



City of San Leandro

Meeting Date: June 17, 2019

Staff Report

File Number: 19-137

Agenda Section: ACTION ITEMS

Agenda Number: 10.C.

TO: City Council

FROM: Jeff Kay
City Manager

BY: Jeff Kay
City Manager

FINANCE REVIEW: David Baum
Finance Director

TITLE: Staff Report for a City of San Leandro City Council Resolution to Approve a License Agreement with Common Networks for City Facility Rooftop Access and a Resolution to Approve a License Agreement with Common Networks to Access City Infrastructure to Assist in the Development of a Residential Broadband Service

SUMMARY AND RECOMMENDATIONS

Common Networks, a wireless Internet Service Provider ("ISP"), expressed interest in expanding its service coverage to San Leandro. To support this expansion and enable Common Networks to build a residential broadband network utilizing City-owned infrastructure, staff recommends that the City Council approve two separate resolutions: a License Agreement for City Facility Rooftop Access and a License Agreement to Access City Fibers.

BACKGROUND

Common Networks, a technology company based in San Francisco with operations in the City of Alameda, has developed an innovative solution to deliver high-speed Internet service via wireless connections, with a network that relies on rooftops with wide visibility, preferably on buildings connected to fiber, which can be used to create a high-speed broadband network. Recognizing the market potential in San Leandro, Common Networks expressed an interest to utilize City infrastructure to expand its services to San Leandro residents.

Analysis

In September 2018, the City Council unanimously adopted the Fiber Optic Master Plan and Smart City Strategy. As part of this comprehensive report, the City conducted a survey of residents on their broadband usage and views. Over 1,800 residents responded to the broadband survey, with responses coming from all neighborhoods and districts within the City.

The following is an excerpt from the Fiber Optic Master Plan:

“Of those expressing low overall satisfaction, 61% indicated that there were no other (internet) service options in their area and 62% were dissatisfied because the connection was slow or unreliable. These results suggest an opportunity for a provider with high-speed, reliable broadband to capture significant market share with the residential sector.”

The City has broadband infrastructure and assets that can be made available to support the creation of a wireless residential broadband network. Recognizing the opportunity, Common Networks began discussions with the City about the possibility of expanding their service to San Leandro.

The discussions resulted in two separate but related agreements that would enable Common Networks to expand into San Leandro by utilizing City assets to create a citywide wireless broadband network:

- (1) License Agreement to Access Rooftops on City Facilities; and
- (2) License Agreement to License Dark Fiber from the City-owned Fiber Strands.

The key terms and conditions of the Rooftop License are:

- The agreement term would be five years and would automatically renew each year thereafter, subject to either party’s right to cancel without cause upon 180 days’ notice;
- Common Networks would pay the City an annual per site license fee, based on fair market value, to access rooftop space to install antennas and related equipment to support its network;
- The Agreement will govern all site licenses. The terms of the site licenses would run concurrently;
- The Agreement will be non-exclusive; and
- Common Networks must ensure non-interference with other City-owned wireless facilities, such as public Wi-Fi.

The key terms and conditions of the Fiber License include the following:

- The term would be five years and would automatically renew each year thereafter, subject to either party’s right to cancel without cause upon 180 days’ notice;
- Common Networks would pay the City a rate per foot, per month, per strand (charged annually) to access City owned fibers;

Where available, Common Network’s antennas on City rooftops would connect to City fibers; and

- The License Agreement will be non-exclusive.

The City would benefit through earning a return on its broadband infrastructure investment. The City also benefits through the introduction of a new cutting-edge ISP to directly benefit City residents and households.

Based on comments by the City Council Facilities & Transportation Committee at its May 8 meeting, the agreements include a local workforce development effort adapted from the City's existing local business inclusion policy.

Staff recommends that the City Council approve the attached resolutions for a License Agreement for City Facility Rooftop Access and a Fiber License Agreement to Access City Fibers.

Fiscal Impacts

Fiber License Agreement - Payment for access and use of the Licensed Fiber will be \$0.03 per linear foot per strand per month for a total of \$4,251.05 per month (\$51,012.72 annually) paid by Common to the City for the term of this Agreement. The agreement will increase by 3% each year and has a five-year initial term.

Rooftop License Agreement - Payment for access and usage of City facility rooftop sites is expected to generate \$5,150.00 per month (\$61,800.00 annually) paid by Common to the City for the term of this Agreement. The agreement will increase by 3% each year and has a five-year initial term.

The combined payment to the City is expected to be approximately \$112,000.00 for the first year, and proceeds shall be recorded in the Information Technology Fund revenue account 688-3518. Doing so will ensure that revenues will be reinvested into future broadband and fiber related projects.

Current Agency Policies

- Advance projects and programs promoting sustainable economic development, including transforming San Leandro into a center for innovation.
- Maintain and enhance San Leandro's infrastructure.

Previous Council Actions

- At the September 17, 2018 City Council meeting, the Council unanimously adopted the Fiber Optic Master Plan & Smart City Strategy.

Committee Review and Actions

- January 9, 2019 City Council Facilities and Transportation Committee meeting update

from staff on preliminary discussions with Common Networks.

- Presentation at the May 8, 2019 City Council Facilities and Transportation Committee meeting. The agreements incorporate comments by the Committee, including: indemnification for the City against any damages relating to radiofrequency (RF) emissions; and the creation of a local workforce development that includes good faith efforts to hire local.

Applicable General Plan Policies

- Policy CSF-4.1 Telecommunications. Collaborate with telecommunication service providers, the business community, and investors to foster access to emerging information and communication technology.

Attachment(s) to Staff Report

- License Agreement Between the City of San Leandro and Common Networks, Inc. for Access to City Dark Fiber Network.
- Master License Agreement for Access to City Facility Rooftops.

