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B. City shall pay Contractor in due course of payments following receipt from Contractor and approval by City of invoices showing the services or task performed, the time expended (if billing is hourly), and the name of the Project. Contractor shall certify on the invoices that Contractor has performed the services in full conformance with this Agreement and is entitled to receive payment. Each invoice shall be accompanied by a progress report indicating the progress to date of services performed and covered by the invoice, including a brief statement of any Project problems and potential causes of delay in performance, and listing those services that are projected for performance by Contractor during the next invoice cycle. Where billing is done and payment is made on an hourly basis, the parties acknowledge that this arrangement is either customary practice for Contractor's profession, industry or business, or is necessary to satisfy audit and legal requirements which may arise due to the fact that City is a municipality.

C. Contractor represents that Contractor has obtained all necessary information on conditions and circumstances that may affect its performance and has conducted site visits, if necessary.

D. By executing this Agreement, Contractor warrants that Contractor (a) has thoroughly investigated and considered the scope of services to be performed, (b) has carefully considered how the services should be performed, and (c) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. It the services involve work upon any site, Contractor warrants that Contractor has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services set forth in this Agreement. Should Contractor discover any latent or unknown conditions that will materially affect the performance of the services set forth in this Agreement, Contractor must immediately inform the City of that fact and may not proceed except at

1 Contractor's risk until written instructions are received from the City.

2 E. Contractor must adopt reasonable methods during the life of  
3 the Agreement to furnish continuous protection to the work, and the equipment,  
4 materials, papers, documents, plans, studies and other components to prevent  
5 losses or damages, and will be responsible for all damages, to persons or  
6 property, until acceptance of the work by the City, except those losses or damages  
7 as may be caused by the City's own negligence.

8 F. CAUTION: Contractor shall not begin work until this  
9 Agreement has been signed by both parties and until Contractor's evidence of  
10 insurance has been delivered to and approved by City.

11 2. TERM. The term of this Agreement shall commence at midnight on  
12 December 17, 2014 and shall terminate at 11:59 p.m. on December 16, 2017 unless  
13 sooner terminated as provided in this Agreement, or unless the services or the Project is  
14 completed sooner.

15 3. COORDINATION AND ORGANIZATION.

16 A. Contractor shall coordinate its performance with City's  
17 representative, if any, named in Exhibit "B", attached to this Agreement and  
18 incorporated by this reference. Contractor shall advise and inform City's  
19 representative of the work in progress on the Project in sufficient detail so as to  
20 assist City's representative in making presentations and in holding meetings on  
21 the Project. City shall furnish to Contractor information or materials, if any,  
22 described in Exhibit "C", attached to this Agreement and incorporated by this  
23 reference, and shall perform any other tasks described in the Exhibit.

24 4. INDEPENDENT CONTRACTOR. In performing its services,  
25 Contractor is and shall act as an independent contractor and not an employee,  
26 representative or agent of City. Contractor shall have control of Contractor's work and  
27 the manner in which it is performed. Contractor shall be free to contract for similar  
28 services to be performed for others during this Agreement; provided, however, that

1 Contractor acts in accordance with Section 9 and Section 11 of this Agreement.  
2 Contractor acknowledges and agrees that (a) City will not withhold taxes of any kind from  
3 Contractor's compensation; (b) City will not secure workers' compensation or pay  
4 unemployment insurance to, for or on Contractor's behalf; and (c) City will not provide  
5 and Contractor is not entitled to any of the usual and customary rights, benefits or  
6 privileges of City employees. Contractor expressly warrants that neither Contractor nor  
7 any of Contractor's employees or agents shall represent themselves to be employees or  
8 agents of City.

9 5. INSURANCE.

10 A. As a condition precedent to the effectiveness of this  
11 Agreement, Contractor shall procure and maintain, at Contractor's expense for the  
12 duration of this Agreement, from insurance companies that are admitted to write  
13 insurance in California and have ratings of or equivalent to A:V by A.M. Best  
14 Company or from authorized non-admitted insurance companies subject to  
15 Section 1763 of the California Insurance Code and that have ratings of or  
16 equivalent to A:VIII by A.M. Best Company, the following insurance:

17 (a) Commercial general liability insurance (equivalent in scope to  
18 ISO form CG 00 01 11 85 or CG 00 01 10 93) in an amount not less than  
19 \$1,000,000 per each occurrence and \$2,000,000 general aggregate. This  
20 coverage shall include but not be limited to broad form contractual liability,  
21 cross liability, independent contractors liability, and products and  
22 completed operations liability. City, its boards and commissions, and their  
23 officials, employees and agents shall be named as additional insureds by  
24 endorsement (on City's endorsement form or on an endorsement  
25 equivalent in scope to ISO form CG 20 10 11 85 or CG 20 26 11 85), and  
26 this insurance shall contain no special limitations on the scope of  
27 protection given to City, its boards and commissions, and their officials,  
28 employees and agents. This policy shall be endorsed to state that the

1 insurer waives its right of subrogation against City, its boards and  
2 commissions, and their officials, employees and agents.

3 (b) Workers' Compensation insurance as required by the California  
4 Labor Code and employer's liability insurance in an amount not less than  
5 \$1,000,000. This policy shall be endorsed to state that the insurer waives  
6 its right of subrogation against City, its boards and commissions, and their  
7 officials, employees and agents.

8 (c) Professional liability or errors and omissions insurance in an  
9 amount not less than \$1,000,000 per claim.

10 (d) Commercial automobile liability insurance (equivalent in scope  
11 to ISO form CA 00 01 06 92), covering Auto Symbol 1 (Any Auto) in an  
12 amount not less than \$500,000 combined single limit per accident.

13 B. Any self-insurance program, self-insured retention, or  
14 deductible must be separately approved in writing by City's Risk Manager or  
15 designee and shall protect City, its officials, employees and agents in the same  
16 manner and to the same extent as they would have been protected had the policy  
17 or policies not contained retention or deductible provisions.

18 C. Each insurance policy shall be endorsed to state that  
19 coverage shall not be reduced, non-renewed or canceled except after thirty (30)  
20 days prior written notice to City, shall be primary and not contributing to any other  
21 insurance or self-insurance maintained by City, and shall be endorsed to state that  
22 coverage maintained by City shall be excess to and shall not contribute to  
23 insurance or self-insurance maintained by Contractor. Contractor shall notify City  
24 in writing within five (5) days after any insurance has been voided by the insurer or  
25 cancelled by the insured.

26 D. If this coverage is written on a "claims made" basis, it must  
27 provide for an extended reporting period of not less than one hundred eighty (180)  
28 days, commencing on the date this Agreement expires or is terminated, unless

1 Contractor guarantees that Contractor will provide to City evidence of  
2 uninterrupted, continuing coverage for a period of not less than three (3) years,  
3 commencing on the date this Agreement expires or is terminated.

4 E. Contractor shall require that all sub-contractors or contractors  
5 that Contractor uses in the performance of these services maintain insurance in  
6 compliance with this Section unless otherwise agreed in writing by City's Risk  
7 Manager or designee.

8 F. Prior to the start of performance, Contractor shall deliver to  
9 City certificates of insurance and the endorsements for approval as to sufficiency  
10 and form. In addition, Contractor shall, within thirty (30) days prior to expiration of  
11 the insurance, furnish to City certificates of insurance and endorsements  
12 evidencing renewal of the insurance. City reserves the right to require complete  
13 certified copies of all policies of Contractor and Contractor's sub-Contractors and  
14 contractors, at any time. Contractor shall make available to City's Risk Manager or  
15 designee all books, records and other information relating to this insurance, during  
16 normal business hours.

17 G. Any modification or waiver of these insurance requirements  
18 shall only be made with the approval of City's Risk Manager or designee. Not  
19 more frequently than once a year, City's Risk Manager or designee may require  
20 that Contractor, Contractor's sub-Contractors and contractors change the amount,  
21 scope or types of coverages required in this Section if, in his or her sole opinion,  
22 the amount, scope or types of coverages are not adequate.

23 H. The procuring or existence of insurance shall not be  
24 construed or deemed as a limitation on liability relating to Contractor's  
25 performance or as full performance of or compliance with the indemnification  
26 provisions of this Agreement.

27 6. ASSIGNMENT AND SUBCONTRACTING. This Agreement  
28 contemplates the personal services of Contractor and Contractor's employees, and the

1 parties acknowledge that a substantial inducement to City for entering this Agreement  
2 was and is the professional reputation and competence of Contractor and Contractor's  
3 employees. Contractor shall not assign its rights or delegate its duties under this  
4 Agreement, or any interest in this Agreement, or any portion of it, without the prior  
5 approval of City, except that Contractor may with the prior approval of the City Manager  
6 of City, assign any moneys due or to become due Contractor under this Agreement. Any  
7 attempted assignment or delegation shall be void, and any assignee or delegate shall  
8 acquire no right or interest by reason of an attempted assignment or delegation.  
9 Furthermore, Contractor shall not subcontract any portion of its performance without the  
10 prior approval of the City Manager or designee, or substitute an approved sub-Contractor  
11 or contractor without approval prior to the substitution. Nothing stated in this Section  
12 shall prevent Contractor from employing as many employees as Contractor deems  
13 necessary for performance of this Agreement.

14 7. CONFLICT OF INTEREST. Contractor, by executing this  
15 Agreement, certifies that, at the time Contractor executes this Agreement and for its  
16 duration, Contractor does not and will not perform services for any other client which  
17 would create a conflict, whether monetary or otherwise, as between the interests of City  
18 and the interests of that other client. And, Contractor shall obtain similar certifications  
19 from Contractor's employees, sub-Contractors and contractors.

20 8. MATERIALS. Contractor shall furnish all labor and supervision,  
21 supplies, materials, tools, machinery, equipment, appliances, transportation and services  
22 necessary to or used in the performance of Contractor's obligations under this  
23 Agreement, except as stated in Exhibit "C".

24 9. OWNERSHIP OF DATA. All materials, information and data  
25 prepared, developed or assembled by Contractor or furnished to Contractor in connection  
26 with this Agreement, including but not limited to documents, estimates, calculations,  
27 studies, maps, graphs, charts, computer disks, computer source documentation,  
28 samples, models, reports, summaries, drawings, designs, notes, plans, information,

1 material and memoranda ("Data") shall be the exclusive property of City. Data shall be  
2 given to City, and City shall have the unrestricted right to use and disclose the Data in  
3 any manner and for any purpose without payment of further compensation to Contractor.  
4 Copies of Data may be retained by Contractor but Contractor warrants that Data shall not  
5 be made available to any person or entity for use without the prior approval of City. This  
6 warranty shall survive termination of this Agreement for five (5) years.

7 10. TERMINATION. Either party shall have the right to terminate this  
8 Agreement for any reason or no reason at any time by giving fifteen (15) calendar days  
9 prior notice to the other party. In the event of termination under this Section, City shall  
10 pay Contractor for services satisfactorily performed and costs incurred up to the effective  
11 date of termination for which Contractor has not been previously paid. The procedures  
12 for payment in Section 1.B. with regard to invoices shall apply. On the effective date of  
13 termination, Contractor shall deliver to City all Data developed or accumulated in the  
14 performance of this Agreement, whether in draft or final form, or in process. And,  
15 Contractor acknowledges and agrees that City's obligation to make final payment is  
16 conditioned on Contractor's delivery of the Data to City.

17 11. CONFIDENTIALITY. Contractor shall keep all Data confidential and  
18 shall not disclose the Data or use the Data directly or indirectly, other than in the course  
19 of performing its services, during the term of this Agreement and for five (5) years  
20 following expiration or termination of this Agreement. In addition, Contractor shall keep  
21 confidential all information, whether written, oral or visual, obtained by any means  
22 whatsoever in the course of performing its services for the same period of time.  
23 Contractor shall not disclose any or all of the Data to any third party, or use it for  
24 Contractor's own benefit or the benefit of others except for the purpose of this  
25 Agreement.

26 12. BREACH OF CONFIDENTIALITY. Contractor shall not be liable for  
27 a breach of confidentiality with respect to Data that: (a) Contractor demonstrates  
28 Contractor knew prior to the time City disclosed it; or (b) is or becomes publicly available



1 without breach of this Agreement by Contractor; or (c) a third party who has a right to  
2 disclose does so to Contractor without restrictions on further disclosure; or (d) must be  
3 disclosed pursuant to subpoena or court order.

4           13.    ADDITIONAL SERVICES. The City has the right at any time during  
5 the performance of the services, without invalidating this Agreement, to order extra work  
6 beyond that specified in the RFP or make changes by altering, adding to or deducting  
7 from the work. No extra work may be undertaken unless a written order is first given by  
8 the City, incorporating any adjustment in the Agreement Sum, or the time to perform this  
9 Agreement. Any increase in compensation of ten percent (10%) or less of the Agreement  
10 Sum, or in the time to perform of One Hundred Eighty (180) days or less, may be  
11 approved by the City Representative. Any greater increases, taken either separately or  
12 cumulatively, must be approved by the City Council. It is expressly understood by  
13 Contractor that the provisions of this paragraph do not apply to services specifically set  
14 forth in the RFP or reasonably contemplated in the RFP. Contractor acknowledges that it  
15 accepts the risk that the services to be provided pursuant to the RFP may be more costly  
16 or time consuming than Contractor anticipates and that Contractor will not be entitled to  
17 additional compensation for the services set forth in the RFP.

18           14.    RETENTION OF FUNDS. Contractor authorizes the City to deduct  
19 from any amount payable to Contractor (whether or not arising out of this Agreement) any  
20 amounts the payment of which may be in dispute or that are necessary to compensate  
21 the City for any losses, costs, liabilities or damages suffered by the City, and all amounts  
22 for which the City may be liable to third parties, by reason of Contractor's acts or  
23 omissions in performing or failing to perform Contractor's obligations under this  
24 Agreement. In the event that any claim is made by a third party, the amount or validity of  
25 which is disputed by Contractor, or any indebtedness exists that appears to be the basis  
26 for a claim of lien, the City may withhold from any payment due, without liability for  
27 interest because of the withholding, an amount sufficient to cover the claim. The failure  
28 of the City to exercise the right to deduct or to withhold will not, however, affect the

1 obligations of Contractor to insure, indemnify and protect the City as elsewhere provided  
2 in this Agreement.

3 15. AMENDMENT. This Agreement, including all Exhibits, shall not be  
4 amended, nor any provision or breach waived, except in writing signed by the parties  
5 which expressly refers to this Agreement.

6 16. LAW. This Agreement shall be construed in accordance with the  
7 laws of the State of California, and the venue for any legal actions brought by any party  
8 with respect to this Agreement shall be the County of Los Angeles, State of California for  
9 state actions and the Central District of California for any federal actions. Contractor  
10 shall cause all work performed in connection with construction of the Project to be  
11 performed in compliance with (1) all applicable laws, ordinances, rules and regulations of  
12 federal, state, county or municipal governments or agencies (including, without limitation,  
13 all applicable federal and state labor standards, including the prevailing wage provisions  
14 of sections 1770 *et seq.* of the California Labor Code); and (2) all directions, rules and  
15 regulations of any fire marshal, health officer, building inspector, or other officer of every  
16 governmental agency now having or hereafter acquiring jurisdiction. If any part of this  
17 Agreement is found to be in conflict with applicable laws, that part will be inoperative, null  
18 and void insofar as it is in conflict with any applicable laws, but the remainder of the  
19 Agreement will remain in full force and effect.

20 17. PREVAILING WAGES.

21 A. Consultant agrees that all public work (as defined in California  
22 Labor Code section 1720) performed pursuant to this Agreement (the "Public  
23 Work"), if any, shall comply with the requirements of California Labor Code  
24 sections 1770 *et seq.* City makes no representation or statement that the Project,  
25 or any portion thereof, is or is not a "public work" as defined in California Labor  
26 Code section 1720.

27 B. In all bid specifications, contracts and subcontracts for any  
28 such Public Work, Consultant shall obtain the general prevailing rate of per diem

1 wages and the general prevailing rate for holiday and overtime work in this locality  
2 for each craft, classification or type of worker needed to perform the Public Work,  
3 and shall include such rates in the bid specifications, contract or subcontract.  
4 Such bid specifications, contract or subcontract must contain the following  
5 provision: "It shall be mandatory for the contractor to pay not less than the said  
6 prevailing rate of wages to all workers employed by the contractor in the execution  
7 of this contract. The contractor expressly agrees to comply with the penalty  
8 provisions of California Labor Code section 1775 and the payroll record keeping  
9 requirements of California Labor Code section 1771."

10 18. ENTIRE AGREEMENT. This Agreement, including all Exhibits,  
11 constitutes the entire understanding between the parties and supersedes all other  
12 agreements, oral or written, with respect to the subject matter in this Agreement.

13 19. INDEMNITY.

14 A. Consultant shall indemnify, protect and hold harmless City, its  
15 Boards, Commissions, and their officials, employees and agents ("Indemnified  
16 Parties"), from and against any and all liability, claims, demands, damage, loss,  
17 obligations, causes of action, proceedings, awards, fines, judgments, penalties,  
18 costs and expenses, including attorneys' fees, court costs, expert and witness  
19 fees, and other costs and fees of litigation, arising or alleged to have arisen, in  
20 whole or in part, out of or in connection with (1) Consultant's breach or failure to  
21 comply with any of its obligations contained in this Agreement, including all  
22 applicable federal and state labor requirements including, without limitation, the  
23 requirements of California Labor Code section 1770 *et seq.* or (2) negligent or  
24 willful acts, errors, omissions or misrepresentations committed by Consultant, its  
25 officers, employees, agents, subcontractors, or anyone under Consultant's control,  
26 in the performance of work or services under this Agreement (collectively "Claims"  
27 or individually "Claim").

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1                   B.     In addition to Consultant's duty to indemnify, Consultant shall  
2                   have a separate and wholly independent duty to defend Indemnified Parties at  
3                   Consultant's expense by legal counsel approved by City, from and against all  
4                   Claims, and shall continue this defense until the Claims are resolved, whether by  
5                   settlement, judgment or otherwise. No finding or judgment of negligence, fault,  
6                   breach, or the like on the part of Consultant shall be required for the duty to defend  
7                   to arise. City shall notify Consultant of any Claim, shall tender the defense of the  
8                   Claim to Consultant, and shall assist Consultant, as may be reasonably requested,  
9                   in the defense.

10                  C.     If a court of competent jurisdiction determines that a Claim  
11                  was caused by the sole negligence or willful misconduct of Indemnified Parties,  
12                  Consultant's costs of defense and indemnity shall be (1) reimbursed in full if the  
13                  court determines sole negligence by the Indemnified Parties, or (2) reduced by the  
14                  percentage of willful misconduct attributed by the court to the Indemnified Parties.

15                  D.     The provisions of this Section shall survive the expiration or  
16                  termination of this Agreement.

17                  20.    FORCE MAJEURE. If any party fails to perform its obligations  
18                  because of strikes, lockouts, labor disputes, embargoes, acts of God, inability to obtain  
19                  labor or materials or reasonable substitutes for labor materials, governmental restrictions,  
20                  governmental regulations, governmental controls, judicial orders, enemy or hostile  
21                  governmental action, civil commotion, fire or other casualty, or other causes beyond the  
22                  reasonable control of the party obligated to perform, then that party's performance will be  
23                  excused for a period equal to the period of such cause for failure to perform.

24                  21.    AMBIGUITY. In the event of any conflict or ambiguity between this  
25                  Agreement and any Exhibit, the provisions of this Agreement shall govern.

26                  22.    NONDISCRIMINATION.

27                  A.     In connection with performance of this Agreement and subject  
28                  to applicable rules and regulations, Contractor shall not discriminate against any

1 employee or applicant for employment because of race, religion, national origin,  
2 color, age, sex, sexual orientation, gender identity, AIDS, HIV status, handicap or  
3 disability. Contractor shall ensure that applicants are employed, and that  
4 employees are treated during their employment, without regard to these bases.  
5 These actions shall include, but not be limited to, the following: employment,  
6 upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or  
7 termination; rates of pay or other forms of compensation; and selection for training,  
8 including apprenticeship.

9 23. EQUAL BENEFITS ORDINANCE. Unless otherwise exempted in  
10 accordance with the provisions of the Ordinance, this Agreement is subject to the  
11 applicable provisions of the Equal Benefits Ordinance (EBO), section 2.73 et seq. of the  
12 Long Beach Municipal Code, as amended from time to time.

13 A. During the performance of this Agreement, the Consultant  
14 certifies and represents that the Consultant will comply with the EBO. The  
15 Consultant agrees to post the following statement in conspicuous places at its  
16 place of business available to employees and applicants for employment:

17 "During the performance of a contract with the City of Long Beach,  
18 the Consultant will provide equal benefits to employees with spouses and its  
19 employees with domestic partners. Additional information about the City of  
20 Long Beach's Equal Benefits Ordinance may be obtained from the City of  
21 Long Beach Business Services Division at 562-570-6200."

22 B. The failure of the Consultant to comply with the EBO will be  
23 deemed to be a material breach of the Agreement by the City.

24 C. If the Consultant fails to comply with the EBO, the City may  
25 cancel, terminate or suspend the Agreement, in whole or in part, and monies due  
26 or to become due under the Agreement may be retained by the City. The City  
27 may also pursue any and all other remedies at law or in equity for any breach.

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1 D. Failure to comply with the EBO may be used as evidence  
2 against the Consultant in actions taken pursuant to the provisions of Long Beach  
3 Municipal Code 2.93 et seq., Contractor Responsibility.

4 E. If the City determines that the Consultant has set up or used  
5 its contracting entity for the purpose of evading the intent of the EBO, the City may  
6 terminate the Agreement on behalf of the City. Violation of this provision may be  
7 used as evidence against the Consultant in actions taken pursuant to the  
8 provisions of Long Beach Municipal Code Section 2.93 et seq., Contractor  
9 Responsibility.

10 24. NOTICES. Any notice or approval required by this Agreement shall  
11 be in writing and personally delivered or deposited in the U.S. Postal Service, first class,  
12 postage prepaid, addressed to Contractor at the address first stated above, and to City at  
13 333 West Ocean Boulevard, Long Beach, California 90802, Attn: City Manager, with a  
14 copy to the City Clerk at the same address. Notice of change of address shall be given in  
15 the same manner as stated for other notices. Notice shall be deemed given on the date  
16 deposited in the mail or on the date personal delivery is made, whichever occurs first.

17 25. COVENANT AGAINST CONTINGENT FEES. Contractor warrants  
18 that Contractor has not employed or retained any entity or person to solicit or obtain this  
19 Agreement and that Contractor has not paid or agreed to pay any entity or person any  
20 fee, commission or other monies based on or from the award of this Agreement. If  
21 Contractor breaches this warranty, City shall have the right to terminate this Agreement  
22 immediately notwithstanding the provisions of Section 10 or, in its discretion, to deduct  
23 from payments due under this Agreement or otherwise recover the full amount of the fee,  
24 commission or other monies.

25 26. WAIVER. The acceptance of any services or the payment of any  
26 money by City shall not operate as a waiver of any provision of this Agreement or of any  
27 right to damages or indemnity stated in this Agreement. The waiver of any breach of this  
28 Agreement shall not constitute a waiver of any other or subsequent breach of this

1 Agreement.

2 27. CONTINUATION. Termination or expiration of this Agreement shall  
3 not affect rights or liabilities of the parties which accrued pursuant to Sections 7, 10, 11,  
4 18, 21 and 28 prior to termination or expiration of this Agreement.

5 28. TAX REPORTING. As required by federal and state law, City is  
6 obligated to and will report the payment of compensation to Contractor on Form 1099-  
7 Misc. Contractor shall be solely responsible for payment of all federal and state taxes  
8 resulting from payments under this Agreement. Contractor shall submit Contractor's  
9 Employer Identification Number (EIN), or Contractor's Social Security Number if  
10 Contractor does not have an EIN, in writing to City's Accounts Payable, Department of  
11 Financial Management. Contractor acknowledges and agrees that City has no obligation  
12 to pay Contractor until Contractor provides one of these numbers.

13 29. ADVERTISING. Contractor shall not use the name of City, its  
14 officials or employees in any advertising or solicitation for business or as a reference,  
15 without the prior approval of the City Manager or designee.

16 30. AUDIT. City shall have the right at all reasonable times during the  
17 term of this Agreement and for a period of five (5) years after termination or expiration of  
18 this Agreement to examine, audit, inspect, review, extract information from and copy all  
19 books, records, accounts and other documents of Contractor relating to this Agreement.

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THIRD PARTY BENEFICIARY. This Agreement is not intended or designed to or entered for the purpose of creating any benefit or right for any person or entity of any kind that is not a party to this Agreement.

IN WITNESS WHEREOF, the parties have caused this document to be duly executed with all formalities required by law as of the date first stated above.

WINDSTREAM COMMUNICATIONS, INC., a Delaware corporation

July 1st, 2015

By [Signature]  
Name Rudney Hines  
Title Director of Acct. Mgmt.

July 1st, 2015

By [Signature]  
Name Jeanne A. Trevino  
Title Sr. Director of Sales

"Contractor"

CITY OF LONG BEACH, a municipal corporation

Sept. 4, 2015

By [Signature]  
City Manager

EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER.

"City" Assistant City Manager

This Agreement is approved as to form on July 30, 2015

CHARLES PARKIN, City Attorney

By [Signature]  
Deputy

OFFICE OF THE CITY ATTORNEY  
CHARLES PARKIN, City Attorney  
333 West Ocean Boulevard, 11th Floor  
Long Beach, CA 90802-4664





City of Long Beach  
Purchasing Division  
333 W Ocean Blvd/7<sup>th</sup> Floor  
Long Beach CA 90802

# Exhibit A-1

## City of Long Beach Request For Proposals Number TS14-047 For SIP and PRI Trunking Services

Release Date: May 6, 2014  
Due Date: June 11, 2014

For additional information, please contact:  
**Michelle King, Buyer, 562-570-6020**

**See Page 11, for instructions on submitting proposals.**

Company Name \_\_\_\_\_ Contact Person \_\_\_\_\_

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone (\_\_\_\_) \_\_\_\_\_ Fax (\_\_\_\_) \_\_\_\_\_ Federal Tax ID No. \_\_\_\_\_

E-mail \_\_\_\_\_

Prices contained in this proposal are subject to acceptance within \_\_\_\_\_ calendar days.

I have read, understand, and agree to all terms and conditions herein. Date \_\_\_\_\_

Signed \_\_\_\_\_

Print Name & Title \_\_\_\_\_



City of Long Beach  
Purchasing Division  
333 W Ocean Blvd/7<sup>th</sup> Floor  
Long Beach CA 90802

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12.	ADDITIONAL REQUIREMENTS FROM FUNDING SOURCE (NOT APPLICABLE).....	17
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### **ATTACHMENTS**

#### **EXHIBIT 1**

**CERTIFICATION OF COMPLIANCE WITH TERMS AND CONDITIONS OF RFP  
PRO-FORMA AGREEMENT SAMPLE  
STATEMENT OF NON-COLLUSION  
W-9 REQUEST FOR TAXPAYER IDENTIFICATION NUMBER AND CERTIFICATION  
INSURANCE REQUIREMENTS  
REFERENCE LIST**



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## 1. OVERVIEW OF PROJECT

The City of Long Beach (City) is soliciting proposals from qualified vendors (Contractors) to provide SIP and PRI Trunking Services. If required, the on-premise hardware and software for this project will be installed at City Hall located at 333 W. Ocean Blvd. and at the Emergency Communications and Operations Center (ECOC) located at 2900 E. Redondo Blvd. See Exhibit 1 for an overview of the City's Telecommunications process.

### 1.1 Purpose of this Request for Proposal

The City of Long Beach, Technology Services Department (TSD) is seeking proposals from qualified Contractors provide Telecommunications services, including Session Initiated Protocol (SIP) transport and Primary Rate Interface (PRI) to support the City workforce. Although this is in the format of an RFP and the City will adhere to the RFP conventions, the City expressly intends that this procurement is a professional service and as such, the City is not bound by the lowest price. This RFP has been prepared by the City to improve network pricing, expand functionality and increase resilience.

Please consider the following key points in preparing responses to this RFP:

- TSD is seeking a Contractor who can work jointly with the City IT staff in simplifying communications through custom configurations, profiles, scripts, programs, and management software and customer portal.
- TSD is seeking a Contractor who has completed a number of implementations in cities of like size and has the ability to work well solving problems and the ability to work well in a knowledge transfer mode while performing the actual hands-on work.
- Selected vendor must be able to provide network services in all locations within sixty (60) days of contract execution.
- Primary and supporting services include:
  - SIP Trunks and Transport
  - PRI Primary Rate Port
  - DS3
  - Ethernet Services
  - DID
  - IP Based Services
  - Local, zone, Intralata, toll, long distance, international call minutes
- The City, along with other municipalities across the country, has been impacted by this extraordinary economic decline and therefore, is interested



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in ways to reduce spending. The last time this RFP was issued (2009) the City was able to negotiate an 18% discount and prior to that (2004) the City was able to negotiate a 30-35% discount from the previous contract. The City expects to receive a similar reduction through this RFP process.

- Price discounts are strongly desired in our current fiscal condition, e.g. CalNet, Western States Contracting Alliance (WSCA), the California Multiple Award Schedule (CMAS), or other sources that may not have been mentioned. The City would like to see annual pricing, and 3 year pricing with options to renew.
- The RFP has been prepared to specify a framework for telecommunications services that best meet the City's objectives. Proposers are asked to respond to the specified services, but are also encouraged to present alternatives that may enhance or supplement the services specified.

