

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number _____

Meeting Type: Regular

Meeting Date: 6/26/2014

Action Requested By:
ITS

Agenda Item Type
Resolution

Subject Matter:

Agreement with API Digital

Exact Wording for the Agenda:

Resolution authorizing the Mayor to enter into an Agreement between the City of Huntsville and API Digital to provide dual internet service bandwidth.

Note: If amendment, please state title and number of the original

Item to be considered for: Action

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what Council action will provide, allow and accomplish and; any other information that might be helpful.

This agreement provides internet bandwidth of 100Mbps burstable speed between API Digital and the City of Huntsville. The City must maintain two internet pathways to assure sustainability of City data communication. API digital provides one of those pathways. API provides this service in exchange for 6U of rack space in the City data center, 2 UPS protected 110v outlets, and access to tenants within the City data center. (Original Res. 11-575)

Associated Cost: None

Budgeted Item: Not applicable

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head: William M. [Signature]

Date: 6/11/2014

ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: ITS

Council Meeting Date: 6/26/2014

Department Contact: Stephanie Stegall-Elliott

Phone # 256-427-6701

Contract or Agreement: Agreement - COH & API Digital

Document Name: Agreement Between the City of Huntsville & API Digital

City Obligation Amount: None

Total Project Budget: N/A

Uncommitted Account Balance: N/A

Account Number: N/A

Procurement Agreements

Not Applicable	Not Applicable
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Grant-Funded Agreements

Not Applicable	Grant Name:
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Department	Signature	Date
1) Originating	<i>Wayne Brooks</i>	6-12-2014
2) Legal	<i>Mary C. Lates</i>	6/18/2014
3) Finance <i>RL</i>	<i>Asyl</i>	6/17/14
4) Originating		
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		

RESOLUTION NO. 14 - _____

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama that the Mayor be, and he is authorized on behalf of the City of Huntsville, a Municipal corporation in the State of Alabama, to enter into an Agreement by and between the City of Huntsville and API Digital similar to that certain document attached hereto and identified as "Agreement Between the City of Huntsville and API Digital", consisting of a total of twelve (12) pages, including "Addendum A, three (3) pages, Addendum B, one (1) page, Addendum C, two (2) pages and Attachment "A", one (1) page, and the date of June 26, 2014 appearing on the margin of the first page, together with the signatures of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this 26th day of June, 2014.

President of the City Council of the
City of Huntsville, Alabama

APPROVED this 26th day of June, 2014.

Mayor of the City of Huntsville, Alabama

AGREEMENT BETWEEN THE CITY OF
HUNTSVILLE AND API DIGITAL

STATE OF ALABAMA
COUNTY OF MADISON

AGREEMENT

This Agreement is entered into this 26th day of June, 2014 by and between the City of Huntsville, Alabama (hereinafter referred to as "the City") and API Digital (hereinafter referred to as "API").

WITNESSETH:

WHEREAS, the City recognizes the need for dual internet service bandwidth in order to achieve greater security and sustainability for its subscribers;

WHEREAS, API has presented a cost effective means to achieve these requirements;

API will provide a Burstable 100 Mbps Ethernet Internet Circuit from API Digital, 200 Westside Square Suite 600, Huntsville, Alabama 35801, delivered via City-owned fiber with copper Gigabit handoff.

API will provide Internet bandwidth in exchange for continued use existing 6U of space at City ITS, and access to tenants within City ITS datacenter.

City ITS will continue to provide 2 UPS protected - 110v 15a power outlets.

The term for this service is thirty-six (36) months beginning August 11, 2014.

The following Addendums are attached and become a part of this Agreement:

Addendum "A" consisting of three (3) pages, titled "Services Terms and Conditions".

Addendum "B" consisting of one (1) page, titled "Service Level Agreement".

Addendum "C" consisting of two (2) pages, titled "Acceptable Use Policy".

President of the City Council
Huntsville, Alabama
Date: June 26, 2014

1. CONTACT INFORMATION:

Contact for the City: William Steiner, Director - Information Technology Services Department - 101 Church Street Suite 201- Huntsville, Alabama 35801.

