

YADKIN COUNTY

NORTH CAROLINA

AGREEMENT FOR SERVICES

(Munis Contract Number) _____

This Agreement is made and entered into this 1st day of September, 20 16
("Effective Date") between Yadkin County, North Carolina ("County") and
Wireless Communications, Inc. ("Provider").

WHEREAS, the County and the Provider wish to enter into a contract under which the Provider will provide certain specified services and/or materials to the County in exchange for payment. NOW, THEREFORE, in consideration of the mutual covenants, promises, terms, conditions, and agreements herein, the County and the Provider agree as follows:

1. **Services To Be Performed.** The Provider agrees to perform the services and to provide the materials (all collectively called the "Services") for the County as authorized by the County Manager. Provider acknowledges that this Agreement does not guarantee that the County will assign the Provider any work; however, that the County from time to time may request the Provider to perform services for Yadkin County.

The Provider warrants that all materials it provides shall be of good quality and shall meet industry standards and the County's expectations and approval, and the Provider warrants that it shall perform all Services in a good and workmanlike manner, in accordance with industry standards and the County's expectations, and to the County's full satisfaction.

See "Exhibit A" attached hereto and incorporated as if fully setout herein. "Exhibit A" lists in detail the scope of services to be provided under this contract. Any changes to "Exhibit A" must be approved by the County Manager, in writing, prior to the service being provided.

2. **Term of the Agreement.** (Check the one provision that applies.)

☒ This Agreement shall end on February 28th, 20 17.

☐ This Agreement shall continue until the Provider has completed the Services to the County's satisfaction.

☐ This Agreement shall continue until terminated in accordance with Section 9 of the Agreement.

3. **Payment to the Provider.**

- ☐ The County shall pay the Provider \$_____ every _____.
- ☒ The County shall pay the Provider a total of \$ 12,615.18 for all Services performed under this Agreement. The Provider will invoice the County for Services as they are performed, but no more frequently than monthly.

In accordance with Item 3, Payment to the Provider, the County agrees to pay the Provider for Services satisfactorily performed in accordance with this Agreement. The County shall pay each properly submitted invoice within thirty (30) days of its submission. Each invoice shall document, to the County's satisfaction, the work performed and the basis for the amount of payment sought. If the Provider fails to perform in accordance with this Agreement, the County may, without penalty, withhold any payment(s) associated with Services not properly performed until and unless the Provider completes or corrects its performance, as applicable. The County's remedies under this Agreement are not exclusive and are in addition to all other rights and remedies provided by law.

4. **E-Verify.** North Carolina General Statutes prohibit counties from entering into contracts with contractors and subcontractors under the formal bid process and/or proposals who have not complied with the requirement of Article 2 of Chapter 64 of the NC General Statutes. Said Article 2 of Chapter 64 states *The prohibition applies to all contracts subject to G.S. 143-129, which are purchase contracts with an estimated cost of \$90,000 or more, and construction or repair contracts with an estimated cost of \$500,000 or more. GS 143-129 applies to virtually all public entities, including cities, counties, local school boards, water and sewer authorities, and other special purpose local government districts and authorities.* The Contractor must submit the E-Verify Affidavit with bid proposals and/or contracts as required by NC General Statutes.

5. **Non-waiver.** If the County at any time does not require the Provider to satisfy any of the Provider's obligations under this Agreement, or if the County fails at any time to exercise any right or privilege granted to it by this Agreement, that shall not waive or limit the County's ability to require the Provider to satisfy those obligations in the future or the County's ability to enforce its rights or privileges in the future. If the County waives any breach of this Agreement by the Provider that shall not be deemed a waiver of any later breach by the Provider, nor shall it be deemed a waiver of this section of the Agreement.

6. **Independent Contractor.** For purposes of this Agreement, the Provider at all times shall be considered an independent contractor, and the County shall not be deemed the employer of the Provider or of any of the Provider's agents or employees, nor shall the County be responsible for the actions or omissions of the Provider or its agents and employees. For purposes of this Agreement, the Provider and its agents and employees shall not be deemed an employee of the County for any purpose, including (by example only and not for purposes of limitation) federal or state income taxation, unemployment benefits, or worker's compensation benefits.

