

FIBER USE LICENSE AGREEMENT
[LICENSEE] – [LOCATION]

This Fiber Use License Agreement (“Agreement”) is made and entered into on this _____ day of _____, 2017, (“Effective Date”) by and between the City of Riverside, a California charter city and municipal corporation (herein “City”) and the _____, a _____, (herein “LICENSEE”). (City and LICENSEE are sometimes hereinafter referred to individually as a “Party” and together as “the Parties”).

RECITALS

A. City has an existing optical fiber system (“Fiber System”) located in the City of Riverside as shown on Exhibit “A”, which is attached hereto and incorporated herein by this reference, and City desires to license to LICENSEE the use of certain strands of fiber in the Fiber System to enhance utilization of the Fiber System and to obtain additional revenues. For purposes of this Agreement, the term “Fiber System” shall include existing related City-owned facilities such as pole, conduit and interduct facilities, building entrances, and cabinets through which fibers in the Fiber System pass, or which are appurtenant to the Fiber System. Such related facilities are sometimes separately referred to in this Agreement as the “Related Facilities.”

B. LICENSEE desires to use optical fibers to provide communications service to present and future internal and transitional department personnel (“users”) as permitted users. In the interests of convenience and efficiency, LICENSEE finds that it is prudent and economical to use space and capacity in existing City facilities rather than to install additional facilities.

C. City and LICENSEE believe that the interests of the public and the Parties will be well served by using some of City’s fiber-optic capacity in accordance with the terms and conditions contained herein.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants, agreements and undertakings contained herein, and the foregoing recitals, which are incorporated herein to this Agreement, the Parties agree as follows:

Section 1. Grant of License

- (a) City hereby grants to LICENSEE the right to use the fibers described in Exhibit “B”, which is attached hereto and incorporated herein by this reference (“Licensed Fibers”). Exhibit “B” may be amended in writing by the Parties hereto, from time to time, to reflect additions to and deletions from the Licensed Fibers.
- (b) City retains and reserves the right to use and otherwise grant use of other fibers of the Fiber System to other parties, provided that such use and grants of use do not unreasonably interfere with the rights granted to LICENSEE herein.

- (c) Neither LICENSEE's use of Licensed Fibers or Related Facilities, nor its payment of any amounts under this Agreement shall create or vest in LICENSEE any easements or other ownership of property rights of any nature in the Licensed Fibers, in the Fiber System, or in any other City property.
- (d) Detailed specifications for the Licensed Fibers ("Specifications") are contained in Exhibits "C-1" and "C-2", which are attached hereto and incorporated herein by this reference.
- (e) City will from time to time perform acceptance tests to ensure that the Licensed Fibers meet the Specifications. Prior to placing the initial Licensed Fibers into service and whenever LICENSEE notifies City of its intention to add Licensed Fibers, City will provide LICENSEE with complete and accurate written results of the most recent of such tests. LICENSEE will review the test results (and may conduct its own tests after coordination with the City) and will provide written notice of acceptance or rejection of such Licensed Fibers not later than thirty (30) days after City provides LICENSEE such test results. If the Licensed Fibers fail to meet the Specifications and LICENSEE provides timely written notice of its rejection of the Licensed Fibers, City shall repair or substitute fibers that meet the Specifications, unless LICENSEE otherwise accepts the original fibers. After City provides written notice to LICENSEE of such repair or substitution, LICENSEE shall accept or reject in writing the repaired or substituted Licensed Fibers, not later than thirty (30) days after City provides LICENSEE such notice. The date upon which LICENSEE notifies City of its acceptance of Licensed Fibers, or the first day after the expiration of LICENSEE's right to reject City's Test results or notice of repair or substitution of Licensed Fibers, shall be the "Acceptance Date" with respect to such fibers.
- (f) The Licensed Fiber shall be used exclusively for the transmission of any data or other information that originates or terminates with a device directly attached to the network owned and operated by LICENSEE, for daily business purposes. LICENSEE shall not provide any services using the Licensed Fibers except as described herein without the prior written approval of City.

Section 2: Term

- (a) The initial term of this Agreement shall be _____ (____) years, commencing on the date of the execution of this Agreement, and shall be renewable and amended in writing based on mutually acceptable terms.
- (b) Fiber rates and charges for the initial 5-year term shall be set in accordance with Section 3 herein. Thereafter, the License Fee shall be set at rates as established by the Riverside City Council.
- (c) Immediately upon termination of this Agreement or the expiration of the term hereof or otherwise, LICENSEE shall peaceably quit and surrender the Licensed Fibers to City in good condition in accordance with the Specifications. Should the City determine that any

repairs are needed to bring the Licensed Fibers and Related Facilities into compliance with the Specifications, the City shall so notify LICENSEE in writing within thirty (30) days of termination of this Agreement, specifying exactly what repairs are required. LICENSEE shall thereafter have thirty (30) days to perform such repairs. If more than thirty (30) days is required to perform such repairs, then LICENSEE shall not be considered in default under this Agreement if it commences the repairs within such thirty (30) day period and diligently pursues same to completion. Should the required repairs not be performed by LICENSEE as provided for in this Section 2(b), then the repairs shall be performed by City and billed to LICENSEE, which shall pay or dispute said charges within thirty (30) days of receipt thereof.

