

CITY COUNCIL AGENDA ITEM NO. : "&

Meeting Date: May 13, 2014

Subject/Title: A resolution approving and authorizing the City Manager to execute a conduit and fiber lease agreement with Sonic Telecom, LLC, substantially consistent with the attached, to provide gigabit internet service within the City of Brentwood

Prepared by: Kerry Breen, Assistant Finance Director

Submitted by: Pamela Ehler, Director of Finance and Information Systems

RECOMMENDATION

Approve a resolution authorizing the City Manager to execute a conduit and fiber lease agreement with Sonic Telecom, LLC, substantially consistent with the attached, to provide gigabit internet service within the City of Brentwood.

PREVIOUS ACTION

None

BACKGROUND

In 1999 the City implemented a requirement that all new development in the City be constructed with conduit to the home/business via the joint trench. The conduits were then dedicated to the City for future use. The City now has approximately 120-150 miles of City owned conduit reaching over 8,000 homes in addition to all commercial areas constructed over the past 15 years. These conduits are a valuable City resource, providing a cost-effective means by which fiber can be installed to individual residences and businesses and by which the City can establish a fiber ring throughout the City.

In April 2013 the City was approached by Sonic.net, the largest independent internet service provider in northern California, to gauge the City's interest in developing a public-private partnership with the goal of bringing gigabit internet service to Brentwood. Gigabit service would bring ultra-high speed internet access to the businesses and residents of Brentwood at speeds 50 – 400 times greater than speeds currently experienced by most internet users in the City. From an economic development standpoint, the availability of gigabit service would position Brentwood to better compete for desirable businesses and industries, such as health care and high-tech, which transmit large amounts of data and require ultra-high speed transmission services. The availability of high-speed internet has been reported as one of the top factors that businesses consider in determining where to establish their operations.

In addition the benefits offered to business; residents of Brentwood would also have the ability to sign up for affordable gigabit internet service. Studies have shown that having access to an ultra-high speed network also boosts property values and is a benefit that businesses and residents consider favorably when choosing between potential locations. All the benefits that would accrue as a result of being a gigabit City cannot be identified at this time, but the City would be well-positioned, with its proximity to the Tri-Valley and Silicon Valley and with an

internet network rivaling any in the country, to become an attractive destination for the next generation of technology companies.

Gigabit internet service first became available to the public in 2012, when Google unveiled their first Google Fiber network in Kansas City. Google has since expanded to Provo, Utah and Austin, Texas and recently announced a desire to roll out Gigabit service to 34 new cities in nine metropolitan areas, including the San Jose metropolitan area, although their service offering would likely be limited to the cities of Santa Clara, Mountain View, Sunnyvale and Palo Alto. AT&T has also recently announced their desire to offer gigabit service in several metropolitan areas, although no plans for construction have been developed. As of January 2013, approximately 50 communities in 14 states had gigabit service to the home available.

Following the meeting with Sonic.net, staff prepared a Request for Expression of Interest (RFEI), highlighting the City's available conduit and seeking to gauge interest from potential gigabit internet service providers in coming to Brentwood. The RFEI was submitted to the following companies: Astound, AT&T, Comcast, Google, Level 3, Lit San Leandro, Sonic.net and XO Communications. The only respondent to the RFEI was supplied by Sonic.net.

Founded in 1994, Sonic.net has nineteen years as an internet service provider and is the largest independent internet service provider in northern California. Sonic.net currently services over 80,000 customers and reports over \$45 million in annual revenue. The company provides its own customer service and support and has been doing installation and repair with its own personnel (190 team members) and vehicle fleet for over five years. In 2013, Sonic.net expanded to begin doing its own fiber optic construction, purchasing the equipment to perform horizontal directional drilling, vacuum excavation and fiber optic conduit placement. Sonic.net is currently delivering fiber to the home to customers in Sebastopol and has been issued a permit to start fiber construction in San Francisco's Outer Sunset District. Sonic.net also ran the first Google gigabit fiber network at Stanford University in Palo Alto.

After doing due diligence on Sonic.net, staff felt confident in their ability to successfully execute their plan and subsequently entered into negotiations with the company to develop the framework for an agreement. The main requests Sonic.net had of the City were to:

- Provide Sonic.net with continued, non-exclusive access to the City owned conduit network (including traffic conduit) throughout the City.
- Allow Sonic.net to utilize existing City owned fiber where excess City capacity exists. The City will provide Sonic.net with access to 12 fiber strands in locations where the City has already pulled fiber and where such capacity exists. City staff has determined this will not impact City operations and will not result in additional costs for the City.
- Expedite the permitting and inspection process and to waive City fees for permits and/or inspections that are solely related to conduit and fiber installation (excluding overtime costs and/or consulting costs incurred by the City for expedited services) for the initial term of the agreement.
- Provide Sonic.net with a staging area for their network deployment equipment (likely to be the future park site at Fairview/Sand Creek) subject to an encroachment permit and at no cost to the City.

