DARK FIBER LEASE AGREEMENT
BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA AND
*INSERT LESSEE'S NAME

PREAMBLE

This lease agreement ("Agreement"), effective as of the last signature date below (the "Effective Date"), is entered into between the City of Santa Clara, California, a chartered California municipal corporation doing business as Silicon Valley Power ("City" or "SVP") and *insert Lessee's name, a[n] *choose one: a _____ (enter State name) corporation/partnership/individual, ("Lessee"). City and Lessee may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

A. City owns, designs, constructs, operates, and maintains a Dark Fiber Optic Infrastructure ("FOI") substantially located in and around the jurisdictional boundaries of City, including the City of San Jose and City of Sunnyvale. The FOI has been designed without electronics and with unlit fiber with strand capacity available for leasing ("Leasable Fiber(s)") and supports state-of-the-art communications services to meet the requirements of City, municipal institutions, and various commercial entities.

B. This Agreement shall be considered an all-inclusive master lease agreement and if Lessee desires to modify fiber miles or other configurations, Lessee shall submit a Fiber Request Application ("Application") as depicted in Exhibit 1. Upon City approval as defined in Exhibit 1, each Application hereinafter "Approved Application" shall be subject to the Terms and Conditions of this Agreement;

C. FOI, including Extended Demarcation For Cable (EDFC) when applicable is Leasable Fiber. Any future expansions to the FOI owned by City may be considered Leasable Fiber at the sole discretion of the City.

D. FOI and EDFC are further defined in Silicon Valley Power Fiber Standards as may be amended from time to time ("SVP Fiber Standards"). Lessee may request a copy of SVP Fiber Standards by e-mail to svpfiber@santaclaraca.gov.

E. Under this Agreement, Lessee is duly authorized to use Leasable Fibers from the FOI for lawful purposes;

F. This Agreement only applies to the services described herein.

The Parties agree as follows:

AGREEMENT TERMS AND CONDITIONS

1. AGREEMENT DOCUMENTS

The documents forming the entire Agreement between City and Lessee shall consist of these Terms and Conditions and the following Exhibits, which are hereby incorporated into this Agreement by this reference:

Exhibit 1 – Sample Fiber Request Application

Exhibit 2 – Notice of Completion/Rejection

Exhibit 3 – Dark Fiber Rates

This Agreement, including the Exhibits listed above, contains all of the agreements, representations and understandings of the Parties, and supersedes and replaces any previous agreements, representations and understandings, whether oral or written. In the event of any inconsistency between the provisions of any of the Exhibits and the Terms and Conditions, the Terms and Conditions shall govern and control.

Exhibits may be reasonably amended by City such as to address new technical specifications. City shall notify Lessee at least 60 days in advance of proposed amendments to Exhibits. Upon notification, Lessee may request alternate modifications and City and Lessee shall negotiate in an effort to resolve. In the event that City and Lessee cannot agree to modifications, Lessee may terminate this Agreement subject to the terms of this Agreement.

Unless otherwise stated the term “days” shall mean calendar days.

2. TERM OF AGREEMENT

2.1. Initial Term. The Initial Term shall commence on the Effective Date and terminate five (5) years from the Effective Date.

2.2. Option Period:

2.2.1. After the Initial Term, the Agreement shall automatically renew for a five (5) year period (“Option Period”) unless either Party notifies the other Party at least 180 days before the termination date of that Party’s intent to terminate the agreement.

2.2.2. This Agreement may be automatically renewed for up to three (3)

Option Periods with an option for either Party to terminate the Agreement by notifying the other Party in writing at least 180 days before the end of that Option Period.

2.2.3. If Lessee desires to terminate before an Option Period and Lessee does not provide notice 180 days before the end of that Option Period, City will take reasonable actions to terminate the Agreement before the end of the Option period. In the event that City cannot complete actions required to terminate the Agreement before the end of the Option Period, the Lease Payment as defined in this agreement shall adjust to 150% of the Lease Payment in effect until the City can take action to terminate services or 180 days from the notice provided by Lessee, whichever comes first.

2.3. Lease Period: The Lease Period is defined as the Initial Term plus all Option Terms that are exercised by the Lessee and City.

2.4. Application Term:

2.4.1. Lessee may elect a period shorter than the Lease Period for a specific Authorized Application ("Application Term"),

2.4.2. If Lessee has elected an Application Term and Lessee desires to extend that Application Term, Lessee shall submit a new Application with the desired term. Such Application shall be submitted to the City at least ninety (90) days before end of that Application Term. In no event shall an Application Term extend beyond the current Lease Period including any Option Periods which have already been exercised.

2.4.3. If Lessee fails to notify City of its intent to extend an Application Term then the Lease Payment for that Approved Application shall adjust to 150% of the Lease Payment in effect as of the termination date of the Application Term until either Lessee makes a request to terminate the services in that Approved Application or until one billing quarter after a new Application has been submitted and approved.

2.5. If Lessor remains in possession after the expiration of the Lease Period, then such holding over shall not be considered a renewal of this Agreement, but rather shall be construed as a tenancy from month to month, subject to all conditions, provisions, and obligations of this Agreement insofar as the same are applicable to a month-to-month tenancy; provided, however, that

Lessee shall pay as rent to City, for each month that Lessee holds over, an amount equal to one hundred and fifty percent (150%) of the current rate charged to fiber customers for the period of service. Notwithstanding the foregoing, nothing contained in this Agreement shall be deemed consent by City to occupancy or possession of Leased Fiber by Lessee after the expiration or termination of this License. The Holdover Period shall not exceed twenty-four (24) months.

3. GRANT AND SCOPE OF LEASE

3.1. Grant. Subject to the Terms and Conditions of this Agreement and Exhibits, which are incorporated by reference, City grants Lessee and Lessee accepts from City, the right and privilege ("Lease") to use certain of the Leasable Fibers ("Leased Fiber(s)"), Attachment Points, and Private Property Access, as defined in this Agreement, referred to herein collectively as "Leased Infrastructure," and described in each Approved Application.

3.2. Title to the FOI, and every part thereof, is vested exclusively to City;

3.3. Fiber Request Application. If Lessee desires to modify fiber miles or configurations, Lessee shall submit a written request using the format in Exhibit 1, entitled "Sample Fiber Request Application". Upon approval of each Application by the City, the "Approved Application" shall be subject to the terms and conditions of this Agreement.

3.4. Ownership of fiber on City's side of the Demarcation Points shall be vested with City. Demarcation is defined in SVP Fiber Standards.

3.5. No Exclusivity. Nothing in this Agreement is to limit City's right of use of, or right to lease Leasable Fiber not leased in this Agreement to others.

3.6. Limitations. This Agreement is for the use of the Leased Infrastructure only, subject to the Terms and Conditions herein.

3.6.1. City is not transferring or granting to Lessee any other interest or estate in the Leased Fibers, the FOI, or any other property interest, including any fee, easement, or any franchise rights, and nothing in this Agreement shall be construed as granting or creating any such rights.

3.6.2. As a dark fiber provider, City does not provide communication services such as cross connects, power, or equipment to facilitate internet connections.