Section 3: Compensation

- (a) LICENSEE shall pay to City for use of the Licensed Fibers a license fee as provided in this Section 3. The LICENSEE shall begin paying license fees as of the Acceptance Date.
- (b) The license fee shall be calculated according to the rates and terms as established by the Riverside City Council. The distance will be determined by an optical time domain reflectometer measurement of the length of the Licensed Fibers rounded to the nearest one-tenth mile. The initial calculation of these charges is as follows:

Fiber Service Cost Table – Year 1 (Months 1-12)								
Path	Route	Est. Optical Distance (miles, rounded)	Monthly Rate	Discount @ 30%	Effective Rate	Number of Strands	Monthly Cost	Annual Cost
-								
Total:							\$	\$

- (c) License fees will be payable in advance on a calendar year basis. The yearly license fee with respect to each Licensed Fiber will be due within thirty (30) days after the Acceptance Date with respect to such Licensed Fiber and shall be pro-rated from the Acceptance Date to the end of the calendar year in which such Acceptance Date occurs. Thereafter, license fees with respect to such Licensed Fibers shall be paid yearly in advance no later than January 30 of each year of the term of this Agreement.
- (d) For the last year of the Agreement term, LICENSEE shall pay for only that prorated portion of the license fees due for the year until the expiration date of the Agreement term. In the event of an early termination of this Agreement, for a reason other than a LICENSEE breach of the Agreement, LICENSEE shall be liable for only that prorated portion of the fees due for the year until the date of such termination. Any excess fees previously paid to City shall be promptly refunded to LICENSEE upon termination.

- (e) The License fee for the Licensed Fiber will be subject to increase each year on the January 1st, an amount equal to two percent (2%) per year, for the initial 5-year term. Thereafter, the License Fee shall be set at rates as established by the Riverside City Council.
- (f) The cost to the City for establishing the initial Access Points and LICENSEE Point of Presence (LICENSEE POPs) as detailed in Section 4 is estimated to be _____ (\$_____), including City furnished fiber. The breakdown of estimated cost is as follows:

Fiber Service Installation Cost Table						
Path	Route	Description	Est. Distance (feet)	Installation Cost	Master Plan Facility Discount @ 50%	Net Cost to Customer
-	Construction planning, design and engineering	Engineering Labor	-	\$	-	\$
-	Connection splicing and field testing	Field Labor	-	\$	-	\$
-	RPU Internal Overhead	138% of project Cost	-	\$	-	\$
-	Capital Cost Markup	Fiber Enterprise cost recovery	-	\$	-	\$
Estimated Total:						\$
Estimated On-Bill Finance Option (Public Agency Only)					4% / yr 20yrs	\$/yr

- (g) The cost above is estimated and LICENSEE will be responsible for the actual cost of construction engineering, overhead and markup (Work Order Cost). LICENSEE shall pay the amount presented by invoice to City within thirty (30) days of presentation.
- (h) Should LICENSEE elect to finance the construction costs with the annual invoice, LICENSEE shall execute an On-Bill Payment Agreement of a form acceptable to the City Attorney within 60 days of execution of this Agreement.