Staff believes that these requests are reasonable and has incorporated these deal points into the proposed agreement attached to this staff report. The proposed agreement would last for an initial term of 10 years, followed by automatic 10 year renewals provided that there are no material defaults under the terms of the agreement. This provides Sonic.net with the knowledge that they will have continued access to network after incurring all of their upfront capital costs associated with the network deployment.

From the City's perspective, Sonic.net was willing to provide the City with a host of benefits as detailed below.

- Infrastructure Benefits to City:
 - Sonic.net to fill in gaps in the City conduit network (e.g. subdivisions may not be connected to each other, conduit may stop on one side of the street and pick up on the other side in certain instances). Sonic.net will conduct any necessary repairs to existing conduit needed to operate their services. Sonic.net will dedicate all newly constructed conduits to the City, thereby greatly increasing the functionality and usability of the City owned conduit network. This work will be done at no cost to the City.
 - Sonic.net will also provide the City with maps of the conduit construction and GPS details concerning the network. There shall be no cost to the City for these items.
 - Sonic.net to pull fiber through the areas of the City with conduit access, dedicating fiber to the City in an amount sufficient for the City to connect to additional public facilities (including 12 stands of dark fiber where the backbone fiber is installed), thereby providing the City to a fiber optic ring throughout a significant portion of the City. There is no City cost for the dedication of this fiber.
 - Sonic.net to connect City traffic signals to fiber wherever Sonic.net pulls fiber in the traffic conduit at no cost to City. The traffic signal fiber would then be dedicated to the City.
 - Sonic.net to install fiber to City Public Facilities (e.g. City buildings, reservoirs, wells, fire stations, public libraries/schools/colleges, etc.) that are passed by conduit used by Sonic.net. Fiber shall be dedicated to the City for the continued servicing of these facilities. If conduit connecting the facilities to the main conduit line is in place the installation and dedication of fiber shall be done at no cost to the City.
 - If conduit connecting the facilities to the conduit trench is not in place, the costs of constructing the conduit to connect the facility shall be shared. In all cases Sonic.net shall provide and pay for lateral construction of the conduit sufficient to reach the edge of the street right-of way. The cost to then connect the facilities shall be borne by the City, either in conjunction with Sonic.net's installation project at Sonic's actual cost, or at some future date as determined by the City, subject to a future formal bid process.

- Sonic.net to be responsible for all maintenance and/or repair costs associated with the conduit and fiber network in locations where Sonic is using this network.
 - If and when Sonic.net begins offering a Wi-Fi roaming service, the City shall have free access to the service. This has the potential to save a significant amount of time for City staff (e.g. police, inspectors) who perform a lot of their duties in the field.
 - Sonic.net to provide City Hall with a minimum of 1 gigabit symmetrical service, subject to upgrade every five years at no cost to City.
 - Sonic.net to implement a pilot program whereby they will develop plans and install conduits and fiber in an existing subdivision which does not currently have conduits available (i.e. a subdivision built prior to 1999). The chosen subdivision shall consist of 250-500 homes. There shall be no cost to the City for this expansion of the network.
- Services Offered to the Public:
 - Sonic.net to begin installation of the network within 60 days of the signed date of the attached agreement, shall connect the first customers within nine months, and shall connect all customers within fifteen months. Sonic.net will offer services to, at a minimum, residential, small business, enterprise, schools, libraries and municipalities within the City where conduit is available. Gigabit services shall be offered to premises passed by conduit and copper services shall be offered to those areas which do not have conduit available, subject to technical reach limitations.
 - Sonic.net to offer free broadband (non-gigabit) service for a minimum contract period of five years to every residential customer to whose residence has existing available conduit and who agrees to pay a one-time connection fee established by Sonic.net.
 - Sonic.net shall connect all customers within future newly constructed subdivisions within six months of the date of issuance of the first occupancy permit within each future subdivision.
 - Sonic.net has set a price of \$39.95 for residential gigabit internet service plus phone service, providing the fastest broadband offering to consumers in America, along with phone service, for less than most households are currently paying for Internet service with less than 5% of the speed that Sonic.net will offer. For business premises, Sonic.net will offer hosted PBX telephone service plus gigabit internet access starting at \$39.95 per seat. This plan will offer an affordable gigabit opportunity for both large and small businesses.
 - Although the gigabit service will only be available to those premises which have conduit available (i.e. post-1999 construction), Sonic.net will offer copper services at up to 20 Megabits per second, plus unlimited phone service for \$39.95 per month – still faster service for a lower cost than the majority of households are currently receiving. A similar plan is available for business outside of the gigabit service area.

