

**AGREEMENT BETWEEN THE CITY OF SACRAMENTO  
AND SACRAMENTO METRO CONNECT LLC FOR THE DESIGN, DEPLOYMENT AND  
OPERATION OF WIRELESS BROADBAND NETWORK IN SACRAMENTO**

This agreement (this "Agreement") is entered into effective as of \_\_\_\_\_, 2007 (the "Effective Date") between the **CITY OF SACRAMENTO**, a charter municipal corporation ("City") and **SACRAMENTO METRO CONNECT LLC**, a California corporation ("SMC") (individually, "Party" and collectively, the "Parties").

**RECITALS**

- A. In an effort to realize the full potential of internet connectivity and broadband services, the City is moving forward with facilitating the creation of a City-wide wireless broadband environment that would allow residents, businesses, and visitors in open and communal spaces within the city to access the Internet from their desktop and portable computers, and other devices at no charge or at affordable rates.
- B. The City issued its Request for Proposal (RFP) seeking the interest of firms to establish such wireless broadband environment and SMC submitted its Response to RFP. The City selected SMC and the Parties proceeded to develop the matter set forth in the Response to RFP to arrive at the Service Attributes and other provisions of this Agreement to encompass SMC's commitments with respect to the implementation of the Wireless Network.
- C. SMC intends to own and operate a City-wide wireless network in the City of Sacramento to provide broadband Internet access ("Wireless Broadband Service"), which network is described in this Agreement as the "Wireless Network" or "WiFi Network System."
- D. The Public Rights-of-Way within the City are used by and useful to private enterprises engaged in providing Wireless Broadband Service to citizens, institutions, and businesses located in the city.
- E. The non-exclusive right to occupy portions of the public rights-of-way and City-owned infrastructure for the business of providing Wireless Broadband Services is a valuable economic privilege, the economic benefit of which should be shared with all the taxpayers of the city.
- F. Beneficial competition between providers of communications services can be furthered by the City's provision of non-exclusive rights to use Municipal Facilities and the Public Rights-of-Way resulting in the non-discriminatory and neutral treatment of users of the WiFi Network System.
- G. SMC wishes to locate, place, attach, install, operate, control, and maintain Equipment in the Public Rights-of-Way and on Municipal Facilities for the purpose of operating the Wireless Network.
- H. SMC has agreed to provide public and City use of its WiFi Network System under the terms and conditions of this Agreement in exchange for the non-exclusive right to use and physically occupy portions of Municipal Facilities, the Public Rights-of-Way, or both.

## AGREEMENT

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree to the following covenants, terms, and conditions.

### 1.0 DEFINITIONS AND EXHIBITS

- 1.1 **Definitions; Interpretation.** For the purposes of this Agreement and all Exhibits, the terms, phrases, words, and their derivations, set forth in Exhibit "A" shall have the meaning provided in Exhibit "A" and apply generally to this Agreement. Other terms, phrases, words and their derivations shall have the meaning given in other portions of this Agreement. Words not defined in this Agreement shall be given their common and ordinary meaning. The word "shall" is always mandatory.
- 1.2 **Exhibits** The documents set forth in Exhibit "A" ("Exhibits"), which are occasionally referred to in this Agreement or in each other, are incorporated into this Agreement by such references as if set forth fully in this Agreement, notwithstanding that such documents may not be physically attached to this Agreement.

### 2.0 GENERAL

- 2.1 **Scope.** Subject to the terms and conditions set forth in this Agreement, SMC shall design, install, support and operate a high quality, public access WiFi Network System to provide Wireless Broadband Services throughout the City of Sacramento.
- 2.2 **Project Supervision.** Within five (5) calendar days of execution of this Agreement, SMC and the City shall each designate in writing a Project Manager(s) who will serve as the respective points of contact with respect to the design, construction, implementation, operation and other activity contemplated by this Agreement, and who will generally be available by telephone or otherwise at all reasonable times. With respect to construction work contemplated by this Agreement, SMC's Project Manager shall have complete authority over the construction contractors and all subcontractors, with authority to order stoppage of work and minor changes to the work in order to comply with the terms of this Agreement and any permits obtained by SMC to complete and operate the Wireless Network. SMC's Project Manager shall keep the City Project Manager informed of the timing and commencement of any and all work being performed in the deployment of the Network. The foregoing requirements shall be in addition to any requirement SMC may have to inform other City staff of the occurrence of work and to call for the inspection thereof pursuant to any permit issued by the City to SMC.
- 2.3 **Timely Deployment.** In order to perform its obligations under this Agreement and to achieve the deployment of the WiFi Network System in a timely manner as specified in the Master Deployment Plan, SMC shall give commercially reasonable effort to the work required for successful deployment, employ and contract with suitable and competent individuals and firms in support of its work, and utilize such Equipment and facilities to facilitate the timely progress of such deployment. Subject to the provisions of Section 9.5, the failure of SMC to take such steps to comply timely with the Master Deployment Plan shall constitute cause for termination of this Agreement and Revocable Permit pursuant to Sections 8.2.1 and 8.2.6, respectively, and revocation of encroachment and other permits provided by the City pursuant to Section 5.2.

- 2.4 **Cooperation.** SMC shall cooperate with the City Project Manager, City inspectors and with other City employees in every way reasonably possible.
- 2.5 **Standard of Performance; Compliance with Law.** SMC shall design, install, maintain and operate the WiFi Network System in a commercially reasonable manner in order to provide high quality Wireless Broadband Services, eliminate or minimize downtime of any portion of the Network, and otherwise comply with the terms of this Agreement. All design, installation and maintenance work shall be performed in a workmanlike manner and shall comply with applicable Law; the terms and conditions of any permit or land use entitlement under or pursuant to which the work is performed; City ordinances, standards and policies; industry standards specified in the RFP; and the terms and conditions of this Agreement, including, without limiting the generality of the foregoing, the Service Attributes. SMC, at its sole cost and expense, shall obtain all applicable permits, approvals, authorizations, land use entitlements and building permits as may be required by Law.
- 2.5.1 The specifications and standards set forth in this Agreement, including, without limitation, those included as Service Attributes, are considered the guidelines for the WiFi Network System and SMC, to the extent reasonable and feasible, shall attempt to surpass such specifications. All products of whatsoever nature which SMC delivers to City pursuant to this Agreement shall be prepared in a professional manner and conform to the standards of quality normally observed by a person currently practicing in SMC's profession. SMC shall assign only competent personnel to perform its obligations pursuant to this Agreement.
- 2.6 **Equipment and Technical Requirements.** SMC shall only install and use Equipment and installation configurations approved by the City set forth in Exhibit "T1." Any Equipment and installation configuration other than as reflected in Exhibit "T1" must be approved in writing by the City before it may be used on any Municipal Facility or placed in the Public Rights-of-Way. In addition, the Equipment and allowed configuration to be utilized on non-City property may be governed by the approvals granted under applicable provisions of the City's zoning ordinance as generally described in Section 5.2 – "Plan Approval and Permits". SMC shall deploy, operate and maintain the Network consistent with the matter set forth in the Technical Appendices.
- 2.6.1 The Equipment used by SMC shall be designed and mounted in such a way as to not hinder the operation of existing services and shall also meet City's aesthetically pleasing requirements as set forth in the Sacramento City Zoning Code. Equipment must be mounted and configured to remain in compliance with the Federal Communications Commission (FCC) regulations regarding the use of radio spectrum and interference. SMC shall be responsible for the identification, selection and coordination of appropriate frequency/bands.
- 2.7 **SMC's Costs not City's.** The City shall not be liable for any costs incurred by SMC for the design, installation, support and operation the Wireless Network.
- 2.8 **Term and Renewal.** This Agreement shall be effective as of the Effective Date. The term of this Agreement shall commence on the Effective Date and shall end (five) 5 years from the Installation Date ("Initial Term"). Provided that SMC is not in material breach, this Agreement may be renewed for two additional periods of five (5) years on mutually agreed upon new terms and conditions, unless the City, in its sole discretion, desires that the terms and conditions shall remain unchanged.

### **3.0 POLICY COMMITMENTS**

- 3.1 **Implementation of Policy Commitments.** During the deployment and operation of the Wireless Network, SMC shall implement and carry out the various policy commitments set forth in Exhibit "D." Each of said commitments is a material consideration for the City entering into this Agreement with SMC.
- 3.2 **Digital Inclusion.** As further material consideration for the City entering into this Agreement, the SMC has agreed to perform certain tasks designed to make Wireless Broadband Services accessible to the residents of the City of Sacramento. Accordingly, SMC shall satisfy the matters set forth in Exhibit "E" in the manner and timeframe described in said exhibit.

### **4.0 SERVICE ATTRIBUTES**

- 4.1 **Service Attributes as Minimum Performance Standards.** SMC shall deploy, implement, operate and maintain the Wireless Network and provide Wireless Broadband Services in accordance with the Service Attributes. The Service Attributes are considered minimum performance standards required of SMC under this Agreement.
- 4.2 **Free Public Service and Subscription Rates.** SMC agrees to provide the level of free Wireless Broadband Services to the public as described in the Service Attributes and otherwise to charge the rates for service to Subscribers and other Users as described in the Service Attributes. SMC shall use commercially reasonable efforts to maintain these levels of free service and subscription rates through the Initial Term of this Agreement. The level of free service and subscription rates may be revised upon mutual agreement by the City and by SMC for one or both renewal terms set forth in Section 2.8.
- 4.3 **Acceptance of Each Phase of the Master Deployment Plan.** Upon completion of the installation, construction, or physical interconnection of each deployment phase as described in the Master Deployment Plan, including the completion of all phases of the Master Deployment Plan, SMC shall notify the City of such completion and the Parties will conduct a performance inspection and, where requested, a test of the Network and related Equipment, to determine whether the work has been completed as contemplated by this Agreement, including, without limitation, by the Service Attributes and specifications set forth in the Technical Appendices, before launching any Wireless Broadband Service to the public or the City. Any such inspection and acceptance test shall take place within ten (10) business days of notice of completion issued by SMC and in a manner consistent with the Acceptance Test Procedures, or the phase shall otherwise be deemed accepted by the City. Such acceptance test is not exclusive of, nor shall preclude other inspections required by Law, including those required to evaluate a Party's compliance with the terms and conditions set out in applicable permits and authorizations.
- 4.3.1 The City may identify those items that it finds as not substantially conforming to the Acceptance Test Procedures, or otherwise not in substantial compliance with the terms of this Agreement. SMC shall promptly correct any non-conformance, and repeat the notice and Acceptance Test Procedures process until all items are accepted.
- 4.3.2 The work on a deployment phase shall be deemed completed upon the written acceptance of the work by both Parties following successful completion of the Acceptance Test Procedures, provided that SMC otherwise shall be in compliance with this Agreement. As used in this Agreement "acceptance" of a deployment phase or any other item of work shall not be deemed to create in the City any ownership or other proprietary

interest in the WiFi Network System, or create any warranty by the City, or otherwise have any legal effect outside the terms of this Agreement.

**4.4 SMC's Continuity of Service.** SMC warrants that it shall:

- 4.4.1 Provide continuous Wireless Broadband Services in accordance with the provisions of this Agreement, including, without limitation, the Response to RFP and Service Attributes
- 4.4.2 Be the right of all Users and/or Subscribers to continue receiving Wireless Broadband Services from SMC provided their financial and other obligations to SMC, if any, are honored and they are not in violation of SMC's acceptable use policy. SMC shall use commercially reasonable efforts consistent with standard industry practices for such networks to ensure that all Users and/or Subscribers receive continuous, uninterrupted services.
- 4.4.3 In the event of a change in ownership of the Wireless Network or in the event a new entity acquires the Wireless Network, both as may be allowed by this Agreement, it shall cooperate with the City and such new owner in maintaining continuity of services to all Users and Subscribers during the transition to such new owner.

**5.0 USE OF MUNICIPAL ASSETS AND PUBLIC RIGHTS-OF-WAY**

- 5.1 **Revocable Permit.** Subject to the provisions of Section 5.2, the City shall grant to SMC a nonexclusive Revocable Permit providing it the right to attach, install, operate, maintain, repair, upgrade, remove, reattach, reinstall, relocate and replace its Equipment on designated and approved Municipal Facilities and within the Public Rights-of-Way for the purpose of SMC installing and constructing Networks in order to provide Wireless Broadband Services to residents, businesses, and visitors located within the City boundaries. The Revocable Permit does not include the right of SMC to utilize Decorative Streetlight Poles or Ornamental Streetlight Poles. The Revocable Permit to be granted is provided to SMC only based on the special consideration, among other things, of SMC's Response to the RFP and the commitments made in this Agreement. The rights conferred to SMC under the Revocable Permit are not transferable to any third party, whether by consensual transaction by SMC or by operation of law. Any transfer of the control of the WiFi Network System, or any portion, Network or Equipment thereof, to any third party shall not carry with it the rights under the Revocable Permit. The City is not obligated to issue rights similar to the Revocable Permit to the successor to such property. The City may, in its sole and absolute discretion, deny the successor the Revocable Permit or negotiate new terms of the Revocable Permit and this Agreement with such successor. The Revocable Permit may be revoked pursuant to the provisions of Section 8.2. The Revocable Permit term shall run concurrently with the term of this Agreement. Upon expiration or termination of this Agreement, the Revocable Permit shall also expire or terminate and any rights granted to SMC by virtue of the Revocable Permit granted by this Agreement shall cease.
- 5.2 **Plan Approval and Permits.** Before the placement of any Equipment on Municipal Facilities, Public Rights-of-Way, or private or public non-City property for each deployment phase as described in the Master Deployment Plan, SMC shall obtain all approvals and permits required by applicable Law, including, without limitation, Sacramento City Code Chapters 3.76 (revocable permits), 15.08 (building permits), 12.12 (excavation and related permits), and 3.08 (business operations tax certificate), and land use entitlements, as applicable, required by the City's Zoning Ordinance. SMC shall comply with the applications, plan submittals (including, without limitation, the matter set forth in Section 5.2.1), procedures, and protocols required by the City in processing

SMC's applications for such approvals and permits. SMC shall pay all Fees and costs for the processing of SMC's applications in accordance with City requirements and policies, in addition to the costs of other permits, licenses, or other documents required by applicable Laws. Any contractors working on Municipal Facilities, in the Public Rights-of-Way or other property shall hold all applicable licenses, including, but not limited to applicable licenses under the state contracting laws. All permits and entitlements obtained by SMC shall be subject to termination pursuant to the Law or regulations applicable to such permits and entitlements.