Section 4. Access Points

- (a) LICENSEE shall have the right to access the Licensed Fibers at the access points (“Access Points”) indicated on Exhibit “A.” If additional Access Points are required after initial installation, LICENSEE may request that City build and maintain additional Access Points, which request will not be unreasonably denied or delayed by City. The expense of building such additional Access Points and any necessary fiber extensions shall be borne by the Parties in an equitable manner, which shall be determined by good faith negotiations between the Parties. The proportionate division of the cost shall be based on the current and expected future economic and system operational value to each Party. Whenever the Parties agree to add additional Access Points in accordance with the provisions of this Agreement, Exhibit “A” shall be amended in writing to reflect the additional Access Points so authorized.
- (b) City will own, operate and maintain each Access Point. Except where a separate arrangement has been mutually agreed to by the Parties, LICENSEE will connect to the Fiber System at each Access Point using a separate pedestal-mount fiber patch-panel in a lockable weather-resistant cabinet with joint operational access with City as depicted in Exhibit “A” (each a “LICENSEE POP”). LICENSEE will own each LICENSEE POP, provided that LICENSEE shall not transfer ownership of any LICENSEE POP. LICENSEE will provide a single-mode fiber cable with sufficient fiber strands from a City communications cabinet located at each Access Point to the LICENSEE POP. City will own all conduits, fiber optic communications equipment, cable, patch panels, and related items inside each Access Point and up to the LICENSEE POP.
- (c) LICENSEE will be responsible for the cost of its connection to each Access Point, and provide all material and labor for the complete installation (including a City-approved conduit from each City communications cabinet to its associated LICENSEE POP) as shown in Exhibit ”A” including spare conduits. Upon acceptance of the facilities by City, the facilities shall become the property of City in accordance with Section 4(b) above. Any work done within a substation or other high voltage area shall be performed only after giving reasonable notice to City and only in the presence of a City safety observer. LICENSEE shall reimburse City at City’s actual cost for the City safety observer’s time spent observing LICENSEE’s work.
- (d) LICENSEE shall use only its own employees or Approved Contractors to install its connections to the Licensed Fibers, provided that connections to fiber inside any City communications cabinet will be performed by City technicians, at the sole cost and expense of LICENSEE, using technical standards agreed to by City and LICENSEE. For purposes of this Agreement, “Approved Contractor” shall mean a contractor who is duly licensed, has adequate experience, and has been approved in writing by City to perform the type of services for which LICENSEE engages such licensed contractor, and whose approval has not been retracted by City in writing delivered to LICENSEE. City shall not unreasonably withhold or delay approval of contractors proposed by LICENSEE, and shall provide reasonable assistance to LICENSEE in identifying Approved Contractors. LICENSEE or its Approved Contractor shall follow City’s specifications and methods (as provided to LICENSEE or its contractor from time to time) in the performance of any work on the Licensed Fibers or the Fiber System. City shall have the right to review work

done for connection to Licensed Fibers. If defects or damage are found due to LICENSEE or LICENSEE's Contractor, LICENSEE shall be responsible for all costs to correct damage or unsuitable work.

- (e) LICENSEE shall have no rights to physically access the Access Points. LICENSEE shall have full and free access to all LICENSEE POPs, provided that LICENSEE shall promptly notify City of its connection to or disconnection from the Licensed Fibers at any LICENSEE POP. City will provide LICENSEE with twenty-four (24) hours' notice of its intention to access any LICENSEE POP, except in emergency situations. In emergency Situations City will attempt to notify LICENSEE prior to accessing any LICENSEE POP, but will be excused from failure to do so if City reasonably believes maintenance of service or other critical operation reasonably requires immediate access.

Section 5. Facilities

LICENSEE shall be responsible for the costs of building and maintaining the LICENSEE POPs, as well as spurs and related facilities required by LICENSEE to connect LICENSEE users to each LICENSEE POP. Such costs shall be determined and apportioned in accordance with Section 3(f). Such POPs, spurs and related facilities are sometimes referred to herein as the "LICENSEE Facilities".

Section 6. Taxes, Licenses, Liens

- (a) During the term hereof, LICENSEE shall pay, when due, any applicable taxes, including premise or property taxes, sales and use taxes, utility users' taxes, or any other fees in lieu of taxes assessed on the use of the Licensed Fibers by LICENSEE, which are directly assessed on LICENSEE's activities involving the Licensed Fibers, as well as LICENSEE's use of the Fiber System. LICENSEE shall keep the Fiber System and the Licensed Fibers free from all liens, including but not limited to mechanics liens and encumbrances resulting from the activities of LICENSEE or its agents.
- (b) If LICENSEE shall fail to pay any of the above mentioned taxes, assessments, or other fees when due, City shall have the right to either pay the same and charge the amount thereof to LICENSEE, who shall pay the same to City upon demand, or terminate this Agreement in accordance with Section 15(a) below. LICENSEE's failure to pay any such taxes, assessments or other fees is a Default under this Agreement, irrespective of whether City exercises its option to pay any of the same.
- (c) Should any such taxes, assessments or fees be levied and/or assessed against City as a result of any activity of LICENSEE related to this Agreement, City shall notify LICENSEE accordingly as soon as is reasonably practical. City shall also provide LICENSEE with copies of any and all notices, bills, and other pertinent documentation received by City related to the same. LICENSEE shall, within forty-five (45) days of receipt of such written notification(s), pay all such amounts.
- (d) City shall be responsible for and shall timely pay any and all taxes and franchise, license and permit fees based on the physical location of the Fiber System, the Licensed Fibers,

and the construction thereof in, on, across, along or through public or private roads, highways or rights-of-way.