API Contact: Stephen S. Pell, Managing Partner/CIO - API Digital - 200 Westside Square Suite 600 - Huntsville, Alabama 35801

2. CONFIDENTIALITY:

During the course of the parties' relationship, API may have access to information deemed Confidential by the City, including but not limited to Software and Documentation licensed to the City. Software for purposes of this provision means all or any portion of the binary computer software programs and related source code identified above as being licensed by the City. API hereby agrees that the City's Confidential Information shall not be disclosed, orally or in writing, to any third party without the prior written consent of the owner of such information. API shall protect all Confidential Information with at least the same degree of care and confidentiality, but not less than a reasonable standard of care, which API utilizes for its own proprietary or confidential information which it does not want disclosed to the public. To the extent API may be required to disclose Confidential Information in a legal proceeding, API may make such disclosure, provided API notifies the City of such requirement prior to disclosure, and provided further that API takes diligent efforts to avoid and/or limit disclosure.

3. INDEMNIFICATION

(a) Intellectual Property Rights.

API agrees to indemnify, hold harmless and defend the City from and against any and all liability, losses, judgments, damages, and expenses arising from third party claims that the Products developed and/or Services performed pursuant to this Agreement infringe on or violate any patents, copyrights, or trade secrets of such third parties, except as provided in Section (c)(ii), below. This indemnification is contingent upon the City providing prompt written notice of such a claim to API, and granting API the sole right to defend such claim. In the event of any infringement or claimed infringement API, in its sole discretion, shall: (i) modify the infringing Services to be non-infringing as long as there is no loss of functionality by such modification; (ii) obtain a license for the City to use the infringing Services; or (iii) terminate the City's right to use the infringing Services and refund to the City all amounts paid for such infringing Services, amortized over a period of (5) years from the acceptance of Services.

(b) Bodily Injury and/or Property Damage.

API, to the fullest extent permitted by law, shall indemnify and hold harmless the City, its elected and appointed officials, employees, agents and specified volunteers against all claims, damages, losses, and expenses, including but not limited to,

reasonable attorney's fees, arising out of or resulting from the performance of the work, provided that any such claim, damage, loss or expense (1) is attributable to personal injury, including bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, including loss of use resulting there from, and (2) is caused by any negligent act or omission of API or any of its consultants, or anyone directly or indirectly employed by them or anyone for whose acts they are legally liable.

(c) Indemnification of Provider.

To the extent allowed and as limited by Alabama State law, the City agrees to indemnify, hold harmless and defend API from and against any and all judgments, liabilities, losses, expenses, and costs (including but not limited to, court costs and reasonable attorney fees) incurred by API in respect to third-party claims that arise from: (i) death, bodily injury, or damage to tangible personal property caused by the City's acts of gross negligence or willful misconduct in connection with this Agreement; (ii) the violation of any third-party's intellectual property rights arising in connection with the provision of Services where such violation arises from API's reliance on, or authorized use of, tools, instructions, specifications, or other materials provided by the City, including use of any materials provided by the City, including or where the City or any third-party modifies, adds to, or combines with any technology or data, any Intellectual Property; or (iii) any failure to obtain intellectual property rights or export licenses of software used during API's performance of Services.

(d) Duties of Indemnitee.

To receive the benefit of indemnification under this Section entitled "Indemnification", the indemnified party must promptly notify the indemnitor of any such claim or lawsuit and provide reasonable cooperation (at indemnitor's expense) and tender to indemnitor (and its insurer) full authority to defend or settle the claim or suit. Indemnitor has no obligation to indemnify for any settlement made without its consent or for any claim to the extent lack of prompt notice shall have prejudiced indemnitor. The remedies provided in this Section shall be the sole and exclusive remedies available in respect to any claim covered hereunder.

4. INJURIES TO API

API is obligated to obtain sufficient liability insurance coverage (as well as worker's compensation coverage, if required by law) for the benefit of API and its agents and/or employees. API waives any and all rights to recovery from the City for any injuries that API (and/or its agents and/or employees) may sustain while performing services under this Agreement except in cases where API is injured by the City's acts of gross negligence or willful misconduct. API shall maintain minimum limit of general liability insurance in the aggregate amount of \$500,000 per occurrence.

5. ASSIGNMENT OF RIGHTS:

Neither party may assign its rights or delegate its obligations hereunder without the prior written consent of the other party. API may not subcontract its obligations hereunder to independent contractors without the prior written consent of the City's ITS Director.

