist the other party in orderly termination of the contract and the transfer of all assets, tangible and intangible, as may facilitate the orderly, nondisrupted business continuation of each party.

d. Prior to the expiration of this contract, this contract may be terminated for the convenience of both parties by mutual consent.

17. CMAS Updates and/or Changes

a) A CMAS amendment is not required for updates and/or changes once the update and/or change becomes effective for the federal GSA schedule, except as follows:

i) A CMAS amendment is required when the contract is based on products and/or services from another contractor's multiple award contract and the contractor wants to add a new manufacturer's products and/or services.

ii) A CMAS amendment is required for new federal contract terms and conditions that constitute a material difference from existing contract terms and conditions. A material change has a potentially significant effect on the delivery, quantity or quality of items provided, the amount paid to the contractor or on the cost to the State.

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- iii) A CMAS amendment is required for changes to contracts that require Prison Industry Authority (PIA) approval.
- b) A CMAS amendment is required to update and/or change products and services on a non-federal GSA multiple award contract.
- c) A CMAS amendment is not required to update and/or change products and services on Software Volume License Agreements.
18. CONTRACT AMOUNT
There is no minimum or maximum dollar amount specified by this contract nor is there any guarantee of minimum purchase of Contractor's products or services by the State.
19. PURCHASE ORDER LIMITS
Orders for Information Technology products and/or services shall not exceed \$500,000 per transaction. Orders for non Information Technology (commodities) products and/or services shall not exceed \$100,000 per transaction.
20. NO ADDITIONAL COSTS
No additional costs beyond those identified in the agreement shall be incurred by the State for obtaining the products and services offered.
21. DELIVERY (ORDERS \$250,000 OR LESS)
If the Contractor does not deliver its products to a site designated by the State within the delivery time specified, the State may terminate the right of the Contractor to deliver and may obtain substitute products.
22. CONFIDENTIALITY
All financial, statistical, personal, technical and other data and information relating to the State's operation which are designated confidential by the State and made available to the Contractor in order to carry out this agreement, or which become available to the Contractor in carrying out this agreement, shall be protected by the Contractor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the State. The identification of all such confidential data and information as well as the State's procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the State in writing to the Contractor. If the methods and procedures employed by the Contractor for the protection of the Contractor's data and information are deemed by the State to be adequate for the protection of the State's confidential information, such methods and procedures may be used, with the written consent of the State, to carry out the intent of this paragraph. The Contractor shall not be required under the provisions of this paragraph to keep confidential any data or information which is or becomes publicly available, is already rightfully in the Contractor's possession, is independently developed by the Contractor outside the scope of this agreement, or is rightfully obtained from third parties.
23. QUARTERLY REPORTS
Contractors are required to submit a detailed report quarterly to the DGS Procurement Division, CMAS Unit, 1500 5th Street, Suite 116, Sacramento, 95814, Attention: Carol Umfleet (IMS Code C-39). A separate report is required for each contract, as differentiated by alpha suffix (if applicable). Suppliers with resellers are responsible for reporting reseller ordering activity. Any report that does not follow the required format or that excludes information will be deemed incomplete.
New schedules for suppliers with existing schedules, and extensions or renewals of existing schedules, will be approved ONLY if the supplier has submitted to the CMAS
- Unit all quarterly reports due. [Copies of purchase orders are no longer acceptable.] Each quarterly report is required within two weeks of the end of March, June, September, and December of each calendar year. Reports which become two months past due will result in automatic contract revocation. A report is required even when there is no activity.
- The report must include the agency name, purchase order number, purchase order date, agency billing code, pre-tax total order cost, agency contact name, address and phone number, and total dollars for the quarter. Tax must NOT be included in the quarterly report, even if the agency includes tax on the purchase order.
24. TAXES
The State of California is exempt from Federal excise taxes and no payment shall be made for any personal property taxes levied on the Contractor or on any taxes levied on employee wages. The State will only pay for any State or local sales or use taxes on the services rendered or equipment, parts or software supplied to the State pursuant to this contract.
25. INVOICES AND PAYMENTS
The Contractor shall render invoices to the ordering agency. Invoices for purchases and software fees are not due and payable until successful completion of any applicable acceptance testing. Invoices for services are not due and payable, and do not constitute an obligation of the State, until the month following the month for which charges accrue.
Software maintenance and license fees, which are considered a subscription, may be paid in advance if a provision addressing payment in advance is included in the contract or purchase order.
26. AMENDMENTS
This contract may be amended by mutual consent of the parties. An amendment shall not be effective until approved by the Director of General Services, or until a certification of exemption from such approval has been signed by the contracting agency. No alteration or variation of the terms of this contract shall be valid unless made in writing, and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.
27. ASSIGNMENT
This contract shall not be assignable in whole or in part without written consent of the State. For the purpose of this paragraph, State will not unreasonably prohibit contractor from freely assigning its rights to payment, provided that contractor remains responsible for its obligations hereunder.
Should the State desire financing of the assets provided hereunder through GS \$Mart, the State's financial marketplace, the Contractor agrees to assign to a State-designated lender its right to receive payment from the State for the assets in exchange for payment by the lender of the cash purchase price for the assets. Upon notice to do so from the State-designated lender at any time prior to payment by the State for the assets, the Contractor will execute and deliver to the State-designated lender an assignment agreement and any additional documents necessary for the State selected financing plan. The State-designated lender will pay the Contractor according to the terms of the Contractor's invoice upon acceptance of the assets by the State.
28. GENERAL INDEMNITY
The Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses, with the exception of consequential damages accruing or resulting to any other person, firm or corporation furnishing or supplying work.

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services, materials or supplies in connection with the performance of this contract, and from any and all claims and losses accruing or resulting to any person, firm or corporation which may be injured or damaged by the Contractor in the performance of this contract which are attributable to the negligence or intentionally tortious acts of the Contractor provided that the Contractor is notified in writing within 30 days that the State has knowledge of such claims.

29. GOVERNING LAW

This Agreement shall be construed in accordance with, and its performance governed by, the laws of the State of California.

30. CONFLICT OF TERMS

The California Multiple Award Schedule terms and conditions shall prevail if there is a conflict between the terms and conditions of the Contractor's federal GSA (or other multiple award contract), packaging, invoices, catalogs, brochures, technical data sheets or other documents.

31. NEWS RELEASES

News releases pertaining to this agreement shall not be made without prior written approval of the DGS Procurement Division.

32. CONTRACTS (ORDERS) FUNDED IN WHOLE OR PART BY THE FEDERAL GOVERNMENT

All contracts (including individual orders), except for State construction projects, which are funded in whole or in part by the federal government may be canceled with 30 days notice, and are subject to the following:

- a. It is mutually understood between the parties that this contract (order) may have been written before ascertaining the availability of congressional appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays which would occur if the contract (order) were executed after that determination was made.
- b. This contract (order) is valid and enforceable only if sufficient funds are made available to the State by the United States Government for the fiscal year during which the order was generated for the purposes of this program. In addition, this contract (order) is subject to any additional restrictions, limitations, or conditions enacted by the Congress or any statute enacted by the Congress which may affect the provisions, terms or funding of this contract (order) in any manner.
- c. It is mutually agreed that if the Congress does not appropriate sufficient funds for the program, this contract (order) shall be amended to reflect any reduction in funds.
- d. The department has the option to void the contract (order) under the 30-day cancellation clause or to amend the contract to reflect any reduction of funds.

33. FOLLOW-ON CONTRACTS FOR CONSULTANT SERVICES IN FEASIBILITY STUDIES AND EDP ACQUISITION (SAM 5202)

No person, firm, or subsidiary thereof who has been awarded a consulting services contract, or a contract which includes a consulting component, may be awarded a contract for the provision of services, delivery of goods or supplies, or any other related action which is required, suggested, or otherwise deemed appropriate as an end product of the consulting services contract. Therefore, any consultant that contracts with a state agency to develop a feasibility study or provide formal recommendations for the acquisition of EDP products or services is precluded from contracting for any work recommended in the feasibility study or the formal recommendation.

34. COVENANT AGAINST GRATUITIES

The Contractor warrants that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor or any agent or representative of the Contractor, to any officer or employee of the State with a view toward securing the contract or securing favorable treatment with respect to any determinations concerning the performance of the contract. For breach or violation of this warranty, the State shall have the right to terminate the contract, either in whole or in part, and any loss or damage sustained by the State in procuring on the open market any items which Contractor agreed to supply shall be borne and paid for by the Contractor. The rights and remedies of the State provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under the contract.

35. CONFLICT OF INTEREST

a. Current State Employees (Public Contract Code Section 10410):

1) No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any State agency, unless the employment, activity or enterprise is required as a condition of regular State employment.

2) No officer or employee shall contract on his or her own behalf as an independent contractor with any State agency to provide goods or services.

b. Former State Employees (Public Contract Code Section 10411):

1) For the two-year period from the date he or she left State employment, no former State officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any State agency.

2) For the twelve-month period from the date he or she left State employment, no former State officer or employee may enter into a contract with any State agency if he or she was employed by that State agency in a policy-making position in the same general subject area as the proposed contract within the twelve-month period prior to his or her leaving State service.

36. PATENT, COPYRIGHT, AND TRADE SECRET PROTECTION

a. The Contractor, at its own expense, shall defend any action brought against the State to the extent that such action is based upon a claim that the equipment or software supplied by the Contractor, or the operation of such equipment pursuant to a current version of Contractor-supplied operating software, infringes a United States patent, or copyright or violates a trade secret. The Contractor shall pay those costs and damages finally awarded against the State in any such action. Such defense and payment shall be conditioned on the following:

1) That the Contractor shall be notified within a reasonable time in writing by the State of any notice of such claim; and,

2) That the Contractor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise, provided, however, that when principles of government or public law are involved, the State shall have the option to participate in such action at its own expense.

b. Should the machines or software, or the operation thereof, become, or in the Contractor's opinion are likely

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to become, the subject of a claim of infringement of a United States patent, copyright or a trade secret, the State shall permit the Contractor at its option and expense either to procure for the State the right to continue using the machines or software, or to replace or modify the same so that they become noninfringing and continue to meet bid specifications. If neither of these options can reasonably be taken, or if the use of such equipment or software by the State shall be prevented by injunction, the Contractor agrees to take back such equipment or software, and refund any sums the State has paid Contractor less any reasonable amount for use or damage and make every reasonable effort to assist the State in procuring substitute equipment or software. If, in the sole opinion of the State, the return of such infringing equipment or software makes the retention of other items of equipment or software acquired from the Contractor under this contract impractical, the State shall then have the option of terminating the contract, or applicable portions thereof, without penalty or termination charge. The Contractor agrees to take back such equipment or software and refund any sums the State has paid Contractor less any reasonable amount for use or damage.

- c. The Contractor shall have no liability to the State under any provision of this Paragraph 36 with respect to any claim of patent, copyright, or trade secret infringement which is based upon:
- 1) The combination or utilization of machines furnished hereunder with machines or devices not made or furnished by the Contractor.
 - 2) The operation of machines furnished by the Contractor under the control of any operating software other than, or in addition to, the aforementioned current version of Contractor-supplied operating software.
 - 3) The modification by the State of the machines furnished hereunder or of the aforementioned software.
 - 4) The combination or utilization of software furnished hereunder with noncontractor's supplied software.
- d. The foregoing states the entire liability of the Contractor with respect to infringement of patents, copyrights and trade secrets.

37. LIMITATION OF LIABILITY

- a. The equipment* shall be under State's exclusive management and control. The State agrees that the Contractor shall not be liable for any damages caused by the State's failure to fulfill any State responsibilities of assuring the proper use, management and supervision of the machines and programs, audit controls, operating methods, and office procedures, and for establishing all proper checkpoints necessary for the State's intended use of the machines.
- b. Contractor's liability for damages to the State for any cause whatsoever, and regardless of the form of action, whether in contract or in tort, shall be limited to the greater of \$200,000 or the purchase price stated herein for the specific machines that caused the damages or that are the subject matter of or are directly related to the cause of action.

The foregoing limitation of liability shall not apply to the payment of costs and damage awards referred to in Paragraph 36, entitled "Patent, Copyright, and Trade Secret Protection", to claims covered by other specific provisions calling for liquidated damages or specifying a different limit of liability, or to claims for injury to persons or damage to property caused by Contractor's negligence. This limitation of liability does not apply to the receipt of court costs or attorney's fees that might be awarded by a

court in addition to damages after litigation based on this contract.

- c. State's liability for damages for any cause whatsoever, and regardless of the form of action whether in contract or in tort, excluding negligence, shall be limited to the greater of \$200,000 or the purchase price stated herein for the specific machines that caused the damage or that are the subject matter of or are directly related to the cause of action.
- d. In no event will either the Contractor or the State be liable for consequential damages even if notification has been given as to the possibility of such damages.

*equipment-an all-inclusive term which refers either to individual machines or to a complete data processing system or subsystem, including its operating software (if any).