Section 7. Maintenance

- (a) City shall be responsible for all maintenance and repair functions on the Fiber System, including the Licensed Fibers and the Related Facilities. Such maintenance and repair functions shall be performed by or under the direction of City, with reasonable notice to LICENSEE in accordance with Exhibit "D", as to Licensed Fibers and Related Facilities used by LICENSEE. Except as otherwise provided in this Section 7, LICENSEE is prohibited from performing any maintenance or repair on the Fiber System. LICENSEE shall have the right to have an employee or representative available to assist City in any maintenance or repair of the Licensed Fibers used by LICENSEE. City shall maintain the Licensed Fibers in accordance with the Specifications.
- (b) Emergency Maintenance. City shall undertake and provide for or pay for emergency maintenance and repair activities for the Licensed Fibers at City's sole cost and expense. City shall respond to any failure, interruption or impairment in the operation of the Licensed Fibers used by LICENSEE within twenty-four (24) hours after receiving a report of any such failure, interruption or impairment. City shall use its best efforts to perform maintenance and repair to correct any failure, interruption or impairment in the operation of the Licensed Fibers or the Related Facilities used by LICENSEE when reported by LICENSEE in accordance with the procedures set forth in Exhibit "D" which is attached hereto and incorporated herein by this reference.
- (c) Scheduled Maintenance. City from time to time will schedule and perform, at City's sole cost and expense, specific periodic maintenance to protect the integrity of the Fiber System and to maintain the Licensed Fibers after the Acceptance Date in accordance with the Specifications. After the Acceptance Date, City shall give LICENSEE reasonable notice of any maintenance operations affecting the Licensed Fibers, including at least fifteen (15) days' notice of any scheduled maintenance, which is likely to interrupt service to LICENSEE or its users of the fiber system. City shall use its best efforts to perform scheduled maintenance at times that will minimize interference with the business of LICENSEE and its users of the fiber system. LICENSEE shall pay City any extra costs resulting from overtime charges incurred solely to accommodate LICENSEE's schedule. After the Acceptance Date, LICENSEE may request scheduled maintenance it deems appropriate or desirable, including modifications of the Fiber System, provided that maintenance or modifications, which, in City's reasonable judgment, are not required pursuant to this Section 7, shall be performed at LICENSEE's sole cost and expense.
- (d) In the event that any failure, interruption or impairment adversely affects both City's electrical service capacity and the Licensed Fibers, restoration of the Licensed Fibers shall at all times be subordinate to restoration of the City's electrical service capacity, unless otherwise agreed to in advance in writing by the Authorized Representatives, as that term is defined in Section 31. In such event or in the event City is unable to provide timely repair service to the Licensed Fibers after the Acceptance Date, City shall permit LICENSEE or its Approved Contractor(s) to make repairs to restore the Licensed Fibers

accepted by LICENSEE as long as such restoration efforts do not interfere with City's restoration activities and provided that LICENSEE complies with the notification and approval procedure in Section 7(b). City shall remain responsible for the costs and expenses of such emergency restoration activities, provided that the labor costs charged to City shall be in accordance with telecommunications charges in the Riverside/San Bernardino metropolitan area, and no greater than twenty percent (20%) above City rates with reasonable allowance to be made in emergency restoration situations for evening/holiday or short-notice surcharges. Such repair or restoration work shall be done in a manner that is not detrimental in any way to the Fiber System, City fibers, cable, or other City facilities. No work shall be done in Access Points or City substations without the presence of a City observer.

- (e) If the Fiber System is inoperable for a period longer than twenty-four (24) consecutive hours, LICENSEE will be entitled to license fee abatement for the duration of the service outage that is in excess of twenty-four (24) consecutive hours. Such prorated abatement of license fees shall be deducted from the next license fees payment otherwise due to City under this Agreement.

Section 8: Relocation

The Parties recognize that, from time to time, City may elect or be required to relocate its Fiber System, including the Licensed Fibers, or a portion thereof. City shall be solely responsible for all costs in relocating its Fiber System and Licensed Fibers and shall use commercially reasonable efforts to do so in a manner that will cause minimum outage in LICENSEE's use thereof. LICENSEE shall be responsible for the costs to relocate all facilities owned by LICENSEE. City agrees to give LICENSEE advance written notice as soon as it obtains notice or knowledge of any governmental or other proceeding, which is likely to result in relocation. LICENSEE shall, at its sole cost and expense, have the right to participate in any such proceeding.

