

AGREEMENT NO. _____

INDEPENDENT CONTRACTOR'S AGREEMENT

[Over \$40,000]

This **INDEPENDENT CONTRACTOR'S AGREEMENT** ("Agreement") is made and entered into on _____, by and between the **CITY OF BAKERSFIELD**, a municipal corporation, ("CITY") and **SC Communications** ("CONTRACTOR").

RECITALS

WHEREAS, CITY is in need of Motorola handheld radio repairs for out of warranty devices; and

WHEREAS, CONTRACTOR offers specialized experience in repair of out of warranty Motorola handheld radios; and

WHEREAS, CONTRACTOR represents that CONTRACTOR is experienced, well qualified and a specialist in the field of Motorola handheld radio maintenance and repair; and

WHEREAS, CITY has limited in house resources to repair Motorola handheld radios; and

WHEREAS, CITY desires that CONTRACTOR repair out of warranty Motorola handheld radios; and

NOW, THEREFORE, incorporating the foregoing recitals herein, CITY and CONTRACTOR mutually agree as follows:

1. **SCOPE OF WORK.** In exchange for the Compensation (defined below), CONTRACTOR shall perform the following: Provide repair to out of warranty Motorola XTS2500 & XTS5000 portable radios as detailed in **EXHIBIT A** ("Scope of Work"). The Scope of Work shall include all items and procedures necessary to properly complete the task CONTRACTOR has been hired to perform, whether specifically included in the Scope of Work or not.
2. **COMPENSATION/PAYMENT PROCEDURE.** Subject to the conditions of this

section, CITY will pay CONTRACTOR as follows for performing the Scope of Work ("Compensation"):

- A total payment of Fifty-Seven Thousand Eight Hundred Twelve Dollars and Sixty-Four cents (\$57,812.64) which shall be paid 50% (\$28,906.32 in February 2021)
- upon approval of the agreement by City Council and the remaining 50% (\$28,906.32 in August 2021) six months thereafter, subject to **EXHIBIT B** which is attached hereto and incorporated by reference herein as follows:

CITY will pay CONTRACTOR within 30 days after CONTRACTOR submits an itemized invoice for the portions of the Scope of Work completed and that invoice is approved by CITY. The Compensation will be the total amount paid to CONTRACTOR for performing the Scope of Work and includes, but is not limited to, all out-of-pocket costs and taxes. CITY will pay no other compensation to CONTRACTOR. In no case will CITY compensate CONTRACTOR more than \$57,812.64 for performing the Scope of Work.

3. **TERM.** Unless terminated sooner, as set forth herein, this Agreement shall terminate on December 31, 2021.
4. **TERMINATION.** Either party may terminate this Agreement after giving the other party written notice, as provided herein, ten days before the termination is effective.
5. **COMPLIANCE WITH ALL LAWS.** CONTRACTOR shall, at CONTRACTOR's sole cost, comply with all of the requirements of Municipal, State, and Federal authorities now in force, or which may hereafter be in force, pertaining to this Agreement, and shall faithfully observe in all activities relating to or growing out of this Agreement all Municipal ordinances and State and Federal statutes, rules or regulations, and permitting requirements now in force or which may hereafter be in force including, without limitation, obtaining a City of Bakersfield business tax certificate (Bakersfield Municipal Code Chapter 5.02) where required.
6. **INDEPENDENT CONTRACTOR.** This Agreement calls for CONTRACTOR's performance of the Scope of Work as an independent contractor. CONTRACTOR is not an agent or employee of the CITY for any purpose and is not entitled to any of the benefits provided by CITY to its employees. This Agreement shall not be construed as forming a partnership or any other association with CONTRACTOR other than that of an independent

contractor.