3.6.3. Use of Fiber. Lessee may not use any part of the Leased Infrastructure unless authorized through Approved Application(s).

3.6.4. This Agreement is not a contract for electric service.

3.7. No Agency. Neither Party is the other Party's agent and shall have no authority, express or implied, to act as agent of the other Party for any purpose.

4. CONNECTION:

4.1. Attachment Points.

4.1.1. Attachment Points are defined as service location(s) Lessee requests for Leased Fiber in submitted Application(s).

4.1.2. Attachment Points may either have a point-to-point or ring configuration and shall be the property of City.

4.1.3. City shall provide Lessee with the Attachment Points, as outlined in the Approved Application(s), at the rates and charges specified in this Agreement.

4.2. Private Property Access.

4.2.1. Private Property Access refers to any physical path within private property that extends from the City's FOI at the public right-of-way onto the third party owned real property ("Property") and typically terminates at the PoP and Lessee's Demarcation Point.

4.2.2. Lessee shall be responsible for securing the Private Property Access and all necessary authorizations from the public right-of-way into the building, unless permission already exists.

4.2.3. City shall provide FOI to the Private Property Access at the location shown in the Approved Application(s).

4.3. Construction

4.3.1. Only City personnel and/or contractors designated by City shall be permitted to pull cable or splice fibers located within City-owned FOI. City shall assume responsibility for construction activities taken on behalf of Lessee in accordance SVP Fiber Standards.

4.3.2. City shall make reasonable efforts to complete construction by the

estimated completion dates in each Approved Application, when specified. City shall not be liable for any costs resulting from failure to complete construction by the estimated completion date.

4.3.3. Upon request of Lessee, City may perform construction of Leased Infrastructure subject to the following:

4.3.3.1. Lessee shall provide cable and be prepared to complete the connection from Lessee's Infrastructure to City at the time that City completes construction

4.3.3.2. If requested by Lessee, City shall splice Lessee provided fiber cable at designated City-owned Attachment Points.

4.3.3.3. Lessee shall pay City any charges specified in this Agreement and associated applications.

4.3.4. If at the time City completes 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 City.

4.4. New Fiber Optic Infrastructure (FOI).

4.4.1. City shall install new FOI and make commercially reasonable efforts to complete construction at the service location(s) in each Application.

4.4.2. New FOI includes design, engineering, construction, placement and splicing of new Leased Fiber to provide a fully active path for Lessee's dark fiber requirements, including new handholes, manholes, conduits, colocation, relay racks, termination panels, make-ready, testing, and test results.

4.4.3. Lessee shall be solely responsible for costs and permissions such as permits and consent from third parties required for placement of New FOI in the public right-of-way or for private property access.

4.4.4. Upon Lessee acceptance of such new FOI and additional Attachment Points in accordance with this Agreement, Lessee shall be billed for additional any costs incurred as specified in this Agreement. Leased Fiber shall be billed at the fiber lease rates in this Agreement.

4.5. Reserved Fiber.

4.5.1. If available, City may set aside available fiber that will not be in immediate use as Reserved Fiber as authorized in Approved Application(s).

4.5.2. Reserved Fiber is designed to provide Lessee an option to have pre-arranged and pre-spliced strands along defined routes available to meet immediate requests for service.

4.5.3. Lessee may reserve fiber tube allotments of twelve (12) fiber strands between two (2) Attachment Points for a 12-month period.

4.5.4. Reserve Fiber can be renewed on an annual basis, if available, and at the City's sole discretion.

4.5.5. Lessee shall be billed for Reserved Fiber at the Reserved Fiber Rates and construction and engineering fees specified in this Agreement and associated Approved Application(s).

4.6. Reconnection. In the event that any of Lessee's services are disconnected for any reason such as, but not limited to, breach including failure to make timely payments or Lessee request; Lessee may request to be reconnected. The decision to reconnect Lessee shall be at the sole discretion of the City. In the event of reconnection, Lessee shall be responsible for all costs of disconnection and reconnection. Such costs shall be paid in advance as described in this Agreement.

5. NO WARRANTY

City expressly disclaims any express or implied warranty as to the fitness or merchantability of the FOI or the Leased Infrastructure, and their appurtenances. Lessee accepts use of the FOI and Leased Infrastructure as-is without any express, or implied warranty, including, without limitation, any implied warranty of merchantability, fitness for a particular purpose, and any other warranties.

6. COMPENSATION AND PAYMENT

6.1. Lease Payment: The Lease Payment is defined as the sum of all recurring charges in an Approved Application plus any Annual Rate adjustments and Third Party Charges.

6.1.1. Lease Payments are based on the configuration type (point-to-point or ring) and per fiber miles per month, as described in Exhibit

3. The total number of Leased Fibers leased by Lessee is described in the Approved Application(s).

6.1.2. Lessee shall pay City the Lease Payment as outlined in the Approved Application(s) for Leased Fiber, as well as any other applicable fees.

6.2. Deposit.

6.2.1. Lessee shall establish credit with City by providing one (1) Quarterly Lease Payment based on the first Application under this agreement, as defined in this Agreement.

6.2.2. Deposit must be received before any work activity shall be initiated by City for associated Application.

6.2.3. Deposit shall be held in a deposit account as follows:

6.2.3.1. If Lessee has not been in material breach of this Agreement and has made all payments on time for a consecutive two-year period, the City shall return Deposit.

6.2.3.2. If Lessee has been in material breach of this Agreement during the two years Deposit is held, the City may retain the Deposit until the Lessee has made payments on time for a consecutive two-year period and has not been in material breach for a consecutive two-year period.

6.2.4. At the City's sole discretion, the City may waive or modify deposit requirements for an application including requiring deposit in advance of construction services provided by City under Section 4.

6.3. Assurance: If at any time City at City's sole discretion, the City reasonably believes that Lessee may commit a breach by non-performance of the terms or conditions of this Agreement, or Lessee fails to pay the fees prescribed in this Agreement at any time within a two (2) year period, then City may demand assurance (regardless of whether or not assurance was required at the start of this Agreement) to the extent that City determines is necessary to protect City. Such assurance shall be in a form satisfactory to City and shall be delivered to City within thirty (30) days of City's demand. Such assurance may include requirement of additional Deposit. In the event that Lessee fails to pay additional deposit within thirty (30) days of

request by City, City may terminate this Agreement according to the provisions of this Agreement.

6.4. Quarterly Lease Invoice. City shall invoice Lessee on a quarterly basis and start from the Date of Delivery, as defined in this Agreement.

6.4.1. Due Date of Quarterly Lease Payments. Lease Payments are due on or before the last day of the first month in each quarter of the service period on or before January 31st, April 30, July 31st, and October 31st as follows:

6.4.1.1. Payment for January through March is due before January 31

6.4.1.2. Payment for April through June is due before April 30

6.4.1.3. Payment for July through September is due July 31

6.4.1.4. Payment for October through December is due October 31

6.4.2. Lease Fiber delivered during a quarter shall be prorated based on the number of days of fiber availability during the quarter and shall be paid before the due date of the first quarterly lease payment after construction is completed.