38. FORCE MAJEURE

Except for defaults of subcontractors, neither party shall be responsible for delays or failures in performance resulting from acts beyond the control of the offending party. Such acts shall include but shall not be limited to acts of God, fire, flood, earthquake, other natural disasters, nuclear accident, strike, lockout, riot, freight embargo, public regulated utility, or governmental statutes or regulations superimposed after the fact. If a delay or failure in performance by the Contractor arises out of a default of its subcontractor, and if such default arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for damages of such delay or failure, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required performance schedule.

39. RISK OF LOSS OR DAMAGE

The State shall be relieved from all risks of loss or damage to the equipment under this contract prior to delivery and/or installation as defined in the actual purchase order except when such loss or damage is due to fault or negligence of the State.

40. WARRANTY

The following warranty language is in addition to the warranty language provided in the federal GSA Multiple Award Schedule or other base contract used to establish this CMAS contract. When there is a conflict between the following warranty language and the warranty language provided in the federal GSA Multiple Award Schedule or other base contract used to establish this CMAS contract, the following warranty language overrides.

- a. Contractor warrants that goods and services furnished hereunder will conform to the requirements of this contract (including all descriptions, specifications and drawings made a part hereof), and such goods will be merchantable, fit for their intended purposes, free from all defects in materials and workmanship and to the extent not manufactured pursuant to detailed designs furnished by the State, free from defects in design. The State's approval of designs or specifications furnished by contractor shall not relieve the contractor of its obligations under this warranty.
- b. All warranties, including special warranties specified elsewhere herein, shall inure to the State, its successors, assigns, customer agencies and users of the goods or services.

41. SUBCONTRACTING REQUIREMENTS

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Any subcontractor that the CMAS supplier chooses to use in fulfilling the requirements of this contract/order, and which is expected to receive more than ten (10) percent of value of the contract/order, must also meet all contractual, administrative, and technical requirements of the contract, as applicable.

42. FORCED, CONVICT, AND INDENTURED LABOR

In accordance with PCC Section 6108, contractor warrants that no foreign-made equipment, materials, or supplies furnished to the State pursuant to this contract are produced in whole or in part by or with the benefit of, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor.

43. NONCOLLUSION AFFIDAVIT

By signing this contract, contractor hereby certifies that any quotation provided for a CMAS order or project is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the quotation is genuine and not collusive or sham; that the contractor has not directly or indirectly induced or solicited any other contractor to put in a false sham quotation, and has not directly or indirectly colluded, conspired, connived, or agreed with any contractor or anyone else to put in a sham quotation, or that anyone shall refrain from bidding; that the contractor has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix any overhead, profit, or cost element of the quoted price, of that of any other contractor, or to secure any advantage against the public body awarding the contract or anyone interested in the proposed contract; that all statements in the quotation are true; and, further, that the contractor has not, directly or indirectly, submitted its quoted price or any breakdown thereof, of the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, organization, bid depository, or to any member of agent thereof to effectuate a collusive or sham bid or quotation.

44. YEAR 2000 WARRANTY

Agencies issuing or processing a purchase order must use this language in lieu of alternative language, unless specifically exempted by the Department of Information Technology (DOIT).

a.) Information Technology Products and/or Services

The Contractor warrants that the hardware, software, and firmware products and services delivered under this contract shall be able to accurately process date data (including, but not limited to, calculating, comparing, and/or sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations to the extent that other information technology used in combination with the information technology being acquired, properly exchanges date data with it. This warranty is subject to the warranty terms and conditions of this contract. Nothing in this warranty shall be construed to limit any rights or remedies the State may otherwise have under this contract with respect to defects other than Year 2000 performance.(5/5/98)

- b) For non-information technology goods, the contractor warrants and represents that the goods delivered under this contract are "Year 2000 compliant." For purposes of this contract, a good is Year 2000 compliant if it will continue to function fully before, at and after the Year 2000 without interruption and, if applicable, with full ability to accurately and unambiguously process, display, compare, calculate, manipulate and otherwise utilize date information.**

This warranty and representation supersedes all warranty disclaimers and limitations and all limitations on liability provided by or through the contractor.

45. TERMINATION FOR CONVENIENCE

- a. The State may terminate performance of work under this Contract for its convenience in whole or, from time to time, in part if the Department Director or designee determines that a termination is in the State's interest. The Department Director or designee shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date thereof. The parties agree that, as to the terminated portion of the contract, the contract shall be deemed to remain in effect until such time as the termination settlement, if any, is concluded and the contract shall not be void.
- b. After receipt of a Notice of Termination, and except as directed by the Department Director or designee, the Contractor shall immediately proceed with the following obligations, as applicable, regardless of any delay in determining or adjusting any amounts due under this clause. The Contractor shall:
- 1) Stop work as specified in the Notice of Termination.
 - 2) Place no further subcontracts for materials, services, or facilities, except as necessary to complete the continued portion of the contract.
 - 3) Terminate all subcontracts to the extent they relate to the work terminated.
 - 4) Settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification of which will be final for purposes of this clause.
 - 5) As directed by the Department Director or designee, transfer title and deliver to the State (a) fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (b) completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the State.
 - 6) Complete performance of the work not terminated; and
 - 7) Take any action that may be necessary or as the State may direct for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the State has or may acquire an interest, and to mitigate any potential damages or requests for contract adjustment or termination settlement to the maximum practical extent.
- c. At the completion of the Contractor's termination efforts, the Contractor may submit to the Department Director or designee a list, indicating quantity and quality of termination inventory not previously disposed of, and request instruction for disposition of the residual termination inventory.
- d. After termination, the Contractor shall submit a final termination settlement proposal to the Department Director or designee in the form and with the certification prescribed by the Department Director or designee. The Contractor shall submit the proposal promptly but no later than ninety (90) days from the effective date of termination, unless extended in writing by the State upon written request of the Contractor within the ninety (90) day period. However, if the Department Director or designee determines that the facts justify it, a termination settlement proposal may be received and acted on after the expiration of the filing period or any extension. If the

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Contractor fails to submit the proposal within the time allowed, the Department Director or designee may determine on the basis of information available, an equitable adjustment amount, if any, due the Contractor because of the termination and shall pay the amount determined.

- e. The Contractor and the State may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done, including a reasonable amount for accounting, legal, clerical and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data; and storage, transportation and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory. However, the agreed amount may not exceed the total contract price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated. The contract shall be amended, and the Contractor paid the agreed amount.
- f. If the Contractor and the State fail to agree on the whole amount to be paid because of the termination of work, the State shall pay the Contractor the amounts determined by the State as follows, but without duplication of any amounts agreed on as set forth above:
- 1) The contract price for completed supplies or services accepted by the State (or sold or acquired) not previously paid for, adjusted for any saving of freight and other charges.
- The total of:
- a) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid; and
- b) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract; and
- c) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.
- g. Except for normal spoilage, and except to the extent that the State expressly assumed the risk of loss, the State shall exclude from the amounts payable to the Contractor, the fair value, as determined by the Department Director or designee, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the State or to a buyer.
- h. The Contractor shall use generally accepted accounting principles and sound business practices in determining all costs claimed, agreed to, or determined under this clause. Such costs shall be allocable to the terminated contract or portion thereof, allowable under applicable laws, regulations, generally accepted accounting principles and good business judgment and objectively reasonable.
- i. The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the State, except that if the Contractor failed to submit the termination settlement proposal within the time provided and failed to request a time extension, there is no right of appeal. If the Department Director or designee has made a determination of the amount due, the State shall pay the Contractor (1) the amount determined if there is no right of appeal or if no timely appeal has been taken, or (2) the amount finally determined on appeal. Following any

attempted administrative resolution with the Department Director or designee, the Contractor may proceed in accordance with the Disputes clause of the contract.

- j. In arriving at the amount due the Contractor under this clause, there shall be deducted:
- 1) All payments to the Contractor under the terminated portion of this contract;
- 2) Any claim which the State has against the Contractor under this or any other contract;
- 3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to the State.
- k. If the termination is partial, the Contractor may file a proposal with the Department Director or designee for an equitable adjustment of the price(s) of the continued portion of the contract. The Department Director or designee shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 30 days from the effective date of termination unless extended in writing by the Department Director or designee.
- l. The State may:
- 1) Under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the State believes that total of these payments will not exceed the amount to which the Contractor will be entitled.
- 2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the State upon demand, together with interest computed at the rate established by the California Treasurer's Pooled Money Investment Fund Rate. Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the State because of the circumstances.
- m. In determining the amount payable to the Contractor and notwithstanding any other provision, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the State shall allow no profit and shall reduce the settlement to reflect the indicated rate of loss.
- n. Unless otherwise provided in this contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this contract for three years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this Contract. The Contractor shall make these records and documents available to the State, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the State, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.
46. **STOP WORK**
- a. The State may, at any time, by written stop work order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the stop work order is delivered to the Contractor, and for any further period to which the parties may agree. The stop work order shall be specifically

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identified as such and shall indicate it is issued under this clause. Upon receipt of the stop work order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the stop work order during the period of work stoppage. Within a period of 90 days after a stop work order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the State shall either:

- 1) Cancel the stop work order; or
 - 2) Terminate the work covered by the stop work order as provided for in the termination for default or the termination for convenience clause of this contract.
- b. If a stop work order issued under this clause is canceled or the period of the stop work order or any extension thereof expires, the Contractor shall resume work. The State shall make an equitable adjustment in the delivery schedule, the contract price, or both, and the contract shall be modified, in writing, accordingly, if:
- 1) The stop work order results in an increase in the time required for in the Contractor's cost properly allocable to the performance of any part of this Contract; and
 - 2) The Contractor asserts its right to an equitable adjustment within 30 days after the end of the period of work stoppage; provided, that if the State decides the facts justify the action, the State may receive and act upon a proposal submitted at any time before final payment under this contract.
- c. If a stop work order is not canceled and the work covered by the stop work order is terminated in accordance with the provision entitled Termination for the Convenience of the State, the State shall allow reasonable costs resulting from the stop work order in arriving at the termination settlement.
- d. If a stop work order is not canceled and the work covered by the stop work order is terminated for default, the State shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop work order.
- e. An appropriate equitable adjustment may be made in any related contract of the Contractor that provides for adjustment and is affected by any stop work order under this clause. The State shall not be liable to the contractor for loss of profits because of a stop work order issued under this clause.

47. RENTAL AGREEMENTS

The State does not agree to:

- Indemnify a Contractor;
- Assume responsibility for matters beyond its control;
- Agree to make payments in advance;
- Accept any other provision creating a contingent liability against the State; or
- Agree to obtain insurance to protect the Contractor.

The State's responsibility for repairs and liability for damage or loss is restricted to that made necessary by or resulting from the negligent act or omission of the State or its officers, employees, or agents.

If the Contractor maintains the equipment, the Contractor must keep the equipment in good working order and make all necessary repairs and adjustments without qualification. The State may terminate or cease paying rent should the Contractor fail to maintain the equipment properly.

Personal property taxes are not generally reimbursed when leasing equipment (SAM 8736).

47A. CHILD SUPPORT COMPLIANCE ACT

PURSUANT TO PUBLIC CONTRACT CODE SECTION 7110, AS ENACTED UNDER ASSEMBLY BILL 1396 (AB 1396), CONTRACTOR IS AWARE OF, AND ACKNOWLEDGES THE STATE OF CALIFORNIA'S POLICY CONCERNING ENFORCEMENT OF CHILD AND FAMILY SUPPORT OBLIGATIONS AS SET OUT IN SECTION 7110, (a); TO THE BEST OF CONTRACTOR'S KNOWLEDGE, CONTRACTOR IS FULLY COMPLYING WITH EARNINGS ASSIGNMENT OF ALL EMPLOYEES; AND TO THE BEST OF CONTRACTOR'S KNOWLEDGE, CONTRACTOR IS PROVIDING THE NAMES OF ALL NEW EMPLOYEES TO THE ILLINOIS STATE NEW HIRE REGISTRY PURSUANT TO 42 U.S.C. SECTION 653a (b) (1) (B) AND CALIFORNIA UNEMPLOYMENT INSURANCE CODE SECTION 1088.5 (d) (3).

47B. FINANCE AND LEASE

If an agency desires to lease through Lease SMart, the Contractor agrees to sell to lessor the assets at the same price as they agree to sell to the State.

48. SITE PREPARATION

- a. If the equipment to be installed requires special environmental considerations, Contractor shall provide site preparation specifications for equipment within a reasonable time upon request by the State. The equipment, if installed according to these specifications, shall operate efficiently, from an environmental point of view and properly from a functional point of view.
- b. The State may prepare a site plan showing the location of each item of equipment and detailing the associated electrical power and environmental control facilities. If requested, the Contractor will review and comment on the adequacy of the State's plan, and shall be permitted free access subject to the security requirements for the site for this purpose. Alternatively, the Contractor may prepare the site plan, and will be permitted free access to the site for this purpose.
- c. The State shall cause the site to be prepared in accordance with the Contractor's written minimum site and environmental specifications, unless the Contractor has agreed to be responsible for such site preparation, on or before the Facility Readiness Date specified in the order.
- d. Any subsequent alterations or modifications to the site which are directly attributable to incomplete or erroneous specifications provided by the Contractor and which involve additional expense shall be made at the expense of the Contractor, to the extent that such costs would not have been incurred had the complete and/or correct specifications been initially provided.
- e. If any such site alterations as discussed above cause a delay in the installation, Paragraph 50, Liquidated Damages, shall apply.
- f. Unless mutually agreed to otherwise, arrangements for procurement, installation, and maintenance of noncontractor's communication media (telephone lines, modems, etc.) necessary for the remote transmission of data are the responsibility of the State. In addition, if requested by the Contractor, the State shall provide one telephone, with appropriate coupling devices for the transmission of data, for the Contractor's use in installation and maintenance of the equipment. Any toll charges resulting from the use of this instrument by the Contractor in the installation and maintenance of the equipment will be borne by the Contractor.

