COUNCIL MEETING
November 17, 2009

Honorable Mayor and Members
of the Torrance City Council
City Hall
Torrance, California

Members of the Council:

SUBJECT: Fire Department – Extend the agreement for provision of emergency telephone notification services (CityWatch). Expenditure: $13,000 (new not-to-exceed amount of $67,000).

RECOMMENDATION

Recommendation of the Fire Chief that the City Council authorize the Fire Chief to exercise the option to extend the agreement (C2005-154) with Avtex Solutions LLC, dba Avtex, for provision of emergency telephone notification services for one year through December 20, 2010. The agreement will be increased by $13,000 for a new not to exceed total of $67,000. This is the last option for the City for one-year extension.

Funding

Funding is available in the Fire Department Operating Budget for FY2009-10.

BACKGROUND/ANALYSIS

This is the fourth one-year extension of the agreement with Avtex. (C2005-154) for the provision of CityWatch emergency telephone notification services by delivering pre-recorded messages with emergency event information to residents and businesses of specific impacted area(s) within the City of Torrance. The first extension was approved by Council on December 12, 2006, the second – on November 20, 2007, and the third – on November 18, 2008. The original agreement was entered into on December 20, 2005. This completely hosted/offsite system uses telephone numbers and address data from the 9-1-1 database with quarterly updates and web-based GIS application for geographic area selection.

On August 8, 2006, the City Council adopted Resolution No. 2006-62 repealing Resolution No. 2002-123 and establishing recovery of any direct cost related to the activation of the City's emergency telephone notification system. According to this resolution, the City will pay the annual maintenance fee as well as any other indirect cost for the emergency telephone notification system and will recover the direct cost related to any activation from the business or other entity that caused the city to activate the

system. The City will use the 10,000 free call minutes included in the annual maintenance fee for activations caused by City departments. Any City department that uses minutes over the 10,000 free minutes per year will be responsible for paying the direct cost of the activation. This cost will depend on the number of calls made and call minutes. The rate charged by Avtex Inc. is 9 cents per minute.

The Fire Department wishes to exercise the option to extend the agreement with Avtex for provision of CityWatch emergency telephone notification services (C2005-154) for another year. The agreement will continue in full force and effect through December 20, 2010. Under the existing contract, this is the last option for the City, to extend the agreement for one additional one-year term with the same terms and conditions.

The total annual amount for this one-year term extension is not to exceed $15,000 (an existing balance of $2,000 and an increase of $13,000) and will cover the yearly service access and maintenance fee in the amount of $13,000, overage fees if incurred, cost of additional call-lists, user accounts, and prerecorded messages if needed, or other cost in accordance with the compensation schedule. Since the cumulative contract total exceeds $39,999, Council authorization is needed to exercise the option to extend the agreement. Upon approval, a written notice will be sent to Avtex to notify them that the agreement is extended for one year.

Respectfully submitted,

WILLIAM RACOWSCHI
Fire Chief

By Neli Mileva
Senior Administrative Analyst

CONCUR:

William Racowschi
Fire Chief

LeRoy J. Jackson
City Manager

Attachments: A. Consulting Services Agreement with Avtex, Inc. (C2005-154). Note: The agreement's exhibits are available at the City Clerk's Office.

ATTACHMENT A

CONSULTING SERVICES AGREEMENT

This CONSULTING SERVICES AGREEMENT ("Agreement") is made and entered into as of December 20, 2005 (the "Effective Date"), by and between the CITY OF TORRANCE, a municipal corporation ("CITY"), and Avtex, Inc., a Minnesota Corporation ("CONSULTANT").

RECITALS:

A. The CITY wishes to retain the services of an experienced and qualified CONSULTANT to provide rapid, telephone emergency notification services by delivering pre-recorded messages with emergency event information to residents and businesses of specific impacted area(s) within the City of Torrance. The completely hosted/offsite system will use telephone numbers and address data from extracts from the 9-1-1 database with quarterly updates and web-based GIS application for geographic selection. The system shall be capable of being accessed and activated by both a secure Internet based interface and by telephone (Consultant to activate the emergency notification system at the direction of the city's authorized users without use of a computer system on the city's end).

B. In order to obtain the desired services, the CITY has circulated its Request for Proposal for Emergency Telephone Notification System, RFP No. B2005-04 (the "RFP").