Section 9: Reclamation

- (a) Subject to the terms, conditions and limitations set forth in this Agreement, City shall have the right to terminate from time to time the grant of use of any or all of the Licensed Fibers on any or all segments of the network solely for use directly by City for telecommunications needs related to its electric utility service, provided that City shall have offered to LICENSEE one or more bona fide alternatives to reclamation in accordance with the provisions of Section 9(c) below.
- (b) In the event that City desires to reclaim any Licensed Fibers pursuant to Section 9(a) above after the Acceptance Date, City shall give notice ("Reclamation Notice") of such intent to LICENSEE at least twelve (12) months prior to the date of reclamation. The Reclamation Notice shall identify each Licensed Fiber on each segment that City desires to reclaim, and the intended date of reclamation.
- (c) Simultaneously with delivering the Reclamation Notice, City will submit to LICENSEE its proposals for alternatives to reclamation, including, for example, (1) addition of

LICENSEE's traffic on the fibers within the network already in use by City, (2) alternate or additional optoelectronic equipment, (3) alternate routes, and (4) installation of additional fibers along the network. Within ninety (90) days of receipt of the Reclamation Notice, LICENSEE shall submit to City its analysis of City's alternatives and include LICENSEE alternatives of traffic consolidation on fewer fibers, etc. The Authorized Representatives shall investigate and negotiate in good faith with respect to such alternatives, on behalf of City and LICENSEE. City will bear LICENSEE's reasonable costs to execute any alternative(s) to reclamation that the parties have agreed upon in writing.

- (d) Unless otherwise agreed by City and LICENSEE pursuant to Subsection 9(c) above, reclamation shall be effective on the date of reclamation set forth in the Reclamation Notice. After the Reclamation date, LICENSEE shall be entitled to a proportionate license fee adjustment with respect to the reclaimed Licensed Fibers and to reimbursement for LICENSEE's reasonable expenses in building and/or maintaining Access Points and other facilities, which the Licensed Fibers reclamation renders unusable, by LICENSEE. Any such reimbursement shall be adjusted as appropriate to reflect the depreciated value of capital expenditures, as agreed to in writing in good faith by the Authorized Representatives of City and LICENSEE.

Section 10: Representations and Warranties

- (a) City represents that, to its knowledge, after due inquiry, it has the right and authority to enter into this Agreement and grant the rights and licenses contained herein. City further represents that the execution of this Agreement by its City Manager shall be sufficient to bind City hereunder. City shall provide LICENSEE or its counsel a copy of the City Council minutes authorizing such execution of this Agreement and shall make reasonably available for LICENSEE's review copies of the relevant statutes, ordinances, rules, regulations, and procedures governing the authority of City to enter contracts, and the enforceability of contracts against City.
- (b) LICENSEE represents and warrants to City that, to its knowledge, after due inquiry, (i) it has all licenses, permits and rights authorizing it to enter into this Agreement; (ii) LICENSEE is duly organized and validly existing under the laws of the State of California is qualified to do business in the State of California; (iii) the execution and delivery of this Agreement has been duly authorized by the proper corporate proceedings; (iv) the Agreement constitutes a valid and binding obligation of LICENSEE enforceable in accordance with its terms; and (v) neither the execution, delivery or performance of the Agreement will violate or conflict with any law, rule, regulation, order, judgment, organization document, instrument or agreement by which LICENSEE is bound. The individuals executing this Agreement and the instruments referenced herein on behalf of LICENSEE each represent and warrant that they have the legal power, right and actual authority to bind LICENSEE to the terms and conditions of this Agreement.

Section 11: Assignment and Transfer

LICENSEE shall not assign, transfer or sublicense its interest in or obligations under this

Agreement (“Assign”) without the prior written consent of City.

Section 12: Indemnification

LICENSEE shall defend, indemnify and hold the City, its officers, agents and employees, harmless from and against any and all liability, loss, expense (including reasonable attorney fees), or claims for injury or damages arising out of the performance of this Agreement, but only in proportion to and to the extent that such liability, loss, expense, attorney fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of LICENSEE, its officers, agents, or employees.

Section 13: Insurance

LICENSEE, at its sole cost and expense, shall insure its activities in connection with this Agreement by maintaining programs of self-insurance as follows:

(a) General Liability Self-Insurance Program with minimum limits as follows:

1. Each Occurrence \$1,000,000
2. Products/Completed Operations Aggregate \$1,000,000
3. Personal and Advertising Injury \$1,000,000
4. General Aggregate \$2,000,000

(b) Business Automobile Liability Self-Insurance Program for Owned, Scheduled, Non-Owned, or Hired Automobiles with a combined single limit of not less than \$1,000,000 per occurrence.

(c) Workers’ Compensation as required by California law.

(d) Such other insurance in such amounts, which from time to time may be reasonable, required by the mutual consent of the City and LICENSEE against other insurable risks relating to performance of this Agreement.

