

**FIBER OPTICS LEASE AGREEMENT BY AND BETWEEN
THE CITY OF ANAHEIM AND
PREAMBLE**

This lease agreement, (“Agreement”), is made and entered into in the City of Anaheim, County of _____, State of California on this ____ day of _____, 20__, (“Effective Date”), by and between the City of Anaheim, a chartered California municipal corporation (the "City") and **[INSERT]** (“Lessee”), with an office at **[INSERT]**. The City and Lessee may be referred to herein individually as a "Party" or collectively as the “Parties” or the “Parties to this Agreement”.

Unless otherwise defined herein, terms in this Agreement and in the associated Exhibits and Attachments have the meanings set forth in Exhibit 1. Exhibit 1 and all other Exhibits and Attachments to this Agreement are incorporated herein by this reference as though set forth in full.

RECITALS

Whereas:

- A. The City of Anaheim has deployed a Fiber Optic Infrastructure within and in limited instances beyond the jurisdictional boundaries of the City to accommodate the requirements of the Electric Department and potentially other City agencies and municipal institutions. Title to the Fiber Optic Infrastructure, and every part thereof, is vested exclusively in the City.
- B. The Fiber Optic Infrastructure has been designed with fiber strand capacity (dark fiber) available for leasing or licensing (“Leaseable Fiber”). The City may construct, install, operate, maintain, repair, disconnect, replace and remove facilities, cable and other equipment associated with the Fiber Optic Infrastructure.
- C. Lessee is now, or shall be prior to operating any Telecommunications, duly authorized, licensed or otherwise qualified to operate Telecommunications as required by applicable local, state or federal laws (“Qualified Party”) and that it intends to use Leaseable Fibers from the Fiber Optic Infrastructure for lawful purposes.

AGREEMENT PROVISIONS

In consideration of the Recitals above and the mutual promises contained in this Agreement, the Parties agree as follows:

ARTICLE 1. GRANT AND SCOPE OF LEASE

1.1 **Authority.** The City of Anaheim is a charter city and a municipal corporation, drawing its authority from Article 11 of the California State Constitution. The City owns the Fiber Optic Infrastructure as a public work operated by its electric utility or its designated agent or partner.

1.2 **Fiber Optic Infrastructure.** Said Fiber Optic Infrastructure is located either underground in the City conduits or overhead on electric utility poles in the general route set forth in Exhibit 2. Some portions of the route extend beyond City limits.

➤ Network Elements. **Network elements that are incorporated in this Agreement are as defined in Exhibit 3 and 5.**

1.3 **Exhibits.** Provisions of this Agreement shall encompass Exhibits 1 through 12, inclusive which are incorporated by this reference as though set forth in full. Exhibits incorporate definitions, requirements, specifications, and forms to be submitted by the Lessee, and Terms and Conditions that are specific to this agreement with Lessee. These Exhibits are listed as follows:

Exhibit 1	Comprehensive set of definitions
Exhibit 2	Route maps
Exhibit 3	Fiber to be leased
Exhibit 4	Attachment Points to be provided
Exhibit 5	Lease payment & term
Exhibit 6	Notice of Completion and Notice of Acceptance/Rejection
Exhibit 7	Fiber specifications, performance standards and acceptance testing
Exhibit 8	Engineering Information Form
Exhibit 9	Personnel Contact Form
Exhibit 10	Insurance Requirements
Exhibit 11	Request Form for additional facilities or changes to the existing Lease
Exhibit 12	Form of Surety Bond or other means of payment guarantee

1.4 **Attachments** Provisions of this Agreement shall encompass Attachments 1 through 13, inclusive which are incorporated by this reference as though set forth in full.

Attachment 1	Provisions for Additional Leased Infrastructure
Attachment 2	Interconnection of Lessee's Cable to City-Owned Cable
Attachment 3	Building Entrance Arrangements
Attachment 4	Private Property Access
Attachment 5	Lease Payments Arrangements

Attachment 6	Lease Prepayment Option
Attachment 7	Lease Renewal
Attachment 8	Provisions For Acceptance Testing
Attachment 9	Grounds For Default
Attachment 10	Dispute Resolution
Attachment 11	Construction Costs and Engineering Fees
Attachment 12	Termination
Attachment 13	Confidentiality

- 1.5 **Grant.** Subject to the provisions of this Agreement, the City grants to Lessee, and Lessee accepts from the City, the right and privilege to use certain of the Leased Fibers (“Leased Fibers”) and Network Elements (as set forth in Exhibits 3 (“Fiber to be Leased”) and Exhibit 4 (“Attachment Points to be Provided”) and referred to herein collectively as “Leased Infrastructure”) and any additional Leased Infrastructure later specifically leased to Lessee per Attachment 1 (“Additional Leased Infrastructure”) and as executed in accordance with Exhibit 11 (“Request Form for Additional Facilities or Changes to the Existing Lease”).
- 1.6 **Intentionally Omitted.**
- 1.7 **Leased Infrastructure.** This Agreement establishes the right of Lessee to use the Leased Infrastructure and Additional Leased Infrastructure described and set forth in Exhibits 3, 4 and 11.
- 1.8 **Attachment Point Provisions.** Lessee shall have use of, and access to, the Leased Fibers (or Additional Leased Fibers) through Attachment Points listed on Exhibit 4 or subsequently added in Exhibit 11. All Attachment Points are an integral part of the Fiber Optic Infrastructure and are the property of the City.
- 1.8.1 **Cost of Attachment Points.** The City will provide Lessee with the Attachment Points listed on Exhibits 4 and 1 at the cost set forth in Article 3 (“Lease Payment and Other Fees—Attachment Points”).
- 1.8.2 **Splicing on City's Side of Demarcation.** Splicing of fibers located within the Fiber Optic Infrastructure, if required to accommodate Lessee, shall be performed only by the City’s personnel or the City’s designated independent contractors, or both in accordance with Exhibit 7 (“Fiber Specifications, Performance Standards and Acceptance Testing”). Lessee shall pay to the City the fees specified in Article 3.

1.9 City Point-of Presence. The City will deliver fiber to Lessee to the City point-of presence at the locations so designated on Exhibit 4 and 11. **1.10 No Exclusivity.** Nothing in this Agreement is to limit the City's right of use of, or right to lease or license Network Elements, conduit, or the remaining City Fiber or Leaseable Fiber to others.

1.11 Limitations. This is a Lease for the use of the Leased Infrastructure and Additional Leased Infrastructure only, subject to the terms and conditions herein. City is not transferring or granting to Lessee any other interest or estate in the Leased Fibers, the Additional Leased Infrastructure, the Fiber Optic Infrastructure, Network Elements, conduit or any other property interest, including any fee, other leasehold interest, easement, or any franchise rights. This Agreement is not a contract for electric service. This is not a franchise agreement for providing cable services.

1.12 No Agency. Lessee is not City's agent and shall have no authority, express or implied, to act as agent of City or any of its departments for any purpose. The City is not Lessee's agent and shall have no authority, express or implied, to act as agent of Lessee for any purpose.

ARTICLE 2. TERM

2.1 **Effective Date of Agreement and Term of Agreement.** This Agreement shall be binding on the Parties beginning on the Effective Date. The term of this Agreement shall commence on the Effective Date and shall continue until earlier of (a) the expiration of all Leases and any associated Renewal Terms granted under this Agreement, or (b) the termination of this Agreement in accordance with the provisions herein. Termination of this Agreement under (b) of the foregoing sentence will result in the concurrent termination of all Leases.

2.2 **Term of Lease.** The term of the Lease which is granted for the Leased Infrastructure is set forth in Exhibit 5 plus any exercised Renewal Terms. The term of the Lease(s) of any Additional Leased Infrastructure granted pursuant to Attachment 1 shall be as set forth in a fully executed Exhibit 11, plus any exercised Renewal Terms therefor. For the Additional Leased Infrastructure, the Lease term and Renewal Term shall be specifically identified.

2.3 **Renewal Terms.** Provided Lessee is not in default of any of the terms or provisions of this Lease (including but not limited to payment of all fees and charges) beyond the applicable cure period, Lessee may renew this Lease for up to two Renewal Terms. Each Renewal Term shall be no more than five (5) years. The price for a Renewal Term shall be consistent with City's Adopted Rates in effect at that time as set forth in Article 3, "Lease Payment and Other Fees". In

the case of the Additional Leased Infrastructure, the Renewal Term shall be as set forth in the Exhibit 11. To request a Renewal Term, Lessee shall:

- 2.3.1 Deliver to the City of Anaheim Public Utilities General Manager, a written request for the Renewal Term as early as one hundred and eighty (180) calendar days, and no later than ninety (90) calendar days, prior to the expiration of the then effective term, Initial, Renewal or otherwise. (The City with respect to this notification period may invoke Time-is-of-the-essence.)
- 2.3.2 For any request to renew a Lease for the Leased Infrastructure (or Additional Infrastructure) beyond three Renewal Terms, the Parties shall agree upon the Term length. A Renewal Term shall not be unreasonably withheld.

ARTICLE 3. LEASE PAYMENT AND OTHER FEES

- 3.1 **Pricing Criteria.** The Lease Payment is predicated on the following pricing elements:
 - 3.1.1 Point-to-Point Transport Service, based on total leased fiber-miles (as established on the basis of OTDR measurements).
 - 3.1.2 Co-Location Service, based on the number of vault sites provided to accommodate Lessee's equipment.
- 3.2 The rate schedule for the pricing elements is set forth in Exhibit 5. Rates for any Additional Leased Infrastructure shall be as set forth in a fully executed Exhibit 11. Lessee shall pay to the City in United States Dollars the Lease Payment as calculated in Exhibit 5 and Exhibit 11 (as applicable) under this Agreement and use of the Leased Infrastructure (and Additional Leased Infrastructure), as well as any other applicable fees agreed upon in advance by the Parties.
- 3.3 Lease payment procedures and price inflation adjustments are set forth in Attachment 3.
- 3.4 Prepayment options are provided in Attachment 6.
- 3.5 Provisions for Renewal Terms are provided in Attachment 4.
- 3.6 No Lease Payment shall be due for any fibers specifically designated by the City as not being in compliance with Exhibit 7 (Fiber Specifications, Performance Standards and Acceptance Testing) as set forth hereto. Payment shall be made when said fibers have been found to be in compliance in accordance with the provisions of Article 4 (Construction and Acceptance of Leased Fiber) below.

- 3.7 **Construction Costs and Engineering Fees.** The City charges for engineering services and construction of infrastructure and terms of payment are enumerated in Attachment 11.
- 3.8 **Third Party Charges.** Lessee shall reimburse the City for charges assessed or imposed on the City by third parties, which may be incurred by the City in accommodating Lessee's Infrastructure requirements within the City, or as required by law relating to this Agreement. City will advise Lessee, in advance, of potential or anticipated costs imposed by third parties for accommodating Lessee's Infrastructure and which are directly attributable to Lessee, to the extent City is aware of those charges in advance and can obtain an estimate from that third party. If Lessee does not agree to the charge imposed by the third party, then Lessee shall be responsible for negotiating with that third party and shall hold the City harmless from any claim of delay in completing the subject work due to Lessee's negotiations of the third party charges. If Lessee chooses not to pay the third party charges, then City shall not perform the work requested by Lessee.
- 3.9 **Taxes and Franchise Fees.** None of the Lease Payments charged to Lessee pursuant to this Agreement includes any tax or franchise fee charged by any governmental entity. Lessee shall be solely responsible for paying any and all taxes, franchise fee or assessments by any governmental / non-governmental entity related to the Leased Infrastructure and Additional Leased Infrastructure, if any, when due.
- 3.9.1 The City represents that currently, there is no tax imposed by the City that would be levied on Lessee associated with this Agreement. The City does charge a franchise fee for use of fiber to operate as a cable service, and Lessee agrees and acknowledges that it must enter into a franchise agreement with City in order to provide those services within the City of Anaheim. Providing cable services without a franchise agreement constitutes a material breach of this Agreement and a violation of the Anaheim Charter and Municipal Code.
- 3.9.2 Lessee and City recognize and understand that this Agreement may create possessory interests subject to property taxation and in such case the party obtaining such interest expressly agrees to pay any property tax levied on such interest. This provision constitutes notice of the possibility of the imposition of a possessory interest tax as contemplated by Revenue & Taxation Code Section 107.6.
- 3.9.3 Lessee shall be solely responsible for opposing, protesting, appealing or challenging, at its sole cost, any tax or franchise fee imposed or asserted by any entity.

ARTICLE 4. CONSTRUCTION AND ACCEPTANCE OF LEASED FIBER

- 4.1 **Notice of Completion.** City has constructed and shall continue to cause to be constructed the Fiber Optic Infrastructure. City shall notify Lessee in writing upon the completion of construction of the configuration of all of the Leased Infrastructure as set forth in Exhibits 3 and 4 attached hereto ("Notice of Completion"). If required, Lessee shall grant or secure access to any premises required in connection with the construction or testing of the Leased Infrastructure. Unless the Parties otherwise agree, the first Notice of Completion shall not be sent to Lessee until all items listed in Exhibits 3 and 4 have been completed by City. Charges for Leased Fiber shall commence on the Acceptance Date . Thereafter, if Lessee requests pursuant to an executed Exhibit 11, that City construct and/or lease to Lessee Additional Leased Infrastructure, the City shall provide Lessee with a Notice of Completion as soon as construction is complete. The City shall use its commercially reasonable efforts to complete construction of the Additional Leased Infrastructure as set forth in Exhibits 3 and 4, or any future Additional Leased Infrastructure, or Attachment Points added by an executed Exhibit 11. Upon the completion of construction of the foregoing, the City shall perform testing in accordance with standards and procedures enumerated in Exhibit 7.
- 4.2 **New Construction.** Upon the completion of construction of any Leased Fiber, Additional Leased Infrastructure, or Attachment Point , the City shall promptly conduct construction tests, at its sole cost and expense, in order to verify that the particular item meets the Performance Specifications set forth in Exhibit 7 ("Post-Construction Testing"). The results of such tests shall be provided to Lessee concurrently with the Notice of Completion, at no cost to Lessee.
- 4.3 **Existing Fiber Optic Infrastructure.** If any Leased Fiber, Additional Leased Infrastructure, or Attachment Point, Access is to be provided from the Leased Infrastructure (or Additional Leased Infrastructure) that is not newly constructed, the City shall perform verification testing to verify that the item to be leased meets the Performance Specifications set forth in Exhibit 7 ("Verification Testing"). The results of such tests shall be provided to Lessee, within five (5) business days of completion thereof, at no cost to Lessee.
- 4.4 **Lessee's Acceptance Testing.** Lessee may conduct its own testing of the Leased Infrastructure or of Additional Leased Infrastructure, , or Attachment Points, added by an executed Exhibit 11 upon receipt of the Notice of Completion or Verification Testing as to any of those items in order to verify that the Leased Infrastructure (or Additional Leased Infrastructure) or individual item meets the Performance Specifications set forth in Exhibit 7 ("Acceptance Testing"). Lessee is solely responsible for ensuring that Lessee has installed the necessary Lessee Infrastructure or obtained required entrance agreements to perform its own Acceptance Testing. Additional provisions for Acceptance Testing are provided in Attachment 8.