6. INDEPENDENT CONTRACTOR/API:

In the performance of this work, it is understood between the parties that the Contractor, its employees, agents, subcontractors and consultants, if any, shall be acting as independent Contractors and not as employees or agents of the City of Huntsville. Contractor shall have no authority or power to obligate the City to any indebtedness or other obligation nor shall the Contractor or his employees, agents, subcontractors, and consultants have any right or power to hold themselves out as employees or agents of the City.

The Contractor is retained or engaged by the City only for the purposes and to the extent set forth in this Agreement. The Contractor's relationship to City will, during the period or periods of this Agreement, be that of an independent Contractor and as such the Contractor will be free to dispose of such portion of its time, energy and skill when the Contractor is not obligated under this Agreement in such a manner as Contractor sees fit. This Agreement will not establish a joint venture, agency or partnership between Contractor and the City. In the performance of the services required herein, the Contractor shall exercise a high level of independent skill, professionalism, and judgment and shall retain sole and absolute discretion in the means and methods for carrying out the responsibilities contained herein.

The Contractor shall not be considered under this Agreement or otherwise or in any way as having the status of employee or being entitled to participate in any plans, schemes, arrangements, retirement contributions or other benefits ordinarily provided by the City to its employees. As an independent Contractor, the Contractor shall be responsible for providing for and paying all of its own federal, state, or local, tax obligations, withholdings, licenses, permits, and insurance requirements. The City shall have no responsibility for making any payments for the Contractor for any minimum or overtime wages under the Fair Labor Standards Act, or any amounts owed by or on behalf of the Contractor under the Federal Insurance Contribution Act, Federal Unemployment Tax Act, the federal or state revenue codes, state workers' compensation statutes, or state unemployment insurance laws and regulations.

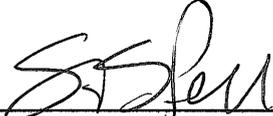
7. E-VERIFY

The City has adopted an ordinance that requires certain contractors of the City to comply with certain requirements regarding the hire of unauthorized aliens under federal law. Contractor must complete and submit the Contractor E-Verify Certification found in Attachment A prior to Award Notification upon request of the City, and comply with the requirements described therein.

IN WITNESS WHEREOF, the City of Huntsville, Alabama and API Digital have caused this Agreement to be executed on the date set forth above.

API DIGITAL

CITY OF HUNTSVILLE
A Municipal Corporation

By: 
Stephen S. Pell
Managing Partner / CIO

By: _____
Tommy Battle
Mayor

ATTEST:

Charles E. Hagood
Clerk-Treasurer

Date: 6/26/14

ADDENDUM "A"

Services Terms and Conditions

API Digital Services: Customer agrees to purchase the API Digital Communications, LLC. ("API Digital") Services outlined in the Services Agreement on these terms and conditions.

Customer agrees to remain a subscriber of the service for the minimum period indicated on the Services Agreement from the date of service activation, which is the date on which API Digital notifies Customer that the Services have been provisioned and are ready for use by Customer, regardless of when Customer actually commences use of the Services. This Agreement shall automatically renew for successive one year periods on the same terms and conditions contained herein until terminated by either party by providing written notice no less than 30 days prior to the end of the then current term. Notwithstanding, Customer may terminate the Service within the initial 30 days following service activation in the event Customer, in its good faith judgment, is not satisfied with the Service.

Unless otherwise specified in the Services Agreement or these terms and conditions, all notices, requests, demands and other communications required or permitted hereunder shall be in writing and shall be deemed to have been given if mailed, certified mail, return receipt requested, with postage prepaid, to, in the case of Customer, the address listed on the Service Agreement, or, in the case of API Digital, to API Digital - Customer Service, 285 Dunlop Drive SW, Suite G, Huntsville, AL 35824, or to such other address as either party may notify the other in writing. In addition, API Digital may deliver notices to Customer by electronic mail to Customer's email address for Contract Administration as set forth on the Services Agreement or as may be updated in writing by Customer.

