

## Customer Information and Contract Specifications

**Customer Name:** City of Milpitas

### Service Order

This Service Order is entered into by **tw telecom holdings inc.** on behalf of itself and its wholly owned operating subsidiaries (collectively "TWTC") and City of Milpitas ("Customer"). It is effective upon execution by both Parties ("Effective Date").

Service Address	Description	Order Type	Term (Months)	Qty	Unit MRC	Unit NRC	Total MRC	Total NRC
1275 N Milpitas BLVD, Milpitas, CA 95035-3153	Internet Access - 100 Mbps  - Service Level = 24x7x4 - Primary DNS (up to 10) - Secondary DNS (up to 50)	New	60	1	\$1,353.60	\$0.00	\$1,353.60	\$0.00
	Internet Transport - Ethernet 100Mbps			1	\$208.00	\$0.00	\$208.00	\$0.00
	<b>Subtotal</b>						<b>\$1,561.60</b>	<b>\$0.00</b>
	<b>Totals</b>						<b>\$1,561.60</b>	<b>\$0.00</b>

Additional charges may be assessed if Customer causes a delay in installation or if wiring is required between the service address and the network demarcation point. The Parties acknowledge that TWTC's provision of the Services specified in this Service Order require the use of certain conduit owned and controlled by Customer ("Customer Conduit"). TWTC and Customer agree to enter into an encroachment permit or similar document for TWTC's use of the Customer Conduit reasonably acceptable to both parties prior to TWTC's provision of the Services.

### Contract Provisions

The Services ordered herein are governed by this Service Order and the tw telecom Standard Terms and Conditions executed by Customer, as referenced above.

#### Internet

Usage: Customer shall not transmit or store material in violation of any Federal or state laws or regulations, including, but not limited to, obscenity, indecency, defamation or infringement of trademark or copyright. Customer agrees to adhere to TWTC's IP policy at <http://twtelecom.gyrohrsclients.com/support-information/customer-resources/Product-Resources/> and Acceptable Use Policy ("AUP") at <http://twtelecom.gyrohrsclients.com/support-information/legal-information/acceptable-use-policy/>, which may be modified from time to time. Customer's intended usage of the Service includes that of its Police Department for law enforcement purposes. Due to the nature of its investigatory characteristics, Police Department usage may technically violate the usage policies set forth in this Agreement. Except for such activity of the Police Department for legitimate law enforcement purposes, the Customer agrees to comply with the usage policies set forth herein.

#### Equipment Recovery

Upon termination of a Service for any reason, TWTC or its representative will contact Customer to schedule a mutually acceptable time and date for TWTC's retrieval of TWTC Equipment located on Customer's premises. Alternatively, TWTC may request that Customer package TWTC's Equipment and return it, at TWTC's cost, to a location identified by TWTC. If Customer does not provide TWTC with access to its premises to allow TWTC to recover the TWTC Equipment within thirty (30) days following TWTC's contact, or if Customer does not ship the TWTC Equipment back to TWTC within the thirty (30) days, then TWTC may charge Customer for the replacement cost of the TWTC Equipment.

Special Provision

Termination Liability: If Customer terminates this Service Order for any reason other than pursuant to Section 13 in the Standard Terms and Conditions within the first eighteen (18) months of the Service Term, all MRCs associated with the terminated Service(s) for the balance of the eighteen (18) months shall become immediately due and payable. After the initial eighteen (18) months of the Service Term, if Customer terminates this Service Order for any reason other than pursuant to Section 13 in the Standard Terms and Conditions TWTC shall be entitled to early termination liability charges equal to \$238.00 per month, multiplied by the number of months remaining in the term at the time of termination, not to exceed \$10,000.00.

**Signature Block**

<b>tw telecom holdings inc.</b>	<b>Customer: City of Milpitas</b>
Signature:	Signature:
Name: Dave Ellebrecht	Name:
Title: General Manager	Title:
Date:	Date:
Sales Person: Gil Knapp	

Customer and the individual signing above represent that such individual has the authority to bind Customer to this Agreement.

## Standard Terms and Conditions

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These Standard Terms and Conditions (“Agreement”) are entered into by **tw telecom holdings inc.**, a Delaware corporation, on behalf of itself and its wholly owned and state certified operating subsidiaries, (collectively “TWTC”) and City of Milpitas, a California Governmental Entity (“Customer”) and are effective upon execution by both Parties. Customer and TWTC may be referred to individually as a “Party” or collectively as the “Parties”. TWTC is responsible for the performance of its operating subsidiaries under this Agreement.