- 4.5 **Notice of Rejection.** In the event Lessee delivers a Notice of Rejection to City, the City shall use its commercially reasonable efforts to correct or repair Leased Fibers, Additional Leased Infrastructure, or Attachment Points that are not in compliance. Thereafter, City shall again give Lessee a Notice of Completion with respect to the particular item previously indicated in Lessee's Notice of Rejection as not in compliance. The foregoing procedure shall apply again and successively thereafter until City, in its sole opinion, has remedied all defects or failures that are not substantially in conformance with the Performance Specifications of Exhibit 7. Once compliance with the Performance Specifications set forth in Exhibit 7 is achieved and demonstrated by the City, or if the cited defects do not materially affect the leased Fiber Optic Infrastructure's performance, as determined by City consistent with industry standards, Lessee shall immediately execute a Notice of Acceptance. Lessee shall not unreasonably withhold acceptance.
- 4.6 **Use of Fiber.** Unless otherwise agreed by the Parties, Lessee shall not use any part of the Leased Infrastructure or Additional Leased Infrastructure as set forth in Exhibits 3 and 4 until acceptance of the entire Leased Infrastructure or entire Additional Leased Infrastructure has been received by the City from Lessee.
- 4.6.1 Upon issuance of a Notice of Completion for the initial portion of the Leased Infrastructure or Additional Leased Infrastructure, Lessee and City shall be subject to all the requirements of Paragraphs 4.1 through 4.5. Upon receipt by the City of the Notice of Acceptance as to the agreed portion of the Leased Infrastructure(or Additional Leased Infrastructure), Lessee may use that portion of the Leased Infrastructure(or Additional Leased Infrastructure) and its Lease Payment for that portion of the Leased Infrastructure (or Additional Leased Infrastructure) delivered, is due.
- 4.6.2 Lessee shall not use Leased Infrastructure(or Additional Leased Infrastructure) to provide cable services unless and until it has obtained a franchise from the City of Anaheim. The City reserves the right to require a franchise for any application that may later be allowed by changes in federal or state law.
- 4.7 **Acceptance Date.** Upon receipt by the City of an executed Notice of Acceptance, the Leased Infrastructure or Additional Leased Infrastructure that is the subject of the Notice of Acceptance shall be deemed to have been accepted by Lessee. The receipt date shall be known as the "Acceptance Date" which City shall confirm in writing.
- 4.8 **As-Built Drawings.** The City provides as-built drawings to Lessees only for Service Drops constructed for that Lessee. Subject to the terms of Attachment 13, the City will not share detailed as-built drawings of its Fiber Optic Infrastructure with the public, nor will it provide those as-builts to its Lessees. A general configuration of Lessee's route is attached hereto as Exhibit 2.

- 4.9 Additional Leased Infrastructure. The provisions of this Article 4 shall apply to any Additional Leased Infrastructure.

ARTICLE 5. LESSEE'S INTERFACE WITH CITY'S INFRASTRUCTURE

5.1 Lessee's Fiber Route.

5.1.1 Any time Lessee applies for a permit for additional fiber routes within the City boundaries for interconnection to the Fiber Optic Infrastructure, Lessee shall, in addition to any other required City permit processes, submit an "Engineering Information Form", substantially in the form of Exhibit 8 to the person identified in Exhibit 9. Lessee shall also provide interconnection status information as may be requested by the General Manager from time to time. To the extent Lessee deems any such information is Confidential Information, it shall comply with the provisions of Article 22 of this Agreement. Following completion of the installation of Lessee's Infrastructure and fiber route within the City, Lessee shall, within thirty (30) calendar days of completion and to the extent necessary, identify the location of Lessee's Infrastructure located within the City, providing the City with information accurately reflecting the actual location of Lessee's Infrastructure and fiber route configurations located within the City ("As-Built Infrastructure"). Lessee's as-built will be treated as Confidential Information, will be labeled as such and shall be treated as set forth in Article 22 below. Lessee's as-builts shall be used solely by the City for purposes of joint testing and trouble diagnosis (e.g., to determine trouble origination as City or Lessee's facility problem).

5.1.2 From time to time either Party may request that the other Party perform installation work on its behalf as an adjunct to installation work occurring and related to their respective infrastructures. Each Party will cooperate with the other in accommodating such requests, but is not obligated to do so if it is deemed to introduce delays or complications to the planned work. Any costs incurred by one Party on behalf of the other Party shall be documented and then reimbursed by the Party receiving the benefit, with the exception of personnel time or overhead unless each Party has explicitly agreed that personnel time is included and that time exceeds eight (8) hours.

5.2 **Lessee's Infrastructure.** Lessee shall assume ownership, installation, and maintenance responsibility for Lessee's Infrastructure beginning at a Demarcation Point located at least one foot from City-owned splice cases, pull boxes, or other City-owned structures.

5.2.1 At each Attachment Point, the City shall provide a capped, stubbed-out conduit, one-foot in length, from the Fiber Optic Infrastructure to the Demarcation Point.

- 5.2.2 At each capped, stubbed-out conduit, City shall provide a fiber drop cable in the amount of thirty (30) feet. Lessee shall be solely responsible for splicing its own fiber to that thirty-foot drop, unless the Parties agree otherwise in writing
- 5.2.3 Lessee shall be responsible for installation and interconnection of fiber within structures located on Lessee's side of the Demarcation Points, which structures are the sole responsibility of Lessee.
- 5.2.4 Installation of conduit, fiber, splice cases and other structures on Lessee's side of the Demarcation Points shall be the responsibility of Lessee, and title shall be vested with Lessee, if and as appropriate.
- 5.3 **Lessee Covenants.** Except as expressly authorized by applicable laws or this Agreement, in the exercise and performance of its rights and obligations under this Agreement, Lessee covenants and agrees:
- 5.3.1 Lessee shall comply with all applicable federal, state and local laws in the exercise and performance of its rights and obligations under this Agreement. Lessee shall comply with any City permit issued to Lessee in connection with the location of Lessee's Infrastructure within the public right-of-way. Lessee shall obtain, as required, any and all necessary approvals for the design, construction, installation, operation and testing of Lessee's Infrastructure to be located within the City;
- 5.3.2 Lessee shall not interfere in any manner with the existence and operation of any and all public and private rights-of-way, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electric and telephone wires, electroliers, cable television, and other telecommunications, utility, and municipal property without the express written approval of the owner or owners of the affected property or properties. Lessee shall not do or permit anything to be done by anyone under its direct control or doing work on its behalf within the public right-of-way or to permit anyone under its direct control or doing work on its behalf to do anything that which may in any way obstruct or interfere with the rights of any person located within the public right-of-way, or injure them, or use or allow the public right-of-way to be used by anyone under its direct control or doing work on its behalf for any improper or unlawful purpose. Notwithstanding the foregoing, this shall not be construed to prohibit Lessee from installing Infrastructure within the City or otherwise exercising its rights and carrying out its obligations under this Agreement, provided however that this sentence is not intended nor shall it be construed to increase Lessee's rights under this Agreement.
- 5.3.3 Lessee shall keep all parts of the Leased Infrastructure and Additional Leased Infrastructure that belong to City free of any liens that may be created or which may attach as the result of the acts or omissions of

Lessee, its employees, subcontractors or agents. If such lien is filed, Lessee shall indemnify and hold harmless City from any and all costs to remove such lien including but not limited to reasonable attorneys' fees through appeal;

- 5.3.4 Lessee shall be permitted to present this Agreement for purposes of obtaining financing; however, if any entity to whom this Agreement has been presented attempts to perfect an interest therein, that entity must comply with the provisions of Article 17 "Assignment". Lessee shall not, under any circumstances pledge or present the actual dark fiber or Leased Infrastructure or Additional Leased Infrastructure as an asset to anyone for any purpose. The Leased Infrastructure and Additional Leased Infrastructure is public property owned by the City and shall not be pledged to any party.
- 5.3.5 Lessee shall not do or permit anything to be done by anyone under its direct control or doing work on its behalf in, on or about the Leased Infrastructure, Additional Leased Infrastructure or Lessee's Infrastructure located within the City, which is prohibited by, or will in any way conflict with, any laws now in force by the City or which may hereafter be enacted or promulgated by an entity other than the City;
- 5.3.6 Lessee shall not, in connection with this Agreement, commit, cause, maintain or permit nor suffer, or allow to be committed, caused, maintained or permitted by anyone under its direct control or doing work on its behalf, any waste, abuse or destructive use within the public right-of-way, nor any public or private nuisance, nor any other act or thing which may disturb the quiet enjoyment of any other person lawfully using the public right-of-way;
- 5.3.7 Lessee shall be solely and fully responsible for the reporting of all hazardous materials releases to the appropriate agencies, when such releases are caused by, or result from, Lessee's activities or by anyone under its direct control or doing work on its behalf. Lessee shall take all necessary precautions to prevent any hazardous materials used by Lessee or by anyone under its direct control or doing work on its behalf, from entering into any storm or sewage drain system or from being released within the public right-of-way and shall be solely responsible for any cleanup and/remediation required by any federal, state or local agency.

5.4 City Covenants.

- 5.4.1 City shall comply with applicable federal, state and local laws in the exercise and performance of its rights and obligations under this Agreement. City shall comply with any City permit issued in connection with the Fiber Optic Infrastructure within the public right-of-way. City

shall obtain, as required, any and all necessary approvals for the design, construction, installation, operation and testing of City's Infrastructure.

5.4.2 City shall not do or permit anything to be done by anyone under its direct control or doing work on its behalf in, on or about the Leased Infrastructure, Additional Leased Infrastructure or Lessee's Infrastructure, which is prohibited by or will in any way conflict with any laws now in force or which may hereafter be enacted or promulgated. However, if any laws, rules, ordinances, resolutions or other regulations which are enacted or promulgated by a governmental entity (other than the City) after the Effective Date of this Agreement materially (a) change the economics of this Agreement, or (b) interfere with Lessee's or Lessor's rights provided hereunder, City shall provide Lessee sixty (60) days notice of the required change and if the Lessee does not agree to comply, City shall have the right to terminate this Agreement without penalty.

5.5 **Cooperation.** Lessee shall cooperate with the City concerning construction, installation and testing activities involving other leases or licensees under separate agreements with the City, in each case at the City's sole cost and expense. City will provide Lessee with reasonable advance notice, in writing, of the necessity for any such cooperation.

5.6 **No Access by Lessee.** Other than as specifically authorized in this Agreement, Lessee is prohibited from accessing, directly or indirectly, the Fiber Optic Infrastructure, or any part thereof, the transmission pathway, or any part thereof, or any City electric or other utility facility on City's side of the Demarcation Points. Unauthorized access by Lessee to, or use of, the Fiber Optic Infrastructure shall constitute a material breach of this Agreement. City may terminate for cause this Agreement upon the delivery of written Notice of Termination to Lessee, effective thirty (30) calendar days after its receipt by Lessee.

ARTICLE 6. FIBER OPTIC INFRASTRUCTURE MONITORING, MAINTENANCE, REPAIRS AND ALTERATIONS.

6.1 **General.** City shall maintain the Fiber Optic Infrastructure in good operating condition and in accordance with the specifications set forth on Exhibit 7, throughout the Term of this Agreement.

6.2 Contact Persons or Representatives

The Parties shall furnish to each other, and update as changes occur, the current name, title, telephone number, and personal communications device number (including facsimile transmission number, cellular telephone number, and paging device number) of personnel that are to be contacted for issues involving maintained, emergencies, and other issues under this Article or in other cases expressly set forth in this Agreement. This information shall be provided on the

Personnel Contact Form set forth as Exhibit 9 and provided by each Party to the other Party according to Article 21 e.

6.3 **Routine Monitoring.**

6.3.1 . The City shall not monitor the Leased Fibers or Additional Leased Fibers.

6.3.2 The City, at its sole cost and expense, shall undertake maintenance and repairs to cure deficiencies in the Fiber Optic Infrastructure as deemed necessary by City in its sole discretion. Lessee is responsible for all maintenance and repairs on Lessee's side of the Demarcation Points. Where routine monitoring reveals a potential maintenance issue, each Party shall, with regard to their respective Infrastructure, take reasonable steps to address the issue prior to it affecting the operation or functionality of their respective Infrastructures. With regard to emergency repairs, see section 6.5 below.

6.3.3 Lessee may conduct independent diagnostic testing, fault isolation, repair verification, and end-to-end network testing, as it deems appropriate, on Lessee's side of the Demarcation Points. Lessee may notify the City's Representative in writing if it is determined as a result of its independent testing and surveillance programs, review of City-provided reports, or otherwise, that any part of the Leased Infrastructure or Additional Leased Infrastructure does not substantially conform to the performance standards set forth in Exhibit 7. If the cited defects materially affect the leased Fiber Optic Infrastructure's performance, then the Parties shall confer to expedite trouble resolution and resolve possible differences in interpretation of trouble reports.

6.4 **Routine Operations.** City, at its sole cost and expense, shall schedule and perform Fiber Optic Infrastructure alterations, and routine operations, maintenance and repairs. City shall identify the time, location, and nature of each alteration or maintenance and repair job potentially affecting the Leased Infrastructure or Additional Leased Infrastructure, and notify Lessee's Representative, via E-mail or facsimile transmission, at the earliest possible time but not less than 96 hours prior to the scheduled time.

6.5 **Emergency Repairs.**

6.5.1 Upon written or verbal request from the City Representative, Lessee shall notify City's Representative whether Lessee has the in-house capability of testing and troubleshooting its own Infrastructure or if Lessee plans to subcontract that expertise to an outside source. If Lessee subcontracts for that service, it shall inform City in writing, with whom City should be dealing in joint testing and trouble isolation related to emergency repairs.

6.5.2 The City, at its sole cost and expense, will facilitate Emergency and non-scheduled alterations, maintenance and repairs of any damaged, failed or impaired part of the Fiber Optic Infrastructure. Should any outage or other disruption of use of the Fiber Optic Infrastructure occur, the City will commence troubleshooting as early as reasonably possible, and will make reasonable efforts to do so within four (4) hours of learning of the occurrence. Lessee, through an employee with technical knowledge of Lessee's system, shall provide the City access to the ends of the Leased Fiber s(or Additional Leased Fibers) or, if applicable, to test points designated by Lessee with Lessee's Infrastructure . Lessee shall provide the City with written information as to how City shall be granted such access to enable the City to troubleshoot. If such access is not granted such that City cannot troubleshoot, then City is relieved from further obligations to troubleshoot. If access is allowed, then troubleshooting shall continue, unabated, until the source of the problem is detected. The City will use commercially reasonable efforts to restore the availability of the Leased Infrastructure or Additional Leased Infrastructure in as timely and expedited a manner as reasonably possible.