6.4.3. City shall send an invoice prior to the quarterly due date to Lessee as a reminder of the total amount of the quarterly Lease Payment due on or before the dates in this Agreement. If Lessee does not receive such invoice, Lessee is still bound to pay the quarterly Lease Payment (the amount in Approved Applications) before the Due Date of Quarterly Lease Payments.

6.5. Reserved Fiber Payment Option. Reserved Fiber may be leased pursuant to Reserved Fiber Rates in this Agreement and shall be included in an Approved Application.

6.6. Annual Rate Adjustments. The fiber lease rates in this Agreement shall be adjusted annually on July 1st, using either a three percent (3%) Price Inflation Adjustment, or local Consumer Price Index (CPI), whichever is higher and rounded to the nearest dollar. Local CPI is designated in accordance with the consumer price index (CPI) for all Urban Consumers for the San Francisco-Oakland-San Jose CMSA, published by the United States Department of Labor, Bureau of Labor Statistics from January

through December of the previous year. The amount of any Annual Adjustment shall not exceed ten percent (10%) of the rate in effect in the previous year.

6.7. Non-Recurring Costs: Engineering Design, Construction, and Splicing Payments.

6.7.1. Construction: Upon receipt of application, City shall provide an estimate of costs for construction associated with that application. Upon receipt of signed Work Authorization in the Fiber Request Application in Exhibit 1 and, City shall initiate actions necessary to complete construction. Costs of Construction may include, but are not limited to placement and splicing of items, placement of handholes, manholes, conduits, relay racks, termination panels, and fiber optic cable.

6.7.2. Additional Engineering Fees. From time to time Lessee may request additional non-recurring engineering services, including but not limited to troubleshooting, splicing, testing and results, fiber audits, fiber verification, civil engineering services for agencies outside the jurisdiction of City, and fiber map reconfigurations.

6.7.2.1. Lessee may request such services by submitting an Application.

6.7.2.2. Upon receipt of application, City shall provide an estimate of costs for additional engineering fees associated with that application. Upon receipt of signed Work Authorization, City shall initiate actions necessary to complete requested activities.

6.7.3. City shall make best efforts to provide Lessee with estimated cost for work required.

6.7.3.1. In the event that Construction or Additional Engineering requires revisions resulting in costs that are likely to exceed the estimated costs by fifteen percent (15%) or less, those costs may be passed through to Lessee without additional notification.

6.7.3.2. If construction estimates must be revised in an amount greater than 15% of estimated costs, construction shall be halted, and City shall notify Lessee, in writing, of any required changes.

6.7.3.2.1. Lessee must approve such changes prior to continuation of construction in Approved Application(s).

6.7.3.2.2. Should Lessee decide not to authorize costs exceeding initial construction estimates and discontinue work, Lessee shall be responsible for all construction costs up to the halt of construction.

6.7.4. If Lessee does not make its first Lease Payment for an Approved Application or this Agreement is otherwise terminated due to no fault of City prior to the Due Date of the first Lease Payment, then Lessee shall be responsible for all costs incurred by City up to the date of termination and any deposit received by City shall be reduced by the amounts paid on Lessee's behalf.

6.7.5. Lessee shall make payment for any non-recurring costs within 30 days of invoice from City. In the event that payment is not received then the provisions of Section 6.10 (Late Fee Payment) shall apply.

6.8. Third Party Charges.

6.8.1. Lessee shall reimburse City for charges assessed or imposed on City by third parties related to this Agreement.

6.8.2. To the extent City is aware of those charges in advance and can obtain an estimate from that third party, City shall 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. Where City may be required to pay such third-party charges on behalf of Lessee, Lessee shall remit payment in advance to City.

6.8.2.1. 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 City harmless from any claim of delay in completing the subject work due to Lessee's negotiations of the third party charges.

6.8.2.2. If Lessee elects not to pay the third party charges, then City shall not perform the work requested by Lessee that requires payment of such third party charges and

may adjust Approved Applications accordingly.

6.8.3. Lessee shall make payment for any third party charges within 30 days of invoice from City. In the event that payment is not received then the provisions of Section 6.10 (Late Fee Payment) shall apply.

6.9. Payment Dispute

6.9.1. Lessee shall notify City of any disputes within 30 days of end of quarter of any disputes. Lessee shall remit any undisputed amount on the due date. Notices regarding payment dispute shall be submitted to SVPFiber@santaclaraca.gov.

6.9.2. City shall review disputed items and respond to Lessee with City's findings within 30-days of receipt of dispute.

6.9.3. Within 15 days of response from City to payment dispute, Lessee shall pay any outstanding amounts due to City.

6.10. Late Fee Payment.

6.10.1. If any amount due is not received in advance of the Due Date, a Late Fee Payment on unpaid, undisputed amounts of the payment shall accrue, until paid, at one and a half percent (1.5%) per month.

6.10.2. In addition, if Lessee fails to pay any invoice, then Default provisions of this Agreement shall apply.

6.11. Taxes and Franchise Fees. None of the Lease Payment amounts 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 entity related to the Leased Infrastructure, if any, when due.

6.11.1. City represents that currently, there is no tax imposed by City that would be levied on Lessee associated with this Agreement.

6.11.2. Notice is hereby given that the property interest vested in Lessee may create a possessory interest which entities (other than City) may deem subject to property taxation and Lessee may be subject to payment of property taxes therefore.

6.11.3. Lessee shall be solely responsible for opposing, protesting, appealing or challenging any tax or franchise fee imposed or asserted by any entity.

6.12. If Lessee desires to decommission certain fiber miles without terminating the entire Agreement, Lessee shall submit an Application at least ninety (90) days in advance of intended decommission.

6.12.1. City shall evaluate such Application and adjust Lease Payments if such Application is approved.

6.12.2. Lessee is responsible for all disconnection costs (labor, time, and materials), resulting from work authorized in Approved Application(s).

6.12.3. If accrued amount of decommissioned fiber exceeds fifty percent (50%) of an Approved Application, a twenty-five percent (25%) Termination Fee shall apply. The Termination Fee shall be based on the Lease Payments expected from the decommissioned fiber for the remaining term of the Agreement.

6.13. City shall have the right to refuse to perform new or additional requests from Lessee until any outstanding invoices have been paid in full.

7. CONSTRUCTION AND ACCEPTANCE OF LEASED FIBER

7.1. Notice of Completion.

7.1.1. Upon the completion of any construction for Lessee, City shall perform testing in accordance with SVP Fiber Standards.

7.1.2. After successful testing, City shall provide Lessee a Notice of Completion, in a form substantially similar to Exhibit 2, with the results of such testing of all Leased Infrastructure described in Approved Application(s).

7.1.3. Charges for any Leased Fiber shall commence on the Date of Delivery of such Leased Fiber.

7.2. Existing FOI.

7.2.1. If any Attachment Point is to be provided that is not newly constructed, City shall perform splicing verification testing to verify that the Attachment Point(s) to be leased meets the Performance Specifications in SVP Fiber Standards.