49. INSTALLATION AND DELIVERY DATES

- a. Equipment (Hardware and Operating Software)

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- 1) Except as otherwise provided in Paragraph 49.a. (7), the Contractor shall install equipment ready for use on or before the Installation Dates specified in the order. Time is the essence of this agreement.
 - 2) Installation Dates may be changed by mutual consent of the Contractor and the State by amendment; however, consent of the Contractor is not required if, at least 90 days prior to the Installation Date, the State defers the installation of any machine, but a new Installation Date will be established by mutual agreement. Such unilateral deferment shall not exceed 180 days, except by mutual agreement.
 - 3) The State shall provide the Contractor access to the site for the purpose of installing equipment prior to the Installation Date. The Contractor shall specify in writing the time required to install the equipment.
 - 4) Except as otherwise provided in Paragraph 49, a. (7), the Contractor shall determine that the equipment is ready for use, and operates in conformance with the Contractor's published specifications. The Contractor shall then certify in writing to the State that the equipment is installed and ready to be turned over to the operational control of the State. The Contractor shall also provide to the State appropriate documentation to support the above certification, at which time the State will accept control of the equipment for the purpose of validating its installation and performance.
 - 5) Notwithstanding certification by the Contractor that the equipment has been installed and is ready for use, the equipment shall not be deemed installed within the terms of this Contract until such installation is confirmed by the State through testing as prescribed in the order or by performance of other suitable tests mutually agreed to by both parties as being adequate for this purpose. If the test is successfully completed, the equipment shall be deemed installed and ready for use as of the date of the Contractor's certification. The State shall immediately begin acceptance testing of the equipment in accordance with the provisions contained in the order, and shall notify the Contractor in writing, within five (5) working days, that the State concurs that the equipment was installed. If the equipment fails to successfully complete the test, the Contractor shall be notified immediately of the failure, with written confirmation to be provided in not more than five (5) working days. Control of the equipment shall immediately be given to the Contractor. The equipment shall not be deemed to be installed until the Contractor re-certifies such installation and the above-described test is successfully completed.
 - 6) Except as otherwise provided in Paragraph 49, a. (7), in the event the Contractor fails to install the equipment by the Installation Date specified in the order, Paragraph 50, Liquidated Damages, shall apply.
 - 7) If the nature of the equipment is such that the services of the Contractor are not required for its installation, and the Contractor so states in writing and the State agrees in writing that such Contractor services are not necessary, the Contractor may ship the equipment to the State site. If the equipment arrives not later than five (5) working days prior to the Installation Date, the equipment shall be deemed to have been installed on or before the Installation Date and no liquidated damages shall be paid, irrespective to whether or not the State is successful in installing the equipment without Contractor assistance. If this procedure is used, the State shall make every reasonable effort to install the equipment prior to the Installation Date, and shall confirm such installation in accordance with the procedures set forth in Paragraph 49 (5), without requiring a certification of installation as set forth in Paragraph 49 (4) by the Contractor. If, however, the State is unable to install the equipment, it shall notify the Contractor that Contractor assistance is required. The Contractor shall then assist in the equipment installation and certification that such installation has been accomplished.
- b. Software (other than Operating Software)
 - 1) The Contractor shall provide those programming aids, program products, and applications listed in the order, on or before the Delivery Dates specified in the order, and shall certify to the State that such software has been delivered and is ready for State use. For purposes of this Paragraph, "delivered" also means received by the State, if such software is mailed by the Contractor.
 - 2) If, in the opinion of the Contractor, the services of the Contractor are required to install the software on the State equipment, "delivery" of the software, for the purposes of this contract, shall be deemed to include such installation services.
 - 3) In the event the Contractor fails to deliver the agreed-upon software by the dates specified, Paragraph 50, Liquidated Damages, shall apply.
50. LIQUIDATED DAMAGES
- a. General

The Installation Dates of the equipment and the Delivery Dates for software set forth in the order have been fixed so that the utilization of the equipment and software is consistent with the timing schedules of the State's programs. If any of the units of equipment, with all required operating software, are not installed within the times specified in the order, and/or if any of the other software is not delivered to the State within the time limits specified in the order, the delay will interfere with the proper implementation of the State's programs, to the loss and damage of the State. From the nature of the case, it would be impracticable and extremely difficult to fix the actual damages sustained in the event of any such delay. The State and Contractor, therefore, presume that in the event of any such delay the amount of damage which will be sustained from a delay will be the amounts set forth in the order, and the State and the Contractor agree that in the event of any such delay, the Contractor shall pay such amounts as liquidated damages and not as a penalty.

Similarly, a unilateral deferment by the State of equipment installation without appropriate notice or a delay in readying the facility interferes with the installation schedule under which the Contractor is operating, thus resulting in damages to the Contractor. The State and Contractor presume that in the event of such delay, the amount of damage which will be sustained will be the amount set forth in the order, and they agree that in the event of such a delay, the State will pay such amount as liquidated damages and not as a penalty. Amounts due the State as liquidated damages may be deducted by the State from any money payable to the Contractor. The State shall notify the Contractor in writing of any claim for liquidated damages pursuant to this paragraph on or before the date State deducts such sums from money payable to the Contractor.
 - b. Equipment Installation Delays Caused by the Contractor
 - 1) If the Contractor does not install the equipment, (designated by the Contractor's type and model number), and special features included with the equipment (or suitable substitutes acceptable to the State), ready for use with all appropriate operating

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software, all as listed in the order, on or before the Installation Date(s) specified in the order, or in the case of the equipment delivered to the State in time for State installation, the Contractor shall be liable for fixed liquidated damages specified in the order, in lieu of all other damages for such noninstallation. Liquidated damages shall accrue for each calendar day between the Installation Date specified in the order and the date the equipment is certified ready for use or 180 calendar days, whichever occurs first.

- 2) If some, but not all of the machines are installed, ready for use, during a period of time when liquidated damages are applicable, and the State uses any such installed machines, liquidated damages shall not accrue against the machines used for any calendar day the machines are so used.
- 3) If the delay is more than thirty (30) calendar days, then by written notice to the Contractor, the State may terminate the right of the Contractor to install, and may obtain substitute equipment, in accordance with the provision of Paragraph 56, Rights and Remedies of the State for Default. In this event, the Contractor shall also be liable for liquidated damages, in the amounts specified above until substitute equipment is installed, ready for use, or for 180 days from the installation date, whichever occurs first.

c. Other Delivery Delays Caused by the Contractor

- 1) If the Contractor does not deliver all the programming aids, program products, and applications listed in the order ready for use in substantial accordance with the Contractor's specifications, on or before the Delivery Dates specified in the order, the Contractor shall be liable for liquidated damages in the amounts specified in the order, in lieu of all other damages for such nondelivery. Liquidated damages shall accrue for each calendar day between the Delivery Date specified and the actual date of the delivery of such software or for 180 days, whichever occurs first. If the Contractor fails to provide the software listed in the order by the specified Delivery Date, but provides suitable substitution of software acceptable to the State, liquidated damages shall not apply to listed software for which substituted software is provided.
- 2) If the State is unable to use the equipment on the installation date because Contractor failed to deliver the software listed in the order by the delivery date specified in the order, and Contractor does not furnish suitable substitute software acceptable to the State, liquidated damages for equipment noninstallation as specified in Paragraph 50, b. (1), shall be paid to the State in lieu of damages for software nondelivery as specified in Paragraph 50, c. (1). Such liquidated damages shall apply until the State uses the equipment or until Contractor provides the programming aids or applications which would render the equipment usable, whichever occurs first, but not for more than 180 calendar days.

d. Installation or Delivery Delays Caused by the State

- 1) In the event the equipment cannot be installed because the State has failed to prepare the facility by the Facility Readiness Date specified in the order, the State shall be liable for fixed liquidated damages specified in the order for each day between the Facility Readiness Date specified in the order and the actual readiness date, but not to exceed 180 calendar days, in lieu of all other damages for such delay.
- 2) In the event a change directed by the State requires a later installation date of certain equipment and the State has failed to notify the Contractor of the delay at

least 60 days prior to the original Installation Date, the State shall be liable, in lieu of all other damages, for liquidated damages as specified in Paragraph 50, d. (1), for each day between the original Installation Date and the new Installation Date, but not to exceed 180 calendar days.

- 3) The State shall not be liable for liquidated damages under both Paragraph 50, d. (1) and d. (2) above during the same period of time with respect to the same equipment.

51. ACCEPTANCE TESTING FOR EQUIPMENT (including Operating Software)

- a. Acceptance testing is intended to ensure that the equipment acquired operates in substantial accord with the Contractor's technical specifications, is adequate to perform as warranted by the Contractor, and evidences a satisfactory level of performance reliability, prior to its acceptance by the State. If the equipment to be installed includes operating software as listed in the order, such operating software shall be present for the acceptance test unless substitute operating software acceptable to the State is provided. Acceptance testing may be required as specified in the order for all newly installed technology systems, subsystems, and individual equipment, and machines which are added or field modified (modification of a machine from one model to another) after a successful performance period.
- b. In accordance with Paragraph 49, a. (4), Installation and Delivery Dates, the Contractor shall certify in writing to the State when equipment is installed and ready for use, at which time operational control becomes the responsibility of the State. Acceptance testing (as specified in the order) shall commence on the first State workday following certification, and shall end when the equipment has met the standard of performance (performance criteria) as provided in the order for a period of 30 consecutive days. Operation of the equipment to confirm its installation, as provided in Paragraph 49, a. (5), Installation and Delivery Dates, shall be considered to be a part of the acceptance test.
- c. In the event the equipment does not meet the standard of performance during the initial 30 consecutive calendar days, the acceptance tests shall continue on a day-to-day basis until the standards of performance are met for 30 consecutive days.
- d. If the equipment does not meet the standards of performance within ninety (90) consecutive days after the start of the acceptance testing, the State shall have the option to request replacement equipment, extend the performance period or terminate the order (or portions thereof) and seek relief as provided by Paragraph 56, Rights and Remedies of State for Default. The State's option shall remain in effect until such time as the equipment meets the performance criteria, or 180 consecutive days after the start of the acceptance testing, whichever occurs first. If the equipment has not met the standards of performance by 180 days after installation, the contract shall be canceled or the defective equipment deleted from the contract and the provisions of Paragraph 56, Rights and Remedies of State for Default shall apply.
- e. At the request of the Contractor, the State shall make available not only the failed equipment, but also those machines which must be utilized by the Contractor to identify the cause of failure and to accomplish the repair.
- f. Equipment shall not be accepted by the State and no charges associated with such equipment shall be paid by the State until the equipment has satisfactorily completed the acceptance tests. In addition, if required in the order,