6.5.3 Lessee, at its sole cost and expense, shall be responsible for emergency repairs on Lessee's side of the Demarcation Points and for maintaining Lessee's Infrastructure, including Lessee-owned splice cases beyond the Demarcation Points. Lessee shall have no right to alter, maintain or repair the Fiber Optic Infrastructure.

6.6 **Route Modifications.**

The City, at its sole cost and expense, may upon reasonable notice, modify the Fiber Optic Infrastructure as conditions and circumstances may warrant. These modifications may cause portions of the Fiber Optic Infrastructure to be relocated, permanently or temporarily, to one or more alternate locations within the public right-of-way, public utility easements, and licensed service properties.

6.6.1 Relocation of Leased Infrastructure or Additional Leased Infrastructure shall not affect the price Lessee pays for use of that Infrastructure.

6.6.2 The City will use its commercially reasonable efforts to ensure such action will minimize any impact on the performance or operations of the Leased Infrastructure or any Additional Leased Infrastructure. If an impact is expected, the City will notify Lessee's representative in accordance with the notification process listed per Paragraph 6.2. Lessee shall cooperate with the City to effect any such modifications, in each case at the City's sole cost and expense.

ARTICLE 7. ACCESS TO LESSEE'S INFRASTRUCTURE

7.1 **Grant of Access.** From time to time access to Lessee's Infrastructure located within the City may facilitate scheduled and non-scheduled maintenance and repair work associated with the Leased Infrastructure and related Fiber Optic Infrastructure. Lessee will cooperate with the City, its officers, employees, agents, representatives and contractors to allow ingress and egress for repairs to Leased Infrastructure and the Fiber Optic Infrastructure, at City's sole cost and expense. Notwithstanding the foregoing, the City shall have no right, or obligation to alter, maintain or repair Lessee's Infrastructure. In no event shall the City, its officers, employees, agents, representatives, contractors, or subcontractors have access to Lessee's Infrastructure unless a representative of Lessee is present.

Written Notice. So long as an emergency situation does not exist, the City shall provide a written request at least twenty-four (24) hours notice in advance of any required ingress to Lessee's Infrastructure. If an emergency situation exists, the City shall provide a verbal request to the person identified pursuant to paragraph 6.2.2.

ARTICLE 8. JOINT MARKETING

The Parties cooperate in joint marketing efforts to the extent that this does not conflict with either Party's interests or those of other network service providers who otherwise may lease capacity from the City; provided, however, the City shall not be obligated to incur any direct or indirect cost or expense pursuant to any work, activities, or marketing effects under this article. A Party shall not use the other Party's name or logo or imply other Party's endorsement of services in any marketing effort without first obtaining the other Party's written consent, which consent may be withheld .

ARTICLE 9. UTILITIES AND OTHER SERVICES

Other than the services described herein, no other utility or other service is provided by the City to Lessee pursuant to this Agreement.

ARTICLE 10. ADEQUATE ASSURANCE

Within seven (7) business days of the Effective Date or within seven days of the date on which this Agreement is presented to the City Council, whichever is later, Lessee shall furnish to City, and maintain throughout the remainder of the Term of this Agreement, Adequate Assurance in the form of a cash deposit equal to the value of two (2) years Lease Payment, securing the faithful performance by Lessee of its obligations under this Agreement. Two (2) years from the Effective Date of this Agreement provided that Lessee has not been in material breach of this Agreement, the City shall return eighteen (18) months of said cash deposit and continue to hold six (6) months cash deposit through the remainder of the lease. If Lessee has been in material breach of this Agreement during the two years the cash deposit is held, the City is entitled to hold the cash deposit for two (2) additional years, and the City shall continue to hold the cash deposit until

Lessee has not been in breach for eighteen (18) consecutive months. If City has drawn against the cash deposit as set forth in Article 11, Lessee is required to replenish the cash deposit. Failure to replenish the cash deposit on demand by the City is a material breach of this Agreement.

ARTICLE 11. DEFAULT AND REMEDIES FOR DEFAULT

- 11.1 **Grounds for Default.** This Agreement may be terminated by either Party (“Non-Defaulting Party”), pursuant to Article 12 below, upon the occurrence of a material breach of this Agreement by the other Party (“Defaulting Party”), including, but not limited to, any of the circumstances delineated in Attachment 6.
- 11.2 The rights and remedies provided by law and under this Agreement are cumulative and either Party may seek the specific performance of the terms of this Agreement, unless this Agreement provides otherwise.

ARTICLE 12. TERMINATION

In addition to those events described in Attachment 6, this Agreement may be terminated upon the occurrence of any of the events enumerated in Attachment 6 and Attachment 9 and summarized below:

- 12.1 Either Party may terminate this Agreement for default or material breach as defined herein;
- 12.2 Lessee exercises its right to terminate this Agreement for convenience, pursuant to Article 13, for all or a portion of the Leased Infrastructure or Additional Leased Infrastructure.
- 12.3 Issuance of a Notice of Termination pursuant to Article 11 due to a material breach by the City.
- 12.4 The City’s failure to deliver the Leased Infrastructure or Additional Leased Infrastructure (excluding any new extensions of new construction to accommodate the unique requirements of Lessee) on or before the date mutually agreed upon by the Parties, unless such failure is due to reasons beyond the control of City or Force Majeure.
- 12.5 An event of Force Majeure that destroys Lessee’s Infrastructure located within the City such that substantially all of Lessee’s Infrastructure located within the City cannot be repaired, restored or replaced within sixty (60) calendar days after an event of destruction.
- 12.6 The City may elect to terminate this Agreement for cause if the Fiber Optic Infrastructure is substantially destroyed by Force Majeure such that it cannot be repaired at a reasonable cost and within six (6) months from the date of destruction.

ARTICLE 13. TERMINATION PAYMENT

For the termination of this Agreement or termination of the Leased with regard to any portion of the Leased Infrastructure or Additional Leased Infrastructure other than a o, Lessee may elect to terminate this Agreement or any Lease for convenience, for all (or a portion of) Leased Infrastructure or Additional Leased Infrastructure. At the time of Termination of this Agreement or any Lease, Lessee would pay a Termination Fee equal to three times the (apportioned) annual payment due for any terminated Leases within the subsequent 12 months, or 40 percent of remaining (apportioned) lease payments due for said terminated Lease(s) under terms of the Agreement, whichever is less. Thereafter, Lessee shall have no termination payment obligation to City under this Agreement for the terminated portion of the Lease. Termination Fees are to be based on current year prices (at the time of Termination) without inclusion of going forward CPI adjustments.

ARTICLE 14. LIMITATION OF LIABILITY

- 14.1 EXCEPT AS PROVIDED FOR IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, INDIRECT, LIQUIDATED, OR SPECIAL DAMAGES OR LOST REVENUE OR LOST PROFITS ARISING OUT OF THE PERFORMANCE OR NON-PERFORMANCE OF ANY PROVISION OF THIS AGREEMENT, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. THE CITY'S TOTAL LIABILITY FOR ANY CLAIM OR DEMAND OF THE LESSEE ARISING OUT OF THIS AGREEMENT SHALL NOT EXCEED THE VALUE OF ONE YEAR OF LEASE PAYMENTS OWED BY THIS LESSEE.
- 14.2 City shall not be liable to Lessee in any manner for any delays and/or lack of completion of construction for reasons beyond reasonable control of City.
- 14.3 City is not liable to Lessee for damage caused to the Fiber Optic Infrastructure by independent third parties not under contract with the City that are engaged in construction or other business operations which damage the Fiber Optic Infrastructure. City will respond and repair any damage to the Fiber Optic Infrastructure caused by such a third party as if it were an Emergency Repair under Article 6.
- 14.4 Inability to use the Leased Fiber or Additional Leased Fiber due to an electrical power outage is not covered by this Agreement. This Agreement is a Lease of dark fiber. Any issues arising out of the inability of Lessee to obtain electricity shall be handled under the applicable City of Anaheim Electric Rates, Rules and Regulations.

- 14.5 Neither Party shall be in default in the performance of any obligation under this Agreement when a failure to perform its obligations under this Agreement shall be due to Force Majeure (as defined in Exhibit 1). For the duration of the Force Majeure, but for no longer period, the obligations of the Party claiming the event (other than the obligations to make payments then due or becoming due with respect to performance prior to the event) shall be suspended to the extent required.
- 14.6 Either Party rendered unable to fulfill any of its obligations by reason of Force Majeure shall give prompt written notice and full details of the event to be confirmed in writing to the other Party, as soon as possible, but in no event later than five (5) days after the occurrence. The Party claiming Force Majeure shall exercise due diligence to remove such inability within a reasonable time period.

ARTICLE 15. HOLD HARMLESS/INDEMNIFICATION.

- 15.1 **By Lessee.** Subject to the terms of Section 14, Lessee shall indemnify, defend and hold harmless City, its officials, officers, agents, employees, subcontractors, and consultants from and against any and all claims, demands, causes of action, losses, damages, costs and expenses of every kind and character arising out of or in connection with Lessee's utilization of Fiber Optic Infrastructure under this Agreement, including without limitation damage to City property caused by or resulting from the acts or omissions of Lessee, its employees, contractors, subcontractors, agents, or representatives.

ARTICLE 16. REPRESENTATIONS AND WARRANTIES

- 16.1 **By City:** The City represents and warrants:

16.1.1 It is a municipal corporation duly organized and validly existing and in good standing under the Laws of the State of California. It has all requisite corporate power and authority to own its property, real and personal (including but not limited to the Fiber Optic Infrastructure), and operate its business as and where it is now being conducted.

- 16.1.2 It has the power and authority to enter into this Agreement and perform its obligations hereunder. The execution, delivery and performance of this Agreement have been duly authorized by all necessary actions and proceedings. This Agreement and any other instruments, documents or writings to be executed and delivered by the City pursuant to this Agreement, will not conflict with or violate any provision of the Charter of the City of Anaheim or the Anaheim Municipal Code and will be legal, valid and binding obligations of the City, and enforceable against the City in accordance with the provisions hereof except as may be limited by applicable laws.

16.1.3 City shall maintain the Fiber Optic Infrastructure in good operating condition for normal use as contemplated by the manufacturers and in accordance with the specifications set forth in Exhibit 7. THE CITY OTHERWISE EXPRESSLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY BEYOND THE MANUFACTURER'S WARRANTY AS TO THE FITNESS OF ANY MATERIALS, EQUIPMENT OR ANY OTHER PART OR ALL OF THE FIBER OPTIC INFRASTRUCTURE OR THE LEASED INFRASTRUCTURE OR ADDITIONAL LEASED INFRASTRUCTURE, CONSTRUCTED OR TO BE CONSTRUCTED. The warranties and remedies set forth above constitute the only warranties and remedies with respect to this Agreement and are in lieu of all other warranties, written or oral, statutory, express or implied, including, without limitation, the warranty of merchantability or fitness for a particular purpose or use.

16.2 **By Lessee:** Lessee represents and warrants:

16.2.1 It is a duly organized and validly existing limited partnership in good standing under the Laws of the State of Delaware and authorized to do business in the State of California. It has all requisite corporate power and authority to own its property, real and personal, and operate its business as and where it is now being conducted.

16.2.2 It has the power and authority to enter into this Agreement and perform its obligations hereunder. The execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate actions and proceedings. This Agreement is, and any other instruments, documents or writings to be executed and delivered by Lessee pursuant to this Agreement will be, legal, valid and binding obligations of Lessee, and enforceable against Lessee in accordance with the provisions hereof except as may be limited by applicable laws.

16.2.3 The execution and delivery by Lessee of this Agreement and of any other instruments, documents or writings contemplated by this Agreement will not conflict with or violate or constitute a breach or default under the Articles of Incorporation or bylaws of Lessee or the provision of any mortgage, trust, indenture, bond, lien, pledge, release, agreement, guaranty or instrument to which Lessee is subject.

16.2.4 There are no known unresolved claims or disputes between Lessee and the City. There are no known actions, suits or proceedings pending or, to the knowledge of Lessee, threatened against Lessee that, if adversely determined to Lessee, would materially and adversely affect the ability of Lessee to perform its obligations under this Agreement.

16.2.5 Lessee agrees to obtain and maintain any certificates, licenses or approvals required by law that relate to its obligations under this Agreement.

ARTICLE 17. ASSIGNMENT

- 17.1 Except as otherwise permitted by this Article, Lessee shall not assign, sublease or otherwise transfer in whole or in part (whether voluntarily or by action of law), directly, indirectly, or contingently this Agreement or any interest herein to any third party, without the prior written consent of City, which consent shall not be unreasonably withheld;
- 17.2 Following City's written consent, Lessee may assign, sublease or otherwise transfer in whole or in part (whether voluntarily or by action of law), directly, indirectly, or contingently this Agreement or any interest herein to an Affiliate, so long as that Affiliate provides information to the City thirty (30) days prior to the assignment, establishing that it either (i) has the ability to meet the financial obligations under this Agreement or (ii) concurrently with the assignment, Lessee assigned to Affiliate the right to the Adequate Assurance provided by Lessee to City pursuant to paragraph 10 herein or (iii) Affiliate has otherwise provided City with substitute Adequate Assurance. If Affiliate fails to meet one of the three criteria set forth above, the Assignment shall be null and void.
- 17.3 Following City's written consent Lessee may assign, sublease or transfer, pursuant to a merger, sale or transfer of all or substantially all of the assets or stock of Lessee, all of its rights and obligations under this Agreement to any Qualified Party which provides similar services, so long as the surviving or purchasing entity assumes, in writing, all of the obligations of Lessee under this Agreement and provides information acceptable to the City within thirty (30) days after the transfer, merger or sale, sufficient to satisfy the City that the proposed Assignee can meet those obligations. If the proposed Assignee cannot meet those financial obligations, then Adequate Assurance acceptable to the City will be provided within sixty (60) days of the date of the transfer, merger or sale. If Assignee fails to provide Adequate Assurance, the Assignment shall be null and void.
- 17.4 Any assignment, transfer, sublease, conveyance, sale, hypothecation or encumbrance hereof by Lessee not authorized by this Article shall be null and void, and, at the option of the City, shall constitute a material breach of this Agreement by Lessee hereunder;
- 17.5 Lessee, as assignor, and any person, including an Affiliate, as assignee, to whom the rights and obligations of Lessee under this Agreement are assigned shall be and remain jointly and severally liable for the performance of all obligations of Lessee under this Agreement;

- 17.6 City may assign or transfer all of its rights and obligations under this Agreement to any Qualified Party. Within thirty (30) days after the transfer City shall inform Lessee in accordance with provisions listed under Article 21 of this Agreement.

