

WIRELESS BROADBAND NETWORK ANCHOR TENANCY SERVICE AGREEMENT

This Anchor Tenancy Wireless Service Agreement ("Anchor Tenancy Agreement") is entered, by and between the CITY OF SACRAMENTO, charter municipal corporation ("City") and SACRAMENTO METRO CONNECT LLC, a California corporation ("SMC") (individually, "Party" and collectively, the "Parties")

RECITALS

- A. The Parties have concurrent herewith entered into an Agreement for the Design, Deployment and Operation of a Wireless Broadband Network in the City ("Wireless Network Agreement").
- B. The Wireless Network Agreement establishes a framework pursuant to which SMC will design, install, support, and operate a city-wide wireless network in the City of Sacramento to provide wireless broadband Internet access.
- C. The City desires certain wireless broadband network services to be provided to City offices and employees, and for other services to be available to the public for free and/or at certain prices to the user.
- D. In exchange for the right to obtain certain services from SMC, the City is willing to serve as an anchor tenant upon the terms and conditions set forth herein.

AGREEMENT

Now, therefore, in consideration of good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1.0 DEFINITIONS

For purposes of this Anchor Tenancy Agreement, terms, phrases, words, and their derivations shall have the meanings provided in Exhibit A to the Wireless Network Agreement except as otherwise provided herein. Words not defined in this Anchor Tenancy Agreement shall be given their common and ordinary meaning.

- 1.1 "Anchor Tenant" means a major participant that assumes a high volume usership role of the wireless network
- 1.2 "Anchor Tenant Groupings" means groupings of users by industry, interest, demographic or geography which elect as a group to pursue enhanced services on the network for the benefit of their group members.
- 1.3 "Customer Premise Equipment or CPE" means communications equipment used at the end user's location to enable or improve the reception of a wireless radio signal.

- 1.4 “Emergency” means any situation that poses an immediate threat to life, property, environment, or homeland security such as flooding, earthquake, terrorist attacks, or other natural disasters.
- 1.5 “Enhanced Services” means services and/or applications hosted on or delivered over the network that will, individually or in combination, enhance network productivity, efficiency, and user experience.
- 1.6 “Network Concentration Point or NCP” means a facility where SMC houses its equipment and systems to operate and support the wireless network.
- 1.7 “Public Safety” means the protection of the general public typically provided by the Police and Fire Department together with other emergency personnel.
- 1.8 “Products” means certain software, hardware and documentation, including but not limited to Customer Premises Equipment.
- 1.9 “Subscription” means a pre-determined fee for monthly access to the internet on the wireless network, as described in **Schedule A**.
- 1.10 “Tier 1” means customer service to respond to, diagnose, and attempt to resolve issues raised by end users through one-to-one interaction between the end users and help desk support or representative via telephone, email or online.
- 1.11 “Tier 2” means customer service provided to an end user if a complaint cannot be addressed to the user’s satisfaction through the Tier 1 customer service and the issue must be escalated to a supervisor.
- 1.12 “Tier 3” means customer service provided to an end user by the engineers and/or subject matter experts of the provider’s equipment manufacturer
- 1.13 “Usership” means volume of users on the network who are obligated to purchase wireless network subscriptions and services.

2.0 NETWORK SERVICES AND PRICING

- 2.1 **Subscriptions-based formula.** The City shall receive a bulk discount based on the aggregate number of connections or the total aggregate monthly revenue, whichever generates the higher discount, from the City and other public agencies in the City of Sacramento. This discount is based on a sliding scale as set forth in the tables below and will be recalculated semi-annually. A given semi-annual discount will be determined by the number of connections made or total 6-month revenue generated from the aggregation of purchases by the City and other public agencies in the Sacramento region from the preceding semi-annual cycle.

