

STATE OF TEXAS §
 § **AGREEMENT FOR MICROWAVE NETWORK REPLACEMENT**
COUNTY OF COLLIN §

This agreement ("Agreement") is made by and between the City of Allen, Texas ("City") and Scientel Solutions, LLC, a Delaware limited liability company ("Company") (each a "Party" and collectively the "Parties"), acting by and through their authorized representatives.

Recitals:

WHEREAS, the City desires to engage the services of the Company as an independent contractor, and not as an employee, to provide the services described in the Contract Documents (hereinafter defined), to replace the existing City microwave network with a new Microwave/Wireless P2P and P2MP system that creates a resilient network to support network connectivity for current and future City facilities (collectively the "Services"); and

WHEREAS, the Company desires to provide the Services for the City on the terms and conditions set forth in this Agreement;

NOW THEREFORE, in exchange for the mutual covenants set forth herein and other valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the Parties agree as follows:

Article I
Term

1.1 This Agreement shall commence on the last day of execution hereof ("Effective Date") and continue until completion of the services, unless sooner terminated as provided herein.

1.2 This Agreement may be terminated by:

- (a) mutual written agreement of the Parties;
- (b) upon written notice by either Party, if the other Party defaults or breaches any of the terms or conditions of this Agreement and such breach or default is not cured within thirty (30) days after receipt of written notice thereof;
- (c) upon written notice by City, if Company suffers an event of Bankruptcy or Insolvency. For purposes of this Agreement, an "event of Bankruptcy" shall mean the dissolution or termination (other than a dissolution or termination by reason of Company merging with an affiliate of Company) of Company's existence as a going business, insolvency, appointment of receiver for any part of Company's property and such appointment is not terminated within ninety (90) business days

after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Company and in the event such proceeding is not voluntarily commenced by the Company, such proceeding is not dismissed within ninety (90) business days after the filing thereof; or

- (d) upon written notice by City, if City fails to budget and appropriate funds for payment of the obligations hereunder for the then ensuing fiscal year.

Article II Contract Documents

The "Contract Documents" shall include the documents identified herein. Every provision of the Contract Documents below is incorporated into this Agreement by reference. The Contract Documents referenced below are in descending order of precedence. Any conflict between or among any of the Contract Documents shall be resolved in favor of the document with higher precedence.

- A. This Agreement;
- B. City's Request for Proposal # 2017-2-48 (the "RFP") incorporated herein; and
- C. Company's Response to the RFP (the "Response") incorporated herein.

Article III Scope of Services

Company shall provide the services set forth in the Contract Documents.

Article IV Schedule of Work

Company agrees to complete the required Services in accordance with the Contract Documents.

Article V Compensation and Method of Payment

5.1 Company will be compensated in accordance with the payment schedule and amounts set forth in the Contract Documents, not to exceed a total amount of Four Hundred Thirteen Thousand Nine Hundred Sixty-Six and 26/100 Dollars (\$413,966.26). Unless otherwise provided herein, payment to the Company shall be monthly based on the Company's monthly progress report and detailed monthly itemized statement for services that show the names of the

Company's employees, agents, contractors performing the services, the time worked, the actual services performed, the rates charged for such service, the total amount of fee earned to date and the amount due and payable as of the current statement, in a form reasonably acceptable to the City. Monthly statements shall include authorized non-salary expenses with supporting itemized invoices and documentation. The City shall pay such monthly statements within thirty (30) days after receipt and City verification of the Services and expenses unless otherwise provided herein.

5.2 Unless otherwise provided in the Contract Documents, Contractor shall be responsible for all expenses related to the services provided pursuant to this Agreement including, but not limited to, travel, copying and facsimile charges, telephone, internet and email charges.

Article VI Notice to Proceed

Company shall not proceed with any work required under this Agreement without a written Notice to Proceed from City. Any work performed or expenses incurred by Company prior to Company's receipt of a written Notice to Proceed from City shall be entirely at Company's own risk.