7. **DIRECTION.** CONTRACTOR retains the right to control or direct the manner in which the services described herein are performed.
8. **EQUIPMENT.** CONTRACTOR will supply all equipment, tools, materials and supplies necessary to perform the services under this Agreement.
9. **STARTING WORK.** CONTRACTOR shall not begin work until authorized to do so in writing by CITY. No work will be authorized before the date first written above.
10. **KEY PERSONNEL.** CONTRACTOR shall name all key personnel to be assigned to perform the Scope of Work. All key personnel shall be properly licensed and have the experience to perform the work called for under this Agreement. CONTRACTOR shall provide background for each of the key personnel including, without limitation, resumes and work experience performing work similar to the Scope of Work. CITY reserves the right to approve key personnel. Once the key personnel are approved, CONTRACTOR shall not change such personnel without CITY's written approval.
11. **INCLUDED DOCUMENTS.** Any bid documents, including, without limitation, special provisions and standard specifications and any Request for Proposals, Request for Qualifications and responses thereto relating to this Agreement are incorporated by reference as though fully set forth herein.
12. **LICENSES.** CONTRACTOR shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits and approvals which are legally required for CONTRACTOR to practice its profession and perform the Scope of Work. If CONTRACTOR is a corporation, at least one officer or key employee shall hold the required licenses or professional degrees. If CONTRACTOR is a partnership, at least one partner shall hold the required licenses or professional degrees.
13. **STANDARD OF PERFORMANCE.** The Scope of Work shall be performed in conformity with all legal requirements and industry standards observed by a specialist of CONTRACTOR's profession in California.
14. **SB 854 COMPLIANCE.** To the extent Labor Code Section 1771.1 applies to this Agreement, a contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, be subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any

contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of Labor Code Section 1771.1 for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded. The prime contractor is required to post job site notices in compliance with Title 8 California Code of Regulations Section 16451. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

15. **NO WAIVER OF DEFAULT.** The failure of any party to enforce against another party any provision of this Agreement shall not constitute a waiver of that party's right to enforce such a provision at a later time and shall not serve to vary the terms of this Agreement.

16. **INSURANCE.**

- 16.1 **Types and Limits of Insurance.** In addition to any other insurance or security required under this Agreement, CONTRACTOR must procure and maintain, for the duration of this Agreement, the types and limits of insurance below ("Basic Insurance Requirements").

- 16.1.1 **Automobile liability insurance,** providing coverage for owned, non-owned, and hired autos on an occurrence basis for bodily injury, including death, of one or more persons, property damage, and personal injury, with limits of not less than \$1,000,000 per occurrence.

- 16.1.2 **Commercial general liability insurance,** unless otherwise approved by CITY's Risk Manager, providing coverage on an occurrence basis for bodily injury, including death, of one or more persons, property damage, and personal injury, with limits of not less than \$1,000,000 per occurrence. The policy must:

- 16.1.2.1 Provide contractual liability coverage for the terms of this Agreement;

- 16.1.2.2 Provide products and completed operations coverage;

16.1.2.3 Provide premises, operations, and mobile equipment coverage; and

16.1.2.4 Contain an additional insured endorsement in favor of CITY and its mayor, council, officers, agents, employees, and designated volunteers.

16.1.3 **Workers' compensation insurance** with limits of not less than \$1,000,000 per occurrence. In accordance with the provisions of Labor Code Section 3700, every contractor will be required to secure the payment of compensation to his employees. Pursuant to Labor Code Section 1861, CONTRACTOR must submit to CITY the following certification before beginning any work on the Improvements:

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

By executing this Agreement, CONTRACTOR is submitting the certification required above.

The policy must contain a waiver of subrogation in favor of CITY and its mayor, council, officers, agents, employees, and designated volunteers.

16.2 General Provisions Applying to All Insurance Types.

16.2.1 All policies required of CONTRACTOR must be written on a first-dollar coverage basis, or contain a deductible provision. Subject to CITY's advance approval, CONTRACTOR may utilize a self-insured retention in any or all of the policies provided, but the policy or policies may not contain language, whether added by endorsement or contained in the policy conditions, that prohibits satisfaction of any self-insured provision or requirement by anyone other than the named insured or by any means including other insurance or which is intended to defeat the intent or protection of an additional insured.