Semi-Annual Revenue generated by aggregate purchase by the City and other public agencies

\$0-\$4M	30% Discount off retail pricing
\$4.01-\$8M	35% Discount off retail pricing
\$8.01M-\$12M	40% Discount off retail pricing
\$12.01M-\$20M	45% Discount off retail pricing
\$20M+	50% Discount off retail pricing

Aggregate Number of Monthly Connection by the City and other public agencies

0-12,000	30% Discount off retail pricing
12,001-18,000	35% Discount off retail pricing
18,001-24,000	40% Discount off retail pricing
24,001-30,000	45% Discount off retail pricing
30,001+	50% Discount off retail pricing

- 2.2 **Enhanced Services-based Formula.** To the extent SMC offers Enhanced Services during the term or any renewal term of this Anchor Tenancy Agreement, the City may purchase the Enhanced Services on a discount based on the range of revenue per annum generated from the City as set forth in the tables below:

Annual Corresponding to City's Fiscal Year

Years 0-3

Revenues of \$.5M - \$3.99M	5% discount on services
Revenues of \$4M - \$5.99M	10% discount on services
Revenues of \$6M - \$7.99M	15% discount on services
Revenues of \$8M - \$9.99M	20% discount on services
Revenues of \$10M and above	25% discount on services or as negotiated, up to a maximum discount of 35%

Years 4 -5

Revenues of \$2M - \$3.99M	5% discount on services
Revenues of \$4M - \$5.99M	10% discount on services
Revenues of \$6M - \$7.99M	15% discount on services
Revenues of \$8M - \$9.99M	20% discount on services
Revenues of \$10M and above	25% discount on services or as negotiated, up to a maximum discount of 35%

- 2.3 **Pricing Schedules.** Pricing levels and schedules for subscriptions, individual services, and bundled service packages shall be published at least 120 days prior to the fiscal year in which the pricing schedules will apply.
- 2.4 **Pricing Protection.** Pricing for services shall remain the same for the fiscal year. The Parties will conduct a review every two (2) years from the effective date of this Anchor Tenancy Agreement to determine the average market price for comparable mobile services. If the review shows that the market price for comparable mobile services is 0% to 5% lower than SMC's pricing for such services, the City shall receive the appropriated additional 0%-5% discount on the current SMC price. If the current market price for comparable mobile services is more than 5% lower than SMC's pricing, the City shall receive an additional 5% on the current SMC price. If following such review the City determines that the additional discount specified in this section is warranted, the City will order the discount to be implemented in writing stating the basis for the City's determination. In the event of a price increase of the subscription rates, the City and SMC shall review and negotiate the discount schedule to be applied to the price increase for the related fiscal year. Upon agreement, the Parties shall amend this Anchor Tenancy Agreement accordingly.
- 2.5 **Alternate Formula.** If at a future time, the formulas provided herein are deemed to lack relevancy to the City's needs and goal, the City may request in writing reexamination of the formula. SMC will address such requests within a reasonable amount of time and make a determination within one hundred twenty (120) days of the request. Any agreed-upon changes to the formula will be reflected in writing as an addendum to this Anchor Tenancy Agreement and will apply in the next Anchor Tenancy renewal cycle.
- 2.6 **Future Network Services.** The City will consider SMC for the provision of certain services for which SMC may in the future qualify as a sole source provider through the City's established contracting process and policies. SMC may also bid on any projects the City makes available.

through a competitive selection process. The City and SMC will negotiate mutually agreeable terms and conditions for such services as appropriate.

3.0 VIRTUAL LOCAL AREA NETWORK (VLAN)

The City and the other public agencies will be designated up to fifty (50) secured VLAN connections as a whole. SMC will provide the connection of the VLANs to a pre-arranged demarcation point. Additional hardware or software needed to provide these connections will be the responsibility of the City or the other entities. The City or the other public entity will dedicate a connection, at the City's or the other entity's cost, to SMC's Network Concentration Point (NCP), which will be housed within the City of Sacramento, to allow for secure and managed access of the VLAN connections. If the City's and/or the other entity's current network is not compatible with the connection to the SMC's demarcation point, the City and/or the other entity would be responsible for providing the necessary equipment to provide the connection. SMC will bring the connection to a pre-arranged demarcation point or a pre-arranged fiber injection.

3.1 **Additional VLANs.** The City may request additional VLANs by submitting a written request to SMC. SMC shall review the request to determine whether the request is feasible and the terms under which SMC will consent to the request, which consent shall not be unreasonably withheld. Within fifteen (15) business days of receipt of request from the City, SMC will respond to the City in writing as to whether it will provide the additional VLANs, the terms and conditions under which it will so provide the additional VLANs, and/or whether there are any alternatives available that could meet City's request. The price, terms and conditions for additional VLANs shall be negotiated in good faith and agreed upon by the Parties.