PREPARED BY: Tony Batalla, Chief Technology Officer, City Manager’s Office



City of San Leandro

Meeting Date: June 17, 2019

Resolution - Council

File Number: 19-138

Agenda Section: ACTION ITEMS

Agenda Number:

TO: City Council

FROM: Jeff Kay
City Manager

BY: Jeff Kay
City Manager

FINANCE REVIEW: David Baum
Finance Director

TITLE: RESOLUTION of the City of San Leandro City Council to Approve a License Agreement with Common Networks for City Facility Rooftop Access to Build a Residential Broadband Service in San Leandro

WHEREAS, the City of San Leandro ("City") owns facilities throughout the City; and

WHEREAS, Common Networks and the City have mutual interests in licensing access to said City facilities' to install wireless networking equipment to build a broadband network in San Leandro; and

WHEREAS, staff presents for review and City Council approval a License Agreement to grant such access; and

WHEREAS, the proposed License Agreement would not directly grant any rights to use individual City Facilities, but rather the Agreement establishes the procedures, terms and conditions under which licensees obtain individual Site Licenses; and

WHEREAS, the Agreement is a comprehensive document that contains uniform terms and conditions applicable to all City-owned Rooftop locations; and

WHEREAS, key terms and conditions of the License Agreement are:

- Term - The term of the License is five (5) years. After the initial five-year term, the License will automatically renew for subsequent 1-year terms, subject to each parties' option not to renew for any reason, with prior 180-day written notice to the other party.
- Site License Term - The term for each Site License is coterminous with the initial term or subsequent renewal terms of the License Agreement. Each Site License will remain effective only as long as the Agreement remains in effect. If

the Agreement is terminated or not renewed, all Site Licenses granted pursuant to the Agreement will terminate regardless of their effective dates.

- Site License Fee - each Site License will include an annual fee, at the current fair market value, using the City's proprietary functions to license property in an amount agreeable to both parties.

NOW, THEREFORE, the City Council of the City of San Leandro hereby RESOLVES, as follows:

(1) to approve the License Agreement for City Facility Rooftop Access with Common Networks; and

(2) to authorize the City Manager to execute the License Agreement in substantially similar form as that attached hereto as Exhibit A, and any other related documents including any Site License pursuant to the License Agreement on behalf of the City, subject to approval as to form by the City Attorney; and

(3) to authorize the City Manager to take any and all actions consistent with the intention of this resolution.

Attachment(s) to Resolution

- License Agreement with Common Networks for City Facility Rooftop Access

MASTER LICENSE AGREEMENT

This Master License Agreement (“**Agreement**”) is entered into effective as of _____, 2019 (“**Effective Date**”) by and between the City of San Leandro, a California charter city (“**City**”) and Common Networks, Inc. (“**Company**”). City and Company are hereinafter referred to individually as a “**Party**” and collectively as the “**Parties**.”

RECITALS

A. City is the owner of certain properties located within the City of San Leandro which may be well suited for communication equipment.

B. On a case-by-case basis, Company desires to install, operate, maintain, replace, modify and remove certain communications equipment, which may consist of, but is not necessarily limited to, antennas, radios, cabling and mounts (the “**Equipment**”) on rooftop portions of City properties (“**Permitted Activities**”), and City is willing, on a case-by-case basis, to make certain properties available to Company for the Permitted Activities.

C. The Parties desire to enter into this Agreement to set forth the general terms and conditions, set forth herein for each specific property which Company may elect to use and City may elect to permit Company to use, as further set forth herein.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Master Agreement and Site Agreements. This Agreement sets forth the basic terms and conditions upon which each Site Agreement (defined below) is executed by City and Company. Upon agreement between the Parties with respect to the particular location and terms for use of a Permit Property (as defined below), the Parties shall execute a completed Site License Agreement (“**Site Agreement**”) in the form attached hereto and incorporated herein by this reference. Each Site Agreement shall act as a separate and independent agreement for each Permit Property, the express intent of the parties being to use this Agreement to facilitate each of the independent transactions. The Site Agreement shall identify the specific property owned by the City (“**Permit Property**”) together with the specific location of the roof of the Permit Property for Company’s installation of the Equipment (“**Roof Space**”) and such other terms as set forth therein. The Site Agreement may have special clauses specific to each individual Permit Property. In the event of a discrepancy or inconsistency between the terms and conditions of a particular Site Agreement and this Agreement, the terms and conditions of this Agreement shall govern and control. The City is not obligated to execute a Site Agreement for any particular Permit Property and the execution of any such Site Agreement shall be in the City’s sole discretion.

2. Grant of License. Upon execution of a Site Agreement, City grants to Company, its contractors, subcontractors, employees and agents (collectively, the “**Company Parties**”) a license to conduct the Permitted Activities on the Roof Space identified in the Site Agreement. Subject to the terms and conditions of this Agreement and the Site Agreement, the license granted under a Site Agreement includes the right of access for the Company Parties from the public right-of-way onto and through areas of the Permit Property as required to perform the Permitted

Activities. Company shall not bring in or permit the placement of any property within the Roof Space any property of a weight in excess of the design capacity of the Roof Space.

3. Permit Fee. On or before the first day of each month during the Term (as defined below) during which each Site Agreement is in effect, Company shall pay to City a monthly fee (the “**Permit Fee**”) in the amount set forth in each Site Agreement per month for Company’s license to conduct the Permitted Activities from the Permit Property described in the Site Agreement. For any partial month at the beginning or end of the Term (as defined below) of this Agreement, the Permit Fee shall be prorated based on the actual number of days in such month to be prorated. Neither this Agreement nor any Site Agreement is intended to, nor shall it be interpreted to, create or vest in Company any leasehold or any other property rights or interests in any Permit Property or the improvements located thereon, or any part thereof. The Permit Fee for each Site Agreement shall increase by three percent (3%) upon the one-year anniversary of the Site Agreement and annually thereafter.

4. Electricity. It is understood and agreed that Company requires electricity to each Roof Space twenty-four (24) hours per day for the maintenance and operation of the Equipment. Subject to those conditions set forth herein and if required for operation of the Equipment, said provision of electricity shall be provided to Company twenty-four (24) hours per day, three hundred sixty five (365) days per year. City agrees to use reasonable diligence in providing Company with access to electric service and ingress or egress; it being understood that City reserves the right to temporarily discontinue electric service, or ingress or egress, at such times as may be necessary when, by reason of accident, unavailability of employees, repairs, alterations or improvements, or whenever by reason of strikes, walkouts, riots, acts of God, or any other happening beyond the control of City, City is unable to provide the same. City shall use best efforts to provide Company with prior written notice of any such discontinuance that is within City’s control. If the cost of electricity solely attributed to the Equipment at a specific Roof Space exceeds five percent (5%) of the Permit Fee associated with that Roof Space on an annualized basis, Company shall be responsible for payment of such excess amount which amount shall be included with the invoice from City to Company for the subsequent Permit Fee payment.