Rights and Obligations of Customer: API Digital's Services are to be used only for lawful purposes and in accordance with API Digital's Acceptable Use Policy. Failure to comply with these obligations and the obligations in the Acceptable Use Policy shall constitute a violation of these terms and conditions, and API Digital may, in its reasonable discretion, terminate this Agreement or take such other action as API Digital may deem necessary to address the non-compliance. If Customer operates hardware or software that API Digital determines in its sole discretion may cause hazard, interference, or service interruption to API Digital provided equipment or Services or API Digital's network or other customers, Customer shall immediately remove the offending hardware or software upon notice, and API Digital reserves the right to partially or entirely suspend service as needed in such situations. Customer agrees that API Digital, in its discretion, may access Customer's network in order to deliver an Internet Control Message Protocol (ICMP) ping in order to determine the number of IP addresses being utilized by Customer and to validate delivery of service.

Proprietary Rights: API Digital grants Customer a non-exclusive, non-transferable license to use the Services provided hereunder. Title, property rights, software licenses and hardware licenses and agreements, including all intellectual property rights to such Services, are and shall remain with API Digital or API Digital's licensee, whether or not they are embedded in any Service. Customer shall not attempt in any way to alter, re-engineer, tamper with, or otherwise misuse such Services. In all cases, the IP addresses assigned for Customer use remain the property of API Digital and shall revert back to same upon Customer termination.

Installation: Installation and one-time charges set forth on the Service Order(s) are due upon service activation. Installation charges are nonrefundable. Customer shall provide API Digital and its suppliers reasonable access to Customer's premises including the point at which any interconnected carrier services are provided to Customer. Customer also is responsible for any and all additional carrier charges arising as a result of necessity to schedule or reschedule carrier suppliers, as well as all carrier maintenance and diagnostics charges that may be needed. Once API Digital Services and equipment have been installed, Customer shall be responsible for any fees associated with relocation of equipment if requested by Customer or Customer's landlord.

Downgrade or Disconnection: If Customer desires to downgrade services within the initial three months

following activation of the Services or following any upgrade, Customer agrees to pay a one-time downgrade fee of \$750 and any applicable carrier fees. If Customer desires to downgrade services after the initial three months after activation of the Services or any upgrade, Customer agrees to pay any applicable termination penalties to disconnect said services.

Customer Premise Equipment: In cases where API Digital provides customer premise equipment, API Digital shall provide the initial equipment configuration and verify connection with the API Digital network. API Digital shall determine the configuration and type of equipment to be used. Customer is responsible for operating the equipment within the parameters of the manufacturer's specifications. API Digital may choose, at its sole discretion, to provide software upgrades for hardware. Additional personnel support required due to misuse or unauthorized modifications by Customer shall be chargeable to Customer at API Digital's then-current rates. Unless otherwise specified, API Digital's point of demarcation shall be the Customer Local Area Network side of the router. In cases where the customer provides premise equipment, API Digital must be allowed administrative rights to the equipment. API Digital is not responsible for repair or replacement of damaged, customer-owned equipment.

Service of Equipment Provided by API Digital: In the event of failure of equipment sold by API Digital to Customer during the warranty period covering the equipment, API Digital shall replace the faulty equipment with like equipment in a reasonable time frame, after notice of failure. In the event of failure of equipment sold by API Digital after the expiration of the warranty covering the equipment, API Digital shall service the equipment for Customer at its then current maintenance rates.

Invoicing and Payment of Service: Initial rates for the Services are set forth in the Services Agreement. The initial rates shall be in effect for the duration of the initial service commitment. API Digital shall invoice Customer monthly, in advance. The price of the Service described in the Services Agreement does not include sales, usage, excise, ad valorem, property or any other taxes now or hereafter imposed directly or indirectly, by any governmental authority or agency with respect to the Services. Customer agrees to pay such taxes directly or reimburse API Digital for any such taxes. This invoice is due and payable in full on the due date shown on the invoice. Customer may prepay for the services for the term of the Services Agreement.