7. **Insurance.** During this Agreement's term, the Provider shall maintain at its sole expense all insurances as set out in this section. All insurance policies shall be issued by a company authorized to issue insurance in the State of North Carolina. Before beginning to perform under this Agreement, the Provider shall provide the County with a certificate of insurance showing that all insurance required by this Agreement is in effect, and the Provider shall keep that certificate current by submitting to the County updated certificates as the Provider's insurance policies are renewed or otherwise modified. The Provider shall notify the County immediately if any insurance required by this Agreement will be or has been cancelled or not renewed or if the amount of coverage of any such insurance will be or has been reduced.

The Provider shall maintain worker's compensation insurance as required by North Carolina law to cover all of the Provider's employees engaged in any work under the Agreement.

The Provider shall also maintain the following insurance to cover its performance under this Agreement during the Agreement's term:

- General commercial liability in the amount of \$1,000,000 per occurrence/\$2,000,000 aggregate.
- Workers' Compensation in the amount of \$500,000 employer's liability.
- Automobile liability covering all owned, hired, and non-owned vehicles used in connection with this Agreement. The minimum combined single limit shall be \$1,000,000 for bodily injury and property damage; and \$1,000,000 uninsured/underinsured motorist coverage.

8. **Indemnity.** The Provider agrees that it shall defend, indemnify, and hold harmless the County and its officials, employees, and agents from and against any and all losses, liabilities, claims, demands, suits, costs, damages, or expenses (including reasonable attorneys' fees) arising from or related to this Agreement and/or the Services, including (by example only and not for purposes of limitation) those for bodily injury, death, or property damage. The Provider's obligations under this section shall survive termination of this Agreement.

9. **Termination.** Notwithstanding any other provision of this Agreement, this Agreement may be terminated at any time by mutual written agreement of the County and the Provider, or it may be terminated by the County upon ten (10) days' written notice to the Provider. Ten days' written notice for termination by the County is not required if the County is terminating because the Provider has breached the Agreement.

10. **Entire Agreement.** This Agreement (including any attached Exhibits) constitute the complete and entire Agreement between the County and the Provider concerning the subject matter of the Agreement and supersedes any and all prior agreements, discussions, understandings, promises, or representations concerning that subject matter. This Agreement may be modified only by a writing signed by both the County and the Provider.

11. **Governing Law and Forum for Disputes.** This Agreement shall be governed by the laws of the State of North Carolina without regard to North Carolina's choice of law provisions. Any lawsuit or other legal proceeding concerning this Agreement and/or the Services must be filed in Yadkin County, North Carolina, unless it is properly filed in Federal Court, in which case it must be filed in the Federal District Court for the Middle District of North Carolina.

12. **Severance Clause.** If any part of this Agreement is deemed unenforceable by a court of competent jurisdiction, then that part shall be enforced to the greatest extent legally possible, and the rest of this Agreement will remain in full force and effect.

13. **Compliance With Laws.** The Provider acknowledges and agrees that it will perform all Services and will satisfy all of its obligations under this Agreement in full compliance with all applicable federal, state, and local laws and regulations.

14. **Repair of Damages.** The Provider shall promptly and fully repair any damages that it or its employees or agents cause to the County's property. Alternatively, the County may choose in its discretion to require the Provider to fully compensate the County for any such damages rather than have the Provider repair them.

15. **Titles and Headings.** Titles and headings used in this Agreement are for convenience only and do not limit or modify the language within each section of this Agreement.

16. **Non-Assignment.** The Provider may not assign its rights or obligations under this Agreement, nor may it sub-contract any part of this Agreement, without written approval from the County.

17. **Notices.** Any notice or communication to the County or the Provider for purposes of this Agreement shall be delivered or shall be deposited in the United States Mail, first class, addressed to the addressee below:

THE COUNTY

THE PROVIDER

Wireless Communications, Inc.

4800 Reagan Drive

Charlotte, NC 28206

18. **Number and gender.** This Agreement's use of singular, plural, masculine, feminine, and neuter pronouns shall include the others as the context may require.

19. **Exhibits.** To the extent of a conflict between the above language of this Agreement and any attachments, the above language of this Agreement will control.

IN WITNESS WHEREOF, the County and the Provider have caused this Agreement to be executed as of the Effective Date.

THE COUNTY

BY: _____

Name: Lisa Hughes

Title: County Manager

THE PROVIDER

BY: _____

Dave Walton

Name: _____

Dave Walton

Title: _____

General Manager

Digitally signed by Dave
Walton
Date: 2016.09.29 10:47:26
-04'00'

This instrument has been pre-audited in
the manner required by the Local
Government Budget and Fiscal Control Act.