5.2.1. When requesting access to Municipal Facilities and Public Rights of Way to install, construct and operate the Equipment, SMC shall, in addition to the matter described in Section 5.2 above, submit a written proposal to the City describing the location of such City property and amount of space desired. The proposal should include a preliminary site plan, an elevation sketch, the nature of the request, a description of the Equipment to be placed on the City property, a description of the equipment or cables SMC intends to place in the City conduit where applicable, the procedures to be followed for installation, marking and locating the Equipment, the SMC entity that will be responsible for the use of the Equipment, the nature of the services for which the Equipment will be used, and the duration of such use. SMC shall provide such additional information and documents reasonably requested by City for evaluation of the proposal.

5.2.2 Upon receipt of a proposal from SMC, the City will review the request to determine whether it is feasible and acceptable; the terms and conditions under which access would be granted; whether there are other authorizations that may be required before access is granted; and whether there are feasible alternatives to the specific request that may be available; and provide a response to SMC within fifteen (15) business days of receipt of the proposal.

5.3 **Inspections.** The City shall inspect the placement of Equipment and installation work, including trenching, backfilling, and other related work, for compliance with all applicable permits and approvals.

5.4 **Relocation of Equipment.** SMC shall relocate its Equipment located on Municipal Facilities or in Public Rights-of-Way in the event of any change in use or configuration of such facility or right of way or where the presence of SMC's Equipment interferes with the City's use of its facilities and rights of way. The parties contemplate that any relocation of equipment may cause a disruption to the network. The City shall work with SMC to locate another Municipal Facility on which SMC shall be permitted to mount the relocated Equipment, at SMC's own cost. SMC shall not be liable for any disruption to the network due to a City ordered relocation of Equipment.

5.5 **Power Sources and Electricity Charges.** SMC shall be allowed to draw electricity for the operation of the Equipment from power distribution units associated with the Municipal Facilities provided such electrical connections shall not interfere with the operation of the Municipal Facilities. However, in any event, SMC shall be solely responsible all costs for connecting to a source of electricity, providing electricity for its Equipment, and paying for electricity to the installed Equipment.

5.6 **City Facilities and Equipment; SMC's Obligation.** The City shall provide the facilities and equipment as set forth in Exhibit "G" to be utilized by SMC for the deployment, operation or support of the WiFi Network System. Except as set forth in Exhibit "G," SMC shall, at its sole cost and expense, furnish all resources, facilities and equipment that may be required for constructing, deploying, operating, and supporting Wireless Broadband Services and the WiFi Network System pursuant to this Agreement.

- 5.7 **Access Obligations.** SMC agrees to abide by all City security and facility access rules as set forth in Exhibit "G". SMC agrees to repair any damage to Municipal Facilities, Public Rights-of-Way, and other affected City and private property caused by the installation, construction, operation of the Equipment and the deployment of the WiFi Network System.
- 5.8 **Documents.** SMC shall be responsible for maintaining accurate and current records of the location of all Equipment and shall furnish this information upon request to the City in an electronic map format compatible with the current City electronic mapping format. If complete updates are not provided in a compatible format, SMC shall pay the actual, reasonable costs the City incurs each month in updating City's electronic maps due to location or relocation of SMC's Equipment on Municipal Facilities or in Public Rights-of-Way. SMC shall provide "as-built" diagrams and plans as may be required by City's permitting policies.
- 5.9. **Other Approvals.** Nothing herein is intended to be a substitute for or in lieu of any authorizations that the City may lawfully require for use of the Public Rights-of-Way by telecommunications, Internet, or cable television providers under applicable Law, including, without limitation, Chapter 5.28 of the Sacramento City Code relating to cable television franchises.
- 5.10 **Use of City Fiber.** City will allow the use of its fiber optic assets in support of the WiFi Network System pursuant to a lease agreement entered into between City and SMC. Said lease agreement shall contain terms, conditions and requirements under which the use of Leased Fiber may occur.
- 5.11 **Zoning Ordinance Entitlements.** City staff shall use its best efforts to develop and present to the Sacramento City Council for its approval, in the Council's sole discretion, procedures under which SMC may apply for entitlements required by the City's zoning ordinance, including special permits, to allow SMC to deploy and operate the WiFi Network System, which procedures will provide a more streamlined process to obtain such entitlements than what the ordinance provides as of the date of this Agreement.
- 5.12 **Attachment to Third-Party Property.** The City authorizes and permits SMC to enter upon the Public Rights-of-Way to attach, install, operate, maintain, remove, reattach, reinstall, relocate, and replace such number of Equipment in or on poles or other structures owned by public utility companies or other private property owners as may be permitted by the public utility company or property owner, as the case may be. SMC shall furnish to the City documentation of such permission and copies of any contracts providing such permission from the individual public utility company or property owner. The City shall inspect the placement of Equipment and installation work, including trenching, backfilling, and other related work, for compliance with all applicable permits and approvals, and SMC shall reimburse the City its actual reasonable and documented inspection costs in accordance with City requirements and policies.
- 5.13 **No Interference with Facilities in Public Rights-of-Way.** SMC, in the performance and exercise of its rights and obligations under this Agreement, shall not adversely interfere with the existence and operation of any and all public and private rights-of-way, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electrical and telephone wires, electroliers, cable television, location monitoring services, public safety and other telecommunications, utility or municipal property, without the express written approval of the owner or owners of the affected property or properties, except as permitted by applicable Law or this Agreement.

## **6.0 MUNICIPAL SPECIFIC SERVICES**

6.1 **City Services.** SMC agrees to provide to the City Wireless Broadband Services under the terms and conditions set forth in the Anchor Tenancy Agreement. The services provided to the City may be revised, at the City's discretion, for one or both renewal terms set forth in Section 2.8.

6.2 **City Use of Equipment and Network.** In addition to the services described in Section 6.1 above, the City may request the opportunity to use the installed Equipment and the WiFi Network, or any Network or portion of Network by submitting a written proposal to SMC describing the nature of services and facilities requested, the location of City sites or facilities to be interconnected, any desired Internet route, and an approximate date by which the facilities or services are sought. SMC shall review the request to determine whether the request is acceptable and feasible and the terms under which SMC will consent to the proposal, which consent shall not be unreasonably withheld.

6.2.1 Within fifteen (15) business days of receipt of the request from the City, SMC will respond to the City in writing as to whether it will provide the facilities and/or services requested, the terms and conditions, including, without limitation, any necessary financial requirements under which it will so provide facilities and/or services; and/or whether there are any alternatives available that could meet the City's request.

6.2.2 In regard to any Network and/or Equipment provided to the City, City shall use the same solely for governmental, educational and public service purposes and shall not make the same available for use by a competitor of SMC or any of its Affiliates, whether or not for compensation.

## **7.0 INSURANCE, INDEMNITY, BOND, WARRANTIES, REPRESENTATIONS AND REMEDIES**

7.1 **Insurance.** As a material term of this Agreement, SMC shall maintain the insurance and comply with the insurance-related provisions set forth in Section 8 of Exhibit "I".

7.2 **Indemnity.** SMC agrees to defend, indemnify and hold harmless City, its officers and employees, and each and every one of them, from and against any and all actions, damages (including, without limitation, damages and losses relating to personal injury including death), costs, liability, claims, suits, losses, judgments, penalties, fines and expenses of every type and description, including, but not limited to, any Fees and/or costs reasonably incurred by City's staff attorneys or outside attorneys and any Fees and/or expenses incurred in enforcing this provision (hereafter collectively referred to as "Liabilities"), to which any or all of them may be subjected, to the extent such Liabilities (a) are in whole or in part caused by or result from any negligent act or omission or willful misconduct of SMC, its contractors, subcontractors or agents, and their respective officers and employees, in connection with the performance or nonperformance of this Agreement, whether or not the City, its officers or employees reviewed, accepted or approved any service or work product performed or provided by the SMC, or (b) relate in any way to the use or misuse of the WiFi Network System or Equipment, including, but not limited to trademark or copyright infringement, invasion of privacy, libel and slander, loss, corruption or compromise of information, computer "hacking," viruses, worms and other harmful programs, violation of state or federal telecommunications law, and any other damage which may be suffered by computer and/or network users, and whether or not such Liabilities are litigated, settled or reduced to judgment.

7.3 **Insurance Policies; Survival** The existence or acceptance by City of any of the insurance policies or coverage described in this Agreement shall not affect or limit any of City's rights under

Sections 7.2 of this Agreement, nor shall the limits of such insurance limit the liability of SMC hereunder. The provisions of Section 7.2 shall survive any expiration or termination of this Agreement.

- 7.4 **Bond.** During the period of deployment as set forth in the Master Deployment Plan, SMC shall post performance security in a form and issued by one or more sureties acceptable to the City Manager in a sum of Fifty Thousand Dollars (\$50,000.00), as security for the faithful performance by SMC of all provisions of this Agreement, including, without limiting the generality of the foregoing, the cost of removal of Equipment pursuant to Sections 8.4 and 8.5 ("Bond"). SMC may cancel the Bond one year after completion of the Master Deployment Plan if there are no outstanding claims against SMC at that time. The City shall draw upon the Bond if SMC fails to cure any default under this Agreement after being provided with thirty (30) days written notice by the City. Within thirty (30) days after written notice to SMC that any amount has been withdrawn from the Bond, SMC shall restore the Bond to the full sum of Fifty Thousand Dollars (\$50,000.00). The provisions of Section 7.3 shall survive any expiration or termination of this Agreement.
- 7.5 **Licenses; Permits, Etc.** SMC represents and warrants that SMC has all licenses (including, without limitation, licenses required under the Contractors' State License statutes), permits, City Business Operations Tax Certificate, qualifications, and approvals of whatsoever nature which are legally required for SMC to perform the work or provide services contemplated by this Agreement. SMC represents and warrants that SMC shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, and approvals which are legally required for SMC to perform the work or provide the services contemplated by this Agreement. Without limiting the generality of the foregoing, if SMC is an out-of-state corporation, SMC warrants and represents that it possesses a valid certificate of qualification to transact business in the State of California issued by the California Secretary of State pursuant to Section 2105 of the California Corporations Code.

## **8.0 SUSPENSION; TERMINATION, ABANDONMENT**

- 8.1 **Suspension.** City shall have the right at any time to temporarily suspend SMC' s performance hereunder, in whole or in part, by giving SMC a written notice of suspension and reasonable time to cure as determined by the City in its sole discretion. If City gives such notice of suspension, SMC shall immediately suspend its activities under this Agreement, as specified in such notice.
- 8.2 **City's Termination.** The City may terminate this Agreement, the Revocable Permit, or any of the permits described in Section 5.2 – "Plan Approval and Permits", or all of the foregoing, before their respective expiration dates, if any. The City may exercise its right to terminate this Agreement if one or more of the following events occur and SMC has been notified in writing of such default and such default remains uncured forty-five (45) calendar days after notice is provided to SMC. If the breach cannot reasonably be cured within this time period and SMC is taking reasonable steps to begin cure of such breach, then the forty-five (45) calendar days shall be extended for an agreed period of time to cure such breach.

8.2.1 SMC has failed to comply with any material provisions of this Agreement or has violated any material term or condition of this Agreement.

8.2.2 SMC has failed to provide the insurance policies and coverage described in this Agreement.

8.2.3 SMC has failed to comply with applicable lawful rules or regulations adopted by the City Council relating to the subject matter of this Agreement.

8.2.4 SMC has failed to maintain its Equipment on Municipal Facilities and in the Public Rights-of-Ways under the standard prescribed by the City for safety, operation, maintenance and general work according to City requirements and codes.

8.2.5 SMC sells, leases, assigns, or transfers its rights under this Agreement without consent of the City when such consent is required by this Agreement.

8.2.6 SMC has failed to comply with any condition of any land use entitlement, permit, approval, or Revocable Permit issued by the City.

8.3 **SMC's Termination.** SMC may terminate this Agreement upon the City's breach of any material obligation under this Agreement and City's failure to cure such breach within forty-five (45) calendar days after notice is received by the City. SMC acknowledges that, once operational, the Network may be relied upon by public safety officials. Should SMC exercise its right to termination pursuant to this section, and the Network is operational, SMC will immediately engage the City in discussions so that public safety officials do not immediately lose access to the network. In no event, however, will SMC be required to maintain the network for greater than 180 days past the termination of this Agreement. If the breach cannot reasonably be cured within this time period and City is taking reasonable steps to begin cure of such breach, then the forty-five (45) calendar days shall be extended for an agreed period of time to cure such breach.

