

AGREEMENT

31218

THIS AGREEMENT is made and entered, in duplicate, as of June 2, 2008 for reference purposes only, pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting on April 18, 2006, by and between T-MOBILE USA a Delaware corporation ("T-Mobile") located at 12920 SE 38th Street, Bellevue, WA 98006 and the CITY OF LONG BEACH, a municipal corporation ("Client").

WHEREAS, Client desires to procure communication services and related services and features (the "Service"), and wireless devices, handsets, personal digital assistants (such as Blackberry handsets), and/or radio or other equipment, including additional or replacement equipment, for use with the Service (each a "Unit"). T-Mobile desires to be engaged by Client, on the terms and conditions of this Agreement; and

WHEREAS, Client selected T-Mobile in accordance with the Client's policies and procedures, after evaluation of its proposal submitted in response to Client's Request for Proposals; and

WHEREAS, the Parties wish to enter into this Agreement to facilitate the provision of Service and Units to Client's employees who receive Service under Client's corporate liable master account ("Master Accounts") or Client's employees who receive separate Service in their own name under the individual liable Employee Account Program ("Employee Accounts") specified herein (each a "User"). For purposes of this Agreement, T-Mobile and Client are sometimes collectively referred to as the "Parties," and individually as a "Party"; and

NOW, THEREFORE, in consideration of the mutual terms and conditions herein, the parties agree as follows:

1. AMOUNT: The amount of this Agreement shall not exceed One Hundred Fifty Thousand Dollars (\$150,000.00) during the term.
2. TERM: The term of this Agreement shall commence on December 1, 2008, and shall terminate on December 1, 2009. This Agreement may be terminated

1 by Client for cause or convenience on two weeks' prior notice without penalty or further
2 obligation after Client has paid for services rendered through the date of termination.
3 Client's City Manager shall have the option to extend this agreement for two (2) additional
4 one-year terms. Users may have terms that begin on the date Service for a certain rate
5 plan or feature is activated for the End User ("Fixed Term"), which continues past the
6 termination date of this Agreement; termination of this Agreement shall not affect such
7 Fixed Terms. Should an employee of Client terminate employment with Client, such
8 employee shall continue to receive Service under the Employee Account rate plan until
9 the end of the employee's Fixed Term.

10 3. INDEPENDENT CONTRACTOR STATUS: With respect to the
11 services provided by T-Mobile, T-Mobile is and shall act as an independent contractor
12 and not an employee, representative, or agent of Client. T-Mobile acknowledges and
13 agrees that: a) Client will not withhold taxes of any kind from T-Mobile's compensation; b)
14 Client will not secure workers' compensation or pay unemployment insurance to, for or on
15 T-Mobile's behalf; and c) Client will not provide and T-Mobile is not entitled to any of the
16 usual and customary rights, benefits or privileges of Client's employees. T-Mobile
17 expressly warrants that neither T-Mobile nor any of T-Mobile 's employees or agents shall
18 represent themselves to be employees or agents of Client.

19 4. INVOICES: T-Mobile shall submit monthly invoices to Client for
20 services rendered that were provided in the previous calendar month.

21 5. PAYMENT DEFAULT: Client agrees to pay the invoices of T-Mobile
22 within thirty (30) days after receipt of a valid invoice by having such payment delivered to
23 T-Mobile at 12920 SE 38th Street, Bellevue, WA 98006 or such other location or manner
24 as T-Mobile shall hereafter direct in writing.

25 6. CLIENT PROPERTY:

26 A. Work Product: All work product of every kind performed by
27 any T-Mobile 's Worker on behalf of Client shall be the sole and exclusive property
28 of Client.

1 B. Confidentiality: T-Mobile recognizes that while performing its
2 duties under this Agreement, T-Mobile and its Workers may be granted access to
3 certain proprietary and confidential information regarding client's business, Clients,
4 and employees. T-Mobile shall keep such information confidential (unless
5 compelled to reveal such information by court), and the obligations of this
6 paragraph will survive the termination of this Agreement. This paragraph does not
7 apply to information that was previously known or information that is available in
8 the public domain.

9 7. NOTICES:

10 A. Manner: Any notice or other communication required or
11 permitted under this Agreement shall be in writing and either delivered personally
12 or sent by overnight courier, or U.S. certified or registered mail, postage prepaid,
13 return receipt requested.