5. Late Charge. Company acknowledges that the late payment of the Permit Fee will cause City to incur administrative costs and other damages, the exact amount of which would be impracticable or extremely difficult to ascertain. Company and City agree that if City does not receive any such payment within ten (10) calendar days after such payment is due, Company shall pay to City an amount equal to ten percent (10%) of the overdue amount as a late charge for each month or partial month that such amount remains unpaid. The Parties acknowledge that this late charge represents a fair and reasonable estimate of the costs that City will incur by reason of the late payment by Company, but the payment of such late charge shall not excuse or cure any default by Company under this Agreement. The Parties further agree that the payment of late charges pursuant to this Section 5 and the payment of interest pursuant to Section 6 are distinct and separate from one another in that the payment of interest is to compensate City for the use of City’s money by Company, while the payment of a late charge is to compensate City for the additional administrative expense incurred by City in handling and processing delinquent payments, but excluding attorneys’ fees and costs incurred with respect to such delinquent payments. Acceptance of any late fees and late charges shall not prevent City from exercising any of the other rights and

remedies available to City under this Agreement or a Site Agreement for any other default by Company.

6. Interest. Any amount due from Company to City which is not paid when due shall bear interest at the lesser of ten percent (10%) per annum or the maximum rate which City is permitted by law to charge, from the date such payment is due until paid, but the payment of such interest shall not excuse or cure any default by Company under this Agreement or a Site Agreement.

7. Nonexclusiveness of Permit. Any license granted to Company for a Permit Property pursuant to a Site Agreement is nonexclusive and nonpossessory. Subject to Section 12 below, Company Parties must allow access to a Permit Property by representatives of City and any other parties possessing prior rights, unless separate arrangements are made with such parties. This Agreement and each Site Agreement are not intended to, nor shall they be interpreted to, create or vest in Company any leasehold or any other property rights or interests in any Permit Property.

8. Prior Rights. Each Site Agreement is made subject and subordinate to the prior and continuing right of City to use the Permit Property for any uses in which City is engaged on the Permit Property as of the date hereof. City will cooperate with Company and use reasonable efforts to minimize interference with Company's use of the Permit Property and shall notify Company of any use by City which it believes may result in interference with Company's use.

9. Term of Site Agreement. The term for this Agreement, shall commence on [INSERT DATE], 2019 ("**Commencement Date**"), and shall terminate on [INSERT DATE], 2024 ("**Term**"). The Term shall automatically renew on an annual basis thereafter, subject to the termination rights in this Agreement. Each Site Agreement shall specify the commencement date and termination date for that specific Site Agreement, but in no circumstances shall any Site Agreement terminate on a date that is later than the termination date of this Agreement. Notwithstanding the foregoing, either Party may terminate this Agreement or any Site Agreement without cause upon one hundred eighty (180) days' prior written notice to the other Party. Company's indemnity obligations set forth in this Agreement survive termination of this Agreement or any Site Agreement for any reason. Company may terminate any Site Agreement at any time upon thirty (30) days' notice to City and payment of a one-time termination fee equivalent to three (3) months' of Permit Fee of such Site Agreement.

10. Default. If Company fails to comply with any of its obligations or terms of this Agreement or a Site Agreement, including without limitation, a failure to pay the Permit Fee or any other amount due under the Site Agreement, and such failure continues for ten (10) business days after delivery of written notice from City, Company shall be deemed in breach of this Agreement and City shall have the right to terminate this Agreement. Any Site Agreements shall concurrently terminate with the termination of this Agreement.

11. Conditions of Access. The Company Parties' entry onto a Permit Property shall be limited to performing the Permitted Activities. Without limiting the foregoing, the Company Parties will adhere to the following specific requirements:

a. Company covenants that it shall enter each Permit Property in such manner and at such time as shall not interfere with any other existing use of the Permit Property. City covenants that it shall reasonably cooperate with Company so that the Company Parties' entry may be handled in an efficient manner and so as to avoid any unreasonable delays with respect to the Permitted Activities. Company hereby waives and releases City for any claim for damages against City in the event that Company's entry onto a Permit Property or any of the Permitted Activities are delayed for any reason whatsoever, except and to the extent caused by the gross negligence or willful misconduct of any representatives of City.

b. The Company Parties shall be liable for any damage to a Permit Property or other City Property ("**City Property**") that occurs as a result of the Permitted Activities, except and to the extent: (1) such damage is required as a condition to Company's completion of the Permitted Activities, in which case Company shall, to the extent necessary and feasible, promptly restore City Property to its condition existing prior to the commencement of such activities; or (2) the damage is caused by the gross negligence or willful misconduct of City. Any damage to City Property caused by the Company Parties in violation of this Agreement shall be immediately repaired to the satisfaction of City at Company's sole cost and expense.

c. Company shall not encroach on the public right of way adjacent to any Permit Property unless Company has applied for and received any necessary approvals and/or permits. All equipment and material storage shall be secured by Company on the Permit Property.

d. Company shall at all times keep the Permit Property free and clear of all liens and encumbrances affecting title to the Permit Property in connection with any work performed by the Company Parties under the applicable Site Agreement. Upon notice of any such lien or claim, Company may bond and contest in good faith the validity and the amount of such lien, but Company shall immediately pay any judgment rendered, shall pay all proper costs and charges, and shall have the lien or claim released at its sole expense.

e. Company shall comply with all applicable state, federal and local laws, regulations, rules and orders, with respect to the Permitted Activities, including, without limitation, all Environmental Laws (defined below) and all laws relating to allowable presence of or human exposure to Radiofrequency Radiation ("**RFs**") or Electromagnetic Fields ("**EMFs**"). Company shall provide City with all reports relating to a particular Permit Property which Company is required to prepare under applicable law. Company shall not cause any Hazardous Material (defined below) to be generated, brought onto, used, stored, or disposed of in or about the Permit Property. As used in this Agreement, the term "**Hazardous Material**" means any chemical, compound, material, mixture, or substance that is now or may in the future be defined or listed in, or otherwise classified pursuant to any Environmental Laws (defined below) as a "hazardous substance", "hazardous material", "hazardous waste", "extremely hazardous waste", "infectious waste", "toxic substance", "toxic pollutant", or any other formulation intended to define, list or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, or toxicity. The term "hazardous material" shall also include asbestos or asbestos-containing materials, radon, chrome and/or chromium, polychlorinated biphenyls, petroleum, petroleum products or by-products, petroleum components, oil, mineral spirits, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable as fuel, perchlorate, and methy tert butyl ether, whether or not defined as a hazardous waste or hazardous substance in the Environmental