**1. Service Orders:** Customer may submit service orders to TWTC to purchase telecommunication and related services under this Agreement (“Service Orders”). The Service Orders describe the telecommunication and related services that are available for purchase (“Services”). Service Orders executed by the Parties together with this Agreement form the final written agreement between the Parties, and can only be amended or modified in a written document executed by both Parties. Services are subject to availability, and TWTC has the right not to accept a Service Order submitted by Customer. If a Service Order has been accepted by TWTC, it will provide Services for the term set forth in the Service Order and renewal periods (“Service Term”). Upon expiration of a Service Term for a particular Service, the Service Term will automatically renew on a month to month basis unless terminated by either Party upon written notice provided in accordance with Section 20 below at least thirty days prior to expiration of the then existing Service Term.

**2. Term of Standard Terms and Conditions:** The term of these Standard Terms and Conditions will commence upon signature by both Parties and will continue to govern Service Orders entered into by the Parties unless and until the Agreement is terminated in accordance with Sections 12 or 13 herein, or is otherwise superseded by a subsequent written agreement between the Parties.

**3. Cancellation, Modification or Expedition of Orders:** “Cancellation”, “Modification” and “Expedite Charges” referenced hereunder are posted to the TWTC Website ([www.twtelecom.com](http://www.twtelecom.com)) and are subject to modification by TWTC effective upon posting to the TWTC Website.

(a) Cancellation. Customer may cancel a Service Order if the request is received in writing by TWTC prior to the planned installation date, and TWTC shall have the right to assess a Cancellation Charge. If the request to cancel is received after installation has begun, Customer must pay full termination liability as set forth in Section 14 below.

(b) Modification. Customer may request in writing the modification of any Service Order(s). Such request shall result in a Modification Charge. If TWTC receives a written modification request for delay of installation less than 3 days prior to the planned installation date, Customer must pay, in addition to the Modification Charge, the monthly recurring charge (“MRC”) applicable to the delayed Service for the shorter of one billing month or the period from the original due date to the requested installation date. TWTC reserves the right to limit the number of requests to delay the planned installation date.

(c) Expedite. Customer may request an expedited installation date. If TWTC accepts the expedited installation date, Customer must pay an Expedite Charge.

(d) Third Party Charges. In addition to the charges set forth in (a), (b) and (c) above, TWTC may bill Customer for third party charges it incurs in order to complete Customer’s request to cancel, modify, or expedite the Service Order.

### 4. TWTC Network, Access and Interconnection:

(a) Responsibilities. TWTC will own and control the telecommunications equipment, cable and facilities installed and operated by TWTC for provision of the Services to Customer (“TWTC Network”), except that fiber optic cable that has been installed on premises owned by Customer shall remain in place after termination of this Agreement. The TWTC Network will remain TWTC’s personal property regardless of where located or attached. TWTC has the right to upgrade, replace or remove the TWTC Network in whole or in part, regardless of where located, so long as the Services continue to perform. TWTC has the right to limit the manner in which any portion of the TWTC Network is used to protect its technical integrity. Customer may not alter, move or disconnect any parts of the TWTC Network and is responsible for any damage to, or loss of, the TWTC Network caused by Customer’s (or its end users’) breach of this provision, negligence or willful misconduct. TWTC has no obligation to install, maintain or repair any equipment owned or provided by Customer, unless

otherwise agreed to in a writing executed by the Parties. If Customer's equipment is incompatible with the Service, Customer is responsible for any special interface equipment or facilities necessary to achieve compatibility.

(b) Access. Customer must provide TWTC with access to its premises to install and maintain Services and TWTC's Network. Customer must provide, at its expense, the following (collectively "Premise Requirements"): (i) appropriate space, power and environmental conditioning; and (ii) reasonable access rights and/or rights of way from third parties, as may be required for the installation and maintenance of the TWTC Network at and into Customer's premises. Customer must pay a Modification Charge if Customer does not provide the Premise Requirements prior to the scheduled installation date. In addition to the Modification Charge, TWTC may charge Customer for the reasonable time and materials incurred and documented by TWTC that are incurred because of Customer's failure to timely provide the Premise Requirements plus any third party charges assessed against TWTC. Customer must provide TWTC with a contact and/or help desk number that can be reached 24 hours per day/7 days per week.