7.2.2. The results of such tests shall be provided to Lessee.

7.3. Lessee's Acceptance Testing.

7.3.1. Upon receipt of the Notice of Completion, Lessee may conduct its own testing of the Leased Infrastructure, using procedures outlined in Approved Application(s) ("Acceptance Testing").

7.3.2. Lessee is solely responsible for ensuring that Lessee has installed the necessary Lessee's Infrastructure and, if necessary, obtained the required building owner service agreements required to perform Lessee's own Acceptance Testing.

7.3.3. Lessee shall complete Acceptance Testing within fifteen (15) days of the issued Notice of Completion.

7.3.3.1. Lessee shall indicate in a Notice of Acceptance/Rejection, similar to Exhibit 2, what portion of the Leased Infrastructure described in the Approved Application(s), failed to pass the Acceptance Testing and the reason therefore.

7.3.3.2. If Lessee fails to complete Acceptance Testing within the time indicated in the Notice of Acceptance / Rejection, Lessee shall have waived its rights to conduct Acceptance Testing, and items listed on the Notice of Completion shall be deemed accepted by Lessee upon expiration of the fifteen (15) day period.

7.3.4. City shall reasonably cooperate in conducting such tests and participate in joint testing,

7.3.4.1. Joint testing by City, if requested by Lessee shall be performed only at Lessee's sole cost and expense.

7.3.4.2. Lessee shall provide City advance notice of at least seventy-two (72) hours from the date and time it desires City to participate in joint testing. Any such notice must be given within twelve (12) days after receipt of the Notice of Completion.

7.4. Notice of Rejection.

7.4.1. In the event Lessee delivers a Notice of Rejection to City, Lessee shall specify what item(s) are not in compliance.

7.4.2. City shall use its commercially reasonable efforts to correct or repair Leased Infrastructure that is not in compliance.

7.4.3. 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.

7.4.4. This procedure shall apply again and successively thereafter until City has remedied all defects or failures that are not in conformance with the Performance Specifications in this Agreement and SVP Fiber Standards.

7.5. Date of Delivery.

7.5.1. Fifteen (15) days after City issuance of a Notice of Completion, if a Notice of Rejection has not been submitted, the Leased Infrastructure shall be deemed ready for immediate use and interconnection by Lessee to Lessee's Infrastructure.

7.5.2. In the event of a Notice of Rejection, the Lease Infrastructure shall be deemed ready for immediate use and interconnection by Lessee to Lessee's Infrastructure fifteen (15) days after issuance of the last Notice of Completion.

7.5.3. The date of the Notice of Completion shall serve as the Acceptance Date and Date of Delivery.

7.5.4. Charges for any Leased Fiber shall commence on the Date of Delivery of such Leased Fiber.

7.6. Reserved Fiber.

7.6.1. Reserved Fiber strands shall be pre-spliced, terminated, and tested, but unavailable for interconnection until Lessee submits an Application, at least two (2) business days in advance, to transfer status from Reserved Fiber to Leased Fiber.

7.6.2. Upon receipt and approval of an Application to activate Reserved Fiber, City shall perform testing and provide Lessee with test results, a map with port assignments, and a Notice of Completion similar to Exhibit 2 and associated with Approved Application(s).

8. LESSEE'S INTERFACE WITH CITY'S INFRASTRUCTURE

8.1. Lessee's Infrastructure and use of Lessee's Infrastructure. Lessee shall be responsible for installation, operation, and maintenance for Lessee's Infrastructure beginning at least one foot from City-owned splice cases, pull

boxes, or other City-owned structures. Lessee hereby grants City the right to use Lessee's Infrastructure during the Lease Period to allow City to perform its obligations under this Agreement. "Lessee's Infrastructure" is defined in this Lease Agreement as any of Lessee's conduit, fiber, buildings, and other infrastructure required for the Leased Infrastructure and FOI.

8.2. No Access by Lessee. Other than as authorized in this Agreement, Lessee is prohibited from accessing, directly or indirectly, the FOI, 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 FOI, the transmission pathway, or any City electric or other utility facility shall constitute a material breach of this Agreement.

8.3. 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 agrees to the following:

8.3.1. Lessee shall comply with applicable federal, state and local laws in the exercise and performance of its rights and obligations under this Agreement.

8.3.2. 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.

8.3.3. 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 City.

8.3.4. Lessee shall not interfere in any manner with the existence and operation of any and all public rights-of-way, easements, 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.

8.3.5. Neither Lessee nor anyone under Lessee's direct control or doing work on Lessee's behalf including, but not limited to, Lessee's employees, contractors, and agents (excluding the City its agents and contractors), shall be permitted to:

8.3.5.1. Do anything within public rights-of-way or easements

that obstructs or interferes with the rights of any person located within the public rights-of-way or easements or that may result in injury,

8.3.5.2. Commit, cause, maintain, permit, suffer, or allow to be committed, caused, maintained any waste, abuse or destructive use within the public rights-of-way or easements,

8.3.5.3. Commit, cause, maintain, permit, suffer, or allow to be committed 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 rights-of-way or easements.

8.3.5.4. Do anything in, on or about the Leased Infrastructure or Lessee's Infrastructure which is prohibited by, or will in any way conflict with, any laws now in force by City or which may hereafter be enacted or promulgated by an entity other than City. If City becomes aware of any laws, rules, ordinances, resolutions, or other regulations which are enacted or promulgated by a governmental entity (other than City) after the Effective Date of this Agreement that materially (a) changes the economics of this Agreement, or (b) interfere with Lessee's rights provided hereunder, City may provide Lessee sixty (60) days' notice of the required change(s) and if the Lessee does not agree to comply, Lessee shall have the right to terminate this Agreement without penalty.

8.3.5.5. This term shall not be construed to prohibit Lessee from installing Infrastructure within City or otherwise exercising its rights and carrying out its obligations under this Agreement, nor shall it be construed to increase Lessee's rights under this Agreement.

8.3.6. Lessee shall keep all parts of the 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, contractors or agents. If any 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.

8.3.7. Lessee shall be permitted to pledge this Agreement as an asset for purposes of obtaining financing; however, if any entity to which this Agreement has been pledged actually perfects its interest therein, that entity must comply with the provisions of this Agreement ("Assignment and Subcontracting").

8.3.8. Lessee may not, under any circumstances, pledge the actual dark fiber or Leased Infrastructure as an asset to anyone for any purpose. The Leased Infrastructure is public property owned by City and shall not be pledged to any party.

8.3.9. Lessee shall not use or store Hazardous Materials of any kind on or near City Property which could contaminate the Property, without prior written permission from City.