Gary Groce

Digitally signed by Gary
DN: cn=Gary, o=Finance, ou=Yadkin Co,
email=ggroce@yadkincountync.gov, c=US
Date: 2016.09.28 11:34:12 -04'00'

Yadkin County Finance Officer

EXHIBIT A

TO AGREEMENT TO SERVICES

Below is a detailed listing of the scope of services to be provided under this contract. Any changes to "Exhibit A" must be approved by the County Manager, in writing, prior to the service being provided. (The detailed listing of the scope of services may also be described on one or more sheets attached hereto and incorporated herein, but each must be signed by the Provider and the County.)

See Attached:

- * Service Agreement
- * COI
- * E-Verify Affidavit
- * Iran Divestment Act

SERVICE AGREEMENT

1. **DEFINITIONS.** "Wireless" shall mean Wireless Communications, Inc.; "Customer" shall mean the Customer named in the Agreement; and "Product" shall collectively mean the Equipment and Software which Wireless and Customer agree to be serviced pursuant to this Service Agreement. Such Product is listed on the front of this Agreement.
2. **ACCEPTANCE.** The terms and conditions set forth on the front and reverse side of this Agreement is an offer to purchase Service by Customer which shall become a Service Agreement when acknowledged in writing by Wireless's Service Department; and the banking, negotiation or other use of any payment shall not constitute an acceptance by Wireless. It is agreed that Service shall be provided only on the terms and conditions contained in this Agreement. Wireless shall not be bound by terms and conditions in Customer's purchase order or elsewhere unless expressly agreed to in writing. Upon acceptance by Wireless's Service Department, Wireless's interest in the Agreement is assigned to Wireless Communications, Inc.
3. **SERVICE DEFINED**
 - a. Wireless agrees to provide service for the Customer for the Product listed on the front side of this Agreement. Such Product shall be serviced according to the terms and conditions on the front and reverse side of this Agreement ("Service"). The Service shall begin and end on the dates set forth on the front side of this Agreement. Wireless shall also Service other Product purchased by Customer during the term of this Agreement on the same terms and conditions set forth in this Agreement at then current service fees for such Product. Upon delivery of such other Product to Customer, service fees for Service on such other Product shall be added to the billing cycle following the expiration of the labor warranty on such other Product. In the event of loss, damage, theft, or removal from Service of any Product, Customer shall immediately report the loss, damage, theft or removal in writing to Wireless. In this event, Customer's obligation to pay service fees with respect to any such Product shall terminate at the end of the month in which Wireless receives such written report.
 - b. Mobile Product shall be removed and reinstalled in different vehicles at Customer's request for the service fee in effect at the time of the Customer's request.
 - c. This Agreement does not include service of any transmission line, antenna, tower or tower lighting, unless such work is described on the front of the Agreement. Service shall include the labor and parts required to repair Product which has become defective through normal wear and usage. This does not include consumables and the Installation. Service does not include the repair or replacement of Product which has otherwise become defective, including, but not limited to, damage caused by accidents, physical or electronic abuse or misuse, acts of God, fires or other casualty. Service performed for non-covered repairs shall be billed at Wireless' above contract rate applicable for such Service. Product under contract must be maintained in environmental conditions as set forth in the Product specifications and damage resulting from environmental conditions not conforming to the specifications is not covered by this Agreement.
 - d. Where telephone lines and Product are used in conjunction with Wireless maintained Product, Wireless shall have no obligations or responsibility for such telephone lines or Product but shall, upon request, assist the Telephone Company in repairing such upon payment at the appropriate above contract rate.
 - e. Customer shall indicate on the front side of this Agreement any Product which is intrinsically safe so that appropriate parts and procedures may be used to maintain such status.
 - f. At the expiration of twelve (12) months after the commencement of Service hereunder (or any time thereafter), if Product cannot in Wireless's opinion be properly or economically repaired, because (but not limited to) excessive wear, deterioration or unavailability of parts, Wireless, at its sole option, upon thirty (30) days prior written notice to customer sent by certified mail, may either: (1) remove such Product from this Agreement; or may increase the price to Service such Product. Customer shall have (30) days from receipt of notice of price increase to object to such increase. If Customer properly objects to such increase Wireless shall then have the option to remove such Product from coverage by the Agreement. Customer's obligation to pay Service fees with respect to Product removed from this Agreement shall terminate at the end of the month during which such Product is removed.
4. **SERVICE STANDARDS.** The Product shall be serviced by Wireless in accordance with the following standards: (i) Wireless part or parts of equal quality shall be used; (ii) the Products shall be serviced at levels set forth in Wireless's product manuals; and (iii) routine service procedures prescribed from time to time by Wireless for its Product shall be followed.
5. **TIME AND PLACE OF SERVICE.**
 - a. Service shall be done at the location specified on the front side of this Agreement. Where Service is to be performed at the location of the Product, Customer shall furnish shelter, heat, light and power at these locations. Customer shall notify Wireless immediately of Product failure, allow Wireless full and free access to the Product, and cooperate fully with Wireless in Wireless's servicing of the Product. Waiver of liability by Wireless against Customer or other restrictions shall not be imposed by Customer as a site access requirement. Customer shall allow Wireless full and free access to the Product. Customer shall allow Wireless to use necessary machines, communications, facilities, features and other product (except as normally supplied by Wireless) at no charge. Mobiles and removable Product under this Agreement shall be delivered by Customer to the Wireless Service Center indicated on the front side of this Agreement.
 - b. Hours of Service under this Agreement shall be the normal working hours, excluding holidays, of Wireless's Service Center unless otherwise indicated on the front side of this Agreement.