(c) Demarcation Point and Inside Wiring. TWTC shall be responsible for provisioning Service up to the Demarcation Point and Customer is responsible for providing and maintaining any necessary wiring and facilities on Customer's side of the Demarcation Point. "Demarcation Point" means the TWTC-designated physical interface between TWTC's Network and Customer's equipment, which point shall be either (i) in the case of a Service terminating at a TWTC owned or controlled premises, TWTC's designated distribution panel or network interface device located within such TWTC premises or (ii) in the case of a Service terminating at Customer's premises, the distribution panel or network interface device located at the common telecommunications ("telco") demarcation at the Customer or end-user premises (e.g., entry point for telco facilities, telco closet or common telco room). If requested by Customer, TWTC may install, co-ordinate or otherwise arrange for installing or obtaining from third parties, facilities on Customer's side of the Demarcation Point ("Inside Wiring"). Customer agrees to pay Time and Materials rates posted at [www.twtelecom.com](http://www.twtelecom.com) for any Inside Wiring performed by TWTC personnel and agrees that TWTC may bill Customer for any third party charges it incurs to provide such Inside Wiring.

(d) Letter of Authorization / Carrier Facility Assignment. If Customer intends to connect the Services to facilities that neither it nor TWTC owns, it must provide TWTC with and maintain (for the Service Term) a current letter of authorization and carrier facility assignment, as applicable.

## 5. Installation and Maintenance:

(a) Installation. TWTC will notify Customer when the Service has been successfully installed and is available for Customer's use ("Service Date"). Unless Customer notifies TWTC by the close of business on the Service Date that the Service is not operational, the Service Term will commence. If Customer so notifies TWTC, the Service Date will not occur and the Service Term will not commence until the Service is operating properly. The Service Date will not be delayed or postponed due to problems with Customer's equipment or Customer's lack of readiness to accept or use Service.

(b) Maintenance:

(i) Scheduled Maintenance. TWTC will monitor TWTC's Network 24 hours per day, 7 days per week. Scheduled Maintenance will be performed between the hours of midnight and 6:00 a.m. (local time where the maintenance is being performed) unless another time is agreed to by the Parties for the particular circumstance. TWTC will endeavor to provide Customer with at least five business days notice before performing Scheduled Maintenance unless a shorter notice period is required under the circumstances.

(ii) Emergency Maintenance. If TWTC has to perform maintenance outside of the Scheduled Maintenance window set forth in Section 5(b)(i) above, then TWTC will provide as much prior notice to Customer as is practicable under the circumstances.

## 6. Charges, Billing, Taxes and Payment:

(a) Services are billed on a monthly basis with payment due no later than 30 days from invoice date commencing with the Service Date. Services are invoiced in advance, but usage charges are invoiced in arrears. Any installation or other non-recurring charges, which are non-refundable, will appear on the first monthly invoice.

(b) TWTC may require a deposit prior to the provision of any new Service. TWTC also may require a deposit as a condition to its obligation to continue to provide Service(s) if Customer has failed to timely pay for Service(s) on two occasions during any six month period.

(c) TWTC will invoice Customer for applicable Taxes (defined below) and, whenever possible, will identify such charges as a separate line item on the invoice. Customer will be liable for Taxes which were assessed by or paid to an appropriate taxing authority within the applicable statute of limitations period. If Customer fails to pay any Taxes properly billed, then as between TWTC and Customer, Customer will be solely responsible for payment of the Taxes, and penalty and interest.

“Tax” or “Taxes” mean any federal, state or local excise, gross receipts, value added, sales, use or other similar tax, fee, tax-like fee or surcharge of whatever nature and however designated, imposed, or sought to be imposed, on or with respect to purchases by Customer from TWTC for consideration under this Agreement or for TWTC's use of public streets or rights of way, which TWTC is required or permitted by law or a tariff to collect from Customer; *provided, however*, that the term "Tax" will not include any tax on TWTC's corporate existence, status, income, corporate property or payroll taxes.

If either Party is audited by a taxing or other governmental authority, the other Party agrees to cooperate reasonably by responding to the audit inquiries in a proper, complete and timely manner. TWTC will cooperate, at Customer's expense, with reasonable requests of Customer in connection with any Tax contest or refund claim. The Customer will ensure that no lien is attached to or allowed to remain on any asset of TWTC as a result of any Tax contest as a result of activities or tax liability of Customer. Customer will indemnify and hold TWTC harmless against any liabilities, damages, losses, costs or expenses arising out of such Tax proceedings, including without limitation any additional Taxes, interest, penalties and attorney's fees.