*To plan for this deployment the City is issuing this RFP to determine the hardware, software, telecommunications and any associated one-time and ongoing costs necessary for the requested services.*

## 1.2 Operating Environment

### 1.2.1 Telco

The City uses Verizon's CentraNet Services for our private network. (20) ISDN PRI links and (2) Flexgrow T1s originate from Verizon's Main Central Office to a City-owned Cisco Unified Communication Manager Cluster (CUCM 8.6) and Northern Telecom Option 81C PBX. The City also utilizes Two Windstream DS3 MPLS SIP trunks (one at City Hall and one at ECOC) and PRI T1 circuits to support a total of 4,000 PBX stations both locally and to remote PBX stations utilizing the (570 Prefix). Outside of City Hall, there are over 800 CentraNet lines at approximately 70 locations, all within the city limits. There are also over 15 clear channel T1 Tie Line circuits between PBX locations and an additional 11 PRI T1's supporting 5 remote PBX locations. The City owns the entire 562/570 prefix (NXX) and utilizes a 5 digit-dialing plan, as well as 562/499-1000 thru 562/499-1099 for a Fax Server application. Cisco Unity Connections and Nortel Call Pilot provide nearly all of the City's voice mail services. Nortel will continue to be supported after the upgrade until all Nortel and Cisco phones have been migrated to Unity Connections. The Cisco UCC Express cluster (UCC Express 8.5) in high availability mode supporting 90 agents with 41 script applications in production. SIP services provided by the vendor must be certified compatible with the City's voice system.



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### 1.2.2 Network environment

The City has 29 Frame Relays circuits 51 Point-to-Point T1's, and 60 DSL's to City locations. There are an additional 10 DSL and several T1 connections to sites outside of the city limits. The City's primary connectivity to the internet is an AT&T 45Mb DS3 at City Hall with a backup AT&T 45Mb DS3 at the ECOC. Two Cisco ASA5520 and two MS ISA Server 2006 with Websense Web & Security Filter at City Hall and same at ECOC. The City has two network cores, one at City Hall and second at the ECOC (4 miles apart), which are connected by four 10 Gbs Fiber Trunks, backed up by 1 Gbs Bridges, backed up by a 45 Mbs microwave DS3 and backed up in turn with an aggregate of (3) T1's. The majority of LAN/WAN infrastructure equipment is Cisco. The PRI and T-1 gateway interfaces for Cisco UCM are through a combination Cisco CUBEs and legacy 6608 blades.

### 1.2.3 Server environment

VM ESXi 5 on Dell M-series and Cisco UCS. Storage EMC and Hitachi.

### 1.2.4 Desktop environment

Microsoft Windows 7 and XP Professional and mix of Office 2000, through Office 2010. Beginning in 2014, Office replacements will be Microsoft Office 365. Directory Services are Microsoft's Active Directory.

### 1.2.5 Messaging system

Lotus Notes Domino 9x. and Lotus Sametime. Beginning in 2014, replacements will be Office 365.

### 1.2.6 Data recovery

Veritas Backup Exec v 12.5 and vRanger currently provides nightly and weekend backups.

### 1.2.7 Primary Mobile Device

RIM BlackBerries through BlackBerry Enterprise Server v 5.0 Service Pack 1. Beginning in 2014, replacements will be Apple iPhones.



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## 2. ACRONYMS/DEFINITIONS

For purposes of this RFP, the following acronyms/definitions will be used:

<b>Awarded Contractor</b>	The organization/individual that is awarded and has an approved contract with the City of Long Beach, California for the services identified in this RFP.
<b>City</b>	The City of Long Beach and any department or agency identified herein.
<b>Contractor</b>	Organization/individual submitting a proposal in response to this RFP.
<b>Department</b>	Technology Services Department
<b>Evaluation Committee</b>	An independent committee comprised solely of representatives of the City established to review proposals submitted in response to the RFP, score the proposals, and select a Contractor.
<b>May</b>	Indicates something that is not mandatory but permissible.
<b>RFP</b>	Request for Proposals.
<b>Shall / Must</b>	Indicates a mandatory requirement. Failure to meet a mandatory requirement may result in the rejection of a proposal as non-responsive.
<b>Should</b>	Indicates something that is recommended but not mandatory. If the Contractor fails to provide recommended information, the City may, at its sole option, ask the Contractor to provide the information or evaluate the proposal without the information.
<b>Subcontractor</b>	Third party not directly employed by the Contractor who will provide services identified in this RFP.



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### 3. **SCOPE OF PROJECT**

#### 3.1 Requirements

Contractors must meet or exceed the following minimum requirements to be considered:

##### 3.1.1 General

1. The trunks will connect to Cisco Unified Border Element (CUBE), at the two location listed below. Both are located in Long Beach, CA:

City Hall  
333 West Ocean Blvd  
Long Beach, CA 90802

Emergency Communications Operations Center  
2990 Redondo Avenue  
Long Beach, CA 90806

2. The Contractor is asked to describe how their design will meet or exceed our requirements.
3. A Delivery Plan with milestones and timelines should be included in the proposal and provide a preliminary timetable for implementation, training and knowledge transfer.
4. The Contractor is expected to provide a detailed and comprehensive list of tasks as part of a Statement of Work for the upgrade based on their knowledge and experience.
5. Provide Migration Procedures from existing contractor to new contractor for both sites and any other items needed to smoothly get from old systems to the new systems
6. Provide hardware, software, licensing, implementation and support Bill of Materials to support the requested services
7. Provide licensing, fees and support pricing (Operational Expense) for subsequent years.
8. Authorized new customer and annual operational education for up to (12) City system administrators should be packaged in the proposal.



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9. Clearly state all and any resources, bandwidth, supporting infrastructure, etc. needed to complete the implementation (E911 imports, DID ports, audits, etc.).
10. The successful contractor shall provide the following minimum services:
  - a. Service level agreements
  - b. Escalation plan.
  - c. Email or SMS notifications of outages and service restoration.
  - d. Support for multiple physical connection options

### 3.1.2 Specific

1. Listed below is the average monthly usage of local and long distance minutes by the City:

Local Minutes of Usage	Long Distance Minutes of Usage
347,531	117,500

2. Trunks shall be configured to support load balancing of 4,000 lines and each shall be capable of supporting at a minimum 10% of the total inbound/outbound call traffic at any given time.
3. The City's Cisco Unified Communication Manager cluster (CUCM) is a single cluster with (1) SIP trunk at each site. The transport shall utilize technologies at each location to effectively failover the other trunk.
4. The trunk shall allow for local and long distance calls on the same trunk.
5. Local and long distance usage packages options shall be available to include, but not be limited to a bundled package and pricing per minute.
6. The trunk shall include, but not be limited to the following:
  - a. Domestic and international inbound/outbound toll-free services
  - b. Emergency 911 calling
  - c. PS/ALI services
  - d. 900/976/411 blocking
  - e. Restrict calls to value added numbers services (Contractors or third party)
  - f. Restrict operator assisted services calls to value added numbers services
  - g. Restrict operator assisted services
  - h. T.38 protocol
  - i. Operator services
  - j. G.711 protocol.
  - k. Telecom fraud protection
7. The trunk shall support local number portability.





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8. The trunk shall provide web-based traffic monitoring and reporting to include, but not be limited to historical usage, traffic analysis, trunking analysis and fraud detection.
9. The trunk shall provide web-based service ticket and reporting.
10. The trunk shall include a secure access circuit provided over a private or an MPLS connection. This must be engineered for voice quality of service.
11. The trunk provided shall have to ability to scale the number of IP trunks required to allow the City to increase or decrease trunks on a monthly basis determined by seasonal needs.
12. The trunk should provide internet connections that could be utilized for an emergency connection to our internet provider.

### 3.2 Contractor Responsibilities

If selected for this project, the Contractor will have the following roles and responsibilities:

- 3.2.1 Work with City personnel to design and deploy the new System.
- 3.2.2 Provide project management of all Contractor activities.
- 3.2.3 Provide consistent updates on project schedule and budget status.
- 3.2.4 Provide basic training and/or train-the-trainer training on all components of the proposed solution to network and system administration personnel of City's IT staff.
- 3.2.5 Provide detailed as built network, telco, interface and equipment topology of the solution to the City in MS Visio.
- 3.2.6 Operate in a secure manner.
- 3.2.7 Perform comprehensive check of the system and validate operational readiness.

### 3.3 City Responsibilities

For this project, the City the will have the following roles and responsibilities:

- 3.3.1 Installation and operational readiness of the new hardware will be the responsibility of the City.
- 3.3.2 Racks, Cabling and KVM console
- 3.3.3 Provide status on all project related City activities.
- 3.3.4 Order supplies as needed.



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3.3.5 Provide detailed current network, telco, interface and equipment topology to the Contractor.

3.3.6 Provide environmental and power infrastructure.

#### 3.4 Joint Responsibilities

If selected for this project, the Contractor and the City will have the following roles and responsibilities:

3.4.1 Test the Trunk fail over.

3.4.2 Perform backup and restore for all systems at both locations (if needed).

#### 3.5 Project Oversight

A Project Committee (Committee) has been assembled to review, and approve the RFP. The Committee will provide guidance selecting the firm and monitoring and facilitating project progress. The Telecommunications Officer of Technology Services Department will serve as the City's project manager. He will have a lead staff support person who will be available as the department's primary point of contact. The selected Contractor would be expected, at minimum, to meet with the Project Committee weekly.



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#### 4. SUBMITTAL INSTRUCTIONS

4.1 For questions regarding this RFP, submit all inquiries via email to [rfppurchasing@longbeach.gov](mailto:rfppurchasing@longbeach.gov) by May 15, 2014 by 11:00 am. Responses to the questions will be posted on the City's website [purchasing.longbeach.gov](http://purchasing.longbeach.gov) under the "Bids/RFPs" tab no later than . All proposers are recommended to visit the abovementioned City website on a regular basis as the responses may be posted earlier than the date above.

4.2 RFP Timeline

<b>TASK</b>	<b>DATE/TIME</b>
Deadline for submitting questions	May 15, 2014 @ 11:00 am
Answers to all questions submitted available	May 23, 2014 @ 11:00 am
Deadline for submission of proposals	June 11, 2014 @ 11:00 am
Evaluation period	June/July 2014
Selection of Contractor	July 2014

**NOTE: These dates represent a tentative schedule of events. The City reserves the right to modify these dates at any time, with appropriate notice to prospective Contractors.**

4.3 Contractors shall submit one (1) original proposal marked "ORIGINAL" and nine (9) identical copies and one (1) digital copy (Flashdrive, CD, etc) as follows:

City of Long Beach  
c/o City Clerk – Attn: Michelle King  
333 W. Ocean Blvd., Plaza Level  
Long Beach, CA 90802

Proposals shall be clearly labeled in a sealed envelope or box as follows:

Request for Proposal No.: RFP TS14-047  
SIP and PRI Trunking Services

4.4 Proposals must be received by 11:00 am Pacific Time, June 11, 2014. Proposals that do not arrive by the specified date and time WILL NOT BE ACCEPTED. Contractors may submit their proposal any time prior to the above stated deadline. The City will not be held responsible for proposal envelopes mishandled as a result



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of the envelope not being properly prepared. Facsimile or telephone proposals will NOT be considered unless otherwise authorized; however, proposals may be modified by fax or written notice provided such notice is received prior to the opening of the proposals.

- 4.5 The proposal should be presented in a format that corresponds to and references sections outlined below and should be presented in the same order. Responses to each section and subsection should be labeled so as to indicate which item is being addressed. For ease of evaluation, proposals should be presented in the format described within this RFP.
- 4.6 Proposals are to be prepared in such a way as to provide a straightforward, concise delineation of capabilities to satisfy the requirements of this RFP. Expensive bindings, colored displays, promotional materials, etc., are not necessary or desired. Emphasis should be concentrated on conformance to the RFP instructions, responsiveness to the RFP requirements, and on completeness and clarity of content.
- 4.7 Descriptions on how any and all equipment and/or services will be used to meet the requirements of this RFP shall be given, in detail, along with any additional information documents that are appropriately marked.
- 4.8 The proposal must be signed by the individual(s) legally authorized to bind the Contractor.
- 4.9 If complete responses cannot be provided without referencing supporting documentation, such documentation must be provided with the proposal and specific references made to the tab, page, section and/or paragraph where the supplemental information can be found.
- 4.10 Proposals shall be submitted in two (2) distinct parts - the **narrative/technical proposal** and the **cost proposal**. THE NARRATIVE/TECHNICAL PROPOSAL MUST NOT INCLUDE COST AND PRICING INFORMATION. The narrative/technical proposal will be reviewed first and then the cost proposal. Therefore, each part should be **packaged separately, but submitted together**.



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## **5. PROPOSAL EVALUATION AND AWARD PROCESS**

- 5.1 Proposals shall be consistently evaluated based upon the following criteria:
  - 5.1.1 Demonstrated competence;
  - 5.1.2 Experience in performance of comparable engagements;
  - 5.1.3 Reasonableness of cost;
  - 5.1.4 Expertise and availability of key personnel;
  - 5.1.5 Financial stability; and
  - 5.1.6 Conformance with the terms of this RFP.
- 5.2 Proposals shall be kept confidential until a contract is awarded.
- 5.3 The City may also contact the references provided in response to Section 8.3; contact any Contractor to clarify any response; contact any current users of a Contractor's services; solicit information from any available source concerning any aspect of a proposal; and seek and review any other information deemed pertinent to the evaluation process. The City shall not be obligated to accept the lowest priced proposal, but shall make an award in the best interests of the City of Long Beach.
- 5.4 The City reserves the right to request clarification of any proposal term from prospective Contractors.
- 5.5 Selected Contractor(s) will be notified in writing. Any award is contingent upon the successful negotiation of final contract terms. Negotiations shall be confidential and not subject to disclosure to competing Contractors unless and until an agreement is reached. If contract negotiations cannot be concluded successfully, the City reserves the right to negotiate a contract with another Contractor or withdraw the RFP.
- 5.6 Any contract resulting from this RFP shall not be effective unless and until approved by the City Council / City Manager, as applicable.



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## **6. PROTEST PROCEDURES**

### **6.1 Who May Protest**

Only a proposer who has actually submitted a proposal is eligible to protest a contract awarded through a Request for Proposals ("RFP"). A proposer may not rely on the protest submitted by another proposer but must pursue its own protest.

### **6.2 Time for Protest**

The City will post a notice of the intent to award a contract at least ten (10) business days before an award is made. The notice will be available to all proposers who submitted a proposal via the City's electronic bid notification system at <http://www.longbeach.gov/purchasing/default.asp>. A proposer desiring to submit a protest for a proposal must do so within five (5) business days of the electronic notification of intent to award. The City Purchasing Agent must receive the protest by the close of business on the fifth (5<sup>th</sup>) business day following posting of notification of intent to award the contract. Proposers are responsible for registering with the City's electronic bid notification system and maintaining an updated Contractor profile. The City is not responsible for proposers' failure to obtain notification for any reason, including but not limited to failure to maintain updated email addresses, failure to open/read electronic messages and failure of their own computer/technology equipment. The City's RFP justification memo will be available for review by protestors once the notification of intent to award has been posted via the City's electronic bid notification system.

### **6.3 Form of Protest**

The protest must be in writing and signed by the individual who signed the proposal or, if the proposer is a corporation, by an officer of the corporation, and addressed to the City Purchasing Agent. Protests may be submitted via US Mail, hand delivery or email, and must include a valid email address, street address and phone number sufficient to ensure that the City's decision concerning the protest will be received. Protests must set forth a complete and detailed statement of the grounds for the protest and include all relevant information to support the grounds stated, and must refer to specific portions of the RFP and attachments upon which the protest is based. Once the protest is received by the City Purchasing Agent, the City will not accept additional information on the protest unless the City requests it.

### **6.4 City Response to Protest**

The City Purchasing Agent or designee will respond with a decision regarding the protest within two (2) business days of receipt of protest by email or US Mail to the address provided in the protest. This decision shall be final.



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## 6.5 Limitation of Remedy

The procedure and time limits set forth herein are mandatory and are the proposer's sole and exclusive remedy in the event of a protest. The proposer's failure to comply with these procedures shall constitute a waiver of any right to further pursue a protest, including filing a Government Code Claim or initiation of legal proceedings.

## 7. **PROJECT SPECIFICATIONS/SOURCING**

- 7.1 Contractor shall certify that it is a Manufacturer Authorized Channel Partner as of the date of the submission of their offer, and that it has the certification/specialization level required by Manufacturer to support both the product sale and product pricing, in accordance with the applicable Manufacturer certification/specialization requirements.
- 7.2 Unless otherwise specified, Contractor shall warrant that the products are new, in their original box. If End-of-Sale or refurbished equipment is specifically requested, the Contractor shall warrant that the products are only Certified Refurbished Equipment and in their original box. The Contractor confirms to have sourced all Manufacturer products submitted in this offer from Manufacturer or through Authorized Channels only in accordance with all applicable laws and policies at the time of purchase.
- 7.3 Contractor shall provide City of Long Beach with a copy of the End User license agreement, and shall warrant that all Manufacturer software is licensed originally to City of Long Beach as the original licensee authorized to use the Manufacturer Software.

## 8. **WARRANTY/MAINTENANCE AND SERVICE**

Please specify in detail the following the length and terms of the warranty/maintenance and service provided with each system proposed.

## 9. **COMPANY BACKGROUND AND REFERENCES**

### 9.1 Primary Contractor Information

Contractors must provide a company profile. Information provided shall include:

- Company ownership. If incorporated, the state in which the company is incorporated and the date of incorporation. An out-of-state Contractor must register with the State of California Secretary of State before a contract can be executed (<http://www.sos.ca.gov/business/>).
- Location of the company offices.



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- Location of the office servicing any California account(s).
- Number of employees both locally and nationally.
- Location(s) from which employees will be assigned.
- Name, address and telephone number of the Contractor's point of contact for a contract resulting from this RFP.
- Company background/history and why Contractor is qualified to provide the services described in this RFP.
- Length of time Contractor has been providing services described in this RFP to the **public and/or private sector**. Please provide a brief description.
- Resumes for key staff to be responsible for performance of any contract resulting from this RFP.

## 9.2 Subcontractor Information

9.2.1 Does this proposal include the use of subcontractors?

Yes \_\_\_\_\_ No \_\_\_\_\_ Initials \_\_\_\_\_

If "Yes", Contractor must:

- 9.2.1.1 Identify specific subcontractors and the specific requirements of this RFP for which each proposed subcontractor will perform services.
- 9.2.1.2 Provide the same information for any subcontractors as is indicated in Section 9.1 for the Contractor as primary contractor.
- 9.2.1.3 References as specified in Section 9.3 below must also be provided for any proposed subcontractors.
- 9.2.1.4 The City requires that the awarded Contractor provide proof of payment of any subcontractors used for this project. Proposals shall include a plan by which the City will be notified of such payments.
- 9.2.1.5 Primary contractor shall not allow any subcontractor to commence work until all insurance required of subcontractor is obtained.

## 9.3 References

Contractors should provide a minimum of five (5) references from similar projects performed for state and/or large local government clients within the last three years. Information provided shall include:

- Client name;
- Project description;





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- Project dates (starting and ending);
- Technical environment;
- Staff assigned to reference engagement that will be designated for work per this RFP;
- Client project manager name and telephone number.

#### 9.4 Business License

The Long Beach Municipal Code (LBMC) requires all businesses operating in the City of Long Beach to pay a business license tax. In some cases the City may require a regulatory permit and/or evidence of a State or Federal license. Prior to issuing a business license, certain business types will require the business license application and/or business location to be reviewed by the Development Services, Fire, Health, and/or Police Departments. For more information, go to [www.longbeach.gov/finance/business\\_license](http://www.longbeach.gov/finance/business_license).

### 10. **COST**

- 10.1 Contractors must provide detailed fixed prices, including out-of-pocket expenses, for all costs associated with the solution provided.
- 10.2 The City is requesting pricing for any Servers, Switches, Gateways, Phones, Software, licensing and Systems maintenance. Proposers may provide cost for all solutions or just some of the solutions but must be clear if the quote is complete or partial. Please provide the **Bill of Materials** broken down by site, project and major tasks/deliverables.
- 10.3 All price quotes will have shipping costed into each line item (FOB Destination, freight pre-paid).
- 10.4 All price quotes will be valid for 12 months.
- 10.5 Please provide the **pricing for labor** broken down by site, project and major tasks/deliverables.

### 11. **BONDS (NOT APPLICABLE)**

### 12. **ADDITIONAL REQUIREMENTS FROM FUNDING SOURCE (NOT APPLICABLE)**

### 13. **TERMS, CONDITIONS AND EXCEPTIONS**

- 13.1 This contract will be for a period of 24 months with two annual renewal options at the discretion of the City. The contract term will not exceed 48 months.



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- 13.2 The City reserves the right to alter, amend, or modify any provisions of this RFP, or to withdraw this RFP, at any time prior to the award of a contract pursuant hereto, if it is in the best interest of the City to do so.
- 13.3 The City reserves the right to waive informalities and minor irregularities in proposals received.
- 13.4 The City reserves the right to reject any or all proposals received prior to contract award.
- 13.5 The City shall not be obligated to accept the lowest priced proposal, but will make an award in the best interests of the City of Long Beach after all factors have been evaluated.
- 13.6 Any irregularities or lack of clarity in the RFP should be brought to the Purchasing Division designee's attention as soon as possible so that corrective addenda may be furnished to prospective Contractors.
- 13.7 Proposals must include any and all proposed terms and conditions, including, without limitation, written warranties, maintenance/service agreements, license agreements, lease purchase agreements and the Contractor's standard contract language. The omission of these documents may render a proposal non-responsive.
- 13.8 Alterations, modifications or variations to a proposal may not be considered unless authorized by the RFP or by addendum or amendment.
- 13.9 Proposals which appear unrealistic in the terms of technical commitments, lack of technical competence, or are indicative of failure to comprehend the complexity and risk of this contract, may be rejected.
- 13.10 Proposals may be withdrawn by written or facsimile notice received prior to the proposal opening time.
- 13.11 The price and amount of this proposal must have been arrived at independently and without consultation, communication, agreement or disclosure with or to any other contractor, Contractor or prospective Contractor.
- 13.12 No attempt may be made at any time to induce any firm or person to refrain from submitting a proposal or to submit any intentionally high or noncompetitive proposal. All proposals must be made in good faith and without collusion.
- 13.13 Prices offered by Contractors in their proposals are an irrevocable offer for the term of the contract and any contract extensions. The awarded Contractor agrees to provide the purchased services at the costs, rates and fees as set forth in their



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proposal in response to this RFP. No other costs, rates or fees shall be payable to the awarded Contractor for implementation of their proposal.

- 13.14 The City is not liable for any costs incurred by Contractors prior to entering into a formal contract. Costs of developing the proposals or any other such expenses incurred by the Contractor in responding to the RFP, are entirely the responsibility of the Contractor, and shall not be reimbursed in any manner by the City.
- 13.15 Proposal will become public record after the award of a contract unless the proposal or specific parts of the proposal can be shown to be exempt by law. Each Contractor may clearly label all or part of a proposal as "CONFIDENTIAL" provided that the Contractor thereby agrees to indemnify and defend the City for honoring such a designation. The failure to so label any information that is released by the City shall constitute a complete waiver of any and all claims for damages caused by any release of the information.
- 13.16 A proposal submitted in response to this RFP must identify any subcontractors, and outline the contractual relationship between the awarded Contractor and each subcontractor. An official of each proposed subcontractor must sign, and include as part of the proposal submitted in response to this RFP, a statement to the effect that the subcontractor has read and will agree to abide by the awarded Contractor's obligations.
- 13.17 The awarded Contractor will be the sole point of contract responsibility. The City will look solely to the awarded Contractor for the performance of all contractual obligations which may result from an award based on this RFP, and the awarded Contractor shall not be relieved for the non-performance of any or all subcontractors.
- 13.18 The awarded Contractor must maintain, for the duration of its contract, insurance coverages as required by the City. Work on the contract shall not begin until after the awarded Contractor has submitted acceptable evidence of the required insurance coverages.
- 13.19 Each Contractor must disclose any existing or potential conflict of interest relative to the performance of the contractual services resulting from this RFP. Any such relationship that might be perceived or represented as a conflict should be disclosed. The City reserves the right to disqualify any Contractor on the grounds of actual or apparent conflict of interest.
- 13.20 Each Contractor must include in its proposal a complete disclosure of any alleged significant prior or ongoing contract failures, any civil or criminal litigation or investigation pending which involves the Contractor or in which the Contractor has been judged guilty or liable. Failure to comply with the terms of this provision will disqualify any proposal. The City reserves the right to reject any proposal based upon the Contractor's prior history with the City or with any other party, which



City of Long Beach  
Purchasing Division  
333 W Ocean Blvd/7<sup>th</sup> Floor  
Long Beach CA 90802

documents, without limitation, unsatisfactory performance, adversarial or contentious demeanor, significant failure(s) to meet contract milestones or other contractual failures.

- 13.21 The City will not be liable for Federal, State, or Local excise taxes.
- 13.22 Execution of Attachment A of this RFP shall constitute an agreement to all terms and conditions specified in the RFP, including, without limitation, the Attachment B contract form and all terms and conditions therein, except such terms and conditions that the Contractor expressly excludes.
- 13.23 The City reserves the right to negotiate final contract terms with any Contractor selected. The contract between the parties will consist of the RFP together with any modifications thereto, and the awarded Contractor's proposal, together with any modifications and clarifications thereto that are submitted at the request of the City during the evaluation and negotiation process. In the event of any conflict or contradiction between or among these documents, the documents shall control in the following order of precedence: the final executed contract, the RFP, any modifications and clarifications to the awarded Contractor's proposal, and the awarded Contractor's proposal. Specific exceptions to this general rule may be noted in the final executed contract.
- 13.24 Contractor understands and acknowledges that the representations above are material and important, and will be relied on by the City in evaluation of the proposal. Any Contractor misrepresentation shall be treated as fraudulent concealment from the City of the true facts relating to the proposal.
- 13.25 No announcement concerning the award of a contract as a result of this RFP may be made without the prior written approval of the City.
- 13.26 Proposers are advised that any contract awarded pursuant to this procurement process shall be subject to the applicable provisions of Long Beach Municipal Code Section 2.73 et seq, the Equal Benefits Ordinance. Proposers shall refer to attachment/appendix for further information regarding the requirements of the ordinance.
- All Proposers shall complete and return, with their bid, the Equal Benefits Ordinance Compliance form contained in the attachment/appendix. Unless otherwise specified in the procurement package, Proposers do not need to submit with their bid supporting documentation proving compliance. However, supporting documentation verifying that the benefits are provided equally shall be required if the proposer is selected for award of a contract.
- 13.27 All work performed in connection with construction shall be performed in compliance



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with all applicable laws, ordinances, rules and regulations of federal, state, county or municipal governments or agencies (including, without limitation, all applicable federal and state labor standards, including the prevailing wage provisions of sections 1770 *et seq.* of the California Labor Code), and (b) all directions, rules and regulations of any fire marshal, health officer, building inspector, or other officer of every governmental agency now having or hereafter acquiring jurisdiction. The Contractor shall indemnify, defend and hold the City harmless from any and all claims, causes of action and liabilities based upon or arising from the failure of any work related to the Project to comply with all such applicable legal requirements, including, without limitation, any such claims, causes of action or liabilities that may be asserted against or incurred by City with respect to or in any way arising from the Project's compliance with or failure to comply with applicable laws, including all applicable federal and state labor requirements including, without limitation, the requirements of California Labor Code section 1770 *et seq.*

Contractor agrees that all public work (as defined in California Labor Code section (1720) performed pursuant to this Agreement (the "Public Work"), if any, shall comply with the requirements of California Labor Code sections 1770 *et seq.* City makes no representation or statement that the project or any portion thereof, is or is not a "public work" as defined in California Labor Code section 1720.

In all bid specifications, contracts and subcontracts for any such Public Work, Contractor shall obtain the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in this locality for each craft, classification or type of worker needed to perform the Public Work, and shall include such rates in the bid specifications, contract or subcontract. Such bid specifications, contract or subcontract must contain the following provision: "It shall be mandatory for the contractor to pay not less than the said prevailing rate of wages to all workers employed by the contractor in the execution of this contract. The contractor expressly agrees to comply with the penalty provisions of California Labor Code section 1775 and the payroll record keeping requirements of California Labor Code section 1771."







City of Long Beach  
Purchasing Division  
333 W Ocean Blvd/7<sup>th</sup> Floor  
Long Beach CA 90802

## **PRO-FORMA AGREEMENT SAMPLE**

[Depending on service, a different pro-forma agreement may be used. Contact Purchasing or your department's attorney.]

[Insurance requirements may also change; contact Risk Management.]





1 hours and provided that milestones for performance, if any, are met.

2 C. Consultant has requested to receive regular payments. City  
3 shall pay Consultant in due course of payments following receipt from Consultant  
4 and approval by City of invoices showing the services or task performed, the time  
5 expended (if billing is hourly), and the name of the Project. Consultant shall certify  
6 on the invoices that Consultant has performed the services in full conformance  
7 with this Agreement and is entitled to receive payment. Each invoice shall be  
8 accompanied by a progress report indicating the progress to date of services  
9 performed and covered by the invoice, including a brief statement of any Project  
10 problems and potential causes of delay in performance, and listing those services  
11 that are projected for performance by Consultant during the next invoice cycle.  
12 Where billing is done and payment is made on an hourly basis, the parties  
13 acknowledge that this arrangement is either customary practice for Consultant's  
14 profession, industry or business, or is necessary to satisfy audit and legal  
15 requirements which may arise due to the fact that City is a municipality.

16 D. Consultant represents that Consultant has obtained all  
17 necessary information on conditions and circumstances that may affect its  
18 performance and has conducted site visits, if necessary.

19 E. CAUTION: Consultant shall not begin work until this  
20 Agreement has been signed by both parties and until Consultant's evidence of  
21 insurance has been delivered to and approved by City.

22 2. TERM. The term of this Agreement shall commence at midnight on  
23 (BEGINNING DATE), and shall terminate at 11:59 p.m. on (ENDING DATE), unless  
24 sooner terminated as provided in this Agreement, or unless the services or the Project is  
25 completed sooner.

26 3. COORDINATION AND ORGANIZATION.

27 A. Consultant shall coordinate its performance with City's  
28 representative, if any, named in Exhibit "C", attached to this Agreement and

1 incorporated by this reference. Consultant shall advise and inform City's  
2 representative of the work in progress on the Project in sufficient detail so as to  
3 assist City's representative in making presentations and in holding meetings on  
4 the Project. City shall furnish to Consultant information or materials, if any,  
5 described in Exhibit "D", attached to this Agreement and incorporated by this  
6 reference, and shall perform any other tasks described in the Exhibit.