14 B. Addressee: Notice shall be addressed to:

15 T-MOBILE USA: T-Mobile USA
16 12920 SE 38th Street
17 Bellevue, WA 98006

18 Client: City of Long Beach
19 333 W. Ocean Boulevard
20 Long Beach, CA 90802
21 Attn: City Manager

22 With a copy to: City of Long Beach
23 333 W. Ocean Boulevard, 12th Floor
24 Long Beach, CA 90802
25 Attn: Curtis Tani

26 C. Delivery: Notice delivered personally shall be deemed given
27 only if acknowledged in writing by the person to whom it is given. Notice sent by
28 overnight courier shall be deemed given on the date shown on the courier's
records. Notice that is sent by U.S. certified mail or registered mail shall be
deemed given on the date shown on the return receipt.

D. Changes: Either party may designate, by notice to the other,

1 substitute addressees, addresses for notices, and thereafter, notices are to be
2 directed to those substitute addresses.

3 8. INSURANCE: As a condition precedent to the effectiveness of this
4 Agreement, T-Mobile shall procure and maintain at T-Mobile's expense for the duration of
5 this Agreement from an insurance company that is admitted to write insurance in
6 California or from authorized non-admitted insurance companies that have ratings of or
7 equivalent to A:VIII by A.M. Best Company:

8 (a) Commercial general liability insurance (equivalent in scope to ISO
9 form CG 00 01 11 85 or CG 00 01 10 93) in an amount not less than One Million Dollars
10 (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) general aggregate.
11 Such coverage shall include but not be limited to broad form contractual liability, cross
12 liability, independent contractors liability, and products and completed operations liability.
13 This insurance shall contain no special limitations on the scope of protection given to the
14 City of Long Beach, its officials, employees and agents.

15 (b) Workers' compensation insurance as required by the California
16 Labor Code and employer's liability insurance in an amount not less than One Million
17 Dollars (\$1,000,000) per accident.

18 Any self-insurance program, self-insured retention, or deductible must be
19 separately approved in writing by Client's Risk Manager or designee and shall protect the
20 City of Long Beach, its officials, employees and agents in the same manner and to the
21 same extent as they would have been protected had the policy or policies not contained
22 retention provisions. Each insurance policy shall be endorsed to state that coverage shall
23 not be suspended, voided or canceled by either party except after thirty (30) days prior
24 written notice to Client, and shall be primary and not contributing to any other insurance
25 or self-insurance maintained by the City of Long Beach, its officials, employees and
26 agents.

27 Upon request by the City of Long Beach, T-Mobile shall deliver to Client
28 certificates of insurance and required endorsements, including any insurance required of

1 T-Mobile's contractors and subcontractors, for approval as to sufficiency and form. In
2 addition, T-Mobile shall, at least thirty (30) days prior to expiration of the insurance
3 required hereunder, furnish to Client certificates of insurance and endorsements
4 evidencing renewal of such insurance. Client reserves the right to require complete
5 certified copies of all policies of T-Mobile or T-Mobile contractors or subcontractors, at
6 any time. T-Mobile shall make available to Client all books, records and other information
7 relating to the insurance coverage required herein during normal business hours.

8 Any modification or waiver of the insurance requirements herein shall only
9 be made with the written approval of Client's Risk Manager or designee. Not more
10 frequently than once a year, Client's Risk Manager or designee may require that T-
11 Mobile, T-Mobile's contractors and subcontractors change the amount, scope or types of
12 coverages required herein if, in his or her sole opinion, the amount, scope, or types of
13 coverages herein are not adequate.

14 The procuring or existence of insurance shall not be construed or deemed
15 as a limitation on liability relating to T-Mobile's performance of services or as full
16 performance of or compliance with the indemnification provisions herein.

17 9. MISCELLANEOUS:

18 A. No party shall transfer or assign any or all of its rights or
19 interests under this Agreement or delegate any of its obligations without the prior
20 written consent of the other party; which consent shall not be unreasonably
21 withheld; provided however, T-Mobile may assign in whole or in part its rights or
22 duties under this Agreement without prior consent of Client or any parent, affiliate
23 or subsidiary or to any party acquiring any portion of the assigning party's capital
24 stock or assets (including, without limitation, any assignment by operation of law.

25 B. This Agreement shall be governed by and construed pursuant
26 to the laws of the State of California (except those provisions of California law
27 pertaining to conflicts of laws). Any action involving this Agreement shall be
28 brought in the Los Angeles County Superior Court, Long Beach Judicial District.

1 C. This Agreement constitutes the entire understanding between
2 the parties hereto and supersedes all other agreements, whether oral or written,
3 with respect to the subject matter herein.