If Customer claims an exemption for any Taxes, Customer must provide TWTC with a proper tax exemption certificate as authorized by the appropriate taxing authority. Customer must pay the applicable Taxes to TWTC until it provides TWTC with a valid tax exemption certificate. If applicable law exempts a Service under this Agreement from a Tax, but does not also provide an exemption procedure, then TWTC will not collect such Tax if Customer provides TWTC with a letter signed by one of its officers: (i) claiming a right to the exemption; (ii) identifying the applicable law that allows such exemption and does not require an exemption certificate; and (iii) agreeing to indemnify and hold TWTC harmless from any tax, interest, penalties, loss, cost or expense asserted against TWTC as a result of its not collecting the Taxes from Customer.

(d) Payment for all undisputed amounts due under this Agreement must be received by TWTC on or before the due date specified on the bill (“Due Date”). Any payment or portion thereof not received by the Due Date is subject to a late charge on the unpaid amount at the lesser of 1.5% per month or the maximum rate permitted by law.

**7. Disputes:** If Customer disputes any charges, it must log the dispute by completing and submitting a dispute form via TWTC's dispute website located at: <http://customers.twtelecom.com/disputes/>, or by contacting TWTC's dispute telephone line at 1-800-829-0420. All disputes must be submitted to TWTC in the manner specified above within 120 calendar days of the date of the invoice associated with the disputed charges, or the invoice shall be deemed correct and all rights to dispute such charges are waived. Withheld disputed amounts determined in favor of TWTC must be paid by Customer within five (5) business days following written, electronic or telephonic notice of the resolution, and will bear interest at the lesser of 1.5% per month or the maximum rate allowed by law from the Due Date until the date paid.

## 8. Service Levels / Service Outage Credits:

(a) Service Level Agreement (“SLA”). The SLA for Internet Services is attached hereto as Exhibit A and incorporated herein by reference. The SLAs identify the applicable performance metrics and Service Outage credit tables. If a specific SLA is not identified on the website for a particular Service, then credits for Service Outages exceeding thirty (30) minutes

will be calculated on a pro rata basis, i.e. credits will be calculated by multiplying the duration of the Service Outage by the applicable MRC, divided by the monthly period.

(b) Service Outage Definition. A “Service Outage” is defined as either: (a) material non-compliance with a specific performance metric in a service level agreement and such non-compliance is caused by TWTC’s Network; or (b) a complete loss of transmission or reception capability for a Service caused by TWTC’s Network.

(c) Reporting and Tracking of Service Outages. If there is a Service Outage, Customer must contact TWTC’s Customer Network Reliability Center (“CNRC”) at 800-829-0420 and TWTC will open a trouble ticket and provide Customer with a trouble ticket number for tracking purposes.

(d) Duration of Service Outage and Application of Credits. For the purpose of calculating applicable credits, a Service Outage begins when Customer reports the Service Outage to TWTC’s CNRC, and ends when the Service is restored. Service Outages do not include outages and failures caused by the equipment, acts or omissions of Customer, third parties, Force Majeure events, or outages occurring during scheduled or emergency maintenance. The duration of a Service Outage does not include any time during which TWTC is not allowed access to the premises necessary to restore the Service. Credits for Service Outages are only issued if requested by Customer, and such requests must be submitted to TWTC within 120 days from the date Service is restored.

(e) Chronic Trouble Services. If two Service Outages have occurred on a particular Service during a 30-day period, and a third Service Outage occurs within thirty days following the second Service Outage, Customer may terminate the applicable Service without early termination liability provided that Customer supplies TWTC with a written termination notice no later than thirty days following the third Service Outage.

(f) Remedies. Notwithstanding anything to the contrary in this Agreement, the remedies set forth in the service level agreement and in Sections 8(a) and 8(e) of this Agreement constitute Customer’s sole and exclusive remedy for Service Outages.

(g) Service Outages Not Caused by TWTC’s Network. If TWTC responds to a service call initiated by Customer, and TWTC reasonably determines that the cause of the problem is: (i) not due to TWTC’s Network; or (ii) on Customer’s side of the Demarcation Point, Customer must compensate TWTC for the service call at TWTC’s then prevailing Time and Materials rates posted at [www.twtelecom.com](http://www.twtelecom.com).

## 9. Governmental Regulation - Changes:

(a) This Agreement is subject to all applicable federal, state and local laws, rules and regulations, and each Party must comply with them in performing its obligations hereunder. To the extent any provision herein conflicts with any applicable law, rule or regulation, such law, rule or regulation will supersede the conflicting provision.