- Sonic.net shall offer free Gigabit fiber services to schools in fiber areas where 30% or more of eligible residential customers in the school area subscribe to Sonic.net services.
- Sonic.net may offer additional services in the future, including voice, video services or other telecommunication services.

The Economic Development Subcommittee, consisting of Mayor Taylor and Vice-Mayor Bryant, met on November 19, 2013 to discuss the deal points and recommended that staff proceed in negotiating with Sonic.net to bring gigabit internet service to Brentwood.

FISCAL IMPACT

Sonic.net has paid a deposit of \$7,500 for the costs associated with the City's use of outside legal counsel in drafting this agreement. In addition, Sonic.net has agreed to reimburse and has paid a deposit for 50% of the costs of scanning and indexing the City's joint trench plans (total cost of this service is estimated to be \$9,980) which the City had not yet converted into an electronic file format. This is a savings to the City, as staff would have had to scan these documents at some point in the future, however, the desire to make the documents available to the Sonic.net engineering team in an immediate manner led to the agreement to share in the costs. The City's share of these costs will be absorbed into the existing Engineering Operating Budget.

The City will save approximately \$15,000 in annual internet service costs through this agreement with Sonic.net. There will also be an efficiency improvement for City staff resulting from the improved network speed, and should Sonic.net implement a Wi-Fi roaming service additional City staff efficiencies would be realized for those employees in the field.

There is an anticipated positive fiscal impact from having gigabit internet available for residents and business, however, this amount is difficult to project. The City has agreed to waive permitting and inspection fees relating to the implementation of this agreement (unless such costs are due to overtime or contractual services costs resulting from a request from Sonic.net to provide expedited permitting or inspection). A dollar value estimate of the waived permit and inspection fees is not available at this time, however; no budget amendments are necessary.

Sonic.net has agreed to be financially responsible for the maintenance and repair of the conduit and fiber network. This may save result in a savings for the City in the event that any part of the network requires future repair.

The City has the opportunity to have City facilities currently served by the conduit network connected to the new fiber network which could save the City a significant amount of funds in the future. Facilities that are not connected to the conduit network would require an outlay of City funds in order to connect, although this contract does not commit the City to connecting any of these facilities.

No budget amendments are required in conjunction with the approval of this agreement.

Attachments:

Resolution

Conduit and Fiber Lease Agreement with Sonic Telecom, LLC

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRENTWOOD APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE A CONDUIT AND FIBER LEASE AGREEMENT WITH SONIC TELECOM, LLC, TO PROVIDE GIGABIT INTERNET SERVICE WITHIN THE CITY OF BRENTWOOD.

WHEREAS, in 1999 the City implemented a requirement that all new development in the City be constructed with conduit to the home/business via the joint trench, and;

WHEREAS, in April 2013 the City was approached by Sonic.net, the largest independent internet service provider in northern California, to gauge the City's interest in developing a public-private partnership with the goal of bringing gigabit internet service to Brentwood, and;

WHEREAS, from an economic development standpoint, the availability of gigabit service would position Brentwood to better compete for desirable businesses and industries, such as health care and high-tech, which transmit large amounts of data and require ultra-high speed transmission services, and;

WHEREAS, all the benefits that would accrue as a result of being a gigabit City cannot be identified at this time, but the City would be well-positioned, with its proximity to the Tri-Valley and Silicon Valley and with an internet network rivaling any in the country, to become an attractive destination for the next generation of technology companies, and;

WHEREAS, as of January 2013, approximately 50 communities in 14 states had gigabit service to the home available, and;

WHEREAS, Sonic.net has nineteen years as an internet service provider and is the largest independent internet service provider in northern California, and;

WHEREAS, Under the terms of the proposed Agreement, Sonic.net will fill in gaps in the City conduit network, dedicate newly placed conduit to the City and perform any repairs and maintenance to the network at their cost, and;

WHEREAS, Under the terms of the proposed Agreement, Sonic.net will pull fiber through the areas of the City with conduit access, dedicating fiber to the City in an amount sufficient for the City to connect to additional public facilities (including 12 stands of dark fiber where the backbone fiber is installed), and;

WHEREAS, Under the terms of the proposed Agreement, Sonic.net will connect City traffic signals to fiber wherever Sonic.net pulls fiber in the traffic conduit at no cost to City and to connect City Public Facilities to fiber where conduit is available, and;

WHEREAS, Under the terms of the proposed Agreement, if and when Sonic.net begins offering a Wi-Fi roaming service, the City shall have free access to the service, and;

WHEREAS, Under the terms of the proposed Agreement, Sonic.net will provide City Hall with a minimum of 1 gigabit symmetrical service, subject to upgrade every five years at no cost to City, and;