Laws. As used in this Agreement, the term “**Environmental Laws**” means any and all federal, state and local statutes, ordinances, orders, rules, regulations, guidance documents, judgments, governmental authorizations or directives, or any other requirements of governmental authorities, as may presently exist, or as may be amended or supplemented, or hereafter enacted, relating to the presence, release, generation, use, handling, treatment, storage, transportation or disposal of Hazardous Materials, or the protection of the environment or human, plant or animal health, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. § 9601), the Hazardous Materials Transportation Act (49 U.S.C. § 1801 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.), the Oil Pollution Act (33 U.S.C. § 2701 et seq.), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. § 11001 et seq.), the Porter-Cologne Water Quality Control Act (Cal. Water Code § 13000 et seq.), the Toxic Mold Protection Act (Cal. Health & Safety Code § 26100, et seq.), the Safe Drinking Water and Toxic Enforcement Act of 1986 (Cal. Health & Safety Code § 25249.5 et seq.), the Hazardous Waste Control Act (Cal. Health & Safety Code § 25100 et seq.), the Hazardous Materials Release Response Plans & Inventory Act (Cal. Health & Safety Code § 25500 et seq.), and the Carpenter-Presley-Tanner Hazardous Substances Account Act (Cal. Health and Safety Code, Section 25300 et seq.).

f. Company shall be responsible, at its sole cost, for the construction, installation, and maintenance of the Equipment to be placed on each Roof Space. No property other than the Equipment, and replacements thereof, shall be installed on the Roof Space. Company will install and operate the Equipment in compliance with City’s technical standards, rules and regulations and any other federal, state, or municipal agency having jurisdiction with respect to the Permit Property.

g. Company, at its expense, shall obtain all necessary governmental permits and certificates required for the construction, installation, authorization and use of the Equipment at each Permit Property. City shall permit Company to arrange for the installation of telephonic and electrical connections, to be done at Company’s expense (the “**Connecting Equipment**”). All such Connecting Equipment shall be installed in accordance with the engineering and design of the base building systems located at the applicable Permit Property. All construction, installations, alterations, repair and maintenance work shall be performed in a manner which will not unreasonably interfere with, delay or impose any additional expense upon City in the maintenance or operation of the Permit Property.

h. Company shall maintain the Equipment in good repair and shall keep the Roof Space free from all trash, debris and waste resulting from use of the Roof Space by its employees, contractors or agents.

i. Company shall give City prior verbal or email notice of the need for access the Permit Property subject to such rules as City may adopt, including, but not limited to, the requirement that an agent of City accompany persons during such access; provided however, in the event of an emergency or equipment failure, no prior notice shall be required except that Company shall provide such notice as soon as reasonably practical. .

12. Interference. Company agrees that the Equipment shall be of such types and frequencies that will not cause interference with: (1) the other existing communications equipment on the applicable Permit Property (including replacements thereof of the same power and frequency), (2) the basic telecommunications services of City or any of the other tenants located on the applicable Permit Property, or (3) the business of City. In the event the Equipment causes such interference, notwithstanding any other provision in this Agreement to the contrary, Company shall immediately upon having notice of such interference (whether such notice, in writing or otherwise, is from City or other persons) take all steps necessary to correct and eliminate the interference in a reasonable and timely manner, including temporary disconnection and shut down of the Equipment causing the interference (except for intermittent operation for the purpose of correcting such interference) until such interference is eliminated. In addition, except as it relates to City's provision of municipal services (e.g. police, fire and emergency response), City shall not permit any use of the applicable Permit Property subsequent to execution of a Site Agreement for the Permit Property that causes interference with the Equipment or Company's ability to send and receive line-of-sight radio communications. Immediately following notification from Company, City shall take all steps necessary to correct and eliminate the interference in a reasonable and timely manner, including temporary disconnection and shut down of the Equipment causing the interference (except for intermittent operation for the purpose of correcting such interference) until such interference is eliminated.

13. Indemnification. Company agrees to defend (with counsel approved by City) and hold City and its elected and appointed officers, officials, employees, agents and representatives (all of the foregoing collectively "**Indemnitees**") harmless from and against all liability, loss, cost, claim, demand, action, suit, legal or administrative proceeding, penalty, deficiency, fine, damage and expense (including, without limitation, reasonable attorney's fees and costs of litigation) (all of the foregoing collectively "**Claims**") resulting from or arising in connection with entry upon and use of a Permit Property, including but not limited to Claims arising from the presence of or exposure to RFs or EMFs resulting from Company's use of a Permit Property, by Company or Company's agents, employees, consultants, contractors or subcontractors pursuant to this Agreement or a Site Agreement; except and to the extent caused by the gross negligence or willful misconduct of Indemnitees. Company's indemnification obligations set forth in this section shall survive the termination of this Agreement.

14. Release of Claims. Company hereby waives, releases, and discharges forever Indemnitees from all present and future Claims arising out of or in any way connected with entry upon a Permit Property by Company or Company's agents, employees, consultants, contractors or subcontractors pursuant to this Agreement or to a Site Agreement, except and to the extent caused by the gross negligence or willful misconduct of Indemnitees.

15. Insurance. Throughout the Term of this Agreement and each Site Agreement, Company and all contractors working on behalf of Company with respect to each Site Agreement shall maintain a commercial general liability policy in the amount of Two Million Dollars (\$2,000,000) combined single limit, or such other policy limit as City may require in its reasonable discretion, including coverage for bodily injury, property damage, products, completed operations and contractual liability coverage. Such policy or policies shall be written on an occurrence basis and shall name City and its respective elected and appointed officers, officials, employees, agents and representatives as additional insureds.

Throughout the Term of this Agreement and each Site Agreement, Company and all contractors, including subcontractors of every tier, working on behalf of Company with respect to a Site Agreement shall maintain a comprehensive automobile liability coverage in the amount of One Million Dollars (\$1,000,000), combined single limit including coverage for owned and non-owned vehicles. Automobile liability policies shall name City and its respective elected and appointed officers, officials, employees, agents and representatives as additional insureds.

Throughout the Term of this Agreement and each Site Agreement, Company shall maintain worker's compensation insurance in the amount required under applicable state law, covering Company's employees, if any, at work upon a Permit Property or engaged in services or operations in connection with the Permitted Activities on a Permit Property. Company shall require any contractor that accesses a Permit Property to provide worker's compensation insurance for its employees in compliance with applicable state law.

Companies writing the insurance required hereunder shall be licensed "on an Admitted or Non-Admitted bases" to do business in the State of California. Insurance shall be placed with insurers with a current A.M. Best's rating of no less than A-: VII. Prior to the effective date of any Site Agreement, Company shall furnish City with certificates of insurance in a form acceptable to City evidencing the required insurance coverage and duly executed endorsements evidencing such additional insured status. Each policy shall require the carrier to notify City of any material change, cancellation, termination or non-renewal of the coverage at least thirty (30) days in advance of the effective date of any such material change, cancellation, termination or non-renewal, except in the event of non-payment of premium a ten (10) day notice will be provided. Coverage provided by Company shall be primary insurance and shall not be contributing with any insurance, or self-insurance maintained by City, and the policies shall so provide. The insurance policies shall contain a waiver of subrogation for the benefit of City.