It should be expressly understood, however, that the coverages and limits required under this Section 13 should not in any way limit the liability of LICENSEE.

The coverages referred to under (a) and (b) of this Section 13 shall include City as a loss payee. Such a provision, however, shall only apply in proportion to and to the extent of the negligent acts or omissions of LICENSEE, its Agencies, Districts, Special Districts, and Departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents or representatives. LICENSEE, prior to the execution of this Agreement, shall furnish City with Certificates of Insurance evidencing compliance with all requirements. Certificates shall provide for thirty (30) days’ advance written notice to City of any material modification, change or cancellation of any of the above insurance coverage.

Section 14: Default

In the event either Party shall fail to observe or perform any of the terms and provisions of this Agreement and such failure shall continue for a period of thirty (30) days after receipt of written notice from the non-defaulting party (“Default”), then the non-defaulting party may terminate this Agreement, provided however, that where such Default cannot reasonably be cured within such period, and the defaulting party has proceeded promptly to cure the same and is prosecuting such cure with diligence, the time for curing such Default shall be extended for an amount of time as may be necessary under the circumstances to complete such cure.

Section 15: Termination

- (a) City may terminate this Agreement and may repossess the Licensed Fibers in the event that any payment or amount owing under this Agreement is not furnished to City, when due, upon giving thirty (30) days' written notice to LICENSEE of City's intention to terminate unless full and proper payment is made to City of all monies due on or before the expiration of the thirty (30) day period indicated in the notice. In like manner, upon thirty (30) days' written notice, City may terminate the Agreement in the event any of the other terms of this Agreement, other than involving violation of any penal law, have been violated, unless LICENSEE has fully rectified any such failure to conform to the conditions of the Agreement within such period.
- (b) City may, in its sole discretion, give notice to LICENSEE of its intent to terminate this Agreement, in the event that LICENSEE engages in, or permits, the material violation of any federal, state or city penal law or ordinance in its performance under this Agreement. Such notice shall be given and such termination shall proceed in accordance with Section 14.
- (c) On the expiration of this Agreement or any earlier termination of LICENSEE's rights to use any or all of the Licensed Fibers under this Agreement, regardless of the reason for termination, LICENSEE shall promptly: (1) remove all of its equipment and its other property from City's premises, (2) surrender the Licensed Fibers to City; and (3) repair and restore the City's premises and property to its original condition, reasonable wear and tear excepted.
- (d) Upon LICENSEE's failure to timely perform any of its duties under this Section 15, City may elect, in its sole discretion, upon thirty (30) days' written notice to LICENSEE, to remove, sell, dispose of, assign, or make a transfer of any kind, any and all of LICENSEE's equipment and other property on City's premises; in such event LICENSEE, and any person claiming under LICENSEE, shall be deemed to have transferred to City and waived all rights to any and all proceeds and consideration received by City from such removal, sale, assignment, disposal or transfer of any kind. LICENSEE agrees to pay City any and all costs and expenses incurred by City in performing such removal, disposal, repairs and restoration, not later than ten (10) days after City gives written notice to LICENSEE of such cost and expense.
- (e) Either party may terminate this Agreement without cause upon 180 days' written notice served upon the non-terminating stating the extent and effective date of termination. Either party may request and be granted an additional 180 day extension for

a total notice period of 1 year. Should LICENSEE elect to terminate this Agreement prior to completion of the tenth year of the Agreement, it shall pay the difference between the published monthly rate tariff and the effective rate tariff for all months (or portions thereof) of licensed fiber use. Should LICENSEE elect to terminate this Agreement without cause, LICENSEE agrees to pay City all amounts owed under any deferred capital cost agreement (i.e. any amount financed annually under an On-Bill Payment Agreement) including accrued interest immediately upon demand. Upon written agreement of both parties the termination notice period may be reduced.

- (f) Should the City terminate this Agreement for cause, LICENSEE agrees to pay City all amounts owed under any deferred capital cost agreement (i.e. any amount financed annually under an On-Bill Payment Agreement) including accrued interest immediately upon demand.

Section 16: Confidentiality

If either Party provides confidential information to the other in writing, which writing is clearly marked “confidential,” the receiving Party shall, to the extent authorized by law, protect the confidential information from disclosure to third parties with the same degree of care afforded its own confidential and proprietary information. Neither Party shall, however, be required to hold confidential any information which becomes publicly available other than through the recipient, is required to be disclosed by a governmental or judicial order, or by statute, is independently developed by the receiving Party, or becomes available to the receiving Party without known restrictions from a third party.

Section 17: Costs

Except as otherwise expressly provided herein, each Party shall bear its own attorney fees and other expenses related to this Agreement.