4 D. Except to the extent of Client's negligence or willful
5 misconduct, T-Mobile shall defend, indemnify and hold the City of Long Beach, its
6 officials, employees and agents harmless from and against all claims, demands,
7 damage, causes of action, proceedings, loss, costs and expenses (including
8 reasonable attorney's fees), and liability, of any kind whatsoever (collectively in
9 this Section "claim"), alleging (a) injury to or death of persons or damage to
10 property, including property owned by or under the care and custody of Client or
11 its boards and (b) that such injury, death or damage arises from or is attributable
12 to or caused by a negligent act or omission, misrepresentation, or willful
13 misconduct of T-Mobile, its employees, or agents in the performance of services,
14 except to the extent that the injury, death, or damage was caused by the
15 negligence of Client, its boards, or their officials or employees. T-Mobile shall
16 notify Client of any claim within ten (10) days. Likewise, Client shall notify T-Mobile
17 of any claim, shall tender the defense of such claim to T-Mobile, and shall assist T-
18 Mobile, as may be reasonably requested, in such defense.

19 E. In the event that there is any legal proceeding between the
20 parties to enforce or interpret this Agreement or to protect or establish any rights
21 or remedies hereunder, the prevailing party shall be entitled to its costs and
22 expenses, including reasonable attorneys' fees.

23 F. Subject to applicable laws, rules, and regulations, neither
24 Client nor T-Mobile shall discriminate in the performance of this Agreement on the
25 basis of race, color, religion, national origin, sex, sexual orientation, AIDS, and
26 AIDS related condition, age, disability or handicap, disabled or veteran status.

27 G. The acceptance of the services or the payment of any money
28 by Client shall not operate as a waiver of any provision of, this Agreement, or of

1 any right to damages or indemnity stated in this Agreement. The waiver of any
2 breach of this Agreement shall not constitute a waiver of any other or subsequent
3 breach of this Agreement.

4 H. Termination or expiration of this Agreement shall not affect
5 rights or liabilities of the parties which accrued pursuant prior to such termination
6 or expiration.

7 I. T-Mobile shall not use the name of the City of Long Beach, its
8 officials or employees in any advertising or solicitation for business, nor as a
9 reference, without the prior approval of Client's City Manager or designee.

10 J. If Client's Unit is lost or stolen ("Lost Unit"): (1) Client must
11 notify T-Mobile promptly and ask T-Mobile to deactivate the Lost Unit; and (2)
12 provide T-Mobile within fourteen (14) days, any reasonable documentation T-
13 Mobile requests (such as a copy of a filed police report if the Unit is stolen). If
14 Client completes the above requirements, Client will not be liable for any
15 unauthorized airtime charged fraudulently incurred on the Los Unit, although Client
16 agrees to assist T-Mobile with any prosecution.

17 K. T-Mobile shall not be liable for any deficiency in performance
18 caused in whole or in part by act or omission of an underlying carrier or service
19 Client, dealer, equipment or facility failure, equipment failure, facilities problems,
20 lack of coverage or network capacity, equipment or facility upgrade or
21 modification, acts of God, strikes, fire, terrorism, war, riot, emergency, government
22 actions, equipment or facility shortage or relocation, or causes beyond T-Mobile's
23 reasonable control, including without limitation the failure of an incoming or
24 outgoing call, including a 9-1-1 emergency call, to be connected or completed or
25 for the functionality of location services, including 9-1-1 location services. Even if
26 T-Mobile or any of T-Mobile's affiliates have been advised of the possibility of
27 damages, they will not be liable to client or any of client's employees, agents, end
28 users, customers or any third parties for any damages arising from use of the

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IN WITNESS WHEREOF, the parties have caused this document to be duly executed with all formalities required by law as of the date first stated above.

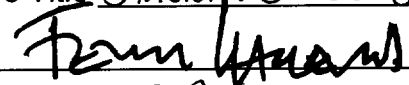
T-MOBILE USA, a Delaware corporation

May 14th, 2009

By 

Officer's Title Divisional Director Business Sales

May 14th, 2009

By 

Officer's Title VP Business Sales

"T-MOBILE"

CITY OF LONG BEACH, a municipal corporation

EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER.

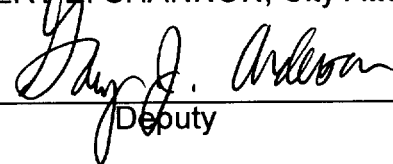
July 16, 2009

By  Assistant City Manager
City Manager

"Client"

This Agreement is approved as to form on June 2, 2009.

ROBERT E. SHANNON, City Attorney

By 
Deputy

Reviewed and Approved as to Form:


T-Mobile USA, Inc. Legal Dept.

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664