#### 8.4 **Receivership and Foreclosure**

8.4.1 At the option of the City, subject to applicable law, this Agreement shall be deemed terminated and all licenses and permits granted herein shall be deemed revoked one hundred twenty (120) days after the appointment of a receiver or a trustee to take over and conduct the business of SMC whether in a receivership, reorganization, bankruptcy or other similar action or proceeding, unless (a) the receivership or trusteeship is vacated within one hundred twenty (120) days of such appointment, or (b) the receiver or trustee has, within one hundred twenty (120) days after election of appointment, fully complied with all terms and conditions of this Agreement and has remedied all defaults under the Agreement. Additionally, the receiver or trustee shall have executed an agreement duly approved by the court having jurisdiction over the receiver or trustee by which the receiver or trustee assumes and agrees to be bound by each and every term and condition of this Agreement.

8.4.2 If there is a foreclosure or other involuntary sale of the whole or any part of the Equipment used by the WiFi Network System, the City may serve notice of the termination of this Agreement and the revocation of the Revocable Permit on SMC and to the purchaser or successor to the Equipment, and the termination and revocation shall be effective thirty (30) days after service of such notice, unless (a) the City, in its sole and absolute discretion, has approved in writing the transfer of the Revocable Permit, based upon the suitability, expertise, competence and financial ability to perform the obligations of SMC under this agreement, and in accordance with the procedures set forth in this Agreement and as provided by City ordinances and policies, and (b) the purchaser or successor has covenanted and agreed with the City to assume and be bound by all the terms and conditions of this Agreement by written agreement satisfactory to the City.

#### 8.5 **Effect of Termination**

8.5.1 SMC's obligations for maintenance costs, removal costs, insurance, warranties, indemnification and defense shall survive the termination of this Agreement.

8.5.2 Upon the expiration or earlier termination of this Agreement, or the revocation of the Revocable Permit, City may direct SMC to remove the Equipment from all Municipal Facilities, Public Rights-of-Way and non-City property at SMC's sole cost and expense or City may take ownership of the Equipment and associated software required to operate the WiFi Network System in order to maintain critical public services related to public safety. In the event City elects to take ownership of the WiFi Network System to maintain critical public services related to public safety, it shall be deemed to be under City ownership upon the date of written notice by City to SMC of City's election. As soon as is practicable following the date of the foregoing notice, SMC shall convey title, in a form and manner acceptable to the City, to the Equipment and software left in place to the City and provide the City with all operational information, specifications, as-built plans, software and other materials and applicable property interests to facilitate the City's use or disposition of such Equipment for the City's operation of the Network. In the event the City does not elect to take ownership of the Equipment and associated software and SMC fails to remove the Equipment, SMC shall reimburse the City for the costs of such removal, including the costs of restoring or repairing property affected by the removal, within thirty (30) days of City's invoices to Vendor requesting such reimbursement. In the event SMC fails to reimburse City in a timely manner, the City may seek any and all available remedies, including recourse against the Bond to recover the invoiced amounts.

**8.6 Abandonment.** If SMC abandons the WiFi Network for any period of twenty-four (24) hours or more during the term of this Agreement, this Agreement shall be deemed terminated and the Revocable Permit shall be deemed revoked. City may elect to take ownership of the Equipment and associated software required to operate the WiFi Network System in order to maintain critical public services related to public safety, or to remove the Equipment from all Municipal Facilities, Public Rights-of-Way and non-City property at SMC's sole cost and expense. In the event City elects to take ownership of the WiFi Network System, it shall be deemed to be under City ownership upon the date of written notice by City to SMC of City's election. As soon as is practicable following the date of the foregoing notice, SMC shall convey title, in a form and manner acceptable to the City, to the Equipment and software left in place to the City and provide the City with all operational information, specifications, as-built plans, software and other materials and applicable property interests to facilitate the City's use or disposition of such Equipment for the City's operation of the Network. In the event the City does not elect to take ownership of the Equipment and associated software and instead chooses to remove the Equipment from Municipal Facilities and the Public Rights-of-Way, SMC shall reimburse City for the costs of such removal, together with the cost of restoring or repairing property affected by the removal, within thirty (30) days of City's invoices to SMC requesting such reimbursement. In the event SMC fails to provide reimbursement to City in a timely manner, the City may seek any and all available remedies, including recourse against the Bond to recover the invoiced amounts.

**8.7 Waiver and Remedies.** The omission by either Party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, conditions, covenants or provisions hereof by the other Party at the time designated, shall not be construed as a waiver of any such default or right to which the Party is entitled, nor shall in any way affect the right of the Party to enforce such provisions thereafter.

## 9.0 MISCELLANEOUS PROVISIONS

- 9.1 **Agreement Controls.** In the event of a conflict between the terms and conditions as set forth in this Agreement and the terms and conditions set forth in the RFP, the Response to RFP, and related submittal documents, the terms and conditions set forth in this Agreement shall prevail.
- 9.2 **General Provisions.** The General Provisions set forth in Exhibit "I" are a part of this Agreement. In the event of any conflict between the General Provisions and any terms or conditions of any document prepared or provided by SMC and made a part of this Agreement, the General Provisions shall control over said terms or conditions.
- 9.3 **Dispute Resolution.** Except for disputes where there is a risk of imminent injury or death, or over intellectual property, or for which emergency relief (including injunctive relief) is sought, each Party will first seek to resolve a dispute informally through the person(s) directly involved. If resolution is not immediately forthcoming, either Party may escalate the disputed matter to a designated executive or manager of the Parties. In the event these discussions do not resolve the dispute, either Party may, on written notice to the other, submit the dispute to non-binding arbitration pursuant to a procedure mutually agreeable to the Parties. However, no Party is required to submit to arbitration in connection with any disputes arising from this Agreement. Accordingly, should informal resolution prove unavailing, any Party may seek legal or equitable relief in the state trial court or federal district court located in or for Sacramento County in the State of California.
- 9.4 **Attorney Fees.** In the event of litigation, arising out of any dispute related to this Agreement, the Parties shall each pay their respective attorneys fees, expert witness costs and cost of suit, regardless of the outcome of the litigation.
- 9.5 **Limitation of Liability.** Except for the indemnity obligations set forth in section 7.2 above and section 5 B of Exhibit "I", in no event will a Party be liable for any indirect, incidental, special or consequential damages, or damages for loss or profits, revenue, data or use, incurred by the other Party or any third party, whether in an action in contract or tort, even if the other Party or any other person has been advised of the possibility of such damages.
- 9.6 **Acceptable Delays; Force Majeure.** Neither Party will be liable for delay in performance, or failure to perform hereunder, due to acts of God, fires, acts of war or intervention or prohibition by any governmental authority; or other similar causes, or for any other cause or event which is outside its reasonable control and cannot have been accommodated or avoided with the exercise of ordinary care; provided, that the delaying Party will provide prompt notice to the other Party of any such delay immediately as of the time it becomes known as an event described in this Section 9.5, and that such Party will use all commercially reasonable efforts to minimize any such delay and mitigate its effects, and will promptly resume performance when the cause of such delay is removed. If the event giving rise to acceptable delay under this section continues uninterrupted for sixty (60) days, the Parties, by mutual agreement, may terminate this Agreement.
- 9.7 **PUC Jurisdiction.** All work undertaken under this Agreement will be in compliance with the rules and regulations of the PUC provided, however, that nothing in this Agreement is intended to enlarge the jurisdiction or enforcement authority of the PUC or any other governmental entity.
- 9.8 **Assignment Prohibited.** The expertise and experience of SMC are material considerations for this Agreement. City has a strong interest in the qualifications and capability of the persons and entities that will fulfill the obligations imposed on SMC under this Agreement. In recognition of

this interest, SMC shall not assign any right or obligation pursuant to this Agreement without the written consent of the City, including the approval by the Sacramento City Council in accordance with applicable provisions of the Sacramento Charter and City Code. The City may grant or withhold its consent in its sole, absolute and unfettered discretion. Any attempted or purported assignment without City's written consent shall be void and of no effect.

9.8.1 **City Opportunity to Purchase.** Should SMC elect to sell the Equipment and any part of the WiFi Network System and no suitable assignee is presented to the City for any approval as required under Section 9.8 herein, SMC will offer the City the opportunity to purchase the Equipment, upon terms to be negotiated and mutually agreed. SMC shall also reasonably assist the City in transferring licenses to software embedded in any Equipment so transferred to the City.

9.8.2 **Agreements and Consent Required.** SMC and the City are not obligated to agree to a purchase of any of the Equipment by the City unless a mutually acceptable agreement on all the essential terms is reached in a written agreement signed by authorized representatives of both Parties, and the consent to such assignment or transfer is obtained from all required third parties, including lessors and lenders that have any interest in the Equipment.

9.8.3 **Security Interests Permitted.** Notwithstanding anything contained in this Agreement to the contrary, SMC shall be permitted to grant to any SMC lender a security interest in any Equipment as secured collateral on any loan or lending instrument.

9.9 **Notice.** All notices, requests, responses, acceptances, consents and other communications required or permitted by this Agreement shall be effective upon receipt and shall be in writing, and shall be sent by hand, U.S. Mail, facsimile or recognized overnight delivery service such as FedEx, DHL or Emery. A notice shall be deemed received: (i) on personal delivery; or (ii) as of the day following deposit with the national overnight courier, charges prepaid; or (iii) as of the day of receipt as reflected on a written receipt obtained by the U.S. Postal Service; or (iv) seven (7) business days after deposit in the U.S. Mail, charges prepaid, if no return receipt is received; or (v) on the next business day following delivery by confirmed facsimile, so long as such notice is confirmed by another method of notice provided herein.

Notices shall be addressed as follows:

If to the City:

CITY OF SACRAMENTO  
1000 I Street, Suite 120  
Sacramento, CA 95814  
Telephone number: (916) 808-8600  
Facsimile number: (916) 264-5087  
To the attention of: Director, Information Technology Department

If to SMC:

Sacramento Metro Connect  
P.O.Box 78192  
San Francisco, CA 94107  
Email address: annemarifowler@yahoo.com  
To the attention of: Anne-Marie Fowler

9.10 **City Council Approval.** The City shall have no obligations whatsoever under this Agreement unless and until this Agreement is approved by the Sacramento City Council.

9.10 **City Council Approval.** The City shall have no obligations whatsoever under this Agreement unless and until this Agreement is approved by the Sacramento City Council.

9.11 **Authority.** The person signing this Agreement for SMC hereby represents and warrants that he/she is fully authorized to sign this Agreement on behalf of SMC and to bind SMC to the performance of its obligations hereunder.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year first above written.

**CITY OF SACRAMENTO**  
A Municipal Corporation

**SACRAMENTO METRO CONNECT LLC**

By \_\_\_\_\_  
Ray Kerridge, City Manager

By: Steve LeVeck

Name: Steve LeVeck

APPROVED TO AS FORM:

Title: VP, Corp. Dev.

Janeth San Pedro  
City Attorney

By: Les Lewis

ATTEST:  
\_\_\_\_\_  
City Clerk

Name: Les Lewis

Title: VP & Treasurer

## EXHIBIT "A"

### DEFINITIONS AND EXHIBITS

#### I. DEFINITIONS

"Acceptance Test Procedures" means the procedures described in Exhibit "T6" of the Technical Appendices developed by City and SMC, based upon the application of industry standards and practices, to test the operation of individual phases of deployment and, as applicable, the interconnection and interoperability of individual phases as they are completed, including the completion of all phases of the Master Deployment Plan, before such Networks and related Equipment are used to provide Wireless Broadband Services to the public or City.

"Affiliate" when used in connection with SMC means any corporation or person who owns or controls, is owned or controlled by, or is under common ownership or control with SMC and its successor corporations.

"Anchor Tenancy Agreement" shall mean the Anchor Tenancy Agreement entered between the City and SMC concurrent herewith.

"City Project Manager" means the person designated by the City in writing pursuant to Section 2.2 of this Agreement.

"Data Center" means a facility that is used to house City's communications systems and associated components.

"Decorative Streetlight Pole" shall mean any City-owned Streetlight Pole that incorporates artistic design elements not typically found in standard steel or aluminum streetlight poles and does not have a mast arm for electrolyte support. The term Decorative Streetlight Pole includes any historically or architecturally significant or designated light poles owned by the City located on Public Rights-of-Way.

"Equipment" means the access points, optical repeaters, network routers, wireless antennas, fiber optic cables, wires, and related equipment, whether referred to singly or collectively, to be installed and operated by SMC hereunder, all of which have been approved by the City.

"Fee" means any assessment, license, charge, fee, imposition, tax, or levy of general application to entities doing business in the City lawfully imposed by any governmental body (but excluding any utility users' tax, franchise fees, communications tax, or similar tax or fee).

"Installation Date" shall mean the date that the first Equipment is installed by SMC pursuant to this Agreement.

"Law" means any and all federal, state and local statutes, constitutions, ordinances, resolutions, regulations, judicial decisions, rules, tariffs, administrative orders, certificates, orders, or other requirements of the City or other governmental agency having joint or several jurisdiction over the Parties to this Agreement.

"Leased Fiber" means fiber optic cable owned or controlled by the City and leased by the City to SMC for purposes of supporting the WiFi Network System and its component Networks, and providing Internet backhaul for the system.

"Master Deployment Plan" is described in Exhibit "B" and means the planned manner, phasing and timing of SMC's installation of the WiFi Network System in various parts of the City of Sacramento until the completion of the system throughout the city as set forth in the Response to RFP and the Service Attributes.

"Municipal Facilities" means City-owned facilities, structures and buildings, and Streetlight Poles, Decorative Streetlight Poles, lighting fixtures, and electroliers located within the Public Rights-of-Way, and may refer to such items in the singular or plural, as appropriate to the context in which used.

"Network" or collectively "Networks" means one or more of the neutral-host, protocol-agnostic, access point, fiber-based optical repeater networks operated by SMC to serve its wireless customers in the City.