7 B. The parties acknowledge that a substantial inducement to City  
8 for entering this Agreement was and is the reputation and skill of Consultant's key  
9 employee, \_\_\_\_\_. City shall have the right to approve any person  
10 proposed by Consultant to replace that key employee.

11 4. INDEPENDENT CONTRACTOR. In performing its services,  
12 Consultant is and shall act as an independent contractor and not an employee,  
13 representative or agent of City. Consultant shall have control of Consultant's work and  
14 the manner in which it is performed. Consultant shall be free to contract for similar  
15 services to be performed for others during this Agreement; provided, however, that  
16 Consultant acts in accordance with Section 9 and Section 11 of this Agreement.  
17 Consultant acknowledges and agrees that (a) City will not withhold taxes of any kind from  
18 Consultant's compensation; (b) City will not secure workers' compensation or pay  
19 unemployment insurance to, for or on Consultant's behalf; and (c) City will not provide  
20 and Consultant is not entitled to any of the usual and customary rights, benefits or  
21 privileges of City employees. Consultant expressly warrants that neither Consultant nor  
22 any of Consultant's employees or agents shall represent themselves to be employees or  
23 agents of City.

24 5. INSURANCE.

25 A. As a condition precedent to the effectiveness of this  
26 Agreement, Consultant shall procure and maintain, at Consultant's expense for the  
27 duration of this Agreement, from insurance companies that are admitted to write  
28 insurance in California and have ratings of or equivalent to A:V by A.M. Best

1 Company or from authorized non-admitted insurance companies subject to  
2 Section 1763 of the California Insurance Code and that have ratings of or  
3 equivalent to A:VIII by A.M. Best Company, the following insurance:

4 (a) Commercial general liability insurance (equivalent in scope to  
5 ISO form CG 00 01 11 85 or CG 00 01 10 93) in an amount not less than  
6 \$1,000,000 per each occurrence and \$2,000,000 general aggregate. This  
7 coverage shall include but not be limited to broad form contractual liability,  
8 cross liability, independent contractors liability, and products and  
9 completed operations liability. City, its boards and commissions, and their  
10 officials, employees and agents shall be named as additional insureds by  
11 endorsement (on City's endorsement form or on an endorsement  
12 equivalent in scope to ISO form CG 20 10 11 85 or CG 20 26 11 85 or  
13 both CG 20 10 07 04 and CG 20 37 07 04 or both CG 20 33 07 04 and  
14 CG 20 37 07 04), and this insurance shall contain no special limitations on  
15 the scope of protection given to City, its boards and commissions, and  
16 their officials, employees and agents. This policy shall be endorsed to  
17 state that the insurer waives its right of subrogation against City, its boards  
18 and commissions, and their officials, employees and agents.

19 (b) Workers' Compensation insurance as required by the California  
20 Labor Code and employer's liability insurance in an amount not less than  
21 \$1,000,000. This policy shall be endorsed to state that the insurer waives  
22 its right of subrogation against City, its boards and commissions, and their  
23 officials, employees and agents.

24 (c) Professional liability or errors and omissions insurance in an  
25 amount not less than \$1,000,000 per claim.

26 (d) Commercial automobile liability insurance (equivalent in scope  
27 to ISO form CA 00 01 06 92), covering Auto Symbol 1 (Any Auto) in an  
28 amount not less than \$500,000 combined single limit per accident.

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B. Any self-insurance program, self-insured retention, or deductible must be separately approved in writing by City's Risk Manager or designee and shall protect City, its officials, employees and agents in the same manner and to the same extent as they would have been protected had the policy or policies not contained retention or deductible provisions.

C. Each insurance policy shall be endorsed to state that coverage shall not be reduced, non-renewed or canceled except after thirty (30) days prior written notice to City, shall be primary and not contributing to any other insurance or self-insurance maintained by City, and shall be endorsed to state that coverage maintained by City shall be excess to and shall not contribute to insurance or self-insurance maintained by Consultant. Consultant shall notify City in writing within five (5) days after any insurance has been voided by the insurer or cancelled by the insured.

D. If this coverage is written on a "claims made" basis, it must provide for an extended reporting period of not less than one hundred eighty (180) days, commencing on the date this Agreement expires or is terminated, unless Consultant guarantees that Consultant will provide to City evidence of uninterrupted, continuing coverage for a period of not less than three (3) years, commencing on the date this Agreement expires or is terminated.

E. Consultant shall require that all subconsultants or contractors that Consultant uses in the performance of these services maintain insurance in compliance with this Section unless otherwise agreed in writing by City's Risk Manager or designee.

F. Prior to the start of performance, Consultant shall deliver to City certificates of insurance and the endorsements for approval as to sufficiency and form. In addition, Consultant shall, within thirty (30) days prior to expiration of the insurance, furnish to City certificates of insurance and endorsements evidencing renewal of the insurance. City reserves the right to require complete

1 certified copies of all policies of Consultant and Consultant's subconsultants and  
2 contractors, at any time. Consultant shall make available to City's Risk Manager  
3 or designee all books, records and other information relating to this insurance,  
4 during normal business hours.

5 G. Any modification or waiver of these insurance requirements  
6 shall only be made with the approval of City's Risk Manager or designee. Not  
7 more frequently than once a year, City's Risk Manager or designee may require  
8 that Consultant, Consultant's subconsultants and contractors change the amount,  
9 scope or types of coverages required in this Section if, in his or her sole opinion,  
10 the amount, scope or types of coverages are not adequate.

11 H. The procuring or existence of insurance shall not be  
12 construed or deemed as a limitation on liability relating to Consultant's  
13 performance or as full performance of or compliance with the indemnification  
14 provisions of this Agreement.

15 6. ASSIGNMENT AND SUBCONTRACTING. This Agreement  
16 contemplates the personal services of Consultant and Consultant's employees, and the  
17 parties acknowledge that a substantial inducement to City for entering this Agreement  
18 was and is the professional reputation and competence of Consultant and Consultant's  
19 employees. Consultant shall not assign its rights or delegate its duties under this  
20 Agreement, or any interest in this Agreement, or any portion of it, without the prior  
21 approval of City, except that Consultant may with the prior approval of the City Manager  
22 of City, assign any moneys due or to become due Consultant under this Agreement. Any  
23 attempted assignment or delegation shall be void, and any assignee or delegate shall  
24 acquire no right or interest by reason of an attempted assignment or delegation.  
25 Furthermore, Consultant shall not subcontract any portion of its performance without the  
26 prior approval of the City Manager or designee, or substitute an approved subconsultant  
27 or contractor without approval prior to the substitution. Nothing stated in this Section  
28 shall prevent Consultant from employing as many employees as Consultant deems

OFFICE OF THE CITY ATTORNEY  
CHARLES PARKIN, City Attorney  
333 West Ocean Boulevard, 11th Floor  
Long Beach, CA 90802-4664

1 necessary for performance of this Agreement.

2           7. CONFLICT OF INTEREST. Consultant, by executing this  
3 Agreement, certifies that, at the time Consultant executes this Agreement and for its  
4 duration, Consultant does not and will not perform services for any other client which  
5 would create a conflict, whether monetary or otherwise, as between the interests of City  
6 and the interests of that other client. And, Consultant shall obtain similar certifications  
7 from Consultant's employees, subconsultants and contractors.

8           8. MATERIALS. Consultant shall furnish all labor and supervision,  
9 supplies, materials, tools, machinery, equipment, appliances, transportation and services  
10 necessary to or used in the performance of Consultant's obligations under this  
11 Agreement, except as stated in Exhibit "D".

12           9. OWNERSHIP OF DATA. All materials, information and data  
13 prepared, developed or assembled by Consultant or furnished to Consultant in  
14 connection with this Agreement, including but not limited to documents, estimates,  
15 calculations, studies, maps, graphs, charts, computer disks, computer source  
16 documentation, samples, models, reports, summaries, drawings, designs, notes, plans,  
17 information, material and memorandum ("Data") shall be the exclusive property of City.  
18 Data shall be given to City, and City shall have the unrestricted right to use and disclose  
19 the Data in any manner and for any purpose without payment of further compensation to  
20 Consultant. Copies of Data may be retained by Consultant but Consultant warrants that  
21 Data shall not be made available to any person or entity for use without the prior approval  
22 of City. This warranty shall survive termination of this Agreement for five (5) years.

23           10. TERMINATION. Either party shall have the right to terminate this  
24 Agreement for any reason or no reason at any time by giving fifteen (15) calendar days  
25 prior notice to the other party. In the event of termination under this Section, City shall  
26 pay Consultant for services satisfactorily performed and costs incurred up to the effective  
27 date of termination for which Consultant has not been previously paid. The procedures  
28 for payment in Section 1.B. with regard to invoices shall apply. On the effective date of

1 termination, Consultant shall deliver to City all Data developed or accumulated in the  
2 performance of this Agreement, whether in draft or final form, or in process. And,  
3 Consultant acknowledges and agrees that City's obligation to make final payment is  
4 conditioned on Consultant's delivery of the Data to City.

5 11. CONFIDENTIALITY. Consultant shall keep all Data confidential and  
6 shall not disclose the Data or use the Data directly or indirectly, other than in the course  
7 of performing its services, during the term of this Agreement and for five (5) years  
8 following expiration or termination of this Agreement. In addition, Consultant shall keep  
9 confidential all information, whether written, oral or visual, obtained by any means  
10 whatsoever in the course of performing its services for the same period of time.  
11 Consultant shall not disclose any or all of the Data to any third party, or use it for  
12 Consultant's own benefit or the benefit of others except for the purpose of this  
13 Agreement.

14 12. BREACH OF CONFIDENTIALITY. Consultant shall not be liable for  
15 a breach of confidentiality with respect to Data that: (a) Consultant demonstrates  
16 Consultant knew prior to the time City disclosed it; or (b) is or becomes publicly available  
17 without breach of this Agreement by Consultant; or (c) a third party who has a right to  
18 disclose does so to Consultant without restrictions on further disclosure; or (d) must be  
19 disclosed pursuant to subpoena or court order.

20 13. ADDITIONAL COSTS AND REDESIGN.

21 A. Any costs incurred by City due to Consultant's failure to meet  
22 the standards required by the scope of work or Consultant's failure to perform fully  
23 the tasks described in the scope of work which, in either case, causes City to  
24 request that Consultant perform again all or part of the Scope of Work shall be at  
25 the sole cost of Consultant and City shall not pay any additional compensation to  
26 Consultant for its re-performance.

27 B. If the Project involves construction and the scope of work  
28 requires Consultant to prepare plans and specifications with an estimate of the



1 cost of construction, then Consultant may be required to modify the plans and  
2 specifications, any construction documents relating to the plans and specifications,  
3 and Consultant's estimate, at no cost to City, when the lowest bid for construction  
4 received by City exceeds by more than ten percent (10%) Consultant's estimate.  
5 This modification shall be submitted in a timely fashion to allow City to receive new  
6 bids within four (4) months after the date on which the original plans and  
7 specifications were submitted by Consultant.

8 14. AMENDMENT. This Agreement, including all Exhibits, shall not be  
9 amended, nor any provision or breach waived, except in writing signed by the parties  
10 which expressly refers to this Agreement.

11 15. LAW. This Agreement shall be construed in accordance with the  
12 laws of the State of California, and the venue for any legal actions brought by any party  
13 with respect to this Agreement shall be the County of Los Angeles, State of California for  
14 state actions and the Central District of California for any federal actions. Consultant  
15 shall cause all work performed in connection with construction of the Project to be  
16 performed in compliance with (1) all applicable laws, ordinances, rules and regulations of  
17 federal, state, county or municipal governments or agencies (including, without limitation,  
18 all applicable federal and state labor standards, including the prevailing wage provisions  
19 of sections 1770 *et seq.* of the California Labor Code); and (2) all directions, rules and  
20 regulations of any fire marshal, health officer, building inspector, or other officer of every  
21 governmental agency now having or hereafter acquiring jurisdiction.

22 16. PREVAILING WAGES.

23 A. Consultant agrees that all public work (as defined in California  
24 Labor Code section 1720) performed pursuant to this Agreement (the "Public  
25 Work"), if any, shall comply with the requirements of California Labor Code  
26 sections 1770 *et seq.* City makes no representation or statement that the Project,  
27 or any portion thereof, is or is not a "public work" as defined in California Labor  
28 Code section 1720.

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B. In all bid specifications, contracts and subcontracts for any such Public Work, Consultant shall obtain the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in this locality for each craft, classification or type of worker needed to perform the Public Work, and shall include such rates in the bid specifications, contract or subcontract. Such bid specifications, contract or subcontract must contain the following provision: "It shall be mandatory for the contractor to pay not less than the said prevailing rate of wages to all workers employed by the contractor in the execution of this contract. The contractor expressly agrees to comply with the penalty provisions of California Labor Code section 1775 and the payroll record keeping requirements of California Labor Code section 1771."

17. ENTIRE AGREEMENT. This Agreement, including all Exhibits, constitutes the entire understanding between the parties and supersedes all other agreements, oral or written, with respect to the subject matter in this Agreement.

18. INDEMNITY.

A. Consultant shall indemnify, protect and hold harmless City, its Boards, Commissions, and their officials, employees and agents ("Indemnified Parties"), from and against any and all liability, claims, demands, damage, loss, obligations, causes of action, proceedings, awards, fines, judgments, penalties, costs and expenses, including attorneys' fees, court costs, expert and witness fees, and other costs and fees of litigation, arising or alleged to have arisen, in whole or in part, out of or in connection with (1) Consultant's breach or failure to comply with any of its obligations contained in this Agreement, including any obligations arising from the Project's compliance with or failure to comply with applicable laws, including all applicable federal and state labor requirements including, without limitation, the requirements of California Labor Code section 1770 *et seq.* or (2) negligent or willful acts, errors, omissions or misrepresentations committed by Consultant, its officers, employees, agents, subcontractors, or

1 anyone under Consultant's control, in the performance of work or services under  
2 this Agreement (collectively "Claims" or individually "Claim").

3 B. In addition to Consultant's duty to indemnify, Consultant shall  
4 have a separate and wholly independent duty to defend Indemnified Parties at  
5 Consultant's expense by legal counsel approved by City, from and against all  
6 Claims, and shall continue this defense until the Claims are resolved, whether by  
7 settlement, judgment or otherwise. No finding or judgment of negligence, fault,  
8 breach, or the like on the part of Consultant shall be required for the duty to defend  
9 to arise. City shall notify Consultant of any Claim, shall tender the defense of the  
10 Claim to Consultant, and shall assist Consultant, as may be reasonably requested,  
11 in the defense.

12 C. If a court of competent jurisdiction determines that a Claim  
13 was caused by the sole negligence or willful misconduct of Indemnified Parties,  
14 Consultant's costs of defense and indemnity shall be (1) reimbursed in full if the  
15 court determines sole negligence by the Indemnified Parties, or (2) reduced by the  
16 percentage of willful misconduct attributed by the court to the Indemnified Parties.

17 D. The provisions of this Section shall survive the expiration or  
18 termination of this Agreement.

19 19. AMBIGUITY. In the event of any conflict or ambiguity between this  
20 Agreement and any Exhibit, the provisions of this Agreement shall govern.

21 20. NONDISCRIMINATION.

22 A. In connection with performance of this Agreement and subject  
23 to applicable rules and regulations, Consultant shall not discriminate against any  
24 employee or applicant for employment because of race, religion, national origin,  
25 color, age, sex, sexual orientation, gender identity, AIDS, HIV status, handicap or  
26 disability. Consultant shall ensure that applicants are employed, and that  
27 employees are treated during their employment, without regard to these bases.  
28 These actions shall include, but not be limited to, the following: employment,

1 upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or  
2 termination; rates of pay or other forms of compensation; and selection for training,  
3 including apprenticeship.

4 B. It is the policy of City to encourage the participation of  
5 Disadvantaged, Minority and Women-Owned Business Enterprises in City's  
6 procurement process, and Consultant agrees to use its best efforts to carry out  
7 this policy in its use of subconsultants and contractors to the fullest extent  
8 consistent with the efficient performance of this Agreement. Consultant may rely  
9 on written representations by subconsultants and contractors regarding their  
10 status. Consultant shall report to City in May and in December or, in the case of  
11 short-term agreements, prior to invoicing for final payment, the names of all  
12 subconsultants and contractors hired by Consultant for this Project and information  
13 on whether or not they are a Disadvantaged, Minority or Women-Owned Business  
14 Enterprise, as defined in Section 8 of the Small Business Act (15 U.S.C. Sec.  
15 637).

16 21. EQUAL BENEFITS ORDINANCE. Unless otherwise exempted in  
17 accordance with the provisions of the Ordinance, this Agreement is subject to the  
18 applicable provisions of the Equal Benefits Ordinance (EBO), section 2.73 et seq. of the  
19 Long Beach Municipal Code, as amended from time to time.

20 A. During the performance of this Agreement, the Consultant  
21 certifies and represents that the Consultant will comply with the EBO. The  
22 Consultant agrees to post the following statement in conspicuous places at its  
23 place of business available to employees and applicants for employment:

24 "During the performance of a contract with the City of Long Beach,  
25 the Consultant will provide equal benefits to employees with spouses and its  
26 employees with domestic partners. Additional information about the City of  
27 Long Beach's Equal Benefits Ordinance may be obtained from the City of  
28 Long Beach Business Services Division at 562-570-6200."

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B. The failure of the Consultant to comply with the EBO will be deemed to be a material breach of the Agreement by the City.

C. If the Consultant fails to comply with the EBO, the City may cancel, terminate or suspend the Agreement, in whole or in part, and monies due or to become due under the Agreement may be retained by the City. The City may also pursue any and all other remedies at law or in equity for any breach.

D. Failure to comply with the EBO may be used as evidence against the Consultant in actions taken pursuant to the provisions of Long Beach Municipal Code 2.93 et seq., Contractor Responsibility.

E. If the City determines that the Consultant has set up or used its contracting entity for the purpose of evading the intent of the EBO, the City may terminate the Agreement on behalf of the City. Violation of this provision may be used as evidence against the Consultant in actions taken pursuant to the provisions of Long Beach Municipal Code Section 2.93 et seq., Contractor Responsibility.

22. NOTICES. Any notice or approval required by this Agreement shall be in writing and personally delivered or deposited in the U.S. Postal Service, first class, postage prepaid, addressed to Consultant at the address first stated above, and to City at 333 West Ocean Boulevard, Long Beach, California 90802, Attn: City Manager, with a copy to the City Engineer at the same address. Notice of change of address shall be given in the same manner as stated for other notices. Notice shall be deemed given on the date deposited in the mail or on the date personal delivery is made, whichever occurs first.

23. COPYRIGHTS AND PATENT RIGHTS.

A. Consultant shall place the following copyright protection on all Data: © City of Long Beach, California \_\_\_\_, inserting the appropriate year.

B. City reserves the exclusive right to seek and obtain a patent or copyright registration on any Data or other result arising from Consultant's

1 performance of this Agreement. By executing this Agreement, Consultant assigns  
2 any ownership interest Consultant may have in the Data to City.

3 C. Consultant warrants that the Data does not violate or infringe  
4 any patent, copyright, trade secret or other proprietary right of any other party.  
5 Consultant agrees to and shall protect, defend, indemnify and hold City, its officials  
6 and employees harmless from any and all claims, demands, damages, loss,  
7 liability, causes of action, costs or expenses (including reasonable attorney's fees)  
8 whether or not reduced to judgment, arising from any breach or alleged breach of  
9 this warranty.

10 24. COVENANT AGAINST CONTINGENT FEES. Consultant warrants  
11 that Consultant has not employed or retained any entity or person to solicit or obtain this  
12 Agreement and that Consultant has not paid or agreed to pay any entity or person any  
13 fee, commission or other monies based on or from the award of this Agreement. If  
14 Consultant breaches this warranty, City shall have the right to terminate this Agreement  
15 immediately notwithstanding the provisions of Section 10 or, in its discretion, to deduct  
16 from payments due under this Agreement or otherwise recover the full amount of the fee,  
17 commission or other monies.

18 25. WAIVER. The acceptance of any services or the payment of any  
19 money by City shall not operate as a waiver of any provision of this Agreement or of any  
20 right to damages or indemnity stated in this Agreement. The waiver of any breach of this  
21 Agreement shall not constitute a waiver of any other or subsequent breach of this  
22 Agreement.

23 26. CONTINUATION. Termination or expiration of this Agreement shall  
24 not affect rights or liabilities of the parties which accrued pursuant to Sections 7, 10, 11,  
25 17, 19, 22 and 28 prior to termination or expiration of this Agreement.

26 27. TAX REPORTING. As required by federal and state law, City is  
27 obligated to and will report the payment of compensation to Consultant on Form 1099-  
28 Misc. Consultant shall be solely responsible for payment of all federal and state taxes

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CHARLES PARKIN, City Attorney  
333 West Ocean Boulevard, 11th Floor  
Long Beach, CA 90802-4664

1 resulting from payments under this Agreement. Consultant shall submit Consultant's  
2 Employer Identification Number (EIN), or Consultant's Social Security Number if  
3 Consultant does not have an EIN, in writing to City's Accounts Payable, Department of  
4 Financial Management. Consultant acknowledges and agrees that City has no obligation  
5 to pay Consultant until Consultant provides one of these numbers.

6 28. ADVERTISING. Consultant shall not use the name of City, its  
7 officials or employees in any advertising or solicitation for business or as a reference,  
8 without the prior approval of the City Manager or designee.

9 29. AUDIT. City shall have the right at all reasonable times during the  
10 term of this Agreement and for a period of five (5) years after termination or expiration of  
11 this Agreement to examine, audit, inspect, review, extract information from and copy all  
12 books, records, accounts and other documents of Consultant relating to this Agreement.

13 30. THIRD PARTY BENEFICIARY. This Agreement is not intended or  
14 designed to or entered for the purpose of creating any benefit or right for any person or  
15 entity of any kind that is not a party to this Agreement.

16 IN WITNESS WHEREOF, the parties have caused this document to be duly  
17 executed with all formalities required by law as of the date first stated above.

18 (NAME OF CONSULTANT)  
19 \_\_\_\_\_, 20 By \_\_\_\_\_  
20 Name \_\_\_\_\_  
21 Title \_\_\_\_\_

22 \_\_\_\_\_, 20 By \_\_\_\_\_  
23 Name \_\_\_\_\_  
24 Title \_\_\_\_\_

25 "Consultant"  
26 CITY OF LONG BEACH, a municipal  
27 corporation  
28 \_\_\_\_\_, 20 By \_\_\_\_\_  
City Manager

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CHARLES PARKIN, City Attorney  
333 West Ocean Boulevard, 11th Floor  
Long Beach, CA 90802-4664

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"City"

This Agreement is approved as to form on \_\_\_\_\_, 20\_\_.

CHARLES PARKIN, City Attorney

By \_\_\_\_\_  
Deputy





City of Long Beach  
Purchasing Division  
333 W Ocean Blvd/7<sup>th</sup> Floor  
Long Beach CA 90802

## Statement of Non-collusion

The proposal is submitted as a firm and fixed request valid and open for 90 days from the submission deadline.

This proposal is genuine, and not sham or collusive, nor made in the interest or in behalf of any person not herein named; the proposer has not directly or indirectly induced or solicited any other proposer to put in a sham proposal and the proposer has not in any manner sought by collusion to secure for himself or herself an advantage over any other proposer.

In addition, this organization and its members are not now and will not in the future be engaged in any activity resulting in a conflict of interest, real or apparent, in the selection, award, or administration of a subcontract.

---

Authorized signature and date

---

Print Name & Title



City of Long Beach  
Purchasing Division  
333 W Ocean Blvd/7<sup>th</sup> Floor  
Long Beach CA 90802

## **Acceptance of Certification**

1. This bid/agreement/proposal or like document has the potential to be a recipient of Federal funds. In order to be in compliance with Code of Federal Regulations, the City requires this completed form. By signing and submitting this document, the prospective bidder/proposer is providing the certification and acknowledgement as follows:
2. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549.
3. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective recipient of Federal assistance funds knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
4. The potential recipient of Federal assistance funds agrees by submitting this bid/agreement/proposal or like document that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

### **Instructions for completing the form, Attachment –Debarment Certification**

1. The City of Long Beach sometimes receives Federal funding on certain purchases/projects. To ensure that the City is in compliance with Federal regulations we require this form to be completed.
2. The City of Long Beach checks the System for Award Management at [www.sam.gov](http://www.sam.gov) to make sure that Contractors who are awarded City contracts and/or purchase orders are not debarred or suspended. Prospective contractors should perform a search on this website for your company and or persons associated with your business.
3. If your business is in compliance with the conditions in the form, please have the appropriate person complete and sign this form and return with your bid/proposal/agreement.
4. If at anytime, your business or persons associated with your business become debarred or suspended, we require that you inform us of this change in status.
5. If there are any exceptions to the certification, please include an attachment. Exceptions will not necessarily result in denial of award, but will be considered in determining bidder responsibility. For any exception, indicate to whom it applies, initiating agency and dates of action.
6. Note: Providing false information may result in criminal prosecution or administrative sanctions.

***If you have any questions on how to complete this form, please contact the  
City of Long Beach, Business Relations, Purchasing Division at 562-570-6200***



City of Long Beach  
Purchasing Division  
333 W Ocean Blvd/7<sup>th</sup> Floor  
Long Beach CA 90802

## **W-9 Request for Taxpayer Identification Number and Certification**

[Form must be signed and dated]





City of Long Beach  
 Purchasing Division  
 333 W Ocean Blvd/7<sup>th</sup> Floor  
 Long Beach CA 90802

Reference Information Form

Client/Contractor Name \_\_\_\_\_

Project Manager/Contact Name \_\_\_\_\_ E-mail \_\_\_\_\_ Ph. No \_\_\_\_\_

Address \_\_\_\_\_

Project Description \_\_\_\_\_

Project Dates (Start and End) \_\_\_\_\_ Contract Term(s) \_\_\_\_\_ Contract Amount \_\_\_\_\_

Client/Contractor Name \_\_\_\_\_

Project Manager/Contact Name \_\_\_\_\_ E-mail \_\_\_\_\_ Ph. No \_\_\_\_\_

Address \_\_\_\_\_

Project Description \_\_\_\_\_

Project Dates (Start and End) \_\_\_\_\_ Contract Term(s) \_\_\_\_\_ Contract Amount \_\_\_\_\_

Client/Contractor Name \_\_\_\_\_

Project Manager/Contact Name \_\_\_\_\_ E-mail \_\_\_\_\_ Ph. No \_\_\_\_\_

Address \_\_\_\_\_

Project Description \_\_\_\_\_

Project Dates (Start and End) \_\_\_\_\_ Contract Term(s) \_\_\_\_\_ Contract Amount \_\_\_\_\_

Client/Contractor Name \_\_\_\_\_

Project Manager/Contact Name \_\_\_\_\_ E-mail \_\_\_\_\_ Ph. No \_\_\_\_\_

Address \_\_\_\_\_

Project Description \_\_\_\_\_

Project Dates (Start and End) \_\_\_\_\_ Contract Term(s) \_\_\_\_\_ Contract Amount \_\_\_\_\_

Client/Contractor Name \_\_\_\_\_

Project Manager/Contact Name \_\_\_\_\_ E-mail \_\_\_\_\_ Ph. No \_\_\_\_\_

Address \_\_\_\_\_

Project Description \_\_\_\_\_

Project Dates (Start and End) \_\_\_\_\_ Contract Term(s) \_\_\_\_\_ Contract Amount \_\_\_\_\_



City of Long Beach  
Purchasing Division  
333 W Ocean Blvd/7<sup>th</sup> Floor  
Long Beach CA 90802

## INSURANCE REQUIREMENTS

- Contractor shall submit proof of insurability from an insurance company with an 8 rating {as specified in City AR 8-27} from AM Best Company with bid. Failure to submit this proof will disqualify the bid.
- Successful bidder shall obtain and maintain at its expense until completion of performance and acceptance by the City, from an insurer:
  - Admitted (Licensed) in the State of California with a current financial responsibility rating of an Excellent or better and a current financial size category (FSC) of V (Capital Surplus and Conditional Surplus Funds of greater than \$10 million) or greater rating as reported by AM Best Company or equivalent, unless waived in writing by the City's Risk Manager, or
  - Non-admitted in the State of California with a current financial responsibility rating of an Excellent or better and a current financial size category (FSC) of VIII (Capital Surplus Funds or greater than \$100 million) or greater rating as reported by AM Best Company or equivalent, unless waived in writing by City's Risk Manager.
  - Comprehensive General Liability naming City, its Officials, Employees, and Agents as additional insureds for injury to or death of persons or damage to or loss of property arising from or connected to vendor's performance here-under \$1,000,000 combined single limit for each occurrence and \$2,000,000 General Aggregate.
  - Automobile Liability: \$500,000 combined single limit per accident for bodily injury and property damage covering owned, non-owned and hired vehicles.
  - Worker's Compensation: As required by California Labor Code.
- Self-insurance of self-insured retention must be approved in writing by City and protect City in same manner and extent as if policies had not contained retention. Each policy must be endorsed to state that coverage shall not be cancelled by either party or reduced in coverage except after 30 days prior written notice to City. Vendor must furnish to City before performance certificates of insurance and original endorsements, with the original signature of one authorized by the insurer to bind coverage on its behalf, for approval as to sufficiency and form. This insurance shall not be deemed to limit vendor's liability hereunder.
- Contractor shall maintain at its expense, until completion of performance and acceptance by City, from an insurer:
  - Admitted (licensed) in the State of California with a current financial responsibility rating of A (Excellent) or better and a current financial size category (FSC) of V (capital surplus and conditional surplus funds of greater than \$10 million) or greater rating as reported by A.M. Best Company or equivalent, unless waived in writing by City's Risk Manager, or



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 Long Beach CA 90802

- o Non-admitted in the State of California with a current financial responsibility rating of A (Excellent) or better and a current financial size category (FSC) of VIII (capital surplus and conditional surplus funds of greater than \$100 million) or greater rating as reported by A.M. Best Company or equivalent, unless waived in writing by City's Risk Manager.
- All coverages for Subcontractors shall be subject to the requirements stated herein and shall be maintained at no expense to the City.
- Contractor shall furnish the City with certificates of insurance and original endorsements providing coverage as required above. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.
- Before any of Contractor's or Subcontractor's employees shall do any work on the City's property, Contractor shall furnish the City with the required certificates evidencing that such insurance is being maintained. Such certificates shall specify the date when such insurance expires. Such insurance shall be maintained until after the Work under the Contract has been completed and accepted.
- Such insurance as required herein or in any other documents to be considered a part hereof shall not be deemed to limit Contractor's liability under this Contract.
- Contractor shall defend, indemnify and hold harmless the City, its officials and employees from and against any and all liability for claims for bodily injury and property damage arising out of negligent acts, omissions or errors of any employee of Contractor at the Site.
- Contractor shall list the name and location of the place of business of each Subcontractor who will perform work, labor or services for Contractor, or who specially fabricates and installs a portion of the Work or improvement in an amount in excess of one-half of one percent of Contractor's total contract cost. The Subcontractor list shall be submitted with Contractor's Bid.