Non-Payment/Customer Termination: A late charge equal to the lesser of 1-1/2% per month or the maximum rate permitted by law may be applied to each of Customer's service bills not paid by the due date. This late charge is applicable to the unpaid balances as of the due date. Customer shall pay API Digital all costs including, without limitation, reasonably attorney fees, the fees of any collection agency, and any other costs incurred by API Digital in exercising any of its rights under this Agreement. If Customer is late with more than one payment, API Digital may, upon written notice to Customer, require a security deposit or other reasonable assurances to secure Customer's payment obligations hereunder, or API Digital may suspend Services until any overdue payments have been made. If Customer terminates the Services Agreement, or if API Digital terminates the Customer for breach by Customer, Customer shall immediately pay a lump sum equal to the monthly recurring charges for the remainder of the then current term of the Services Agreement, plus any disconnection, early cancellation, or termination charges imposed on API Digital by any of its third party contractors.

Right to Terminate: Either party shall have the right to terminate this agreement with 60 day written notice upon the breach, by the other party, of the Terms and Conditions, Acceptable Use Policy, and/or of the Services Agreement, with the understanding that Customer must allow API Digital an opportunity to remedy any problems or concerns within a reasonable time frame of 60 business days. At that time, principals from both companies shall meet to review the resolution of any identified issues.

Limitation of Liability: API Digital exercises no control whatsoever over the content of any information passing through its network. Customer agrees that API Digital makes no representation that it can provide uninterrupted service. API Digital is not responsible for any damages Customer may suffer for any reason, including, but not limited to content passing through its network, loss or degradation of data

resulting from delays, non-deliveries, wrong deliveries, or for any and all service interruptions whether caused by the acts or omissions of API Digital and its employees, of Customer, or of any other party other than the credits outlined herein. API Digital shall not be liable for acts or omissions of other carriers, equipment failures or modifications, acts of God, strikes, government actions, or other causes beyond its reasonable control. Customer further agrees to indemnify and hold harmless API Digital from any and all claims resulting from Customer's use of the equipment or Services, or violation of the Acceptable Use Policy. If for any reason the foregoing disclaimers of damages are found to be unenforceable by a court of competent jurisdiction, then API Digital's liability for damages to Customer for any cause whatsoever, regardless of form of action, shall be limited to the amounts paid by Customer to API Digital in respect of the Services giving rise to the claim during the 6 month period immediately preceding the events giving rise to the claim.

API Digital MAKES NO WARRANTIES WITH RESPECT TO THE PRODUCTS OR SERVICES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, EXCEPT AS SPECIFICALLY PROVIDED IN SERVICES AGREEMENT. THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE ARE HEREBY DISCLAIMED AND EXCLUDED. API Digital SHALL NOT BE LIABLE TO ITS CUSTOMER OR ANY THIRD PARTY FOR ANY SPECIAL, PUNITIVE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES.

Lien on Property Colocated at API Digital Facility: Customer hereby pledges and assigns to API Digital all co located property, including but not limited to, servers, computers, and network equipment, installed on or delivered to the premises of API Digital, as security for the payment of services provided by API Digital. Customer agrees to allow API Digital to prohibit removal from premise until satisfaction of any outstanding invoices and any other applicable charges. Unclaimed Customer equipment, no longer under current services agreement, may become property of API Digital for the satisfaction of outstanding customer invoices. API Digital is not responsible for any Customer equipment, installed at API Digital facility, that is not under a current services agreement. The Services do not constitute a bailment.

Transfer and Assignment: Customer may not assign any of its rights under this Agreement, except with the prior written consent of API Digital. All assignments of rights are prohibited under this subsection, whether they are voluntary or involuntary, by merger, consolidation, dissolution, operation of law, or any other manner. Customer may not delegate any performance under this Agreement. Any purported assignment of rights or delegation of performance in violation of this paragraph are void.

Governing Law: This Services Agreement is governed by the laws of the State of Alabama without regard to its choice of law provisions. Any claims or actions regarding or arising out of this Agreement must be brought exclusively in a court of competent jurisdiction sitting in Huntsville, Alabama, and each party to this Agreement submits to the jurisdiction of such courts for the purposes of all legal actions and proceedings arising out of or relating to this Agreement. Each party waives, to the fullest extent permitted by law, any objection that it may now or later have to (i) the laying of venue of any legal action or proceeding arising out of or relating to this Agreement brought in any state or federal court sitting in Huntsville, Alabama; and (ii) any claim that any action or proceeding brought in any such court has been brought in an inconvenient forum.

