

Service Agreement

Internet Connectivity & Dark Fiber WAN

To: Eric McHenry
 City of Santa Rosa
 Purchasing
 90 Santa Rosa Avenue
 Santa Rosa, CA 95404

Date: April 27, 2017
 Expiration Date: 60 days from today

Prepared by: Dane Jasper/Kinderlin Coddling
 707-522-1000
dane.jasper@sonic.com
kinderlin.coddling@sonic.com

Contract Term: 36 months

Qty	Service Description	Setup	Monthly	Term	Yearly	Full Contract Term Amount
1	Internet Access 1Gbps/500Mbps – service address 90 Santa Rosa Avenue	\$0.00	\$2,400	36 mos	\$28,800.00	\$86,400.00
1	Dark Fiber WAN – linking 90 Santa Rosa Avenue to the Vistor’s Bureau 9 4 th Street	\$0.00	\$ 800	36 mos	\$9,600.00	\$28,800.00

Total Set up:	Total Monthly:	Total Annually:	Total Contract Term Amount
\$0.00	\$3,200.00	\$38,400.00	\$115,200.00

*not inclusive of any federal, state or local taxes or fees

Typical provisioning and delivery interval Service delivery will take 90 to 180 days. A portion of this time interval is permit issuance dependent.

Total contract amount for three-year term, not to exceed \$115,200.00

Initial:

Account Information

PRIMARY ACCOUNT OWNER		
Company Name: City of Santa Rosa		
Service Address: 90 Santa Rosa Avenue		
City: Santa Rosa	State: CA	Zipcode: 95404
Primary Contact: Eric McHenry		Title: Chief Information Officer
Contact Telephone: 707-543-3097		Email: emchenry@srcity.org
_____ BY INITIALING HERE, YOU ACKNOWLEDGE THAT THE SERVICE ADDRESS LISTED ABOVE IS CORRECT.		

ON-SITE TECHNICAL CONTACT (This person will be contacted for site survey and installation)	IMPLEMENTATION CONTACT (This person will receive all correspondence during provisioning)
ADD CONTACT AS ADDITIONAL ADMIN	ADD CONTACT AS ADDITIONAL ADMIN
Contact Name: Brian Hovland	Contact Name: Kristie Bartlett
Phone: 707-543-4309	Phone: 707-543-3104
Email: bhovland@srcity.org	Email: kbartlett@srcity.org
PROPERTY MANAGEMENT (if applicable)	RISER MANAGEMENT (if applicable)
CERTIFICATE OF INSURANCE REQUIRED	
Contact Name:	Contact Name:
Phone:	Phone:
	Email:

BILLING INFORMATION		
Billing Name: City of Santa Rosa – IT Dept		
Billing Address: 90 Santa Rosa Avenue, 2 nd Floor		
City: Santa Rosa	State: CA	Zipcode: 95404
Billing Contact: Tara Norman	Phone: 707-543-3131	Billing Email: tnorman@srcity.org
Credit card #: srcity (account card on file)	Exp:	CSC:
Name on credit card:		Desired or Current username: srcity

All invoices and receipts will be sent via email to the billing email address provided above. This email address needs to be in use by someone associated with accounts payable.

Internet Access Service Agreement

Agreement Number _____

This Internet Access Service Agreement (the "Agreement") is made and entered into as of the _____ day of _____, 2017 (the "Effective Date"), by and between Sonic ("Sonic") and City of Santa Rosa ("Customer"), (Sonic and Customer are collectively referred to as the "Parties," and each individually as a "Party.") This Agreement consists of the terms and conditions below and in the Sonic Acceptable Use Policy, which is incorporated herein by this reference.

1.0 Services. Pursuant to the terms hereof, Customer is purchasing the Sonic Internet Access Service. The Sonic Internet Access Service utilizes a fully multi-homed autonomous system, with routing redundancy to the Internet, that allows high speed access to Sonic's facilities in the following manner:

1.1 Commencement of Service. Sonic will make commercially reasonable efforts to deliver Internet Access Service at the contracted speed within its service territory. On delivery and testing of a circuit, if Sonic determines a stable connection at the contracted speed cannot be provided, Sonic and the Customer shall each have the right to terminate this Agreement without liability or the Customer may elect to execute a new contract with Sonic for a service that is deliverable at the requested location(s).