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- no charges shall be paid until specified Contractor-supplied software has been accepted by the State.
- g. Immediately upon successful completion of the acceptance tests, the State shall notify the Contractor in writing of acceptance of the equipment and authorize appropriate payment. The State shall maintain adequate daily records to satisfy the requirements of acceptance testing. Increments of time shall be measured in hours and whole minutes.
52. ACCEPTANCE TESTING FOR SOFTWARE (other than Operating Software)
- a. Acceptance testing may be required as specified in the order for all Contractor-supplied software as specified and listed in the order, including all software initially installed, improved versions (new releases) of this software, any such software which has been altered (modified) by the Contractor to satisfy State requirements, and any substitute software provided by the Contractor in lieu thereof, unless the order provides otherwise. The purpose of the acceptance test is to ensure that the software operates in substantial accord with the Contractor's technical specifications and meets the State's performance specifications. The procedures for the accomplishment of such tests are contained in the order.
- b. When software has been provided and certified in accordance with Paragraph 49, Installation and Delivery Dates, b. (1), the State shall begin acceptance testing on the first State workday following such certification, as specified in the order.
- c. If successful completion of the acceptance test is not attained within ninety (90) consecutive days after the start of the acceptance testing, the State shall have the option to request substitute software, cancel that portion of the contract which relates to the unaccepted software, or continue the acceptance tests. The State's option shall remain in effect until such time as the tests are successfully performed, or 180 days after certification, whichever occurs first. If the acceptance tests have not been successfully performed prior to the expiration of 180 days, that portion of the contract which relates to the unaccepted software shall be canceled, unless both parties agree to the continuation of the tests or to the delivery of substitute software. If the unaccepted software (or its functional equivalent) is crucial to the accomplishment of the work for which the equipment was acquired, and is so identified in the order, the State shall have the option of terminating the entire contract in accordance with Paragraph 56, Rights and Remedies of State for Default.
- d. Unless otherwise provided in the order, software shall not be accepted by the State and no charges associated with such software shall be paid by the State until the software has satisfactorily completed the acceptance tests.
- e. Immediately upon successful completion of the acceptance testing, the State shall notify the Contractor in writing of the acceptance of the software and authorize appropriate payment. The State shall maintain adequate records to satisfy the requirements of acceptance testing.
53. CONTRACTOR'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY
- a. The Contractor shall be liable for damages arising out of injury to the person and/or damage to the property of the State, employees of the State, persons designated by the State for training, or any other person(s) other than agents or employees of the Contractor, designated by the State for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the equipment either at the Contractor's site or at the State's place of business, provided that the injury or damage was caused by the fault or negligence of the Contractor.
- b. Contractor shall not be liable for damages arising out of or caused by an alteration or an attachment not made or installed by the Contractor, or for damage to alterations or attachments that may result from the normal operation and maintenance of the Contractor's equipment.
54. ENGINEERING CHANGES
- Engineering changes, determined applicable by Contractor, will be controlled and installed by Contractor on equipment covered by this contract. The State may elect to have only mandatory changes, as determined by Contractor, installed on machines so designated. A written notice of this election must be provided to the Contractor for written confirmation. There shall be no charge for engineering changes made. Any Contractor-initiated change shall be installed at a time mutually agreeable to the State and the Contractor. Contractor reserves the right to charge, at its then current time and material rates, for additional service time and materials required due to noninstallation of applicable engineering changes after Contractor has made a reasonable effort to secure time to install such changes.
55. CONNECTION POINTS FOR CENTRAL PROCESSOR EVALUATION EQUIPMENT
- If requested by the State, the Contractor agrees to identify, on all items of equipment supplied under this contract, all appropriate test points for connecting one of the commercially available hardware monitors designed to measure system activity.
56. RIGHTS AND REMEDIES OF STATE FOR DEFAULT
- a. In the event any equipment, software, or service furnished by the Contractor in the performance of this contract should fail to conform to the specifications therefore, the State may reject the same, and it shall thereupon become the duty of the Contractor to reclaim and remove the same forthwith, without expense to the State, and immediately to replace all such rejected equipment, software, or service with others conforming to such specifications; provided that should the Contractor fail, neglect or refuse to do so the State shall thereupon have the right to purchase in the open market, in lieu thereof, a corresponding quantity of any such equipment, software, or service and to deduct from any monies due or that may thereafter become due to the Contractor the difference between the price named in this contract and the actual cost thereof to the State.
- b. In the event the Contractor shall fail to make prompt delivery as specified of any equipment, software, or service, the same conditions as to the rights of the State to purchase in the open market and to reimbursement set forth above shall apply, except as otherwise provided in Paragraph 38, Force Majeure.
- c. In the event of the cancellation of this contract either in whole or in part, by reason of the default or breach thereof by the Contractor, any loss or damage sustained by the State in procuring any equipment, software or service which the Contractor therein agreed to supply shall be borne and paid for by the Contractor.
- d. The rights and remedies of the State provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the contract.
57. CONTRACTOR'S POWER AND AUTHORITY
- The Contractor warrants that it has full power and authority to grant the rights herein granted and will hold the State hereunder harmless from and against any loss, cost, liability, and expense (including reasonable attorney fees) arising out of any breach of this warranty. Further, Contractor avers that it will not enter into any arrangement with any third party

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which might abridge any rights of the State under this contract.

58. TITLE TO EQUIPMENT

Unless otherwise specified in the order or financing plan, title to the equipment shall remain in the Contractor and assigns, if any, until such time as the full purchase prices, applicable taxes and interest charges, if any, are paid to the Contractor. Title to each machine will be transferred to the State when its purchase price, taxes, and associated interest charges, if any, are paid. Title to a special feature installed on a machine and for which only a single installation charge was paid shall pass to the State at no additional charge, together with title to the machine on which it was installed.

59. WAIVER OF BREACH

No term or provision of this contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by an individual authorized to so waive or consent. Any consent by either party to, or waiver of, a breach by the other, whether express or implied, shall not constitute a consent to, waiver of, or excuse for, any other breach or subsequent breach, except as may be expressly provided in the waiver or consent.

60. CONFLICT WITH EXISTING LAW

The Contractor and the State agree that if any provision of this contract is found to be illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the contract shall remain in full force and effect. Either party having knowledge of such term or provision shall promptly inform the other of the presumed non-applicability of such provision. Should the offending provision go to the heart of the contract, the contract shall be terminated in a manner commensurate with the interests of both parties, to the maximum extent reasonable.

61. LIMITATION OF ACTIONS

No action, regardless of form, arising out of this contract may be brought by either party more than two years after the cause of action has arisen, or in the case of nonpayment, more than two years from the date of the last payment, except where either party (within two years after a cause of action has arisen) provides the other party in writing a notice of a potential cause of action, disclosing all material facts then known by the notifying party concerning such cause of action, then the notifying party may bring an action based on the matter so disclosed at any time prior to the expiration of four years from the time the cause of action arose.

62. UNION ORGANIZING

Contractor by signing this agreement hereby acknowledges the applicability of Government Code Section 16645 through Section 16649 to this agreement.

- a) Contractor will not assist, promote or deter union organizing by employees performing work on a state service contract, including a public works contract.
- b) No state funds received under this agreement will be used to assist, promote or deter union organizing.
- c) Contractor will not, for any business conducted under this agreement, use any state property to hold meetings with employees or supervisors, if the purpose of such meetings is to assist, promote or deter union organizing, unless the state property is equally available to the general public for holding meetings.
- d) If Contractor incurs costs, or makes expenditures to assist, promote or deter union organizing, Contractor will maintain records sufficient to show that no reimbursement from state funds has been sought for these costs, and that Contractor shall provide those records to the Attorney General upon request.

63. CMAS PROGRESS PAYMENTS/PERFORMANCE BONDS

In accordance with PCC 12112:

Any contract for information technology goods or services to be manufactured or performed by the contractor especially for the State and not suitable for sale to others in the ordinary course of the contractor's business may provide, on the terms and conditions that the department deems necessary to protect the State's interests, for progress payments for work performed and costs incurred at the contractor's shop or plant, provided that not less than 10 percent of the contract price is required to be withheld until final delivery and acceptance of the goods or services, and provided further, that the contractor is required to submit a faithful performance bond, acceptable to the department, in a sum not less than one-half of the total amount payable under the contract securing the faithful performance of the contract by the contractor.

64. INVOICING AND PAYMENT FOR SERVICES

- a) During the execution of each task which involves the delivery to the State of identified deliverable items, the contractor may submit periodically to the State invoices reflecting a pro-rata cost of the task, determined on the basis of the lesser of either:
 - i) The number of deliverables provided to the State divided by the total number of deliverables required to be delivered to the State, less the percentage specified in the statement of work, less any amounts previously invoiced; or
 - ii) The number of work-hours expended by the contractor in the performance of the task divided by the number of work hours scheduled for the task, less the percentage specified in the statement of work, less any amounts previously invoiced.
- b) For those tasks which do not involve delivery to the State of identified deliverable items, but which are of a continuing nature, the contractor may submit invoices reflecting a pro-rata cost of the task, less the percentage specified in the statement of work, but no less than 10 percent, less any amount previously invoiced. Actual progress payment amounts for such tasks must be based on at least equivalent services rendered, and to the extent practicable, will be keyed to clearly identifiable stages of progress as reflected in written reports submitted with the invoices.
- c) Upon completion of a task to the satisfaction of the State, the full charge for such task, less amounts previously invoiced to the State may be submitted for payment. However, this is only applicable when the benefits of completion of a task can be fully utilized without completion of a subsequent task.
- d) Invoices prepared in accordance with this provision will not be submitted more frequently than monthly to the State.
- e) In the aggregate, invoices reflecting progress payments will not exceed 90 percent of the ceiling amount of the contract, with the balance to be invoiced upon satisfactory completion of the contract.

See Information Technology General Terms and Conditions for CMAS Progress Payments/Performance Bonds.

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Definitions

(from STATE MODEL PURCHASE CONTRACT 2/98)

- a. Data Processing System (System)—The total complement of Contractor-furnished machines, including one or more central processors (or instruction processors) and operating software, which are acquired to operate as an integrated group.
- b. Data Processing Subsystem—A complement of Contractor-furnished individual machines, including the necessary controlling elements (or the functional equivalent) and operating software, if any, which are acquired to operate as an integrated group, and which are interconnected entirely by Contractor-supplied power and/or signal cables; e.g., direct access controller and drives, a cluster of terminals with their controller, etc.
- c. Machine—An individual unit of a data processing system or subsystem, separately identified by a type and/or model number, comprised of but not limited to mechanical, electro-mechanical, and electronic parts, microcode, and special features installed thereon and including any necessary software; e.g., central processing unit, memory module, tape unit, card reader, etc.
- d. Equipment—An all-inclusive term which refers either to individual machines or to a complete data processing system or subsystem, including its operating software (if any).
- e. Equipment Failure—A malfunction in the equipment, excluding all external factors, which prevents the accomplishment of the equipment's intended function(s). If microcode or operating software, residing in the equipment, is necessary for the proper operation of the equipment, a failure of such microcode or operating software which prevents the accomplishment of the equipment's intended functions shall be deemed to be an equipment failure.
- f. Operation Use Time—For performance measurement purposes, that time during which equipment is in actual operation by the State.
- g. Preventive Maintenance—That maintenance, performed on a scheduled basis by the Contractor, which is designed to keep the equipment in proper operating condition.
- h. Remedial Maintenance—That maintenance performed by the Contractor which results from equipment (including operating software) failure, and which is performed as required; i.e., on an unscheduled basis.
- i. Principal Period of Maintenance—Any nine consecutive hours per day (usually between the hours of 7:00 a.m. and 6:00 p.m.) as selected by the State, including an official meal period not to exceed one hour, Monday through Friday, excluding holidays observed at the installation.
- j. Period of Maintenance Coverage—The period of time, as selected by the State, during which maintenance services are provided by the Contractor for a fixed monthly charge, as opposed to an hourly charge for services rendered. The Period of Maintenance Coverage consists of the Principal Period of Maintenance and any additional hours of coverage per day, and/or increased coverage for weekends and holidays.
- k. Maintenance Diagnostic Routines—The diagnostic programs customarily used by the Contractor to test equipment for proper functioning and reliability.
- l. Facility Readiness Date—The date specified in the contract by which the State must have the site prepared and available for equipment delivery and installation.
- m. Installation Date—The date specified in the contract by which the Contractor must have the ordered equipment ready (certified) for use by the State.
- n. Performance Period—A period of time during which the State, by appropriate tests and production runs, evaluates the performance of newly installed equipment and software prior to its acceptance by the State.
- o. Acceptance Tests—Those tests performed during the Performance Period as listed in the purchase order which are intended to determine compliance of equipment and software with Contractor's published specifications and to determine the reliability of the equipment.
- p. Machine Alteration—Any change to a Contractor-supplied machine which is not made by the Contractor, and which results in the machine deviating from its physical, mechanical, electrical, or electronic (including microcode) design, whether or not additional devices or parts are employed in making such change.
- q. Attachment—The mechanical, electrical, or electronic interconnection to the Contractor-supplied machine or system of equipment manufactured by other than the original equipment manufacturer and which is not connected by the Contractor.
- r. Software—An all-inclusive term which refers to any computer programs, routines, or subroutines supplied by the Contractor, including operating software, programming aids, application programs, and program products.
- s. Operating Software—Those routines, whether or not identified as program products, that reside in the equipment and are required for the equipment to perform its intended function(s), and which interface the operator, other Contractor-supplied programs, and user programs to the equipment.
- t. Programming Aids—Contractor-supplied programs and routines executable on the Contractor's equipment which assists a programmer in the development of applications including language processors, sorts, communications modules, data base management systems, and utility routines, (tape-to-disk routines, disk-to-print routines, etc.).
- u. Application Program—A computer program which is intended to be executed on the Contractor's equipment for the purpose of performing useful work for the user of the information being processed. Application programs are usually developed or otherwise acquired by the user of the hardware/software system, but they may be supplied by the Contractor.
- v. Program Product—Programs, routines, subroutines, and related items which are proprietary to the Contractor and which are licensed to the State for its use, usually on the basis of separately stated charges and appropriate contractual provisions.
- w. Software Failure—A malfunction in the Contractor-supplied software, other than operating software, which prevents the accomplishment of work, even though the equipment (including its operating software) may still be capable of operating properly. For operating software failure, see definition of equipment failure.

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- x. Information Technology Services—Are defined as services performed directly on or pertaining to electronic data processing and telecommunications hardware, firmware, and software including, but not limited to, computerized and auxiliary automated information handling, system design and analysis, data conversion, computer programming, information storage and retrieval, voice, video, data communications, requisite system controls, simulation, maintenance and repair, software licensing, and training. Also included are services of an advisory nature requiring a recommended course of action or personal expertise as it pertains to an information technology project, and information technology support functions.