By submitting a signature below, Bidder promises that insurance requirements can be provided as requested.

Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**CERTIFICATION OF COMPLIANCE WITH THE  
EQUAL BENEFITS ORDINANCE**

Section 1. CONTRACTOR/VENDOR INFORMATION

Name: \_\_\_\_\_ Federal Tax ID No. \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP: \_\_\_\_\_  
Contact Person: \_\_\_\_\_ Telephone: \_\_\_\_\_  
Email: \_\_\_\_\_ Fax: \_\_\_\_\_

Section 2. COMPLIANCE QUESTIONS

- A. The EBO is inapplicable to this Contract because the Contractor/Vendor has no employees. \_\_\_\_Yes \_\_\_\_No
- B. Does your company provide (or make available at the employees' expense) any employee benefits? \_\_\_\_Yes \_\_\_\_No  
(If "yes," proceed to Question C. If "no," proceed to section 5, as the EBO does not apply to you.)
- C. Does your company provide (or make available at the employees' expense) any benefits to the spouse of an employee?  
\_\_\_\_Yes \_\_\_\_No
- D. Does your company provide (or make available at the employees' expense) any benefits to the domestic partner of an employee?  
\_\_\_\_Yes \_\_\_\_No (If you answered "no" to both questions C and D, proceed to section 5, as the EBO is not applicable to this contract. If you answered "yes" to both Questions C and D, please continue to Question E. If you answered "yes" to Question C and "no" to Question D, please continue to section 3.)
- E. Are the benefits that are available to the spouse of an employee identical to the benefits that are available to the domestic partner of an employee? \_\_\_\_Yes \_\_\_\_No  
(If "yes," proceed to section 4, as you are in compliance with the EBO. If "no," continue to section 3.)

Section 3. PROVISIONAL COMPLIANCE

- A. Contractor/vendor is not in compliance with the EBO now but will comply by the following date:
- \_\_\_\_\_ By the first effective date after the first open enrollment process following the contract start date, not to exceed two years, if the Contractor/vendor submits evidence of taking reasonable measures to comply with the EBO; or
- \_\_\_\_\_ At such time that the administrative steps can be taken to incorporate nondiscrimination in benefits in the Contractor/vendor's infrastructure, not to exceed three months; or



## EQUAL BENEFITS ORDINANCE DISCLOSURE FORM

As a condition of being awarded a contract with the City of Long Beach ("City"), the selected Contractor/Vendor ("Contractor") may be required during the performance of the Contract, to comply with the City's nondiscrimination provisions of the Equal Benefits Ordinance ("EBO") set forth in the Long Beach Municipal Code section 2.73 et seq. The EBO requires that during the performance of the contract, the Contractor shall provide equal benefits to its employees with spouses and employees with domestic partners. Benefits include but are not limited to, health benefits, bereavement leave, family medical leave, membership and membership discounts, moving expenses, retirement benefits and travel benefits. A cash equivalent payment is permitted if an employer has made all reasonable efforts to provide domestic partners with access to benefits but is unable to do so. A situation in which a cash equivalent payment might be used is where the employer has difficulty finding an insurance provider that is willing to provide domestic partner benefits.

The EBO is applicable to the following employers:

- For-profit employers that have a contract with the City for the purchase of goods, services, public works or improvements and other construction projects in the amount of \$100,000 or more
- For-profit entities that generate \$350,000 or more in annual gross receipts leasing City property pursuant to a written agreement for a term exceeding 29 days in any calendar year

Contractors who are subject to the EBO must certify to the City before execution of the contract that they are in compliance with the EBO by completing the EBO Certification Form, attached, or that they have been issued a waiver by the City. Contractors must also allow authorized City representatives access to records so the City can verify compliance with the EBO.

The EBO includes provisions that address difficulties associated with implementing procedures to comply with the EBO. Contractors can delay implementation of procedures to comply with the EBO in the following circumstances:

- 1) By the first effective date after the first open enrollment process following the contract start date, not to exceed two years, if the Contractor/vendor submits evidence of taking reasonable measures to comply with the EBO; or
- 2) At such time that the administrative steps can be taken to incorporate nondiscrimination in benefits in the Contractor/vendor's infrastructure, not to exceed three months; or
- 3) Upon expiration of the contractor's current collective bargaining agreement(s).

### Compliance with the EBO

If a contractor has not received a waiver from complying with the EBO and the timeframe within which it can delay implementation has expired but it has failed to comply with the EBO,

the Contractor may be deemed to be in material breach of the Contract. In the event of a material breach, the City may cancel, terminate or suspend the City agreement, in whole or in part. The City also may deem the Contractor an irresponsible bidder and disqualify the Contractor from contracting with the City for a period of three years. In addition, the City may assess liquidated damages against the Contractor which may be deducted from money otherwise due the Contractor. The City may also pursue any other remedies available at law or in equity.

By my signature below, I acknowledge that the Contractor understands that to the extent it is subject to the provisions of the Long Beach Municipal Code section 2.73, the Contractor shall comply with this provision.

Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Business Entity Name: \_\_\_\_\_

# Exhibit A-2



**Amendment to Agreement**  
(Existing Service Location)

This amendment ("Amendment") is made as of this 2nd day of June , 2014, to the Service Agreement bearing an Effective Date of 5/24/2011 (the "Agreement"), by and between City of Long Beach - Account # 5387779 ("Customer") and the Windstream legal entit(ies) providing the Services to Customer, as identified on Customer's bill ("Windstream").

A. Windstream and Customer hereby agree to amend the Agreement to: *[check all that apply]*.

i. **Reconfigure services at the existing Service location, as follows:**

change channel assignments between voice/data [describe change and associated charges]:

change facility from one type to another (e.g., Techpath to PRI) [describe change and associated charges]:

change router equipment from one type to another [describe change and associated charges]:

ii. **Add an additional facility at the existing Service location (describe):**

iii. **Add a new Service to existing location (describe):**

iv. XX **Modify the Minimum Monthly Fee** from \$1,799.75 to \$1,330.00 effective as of the first full billing cycle following installation/disconnection of the changed Service(s).

v. **Modify the Term** of the Agreement to end as of

vi. **Relocate the Service location** from to . There will be a one time non-recurring charge to Customer to relocate the facility(ies) and/or service(s) in connection with this relocation in the amount of \$ .

B. Attachment A to this Amendment, Quote # which is incorporated by reference, sets forth the rates and other terms and conditions to apply to the additional facilities and/or Services ordered hereunder.

C. Except as modified by this Amendment, the terms and conditions set forth in the Agreement remain unchanged.

D. **This document may only be used for moves, adds, or changes. Under no circumstances, may Customer receive a credit of any kind through execution of this document.**

IN WITNESS WHEREOF, the undersigned have caused this Amendment to be executed by their duly authorized representative, to be effective as of the date first above written.

\_\_\_\_\_  
BY:  
\_\_\_\_\_  
NAME:  
\_\_\_\_\_  
TITLE:  
\_\_\_\_\_  
DATE:  
\_\_\_\_\_

\_\_\_\_\_  
**WINDSTREAM**  
\_\_\_\_\_  
BY:  
\_\_\_\_\_  
NAME:  
\_\_\_\_\_  
TITLE:  
\_\_\_\_\_  
DATE:  
\_\_\_\_\_



# PROPOSAL SUMMARY

## Service Location Listing - Monthly Recurring Charges

Primary Billing Account City of Long Beach - DS3 SERVICE, #5387779  
Quote # 1686023  
Company Representative Newton, Liza M Rep ID 18213  
Effective Date 06/05/2014  
MME \$1,330.00

---

Location Name & Service Address	Access	Data	Total
City of Long Beach - DS3 SERVICE 333 W OCEAN BLVD, LONG BEACH, CA 90802-4681	\$865.00	\$465.00	\$1,330.00
<b>Total</b>	<b>\$865.00</b>	<b>\$465.00</b>	<b>\$1,330.00</b>



**PROPOSAL**

**Customer Name**

Customer Name	City of Long Beach - DS3 SERVICE	EAN (Account Number)	5387779
Install Street Address	333 W OCEAN BLVD	City, State, Zip	LONG BEACH, CA, 90802-4681
Opportunity ID	835760	Proposal / Quote ID	1686023
Contract Term	36	Service Order Type	Renewal/Upsell
Effective Date	06/05/2014		

**Bundled Services**

**Dedicated Internet Bundle**

	Total Qty	Price/Unit	Total Price
Bandwidth	45 Mbps	--	--
Transport DS3	1	--	--
<b>Total Services</b>			<b>\$1,315.00</b>

**Internet**

	Included	Total Qty	Price/Unit	Total Price
Router Ping Monitoring Charge	--	1	\$15.00	\$15.00
<b>Total Features</b>				<b>\$15.00</b>

**Other Charges (Non-Recurring)**

	Included	Total Qty	Price/Unit	Total Price
<b>Access Loop</b>				
Special Construction Install Charge	--	1	\$0.00	\$0.00
<b>Internet</b>				
Data Installation Charge	--	1	\$0.00	\$0.00
Router Ping Monitoring Install Charge	--	1	\$0.00	\$0.00
<b>Total Other Charges (Non-Recurring)</b>				<b>\$0.00</b>

\* Rates are subject to change on 30 days notice via bill message on customer's invoice.

\*\* Additional charges apply for all local, long distance and 8XX features, network access charge, router maintenance, CPE maintenance and directory listings. For the current features pricing, go to <http://www.paetec.com/about-us/notice>.

\*\*\* Amounts listed are reasonable approximations based on initial proposal. Actual amounts shall depend on final lease amount set forth in the Customer's Lease Agreement.

**Total Solution**

	Total Price
<b>Total Monthly Recurring Charges</b>	<b>\$1,330.00</b>
<b>Total Non-Recurring Charges</b>	<b>\$0.00</b>
<b>Minimum Monthly Fee</b>	<b>\$1,330.00</b>

**Service Information**

This Proposal is subject to and controlled by the Windstream Service Terms and Conditions, which are incorporated herein by reference and attached hereto. Your signature constitutes your acceptance of the Proposal and your agreement to Windstream's Service Terms and Conditions.

**CUSTOMER**

---

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**WINDSTREAM**

---

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



## WINDSTREAM SERVICE TERMS AND CONDITIONS

These terms and conditions apply to the provision of all telecommunications and related services ("Services") by Windstream<sup>1</sup> ("Windstream") to Customer under the proposal to which these terms and conditions are a part. These terms and conditions and Customer's proposal/sales order, and any service specific schedules form the agreement ("Agreement"). The Services will be offered in each area to the Customer by the Windstream affiliated entity authorized to provide the Services in the applicable jurisdiction.

- 1. Term and Renewal.** This Agreement is effective on the date identified on the proposal ("Effective Date") and will continue for the term set forth in the proposal from the date that Services are installed until either terminated pursuant to the provisions below or replaced with a new agreement (the "Term"). Upon expiration of the Term, **this Agreement will automatically renew for successive one-year terms** (each, a "Renewal Term") until terminated or cancelled pursuant to its terms. In the event a Customer provides written notice of its intent not to renew but does not terminate Services hereunder, Windstream shall have the option of continuing to provide such Services on a month-to-month basis, priced at Windstream's then current monthly rates.
- 2. Charges for Services; Billing and Payment.** Customer is responsible for paying all charges that apply to the Services ordered on a proposal or used on a per-use basis by Customer, including Items such as features, installation, labor, repair, long distance, and directory or operator assistance as specified on the proposal or set forth in Windstream's Price Lists or Tariffs. Customer is responsible for taxes, surcharges, fees, and assessments that apply to the sale and use of Services, including how those may change in the future and regardless of whether such charges are identified in the Agreement. Windstream will bill Customer monthly for the Service, and all bills are due and payable upon receipt. Payment will be considered late if not paid within thirty (30) days from the date of invoice. All amounts payable by Customer shall be made without setoff or counterclaim and without deduction. Billing at a location will begin upon the earlier of (i) the installation date (which may be the date administrative access to certain software-based Services is granted to Customer); (ii) thirty (30) days after delivery of the applicable facility and/or equipment to the Customer premises (if the delay in connection of the facility and/or equipment is due to Customer or its agent); (iii) the date the Company notifies a Customer that Service is available for use by Customer; or (iv) the date that Service would have been available for use by Customer if Customer had fulfilled its performance obligations required to provision the Service; however, Windstream may choose to bill in full monthly increments with no proration for partial service periods when Service either starts or ends in the middle of a billing cycle. If installation of off-net Services is delayed due to action or inaction by Customer, then Customer shall be responsible for all associated third-party provider charges. In certain service areas, paper bills are available only upon request and for a monthly charge and billing for usage will round up to the next cent. If Customer authorizes payment by credit or debit card, then Windstream will not obtain further consent or provide additional notice before invoicing the credit or debit card for all amounts due and owing. **WINDSTREAM RESERVES THE RIGHT TO INCREASE OR DECREASE MONTHLY RECURRING CHARGES ("MRCs") ON AT LEAST THIRTY 30 DAYS' NOTICE AND OTHER RATES AT ANY TIME.**
- 3. Service Outage Credits.** For Windstream's business-grade local and long distance voice telecommunications services, T1 and higher facility network Internet access and private networking services, Customer will receive a credit of 1/30th of the MRC for that month for each day that Customer has a Service Outage, defined below. Only the Service affected by the Service Outage will be eligible for a credit. Credit is based upon the length of time Customer is without Service. Credits in any single month cannot exceed the MRCs for Service that was affected by a Service Outage in that month. For purposes of this Agreement, a "Service Outage" is defined as the complete inability to: (i) make or receive calls; (ii) access the Internet for the purpose of sending or receiving Internet traffic; or (iii) send or receive data across a Windstream supported private network. In the event Customer rents equipment from Windstream, such equipment shall not be considered "Services" for purposes of service credits under this Agreement.
- 4. Disputes.** To dispute a bill, Customer must do so in good faith and deliver to Windstream in writing the specific basis for such dispute within sixty (60) days after the date on the bill. If Customer does not follow this dispute process, the dispute shall be deemed waived.
- 5. Partial Payments; Late Payments.** Windstream may accept any payments Customer marks as being "payment in full" or as being settlement of any dispute without waiving any rights Windstream has to collect the full payments from Customer. Customer is responsible for paying all costs and fees Windstream incurs as a result of collecting Customer's unpaid charges. If Windstream does not receive full payment when due or does not receive payment in immediately available funds, Windstream will add a late payment fee to the amounts owed and will calculate such fee as the total owed times interest at the maximum rate allowable by law.
- 6. Credit and Deposits.** Customer authorizes Windstream to ask credit-reporting agencies for Customer's credit information. Windstream may require Customer to submit an initial security deposit and/or advance payment and an additional deposit and/or advance payment if Customer increases Services, Customer is late on payment, or Customer's credit rating changes. The deposit will be refunded if satisfactory credit has been established or upon termination of this Agreement for any reason, except that Windstream at its discretion may apply the deposit to any amount due and unpaid by Customer.
- 7. Services Location; Moves.** Customer is responsible for providing an environment that is suitable for the Services, including equipment that is compatible with Windstream's network. Customer shall provide Windstream with the correct address to obtain Services, because Windstream relies on such information to determine which taxes, fees, surcharges and assessments apply to the Services. If Customer does not provide a valid address, Customer will be responsible for any resulting taxes, fees, surcharges, assessments and penalties related thereto. Customer will notify Windstream if Customer's address changes, in which case Windstream may either (a) terminate the affected Services, or (b) allow Customer to provide sixty (60) days' advance notice to Windstream to move Services to a new location and pay any applicable installation charges. Customer will enter into a new agreement for such new location, or Windstream will apply the liquidated damages set forth in Section 15 for the terminated location. Charges, including reasonable administrative costs and fees incurred by Windstream may apply as a result of Customer's move, in addition to a change in MRCs.
- 8. Windstream-Provided and Owned Equipment.** Any equipment installed by Windstream on Customer's premises that is not the subject of a sale to Customer (such as the CSU/DSU, interface cards, Channel Bank and routers, if applicable) shall remain at all times the property of Windstream. Equipment shall remain in good condition, less normal wear and tear. Windstream shall be responsible for the maintenance and repair of the equipment unless it is damaged as a result of the action or inaction of Customer or its employees or agents, in which case Customer shall reimburse Windstream for the cost of any necessary repairs. Customer shall provide Windstream reasonable access to the equipment for purposes of repair, maintenance, removal or otherwise. If Windstream does not have access to Customer's premises within thirty (30) days after Customer terminates this Agreement, or if Windstream requests Customer return the equipment and Customer does not return the equipment to Windstream within thirty (30) days of termination, Customer shall reimburse Windstream for the full purchase price of the equipment as well as any attorney's fees and costs. Customer shall pack and ship the equipment in such a way so as to limit and/or avoid damage to the equipment. In the event the equipment is damaged in shipping, Customer shall be responsible for the cost to replace the equipment.

<sup>1</sup>Windstream is defined for purposes of this Agreement to mean Windstream Communications, Inc. or such authorized Windstream affiliated entity providing Services to Customer as identified on Customer's bill.

9. **Disconnection of Current Provider; Special Construction; Third Party Charges.** Customer is solely responsible for disconnecting Services with its current service provider. Windstream is not responsible for any charges assessed against Customer by such provider. Customer shall pay all charges if Windstream or a third party provider is required to extend the demarcation point or undertake special construction for Customer. Unless Windstream specifically agrees in writing to undertake equipment installation and maintenance work, Customer is responsible for all charges assessed by its phone system vendor and other third parties in connection with the installation of the Services and Windstream shall have no responsibility for maintenance or repair of same.
10. **Third Party Software.** As part of the Services, Customer may be allowed to use certain software and related documentation developed and owned by Windstream's third-party software licensors (collectively, the "Software"). This Software is neither sold nor distributed to Customer and Customer may use it solely as part of the Services and for no other purpose. Customer may not and agrees not to: (i) transfer such Software outside the Services or to any other person or entity; (ii) make copies of the Software, either through a virtual snapshot of the server containing the Software or otherwise; or (iii) transfer the Software outside of Windstream's infrastructure and/or premises. Further, Customer agrees to provide Windstream with evidence that its use of the Software is in compliance with the Agreement and/or third-party software licensor's terms from time to time during the Term as requested by Windstream. If Customer fails to provide such evidence when requested, or is otherwise not in compliance with the Agreement and/or third-party software licensor's terms, Windstream may, at its sole option suspend or terminate the Services that include the Software. For the avoidance of doubt, Windstream's Software licensors are not responsible for providing any support in connection with the Services or the Software.
11. **Google.** IF CUSTOMER SUBSCRIBES TO GOOGLE SERVICES THROUGH WINDSTREAM, CUSTOMER WILL BE REQUIRED TO COMPLETE A CLICK-THROUGH AGREEMENT FOR THE GOOGLE LICENSE POSTED AT [http://www.windstream.com/legal/Google\\_Apps\\_Premier\\_Edition\\_License.pdf](http://www.windstream.com/legal/Google_Apps_Premier_Edition_License.pdf) PRIOR TO USING THE RELEVANT SERVICES. Windstream may cancel Google Services at any time on thirty (30) days' notice and, at Windstream's option, may either terminate such Google Services altogether or move Customer to a similar platform. In the event that Windstream or Customer terminates the Google Services or downgrades or cancels Google Services, Customer is solely responsible for downloading all of its information to its computer within thirty (30) days.
12. **Government Funding.** Customer must notify Windstream of all restrictions, requirements and reporting obligations to which Windstream could become subject pursuant to any government program before Windstream provisions Services to Customer. Customer will not use such funds, including stimulus funds, grants or loans, in whole or in part, to support its performance under this Agreement without Windstream's prior written consent regarding any specifically applicable terms. If Customer fails to provide such prior written notice to Windstream of government funding or if Windstream does not consent to the use of such funding, then Windstream has the right, in its sole discretion, to reject any order or terminate this Agreement and/or any applicable Services, without liability or obligation to Windstream. If Customer requests government funds for payment of Services under this Agreement and such funding request is denied, Customer shall remain responsible for one-hundred percent (100%) of the cost of Services.
13. **Documents Incorporated by Reference; Entire Agreement; Counterparts; Execution.** THIS AGREEMENT IS SUBJECT TO AND INCORPORATES THE FOLLOWING BY REFERENCE, AS THEY MAY CHANGE FROM TIME TO TIME: (I) THE TERMS AND CONDITIONS OF THE TARIFFS FILED WITH STATE PUBLIC SERVICE COMMISSIONS; (II) THE FCC OR STATE WEB-POSTED PRICE LISTS OR TERMS AND CONDITIONS (EITHER "PRICE LISTS") POSTED AT <http://windstream.com/documents/detariffedservices.pdf>; (III) FOR INTERNET, THE "ACCEPTABLE USE POLICY" POSTED AT <http://www2.windstream.net/customersupport/usersguide/accept/accept.html> AND THE "PRIVACY POLICY" POSTED AT <http://www.windstream.com/privacy.aspx>; (IV) IF CUSTOMER IS OBTAINING CERTAIN VALUE-ADDED SERVICES (I.E., ONLINE BACK UP SERVICES, TECH HELP, ETC), CUSTOMER WILL BE REQUIRED TO CLICK-THROUGH AGREEMENTS RELATED TO THOSE SERVICES (CLICK-THROUGHS) PRIOR TO ACCESSING SUCH SERVICE, WHICH SHALL BE DEEMED PART OF THIS AGREEMENT; AND (V) THIRD PARTY SOFTWARE TERMS, IF APPLICABLE. This Agreement, the documents incorporated by reference and any addendums entered between the parties constitute the parties' entire Agreement. This Agreement may be amended only in a writing signed by authorized representatives of each party. This Agreement and its incorporated documents supersede any and all statements or promises made to Customer by any Windstream employee or agent. In the event of any conflict between the provisions of this Agreement and any of the documents incorporated by reference, the provisions of the Google License shall control for Google Services, followed by the Tariffs and Price Lists or Value-Added Services click-through agreements for applicable Services, this Agreement and then the Acceptable Use and Privacy policies. This Agreement may be signed in counterparts, and facsimile or electronic scanned copies may be treated as original signatures. Windstream also may execute this Agreement via a verifiable electronic signature.
14. **Termination.** Either party may terminate this Agreement by providing at least thirty (30) days' notice prior to the end of the initial Term or a Renewal Term, or if the other party is in breach of any material provision of this Agreement and such other party fails to cure within thirty (30) days after written notice. Notwithstanding, unless prohibited by law, in the event of nonpayment, the breaching party shall have ten (10) days to cure after written notice. Customer's right to terminate for cause is limited to termination of the affected Services at the affected location only. In the event Customer rents equipment from Windstream and Customer terminates network Services pursuant to this section, Customer shall remain obligated to fulfill the remainder of the applicable equipment schedule term. Windstream may limit, interrupt or terminate Services immediately if: (a) after any required notice, Customer has not paid for Services; or (b) Customer uses the Services in an adverse manner that affects Windstream's network or other customers; or (c) Customer or others have used the Services fraudulently or unlawfully while on Customer's premises or while the Services are under Customer's control; or (d) Customer or others use the Services in an excessive, abusive, or unreasonable manner that is not customary for the type of Services; or (e) Customer resells any Services or uses the Services to aggregate other persons' traffic; or (f) Customer uses the Services for its own end users and/or customers as a telecommunications provider or any other kind of provider. In addition to the termination rights of Windstream set forth above, if Customer or others use the Services in an excessive, abusive, or unreasonable manner that is not customary for the type of Services (including, but not limited to, circumstances in which Windstream is receiving traffic from Customer that originates from a location other than the local calling area associated with the customer's service location, when ten percent (10%) or more of Customer's calls are six (6) seconds or less, and/or when more than forty percent (40%) of call attempts are uncompleted per trunk group and DS0/DS0 equivalent), Windstream may: (v) charge long-distance charges for such traffic and any additional charges necessary to recoup its administrative costs and any charges from other carriers; (w) charge an additional price per minute in Windstream's discretion for each call that violates this provision; (x) restrict or cancel use or convert customer to another plan; (y) require customer to pay for the excessive use immediately and make a deposit; and/or (z) void any applicable price guarantee. Windstream may restore service if customer corrects the violation and pays all outstanding amounts owed, including restoration charges. For Ethernet Internet Access services and MPLS - Virtual Private Network/Virtual LAN Services, Windstream shall verify the availability of facilities, and in the event that Windstream determines in its sole discretion that facilities are not economically or technically feasible, Windstream has the right to terminate this Agreement without liability.
15. **Effect of Termination.**
- a. **Pre-Installation.** If Customer terminates this Agreement after the Effective Date but prior to the installation of Service(s), Customer will pay Windstream a Pre-Installation Cancellation Charge ("Cancellation Charge") equal to three (3) months of MRCs except that if Windstream's costs to other providers are greater than this amount, Customer shall also reimburse Windstream for such costs. Customer agrees that the Cancellation Charge is a reasonable measure of the administrative costs and other fees incurred by Windstream to prepare for installation. The Cancellation Charge set forth in this Section 15(a) is in lieu of the charges set forth in 15(b) below for post-installation cancellations.