1.2 Turn Up by Customer. Customer shall have thirty (30) days to turn up the circuit and to perform any required testing with Sonic's assistance. If the Customer does not connect their equipment for testing and turn-up with Sonic, Inc.'s assistance within the thirty (30) day turn-up window, the Customer will be deemed to have unconditionally accepted the circuit.

1.3 Service Quality. Subject to the warranty provisions hereof, absent causes beyond its control, Sonic will use reasonable commercial efforts to ensure that its: (i) Internet Access Service will be available at least 99.99% of the time; (ii) RTT will not exceed 50ms average; and (iii) packet loss will be less than 1% at the first hop.

1.4 Adds Deletions Moves and/or Changes. Sonic may add, delete and/or change the Internet Access Service, in its sole discretion and without liability, by providing fifteen (15) days prior written notice to Customer.

2.0 Acceptable Use Policy – Customers, including all associated users, must comply with Sonic's Acceptable Use Policy (AUP) and all accepted Internet access policies of all upstream networks, including but not limited to, UUNet, NLayer, and Global Crossing. Sonic's AUP shall be as set forth on Sonic's website (<http://www.sonic.com/aup>) as amended from time to time.

3.0 Payment – Invoices will be issued once each calendar month and payment is due on the 1st day of each succeeding calendar month. If full payment is not received by the 10th day of any month, service may be interrupted until full payment is received. If Sonic, Inc. still has not received full payment by the 30th day of any calendar month, service will be disconnected. Customer must provide and maintain a valid credit or debit card, against which all applicable fees will be automatically charged if arrangements have not been made to pay by check.

3.1 If service is disconnected due to non-payment and Sonic decides in its discretion to reinstate service.

3.2 All disputes as to any invoiced amount must be submitted in writing within fifteen (15) days of Customer's receipt of each invoice or the right to dispute will be waived in its entirety. Complete documentation setting forth and establishing all bases of the dispute must be provided within this fifteen (15) day period. Notwithstanding any dispute, the full amount of all disputed and undisputed amounts must be paid in full when due. Sonic shall respond with a determination as to the legitimacy of each dispute within thirty (30) days of receipt. Disputed amounts deemed correct by Sonic shall be credited by Sonic to Customer on the invoice(s) immediately following the determination by Sonic.

4.0 Indemnification -

INDEMNIFICATION. Sonic shall indemnify, hold harmless, and defend the City (including its elected officials, officers, agents and employees) from and against any and all claims (including all litigation, demands, damages, liabilities, costs, and expenses, and including court costs and attorney's fees) resulting or arising from performance, or failure to perform, under this Agreement.

INSURANCE - Sonic shall, throughout the duration of this Agreement, maintain insurance to cover Sonic (including its agents, representatives, and employees) in connection with the performance of services under this Agreement of the types and in the coverage amounts set forth in Attachment 1 entitled "Insurance Requirements for Technology Agreements". This Agreement identifies the minimum insurance levels with which Sonic shall comply; however, the minimum insurance levels shall not relieve Sonic of any other performance responsibilities under this Agreement (including indemnity language) and Sonic may carry, at its own expense, any additional insurance it deems necessary or prudent. Concurrently with the execution of this Agreement by Sonic, and prior to the commencement of any services, Sonic shall furnish written proof of insurance (certificates and endorsements), in a form acceptable to the City. Sonic shall provide substitute written proof of insurance no later than 30 days prior to the expiration date of any insurance policy required by this Agreement.

5.0 DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY

Sonic provides services hereunder strictly on an "AS IS" and "AS AVAILABLE" basis without any warranty, guarantee or other assurance of quality, reliability or functionality. Except as expressly set forth herein, Customer accepts all risk, including all risk with respect to suitability, use and performance of Internet Connection Service. **SONIC DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.** In any instance involving performance or nonperformance by Sonic, Inc. with respect to services provided hereunder, Customer's sole remedy shall be a refund of a pro-rated portion of the price paid for Internet Access, which was not provided after the first twenty-four (24) consecutive hours in which the service failed to meet the quality of service standards set forth herein.

Customer acknowledges that the facilities and services of third parties may be used in connection with the services. Sonic is not liable for any act, omission to act, negligence or defect in the quality or availability of service of any underlying carrier or other service whose facilities or services are used in furnishing any portion of the service received by the Customer or for any failure of performance that is caused by or the result of any act or omission by customer or any entity other than Sonic that furnishes services, facilities, or equipment used in connection with Sonic's services or facilities.