- 16.2.2** All policies required of CONTRACTOR must be primary insurance as to CITY and its mayor, council, officers, agents, employees, or designated volunteers and any insurance or self-insurance maintained by CITY and its mayor, council, officers, agents, employees, and designated volunteers must be excess of CONTRACTOR's insurance and must not contribute with it.
- 16.2.3** The insurance required above, except for workers' compensation insurance, must be placed with insurers with a Best's rating as approved by CITY's Risk Manager, but in no event less than A-:VII. Any deductibles, self-insured retentions, or insurance in lesser amounts, or lack of certain types of insurance otherwise required by this Agreement, or insurance rated below Best's A-:VII, must be declared prior to execution of this Agreement and approved by CITY in writing.
- 16.2.4** The insurance required in this section must be maintained until the Scope of Work is satisfactorily completed as evidenced by CITY's written acceptance. All policies must provide that there will be continuing liability thereon, notwithstanding any recovery on any policy.
- 16.2.5** Full compensation for all premiums which the CONTRACTOR is required to pay to satisfy the Basic Insurance Requirements shall be considered as included in the prices paid for the performance of the Scope of Work, and no additional allowance will be made therefor or for additional premiums which may be required by extensions of the policies of insurance.
- 16.2.6** It is further understood and agreed by CONTRACTOR that its liability to CITY will not in any way be limited to or affected by the amount of insurance obtained and carried by CONTRACTOR in connection with this Agreement.
- 16.2.7** Unless otherwise approved by CITY, if any part of the Scope of Work is subcontracted, the Basic Insurance Requirements must be provided by, or on behalf of, all subcontractors even if CITY has approved lesser insurance requirements for CONTRACTOR, and all subcontractors must agree in writing to be bound by the provisions of this section.

17. **THIRD PARTY CLAIMS.** In the case of public works contracts, CITY will timely notify CONTRACTOR of third party claims relating to this Agreement. CITY shall be allowed to recover from CONTRACTOR, and CONTRACTOR shall pay on demand, all costs of notification.
18. **INDEMNITY.** CONTRACTOR shall indemnify, defend, and hold harmless CITY and CITY's officers, agents and employees against any and all liability, claims, actions, causes of action or demands whatsoever against them, or any of them, before administrative or judicial tribunals of any kind whatsoever, arising out of, connected with, or caused by CONTRACTOR or CONTRACTOR's employees, agents, independent contractors, companies, or subcontractors in the performance of, or in any way arising from, the terms and provisions of this Agreement whether or not caused in part by a party indemnified hereunder, except for CITY's sole active negligence or willful misconduct.
19. **ASSIGNMENT.** Neither this Agreement nor any rights, interests, duties, liabilities, obligations or responsibilities arising out of, concerning or related in any way to this Agreement (including, but not limited to, accounts, actions, causes of action, claims, damages, demands, liabilities, losses, obligations, or reckonings of any kind or nature whatsoever, for compensatory or exemplary and punitive damages, or declaratory, equitable or injunctive relief, whether based on contract, equity, tort or other theories of recovery provided for by the common or statutory law) may be assigned or transferred by any party. Any such assignment is prohibited, and shall be unenforceable and otherwise null and void without the need for further action by the non-assigning party or parties.
20. **ACCOUNTING RECORDS.** CONTRACTOR shall maintain accurate accounting records and other written documentation pertaining to all costs incurred in performance of this Agreement. Such records and documentation shall be kept at CONTRACTOR's office during the term of this Agreement, and for a period of three years from the date of the final payment hereunder, and made available to CITY representatives upon request at any time during regular business hours.
21. **BINDING EFFECT.** The rights and obligations of this Agreement shall inure to the benefit of, and be binding upon, the parties to the Agreement and their heirs, administrators, executors, personal representatives, successors and assigns.
22. **CORPORATE AUTHORITY.** Each individual signing this Agreement on behalf of entities represents and warrants that they are, respectively, duly

authorized to sign on behalf of the entities and to bind the entities fully to each and all of the obligations set forth in this Agreement.