"Ornamental Streetlight Pole" carries the same meaning as Decorative Streetlight Pole.

"Public Rights-of-Way" means the space in, upon, above, along, across, and over the public streets, roads, lanes, courts, ways, alleys, boulevards, and places, including all public utility easements and public service easements as the same now or may hereafter exist, that are under the jurisdiction or control of the City. This term shall not include any other property owned by the City or any property owned by any person or entity (e.g. county, state, or federal rights-of-way) other than the City, except as provided by applicable Laws or pursuant to an agreement between the City and any such person or entity.

"PUC" means the California Public Utilities Commission

"Request for Proposal" or "RFP" means the Request for Proposal of Public Wireless Broadband Service in Sacramento, number P071311001, issued by the City concerning the deployment of a WiFi Network System within the City of Sacramento, and attached hereto as Exhibit "I".

"Response to RFP" means SMC's proposals and responses to the RFP and attached hereto as Exhibit "C".

"Section" means any section, subsection or provision of this Agreement and references to the Section(s) shall include each and every subsection(s), and vice versa.

"Service Attributes" mean various standards and requirements under which SMC shall deploy, implement, operate and maintain the Wireless Network and provide Wireless Broadband Services. The Service Attributes include the matter set forth in the Response to RFP and the matter set forth in Exhibit "F." Exhibit "F" may restate portions of the Response to RFP and may contain additional or different terms than are contained in the Response to RFP as a result of the Parties' negotiations subsequent to the submission of the Response to RFP or otherwise. In the event of a conflict between Exhibit "F" and the Response to RFP, the matter set forth in Exhibit "F" shall prevail as part of the operative standards and requirements to be adhered to by SMC.

"Streetlight Pole" shall mean any City-owned standard-design concrete, fiberglass, or metal pole that has a mast arm for electrolier support and is used for street lighting purposes.

"Subscriber" means any person who elects to subscribe to, for any purpose, Wireless Broadband Services provided by SMC by means of or in connection with the WiFi Network System.

"Technical Appendices" means Exhibits "T1" through "T6," inclusive, of this Agreement that are included in a compilation separate from and not attached physically to this Agreement, and bearing the signatures of the Parties.

"User" means any person who utilizes the Wireless Broadband Services provided by SMC.

"SMC Project Manager" means the person designated by SMC pursuant to Section 2.2 of this Agreement

"Wireless Network System" means a broadband grid utilized to provide Wireless Broadband Services.

**II. EXHIBITS.** The Exhibits to this Agreement are listed as follows:

- Exhibit "A": Definitions and Exhibits
- Exhibit "B": Master Deployment Plan
- Exhibit "C": Response to RFP
- Exhibit "D": Policy Commitments
- Exhibit "E": Digital Inclusion Requirements
- Exhibit "F": Selected Service Attributes
- Exhibit "G": Facilities and Equipment To Be Provided by the City
- Exhibit "H": General Provisions
- Exhibit "I": Request for Proposal

Technical Appendices:

- Exhibit T1: WiFi Network Equipment List
- Exhibit T2: Electrical Specifications and Special Provisions
- Exhibit T3: Sacramento City Code Section 17.24.050, Footnote 58, relating to Antennas and Telecommunication Facilities
- Exhibit T4: City Raceway Systems Specifications
- Exhibit T5: WiFi Network Architecture & Security Design Specifications

## EXHIBIT "B"

### MASTER DEPLOYMENT PLAN

The deadlines and timelines as set forth herein contemplate that all requisite permits have been obtained, access to all requisite Municipal Facilities have been secured, and that neither party is in material breach of its obligations under this Agreement.

1. **Submission of Network Design Documents.** Prior to commencement of installation of the WiFi Network System and within sixty (60) calendar days of execution of this Agreement, SMC shall submit to the City, initial plans and specifications for the installation and deployment of the WiFi Network System. The plans and specifications shall include, at a minimum, a proposed location of all Municipal Facilities to be used for Network Equipment, a schedule time frame and scope of work for the roll out of each Phase, proposed Equipment, proposed Performance and Acceptance Test Criteria that meet the requirements set forth below, and the anticipated number of Municipal Facilities to be used for each Phase.

2. **Public Safety Network Design Document Approval.** In the event the City's Police and/or Fire Department desire to use the Network, prior to installation of a Public Safety Network and within thirty (30) calendar days of notice by the City, SMC shall submit to the City its proposed Initial Public Safety Network Design Documents. In consultation with SMC, the City will review, modify as necessary, and approve SMC's proposed Initial Public Safety Network Design Documents within 20 business days of City's receipt of SMC's proposed Public Safety Network Design Documents. Following City's approval, SMC shall deploy the WiFi Public Safety Network in accordance with the approved Public Safety Network Design Documents.

3. **Network Acceptance.** Upon completion of installation, construction, or physical interconnection of facilities, SMC shall notify the City of completion and the parties will conduct a performance inspection and, where requested, a test of service or facilities, to determine whether the work has been completed as contemplated and agreed. Any such inspection and acceptance test shall take place within ten (10) days of notice of completion, and in a manner consistent with industry practices and any acceptance test procedures established by the parties. This section does not establish terms and conditions for other inspections required by law or regulation to evaluate a party's compliance with the terms and conditions set out in any applicable permits and authorizations.

Network Acceptance shall be based upon satisfaction of the Acceptance Test Criteria. SMC shall provide test results, demonstrating the ability of the network to transmit prioritized packets under load, particularly using prioritization schemes typically used for standards-based voice and video applications, to the City for evaluation. SMC shall provide recognized benchmarks testing results detailing their wireless network system performance, including the extent to which wireless equipment and access points are capable of transmitting both small and large packet profile traffic, up to and including speeds of 54Mbps. The percent of packets lost or dropped, as a function of network load should also be included. The speed and results of security protocols and encryption impact on performance should be documented. The impact of "fallback" in use of 802.11G/B should be documented as to wireless network speed and performance. Annual performance reporting shall be provided by SMC demonstrating network viability.

3.1 **Performance Test Criteria.** SMC will be responsible for installing and operating a wireless network that conforms to acceptable limits within the Service Level Agreement (SLA) between the City and SMC and meets the following performance requirements:

**Coverage (Defined as the number of locations that meet the throughput and latency requirements divided by the number of locations tested.)**

- No less than 95% coverage to the area on the exterior of buildings and 90% coverage through 1 wall on the 1<sup>st</sup> and 2<sup>nd</sup> floors;
- No less than 95% coverage to any vehicle-mounted WiFi client access point located within 50 feet of a city street

**Throughput**

- No less than 1.0 Mbps average download (i.e., network to end user) throughput;
- No less than 256 Kbps average upload (i.e., end user to network) throughput.

**Latency**

- Average ping time of 100 ms or less between an end user and a server on the wireless network;
- Average ping time of 200 ms or less between an end user and a server not on the wireless network (e.g. Google, Yahoo, eBay, etc)

- 3.2 **Acceptance Testing Procedures.** SMC shall apply the following testing procedures for collecting data to measure the wireless network's compliance with the stated performance in the SLA and the test scenarios described in section 5 "Acceptance Test Criteria" herein:

**Off-Street Testing.** SMC shall conduct an "Off-Street Testing" and provide detailed propagation and coverage maps detailing the coverage provided by the wireless network.

**Indoor Testing.** SMC shall conduct an "Indoor Testing" in several areas of the City to demonstrate the performance of the wireless network.

**Drive-By Testing.** SMC shall conduct a "Drive Testing" for characterizing the entire service area for the stated performance requirements. SMC shall complete regression analysis on test results from miles of drive testing and the throughput and latency test results.

4. **Deployment Schedule for each Phase.** SMC shall develop a deployment schedule and install a network that is economically and ethnically balanced between diverse neighborhoods and Council Districts that cover the entire City within two (2) years of start of the initial phase of deployment. The order of deployment will be prioritized in cooperation with the City. Network planning and deployment will be conducted by SMC. SMC will subcontract installation of the pole, roof, and tower mounted equipment to a City approved contractor. The Network design and deployment will be undertaken in a manner consistent with the architectural specification in the approved Network Design Documents set forth in section 1 herein.

- 4.1. Deployment will proceed in a phased manner beginning with the Central City District that covers the following area: Sacramento River on the west to 16<sup>th</sup> Street on the east, H Street on the North to R Street on the South. The next phase shall cover selected individual sites in each Council District and then extending in sectors throughout the City. The deployment sectors comprising each phase will vary in size. Commencement of the installation work for the initial deployment phase shall be no later than ninety (90) calendar days after the execution of this Agreement.

4.2. Prior to the beginning of each phase of deployment SMC shall present to the City for its approval a plan describing the undertaking for that sector, including an inventory of the Municipal Facilities to be employed.

5. **Acceptance Test Criteria**

***Indoor Testing***

Tester		Date	Area		
#	Scenario	Action	Expected Results	Pass/ Fail	Distance from AP
1.1	Connectivity	A customer connects to the SMC SSID using a Cisco CPE	Upon successfully associating to the SMC SSID, the customer will receive a Success page and then will have open access to the Internet		
1.2	Connectivity	A Wholesale customer connects to the SMC SSID using a generic CPE	Upon successfully associating to the SMC SSID, the customer will receive a Success page and then will have open access to the Internet		
1.3	Email	A customer sends an email while connected to the SMC SSID using a Cisco CPE	The customer is able to successfully send email while connected to the SMC SSID using a CPE		
1.4	Email	A customer receives an email while connected to the SMC SSID using a CPE.	The customer is able to successfully receive email while connected to the SMC SSID using a CPE		
1.5	Throughput	A customer performs a speed test to the edge router using an industry standard test tool	The customer is able to perform a speed test. The network throughput as advertised (i.e. 256Kbps up and 1Mbps down on average)		
1.6	Latency	A customer performs a latency test to the edge router	The latency between the end user device and SMC's edge router is <= 100ms		
1.7	Security	A SMC retail customer performs a secure login	Customer can successfully perform secure login using SMC's connection manager and security software		
1.8	Security	A wholesale customer performs a secure login	Customer can successfully perform a secure login to their retail service provider using a proxy RADIUS request		
1.9	Security	A customer can establish a VPN tunnel over the network	Customer can perform a successful VPN tunnel connection		

## Outdoor/Drive-By Testing

Tester		Date	Area		
#	Scenario	Action	Expected Results	Pass/ Fail	Distance from AP
2.1	Connectivity to a SMC Open Access SSID	A retail/free customer connects to the Network by SMC SSID and authenticates to the network using the SMC Portal	Upon successfully authenticating using the SMC Portal, the customer will receive a Success page and then will have open access to the internet		
2.2	Connectivity to a SMC Open Access SSID	A wholesale customer connects to the Network by SMC SSID and authenticates to the network using the SMC Portal	Upon successfully authenticating using the SMC Portal, the customer will receive a Success page and then will have open access to the internet		
2.3	Connectivity to a SMC Open Access SSID	An Occasional Use customer with time remaining in their session connects to the Network by SMC SSID and authenticates to the Network using the SMC Portal	Upon successfully authenticating using the SMC Portal, the customer will be redirected to the City specific Welcome Page and then will have open access to the internet		
2.4	Connectivity to a SMC Open Access SSID	An Occasional Use customer whose session time has expired connects to the Network by SMC SSID and authenticates to the network using the SMC Portal	The customer will be redirected to the SMC Refill page, where he/she will have the option to purchase additional time		
2.5	Connectivity to a SMC Secure SSID	A retail customer connects to the SMC Secure SSID using the SMC WiFi client	After a browser window is opened, the customer has open access to the internet		
2.6	Connectivity to a SMC Secure SSID	A wholesale customer connects to the SMC Secure SSID using the SMC WiFi client	After a browser window is opened, the customer has open access to the internet		
2.7	Connectivity to a SMC Secure SSID	An Occasional Use customer with time remaining in their session connects to the SMC Secure SSID using the SMC WiFi client	After a browser window is opened, the customer has open access to the internet for the duration of his/her session		
2.8	Connectivity to a SMC Secure SSID	An Occasional Use customer whose session time has expired connects to the SMC Secure SSID using the SMC WiFi client	After a browser window is opened, the customer will be redirected to the SMC Refill page, where he/she will have the option to purchase additional time		
2.9	Throughput	A customer performs a speed test to the edge router using an industry standard test tool	The customer is able to perform a speed test The network throughput as advertised (i.e. 256Kbps up and 1Mbps down on average)		
2.10	Latency	A customer performs a latency test to the edge router	The latency between the end user device and SMC's edge router is <= 100ms		
2.11	Security	A SMC retail customer performs a secure login	Customer successfully perform secure login using SMC's connection manager and security software		
2.12	Security	A wholesale customer performs a secure login	Customer can successfully perform a secure login to their ISP using a proxy RADIUS request		

### Outdoor/Drive-By Testing (Continued)

Tester		Date	Area		
#	Scenario	Action	Expected Results	Pass/ Fail	Distance from AP
2.13	Security	A customer can establish a VPN tunnel over the network	Customer can perform a successful VPN tunnel connection		
2.14	Product Purchase	An Occasional Use customer purchases the 1-Hour Product	The customer receives an email confirmation with their invoice upon purchase of the session. The customer is able to surf the internet for 60 continuous minutes. After 60 minutes, if a browser window is open the customer will be redirected to the Refill page on the SMC Portal		
2.15	Product Purchase	An Occasional Use customer purchases the 1-Day Product	The customer receives an email confirmation with their invoice upon purchase of the session. The customer is able to surf the internet for 24 continuous hours. After 24 hours, if a browser window is open the customer will be redirected to the Refill page on the SMC Portal		