- b. Post-Installation- CUSTOMER UNDERSTANDS THAT ITS RATES ARE BASED UPON ITS COMMITMENT TO PURCHASE SERVICES FOR THE TERM OR RENEWAL TERM. AS SUCH, IF CUSTOMER TERMINATES THIS AGREEMENT OR ANY SERVICES PROVIDED HEREUNDER AFTER INSTALLATION DURING THE INITIAL OR RENEWAL TERM FOR ANY REASON OTHER THAN FOR CAUSE, OR AS A RESULT OF WINDSTREAM'S TERMINATION FOR CUSTOMER'S BREACH, CUSTOMER SHALL PAY TO WINDSTREAM AS LIQUIDATED DAMAGES, AND NOT AS A PENALTY, AN AMOUNT EQUAL TO ONE HUNDRED PERCENT (100%) OF THE MRCS APPLICABLE TO THE TERMINATED SERVICES MULTIPLIED BY THE NUMBER OF MONTHS REMAINING IN THE THEN-CURRENT TERM OR RENEWAL TERM ("LIQUIDATED DAMAGES"). CUSTOMER ACKNOWLEDGES THAT ACTUAL DAMAGES WOULD BE DIFFICULT TO DETERMINE AND SUCH LIQUIDATED DAMAGES REPRESENT A FAIR AND REASONABLE ESTIMATE OF THE DAMAGES WHICH MAY BE INCURRED BY WINDSTREAM, INCLUDING BUT NOT LIMITED TO ACTUAL EXPENSES INCURRED BY WINDSTREAM TO INITIATE OR TERMINATE THE SERVICES, THIRD PARTY COSTS, USE OF LIMITED NETWORK RESOURCES, INSTALLATION CHARGES WAIVED AND ANY DISCOUNTS OR CREDITS GRANTED. If Customer's proposal includes Monthly Minimum Charges or Fees ("MMCs" or "MMFs") and Customer terminates or disconnects less than the entirety of its Services such that its actual usage at a location falls below the MMC or MMF for that location, Customer will pay the MMC or MMF every month in lieu of the Liquidated Damages set forth above. If Customer's proposal does not include MMCs or MMFs and Customer terminates or disconnects less than the entirety of its Services such that its actual usage at a location falls below fifty percent (50%) of its original contracted rate for that location, Customer will pay fifty percent (50%) of the MRCS every month in lieu of the Liquidated Damages set forth above. Additionally, if Customer received a bundled rate for the disconnected Service(s), then Customer's charges may be adjusted by Windstream to the unbundled service rates.
16. **Limitation of Liability. FOR PURPOSES OF THIS SECTION, AND THE FOLLOWING SECTIONS DESCRIBING INDEMNITY, DISCLAIMER OF WARRANTIES, AND EMERGENCY. CRITICAL LINES SECTIONS, "WINDSTREAM" INCLUDES ITS OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AGENTS, SUBCONTRACTORS, VENDORS, AND ANY ENTITY ON WHICH BEHALF WINDSTREAM RESELLS SERVICES.**
- A. WINDSTREAM'S LIABILITY FOR SERVICES PROVIDED UNDER THIS AGREEMENT WILL NOT EXCEED THE LESSER OF: (I) CUSTOMER'S MRCS DURING THE PERIOD IN WHICH THE DAMAGE OCCURS, OR (II) CUSTOMER'S MRCS MULTIPLIED BY SIX (6). IF CUSTOMER'S SERVICE IS INTERRUPTED, WINDSTREAM'S LIABILITY WILL BE LIMITED TO A PRO-RATA CREDIT FOR THE PERIOD OF INTERRUPTION. CUSTOMER AGREES THAT THE PRICING OF SERVICES REFLECTS THE INTENT OF THE PARTIES TO LIMIT WINDSTREAM'S LIABILITY AS PROVIDED HEREIN. UNDER NO CIRCUMSTANCES WILL WINDSTREAM BE LIABLE FOR ANY ACCIDENT OR INJURY CAUSED BY SERVICES, ANY INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES (SUCH AS LOST PROFITS, LOST BUSINESS OPPORTUNITIES, BUSINESS INTERRUPTION, LOSS OF BUSINESS DATA), ANY PUNITIVE OR EXEMPLARY DAMAGES, THE COST OF ALTERNATIVE SERVICE, OR ATTORNEY'S FEES OR FOR ANY DELAY OR FAILURE TO PERFORM UNDER THIS AGREEMENT (INCLUDING BUT NOT LIMITED TO SERVICE INTERRUPTIONS) DUE TO CAUSES BEYOND WINDSTREAM'S REASONABLE CONTROL. WINDSTREAM IS NOT RESPONSIBLE OR LIABLE IF SERVICES ARE LOST, STOLEN OR MISUSED, EXCEPT WHEN DUE SOLELY TO WINDSTREAM'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. CUSTOMER IS RESPONSIBLE FOR ALL USAGE, CHARGES, AND LIABILITY INCURRED FOR SUCH LOSS, MISUSE, OR THEFT OF SERVICES WHILE IN CUSTOMER'S CONTROL, REGARDLESS OF WHETHER/WHEN WINDSTREAM NOTIFIES CUSTOMER OF INCREASED USAGE.
- B. ENTRY ONTO WINDSTREAM'S PREMISES IS AT CUSTOMER'S OWN RISK, AND WINDSTREAM ASSUMES NO LIABILITY WHATSOEVER FOR ANY HARM ARISING FROM ANY CAUSE OTHER THAN WINDSTREAM'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT RESULTING IN PERSONAL INJURY TO CUSTOMER DURING SUCH VISIT. WINDSTREAM IS NOT RESPONSIBLE IF EQUIPMENT IS LOST, STOLEN OR MISUSED, EXCEPT WHEN DUE SOLELY TO WINDSTREAM'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. CUSTOMER IS RESPONSIBLE FOR ALL LOSS INCURRED FOR MISUSE, MISHANDLING OR PROVISIONING OF CUSTOMER EQUIPMENT INCOMPATIBLE WITH THE SERVICES, CHANGES MADE TO THE SERVICES BY CUSTOMER OR A THIRD PARTY NOT AUTHORIZED TO MAKE CHANGES, OR BY WINDSTREAM AT THE DIRECTION OF CUSTOMER. IN NO EVENT SHALL WINDSTREAM BE RESPONSIBLE FOR ANY THIRD-PARTY EQUIPMENT, INCLUDING ANY DAMAGES THAT MAY ARISE AS A RESULT OF DEFECTS OR ISSUES RELATED TO THE THIRD-PARTY EQUIPMENT. TO THE EXTENT WINDSTREAM IS LIABLE FOR DAMAGE TO, OR LOSS OF, CUSTOMER EQUIPMENT, SUCH LIABILITY WILL BE LIMITED TO THE THEN-CURRENT BOOK VALUE OF THE DAMAGED EQUIPMENT. EACH PARTY IS RESPONSIBLE FOR INSURING THE EQUIPMENT AND PROPERTY IT OWNS WITH COVERAGE CONSISTENT WITH INDUSTRY STANDARDS.
17. **Indemnity. EACH PARTY WILL DEFEND, INDEMNIFY AND HOLD HARMLESS THE OTHER PARTY, AND ITS RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS, FROM AND AGAINST ALL THIRD-PARTY CLAIMS ARISING OUT OF THE INDEMNIFYING PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT WITH RESPECT TO ITS OBLIGATIONS UNDER THIS AGREEMENT. FURTHER, CUSTOMER WILL DEFEND, INDEMNIFY AND HOLD HARMLESS WINDSTREAM FROM AND AGAINST ALL CLAIMS ARISING OUT OF OR IN CONNECTION WITH (I) ANY FAILURE BY CUSTOMER OR CUSTOMER'S END USERS TO COMPLY WITH WINDSTREAM'S ACCEPTABLE USE POLICY OR APPLICABLE LAW, OR (II) CLAIMS OF OWNERSHIP OR SUPERIOR RIGHTS TO CUSTOMER EQUIPMENT OR OTHER INTELLECTUAL PROPERTY BY A THIRD PARTY.**
18. **Force Majeure.** Windstream shall be excused from, and shall have no liability, including service credits, with respect to, any delay or failure to perform hereunder caused by any event beyond its reasonable control, including but not limited to, (i) cable cuts or common carrier delays; (ii) actions, failures to act or delays by Customer or others authorized by the Customer to use the Service; (iii) failure of power, equipment, services or systems not provided by Windstream including but not limited to other providers' networks and interconnections to or from and connectivity with other Internet Service Providers' networks; (iv) Customer owned or leased equipment or facilities (i.e., Customer's PBX, Local Area Network (LAN)); (v) during any period in which Windstream or its agents are not afforded access to the premises where access lines associated with the Services are terminated or the Customer elects not to release the Services for testing and/or repair and the Customer continues to use Services; (vi) maintenance (planned or emergency) or implementation of a Customer order that requires a Services interruption (Windstream reserves the right to schedule maintenance and upgrades to the network seven (7) days a week from 12a.m. to 6a.m. in the local time zone of the area being worked on without prior notice to Customer or upon reasonable advance notice outside these time frames); (vii) when a Service Outage has not been reported to Windstream or where there is a trouble reported, but no trouble found; and (viii) labor difficulties, governmental orders, civil commotion, acts of God and other circumstances beyond Windstream's reasonable control.
19. **Disclaimer of Warranties. EXCEPT AS OTHERWISE PROVIDED HEREIN, SERVICES, EQUIPMENT, AND THE DESIGNATED CUSTOMER AREA ON WINDSTREAM'S PREMISES, IF APPLICABLE, ARE PROVIDED ON AN "AS IS" AND "AS-AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE OR NON-INFRINGEMENT OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WARRANTY ARISING BY COURSE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE. ANY WARRANTY THAT THE SERVICES WILL MEET CUSTOMER'S requirements OR ANY WARRANTY REGARDING THE QUALITY, CONTENT, ACCURACY OR VALIDITY OF THE INFORMATION OR DATA RESIDING ON OR PASSING THROUGH OR OVER THE NETWORK AND ALL SUCH WARRANTIES ARE HEREBY DISCLAIMED. WITHOUT LIMITING THE FOREGOING, BROADBAND SPEEDS, UNINTERRUPTED OR ERROR-FREE SERVICE, TRANSMISSION QUALITY, AND ACCURACY OF ANY DIRECTORY LISTINGS ARE NOT GUARANTEED. EXCEPT AS EXPRESSLY PROVIDED IN WINDSTREAM'S PRIVACY POLICY, WINDSTREAM HAS NO OBLIGATION TO PROVIDE SECURITY OR PROTECTION FOR CUSTOMER'S PRIVACY, CONFIDENTIAL INFORMATION OR DATA. NO ORAL OR WRITTEN ADVICE OR INFORMATION BY WINDSTREAM'S EMPLOYEES, AGENTS OR CONTRACTORS SHALL CREATE A WARRANTY, AND CUSTOMER MAY NOT RELY ON ANY SUCH INFORMATION.**



20. **Emergency. Critical Lines. CUSTOMER ACKNOWLEDGES THAT CERTAIN SERVICES MAY NOT, IN CERTAIN CIRCUMSTANCES, PROVIDE ACCESS TO 911 OR TRANSMIT THE MOST ACCURATE LOCATION OR EXTENSION INFORMATION IN A TIMELY MANNER, IF CUSTOMER ATTEMPTS TO ACCESS 911 IN AN EMERGENCY.** Examples include voice over Internet protocol ("VoIP"), Centrex, Allworx Reach™ Application ("Allworx Reach™"), and private branch exchange. Additionally, because T1s and VoIP can cease operating during a power outage, Customer should have a basic business or copper line for elevator, alarm, E911 and other critical functions. When using VoIP service or Allworx Reach™, Customer must timely update changes to their registered location for 911 services. By signing this Agreement, Customer acknowledges that Customer has read this disclosure. By proceeding with use of Services, Customer assumes all responsibility and risk of harm, loss, or damage in the event that 911 access fails, is not possible, or does not provide the address, correct address, extension or other information to emergency authorities.

21. **Miscellaneous. (a) Notices and Electronic Communications:** Any notice pursuant to this Agreement must be in writing and will be deemed properly given if hand delivered or mailed to Customer at the address populated on Customer's proposal or to Windstream at Windstream, Attn: Correspondence Division, 1720 Galleria Blvd., Charlotte, NC 28270, [windstream.business.support@windstream.com](mailto:windstream.business.support@windstream.com) or at such other address provided to the other party. CUSTOMER AGREES THAT WINDSTREAM MAY SEND ELECTRONIC MESSAGES TO CUSTOMER CONCERNING WINDSTREAM'S SERVICES; (b) Applicable Law; Venue: This Agreement is subject to applicable federal law and the laws of the state in which the Services are provided, without regard to that state's conflict of laws principles. If this Agreement covers multiple states, then it is subject to Nebraska law, without regard to its conflict of law principles. The parties agree to submit to the exclusive jurisdiction of federal courts in the state in which the Services are provided (or federal courts in Nebraska, if the Agreement covers multiple states) so long as diversity and the amount in controversy requirements are met, or a federal question is at issue; (c) Waiver of Jury Trial. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT; (d) Statute of Limitations: No claim may be asserted by either party against the other with respect to any event, act or omission for which a claim accrued more than two (2) years prior to such claim being asserted; the foregoing statute of limitations is not applicable to billing disputes, which are governed by the timeframe for disputes described in Section 4; (e) Assignment: Either party may assign this Agreement to an affiliate or acquirer of all or substantially all of its assets without any advance consent from the other party, but Customer shall provide Windstream with notice and complete all paperwork necessary to effectuate any change in ownership or other account changes. Otherwise, Customer may not assign its rights and obligations under this Agreement without Windstream's advance written consent. Any attempted assignment in violation of this provision is void; (f) Third Party Beneficiaries: No third party shall be deemed a beneficiary of this Agreement; (g) Publicity: Customer agrees that Windstream may publicly disclose that Windstream is providing Services to Customer and may include Customer's name in promotional materials, including press releases; (h) Waiver: Either party's failure to enforce any right or remedy available under this Agreement is not a waiver; (i) Severability: If any part of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall remain in full force and effect; (j) Survival: Sections 16 through 21 survive after this Agreement ends; (k) Handwritten Changes: Handwritten changes are not binding on either party; (l) Use of Products in U.S. Customer acknowledges that the transfer and use of products, services and technical information outside the United States are subject to U.S. export laws and regulations. Customer shall not use, distribute, transfer, or transmit the products, services or technical information (even if incorporated into other products) except in compliance with U.S. export laws and regulations. At Windstream's request, Customer shall sign written assurances and other export-related documents as may be required for Windstream to comply with U.S. export regulations; (m) Representation on Authority of Parties/Signatories: Each person signing this Agreement represents and warrants that he or she is duly authorized in accordance with its corporate governance documents and has legal capacity to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized in accordance with its corporate governance documents and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms; (n) Confidentiality: Except when this Agreement is required to be filed with a governmental authority or as may otherwise be required by local, state or federal freedom of information laws, the parties agree that this Agreement contains proprietary and confidential information and shall not be disclosed publicly to any third party except the such dealer(s) or agent(s) of Windstream that are negotiating with Customer in order to execute this Agreement.

## 22. Service Specific Provisions:

### ***For Dynamic IP Services only:***

Customer represents and warrants that it will immediately notify and post alternative dialing instructions to its end-users if any restrictions or limitations to access emergency 911 services a result from its actions including but not limited to: (a) Extending the origination of outbound calling capabilities of the Dynamic IP service outside of the Windstream Dynamic IP-serviceable area by means of private circuits, wireless service, public networks, the public Internet or other means; (b) Implementing call routing schemes within its applications, systems or networks which may prevent access to emergency services; or (c) Implementing call routing schemes within its applications, systems or networks which may route outbound emergency 911 calls to Public Service Answering Points (PSAPs) other than the PSAP servicing the calling party end-user location. Customer agrees to indemnify and hold Windstream harmless from all claims, causes of action, damages and judgments arising from restrictions or limitations to access emergency 911 services as a result of customer's actions or inactions in ensuring that all 911 dialed calls are routed to the proper PSAP using Windstream's dynamic IP service.

### ***For Managed CPE Firewall Services only:***

**Authorization to Perform Testing.** Certain laws and regulations prohibit the unauthorized penetration of computer networks and systems. Customer hereby grants Windstream the authority to access Customer's networks and computer systems solely for the purpose of providing the Managed CPE Firewall Service. Customer acknowledges that the Managed CPE Firewall Service constitutes permitted access to Customer networks and computer systems. In the event one or more of the IP Addresses Customer gives to Windstream are associated with computer systems that are owned, managed, and/or hosted by a third party service provider ("Host"), Customer agrees to: (i) notify Windstream of such Host arrangement prior to the commencement of any Managed CPE Firewall Service; (ii) obtain Host's written consent for Windstream to provide the Managed CPE Firewall Service on Host's computer systems, which includes acknowledgement of the risks and acceptance of the conditions set forth herein; (iii) provide Windstream with a copy of such consent, acknowledgement and acceptance; and (iv) facilitate any necessary communications and exchanges of information between Windstream and Host in connection with the Managed CPE Firewall Service. Customer agrees to indemnify, defend and hold Windstream and its suppliers harmless from and against any and all claims, losses, liabilities and damages, including reasonable attorney's fees that arise out of Customer's failure to comply with this section. Customer will indemnify and hold Windstream and its suppliers harmless from any and all third party claims that arise out of the testing and evaluation of the security risks, exposures, and vulnerabilities of the IP Addresses that Customer provides. Customer acknowledges that the Managed CPE Firewall Service entail certain risks including the following possible negative impacts: (i) excessive log file disk space may be consumed due to the excessive number of log messages generated by the Managed CPE Firewall Service; (ii) performance and throughput of networks and associated routers and firewalls may be temporarily degraded; (iii) degradation of bandwidth; and (iv) Customer computer systems may hang or crash resulting in temporary system unavailability and/or loss of data.

With regard to any software components of the Firewall Device, Customer agrees it will not: (i) use or make any copies of the software; (ii) reverse engineer, decompile, or disassemble the software; (iii) sell, resell, transfer, license, sublicense, or distribute the software; or (iv) create, write, or develop any derivative software or other software program that is based on such software. Customer agrees to indemnify, defend and hold Windstream and its suppliers harmless from and against any and all claims, losses, liabilities and damages, including reasonable attorney's fees, which arise out of Customer's failure to comply with the foregoing.



### APPLICATION FOR CREDIT

Representative: Newton, Liza M  
 Representative Phone: 818-257-7223

Customer Name: <u>City of Long Beach - DS3 SERVICE</u>		Tax Exempt Status: _____
Federal Tax ID or SS Number: _____		EMR: <u>\$1,330.00</u>
Notice Address: <u>333 W Ocean BLVD</u>		Years In Operation: _____
<u>FLR 12</u>		Number Of Employees: _____
City: <u>LONG BEACH</u>		
State: <u>CA</u>	Zip: <u>90802-4681</u>	Business Structure: _____
Nature Of Business: _____		

Company Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Contact Name: <u>SOEY KOL</u>	AP Contact Name: _____
Contact Phone: <u>562-570-6807</u>	AP Contact Phone: _____
Contact Fax: _____	AP Contact Fax: _____
Contact Email: _____	AP Contact Email: _____
Principal/Partner/Officer Full Name: _____	Title: _____

Bank Name: _____	Bank Contact Name: _____
Address: _____	Bank Contact Phone: _____
City: _____	Bank Contact Fax: _____
State: _____	Account Number: _____
Zip: _____	

	<u>Vendor</u>	<u>Account Number</u>	<u>Phone</u>	<u>Fax</u>	<u>Contact</u>
1.	_____	_____	_____	_____	_____
Address: _____					
2.	_____	_____	_____	_____	_____
Address: _____					
3.	_____	_____	_____	_____	_____
Address: _____					
Current Local Telco: _____			Current LD Carrier: _____		

<p style="text-align: center;"><b>Authorization</b></p> <p>I hereby represent that I am authorized to submit this application on behalf of the Customer named above, and the information provided is for the purpose of obtaining credit and is warranted to be true. I/We hereby authorize Company, and its affiliates to investigate the references listed pertaining to my/our credit and financial responsibility sold. I further represent that the customer applying for credit has the financial ability and willingness to pay for all invoices with established terms.</p>	<p style="text-align: center;"><b>Accepted By Customer</b></p> <p>Signature: _____</p> <p>Printed Name: _____</p> <p>Title: _____</p> <p>Date: _____</p>
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**Amendment to Agreement**  
(Existing Service Location)

This amendment ("Amendment") is made as of this 2nd day of June, 2014, to the Service Agreement bearing an Effective Date of 5/24/2011 (the "Agreement"), by and between City of Long Beach ("Customer") and the Windstream legal entity(ies) providing the Services to Customer, as identified on Customer's bill ("Windstream").

A. Windstream and Customer hereby agree to amend the Agreement to: *[check all that apply]*.

i. **Reconfigure services at the existing Service location, as follows:**

change channel assignments between voice/data *[describe change and associated charges]*:

change facility from one type to another (e.g., Techpath to PRI) *[describe change and associated charges]*:

change router equipment from one type to another *[describe change and associated charges]*:

ii. **Add an additional facility at the existing Service location (describe):** .

iii. **XX Add a new Service to existing location (describe):** Adding Bundle Usage Minutes As Follows:

City Hall Acct.# 4379935

Flat Rate LMS (local) 300,000

Flat Rate LD (long Distance) 75,000

ECOC Acct.# 4565489

Flat Rate LMS (local) 300,000

Flat Rate LD (long Distance) 25,000

Total Bundle Usage Minutes - 700,000

iv. **XX Modify the Minimum Monthly Fee** from \$18,122.20 to \$8,575.74 effective as of the first full billing cycle following installation/disconnection of the changed Service(s).

v. **Modify the Term** of the Agreement to end as of .

vi. **Relocate the Service location** from to . There will be a one time non-recurring charge to Customer to relocate the facility(ies) and/or service(s) in connection with this relocation in the amount of \$ .

B. Attachment A to this Amendment, Quote # which is incorporated by reference, sets forth the rates and other terms and conditions to apply to the additional facilities and/or Services ordered hereunder.

C. Except as modified by this Amendment, the terms and conditions set forth in the Agreement remain unchanged.

D. **This document may only be used for moves, adds, or changes. Under no circumstances, may Customer receive a credit of any kind through execution of this document.**

IN WITNESS WHEREOF, the undersigned have caused this Amendment to be executed by their duly authorized representative, to be effective as of the date first above written.



**PROPOSAL SUMMARY**

**Service Location Listing - Monthly Recurring Charges**

Primary Billing Account      City of Long Beach, #4379935  
Quote #                              1690440  
Company Representative      Newton, Liza M                              Rep ID              18213  
Effective Date                      06/06/2014  
MME                                      \$8,575.74

Location Name & Service Address	Access	Voice	Integrated Voice & Data	Data	Total
City of Long Beach 333 W OCEAN BLVD FLR 12, Floor 12, LONG BEACH, CA 90802-4681	\$985.00	\$913.00	\$2,016.92		\$3,914.92
City of Long Beach - ECOC 2990 REDONDO AVE, LONG BEACH, CA 90806-2416	\$985.00	\$541.95	\$2,117.87	\$15.00	\$3,659.82
<b>Total</b>	<b>\$1,970.00</b>	<b>\$1,454.95</b>	<b>\$4,134.79</b>	<b>\$15.00</b>	<b>\$7,574.74</b>



**PROPOSAL**

**Customer Name**

Customer Name	City of Long Beach	EAN (Account Number)	4379935
Install Street Address	333 W OCEAN BLVD	City, State, Zip	LONG BEACH, CA, 90802-4681
Opportunity ID	834593	Proposal / Quote ID	1690440
Contract Term	36	Service Order Type	Renewal/Upsell
Effective Date	06/06/2014		

	Included	Total Qty	Price/Unit	Total Price
<b>Access Loop</b>				
On Net T1	--	3	\$0.00	\$0.00
<b>Access Loop</b>				
Interstate Facility Charge DS3	--	1	\$985.00	\$985.00
<b>Dynamic IP Services</b>				
20 DID Station Numbers *	--	1	\$4.00	\$4.00
45 Mb High Speed Dynamic IP Port DS3 SIP Features Converged	--	1	\$1,874.92	\$1,874.92
FSLC Charge	--	15	\$9.20	\$138.00
<b>Trunks</b>				
20 DID Station Numbers *	--	65	\$5.00	\$325.00
FSLC Charge *	--	15	\$9.20	\$138.00
PRI Trunk Port	--	3	\$150.00	\$450.00
<b>Total Features</b>				<b>\$3,914.92</b>

Usage Rates	Dedicated Rate	Switched Rate	Initial Increment	Additional Increment	Call Rounding
Usage Type					
Regional Long Distance Charges (D)	0.0100'		6 sec	6 sec	2 digit †
In State Long Distance Charges (D)	0.0100'		6 sec	6 sec	2 digit †
Out of State Long Distance Charges (D)	0.0100'		6 sec	6 sec	2 digit †
Local Measured Service Zone 1 Charges	0.0085'				
Local Measured Service Zone 2 Charges	0.0085'				
Local Measured Service Zone 3 Charges	0.0085'				
Flat Rate LD InterState	0.0140'				
Flat Rate LD IntraLata	0.0140'				
Flat Rate LD IntraState	0.0140'				

Usage Bundles	Minute Quantity	In State	Toll Regional	Out of State	In State	Inbound 8xx Regional	Out of State
Usage Type							
Flat Rate LMS *****	300,000						

Other Charges (Non-Recurring)	Included	Total Qty	Price/Unit	Total Price
<b>Access Loop</b>				
On Net T1	--	3	\$0.00	\$0.00
<b>Access Loop</b>				
Special Construction Install Charge	--	1	\$0.00	\$0.00
<b>Dynamic IP Services</b>				
High Speed Dynamic IP Port Install	--	1	\$0.00	\$0.00
<b>Trunks</b>				
PRI Trunk Port	--	1	\$0.00	\$0.00
<b>Total Other Charges (Non-Recurring)</b>				<b>\$0.00</b>

Total Location Solution	Total Price
Total Location Monthly Recurring Charges	\$3,914.92
Total Location Non-Recurring Charges	\$0.00

Rates listed within the Usage Rates section are applicable for all locations, unless otherwise noted on the individual Service Location listing in the Usage Rates sub-section.

Notes: 1 - Per Minute 2 - Per Call 3 - Per Minute per Participant

\* Rates are subject to change on 30 days notice via bill message on customer's invoice.

\*\* Additional charges apply for all local, long distance and 8XX features, network access charge, router maintenance, GPE maintenance and directory listings. For the current features pricing, go to <http://www.paetec.com/about-us/notice>.

\*\*\* Amounts listed are reasonable approximations based on initial proposal. Actual amounts shall depend on final lease amount set forth in the Customer's Lease Agreement.

† Each call is billed to two decimal places and rounds the billed amount for each call up to the nearest whole cent.

Customer Name			
Customer Name	City of Long Beach - ECOC	EAN (Account Number)	4565489
Install Street Address	2990 REDONDO AVE	City, State, Zip	LONG BEACH, CA, 90806-2416
Opportunity ID	834593	Proposal / Quote ID	1690440
Contract Term	36	Service Order Type	Renewal/Upsell
Effective Date	06/06/2014		

	Included	Total Qty	Price/Unit	Total Price
<b>Access Loop</b>				
Interstate Facility Charge DS3	--	1	\$985.00	\$985.00
<b>Dynamic IP Services</b>				
20 DID Station Numbers *	--	9	\$5.00	\$45.00
45 Mb High Speed Dynamic IP Port DS3 SIP Features Converged	--	1	\$1,874.92	\$1,874.92
FSLC Charge	--	15	\$9.20	\$138.00
IP Direct Trunk Overflow Charge *	--	1	\$34.95	\$34.95
Managed Dial Plan Charge *	--	1	\$25.00	\$25.00
Router Ping Monitoring Charge	--	1	\$15.00	\$15.00
<b>Trunks</b>				
20 DID Station Numbers *	--	20	\$5.00	\$100.00
Direct Trunk Overflow Charge *	--	1	\$34.95	\$34.95
Expanded Rate Centers Charge *	--	1	\$15.00	\$15.00
FSLC Charge *	--	10	\$9.20	\$92.00
PRI Trunk Port	--	2	\$150.00	\$300.00
<b>Total Features</b>				<b>\$3,659.82</b>

Usage Bundles	Minute	In State	Toll	Out of State	In State	Inbound 8xx	Out of State
Usage Type	Quantity		Regional			Regional	
Flat Rate LMS *****	300,000						

Other Charges (Non-Recurring)	Included	Total Qty	Price/Unit	Total Price
<b>Access Loop</b>				
Special Construction Install Charge	--	1	\$0.00	\$0.00
<b>Dynamic IP Services</b>				
High Speed Dynamic IP Port Install	--	1	\$0.00	\$0.00
Managed Dial Plan Install Charge	--	1	\$0.00	\$0.00
Router Ping Monitoring Install Charge	--	1	\$0.00	\$0.00
<b>Trunks</b>				
Direct Trunk Overflow (DTO)	--	1	\$0.00	\$0.00
Expanded Rate Centers (DID) Install Charge	--	1	\$0.00	\$0.00
PRI Trunk Port	--	1	\$0.00	\$0.00
<b>Total Other Charges (Non-Recurring)</b>				<b>\$0.00</b>

Total Location Solution	Total Price
Total Location Monthly Recurring Charges	\$3,659.82
Total Location Non-Recurring Charges	\$0.00

Total Solution	Total Price
Total Monthly Recurring Charges	\$7,574.74
Total Non-Recurring Charges	\$0.00
Minimum Monthly Fee	\$8,575.74

**Service Information**

This Proposal is subject to and controlled by the Windstream Service Terms and Conditions, which are incorporated herein by reference and attached hereto. Your signature constitutes your acceptance of the Proposal and your agreement to Windstream's Service Terms and Conditions.

CUSTOMER	WINDSTREAM
Signature: _____	Signature: _____
Printed Name: _____	Printed Name: _____
Title: _____	Title: _____
Date: _____	Date: _____



## WINDSTREAM SERVICE TERMS AND CONDITIONS

These terms and conditions apply to the provision of all telecommunications and related services ("Services") by Windstream<sup>1</sup> ("Windstream") to Customer under the proposal to which these terms and conditions are a part. These terms and conditions and Customer's proposal/sales order, and any service specific schedules form the agreement ("Agreement"). The Services will be offered in each area to the Customer by the Windstream affiliated entity authorized to provide the Services in the applicable jurisdiction.

- 1. Term and Renewal.** This Agreement is effective on the date identified on the proposal ("Effective Date") and will continue for the term set forth in the proposal from the date that Services are installed until either terminated pursuant to the provisions below or replaced with a new agreement (the "Term"). Upon expiration of the Term, **this Agreement will automatically renew for successive one-year terms** (each, a "Renewal Term") until terminated or cancelled pursuant to its terms. In the event a Customer provides written notice of its intent not to renew but does not terminate Services hereunder, Windstream shall have the option of continuing to provide such Services on a month-to-month basis, priced at Windstream's then current monthly rates.
- 2. Charges for Services; Billing and Payment.** Customer is responsible for paying all charges that apply to the Services ordered on a proposal or used on a per-use basis by Customer, including items such as features, installation, labor, repair, long distance, and directory or operator assistance as specified on the proposal or set forth in Windstream's Price Lists or Tariffs. Customer is responsible for taxes, surcharges, fees, and assessments that apply to the sale and use of Services, including how those may change in the future and regardless of whether such charges are identified in the Agreement. Windstream will bill Customer monthly for the Service, and all bills are due and payable upon receipt. Payment will be considered late if not paid within thirty (30) days from the date of invoice. All amounts payable by Customer shall be made without setoff or counterclaim and without deduction. Billing at a location will begin upon the earlier of (i) the installation date (which may be the date administrative access to certain software-based Services is granted to Customer); (ii) thirty (30) days after delivery of the applicable facility and/or equipment to the Customer premises (if the delay in connection of the facility and/or equipment is due to Customer or its agent); (iii) the date the Company notifies a Customer that Service is available for use by Customer; or (iv) the date that Service would have been available for use by Customer if Customer had fulfilled its performance obligations required to provision the Service; however, Windstream may choose to bill in full monthly increments with no proration for partial service periods when Service either starts or ends in the middle of a billing cycle. If installation of off-net Services is delayed due to action or inaction by Customer, then Customer shall be responsible for all associated third-party provider charges. In certain service areas, paper bills are available only upon request and for a monthly charge and billing for usage will round up to the next cent. If Customer authorizes payment by credit or debit card, then Windstream will not obtain further consent or provide additional notice before invoicing the credit or debit card for all amounts due and owing. **WINDSTREAM RESERVES THE RIGHT TO INCREASE OR DECREASE MONTHLY RECURRING CHARGES ("MRCs") ON AT LEAST THIRTY 30 DAYS' NOTICE AND OTHER RATES AT ANY TIME.**
- 3. Service Outage Credits.** For Windstream's business-grade local and long distance voice telecommunications services, T1 and higher facility network Internet access and private networking services, Customer will receive a credit of 1/30th of the MRC for that month for each day that Customer has a Service Outage, defined below. Only the Service affected by the Service Outage will be eligible for a credit. Credit is based upon the length of time Customer is without Service. Credits in any single month cannot exceed the MRCs for Service that was affected by a Service Outage in that month. For purposes of this Agreement, a "Service Outage" is defined as the complete inability to: (i) make or receive calls; (ii) access the Internet for the purpose of sending or receiving Internet traffic; or (iii) send or receive data across a Windstream supported private network. In the event Customer rents equipment from Windstream, such equipment shall not be considered "Services" for purposes of service credits under this Agreement.
- 4. Disputes.** To dispute a bill, Customer must do so in good faith and deliver to Windstream in writing the specific basis for such dispute within sixty (60) days after the date on the bill. If Customer does not follow this dispute process, the dispute shall be deemed waived.
- 5. Partial Payments; Late Payments.** Windstream may accept any payments Customer marks as being "payment in full" or as being settlement of any dispute without waiving any rights Windstream has to collect the full payments from Customer. Customer is responsible for paying all costs and fees Windstream incurs as a result of collecting Customer's unpaid charges. If Windstream does not receive full payment when due or does not receive payment in immediately available funds, Windstream will add a late payment fee to the amounts owed and will calculate such fee as the total owed times interest at the maximum rate allowable by law.
- 6. Credit and Deposits.** Customer authorizes Windstream to ask credit-reporting agencies for Customer's credit information. Windstream may require Customer to submit an initial security deposit and/or advance payment and an additional deposit and/or advance payment if Customer increases Services, Customer is late on payment, or Customer's credit rating changes. The deposit will be refunded if satisfactory credit has been established or upon termination of this Agreement for any reason, except that Windstream at its discretion may apply the deposit to any amount due and unpaid by Customer.
- 7. Services Location; Moves.** Customer is responsible for providing an environment that is suitable for the Services, including equipment that is compatible with Windstream's network. Customer shall provide Windstream with the correct address to obtain Services, because Windstream relies on such information to determine which taxes, fees, surcharges and assessments apply to the Services. If Customer does not provide a valid address, Customer will be responsible for any resulting taxes, fees, surcharges, assessments and penalties related thereto. Customer will notify Windstream if Customer's address changes, in which case Windstream may either (a) terminate the affected Services, or (b) allow Customer to provide sixty (60) days' advance notice to Windstream to move Services to a new location and pay any applicable installation charges. Customer will enter into a new agreement for such new location, or Windstream will apply the liquidated damages set forth in Section 15 for the terminated location. Charges, including reasonable administrative costs and fees incurred by Windstream may apply as a result of Customer's move, in addition to a change in MRCs.
- 8. Windstream-Provided and Owned Equipment.** Any equipment installed by Windstream on Customer's premises that is not the subject of a sale to Customer (such as the CSU/DSU, interface cards, Channel Bank and routers, if applicable) shall remain at all times the property of Windstream. Equipment shall remain in good condition, less normal wear and tear. Windstream shall be responsible for the maintenance and repair of the equipment unless it is damaged as a result of the action or inaction of Customer or its employees or agents, in which case Customer shall reimburse Windstream for the cost of any necessary repairs. Customer shall provide Windstream reasonable access to the equipment for purposes of repair, maintenance, removal or otherwise. If Windstream does not have access to Customer's premises within thirty (30) days after Customer terminates this Agreement, or if Windstream requests Customer return the equipment and Customer does not return the equipment to Windstream within thirty (30) days of termination, Customer shall reimburse Windstream for the full purchase price of the equipment as well as any attorney's fees and costs. Customer shall pack and ship the equipment in such a way so as to limit and/or avoid damage to the equipment. In the event the equipment is damaged in shipping, Customer shall be responsible for the cost to replace the equipment.