C. CONSULTANT has submitted a Proposal (the "Proposal") in response to the RFP. In its Proposal CONSULTANT represents that it is qualified to perform those services requested in the RFP. Based upon its review of all proposals submitted in response to the RFP, the CITY is willing to award the contract to CONSULTANT.

C20 05-154

AGREEMENT:

1. <u>SERVICES TO BE PERFORMED BY CONSULTANT</u>
CONSULTANT will provide the services and install those materials listed in CONSULTANT's Proposal and Best and Final Offer submitted in response to the RFP. A copy of the RFP is attached as Exhibit A. A copy of the Proposal is attached as Exhibit B. A copy of the Best and Final Offer is attached as Exhibit C.

2. <u>TERM</u>
Unless earlier terminated in accordance with Paragraph 4 below, this Agreement will be for a term of one-year commencing on the Effective Date. The CITY will have the option of extending the Agreement for four additional successive one-year terms. Each extension shall be under the same terms, covenants, and conditions as in this agreement. For each extension period, the CITY shall pay to Consultant the amount of $13,000. Upon written notice from the CITY, this Agreement shall be deemed extended for the specified period without execution of any further instrument. If the Agreement is extended, the $13,000 fee will be paid in full each year the Agreement is extended upon presentation of an invoice and payment will be made within 30 days after the date of the invoice.

COPY

For each extension period, the CITY shall pay to CONSULTANT the yearly service access and maintenance fee in the amount of $13,000, overage fees if incurred, cost of additional call-lists, user accounts, and pre-recorded messages if needed, or other cost in accordance with the compensation schedule set forth in the Proposal and in the Best and Final offer; provided, however that in no event will the total amount of money paid the CONSULTANT, exceed $15,000, unless otherwise first approved in writing by the CITY.

3. **COMPENSATION**

A. CONSULTANT's Fee.

For services rendered pursuant to this Agreement, CONSULTANT will be paid in accordance with the compensation schedule set forth in the Proposal and the Best and Final Offer; provided, however, that in no event will the total amount of money paid the CONSULTANT, for services initially contemplated by this Agreement, exceed the sum of $17,000 ("Agreement Sum"), unless otherwise first approved in writing by the CITY.

B. Schedule of Payment.

The $13,000 yearly service access and maintenance fee and the $2,000 one-time training fee will be paid when the service is live, after completion of the 16 hours onsite training and the acceptance testing, upon presentation of an invoice. The invoice will be paid within 30 days. If the Agreement is extended, the $13,000 fee will be paid in full each year the Agreement is extended upon presentation of an invoice and payment will be made within 30 days after the date of the invoice.

The Overage fees (for minute usage beyond the 10,000 minutes included in the proposal) will be billed monthly and paid upon presentation of an invoice within 30 days after the date of the invoice provided that the CONSULTANT is not in default under the terms of this Agreement.

4. **TERMINATION OF AGREEMENT**

A. Termination by CITY for Convenience.

1. CITY may, at any time, terminate the Agreement for CITY's convenience and without cause.

2. Upon receipt of written notice from CITY of such termination for CITY's convenience, CONSULTANT will:

   a. cease operations as directed by CITY in the notice;
   b. take actions necessary, or that CITY may direct, for the protection and preservation of the work; and

c. except for work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

3. In case of such termination for CITY's convenience, CONSULTANT will be entitled to receive payment for work executed; and costs incurred by reason of such termination, along with reasonable overhead and profit on the work not executed.

B. Termination for Cause.

1. If either party fails to perform any term, covenant or condition in this Agreement and that failure continues for 15 calendar days after the nondefaulting party gives the defaulting party notice of the failure to perform, this Agreement may be terminated for cause; provided, however, that if during the notice period the defaulting party has promptly commenced and continues diligent efforts to remedy the default, the defaulting party will have such additional time as is reasonably necessary to remedy the default.

2. In the event this Agreement is terminated for cause by the default of the CONSULTANT, the CITY may, at the expense of the CONSULTANT and its surety, complete this Agreement or cause it to be completed. Any check or bond delivered to the CITY in connection with this Agreement, and the money payable thereon, will be forfeited to and remain the property of the CITY. All moneys due the CONSULTANT under the terms of this Agreement will be retained by the CITY, but the retention will not release the CONSULTANT and its surety from liability for the default. Under these circumstances, however, the CONSULTANT and its surety will be credited with the amount of money retained, toward any amount by which the cost of completion exceeds the Agreement Sum and any amount authorized for extra services.