ARTICLE 18. WAIVER

The consent by a Party to any act by the other Party shall not be deemed to imply consent to, or to constitute the waiver of, a breach of any provision of this Agreement nor shall any custom or practice which may arise between the Parties in the administration of any part of the provisions of this Agreement be construed to waive or lessen the right of a Party to insist upon the performance by the other Party in strict accordance with the provisions of this Agreement.

ARTICLE 19. INSURANCE REQUIREMENTS.

- 19.1 During the Term of this Agreement, and as defined in Exhibit 10, Lessee shall purchase and maintain in full force and effect the following insurance policies:

19.1.1. Commercial general liability (including bodily injury and property damage);

19.1.2. Business automobile liability insurance, and

19.1.3. Worker's compensation employer's liability.

- 19.2 Said policies shall be maintained with respect to employees and vehicles assigned to the performance of work under this Agreement with coverage amounts and with the required endorsements, certificates of insurance and coverage verifications as defined in Exhibit 10. Lessee shall make its best effort to secure, and thereafter maintain in effect, such insurance policies. In the event that any required insurance policy expires or is terminated for any reason, Lessee agrees to replace the policy prior to any lapse in coverage. In the event any policy required under this Agreement is allowed to lapse, City may, (after providing Lessee notice and ten (10) business days therefrom to cure) in its sole discretion, elect to purchase the required insurance policy and the cost of such policy shall be charged to Lessee under this Agreement.

ARTICLE 20. DISPUTE RESOLUTION.

Any documented dispute between the Parties which arises during the performance of this Agreement and which the Parties cannot then resolve, shall be subject to the administrative remedy enumerated in Attachment 10 prior to any litigation occurring between the Parties.

ARTICLE 21. NOTICE

21.1 Unless otherwise stated herein, all notices which shall or may be given pursuant to this Agreement shall be in writing and delivered by means of certified United States Postal Service mail, return receipt requested, or private overnight delivery systems, or by facsimile transmission, provided a copy of the facsimile is also sent on that same date by United States Postal Service mail or by private express delivery systems, addressed as follows:

To City:

City of Anaheim
Attn: City Clerk
200 South Anaheim Blvd.
Anaheim, CA 92805

With a copy to:

City of Anaheim
201 S. Anaheim Blvd., 11th Floor
Anaheim, CA 92805
Attn.: Public Utilities General Manager
Tel No. 714-765-3300

To Lessee:

_____, Inc.
Attention: _____
Title: _____
Street
City
Telephone:
Facsimile:

21.2 Notices shall be deemed received on the same day as a facsimile is sent, the day following the date on which the Notice was sent via an overnight mail service, and five (5) calendar days from the date postmarked by the United States Postal Service. If Notice is given pursuant to two different methods receipt shall be deemed to occur on the earliest date.

ARTICLE 22. CONFIDENTIALITY

22.1 **General.** Lessee acknowledges that City is a public agency subject to the requirements of the California Public Records Act. City acknowledges that Lessee may submit information to the City that Lessee considers confidential, proprietary, or trade secret information, or otherwise not subject to disclosure pursuant to an exemption to the California Public Records Act.

- 22.2 **Requests Made Under the Public Records Act.** In the event of a request or demand of any third person or entity not a party to this Agreement (“Requestor”) for production, inspection and/or copying of information designated by the party disclosing the Confidential Information (“Disclosing Party”) as “Confidential Information” the terms of Attachment 13 will be evoked.
- 22.3 **All Other Requests.** Except for disclosures expressly required under the Public Records Act, the Parties acknowledge and agree that any information properly labeled shall be considered Confidential Information of the Disclosing Party in accordance with Attachment 13.
- 22.4 **Permitted Disclosures:** Notwithstanding the other provisions of this Article and without waiver of any obligations hereunder, the City may disclose the identity of Lessee as a customer of City, and Lessee may disclose the identity of City as a supplier of Lessee. The body of this Agreement shall be public record, but Exhibits 3, 4 and 5 shall be held as confidential. No other disclosures, including press releases or other public announcements about this Agreement may be disclosed, except with the prior written consent of the Parties hereto.
- 22.5 **General.** All Confidential Information, unless otherwise specified in writing, shall be used by the Receiving Party only for the intended purpose, and such written Confidential Information, including all copies thereof, shall be returned to the Disclosing Party or destroyed upon the request of the Disclosing Party. The provisions of this Article shall survive expiration or earlier termination of this Agreement.
- 22.6 **Attachment 13.** In the event of a conflict between the terms of this Section and the terms of Attachment 13, the terms of Attachment 13 shall prevail.

ARTICLE 23. ENTIRE AGREEMENT

This Agreement contains the entire understanding between the Parties with respect to the subject matter herein. There are no representations, warranties, agreements or understandings (whether oral or written) between the Parties relating to the subject matter hereof which are not fully expressed herein.

ARTICLE 24. AMENDMENT

This Agreement may not be amended except pursuant to a written instrument signed by each of the Parties.

ARTICLE 25. HEADINGS

The Article headings hereof are inserted for convenience of reference only, are not a part hereof and shall have no effect on the construction or interpretation hereof. All Exhibits referred to in this Agreement and any addenda, attachments, and schedules which may,

from time to time, be referred to in any duly executed amendment to this Agreement are incorporated by this reference into this Agreement and shall be deemed a part hereof.

ARTICLE 26. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the Laws of the State of California without regard to its conflict of laws, rules or principles. Any legal action concerning or arising out of this Agreement shall be filed in a court of the State of California having jurisdiction over the subject matter and venue shall be in the County of Orange, State of California. This Agreement is entered into in the City of Anaheim, and shall be performed in the City of Anaheim, County of Orange, State of California.

ARTICLE 27. SEVERABILITY

If any provision of this Agreement is held by court of competent jurisdiction in a final judicial action to be void, voidable, or unenforceable, such provision shall be deemed severable from the remaining provisions and shall in no way affect the validity of the remaining portions hereof. To the extent the provisions of this Agreement and any other agreement required to be obtained by Lessee from the City are in conflict, the provisions of the agreement which impose the higher or greater legal duty or obligation shall take precedence.

ARTICLE 28. CONSTRUCTION OF AGREEMENT

28.1 Each Party and its counsel have reviewed this Agreement. Accordingly, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the construction and interpretation of this Agreement.

28.2 For the purposes hereof, excluding the first day and including the last shall compute the time in which an act is to be performed. If the time in which an act is to be performed falls on a Saturday, Sunday, or any day observed as an official holiday by the City, the time for performance shall be extended to the following business day.

The Parties acknowledge and accept the terms and conditions stated herein as evidenced by the following signatures of their duly authorized representatives. It is the intent of the City and Lessee that this Agreement shall become operative on the Effective Date first set forth in the preamble, above.

“City”

Approved as to form:

Assistant City Attorney

Public Utilities General Manager

Date: _____

Date: _____

Attest:

Anaheim, California

Telephone:

Facsimile:

City Clerk

Date: _____

“Lessee”

,

By: _____

Date: _____

Name:

Title:

Address:

Phone:

Facsimile:

Attachment 1

Provisions for Additional Leased Infrastructure

1.0 Additional Leased Infrastructure. In the future, the City may lease to Lessee additional Leaseable Fibers requested by Lessee during the remainder of the Term of this Agreement, if capacity is available and the following conditions are met:

1.1 Lessee will be granted a Lease of additional Leaseable Infrastructure so long as the capacity remains available and Lessee is not in material breach of this Agreement. If Lessee is currently, or in the past has been, in material breach of this Agreement, then the Public Utilities General Manager shall determine whether to allow or deny the lease of additional Leaseable Infrastructure to Lessee.

1.2 The Public Utilities General Manager (General Manager) has authority delegated by the City Council to agree to the lease of additional Leaseable Infrastructure to Lessee. Lessee shall make a request for additional Leaseable Infrastructure by submitting the Request Form attached as Exhibit 11, executed by a person authorized to bind Lessee. The price, terms and conditions of leasing additional Leaseable Infrastructure shall be negotiated in good faith and agreed upon by the Parties subject to the Adopted Rates in effect at that time. Upon mutual agreement of the Parties as to the price, terms and conditions, Exhibit 11 shall be revised and executed by an Authorized Representative of Lessee and the General Manager, and an amendment to this Agreement shall have occurred without the necessity of further action by either Party. All other terms and conditions set forth in this Agreement will apply to the Additional Leased Infrastructure. The Lease as to the Additional Leased Infrastructure shall commence on the Acceptance thereof and the Lease term for the Additional Leased Infrastructure shall continue as set forth in Exhibit 11 unless earlier terminated.

1.3 Additional Attachment Points. If, after execution of this Agreement by the Parties, Lessee desires to attach to other Attachment Points not listed in Exhibit 4 (“Additional Attachment Points”), then Lessee shall submit a request through a Request Form (attached hereto as Exhibit 11) executed by a person authorized to bind Lessee ("Authorized Representative"). The City will cooperate in accommodating Lessee's requests for Additional Attachment Points so long as, in the judgment of City, adequate space exists to attach Lessee to that Attachment Point, the request to be attached to Additional Attachment Points is not excessive, and the Additional Attachment Points do not materially and adversely affect the Fiber Optic Infrastructure. Authority to agree to Additional Attachment Points for Lessee is delegated to the General

Manager by the City Council. The terms and conditions of leasing Additional Attachment Points shall be negotiated and agreed upon by the Parties; the price for Additional Attachment Points is set forth in Article 3. If the General Manager and the Authorized Representative execute Exhibit 11, then an amendment to this Agreement has occurred; Exhibit 4 may be modified to reflect the Additional Attachment Points All other terms and conditions set forth in this Agreement will apply to the Additional Attachment Points.

Attachment 2

Interconnection of Lessee's Cable to City-Owned Cable

- 1.0 **Lessee's Infrastructure Unavailable.** If the City has been requested to perform construction of Leased Infrastructure (or Additional Leased Infrastructure), and if at the time the City completes that construction Lessee is not prepared to complete the connection, then Lessee shall be responsible for splicing its fiber to the thirty (30) foot fiber drop provided by the City as agreed in Paragraph 5.2.2. If Lessee desires City to provide fiber drop cable in excess of the thirty foot drop, or if Lessee desires City to splice the drop to Lessee's Infrastructure, then Lessee will pay the fees specified in Article 3 "Lease Payment and Other Fees—Attachment Points".

- 2.0 **Splicing.** If Lessee provides cable from Lessee's Infrastructure to the City in a timely manner, then upon Lessee's request, the City shall splice Lessee-provided fiber cable at designated City-owned Attachment Points. The City shall be responsible for pulling Lessee's fiber cable, and splicing Lessee's fiber strand within the City-owned Fiber Optic Infrastructure. Ownership of fiber on the City's side of the Demarcation Points shall be vested with the City. Lessee shall pay the City the fees specified in Article 3 "Lease Payment and Other Fees—Attachment Points"

Attachment 3

Building Entrance Arrangements

- 1.0 **Meet-Me Boxes.** Some City Points-of Presence are not in Building Entrances but are located in meet-me-boxes located on the private property near the building. Unless the City expressly agrees in writing to negotiate a Right-of-Entry that results in a Building Entrance, the City shall only deliver Lessee to the meet-me-box at that City Point-of-Presence. Lessee shall be responsible for negotiating the Right-of-Entry and securing the Building Entrance on its own behalf and providing City with any rights necessary for City to deliver fiber to Lessee at the Building Entrance.
- 2.0 **No Space Available.** Where no Building Entrance or Point-of-Presence exists at the location Lessee desires to have its fiber, then the City: (i) will determine the engineering and construction costs to build that Point-of-Presence (ii) may treat the build as a Service Drop by allocating all costs to Lessee and (iii) whether the Lessee or the City shall be responsible for securing the Right-of-Entry.
- 3.0 **Completion Dates.** If the City agrees to deliver Lessee to a new Building Entrance and the City assumes the obligation of securing the Right-of-Entry, then all completion dates for connections to Building Entrances are estimated completion dates and shall not be guaranteed by the City.
- 4.0 **Lessee's Responsibility.** Lessee is and shall remain responsible for obtaining Service Agreement on its own behalf, enabling Lessee to have Lessee's Infrastructure located within a private building.

Attachment 4

Private Property Access

- 1.0 **Costs Borne By City.** If the Private Property Access is to a location where other potential Lessees desire to run fiber City may adjust its costs to Lessee for engineering or construction services on a proportional basis among the potential Lessees.

- 2.0 **Costs Borne By Lessee.** If the Private Property Access is one that no other Lessee desires, then it is treated as a Service Drop. If the Private Property Access is to a location where other potential Lessees desire to run fiber, but the City had not anticipated building that Private Property Access at the time Lessee requests it, then Lessee shall pay the amount set forth in Article 3 "Lease Payment and Other Fees—Private Property Access". The price per fiber mile associated with the Private Property Access is set forth in Exhibit 5 and the cost of engineering and construction of a Private Property Access is set forth in Exhibit 4 or an executed Exhibit 11.

Attachment 5

Lease Payments Arrangements

1.0 Availability of the Leased Fiber. Lease charges for the Leased Fiber or Additional Leased Fiber are to accrue from the Acceptance Date within the quarter that the Leased Fiber is delivered. In any subsequent quarter, the Leased Fiber is deemed available to Lessee for 91 calendar days.

1.1 Prorated Lease Payment. If an Acceptance Date occurs in the middle of a month, the Lease Payment is prorated. The Lease Payment for any month shall be based on the criteria set forth in Exhibit 5 or Exhibit 11 (as applicable) of the Agreement, in accordance with the following calculation:

$$\text{Lease Payment} = \sum_{\text{Segments}} [\text{Length of Segments} \times \text{No. of Fibers} \times \text{Rate} \times 3 \times (\text{Days of availability}/91)].$$

2.0 Lease Payment. The Lease Payment for any quarter shall be based on the criteria set forth in Exhibit 5 or Exhibit 11 (as applicable), in accordance with the calculation set forth in Exhibit 5. Charges for the first Lease Payment shall commence to accrue on the Acceptance Date.

2.1 Due-Date of Lease Payments. Lease Payments shall be paid on a quarterly basis. Lease Payments are due and payable on or before the commencement of a quarter, to wit: before January 1, April 1, July 1, and October 1. For any Leased Fiber that has been delivered to Lessee, Lessee shall pre-pay for use of that Leased Fiber for the coming quarter. For any Leased Fiber delivered to Lessee after the commencement of a quarter, Lessee shall have use of that Leased Fiber without pre-payment and shall pay the pro-rated amount at the end of the quarter in which the Leased Fiber was delivered, as well as the pre-payment amount for the next quarter.