<sup>1</sup>Windstream is defined for purposes of this Agreement to mean Windstream Communications, Inc. or such authorized Windstream affiliated entity providing Services to Customer as identified on Customer's bill.



9. **Disconnection of Current Provider; Special Construction; Third Party Charges.** Customer is solely responsible for disconnecting Services with its current service provider. Windstream is not responsible for any charges assessed against Customer by such provider. Customer shall pay all charges if Windstream or a third party provider is required to extend the demarcation point or undertake special construction for Customer. Unless Windstream specifically agrees in writing to undertake equipment installation and maintenance work, Customer is responsible for all charges assessed by its phone system vendor and other third parties in connection with the installation of the Services and Windstream shall have no responsibility for maintenance or repair of same.
10. **Third Party Software.** As part of the Services, Customer may be allowed to use certain software and related documentation developed and owned by Windstream's third-party software licensors (collectively, the "Software"). This Software is neither sold nor distributed to Customer and Customer may use it solely as part of the Services and for no other purpose. Customer may not and agrees not to: (i) transfer such Software outside the Services or to any other person or entity; (ii) make copies of the Software, either through a virtual snapshot of the server containing the Software or otherwise; or (iii) transfer the Software outside of Windstream's infrastructure and/or premises. Further, Customer agrees to provide Windstream with evidence that its use of the Software is in compliance with the Agreement and/or third-party software licensor's terms from time to time during the Term as requested by Windstream. If Customer fails to provide such evidence when requested, or is otherwise not in compliance with the Agreement and/or third-party software licensor's terms, Windstream may, at its sole option suspend or terminate the Services that include the Software. For the avoidance of doubt, Windstream's Software licensors are not responsible for providing any support in connection with the Services or the Software.
11. **Google. IF CUSTOMER SUBSCRIBES TO GOOGLE SERVICES THROUGH WINDSTREAM, CUSTOMER WILL BE REQUIRED TO COMPLETE A CLICK-THROUGH AGREEMENT FOR THE GOOGLE LICENSE POSTED AT [http://www.windstream.com/legal/Google\\_Apps\\_Premier\\_Edition\\_License.pdf](http://www.windstream.com/legal/Google_Apps_Premier_Edition_License.pdf) PRIOR TO USING THE RELEVANT SERVICES.** Windstream may cancel Google Services at any time on thirty (30) days' notice and, at Windstream's option, may either terminate such Google Services altogether or move Customer to a similar platform. In the event that Windstream or Customer terminates the Google Services or downgrades or cancels Google Services, Customer is solely responsible for downloading all of its information to its computer within thirty (30) days.
12. **Government Funding.** Customer must notify Windstream of all restrictions, requirements and reporting obligations to which Windstream could become subject pursuant to any government program before Windstream provisions Services to Customer. Customer will not use such funds, including stimulus funds, grants or loans, in whole or in part, to support its performance under this Agreement without Windstream's prior written consent regarding any specifically applicable terms. If Customer fails to provide such prior written notice to Windstream of government funding or if Windstream does not consent to the use of such funding, then Windstream has the right, in its sole discretion, to reject any order or terminate this Agreement and/or any applicable Services, without liability or obligation to Windstream. If Customer requests government funds for payment of Services under this Agreement and such funding request is denied, Customer shall remain responsible for one-hundred percent (100%) of the cost of Services.
13. **Documents Incorporated by Reference; Entire Agreement; Counterparts; Execution. THIS AGREEMENT IS SUBJECT TO AND INCORPORATES THE FOLLOWING BY REFERENCE, AS THEY MAY CHANGE FROM TIME TO TIME: (I) THE TERMS AND CONDITIONS OF THE TARIFFS FILED WITH STATE PUBLIC SERVICE COMMISSIONS; (II) THE FCC OR STATE WEB-POSTED PRICE LISTS OR TERMS AND CONDITIONS (EITHER "PRICE LISTS") POSTED AT <http://windstream.com/documents/detariffedservices.pdf>; (III) FOR INTERNET, THE "ACCEPTABLE USE POLICY" POSTED AT <http://www2.windstream.net/customersupport/usersguide/accept/accept.html> AND THE "PRIVACY POLICY" POSTED AT <http://www.windstream.com/privacy.aspx>; (IV) IF CUSTOMER IS OBTAINING CERTAIN VALUE-ADDED SERVICES (I.E., ONLINE BACK UP SERVICES, TECH HELP, ETC), CUSTOMER WILL BE REQUIRED TO CLICK-THROUGH AGREEMENTS RELATED TO THOSE SERVICES (CLICK-THROUGHS) PRIOR TO ACCESSING SUCH SERVICE, WHICH SHALL BE DEEMED PART OF THIS AGREEMENT; AND (V) THIRD PARTY SOFTWARE TERMS, IF APPLICABLE.** This Agreement, the documents incorporated by reference and any addendums entered between the parties constitute the parties' entire Agreement. This Agreement may be amended only in a writing signed by authorized representatives of each party. This Agreement and its incorporated documents supersede any and all statements or promises made to Customer by any Windstream employee or agent. In the event of any conflict between the provisions of this Agreement and any of the documents incorporated by reference, the provisions of the Google License shall control for Google Services, followed by the Tariffs and Price Lists or Value-Added Services click-through agreements for applicable Services, this Agreement and then the Acceptable Use and Privacy policies. This Agreement may be signed in counterparts, and facsimile or electronic scanned copies may be treated as original signatures. Windstream also may execute this Agreement via a verifiable electronic signature.
14. **Termination.** Either party may terminate this Agreement by providing at least thirty (30) days' notice prior to the end of the initial Term or a Renewal Term, or if the other party is in breach of any material provision of this Agreement and such other party fails to cure within thirty (30) days after written notice. Notwithstanding, unless prohibited by law, in the event of nonpayment, the breaching party shall have ten (10) days to cure after written notice. Customer's right to terminate for cause is limited to termination of the affected Services at the affected location only. In the event Customer rents equipment from Windstream and Customer terminates network Services pursuant to this section, Customer shall remain obligated to fulfill the remainder of the applicable equipment schedule term. Windstream may limit, interrupt or terminate Services immediately if: (a) after any required notice, Customer has not paid for Services; or (b) Customer uses the Services in an adverse manner that affects Windstream's network or other customers; or (c) Customer or others have used the Services fraudulently or unlawfully while on Customer's premises or while the Services are under Customer's control; or (d) Customer or others use the Services in an excessive, abusive, or unreasonable manner that is not customary for the type of Services; or (e) Customer resells any Services or uses the Services to aggregate other persons' traffic; or (f) Customer uses the Services for its own end users and/or customers as a telecommunications provider or any other kind of provider. In addition to the termination rights of Windstream set forth above, if Customer or others use the Services in an excessive, abusive, or unreasonable manner that is not customary for the type of Services (including, but not limited to, circumstances in which Windstream is receiving traffic from Customer that originates from a location other than the local calling area associated with the customer's service location, when ten percent (10%) or more of Customer's calls are six (6) seconds or less, and/or when more than forty percent (40%) of call attempts are uncompleted per trunk group and DS0/DS0 equivalent), Windstream may: (v) charge long-distance charges for such traffic and any additional charges necessary to recoup its administrative costs and any charges from other carriers; (w) charge an additional price per minute in Windstream's discretion for each call that violates this provision; (x) restrict or cancel use or convert customer to another plan; (y) require customer to pay for the excessive use immediately and make a deposit; and/or (z) void any applicable price guarantee. Windstream may restore service if customer corrects the violation and pays all outstanding amounts owed, including restoration charges. For Ethernet Internet Access services and MPLS - Virtual Private Network/Virtual LAN Services, Windstream shall verify the availability of facilities, and in the event that Windstream determines in its sole discretion that facilities are not economically or technically feasible, Windstream has the right to terminate this Agreement without liability.
15. **Effect of Termination.**
- a. **Pre-Installation-** If Customer terminates this Agreement after the Effective Date but prior to the installation of Service(s), Customer will pay Windstream a Pre-Installation Cancellation Charge ("Cancellation Charge") equal to three (3) months of MRCs except that if Windstream's costs to other providers are greater than this amount, Customer shall also reimburse Windstream for such costs. Customer agrees that the Cancellation Charge is a reasonable measure of the administrative costs and other fees incurred by Windstream to prepare for installation. The Cancellation Charge set forth in this Section 15(a) is in lieu of the charges set forth in 15(b) below for post-installation cancellations.

b. ~~Post-Installation-~~ CUSTOMER UNDERSTANDS THAT ITS RATES ARE BASED UPON ITS COMMITMENT TO PURCHASE SERVICES FOR THE TERM OR RENEWAL TERM. AS SUCH, IF CUSTOMER TERMINATES THIS AGREEMENT OR ANY SERVICES PROVIDED HEREUNDER AFTER INSTALLATION DURING THE INITIAL OR RENEWAL TERM FOR ANY REASON OTHER THAN FOR CAUSE, OR AS A RESULT OF WINDSTREAM'S TERMINATION FOR CUSTOMER'S BREACH, CUSTOMER SHALL PAY TO WINDSTREAM AS LIQUIDATED DAMAGES, AND NOT AS A PENALTY, AN AMOUNT EQUAL TO ONE HUNDRED PERCENT (100%) OF THE MRCS APPLICABLE TO THE TERMINATED SERVICES MULTIPLIED BY THE NUMBER OF MONTHS REMAINING IN THE THEN-CURRENT TERM OR RENEWAL TERM ("LIQUIDATED DAMAGES"). CUSTOMER ACKNOWLEDGES THAT ACTUAL DAMAGES WOULD BE DIFFICULT TO DETERMINE AND SUCH LIQUIDATED DAMAGES REPRESENT A FAIR AND REASONABLE ESTIMATE OF THE DAMAGES WHICH MAY BE INCURRED BY WINDSTREAM, INCLUDING BUT NOT LIMITED TO ACTUAL EXPENSES INCURRED BY WINDSTREAM TO INITIATE OR TERMINATE THE SERVICES, THIRD PARTY COSTS, USE OF LIMITED NETWORK RESOURCES, INSTALLATION CHARGES WAIVED AND ANY DISCOUNTS OR CREDITS GRANTED. If Customer's proposal includes Monthly Minimum Charges or Fees ("MMCs" or "MMFs") and Customer terminates or disconnects less than the entirety of its Services such that its actual usage at a location falls below the MMG or MMF for that location, Customer will pay the MMG or MMF every month in lieu of the Liquidated Damages set forth above. ~~If Customer's proposal does not include MMCs or MMFs and Customer terminates or disconnects less than the entirety of its Services such that its actual usage at a location falls below fifty percent (50%) of its original contracted rate for that location, Customer will pay fifty percent (50%) of the MRCS every month in lieu of the Liquidated Damages set forth above. Additionally, if Customer received a bundled rate for the disconnected Service(s), then Customer's charges may be adjusted by Windstream to the unbundled service rates.~~

**16. Limitation of Liability. FOR PURPOSES OF THIS SECTION, AND THE FOLLOWING SECTIONS DESCRIBING INDEMNITY, DISCLAIMER OF WARRANTIES, AND EMERGENCY, CRITICAL LINES SECTIONS, "WINDSTREAM" INCLUDES ITS OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AGENTS, SUBCONTRACTORS, VENDORS, AND ANY ENTITY ON WHICH BEHALF WINDSTREAM RESELLS SERVICES.**

A. WINDSTREAM'S LIABILITY FOR SERVICES PROVIDED UNDER THIS AGREEMENT WILL NOT EXCEED THE LESSER OF: (I) CUSTOMER'S MRCS DURING THE PERIOD IN WHICH THE DAMAGE OCCURS, OR (II) CUSTOMER'S MRCS MULTIPLIED BY SIX (6). IF CUSTOMER'S SERVICE IS INTERRUPTED, WINDSTREAM'S LIABILITY WILL BE LIMITED TO A PRO-RATA CREDIT FOR THE PERIOD OF INTERRUPTION. CUSTOMER AGREES THAT THE PRICING OF SERVICES REFLECTS THE INTENT OF THE PARTIES TO LIMIT WINDSTREAM'S LIABILITY AS PROVIDED HEREIN. UNDER NO CIRCUMSTANCES WILL WINDSTREAM BE LIABLE FOR ANY ACCIDENT OR INJURY CAUSED BY SERVICES, ANY INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES (SUCH AS LOST PROFITS, LOST BUSINESS OPPORTUNITIES, BUSINESS INTERRUPTION, LOSS OF BUSINESS DATA), ANY PUNITIVE OR EXEMPLARY DAMAGES, THE COST OF ALTERNATIVE SERVICE, OR ATTORNEY'S FEES OR FOR ANY DELAY OR FAILURE TO PERFORM UNDER THIS AGREEMENT (INCLUDING BUT NOT LIMITED TO SERVICE INTERRUPTIONS) DUE TO CAUSES BEYOND WINDSTREAM'S REASONABLE CONTROL. WINDSTREAM IS NOT RESPONSIBLE OR LIABLE IF SERVICES ARE LOST, STOLEN OR MISUSED, EXCEPT WHEN DUE SOLELY TO WINDSTREAM'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. CUSTOMER IS RESPONSIBLE FOR ALL USAGE, CHARGES, AND LIABILITY INCURRED FOR SUCH LOSS, MISUSE, OR THEFT OF SERVICES WHILE IN CUSTOMER'S CONTROL, REGARDLESS OF WHETHER/WHEN WINDSTREAM NOTIFIES CUSTOMER OF INCREASED USAGE.

B. ENTRY ONTO WINDSTREAM'S PREMISES IS AT CUSTOMER'S OWN RISK, AND WINDSTREAM ASSUMES NO LIABILITY WHATSOEVER FOR ANY HARM ARISING FROM ANY CAUSE OTHER THAN WINDSTREAM'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT RESULTING IN PERSONAL INJURY TO CUSTOMER DURING SUCH VISIT. WINDSTREAM IS NOT RESPONSIBLE IF EQUIPMENT IS LOST, STOLEN OR MISUSED, EXCEPT WHEN DUE SOLELY TO WINDSTREAM'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. CUSTOMER IS RESPONSIBLE FOR ALL LOSS INCURRED FOR MISUSE, MISHANDLING OR PROVISIONING OF CUSTOMER EQUIPMENT INCOMPATIBLE WITH THE SERVICES, CHANGES MADE TO THE SERVICES BY CUSTOMER OR A THIRD PARTY NOT AUTHORIZED TO MAKE CHANGES, OR BY WINDSTREAM AT THE DIRECTION OF CUSTOMER. IN NO EVENT SHALL WINDSTREAM BE RESPONSIBLE FOR ANY THIRD-PARTY EQUIPMENT, INCLUDING ANY DAMAGES THAT MAY ARISE AS A RESULT OF DEFECTS OR ISSUES RELATED TO THE THIRD-PARTY EQUIPMENT. TO THE EXTENT WINDSTREAM IS LIABLE FOR DAMAGE TO, OR LOSS OF, CUSTOMER EQUIPMENT, SUCH LIABILITY WILL BE LIMITED TO THE THEN-CURRENT BOOK VALUE OF THE DAMAGED EQUIPMENT. EACH PARTY IS RESPONSIBLE FOR INSURING THE EQUIPMENT AND PROPERTY IT OWNS WITH COVERAGE CONSISTENT WITH INDUSTRY STANDARDS.

**17. Indemnity. EACH PARTY WILL DEFEND, INDEMNIFY AND HOLD HARMLESS THE OTHER PARTY, AND ITS RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS, FROM AND AGAINST ALL THIRD-PARTY CLAIMS ARISING OUT OF THE INDEMNIFYING PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT WITH RESPECT TO ITS OBLIGATIONS UNDER THIS AGREEMENT. FURTHER, CUSTOMER WILL DEFEND, INDEMNIFY AND HOLD HARMLESS WINDSTREAM FROM AND AGAINST ALL CLAIMS ARISING OUT OF OR IN CONNECTION WITH (I) ANY FAILURE BY CUSTOMER OR CUSTOMER'S END USERS TO COMPLY WITH WINDSTREAM'S ACCEPTABLE USE POLICY OR APPLICABLE LAW, OR (II) CLAIMS OF OWNERSHIP OR SUPERIOR RIGHTS TO CUSTOMER EQUIPMENT OR OTHER INTELLECTUAL PROPERTY BY A THIRD PARTY.**

**18. Force Majeure. Windstream shall be excused from, and shall have no liability, including service credits, with respect to, any delay or failure to perform hereunder caused by any event beyond its reasonable control, including but not limited to, (i) cable cuts or common carrier delays; (ii) actions, failures to act or delays by Customer or others authorized by the Customer to use the Service; (iii) failure of power, equipment, services or systems not provided by Windstream including but not limited to other providers' networks and interconnections to or from and connectivity with other Internet Service Providers' networks; (iv) Customer owned or leased equipment or facilities (i.e., Customer's PBX, Local Area Network (LAN); (v) during any period in which Windstream or its agents are not afforded access to the premises where access lines associated with the Services are terminated or the Customer elects not to release the Services for testing and/or repair and the Customer continues to use Services; (vi) maintenance (planned or emergency) or implementation of a Customer order that requires a Services interruption (Windstream reserves the right to schedule maintenance and upgrades to the network seven (7) days a week from 12a.m. to 6a.m. in the local time zone of the area being worked on without prior notice to Customer or upon reasonable advance notice outside these time frames); (vii) when a Service Outage has not been reported to Windstream or where there is a trouble reported, but no trouble found; and (viii) labor difficulties, governmental orders, civil commotion, acts of God and other circumstances beyond Windstream's reasonable control.**

**19. Disclaimer of Warranties. EXCEPT AS OTHERWISE PROVIDED HEREIN, SERVICES, EQUIPMENT, AND THE DESIGNATED CUSTOMER AREA ON WINDSTREAM'S PREMISES, IF APPLICABLE, ARE PROVIDED ON AN "AS IS" AND "AS-AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE OR NON-INFRINGEMENT OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WARRANTY ARISING BY COURSE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE, ANY WARRANTY THAT THE SERVICES WILL MEET CUSTOMER'S requirements OR ANY WARRANTY REGARDING THE QUALITY, CONTENT, ACCURACY OR VALIDITY OF THE INFORMATION OR DATA RESIDING ON OR PASSING THROUGH OR OVER THE NETWORK AND ALL SUCH WARRANTIES ARE HEREBY DISCLAIMED. WITHOUT LIMITING THE FOREGOING, BROADBAND SPEEDS, UNINTERRUPTED OR ERROR-FREE SERVICE, TRANSMISSION QUALITY, AND ACCURACY OF ANY DIRECTORY LISTINGS ARE NOT GUARANTEED. EXCEPT AS EXPRESSLY PROVIDED IN WINDSTREAM'S PRIVACY POLICY, WINDSTREAM HAS NO OBLIGATION TO PROVIDE SECURITY OR PROTECTION FOR CUSTOMER'S PRIVACY, CONFIDENTIAL INFORMATION OR DATA. NO ORAL OR WRITTEN ADVICE OR INFORMATION BY WINDSTREAM'S EMPLOYEES, AGENTS OR CONTRACTORS SHALL CREATE A WARRANTY, AND CUSTOMER MAY NOT RELY ON ANY SUCH INFORMATION.**

20. **Emergency, Critical Lines. CUSTOMER ACKNOWLEDGES THAT CERTAIN SERVICES MAY NOT, IN CERTAIN CIRCUMSTANCES, PROVIDE ACCESS TO 911 OR TRANSMIT THE MOST ACCURATE LOCATION OR EXTENSION INFORMATION IN A TIMELY MANNER, IF CUSTOMER ATTEMPTS TO ACCESS 911 IN AN EMERGENCY.** Examples include voice over Internet protocol ("VoIP"), Centrex, Allworx Reach™ Application ("Allworx Reach™"), and private branch exchange. Additionally, because T1s and VoIP can cease operating during a power outage, Customer should have a basic business or copper line for elevator, alarm, E911 and other critical functions. When using VoIP service or Allworx Reach™, Customer must timely update changes to their registered location for 911 services. By signing this Agreement, Customer acknowledges that Customer has read this disclosure. By proceeding with use of Services, Customer assumes all responsibility and risk of harm, loss, or damage in the event that 911 access fails, is not possible, or does not provide the address, correct address, extension or other information to emergency authorities.

21. **Miscellaneous. (a) Notices and Electronic Communications:** Any notice pursuant to this Agreement must be in writing and will be deemed properly given if hand delivered or mailed to Customer at the address populated on Customer's proposal or to Windstream at Windstream, Attn: Correspondence Division, 1720 Galleria Blvd., Charlotte, NC 28270, [windstream.business.support@windstream.com](mailto:windstream.business.support@windstream.com) or at such other address provided to the other party. CUSTOMER AGREES THAT WINDSTREAM MAY SEND ELECTRONIC MESSAGES TO CUSTOMER CONCERNING WINDSTREAM'S SERVICES; (b) **Applicable Law; Venue:** This Agreement is subject to applicable federal law and the laws of the state in which the Services are provided, without regard to that state's conflict of laws principles. If this Agreement covers multiple states, then it is subject to Nebraska law, without regard to its conflict of law principles. The parties agree to submit to the exclusive jurisdiction of federal courts in the state in which the Services are provided (or federal courts in Nebraska, if the Agreement covers multiple states) so long as diversity and the amount in controversy requirements are met, or a federal question is at issue; (c) **Waiver of Jury Trial.** EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT; (d) **Statute of Limitations:** No claim may be asserted by either party against the other with respect to any event, act or omission for which a claim accrued more than two (2) years prior to such claim being asserted; the foregoing statute of limitations is not applicable to billing disputes, which are governed by the timeframe for disputes described in Section 4; (e) **Assignment:** Either party may assign this Agreement to an affiliate or acquirer of all or substantially all of its assets without any advance consent from the other party, but Customer shall provide Windstream with notice and complete all paperwork necessary to effectuate any change in ownership or other account changes. Otherwise, Customer may not assign its rights and obligations under this Agreement without Windstream's advance written consent. Any attempted assignment in violation of this provision is void; (f) **Third Party Beneficiaries:** No third party shall be deemed a beneficiary of this Agreement; (g) **Publicity:** Customer agrees that Windstream may publicly disclose that Windstream is providing Services to Customer and may include Customer's name in promotional materials, including press releases; (h) **Waiver:** Either party's failure to enforce any right or remedy available under this Agreement is not a waiver; (i) **Severability:** If any part of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall remain in full force and effect; (j) **Survival:** Sections 16 through 21 survive after this Agreement ends; (k) **Handwritten Changes:** Handwritten changes are not binding on either party; (l) **Use of Products in U.S.** Customer acknowledges that the transfer and use of products, services and technical information outside the United States are subject to U.S. export laws and regulations. Customer shall not use, distribute, transfer, or transmit the products, services or technical information (even if incorporated into other products) except in compliance with U.S. export laws and regulations. At Windstream's request, Customer shall sign written assurances and other export-related documents as may be required for Windstream to comply with U.S. export regulations; (m) **Representation on Authority of Parties/Signatories:** Each person signing this Agreement represents and warrants that he or she is duly authorized in accordance with its corporate governance documents and has legal capacity to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized in accordance with its corporate governance documents and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms; (n) **Confidentiality:** Except when this Agreement is required to be filed with a governmental authority or as may otherwise be required by local, state or federal freedom of information laws, the parties agree that this Agreement contains proprietary and confidential information and shall not be disclosed publicly to any third party except the such dealer(s) or agent(s) of Windstream that are negotiating with Customer in order to execute this Agreement.

22. **Service Specific Provisions:**

**For Dynamic IP Services only:**

Customer represents and warrants that it will immediately notify and post alternative dialing instructions to its end-users if any restrictions or limitations to access emergency 911 services a result from its actions including but not limited to: (a) Extending the origination of outbound calling capabilities of the Dynamic IP service outside of the Windstream Dynamic IP-serviceable area by means of private circuits, wireless service, public networks, the public Internet or other means; (b) Implementing call routing schemes within its applications, systems or networks which may prevent access to emergency services; or (c) Implementing call routing schemes within its applications, systems or networks which may route outbound emergency 911 calls to Public Service Answering Points (PSAPs) other than the PSAP servicing the calling party end-user location. Customer agrees to indemnify and hold Windstream harmless from all claims, causes of action, damages and judgments arising from restrictions or limitations to access emergency 911 services as a result of customer's actions or inactions in ensuring that all 911 dialed calls are routed to the proper PSAP using Windstream's dynamic IP service.

**For Managed CPE Firewall Services only:**

**Authorization to Perform Testing.** Certain laws and regulations prohibit the unauthorized penetration of computer networks and systems. Customer hereby grants Windstream the authority to access Customer's networks and computer systems solely for the purpose of providing the Managed CPE Firewall Service. Customer acknowledges that the Managed CPE Firewall Service constitutes permitted access to Customer networks and computer systems. In the event one or more of the IP Addresses Customer gives to Windstream are associated with computer systems that are owned, managed, and/or hosted by a third party service provider ("Host"), Customer agrees to: (i) notify Windstream of such Host arrangement prior to the commencement of any Managed CPE Firewall Service; (ii) obtain Host's written consent for Windstream to provide the Managed CPE Firewall Service on Host's computer systems, which includes acknowledgement of the risks and acceptance of the conditions set forth herein; (iii) provide Windstream with a copy of such consent, acknowledgement and acceptance; and (iv) facilitate any necessary communications and exchanges of information between Windstream and Host in connection with the Managed CPE Firewall Service. Customer agrees to indemnify, defend and hold Windstream and its suppliers harmless from and against any and all claims, losses, liabilities and damages, including reasonable attorney's fees that arise out of Customer's failure to comply with this section. Customer will indemnify and hold Windstream and its suppliers harmless from any and all third party claims that arise out of the testing and evaluation of the security risks, exposures, and vulnerabilities of the IP Addresses that Customer provides. Customer acknowledges that the Managed CPE Firewall Service entail certain risks including the following possible negative impacts: (i) excessive log file disk space may be consumed due to the excessive number of log messages generated by the Managed CPE Firewall Service; (ii) performance and throughput of networks and associated routers and firewalls may be temporarily degraded; (iii) degradation of bandwidth; and (iv) Customer computer systems may hang or crash resulting in temporary system unavailability and/or loss of data.

With regard to any software components of the Firewall Device, Customer agrees it will not: (i) use or make any copies of the software; (ii) reverse engineer, decompile, or disassemble the software; (iii) sell, resell, transfer, license, sublicense, or distribute the software; or (iv) create, write, or develop any derivative software or other software program that is based on such software. Customer agrees to indemnify, defend and hold Windstream and its suppliers harmless from and against any and all claims, losses, liabilities and damages, including reasonable attorney's fees, which arise out of Customer's failure to comply with the foregoing.

## Windstream VoIP 911 Disclosure

Windstream is subject to an FCC requirement to provide notification of any E911 limitations that may be associated with the service provided to your company. There are critical differences between traditional telephone service and Windstream VoIP service:

- 911 emergency services will not be available in the event of a power failure.
- ~~911 emergency services will not be available in the event of an internet failure.~~

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- There are severe limitations (details below) to 911 emergency services if you move your phone from its registered location.