8.3.9.1. "Hazardous Material(s)" shall mean any toxic or hazardous substance, material or waste or any pollutant or contaminant or infectious or radioactive material, including but not limited to, those substances, materials or wastes regulated now or in the future under any of the following statutes or regulations and any and all of those substances included within the definitions of "hazardous substances," "hazardous waste," "hazardous chemical substance or mixture," "imminently hazardous chemical substance or mixture," "toxic substances," "hazardous air pollutant," "toxic pollutant" or "solid waste" in the (a) "CERCLA" or "Superfund" as amended by SARA, 42 U.S.C. Sec. 9601 et seq., (b) RCRA, 42 U.S.C. Sec. 6901 et seq., (c) CWA., 33 U.S.C. Sec. 1251 et seq., (d) CAA, 42 U.S.C. 78401 et seq., (e) TSCA, 15 U.S.C. Sec. 2601 et seq., (f) The Refuse Act of 1899, 33 U.S.C. Sec. 407, (g) OSHA, 29 U.S.C. 651 et seq. (h) Hazardous Materials Transportation Act, 49 U.S.C. Sec. 1801 et seq., (i) USDOT Table (40 CFR Part 302 and amendments) or the EPA Table (40 CFR Part 302 and amendments), (j) California Superfund, Cal. Health & Safety Code Sec. 25300 et seq., (k) Cal. Hazardous Waste Control Act, Cal. Health & Safety Code Section 25100 et seq., (l) Porter-Cologne Act, Cal. Water Code Sec. 13000 et seq., (m) Hazardous Waste Disposal Land Use Law, Cal. Health & Safety Code Sec. 25220

et seq., (n) “Proposition 65,” Cal. Health and Safety Code Sec. 25249.5 et seq., (o) Hazardous Substances Underground Storage Tank Law, Cal. Health & Safety Code Sec. 25280 et seq., (p) California Hazardous Substance Act, Cal. Health & Safety Code Sec. 28740 et seq., (q) Air Resources Law, Cal. Health & Safety Code Sec. 39000 et seq., (r) Hazardous Materials Release Response Plans and Inventory, Cal. Health & Safety Code Secs. 25500-25541, (s) TCPA, Cal. Health and Safety Code Secs. 25208 et seq., and (t) regulations promulgated pursuant to said laws or any replacement thereof, or as similar terms are defined in the federal, state and local laws, statutes, regulations, orders or rules.

8.3.9.2. Hazardous Materials shall also mean any and all other substances, materials and wastes which are, or in the future become regulated under applicable local, state or federal law for the protection of health or the environment, or which are classified as hazardous or toxic substances, materials or wastes, pollutants or contaminants, as defined, listed or regulated by any federal, state or local law, regulation or order or by common law decision, including, without limitation, (i) trichloroethylene, tetrachloroethylene, perchloroethylene and other chlorinated solvents, (ii) any petroleum products or fractions thereof, (iii) asbestos, (iv) polychlorinated biphenyls, (v) flammable explosives, (vi) urea formaldehyde, and (vii) radioactive materials and waste.

8.3.9.3. In the event that any Hazardous Material is spilled or leaked or otherwise released on the Property or any area in the vicinity of the Property as a result of Lessee’s exercise of this Lease, Lessee shall promptly take all steps necessary to remove any contamination resulting from such activities. Lessee accepts full responsibility for all activities and costs incurred related to cleaning up the Property from the effects of such spill or leak.

8.3.9.4. Lessee shall be responsible for meeting, and possess

the means to satisfy, the requirements of all federal, state and local controlling agencies, such as the Bay Area Water Quality Management District and/or the Environmental Protection Agency, which may have jurisdiction over the region in which the Property is located or over the substance being used by Lessee on the Property.

8.3.9.5. Hazardous Materials Indemnity. Lessee shall indemnify, defend (by counsel reasonably acceptable to City), protect and hold City harmless from and against any and all claims, liabilities, penalties, forfeitures, losses and/or expenses (including, without limitation, diminution in value of the Property, damages for the loss or restriction on use of the rentable or usable space or of any amenity of the Property, damages arising from any adverse impact or marketing of the Property and sums paid in settlement of claims, response costs, cleanup costs, site assessment costs, attorneys' fees, consultant and expert fees, judgments, administrative rulings or orders, fines, costs of death of or injury to any person or damage to any property whatsoever (including, without limitation, groundwater, sewer systems and atmosphere), arising from, or caused or resulting, either prior to or during the Lease Period, in whole or in part, directly or indirectly, by the presence or discharge in, on, under or about the Property by Lessee, Lessee's agents, employees, licensees or invitees or at Lessee's direction of Hazardous Material, or by Lessee's failure to comply with any Hazardous Materials Law, whether knowingly or by strict liability. Licensee's indemnification obligations shall include, without limitation, and whether foreseeable or unforeseeable, all costs of any required or necessary Hazardous Materials management plan, investigation, repairs, cleanup or detoxification or decontamination of the Property, and the presence and implementation of any closure, remedial action or other required plans, and shall survive the expiration of or early termination of the Lease Period. For purposes of the indemnity provided herein, any acts or omissions of Lessee, or its

employees, agents, customers, sublessees, assignees, contractors or subcontractors of Lessee (whether or not they are negligent, intentional, willful or unlawful) shall be strictly attributable to Lessee.

8.4. City Covenants.

8.4.1. City shall comply with applicable federal, state and local laws in the exercise and performance of its rights and obligations under this Agreement.

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

8.4.3. City shall comply with any City permit issued in connection with the FOI within the public rights-of-way or easements.

8.4.4. 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 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.

9. OPERATION AND MAINTENANCE, MODIFICATIONS, AND REPAIRS

9.1. General. City shall maintain the FOI in good operating condition and in accordance with the specifications in this Agreement and SVP Fiber Standards.

9.2. City shall provide all equipment, manpower, supervision, certified fiber optic splicers, consumable materials, tools, construction equipment and machinery, utilities, transportation, any and all applicable taxes, and other facilities and work as necessary for the proper execution and completion of monitoring, operation, maintenance, modifications, repairs including temporary and permanent emergency restoration for operation of the fiber optic communications network for the performance of this Agreement. Such services may include:

9.2.1. Underground trenching and placement/repair of conduit and infrastructure per City's construction standards. Lessee may request a copy of City construction standards and specifications by e-mail to svpfiber@santaclaraca.gov. Placement of underground fiber optic cable and facilities in conduit system.

9.2.2. Setting poles and/or repair of aerial facilities for fiber optic cable.

9.2.3. Placement of aerial fiber optic cable poles in compliance with California Public Utilities Commission General Order No. 95.

9.2.4. Splicing, termination and testing of fiber optic cable to SVP Fiber Standards.

9.2.5. Underground and aerial defect discovery work to ascertain the extent of damage to fiber optic cables and/or facilities.

9.3. Representatives. Lessee shall provide to City, and update as changes occur, the current name, title, telephone number, and personal communications device number of a representative of Lessee, in this Agreement ("Lessee's Representative").

9.3.1. City shall keep Lessee's Representative informed of City's maintenance schedules and emergencies.

9.3.2. In the event that Lessee fails to update contact information for Lessee's Representative, City shall not be held liable for any failure to meet any notification or response provisions, resulting directly therefrom.

9.3.3. City shall provide to Lessee's Representative the telephone number of a City Representative that can be contacted on a 24/7 basis, including City's observed holidays, as set forth in this Agreement ("City's Representative").

9.3.4. Lessee may contact City's Representative to report any perceived damage to or failure, interruption or impairment of the Leased Infrastructure.

9.4. Operations and Maintenance.

9.4.1. City shall schedule and perform routine operations, maintenance and repairs and undertake timely maintenance and repairs to cure deficiencies in the FOI.