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VERIZON CALIFORNIA INC.**

Attachment for Personal Services (applicable when CMAS contract allows Personal Services)

1. The State may terminate this agreement and be relieved of the payment of any consideration to Contractor should Contractor fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. The cost to the State shall be deducted from any sum due the Contractor under this agreement, and the balance, if any, shall be paid the Contractor upon demand.
2. Time is of the essence in this agreement.
3. PERSONNEL
 - a. Contractor personnel shall perform their duties on the premises of the State, during the State's regular work days and normal work hours, except as may be specifically agreed to otherwise by the State.
 - b. The State reserves the right to disapprove the continuing assignment of Contractor personnel provided to the State under this Agreement. If the State exercises this right, and the Contractor cannot immediately replace the disapproved personnel, the State agrees to an equitable adjustment in schedule or other terms that may be affected thereby.
 - c. The Contractor will make every effort consistent with sound business practices to honor the specific requests of the State with regard to assignment of its employees; however, subject to Paragraph 3b above, the Contractor reserves the sole right to determine the assignment of its employees. If a Contractor employee is unable to perform due to illness, resignation, or other factors beyond the Contractor's control, the Contractor will make every reasonable effort to provide suitable substitute personnel.
 - d. In recognition of the fact that Contractor personnel providing services under this Agreement may perform similar services from time to time for others, this Agreement shall not prevent Contractor from performing such similar services or restrict Contractor from using the personnel provided to the State under this Agreement, providing that such use does not conflict with the performance of services under this Agreement.
4. RESPONSIBILITIES OF THE STATE

The State shall provide normal office working facilities and equipment necessary for Contractor performance under this Agreement. Any special requirements (e.g., reprographic services, computer time, keydata entry, etc.) must be identified.
5. RIGHTS IN DATA
 - a. All technical communications and records originated or prepared by the Contractor pursuant to this Agreement including papers, reports, charts, computer programs, and other documentation, but not including Contractor's administrative communications and records relating to this Agreement shall be delivered to and shall become the exclusive property of the State and may be copyrighted by the State.
 - b. The ideas, concepts, know-how, or techniques relating to data processing, developed during the course of this Agreement by the Contractor or jointly by the Contractor and the State can be used by either party in any way it may deem appropriate.
 - c. All inventions, discoveries or improvements of the computer programs developed pursuant to this Agreement shall be the property of the State. The State agrees to grant a nonexclusive royalty-free license for any such invention, discovery, or improvement to the Contractor or any other such person and further agrees that the Contractor or any other such person may sublicense additional persons on the same royalty-free basis.
 - d. This Agreement shall not preclude the Contractor from developing materials outside this Agreement which are competitive, irrespective of their similarity to materials which might be delivered to the State pursuant to this Agreement.
6. REPORTING, INVOICING, AND PAYMENT FOR SERVICE

In the aggregate, invoices reflecting progress payments will not exceed 90 percent of the ceiling amount of the agreement, with the balance to be invoiced upon satisfactory completion of the Agreement. In accordance with PCC Section 12112: if a contract has progress payments, then a performance bond is required by law. The bond is issued to the name of the contracting agency. If the agency is issuing the contract under delegated authority or CMAS they hold the bond, otherwise DGS holds the bond. The amount of the bond is 50% of the total amount of the contract.
7. LIABILITIES FOR DAMAGES
 - a. The Contractor shall be relieved from liability with respect to the performance of work as outlined in each order when the State agrees the tasks have been satisfactorily completed.
 - b. Except for liability for injury to persons or damage to property, the Contractor will be liable for damages only to the extent of the maximum amount of this Agreement.
 - c. In no event will the contractor or the state be liable for consequential damages even if notification has been given as to the possibility of such damages.
 - d. Notwithstanding the foregoing, nothing contained herein shall limit contractor's liability for personal injury and damage to property caused by contractor's negligence or tortuous act.
 - e. Neither party to this Agreement shall be liable for damages resulting from delayed or defective performance when such delays arise out of causes beyond the control and without the fault or negligence of the offending party. Such causes may include, but are not restricted to, Acts of God or of the public enemy, acts of the State in its sovereign capacity, fires, floods, power failure, disabling strikes, epidemics, quarantine restrictions, and freight embargoes.

Exhibit "B"

EXHIBIT B



| | |
|--|---|
| A. | B. |
| Contractor: Verizon California Inc. | City: City of Long Beach |
| Address: 2801 Townsgate Rd., Suite 200 | Address: 333 W. Ocean Blvd. |
| City: Thousand Oaks State: CA Zip Code: 91361 | City: Long Beach State: CA Zip Code: 90802 |
| Contact Name and Phone Number: Keith Puls | Contact Name and Phone Number: Colleen Huber 12 th floor 562-570-6199 |
| Quote Number (if applicable): 8-O4N55 | |

| | |
|---|---|
| <p>C. Select all applicable options:</p> <p>Contractor Maintenance and Management Service Schedules</p> <ul style="list-style-type: none"> <input type="checkbox"/> Data Maintenance Next Business Day Remote <input type="checkbox"/> Data Maintenance 4-Hour Remote <input checked="" type="checkbox"/> Data Maintenance 4-Hour On-Site <input type="checkbox"/> Data Maintenance 8-Hour On-Site <input type="checkbox"/> Connectivity Assurance <input type="checkbox"/> EMC Support Services <input type="checkbox"/> IP Phones Next Business Day <input checked="" type="checkbox"/> IP Telephony Application Server Platform 4-Hour Remote <input type="checkbox"/> IP Telephony Application Server Platform 4-Hour On-Site <input type="checkbox"/> IP Telephony Application Server Platform 8-Hour On-Site <input type="checkbox"/> IP Telephony Software Support <input type="checkbox"/> SiteWatch – Fault Management <input type="checkbox"/> SiteWatch – Performance Management <input type="checkbox"/> SiteWatch – Configuration Management <input type="checkbox"/> IPTWatch Call Manager/Server Management <input checked="" type="checkbox"/> IPTWatch Unity Voice Mail/Server Management <input type="checkbox"/> IPTWatch IP QoS Fault Monitoring <input type="checkbox"/> IPTWatch QoS Performance Monitoring | <p>Contractor Maintenance and Management Service Schedules Cont'd.</p> <ul style="list-style-type: none"> <input checked="" type="checkbox"/> 8x5 Switch & Phones <input type="checkbox"/> 8x5 Switch & Proprietary Phones <input type="checkbox"/> 8x5 Switch Only <input type="checkbox"/> 8x5 Ancillary/Auxiliary Equipment <input type="checkbox"/> 8x5 Nortel Norstar <input type="checkbox"/> 8x5 NEC Electra Elite <input checked="" type="checkbox"/> 8x5 Succession <input checked="" type="checkbox"/> 24x7 Switch & Phones <input type="checkbox"/> 24x7 Switch & Proprietary Phones <input type="checkbox"/> 24x7 Switch Only <input type="checkbox"/> 24x7 Ancillary/Auxiliary Equipment <input type="checkbox"/> 24x7 Nortel Norstar <input type="checkbox"/> 24x7 NEC Electra Elite <input type="checkbox"/> 24x7 Succession <input checked="" type="checkbox"/> On-Site Technician <input type="checkbox"/> Supplemental Warranty Coverage (extends the standard warranty to 24 hour coverage for major failures during the warranty period) <input type="checkbox"/> Other _____ |
|---|---|

Contractor Maintenance and Management Service Schedules Cont'd.

Third Party Maintenance Services (maintenance will be provided in accordance with the vendor's terms and conditions and except for Sections 2, 4 and 12, the terms and conditions herein shall not apply to such maintenance services)

- Nortel Extended Service
- Cisco SmartNet
- Other: ____

D. Payment Options:

- Cash Purchase
- E-Rate/USF Funding Application No. ____
- Tax Exempt No. ____

| | |
|---|---------------------|
| E. The total price of the Services being purchased by the City is: | |
| Maintenance Service Voice Maintenance Service for <u>3</u> Years | \$403,862.06 |
| Managed Network Solutions Service for ____ Years | \$ _____ |
| Supplemental Warranty Coverage | \$ _____ |
| Applicable taxes (estimated) | \$ _____ |
| TOTAL PRICE | \$ _____ |
| Down Payment | N/A |
| Balance Due | \$ _____ |

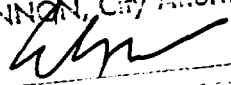
| | | | | | | |
|---|--|--|------------------------------------|----------------------------------|-------------------|-------------------|
| F. Maintenance Service Billing Option: | | | | | | |
| <input type="checkbox"/> Pre-paid Billing: | ___ years | \$___ (Annual Rate) | | | | |
| <input type="checkbox"/> Deferred Billing (deferred until warranty expiration): | ___ years | \$___ (Year 1) | \$___ (Year 2) | \$___ (Year 3) | \$___ (Year 4) | \$___ (Year 5) |
| Bill deferred payment (check one): | <input checked="" type="checkbox"/> annually | <input type="checkbox"/> semi-annually | <input type="checkbox"/> quarterly | <input type="checkbox"/> monthly | | |

G. Attachments:

Quote
 Maintenance Service Schedule
 Managed Network Solutions Service Schedule
 Service Plan Description(s)

THE TERMS AND CONDITIONS OF THIS EXHIBIT CONTINUE ON THE FOLLOWING PAGES


City Initials

APPROVED AS TO FORM
2/23, 2005
 ROBERT E. SHANNON, City Attorney
 By 
 DEPUTY CITY ATTORNEY

1. Scope of Exhibit. Subject to the terms and conditions of the Agreement, Contractor will provide City, either directly or in conjunction with such subcontractors as it may select, the maintenance services (hereinafter the "Services") as described in this Agreement and as further described in a Statement of Work and/or any Service Schedule attached hereto.

Contractor will provide the Services as set forth in the applicable quote and the Maintenance Services Schedule and/or the Managed Network Solutions Service Schedule attached hereto.

All applicable Statements of Work and Service Schedules attached hereto are incorporated herein and made a part of this Agreement.

2. Fees and Payment.

2.1 City will pay all fees for the Services as set forth below and the applicable quote, subject to additions and deductions made by written Change Order(s). City is responsible for applicable taxes, shipping, handling, telecommunication surcharges and other charges applicable to the Services provided under this Agreement. Contractor acknowledges that City is exempt from federal and local taxes and no such taxes shall be included in any invoice to City. City agrees to provide evidence of exemption acceptable to Contractor provided upon execution of this Agreement.

2.2 Payments are due within thirty (30) days of receipt and approval of an invoice ("Due Date"), and any payment not received by the Due Date, shall be subject to a late payment charge of, the lesser of, one and one-half percent (1.5%) per month, or the maximum amount allowed by law. City shall have five (5) days of receipt of an invoice to review and approve of the same and to notify Contractor of any amounts in dispute. Late payment charges will only be assessed monthly against the amount due. Should City dispute an amount invoiced, City shall pay the undisputed portion of that invoice, promptly notify Contractor in writing of the amount and nature of the dispute, and the parties shall cooperate to resolve the dispute pursuant to Section 15 below. Contractor reserves the right to suspend or terminate any or all Services, or repair of any or all Equipment immediately if City is more than sixty (60) days overdue for payments that are not disputed in good faith.

3. Suspension of Performance/Termination

3.1 Either party may suspend its performance of and/or terminate the affected service order to which the deficiency pertains immediately by written notice in the event the other party (i) fails to perform material terms of the Agreement or this Exhibit and (a) such failure is not cured within thirty (30) calendar days following receipt of a default notice in writing from the other party, or (b) if such failure cannot reasonably be cured during that time and the defaulting party, fails to use commercially reasonable efforts to cure such breach as soon as practicable, but in any event within ninety (90) calendar days following written notice; (ii) engages in fraud, criminal conduct or willful misconduct in connection with the business relationship of the parties; or (iii) becomes insolvent, ceases doing business in the ordinary course, enters bankruptcy proceedings or effects an assignment for the benefit of creditors. In the event Contractor terminates the Agreement pursuant to Section 3.2 below, City shall promptly pay Contractor for the any Services provided up to the date of termination. In the

event City defaults under the Agreement or this Exhibit, City's down payment shall be non-refundable.

3.2 Either party may terminate the Agreement or a Statement of Work, in whole or in part, upon thirty (30) days prior written notice to the other party for convenience. If the Agreement or a Statement of Work is terminated by City pursuant to this Section, Contractor shall have no further responsibility under the Agreement, this Exhibit or a Statement of Work and City shall promptly pay Contractor:

3.2.1 Services provided up to the date of termination;

3.2.2 For expenses incurred, up to the date of termination, including but not limited to the costs of terminating purchase orders, removal of equipment and other contractual obligations made by Contractor to meet its obligations under the Agreement or a Statement of Work.

3.3 Where multiple Statements of Work are associated with this Exhibit, the termination of one or less than all of the Statements of Work, shall only affect the terminated Statement of Work. The remaining Statements of Work shall remain in effect.

3.4 Contractor reserves the right to suspend performance under the Agreement or a Statement of Work if, in Contractor's sole discretion, required by regulation, statute, judicial action or other applicable legal requirement.

3.5 Termination of the Agreement shall not relieve either party of its respective obligations to comply with all terms of the Agreement that expressly call for performance prior or subsequent to the termination date, including without limitation the parties' respective obligations to protect proprietary and confidential information.