23. **COUNTERPARTS.** This Agreement may be executed in any number of counterparts, each of which shall be considered as an original and be effective as such.
24. **EXECUTION.** This Agreement is effective upon execution. It is the product of negotiation and all parties are equally responsible for authorship of this Agreement. Section 1654 of the California Civil Code shall not apply to the interpretation of this Agreement.
25. **EXHIBITS.** In the event of a conflict between the terms, conditions or specifications set forth in this Agreement and those in exhibits attached hereto, the terms, conditions, or specifications set forth in this Agreement shall prevail. All exhibits to which reference is made in this Agreement are deemed incorporated in this Agreement, whether or not actually attached.
26. **FURTHER ASSURANCES.** Each party shall execute and deliver such papers, documents, and instruments, and perform such acts as are necessary or appropriate, to implement the terms of this Agreement and the intent of the parties to this Agreement.
27. **GOVERNING LAW.** The laws of the State of California will govern the validity of this Agreement and its interpretation and performance. Any litigation arising in any way from this Agreement shall be brought in Kern County, California.
28. **INTERPRETATION.** Whenever the context so requires, the masculine gender includes the feminine and neuter, and the singular number includes the plural.
29. **MERGER AND MODIFICATION.** This Agreement sets forth the entire agreement between the parties and supersedes all other oral or written representations. This Agreement may be modified only in a writing approved by the City Council and signed by all the parties.
30. **NON-INTEREST.** No CITY officer or employee shall hold any interest in this Agreement (California Government Code section 1090).
31. **NOTICES.** All notices relative to this Agreement shall be given in writing and shall be personally served or sent by certified or registered mail and be effective upon actual personal service or depositing in the United States mail. The parties shall be addressed as follows, or at any other address

designated by notice:

CITY: **CITY OF BAKERSFIELD**
CITY HALL
1600 Truxtun Avenue
Bakersfield, California 93301

CONTRACTOR: **SC Communications, Inc.**
5303 Woodmere Court
Bakersfield, CA 93313

- 32. RESOURCE ALLOCATION.** All CITY obligations under the terms of this Agreement are subject to the appropriation and allocation of resources by the City Council.
- 33. TITLE TO DOCUMENTS.** All documents, plans, and drawings, maps, photographs, and other papers, or copies thereof prepared by CONTRACTOR pursuant to the terms of this Agreement, shall, upon preparation, become CITY property.
- 34. TAX NUMBERS.**

CONTRACTOR's Federal Tax ID Number 77-0546784
CONTRACTOR is a corporation? Yes X No
(Please check one.)

[Signatures on Following Page]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above.

"CITY"
CITY OF BAKERSFIELD

"CONTRACTOR"

By: _____
KAREN GOH
Mayor

By:  _____
ANDREA OSUNA
General Manager

APPROVED AS TO FORM:
VIRGINIA GENNARO
City Attorney

By: _____
CHRISTINA J. OLESON
Deputy City Attorney
Insurance: _____

APPROVED AS TO CONTENT:
TECHNOLOGY SERVICES DEPARTMENT

By: _____
GREGORY PRONOVOST
Technology Services Director

COUNTERSIGNED:

By: _____
RANDY MCKEEGAN
Finance Director

Attachment: Exhibit A – SOW
Exhibit B – Quote

Statement of Work

Service From The Start (SFS)

SFS Comprehensive

1.0 Description

Service From The Start (SFS) Comprehensive provides all-component level service for the Equipment that is specifically named in the applicable agreement to which this Statement of Work (SOW) is attached or any of the agreement's subsequent revisions. Services are performed at the Sunny Communications Radio Repair Center.

