

**AGREEMENT FOR ISSUANCE OF A REVOCABLE PERMIT BETWEEN CITY OF
SACRAMENTO AND SACRAMENTO METRO CONNECT, LLC
(CITYWIDE WIRELESS BROADBAND NETWORK)**

THIS AGREEMENT FOR ISSUANCE OF REVOCABLE PERMIT ("Agreement"), dated _____, 2007 is made by and between SACRAMENTO METRO CONNECT, LLC ("SMC") and the CITY OF SACRAMENTO, a municipal corporation ("City"), (individually as "Party" and collectively as the "Parties").

RECITALS

- A. The City and SMC have entered into an Agreement for the Design, Deployment and Operation of Wireless Broadband Network in Sacramento, City Agreement No. 2007-0630 ("Wireless Network Agreement"), dated June 21, 2007.
- B. The Wireless Network Agreement establishes a framework pursuant to which SMC will own and operate a wireless broadband network in the City of Sacramento to provide wireless broadband services.
- C. The Wireless Network Agreement contemplates that SMC have access to certain Municipal Facilities for use by SMC in order to construct the wireless network and provide wireless broadband services.
- D. The City desires to grant SMC a non-exclusive revocable permit upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. DEFINITIONS

1.1 "Attachment" means the physical affixing or connection of network Equipment by SMC and its contractors or agents to the Municipal Facilities.

1.2 "Decorative Streetlight Poles" means 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 the Public Rights-of-Way.

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

1.4 "Master Deployment Plan" is described in Exhibit B of the Wireless Network Agreement.

1.4 “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.

1.5 “Network” or collectively **“Networks”** means the wireless broadband access service equipment installed and used by SMC to provide wireless broadband services in the City.

1.6 “Public Rights-of-Way” means the space in, above, upon, 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.

1.7 “Wireless Network System” means a broadband grid utilized to provide wireless broadband services.

2. ISSUANCE OF REVOCABLE PERMIT

2.1 Scope

During the Term of this Agreement, and subject to the terms and conditions contained in this Agreement, City hereby grants to SMC a non-exclusive revocable permit (“Revocable Permit”) to attach, install, operate, maintain, repair, upgrade, remove, reattach, reinstall, relocate and replace, together with rights of ingress and egress for reasonable access thereto, at SMC’s sole cost and expense, its Equipment on designated and approved Municipal Facilities and within the Public Rights-of-Way, specified in **Exhibit “A”** hereof, for the purpose of installing and constructing a Network to provide wireless broadband services to residents, businesses, and visitors located within the City. The Revocable Permit does not include the right of SMC to utilize Decorative Streetlight Poles and historical buildings and structures.

2.2 Non-exclusive

This Agreement is expressly agreed to be non-exclusive, and City shall have the right enter into agreements or permits with other parties, including related or non-related providers, for revocable permits or similar arrangements to install equipment or devices on Municipal Facilities. This Agreement does not constitute a grant by the City of any ownership, leasehold, easement, or other property interest whatsoever in the Municipal Facilities.

2.3 Term

The term shall run concurrently with the term of the Wireless Network Agreement. Upon expiration or termination of the Wireless Network Agreement, the Revocable Permit granted by this Agreement shall also expire or terminate and any rights granted to SMC shall cease.

3. TERMINATION AND REVOCATION

3.1 Termination

The Parties may terminate this Agreement in the manner and for the reasons set forth in Section 8.0 of the Wireless Network Agreement.

3.2 Homeland Security

The City may terminate the Revocable Permit at any time if it is determined by the City in its sole discretion that national or local security emergency requires the revocation of the permit. If such determination is made by the City Manager, SMC will be required to remove Equipment as indicated in this agreement. The City will provide access to Municipal Facilities and Equipment as required to perform removal.

3.3 Removal of Equipment upon Expiration or Termination

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 City-owned property at SMC's sole cost and expense. Alternately, City may take ownership of the Equipment and associated software required to operate the wireless broadband Network System in order to maintain critical public services related to public safety. In the event that the Municipal Facilities, or any portion thereof, are damaged by SMC in the process of removal, normal wear and tear excepted, such damage shall be repaired forthwith by SMC at SMC's sole cost and expense.