3. Termination for cause will not affect or terminate any of the rights of the CITY as against the CONSULTANT or its surety then existing, or which may thereafter accrue because of the default; this provision is in addition to all other rights and remedies available to the CITY under law.

C. Termination for Breach of Law.

In the event the CONSULTANT or any of its officers, directors, shareholders, employees, agents, subsidiaries or affiliates is convicted (i) of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of a contract or subcontract; (ii) under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or

destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a public consultant or contractor; (iii) under state or federal antitrust statutes arising out of the submission of bids or proposals; or (iv) of violation of Paragraph 19 of this Agreement; or for any other cause the City determines to be so serious and compelling as to affect CONSULTANT's responsibility as a public consultant or contractor, including but not limited to, debarment by another governmental agency, then the CITY reserves the unilateral right to terminate this Agreement or to impose such other sanctions (which may include financial sanctions, temporary suspensions or any other condition deemed appropriate short of termination) as it deems proper. The CITY will not take action until CONSULTANT has been given notice and an opportunity to present evidence in mitigation.

5. **FORCE MAJEURE**

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

6. **RETENTION OF FUNDS**

CONSULTANT authorizes the CITY to deduct from any amount payable to CONSULTANT (whether or not arising out of this Agreement) any amounts the payment of which may be in dispute or that are necessary to compensate the CITY for any losses, costs, liabilities, or damages suffered by the CITY, and all amounts for which the CITY may be liable to third parties, by reason of CONSULTANT's acts or omissions in performing or failing to perform CONSULTANT's obligations under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by CONSULTANT, or any indebtedness exists that appears to be the basis for a claim of lien, the CITY may withhold from any payment due, without liability for interest because of the withholding, an amount sufficient to cover the claim. The failure of the CITY to exercise the right to deduct or to withhold will not, however, affect the obligations of CONSULTANT to insure, indemnify, and protect the CITY as elsewhere provided in this Agreement.

7. **THE CITY'S REPRESENTATIVE**

Dennis Coker is designated as the "City Representative," authorized to act in its behalf with respect to the work and services specified in this Agreement and to make all decisions in connection with this Agreement. Whenever approval, directions, or other actions are required by the CITY under this Agreement, those actions will be taken by the City Representative, unless otherwise stated. The City Manager has the right to designate another City Representative at any time, by providing notice to CONSULTANT.

8. **CONSULTANT REPRESENTATIVE(S)**
The following principal(s) of CONSULTANT are designated as being the principal(s) and representative(s) of CONSULTANT authorized to act in its behalf with respect to the work specified in this Agreement and make all decisions in connection with this Agreement:

Don Denman, Vice President

9. **INDEPENDENT CONTRACTOR**
The CONSULTANT is, and at all times will remain as to the CITY, a wholly independent contractor. Neither the CITY nor any of its agents will have control over the conduct of the CONSULTANT or any of the CONSULTANT's employees, except as otherwise set forth in this Agreement. The CONSULTANT may not, at any time or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of the CITY.

10. **BUSINESS LICENSE**
The CONSULTANT must obtain a City business license prior to the start of work under this Agreement, unless CONSULTANT is qualified for an exemption.

11. **OTHER LICENSES AND PERMITS**
CONSULTANT warrants that it has all professional, contracting and other permits and licenses required to undertake the work contemplated by this Agreement.

12. **FAMILIARITY WITH WORK**
By executing this Agreement, CONSULTANT warrants that CONSULTANT (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. If the services involve work upon any site, CONSULTANT warrants that CONSULTANT 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 CONSULTANT discover any latent or unknown conditions that will materially affect the performance of the services set forth in this Agreement, CONSULTANT must immediately inform the CITY of that fact and may not proceed except at CONSULTANT's risk until written instructions are received from the CITY.

13. **CARE OF WORK**
CONSULTANT must adopt reasonable methods during the term of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and other components to prevent losses or damages, and will be responsible for all damages, to persons or property, until acceptance of the work by the CITY, except those losses or damages as may be caused by the CITY's own negligence.