SFS Comprehensive is only applicable on XTS®, XTL™, APX™, and some MOTOTRBO™ model radios. A radio model may be added to an SFS Comprehensive service agreement while it is currently being manufactured by Motorola, or for up to one (1) year after manufacturer cancellation date of said model. SFS Comprehensive includes:

- Repair and or replacement of cracked housings, frames, covers, crushed components, shields, missing components, circuit boards, warped circuit boards
- Damage to LCD screens (cracks to screen, or any damage that does not pass Motorola test parameters)
- Damaged foils/traces/lands
- Electrical damage
- Water/chemical corrosion
- Contaminants visible which cannot be cleaned up reliably

The customer will incur additional charges at the prevailing rates for any of the following activities, which are NOT covered under SFS Comprehensive:

- Replacement of consumable parts or accessories, as defined by product, such as batteries, antennas, and other similar items
- Internal and external component damage or destruction from force majeure events, including but not limited to natural or man-made disasters, such as fire, theft, and floods. Notwithstanding, if in the normal course of an emergency responder's duty, the product is taken into a fire, damage to the product will be covered.
- Non-remedial work, such as but not limited to firmware or protocol upgrades, reprogramming, and product configuration
- Repair of non-covered products
- Damages caused by using the device outside of the product's operational and environmental specifications
- Damages caused as a result of the device being modified or repaired by a third party

SC Communications Inc reserves the right to monitor the customer's repair history under this SFS Comprehensive service agreement. SC Communications Inc may take appropriate action if the customer's repair history under this SFS Comprehensive service appears to be in violation of this Statement of Work.

MOTOTRBO, XTS, XTL and APX model radios that are presently on a standard service agreement may be transferred to an SFS Comprehensive service agreement. These transferred units must either be models that are currently being manufactured by Motorola or models where manufacturing by Motorola was canceled within the prior 364 days.

Customers who wish to add MOTOTRBO, XTS, XTL and APX model radios that are currently being manufactured by Motorola that are not presently on a standard service agreement must be operating in accordance with Motorola specifications, and are not damaged. If Customer attempts to add radios to the SFS Service Agreement that are not operating in accordance with Sunny Communications specifications or are damaged, Sunny Communications may either terminate the Service Agreement, as provided in the Service Terms and Conditions, or in its sole discretion, Sunny Communications may terminate just those services covered by this SFS Comprehensive Statement of Work. Sunny Communications recommends a Preventative Maintenance check be completed on radios that are not currently under an SFS service agreement so the customer can confirm radios are operational and aligned with Sunny Communications specifications, and are not damaged.

Exhibit A

In addition to Equipment specifically named in the applicable agreement to which this Statement of Work is attached, Service From the Start Comprehensive includes single mobile control heads provided that they are required for normal operation of the Equipment and are included at the point of manufacture.

SFS Comprehensive excludes repairs to: optional accessories; standard mobile palm microphones; non-standard mobile microphones; iDEN mobile microphones; portable remote speaker microphones; optional or additional control heads; mobile external speakers; mobile power and antenna cables; and power supplies. Engraving service is not covered under SFS Comprehensive.

SFS Comprehensive is non-cancelable and non-refundable. If Equipment is added to the agreement subsequent to the Start Date, these units are also non-cancelable and non-refundable for the agreement duration. All added Equipment must be in "good working order" on the Start Date or when additional Equipment is added to the agreement. To ensure "good working order", added equipment will incur a time and material (T&M) repair fee if a repair is requested on that equipment within 30 days after being added to the agreement. Equipment may only be added to the agreement, via a customer signed or emailed Sunny Communications Inventory Adjustment Form (IAF). Complete and accurate serial numbers and model descriptions must be supplied or the added unit will not be included under the agreement and will incur a T&M repair fee.

All inventory adjustment requests for add-on subscriber units received prior to the 15th of the month will be effective the 1st of the following month. Equipment add-on requests received after the 15th of the month will be effective the 1st of the next succeeding month.

Equipment deletions from the agreement may only be deleted under the following limited conditions:

- a) Equipment was stolen and proof of theft is provided to Motorola; or
- b) Sunny Communications determines Equipment is damaged beyond repair; or
- c) Sunny Communications determines Equipment is no longer supportable or is obsolete; or
- d) Equipment had already been under a previous contract for at least the twelve month requirement.

Equipment deletions, where applicable, will be effective at the end of the month in which the request was received.

2.0 Sunny Communications has the following responsibilities:

2.1 Test and Restore the Equipment to Motorola factory specifications, including Factory Mutual (FM), and Mine Hazard Safety Association (MHSA).