4.0 TERM AND RENEWAL

This Anchor Tenancy Agreement shall be effective as of the Effective Date of the Wireless Network Agreement. The term of this Anchor Tenancy Agreement shall be for an initial term of one (1) year, commencing on the effective date, and shall be renewed annually for up to a total agreement term of five (5) years unless written notice of termination is provided within 120 calendar days prior to commencement of the relevant annual renewal term. Prior to expiration of the five (5) year agreement term, the City may renew for two additional periods of five (5) years on mutually agreed upon terms and conditions provided SMC has complied with all material conditions under this Anchor Tenancy Agreement and has no uncured defaults.

5.0 MANNER OF PAYMENT

5.1 The City shall make payments due under this Anchor Tenancy Agreement within thirty (30) days after receipt of SMC's invoice. If the City disputes, in good faith, any portion of an invoice submitted by SMC, the City shall pay any portion not disputed and shall notify SMC in writing of the amount and the basis for the dispute. The Dispute Resolution process set forth in Section 9.3 of the Wireless Network Agreement will

be followed. Notwithstanding any dispute under this Anchor Tenancy Agreement, SMC shall continue to perform its work pending resolution of a dispute and the City shall continue to make payments as required under this Anchor Tenancy Agreement for undisputed portions of the invoice.

- 5.2 All invoices submitted by SMC shall contain the following information:
- a. Job Name
 - b. Description of services billed under this invoice
 - c. Date of invoice issuance
 - d. Sequential invoice number
 - e. City's Purchase Order Number
 - f. Total Purchase Order
 - g. Amount of this invoice
 - h. Total billed to date
 - i. Total remaining on Purchase Order
- 5.3 SMC shall be responsible for the cost of supplying all documentation necessary to verify the monthly billings to the satisfaction of the City. Invoices that do not conform to the format outlined above shall be returned to SMC for correction. City shall not be responsible for delays in payment to SMC resulting from SMC's failure to comply with the invoice format described above.
- 5.4 SMC's invoices shall be sent to:
- City of Sacramento
Information Technology Department
1000 I Street, Suite 120
Sacramento, CA 95814
Attn: Administrative Services, Program Manager
- 5.5 **Enhanced Services and Products.** City may obtain at a later date additional Products and/or Enhanced Services from SMC. Additional Products and/or Enhanced Services shall be provided only upon approval by the City in accordance with the applicable provisions of the City Code, policies and procedures.
- 5.6 **Accounting Records of SMC.** SMC shall maintain for three (3) years after completion of all services and any Enhanced Services all records relating to this Anchor Tenancy Agreement, including, but not limited to, records of SMC's direct salary costs for all services and Enhanced Services performed under this Anchor Tenancy Agreement, in accordance with generally accepted accounting practices. SMC shall keep such records available for inspection and audit by representatives of the City's Finance Department at a mutually convenient time.
- 5.7 **Taxes.** SMC shall pay, when and as due, any and all taxes incurred as a result of SMC's compensation hereunder, including estimated taxes, and shall provide the City with proof of such payment upon request. SMC hereby agrees to indemnify City for any claims, losses, costs, fees,

liabilities, damages or injuries suffered by the City arising out of SMC's breach of this section.

6.0 NON-APPROPRIATION

The City will duly request the appropriation of funds for payments due under this Anchor Tenancy Agreement. In the event the funds requested for the fiscal year are not appropriated, City will promptly notify SMC and this Anchor Tenancy Agreement will terminate at the end of the last fiscal year for which funds were appropriated and the City will not be in default. SMC may terminate any services provided to the City under this Anchor Tenancy Agreement and relieve the City of any further obligation. The City will pay SMC for services rendered and not previously paid for by the City.

7.0 ANCHOR TENANCY STATUS

Subject to network capacity, there is no maximum number of entities that could be anchor tenants on the network. SMC may enter into anchor tenancy agreements with other entities and such anchor tenancy agreements are deemed separate from this Anchor Tenancy Agreement.