4. REMOVAL BOND

Prior to commencing deployment for Phase 2 of the deployment schedule in the Master Deployment Plan, SMC shall provide to City a bond, letter of credit, or other security instrument in the amount of fifty thousand dollars (\$50,000) for the purpose of reimbursing the City for its costs of removing SMC's Equipment installed on Municipal Facilities and repairing the Municipal Facilities and any adjacent public rights-of-way in the event SMC fails to do as required by this Agreement and the Wireless Network Agreement ("Removal Bond"). At the conclusion of the full citywide deployment, the Removal Bond amount shall be adjusted based on the actual number of Municipal Facilities used, at the rate of one hundred dollars (\$100.00) per Municipal Facilities. SMC shall maintain the Removal Bond in effect for the duration of this Agreement, including any extensions or renewals hereof and for two (2) years thereafter; provided that SMC may terminate the Removal Bond prior to the end of the two-year period if, and when, the parties agree in writing that SMC has satisfied its obligations to remove its Equipment and repair the Municipal Facilities.

SMC may meet its Removal Bond obligations by providing to the City a cash payment adequate to pay for the removal of structures and facilities installed on the Municipal Facilities by SMC. Upon a surety's written notice to City of cancellation of a Removal Bond, SMC must submit written notice and proof of a replacement Removal Bond within thirty (30) days. All fees and the Removal Bond, or the cash payment provided in lieu of

the Removal Bond, shall be delivered to City at the address specified herein for the giving of notices.

In the event SMC does not remove its Equipment from the Municipal Facilities or does not restore the Municipal Facilities to their original condition as required by the City, the City may use the Removal Bond, or any cash payment provided in lieu of the Removal Bond, for such purposes. Any unused portion of the cash payment shall be returned without interest.

5. FEES AND CHARGES

5.1 Use of Municipal Facilities

In consideration for use of Municipal Facilities, SMC shall pay to the City the following:

- City-owned streetlight poles. Thirty six dollars (\$36.00) per annum per pole
- City-owned buildings or structures: \$ 200 per annum per building. For buildings where a bandwidth aggregation point is located: \$ 500 per annum

The fee shall be calculated based on the number of Municipal Facilities used as of the Effective Date of this Agreement. The fees shall be adjusted on each annual anniversary of the Effective Date of this Agreement according to the change in the Consumer Price Index (CPI) for all Urban Consumers: San Francisco, Oakland, San Jose (1967-1) index in the prior year.

The fees paid by SMC for use of the Municipal Facilities shall be used for community reinvestment efforts toward digital opportunity as provided in Exhibit G of the Wireless Network Agreement.

5.2 Payment

SMC shall pay the fees described in section 5.1 in arrears on an annual basis within thirty (30) days of SMC's receipt of an invoice statement from the City. Payment shall be submitted to:

City of Sacramento
Revenue Administration Division
915 I Street
Sacramento, CA 95814

5.3 In-Kind Services

As additional consideration for SMC's use of the Municipal Facilities, SMC shall allocate grant funds and philanthropically raised funds to subsidize consumer premises equipment acquisition as described in Exhibit G of the Wireless Network Agreement.

6. USE OF MUNICIPAL FACILITIES

6.1 Nature of the Use Allowed

SMC shall use the Municipal Facilities strictly in accordance with the terms of this Agreement, solely for the purpose of installation, operation and maintenance of a Wireless Network System. SMC shall have reasonable rights of ingress and egress to the Municipal Facilities to conduct, at the sole expense of SMC, surveys, structural strength analyses, subsurface boring tests, installation, maintenance, repair and other similar activities with the written consent of City, which consent shall not be unreasonably withheld.

6.2 Non-interference with City Use

SMC shall use the Municipal Facilities in a manner which is at all times subordinate to and consonant with City's use of the Property and the Municipal Facilities, including but are not limited to telemetry systems, traffic control systems, traffic signals, streetlights, utilities monitoring systems, telecommunication systems, network systems, and CCTV/surveillance cameras.

6.3 Non-interference with City Communications and Other Uses

SMC agrees and understands that City maintains a communications system, including associated installations and equipment, which provides routine and emergency communications with its officers and employees, as well as officers and employees of other jurisdictions, and that it is imperative that there be no interference with that system by virtue of SMC's use of the Municipal Facilities. SMC shall comply with 802.11a/b/g standards for interoperability with City-owned WiFi systems. SMC's maximum effective radiated power shall not exceed 400mW. The frequencies at the Municipal Facilities shall be within 2.4 – 2.5 GHz (802.11b, g) or 5.15 - 5.875 GHz (802.11a). SMC agrees to resolve technical interference problems with other equipment located at the Municipal Facilities as of the Effective Date. SMC agrees to resolve any such technical interference problems associated with any future Equipment that SMC adds or attaches to the Municipal Facilities during the term of this Agreement.

6.4 Nuisance

SMC shall at all times conduct its use of the Municipal Facilities in such a manner that it shall not constitute a public or private nuisance.