(b) TWTC may discontinue or impose additional requirements to the provision of Service, upon 15 days written notice, if necessary to meet regulatory requirements or if such requirements have a material, adverse impact on the economic feasibility of TWTC providing the Service. Customer is not responsible for the termination liability set forth in Section 14 below if TWTC discontinues the Service under this subsection.

**10. Indemnification:** TWTC shall indemnify, defend with counsel reasonably acceptable to Customer, and hold harmless the Customer and its officials, officers, employees, agents, contractors, consultants, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of TWTC or its employees, subcontractors, or agents, by acts for which they could be held strictly liable, or by the quality or character of their work. The foregoing obligation of TWTC shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of Customer or its officers, employees, agents, contractors, consultants, or volunteers and (2) the actions of TWTC or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of TWTC to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by

Customer of insurance certificates and endorsements required under this Agreement does not relieve TWTC from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, TWTC acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

**11. Limitation of Liability:** Except for the Parties' respective obligations set forth in Section 14 herein, and for liability covered by applicable insurance, neither Party is liable to the other for indirect, consequential, special, incidental, or punitive damages of any kind or nature whatsoever (including without limitation lost profits, lost revenues, lost savings, lost opportunity or harm to business), whether or not foreseeable, whether or not the Party had or should have had any knowledge, actual or constructive, that such damages might be incurred, and regardless of the form of action, nature of the claim asserted or the frustration of either Party's purpose. Indirect damages include, but are not limited to, damages of the kinds specified in the preceding sentence that are incurred by a third party and are asserted against a Party (including attorneys' fees and expenses). TWTC's liability to Customer for direct damages may not exceed one month's calculation of the applicable MRCs regardless of the form of action, nature of the claim asserted or the frustration of either Party's purpose. TWTC has no liability for the content of information that Customer passes through TWTC's Network, Customer's transmission errors, or any failure to establish connections outside of the TWTC Network.

## 12. Termination by TWTC:

(a) Termination With Notice. TWTC may disconnect all Service(s) associated with a delinquent account upon ten (10) days written notice for Customer's failure to pay amounts due under this Agreement which remain uncured at the end of the notice period; or upon thirty (30) days written notice for: (i) Customer's breach of a non-economic, material provision of this Agreement or any law, rule or regulation governing the Services which remains uncured at the end of the notice period; (ii) Customer's insolvency, bankruptcy, assignment for benefit of creditors, appointment of trustee or receiver; and/or (iii) any governmental prohibition or required alteration of the Services.

(b) Termination Without Notice. TWTC may terminate or suspend Services without notice if: (i) necessary to protect TWTC's Network; (ii) TWTC has reasonable evidence of Customer's illegal, improper or unauthorized use of Services; or (iii) required by legal or regulatory authority.

(c) Post Termination. Any termination or disconnection shall not relieve Customer of any liability incurred prior to such termination or disconnection, or for payment of unaffected Services. TWTC retains the right to pursue all available legal remedies if it terminates this Agreement or disconnects Service(s) in accordance with this Section. All terms and conditions of this Agreement shall continue to apply to any Services not so terminated, regardless of the termination of this Agreement. If TWTC terminates Service in accordance with this section, and Customer wants to restore such Service, Customer first must pay all past due charges, a reconnection charge and a deposit equal to 2 months' recurring charges. All requests for disconnection will be processed by TWTC in 30 days or less. Customer must pay for Services until such disconnection actually occurs.

**13. Termination by Customer:** Customer may terminate this Agreement and/or any Service Order hereunder upon thirty (30) days prior written notice, without incurring termination liability, for TWTC's (i) breach of any material provision of this Agreement, or any law, rule or regulation that affects Customer's use of Service(s), which remains uncured at the end of the notice period and/or (ii) insolvency, bankruptcy, assignment for the benefit of creditors, appointment of trustee or receiver or similar event.

## 14. Termination Liability / Annual Appropriations:

(a) Termination Liability. If TWTC terminates this Agreement or any Service Order(s) pursuant to Section 12 above (other than subsections a(iii) and/or b(iii)), or if Customer terminates this Agreement or any Service Order(s) for any reason other than pursuant to Section 13 above, Customer agrees to pay the applicable termination liability specified in the applicable Service Order.