### Administrative Testing

Tester		Date	Area		
#	Scenario	Action	Expected Results	Pass/ Fail	Distance from AP
3.1	Password Recovery	An existing customer needs to recover a lost password	The existing customer is able to successfully reset his/her password		
3.2	Login Name Recovery	An existing customer needs to recover his/her user name	The existing customer is able to successfully recover his/her user name		
3.3	Account Update	A customer updates his/her Account Information	The customer is able to successfully update his/her account information		
3.4	Account Update	A customer updates his/her Billing Information	The customer is able to successfully update his/her billing information		
3.5	Local Portal Content	A customer clicks on a City specific link on the Portal Landing page	A new browser window opens for the City specific link		
3.6	Local Portal Content	After authentication, a customer wants to surf the city customized Welcome page	The City customized Welcome page contains city specific links, local news, local search, traffic, and local directory		
3.7	Monthly Plans	A customer clicks on the "Learn About Monthly Plans" link within the SMC portal	The customer is redirected to the Monthly Plans page, where they are presented with companies that offer monthly plans in their area		

**EXHIBIT "C"**

**SMC RESPONSE TO CITY OF SACRAMENTO REQUEST FOR PROPOSAL NO.P071311001**

[Provided Separately]

## EXHIBIT "D"

### POLICY COMMITMENTS

#### I. PRIVACY

- A. For services other than the free tier service, SMC will adhere to a privacy policy that meets the following minimum requirements. SMC would also expect its wholesale Internet Service Providers to comply with similar policies that meet the following minimum requirements
- (1) SMC will not share personally identifiable information and/or user location with any person or entity without the voluntary, affirmative consent of the User.
  - (2) SMC may share personal information with vendors or partners of SMC that deliver or promote SMC's services, provided Users have an opportunity to opt out of the use by SMC of the personal information. An opt out does not preclude SMC from using location information to: (i) enable a device to connect to the Network; (ii) provide other services which use location information from which the User has not opted out; or (iii) comply with legal requests as required by applicable laws. The opportunity to opt out shall be made readily available to the User.
  - (3) SMC may share information with law enforcement or in connection with civil legal proceedings as required by applicable laws. To the extent permitted by applicable laws, SMC shall provide reasonable prior notice to the User and require court-ordered documentation before disclosure.
  - (4) SMC to adhere to a sixty (60) day retention policy for non-aggregated location information.
- B. SMC to work with City to create a mutually agreeable process for changes to these policies requested by either SMC or City during the term of this Agreement.
- C. The free tier will meet the following minimum requirements with respect to information obtained from free tier Users and collected as a result of SMC administering the free tier service, or SMC will provide an alternative that will meet such minimum requirements.
- (1) Users may be directed to a capture portal where Users can be presented with options to register or login that require minimal information from the User.
  - (2) SMC may share personal information with vendors or partners of SMC that deliver or promote SMC's services, provided Users have an opportunity to opt out.
  - (3) SMC to notify Users of legal requests for personal data to the extent permitted by law.
  - (4) SMC to adhere to a 60-day retention period for non-aggregated location information. SMC will provide mechanisms for Users to opt-out.

## **II. BROADBAND NON-DISCRIMINATION/NETWORK NEUTRALITY**

- A. SMC will promote the open and interconnected nature of the public internet and the neutral and non-discriminatory treatment of consumers with respect to the following:
- (1) Run applications and use services of their choice, subject to the needs of law enforcement.
  - (2) Access the lawful Internet content of their choice.
  - (3) Connect their choice of industry standard devices that do not harm the Network.
  - (4) Competition among network providers, application and service providers, and content providers.
- B. The Parties encourage all similarly-situated providers of broadband services to also abide by these principles. The City may establish more specific standards as may be established by separate ordinances of general applicability that will apply to all providers.

## **III. OPEN ACCESS**

- A. SMC shall provide open access to the Network's Internet access transport services to multiple unaffiliated service providers.
- B. Access transport service will be offered in a non-discriminatory manner and will mirror SMC's retail transport services.
- C. When any unauthenticated User is redirected to a "capture portal" on the Network, the User shall have an option to choose between multiple service providers and service plans.
- D. The Network shall support unilateral, inbound and outbound roaming relationships whereby subscribers to other fee-based WiFi services may gain access to premium services provided over the Network and vice versa.

## EXHIBIT "E"

### DIGITAL INCLUSION REQUIREMENTS

SMC recognizes digital opportunity and economic development efforts as a fundamental component of this Agreement, insofar as customer ubiquity and coverage ubiquity enhance network usership and contribute directly to network viability.

Accordingly, SMC proposes the following framework for promotion of digital opportunity efforts on the wireless broadband network.

- I. Digital Inclusion and Digital Opportunity: Recitals
- II. Digital Opportunity: Relevancy of Offering/Overall Policy Directives
- III. Governance
- IV. Grantseeking: Enabling funding sources for Digital Opportunity Programming
- V. Grantmaking: Investment into Community Digital Opportunity Priorities
- VI. Free Layer Advertising Revenue Allocation.
- VII. Demand Aggregation: Anchor Tenancy Status
- VIII. Training, Education and Service Delivery: Programs Proposed
- IX. Parties to Implementation
- X. Manner of Qualification
- XI. Timeframe for Implementation

#### I. **Digital Inclusion and Digital Opportunity: Recitals**

A. Creating a situation in which coverage ubiquity brings opportunity and prosperity for all residents and businesses of the city of Sacramento offers a mutually beneficial outcome for both SMC and the City.

B. While inclusion of all communities will be an initial goal, productive enablement of educational, business, civic and social opportunity via this access, i.e. "Digital Opportunity," will become a greater measure of success of these efforts over time.

C. It is understood that Digital Opportunity efforts will not single out specific constituencies, but rather will enable digitally underserved constituencies to participate viably and productively in the greater progress of the entire Sacramento community.

D. It is understood that Digital Opportunity efforts will be provided according to and to the extent of resources specifically engaged from:

1. Network-driven revenues (see Exhibit E, Section VI, A and B and Exhibit G, Section D,1);
2. Philanthropically raised funds which are separately solicited and not raised from capitalization or operating network receipts or sources (see Exhibit E, Section IV, B); and
3. Federal and State grants which are sought separately from capitalization and operating network receipts or sources (see Exhibit E, Section IV, A).

E. The resources described in Section I.D. above shall be deposited into accounts or funds established for digital inclusion programs and opportunities only. The Sacramento City Council shall have the authority to approve the expenditure of such funds pursuant to policies and procedures established by the Council in furtherance of Digital Inclusion and Digital Opportunity,

including Digital Opportunity investment, fundraising, program implementation, provision and evaluation. The Council will appoint a Digital Opportunity advisory board ("Advisory Board") that will make recommendations and provide advice to the Council and City staff as the City considers the expenditures of such funds and the formulation of City policies and procedures relating to Digital Inclusion and Digital Opportunity.

F. Efforts to engage philanthropically raised funds from the public (see this Exhibit E, Section IV, B) will be overseen solely by subcontractors of SMC who are not-for-profit California public benefit entities clearly eligible to perform such fundraising in furtherance of Digital Opportunity objectives. Such subcontractor(s) will engage fundraising efforts to the greatest extent reasonable to achieving shared goals of network ubiquity as outlined in this Exhibit E and as determined reasonable by the Advisory Board.

G. All federal, state and other grant funds together with all philanthropically raised funds will in all cases flow directly to accounts established for Digital Opportunity purposes including specifically designated community support purposes as directed by the City Council and as outlined herein. In no case will such funds flow through the Network as receipts of the business of the network. SMC will engage appropriate compliance procedures to ensure the segregation of publicly-raised charitable funds for Digital Opportunity priorities from general receipts of the network. Any additional staffing required to effectuate the provisions of this Exhibit E shall be provided by SMC's selected designee. Notwithstanding anything contained herein to the contrary, SMC shall not be required to expend SMC personnel to effectuate any requirement contained in this Exhibit E.

## **II. Digital Opportunity: Relevancy of Offering/Overall Objectives**

**A. Relevancy of offering.** The new network and the advancements in technology it will bring will not be embraced by new users unless priorities that are already important to the community are addressed via the new technology. Towards ensuring relevancy of effort, SMC will:

1. Address knowledge sharing in key areas around digitally underserved community priorities via focus groups and related research.
2. Enable ways in which technology could adjust to fit community priorities.
3. Secure technology and expertise required for delivery of such priorities.
4. Enhance the profile and involvement of existing, local Sacramento community service providers in enabling network usership.

### **B. Digital Opportunity: Overall Objectives**

1. Maximum usership: Attract users and fill the network – Achieves inclusion objectives, promotes the City's economic development goals, and serves SMC business objectives. All three areas of focus work productively together in the context of the network.
2. Resourcefulness and efficiency - Inclusion of existing providers of community service, ensuring value added partnerships rather than competition for resources.

3. A grassroots, neighborhood focus - Promoting Digital Opportunity through neighborhood portals, local schools, and community centers. Enabling local content creation.
4. An entrepreneurial focus - Enabling new businesses and new business owners; welcoming investment capital of all types.
  - a) Community-focused training programs established around business corridors and zones of enterprise, with close collaboration of the City of Sacramento's Economic Development department and local chambers of commerce. These training programs will be offered to Digital Inclusion qualified persons, as determined by the City Council referenced in Section III, at no fee. Those who are interested but not officially qualified may participate at a nominal fee if space is available. Digital Inclusion qualified persons will be given enrollment priority. The focus areas for these planned training programs are listed in Section VIII.
5. Enabling service learning and distance learning
  - a) Engagement of the positive benefit of involvement of local students and academic institutions in network build-out, service and maintenance.
6. Enabling "Loan to Own" equipment purchase format.
  - a) SMC proposes the inclusion of a stored value card product for those registered for digital opportunity programming to use toward low cost purchase of equipment. This option will be offered to Digital Inclusion qualified persons at no fee. Those who are interested but not officially qualified may also participate upon payment of a published and reasonable fee
  - b) It is SMC's intention to have this product achieve wider usage rather than enabling it as an unintentional identifier of a Digital Inclusion qualified person, the program is intended to enable a stored value card product for those who may not currently qualify for traditional credit products.
7. Focus groups/Ongoing dialogue.
8. Active Donor Engagement.

**III. Governance:** The resources described in Section I.D. of this Exhibit E shall be deposited into accounts or funds established for digital inclusion programs and opportunities only. The Sacramento City Council shall have the authority to approve the expenditure of such funds or pursuant to policies and procedures established by the Council in furtherance of Digital Inclusion and Digital Opportunity, including Digital Opportunity investment, fundraising, program implementation, provision and evaluation. The Council will appoint the Advisory Board that will make recommendations and provide advice to the Council and City staff as the City considers the expenditures of such funds and the formulation of City policies and procedures relating to Digital Inclusion and Digital Opportunity.

#### **IV. Grantseeking: Enabling Funding Sources for Digital Opportunity Programming.**

**A. Grantseeking: State and Federal Grants** - SMC recognizes that state of California and Federal monies, some of the latter earmarked for Homeland Security purposes, may in certain cases be qualified for investment into SMC Digital Opportunity and public safety efforts. Toward enabling collaborative effort to secure these funds for the benefit of the residents, businesses and government of the city of Sacramento and its agencies dedicated to public safety,

1. SMC will appoint at least (1) representative to seek such grants on a part time basis and liaise with appropriate City representatives regarding specific grant opportunities for the City of Sacramento.
2. SMC will engage the not-for-profit organization community toward identifying grant opportunities at the state and federal level which can directly support Digital Opportunity efforts on the network.
3. The City agrees to reasonably support and encourage efforts to request, receive and invest such moneys according to their stated purpose and allocation within a timely and effective manner.

#### **B. Grantseeking: Philanthropic Participation.**

1. SMC recognizes that community and foundation philanthropy may provide a helpful resource in engaging Digital Opportunity and coverage ubiquity for the City of Sacramento.
2. SMC will appoint at least (1) representative to seek such grants on a part time basis and liaise with appropriate City representatives regarding specific grant opportunities for the City of Sacramento.
3. The City agrees to reasonably support and encourage efforts to secure philanthropic funding, and will provide referral and endorsement as appropriate and allowable toward enabling successful engagement by SMC of donors to fund Digital Opportunity programs benefiting diverse underserved communities in the City achieve the benefits of digital opportunity brought by the network.

#### **V. Grantmaking: Investment into Community Digital Opportunity Priorities**

**A. Grantmaking: Grant Guidelines.** Grant guidelines, as well as guidelines for grants marketing will be developed by the Advisory Board. Reasonable administrative fees, not to exceed 10% of donated funds, will be retained toward addressing administrative costs of grant investment and disbursement. Direction of the Advisory Board will be sought to determine appropriate administrative fee levels.

1. The Advisory Board will establish a merit-based evaluation system and ongoing due diligence will identify the most competent organizations for each task assignment in a timely and objective manner.

## VI. Free Layer Advertising Revenue Allocation/Other Revenue Sources.

**A. Allocation.** SMC will allocate 7% of gross revenue on a monthly basis from advertising on the free service to “Digital Opportunity and Economic Development Efforts” in and for the residents and businesses of the City of Sacramento toward promotion and expansion of coverage ubiquity. SMC will work with the Advisory Board to make recommendations to the City Council on allocation formulas and specific administrative requirements.

**B. Additional Revenue Sources.** SMC agrees to make seeking additional revenue sources for Digital Opportunity efforts a key business priority for the network; as such, efforts represent avenues to customer acquisition. Such revenue sources may include, but are not limited to incentive programs with local retailers in which a percentage of retail purchases are allocated to Digital Opportunity.

