

## **RESOLUTION NO. 2008-585**

Adopted by the Sacramento City Council

August 19, 2008

### **TERMINATION OF CITY AGREEMENT WITH SMC, LLC FOR CITYWIDE WIRELESS BROADBAND NETWORK**

#### **BACKGROUND**

- A. On June 21, 2007, the City and Sacramento Metro Connect, LLC ("SMC") entered into: 1) City Agreement No. 2007-0630 for the design, deployment and operation of a citywide wireless broadband network by SMC ("Wireless Network Agreement"); and 2) City Agreement No. 2007-0631 for providing wireless network broadband services to City offices and employees ("Anchor Tenancy Agreement").
- B. The Wireless Network Agreement contemplated that SMC have access to certain city-owned buildings, infrastructure and streetlight poles to install its equipment and operate the wireless network. To support deployment of the wireless network, the City and SMC entered into: 1) City Agreement No. 2007-1125 granting SMC non-exclusive rights to attach its equipment on designated city-owned buildings, structures and streetlight poles ("Revocable Permit"); and 2) City Agreement No. 2007-1126 granting SMC a license to use city-owned excess dark fibers to support the wireless broadband network ("Fiber License") on October 23, 2007.
- C. Since approval of the above agreements, staff has been working with representatives of SMC to address issues associated with the deployment of a citywide wireless network. Pursuant to the Wireless Network Agreement, SMC was to begin commencement of the installation work for the initial deployment phase within the Central City District no later than ninety 90 calendar days after execution of the Wireless Network Agreement. Staff has continued to work with SMC to explore alternatives to facilitate deployment of the network. Unfortunately, SMC has not had success due to its inability to secure funding.
- D. Since approval of the agreements with SMC, numerous municipal (public/private) wireless networks that were deployed have ceased operations due to the inability by the wireless network operator to develop a business model which provides a sufficient revenue stream. The selected wireless operator has either ceased construction and/or backed out of agreements asking the local government or another third party to assume management and build-out of the network. Simultaneously, the wi-fi marketplace, including Sacramento, has seen the explosion of wireless network hotspots deployed in café's, hotels, restaurants, office buildings, airports, libraries and other public meeting places.

- E. SMC has failed to submit a detailed plan for a citywide deployment as required by the Wireless Network Agreement. In addition, SMC has failed to commence any construction work for the deployment of the wireless network. The failure by SMC to timely comply with the deployment plan specified in Wireless Network Agreement constitutes a default and is cause for termination of the Wireless Network Agreement and revocation of any permits related to the deployment of the wireless network. The City can exercise its right to terminate by providing SMC with a notice of default. SMC has forty-five (45) calendar days after the notice of termination to cure any default.
  
- F. The term for the Anchor Tenancy Agreement, Revocable Permit, and Fiber License runs concurrently with the Wireless Network Agreement. Accordingly, termination of the Wireless Network Agreement will also result in termination of these agreements.

Adopted by the City of Sacramento City Council on August 19, 2008 by the following vote:

Ayes: Councilmembers Cohn, Fong, Hammond, McCarty, Pannell, Sheedy, Tretheway, Waters, and Mayor Fargo.

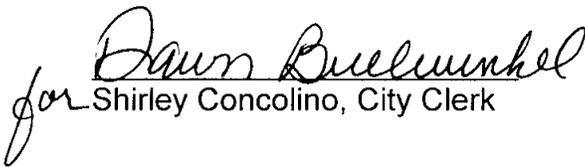
Noes: None.

Abstain: None.

Absent: None.

  
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Mayor Heather Fargo

Attest:

  
for Shirley Concolino, City Clerk