6. **PAYMENT/TAXES.** On or about the date each payment is due as set forth on the front side of this Agreement, Wireless shall send Customer an invoice covering the Service fees for the next Payment Period. All other charges shall be billed monthly and the Customer shall pay the amount of each invoice within thirty (30) days of its date to the Wireless office designated by Wireless. Each invoice shall be due and payable whether or not the Product is operating and Wireless may terminate this Agreement by giving Customer ten (10) days notice by certified mail if Customer defaults in its payment to Wireless. Customer shall reimburse Wireless for all property taxes, sales and use taxes, excise taxes, and other taxes or assessments now or hereafter imposed by authority of any Federal, State, or Local law, rule or regulation with respect to the Service of the Product except Federal income and profit taxes of Wireless and income and franchise taxes of Wireless.
7. **RIGHT TO SUBCONTRACT.** Wireless shall have the right to subcontract in whole or in part the Service called for by this Agreement as long as subcontractor personnel are equally qualified to that of Wireless. Determination of qualification is at the sole discretion of Customer. Wireless shall notify customer of name, address, phone number and contact person immediately upon determining such subcontracting is necessary. Customer reserves the right to cancel Agreement, or seek alternative service provider, if subcontractor is unacceptable to Customer provided Wireless does not provide approved contractor to Customer.
8. **REVISION OF FEES.** Prior to the anniversary of the "Expiration Date" indicated on the front side of this Agreement, Wireless may revise the Service fees set forth on the front side of this Agreement by giving Customer written notice of the amount of the increase at least sixty (60) days in advance of the Anniversary date. Upon receipt of any such notice, Customer, as determined this Agreement on the Expiration Date or any Anniversary of it upon thirty (30) days prior written notice to Wireless sent by certified mail to the address indicated in this Agreement, otherwise the new fees shall become effective on the Anniversary date. In the event of such termination, all accrued and unpaid charges shall be due and payable immediately upon termination.
9. **AUTOMATIC RENEWAL.** After the Expiration Date indicated on the front side of this Agreement, this Agreement shall continue for successive additional periods of one year, provided that either Wireless or Customer may terminate this Agreement on the Expiration Date or Anniversary of it, or otherwise as herein provided, upon thirty (30) days prior written notice to the other party sent by certified mail to the address indicated in this Agreement.
10. **INTERRUPTION OF SERVICE.** Customer shall notify the servicing agency in the event of the failure of any Product. If the servicing agency fails to repair the Product within a reasonable time, Customer shall notify the Wireless office designated by Wireless. After said notice from Customer to the servicing agency and to the Wireless office designated by Wireless, Wireless shall be liable for any interruption or interference affecting the use of transmission through the Product maintained to the extent of a pro rata allowance based on the monthly service fee for the time such interruption or interference is attributable to the fault of Wireless or its subcontractor. Wireless does not assume and shall have no liability under this Agreement for failure to provide or delay in providing service for the Product due directly or indirectly to causes beyond the control of Wireless, including, but not restricted to, acts of God, acts of public enemy, acts of the United States, or any State, Territory of the United States, or any political subdivision of the foregoing, or the District of Columbia, acts of failure to act of the Customer, its agents, employees or subcontractors, fires, floods, casualty, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather conditions or defaults of Wireless subcontractors due to any such causes.
11. **WARRANTY LIMITATIONS. EXCEPT AS SPECIFIED IN THIS AGREEMENT, WIRELESS DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL WIRELESS BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES TO THE FULL EXTENT SUCH MAY BE DISCLAIMED BY LAW, FCC AND OTHER GOVERNMENT MATTERS.** Although Wireless may assist in preparation of the FCC license application, Customer is solely responsible for obtaining any licenses or other authorizations required by the Federal Communications Commission ("FCC") or any Federal, State, or Local governmental agency. Customer is solely responsible for complying with the applicable FCC rules and regulations and the applicable rules and regulations of any other Federal, State, or Local governmental agency. Neither Wireless or any of its employees is an agent of Customer in FCC or other governmental matters. Wireless, however, may assist in preparation of the FCC license application at no charge to Customer.
12. **ENTIRE AGREEMENT.** Customer acknowledges that it has read and understands the terms and conditions of the Agreement and agrees to be bound by them, that it is the complete and conclusive statement of the Agreement between the parties and that this Agreement sets forth the entire agreement and understanding between the parties relating to the subject matter hereof and all understandings and agreements, oral and written, heretofore made between Wireless and Customer, are merged in this Agreement which alone fully and Completely expresses their agreement.
13. **AMENDMENT.** No modification of or additions to this Agreement shall be binding upon Wireless unless such modification is in writing and signed by the Wireless Division Service Vice President authorized to make such revisions and authorized agent of Customer.
14. **VALIDITY.** If any term or provision of this Agreement shall to any extent be held by a court or other tribunal to be invalid, void, or unenforceable, then that term or provision shall be inoperative and void insofar as it is in conflict with law, but the remaining terms and provisions of the Agreement shall nevertheless continue in full force and effect and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid, void, or unenforceable.
15. **HEADINGS.** Section and paragraph headings used in this Agreement are for convenience only and are not to be deemed or construed to be part of this agreement.
16. **LAW. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES SHALL BE GOVERNED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NORTH CAROLINA.**
17. **ASSIGNMENT.** No assignment or transfer, in whole or in part, of this Agreement by Customer or Wireless shall be binding upon the other party without its prior written consent.
18. **WAIVER.** Failure or delay on the part of Wireless or Customer to exercise any right, power or privilege under this Agreement shall not operate as a waiver of any right, power, or privilege of this Agreement.
19. **TIME TO SUE.** Except for money due upon an open account, no action shall be brought for any breach of this Agreement more than two (2) years after the accrual of such cause of action except where a shorter limitation period is provided by applicable law.