2.2 Reprogram Equipment to original operating parameters based on the Customer template, if retrievable, or from a Customer supplied backup. If the Customer template is not usable, a generic template or code plug utilizing the latest Radio Service Software (RSS) or Customer Programming Software (CPS) version for that Equipment will be used. The Equipment will require additional programming by the Customer to restore the original template. All Firmware is upgraded to the latest release for each individual product line.

2.3 Clean external housing of the Equipment. External components of unit will only be replaced when functionality has been diminished.

2.4 Replace currently manufactured Equipment if it is determined that the Equipment is unrepairable. Motorola will contact the customer to inform them if Equipment needs to be replaced and that the cycle time may be increased because of the replacement. If unrepairable Equipment is no longer manufactured, the Customer will have the option of having the radio returned unrepared to them.

2.5 Pay the outbound freight charges. Sunny Communications will pay the inbound freight charges if the Customer uses the Sunny Communications designated delivery service.

2.6 Provide Customer with the Sunny Communications repair request form and Inventory Adjustment Form (IAF).

2.7 Perform covered services as requested by Customer on the Sunny Communications repair request form.

2.8 Process inventory adjustment requests received by email or fax from Customer. If the request is received by email, Sunny Communications will email an acknowledgement to the sender.

2.9 If applicable, notify Customer of changes in Sunny Communications designated inventory adjustment email address or fax number.

3.0 Customer has the following Responsibilities:

3.1 Supply Sunny Communications complete and accurate serial numbers and model description.

3.2 Utilize the Sunny Communications designated delivery service program to obtain Motorola payment for inbound shipping

Exhibit A

3.3 Access the Sunny Communications repair request form and Inventory Adjustment Form (IAF)

3.4 Initiate service request via SC Communications Inc repair request form with contract number referenced, and submit it with each unit of Equipment sent in for service. Mobile control heads or palm microphones sent in must reference the serial number of the main unit.

3.5 If desired, supply Sunny Communications with a backup Software template or programming in order to assist in returning the Equipment to original operating parameters. This step must be completed for Equipment that will not power up. If applicable, record the current flashcode for each radio.

3.6 If Sunny Communications must utilize a generic template or code plug to Restore Equipment to operating condition, Customer is responsible for any programming required to Restore Equipment to desired parameters.

3.7 Provide a signed or emailed Sunny Communications Inventory Adjustment Form (IAF) for all Equipment additions



5303 Woodmere Drive
Bakersfield, CA 93313
(661) 831-0191

Estimate

Date	Estimate #
7/1/2020	9642

Name / Address
City Of Bakersfield 1600 Truxtun Ave. Bakersfield, Ca. 93301

Rep	Project
ANO	

Description	Qty	Rate	Total
PREFERRED CUSTOMER SERVICE AGREEMENT MOTOROLA XTS2500 PORTABLE RADIOS FOR SFS COMPREHENSIVE SERVICE PLAN	500	84.03	42,015.00
PREFERRED CUSTOMER SERVICE AGREEMENT MOTOROLA XTS5000 PORTABLE RADIOS FOR SFS COMPREHENSIVE SERVICE PLAN	188	84.03	15,797.64
Contract 1/1/2021 thru 12/31/2021			

THIS QUOTE IS BASED ON THE FOLLOWING:

This quotation is provided to you for information purposes only and is not intended to be an offer or a binding proposal.

If you wish to purchase the quoted products, SC Communications, Inc. will be pleased to provide you with our standard terms and conditions of sale (which will include the capitalized provisions below), or alternatively, receive your purchase order which will be acknowledged. Thank you for your consideration of Motorola products. Quotes are exclusive of all installation and programming charges (unless expressly stated) and all applicable taxes. Purchaser will be responsible for shipping costs, which will be added to the invoice.

Prices quoted are valid for sixty (60) days from the date of this quote. Unless otherwise stated, payment will be due within thirty days after invoice. Invoicing will occur concurrently with shipping.

Subtotal \$57,812.64

Sales Tax (7.5%) \$0.00

Total \$57,812.64

Signature _____