4. **Purchase Order.** The parties acknowledge that a City purchase order or other similar document is for City's internal purposes only and, therefore, even if acknowledged by Contractor, the terms and conditions will have no effect on the Agreement or Services provided hereunder.

5. **City Responsibilities.** City will:

5.1 Allow Contractor access for inspection, testing, maintenance and repair services and performance of any required activity.

5.2 Provide suitable building facilities for the performance of Service in accordance with local codes, including but not limited to ducting, conduit, structural borings, etc. for cable and conductors in floors, ceilings and walls; electrical service with suitable terminals and power surge protection devices; and metallic grounds with sufficient slack in the equipment room, installed in conformity with the National Electrical Code and local codes.

5.3 Provide necessary heating, cooling, humidity and dust control as required by manufacturer specifications.

- 5.4 Identify and disclose to Contractor concealed equipment, wiring or conditions that might be affected by or might affect the performance of Services. City shall defend and hold Contractor harmless from any claim, damage or liability resulting from a failure to disclose this information.
- 5.5 Authorize Contractor, at City's expense, to make service requests upon third parties for interconnection requirements, including obtaining telephone service for the performance of Services and testing where necessary.
- 5.6 Cooperate with Contractor's requests for assistance in testing.
- 5.7 Be responsible for providing adequate back-up of data and for restoring data to repaired equipment.
- 5.8 If the Services are provided on equipment which is connected to the public network, City is solely responsible for selection, implementation and maintenance of security features for defense against unauthorized long distance calling. City is solely responsible for payment of long distance, toll and other telecommunications charges incurred through use of this equipment.
- 5.9 Immediately notify Contractor of any anticipated delay in building availability or inability to meet any of the above listed requirements.

6. Changes In/Additions to System.

- 6.1 City may order additional maintenance services pursuant to a written Amendment, City purchase order or similar document, and such order shall be governed by the Agreement, including without limitation Section 4 above, and shall reference the Agreement.
- 6.2 City shall also have the right, by written notice, to propose changes in the Services under the Agreement and any Statement of Work ("Change Orders") and Contractor shall comply to the extent it deems feasible and reasonable. If Contractor determines that such changes cause an increase or decrease in the cost of or time required for Service performance, Contractor shall advise City and such adjustments shall be reflected in a written Change Order.
- 6.3 No Change Order shall become effective as a part of this Agreement and the applicable Statement of Work, and no changes in the Services shall be initiated, until the Change Order is mutually agreed upon in writing. Contractor may also propose changes in or additions to the Services, and may proceed with such changes upon execution by City and Contractor of a written Change Order.

7. Warranty. Contractor warrants that it will perform all Services provided under the Agreement in a good and workmanlike manner.

THE WARRANTIES SET FORTH HEREIN ARE IN LIEU OF ALL OTHER WARRANTIES FROM CONTRACTOR, UNLESS OTHERWISE STATED IN AN EXHIBIT. OTHERWISE CONTRACTOR DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT

NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ANY WARRANTY OF NON-INFRINGEMENT, ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE OR ANY WARRANTY THAT THE SERVICES OR NETWORK TRANSPORT WILL BE UNINTERRUPTED OR ERROR FREE. CONTRACTOR SHALL NOT BE LIABLE FOR UNAUTHORIZED ACCESS TO CONTRACTOR'S OR CITY'S TRANSMISSION FACILITIES OR PREMISES EQUIPMENT OR FOR UNAUTHORIZED ACCESS TO OR ALTERATION, THEFT OR DESTRUCTION OF CITY'S DATA FILES, PROGRAMS, PROCEDURES OR INFORMATION THROUGH ACCIDENT, FRAUDULENT MEANS OR DEVICES, OR ANY OTHER METHOD. CONTRACTOR MAKES NO WARRANTY FOR USE OF THE SYSTEM AS A COMPONENT IN LIFE SUPPORT DEVICES OR SYSTEMS OR WITH RESPECT TO THE PERFORMANCE OF ANY SOFTWARE OR FIRMWARE.

8. Limitation of Liability. EXCEPT FOR PAYMENTS OWED UNDER THE AGREEMENT, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, WHETHER ARISING IN CONTRACT, TORT (INCLUDING A PARTY'S NEGLIGENCE) OR OTHERWISE, INCLUDING WITHOUT LIMITATION DAMAGES ARISING FROM DELAY, LOSS OF GOODWILL, LOSS OF OR DAMAGE TO DATA, LOST PROFITS (ACTUAL OR ANTICIPATED), UNAVAILABILITY OF ALL OR PART OF THE SYSTEM, OR OTHER COMMERCIAL OR ECONOMIC LOSS, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

EXCEPT WITH RESPECT TO THE INDEMNIFICATION OBLIGATIONS SET OUT IN SECTION 9 BELOW, CONTRACTOR'S ENTIRE LIABILITY FOR ANY OTHER DAMAGE WHICH MAY ARISE HEREUNDER, FOR ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR IN TORT, INCLUDING CONTRACTOR'S NEGLIGENCE, OR OTHERWISE, SHALL BE LIMITED TO THE PURCHASE PRICE OF THE SERVICES GIVING RISE TO THE CLAIM. CONTRACTOR SHALL BEAR NO LIABILITY FOR SERVICES PROVIDED UNDER THE AGREEMENT IN CONNECTION WITH LIFE SUPPORT SYSTEMS OR DEVICES. IN ADDITION, CONTRACTOR SHALL HAVE NO LIABILITY OR RESPONSIBILITY FOR INTEROPERABILITY OR COMPATIBILITY OF THIRD-PARTY OR CITY PRODUCTS OR SYSTEMS.

9. Indemnification. In the event Contractor sells Equipment to City under Exhibit "B", the indemnification provisions set forth herein and not those of the CMAS Agreement shall apply:

9.1 Contractor will defend, indemnify and hold harmless City against any claim, suit, action or proceeding ("Claim") alleging that Service (s) supplied to City infringes a valid U.S. patent or copyright, except as provided below, and Contractor agrees to pay all reasonable litigation and settlement costs and attorney's fees incurred by City in connection with any such Claim. If the use of any equipment is enjoined or subject to a Claim as described above, Contractor may, at its option and expense, procure for City the right to use the equipment or relevant component, replace the equipment or relevant component with an equivalent, non-infringing equipment or relevant component, or modify the equipment or relevant component so that it becomes non-infringing. In the event that none of the foregoing options is commercially

reasonable, Contractor will remove the infringing equipment and refund the purchase price for the equipment less depreciation for such use. Depreciation shall be calculated on a straight-line basis, assuming a useful life of five (5) years. Contractor shall have no obligation for (a) any costs, fees or expenses incurred by City without Contractor's prior written consent, (b) with respect to any Claim arising out of "music on hold" or similar service, or (c) for any indirect, special, consequential or incidental damages arising out of any Claim. This indemnity shall not apply to any Claim, or portion thereof that arises from (i) any negligent or willful act or omission by or attributable to City; (ii) use or operation of the equipment in combination with equipment or services provided by City or its other contractors; (iii) any addition to or modification of the equipment by City or its other contractors; (iv) use of other than the current unaltered release of any software used in the equipment; or (v) any equipment, system, product or service of City which otherwise infringed the U.S. patent or copyright asserted against City prior to the supply of the Equipment by Contractor under the Agreement. The foregoing states the entire obligation of Contractor to City, and is City's sole and exclusive remedy, with respect to any Claim of infringement of any intellectual property right of any kind, and Contractor disclaims all other warranties and obligations with respect to any such Claims.

- 9.2 City shall defend, indemnify and hold harmless Contractor, its employees, officers, directors, agents and affiliates for damages, costs and attorneys fees in connection with any claim arising out of City's use of the equipment provided by Contractor other than as specified in the Agreement, City's combination of the Equipment provided by Contractor with other equipment or services not provided by Contractor, City's modification of the Equipment provided by Contractor, or arising out of the content of communications transmitted by City in its use of the Services or Equipment provided by Contractor, including but not limited to libel, slander, and invasion of privacy.
- 9.3 To the extent permitted by law, each party (the "indemnitor") shall defend, indemnify, and hold harmless the other party (the "indemnitee") against all claims and liabilities for direct damages imposed on the indemnitee for bodily injuries, including death, and for damages to real or tangible personal property to the extent caused by the negligent or otherwise tortuous acts or omissions of the indemnitor, its agents or employees in the course of performance of the Agreement while on the indemnitor's premises.
- 9.4 The indemnification obligations set forth in this Section 13 are contingent upon (1) the indemnitee providing the indemnitor prompt, written, and reasonable notice of the claims, demands, and/or causes of action subject to indemnification, (2) the indemnitee granting the indemnitor the right to control the defense of the same, and (3) the indemnitee's full cooperation with the indemnitor in defense of the claim, including providing information and assistance in defending the claim. Nothing herein, however, shall restrict the indemnitee from participating in the defense of the claim, demand, and/or cause of action at its own cost and expense with counsel of its own choosing. No settlement may be entered into by the indemnitor on behalf of the indemnitee that includes obligations to be performed by the indemnitee (other than payment of money that will be fully paid by the indemnitor under Sections 9.1-9.3 above) without indemnitee's prior written approval.

10. Confidentiality. Except as required by law or regulation, each party (the "receiving party")

shall keep confidential and not disclose, directly or indirectly, to any third party any Confidential Information, as defined below, received from the other party (the “disclosing party”) without the prior written consent of a duly authorized officer of the disclosing party. The disclosing party shall conspicuously mark its tangible Confidential Information as Proprietary or Confidential to the disclosing party at the time of disclosure to the receiving party. Confidential Information that is disclosed orally will be identified by the disclosing party as Confidential Information at the time of disclosure to the receiving party. Each party shall use, copy and disclose the Confidential Information of the disclosing party solely for purposes of performing its duties and obligations under the Agreement. All Confidential Information of a party shall be and shall remain the property of such party. A party shall deliver to the disclosing party, upon written request by the disclosing party, all Confidential Information of the disclosing party then in the receiving party’s possession or control, directly or indirectly, in whatever form it may be (including, without limitation, magnetic media) or certify its destruction to the disclosing party. Each party shall take all necessary and reasonable action, by instruction, agreement or otherwise, with its employees, consultants, subcontractors, affiliates, and representatives to satisfy its obligations hereunder. The receiving party’s obligations hereunder with respect to confidentiality, non-disclosure and limitation of use of Confidential Information shall be for the term of the Agreement plus one (1) year. Such obligations shall survive termination or expiration of the Agreement. For purposes of this provision, a third party shall not include an entity which has a need to know the Confidential Information and which owns, is owned by, or under common ownership with a party to the Agreement.

10.1 Nothing in this Exhibit “B” or the Agreement shall prevent either party from using or disclosing any Confidential Information that: (i) has become generally available to the public, other than through any improper action of such party, (ii) is already in the possession of the receiving party and not subject to an existing agreement of confidence between the parties, (iii) is received from a third party without restriction and without breach of this Agreement, (iv) is independently developed by the receiving party as evidenced by its records, or (v) is disclosed pursuant to a valid law, rule, regulation, subpoena, demand, or order of a court or other governmental body or any political subdivision thereof of competent jurisdiction (collectively “demand”), provided; however, that the receiving party shall first have given notice to the disclosing party about the demand in order to permit the disclosing party to seek reasonable protective arrangements.

10.2 For purposes of this Exhibit “B”, the term “Confidential Information” shall include, without limitation, all trade secrets of a party and all other information and material that relates or refers to the plans, policies, finances, corporate developments, products, pricing, sales, services, procedures, intra-corporate transactions, suppliers, prospects of a party, as well as financial information relating to such suppliers, and prospects, and any other similar confidential information and material which such party does not make generally available to the public. By way of illustration, but not limitation, Confidential Information includes all computer software (including object code and source code), computer software and data base technologies, systems, structures and architectures, and the processes, formulae, compositions, improvements, inventions, discoveries, concepts, ideas, designs, methods and information developed, acquired, owned, produced, or practiced at any time by a party, and all non-public information relating to the business of such party.

11. **Alternate Dispute Resolution (ADR).** Any controversy, claim, or dispute (“Disputed

Claim”) arising out of or relating to the Agreement, except for claims relating to indemnity, infringement, or confidentiality obligations or matters relating to injunctions or other equitable relief (together “Equitable Claims”), shall be first subject to a thirty (30) day negotiation period between the parties in which each party shall disclose to the other party all such documents, facts, statements and any other information which are reasonably requested by the other party and are relevant to the dispute in question. Should such negotiations fail to resolve the dispute within thirty (30) calendar days, Disputed Claims shall be resolved by binding arbitration of a single arbitrator in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator shall be based upon the provisions of this Exhibit “B”, and applicable law. The decision of the arbitrator shall be reduced to writing, shall be final and binding except for fraud, misconduct, or errors of law, and judgment upon the decision rendered may be entered in any court having jurisdiction thereof. In all arbitrations, the arbitrator must give effect to applicable statutes of limitation subject to limitation of actions terms set forth in the Agreement, and shall not be afforded any authority to award relief in excess of what this Agreement provides or to order consolidation or class arbitrations. The parties agree that any such claims arising under this Exhibit “B” must be pursued on an individual basis in accordance with the procedure noted above. Even if applicable law permits class actions or class arbitrations, the ADR procedure agreed to herein applies and the parties waive any rights to pursue any claim arising under this Exhibit “B” on a class basis. The arbitration shall be held in a mutually agreed to location, and shall be final and binding on both parties. Each party will bear its own costs of arbitration but shall split equally the fees of the arbitration and the arbitrator.