NOTE:

DIRECT INQUIRES ABOUT THIS AGREEMENT TO YOUR LOCAL WIRELESS COMMUNICATIONS, INC. OFFICE AT 4800 NORTH I-85, CHARLOTTE, NC 28206 OR 8724 GLENWOOD AVENUE, RALEIGH, NC 27612

CERTIFICATION OF ELIGIBILITY
Under the Iran Divestment Act

Pursuant to G.S. 147-86.59, any person identified as engaging in investment activities in Iran, determined by appearing on the Final Divestment List created by the State Treasurer pursuant to G.S. 147-86.58, is ineligible to contract with the State of North Carolina or any political subdivision of the State. The Iran Divestment Act of 2015, G.S. 147-86.55 *et seq.** requires that each vendor, prior to contracting with the State certify, and the undersigned on behalf of the Vendor does hereby certify, to the following:

1. that the vendor is not identified on the Final Divestment List of entities that the State Treasurer has determined engages in investment activities in Iran;
2. that the vendor shall not utilize on any contract with the State agency any subcontractor that is identified on the Final Divestment List; and
3. that the undersigned is authorized by the Vendor to make this Certification.

Vendor: Mobile Communications America, Inc. dba Wireless Communications

By: 
Signature

4/12/16
Date

Dennis Dawley
Printed Name

Divisional CFO
Title

The State Treasurer's Final Divestment List can be found on the State Treasurer's website at the address:
<https://www.nctreasurer.com/inside-the-department/OpenGovernment/Pages/Iran-Divestment-Act-Resources.aspx>
and will be updated every 180 days. For questions about the Department of State Treasurer's Iran Divestment Policy, please contact Meryl Murtagh at Meryl.Murtagh@nctreasurer.com or (919) 814-3852.

* Note: Enacted by Session Law 2015-118 as G.S. 143C-55 *et seq.*, but has been renumbered for codification at the direction of the Revisor of Statutes.