## VII. Demand Aggregation: Anchor Tenancy Status

**A. Breadth of Sector.** The not-for-profit sector serves, involves and employs a significant number of Sacramento residents. SMC recognizes that in aggregate, this business segment could create an anchor tenancy arrangement on the wireless broadband network in Sacramento. An initial survey will be performed to analyze the current value of the tenancy arrangement in terms of number of users and internet connections.

**B. Enabling Anchor Tenancy.** Towards enabling this arrangement, SMC will:

1. Identify and contact all members of this organizational group;
2. Perform high level needs analysis in terms of current connectivity;
3. Aggregate demand amongst entities to establish a valid anchor tenancy grouping;
4. The following discounting arrangement would apply to a demand aggregated Anchor Tenancy arrangement for the not-for-profit community. This schedule applies to the not-for-profit community only and is separate from Anchor Tenancy discounting schedules offered in Section 2 of the Anchor Tenancy Agreement. Qualification will be demonstrated by proof of federal and state tax exemption and via other criteria as determined by the Advisory Board. This not-for-profit Anchor Tenancy discounting schedule will create incentives for connectivity and services; for example, it may spur such efforts as user mobility signups and T1 replacement commitments.

### **Semi-Annual Revenue generated by aggregate purchase by not for profit community**

\$300k-\$2.5M	20% Discount off retail pricing
\$2.51-\$8M	25% Discount off retail pricing
\$8.01M-\$12M	30% Discount off retail pricing
\$12.01M-\$20M	40% Discount off retail pricing
\$20M+	50% Discount off retail pricing

### **Aggregate Number of Monthly Connection by not for profit community**

2000-8,000	20% Discount off wholesale pricing
8,001-18,000	25% Discount off wholesale pricing
18,001-24,000	30% Discount off wholesale pricing
24,001-30,000	40% Discount off wholesale pricing
30,001+	50% Discount off wholesale pricing

## **VIII. Training, Education and Service Delivery: Programs Proposed**

### **A. Topics/Constituencies Eligible for Service within Digital Opportunity Framework**

#### 1. Location based:

- a) Residents of underserved communities, regardless of income level;
- b) Businesses in underserved communities; new small and emerging business in zones of economic development and enterprise;
- c) Schools and Community organizations serving underserved communities.

#### 2. Topic/Segment based.

- a) Senior populations seeking technology access and familiarity
- b) Persons with disabilities seeking technology access
- c) Not for profit organizations/ Local government-contracted service providers
- d) Job seekers/those between jobs and uninsured
- e) New arrival/immigrant populations
- f) Disaster preparedness efforts/neighborhood safety groups (working with appropriate municipal agencies)
- g) Literacy meets digital literacy programs – two in one
- h) Healthcare support groups and prescription refill
- i) Cultural pride and uniqueness
- j) Social networking
- k) New business owners/ Economic and venture empowerment
- l) Interdisciplinary programming (involvement of academia)

**IX. Parties to Implementation.** Services shall be provided primarily by SMC and secondarily by subcontractors of SMC. Arrangements related to subcontracting in this area shall be governed by Section 9 of Exhibit "H."

## **X. Manner of Qualification**

**A. Recipients of Service.** Providers of service will be evaluated and selected based upon publicly published criteria approved by both the City and SMC. These criteria will be updated at least annually to reflect community needs and necessary qualifications for service provision. The initial list

of criteria for recipients of service of digital opportunity programming will be developed by the Advisory Board subject to the approval of the City Council.

**B. Providers of Service.** Providers of service are locally recognized Sacramento Community organizations, who will be evaluated and selected based upon publicly published criteria approved by both the City and SMC to assist SMC in the provision of digital opportunity curricula and services. These following initial criteria will be updated at least annually to reflect community needs and necessary qualifications for service provision.

1. Current access, legitimacy and trust within populations served
2. Length and quality of experience in provision of qualified and relevant services
3. Willingness to participate according to City and SMC shared objectives, including City/SMC shared demands for teamwork and transparency
4. Capacity for timeliness of delivery
5. 501(c)(3) or other tax-exempt status allowing solicitation and receipt of philanthropic/granted funds
6. Willingness to refer other qualified organization and willingness to engage anchor tenancy arrangements are not required but will be viewed positively

**XI. Timeframe for Implementation.** Digital Opportunity program development and engagement shall commence not later than sixty (60) calendar days following execution of this Agreement.

**A. Timeframe for specific curricula.** SMC will implement programming on a timely, effective, best efforts basis according to available resources, qualified local participants and community needs. Prioritization, sequence and implementation of programs noted in section VIII will be governed first and foremost by what most effectively achieves City objectives within available bases of resources. If it is determined that a proposed training framework does not enable such objectives, it will be amended or replaced with one which resources enable to be an effective method of achieving city objectives. SMC reserves the right to propose such changes for the Advisory Board review as appropriate to timely achievement of mutual objectives.

**B. Reporting on implementation status.** Progress and breadth of engagement is to be reported to City staff on a monthly basis by SMC; a written report is to be submitted electronically by close of business on the 10<sup>th</sup> day of each month, or by close of business on the immediately subsequent business day if the 10<sup>th</sup> falls upon a Saturday or Sunday. The report is to note successes, clearly note obstacles and proposed solutions and list relevant metrics to include, but not limited to, number of persons served, curricula offered, milestones achieved, geographies and demographics affected, next steps and resources required. City staff will review and compile reports to be submitted to the Advisory Board and the City Council with recommendations, if any. SMC shall provide an annual report to the Advisory Board and the City Council concerning the status and/or progress of the digital opportunity programs and efforts.

## EXHIBIT "F"

### SERVICE ATTRIBUTES

#### I. SUBSCRIPTION OPTIONS:

1. **Basic Free Services: 1Mbps** combined with best effort, no time limit and no credit card required (VPN or VoIP limited to 15-30 minutes)

2. **Retail Subscription Tier**

- **\$15/month** (1Mbps download/256Kbps upload)
- **\$25/month** (2Mbps download /384Kbps upload)
- **\$50/month** (3Mbps download /572Kbps upload)
- **\$80/month** (3Mbps download /768Kbps upload)

3. **Wholesale Subscription Tier**

National and Regional ISPs with 1,000 broadband or 10,000 dial-up existing subscribers and required 24x7 call center up to Tier 2 support – City could be qualified for wholesale pricing with certain commitment on uses

4. **Public Safety (4.9GHz):**

- \$24/month (1Mbps download /256Kbps upload)
- \$40/month (2Mbps download /384Kbps upload)
- \$80//month (3Mbps download /572Kbps upload)

II. The above listed subscription tier rates shall be in effect for one year from the Effective Date of this Agreement.

III. For City use, SMC offers both concurrent license and named license with separate and dedicated SSID. QoS is built-in for Anchor Tenant and speed above 1Mbps will depend on the extent of municipal requirements and its applications.

#### IV. CUSTOMER SUPPORT

- SMC provides a tiered 24X7X365 technical support system. Tier 1 and Tier 2 toll-free and on-line supports for all issues for residents and commercial users. For Anchor Tenant's devices, City will assume Tier 1 supports for its users. SMC will assume Tier 2 support
- SMC collaboration members Cisco and Intel each will maintain an Account Manager, who will be the primary customer contact for the City.
- SMC will measure and maintain a record of users on the network, average users per node and the average speed per user. This information will use to adjust network nodes to achieve desired network performance and connectivity on the network

#### V. MAINTENANCE

SMC will deploy WiMAX products for backhaul and Point to Multi-point circuits. SMC provides a technology upgrade and refreshes program as a key safeguard against eventual technology obsolescence via its Technology Refresh Lease Program, as set forth in SMC's RFP Response. The program is based on an established constant oversight of equipment performance, local conditions and emerging technologies that trigger replacement/upgrades during the life of the project. The City will not incur any financial obligations for this aspect of the network.

## EXHIBIT "G"

### CITY-OWNED PROPERTIES AND FACILITIES TO BE PROVIDED BY CITY

**A. Access to City-owned properties.** In the event that SMC requests access to or use of pre-approved City-owned properties and/or facilities to install the Wireless Network equipment, City will provide SMC with reasonable access to such facilities as necessary. SMC must comply with the following procedures.

1. SMC agrees to abide by all City security and facility access rules. SMC agrees to repair any damage to City property caused by the deployment of this Wireless Network.
2. SMC's employees, contractors and vendors working in the City-owned Facilities should maintain confidentiality, integrity, and access to City Information Technology Resources. Access should be limited to SMC's device/equipment, which is needed for the operation or repair of the Public Wireless Services Network. In addition, no information or processes should be accessed in any manner without proper authority or necessity.
3. SMC's employees, contractors and vendors with access needs to City-owned Facilities other than the Data Center requires a pre-approval from City Project Manager. SMC's employees, contractors and vendors shall wear their company identification, when they are working inside City-owned Facilities.
4. Access to the Data Center requires a pre-approval from IT Department, Technical Support and Services Division. Any photos to be taken inside City-owned facilities also require a pre-approval from the City.
5. The City currently doesn't have staff 24/7 in our Data Center. However, if access is necessary to facilitate deployment and maintenance of the Wireless Network System components during off-working hours, SMC must pre-arrange with and obtain prior approval from the IT Department and complies with City's security measurements as stated in sections 6 and 7 below.
6. SMC's employees, contractors and vendors, who have been approved to access the Data Center, must check in with the Data Center Operations Desk during regular working hours, or an IT designated staff during off working hours, and sign the login sheet.
7. SMC's employees, contractors and vendors with access needs to the Data Center must be escorted by City IT staff. IT Computer Operations staff may require SMC's employees, contractors and vendors to show their company identification.

**B. Relocation.** The City reserves the right to reallocate its facilities if such is determined to be appropriate in its sole business judgment, and if there is no material interruption or degradation of any services affected by the reallocation and/or rerouting, and if there is no impact on the cost to SMC as agreed upon for the particular project. The City shall provide at least thirty (30) days' written notice of such action to SMC, where reallocating of facilities is needed.

**C. Additional facilities.** SMC may request access to additional City-owned properties or facilities by submitting a preliminary written proposal to the City, including the location of the City property and amount of space desired. The preliminary written request should also include a preliminary site plan, an elevation sketch, the nature of the request, a description of any SMC equipment and facilities to be

placed on the City property, a description of the equipment or cables SMC intends to place in the City conduit where applicable, the procedures to be followed for installation, marking and locating, the SMC entity that will be responsible for the use, the nature of the services for which the equipment and facilities will be used, and the duration of use. Upon receipt of a request from SMC, the City will review the request to determine whether the request is feasible, under what terms and conditions access would be granted; whether there are other authorizations that may be required before access is granted; and whether there are feasible alternatives to the specific request that may be available and provide a response to SMC within fifteen (15) business days.

**D. Use of City Pole Mounting Assets.** The City will provide specific pole mounting assets to SMC as set forth under Section 5 of the Master Agreement. SMC agrees to the following compensations for use of such City-owned assets during the term and any renewal term of this Agreement:

1. SMC will allocate \$36.00 annually per pole used in the network to community reinvestment efforts toward Digital Opportunity. The investment of these funds is to be directed by the City Council as described under Section III in Exhibit E to this Agreement.
2. Applicable grant funds and philanthropically raised funds (as set forth in section IV of Exhibit E to this Agreement) will be allocated to subsidize consumer premises equipment ("CPE") acquisition for up to 200 "Community Organizations" within a low cost loan to own format, as described in Section II.B.6 of Exhibit E. A "Community Organization" is an organization established and operated for a public service purpose which provides benefit to underserved residents, schools and businesses within the City of Sacramento. For purposes of this section, community organizations will be selected according to the extent they offer (1) opportunity to have free access to computer hardware and software in a group training setting designed to promote the City's objectives of digital opportunity education (to include but not be limited to a school, place of worship, library or community center) or to the extent they offer (2) necessary low or no cost health services to underserved residents of the City of Sacramento (to include but not be limited to community health clinics established to serve the uninsured, or those unable to afford basic healthcare for themselves and/or their families.) The CPE will be selected toward effective extension of free layer service within ground and first story indoor spaces in communal areas of community focused education/training and internet/broadband usage. SMC will confirm recipient list with the City of Sacramento toward allocating these devices to areas in which coverage ubiquity is a key network priority for the City and/or such equipment could not be easily afforded or accessed via traditional retail purchase.
3. SMC will discuss and confirm with the Advisory Board to allocate such philanthropically raised funds to support access to Assistive Technology solutions to include, more specifically, broadband access solutions for low income families, and senior residents and business owners over the age of 65 in the City of Sacramento.
4. SMC agrees to maintain an ongoing dialogue with the City of Sacramento towards ensuring that allocation of such compensation is timely, is resource-effective, and is focused upon expansion of network user ubiquity and Digital Opportunity.