2.2 The City shall send an invoice dated thirty (30) calendar days prior to the end of the quarter, to Lessee as a reminder of the total amount of the quarterly Lease Payment due thirty (30) calendar days later. If Lessee does not receive such an invoice, it is still bound to pay the quarterly Lease Payment in a timely manner, which amount is set forth in Exhibit 5. Lessee shall make each quarterly payment to the City under this Agreement as delineated on the City invoice:

For further information contact City Treasurer's office at (714) 765-5117.

3.0 If the Lease Payment is not paid as required herein, simple interest on unpaid, undisputed amounts of the Lease Payment shall accrue, until paid, at one percent (1%) per month. Beginning on the second anniversary of the Effective Date and

on each subsequent anniversary date, the price will be adjusted to reflect annual changes in the Consumer Price Index. The base for computing the Price Inflation Adjustment (PIA) shall be the most current Consumer Price Index for *all Urban Consumers* for the Anaheim/Orange County CMSA, published by the United States Department of Labor, Bureau of Labor Statistics available on December 1 of each year.

Attachment 6

LEASE PREPAYMENT OPTION

- 1.0 Pre-Payment Option.** Lessee may choose to pre-pay the entire Initial Term of the Lease and receive a discounted price upon execution of the Lease. Lessee may also elect, at any time in the future, to prepay any remaining balance of the Annual Payments due under the Initial Term, or any Renewal Term, of this Agreement by sending a written notification to City. Within ten (10) business days of receipt of such notice, City shall respond by sending Lessee an invoice for the net present value of the remaining Annual Payments, which net present value shall be determined by discounting the sum of the remaining future payments due under the Initial Term or the Renewal Term, as applicable, of this Agreement by ten percent (10%) per year. The amount due shall reflect the annual price per fiber mile prevailing at the time of prepayment. Lessee shall pay such invoice within thirty (30) days of receipt thereof, or shall forfeit the election to prepay the remainder of the Initial Term or the applicable Renewal Term. Any Lessee electing to pre-pay the Lease shall be required to pay a Maintenance Fee as set forth in paragraph 3.5 Below.
- 2.0 Maintenance Fees.** For Lessees making quarterly lease payments pursuant to paragraph 3.3 above, no Maintenance Fee is charged. For Lessees electing to pre-pay the Lease (paragraph 3.4 above), Lessee will make annual payments of ten dollars (\$10) per fiber mile per month for ongoing fiber maintenance and administration. Payment will be due annually in advance, at the beginning of each calendar year. Lessee shall make this annual payment to the City in a timely manner via wire transfer to:

Bank of America
ABA # 121-000358
Credit to City of Anaheim
Account # 14315-81748
Attention: Government Banking #1431

Reference: Purpose of wire and contact name and telephone
number
For further information contact City Treasurer's office at (714)
765-5117.

The City shall send an invoice to Lessee dated thirty (30) calendar days prior to the first of the year as a reminder of the amount due. If the Lease Payment is not paid as required herein, simple interest on unpaid, undisputed amounts of the Lease Payment shall accrue, until paid, at one percent (1%) per month.

Attachment 7

Lease Renewal

- 1.0 Lease Payment for Renewal Term.** At the cessation of the Initial Term Lessee may elect to renew a Lease as set forth in section 2.3 for that Renewal Term and at the rate schedule for Renewal Term as set forth in Exhibit 5. For the Additional Leased Infrastructure, Lessee may elect to extend the Lease term for the Additional Leased Infrastructure as set forth in section 2.3 for the Renewal Term and rate schedule in Exhibit 11.

- 2.0 Price Inflation Adjustment.** During any Renewal Term (for either the Leased Infrastructure or Additional Leased Infrastructure), the Rate may be adjusted annually for price inflation (“PIA”) for each successive year after the first year of the Renewal Term. The base for computing the PIA shall be the most current Consumer Price Index for *All Urban Consumers* for the Anaheim/Orange County CMSA, published by the United States Department of Labor, Bureau of Labor Statistics available on December 1 of each year.

- 3.0 Market Rate Adjustment.** The rate schedule in Exhibit 5 and 11 (as applicable) may be adjusted at the commencement of each Renewal Term to reflect prevailing market conditions at that time as set forth in City’s Adopted Rates. The change in the rate in the first year of any such rate adjustment period shall not exceed plus or minus 20 percent relative to the rate charged in the immediately preceding 5-year period. For a rate adjustment to take effect, the parties shall mutually agree upon the terms and rates.

Attachment 8

Provisions For Acceptance Testing

- 1.0 The time for Lessee performing Acceptance Testing shall not be extended because Lessee has failed to install Lessee Infrastructure or obtain entrance into private locations. Lessee shall complete Acceptance Testing within thirty (30) calendar days of the later of receipt of (a) the Notice of Completion as to the Leased Infrastructure or any Additional Leased Infrastructure , or Attachment Points added by an executed Exhibit 11 or (b) receipt of the results of the City's Post-Construction or Verification Tests as to the same.
- 2.0 The City will cooperate in conducting such tests, and participate in joint testing, if requested, in each case at Lessee's sole cost and expense. Lessee shall provide City with no less than seventy-two (72) hours notice of the time it desires City to participate in joint testing.
- 3.0 If Lessee shall have failed to complete Acceptance Testing within the time period set forth in this Article, it shall be deemed to have waived its rights to conduct Acceptance Testing as to the Leased Fibers, Additional Leased Infrastructure, or Attachment Points that are the subject of the Notice of Completion and said items shall be deemed accepted by Lessee upon expiration of such thirty-day period;
- 4.0 If Lessee chooses to perform Acceptance Testing, it may do so and then notify the City within thirty (30) calendar days of the later of the date of receipt of (a) the Notice of Completion as to the Leased Infrastructure or any Leased Fiber Attachment Point, or Additional Leased Infrastructure, added by an executed Exhibit 11 or (b) the results of the City's Post-Construction or Verification Tests as to the same. Lessee shall indicate in a Notice of Acceptance/Rejection (Exhibit 6) what portion of the Leased Infrastructure (Exhibit 3 and 4) or which of the Leased Fibers, Attachment Point, Private or Property Access added by an executed Exhibit 11, failed to pass the Acceptance Testing, and the reason therefore.

Attachment 9

Grounds For Default and Notice in Event of Default

- 1.0** Grounds for default include:
- 1.1** Failure to make any Lease Payment within five (5) business days following the Due Date constitutes a material breach and default of this Agreement, unless Lessee in good faith disputes all or any portion of such Lease Payment in which case Lessee shall pay only the undisputed portion, if any, until such dispute is resolved. If Lessee fails to make a Lease Payment, City will send a Notice of Default to Lessee as set forth in this Attachment. If Lessee fails to pay the amount due within ten (10) business days of the date on the Notice of Default, then City may elect to pay the Lease Payment from the Adequate Assurance, or to terminate the Agreement. City may elect to pay the Lease Payment from the Adequate Assurance, or to terminate the Agreement. Even if Lessee does cure the default, the material breach shall still be a basis for consideration of future renewals or additions by means of Exhibit 11;
 - 1.2** Failure to pay an invoice within five (5) business days following the Due Date constitutes a material breach and default of this Agreement, unless Lessee in good faith disputes all or any portion of such invoice in which case Lessee shall pay only the undisputed portion, if any, until such dispute is resolved. If Lessee fails to pay an invoice, City will send a Notice of Default to Lessee as set forth in this Attachment. If Lessee fails to pay the amount due within ten (10) business days of the date on the Notice of Default, then City may elect to pay the invoice from the Adequate Assurance, or to terminate the Agreement. Even if Lessee does cure the default as specified below the material breach shall still be a basis for consideration of future renewals or additions by means of Exhibit 11.
 - 1.3** Failure to pay any tax, when due, or the failure to perform any other obligation requiring the payment of money under the provisions of this Agreement, unless the Party in good faith disputes all or any portion of such tax, in which case that Party shall pay only the undisputed portion, if any, until such dispute is resolved;
 - 1.4** Failure to observe, perform or comply with any material provision of this Agreement, unless said “failure” was a result of the other Party’s failure to perform;
 - 1.5** Assignment or transfer of Defaulting Party’s interest in this Agreement, whether voluntarily or by operation of law, in violation of the provisions of this Agreement;
 - 1.6** General assignment of assets for the benefit of creditors;

- 1.7 Abandonment of Lessee's Infrastructure in the public right-of-way or a failure to notify the City of such abandonment;
 - 1.8 Filing of a petition to have a Party to this Agreement adjudicated a bankrupt, or a petition for a reorganization or arrangement under any Law relating to bankruptcy or insolvency, and the Party is not current in its payment of all Lease Payments (, then the Party is immediately in default. If the Party is current on all Lease Payments , the Party shall have one hundred eighty (180) calendar days after the filing of the petition within which to have it dismissed without being declared in default. It is agreed by the Parties that this Agreement constitutes a true lease within the meaning of Title 11 of the United States Bankruptcy Code, section 365.
 - 1.9 A Person (other than a Party to this Agreement) obtains an order or decree in any court of competent jurisdiction enjoining or prohibiting the Defaulting Party from performing under this Agreement and the Party is not current in its payment of all Lease Payments (or otherwise in default of Paragraph 11.1), then the Party is immediately in default. If the Party is current on all Lease Payments and continues to remain current on any Lease Payments, then the Party shall have one hundred eighty (180) calendar days after the issuance of the order to have the order vacated, without being declared in default; or
 - 1.10 Any material representation, warranty, or statement made by a Party with regard to this Agreement that shall prove to have been incorrect in any material respect when made which adversely affects the rights of others.
- 2.0 In the event of a material breach of this Agreement, the Non-Defaulting Party shall give Notice of Default to the Defaulting Party. Except for failure to make a payment, the Defaulting Party shall have thirty (30) calendar days from receipt of the Notice of Default to cure the material breach and the Non-Defaulting Party shall have the right to demand Adequate Assurance.
- 2.1 If Lessee receives a Notice of Default for failure to make a Lease Payment or to pay an invoice, then Lessee has ten (10) business days from the date on the Notice of Default to cure the non-payment. The Lease Payment must be received in hand by the City's Municipal Service Division no later than the tenth day following the date on the Notice of Default;
 - 2.2 If, at the time of a breach for non-payment, Lessee's assignee (if applicable) has Adequate Assurance in the form of a Letter of Credit, surety bond or cash deposit in place naming the City as beneficiary, the City shall be entitled to draw on that Adequate Assurance to cover all outstanding amounts owed, on the thirtieth (30th) day following the Due Date;

- 2.2.1** The City's total damages for any material breach by Lessee shall be limited to, or the equivalent of, the applicable Termination Payment;
- 2.2.2** When the cure reasonably requires more than thirty (30) calendar days, the Defaulting Party shall commence to cure within thirty (30) calendar days of receipt of said Notice of Default and thereafter diligently and continuously prosecute such cure to completion. Failure to cure the material breach within the time limits set forth above shall constitute a default (“Default”). Lessee may not claim that a breach of an obligation to pay requires more than thirty (30) calendar days to cure;
- 2.2.3** Where a Default has occurred, and in no case any earlier than thirty (30) calendar days from the date a Notice of Default was issued, the Non-Defaulting Party may terminate this Agreement by issuing a Notice of Termination. Any extension of time by the Non-defaulting Party in issuing the Notice of Default or Notice of Termination shall not constitute waiver of any right of the Non-Defaulting Party.

Attachment 10

Dispute Resolution. Both Parties shall attempt to resolve any controversy claim, problem or dispute arising out of, or related to, this Agreement through good faith consultation in the ordinary course of business. In the event that any problem or dispute is not resolved by the project managers of each party, either party may upon written notice to the other request that the matter be referred to senior management officials within each respective organization with express authority to resolve the problem or issue ("Request for Internal Resolution"). Either Party shall give a written Request for Internal Resolution within thirty (30) calendar days of the Parties' knowledge of the claim. Senior management officials shall meet or confer at least once in good faith, to negotiate a mutually acceptable resolution within ten (10) business days of the Request for Internal Resolution.

Attachment 11

Construction Costs and Engineering Fees

1.0 The City charges for engineering services and construction of infrastructure under certain circumstances are set forth below.

1.1 Preliminary Engineering Fees. Subsequent to execution of this Agreement and delivery of the Adequate Assurance, but prior to the Acceptance Date of the Leased Fiber (or Additional Leased Fibers) and prior to the first Due Date of a Lease Payment for that fiber, it is anticipated that the City will be required to provide to Lessee Preliminary Engineering Services. The City will perform these Preliminary Engineering Services upon deposit of the Adequate Assurance. The City shall render an invoice every thirty (30) days detailing the hours of Preliminary Engineering Services performed for Lessee at rates set forth in the Electric Rates, Rules and Regulations in effect at that time. Lessee shall pay for the Engineering Services performed, which payment is due within thirty (30) days of date on the invoice.

1.2 Construction of the Configuration. In general, the City may not charge Lessee for the engineering services or construction costs of splicing Lessee's basic ring configuration. However, if Lessee does not make its first Lease Payment or this Agreement is otherwise terminated due to no fault of the City prior to the Due Date of the first Lease Payment, then Lessee shall also pay the City for Construction of the Configuration of Leased Fiber (or Additional Leased Fibers) as set forth in Exhibits 3 and 4. Lessee shall be liable for any attorney fees expended by City in attempting to recover any fees that are the subject of this Paragraph. This attorney fees provision does not apply to any other sections of this Agreement. In order to provide Lessee with the Leased Fibers or Additional Leased Fibers beyond a basic ring configuration, City is required to expend monies for engineering services (beyond Preliminary Engineering Services), construction, and splicing of dark fiber to meet Lessee's configuration needs. City will begin such construction under the following circumstances:

1.2.1 City shall provide Lessee with an engineer's estimate and, if necessary revised estimates, for the construction of the requested work,

1.2.2 Lessee shall deposit the full amount of that estimated costs with City prior to any construction commencing,

1.2.3 If actual costs of that construction exceed the estimated costs, and any revision, by 10% or less, then Lessee shall be liable for those

additional costs. If due to unforeseen circumstances beyond the control of City, construction estimates must be significantly revised, construction shall be halted, and City shall notify Lessee of any required changes. Lessee must approve these changes prior to continuation of construction. Lessee will be responsible for all construction costs prior to the halt of construction should continued construction not be approved by Lessee.