Article VII Suspension of Work

City shall have the right to immediately suspend work by Company if City determines in its sole discretion that Company has failed, or will fail to perform, in accordance with this Agreement. In such event, any payments due Company shall be suspended until Company has taken satisfactory corrective action.

Article VIII Devotion of Time; Personnel; and Equipment

8.1 The Company shall devote such time as reasonably necessary for the satisfactory performance of the work under this Agreement. Should the City require additional services not included under this Agreement, the Company shall make reasonable effort to provide such additional services at mutually agreed charges or rates, and within the time schedule prescribed by the City; and without decreasing the effectiveness of the performance of services required under this Agreement.

8.2 To the extent reasonably necessary for the Company to perform the services under this Agreement, the Company shall be authorized to engage the services of any agents, assistants, persons, or corporations that the Company may deem proper to aid or assist in the performance of the services under this Agreement. The cost of such personnel and assistance shall be borne exclusively by the Company.

8.3 The Company shall furnish the facilities, equipment, telephones, facsimile machines, email facilities, and personnel necessary to perform the services required under this Agreement, unless otherwise provided herein.

8.4 Time is and shall be of the essence in the performance of this Agreement as written.

Article IX Insurance

9.1 Company shall, during the term hereof, maintain in full force and effect the following insurance: (i) a comprehensive general liability policy of insurance for bodily injury, death and property damage, including the property of the City, its officers, contractors, agents and employees (collectively referred to as the "City") insuring against all claims, demands or actions relating to the work and services provided by the Company pursuant to this Agreement with a minimum combined single limit of not less than \$1,000,000.00 per occurrence for injury to persons (including death), and for property damage and \$2,000,000.00 aggregate including products and completed operations coverage of \$1,000,000.00. This policy shall be primary to any policy or policies carried by or available to the City; (ii) policy of automobile liability insurance covering any vehicles owned, non-owned and hired and/or operated by Company, its officers, agents, and employees, and used in the performance of this Agreement with policy limits of not less than \$1,000,000.00 combined single limit for bodily injury, death and property damage; (iii) statutory Worker's Compensation Insurance at the statutory limits and Employers Liability covering all of Company's employees involved in the provision of services under this Agreement with policy limits of not less than \$1,000,000.00; (iv) excess liability insurance with a limit of not less than \$7,000,000.00. Such insurance shall be excess of the commercial general liability insurance, business auto liability insurance and Employers Liability insurance; and (v) Professional Liability with policy limit of not less than \$5,000,000.00 per claim covering negligent acts, errors and omissions by Company, its contractors, sub-contractors, consultants and employees in the performance of services pursuant to this Agreement.

9.2 All insurance shall be endorsed to provide the following provisions: (1) name the City, its officers, and employees as additional insureds as to all applicable coverage with the exception of Professional Liability Insurance and Workers Compensation Insurance; (2) provide for a waiver of subrogation against the City for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance. A specific endorsement needs to be added to all policies, with a copy of the endorsement provided to the City that indicates the insurance company will provide to the City at least a thirty (30) day prior written notice for cancellation, non-renewal, and/or material changes of the policy. In the event the companies providing the required insurance are prohibited by law to provide any such specific endorsements, the Company shall provide at least thirty (30) days prior written notice to the City of any cancellation, non-renewal and/or material changes to any of the policies of insurance.

9.3 All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least "A" by AM Best or other equivalent rating service. All policies must be written on a primary basis, non-contributory with any other insurance coverage and/or self-insurance maintained by the City.

9.4 A certificate of insurance and copies of policy endorsements evidencing the required insurance shall be submitted to the City prior to commencement of services. On every date of renewal of the required insurance policies, the Company shall cause a certificate of insurance and policy endorsements to be issued evidencing the required insurance herein and delivered to the City. In addition, the Company shall, within ten (10) business days after written request provide the City with certificates of insurance and policy endorsements for the insurance required herein. The delivery of the certificates of insurance and policy endorsements to the City is a condition precedent to the payment of any amounts due to Company by the City. The failure to provide valid certificates of insurance and policy endorsements shall be deemed a default and/or breach of this Agreement.