14. CONSULTANT'S ACCOUNTING RECORDS; OTHER PROJECT RECORDS
Records of the CONSULTANT's time pertaining to the project, and records of accounts between the CITY and the CONSULTANT, will be kept on a generally recognized accounting basis. CONSULTANT will also maintain all other records, including without limitation specifications, drawings, progress reports and the like, relating to the project. All records will be available to the CITY during normal working hours. CONSULTANT will maintain these records for three years after final payment.

15. INDEMNIFICATION
CONSULTANT will indemnify, defend, and hold harmless CITY, the City Council, each member thereof, present and future, its officers, agents and employees from and against any and all liability, expenses, including defense costs and legal fees, and claims for damages whatsoever, including, but not limited to, those arising from breach of contract, bodily injury, death, personal injury, property damage, loss of use, or property loss however the same may be caused and regardless of the responsibility for negligence. The obligation to indemnify, defend and hold harmless includes, but is not limited to, any liability or expense, including defense costs and legal fees, arising from the negligent acts or omissions, or willful misconduct of CONSULTANT, its officers, employees, agents, subcontractors or vendors. It is further agreed, CONSULTANT's obligations to indemnify, defend and hold harmless will apply even in the event of concurrent negligence on the part of CITY, the City Council, each member thereof, present and future, or its officers, agents and employees, except for liability resulting solely from the negligence or willful misconduct of CITY, its officers, employees or agents. Payment by CITY is not a condition precedent to enforcement of this indemnity. In the event of any dispute between CONSULTANT and CITY, as to whether liability arises from the sole negligence of the CITY or its officers, employees, agents, subcontractors or vendors, CONSULTANT will be obligated to pay for CITY's defense until such time as a final judgment has been entered adjudicating the CITY as solely negligent. CONSULTANT will not be entitled in the event of such a determination to any reimbursement of defense costs including but not limited to attorney's fees, expert fees and costs of litigation.

16. NON-LIABILITY OF THE CITY'S OFFICERS AND EMPLOYEES
No officer or employee of the CITY will be personally liable to CONSULTANT, in the event of any default or breach by the CITY or for any amount that may become due to CONSULTANT.

17. INSURANCE
A. CONSULTANT must maintain at its sole expense the following insurance, which will be full coverage not subject to self insurance provisions:

(1) Automobile Liability, including owned, non-owned and hired vehicles, with at least the following limits of liability:

(a) Primary Bodily Injury with limits of at least $500,000 per person, $1,000,000 per occurrence; and

(b) Primary Property Damage of at least $250,000 per occurrence; or

(c) Combined single limits of $1,000,000 per occurrence.

(2) General Liability including coverage for premises, products and completed operations, independent contractors/vendors, personal injury and contractual obligations with combined single limits of coverage of at least $1,000,000 per occurrence.

(3) Professional liability insurance with limits of at least $1,000,000 per occurrence.

(4) Workers' Compensation with limits as required by the State of California and Employers Liability with limits of at least $1,000,000.

B. The insurance provided by CONSULTANT will be primary and non-contributory.

C. CITY, the City Council and each member thereof, members of boards and commissions, every officer, agent, official, employee and volunteer must be named as additional insured under the automobile and general liability policies.

D. CONSULTANT must provide certificates of insurance and/or endorsements to the City Clerk of the City of Torrance before the commencement of work.

E. Each insurance policy required by this Paragraph must contain a provision that no termination, cancellation or change of coverage can be made without thirty days notice to CITY.

18. **SUFFICIENCY OF INSURERS**

Insurance required by this Agreement will be satisfactory only if issued by companies admitted to do business in California, rated "B+" or better in the most recent edition of Best's Key Rating Guide, and only if they are of a financial category Class VII or better, unless these requirements are waived by the Risk Manager of the CITY ("Risk Manager") due to unique circumstances. In the event the Risk Manager determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to the CITY, the CONSULTANT agrees that the minimum limits of any insurance policies and/or performance bond required by this Agreement may be changed accordingly upon receipt of written notice from the Risk Manager; provided that CONSULTANT will have the right to appeal a determination of increased coverage by the Risk Manager to the City Council of the CITY within 10 days of receipt of notice from the Risk Manager.