- 7.1 It is assumed that City of Sacramento government and public safety functions may be addressed separately in certain instances, but for purposes of this agreement, the two will be considered as one buying/contracting Anchor Tenancy entity.
- 7.2 It is assumed that City of Sacramento government and public safety functions shall, within the scope of anchor tenancy commitments, interface on occasion with other City of Sacramento constituencies also eligible for Anchor Tenancy status. While it is acknowledged that this may occur, such interaction is not addressed by this agreement. Supplemental and additional agreements are necessary should the city desire inclusion and aggregation of purchases and commitments made in a multi-constituent format other than that referenced in this Anchor Tenancy Agreement.
- 7.3 Information and Public Awareness. Training sessions and informational meetings are to be held for key decision makers within all eligible constituent groups in the City of Sacramento. Insofar as these training and informational sessions serve to promote the network and its business and usership goals, they are to offer clarity and specificity on Anchor Tenancy concepts, offerings and efficiencies in such a way as to allow informed decision making and knowledge of term, nature and prices of commitment. They are to be offered with a reasonably level of notice and convenience at no charge to participants. Costs associated with these sessions are the sole responsibility of SMC.

8.0 NETWORK SERVICE LEVEL ATTRIBUTES (SLA) AND COVERAGE

SMC shall meet or exceed the service attributes set forth in **Schedule A**. SMC shall measure and report SLA compliance, including true uptime, priorities, guaranteed, bandwidth, outdoor and indoor coverage, by providing daily, weekly and monthly SLA compliance summaries that are automatically e-mailed to the City Project Manager.

- 8.1 Outdoor broadband coverage shall be provided a minimum of 95% of all areas covered. An area is considered covered if a laptop, handheld or other personal computing device, equipped with a minimum of 65Mw 802.11g or 100Mw 802.11b (WiFi) interface, can access the Network at the provisioned service attribute with no additional hardware required beyond the device's standard wireless interface.
- 8.2 Indoor, perimeter coverage for the ground and second floors of a building shall be provided a minimum of 90% of all residential and commercial buildings throughout the coverage area. A building is assumed covered if a device located in the perimeter room on the ground and second floor level of the building can access the network at the provisioned service attribute. This coverage requirement may be met by use of a 200Mw CPE. 90% indoor coverage will be based on non-stucco, stick built building, avoidant of heavy foliage, with non-treated windows facing line of sight to an access point.

9.0 CUSTOMER SERVICE

- 9.1 **Network Concentration Point.** SMC will sufficiently staff its NCP 24X365 in order to monitor, maintain, operate and repair the network and provide products and services in the City.
- 9.2 **Customer Support.** SMC will provide 24x365 customer service representatives for online, e-mail and telephonic support for premium service users of the network. This will include Tier 1 Support. Tier 2 and Tier 3 Support will be provided Monday through Friday, 8 a.m. to 5 p.m. EST.
- 9.3 **Network Outage.** SMC shall respond to any wireless network outage within two (2) hours and notify the City of the estimated time to restore its wireless network system. If the wireless network problems cannot be resolved and/or the wireless network system repaired within four (4) hours from the time of outage, SMC will work diligently toward restoration of its internet service in a timely manner and provide the City with progress feedback in terms of the absolute amount of work done.

10.0 NETWORK UPGRADE

SMC shall keep the network updated with industry standard technology, including, without limitation, updated equipment, software, protocols and other standards. Upgrades will be at parity with the upgrades performed in other comparable cities with wireless broadband Internet access networks. A list of

comparable cities, which may be similar in terms of geographic size, population, household density or other such factors shall be proposed by SMC and subject to approval by the City. SMC agrees to meet annually with the City to discuss the availability and potential benefits of future wireless technology. City may request SMC to upgrade the network by submitting a written request setting forth the basis for the City's request. There shall not be more than one (1) such request per calendar year. Such request shall, at a minimum, take into account the following:

- a) Characteristics of the existing wireless network system;
- b) The upgrade as adopted by other cities;
- c) The additional benefits provided to customers by the request;
- d) The marketplace demand for the upgrade taking into account any associated rate increase;
- e) Any additional factors deemed relevant by the City or SMC, including but not limited to status and terms of contract renewal and remaining term of current agreement considered versus validity of City request for significant additional investment in the network by SMC;
- f) Common availability of Customer Provisioned Equipment and connectivity devices for the Refresh Technology; and
- g) Having reached a significant threshold of users with the new technology to justify the upgrade.