- 2.0 Unless otherwise specified, payment for those services shall be invoiced upon completion by the City, and payment of that invoice is due thirty (30) days from the date on the invoice. If payment of the invoice is not paid on the Due Date, then simple interest on the unpaid, undisputed amounts shall accrue until paid, at one percent (1%) per month. If Lessee fails to pay any invoice, then the City may subject the applicant to the Notice & Cure Rights of the Lessee and the City may draw against the Adequate Assurance posted by Lessee pursuant to Article 10.
- 3.0 Free Services. The following services are free, and not considered Preliminary Engineering Services: Information about the general route of the Fiber Optic Backbone and whether the Backbone passes near certain street addresses desired by Lessee.

Attachment 12

Termination

- 1.0 This Agreement may be terminated upon the occurrence of any of the following events:
 - 1.1 Either Party may terminate this Agreement for default or material breach as defined herein.
 - 1.2 Lessee exercises its right to terminate this Agreement or any Lease for convenience, pursuant to Article 13,. In the event such termination pursuant to Article 13 is a partial termination, Lessee shall continue to make quarterly Lease Payments with respect to any Leased Infrastructure or Additional Leased Infrastructure that have not been the subject of the termination. However, Lessee does not have the right to terminate this Agreement for convenience as to any stranded fiber, which fiber is stranded due to the manner in which Lessee chose to route or splice the Leased Fiber or Additional Leased Fiber. Termination under this section does not authorize partial termination of a Lease.
 - 1.3 Issuance of a Notice of Termination pursuant to Article 11 due to a material breach by the City. If a tribunal later determines that the breach was not material, then Lessee shall owe back payment of all Lease Payments not made, as well as the Termination Payment as of the date of the decision rendered.
 - 1.4 The City's failure to deliver the Leased Infrastructure or Additional Leased Infrastructure (excluding any new extensions of new construction to accommodate the unique requirements of Lessee) on or before the date mutually agreed upon by the Parties and set forth in Exhibit 4, unless such failure is due to reasons beyond the control of City or Force Majeure. Such termination shall be without liability to either City or Lessee unless, and to the extent that, the failure to meet the deadline is caused by Lessee.
 - 1.5 An event of Force Majeure that destroys Lessee's Infrastructure located within the City such that substantially all of Lessee's Infrastructure located within the City cannot be repaired, restored or replaced within sixty (60) calendar days after an event of destruction. Lessee shall be excused from its obligations to make Lease Payments during the pendency of the event of Force Majeure, not to exceed six (6) months from the date of the destruction. The City may elect to terminate this Agreement for cause by written notice to Lessee if Lessee does not commence Lease Payments within six (6) months of the date of destruction, in which case no Termination Payment shall be owed by either Party.

- 1.6 The City may elect to terminate this Agreement for cause with written notice to Lessee if the Fiber Optic Infrastructure is substantially destroyed by Force Majeure such that it cannot be repaired at a reasonable cost and within six (6) months from the date of destruction, and Lessee shall not owe the City any Lease Payment or shall be entitled to an appropriate credit if prepayments are involved. If the City elects to terminate this Agreement as set forth above, Lessee shall not owe the City any Lease Payment or shall be entitled to an appropriate credit if prepayments are involved, for the period from the date of destruction until the Agreement either is terminated or the Fiber Optic Infrastructure is repaired by the City. Lessee may elect to terminate this Agreement for cause if the Fiber Optic Infrastructure is substantially destroyed such that the City cannot repair the Fiber Optic Infrastructure within sixty (60) calendar days of the date of destruction, in which case no Termination Payment shall be owed by either Party.

Attachment 13

Confidentiality

- 1.0 General.** Lessee acknowledges that City is a public agency subject to the requirements of the California Public Records Act Cal. Gov. Code section 6250 et seq. City acknowledges that Lessee may submit information to the City that Lessee considers confidential, proprietary, or trade secret information pursuant the Uniform Trade Secrets Act (Cal. Civil Code section 3426 et seq.), or otherwise not subject to disclosure pursuant to an exemption to the California Public Records Act (Government Code section 6254 et seq.). Lessee acknowledges that the City may submit to Lessee information that the City considers confidential or proprietary or not subject to disclosure pursuant to an exemption to the California Public Records Act (Government Code section 6254 et seq.). Any Party desiring to claim that information shared with the other Party is “Confidential Information”, shall clearly label written information “Confidential” before releasing it to the other Party, and in the case of oral information, shall state that such information is confidential when given and shall confirm in writing the confidentiality of such information promptly thereafter.
- 2.0 Requests Made Under the Public Records Act.** Upon request or demand of any third person or entity not a party to this Agreement (“Requestor”) for production, inspection and/or copying of information designated by a the party disclosing the Confidential Information (“Disclosing Party”) as “Confidential Information” (i) that is made under the Public Records Act, and (ii) is not exempt from disclosure under the Public Records Act, the party that is the recipient of the Confidential Information (“Receiving Party”), as soon as is practical but in any event within three (3) business days of receipt of the request, shall notify the Disclosing Party by telephone call, letter sent via facsimile and/or by US Mail to the address and facsimile number listed at the end of the Agreement that such request has been made. The Disclosing Party shall be responsible for taking whatever legal steps are necessary to protect information deemed by it to be “Confidential Information” and to prevent release of information to the Requestor by the Receiving Party, including prosecuting any defense that the information demanded is exempt from disclosure under the Public Records Act. The Receiving Party will provide reasonable cooperation and assistance to the Disclosing Party in preventing the release of the Confidential Information without compensation; however, if Disclosing Party requires significant dedication of Receiving Party’s time, the Parties shall agree on a fair compensation or limit the hours Receiving Party is taken from duties at its employer. If the Disclosing Party takes no such action within seven (7) days after receiving the foregoing notice from the Receiving Party, the Receiving Party notify Requestor that it requires the allowed ten (10) day extension under the Public Records Act. If Disclosing Party fails to take any action within twenty (20) days of the date on the original Public Records Act demand, then Receiving Party is required by law to comply with the demand and is not required to defend against it.

3.0 All Other Requests. Except for disclosures expressly required under the Public Records Act, the Parties acknowledge and agree that any information properly labeled in accordance with Article 22 and provided now or in connection with this Agreement, [including without limitation, the terms and conditions of this Agreement set forth in Exhibits 3, 4 and 5], shall be considered Confidential Information of the Disclosing Party. [It is acknowledged by the Parties that this Agreement and Exhibits 1, 2, 6, 7, 8, 9, 10, and 11 are public record.] The Receiving Party shall afford such Confidential Information the same care and protection it generally affords its own confidential and proprietary information (which shall not be less than reasonable care, in any case), and further agrees not to use or disclose to any third party the Confidential Information of the Disclosing Party, except as required for performance of its obligations under this Agreement.

3.1 Each Party shall restrict dissemination of Confidential Information to only those persons in its respective organizations, or to its agents, funding partners, fiber optic consultants, legal and financial advisors and lenders who must have access to such Confidential Information in order to perform the obligations required by the Parties under this Agreement or obtain financing; provided, however, that such person or entities shall be made aware of the confidentiality of such information and are subject to or agree to be bound by substantially similar restrictions on its use and disclosure.

3.2 Neither Party shall be required to hold confidential any information which (i) is or becomes publicly available other than through the Receiving Party; (ii) is independently developed by the Receiving Party; (iii) becomes available to the Receiving Party without restriction from a third party; or (iv) is legally required to be disclosed (including securities and regulatory filings and statements), provided that in such circumstances the Receiving Party first provides the Disclosing Party with notice of such required disclosure and takes reasonable steps to allow the Disclosing Party to seek a protective order with respect to the Confidential Information. The Receiving Party will cooperate and assist the Disclosing Party in connection with such protective order at the Disclosing Party's request as detailed herein.

LIST OF EXHIBITS

Exhibit 1	Definitions
Exhibit 2	Map
Exhibit 3	Fiber Miles
Exhibit 4	Attachment Points
Exhibit 5	Lease Payment & Term
Exhibit 6	Notice of Completion and Notice of Acceptance/Rejection
Exhibit 7	Fiber Specifications, Performance Standards and Acceptance Testing
Exhibit 8	Engineering Information Form
Exhibit 9	Personnel Contact Form
Exhibit 10	Insurance Requirements
Exhibit 11	Request Form
Exhibit 12	Form of Surety Bond

EXHIBIT 1
DEFINITIONS

Acceptance Testing

The testing conducted on any Leased Fibers or Additional Leased Fibers prior to acceptance by Lessee in order to verify that the Leased Fibers or Additional Leased Fibers meet the performance specifications set forth in Exhibit 7.

Additional Attachment Points

Attachment Points requested by Lessee, and agreed to by the City, by amendment to this Agreement after the Effective Date.

Additional Leased Fiber(s)

Leaseable Fibers that are later added to this Agreement by the Parties executing one or more versions of Exhibit 11.

Additional Leased Infrastructure

The combination of any Leased Fibers that are later added to this Agreement by the Parties executing one or more versions of Exhibit 11

Affiliate

A company that has some form of ownership in common with Lessee, such as a parent company or subsidiary of Lessee or Lessee' parent company.

As-built Infrastructure

The actual location of Lessee's Infrastructure and fiber routes following construction.

Attachment Point(s)

Existing or new fiber optic pullboxes located on the Fiber Optic Infrastructure and delineated in Exhibit 4 where Lessee will be allowed to connect its facilities to the Leased Fibers or Additional Leased Fibers. Attachment Points are owned by the City.

Authorized Representative

A person legally authorized by Lessee to bind Lessee to the terms of a contract.

Backbone

The physical location of the Fiber Optic Infrastructure.

City Fiber

The fiber used by, or reserved, for use by the City for municipal communications purposes.

City Representative

The person to be identified by City in Paragraph 6.2 of this Agreement.

Demarcation Point(s)

The specific points at which the Fiber Optic Infrastructure connects to Lessee Infrastructure and ownership changes.

Due Date

The date on which a Lease Payment or payment on any invoice is due to the City.

Engineering Information Form

Form used by Lessee to inform the City of Lessee's Planned Infrastructure interconnected with the Fiber Optic Infrastructure pursuant to section 5.1

Fiber Optic Infrastructure – The fiber optic cable, splices, associated structures including conduits and boxes, and other facilities designed, constructed and installed by or on behalf of the City.

Force Majeure

Any cause beyond the control of the Party affected, and which by exercise of reasonable due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence it has been unable to overcome or obtain or cause to be obtained a commercially reasonable substitute therefore. Force Majeure includes Acts of God, flood, drought, earthquake, storm, tornado, fire, explosion, lightening, epidemic, public emergency, war, riot, civil disobedience, labor strike, labor dispute, labor or materials shortage (however labor or materials shortage does not include the mere inability to obtain that labor or material at a particular price), sabotage, restraint by court order, restraint by public authority, or action or non-action by governmental authority or accident. No Party shall, however, be relieved of liability for failure of performance if such failure is due to causes arising out of its own negligence or due to the removal of remediable causes which it fails to take reasonable efforts to remove or remedy within a reasonable time, or due to mere fluctuations in market prices. Nothing contained herein shall be construed to require a Party to settle any strike or labor dispute in which it may be involved. Either Party rendered unable to fulfill any of its obligations under this Agreement by reason of Force Majeure shall give prompt written notice of such fact to the other Party and shall exercise due diligence to remove such inability with all reasonable dispatch.

Initial Term

The length of the Initial Term is set forth in Exhibit 5 or Exhibit 11 as applicable.

Leaseable Fiber(s)

Any fiber (dark fiber) within the Fiber Optic Infrastructure, other than the City-Fiber (including but not limited to the Public Utilities Department Network and Public,

Educational and Government Network reserved for future use), available for leasing or licensing.

Leaseable Infrastructure

Any Fiber Optic Infrastructure, other than the City-Fiber (including but not limited to the Public Utilities Department Network and Public, Educational and Government Network reserved for future use), available for leasing or licensing.

Lease

The right and privilege to use Leased Infrastructure, and any Additional Leased Fibers, during the Term hereof and in accordance with the provisions of this Agreement.

Lease Payment

The monthly fee owed by Lessee for Leased Infrastructure and Additional Leased Infrastructure as set forth in Exhibit 5 and Exhibit 11 (as applicable) and otherwise established by this Agreement.

Lessee's Infrastructure

Any conduit, fiber, premises, buildings, boxes etc. belonging to Lessee.

Lessee's Representative

The person to be identified by the Lessee in Paragraph 6.2 of this Agreement.

Leased Fiber(s)

The Leaseable Fibers leased to Lessee under this Agreement as depicted on Exhibit 3.

Leased Infrastructure

The combination of Leased Fibers, or Attachment Points which Lessee is entitled to use pursuant to this Agreement or pursuant to an executed Exhibit 11.

Notice of Completion

The notice sent by the City to Lessee upon completion of construction of any configuration of Leased Fibers or Additional Leased Fiber (as applicable), a copy of which is attached hereto as Exhibit 6.

Notice of Acceptance/Rejection

The form completed by Lessee notifying the City of those Leased Fibers or Additional Leased Fiber (as applicable) that are in compliance with the Acceptance Testing and accepted and those that are not in compliance and not accepted, a copy of which form is attached hereto as Exhibit 6.

Notice of Termination

A written notice sent by either Party to the other terminating this Agreement.

Performance Specifications

Those specifications relating to the fiber that are set forth in Exhibit 7.

Preliminary Engineering Services

Providing distances from the City's Fiber Optic Backbone to locations desired by Counterparty, providing information on conduit sizing, location of Attachment Points, and an Engineer's estimate for the cost of splicing Counterparty's desired configuration as well as an Engineer's estimate for installing additional conduit, fiber, or Attachment Points,. Preliminary Engineering Services does not include provisions of any drawings or specifications by City to Counterparty or estimates for Counterparty to obtain access to private property or entrance agreements with private building owners.

Post-Construction Testing

Testing conducted by the City immediately following construction of the subject item, (including but not limited to any Leased Fiber, Additional Leased Fiber Attachment Point) to ensure the performance of said portion meets the requirements set forth in Exhibit 7.

Public Utilities Department

The Public Utilities (Electric and Water) Department of the City of Anaheim

Qualified Party

An entity that it is now, or shall be prior to operating any Telecommunications, duly authorized, licensed or otherwise qualified to operate Telecommunications as required by applicable state or federal laws.

Reimbursable Amount

To calculate the Reimbursable Amount, the total cost of engineering services and cost of construction (including the City's ten percent fee) shall be divided by the number of fibers running to or through the item constructed in order to obtain a cost per fiber. Each time a new lessee requests fiber in a location that was built by the City but paid for by Lessee, that new lessee shall be charged the Reimbursable Amount for each fiber that new lessee desires in that location. The Reimbursable Amount will be collected by the City on the new lessee's Due Date and paid to Lessee within thirty (30) days thereof.

Renewal Term(s)

One or more Renewal Terms of the Agreement commencing upon expiration of the Initial Term. As for the Additional Leased Infrastructure, the Renewal Terms shall be that term identified in Exhibit 11.