Section 18: Third Party Beneficiaries

No person or entity shall be considered a third-party beneficiary to this Agreement. None of the terms or conditions in this Agreement shall give or allow any claim, benefit, or right of action by any third person or entity not a party hereto.

Section 19: No Partnership

The Parties acknowledge and agree that this Agreement does not create a partnership between, or a joint venture of, City and LICENSEE.

Section 20: Binding Effect

This Agreement shall be binding upon, and shall inure to the benefit of the Parties hereto and their respective successors and assigns.

Section 21: Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of California without giving effect to the principles of conflicts of laws.

Section 22: Severability

In the event any term, covenant or condition of this Agreement, or the application of such term, covenant or condition, shall be held invalid as to any person or circumstance by any court having jurisdiction, all other terms, covenants and conditions of this Agreement shall not be affected thereby, but shall remain in force and effect unless a court holds that the invalid term, covenant or condition is not separable from all other terms, covenants and conditions of this Agreement.

Section 23: Force Majeure

Neither Party shall be liable to the other for any failure of performance under this Agreement due to causes beyond its control, including, but not limited to: acts of God, fire, flood or other catastrophes, adverse weather conditions, material or facility shortages or unavailability not resulting from such Party's failure to timely place orders therefore, lack of transportation, the imposition of any governmental codes, ordinances, laws, rules, regulations or restrictions, national emergencies, insurrections, riots, wars, or strikes, lock-outs, work stoppages or other labor difficulties.

Section 24: Waiver

No delay or omission by either Party to exercise any right or power occurring upon non-compliance or failure of performance by the other Party shall impair that right or power or be construed to be a waiver. A waiver by either Party of any of the covenants, conditions or obligations to be performed by the other Party under the Agreement shall not be construed to be a general waiver.

Section 25: Headings

The Section headings herein are for convenience and reference only, and shall in no way define or limit the scope and content of this Agreement or in any way affect its provisions.

Section 26: Notices

Other than billing invoices, which may be sent by first-class mail, and notifications required under Exhibit "D," whenever written notice is required or permitted to be given under this Agreement by one party to the other, it shall be given effect by hand delivery, or by mailing the same by certified mail, return receipt requested, properly addressed and postage pre-paid to the party to whom given. Notices shall be addressed as follows:

LICENSEE:

City:
Utilities General Manager
3750 University Ave., Suite 300

Riverside, CA 92501

With copy to:

With copy to:
Mujib Lodhi
Assistant General Manager – Operational
Technology
3750 University Ave., Suite 300
Riverside, CA 92501
Email: mlodhi@riversideca.gov
951.826.5699

Either party hereto may at any time designate a different person or address for the purpose of receiving notice by so informing the other party in writing in accordance with this section. Notice by certified mail shall be deemed given upon actual receipt thereof or three (3) days after being deposited in the United States Mail, whichever first occurs.

Section 27: No Implied Representations

No representations, agreements, covenants, warranties, or certifications, express or implied, shall exist as between the Parties, except as specifically set forth in this Agreement.

Section 28: Integrated Agreement and Amendments

This Agreement is an integration of the entire understanding of the Parties with respect to the matters set forth herein. The Parties shall only amend this Agreement in writing with the proper official signatures attached thereto.

Section 29: Media Releases

Neither Party shall issue any media releases or otherwise make any announcements, or do any marketing or advertising or public relations, that references the Parties' relationship without the prior review and approval of the other Party.

Section 30: Nondiscrimination

During the performance of this Agreement, LICENSEE shall not deny the Agreement's benefits to any person otherwise eligible to receive such benefits, nor shall LICENSEE discriminate unlawfully against any employee or applicant for employment on the ground or because of race, color, creed, national origin, ancestry, age, sex, sexual orientation, marital status, disability including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto. LICENSEE shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.

Section 31: Authorized Representatives

Each Party shall designate, in the manner provided in Section 26 of this Agreement, a representative who is authorized to act on its behalf in the implementation of this Agreement and with respect to those matters contained herein, which are the functions and responsibilities of the

Authorized Representatives. Each Authorized Representative may delegate actual performance of such functions and responsibilities; provided, that any agreement of the Authorized Representatives required to be in writing shall be signed by the Authorized Representatives. Either Party may at any time change the designation of its Authorized Representative by written notice to the other Party.

Section 32: Time of the Essence

Time is of the essence for each and every provision of this Agreement.

[All signatures on next page]

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the date first written above.

CITY OF RIVERSIDE

By: _____

Name: _____

Title: _____

Approved as to form:

By: _____

Name: _____

Title: _____

Attest:

By: _____

City Clerk

LICENSEE OF RIVERSIDE

By: _____

Name: _____

Title: _____

Approved as to form (LICENSEE):

By: _____

Name: _____

Title: _____

Exhibit A

Fiber System and Access Points

(See attached Map)

The following are agreed locations of Access Points and LICENSEE POPs for the Licensed Fibers in

Exhibit B.