Sonic, Inc. will not be liable for any damage that Customer may suffer arising out of use, or inability to use, the Internet Access Service. Sonic, Inc. will not be liable for unauthorized access to Customer's transmission facilities of Customer Customer's data files, programs, procedures or information through accident, fraudulent means or devices, or any other method, regardless or whether such damage occurs as a result of Sonic's negligence. Sonic shall not be liable for indirect, consequential, incidental or special damages even if advised of the possibility in advance. Sonic shall not be liable for any lost property or data of Customer or Customer Customers. Sonic's liability for damages to Customer for any cause whatsoever, regardless of form of action, shall be limited to the pro-rated portion of the monthly charge actually paid by the customer for the period after the first twenty-four (24) consecutive hours in which the service failed to meet the quality of service standards set forth herein.

6.0 TERMINATION

- 6.1 *Term.* This contract is for an initial thirty-six (36) month term. Contract term begins once service is installed and billing begins
- 6.2 *Moves.* If Customer moves to a new service address that is not within range for service with Sonic, Customer will remain obligated to pay the full monthly charge for the remainder of the term.
- 6.3 *Termination by Either Party.* Services may be terminated by providing the other party with thirty (30) days prior written notice on company letterhead. In the event that neither party gives such notice prior to the end of the initial or any subsequent term, this agreement will automatically be renewed for an additional term of 30 days. Absent the written agreement of the parties, pricing during any Renewal Term shall be the then current price for service at the commencement of the Renewal Term.
- 6.4 If any of the events below occur with respect to one party, then the other party may terminate this Agreement effective immediately upon the delivery of written notice:

1. A party becomes insolvent; files a voluntary petition in bankruptcy, proposed any dissolution, liquidation, reorganization or recapitalization; has filed against it an involuntary petition in bankruptcy, or receiver is appointed or takes possession of the party's property, and such petition is not dismissed or stayed within ten (10) calendar days of such filing, appointment or taking possession; makes an assignment for the benefit of creditors, or is adjudicated as bankrupt; or takes any similar action under the law of any jurisdiction.
2. Material breach of this Agreement which is not remedied within ten (10) calendar days after written notice (describing the breach with particularity) has been given.
3. Customer is merged into or acquired by another entity or there is a substantial change in Customer's direct or indirect ownership or control of its voting securities or the sale of substantially all of its assets.

6.5 Effect of Termination. Upon termination Customer agrees immediately to cease all use of the Internet Access Service and to return any Sonic, Inc.-provided equipment, software and Colocation access cards, at Customer's expense and risk, to be received by Sonic within three (3) business days. Notwithstanding any termination hereof, Customer shall be and remain liable to Sonic for the full replacement cost of any equipment, software and Colocation access cards that it fails to return to Sonic, as well as the repair or replacement cost of any equipment, software and/or Colocation access cards that are returned in a damaged condition. All equipment and software shall be shipped to:

Sonic, Inc
Attention: NOC.
2260 Apollo Way
Santa Rosa, CA 95407

7.0 FORCE MAJEURE – Neither Party will be liable for, or will be considered to be in breach of or default under this Agreement on account of, any delay or failure to perform as required by this Agreement as a result of any causes or conditions that are beyond such Party's reasonable control and that such Party is unable to overcome through the exercise of commercially reasonable diligence. If any force majeure event occurs, the affected Party will give prompt written notice to the other Party and will use commercially reasonable efforts to minimize the impact of the event.

8.0 NOTICE AND PAYMENT – Any notice required to be given under this Agreement shall be in writing and delivered personally to the other designated party at the above stated address, "Attention: Billing", or mailed by certified, registered or Express mail, return receipt requested or by overnight delivery. Either party may change the address to which notice or payment is to be sent by written notice to the other under any provision of this paragraph.

Sonic, Inc
Attention: Billing.
2260 Apollo Way
Santa Rosa, CA 95407
(707) 522-1000

City of Santa Rosa
Attn: Eric McHenry
90 Santa Rosa Avenue, 2nd Floor
Santa Rosa, CA 95404
(707) 543-3097

9.0 JURISDICTION/DISPUTES – This Agreement shall be governed in accordance with the laws of the State of California. All disputes under this Agreement shall be resolved by litigation in the courts of State of California including the federal courts therein and the Parties all consent to the jurisdiction of such courts, agree to accept service of process by mail, and hereby waive any jurisdiction or venue defenses otherwise available to it.

10.0 AGREEMENT BINDING ON SUCCESSORS – The provisions of the Agreement shall be binding upon and shall inure to the benefit of the Parties hereto, their heirs, administrators, successors and assigns.