Telecommunications

Generating, acquiring, storing, transforming, processing, retrieving, utilizing, transmitting or making available information, whether on a common carrier, private carrier, or other basis, and whether or not subject to certification or regulation by any governmental entity.

Termination Payment

That payment made by Lessee in order to terminate this Agreement for convenience, which payment is a percentage of the remaining Lease Payments that would be paid by the Lessee (without any future CPI adjustments) under the Terms of the Agreement.

Term

The Term set forth in Section 2 of this Agreement.

Tube

A physical grouping of fibers within a cable.

Verification Testing

Testing performed by the City on an existing portion of the Fiber Optic Infrastructure, to ensure that the performance of said portion meets the requirements set forth in Exhibit 7.

EXHIBIT 2

MAP OF CITY/CITY OF ANAHEIM FIBER OPTIC ROUTE (To be included in Final Lease Agreement)

➤ Network Overview

EXHIBIT 3

LEASED FIBER ROUTE & FIBER COUNT

Link	Endpoint 1	Endpoint 2	Network Element Description	Quantity	Fiber Length	Route Miles	Fiber Strands	Fiber Miles
1								
2								
3								
4								
5								
6								
7								
8								
9								
10								
11								
12								
13								
14								
15								
16								
17								
18								
19								
20								
21								
22								
23								
24								
							Total	

The length of fiber is to be determined to the nearest foot, per the City's Fiber Optic measurements.

EXHIBIT 4

Attachment Points,

The City will use its reasonably commercial efforts to complete construction or connection of the following Attachment Points. COMPLETION DATES ARE ESTIMATED AND ARE NOT GUARANTEED.

Attachment Points	Location	Est. Cost (add 10%)	Estimated Completion Date
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			

**EXHIBIT 5
FIBER LEASE PAYMENT & TERM**

1.0 Initial Term. The Initial Term of each Lease granted for the Leased Infrastructure commences on the Acceptance Date of the Lease, is for _____(2-20) years, and ends on _____ ("Initial Term") unless renewed in accordance with Paragraph 2.3 of this Agreement.

2.0 Number of Fibers. The Agreement, exclusive of any additions by Exhibit 11, is for _____ fibers in a configuration as identified in Exhibit 3.

3.0 Optical Fiber Network Elements. Optical fiber network elements at the Acceptance Date are as follows:

3.1 Point-to-Point Transport Service, based on total leased fiber-miles (as established on the basis of OTDR measurements).

- Leased fiber-miles _____.
- Unit Lease Price per fiber-mile _____.

4.0 Lease Payment.

4.1 First Year. The lease payment for the first year of the lease is \$_____ and is due and payable in four (4) quarterly installments on of before January 1, April 1, July 1, and October 1 as follows:

<u>Year</u>	<u>Annual Lease</u>	<u>Quarterly Payments</u>
1	\$ <u>XX,XXX</u>	\$ <u>XX,XXX</u>

4.2 Exhibit 3. Exhibit 3 will be revised, as needed to reflect all future changes in Lessee’s fiber configuration (i.e. attachment points, additional fiber, service drops, and backbone extensions).

4.3 Prorated Lease Payment. If an Acceptance Date occurs in the middle of a quarter, the Lease Payment is prorated. The Lease Payment for any quarter shall be based on the criteria set forth in Paragraph 1.1 of Attachment 3, in accordance with the following calculation:

$$\text{Lease Payment} = \sum_{\text{Segments}} [\text{Length of Segments} \times \text{No. of Fibers} \times \text{Rate} \times 3 \times [\text{Days of availability}/91]].$$

4.4 Subsequent Years. The annual lease payment during the remaining years of the lease and payments due at the beginning of each quarter are as follows:

<u>Year</u>	<u>Annual Lease</u>	<u>Quarterly Payments</u>
-------------	---------------------	---------------------------

- 4.5 Price Inflation Adjustment. The Price Inflation Adjustment (PIA) is set forth in paragraph 3.0 of Attachment 3 of this Agreement and may be exercised at the discretion of the City as provided therein.
- 5.0 Lease Renewal. Lessee shall have the option to renew the Agreement for two successive five-year terms, immediately following the initial term. The Price for the first year of the renewal term shall be the prevailing rate approved by Anaheim's City Council. The price for the subsequent years shall be adjusted annually, at the discretion of the City, based on the PIA as set forth in 3.0 of Attachment 3.
- 6.0 Termination Payment - Lessee may elect to terminate this Agreement for convenience for all (or a portion of) Leased Infrastructure Fibers. At time of Termination, Lessee would pay a Termination Fee equal to three times the (apportioned) annual payment due within the subsequent four quarters, or 40 percent of remaining (apportioned) Lease Payments due under terms of the Agreement, whichever is less. Termination Fees are to be based on current year prices (at the time of Termination) without inclusion of going forward CPI adjustments.
- 7.0 Preliminary Engineering Services. Subsequent to the Effective Date of this Amendment, upon request by Lessee, City will provide to Lessee Preliminary Engineering Services as that term is defined below. City charges for Preliminary Engineering Services as set forth in Section 7.2.
- 7.1 Preliminary Engineering Services include providing distances from the City's Fiber Optic Backbone to locations desired by Lessee, providing information on conduit sizing, location of Attachment Points, feasibility of Backbone Extensions or Service Drops, and an Engineer's estimate for the cost of splicing Lessee's desired configuration as well as an Engineer's estimate for installing additional conduit, fiber, Attachment Points, Service Drops, or Backbone Extensions. Preliminary Engineering Services do not include, nor will City provide provisions for any drawings or specifications by City to Lessee, or estimates for Lessee to obtain access to private property or entrance agreements with private building owners. Lessee is not required to obtain engineering services from City and may supply its own preliminary engineering.
- 7.2 Charge for Preliminary Engineering Services. Before City will perform any service that is defined above as Preliminary Engineering Services, Lessee shall pay to City a non-refundable sum of one thousand dollars and no cents (\$1,000.00). This fee shall entitle Lessee to ten (10) hours of Preliminary Engineering Services. If Lessee requires additional Preliminary Engineering Services, it shall pay one hundred dollars and no cents (\$100) per hour of Preliminary Engineering Services as of the date of this agreement. This amount will be adjusted as necessary to reflect City's actual costs of services. Lessee will be notified 30 days in advance of any changes to these charges. Upon request, City will provide Lessee an engineering estimate, of costs, in writing,

of any changes to Lessee's fiber routes leased from City as requested by Lessee. If Lessee approves of requested changes and associated costs, and City approves requested changes, City will complete requested changes. A monthly accounting of and invoice for services rendered shall be sent to Lessee. Upon depletion of the \$1,000 sum, all additional charges for Preliminary Engineering Services shall be due and payable thirty (30) days from the date of the invoice. Interest at a rate of 10 percent shall be charged on all over due amounts. City shall not perform additional requests by Lessee until all outstanding invoices for Engineering Services and Fees have been paid in full. Lessee shall make requests for such Engineering Services via email or some other written form.

- 8.0 Free Services. The following services are free, and not considered Preliminary Engineering Services: Information about the general route of the Fiber Optic Backbone and whether the Backbone passes near certain street addresses desired by Lessee.
- 9.0 Construction of Configuration. In order to provide Lessee with the Leased Fibers it has chosen to lease from City, City is required to expend monies for engineering services (beyond Preliminary Engineering Services), construction, and splicing of dark fiber to meet Lessee's configuration needs. City will begin such construction under the following circumstances:
- 9.1 City shall provide Lessee with an engineer's estimate and, if necessary revised estimates, for the construction of the requested work,
- 9.2 Lessee shall deposit the full amount of that estimated costs with City prior to any construction commencing,
- 9.3 If actual costs of that construction exceed the estimated costs, and any revision, by 10% or less, then Lessee shall be liable for those additional costs. If due to unforeseen circumstances beyond the control of City, construction estimates must be significantly revised, construction shall be halted, and City shall notify Lessee of any required changes. Lessee must approve these changes prior to continuation of construction. Lessee will be responsible for all construction costs prior to the halt of construction should continued construction not be approved by Lessee.
- 10.0 Services not a Part of this Agreement. City will not provide hard copy maps of the Fiber Optic Infrastructure, specifications or engineering drawings to Lessee pursuant to this Agreement. City is not responsible for obtaining access to private property or entrance agreements with private building owners on behalf of Lessee pursuant to this Letter Agreement or pursuant to the Lease Agreement unless so stated therein.
- 11.0 Exhibit 11 Request Form. Lessee will have the right to request additional route extensions. Cost for attachment points, additional fiber, service drops, backbone extensions, construction, and splicing to meet Lessee's configuration needs shall be requested under the terms specified in a negotiated Exhibit 11 and agreed to by the Parties. City will use its commercially reasonable efforts to accommodate Lessee's construction requirements and seek approval by City in a timely manner.

EXHIBIT 6

NOTICE OF COMPLETION AND NOTICE OF ACCEPTANCE/REJECTION

NOTICE OF COMPLETION

This Notice of Completion is issued pursuant to that Agreement dated _____, 20__ (the "Agreement") by and Between the City of Anaheim and _____ **Company** ("Lessee"). This Notice of Completion is dated _____ and hereby notifies Lessee that the following items of the Leased Infrastructure (or Additional Leased Infrastructure) identified as follows:

_____ are complete and available for acceptance testing by Lessee.

Please take notice that if Lessee desires to perform Acceptance Testing, it must do so in accordance with Section 4.2 of the Agreement

Signed by Authorized Representative: _____
Type Name: _____
Title: _____
Dated: _____

NOTICE OF ACCEPTANCE/REJECTION

Lessee hereby accepts the following items of the Leased Infrastructure (or Additional Leased Infrastructure) as in compliance with the Acceptance Testing:

_____.

The following items of the Leased Infrastructure (or Additional Leased Infrastructure) are found not in compliance with the Acceptance Testing and are not accepted by Lessee: _____ and comprise ____ percent of the total Leased Infrastructure (or Additional Leased Infrastructure) that are the subject of this Notice of Completion.

Briefly describe the condition that is the basis for your claim that said portions of the Leased Infrastructure (or Additional Leased Infrastructure) are not in compliance:

Signed by Authorized Representative: _____
Type Name: _____
Title: _____
Dated: _____

EXHIBIT 7

FIBER SPECIFICATIONS, PERFORMANCE STANDARDS AND ACCEPTANCE TESTING

1.0 CONFIGURATION

City's communications cable plant consists of single mode fiber optic cable, Attachment Points at locations within and outside the City of Anaheim.

2.0 FIBER OPTIC CABLE

Fiber optic cable is of suitable manufacture to provide long-term reliable service in a flooded underground ductbank or aerial outside environment.

3.0 PERFORMANCE

3.1 Optical Fiber Performance and Parameters (Backbone Cable):

3.1.1 Fiber construction shall be single-mode -The core/cladding size will be nominal 9/125 μ m.

3.1.2 Fiber shall be of a dual-window construction with transmission capabilities at 1310nm and 1550nm.

3.1.3 The nominal attenuation of each fiber will be 0.5 dB / km at 1310 nanometers (nm), and 0.45dB / km at 1550 nm.

3.1.4 Each fiber within a cable is color coded with distinct and recognizable colors. CITY will assign buffer tube and fiber numbers assigned for each leased fiber.

3.1.5 Where required, each fiber shall either be terminated with an SC-type 2.5mm bayonet connector, or spliced to an SC-type 2.5mm bayonet connector pigtail. The nominal loss of the connector termination will not exceed 1.0 dB.

3.1.6 Where required, each fiber will be fusion spliced. The measured loss of each completed strand splice will be less than 0.15 dB per splice.

3.2 Mechanical and Environmental Conditions for the Fiber Optic Backbone Cable:

3.2.1 The cables shall be suitable for underground installation in an enclosed ductbank or an overhead self-supporting or strand-supported installation. Cable shall be flooded with a suitable water-repellent compound, or otherwise constructed in such a

manner to inhibit deterioration of performance due to duct flooding.

3.3 Fiber Optic Cable Structure:

3.3.1 The number of fibers in each cable is designated on the plans. The cable structure shall be such that the fibers are grouped for easy handling. The individual fibers or buffer tubes are color-coded for ease of identification.

3.3.2 The cable shall contain appropriate dielectric strength members to satisfy the above mechanical and environmental specifications.

3.3.3 The cable core shall consist of fibers enclosed in filled loose buffer tubes, arranged around a central dielectric strength member. The interstices between the buffer tubes include a suitable water-repellent compound to inhibit intrusion and migration of moisture along the cable.

3.3.4 The cable is enclosed in a jacket acceptable for use in an underground duct or aerial self-supporting application environment.

3.4 When feasible, each span of fiber optic cable is to be installed as a single run of cable, using appropriate pulling techniques as necessary. Splices are to be made in the fiber optic cable as noted on the prints and at the termination of the cable in each communications room or pedestal.

3.5 Packaging and Shipping: Each length of cable shall have both ends effectively sealed. Individual fibers in each cable to be delivered must be tested before shipping to verify their conformance with the performance specifications.

3.6 Acceptable Manufacturers:

3.6.1 AT&T Fitel, Aloca Fujikura, Optical Cable Corp. and other SMF-28 compliant manufacturers, as determined by the City.

4.0 Installation and Operation

4.1 City will coordinate all scheduled or emergency maintenance operations with Lessee's representative to insure that any interference or interruptions of Lessee's operations are anticipated and scheduled. Likewise, Lessee shall coordinate all scheduled or emergency maintenance operations with City's representative to insure that any interference or interruption of Lessor's operations are anticipated and scheduled.

- 4.2 City shall provide construction drawings applicable to Lessee's network construction, indicating all actual construction distances, variations from design, and other pertinent information upon delivery of the fiber.

5.0 Acceptance Testing

5.1 Acceptance Procedure

Lessee's acceptance of the licensed fiber optic cable shall be based on conformance of the Dark Fiber Route (DFR) operation to the testing criteria as described herein. Prior to conduct of Lessee's Acceptance Tests, the City shall test the transmission media for the acceptance of each individual strand and verify the integrity of the complete DFR ("Post-Construction Test" or "Verification Test", collectively "Lessor's Testing"). Upon completion of City's Testing, City will notify Lessee in writing of the "completion of construction" and provide a Notice of Completion/Acceptance or Rejection form (Exhibit 6) for execution by the Lessee, pursuant to the Acceptance Testing set forth in the Agreement to which this is an Exhibit.

5.2 Documentation

City will make relevant drawings and documentation available to Lessee concurrent with the Notice of Completion.

5.3 Testing Support

City will accommodate Lessee's request to participate in joint testing arrangements. Alternatively, City may observe the conduct of Lessee's Acceptance Tests.