(b) Annual Appropriations. TWTC acknowledges that funding to pay for Services ordered under this Agreement is subject to annual appropriations by the appropriate governing body and if adequate sums are not appropriated in any

fiscal year to fund Customer's use of telecommunications services ordered hereunder, upon delivering to TWTC documentation of the same satisfactory to TWTC in its reasonable discretion, Customer may terminate the affected Service Orders upon no less than 45 days prior written notice. Such termination will not affect Customer's payment obligations for periods prior to such termination. If Customer exercises the termination right specified immediately above, it may not during the unexpired Service Term of the terminated Services obtain like services from a third party telecommunications provider; and if funds are re-appropriated for a later fiscal year during the unexpired Service Term, Customer will notify TWTC and reinstate the terminated Services. Customer represents and warrants, however, that Customer will include sufficient funding to cover charges for all Services ordered under this Agreement in each Customer budget submitted for approval, and will actively support the appropriation of such funding, during the term of this Agreement.

**15. Assignment:** Neither Party may assign this Agreement without the prior written consent of the other Party, not to be unreasonably conditioned, withheld or delayed, except that: (1) TWTC may assign its rights and/or obligations hereunder (a) to its parent, affiliates or subsidiaries, (b) pursuant to any merger, acquisition, reorganization, sale or transfer of all or substantially all its assets, or (c) for purposes of financing; and (2) Customer may assign its rights and/or obligations hereunder (a) to its parent, affiliates or subsidiaries, or (b) pursuant to any merger, acquisition, reorganization, sale or transfer of all or substantially all its assets, provided that any assignment by Customer pursuant to this exception is subject to the following conditions: (i) the proposed assignee satisfies TWTC's credit and deposit standards; (ii) Customer has fully paid for all Services through the date of assignment; and (iii) the proposed assignee agrees in writing to be bound by all provisions of this Agreement.

**16. Entire Agreement:** This Agreement, together with the Service Order(s), the terms of RFP#2013 ("RFP") as modified by TWTC's response to said RFP, and applicable tariffs set forth the entire agreement with respect to the subject matter hereof, and supersede all prior agreements, promises, representations, and negotiations between the Parties. If there is a conflict, the RFP as modified by TWTC's response to said RFP shall prevail over the Service Order, the Service Order shall prevail over this Agreement and any applicable tariff shall prevail over all. Modifications, amendments, supplements to or waivers of this Agreement must be in writing and executed by both Parties.

**17. Force Majeure:** Either Party shall be excused from performance if inability to perform is due to a cause or causes beyond such Party's reasonable control, including without limitation, acts of God, fire, explosion, vandalism, acts of terrorism, cable cuts caused by a third party, adverse weather conditions, labor strikes and governmental action ("Force Majeure"). If such inability to perform continues for sixty days or longer, the other Party may terminate the affected Services. Customer's invocation of this clause does not relieve Customer of its obligation to pay for Services actually received.

**18. Governing Law - Litigation:** The interpretation of the rights and duties of the Parties and any claim, controversy or dispute arising under or related to this Agreement shall be governed by and subject to the laws of the State of California excluding its principles of conflicts of law. If litigation is commenced to enforce this Agreement, the prevailing Party is entitled to reimbursement of its costs and attorneys' fees from the other Party.

**19. Headings:** Headings herein are for convenience only and are not intended to have substantive significance in interpreting this Agreement.

**20. Notices:** Any notice required under this Agreement must be in writing and be delivered to the receiving Party at the addresses listed below (i) in person, (ii) by certified mail with return receipt requested, or (iii) by overnight courier. A notice is deemed given (i) when delivered, if personally delivered, (ii) at the time indicated on the return receipt, if delivered by certified mail, or (iii) at the time the party or its representative executes the delivery receipt, if delivered via courier. TWTC must provide such notice to Customer's billing address, and Customer must provide such notice to TWTC at 10475 Park Meadows Drive, Littleton CO 80124, Attn: Deputy General Counsel, ***except that if Customer is disconnecting Services for any reason, it must deliver notice to TWTC either by facsimile to 303-803-9638 or by email to [CustomerCare@twtelecom.com](mailto:CustomerCare@twtelecom.com)***. Notice by facsimile or email is deemed given when delivered.

**21. No Waiver:** Either Party's failure to enforce any provision or term of this Agreement shall not be construed as a future or continuing waiver of such provision or term of this Agreement.

**22. Public Releases, Use of Name:** Neither Party may issue a news release, public announcement, advertisement or other form of publicity regarding this Agreement nor the Services provided hereunder without the prior written consent of the other Party. Customer may not use TWTC's name, logo or service mark without TWTC's prior written consent. TWTC may use Customer's name and logo in materials presented to analysts and investors. Notwithstanding the forgoing and as required by law, the Parties acknowledge that Customer is a public entity subject to the California Public Record Act, the terms of which it must comply.