11.0 ASSIGNABILITY – Customer shall not have the right to assign this Agreement or the rights and obligations hereunder to any third party without the prior express written approval of Sonic, which consent shall not be unreasonable withheld.

12.0 WAIVER – No waiver by either party of any default shall be deemed as a waiver of prior or subsequent default of the same of the other provisions of this Agreement.

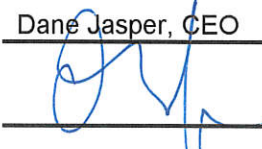
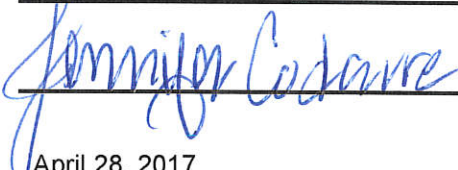
13.0 SEVERABILITY – If any term, clause or provision hereof is held invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other term, clause or provision and such invalid term, clause or provision shall be deemed to be severed from the Agreement.

14.0 AUTHORITIES AND CONSENTS – By executing below, each person represents and warrants that he/she is authorized to bind the party on whose behalf of he/she is signing and that the consents of third parties is not required to perfect this right.

15.0 INTEGRATION – This Agreement constitutes the entire understanding of the Parties, and revokes and supersedes all prior agreements between the Parties and is intended as a final expression of their Agreement. This Agreement may not be modified or amended except in writing signed by the Parties hereto and specifically referring to this Agreement. This Agreement shall take precedence over any other documents which may conflict with this Agreement.

16.0 SERVICE LEVEL AGREEMENT – Encompassed is Sonic’s Internet Service Level Agreement.

By signing this agreement, you are stating that you are a sanctioned employee of the Company and have authorization to enter into this Agreement.

Customer		Sonic, Inc	
Company:	<u>City of Santa Rosa</u>	Name (printed):	<u>Dane Jasper, CEO</u>
Name (printed):	<u>Chris Coursey</u>	Signature:	
Title:	<u>Mayor</u>	Name (printed):	<u>Jen Codarre, Secretary</u>
Date:		Signature:	
Signature:		Date:	<u>April 28, 2017</u>

Additional Terms to add:

- 1. COMPLIANCE WITH LAWS AND REGULATIONS:** Seller represents and warrants that Seller has all licenses, permits, a City Business Tax Certificate, qualifications, and approvals of whatsoever nature that are legally required for Seller to provide goods and/or services under the Order. Seller shall comply with all applicable federal, state and local laws, rules, regulations, and ordinances, including but not limited to, (i) the Americans With Disabilities Act (ADA) of 1990, (42 U.S.C. 12101, et seq.), and any regulations and guidelines issued pursuant to the ADA, which prohibits discrimination against individuals with disabilities and may require reasonable accommodations; (ii) and Labor Code Sections 1700-1775, which require prevailing wages (in accordance with DIR schedule at www.dir.ca.gov) be paid to any employee performing work covered by Labor Code Section (except work done directly by any public utility company pursuant to order of the public Utilities Commissions or other public authority) 1720 et seq.; (iii) California Occupational Safety and Health Administration (Cal/OSHA) regulations; and (iv) the Immigration Reform and Control Act of 1986. Seller shall, if requested by City, provide certification and evidence of compliance. If Seller is an out-of-state corporation, Seller warrants and represents that it possesses a valid certificate of qualification to transact business in the State of California issued by the California Secretary of State pursuant to Section 2105 of the California Corporations Code.
- 2. PATENTS AND ROYALTIES:** All costs, fees, royalties and claims for any patented invention, article, process or method that may be used upon or in any manner connected with the supply of goods herein shall be paid by Seller. Should Seller, its agents or employees or any of them be enjoined from furnishing or using any invention, article, material or plans supplied or required to be supplied or used under the terms herein, Seller shall promptly substitute other articles, materials or appliances in lieu thereof of equal finish, efficiency, quality, suitability and market value and satisfactory

in all respects to City. In the event that City elects, in lieu of such substitution, to have supplied and to retain and use any inventions, articles, materials, or plans as may be required to be supplied, Seller shall pay such royalties and secure such valid licenses as may be requisite for City, its officers, agents and employees, or any of them to use such invention, article, materials or appliances without being disturbed or in any way interfered with by any proceeding at law or equity on account thereof. Should Seller neglect or refuse to make the substitution promptly or to pay such royalties and secure such licenses as may be necessary, then City shall have the right to make such substitution or City may pay such royalties and secure such licenses and charge the Seller even though final payment under the contract may have been made.