### **Loss of 911 services due to power failure or Internet connection failure:**

Historically, telephone service has been powered by electrical power within the telephone network. If you subscribe to Windstream VoIP service, power is supplied directly from the premise in which you are operating the telephone.

- In the event of a commercial power outage, and if your building does not have a back-up power system, your telephone service, including 911, will not function until power is restored.
- Loss of power to your broadband gateway (through which your service is provided) will cause a loss of telephone and 911 services.
- Any Internet connection failure will cause a loss of telephone and 911 services.

Windstream recommends that you always have an alternative means of accessing 911 during a power failure or Internet connection failure.

### **To ensure that 911 calls are properly routed:**

- **Do not move the equipment installed at your premise to another location.** Use of the telephone service at another location will prevent E911 service (the ability of the 911 operator to automatically determine your location) from working.
- **If you have users that will be using devices such as Software telephones that are installed on mobile personal computers, Laptops, Smart Phones, Netbooks and any other mobile VoIP supported device that is intended to be mobile with Windstream service,** you must update your service address prior to using the service from a different location by contacting Windstream Customer Service at 1-855-361-7792 in order for your current location to be transmitted automatically and accurately to emergency services.
- **Always state the telephone number and address that you are calling from to the 911 operator.** The 911 operator receiving the emergency call may not be able to automatically identify your phone number and physical location and be able to call you back if the call is disconnected, therefore you must specify the exact location of the emergency and the telephone number from which you are calling.
- **Contact the Windstream Business Center at 800-600-5050 when you plan to move your service address.** Since your Windstream VoIP service will not provide 911 services from another location, you must notify Windstream before you move the registered location of your service.

To help remind you about the availability of 911 emergency service, we have provided stickers to be placed on or near your telephones and devices.

## Customer Affirmation of Notification

I have read the above notice and understand that there are critical differences between 911 service with Windstream VoIP and traditional telephone service.

\_\_\_\_\_  
Printed name

\_\_\_\_\_  
Account number

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date



## APPLICATION FOR CREDIT

Representative: Newton, Liza M  
 Representative Phone: 818-257-7223

Customer Name: <u>City of Long Beach</u>	Tax Exempt Status: _____
Federal Tax ID or SS Number: _____	EMR: <u>\$9,114.74</u>
Billing Address: <u>333 W OCEAN BLVD</u>	Years In Operation: _____
<u>FLR 12</u>	Number Of Employees: _____
City: <u>LONG BEACH</u>	
State: <u>CA</u> Zip: <u>90802-4681</u>	Business Structure: _____
Nature Of Business: _____	

Company Name: _____			
Address: _____			
City: _____	State: _____	Zip: _____	

Contact Name: <u>Sandy Taylor</u>	AP Contact Name: _____
Contact Phone: <u>562-570-5556</u>	AP Contact Phone: _____
Contact Fax: _____	AP Contact Fax: _____
Contact Email: _____	AP Contact Email: _____
Principal/Partner/Officer Full Name: _____	Title: _____

Bank Name: _____	
Address: _____	Bank Contact Name: _____
City: _____	Bank Contact Phone: _____
State: _____	Bank Contact Fax: _____
Zip: _____	Account Number: _____

	<u>Vendor</u>	<u>Account Number</u>	<u>Phone</u>	<u>Fax</u>	<u>Contact</u>
1.	_____	_____	_____	_____	_____
Address: _____					
2.	_____	_____	_____	_____	_____
Address: _____					
3.	_____	_____	_____	_____	_____
Address: _____					
Current Local Telco: _____			Current LD Carrier: _____		

<p style="text-align: center;"><b>Authorization</b></p> <p>I hereby represent that I am authorized to submit this application on behalf of the Customer named above, and the information provided is for the purpose of obtaining credit and is warranted to be true. I/We hereby authorize Company, and its affiliates to investigate the references listed pertaining to my/our credit and financial responsibility sold. I further represent that the customer applying for credit has the financial ability and willingness to pay for all invoices with established terms.</p>	<p style="text-align: center;"><b>Accepted By Customer</b></p> <p>Signature: _____</p> <p>Printed Name: _____</p> <p>Title: _____</p> <p>Date: _____</p>
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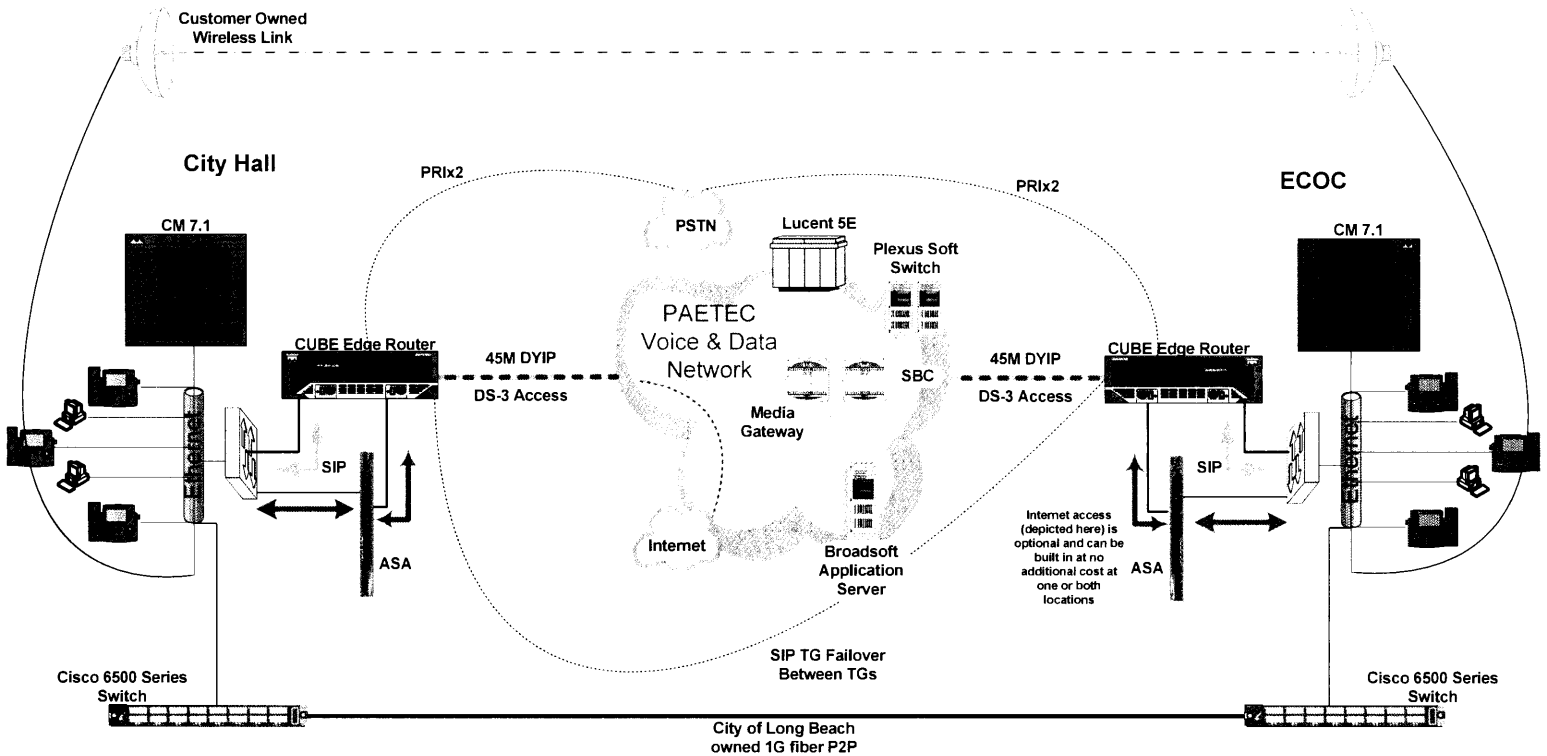
# CITY OF LONG BEACH

## MPLS/Internet VPN Network

Qty	Type of Service
2	DYIP w/QoS
4	PRI

### Normal Traffic Flow

Data between the Host site and Remote Offices is over the PAETEC MPLS VPN network. All sites are fully meshed. PAETEC QoS will be designed based on EF for real-time traffic, AF41 for high priority traffic, AF21 for medium priority traffic, and BE for best effort applications. PAETEC will also apply percentages to each queue based on customers requirements. PAETEC supports 2 types of routing in the network, static and dynamic through BGP. If routing BGP, routers will need to have correct IOS.



PRIVATE  
PUBLIC

This Service Level Agreement (“SLA”) only applies to Windstream’s Enterprise Data Products, as defined herein (the “Services”), and is offered as part of networking services provided by the applicable Windstream company. The SLA does not apply to any applications or enhanced telecommunications services, local access circuits, equipment sales and related maintenance services, or any other services provided by a Windstream company or any third party provider. The SLA is effective as of the first day of the first whole calendar month after the initial installation of Services. This SLA shall be deemed an addendum to either the written contract executed by the parties or the Windstream Online Terms and Conditions to which Customer is subject, whichever is applicable. To be eligible for the credits under this SLA, Customer must be in good standing with Windstream and current in Customer’s obligations.

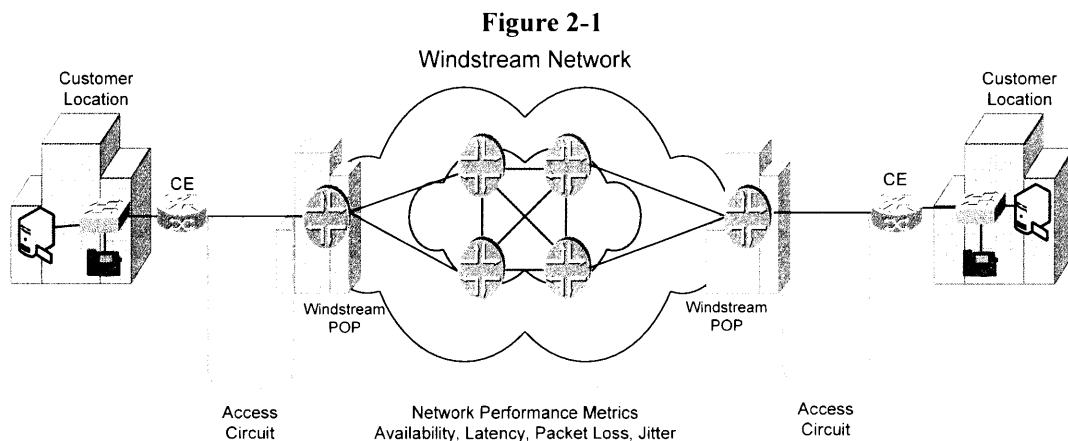
**1 Description of Services**

The Services covered under this SLA are Ethernet Internet (“EI”), Dedicated Internet (“DI”), and MPLS Networking Services. MPLS Networking Services (“MPLS Networking”) are IP Virtual Private Network (“IP VPN”), Virtual LAN Services (“VLS”), Dynamic IP, and Virtual PBX. Individually, the Services may be referenced in this SLA by the noted abbreviations. Collectively, the term “Services” as used in this SLA refers to any of the qualifying EI, DI, and MPLS Networking Services but does not refer and shall not be interpreted as referring to other services offered by Windstream or any third party provider. Services under this SLA shall only be entitled to credits consistent with the terms of this SLA and shall not be subject to credits under any other agreement or arrangement that may exist between Windstream and Customer. To the extent of any conflict between the terms of this SLA and such other agreement with respect to service credits, this SLA shall govern.

**1.1 MPLS Networking**

As noted above, MPLS Networking includes for purposes of this SLA only IP VPN, VLS, Dynamic IP, and Virtual PBX. Windstream’s MPLS Networking provides connectivity through Windstream’s network at designated speeds, enabling Customer to transport private data between two or more Customer locations. MPLS Networking enables Customer to prioritize voice or data through Quality of Service (“QOS”) levels, as defined later, based on Customer’s unique business requirements.

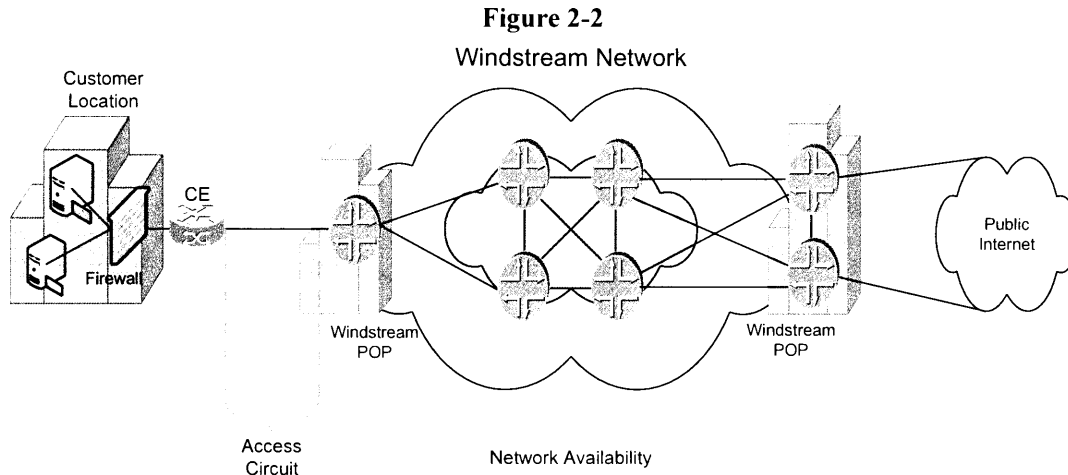
The performance of Windstream’s network for purposes of measuring MPLS Networking deliverables under this SLA is measured through Network Availability, Network Latency, Network Packet Loss, and Network Jitter. These individual metrics are defined in Section 3 below and collectively may be referenced in this SLA as “Network Performance Metrics.” All Network Performance Metrics will be measured across specific Points of Presence (“POP”) on Windstream’s Network (See figure 2-1). Windstream’s network management system is the sole and conclusive measurement for purpose of this SLA regarding Network Performance Metrics.



**1.2 Dedicated Internet / Ethernet Internet Access**

As noted previously, in addition to MPLS Networking, this SLA applies to DI and EI. DI and EI provide connectivity to the public internet through Windstream's network at designated speeds.

The performance of Windstream's network for purposes of measuring DI and EI deliverables under this SLA is measured through Network Availability. For purposes of DI and EI, Network Availability will be measured across specific POPs on the Windstream Network. (See figure 2-2). Windstream's network management system is the sole and conclusive measurement for purpose of this SLA regarding Network Availability.

**2 Definition****2.1 On-Net:**

On-Net is defined as those Services which are provided by the applicable Windstream Company and reside on Windstream's wholly owned facilities.

**2.2 Off-Net:**

Off-Net is defined as those services / circuits, which are provided by the applicable Windstream company and *do not reside* on Windstream's wholly owned facilities.

**2.3 Service Outage:**

A Service Outage is defined as the complete unavailability or degradation of Services during any unscheduled period of time except that Windstream is not responsible for failure to meet performance objectives for any of the following reasons which shall not be deemed a Service Outage (collectively, "Exclusions"):

- Any Service Outage for which Customer may have previously obtained credit or compensation outside the terms of this SLA;
- Actions, failures to act or delays by Customer or others authorized by or acting on behalf of Customer to use the Services;
- Failure of power, equipment, services or systems not provided by Windstream including, but not limited to, other providers' networks and interconnections to or from and connectivity with other Internet service providers' networks;
- Customer owned or leased equipment or facilities (e.g., Customer's PBX or local area network);
- Failure of Customer to afford Windstream or its agents access to the premises where access lines associated with the Services are terminated;
- Election by Customer not to release the Services for testing and/or repair during which time Customer continues to use Services;
- Maintenance activities (including planned and emergency) as set forth in Section 5 of this SLA;
- Implementation of a Customer order that requires Services interruption;



- Failure to report a Service Outage to Windstream or reporting of a trouble where no trouble was found;
- Labor difficulties, governmental orders, civil commotion, acts of God, and other circumstances beyond Windstream’s reasonable control; and
- Failure of equipment or systems responsible for network measurements.

**2.4 Windstream Point of Presence (“POP”):**

Physical location of Windstream router at the edge of Windstream’s network that faces the Customer Edge and delivers private data and/or Internet Services to Customer’s network.

**2.5 Customer Edge (“CE”):**

CE refers to the router at Customer’s premises that is connected to the Windstream POP.

**2.6 Quality of Service (“QOS”):**

QOS is the ability to provide different priority to different applications, users, or data flows, or to offer a certain level of performance for data flows. For example, a required bit rate, delay, jitter, packet dropping probability and/or bit error rate may be offered by Windstream to Customer. To determine what QOS level applies to the Services, Customer either must select from the following QOS classes of service or subscribe to a Service that is defaulted into one or more QOS classes. The Windstream QOS classes are identified as:

QOS Class of Service	Description
Real Time	Real-time Class of Service delivers premium QOS to a customer’s site and is optimized for low latency and low jitter performance required for voice communications. All managed VoIP services are defaulted into Real-time QOS.
Mission Critical Data	Mission Critical Class of Service provides the highest priority treatment for data. Intended for applications with high business value requiring large bandwidth allocations and/or lower latency such as interactive video conferencing, streaming video, credit card transactions, and ERP applications like SAP and PeopleSoft.
Business Critical Data	Business Critical Data Class of Service provides priority treatment to transactional and interactive data such as email, or client/server applications
Standard Data	Standard Data class of Services enables customers to share latency and jitter tolerant data and Internet applications across all locations. DI and EIA traffic are defaulted into Standard Data QOS.

For purposes of this SLA between Customer and Windstream, Customer has selected the following QOS Class (es) of Service: \_\_\_\_\_ . **[INSERT CUSTOMER’S SELECTION]**

**2.7 Calendar Month:**

For the purpose of this SLA a Calendar Month is based on 60 Minutes/Hour, 24 Hours/Day, 30 Days/Month = 43,200 average monthly minutes. In no event shall any obligation for a service credit arise under this SLA until such time as the Services are fully installed and operational.

**3 Service Levels**

**3.1 Network Availability**

For purposes of measuring Windstream’s MPLS Networking, DI, and EI QOS under this SLA, the term “Network Availability” is defined as the percentage of time in one Calendar Month during which POPs on Windstream’s wholly owned IP/MPLS network can deliver traffic to/from other Windstream POP locations and does not apply to local access circuits. Network Availability shall be calculated based on an aggregate monthly measurement average between specific Windstream POP endpoints. Network Availability measurements do not include the specified Exclusions (e.g., scheduled maintenance windows or planned outages).

The following outlines the Network Availability objectives in any given Calendar Month:

<b>On-Net MPLS Networking DIA / EIA</b>	99.99% (≤ 4.32 minutes of network unavailability per month)
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**3.1.1 Services Credit for time when Network Availability is not provided (“Network Unavailability”)**

<b>Network Unavailability / Duration</b>	<b>Services Credit</b>
>4.32 minutes and ≤ 1hour	1/30 <sup>th</sup> of the Monthly Recurring Charge
>1 hour and ≤ 2 hours	2/30 <sup>th</sup> of the Monthly Recurring Charge
>2 hours and ≤ 3 hours	3/30 <sup>th</sup> of the Monthly Recurring Charge
>3 hours and ≤ 4 hours	4/30 <sup>th</sup> of the Monthly Recurring Charge
>4 hours and ≤ 5 hours	5/30 <sup>th</sup> of the Monthly Recurring Charge
>5 hours and ≤ 6 hours	6/30 <sup>th</sup> of the Monthly Recurring Charge
>6 hours and ≤ 7 hours	7/30 <sup>th</sup> of the Monthly Recurring Charge
>7hours and ≤ 8 hours	8/30 <sup>th</sup> of the Monthly Recurring Charge
>8 hours and ≤ 9 hours	9/30 <sup>th</sup> of the Monthly Recurring Charge
>9 hours and ≤ 10 hours	10/30 <sup>th</sup> of the Monthly Recurring Charge
>10 hours and ≤ 11 hours	11/30 <sup>th</sup> of the Monthly Recurring Charge
>11 hours and ≤ 12 hours	12/30 <sup>th</sup> of the Monthly Recurring Charge
>12 hours and ≤ 13 hours	13/30 <sup>th</sup> of the Monthly Recurring Charge
>13 hours and ≤ 14 hours	14/30 <sup>th</sup> of the Monthly Recurring Charge
> 14 hours	15/30 <sup>th</sup> of the Monthly Recurring Charge

<b>Product</b>	<b>Target Commitment</b>
<b>On-Net MPLS Networking DI / EI</b>	99.99% (≤ 4.32 minutes of network unavailability per month)

**3.2 Network Latency**

For purposes of measuring Windstream’s MPLS Networking under this SLA, Network Latency is defined as the round trip delay (in milliseconds) of packets transported between specific Windstream POP locations across Windstream’s wholly owned IP/MPLS network and does not apply to local access circuits. Network Latency shall be calculated based on an aggregate monthly measurement average between specific Windstream POP endpoints. The following outlines the latency objectives, depending on the class selected by Customer, in any given Calendar Month.

<b>QOS Class of Service</b>	<b>Target Commitment</b>
<b>Real Time</b>	≤ 40 ms (Roundtrip)
<b>Mission Critical Data</b>	≤ 45 ms (Roundtrip)
<b>Business Critical Data</b>	≤ 48 ms (Roundtrip)
<b>Standard Data</b>	N/A

3.2.1 Services Credit for Network Latency

QOS Class	Target	Network Latency, =(Credit as a fraction of the MRC for the Affected Services)
Real Time	≤ 40ms (Roundtrip)	1/30 MRC if Windstream fails to meet the Network Latency SLA for Real Time QoS during any Calendar Month
Mission Critical Data	≤ 45 ms (Roundtrip)	1/30 MRC if Windstream fails to meet the Network Latency SLA for Mission Critical QoS during any Calendar Month
Business Critical Data	≤ 48 ms (Roundtrip)	1/30 MRC if Windstream fails to meet the Network Latency SLA for Business Critical Data QoS during any Calendar Month.
Standard Data	N/A	N/A

3.3 Network Packet Loss

For purposes of measuring Windstream’s MPLS Networking under this SLA, Network Packet Loss is defined as the percentage of packets in a Calendar Month that are dropped between specific Windstream POP locations across Windstream’s wholly owned IP/MPLS network and does not apply to local access circuits. Network Packet Loss shall be calculated based on an aggregate monthly measurement average between specific Windstream POP endpoints. The following outlines the Network Packet Loss objectives, depending on the class selected by Customer, in any given Calendar Month.

QOS Class of Service	Target Commitment
Real Time	≤ .10%
Mission Critical Data	≤ .30%
Business Critical Data	≤ .50%
Standard Data	N/A

3.3.1 Services Credit for Network Packet Loss

QOS Class	Target	Network Packet Loss =(Credit as a fraction of the MRC for the Affected Services)
Real Time	≤ .10%	1/30 MRC if Windstream fails to meet the Network Packet Loss SLA for Real Time QoS during any Calendar Month.
Mission Critical	≤ .30%	1/30 MRC if Windstream fails to meet the Network Packet Loss SLA for Mission Critical QoS during any Calendar Month.
Business Critical Data	≤ . 50%	1/30 MRC if Windstream fails to meet the Network Packet Loss SLA for Business Critical Data QoS during any Calendar Month.
Standard Data	N/A	N/A

3.4 Network Jitter

For purposes of measuring Windstream’s MPLS Networking under this SLA, Network Jitter is defined as the variation in the delay of received packets transmitted between specific Windstream POP locations across Windstream’s wholly owned IP/MPLS network and does not apply to local access circuits. Network Jitter shall be calculated based on an aggregate monthly measurement average between specific Windstream POP endpoints. Network Jitter measurement is only available

to customers selecting the Real Time QoS class. The following outlines the Network Jitter objectives in any given Calendar Month:

QOS Class of Service	Target Commitment
Real Time	≤ 2.5 ms
Mission Critical Data	≤ 3.5 ms
Business Critical Data	N/A
Standard Data	N/A

**3.4.1 Services Credit for Network Jitter**

Target	Network Jitter, =(Credit as a fraction of the MRC for the affected Services)
≤ 3 ms	1/30 MRC if Windstream fails to meet the Network Jitter SLA for Real Time QoS during any Calendar Month.

**4 Credits**

When Customer’s Services fail to meet the applicable commitments outlined in this SLA after being reported by Customer may receive a credit adjustment to its account. Windstream maintains internal escalation procedures and call-out technical support for observed holidays and after-business hours emergencies and critical outages. To request a credit under this SLA, Customer shall email their Business Sales Representative with a description of the requested credit along with the Windstream trouble ticket number(s) provided by the Service Center within thirty (30) calendar days of the asserted Service Outage. The Business Sales Representative shall notify Customer when the requested credit has been approved or declined.

**4.1 Calculations of Credits**

- Maximum Credit - In no event may the credits provided for hereunder (either individually or on a cumulative basis) in any billing period exceed the total MRCs for that period for service and facilities.

**5 Maintenance**

As set forth above, maintenance activities are Exclusions and do not constitute a Service Outage for purposes of this SLA. Windstream reserves the right to schedule maintenance and upgrades to the network 7 days a week from 12 a.m. to 6 a.m. in the local time zone of the affected area without prior notice to Customer or upon reasonable advance notice outside these time frames.

**5.1 Scheduled Network Maintenance**

The term “Scheduled Network Maintenance” refers to upgrades or modifications to network equipment software, network equipment hardware, or network capacity. Scheduled Network Maintenance may temporarily degrade the quality of Customer’s Services. Windstream takes every reasonable precaution to minimize the duration of any impacts during the Scheduled Network Maintenance window. Such effects related to Scheduled Network Maintenance shall not give rise to credits under this SLA and shall not be deemed a Service Outage. Scheduled Network Maintenance shall be undertaken **between the hours of 12:00AM and 6:00AM of the local time zone.**

**5.2 Emergency Network Maintenance:**

The term “Emergency Network Maintenance” refers to efforts to correct network conditions that are likely to lead to a material Service Outage and that require immediate action. Emergency Network Maintenance may temporarily degrade the quality of Customer’s Services, including the possibility of causing short-duration outages. Such effects related to Emergency Network Maintenance shall not give rise to credits under this SLA and shall not be deemed a Service Outage. Windstream may undertake Emergency Network Maintenance at any time deemed necessary to preserve network services.

**6 LIMITATION OF LIABILITY**

Windstream's total liability to Customer under this SLA is limited to 50% of the MRCs for the affected Services for the applicable Calendar Month in which the Service Outage occurs. Except for the credits identified in this SLA, this SLA does not modify or amend the written contract executed by the parties or the Online Terms and Conditions to which Customer is subject, whichever is applicable, including but not limited to any warranty disclaimers or limitation of liability provisions.

**THE PROVISIONS OF THIS SLA ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES FOR WINDSTREAM'S FAILURE TO MEET THE STANDARDS IN THIS SLA AND ANY OTHER NETWORK, EQUIPMENT OR SERVICE ISSUES.**

Customer: \_\_\_\_\_

Windstream: \_\_\_\_\_



## WINDSTREAM SERVICE TERMS AND CONDITIONS

These terms and conditions apply to the provision of all telecommunications and related services ("Services") by Windstream<sup>1</sup> ("Windstream") to Customer under the proposal to which these terms and conditions are a part. These terms and conditions and Customer's proposal/sales order, and any service specific schedules form the agreement ("Agreement"). The Services will be offered in each area to the Customer by the Windstream affiliated entity authorized to provide the Services in the applicable jurisdiction.