16. Assignment. Company shall have no right to sublicense, assign or transfer this Agreement or any Site Agreement, or rights arising under this Agreement or any Site Agreement, except, Company shall have the right to assign this Agreement and all Site Agreements (a) to an entity who controls, is under common control of, or is controlled by Company, or (b) any person or entity that directly or indirectly acquires, through merger, sale of stock, purchase or otherwise, all or substantially all of the assets of Company.

17. Notices. Except as otherwise specified in this Agreement, all notices to be sent pursuant hereto shall be made in writing, and sent to the Parties at the addresses specified below, or such other address as a Party may designate by written notice delivered to the other Party in accordance with this section. All such notices shall be sent by:

- a. personal delivery, in which case notice shall be deemed delivered upon receipt;
- b. certified or registered mail, return receipt requested, in which case notice shall be deemed delivered two (2) business days after deposit, postage prepaid in the United States mail;

c. nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) day after deposit with such courier; or

d. except for a notice of default, email, in which case notice shall be deemed delivered on transmittal, provided that written notice by one of the method provided above is also used.

City: [INSERT INFORMATION]

Company: [INSERT INFORMATION]

18. Entire Agreement; Amendments. This Agreement together with the Site Agreement attached hereto and incorporated herein by reference, and any Site Agreements executed by the Parties, constitutes the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all prior written or oral agreements, understandings, representations or statement with respect thereto. This Agreement and any Site Agreement may be amended only by a written instrument executed by the Parties hereto.

19. Severability. If any term, provision, or condition of this Agreement or an executed Site Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement or any executed Site Agreement shall continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged thereby.

20. Waiver. A waiver by either Party of the performance of any covenant or condition herein shall not invalidate this Agreement or any Site Agreement nor shall the delay or forbearance by either Party in exercising any remedy or right be considered a waiver of, or an estoppel against, the later exercise of such remedy or right.

21. Captions; Interpretation. The section headings used herein are solely for convenience and shall not be used to interpret this Agreement. The provisions of this Agreement shall be construed as a whole according to their common meaning, and not strictly for or against any party, in order to achieve the objectives and purposes of the Parties.

22. Attorney's Fees. In any action at law or in equity, arbitration or other proceeding arising in connection with this Agreement or any executed Site Agreement, the prevailing party shall recover reasonable attorney's fees and other costs, including but not limited to court costs and expert and consultants' fees incurred in connection with such action, in addition to any other relief awarded.

23. Counterparts. This Agreement and any Site Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

24. Governing Law and Venue. This Agreement and any executed Site Agreement, and the rights and obligations of the Parties, shall be governed by and interpreted in accordance with the laws of the State of California without regard to principles of conflicts of law. Any action to enforce or interpret this Agreement or any executed Site Agreement shall be filed in the Superior

Court of Alameda County, California or in the Federal District Court for the Northern District of California.

25. Local Workforce Development Effort. In its normal business operations within the city of San Leandro, Common will show “good faith efforts” to meet local workforce development targets. In order to show such good faith efforts, throughout the duration of this agreement, Common shall certify that it has completed, or will attempt to complete, as many of the following activities as possible:

- (1) Documentation of good faith negotiations with the City of San Leandro, the San Leandro and San Lorenzo Unified School Districts to identify ways to engage the student and teacher population on topics such as: the high-tech industry in Silicon Valley, entrepreneurship, venture capital, etc.;
- (2) Convening a meeting within the City of San Leandro for San Leandro residents, businesses, and nonprofit organizations to identify specific workforce needs in order to increase the likelihood of meeting those needs with local talent;
- (3) Providing confirmation of any San Leandro residents hired for employment, to the extent allowable by privacy laws and policies;
- (4) Advertising employment opportunities in one or more daily or weekly newspapers, websites, trade association publications, trade journals or other media;
- (5) An ongoing commitment to making announcements of employment opportunities available for distribution by the City of San Leandro in publications, job boards and/or events;
- (6) Documentation of requests for assistance from San Leandro community organizations, contractors or professional groups, including local, county, state or federal workforce development agencies that provide assistance with the recruitment and placement of employees with employers, specifically targeting San Leandro residents.

SIGNATURES ON THE NEXT PAGE

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

COMMON NETWORKS, INC.:

By: _____

Print Name:

Title:

CITY OF SAN LEANDRO:

Jeff Kay, City Manager

Attest

Leticia I. Miguel, City Clerk

Approved As To Form:

Richard D. Pio Roda, City Attorney

Address: _____

SITE AGREEMENT

This Site License Agreement (“**Site Agreement**”) is entered into effective as of _____, 20__ (“**Effective Date**”) by and between the City of San Leandro, a California charter city (“**City**”) and Common Networks, Inc. (“**Company**”) and pursuant to that certain Master License Agreement dated _____, 2019 (“**Master Agreement**”). All terms and conditions of the Master Agreement are incorporated herein by reference and shall govern the relationship between both parties. In the event of a conflict or inconsistency between the terms of the Master Agreement and this Site Agreement, the terms of this Site Agreement shall govern and control.

1. Permit Property Address: _____
(See Exhibit A for legal description)
2. Roof Space: (See Exhibit B)
3. Commencement Date: _____, 20__
4. Term: _____ years, with automatic one (1) year extensions with a maximum of thirty (30) years (See Section 9 of Master Lease)
5. Monthly Permit Fee: \$ _____
6. Special Access Requirements: _____ (if none, write “none”)_
7. City’s Contact for Access for Emergency: _____
8. Company’s Contact for Emergency: _____
9. Other Provisions:

[Signatures appear on following page.]

IN WITNESS WHEREOF, the Parties have executed this Site Agreement as of the date first written above.

COMMON NETWORKS, INC.:

By: _____

Print Name:

Title:

CITY OF SAN LEANDRO:

Jeff Kay, City Manager

Attest

Leticia I. Miguel, City Clerk

Tenant:

By: _____

Name: _____

Title: _____

Date: _____

Exhibit A

PERMIT PROPERTY

(Attach legal description and map of Permit Property.)