**23. Representations and Warranties:** Each Party represents and warrants that it, and the person signing on its behalf, is fully authorized to enter into this Agreement. TWTC represents and warrants that the Services will be performed by qualified and trained personnel. TWTC does not guarantee, represent or warrant that the Service(s) will be without interruption. TWTC MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, AND DISCLAIMS ANY AND ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR OR ORDINARY PURPOSE.

**24. Severability:** If any provision hereunder is declared or held invalid, illegal or unenforceable, this Agreement will be revised only to the extent necessary to make such provision(s) legal and enforceable, or if impossible, the unaffected portions of this Agreement shall remain in full force and effect so long as the Agreement remains consistent with the Parties' original intent.

**25. Survival:** The terms and conditions of this Agreement will survive the expiration or termination of this Agreement to the extent necessary for their enforcement and for the realization of the benefit thereof by the Party in whose favor they operate.

**26. Relationship of Parties; No Third Party Beneficiaries:** The Parties are independent contractors, and nothing herein creates or implies an agency, joint venture or partnership relationship between the Parties. This Agreement shall bind and inure to the benefit of TWTC, Customer, and permitted successors and assigns. The Parties do not intend to create any rights for the benefit of any third parties.

**27. Confidentiality:** Each Party may disclose confidential information to the other Party in connection with this Agreement. Confidential information includes this Agreement, Service Orders, Service Level Agreements, all pricing information and any other information that is marked confidential or bears a marking of like import, or that the Party disclosing such information states is confidential and then confirms such confidentiality in writing within ten (10) days ("Confidential Information"). Confidential Information may only be used in connection with performance under this Agreement. Confidential Information may not be disclosed except to those employees or affiliates of the receiving Party who have a need to know, or to consultants or subcontractors of the receiving Party who agree to be bound by this Section. Confidential Information does not include information that is generally available to the public through no wrongful act of the receiving Party or is independently developed by the receiving Party. Upon termination or expiration of this Agreement, the receiving Party will return the Confidential Information or destroy it. The obligations of this provision will survive for five years after the termination or expiration of this Agreement. Notwithstanding the forgoing and as required by law, the Parties acknowledge that Customer is a public entity subject to the California Public Records Act and other laws including statutes mandating the retention of records for specific periods of time.

**Signature Block**

<b>tw telecom holdings inc.</b>	<b>Customer: City of Milpitas</b>
Signature:	Signature:
Name: Dave Ellebrecht	Name:
Title: General Manager	Title:
Date:	Date:
Sales Person: Gil Knapp	

Customer and the individual signing above represent that such individual has the authority to bind Customer to this Agreement.

## Exhibit A

### Internet Services

#### I. Product Description

##### Internet Services

TWTC offers a comprehensive suite of high-quality, high-speed Internet options -- Ethernet connections from 10Mbps ports to 10Gbps ports, as well as traditional connections (TDM) from T1 to OC48. Internet Services are high capacity, full duplex, Internet Protocol ("IP") Services connecting the Customer's network to TWTC's Internet backbone. Internet Services are comprised of two service elements -- Internet Access (bandwidth) and Internet Transport (port).

##### Ethernet Internet Services

Ethernet 10 Mbps - 2 Mbps to 10 Mbps in 2 Mbps increments

Ethernet 100 Mbps - 2 Mbps to 10 Mbps in 2 Mbps increments, 10 Mbps to 100 Mbps in 5 Mbps increments

Ethernet 1Gbps - 50 Mbps to 100 Mbps in 10 Mbps increments, 100 Mbps to 250 Mbps in 25 Mbps increments, 250 Mbps to 1 Gbps in 50 Mbps increments

Ethernet 10Gbps - 1 Gbps to 10 Gbps in 500 Mbps increments

##### Traditional Internet Services

T1 - 1.5 Mbps

NxT1 - multiple bonded T1s - 3 Mbps to 12 Mbps, in 1.5 Mbps increments

DS3 - 2 Mbps to 10 Mbps in 2 Mbps increments, 10 Mbps to 45 Mbps in 5 Mbps increments

OC3 - 35 Mbps to 95 Mbps in 10 Mbps increments, 100 Mbps to 150 Mbps in 25 Mbps increments, plus 155 Mbps

OC12 - 125 Mbps to 250 Mbps in 25 Mbps increments, 250 Mbps to 600 Mbps in 50 Mbps increments, plus 622 Mbps

OC48 - 1 Gbps, 1.5 Gbps, 2 Gbps, 2.488 Gbps

Note: Not all services available in all markets. Burstable service is available in most markets. Burstable bandwidth minimums may vary.