- 1. Term and Renewal.** This Agreement is effective on the date identified on the proposal ("Effective Date") and will continue for the term set forth in the proposal from the date that Services are installed until either terminated pursuant to the provisions below or replaced with a new agreement (the "Term"). Upon expiration of the Term, **this Agreement will automatically renew for successive one-year terms** (each, a "Renewal Term") until terminated or cancelled pursuant to its terms. In the event a Customer provides written notice of its intent not to renew but does not terminate Services hereunder, Windstream shall have the option of continuing to provide such Services on a month-to-month basis, priced at Windstream's then current monthly rates.
- 2. Charges for Services; Billing and Payment.** Customer is responsible for paying all charges that apply to the Services ordered on a proposal or used on a per-use basis by Customer, including items such as features, installation, labor, repair, long distance, and directory or operator assistance as specified on the proposal or set forth in Windstream's Price Lists or Tariffs. Customer is responsible for taxes, surcharges, fees, and assessments that apply to the sale and use of Services, including how those may change in the future and regardless of whether such charges are identified in the Agreement. Windstream will bill Customer monthly for the Service, and all bills are due and payable upon receipt. Payment will be considered late if not paid within thirty (30) days from the date of invoice. All amounts payable by Customer shall be made without setoff or counterclaim and without deduction. Billing at a location will begin upon the earlier of (i) the installation date (which may be the date administrative access to certain software-based Services is granted to Customer); or (ii) thirty (30) days after delivery of the applicable facility and/or equipment to the Customer premises (if the delay in connection of the facility and/or equipment is due to Customer or its agent); however, Windstream may choose to bill in full monthly increments with no proration for partial service periods when Service either starts or ends in the middle of a billing cycle. In certain service areas, paper bills are available only upon request and for a monthly charge and billing for usage will round up to the next cent. If Customer authorizes payment by credit or debit card, then Windstream will not obtain further consent or provide additional notice before invoicing the credit or debit card for all amounts due and owing. **WINDSTREAM RESERVES THE RIGHT TO INCREASE OR DECREASE MONTHLY RECURRING CHARGES ("MRCS") ON AT LEAST THIRTY 30 DAYS' NOTICE AND OTHER RATES AT ANY TIME.**
- 3. Service Outage Credits.** For Windstream's business-grade local and long distance voice telecommunications services, T1 and higher facility network Internet access and private networking services, Customer will receive a credit of 1/30th of the MRC for that month for each day that Customer has a Service Outage, defined below. Only the Service affected by the Service Outage will be eligible for a credit. Credit is based upon the length of time Customer is without Service. Credits in any single month cannot exceed the MRCs for Service that was affected by a Service Outage in that month. For purposes of this Agreement, a "Service Outage" is defined as the complete inability to: (i) make or receive calls; (ii) access the Internet for the purpose of sending or receiving Internet traffic; or (iii) send or receive data across a Windstream supported private network. In the event Customer rents equipment from Windstream, such equipment shall not be considered "Services" for purposes of service credits under this Agreement.
- 4. Disputes.** To dispute a bill, Customer must do so in good faith and deliver to Windstream in writing the specific basis for such dispute within sixty (60) days after the date on the bill. If Customer does not follow this dispute process, the dispute shall be deemed waived.
- 5. Partial Payments; Late Payments.** Windstream may accept any payments Customer marks as being "payment in full" or as being settlement of any dispute without waiving any rights Windstream has to collect the full payments from Customer. Customer is responsible for paying all costs and fees Windstream incurs as a result of collecting Customer's unpaid charges. If Windstream does not receive full payment when due or does not receive payment in immediately available funds, Windstream will add a late payment fee to the amounts owed and will calculate such fee as the total owed times interest at the maximum rate allowable by law.
- 6. Credit and Deposits.** Customer authorizes Windstream to ask credit-reporting agencies for Customer's credit information. Windstream may require Customer to submit an initial security deposit and/or advance payment and an additional deposit and/or advance payment if Customer increases Services, Customer is late on payment, or Customer's credit rating changes. The deposit will be refunded if satisfactory credit has been established or upon termination of this Agreement for any reason, except that Windstream at its discretion may apply the deposit to any amount due and unpaid by Customer.
- 7. Services Location; Moves.** Customer is responsible for providing an environment that is suitable for the Services, including equipment that is compatible with Windstream's network. Customer shall provide Windstream with the correct address to obtain Services, because Windstream relies on such information to determine which taxes, fees, surcharges and assessments apply to the Services. If Customer does not provide a valid address, Customer will be responsible for any resulting taxes, fees, surcharges, assessments and penalties related thereto. Customer will notify Windstream if Customer's address changes, in which case Windstream may either (a) terminate the affected Services, or (b) allow Customer to provide sixty (60) days' advance notice to Windstream to move Services to a new location and pay any applicable installation charges. Customer will enter into a new agreement for such new location, or Windstream will apply the liquidated damages set forth in Section 15 for the terminated location. Charges, including reasonable administrative costs and fees incurred by Windstream may apply as a result of Customer's move, in addition to a change in MRCs.
- 8. Windstream-Provided and Owned Equipment.** Any equipment installed by Windstream on Customer's premises that is not the subject of a sale to Customer (such as the CSU/DSU, interface cards, Channel Bank and routers, if applicable) shall remain at all times the property of Windstream. Equipment shall remain in good condition, less normal wear and tear. Windstream shall be responsible for the maintenance and repair of the equipment unless it is damaged as a result of the action or inaction of Customer or its employees or agents, in which case Customer shall reimburse Windstream for the cost of any necessary repairs. Customer shall provide Windstream reasonable access to the equipment for purposes of repair, maintenance, removal or otherwise. If Windstream does not have access to Customer's premises within thirty (30) days after Customer terminates this Agreement, or if Windstream requests Customer return the equipment and Customer does not return the equipment to Windstream within thirty (30) days of termination, Customer shall reimburse Windstream for the full purchase price of the equipment as well as any attorney's fees and costs. Customer shall pack and ship the equipment in such a way so as to limit and/or avoid damage to the equipment. In the event the equipment is damaged in shipping, Customer shall be responsible for the cost to replace the equipment.
- 9. Disconnection of Current Provider; Special Construction; Third Party Charges.** Customer is solely responsible for disconnecting Services with its current service provider. Windstream is not responsible for any charges assessed against Customer by such provider. Customer shall pay all charges if Windstream or a third party provider is required to extend the demarcation point or undertake special construction for Customer. Unless Windstream specifically agrees in writing to undertake

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<sup>1</sup>Windstream is defined for purposes of this Agreement to mean Windstream Communications, Inc. or such authorized Windstream affiliated entity providing Services to Customer as identified on Customer's bill.

equipment installation and maintenance work, Customer is responsible for all charges assessed by its phone system vendor and other third parties in connection with the installation of the Services and Windstream shall have no responsibility for maintenance or repair of same.

10. **Third Party Software.** As part of the Services, Customer may be allowed to use certain software and related documentation developed and owned by Windstream's third-party software licensors (collectively, the "Software") This Software is neither sold nor distributed to Customer and Customer may use it solely as part of the Services and for no other purpose. Customer may not and agrees not to: (i) transfer such Software outside the Services or to any other person or entity; (ii) make copies of the Software, either through a virtual snapshot of the server containing the Software or otherwise; or (iii) transfer the Software outside of Windstream's infrastructure and/or premises. Further, Customer agrees to provide Windstream with evidence that its use of the Software is in compliance with the Agreement and/or third-party software licensor's terms from time to time during the Term as requested by Windstream. If Customer fails to provide such evidence when requested, or is otherwise not in compliance with the Agreement and/or third-party software licensor's terms, Windstream may, at its sole option suspend or terminate the Services that include the Software. For the avoidance of doubt, Windstream's Software licensors are not responsible for providing any support in connection with the Services or the Software.
11. **Google. IF CUSTOMER SUBSCRIBES TO GOOGLE SERVICES THROUGH WINDSTREAM, CUSTOMER WILL BE REQUIRED TO COMPLETE A CLICK-THROUGH AGREEMENT FOR THE GOOGLE LICENSE POSTED AT [http://www.windstream.com/legal/Google\\_Apps\\_Premier\\_Edition\\_License.pdf](http://www.windstream.com/legal/Google_Apps_Premier_Edition_License.pdf) PRIOR TO USING THE RELEVANT SERVICES.** Windstream may cancel Google Services at any time on thirty (30) days' notice and, at Windstream's option, may either terminate such Google Services altogether or move Customer to a similar platform. In the event that Windstream or Customer terminates the Google Services or downgrades or cancels Google Services, Customer is solely responsible for downloading all of its information to its computer within thirty (30) days.
12. **Government Funding.** Customer must notify Windstream of all restrictions, requirements and reporting obligations to which Windstream could become subject pursuant to any government program before Windstream provisions Services to Customer. Customer will not use such funds, including stimulus funds, grants or loans, in whole or in part, to support its performance under this Agreement without Windstream's prior written consent regarding any specifically applicable terms. If Customer fails to provide such prior written notice to Windstream of government funding or if Windstream does not consent to the use of such funding, then Windstream has the right, in its sole discretion, to reject any order or terminate this Agreement and/or any applicable Services, without liability or obligation to Windstream. If Customer requests government funds for payment of Services under this Agreement and such funding request is denied, Customer shall remain responsible for one-hundred percent (100%) of the cost of Services.
13. **Documents Incorporated by Reference; Entire Agreement; Counterparts; Execution. THIS AGREEMENT IS SUBJECT TO AND INCORPORATES THE FOLLOWING BY REFERENCE, AS THEY MAY CHANGE FROM TIME TO TIME: (I) THE TERMS AND CONDITIONS OF THE TARIFFS FILED WITH STATE PUBLIC SERVICE COMMISSIONS; (II) THE FCC OR STATE WEB-POSTED PRICE LISTS OR TERMS AND CONDITIONS (EITHER "PRICE LISTS") POSTED AT <http://windstream.com/documents/detariffedservices.pdf>; (III) FOR INTERNET, THE "ACCEPTABLE USE POLICY" POSTED AT [http://www2.windstream.net/customer-support/usersguide/accept\\_accept.html](http://www2.windstream.net/customer-support/usersguide/accept_accept.html) AND THE "PRIVACY POLICY" POSTED AT <http://www.windstream.com/privacy.aspx>; (IV) IF CUSTOMER IS OBTAINING CERTAIN VALUE-ADDED SERVICES (I.E., ONLINE BACK UP SERVICES, TECH HELP, ETC), CUSTOMER WILL BE REQUIRED TO CLICK-THROUGH AGREEMENTS RELATED TO THOSE SERVICES (CLICK-THROUGHS) PRIOR TO ACCESSING SUCH SERVICE, WHICH SHALL BE DEEMED PART OF THIS AGREEMENT; AND (V) THIRD PARTY SOFTWARE TERMS, IF APPLICABLE.** This Agreement, the documents incorporated by reference and any addendums entered between the parties constitute the parties' entire Agreement. This Agreement may be amended only in a writing signed by authorized representatives of each party. This Agreement and its incorporated documents supersede any and all statements or promises made to Customer by any Windstream employee or agent. In the event of any conflict between the provisions of this Agreement and any of the documents incorporated by reference, the provisions of the Google License shall control for Google Services, followed by the Tariffs and Price Lists or Value-Added Services click-through agreements for applicable Services, this Agreement and then the Acceptable Use and Privacy policies. This Agreement may be signed in counterparts, and facsimile or electronic scanned copies may be treated as original signatures. Windstream also may execute this Agreement via a verifiable electronic signature.
14. **Termination.** Either party may terminate this Agreement by providing at least thirty (30) days' notice prior to the end of the initial Term or a Renewal Term, or if the other party is in breach of any material provision of this Agreement and such other party fails to cure within thirty (30) days after written notice. Notwithstanding, unless prohibited by law, in the event of nonpayment, the breaching party shall have ten (10) days to cure after written notice. Customer's right to terminate for cause is limited to termination of the affected Services at the affected location only. In the event Customer rents equipment from Windstream and Customer terminates network Services pursuant to this section, Customer shall remain obligated to fulfill the remainder of the applicable equipment schedule term. Windstream may limit, interrupt or terminate Services immediately if: (a) after any required notice, Customer has not paid for Services; or (b) Customer uses the Services in an adverse manner that affects Windstream's network or other customers; or (c) Customer or others have used the Services fraudulently or unlawfully while on Customer's premises or while the Services are under Customer's control; or (d) Customer or others use the Services in an excessive, abusive, or unreasonable manner that is not customary for the type of Services; or (e) Customer resells any Services or uses the Services to aggregate other persons' traffic; or (f) Customer uses the Services for its own end users and/or customers as a telecommunications provider or any other kind of provider. In addition to the termination rights of Windstream set forth above, if Customer or others use the Services in an excessive, abusive, or unreasonable manner that is not customary for the type of Services (including, but not limited to, circumstances in which Windstream is receiving traffic from Customer that originates from a location other than the local calling area associated with the customer's service location, when ten percent (10%) or more of Customer's calls are six (6) seconds or less, and/or when more than forty percent (40%) of call attempts are uncompleted per trunk group and DS0/DS0 equivalent), Windstream may: (v) charge long-distance charges for such traffic and any additional charges necessary to recoup its administrative costs and any charges from other carriers; (w) charge an additional price per minute in Windstream's discretion for each call that violates this provision; (x) restrict or cancel use or convert customer to another plan; (y) require customer to pay for the excessive use immediately and make a deposit; and/or (z) void any applicable price guarantee. Windstream may restore service if customer corrects the violation and pays all outstanding amounts owed, including restoration charges. For Ethernet Internet Access services and MPLS - Virtual Private Network/Virtual LAN Services, Windstream shall verify the availability of facilities, and in the event that Windstream determines in its sole discretion that facilities are not economically or technically feasible, Windstream has the right to terminate this Agreement without liability.
15. **Effect of Termination.**
  - a. **Pre-Installation-** If Customer terminates this Agreement after the Effective Date but prior to the installation of Service(s), Customer will pay Windstream a Pre-Installation Cancellation Charge ("Cancellation Charge") equal to three (3) months of MRCs except that if Windstream's costs to other providers are greater than this amount, Customer shall also reimburse Windstream for such costs. Customer agrees that the Cancellation Charge is a reasonable measure of the administrative costs and other fees incurred by Windstream to prepare for installation. The Cancellation Charge set forth in this Section 15(a) is in lieu of the charges set forth in 15(b) below for post-installation cancellations.
  - b. **Post-Installation-** CUSTOMER UNDERSTANDS THAT ITS RATES ARE BASED UPON ITS COMMITMENT TO PURCHASE SERVICES FOR THE TERM OR RENEWAL TERM. AS SUCH, IF CUSTOMER TERMINATES THIS AGREEMENT OR ANY SERVICES PROVIDED HEREUNDER AFTER INSTALLATION DURING THE INITIAL OR RENEWAL TERM FOR ANY REASON OTHER THAN FOR CAUSE, OR AS A RESULT OF WINDSTREAM'S TERMINATION FOR CUSTOMER'S BREACH, CUSTOMER SHALL PAY TO WINDSTREAM AS LIQUIDATED DAMAGES, AND NOT AS A PENALTY, AN AMOUNT EQUAL TO ONE HUNDRED PERCENT (100%) OF THE MRCs APPLICABLE TO THE TERMINATED SERVICES MULTIPLIED BY THE NUMBER OF MONTHS REMAINING IN THE THEN-CURRENT TERM OR RENEWAL TERM ("LIQUIDATED

DAMAGES"). CUSTOMER ACKNOWLEDGES THAT ACTUAL DAMAGES WOULD BE DIFFICULT TO DETERMINE AND SUCH LIQUIDATED DAMAGES REPRESENT A FAIR AND REASONABLE ESTIMATE OF THE DAMAGES WHICH MAY BE INCURRED BY WINDSTREAM, INCLUDING BUT NOT LIMITED TO ACTUAL EXPENSES INCURRED BY WINDSTREAM TO INITIATE OR TERMINATE THE SERVICES, THIRD PARTY COSTS, USE OF LIMITED NETWORK RESOURCES, INSTALLATION CHARGES WAIVED AND ANY DISCOUNTS OR CREDITS GRANTED. If Customer's proposal includes Monthly Minimum Charges or Fees ("MMCs" or "MMFs") and Customer terminates or disconnects less than the entirety of its Services such that its actual usage at a location falls below the MMC or MMF for that location, Customer will pay the MMC or MMF every month in lieu of the Liquidated Damages set forth above. If Customer's proposal *does not* include MMCs or MMFs and Customer terminates or disconnects less than the entirety of its Services such that its actual usage at a location falls below fifty percent (50%) of its original contracted rate for that location, Customer will pay fifty percent (50%) of the MRCs every month in lieu of the Liquidated Damages set forth above. Additionally, if Customer received a bundled rate for the disconnected Service(s), then Customer's charges may be adjusted by Windstream to the unbundled service rates.

**16. Limitation of Liability. FOR PURPOSES OF THIS SECTION, AND THE FOLLOWING SECTIONS DESCRIBING INDEMNITY, DISCLAIMER OF WARRANTIES, AND EMERGENCY. CRITICAL LINES SECTIONS, "WINDSTREAM" INCLUDES ITS OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AGENTS, SUBCONTRACTORS, VENDORS, AND ANY ENTITY ON WHICH BEHALF WINDSTREAM RESELLS SERVICES.**

**A. WINDSTREAM'S LIABILITY FOR SERVICES PROVIDED UNDER THIS AGREEMENT WILL NOT EXCEED THE LESSER OF: (I) CUSTOMER'S MRC'S DURING THE PERIOD IN WHICH THE DAMAGE OCCURS, OR (II) CUSTOMER'S MRC'S MULTIPLIED BY SIX (6). IF CUSTOMER'S SERVICE IS INTERRUPTED, WINDSTREAM'S LIABILITY WILL BE LIMITED TO A PRO-RATA CREDIT FOR THE PERIOD OF INTERRUPTION. CUSTOMER AGREES THAT THE PRICING OF SERVICES REFLECTS THE INTENT OF THE PARTIES TO LIMIT WINDSTREAM'S LIABILITY AS PROVIDED HEREIN. UNDER NO CIRCUMSTANCES WILL WINDSTREAM BE LIABLE FOR ANY ACCIDENT OR INJURY CAUSED BY SERVICES, ANY INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES (SUCH AS LOST PROFITS, LOST BUSINESS OPPORTUNITIES, BUSINESS INTERRUPTION, LOSS OF BUSINESS DATA), ANY PUNITIVE OR EXEMPLARY DAMAGES, THE COST OF ALTERNATIVE SERVICE, OR ATTORNEY'S FEES OR FOR ANY DELAY OR FAILURE TO PERFORM UNDER THIS AGREEMENT (INCLUDING BUT NOT LIMITED TO SERVICE INTERRUPTIONS) DUE TO CAUSES BEYOND WINDSTREAM'S REASONABLE CONTROL. WINDSTREAM IS NOT RESPONSIBLE OR LIABLE IF SERVICES ARE LOST, STOLEN OR MISUSED, EXCEPT WHEN DUE SOLELY TO WINDSTREAM'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. CUSTOMER IS RESPONSIBLE FOR ALL USAGE, CHARGES, AND LIABILITY INCURRED FOR SUCH LOSS, MISUSE, OR THEFT OF SERVICES WHILE IN CUSTOMER'S CONTROL, REGARDLESS OF WHETHER/WHEN WINDSTREAM NOTIFIES CUSTOMER OF INCREASED USAGE.**

**B. ENTRY ONTO WINDSTREAM'S PREMISES IS AT CUSTOMER'S OWN RISK, AND WINDSTREAM ASSUMES NO LIABILITY WHATSOEVER FOR ANY HARM ARISING FROM ANY CAUSE OTHER THAN WINDSTREAM'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT RESULTING IN PERSONAL INJURY TO CUSTOMER DURING SUCH VISIT. WINDSTREAM IS NOT RESPONSIBLE IF EQUIPMENT IS LOST, STOLEN OR MISUSED, EXCEPT WHEN DUE SOLELY TO WINDSTREAM'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. CUSTOMER IS RESPONSIBLE FOR ALL LOSS INCURRED FOR MISUSE, MISHANDLING OR PROVISIONING OF CUSTOMER EQUIPMENT INCOMPATIBLE WITH THE SERVICES, CHANGES MADE TO THE SERVICES BY CUSTOMER OR A THIRD PARTY NOT AUTHORIZED TO MAKE CHANGES, OR BY WINDSTREAM AT THE DIRECTION OF CUSTOMER. IN NO EVENT SHALL WINDSTREAM BE RESPONSIBLE FOR ANY THIRD-PARTY EQUIPMENT, INCLUDING ANY DAMAGES THAT MAY ARISE AS A RESULT OF DEFECTS OR ISSUES RELATED TO THE THIRD-PARTY EQUIPMENT. TO THE EXTENT WINDSTREAM IS LIABLE FOR DAMAGE TO, OR LOSS OF, CUSTOMER EQUIPMENT, SUCH LIABILITY WILL BE LIMITED TO THE THEN-CURRENT BOOK VALUE OF THE DAMAGED EQUIPMENT. EACH PARTY IS RESPONSIBLE FOR INSURING THE EQUIPMENT AND PROPERTY IT OWNS WITH COVERAGE CONSISTENT WITH INDUSTRY STANDARDS.**

**17. Indemnity. EACH PARTY WILL DEFEND, INDEMNIFY AND HOLD HARMLESS THE OTHER PARTY, AND ITS RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS, FROM AND AGAINST ALL THIRD-PARTY CLAIMS ARISING OUT OF THE INDEMNIFYING PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT WITH RESPECT TO ITS OBLIGATIONS UNDER THIS AGREEMENT. FURTHER, CUSTOMER WILL DEFEND, INDEMNIFY AND HOLD HARMLESS WINDSTREAM FROM AND AGAINST ALL CLAIMS ARISING OUT OF OR IN CONNECTION WITH (I) ANY FAILURE BY CUSTOMER OR CUSTOMER'S END USERS TO COMPLY WITH WINDSTREAM'S ACCEPTABLE USE POLICY OR APPLICABLE LAW, OR (II) CLAIMS OF OWNERSHIP OR SUPERIOR RIGHTS TO CUSTOMER EQUIPMENT OR OTHER INTELLECTUAL PROPERTY BY A THIRD PARTY.**

**18. Force Majeure. Windstream shall be excused from, and shall have no liability, including service credits, with respect to, any delay or failure to perform hereunder caused by any event beyond its reasonable control, including but not limited to, (i) cable cuts or common carrier delays; (ii) actions, failures to act or delays by Customer or others authorized by the Customer to use the Service; (iii) failure of power, equipment, services or systems not provided by Windstream including but not limited to other providers' networks and interconnections to or from and connectivity with other Internet Service Providers' networks; (iv) Customer owned or leased equipment or facilities (i.e., Customer's PBX, Local Area Network (LAN)); (v) during any period in which Windstream or its agents are not afforded access to the premises where access lines associated with the Services are terminated or the Customer elects not to release the Services for testing and/or repair and the Customer continues to use Services; (vi) maintenance (planned or emergency) or implementation of a Customer order that requires a Services interruption (Windstream reserves the right to schedule maintenance and upgrades to the network seven (7) days a week from 12a.m. to 6a.m. in the local time zone of the area being worked on without prior notice to Customer or upon reasonable advance notice outside these time frames); (vii) when a Service Outage has not been reported to Windstream or where there is a trouble reported, but no trouble found; and (viii) labor difficulties, governmental orders, civil commotion, acts of God and other circumstances beyond Windstream's reasonable control.**

**19. Disclaimer of Warranties. EXCEPT AS OTHERWISE PROVIDED HEREIN, SERVICES, EQUIPMENT, AND THE DESIGNATED CUSTOMER AREA ON WINDSTREAM'S PREMISES, IF APPLICABLE, ARE PROVIDED ON AN "AS IS" AND "AS-AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE OR NON-INFRINGEMENT OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WARRANTY ARISING BY COURSE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE, ANY WARRANTY THAT THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS OR ANY WARRANTY REGARDING THE QUALITY, CONTENT, ACCURACY OR VALIDITY OF THE INFORMATION OR DATA RESIDING ON OR PASSING THROUGH OR OVER THE NETWORK AND ALL SUCH WARRANTIES ARE HEREBY DISCLAIMED. WITHOUT LIMITING THE FOREGOING, BROADBAND SPEEDS, UNINTERRUPTED OR ERROR-FREE SERVICE, TRANSMISSION QUALITY, AND ACCURACY OF ANY DIRECTORY LISTINGS ARE NOT GUARANTEED. EXCEPT AS EXPRESSLY PROVIDED IN WINDSTREAM'S PRIVACY POLICY, WINDSTREAM HAS NO OBLIGATION TO PROVIDE SECURITY OR PROTECTION FOR CUSTOMER'S PRIVACY, CONFIDENTIAL INFORMATION OR DATA. NO ORAL OR WRITTEN ADVICE OR INFORMATION BY WINDSTREAM'S EMPLOYEES, AGENTS OR CONTRACTORS SHALL CREATE A WARRANTY, AND CUSTOMER MAY NOT RELY ON ANY SUCH INFORMATION.**



20. **Emergency. Critical Lines.** CUSTOMER ACKNOWLEDGES THAT CERTAIN SERVICES MAY NOT, IN CERTAIN CIRCUMSTANCES, PROVIDE ACCESS TO 911 OR TRANSMIT THE MOST ACCURATE LOCATION OR EXTENSION INFORMATION IN A TIMELY MANNER, IF CUSTOMER ATTEMPTS TO ACCESS 911 IN AN EMERGENCY. Examples include voice over Internet protocol ("VoIP"), Centrex, Allworx Reach™ Application ("Allworx Reach™"), and private branch exchange. Additionally, because T1s and VoIP can cease operating during a power outage, Customer should have a basic business or copper line for elevator, alarm, E911 and other critical functions. When using VoIP service or Allworx Reach™, Customer must timely update changes to their registered location for 911 services. By signing this Agreement, Customer acknowledges that Customer has read this disclosure. By proceeding with use of Services, Customer assumes all responsibility and risk of harm, loss, or damage in the event that 911 access fails, is not possible, or does not provide the address, correct address, extension or other information to emergency authorities.

21. **Miscellaneous.** (a) Notices and Electronic Communications: Any notice pursuant to this Agreement must be in writing and will be deemed properly given if hand delivered or mailed to Customer at the address populated on Customer's proposal or to Windstream at Windstream, Attn: Correspondence Division, 1720 Galleria Blvd., Charlotte, NC 28270, [windstream.business.support@windstream.com](mailto:windstream.business.support@windstream.com) or at such other address provided to the other party. CUSTOMER AGREES THAT WINDSTREAM MAY SEND ELECTRONIC MESSAGES TO CUSTOMER CONCERNING WINDSTREAM'S SERVICES; (b) Applicable Law; Venue: This Agreement is subject to applicable federal law and the laws of the state in which the Services are provided, without regard to that state's conflict of laws principles. If this Agreement covers multiple states, then it is subject to Nebraska law, without regard to its conflict of law principles. The parties agree to submit to the exclusive jurisdiction of federal courts in the state in which the Services are provided (or federal courts in Nebraska, if the Agreement covers multiple states) so long as diversity and the amount in controversy requirements are met, or a federal question is at issue; (c) Waiver of Jury Trial: EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT; (d) Statute of Limitations: No claim may be asserted by either party against the other with respect to any event, act or omission for which a claim accrued more than two (2) years prior to such claim being asserted; the foregoing statute of limitations is not applicable to billing disputes, which are governed by the timeframe for disputes described in Section 4; (e) Assignment: Either party may assign this Agreement to an affiliate or acquirer of all or substantially all of its assets without any advance consent from the other party, but Customer shall provide Windstream with notice and complete all paperwork necessary to effectuate any change in ownership or other account changes. Otherwise, Customer may not assign its rights and obligations under this Agreement without Windstream's advance written consent. Any attempted assignment in violation of this provision is void; (f) Third Party Beneficiaries: No third party shall be deemed a beneficiary of this Agreement; (g) Publicity: Customer agrees that Windstream may publicly disclose that Windstream is providing Services to Customer and may include Customer's name in promotional materials, including press releases; (h) Waiver: Either party's failure to enforce any right or remedy available under this Agreement is not a waiver. (i) Severability: If any part of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall remain in full force and effect; (j) Survival: Sections 16 through 21 survive after this Agreement ends; (k) Handwritten Changes: Handwritten changes are not binding on either party; (l) Use of Products in U.S.: Customer acknowledges that the transfer and use of products, services and technical information outside the United States are subject to U.S. export laws and regulations. Customer shall not use, distribute, transfer, or transmit the products, services or technical information (even if incorporated into other products) except in compliance with U.S. export laws and regulations. At Windstream's request, Customer shall sign written assurances and other export-related documents as may be required for Windstream to comply with U.S. export regulations; (m) Representation on Authority of Parties/Signatories: Each person signing this Agreement represents and warrants that he or she is duly authorized in accordance with its corporate governance documents and has legal capacity to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized in accordance with its corporate governance documents and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms; (n) Confidentiality: Except when this Agreement is required to be filed with a governmental authority or as may otherwise be required by local, state or federal freedom of information laws, the parties agree that this Agreement contains proprietary and confidential information and shall not be disclosed publicly to any third party except the such dealer(s) or agent(s) of Windstream that are negotiating with Customer in order to execute this Agreement.

22. **Service Specific Provisions:**

***For Dynamic IP Services only:***

Customer represents and warrants that it will immediately notify and post alternative dialing instructions to its end-users if any restrictions or limitations to access emergency 911 services result from its actions including but not limited to: (a) Extending the origination of outbound calling capabilities of the Dynamic IP service outside of the Windstream Dynamic IP-serviceable area by means of private circuits, wireless service, public networks, the public Internet or other means; (b) Implementing call routing schemes within its applications, systems or networks which may prevent access to emergency services; or (c) Implementing call routing schemes within its applications, systems or networks which may route outbound emergency 911 calls to Public Service Answering Points (PSAPs) other than the PSAP servicing the calling party end-user location. Customer agrees to indemnify and hold Windstream harmless from all claims, causes of action, damages and judgments arising from restrictions or limitations to access emergency 911 services as a result of customer's actions or inactions in ensuring that all 911 dialed calls are routed to the proper PSAP using Windstream's dynamic IP service.

***For Managed CPE Firewall Services only:***

Authorization to Perform Testing. Certain laws and regulations prohibit the unauthorized penetration of computer networks and systems. Customer hereby grants Windstream the authority to access Customer's networks and computer systems solely for the purpose of providing the Managed CPE Firewall Service. Customer acknowledges that the Managed CPE Firewall Service constitutes permitted access to Customer networks and computer systems. In the event one or more of the IP Addresses Customer gives to Windstream are associated with computer systems that are owned, managed, and/or hosted by a third party service provider ("Host"), Customer agrees to: (i) notify Windstream of such Host arrangement prior to the commencement of any Managed CPE Firewall Service; (ii) obtain Host's written consent for Windstream to provide the Managed CPE Firewall Service on Host's computer systems, which includes acknowledgement of the risks and acceptance of the conditions set forth herein; (iii) provide Windstream with a copy of such consent, acknowledgement and acceptance; and (iv) facilitate any necessary communications and exchanges of information between Windstream and Host in connection with the Managed CPE Firewall Service. Customer agrees to indemnify, defend and hold Windstream and its suppliers harmless from and against any and all claims, losses, liabilities and damages, including reasonable attorney's fees that arise out of Customer's failure to comply with this section. Customer will indemnify and hold Windstream and its suppliers harmless from any and all third party claims that arise out of the testing and evaluation of the security risks, exposures, and vulnerabilities of the IP Addresses that Customer provides. Customer acknowledges that the Managed CPE Firewall Service entail certain risks including the following possible negative impacts: (i) excessive log file disk space may be consumed due to the excessive number of log messages generated by the Managed CPE Firewall Service; (ii) performance and throughput of networks and associated routers and firewalls may be temporarily degraded; (iii) degradation of bandwidth; and (iv) Customer computer systems may hang or crash resulting in temporary system unavailability and/or loss of data.

With regard to any software components of the Firewall Device, Customer agrees it will not: (i) use or make any copies of the software; (ii) reverse engineer, decompile, or disassemble the software; (iii) sell, resell, transfer, license, sublicense, or distribute the software; or (iv) create, write, or develop any derivative software or other software program that is based on such software. Customer agrees to indemnify, defend and hold Windstream and its suppliers harmless from and against any and all claims, losses, liabilities and damages, including reasonable attorney's fees, which arise out of Customer's failure to comply with the foregoing.

# EXHIBIT "B"

City Representative Named: None

# EXHIBIT "C"

Materials: None