Article X Miscellaneous

10.1 Entire Agreement. This Agreement constitutes the sole and only agreement between the Parties and supersedes any prior understandings written or oral agreements between the Parties with respect to this subject matter.

10.2 Assignment. Company may not assign this Agreement in whole or in part without the prior written consent of City. In the event of an assignment by Company to which City has consented, the assignee shall agree in writing with City to personally assume, perform, and be bound by all the covenants, and obligations contained in this Agreement.

10.3 Successors and Assigns. Subject to the provisions regarding assignment, this Agreement shall be binding on and inure to the benefit of the Parties to it and their respective heirs, executors, administrators, legal representatives, successors and assigns.

10.4 Governing Law. The laws of the State of Texas shall govern this Agreement; and venue for any action concerning this Agreement shall be in Collin County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said Court.

10.5 Amendments. This Agreement may be amended by the mutual written agreement of the Parties.

10.6 Severability. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions, and the Agreement

shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

10.7 Independent Company. It is understood and agreed by and between the Parties that Company, in satisfying the conditions of this Agreement, is acting independently, and that City assumes no responsibility or liabilities to any third party in connection with these actions. All services to be performed by Company pursuant to this Agreement shall be in the capacity of an independent Company, and not as an agent or employee of City. Company shall supervise the performance of its services and shall be entitled to control the manner and means by which its services are to be performed, subject to the terms of this Agreement.

10.8 Notice. Any notice required or permitted to be delivered hereunder may be sent by first class mail, overnight courier or by confirmed telefax or facsimile to the address specified below, or to such other Party or address as either Party may designate in writing, and shall be deemed received three (3) days after delivery set forth herein:

If intended for City:

City of Allen, Texas
Attn: Peter H. Vargas,
City Manager
Allen Civic Plaza
305 Century Parkway
Allen, Texas 75013
Facsimile: 214-509-4118

With copy to:

Peter G. Smith
City Attorney
Nichols, Jackson, Dillard, Hager &
Smith, L.L.P.
1800 Ross Tower
500 N. Akard
Dallas, Texas 75201
Facsimile: 214-965-0010

If intended for Company:

Sciencel Solutions, LLC
948 Springer Drive
Lombard, Illinois 60148
Facsimile: 630-652-3805

10.9 Counterparts. This Agreement may be executed by the Parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of any number of copies hereof each signed by less than all, but together signed by all of the Parties hereto.

10.10 Exhibits and Recitals. The exhibits attached hereto and the Recitals are incorporated herein and made a part hereof for all purposes.

10.11 Indemnification. CITY SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE, OR INJURY OF ANY KIND OR CHARACTER TO ANY PERSON OR PROPERTY ARISING FROM THE SERVICES OF COMPANY PURSUANT TO THIS AGREEMENT. COMPANY HEREBY WAIVES ALL CLAIMS AGAINST CITY, ITS OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY REFERRED TO IN THIS SECTION AS "CITY") FOR DAMAGE TO ANY PROPERTY OR INJURY TO, OR DEATH OF, ANY PERSON ARISING AT ANY TIME AND FROM ANY CAUSE OTHER THAN THE NEGLIGENCE OR WILLFUL MISCONDUCT OF CITY OR BREACH OF CITY'S OBLIGATIONS HEREUNDER. COMPANY AGREES TO INDEMNIFY AND SAVE HARMLESS CITY FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, CLAIMS, SUITS, COSTS (INCLUDING COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION) AND ACTIONS OF ANY KIND BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO OR LOSS OF PROPERTY TO THE EXTENT CAUSED BY THE COMPANY'S NEGLIGENT PERFORMANCE OF SERVICES UNDER THIS AGREEMENT OR BY REASON OF ANY NEGLIGENT ACT OR OMISSION ON THE PART OF COMPANY, ITS OFFICERS, DIRECTORS, SERVANTS, EMPLOYEES, REPRESENTATIVES, CONSULTANTS, LICENSEES, SUCCESSORS, SUBCONTRACTORS OR PERMITTED ASSIGNS (EXCEPT WHEN SUCH LIABILITY, CLAIMS, SUITS, COSTS, INJURIES, DEATHS OR DAMAGES ARISE FROM OR ARE ATTRIBUTED TO NEGLIGENCE OF THE CITY, IN WHOLE OR IN PART, IN WHICH CASE COMPANY SHALL INDEMNIFY CITY ONLY TO THE EXTENT OR PROPORTION OF NEGLIGENCE ATTRIBUTED TO COMPANY AS DETERMINED BY A COURT OR OTHER FORUM OF COMPETENT JURISDICTION). THE COMPANY'S OBLIGATIONS UNDER THIS SECTION SHALL NOT BE LIMITED TO THE LIMITS OF COVERAGE OF INSURANCE MAINTAINED OR REQUIRED TO BE MAINTAINED BY COMPANY UNDER THIS AGREEMENT. THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