## EXHIBIT "H"

### GENERAL PROVISIONS

#### 1. Independent Contractor.

- A. It is understood and agreed that SMC (including SMC's employees) is an independent contractor and that no relationship of employer-employee exists between the Parties hereto for any purpose whatsoever. Neither SMC nor SMC's assigned personnel shall be entitled to any benefits payable to employees of City. City is not required to make any deductions or withholdings from the compensation payable to SMC under the provisions of this Agreement, and SMC shall be issued a Form 1099 for its services hereunder. As an independent contractor, SMC hereby agrees to indemnify and hold City harmless from any and all claims that may be made against City based upon any contention by any of SMC's employees or by any third party, including but not limited to any state or federal agency, that an employer-employee relationship or a substitute therefore exists for any purpose whatsoever by reason of this Agreement or by reason of the nature and/or performance under this Agreement.
- B. It is further understood and agreed by the Parties hereto that SMC, in the performance of its obligations hereunder, is subject to the control and direction of City as to the designation of tasks to be performed and the results to be accomplished by the services agreed to be rendered and performed under this Agreement, but not as to the means, methods, or sequence used by SMC for accomplishing such results. To the extent that SMC obtains permission to, and does, use City facilities, space, equipment or support services in the performance of this Agreement, this use shall be at the SMC's sole discretion based on the SMC's determination that such use will promote SMC's efficiency and effectiveness. Except as may be specifically provided elsewhere in this Agreement, the City does not require that SMC use City facilities, equipment or support services or work in City locations in the performance of this Agreement.
- C. If, in the performance of this Agreement, any third persons are employed by SMC, such persons shall be entirely and exclusively under the direction, supervision, and control of SMC. Except as may be specifically provided elsewhere in this Agreement, all terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by SMC. It is further understood and agreed that SMC shall issue W-2 or 1099 Forms for income and employment tax purposes, for all of SMC's assigned personnel and subcontractors.
- D. The provisions of this Section 1 shall survive any expiration or termination of this Agreement. Nothing in this Agreement shall be construed as to create an exclusive relationship between City and SMC. SMC may represent, perform services for, or be employed by such additional persons or companies as SMC sees fit provided that SMC does not violate the provisions of Section 3, below.

2. Relationship of Parties. Except as City may specify in writing, SMC and SMC's personnel shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. SMC and SMC's personnel shall have no authority, express or implied, to bind City to any obligations whatsoever. Neither Party will represent that it has any authority to assume or create any obligation, express or implied, on behalf of the other Party, nor to represent the other Party as agent, partner, joint venture, employee, or in any other capacity.

3. Conflicts of Interest. SMC covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, that would conflict in any manner with the interests of City or which would in any way hinder SMC's performance of Services under this Agreement. SMC further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor, without the written consent of City. SMC agrees to avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City at all times during the performance of this Agreement.

4. Confidentiality of CITY Information. During performance of this Agreement, SMC may gain access to and use City information regarding inventions, machinery, products, prices, apparatus, costs, discounts, future plans, business affairs, governmental affairs, processes, trade secrets, technical matters, customer lists, product design, copyright, data, and other vital information (hereafter collectively referred to as "City Information") which are valuable, special and unique assets of the City. SMC agrees to protect all City Information and treat it as strictly confidential, and further agrees that SMC shall not at any time, either directly or indirectly, divulge, disclose or communicate in any manner any City Information to any third party without the prior written consent of City. Disclosure of any City confidential information to an SMC subcontractor shall only occur once the receiving subcontractor has executed a separate non-disclosure agreement with SMC, as set forth in the Attachment to this Exhibit H. A violation by SMC of this section shall be a material violation of this Agreement and shall justify legal and/or equitable relief.

5. SMC Information.

- A. In this Agreement, the term "information" shall be construed to mean and include: any and all work product, submittals, reports, plans, specifications, and other deliverables consisting of documents, writings, handwritings, typewriting, printing, Photostatting, photographing, computer models, and any other computerized data and every other means of recording any form of information, communications, or representation, including letters, works, pictures, drawings, sounds, or symbols, or any combination thereof. Nothing contained herein shall affect the ownership of any such intellectual property rights, which shall, at all times, remain with SMC. SMC shall not be responsible for any unauthorized modification or use of such information for other than its intended purpose by City.
- B. All proprietary and other information received from SMC by City, whether received in connection with SMC's proposal to City or in connection with any services performed by SMC, will be disclosed upon receipt of a request for disclosure, pursuant to the California Public Records Act; provided, however, that, if any information is set apart and clearly marked "trade secret" and/or "proprietary" when it is provided to City, City shall give notice to SMC of any request for the disclosure of such information. The SMC shall then have five (5) calendar days from the date it receives such notice to enter into an agreement with the City, satisfactory to the City Attorney, providing for the defense of, and complete indemnification and reimbursement for all costs (including plaintiff's attorney fees) incurred by City in any legal action to compel the disclosure of such information under the California Public Records Act. SMC shall have sole responsibility for defense of the actual "trade secret" and/or "proprietary" designation of such information.
- C. The Parties understand and agree that any failure by SMC to respond to the notice provided by City and/or to enter into an agreement with City, in accordance with the provisions of subsection C, above, shall constitute a complete waiver by SMC of any

rights regarding the information designated "trade secret" and/or "proprietary" by SMC, and such information shall be disclosed by CITY pursuant to applicable procedures required by the Public Records Act.

6-1. Intellectual Property Indemnification. SMC shall fully defend, indemnify and hold harmless City, its officers and employees, and each and every one of them, from and against any and all claims, actions, lawsuits or other proceedings alleging that all or any part of the information prepared, produced, or provided by SMC pursuant to this Agreement infringes upon any third party's trademark, trade name, copyright, patent or other intellectual property rights. City shall make reasonable efforts to notify SMC not later than ten (10) days after City is served with any such claim, action, lawsuit or other proceeding, provided that City's failure to provide such notice within such time period shall not relieve SMC of its obligations hereunder, which shall survive any termination or expiration of this Agreement.

6-2. Non-Discrimination in Employee Benefits. This Agreement is subject to the provisions of Sacramento City Code Chapter 3.54, Non-Discrimination in Employee Benefits by City Contractors. The requirements of Sacramento City Code Chapter 3.54 are summarized in the attachments to this Exhibit "H." SMC is required to sign the attached Declaration of Compliance (Equal Benefits Ordinance) to assure compliance with these requirements.

7. Equal Employment Opportunity. During the performance of this Agreement, SMC, for itself, its assignees and successors in interest, agrees as follows:

- A. Compliance With Regulations: SMC shall comply with the Executive Order 11246 entitled "Equal Opportunity in Federal Employment", as amended by Executive Order 11375 and 12086, and as supplemented in Department of Labor regulations (41 CFR Chapter 60), hereinafter collectively referred to as the "Regulations".
- B. Nondiscrimination: SMC, with regards to the work performed by it after award and prior to completion of the work pursuant to this Agreement, shall not discriminate on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation in selection and retention of subcontractors, including procurement of materials and leases of equipment. SMC shall not participate either directly or indirectly in discrimination prohibited by the Regulations.
- C. Solicitations for Subcontractors, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiations made by SMC for work to be performed under any subcontract, including all procurement of materials or equipment, each potential subcontractor or supplier shall be notified by SMC of SMC's obligation under this Agreement and the Regulations relative to nondiscrimination on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation.
- D. Information and Reports: SMC shall provide all information and reports required by the Regulations, or by any orders or instructions issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the City to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of SMC is in the exclusive possession of another who fails or refuses to furnish this information, SMC shall so certify to the City, and shall set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance: In the event of noncompliance by SMC with the nondiscrimination provisions of this Agreement, the City shall impose such sanctions as it

may determine to be appropriate including, but not limited to:

- (1) Withholding of payments to SMC under this Agreement until SMC complies;
- (2) Cancellation, termination, or suspension of the Agreement, in whole or in part.

F. Incorporation of Provisions: SMC shall include the provisions of subsections A through E, above, in every subcontract, including procurement of materials and leases of equipment, unless exempted by the Regulations, or by any order or instructions issued pursuant thereto. SMC shall take such action with respect to any subcontract or procurement as the City may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event SMC becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, SMC may request City to enter such litigation to protect the interests of City.

8. Insurance. During the entire term of this Agreement, SMC shall maintain the following insurance:

A. Minimum Scope of Insurance. Coverage shall be at least as broad as:

- (1) Insurance Services Office Form No. CG 0001 (Commercial General Liability);
- (2) Insurance Services Office Form No. CA 0001 (Ed. 1/87) (Automobile Liability, Code 1 "any auto");
- (3) Workers' Compensation as required by the Labor Code of the State of California, and Employers' Liability Insurance;

B. Minimum Limits of Insurance. SMC shall maintain limits no less than:

- (1) Commercial General Liability; \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage.
- (2) Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.
- (3) Workers' Compensation and Employers' Liability: Workers' compensation limits as required by the Labor Code of the State of California and Employers' Liability limits of \$1,000,000 per accident

C. Deductibles and Self-Insured Retention's. Any deductibles or self-insured retentions must be declared to and approved by the City.

D. Other Insurance Provisions. The policies are to contain, or be endorsed to contain, the following provisions:

- (1) General Liability and Automobile Liability Coverage:
  - (a) City, its officials, employees and volunteers shall be covered as insured as respects: liability arising out of activities performed by or on behalf of SMC; products and completed operations of SMC; premises owned, leased or used by SMC. The coverage shall contain no special limitations on the

scope of the protection afforded to CITY, its officials, employees or volunteers.

- (b) SMC's insurance coverage shall be primary insurance as respects City, its officials, employees and volunteers. Any insurance or self-insurance maintained by City, its officials, employees or volunteers shall be in excess of SMC's insurance and shall not contribute with it.
  - (c) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its officials, employees or volunteers.
  - (d) Coverage shall state that SMC's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (2) All Coverages: Each insurance policy require by this Agreement shall be endorsed to state that coverage shall not be canceled except after thirty (30) days prior written notice has been given to City. In addition, SMC agrees that it shall not reduce its coverage or limits on any such policy except after thirty (30) days prior written notice has been given to City and City approves the reduction in coverage or limits. SMC further agrees that it shall not increase any deductibles or self-insured retentions on any such policy except after thirty (30) days prior written notice has been given to City and City approves such increase.
- (3) Subcontractors: SMC shall include all independent contractors and/or subcontractors under its policies or shall furnish separate certificates and endorsements for each independent contractor and/or subcontractor. All coverages for SMC's independent contractors and/or subcontractors shall be subject to all requirements stated herein for SMC.
- (4) Safety: SMC and its independent contractors and/or subcontractors shall be solely and completely responsible for the conditions of any job site where Equipment is being placed, including safety of their employees, City employees, and property during performance of the work. This safety requirement shall apply continuously and not limited to normal working hours. Safety provisions shall conform to all applicable federal, state, county, local laws, ordinances, codes, and regulations. Where any of these are in conflict, the most stringent requirement shall be followed. SMC's failure to thoroughly familiarize itself with the aforementioned said provisions shall not relieve SMC from compliance with these provisions.

E. Acceptability of Insurers. Insurance shall be placed with insurers with a Bests' rating of no less than A:VII. This requirement may, however, be waived in individual cases for Errors and Omissions Coverages only; provided, however, that in no event shall a carrier with a rating below B.IX be acceptable.

F. Verification of Coverage. SMC shall furnish City with certificates of insurance showing compliance with the above requirements and with original endorsements effecting all coverages required by this Agreement. The certificates and/or endorsements shall set forth a valid policy number for City, and shall indicate the Issue Date, Effective Date and Expiration Date. The certificates and endorsements for each insurance policy shall be signed by a person authorized by the insurer to bind coverage on its behalf. The

certificates and endorsements shall be forwarded to the City representative named in this Agreement.

9. Subcontractors. SMC shall have the right to subcontract the performance of any work contemplated by this Agreement without the prior consent of the City. In the event SMC uses one or more subcontractors to such work, the work shall nevertheless continue to be deemed as completed by SMC. SMC shall obtain complete lien waivers and any other releases of claims authorized or provided by Law, such that the City shall have no responsibility or obligation with respect to any claims made by any subcontractor, supplier or other person.

10. Taxes. SMC shall pay applicable City, County, and state sales, transaction, possessory interest, privilege and use taxes. Each Party shall be responsible for taxes on their respective income or revenues.

11. Severability. If any portion of this Agreement or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

12. Waiver. Neither City's nor SMC's acceptance or approval provided in connection with the subject matter of this Agreement, nor any waiver by either Party of any default, breach or condition precedent, shall be construed as a waiver of any provision of this Agreement, nor as a waiver of any other default, breach or condition precedent or any other right hereunder.

13. Choice of Law; Venue. This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California. Venue of any litigation arising out of or connected with this Agreement shall lie exclusively in the state trial court or Federal District Court located in or for Sacramento County in the State of California, and the Parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.

14. Successors and Assigns. This Agreement shall be binding upon the Affiliates, successors, and assigns of the Parties, but only to the extent an assignment is permitted under Section 9.8.

15. Entire Agreement. This document, including all Exhibits, contains the entire agreement between the Parties and supersedes all understandings, agreements or representations, written or oral, concerning the subject matter of this Agreement arising prior to or contemporaneous with the execution of this Agreement. This Agreement may not be modified or amended except in a writing signed by a duly authorized representative of each Party and, in the case of City, approval by the Sacramento City Council in accordance with applicable provisions of the Sacramento City Code; no other act, document, usage or custom will be deemed to amend or modify this Agreement.

16. Captions. The heading and titles of the various sections of this Agreement are intended for reference or to indicate the content of the sections, and shall not be taken as part of the substantive agreement or the sections to which they refer, and shall have no effect upon the construction or interpretation of any part of this Agreement.

## **ATTACHMENT A TO EXHIBIT "H"**

### **NON-DISCRIMINATION IN EMPLOYEE BENEFITS BY CITY CONTRACTORS ORDINANCE**

#### **INTRODUCTION**

The Sacramento Non-Discrimination In Employee Benefits By City Contractors Ordinance (the "Ordinance"), codified as Sacramento City Code Chapter 3.54, prohibits City contractors from discriminating in the provision of employee benefits between employees with spouses and employees with domestic partners, and between the spouses and domestic partners of employees.

#### **APPLICATION**

The provisions of the Ordinance apply to any contract or agreement (as defined below), between a Contractor and the City of Sacramento, in an Agreement exceeding \$25,000.00. The Ordinance applies to that portion of a contractor's operations that occur: (i) within the City of Sacramento; (ii) on real property outside the City of Sacramento if the property is owned by the City or if the City has a right to occupy the property; or (iii) at any location where a significant Agreement of work related to a City contract is being performed. The provisions apply only to those employee(s) actually working on the City contract and only for the actual Agreement of time the employee(s) spend working on such contract.