6.5 Damage to City Property and Municipal Facilities

6.5.1 Standard of Care; Reporting of Damage. SMC shall at all times conduct its use of the Municipal Facilities in such a manner so as not to damage City property. SMC shall be liable to City for any damage to any City property, including but not limited to, trees, sprinklers, lawn, other landscaping, fixtures, equipment, structures, vehicles, or other City property, arising out of or in any way directly or indirectly related to or resulting from the installation, maintenance or operation of SMC's structures and equipment on the Municipal Facilities, or any action or activity of SMC, its employees, agents, or contractors. If any Municipal Facilities are damaged by any activities conducted by SMC or anyone acting by or through SMC hereunder, SMC shall immediately give City written

notice of such damage. The City may, but shall not be obligated to, remedy such damage at SMC's sole cost, or the City may elect to oversee SMC's repair work. SMC shall, at its sole cost, repair any and all such damage subject to City's inspection, review and approval.

6.5.2 Repair of Damaged Municipal Facilities If any Municipal Facilities are fully or partially damaged or destroyed by third party actions, fire, winds, flood, lightning or other natural or manmade cause or acts beyond the parties' control, the City shall have the option to repair, rebuild, remove or replace said Municipal Facilities. The City's sole obligation to SMC shall be to notify SMC, within seven (7) calendar days of such event, whether or not the City intends to repair, rebuild, remove or replace said Municipal Facilities. City shall not be responsible for any damage to the Equipment or for any interruptions to SMC's wireless network system as a result of such event. If City elects to repair or replace such Municipal Facilities, City will use reasonable efforts to ensure that any necessary repairs are performed in a timely manner. If SMC requests repair of said Municipal Facilities in a shorter time period than City's estimated time to repair, City will use its best commercially reasonable efforts to perform the necessary repairs within the requested shorter time period at SMC's sole cost. In the event City elects not to repair or replace said Municipal Facilities, City shall meet and confer with SMC to identify another Municipal Facility SMC may use to relocate its Equipment to continue operating the Wireless Network System. The ultimate location of SMC's Equipment shall be mutually agreeable to both parties. SMC shall be responsible for all costs of relocation.

6.6 Non-interference with SMC's Use

City agrees that, subject to all other provisions of this Agreement, and subject to City's right to grant other or additional permits, SMC is entitled to reasonable access to the Municipal Facilities at all times throughout the Initial Term and the Renewal Term so long as SMC is not in default beyond the expiration of any cure period and complies with City's policies and procedures as set forth in Exhibit G to the Wireless Network Agreement. If City desires to permit another communications provider to install Equipment on the Municipal Facilities with the potential to cause interference problems with SMC's then-existing Equipment, then prior to entering into an agreement with such proposed communications provider, City will give written notice to SMC of such proposed installation. Such notice shall include technical information from the proposed provider which is sufficient to determine whether the proposed use will interfere with SMC's operation of the Network. SMC agrees to cooperate with the proposed provider to resolve any such interference problem(s). City agrees that any future agreement which permits the installation of equipment on the Municipal Facilities shall be conditioned upon that equipment not interfering with SMC's then-existing operation of the Wireless Network System. SMC shall not be required to modify SMC's then-existing Wireless Network System to prevent interference with any new communications use of the Municipal Facilities so long as SMC operates the Wireless Network System within its assigned frequencies and in compliance with all applicable FCC Rules and Regulations.

6.7 Co-location

SMC acknowledges and agrees that the City may allow other providers of communications facilities to locate on the same Municipal Facilities as SMC,

including such facilities as may be constructed by SMC. In the event any other facilities are co-located on facilities constructed and/or used by SMC, SMC agrees not to dismantle or otherwise alter the facilities being used by SMC for as long as those facilities are being used by any other permittee(s). At the expiration of all uses on the facilities used by SMC, SMC agrees, at City's option, either to remove the facility used by SMC or leave the facility used by SMC in its then current condition.

6.8 Reservation for Public Use

SMC shall provide space on its facilities for public communications use by public agencies in such location(s) and in such manner(s) as may be determined by City. Such space shall be provided at no cost if used by City.

6.9 SMC's Duty to Maintain or Repair Damaged Equipment

SMC shall, at all times during the term of this Agreement and at its own sole risk and expense, maintain its Equipment on Municipal Facilities in good and safe operating order and condition. SMC shall notify the City of any damaged Equipment on Municipal Facilities and the estimated time to repair or replace the damaged Equipment.