SMC shall review the request to determine whether the request is feasible. Within thirty (30) business days of receipt of the request, SMC shall respond to the City's request as to whether SMC will implement the requested upgrade, the terms and conditions, including, without limitation, any financial requirements and/or whether there are any alternatives available that could meet the City's request. In the event, SMC is not willing to comply with such request, the City, within sixty (60) days after the request date, may terminate this Anchor Tenancy Agreement with cause.

11.0 NETWORK PRIORITIZATION IN EMERGENCY

SMC shall construct the network in such a manner so that public bandwidth can be shifted quickly and securely to the Public Safety connectivity in the event of a disaster or emergency. These bandwidth shifts will not be calculated as down time on the network and will instead be treated as emergency measures.

The network architecture will be designed for reliability and the support of mission critical networking applications. The solution will feature self-configuring, self-healing, dynamic path optimization for the routing of traffic between APs. The network will support priority queuing in the AP and quality of service (QoS) grades over the air for specific users or applications based on the SLA. As with an electrical grid, all SMC network points have redundancy, allowing no single

point of failure in the network and allowing it to be self healing through the harshest weather conditions. The network is fully redundant along both paths and frequencies, allowing for example, the 4.9GHz public safety network to backup onto another network should it fail. SMC shall work with the City on the design of and protocols for the fail over network before the deployment. SMC employs multiple ISP POPs in order to provide redundancy in case of backbone failure. In any case, the city network will continue to operate in all but the worst case scenario.

In the event of an access point failure, wireless LAN controllers automatically adjust power on adjacent access points to cover the area where the failed access point provided service. In the event of an individual controller failure, access points automatically find a backup wireless LAN controller to keep wireless service available. The wireless LAN controllers can be deployed in an N+1 redundant topology, allowing enterprises and service providers to scale their wireless networks while knowing that they are protected from both hardware and software disruptions. The wireless LAN controllers support redundant power supplies provides for system operation even if a power supply fails. The equipment uses a UPS system of redundant and back up power on each of its networking devices.

QOS will be implemented to prioritize Public Safety or critical City services over the air (802.11) and onto a wired backbone network (Priority Tagging). Wireless network users can be segmented into different SSIDs (up to 16 SSIDs are supported), or VLANs, (up to 250 VLANs can be supported),and SSIDs can be mapped to the different queues (for example, QOS is tied to SLAs).

12.0 TERMINATION

Termination of services and obligations shall be in accordance with the provisions for Termination set forth in section 8.0 of the Wireless Network Agreement

13.0 MARKETING

The City will cooperate with SMC in joint marketing efforts to the extent that this does not conflict with the City's interests. The City shall not be obligated to incur any direct or indirect cost or expense pursuant to any work, activities, or marketing efforts. SMC shall not use the City's name or logo or imply City's endorsement of SMC's services in any such marketing effort without first obtaining City's written consent.

14.0 ENTIRE AGREEMENT

This Anchor Tenancy Agreement incorporates by reference the Wireless Network Agreement, including all Exhibits to the Wireless Network Agreement, and contains the entire agreement between the Parties and supersedes all understandings, agreements or representations, written or oral, concerning the subject matter of this Anchor Tenancy Agreement arising prior to or contemporaneous with the execution of this Anchor Tenancy Agreement. This Anchor Tenancy Agreement may not be modified or amended except in 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.

15.0 CAPTIONS

The heading and titles of the various sections of this Anchor Tenancy 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.

16.0 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.

17.0 AUTHORITY

The person signing this Agreement hereby represents and warrants that he/she is fully authorized to sign this Anchor Tenancy Agreement on behalf of the parties and to bind the parties to the performance of their respective 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

ATTEST:

City Clerk

By: Les Lewis

Name: Les Lewis

Title: VP Treasurer