12. Hazardous Substances. Except as disclosed to and acknowledged in writing by Contractor, City certifies that it is not aware of the presence of any asbestos or other hazardous substance (as defined by any applicable state, federal or local hazardous waste or environmental law or regulation) at any location where Contractor is to perform Services. If during such performance Contractor employees or agents encounter any such substance, City agrees to take all necessary steps, at its own expense, to remove or contain the asbestos or other hazardous substance and to test the premises to ensure that exposure does not exceed the lowest exposure limit for the protection of workers. Contractor may suspend performance under this Exhibit “B” until the removal or containment has been completed and approved by the appropriate governmental agency and Contractor. Performance obligations under this Exhibit “B” shall be extended for the delay caused by said cleanup or removal. City’s failure to remove or contain hazardous substances shall entitle Contractor to terminate the Agreement as to Services without further liability, in which event City shall permit Contractor to remove any equipment that has not been accepted, shall reimburse Contractor for expenses incurred in performing its obligations hereunder until termination (including expenses of removing equipment), and shall complete payment for any portion of the System that has been accepted.

13. Force Majeure. Neither party shall be liable for any delay or failure in performance hereunder arising out of acts or events beyond its reasonable control, including but not limited to acts of God, war, terrorist acts, fire, flood, explosion, riot, embargo, acts of the Government in its sovereign capacity, labor disputes, unavailability of equipment or parts from vendors, or changes requested by City. The affected party shall provide prompt notice to the other party and shall be excused from such performance to the extent of such caused delays or failures; provided that the party so affected shall use reasonable efforts to remove such causes of such delays or failures and both parties shall proceed whenever such causes are removed or cease. If performance of either party is prevented or delayed by circumstances as described in this section for more than ninety (90) days,

either party may terminate the affected Service or Statement of Work. Notwithstanding the foregoing, City shall not be relieved of its obligation to make any payments, including any late payment charges as provided in Section 2.2, above, that are due to Contractor hereunder.

14. Assignment. Neither party may, without the prior written consent of the other party, assign or transfer its rights or obligations under the Agreement as to Services; consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, Contractor may, without prior notice, assign this Agreement as to Services, in whole or in part, to any Contractor affiliate, any successor entity upon the merger, reorganization, consolidation or sale of all or substantially all of Contractor's assets. For purposes of this Section, "affiliate" shall mean a person or entity that directly or indirectly controls or is controlled by or is under common control with Contractor. Any attempt by Contractor to assign or transfer its rights in contravention of this Section shall be void and of no force and effect.

15. Governing Law. The Agreement shall be governed by the substantive laws of the State of California, without regard to its choice of law principles

16. Non-Waiver/Severability. Either party's failure to enforce any of the provisions of this Exhibit "B" or to exercise any right or option is not a waiver of any such provision, right, or option, and shall not affect the validity of this Exhibit "B" or the Agreement. Any waiver must be written and signed by the parties. If any provision of this Exhibit "B" or the provision of any Service or equipment under the terms hereof is held to be illegal, invalid, or otherwise prohibited under applicable law or regulation in any State or jurisdiction, then this Exhibit "B" shall be construed as if not containing such provision or not requiring the provision of such invalid, illegal, or prohibited Service or equipment in such State or jurisdiction.

17. No Agency. Neither party has the right or authority to, and shall not, assume or create any obligation of any nature whatsoever on behalf of the other party or bind the other party in any respect whatsoever. Each party is an independent contractor hereunder. Each party shall be responsible for compliance with all laws, rules and regulations including, but not limited to employment, hours of labor, working conditions, workers' compensation, payment of wages, and payment of taxes associated with its performance under this Exhibit "B". Each party shall indemnify, hold harmless and defend the other against any liabilities, claims, losses and damages (including costs, expenses and reasonable attorneys' fees) arising out of its failure to comply with any such laws, rules or regulations.

18. Publicity. Except as required by law, the parties shall keep the provisions of this Exhibit "B" confidential and shall not disclose any of its terms, without the other party's written consent. Neither party shall use any trademark, trade name, trade dress or any name, picture or logo which is commonly identified with the other party or its affiliates, or from which any association with such party or its affiliates may be inferred or implied, in any manner, including but not limited to advertising, sales promotions, press releases or otherwise, without the prior written permission of such party.

19. Limitation of Actions. A party may bring no action or demand for arbitration arising out of this Exhibit "B" more than two (2) years after the cause of action has accrued. The parties waive the right to invoke any different limitation on the bringing of actions under state law.

20. **Independent Contractor Relationship.** Each party understands and agrees that it and its personnel are not agents or employees of the other party, and that each party is an independent contractor for all purposes and at all times. Neither party shall enter into any agreements or make any promises or commitments on behalf of the other party. Each party shall be responsible for compliance with all applicable employment-related laws and regulations for its personnel including but not limited to those governing hours of labor, working conditions, Workers' Compensation, payment of wages, and payment of taxes, such as unemployment, social security and other payroll taxes, including applicable contributions for such persons when required by law.

21. **Interpretation.** This Exhibit "B" shall not be construed or interpreted for or against any party hereto because that party drafted or caused that party's legal representative to draft any of its provisions.

22. **Headings.** The Section headings used herein are for reference and convenience only and shall not enter into the interpretation of this Exhibit "B".

23. **Modifications.** This Exhibit "B" may only be amended, changed or modified in a written document that is signed by both parties.

24. **Entire Agreement.** This Exhibit "B", together with any Statement of Work hereunder and any Exhibit hereto, constitutes the entire agreement between the parties pertaining to the provision of Services and supercedes all prior oral and written proposals, correspondence and memoranda with respect thereto, and no representations, warranties, agreements or covenants, express or implied, of any kind or character whatsoever with respect to such subject matter have been made by either party to the other, except as expressly set forth in this Exhibit "B". In the event of a conflict between the provisions of the Agreement, this Exhibit "B", a Statement of Work or an Exhibit as to the provision of Services, the provisions of this Exhibit "B" shall prevail.

Contractor: _____

City: Macomb

By: Timothy J. McCallion

By: Gerald B. Miller

Print Name: Timothy J. McCallion

Print Name: Gerald B. Miller

Title: President

Title: City Manager

Date: February 9, 2005

Date: February 23, 2005

FORM APPROVED
for 12: CUB
ATTORNEY
DATE 2/8/05

APPROVED AS TO FORM
2/23, 2005
ROBERT E. SHANNON, City Attorney
By [Signature]
DEPUTY CITY ATTORNEY

By: Lawrence A. Valdivieso
Print Name: Lawrence A. Valdivieso
Title: Assistant Secretary
Date: February 8, 2005

EXHIBIT B



MAINTENANCE SERVICE SCHEDULE Voice Equipment Maintenance

In addition to the terms and conditions of the Agreement, the following terms and conditions apply to voice equipment maintenance services. Contractor will provide the voice equipment maintenance service identified in the applicable quote or Equipment Description and the Service Description(s) attached hereto and incorporated herein ("VM Service"). Contractor reserves the right to modify the Service Description from time to time. Such modifications would be presented to City at the time of renewal. Service Descriptions are available from City's account representative. For the purposes of this Service Schedule, "System" shall refer to the specific Voice Customer Premise Equipment which Contractor is providing maintenance service for and as identified in the applicable quote or Statement of Work.

1. Term and Termination.

- 1.1 VM Service for equipment sold with a warranty begins at the end of the warranty period. VM Service for equipment sold without a warranty begins on the In-Service Date. VM Service for equipment not sold or installed by Contractor begins upon activation. VM Service shall remain in effect for the period set forth on Page 2 of the Agreement, and shall automatically renew for additional one (1) year terms at the then current undiscounted rate, unless terminated in accordance with this Service Schedule or the Agreement ("Term").
- 1.2 City may terminate the VM Service upon not less than sixty (60) days prior written notice. If City has pre-paid the VM Service and terminates such prior to the end of the Term, City will be reimbursed for the unused portion of the VM Service, less any discount received.
- 1.3 VM Service includes maintenance for additions to the System, which are purchased from and installed by Contractor during the term of the Agreement. If City purchases VM Service and, during the term of the Agreement, purchases from Contractor an addition(s) to the System and Contractor installs such addition(s), the Contractor warranty, if any, for such addition(s) shall run until the first VM Service renewal date, so that the warranty period for the addition(s) will be coterminous with the VM Service.
- 1.4 Contractor may terminate the VM Services upon sixty (60) days written notice prior to the end of the then current Term.

2. Maintenance Plans. Once on-site maintenance has begun, it will continue uninterrupted during the hours for the VM Service as set forth in the applicable Service Description. Upon City's written request, Contractor will continue the maintenance activity beyond the plan hours, provided; however, labor provided outside of Plan Hours will be billed at Contractor's then current time and material labor rates.

3. Major/Minor System Failure. Contractor will respond to major System failures within the time specified in the applicable Service Description. A major System failure is limited to one or more of the following:

- 3.1 Total inability to originate voice communications.
- 3.2 Total inability to receive and process incoming voice communications.
- 3.3 In a multi-point network in which each point has a defined street address, the total inability to originate, receive and process incoming and outgoing voice communications.
- 3.4 Attendant console and/or night answer position failure.
- 3.5 Twenty percent (20%) or more of the trunk-side ports out of service.
- 3.6 Twenty percent (20%) or more of the line-side stations and/or ports out of service.
- 3.7 Failure of the PBX system interface connecting to a call accounting system.
- 3.8 Any other failure mutually agreed to in writing by City and Contractor.

A minor System failure is defined as any System failure or malfunction, other than that defined as a major System failure. Contractor will respond to minor System failures within the time specified in the applicable Service Description.

4. Exclusions. Maintenance Services do not include:

- 4.1 Additions, changes, relocations, removals, operating supplies or accessories.
- 4.2 Operator, System Administrator and end user training except as specifically identified in this Agreement and any attachment.
- 4.3 Services necessitated by accident, casualty, neglect, misuse, intentional acts or any cause other than normal use of the System.
- 4.4 Repairs or replacements necessitated by lightning, radio frequency interference, power disturbances, fire, flood, earthquake, excessive moisture, Harmful Code or any event occurring external to the System that directly or indirectly causes a malfunction in the System, a private network to which the System is connected, or in telephone lines, cable or other equipment connecting the System to the public telephone network. Harmful Code means any virus or machine-readable instructions and data designed to intentionally disrupt the operation of the software or hardware or intentionally destroy or damage software or hardware or data contained therein.
- 4.5 Services necessitated by use of the System with any other device or system not supplied or approved as to such combined use by Contractor, or use of any part of the System in a manner not specified by Contractor.

- 4.6 Repair or maintenance or increase in normal service time resulting from City's failure to provide a suitable environment for the System or any other failure of City to perform its responsibilities.
- 4.7 Repair or replacement of City-owned outside plant cable unless specifically set forth in the applicable Statement of Work.
- 4.8 Loss or recovery of City data.
- 4.9 Upgrades, enhancements or new releases of software or firmware, except as specifically indicated in this Agreement and any attachment.