10.12 Audits and Records. Company agrees that during the term hereof, City and its representatives may, during normal business hours and as often as deemed necessary, inspect, audit, examine and reproduce any and all of the Company's records relating to the services provided pursuant to this Agreement for a period of one (1) year following the date of completion of services as determined by City, or date of termination if sooner.

10.13 Warranty. The Company warrants to the City that all labor furnished to perform the work under this Contract will be competent to perform the tasks undertaken, that the product of such labor will yield only first-class results, that the work will be performed in a good and workmanlike manner and at least in accordance with industry standards, and that the work will be of good quality, free from faults and defects and in strict conformance with this contract. All work not conforming to these requirements may be considered defective.

10.14 Uniforms. Company shall provide and require its employees to wear a uniform that bears the Company name, logo, and the employee's name. Uniforms are not to be dirty, stained,

or torn. Uniforms shall be worn at all times while on the job. Company shall provide and ensure the wearing of protective clothing, masks, eye protection, etc., as required by laws, regulation, ordinances, and/or manufacturer's instruction for material and equipment. All employees of Company working on right-of-ways or medians must utilize personal protective equipment such as safety vests to insure their visibility to drivers.

10.15 Warning Devices and Barricades. The Company shall furnish and maintain such warning devices, barricades, lights, signs, and other devices as may be necessary or appropriate or required by the City to protect persons or property in, near or adjacent to the jobsite. The Company shall comply with all applicable Federal, State, and Local Laws regarding occupational safety and health as well as providing protection of the environment. This shall include, but not be limited to, compliance with U.S. Department of Labor-Occupational Safety and Health Administration (OSHA), and U.S. Environmental Protection Agency (EPA) guidelines and regulations. No separate compensation shall be paid to the Company for such measures.

10.16 Protection of Utilities. The Company shall use best efforts to leave undisturbed and uninterrupted all irrigation systems, utilities, and utility services provided to the job site or which presently exist at, above, or beneath the location where the work is to be performed. In the event that any irrigation system, utility, or utility service is disturbed or damaged during the progress of the work, the Company shall forthwith repair, remedy or restore the utility at Company's sole expense. The Company is responsible for an inspection of the site prior to commencing work on site to ensure that no damage is existing or will not occur when maintenance begins. If damage is noted or if probable damage will occur then it is the Company's responsibility to notify the City of Allen representative so that the City of Allen can take action to correct and document the problem(s). The Company is responsible for the replacement of all irrigation heads that are damaged by mowing with like equipment approved by the City of Allen.

(Signature page to follow)

EXECUTED this _____ day of _____, 2017.

CITY OF ALLEN

By: _____
Peter H. Vargas, City Manager

ATTEST

Shelley B. George, City Secretary

EXECUTED this 18th day of May, 2017.

SCIENTEL SOLUTIONS, LLC

By: Nelson Santos
Signature of Authorized Officer

Name: Nelson Santos
Print Name

Title: President
Print Title

948 Springer Drive
Lombard, IL 60148