3. RETENTION OF RECORDS: Seller shall be required to retain any records necessary to document the charges for goods provided and services performed and make such records available to City for inspection at the City's request for a period of four years.
4. PERFORMANCE OF SERVICES: With respect to the performance of services under this Order, Seller shall perform all services in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Seller's trade or profession. Seller hereby warrants that all work will be performed in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state, and local laws, it being understood that acceptance of Seller's work by City shall not operate as a waiver or release. Seller shall assign only competent personnel to perform services hereunder. In the event that at any time the City, in its sole discretion, desires the removal of any person or persons assigned to perform services hereunder, Seller shall remove such person or persons immediately upon written notice from City. Seller shall perform the services described on the Order within the time or dates set forth therein.
5. INDEPENDENT CONTRACTOR: The parties intend that Seller, in performing services herein specified, shall act as an independent contractor and shall have control of its work and the manner in which it is performed. It shall be free to contract for similar services to be performed for other employers while it is under contract with City. Seller is not to be considered an agent or employee of City and is not entitled to participate in any pension plan, medical, or dental plans, or any other benefit provided by City for its employees.
6. BUSINESS TAXES: Seller shall pay to City, when due, all business taxes payable by Seller under the provisions of Chapter 6-04 of the Santa Rosa City Code. City may deduct any delinquent business taxes, and any penalties and interest added to the delinquent taxes, from its payments to Seller.
7. NON-DISCRIMINATION: With respect to the provision of goods or services under the Order, Seller agrees not to discriminate against any person because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of that person.

Attachments:

Attachment One - Insurance Requirements

**ATTACHMENT ONE
INSURANCE REQUIREMENTS FOR
TECHNOLOGY AGREEMENTS**

- A. Insurance Policies:** At all times during the terms of this Agreement, maintain and keep in full force and effect, the following policies of insurance with minimum coverage as indicated below and issued by insurers with AM Best ratings of no less than A-:VI or otherwise acceptable to the City:

Insurance	Minimum Limits	Coverage	Additional Coverage Requirements
1. Commercial general liability	\$ 1 million per occurrence \$ 2 million aggregate		Coverage must be at least as broad as ISO CG 00 01 and must include completed operations coverage. If insurance applies separately to a project/location, aggregate may be equal to per occurrence amount. Coverage may be met by a combination of primary and umbrella or excess insurance but umbrella and excess shall provide coverage at least as broad as specified for underlying coverage. Coverage shall not exclude subsidence.
2. Business auto coverage	\$ 1 million		ISO Form Number CA 00 01 covering any auto (Code 1), or if Consultant Sonic has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$ 1 million per accident for bodily injury and property damage.
4. Workers' compensation and employer's liability	\$ 1 million		As required by the State of California, with Statutory Limits and Employer's Liability Insurance with limit of no less than \$ 1 million per accident for bodily injury or disease. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Consultant Sonic, its employees, agents and subcontractors.

B. Endorsements:

1. All policies shall provide or be endorsed to provide that coverage shall not be canceled, except after prior written notice has been provided to the City in accordance with the policy provisions.
2. Liability, umbrella and excess policies shall provide or be endorsed to provide the following:
 - a. For any claims related to this project, Sonic insurance coverage shall be primary and any insurance or self-insurance maintained by City shall be excess of the Sonic insurance and shall not contribute with it; and,
 - b. **The City of Santa Rosa, its officers, agents, employees and volunteers are to be covered as additional insureds on the CGL policy.** General liability coverage can be provided in the form of an endorsement to Sonic insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used.

- C. Verification of Coverage and Certificates of Insurance:** Sonic shall furnish City with original certificates and endorsements effecting coverage required above. Certificates and endorsements shall make reference to policy numbers. All certificates and endorsements are to be received and approved by the City before work commences and must be in effect for the duration of the Agreement. The City reserves the right to require complete copies of all required policies and endorsements.

D. Other Insurance Provisions:

1. No policy required by this Agreement shall prohibit Sonic from waiving any right of recovery prior to loss. Sonic hereby waives such right with regard to the indemnitees.
2. All insurance coverage amounts provided by Sonic and available or applicable to this Agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement limits the application of such insurance coverage. Defense costs must be paid in addition to coverage amounts.
3. Sole Proprietors must provide a representation of their Workers' Compensation Insurance exempt status.