##### Available Features:

- Primary DNS (for up to 10 domains)
- Secondary DNS available at no charge (up to 50 domains)
- IP address space with proper justification
- 24x7 trouble shooting (excludes Customer's equipment)
- Online bandwidth utilization reports
- Backup mail-exchange (MX service)
- BGP peering

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**Available Services at an additional charge:**

- Managed Router Service
- Managed Firewall
- DDoS
- Shared Web/E-mail Hosting

**Additional Terms and Conditions**

Usage. Customer will not originate the transmission of or store material in violation of any Federal or state laws or regulations, including, but not limited to, obscenity, indecency, defamation or infringement of trademark or copyright. Customer must comply with TWTC's IP policy at [http://www.twtelecom.com/cust\\_center/ip\\_addressing\\_policy.html](http://www.twtelecom.com/cust_center/ip_addressing_policy.html) and Acceptable Use Policy at [http://www.twtelecom.com/cust\\_center/acceptable\\_use\\_policy.html](http://www.twtelecom.com/cust_center/acceptable_use_policy.html); either may be reasonably modified from time to time.

**II. Service Level Agreement****Network Availability**

TWTC's Internet Services will be available to Customer at least 99.99% of the time in a calendar month ("Network Availability"). Network unavailability occurs during a Service Outage. Upon Customer's request, TWTC shall issue credits for each Service Outage, calculated by multiplying the percentage specified in the table below by the MRC for the non-performing Service.

<b>Duration of Service Outage</b>	<b>Percentage Credit</b>
Less than 5 minutes (99.99% availability)	No Credit
5 minutes up to 4 hours	5% of the MRC
4 hours up to 8 hours	10% of the MRC
8 hours up to 12 hours	15% of the MRC
12 hours up to 16 hours	20% of the MRC
16 hours up to 24 hours	35% of the MRC
24 hours or greater	50% of the MRC

**Network Latency**

TWTC measures network latency with respect to average round-trip transmission on its Network each month. Network latency calculations for Internet Services provided in the continental United States are made between designated points of presence ("POPs") within the continental United States and, for Hawaii, are made between its POPs in Hawaii and its POPs on the west coast of the continental United States (collectively "Network Latency"). Upon Customer's request, TWTC shall issue credits for TWTC's failure to meet the Network Latency metrics specified below, and such credits will be calculated by multiplying the percentage specified in the table below multiplied by the MRC for the non-performing Service.

Network Latency Metrics (continental United States)	Network Latency Metrics (Hawaii to continental United States - west coast)	Percentage Credits
0.00 to 45.00 ms	0.00 to 75.00 ms	No Credit
45.01 to 55.00 ms	75.01 to 85.00 ms	5% of the MRC
55.01 to 60.00 ms	85.01 to 90.00 ms	10% of the MRC
60.01 to 65.00 ms	90.01 to 95.00 ms	15% of the MRC
65.01 to 70.00 ms	95.01 to 100.00 ms	20% of the MRC
70.01 to 75.00 ms	100.01 to 105.00 ms	35% of the MRC
75.01 ms or greater	105.01 ms or greater	50% of the MRC

### **Packet Delivery**

TWTC measures packet delivery on its Network on a monthly basis. Packet Delivery is determined by averaging sample measurements taken each calendar month between TWTC's designated POPs. Upon Customer's request, TWTC will issue credits for TWTC's failure to meet the Packet Delivery metrics specified in the table below, and such credits will be calculated by multiplying the percentage specified in the table by the MRC for the non-performing Service.

<b>Packet Delivery Metrics (continental United States)</b>	<b>Percentage Credits</b>
99.9% or greater	No Credit
99.5% to 99.8%	5% of the MRC
99% to 99.4%	10% of the MRC
98% to 98.9%	15% of the MRC
97% to 97.9%	20% of the MRC
96% to 96.9%	35% of the MRC
Less than 96%	50% of the MRC

#### Performance Metrics Available at TWTC's Website

Monthly Network Latency and Packet Delivery averages may be viewed at:

[www.twtelecom.com/performance/ip\\_network\\_overview\\_performance.html](http://www.twtelecom.com/performance/ip_network_overview_performance.html)