The land referred to is situated in the County of Alameda, City of San Leandro, State of California, and is described as follows:

DRAFT

Exhibit B

ROOF SPACE

[INSERT DESCRIPTION OF THE ROOF SPACE AND PERMISSIBLE AREA]

3224333.1

3205510.1

DRAFT



City of San Leandro

Meeting Date: June 17, 2019

Resolution - Council

File Number: 19-139

Agenda Section: ACTION ITEMS

Agenda Number:

TO: City Council

FROM: Jeff Kay
City Manager

BY: Jeff Kay
City Manager

FINANCE REVIEW: David Baum
Finance Director

TITLE: RESOLUTION of the City of San Leandro City Council to Approve a License Agreement with Common Networks to Access City Communications Infrastructure in Order to Build a Residential Broadband Service in San Leandro

WHEREAS, the City of San Leandro ("City") owns communications infrastructure that runs underground throughout the City; and

WHEREAS, Common Networks and the City have mutual interests that involve licensing access to said City communications infrastructure to build a residential broadband network in San Leandro; and

WHEREAS, staff drafted a License Agreement to grant such access; and

WHEREAS, the Agreement is a comprehensive document that contains uniform terms and conditions applicable to City communications infrastructure; and

WHEREAS, among the key terms and conditions of the License Agreement are:

- License Term - The term of the License is five (5) years. During this period, either party can cancel the Agreement with 180-days prior written notice to the other party. After the initial five-year term, the License will automatically renew for subsequent 1-year terms, subject to each party's option not to renew for any reason, with prior 180-day written notice to the other party.
- Dark Fiber Strands - The agreement provides Common Networks with two (2) dark fiber strands throughout the entire City network for its exclusive use.
- License Fee - The License Fee would start at \$0.03 per foot per strand per month, subject to 3% annual increases each year thereafter.

NOW, THEREFORE, the City Council of the City of San Leandro hereby RESOLVES as follows:

- (1) to approve the License Agreement to Access City Communications Infrastructure with Common Networks; and
- (2) to authorize the City Manager to execute the License Agreement in substantially similar form as that attached hereto as Exhibit A, and any other related documents on behalf of the City, subject to approval as to form by the City Attorney; and
- (3) to authorize the City Manager to take any other actions consistent with the intent of this resolution.

Attachment(s) to Resolution

- License Agreement to Access City Communications Infrastructure with Common Networks

FIBER LICENSE AGREEMENT BETWEEN CITY OF SAN LEANDRO AND
COMMON NETWORKS, INC. FOR ACCESS TO CITY DARK FIBER NETWORK
FOR WIRELESS NETWORK DATA SERVICE

THIS FIBER LICENSE AGREEMENT (“Agreement”), effective as of _____, 2019 (the “Effective Date”), is by and between the City of San Leandro, a California municipal corporation organized as a charter city (“City”), and Common Networks, Inc. (“Common” and together, the “Parties”).

WHEREAS, the City designed, owns dark fiber strands in City owned conduit, which includes fiber strands within the Lit San Leandro Fiber System, which was developed by the City as a public private partnership between the City and San Leandro Dark Fiber (the “Lit San Leandro Fiber System”) and fiber strands in City-owned cable bundles (together the “City Fibers”); and

WHEREAS, Common would like to access and use the City Fibers for data service and connectivity as part of its network to deliver wireless residential internet service in San Leandro, subject to the terms and conditions set forth in this Agreement; and

WHEREAS, the City is willing to license usage of City Fibers for rates negotiated in a fair market arrangement, acceptable to the Parties.

NOW THEREFORE, in consideration of the mutual promises set forth below, the Parties agree as follows:

1. License Price and Rights.

a. The City grants to Common a license for exclusive access and connection to and use of specific fibers (the “Licensed Fiber”) from the City’s Fibers as follows:

- The Licensed Fiber is two (2) dark fiber strands.
- The City of San Leandro assigns fiber strands XXX in Fiber Bundle X to Common.

Sections 1.a is more thoroughly depicted in Exhibit A, which is attached hereto and made a part hereof, although this agreement sets forth terms for any and all areas where City Fibers are available and for which Common may have business interests in, now and in the future, regardless of the map depicted in Exhibit A, which is for illustrative purposes only.

c. Payment for access and use of the Licensed Fiber shall be \$0.03 per linear foot per strand per month, paid by Common to the City per year for the term of this

Agreement. The License Fee shall increase by three percent (3%) upon the one-year anniversary of the effective date of the License Agreement and annually thereafter.

d. This Agreement is for the use of the Licensed Fiber only, subject to the terms and conditions herein. As between the parties, the Licensed Fiber will remain the sole and exclusive property of the City, and nothing contained herein shall be interpreted to give or convey to Common any property right, title or interest in such Licensed Fiber, which will at all times be and remain City's personal property.

2. Further Assurances.

a. The City will provide at Common's request written evidence, in a form and substance satisfactory to Common, that City has title to the Licensed Fiber and City Fibers, clear of all liens and encumbrances, including but not limited to any mortgage encumbrances and any option agreements and rights of first refusal. City provides written assurance by the City Manager's signature hereto that the City has already reserved two (2) of the strands owned, managed, and maintained by the City for Common's use pending approval by the City Council.

b. City use its best efforts to maintain the Licensed Fiber and City Fibers in good condition and repair throughout the term of this Agreement such that the Licensed Fiber maintains a reliability rating of at least 99%. City shall not do anything that will disconnect or sever the Licensed Fiber throughout the term of this Agreement and shall provide Common with reasonable prior notice if it will perform any work or other activities that may reduce the effectiveness of the Licensed Fiber more than five (5%). Such notice shall include the dates and times Common should expect a drop in the effectiveness of the Licensed Fiber and the duration of such drops.

3. Additional Terms.

a. Costs. The Parties shall be solely responsible for their own costs to prepare and review this Agreement, including but not limited to attorneys' and any consultants' or experts' fees, costs or expenses.

b. Environmental Matters. Each Party shall be responsible for its own environmental analysis of the approval of the Agreement, including any fees, costs or expenses related to any remediation.

c. Indemnification

(i) General Indemnity. Common agrees to indemnify and hold City harmless against all risks, claims, expenses, liabilities and costs associated with strict liability, negligence or willful misconduct of Common, related to its usage of the Licensed Fiber. This indemnity includes any claims, actions, or costs related to defense

of any copyright, trademark, or software infringement that may occur due to or over the Licensed Fiber.

(ii) Environmental Indemnity. Common agrees to indemnify and hold City harmless for all environmental contamination or damage that may be caused by Common's usage of the Licensed Fiber.

d. Insurance. Prior to commencing any activities under this Agreement, Common shall procure, or cause to be procured, and keep in full force and effect during the life of this Agreement, at Common's sole cost and expense, all of the following types of insurance:

<u>Type of Insurance Policy</u>	<u>Limits</u>
Commercial general liability policy, combined single limit	\$2,000,000
Comprehensive automobile liability coverage	\$2,000,000
Worker's compensation	Statutory

For purposes of this Agreement, the foregoing insurance shall be referred to herein as "Required Insurance."