In the event there is a threat to the health, safety or welfare of the public, the City may, in its discretion, correct the problem without delay. While the City shall take all reasonable measures to notify SMC when there is such a threat, the City may, without prior notice to SMC, interrupt SMC's use of the Municipal Facilities that are affected by the threat, including removal of any SMC Equipment if necessary to protect the public health, safety or welfare.

6.10 Alterations, Additions, Improvements and Equipment Upgrades

SMC may update and upgrade the installed Equipment from time to time for the operation of the Wireless Network System with the written consent of the City. SMC shall be allowed to make alterations, upgrades, additions or improvements to the installed Equipment with prior written notice to the City that (i) the proposed updated or upgraded Equipment has been previously approved by the City; (ii) the proposed updated or upgraded Equipment is no heavier or larger and uses no more electrical power than the Equipment being replaced; and (iii) the method proposed updated or upgraded Equipment creates no greater health, safety concerns or visual impacts than the Equipment being replaced. No upgrade or replacement may be undertaken without an interference review and written approval of the City prior to installation. Any upgrades, improvements, additions or alterations to the Equipment for the operation of the Wireless Network System shall be made at SMC's sole cost and expense.

SMC shall not be required to obtain a separate permit to perform routine maintenance on installed Equipment or to replace Equipment with the same kind or model provided the replacement Equipment meets the City's zoning requirements and will be mounted identically as the Equipment being replaced.

7. OTHER PERMITS AND ENTITLEMENTS

SMC shall at its sole and exclusive expense, obtain all necessary local land use entitlements and other City, County, State or Federal permits and certificates as may be necessary to operate the Wireless Network System contemplated by SMC.

8. INSTALLATION REQUIREMENTS

8.1 **Location of Equipment**

The proposed locations of SMC's planned installation are specified in **Exhibit "A"**. Any changes to the proposed locations shall be provided to the City for review and approval at least thirty (30) calendar days prior to commencement of any deployment activities. SMC shall submit regular reports with maps identifying the number, location and types of Equipment planned to be installed, until the citywide wireless network system installation is complete. Documentation shall be submitted to the City Project Manager in an agreed format sufficient to permit City review, oversight and approval in advance of installation. SMC shall keep the City Project Manager informed of progress on deployment on a bi-weekly basis. Upon completion of installation of the Wireless Network System, SMC shall promptly, but in no event later than thirty (30) calendar days following such completion, furnish to the City a summary and map identifying the exact location of SMC's Equipment on Municipal Facilities and Public Rights-of-Way, the monthly electrical usage, the date of installation, and whether the Equipment has been activated.

8.2 **City Approval of Plans, Specifications and Design**

8.2.1 Fees. Prior to installation or attachment of Equipment to Municipal Facilities, SMC shall obtain from the City all necessary building permits, and excavation and related permits, if necessary. SMC shall comply with the applications, plan submittals, procedures and protocols required by the City in processing SMC's application for such approvals and permits. SMC shall pay all fees and costs for the processing of SMC's applications in accordance with City's requirements and policies. For each initial submittal of the plans for each phase, SMC shall pay \$ 3,000 for the City's review and processing costs.

8.2.2 Submittals. SMC shall submit to City complete plans and specifications, including detailed site plans, RF Signals Propagation plans, installation plans, power wiring plans, pole/wall/rooftop mounting plans, improvements plans, construction plans and traffic control plans, sufficient for City to review the proposed Equipment to be installed on Municipal Facilities at least thirty (30) calendar days prior to commencement of any installation or attachment of the Equipment to Municipal Facilities. Such plans and specifications shall include, at a minimum, a vicinity map and scaled drawings accurately depicting the requested area/Municipal Facilities, size, weight, mounting method, method of providing electrical power (including placement of any cables), estimated monthly electrical use, and radiofrequency radiation of the Equipment. SMC shall not commence any installation on the Municipal Facilities until and unless the City has approved all plans and specifications for that installation. City reserves the right to require SMC, at its own expense, to paint any Equipment in a manner consistent with the color of the Municipal Facilities to minimize the visual impact of the Equipment without impacting the performance

or capability of the Equipment. If performance or capability of the Equipment would be so affected, the Parties will meet and confer on an acceptable alternate solution to avoid and/or mitigate any such performance or capability impact while also mitigating visual impact. Any damage to Municipal Facilities during installation shall be promptly repaired by SMC.

8.3 Seismic Safety

Because SMC's equipment will, in part, be located above ground level in areas where falling heavy equipment would likely result in personal injury or death, and property damage, SMC shall furnish to City a copy of all engineering seismic reports and recommendations, together with any supporting data, calculations or studies, for SMC's proposed Equipment to be installed. City shall have the right to approve or disapprove the report and recommendations prior to installation by SMC. No installation of the Equipment shall commence without the City's prior written approval of the engineering reports and recommendations.