ADDENDUM "B"

Service Level Agreement

Committed Port Availability: API Digital will maintain 100% Committed Port Availability for each Port that utilizes contracted API Digital Services via API Digital provided local loop, carrier and transport access, or API Digital will provide Customer with the described remedies. Only API Digital procured Long Haul, Local Exchange Carrier or Competitive Local Exchange Carrier for the Point of Presence may provide the local loop to qualify for Service Level Agreement. Customer supplied circuits do not qualify.

Port Availability Calculation: Port availability is calculated by dividing availability during a month period by the eligible availability during a month period. If this number is not 100%, the customer is entitled to the described remedy.

Eligible Availability: Entire month period is considered eligible availability with the exception of standard maintenance window time frames and announced after-hours maintenance window events.

Maintenance Window: API Digital considers 2 am to 4 am to be standard maintenance window time frames. API Digital may conduct maintenance during these hours without notice. API Digital may also conduct after-hours maintenance, emergency or otherwise, with notification, outside the standard maintenance window time frame.

Exceptions to Remedy: Cases where API Digital is unable to control the circumstances restoring of service to the customer are considered exceptions to the remedy process.

- Failure of Customer provided local access facilities used to access the API Digital Network.
- Failure of any components that API Digital cannot correct because Customer is inaccessible.
- Issues beyond the agreed upon demarcation point between the Customer and API Digital. This includes Customer internal network and configuration issues, unless otherwise contracted in the Services Agreement.
- Customer negligence or willful misconduct or the negligence or willful misconduct of others authorized by Customer to use the contract Services
- Loss of Lateral Exchange or Peer Network Services.
- Temporary loss of routing due to re convergence of redundant routing protocols or other events lasting less than 5 minutes.
- Force majeure events.

Service Level Remedy: If Customer believes that API Digital has failed to meet its Committed Port Availability, Customer must contact API Digital. Upon API Digital's verification that the actual Port availability is below the Committed Port Availability, API Digital will issue a service credit to Customer toward the next monthly invoice.

The service credit shall be 1/30 of the contracted monthly recurring service rate, of the affect port, for each hour of downtime. Service credit for any month period will not exceed the contracted monthly service rate for the affected port. The combined cumulative total of service credits issued during a Contract Year under this Service Level Agreement and any other Service Level Agreements will not exceed 20% of eligible Customer Services invoiced during that Contract Year.

ADDENDUM "C"

Acceptable Use Policy

Acceptance: The Services Agreement and Acceptable Use Policy together supersede all previous representations, understandings or agreements and shall prevail notwithstanding any variance with terms and conditions of any purchase order submitted.

API Digital has formulated this Acceptable Use Policy in order to encourage the responsible use of API Digital services by our customers and other users ("Users"), and to enable us to provide our users with secure, reliable and productive services.

General Conduct: The API Digital Network, including the websites operated by API Digital, as well as customer operated websites stored on API Digital servers or hosted on API Digital circuits (collectively, the "API Digital Network"), may be used only for lawful purposes. Users may not use the API Digital Network in order to transmit, distribute or store material (a) in violation of any applicable law, (b) in a manner that will infringe the copyright, trademark, trade secret or other intellectual property rights of others or the privacy, publicity or other personal rights of others, (c) that is obscene, threatening, abusive or hateful or contains a virus, worm, Trojan horse, or other harmful component.

EMAIL: Users may not send unsolicited email messages, including, without limitation, bulk commercial advertising or informational announcements ("spam") in a way that could be reasonably expected to adversely impact the API Digital Network, including, without limitation, using an email account on API Digital's network to send spam, or using the service of another provider to send spam or to promote a site hosted on or connected to the API Digital Network. In addition, Users may not use the API Digital Network in order to (a) send email messages which are excessive and/or intended to harass or annoy others, (b) continue to send email messages to a recipient that has indicated that he/she does not wish to receive them, (c) send email with forged header information, (d) send malicious email (e) send or receive email messages in a manner that violates the use policies of any other Internet service provider, or (f) use an email box exclusively as a storage space for data.