(i) Qualifications of Insurers and Deductibles. All of the Required Insurance shall be issued by an admitted insurer or insurers as defined by the California Insurance Code with a Bests' rating of no less than A:-VII. The deductibles under each of the policies issued for the Required Insurance shall be reasonable in amount and in no event shall exceed the sum of Ten Thousand Dollars (\$10,000.00) under each such policy.

(ii) Additional Insured; Form of Endorsement. All policies for Required Insurance will be required to name City and its respective elected officials, officers, employees, agents and representatives as additional insureds by way of an endorsement. Prior to the effective date of this Agreement, Common shall furnish City with certificates of insurance in a form acceptable to City evidencing the Required Insurance coverage and duly executed endorsements evidencing such additional insured status.

(iii) Cancellation Provisions. All of the Required Insurance shall provide (by way of endorsement or otherwise) that no cancellation, expiration, reduction or modification in such Required Insurance can occur or be implemented without first notifying City with at least thirty (30) days prior written notice.

(iv) Primary Insurance Endorsement. All Required Insurance shall contain an endorsement providing that such insurance is primary and that any insurance maintained by City is noncontributory with the Required Insurance. All Required Insurance shall also contain language to the effect that any loss shall be payable

notwithstanding any act or negligence of City that might otherwise result in the forfeiture of the Required Insurance.

(v) Waiver of Subrogation. All Required Insurance shall also contain an endorsement providing for a waiver of subrogation against City by Common.

(vi) Worker's Compensation. This policy or policies shall cover the entire liability of Common to employees as determined by California law. The policy shall contain a waiver of subrogation against City.

(vii) Comprehensive General Liability. General Liability Insurance must be Two Million Dollars (\$2,000,000.00) combined single limit per event and annual aggregate for bodily injury and property damage liability arising out of all activities performed under this Agreement.

e. Assignment. Company shall have no right to sublicense, assign or transfer this Agreement, or rights arising under this Agreement, except, Company shall have the right to assign this Agreement and all Site Agreements (a) to an entity who controls, is under common control of, or is controlled by Company, or (b) any person or entity that directly or indirectly acquires, through merger, sale of stock, purchase or otherwise, all or substantially all of the assets of Company.

f. Term. The term of this Agreement shall commence on the full execution and delivery of this Agreement and the approval of the City Attorney ("Commencement Date"), and shall continue until either party elects, upon 90 days' written notice, to terminate this Agreement. Upon termination, Common shall pay the pro-rated amount of any License fees due and owing to the City up to the date of termination.

g. Amendment. This Agreement may not be amended except in a writing executed by both Parties.

h. Service Level Agreement. As the Licensed Fiber is contained within the Lit San Leandro Fiber Network, it shall be governed under the terms of Amendment 1 to the San Leandro Dark Fiber License Agreement with the City of San Leandro, Exhibits 4 and 5, incorporated herein as Exhibit B.

i. Miscellaneous. No provisions in this Agreement shall be interpreted against the drafter. This Agreement may be executed in counterparts. Any disputes shall first be subject to a meet and confer between the Parties' authorized representatives, then mediation, and then binding arbitration subject to the rules and regulations of the American Arbitration Association. Any notice required to be sent under this Agreement shall be sent to the corporate office of Common, and to San Leandro City Hall, 835 East 14th Street, San Leandro, California, 94577.

SIGNATURES ON THE NEXT PAGE

DRAFT

COMMON NETWORKS, INC.:

By: _____

Print Name:

Title:

CITY OF SAN LEANDRO:

Jeff Kay, City Manager

Attest

Leticia I. Miguel, City Clerk

Approved As To Form:

Richard D. Pio Roda, City Attorney

3174326.2

EXHIBIT A

PROPOSED MAP OF PROJECT

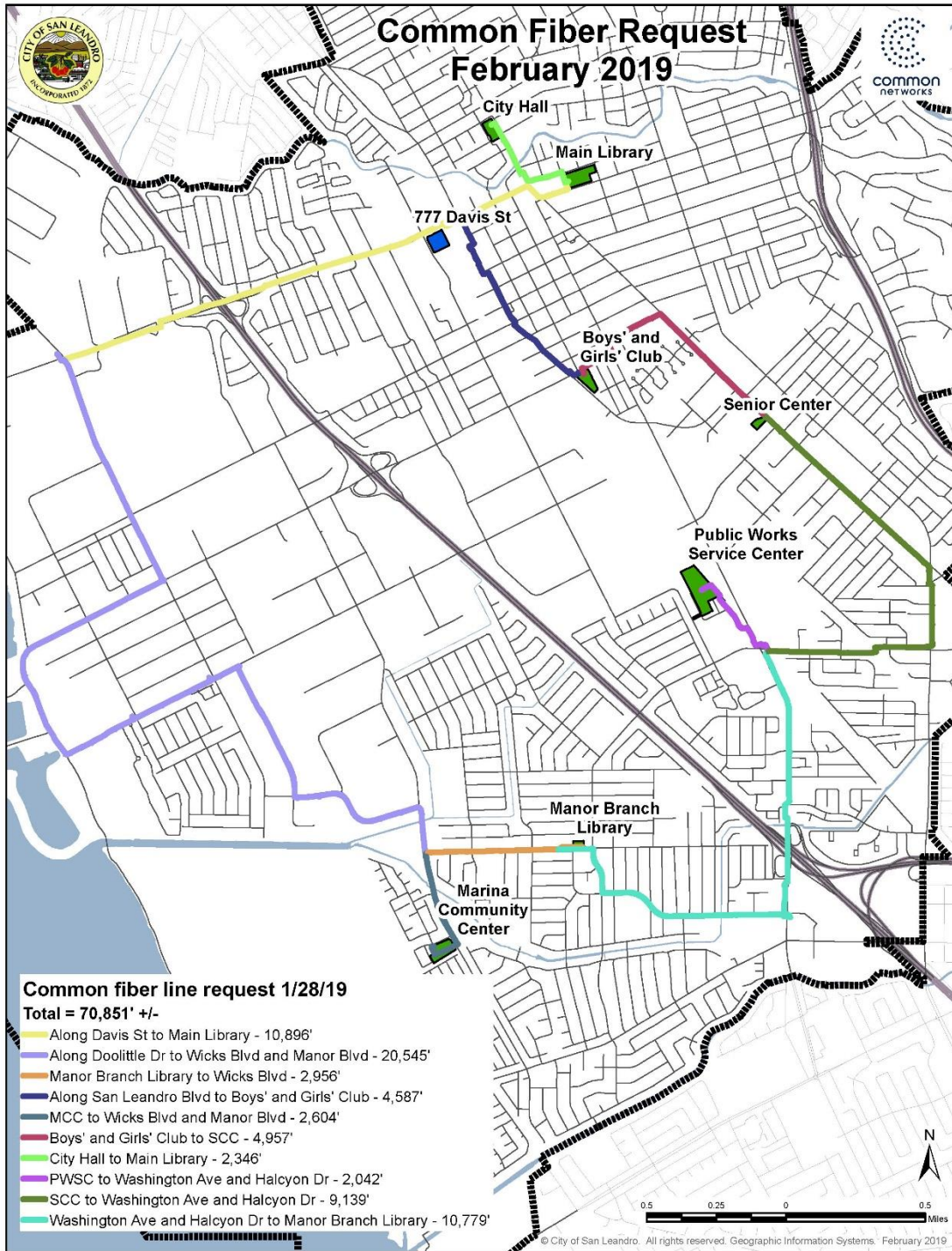


EXHIBIT B

FIBER OPTIC RESPONSIBILITY MATRIX

- Main – Conduit or cable that terminates at both ends at a box or manhole within the public right of way.
- Lateral – A conduit or cable that terminates at one end in a box or manhole within the public right of way and the other end serves as a point of connection for an end device (*i.e.* modem, termination panel, etc.)
- SLDF – San Leandro Dark Fiber
- CoSL – City of San Leandro
- PO – Property Owner served by lateral (2)

Facility	Time Period	Ownership	Maintenance /	Operation	USA Marking	Notes
Conduit Mains	Constructed Prior to 2011	CoSL	CoSL	CoSL	CoSL	Available for use by SLDF in conduits as shown
	Constructed by SLDF	CoSL	CoSL	CoSL	CoSL	Requires written consent by City per Section 8.6 An encroachment
	Constructed	CoSL	CoSL	CoSL	CoSL	Not available to SLDF by
	Constructed	CoSL	CoSL	CoSL	CoSL	Not available to SLDF by
Conduit	Constructed	CoSL	CoSL	CoSL	CoSL	Not available to SLDF by
	Constructed	SLDF (4)	SLDF (4)	SLDF (4)	SLDF	Customer agreements state
	Constructed	CoSL	CoSL	CoSL	CoSL	Not available to SLDF by
Fiber	Main Cable	CoSL	CoSL	CoSL	CoSL	
	Main Cable Installed by SLDF	SLDF	SLDF	SLDF	SLDF *	* CoSL will mark if conduit containing cable has been accepted into
	Lateral Cable	CoSL	CoSL	CoSL	CoSL	
	Lateral Cable installed by	SLDF	SLDF	SLDF	SLDF * (3)	* CoSL may mark at its sole discretion (If "City

	Facility	Ownership	Maintenance /	Operation	USA Marking	Notes
Fbr Strands	W/n cable installed by CoSL	CoS	CoS	CoSL	*	* See Fiber Cable that contains the strands
	W/n cable installed by SLDF	SLD	SLD	SLDF	*	* See Fiber Cable that contains the strands
	Within Cable installed by SLDF owned (5) by CoSL per	CoSL (1)	SLDF	CoSL	*	* See Fiber Cable that contains the strands + SLDF to make all connections to "City
	Within cable installed by third party	TBD	TBD	TBD	TBD	AC Transit BRT for Example Not determined at this time
Other	Boxes Installed on Main Lines *	CoS	CoS	CoSL	CoSL	* Includes boxes where laterals connect to
	Boxes Installed on Lateral Lines	SLDF	SLDF	SLDF (4)	SLDF (4)	
	CoSL Installed Boxes	CoS	CoS	CoSL	N/	
	CoSL Installed Splice Enclosures	CoS	CoS	CoSL	N/	
	SLDF Installed Splice Enclosures	SLD	SLD	SLDF	N/	
	End devices (modems, termination panels, etc.)	See Notes	See Notes	See Notes	See Notes	Responsibility is determined by the fiber strand connected to the device

(1) Revised 7/3/2014(2) Revised 7/10/2014 (3) Revised 7/15/2014(4) Revised 9/18/2014 Comments from Jim Morrison SLDF
(5) Revised 10/14/2014



**CITY PUBLIC WORKS DEPARTMENT SERVICE LEVEL AGREEMENT
FOR THE PROJECT INSTALLED IN THE PROPERTY OR EXPANDED PROPERTY**

(a) Each Party agrees to take all necessary precautions to avoid damaging the other Party's fiber facilities, and those of third parties, and to protect such fiber facilities in the same manner as such Party protects its own facilities.

(b) Any damage to the Property caused by SLDF or SLDF-affiliated third parties that results in a loss of service shall be repaired by SLDF, at SLDF's sole cost, within a reasonable time period. Provided that nothing contained herein shall be deemed to release or limit claims that SLDF may have against any third party arising from or related to such damage to facilities.

(c) Any damage to the Property, including conduit or other City infrastructure, by third parties unaffiliated with either Party shall be promptly repaired by the City.

(d) If SLDF or SLDF-affiliated third party damages City Fibers and related facilities or facilities owned by third parties within the Property, SLDF shall immediately notify City and, if the damaged facility is owned or leased by a third party, take reasonable efforts to notify the owner of the damaged facility. If required by City, SLDF shall effect repairs to the damaged facilities within a reasonable time period based on the nature of the damage conditions at the site.

(e) In the event of damages described herein, City may elect to hire a third party contractor to effect repairs to any damaged facility within the Project if, , SLDF notifies the City that it will not or cannot effect repairs within a reasonable time period and, present an invoice to SLDF for all Costs directly incurred for repairs to the damaged facilities, including, but not limited to, staff time costs, traffic control, police services, notification of third parties, and consultant and contractor costs.

(f) For the purposes of these requirements, a “reasonable time period” shall mean that SL Dark Fiber must mobilize personnel to respond to the repair site within four (4) hours after the time of becoming aware of an event requiring Emergency Unscheduled Maintenance of Services and work diligently and continuously until any outage is resolved with restoration of service. This provision shall not be applied if SL Dark Fiber notifies the City of a Force Majeure event.(g) Within thirty (30) days of the First Amendments execution date, SLDF shall provide to City for its review and approval a Protocol Document and Escalation Matrix, outlining procedures to be followed in the event of service loss.

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