9.4.2. City shall provide written notification identifying the time, location, and nature of each maintenance and repair job potentially affecting the Leased Infrastructure and/or Lessee's Infrastructure, and notify Lessee's Representative, at the earliest possible time but not less than ninety-six (96) hours prior to the scheduled time except in the

event of emergency as defined in this Agreement.

9.4.3. Lessee is responsible for all maintenance and repairs on Lessee's side of the Demarcation Points.

9.5. Route Modifications.

9.5.1. City, at its sole cost and expense, may modify the FOI as conditions and circumstances may warrant.

9.5.2. City shall provide written notification to Lessee's Representative identifying the time, location, and nature of each route modification at least ninety-six (96) hours prior to the scheduled time, unless route modification is considered an Emergency, as defined in this Agreement.

9.5.3. Such modifications may cause portions of the FOI to be relocated, permanently or temporarily, to one or more alternate locations within the public right-of-way or easement, and leased service properties.

9.5.4. Lessee shall cooperate with City to affect any such modifications.

9.6. Emergency Repairs.

9.6.1. For the purpose of this Agreement, "Emergency" shall be defined as an abrupt failure of fiber optic cable functionality.

9.6.2. City shall provide emergency maintenance response and restoration services.

9.6.3. City Emergency services will be available on a 24/7 basis, including City's observed holidays.

9.6.4. Emergency maintenance provided in this Agreement does not apply to fiber optic facilities not owned by City.

9.6.5. Response Time.

9.6.5.1. Upon receipt of notification of a potential problem fitting the definition of emergency from Lessee's Representative to City's Representative, City shall evaluate the potential problem within the following timelines:

9.6.5.1.1. During normal business hours: City shall evaluate issue within four (4) hours of notification and shall have appropriate restoration/repair personnel and equipment onsite to begin restoration of fiber optic network functionality within eight (8) hours of such notification

9.6.5.1.2. Outside of City business hours including weekends and holidays: City shall evaluate issue within eight (8) hours of notification and shall have appropriate restoration/repair personnel and equipment onsite to begin restoration of fiber optic network functionality on the next business day.

9.6.5.2. If City cannot provide permanent restoration within four (4) hours, City will make commercially reasonable efforts to provide temporary restoration.

9.6.5.3. After temporary restoration is complete, a permanent repair and site restoration plan will be proposed by City within two (2) days. Upon City's approval, this work will be scheduled and initiated.

9.6.5.4. During restoration services, City's Representative will provide regular updates to Lessee's Representative.

9.6.6. Point of Contact. During Emergency service, required communications regarding restoration shall be exchanged between Lessee's Representative and City's Representative, as set forth in this Agreement.

9.7. In the event that the City is mobilized as a result of an issue resulting from Lessee's infrastructure, City may, at City's sole discretion, invoice Lessee for City costs associated with such activity.

10. ACCESS TO LESSEE'S INFRASTRUCTURE

10.1. Grant of Access. From time to time access to Lessee's Infrastructure may be required for scheduled and non-scheduled maintenance and repair work associated with the Leased Infrastructure and related FOI. Lessee shall cooperate with City, its officers, employees, agents, representatives, contractors to allow ingress and egress for repairs to Leased Infrastructure

and the FOI. Notwithstanding the foregoing, City shall have no right or responsibility to alter, maintain, or repair Lessee's Infrastructure. In no event shall City, its officers, employees, agents, representatives, contractors, or subcontractors access Lessee's Infrastructure unless a representative of Lessee is present unless authorized in writing by Lessee.

10.2. Written Notice.

10.2.1. So long as an emergency situation does not exist, City shall provide a written notice to Lessee's Representative at least forty-eight (48) hours in advance of any required ingress to Lessee's Infrastructure.

10.2.2. If an emergency situation exists, City shall provide a verbal request to Lessee's Representative as soon as practical.

11. DEFAULT

11.1. Either Party may be subject to default in this Agreement if the Party materially breaches any term or condition of this agreement.

11.2. Lessee shall be subject to default procedures in this Agreement if Lessee fails to pay any fees as prescribed in this Agreement.

11.3. Upon default under this Agreement, the non-defaulting Party shall give the other Party written notice, setting forth the nature of the default and a demand that said default be cured and remedied. If that Party fails, neglects or refuses within thirty (30) days after the giving of said notice to cure or remedy the default, or commence and diligently continue such cure, then the non-defaulting Party, shall provide a Notice of Default to the defaulting Party. Upon Notice of Default and without suit or other proceedings, may terminate this Agreement and cancel and annul the rights and privileges granted herein.

12. TERMINATION

12.1. Termination by Lessee.

12.1.1. Termination without Cause:

12.1.1.1. Lessee may terminate this Agreement without cause by giving City written notice ("Notice of Termination") which clearly expresses Lessee's intent to terminate the Agreement.

12.1.1.2. Notice of Termination shall become effective no less

than ninety (90) days after City receives such notice.

12.1.1.3. In the event of termination without cause, Lessee shall be subject to an early Termination Fee equal to one hundred percent 100% of the current year's Lease Payment(s) plus twenty-five percent (25%) of the remaining Lease Payment(s) due under the terms of all Approved Application(s). The Termination Fee is based on the current fiber lease rate (at the time of Termination) exclusive of future Annual Adjustments.

12.1.2. Failure to Deliver Leased Infrastructure

12.1.2.1. Lessee may terminate this Agreement if City fails to deliver the 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 in Approved Application(s), unless such failure is due to reasons beyond the control of City or Force Majeure.

12.1.2.2. Termination for failure to deliver leased infrastructure shall not be subject to a Termination Payment. Lessee shall be responsible for any costs incurred by City on Lessee's behalf up to the point of termination.

12.1.2.3. Termination for failure to deliver leased infrastructure 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.

12.2. Termination by City:

12.2.1. Termination without Cause:

12.2.1.1. City may terminate this Agreement without cause by giving Lessee written notice ("Notice of Termination") which clearly expresses City's intent to terminate the Agreement.

12.2.1.2. Notice of Termination shall become effective no less than thirty (30) days after Lessee receives such notice.

12.2.1.3. In the event of termination without cause by City and

provided that Lessee has made all quarterly payments in full and on time, Lessee may use FOI without cost for the final three months before the termination date in the Notice of Termination from City.

12.2.1.4. After Notice of Termination has been presented by City, City may terminate and disconnect Lessee from the FOI on the date indicated in the Notice of Termination without further notice to Lessee and with no liability to City.

12.2.2. Termination for default or cause: In the event of termination for default of this agreement or other cause, City may terminate and disconnect Lessee from the FOI on the date indicated in the Notice of Termination or Notice of Default without further notice to Lessee and with no liability to City.

12.3. Termination due to destruction of FOI:

12.3.1. Either Party may terminate this Agreement if the FOI is substantially destroyed by Force Majeure such that it cannot be repaired at a reasonable cost and within ninety (90) days from the date of destruction.

12.3.2. In the event of destruction of FOI, either Party shall provide the other Party a Notice of Termination and termination shall become effective no less than thirty (30) days after a Party receives such notice.