The Ordinance does not apply: to subcontractors or subcontracts of any Contractor or contractors; to transactions entered into pursuant to cooperative purchasing agreements approved by the Sacramento City Council; to legal contracts of other governmental jurisdictions or public agencies without separate competitive bidding by the City; where the requirements of the ordinance will violate or are inconsistent with the terms or conditions of a grant, subvention or agreement with a public agency or the instructions of an authorized representative of any such agency with respect to any such grant, subvention or agreement, to contracts for excavation or street construction; or to agreements for the use of City right-of-way where a contracting utility has the power of eminent domain.

#### **DEFINITIONS**

As set forth in the Ordinance, the following definitions apply:

"Contract" means an agreement for public works or improvements to be performed, or for goods or services to be purchased or grants to be provided, at the expense of the City or to be paid out of moneys deposited in the treasury or out of the trust money under the control or collected by the City. "Contract" also means a written agreement for the exclusive use ("exclusive use" means the right to use or occupy real property to the exclusion of others, other than the right reserved by the fee owner) or occupancy of real property for a term exceeding 29 days in any calendar year, whether by singular or cumulative instrument, (i) for the operation or use by others of real property owned or controlled by the City for the operation of a business, social, or other establishment or organization, including leases, concessions, franchises and easements, or (ii) for the City's use of occupancy of real property owned by others, including leases, concessions, franchises and easements.

"Contract" shall not include: a revocable at-will use or encroachment permit for the use of or encroachment on City property regardless of the ultimate duration of such permit; excavation, street construction or street use permits; agreements for the use of City right-of-way where a contracting utility has the power of eminent domain; or agreements governing the use of City property that constitute a public forum for activities that are primarily for the purpose of espousing or advocating causes or ideas and that are generally protected by the First Amendment to the United States Constitution or that are primarily recreational in nature.

"Contractor" means any person or persons, firm partnership or corporation, company, or combination thereof, that enters into a Contract with the City. "Contractor" does not include a public entity.

"Domestic Partner" means any person who has a currently registered domestic partnership with a governmental entity pursuant to state or local law authorizing the registration.

"Employee Benefits" means bereavement leave; disability, life, and other types of insurance; family medical leave; health benefits; membership or membership discounts; moving expenses; pension and retirement benefits; vacation; travel benefits; and any other benefit given to employees; "Employee benefits" shall not include benefits to the extent that the application of the requirements of this chapter to such benefits may be preempted by federal or state.

#### **CONTRACTOR'S OBLIGATION TO PROVIDE THE CITY WITH DOCUMENTATION AND INFORMATION**

Contractor shall provide the City with documentation and information verifying its compliance with the requirements of the Ordinance within ten (10) days of receipt of a request from the City. Contractors shall keep accurate payroll records, showing, for each City Contract, the employee's name, address, Social Security number, work classification, straight time pay rate, overtime pay rate, overtime hours worked, status and exemptions, and benefits for each day and pay period that the employee works on the City Contract. Each request for payroll records shall be accompanied by an affidavit to be completed and returned by the Contractor, as stated, attesting that the information contained in the payroll records is true and correct, and that the Contractor has complied with the requirements of the Ordinance. A violation of the Ordinance or noncompliance with the requirements of the Ordinance shall constitute a breach of contract.

#### **EMPLOYER COMPLIANCE CERTIFICATE AND NOTICE REQUIREMENTS**

- (a) All contractors seeking a Contract subject to the Ordinance shall submit a completed Declaration of Compliance Form (attachment "A"), signed by an authorized representative, with each proposal, bid or application. The Declaration of Compliance shall be made a part of the executed contract, and will be made available for public inspection and copying during regular business hours.
- (b) The Contractor shall give each existing employee working directing on a City contract, and (at the time of hire), each new employee, a copy of the notification provided as attachment "B."
- (c) Contractor shall post, in a place visible to all employees, a copy of the notice provided as attachment "C."

**Attachment B to Exhibit "H"**  
**DECLARATION OF COMPLIANCE**  
**Equal Benefits Ordinance**

---

Name of SMC

Address

The above named SMC ("Contractor") hereby declares and agrees as follows:

1. I have read and understand the Non-Discrimination In Employee Benefits By City Contractors Ordinance ("Ordinance") provided to me by the City of Sacramento ("City") in connection with the City's request for proposals or other solicitations for the performance of services, or for the provision of commodities, under a City contract or agreement ("Contract").
2. As a condition of receiving the City Contract, I agree to fully comply with the requirements of the Ordinance, codified as Chapter 3.54 of the Sacramento City Code.
3. If the face Agreement of this City Contract is less than \$25,000, as a condition of receiving this Contract, I agree to notify the City in writing if the aggregate value of the City Contract referenced herein, after changes, modifications, or similar actions, equals or exceeds \$25,000 in total value.
4. I understand, to the extent that such benefits are not preempted or prohibited by federal or state law, employee benefits covered by the Ordinance, are any of the following:
  - a. Bereavement Leave
  - b. Disability, life, and other types of insurance
  - c. Family medical leave
  - d. Health benefits
  - e. Membership or membership discounts
  - f. Moving expenses
  - g. Pension and retirement benefits
  - h. Vacation
  - i. Travel benefits
  - j. Any other benefit offered to employees

I agree that should I offer any of the above listed employee benefits, that I will offer those benefits, without discrimination between employees with spouses and employees with domestic partners, and without discrimination between the spouses and domestic partners of such employees.

5. I understand that I will not be considered to be discriminating in the provision or application of employee benefits under the following conditions or circumstances:
  - a. In the event that the actual cost of providing a benefit to a domestic partner or spouse, exceeds the cost of providing the same benefit to a spouse or domestic partner of an employee, I will not be required to provide the benefit, nor shall it be deemed discriminatory, if I require the employee to pay the monetary difference in order to provide the benefit to the domestic partner or to the spouse.
  - b. In the event I am unable to provide a certain benefit, despite taking reasonable measures to do so, if I provide the employee with a cash equivalent, I will not be deemed to be discriminating in the application of that benefit.
  - c. If I provide employee benefits neither to employee's spouses nor to employee's domestic partners.
  - d. If I provide employee benefits to employees on a basis unrelated to marital or domestic partner status.

- e. If I submit, to the Program Coordinator, written evidence of making reasonable efforts to end discrimination in employee benefits by implementing policies which are to be enacted before the first effective date after the first open enrollment process following the date the Contract is executed with the City.

I understand that any delay in the implementation of such policies may not exceed one (1) year from the date the Contract is executed with the City, and applies only to those employee benefits for which an open enrollment process is applicable.

- f. Until administrative steps can be taken to incorporate, in the infrastructure, nondiscrimination in employee benefits.

The time allotted for these administrative steps will apply only to those employee benefits for which administrative steps are necessary and may not exceed three (3) months from the date the Contract is executed with the City.

- g. Until the expiration of a current collective bargaining agreement(s) where, in fact, employee benefits are governed by a collective bargaining agreement(s).

- h. I take all reasonable measures to end discrimination in employee benefits by either requesting the union(s) involved agree to reopen the agreement(s) in order for me to take whatever steps are necessary to end discrimination in employee benefits or by my ending discrimination in employee benefits without reopening the collective bargaining agreement(s).

- i. In the event I cannot end discrimination in employee benefits despite taking all reasonable measures to do so, I provide a cash equivalent to eligible employees for whom employee benefits (as listed previously), are not available.

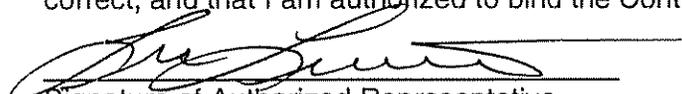
Unless otherwise authorized in writing by the City Manager, I understand this cash equivalent must begin at the time the union(s) refuse to allow the collective bargaining agreement(s) to be reopened or no longer than three (3) months from the date the Contract is executed with the City.

- 6. I understand that failure to comply with the provisions of Section 5. (a) through 4. (i), above, will subject me to possible suspension and/or termination of this Contract for cause; repayment of any or all of the Contract Agreement disbursed by the City; debarment for future contracts until all penalties and restitution have been paid in full; deemed ineligible for future contracts for up to two (2) years; the imposition of a penalty, payable to the City, in the sum of \$50.00 for each employee, for each calendar day during which the employee was discriminated against in violation of the provisions of the Ordinance.
- 7. I understand and do hereby agree to provide each current employee and, within ten (10) days of hire, each new employee, of their rights under the Ordinance. I further agree to maintain a copy of each such letter provided, in an appropriate file for possible inspection by an authorized representative of the City. I also agree to prominently display a poster informing each employee of these rights.
- 8. I understand that I have the right to request an exemption to the benefit provisions of the Ordinance when such a request is submitted to the Procurement Services Division, in writing with sufficient justification for resolution, prior to contract award.

I further understand that the City may request a waiver or exemption to the provisions or requirements of the Ordinance, when only one contractor is available to enter into a contract or agreement to occupy and use City property on terms and conditions established by the City; when sole source conditions exist for goods, services, public project or improvements and related construction services; when there are no responsive bidders to the EBO requirements and the contract is for essential goods or services; when emergency conditions with public health and safety implications exist; or when the contract is for specialized legal services if in the best interest of the City.

9. In consideration of the foregoing, I shall defend, indemnify and hold harmless, the City, its officers and employees, against any claims, actions, damages, costs (including reasonable attorney fees), or other liabilities of any kind arising from any violation of the City's Equal Benefits Requirements or of the Ordinance by me.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am authorized to bind the Contractor to the provisions of this Declaration.



Signature of Authorized Representative

Print Name *Les Lewis*

Title *VP & Treasure*

*4 June 2007*  
Date

## Attachment C to Exhibit "H"



### **YOUR RIGHTS UNDER THE CITY OF SACRAMENTO'S NON-DISCRIMINATION IN EMPLOYEE BENEFITS BY CITY CONTRACTORS ORDINANCE**

On ..... (date), your employer (the "Employer") entered into a contract with the City of Sacramento (the "City") for ..... (contract details), and as a condition of that contract, agreed to abide by the requirements of the City's Non-Discrimination In Employee Benefits By City Contractors Ordinance (Sacramento City Code Section 3.54).

The Ordinance does not require the Employer to provide employee benefits. The Ordinance does require that if certain employee benefits are provided by the Employer, that those benefits be provided without discrimination between employees with spouses and employees with domestic partners, and without discrimination between the spouse or domestic partner of employees.

The Ordinance covers any employee working on the specific contract referenced above, but only for the period of time while those employees are actually working on this specific contract.

The included employee benefits are:

- Bereavement leave
- Disability, life and other types of insurance
- Family medical leave
- Health benefits
- Membership or membership discounts
- Moving expenses
- Pension and retirement benefits
- Vacation
- Travel benefits
- Any other benefits given to employees

(Employee Benefits does not include benefits that may be preempted by federal or state law.)

If you feel you have been discriminated or retaliated against by your employer in the terms and conditions of your application for employment, or in your employment, or in the application of these employee benefits, because of your status as an applicant or as an employee protected by the Ordinance, or because you reported a violation of the Ordinance, and after having exhausted all remedies with your employer,

#### **You May . . .**

- o Submit a written complaint to the City of Sacramento, Contract Services Unit, containing the details of the alleged violation. The address is:  
City of Sacramento  
Contract Services Unit  
921 10<sup>th</sup> St., Room 402  
Sacramento, CA 95814-2714
- o Bring an action in the appropriate division of the Superior Court of the State of California against the Employer and obtain the following remedies:
  - Reinstatement, injunctive relief, compensatory damages and punitive damages
  - Reasonable attorney's fees and costs

## Attachment D to Exhibit "H"



### **YOUR RIGHTS UNDER THE CITY OF SACRAMENTO'S NON-DISCRIMINATION IN EMPLOYEE BENEFITS BY CITY CONTRACTORS ORDINANCE**

If your employer provides employee benefits, they must be provided to those employees working on a City of Sacramento contract without discriminating between employees with spouses and employees with domestic partners.

The included employee benefits are:

- Bereavement leave
- Disability, life and other types of insurance
- Family medical leave
- Health benefits
- Membership or membership discounts
- Moving expenses
- Pension and retirement benefits
- Vacation
- Travel benefits
- Any other benefits given to employees

If you feel you have been discriminated against by your employer . . .

**You May . . .**

- Submit a written complaint to the City of Sacramento, Contract Services Unit, containing the details of the alleged violation. The address is:

City of Sacramento  
Contract Services Unit  
921 10<sup>th</sup> St., Room 402  
Sacramento, CA 95814-2714

- Bring an action in the appropriate division of the Superior Court of the State of California against the employer and obtain reinstatement, injunctive relief, compensatory damages, punitive damages and reasonable attorney's fees and costs.

### **Discrimination and Retaliation Prohibited.**

If you feel you have been discriminated or retaliated against by your employer in the terms and conditions of your application for employment, or in your employment, because of your status as an applicant or as an employee protected by the Ordinance, or because you reported a violation of this Ordinance . . .

**You May Also . . .**

Submit a written complaint to the City of Sacramento, Contract Services Unit, at the same address, containing the details of the alleged violation.

**EXHIBIT "I"**

**REQUEST FOR PROPOSAL**

**CITY OF SACRAMENTO RFP No. P071311001**

[Provided Separately]

## **TECHNICAL APPENDICES**

### **Exhibits T1-T5**

[Provided Separately]