8.4 Inspection Review

The parties agree and understand that during the course of installation, City may be required to provide on-site supervision and inspection services because SMC may be performing work on and around City-owned facilities and structures. SMC shall pay the cost of such on-site supervision and inspection services as are directly related to the installation activities of SMC during the course of installation and until final City inspection and approval of the work. SMC shall reimburse the City its actual reasonable and documented inspection costs in accordance with City requirements and policies.

8.5 Notice Requirement for excavation

SMC shall inform the City in writing at least five (5) calendar days prior to any intended excavation on or around the Municipal Facilities.

9. RELOCATION OF EQUIPMENT

9.1 Relocation

In the event City determines in its sole discretion that Equipment needs to be moved, City shall meet and confer with SMC to discuss the necessary relocation of Equipment. The ultimate location of SMC's Equipment shall be mutually agreeable to both parties; provided, however, that in no event shall SMC be required to relocate its Equipment, in order to accommodate another telecommunications provider. SMC shall be responsible for all costs of relocation.

9.2 Temporary Relocation

In the event that construction or renovation of City property requires removal of SMC's Equipment, the City may agree to temporary relocation in lieu of removal. At the conclusion of the construction or renovation, SMC's Equipment shall be returned to its previous location within a reasonable amount of time unless the parties agree to a different location in writing. All costs related to temporary relocation shall be paid by SMC.

10. INSURANCE; LIABILITY; INDEMNIFICATION

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

- (1) Minimum Scope of Insurance. Coverage shall be at least as broad as:
 - a. Insurance Services Office Form No. CG 001 (Broad Comprehensive General Liability);
 - b. Insurance Services Office Form Number CA 0001 (ED. 6/92) (Automobile Liability, Code 1 "any auto");
 - c. Workers' Compensation as required by the Labor Code of the State of California, and Employers' Liability insurance.

10.2 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) Worker's 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.

10.3 Deductibles and Self-Insured Retention. Any amounts that SMC (rather than its insurance carrier) must pay directly to any third party as compensation for any insured loss or liability whether described as a deductible or self-insured retention must be declared to and approved by City.

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

- (1) General Liability and Automobile Liability Coverages:
 - a. City, its officials, employees and volunteers are to be covered as additional insureds with respect to: liability arising out of activities performed by or on behalf of SMC; products and completed operations of SMC; Municipal Facilities owned, leased or used by SMC; or automobiles owned, leased, hired or borrowed by SMC. The coverage shall contain no special limitations on the scope of the protection afforded to City, its officials, employees or volunteers, with respect to SMC's operations of and on the Municipal Facilities.
 - b. SMC's insurance coverage shall be primary insurance with respect to City, its officials, employees and volunteers. Any insurance or self-insurance maintained by City, its officials, employees or volunteers shall be 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 required by this Agreement shall be endorsed to state that coverages 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.

10.5 Acceptability of Insurers. Insurance is to be placed with insurers with a Bests' rating of no less than A.VII.

10.6 Verification of Coverage. SMC shall furnish City with certificates of insurance showing compliance with the above requirements and with copies of endorsements effecting all coverages required by this clause, or other similar documentation acceptable to the City's Risk Manager within thirty (30) days of the Effective Date of this Agreement. The certificates, endorsements and/or other acceptable documents shall set forth a valid policy number for City, and shall indicate the Issue Date, Effective Date and Expirations Date. The certificates and endorsements for each insurance policy are to be signed by a person authorized by the insurer to bind coverage on its behalf.

10.7 Insurance. In any public liability policy covering personal injury or property damage, City shall be named as an additional insured at no cost to City. Each policy of insurance shall provide that there shall be no cancellation of coverage under the policy unless and until City has been provided with thirty (30) days written notice of cancellation.

10.8 No City Liability for Loss or Damage to SMC's Structures or Equipment. In the event that SMC's structures or Equipment installed on the Municipal Facilities are damaged in any way, irrespective of the cause, excepting City's willful misconduct or sole negligence, City shall not be liable and SMC shall have no claim or right against City for the costs of repair or replacement. This clause is intended as a complete release of liability in favor of City, including without limitation all claims whether known or unknown, liquidated or unliquidated, contingent or absolute. SMC has knowledge of and understands the terms and effect of California Civil Code Section 1542, and voluntarily waives the benefits of the terms of that statute. California Civil Code Section 1542, states in full:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

Initials: CITY: _____

SMC: _____

10.9 Indemnification and Defense of City. SMC shall fully defend, indemnify, and hold harmless City and its officers, employees and agents, from and against any and all claims, losses, liabilities, or damages, including payment of attorneys' fees, whether for personal injury or property damage, rising out of or in any way directly or indirectly related to or resulting from the installation, maintenance or operation of SMC's structures and equipment on the Municipal Facilities, or any action or activity of SMC or its officers, employees, or agents relating to the performance of the terms of this Agreement or the Revocable Permit, irrespective of whether caused in part by City, its officers, agents or employees, except where City's actions constitute willful misconduct or City's sole negligence. The provisions of this section shall survive any revocation of the permit.