12.3.3. After either Party terminates the Agreement due to destruction of FOI, Lessee shall not owe City any further Lease Payment and Lessee shall be entitled to an appropriate credit if pre-payments occurred.

12.3.4. Lessee shall not be subject to the Termination Fee in the event of Termination due to destruction of FOI.

13. FORCE MAJUEURE

13.1. For the purpose of this Agreement, “Force Majeure” shall be defined as 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.

13.2. Force Majeure includes Acts of God, flood, drought, earthquake, storm, tornado, fire, explosion, lightning, epidemic, pandemic, 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.

13.3. No Party shall 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.

13.4. Force Majeure shall not excuse Lessee's nonpayment of any fees or costs required under this Agreement

14. ASSIGNMENT AND SUBCONTRACTING

14.1. City and Lessee bind themselves, their successors and assigns to all covenants of this Agreement. This Agreement shall not be assigned or transferred without the prior written approval of City.

14.2. Lessee shall be as fully responsible to City for the acts and omissions of its subcontractors, and of person either directly or indirectly employed by them, as Lessee is for the acts and omissions of persons directly employed by it.

15. NO THIRD PARTY BENEFICIARY

This Agreement shall not be construed to be an agreement for the benefit of any third party or parties and no third party or parties shall have any claim or right of action under this Agreement for any cause whatsoever.

16. INDEPENDENT CONTRACTOR

Lessee and all person(s) employed by or contracted with Lessee to furnish labor and/or materials under this Agreement are independent contractors and do not

act as agent(s) or employee(s) of City. Lessee has full rights to manage its employees in their performance of Services under this Agreement.

17. CONFIDENTIALITY OF MATERIAL

Except as required by the California Public Records Act, or any other applicable law, all ideas, memoranda, specifications, plans, manufacturing procedures, data, drawings, descriptions, documents, discussions or other information submitted by a Party ("Discloser") to the other Party ("Recipient") in connection with the performance of this Agreement and marked as "Confidential" or, if identified as confidential at the time of disclosure, shall be held confidential by Recipient and shall not, without the prior written consent of Discloser, be used for any purposes other than the performance under this Agreement nor be disclosed to an entity not connected with performance under this Agreement. Nothing furnished to Recipient which is otherwise known to Recipient or becomes generally known to the related industry shall be deemed confidential.

18. HOLD HARMLESS/INDEMNIFICATION

18.1. To the extent permitted by law, Lessee agrees to protect, defend, hold harmless and indemnify City, its City Council, commissioners, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and reasonable attorney's fees in providing a defense to any claim arising therefrom, for which City shall become liable arising from Lessee's negligent, reckless or wrongful acts, errors, or omissions with respect to or in any way connected with the Services performed by Lessee pursuant to this Agreement.

18.2. City shall not be liable to Lessee for damage caused to the FOI by independent third parties not under contract with City that are engaged in construction or other business operations which damage the FOI. City shall respond and repair any damage to the FOI caused by such third party as if it were an Emergency Repair as described in this Agreement. In the event that such damage is related to actions of Lessee or third parties under the control or direction of Lessee, City may invoice Lessee for any costs of response.

18.3. City shall not be liable to Lessee for any fines, penalties, claims, or damages stemming from the interruption of, or interference with Lessee's Infrastructure. City shall not be liable for incidental, punitive, exemplary, special, indirect or consequential damages, or lost profits, arising under or relating to this Agreement. Nothing in the preceding sentence shall be

construed to limit Lessee's indemnity obligations under this Agreement.

18.4. City shall not be liable to Lessee for any fines, penalties, claims, or damages for third-party claims for intellectual property infringement, data breach, or violations of any data privacy laws.

18.5. The total aggregate liability of City and its City Council, commissions, officers, employees, volunteers and agents and their insurers, collectively, for all claims damages, losses, expenses, costs, and liabilities of any kind arising out of this Agreement, whether such arise from a breach of contract, warranty, tort, including negligence, strict liability; or otherwise, shall be limited to One Dollar ($1.00).

18.6. Lessee's obligation to protect, defend, indemnify, and hold harmless in full City and its employees, shall specifically extend to any and all employment-related claims of any type brought by employees, contractors, subcontractors or other agents of Lessee, against City (either alone, or jointly with Lessee), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.

18.7. To the extent Lessee is obligated to provide health insurance coverage to its employees pursuant to the Affordable Care Act ("Act") and/or any other similar federal or state law, Lessee warrants that it is meeting its obligations under the Act and will fully indemnify and hold harmless City for any penalties, fines, adverse rulings, or tax payments associated with Lessee's responsibilities under the Act.

19. WAIVER

Lessee agrees that waiver by City of any or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement. Neither City's review, acceptance, nor payments required under this Agreement shall be constructed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

20. NOTICES

20.1. All notices to the Parties shall, unless otherwise required in writing, shall be sent to City addressed as follows:

City of Santa Clara dba Silicon Valley Power
Attention: Chief Electric Utility Officer
1500 Warburton Avenue

Santa Clara, CA 95050
and by e-mail at svpcontracts@santaclaraca.gov, svpfiber@santaclaraca.gov, and manager@santaclaraca.gov

And to Lessee addressed as follows:

*Name of Lessee
*Address of Lessee
and by e-mail at *_____@XXX

The workday the e-mail was sent shall control the date notice was deemed given. An e-mail transmitted after 1:00 p.m. on a Friday shall be deemed to have been transmitted on the following business day.

20.2. Routine Operations and Emergencies (City's Representative and Lessee's Representative).

All notices to the Parties regarding routine operations and emergencies shall be sent to City addressed as follows:

City of Santa Clara dba Silicon Valley Power
Attention: Fiber Program Manager
1500 Warburton Avenue
Santa Clara CA 95050
Telephone: (408)548-7741

Secondary contact or for emergencies (24/7/365) and after normal business hours:

City of Santa Clara dba Silicon Valley Power
SVP Operations Control Room
Telephone: (408) 615-5640

And to Lessee addressed as follows:

*Name of Lessee
*Address of Lessee
Telephone No:

Secondary contact or for emergencies (24/7/365) and after normal business hours:

*Name of Lessee
*Address of Lessee
Telephone:

21. COMPLIANCE WITH LAWS

Lessee shall comply with all applicable laws and regulations of the federal, state and local government, including but not limited to "The Code of the City of Santa Clara, California" ("SCCC"). In particular, Lessee's attention is called to

the regulations regarding Campaign Contributions (SCCC Chapter 2.130), Lobbying (SCCC Chapter 2.155), Minimum Wage (SCCC Chapter 3.20), Business Tax Certificate (SCCC section 3.40.060), and Food and Beverage Service Worker Retention (SCCC Chapter 9.60), as such Chapters or Sections may be amended from time to time or renumbered. Additionally Lessee has read and agrees to comply with City's Ethical Standards (http://santaclaraca.gov/home/showdocument?id=58299).

22. CONFLICTS OF INTEREST

Lessee certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial interest in the business of Lessee and that no person associated with Lessee has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Lessee is familiar with the provisions of California Government Code section 87100 and following, and certifies that it does not know of any facts which would violate these code provisions. Lessee will advise City if a conflict arises.