5.4 Testing and Measurement Equipment

City will provide necessary testing equipment for performing the required Acceptance Tests, subject to review and concurrence by the Lessee.

5.5 Reports

Each party shall provide full test reports to the other party within two weeks of test completion, reflecting independent analysis and observations. For City, any test must be provided to Lessee concurrently with a Notice of Completion (Exhibit 6). Test reports shall include a description of cable problems and testing failures, and necessary remedial actions.

5.6 Fiber Optic Cable Testing Procedures

5.6.1 Insertion Loss Testing:

5.6.1.1 An end-to-end attenuation test (including all connectors, fibers, and jumpers) shall be performed on all fiber strands by comparing the optical power at the input of a fiber with the output. This shall be accomplished by Insertion Loss Testing using a "one jumper reference" to include the connector losses. Testing shall be in accordance with EIA-455-53.

5.6.1.2 Tests shall be performed by using a transmitter and inserting a light signal, at 1310 and 1550 nanometers for single-mode fiber, in a "known" short (about 2 meters and less than 3 meters) jumper and placing a receiver or power meter at the other end of the jumper and measuring the reference level in dBm and recording this as the "reference jumper".

5.6.1.2.1 Disconnect the receiver from the jumper and connect another jumper to the receiver and the reference jumper.

5.6.1.2.2 Measure the attenuation in dB and insure loss is less than 1 dB and record this loss as the test set loss.

5.6.1.2.3 Now disconnect the two jumpers from each other and connect to each end of the fiber to be tested.

5.6.1.2.4 Testing shall be performed at 1310 and 1550 nanometers for single-mode fiber, using an attenuation or optical loss test set equivalent to GNNetest GN-6025/6250. The loss shall be calculated by subtracting the system loss from the reference loss (see below).

$$\text{Loss} = P_{\text{ref}} - P_{\text{sys}}$$

where,

P_{ref} = the level of the jumpers measured in dBm

P_{sys} = the level of the jumpers plus the fiber being tested in dBm.

5.6.2 This tested actual loss value shall be compared to the theoretical loss calculated using the following attenuation criteria:

- 5.6.2.1 SC Type connectors (per mated pair):Single-mode - 1.0 dB.
- 5.6.2.2 Fiber cable:
 - Single-mode - 0.50 dB/km @ 1310nm
 - 0.45 dB/km @ 1550nm
- 5.6.2.3 It shall be the responsibility of the Lessee to independently calculate the theoretical loss using installed cable lengths.
- 5.6.3 If the actual loss exceeds the theoretical loss by greater than 3.0dB, the fiber will be considered as having not passed the acceptance criteria. City, at its own discretion, will perform one of the following activities based on the requirements of the system and project schedules:
 - 5.6.3.1 Re-test using optical time-domain reflectometer (OTDR) testing.
 - 5.6.3.2 Properly isolate the fiber from use in the system.
 - 5.6.3.3 Repair / replace the defective fiber optic cable at City's option
- 5.6.4 All cables will have been previously tested with an OTDR upon installation and acceptance by City. These records will be made available to and may suffice as record of proof of performance for Lessee.
- 5.6.5 All cables that fail the continuity or the insertion loss tests shall be re-tested using an optical time-domain reflectometer. OTDR testing may also be performed by the Lessee, City, or both as the utilization of the cable is transferred from the Lessor to the Lessee.
- 5.6.6 These tests shall be used to disclose irregularities, if any, and their location caused from manufacture, handling, or installation such as discontinuities and macro-bendings.

**EXHIBIT 8
ENGINEERING INFORMATION FORM
FOR CONSTRUCTION PERFORMED BY LESSEE**

<p>Lessee's Fiber Route Description</p> <ul style="list-style-type: none"> • Architecture • Route Layout • Terminating Points • Mileage • Fiber Count 	
<p>Lessee's Schedules</p> <ul style="list-style-type: none"> • Anticipated Service Date • Anticipated Tests 	
<p>Lessee's Construction Plans</p> <ul style="list-style-type: none"> • Attached Drawing • Attachment Points • Manhole Locations • Terminal Equipment 	
<p>Lessee's Coordination With City</p> <ul style="list-style-type: none"> • Joint Testing • Network Interfaces • Construction Support 	
<p>Lessee's Project Manager</p> <ul style="list-style-type: none"> • Name • Telephone • Fax • Address 	

EXHIBIT 9

PERSONNEL CONTACT FORM

For City:

Primary Contact and during normal business hours:

Title: _____

Telephone _____

Facsimile _____

Secondary contact or for emergencies (24x7x365) and after normal business hours:

Operator on Duty

Operations Control Room

Telephone: _____

Facsimile: _____

For Lessee:

Primary Contact:

Name:

Title:

Address:

Telephone

Pager:

Facsimile:

Secondary Contact or for emergencies (24x7x365) and after normal business hours:

Name:

Title:

Address:

Telephone

Pager:

Facsimile:

**CITY OF ANAHEIM, CALIFORNIA
STANDARD INSURANCE REQUIREMENTS**

EXHIBIT 10

Lessee, its contractors, and subcontractor(s), if any, shall purchase and maintain the insurance policies set forth below on all of its operations under this Agreement at its/their sole cost and expense. Such policies shall be maintained for the full term of this Agreement and the related warranty period (if applicable). For purposes of the insurance policies required under this Agreement, the term "City" shall include the duly elected or appointed council members, commissioners, officers, agents, employees, and volunteers of the City of Anaheim, California, individually or collectively.

1. **MINIMUM SCOPE AND LIMITS OF REQUIRED INSURANCE POLICIES.**

The following policies shall be maintained with insurers authorized to do business in the State of California and shall be issued under forms of policies satisfactory to the City:

a. **COMMERCIAL GENERAL LIABILITY INSURANCE POLICY ("CGL").**

Policy shall include coverage at least as broad as set forth in Insurance Services Office (herein "ISO") Commercial General Liability coverage (Occurrence Form CG 0001) with policy limits not less than the following:

\$1,000,000 each occurrence (combined single limit);
\$1,000,000 for personal injury liability;
\$1,000,000 aggregate for products-completed operations; and,
\$1,000,000 general aggregate applying separately to this Agreement.

b. **BUSINESS AUTOMOBILE LIABILITY POLICY ("BAL").**

Policy shall include coverage at least as broad as set forth in Insurance Services Office Business Automobile Liability coverage, Symbol 1 "Any Auto" (Form CA 0001). This policy shall include a minimum combined single limit of not less than one million (\$1,000,000) dollars for each accident, for bodily injury and/or property damage.

c. **WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE POLICY ("WC/EL").** (A Workers' Compensation Policy is required only if Lessee has employees or volunteers.)

These policies shall include at least the following coverages and policy limits:

1. Workers' Compensation insurance as required by the laws of the State of California; and
2. Employer's Liability insurance with coverage amounts not less than one million (\$1,000,000) dollars each accident/Bodily Injury (herein "BI"); one million (\$1,000,000) dollars policy limit BI by disease; and, one million (\$1,000,000) dollars each employee BI by disease.

d. **PROFESSIONAL LIABILITY INSURANCE POLICY ("PL").**

[not applicable]

2. **DEDUCTIBLES AND SELF-INSURANCE RETENTIONS.**

Any deductibles and/or self insured retentions which apply to any of the insurance policies referred to above shall be declared in writing by Lessee and approved by the City before work is begun pursuant to this Agreement. At the option of the City, Lessee shall either reduce or eliminate such deductibles or self-insured retentions or provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and/or defense expenses.

3. **ENDORSEMENTS.**

All of the following clauses and endorsements, or similar provisions, are required to be made a part of the required insurance policies indicated in parentheses below:

- a. Additional Insureds The City of Anaheim, its City Council, commissions, officers and employees are hereby added as additional insureds in respect to liability arising out of the Lessee's work for the City, providing coverage at least as broad as Insurance Services Office (ISO) Endorsement CG 2010, 1985 Edition, or insurer's equivalent (CGL);
- b. General Aggregate The general aggregate limits shall apply separately to Lessee's work under this Agreement providing coverage at least as broad as Insurance Services Office (ISO) Endorsement CG 2503 1985 Edition, or insurer's equivalent (CGL);
- c. Primary Insurance This policy shall be considered primary insurance with respect to any other valid and collectible insurance City may possess, including any self-insured retention City may have, and any other insurance City does possess shall be considered excess insurance only and shall not be called upon to contribute with this insurance (CGL & BAL); and
- d. Notice of Cancellation No cancellation shall be effective until written notice has been given at least thirty (30) days prior to the effective date of such cancellation to City at the address set forth below, except the insurer may give ten (10) days notice for non-payment of premium (CGL, CAL & WC/EL & PL).

4. **DEDUCTIBLES AND SELF-INSURED RETENTIONS (SIR)**

Deductibles and self-insured retentions (SIR) must be declared (all Policies).

5. **ABSENCE OF INSURANCE COVERAGE.**

City may direct Lessee to immediately cease all activities with respect to this Agreement if the City determines that Lessee fails to carry, in full force and effect, all insurance policies with coverages at or above the limits specified in this Agreement. Any delays or

expense caused due to stopping of work and change of insurance shall be considered Lessee's delay and expense. At the City's discretion, under conditions of lapse, City may purchase appropriate insurance and charge all costs related to such policy to Lessee.

6. **PROOF OF INSURANCE COVERAGE AND COVERAGE VERIFICATION.**

A Certificate of Insurance, on an Accord form, and implementing endorsements shall be provided to City by each of Lessee's insurance companies as evidence of the stipulated coverages prior to commencement of work under this Agreement, and annually thereafter at least ten (10) days prior to termination of existing coverage for the term of this Agreement. City reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by this Agreement at any time. All of the insurance companies providing insurance for Lessee shall have, and provide evidence of, a Best Rating Service rate of "A VI" or above.

The Certificate of Insurance and coverage verification and all other notices related to cancellation shall be mailed to:

Office of the City Clerk
200 S. Anaheim Blvd.
Anaheim, California 92805

**EXHIBIT 11
REQUEST FORM**

[FOR WORK TO BE PERFORMED BY CITY]

This Request Form is submitted on behalf of _____ **Company**, the lessee (the "Lessee") under that certain Agreement by and between the City of Anaheim, California (the "City") and Lessee dated as of _____, 200_ (the "Agreement"). Lessee hereby requests that the City provide Additional Attachment Points, or Fibers, as indicated below. The person signing on behalf of Lessee has authority to bind Lessee. Provided that this Request Form is signed on behalf of the City and returned to Lessee on or before _____, then this document shall amend the Agreement as herein provided without the necessity of any further action by either party. If this document is not signed on behalf of the City and returned to Lessee by the date referenced in the preceding sentence, then this Request Form shall be null and void unless an extension is granted in writing by Lessee.

Additional Fiber

Lessee hereby requests that it be permitted to lease Additional Leaseable Fiber at the following locations:

<u>No. of Fibers</u>	<u>General Intersection Location</u>	<u>Node to Node</u>	<u>Price Per Exhibit 5</u>	<u>Est. Completion</u>
----------------------	--------------------------------------	---------------------	----------------------------	------------------------

- 1.
- 2.
- 3.
- 4.
- 5.

Add an additional page if necessary.

1. Lease Term for Additional Leased Infrastructure: _____ from the last date of execution below.

2. Renewal Term for Additional Leased Infrastructure: _____ from the end of the Lease Term for the Additional Leased Infrastructure.

3. First Year. The Lease Payment for the first year of the lease is \$_____ and is due and payable in twelve (12) monthly payments on or before the first day of each month as follows:

Year	Annual Lease	Monthly Payments
------	--------------	------------------

1	\$XX,XXX	\$XX,XXX
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4. If an Acceptance Date occurs in the middle of a month, the Lease Payment is prorated. The Lease Payment for any month shall be based on the criteria set forth in Attachment 3.

5. The annual Lease Payment during the remaining years of the Lease and payments due at the first day of each month are as follows:

Year	Annual Lease	Monthly Payments
1	Prior year x PIA	Prior Year x PIA

By their signatures below, Lessee and the City agree that the Agreement is amended as per the terms set forth above, effective as of the date this Request Form is signed by the City (subject to the time limitation set forth above). City will use its commercially reasonable efforts to meet the estimated completion dates above, however, Lessee understands and agrees that the estimated completion dates are estimated dates, and not guaranteed by City.

_____, Inc.
a _____ Corporation

CITY OF ANAHEIM, CALIFORNIA,
a chartered California municipal corporation

By: _____
Title: _____

By: _____
Public Utilities General Manager

Address: _____
Telephone: (____)____-____
Fax: (____)____-____

201 S. Anaheim Blvd., Suite 1101
Anaheim, California 92805
Telephone: _____
Fax: _____

Dated: _____

Dated: _____

“Lessee”

“City”

Approved as to form:

Assistant City Attorney

Attest:

City Clerk

EXHIBIT 12

[FORM OF SURETY BOND]

Bond Number: _____

SURETY BOND

KNOW ALL MEN BY THESE PRESENTS:

That _____ Company as Principal, and _____, incorporated under the laws of the State of _____, and authorized to execute bonds and undertakings as sole surety, are held and firmly bound unto _____, as Oblige, in the sum of _____ (\$ _____); for the payment thereof, well truly to be made, said Principal and Surety bind themselves, their administrators, successors and assigns, jointly and severally, firmly by these presents.

The condition of the foregoing obligation is such that:

WHEREAS, the above bounden Principal is about to enter into a certain agreement with the Oblige for the following: _____, the award of which said agreement was made to the Principal by the Oblige, on _____.

NOW THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and provisions of said agreement during the original term thereof, and any extensions thereof which may be granted by the Oblige, with or without notice to the Surety, and if he shall satisfy all claims and demands incurred under such agreement, and shall fully indemnify and save harmless the Oblige from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the Oblige all outlay and expenses which the Oblige may incur in making good any default, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the agreement or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the agreement or to the work or to the specifications.

PROVIDED, HOWEVER, this bond is issued subject to the following express conditions:

1. This bond shall be deemed continuous in form and shall remain in full force and effect until canceled under Section _____, after which all liability ceases except as to any liability incurred or accrued prior to the date of such cancellation.
2. The aggregate liability of the Surety hereunder on all claims whatsoever shall not exceed the penal sum of this bond in any event.

3. The surety reserves the right to withdraw as surety from this bond, except as to any liability incurred or accrued, and may do so upon giving the Obligee sixty (60) days written notice.

SIGNED AND SEALED this _____ day of _____, 200__.

PRINCIPAL

SURETY

(Type Company Name)

By: _____

By: _____

Title: _____

Title: _____

By: _____

Address: _____

Telephone: _____

(Affix Corporate Seals)

(Attach Acknowledgments of both Principal and Surety signatures)