VOICE MAINTENANCE EQUIPMENT LIST

EQUIPMENT AND SERVICES COVERED

| SYSTEM | MATERIAL CODE | QUANTITY | DESCRIPTION | COVERAGE |
|--------|---------------|-------------|--|----------|
| 1 | *81KSU | 1 | MERIDIAN 81 PABX SU | MC |
| | *81POR | 3586 | MERIDIAN 81 PABX PORTS | MC |
| 2 | *51KSU | 1 | MERIDIAN 51 PABX SU | MC |
| | *51POR | 316 | MERIDIAN 51 PABX PORTS | MC |
| 3 | *51KSU | 1 | MERIDIAN 51 PABX SU | MC |
| | *51POR | 252 | MERIDIAN 51 PABX PORTS | MC |
| 4 | 330945 | 1 | PACKAGE OPT 11 SYS AC/DC C/T 733318 | MC |
| | *11POR | 168 | MERIDIAN 11 PABX PORTS | MC |
| 5 | 330945 | 1 | PACKAGE OPT 11 SYS AC/DC C/T 733318 | MC |
| | *11POR | 216 | MERIDIAN 11 PABX PORTS | MC |
| 6 | 330945 | 1 | PACKAGE OPT 11 SYS AC/DC C/T 733318 | MC |
| | *11POR | 128 | MERIDIAN 11 PABX PORTS | MC |
| 7 | 733318 | 1 | OPTION 11 SYSTEM PACKAGE AC/DC | MC |
| | *11POR | 160 | MERIDIAN 11 PABX PORTS | MC |
| 8 | 330945 | 1 | PACKAGE OPT 11 SYS AC/DC C/T 733318 | MC |
| | *11POR | 264 | MERIDIAN 11 PABX PORTS | MC |
| 9 | 330945 | 1 | PACKAGE OPT 11 SYS AC/DC C/T 733318 | MC |
| | *11POR | 286 | MERIDIAN 11 PABX PORTS | MC |
| 10 | 495757 | 1 | OPTION 11C SNGL CABNT C/T 587865 | MC |
| | *11POR | 158 | MERIDIAN 11 PABX PORTS | MC |
| 11 | 495757 | 1 | OPTION 11C SNGL CABNT C/T 587865 | MC |
| | *11POR | 160 | MERIDIAN 11 PABX PORTS | MC |
| 12 | 495757 | 1 | OPTION 11C SNGL CABNT C/T 587865 | MC |
| | *11POR | 122 | MERIDIAN 11 PABX PORTS | MC |
| 13 | 495757 | 1 | OPTION 11C SNGL CABNT C/T 587865 | MC |
| | *11POR | 152 | MERIDIAN 11 PABX PORTS | MC |
| 14 | 495757 | 1 | OPTION 11C SNGL CABNT C/T 587865 | MC |
| | *11POR | 104 | MERIDIAN 11 PABX PORTS | MC |
| 15 | 495757 | 1 | OPTION 11C SNGL CABNT C/T 587865 | MC |
| | *11POR | 152 | MERIDIAN 11 PABX PORTS | MC |
| 16 | 367010 | 1 | M1 OPT 61 SYS AC NO REPLACEMENT | MC |
| | *61POR | 355 | MERIDIAN 61 PABX PORTS | MC |
| 17 | 495757 | 1 | OPTION 11C SNGL CABNT C/T 587865 | MC |
| | *11POR | 144 | MERIDIAN 11 PABX PORTS | MC |
| 18 | 495757 | 1 | OPTION 11C SNGL CABNT C/T 587865 | MC |
| | *11POR | 252 | MERIDIAN 11 PABX PORTS | MC |
| 19 | *11KSU | 1 | MERIDIAN 11 PABX SU | MC |
| | *11POR | 150 | MERIDIAN 11 PABX PORTS | MC |
| 20 | *11KSU | 1 | MERIDIAN 11 PABX SU | MC |
| | *11POR | 96 | MERIDIAN 11 PABX PORTS | MC |
| 21 | 906820 | 1 | BCM 2.5 BASE 0X0 W/2 LAN INTERFACES | MC |
| | 738045 | 1 | MODULE TRUNK 4 PORT CLID F/EEDGE | MC |
| | 738046 | 1 | BCM 32 DIG STA MBM C/T 932651 | MC |
| | 738660 | 1 | MODULE MEDIA BAY 16 DIG STNS C/T 932650 | MC |
| | 906790 | 1 | BCM EXP CABINET W/PWR SUPPLY C/T 932645 | MC |
| | 738653 | 1 | MODULE MEDIA BAY DIGITAL TRUNK | MC |
| 22 | 875179 | 1 | UPS500W 130M 5-15P (4)5-15R 120V I/O | MC |
| | 875179 | 1 | UPS500W 130M 5-15P (4)5-15R 120V I/O | MC |
| 23 | 906821 | 1 | BCM 2.5 BASE 0X0 W/2 LAN/REDUN PWR/FANS | MC |
| | 907189 | 30 | BCM I2004 INTERNET PHONE | MC |
| 24 | 906798 | (note 2) 1 | BCM MEDIA SERVICES PEC III (2) | MC |
| | 906798 | (note 2) 2 | BCM MEDIA SERVICES PEC III (2) | MC |
| 25 | 906808 | (note 2) 1 | BCM VOIP GATEWAY 8 TRK S/W AUTH CODE | MC |
| | 906808 | (note 2) 1 | BCM VOIP GATEWAY 8 TRK S/W AUTH CODE | MC |
| 26 | 906817 | (note 2) 1 | BCM IP TELEPHONY 32 SEAT S/W AUTH CODE | MC |
| | 906817 | (note 2) 1 | BCM IP TELEPHONY 32 SEAT S/W AUTH CODE | MC |
| 27 | 828250 | (note 2) 1 | MODULE SWITCH 3 PORT I-NET TEL NA | MC |
| | 828250 | (note 2) 30 | MODULE SWITCH 3 PORT I-NET TEL NA | MC |
| 28 | 912376 | 1 | UPS 700VA 2H10MIN 120VIN/O 5-15P 4-5-15R | MC |
| | 912376 | 1 | UPS 700VA 2H10MIN 120VIN/O 5-15P 4-5-15R | MC |
| 29 | 495758 | 1 | OPTION 11C SNGL CABNT C/T 587866 | MC |
| | *11POR | 176 | MERIDIAN 11 PABX PORTS | MC |

Note 2: These items are covered under the terms of your Maintenance Agreement, but do not directly affect the price.

RENEWAL FOR CITY OF LONG BEACH. THIS IS 3YR QUOTE WHICH THE MERIDIAN MAX AND ANY OTHER MD CPE IS NOT INCLUDED. THERE ARE 23 SITES. MER APPROVAL PRICING

** While the Meridian Max is not covered under the terms of this agreement, the Meridian Max has been approved to be maintained at Time and Material Rates.

- Telephone instruments (Nortel): City Tel is responsible for responding to the repair call and collecting defective instruments. NOTE: repair exchange depot - there must be at least 20 tels sets collected before Verizon will roll out to replace with like tel sets.

EXHIBIT B



MANAGED NETWORK SOLUTIONS SERVICE SCHEDULE Data Equipment Maintenance

In addition to the terms and conditions of the Agreement, the following terms apply to Managed Network Solution services. Contractor will provide the Managed Network Solutions service identified in the applicable quote and the Service Description(s) attached hereto and incorporated herein ("MNS Service"). Contractor reserves the right to modify the Service Description from time to time. Contractor will provide City any modifications to the Service Description at the time of renewal. Service Descriptions are available from City's Contractor account representative. For the purpose of this Service Schedule, "System" shall refer to the specific Data Customer Premise Equipment which Contractor is providing maintenance service for and is identified in the applicable quote or Statement of Work.

1. **Term and Termination.**

- 1.1 MNS Services shall become effective as of the date Contractor executes the Agreement and this Service Schedule and shall remain in effect for the period set forth on Page 2 of the Agreement, after which MNS Services shall automatically renew for additional one (1) year terms at Contractor's then current undiscounted rate, unless terminated in accordance with this Service Schedule or the Agreement.
- 1.2 During the first twelve (12) months of the MNS Services, City may terminate the MNS Service (in whole or in part) only for default as defined in the Agreement. After the initial twelve (12) months, City may terminate the MNS Service (in whole or in part) upon not less than sixty (60) days prior written notice to Contractor. If City has pre-paid for the MNS Service and terminates such MNS Service (in whole or in part) prior to the end of the applicable maintenance term, City will be reimbursed for the unused portion of the terminated MNS Service, less any discount received.
- 1.3 Contractor may terminate the MNS Service upon sixty (60) days written notice prior to the end of the then current term.

2. **Equipment Support.**

- 2.1 In the event the manufacturer of the equipment covered by this Service Schedule discontinues a piece of equipment, and/or the associated support of such equipment, Contractor will notify City and only be obligated to provide the MNS Services hereunder on the affected equipment for the period of time that the manufacturer continues to support such equipment. At the end of such period Contractor will cease to support such equipment in accordance with the Service Description, but will use commercially reasonable efforts to provide MNS Service on the affected piece of equipment until City upgrades or replaces such equipment.

2.2 If Contractor did not install the equipment covered by the MNS Service under this Service Schedule, City warrants that such equipment is in good working order and meets all applicable manufacturer specifications. If any such item of equipment is found not to be in good working order and/or not in compliance with all applicable manufacturer specifications, Contractor will be under no obligation to provide MNS Service under this Service Schedule, provided; however, that City may, upon written notice, request Contractor to upgrade and/or repair such equipment at Contractor's then current time and material rate.

3. City Responsibilities.

3.1 City will notify Contractor in writing in the event that any substantial or material modifications are made to City's network, and shall provide Contractor with such information as it may reasonably request, in order for Contractor to perform the MNS Service.

3.2 City acknowledges and agrees that Contractor may increase the amount of any fees specified in the applicable quote, or the total fees payable hereunder, as appropriate, upon prior written notice to City at any time during the term of the MNS Service in the event that City makes any material alteration or modification to City's network, or any of its component parts, which causes Contractor to incur any increased burden in its performance of the MNS Service hereunder.

3.3 City hereby agrees to allow Contractor's personnel such on-site and remote access (e.g., dial modem to console port, etc.) to those portions of City's network as may be reasonably necessary to enable Contractor to perform the MNS Service under this Agreement. City further agrees that should City not provide Contractor remote access into its network, the following applies:

3.3.1 If Contractor is required to dispatch an engineer to City's site to troubleshoot an outage, City will incur a time and material charge at Contractor's then current rate.

3.3.2 Any remote diagnosis service level set forth in the applicable Service Description will be void.

3.4 In the event Contractor or the manufacturer ships a replacement part to City pursuant to the applicable Service Description, City is responsible for returning the defective part, in accordance with the instructions contained in the replacement part packaging, to Contractor within ten (10) days of receipt of such replacement part. If Contractor does not receive the defective part within ten (10) days, City may be billed for the list price of the replacement part.

4. Reports. Contractor shall provide City with such reports as are described in the Service Description.

5. Network Administrator. City shall designate a single person who shall serve as Contractor's primary point of contact ("Network Administrator"). City may change the designation of the Network Administrator at any time upon prior written notice to Contractor.



SERVICE PLAN DESCRIPTION
Verizon Voice CPE Maintenance Services
8x5 and 24x7 Switch Only
8x5 and 24x7 Switch & Proprietary Phones
8x5 Switch & Phones

Overview of Service:

Verizon's 8x5 and 24x7 Switch Only, 8x5 and 24x7 Switch & Proprietary Phones and 8x5 Switch & Phones Service ("VM Service") covers the System begins on the In-Service date and remains in effect as defined in the Agreement.

8x5 and 24x7 Switch Only: provides coverage for equipment attached to the PBX cabinet(s) – excluding all phones.

8x5 and 24x7 Switch & Proprietary Phones: provides coverage for proprietary phones attached to the PBX cabinet(s).

8x5 Switch & Phones: provides coverage for all proprietary and single line phones attached to the PBX cabinet(s).

Voice-mail (including voice mail internal to the PBX cabinet) or other ancillary equipment that is part of Customer's voice network are not covered under the above plans, but are applicable for coverage under other Verizon voice CPE maintenance service plans.

Service Deliverables:

Verizon will provide to Customer the following deliverables as part of the VM Service:

NOTE: The Service Deliverables are based upon Customer's location being within fifty (50) miles of a Verizon service center. Verizon reserves the right to charge Customers a time and material rate for Customer locations that are greater than fifty (50) miles of a Verizon service center.

1. Hours of Coverage:
 - a. 8x5 VM Service plans provide labor and material repair or replacement coverage for minor and major System failures from 8:00 a.m. to 5:00 p.m. (7:30 a.m. to 4:15 p.m. in Hawaii), local time, Monday through Friday ("Office Hours"), excluding Verizon-observed holidays.
 - b. 24X7 VM Service plans provide labor and material repair or replacement coverage for major System failures, 7 days a week, 24 hours a day, including holidays. Labor and material repair or replacement coverage for minor System failures is provided during Office Hours.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

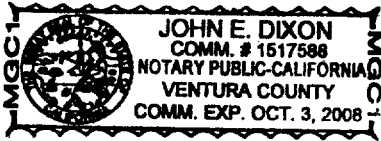
County of Ventura } ss.

On 2/9/05, before me, John E. Dixon,
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Timothy J. McCallion,
Name(s) of Signer(s)

personally known to me

proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Place Notary Seal Above

WITNESS my hand and official seal.

John E. Dixon
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer Is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

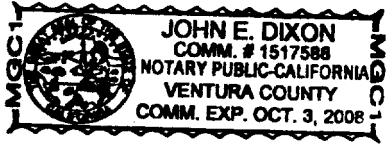
RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer Is Representing: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of Ventura } ss.
On 2/8/05, before me, John E. Dixon,
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
personally appeared Lawrence A. Valdivieso,
Name(s) of Signer(s)

- personally known to me
- proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Place Notary Seal Above

WITNESS my hand and official seal.
John E. Dixon
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

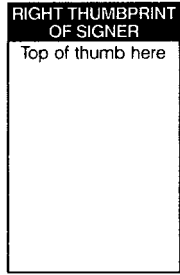
Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

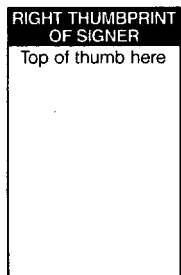
Capacity(ies) Claimed by Signer(s)

- Signer's Name: _____
- Individual
 - Corporate Officer — Title(s): _____
 - Partner — Limited General
 - Attorney in Fact
 - Trustee
 - Guardian or Conservator
 - Other: _____



Signer Is Representing: _____

- Signer's Name: _____
- Individual
 - Corporate Officer — Title(s): _____
 - Partner — Limited General
 - Attorney in Fact
 - Trustee
 - Guardian or Conservator
 - Other: _____



Signer Is Representing: _____