Usenet: Users who post messages to Usenet newsgroups are responsible for becoming familiar with any written charter or FAQ governing use of such newsgroups and complying therewith. Regardless of such policies, Users may not (a) post the same message, or a series of similar messages, to one or more newsgroups (excessive cross-posting or multiple-posting, also known as "Usenet spam"), (b) cancel or supersede posts not originally posted by such User, unless such User does so in the course of his/her duties as an official newsgroup moderator, (c) post any message with forged packet header information, or (d) post messages that are excessive and/or intended to annoy or harass others, including, without limitation, chain letters.

System and Network Security: Users are prohibited from violating or attempting to violate the security of the API Digital Network, including, without limitation, (a) accessing data not intended for such User or logging into a server or account which such User is not authorized to access, (b) attempting to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without proper authorization, (c) attempting to interfere with, disrupt or disable service to any user, host or network, including, without limitation, via any means of overloading (d) forging any email header or any part of the header information in any email or newsgroup posting, or (e) taking any action in order to obtain services to which such User is not entitled. Violations of system or network security may result in civil or criminal liability. API Digital will investigate occurrences, which may involve such violations and may involve, and cooperate with, law enforcement authorities in prosecuting Users who are involved in such violations.

Suspension or Termination: Any User which API Digital determines, in its sole discretion, to have violated any element of this Acceptable Use Policy shall receive a warning via email, and may be subject to a temporary suspension of service pending such User's agreement in writing to refrain from any further

violations. Users which remain in violation of any element of this Acceptable Use Policy, after multiple warnings, shall be subject to immediate suspension or termination of service without further notice. API Digital may take further action to eliminate or preclude such violation. API Digital shall not be liable for any damages of any nature suffered by any Customer, User, or any third party resulting in whole or in part from API Digital's exercise of its rights under these policies.

Responsibility: API Digital reserves the right to monitor all traffic on the API Digital Network, at any time, without notice. API Digital is not responsible for content published or made accessible by Internet users or customers.

Privacy: Any User interacting with our website and providing API Digital with name, address, telephone number, email address, domain name or URL or any other personally identifiable information permits API Digital to use such information for commercial purposes of its own, including contacting Users about products and services which may be of interest. All information concerning Customers of API Digital shall be kept private.

ATTACHMENT "A"

**CITY OF HUNTSVILLE, ALBAMA
CONTRACTOR E-VERIFY CERTIFICATION**

The City of Huntsville, Alabama ("City") has adopted Ordinance No. 09-735 ("E-verify Ordinance") which requires that certain Contractors of the City comply with certain employment requirements. The ordinance appears on the following pages.

Pursuant to the E-Verify Ordinance, the undersigned ("Contractor") hereby acknowledges:

1. That it has obtained a copy of this certification that includes the E-Verify Ordinance; and
2. That it has read and understands the requirements of the E-Verify Ordinance, particularly Section 3 - Requirements and Section 4 - Enforcement Provisions that pertain to Contractor; and
3. That if Contractor elects to use an alternate comparable employment eligibility verification system to be used in lieu of E-Verify as defined in the E-Verify Ordinance, Contractor shall make a written request for approval of such system to the City's Finance Director through the Procurement Services Division; and
4. That if Contractor uses one or more subcontractors in connection with the performance of a contract as defined in the E-Verify Ordinance, Contractor shall include in all subcontracts valued at \$3,000 or more the requirement for compliance by the subcontractor with the E-Verify Ordinance, and that certification from a subcontractor shall be furnished by the Contractor to the City within three (3) working days from the date of execution the subcontract agreement; and
5. That failure to comply with the E-Verify Ordinance by Contractor or subcontractor shall be a material breach of its Contract with the City.
6. That it shall submit proof of enrollment in the E-Verify system or approved alternate system upon request of the City, prior to award of a contract.

Pursuant to the E-Verify Ordinance, the undersigned ("Contractor") hereby certifies:

1. That pursuant to 8 U.S.C. § 1324a, it shall be unlawful for Contractor to hire, or to recruit or refer for a fee, for employment in the United States an alien knowing the alien is an unauthorized alien with respect to such employment; and
2. That Contractor shall not knowingly employ or contract with an unauthorized alien in violation of 8 U.S.C. § 1324a.

API Digital Communication Group, LLC
Printed legal name of Contractor

Stephen S. Pell
Printed name of individual/corporate officer/general partner/joint venturer AND Title


Signature

6/18/14
Date