23. FAIR EMPLOYMENT

Lessee shall not discriminate against any employee or applicant for employment because of race, sex, color, religion, religious creed, national origin, ancestry, age, gender, marital status, physical disability, mental disability, medical condition, genetic information, sexual orientation, gender expression, gender identity, military and veteran status, or ethnic background, in violation of federal, state or local law.

24. NO USE OF NAME OR EMBLEM

Neither Party shall use the other Party's name, insignia, or emblem, or distribute any information related to services under this Agreement in any magazine, trade paper, newspaper or other medium without express written consent of that other Party.

25. GOVERNING LAW AND VENUE

This Agreement shall be governed and construed in accordance with the statues and laws of the State of California. The venue of any suit filed by either Party shall be vested exclusively in the state courts of the County of Santa Clara, or if appropriate, in the United States District Court, Northern District of California, San Jose, California.

26. SEVERABILITY CLAUSE

In case any one or more of the provisions of this Agreement shall, for any reason, be invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions, which shall remain in full force and effect.

27. AMENDMENTS

This Agreement may only be modified by a written amendment duly authorized and executed by the Parties to this Agreement.

28. COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument.

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives.

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

Approved as to Form: Dated: _____

_____
GLEN R. GOOGINS
City Attorney

_____
JŌVAN D. GROGAN
City Manager
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

"CITY"

***INSERT LESSEE'S NAME**
*choose one: a[n] _____ (insert State) corporation/partnership/individual

Dated: _____
By (Signature): _____
Name: _____
Title: _____
Principal Place of Business Address: _____
Email Address: _____
Telephone: ( ) _____
Fax: ( ) _____

"LESSEE"

DARK FIBER LEASE AGREEMENT
BETWEEN THE CITY OF SANTA CLARA, CALIFORNIA AND
***INSERT LESSEE'S NAME**
EXHIBIT 1 - SAMPLE FIBER REQUEST APPLICATION

SILICON VALLEY POWER
CITY OF SANTA CLARA

Fiber Request Application

Work Order # mmddyy-name-fwmid

CITY OF SANTA CLARA CALIFORNIA 1852 THE MISSION CITY

Requestor Completes - Email When Finished

REQUESTOR'S INFORMATION			
Request Type:			
Date Requested:		Lease Agreement Date:	N/A
REQUESTOR'S INFORMATION			
Lessee Company Name:	Enter Customer Name		
Requested By:			
Contact Number:			
Email:			
REQUEST INFORMATION			
Configuration Type:	Point to Point (P-t-P) or Ring	Number of Fibers:	
Locations A - Z: (Attachment Points)			
Additional Services:			
Notes/Instructions:			

STOP HERE - EMAIL REQUEST TO RECEIVE SVP ESTIMATE - CONTACT INFO AT BOTTOM OF PAGE

SVP Estimate

SVP (CITY) FILLS OUT BELOW - ESTIMATE SECTION			
Fiber Work Manager ID:		Date of Estimate:	5/17/2023
Fiber Miles:	0.00	Lease Security Deposit:	
Quarterly Lease Fee[1]:		Quarterly 3rd Party Fee[2]:	$ -
Application Term:		Non-Recurring Costs:	$0
Quote expires 90 calendar days from Date of Estimate.			
Notes:			

1. Subject to annual price inflation adjustment
2. May be subject to future 3rd Party Fees

Contact Info
Submit requests via email to: SVPfiber@siliconvalleypower.com

Fiber Request Application

Work Order # mmddyy-name-fwmid

LESSEE WORK AUTHORIZATION

SIGNATURE REQUIRED TO ACCEPT PRICE ESTIMATES AND WORK ABOVE

Authorized Signature:			
Print Name:			
Title:		**Phone:**	
Email:		**Date:**	

Authorization

SVP (CITY) FILLS OUT BELOW - COMPLETION RESULTS

Fiber Miles:		**Lease Security Deposit:**	
Date Completed:		**3rd Party Fees**	
Work Verified by:		**NRC Costs:**	
Notes:			

MILEAGE SUMMARY AS OF DATE COMPLETED

Point to Point (P-t-P) Summary:		**Ring Summary:**	
Existing Miles:		**Existing Miles:**	
Requested Miles:		**Requested Miles:**	
Total Miles:		**Total Miles:**	
Rate per Mile:		**Rate per Mile:**	
Estimated Annual Cost:		**Estimated Annual Cost:**	

SVP Completion Results

With regards to SVP leases between City and Lessee authorization, this Fiber Request Application shall follow the terms and conditions as set forth in the all-inclusive master lease agreement and Lessee shall be billed according to the costs indicated on the Application.

Contact Info

Submit requests via email to: SVPfiber@siliconvalleypower.com

DARK FIBER LEASE AGREEMENT
BETWEEN THE CITY OF SANTA CLARA, CALIFORNIA AND
***INSERT LESSEE'S NAME**
EXHIBIT 2 - NOTICE OF COMPLETION/REJECTION

NOTICE OF COMPLETION

This Notice of Completion is issued pursuant to the Dark Fiber Lease Agreement dated _____, 20__ ("Agreement") by and between the City of Santa Clara and _____ ("Lessee") and in reference to Fiber Work Manager (FWM) ID # _____. This Notice of Completion is dated _____, 20__ and hereby notifies Lessee that the items listed below of the Leased Infrastructure are complete and available for Acceptance Testing by Lessee.

_____

_____

If Lessee desires to perform Acceptance Testing, it must do so within fifteen (15) days.

Dated: _____

By: _____
Name: _____
Title: SVP Fiber Program Manager

NOTICE OF REJECTION

The items listed below of the Leased Infrastructure are found not in compliance with the Acceptance Testing and are not accepted by Lessee.

Briefly describe the condition which is the basis for Lessee's claim that said portions of the Leased Infrastructure are not in compliance:

_____

_____

Please submit Notice of Rejection to SVP Fiber Program Manager at SVPFiber@siliconvalleypower.com for correction or repair.

DARK FIBER LEASE AGREEMENT
BETWEEN THE CITY OF SANTA CLARA, CALIFORNIA AND
***INSERT LESSEE'S NAME**
EXHIBIT 3 - DARK FIBER RATES

Dark Fiber Rates – Lease Rates are defined in the table below with the following considerations:

- All fiber miles are leased by configuration type (Point to Point or Ring)
- One rate is charged for all Leased Fiber miles within each configuration (Point to Point or Ring)
- Minimum charge is one (1) mile per requested configuration

Quarterly Rates/Fiber Mile/Month – Effective July 1, 2024		
Cumulative Miles Leased by Configuration	**Point to Point Rates**	**Ring Rates**
1.00 – 500.00	$244.00	$175.00
500.01+	$216.00	$145.00

Reserved Fiber Pricing/Fiber Mile/Month	
Point to Point Configuration – Per Mile	$66.00

Annual Adjustment: Rates are adjusted annually on July 1st as outlined in the Agreement. No additional notification is required for Annual Adjustment.