11. TAXES

SMC shall pay all personal property and other taxes assessed upon its structures and equipment, and any possessory interest or other property tax imposed on SMC or City by virtue of or relating to the installation, maintenance or operation of SMC's structures and equipment on the Municipal Facilities. In the event that the Sacramento County Assessor requires preparation and filing of any form of tax exemption application due to the existence on the Municipal Facilities of SMC's structures or equipment, SMC shall pay the entire cost of preparation and processing of such applications, including reasonable attorneys' fees associated therewith. Pursuant to Section 107.6 of the California Revenue and Taxation Code, City hereby informs SMC that there may be a possessory interest tax levied by virtue of this Agreement.

12. EFFECTIVE DATE

The effective and operative date of this Agreement shall be upon approval of City Council (the "Effective Date"). However, this Agreement shall be of no force or effect and shall be deemed terminated without liability to City if SMC fails to provide valid proof of insurance acceptable to City's Risk Manager within the time period specified herein. This Agreement further shall be of no force or effect and shall be deemed terminated without liability to City if SMC fails to obtain and maintain any entitlement, permit or approval required for the installation, operation, or maintenance of its structures or equipment, or if SMC fails to obtain final City approval of the installation.

13. ASSIGNMENT AND SUBLETTING

SMC shall not have the right to assign or sublet its Revocable Permit, or any of its rights under this Agreement, in whole or in part, without the prior written consent of City, which consent may be withheld for any reason or granted subject to such conditions as may be specified by City; provided, however, that SMC may assign or sublet without City's prior written consent to its general partner or to any party controlling, controlled by or under common control with SMC or to any party which acquires substantially all of the assets of SMC. Any other attempt to do so assign or sublet shall be void, and cause for immediate termination of the Agreement and revocation of the Revocable Permit issued pursuant to this Agreement. The prohibition on assignment and subletting pursuant to this Agreement specifically includes, without limitation, the subleasing, licensing, or granting of other rights to use all or any portion of the facilities (including towers) constructed or used by SMC on the Municipal Facilities. Any revenue obtained by SMC from any such assignment or subletting authorized hereunder shall be the property of the City.

14. NOTICES

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 personal delivery, U.S. Mail, facsimile or recognized 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 within 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 in writing.

Notice shall be addressed as follows:

To 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: Chief Information Officer

To SMC:

SACRAMENTO METRO CONNECT LLC
182 Howard Street
San Francisco, CA 94105
To the attention of: Chief Operating Officer

15. NO AGENCY RELATIONSHIP

Nothing in this Agreement or the application thereof shall be construed to create any relationship between the parties other than that of a permitting agency and a SMC as to the Municipal Facilities. SMC is not an agent of City in performing the terms of this Agreement or in operating under this Agreement.

16. SEVERABILITY

Should any part, term, portion or provision of this Agreement or the application thereof to any person or circumstance be held to be illegal or in conflict with any law of the State of California, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining parts, terms, portions or circumstances, shall be deemed severable and shall not be affected thereby, provided that said remaining portions or provisions can be construed in substance to constitute the full Agreement that the parties intended to enter into in the first instance.

17. AMENDMENTS

No alteration, modification, or variation of the terms of this Agreement shall be valid unless made in writing and executed by both parties.

18. WAIVER

Waiver by either party of any default, breach, or condition precedent shall not be construed as a waiver of any other default, breach, or condition precedent or any other right hereunder.

19. INTERPRETATION

The headings herein are for convenience only and shall not affect construction or interpretation of the Agreement. Construction and interpretation of this Agreement and the Revocable Permit issued pursuant to this Agreement shall be governed by California law. Venue for any action concerning this Agreement or the Revocable Permit issued pursuant to this Agreement shall be Sacramento County, California. This Agreement and the Revocable Permit issued pursuant to this Agreement shall at all times be subject to the provisions of Sacramento City Code Chapter 3.76.050, as such chapter may be amended from time to time.