19. **CONFLICT OF INTEREST**

A. No officer or employee of the CITY may have any financial interest, direct or indirect, in this Agreement, nor may any officer or employee participate in any

decision relating to the Agreement that effects the officer or employee's financial interest or the financial interest of any corporation, partnership or association in which the officer or employee is, directly or indirectly interested, in violation of any law, rule or regulation.

B. No person may offer, give, or agree to give any officer or employee or former officer or employee, nor may any officer or employee solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any way pertaining to any program requirement, contract or subcontract, or to any solicitation or proposal.

20. **NOTICE**

A. All notices, requests, demands, or other communications under this Agreement will be in writing. Notice will be sufficiently given for all purposes as follows:

(1) Personal delivery. When personally delivered to the recipient: notice is effective on delivery.

(2) First Class mail. When mailed first class to the last address of the recipient known to the party giving notice: notice is effective three mail delivery days after deposit in an United States Postal Service office or mailbox.

(3) Certified mail. When mailed certified mail, return receipt requested: notice is effective on receipt, if delivery is confirmed by a return receipt.

(4) Overnight delivery. When delivered by an overnight delivery service, charges prepaid or charged to the sender's account: notice is effective on delivery, if delivery is confirmed by the delivery service.

(5) Facsimile transmission. When sent by fax to the last fax number of the recipient known to the party giving notice: notice is effective on receipt. Any notice given by fax will be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a non-business day.

Addresses for purpose of giving notice are as follows:

CONSULTANT:	Avtex, Inc. 5775 West Old Shakopee Road, Suite 160 Bloomington, MN 55437 Fax: (952) 832-3722
CITY:	City Clerk City of Torrance 3031 Torrance Boulevard Torrance, CA 90509-2970 Fax: (310) 618-2931

B. Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified, will be deemed effective as of the first date the notice was refused, unclaimed or deemed undeliverable by the postal authorities, messenger or overnight delivery service.

C. Either party may change its address or fax number by giving the other party notice of the change in any manner permitted by this Agreement.

21. **PROHIBITION AGAINST ASSIGNMENT AND SUBCONTRACTING**
This Agreement and all exhibits are binding on the heirs, successors, and assigns of the parties. The Agreement may not be assigned or subcontracted by either the CITY or CONSULTANT without the prior written consent of the other.

22. **INTEGRATION; AMENDMENT**
This Agreement represents the entire understanding of the CITY and CONSULTANT as to those matters contained in it. No prior oral or written understanding will be of any force or effect with respect to the terms of this Agreement. The Agreement may not be modified or altered except in writing signed by both parties.

23. **INTERPRETATION**
The terms of this Agreement should be construed in accordance with the meaning of the language used and should not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction that might otherwise apply.

24. **SEVERABILITY**
If any part of this Agreement is found to be in conflict with applicable laws, that part will be inoperative, null and void insofar as it is in conflict with any applicable laws, but the remainder of the Agreement will remain in full force and effect.

25. TIME OF ESSENCE
Time is of the essence in the performance of this Agreement.

26. GOVERNING LAW; JURISDICTION
This Agreement will be administered and interpreted under the laws of the State of California. Jurisdiction of any litigation arising from the Agreement will be in Los Angeles County, California.

27. COMPLIANCE WITH STATUTES AND REGULATIONS
CONSULTANT will be knowledgeable of and will comply with all applicable federal, state, county and city statutes, rules, regulations, ordinances and orders.

28. WAIVER OF BREACH
No delay or omission in the exercise of any right or remedy by a nondefaulting party on any default will impair the right or remedy or be construed as a waiver. A party's consent or approval of any act by the other party requiring the party's consent or approval will not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and will not be a waiver of any other default concerning the same or any other provision of this Agreement.

29. ATTORNEY'S FEES
Except as set forth in Paragraph 15, in any dispute, litigation, arbitration, or other proceeding by which one party either seeks to enforce its rights under this Agreement (whether in contract, tort or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing party will be awarded reasonable attorney's fees, together with any costs and expenses, to resolve the dispute and to enforce any judgment.