Path "A"

Exhibit B

Licensed Fibers

Exhibit C-1

Fiber Specifications

The Fiber System will meet the optical specifications as detailed below for all new fiber installed:

Single mode Fiber

Parameter	Specification	Units
Max. Attenuation 1310nm	0.40	dB/km
Max. Attenuation 1550nm	0.30	dB/km

Attenuation vs. Wavelength

The attenuation for the wavelength region from 1525nm to 1575nm must not exceed the attenuation at 1550nm by more than 0.05 dB/km.

Cladding Diameter	12561	um
Core Diameter	8.3	um
Fiber Cut-Off Wavelength	1150-1350nm (typically less than 1250nm)	
Zero-Dispersion Wavelength	1301.5nm- 1321.5nm	

The maximum dispersion slope (SoMax) must be no greater than 0.092 ps/(nm²-km). The nominal zero dispersion wavelength must be near 1310nm zero dispersion range. The dispersion between 1530 and 1570nm must be less than or equal to 18 ps/(nm²*km).

Maximum Dispersion 1290-1330 nm	<2.8	ps/(nm-km)
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Exhibit C-2

Splice Loss

All splices will be performed with an industry-accepted fusion-splicing machine. In no case shall a fiber show a point of discontinuity greater than 0.25 dB. Discontinuities (known as steps, splices, or attenuation non-uniformity) shall be measured with OTDR to determine the loss of the localized attenuation. The least squares fit method of measure must be used to determine the magnitude of the loss of the point of discontinuity.

Splices will be qualified with bi-directional span testing. These measurements must be made after the splice manhole/handhole is closed in order to check for micro-bending problems. Once end-to-end continuity is established, loss measurements at the required wavelength(s) (1310 nm and 1550 nm for single mode conventional fiber and 1550 nm only for Corning SMF-LS and Lucent True Wave) will be recorded using an industry-accepted laser source and power meter.

OTDR traces will be taken at the required wavelength(s) and splice loss measurements will be recorded. Contractor shall record OTDR traces on diskettes and provide one set of diskettes with all traces to City. The format of the diskettes will be that of the OTDR manufacturer.

The splicing standards are as follows:

Although no single maximum splice loss limit is placed on individual splices, (other than none >0.25 dB) there is a loss requirement placed on the end-to-end loss value as measured with an industry-accepted laser source and power meter. The end-to-end loss must meet the design loss value of 0.65 dB/km at 1310 nm and 0.55 dB/km at 1550 nm for conventional single mode fiber and 0.55 dB/km at 1550 nm for SMF-LS and True Wave fiber. Examples:

Conventional Single Mode Fiber at 1310 nm	= $50 \text{ km} \times 0.65 = 32.5 \text{ dB}$
Conventional Single Mode Fiber at 1550 nm	= $50 \text{ km} \times 0.55 = 27.5 \text{ dB}$
SMF-LS and Lucent TrueWave Fiber at 1550 nm	= $50 \text{ km} \times 0.55 = 27.5 \text{ dB}$

Exhibit D

Maintenance, Repair, and Restoration, Notification/Escalation Procedures

Should failure, interruption, or impairment of the Licensed Fibers (or Related Facilities essential to use or maintenance of the Licensed Fibers) occur, LICENSEE may call the following number to report such circumstances: (951) 351-6229 – Primary; (951) 687-0791 – Alternate; (951) 351-6290 -- Fax. Such number will be staffed on a 24-hour basis 7 days a week, including holidays, by an employee of City with authority (or the ability to contact a supervisor with authority) to make decisions and implement services related to emergency restoration under Section 7 of this Agreement. The supervisor on duty will initiate restoration service and coordinate restoration activity.

City shall, within twenty-four (24) hours of notification by LICENSEE, have one or more employees on site to begin investigation and correction of the reported condition. At four-hour intervals, City shall provide LICENSEE with a report of progress or lack thereof in restoring operation of the Licensed Fibers in accordance with the Specifications.

Whenever LICENSEE notifies City of its intention to perform emergency restoration services through its employees or contractors pursuant to Section 7(d) of this Agreement, City shall provide its concurrence or disapproval (and any requisite contractor approval) within two (2) hours from LICENSEE's notification.

City may provide notice of the following occurrences or planned occurrences by **contacting the [REDACTED]** for:

- Emergency/unscheduled outages
- Emergency repair progress reports
- Scheduled maintenance affecting Licensed Fiber
- Relocations