20. UTILITIES

20.1 Acceptance of Utilities

By accepting the Revocable Permit, SMC agrees and acknowledges that it is satisfied with utility service to the Municipal Facilities, and that such utilities are adequate for the operations of SMC on the Municipal Facilities. SMC shall pay for all utilities used by it at the Municipal Facilities. City agrees to cooperate with SMC in SMC's efforts to obtain utilities from any location provided by City or the servicing utility. The cost of improving or constructing any utility service to the Municipal Facilities for SMC's use shall be the sole and exclusive expense of SMC.

20.2 Relocation

Where utility relocation is required either because of SMC's construction or installation, or by virtue of a subsequent City issued permit(s), the entire utility relocation cost shall be payable by the SMC whose Equipment required the relocation.

20.3 Power Sources and Electricity Charges

SMC shall be solely responsible for all costs for connecting to a source of electricity, providing electricity for its Equipment and paying for electricity to the installed Equipment. Electrical costs shall be calculated based upon actual usage of electricity and applicable tariffs, or a usage formula shall be applied to calculate actual expense per Equipment including, without limitation, any necessary installation, operation and/or removal or replacement of metering devices that may be necessary to support measurement or metering of SMC's power usage.

21. HAZARDOUS MATERIALS

City represents that it has no knowledge of any substance, chemical or waste (collectively, "Substance") on the Municipal Facilities identified as hazardous, toxic or dangerous in any applicable federal, state, or local law or regulation. SMC shall not

introduce or use any such Substance on the Municipal Facilities in violation of any applicable law. SMC shall be responsible for the complete cost of removal and/or remediation of any such Substance introduced by SMC as may be required by any applicable federal, state, or local law or regulation.

22. ENTIRE AGREEMENT

This Agreement and the Revocable Permit issued pursuant to this Agreement, and any attachments hereto, constitute the entire Agreement between the parties concerning the subject matter thereof.

23. BINDING ON SUCCESSORS

The provisions of this Agreement shall inure to the benefit of and be binding upon the respective successors, heirs, and assigns of the parties hereto.

24. PUBLIC RECORDS

SMC acknowledges that this Agreement, the Revocable Permit issued pursuant to this Agreement and all exhibits or attachments hereto, are public records and thus may be disclosed to members of the public pursuant to the Public Records Act (California Government Code Section 6250 et seq.), as such act may be amended from time to time.

25. FORCE MAJEURE

Neither Party shall 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 the Party's reasonable control and cannot have been accommodated or avoided with the exercise of ordinary care. The provision of this section shall not apply unless the Party seeking an extension of time for performance gives prompt written notice to the other Party of the delay immediately after it becomes known that an event may constitute a Force Majeure delay under this section. The 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. The time for performance shall be deemed extended by time lost due to delays resulting from a Force Majeure event.

26. AUTHORITY

By executing this Agreement, SMC warrants and represents that it has the legal authority to enter into this Agreement. Within thirty (30) days of the effective date, SMC shall provide to City a certificate executed by the SMC's corporate secretary, or equivalent authorized person, stating that SMC is an entity in good standing in its state of origin licensed to do business in California and that SMC has obtained all necessary local, state, and federal licenses as may be necessary to operate the facilities and business operations contemplated by this Agreement. The person signing this Agreement for SMC hereby represents and warrants that he or she is authorized to sign this Agreement on behalf of SMC.

IN WITNESS HEREOF, the Parties have executed this Agreement on the date stated above.

SACRAMENTO METRO CONNECT, LLC

CITY OF SACRAMENTO
A Municipal Corporation

BY: [Signature]
Name: Am Fowler
Title: Principal

By: _____
Print Name: _____
Title: _____
For Ray Kerridge, City Manager

APPROVED AS TO FORM:

By: [Signature]
Deputy City Attorney

ATTEST:
By: _____
City Clerk

EXHIBIT A to REVOCABLE PERMIT AGREEMENT

City-owned Facilities

- 2921 Truxel Rd. Sacramento, CA. 95833 (South Natomas Community Center)
- 915 27th Street Sacramento, CA. 95816 (Hart Senior Center)
- 5699 S Land Park Drive Sacramento, CA. 95822 (Belle Coolidge Community Center)
- 4623 T Street Sacramento, CA. 95819 (Coloma Community Center)
- 2450 Meadowview Rd Sacramento, CA. 95832 (Pannell Community Center)
- 1000 I Street Sacramento, CA. 95814 (IT Department/Water Fall Garage)
- 2101 Arena Blvd. Sacramento, CA. 95834 (North Permit Center)
- 918 Del Paso Road Sacramento, CA. 95834 (North Corp Yard)
- 3145 Granada Way Sacramento, CA. 95816 (Alhambra Reservoir/Fire Station #4)
- 7399 San Joaquin St Sacramento, CA. 95820 9-1-1 Dispatch Center
- 7501 College Town Drive Sacramento, CA. 95826 (Water Treatment Plant)
- 3581 23rd St Sacramento, CA. 95818 (City College Reservoir)
- 3530 Riverside Blvd Sacramento, CA. 95818 (DOU Sump 2 Station)
- 1391 35th Avenue Sacramento, CA. 95822 (DOU HQ)
- 7788 Freeport Blvd Sacramento, CA. 95832 (DOU Water Tank along I-5)
- 785 Florin Rd. Sacramento, CA. 95831 - Fire Station
- 3525 Norwood Avenue Sacramento, CA. 95838 (Robertson Community Center)
- 3425 Martin Luther King Jr. Blvd, CA. 95817 (Oak Park Community Center)

Pole id	Street side	Address	Dd_long	dd_lat	Service id
C012856	ES	1011 7Th St	-121.49751997529	38.58089739474	644
C012877	ES	I St	-121.49433926137	38.58132735577	264
C010667	WS	930 K St	-121.49413410867	38.57907305816	512
C000744	NW COR	460 35Th St	-121.45719699763	38.57682443187	167
C013082	SW COR	Q St	-121.49653605552	38.57357033576	728
C002898	WS	5508 Camellia Ave	-121.42938546761	38.57456127162	123
C001235	WS	700 36Th St	-121.45652305441	38.57387504083	47
C000789	SW COR	3728 Mckinley Blvd	-121.45334505315	38.57611230099	167
C023866	NS	1205 L St	-121.49080062624	38.57726053509	542
C010127	SW COR	500 16Th St	-121.48303711436	38.58349143789	487
C012860	SE COR	903 8Th St	-121.49549090260	38.58196247541	710
C002005	NS	3Rd St	-121.50461980558	38.57978059728	383
C020547	SS	C St	-121.47731781646	38.58443315722	1015
C012630	SS	I St	-121.49948136279	38.58303343701	509
C001944	NW COR	400 Capitol Mall	-121.50217108672	38.57778681537	267
C002271		555 Capitol Mall	-121.50123646432	38.57885276302	596
C000727	NS	3301 C St	-121.45183339682	38.58104764591	167
C010204	NS		-121.50222570665	38.58389310181	480
C012900	WS	1029 J St	-121.49207397125	38.58042172536	713

EXHIBIT A to REVOCABLE PERMIT AGREEMENT

Pole id	Street side	Address	Dd long	dd lat	Service id
C002655	WS	36Th St	-121.45172620526	38.57854523071	50
C001432	ES	2001 K St	-121.48002779165	38.57598685221	795
C004997	ES	5101 B St	-121.43760599272	38.57458634050	204
C000743	NE COR	461 34Th St	-121.45808967168	38.57706839138	167
C003105	SS	5304 Callister Ave	-121.43344373965	38.57831383611	125
C001347	SE COR	805 15Th St	-121.48545541573	38.58051010493	625
C003967	SS	3900 Breuner Ave	-121.44590060313	38.58274768861	135
C030589	SS	1716 O St	-121.48545546618	38.57187035869	1418
C019867	SW COR	1416 17Th St	-121.48620563629	38.57272587528	1558
C010221	SS	404 I St	-121.50085690667	38.58338252835	481
C012900	WS	1029 J St	-121.49207397125	38.58042172536	713
C003866	ES	59 50Th St	-121.43721686327	38.57761015341	136
C001784	WS	1515 8Th St	-121.49846480961	38.57528702680	259
C019587	ES	1800 3Rd St	-121.50798331991	38.57379496923	988
C010197	SW COR		-121.50292947215	38.58263212100	479
C001676	SS	1400 I St	-121.48725173447	38.57974803504	264
C012854	NE COR	923 7Th St	-121.49725412246	38.58149049303	644
C012635	WS	6Th St	-121.49803673950	38.58376840783	1231
C000764	ES	325 Santa Ynez Way	-121.45403610658	38.57816734604	167
C004455	WS	48 45Th St	-121.44147010486	38.57956489273	100
C022092	NW COR		-121.50449171730	38.57594803373	1061
C000760	ES	401 Santa Ynez Way	-121.45566904549	38.57728314829	167
C017759	SE COR	1408 G St	-121.48630138227	38.58194258893	907
C000898	NW COR	524 La Purissima Way	-121.44574319809	38.57331121723	177
C014212	NW COR	1237 G St	-121.48791550286	38.58261213005	X