30. EXHIBITS
All exhibits identified in this Agreement are incorporated into the Agreement by this reference.

31. CONFIDENTIALITY/NONDISCLOSURE
A. CONSULTANT will sign and comply with the terms of the Nondisclosure Agreement from Pacific Bell Telephone Company dba SBC California. A copy of the Nondisclosure Agreement is attached as Exhibit D. Further, CONSULTANT will agree to and comply with the terms of Article 5, entitled "Confidentiality," and Paragraph 6.4 of the Emergency Subscriber List Information License Agreement from Verizon California, Inc. A copy of the Emergency Subscriber List Information License Agreement is attached as Exhibit E. CONSULTANT will indemnify CITY as provided in Paragraph 15 of this Agreement for any breaches by CONSULTANT of either (1) the Nondisclosure Agreement from Pacific Bell Telephone Company dba SBC California or (2) the Emergency Subscriber List Information License Agreement from Verizon.

B. CITY will provide CONSULTANT with technical and business information in written, graphic, oral or other tangible or intangible forms, including but not limited to Street Centerline Data, Address Point Data, and ESRI GIS shapefiles and data files. Such information may contain proprietary or confidential material subject to applicable laws regarding trade secrets, intellectual property, and copyrights. ("CONFIDENTIAL INFORMATION").

CONSULTANT agrees that

(1) It will limit access to CONFIDENTIAL INFORMATION to authorized employees, agents, and contractors who have a need to know the CONFIDENTIAL INFORMATION in order for CONSULTANT to perform its obligations under this Agreement and who have been informed of the confidential and proprietary nature;

(2) The agents and contractors of CONSULTANT who have access to the CONFIDENTIAL INFORMATION must be covered by a written confidentiality agreement at least as restrictive as Paragraph 31(B) of this Agreement;

(3) It will not disclose, reveal, or divulge any CONFIDENTIAL INFORMATION or authorize any other person to do so except as specifically approved in writing by CITY;

(4) The CONFIDENTIAL INFORMATION shall not, for any reason, be disclosed or used for marketing, advertising, public relations, or other commercial purposes of any nature;

(5) Upon request of CITY, CONSULTANT will return all CONDIFENTIAL INFORMATION to the CITY or will certify that it has destroyed any documents, computer media or records, in written, graphic, or other tangible form, that contain any CONFIDENTIAL INFORMATION;

(6) Nothing contained in this Paragraph shall be construed as a license or permission to make, use, or sell the CONFIDENTIAL INFORMATION or products derived therefrom;

(7) If CONSULTANT receives a request to disclose any CONFIDENTIAL INFORMATION (whether pursuant to a valid and effective subpoena, an order issued by a court or other governmental authority of competent jurisdiction or otherwise) on advice of legal counsel that disclosure is required under applicable law, CONSULTANT agrees that prior to disclosing any CONFIDENTIAL INFORMATION, it shall (i) notify the CITY of the existence and terms of such request or advice, (ii) cooperate with the CITY in taking legally available steps to resist or narrow any such request or to otherwise eliminate the need for such disclosure, if requested to do so by the CITY, and (iii) if disclosure is required, use its best efforts to obtain a protective order or other reliable assurance that confidential treatment will be afforded to such portion of the CONFIDENTIAL INFORMATION as is required to be disclosed; and

(8) CONSULTANT will indemnify CITY as provided in Paragraph 15 of this Agreement for any breaches by CONSULTANT of Paragraph 31(B) of this Agreement.

32. **CONSULTANT'S AUTHORITY TO EXECUTE**
The person(s) executing this Agreement on behalf of the CONSULTANT warrant that (i) the CONSULTANT is duly organized and existing; (ii) they are duly authorized to execute this Agreement on behalf of the CONSULTANT; (iii) by so executing this Agreement, the CONSULTANT is formally bound to the provisions of this Agreement; and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which the CONSULTANT is bound.

CITY OF TORRANCE,
a Municipal Corporation

Richard V. Bongard, Fire Chief

LeRoy J. Jackson, City Manager

Avtex, Inc.
a Corporation

By: _____
Don Denman, Vice President

APPROVED AS TO FORM:

JOHN L. FELLOWS III
City Attorney

By: _____

Attachments:
- Exhibit A: RFP
- Exhibit B: Proposal
- Exhibit C: Best and Final Offer
- Exhibit D: Nondisclosure Agreement (Pacific Bell Telephone Company dba SBC California
- Exhibit E: Emergency Subscriber List Information License Agreement (Verizon California, Inc.)

Revised: 1/30/01