WHEREAS, Under the terms of the proposed Agreement, Sonic.net will implement a pilot program whereby they will develop plans and install conduits and fiber in an existing 250-500 home subdivision which does not currently have conduits available, and;

WHEREAS, Under the terms of the proposed Agreement, Sonic.net will begin installation of the network within 60 days of the agreement, connect the first customers within nine months of the agreement, connect all customers within fifteen months of the agreement, and connect all customers within future newly constructed subdivisions within six months of the date of issuance of the first occupancy permit of the subdivision, and;

WHEREAS, the Economic Development Subcommittee, consisting of Mayor Taylor and Vice-Mayor Bryant, met on November 19, 2013 to discuss the deal points and recommended that staff proceed in negotiating with Sonic.net to bring gigabit internet service to Brentwood.

NOW, THEREFORE BE IT RESOLVED that the City Council of the City of Brentwood approves and authorizes the City Manager to execute a conduit and fiber lease agreement with Sonic Telecom, LLC, substantially consistent with the attached, to provide gigabit internet service within the City of Brentwood.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Brentwood at a regular meeting held on May 13, 2014 by the following vote:

Conduit and Fiber Lease Agreement

This Conduit and Fiber Lease Agreement (this “**Lease Agreement**”) is made and entered into as of the ____ day of ____, 2014 (the “**Effective Date**”), by and between the City of Brentwood, California, a municipal corporation (“**City**”) and Sonic Telecom, LLC, a California Corporation (“**Sonic**”) (Each a “**Party**” and collectively, the “**Parties.**”)

Recitals

Whereas: City owns the City Network and the City System which have been installed in the public rights of way within the jurisdictional limits of the City of Brentwood, California.

Whereas: Sonic desires to construct, install, operate, and maintain, within the City System at no cost to City, the Sonic Network, and for that purpose to lease from City the Leased Conduit and the Leased Fibers.

Whereas: City is willing to lease the Leased Conduit and the Leased Fibers to Sonic for that purpose, subject to the terms and conditions set forth herein.

Whereas: Sonic intends to install additional conduit and fiber optic facilities in the public rights of way of the City to make service available in certain additional areas of the City.

Whereas: City requires future subdivisions within the City (“**Future Subdivisions**”) to install and dedicate additional conduit to the City, pursuant to Brentwood Municipal Code (BMC) Section 16.120.120.C, which will become a part of the City System and be available for lease by Sonic consistent with the terms and conditions of this Lease Agreement.

Whereas: City is willing to allow Sonic to install conduit and fiber within City rights of way, and Sonic is willing to dedicate the conduit to the City and dedicate a portion of the Sonic-installed strands of the fiber to the City in a number sufficient to service City Public Facilities, all subject to the terms and conditions set forth herein.

Whereas: City and Sonic are willing to undertake and share the cost of Lateral Construction to provide service to City Public Facilities.

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

Article I. Definitions

As used in this Lease Agreement, the following terms are defined as follows:

“**City-Dedicated Fiber**” means strands of Sonic-installed fiber, in a number sufficient to meet requirements for servicing City Public Facilities during the term of this Lease Agreement and any renewal hereof, including fibers needed to connect City Public Facilities to the City Network,

which Sonic dedicates to City under the terms of this Lease Agreement.

“City Network” means City-owned fiber optic facilities and City-Dedicated Fiber and all Ancillary Facilities and Related Fixtures associated therewith.

“City Public Facilities” means City-owned public properties and facilities on City-owned properties located within City limits, including, but not limited to, municipal office buildings, traffic signals, and reservoirs and wells. Fire stations, irrigation facilities, public libraries, public schools and public colleges, which may or may not be owned in fee title by the City but service City residents, shall also be considered City Public Facilities for the purposes of this Agreement. A comprehensive list of City Public Facilities shall be provided to Sonic within 30 days of the execution of this Agreement.

“City System” means conduit that is intended for use for the installation and use of fiber optic infrastructure, including traffic signal conduit (a map of which is attached as Sheet 1 of Exhibit A), installed in the public rights of way within the jurisdictional limits of the City of Brentwood, California, including conduit to be constructed by Sonic within the public right of way.

“Confidential Information” means any information or documentation that is exempt from disclosure under the California Public Records Act, including confidential trade secrets.

“Lateral Construction” means construction of conduit to connect the City System to a City Public Facility, if such a connection does not exist as of the Effective Date.

“Leased Conduit” means the portion of the City System described in Exhibit A (Sheets 1 and 2), attached hereto and incorporated herein.

“Leased Fibers” means 12 fiber optic strands within the City Network on the route(s) identified in Exhibits A and B, attached hereto, which are leased by Sonic from City under this Lease Agreement.

“Sonic Fiber” means all Sonic-installed fiber, with the exception of City-Dedicated Fiber.

“Sonic Network” means fiber optic facilities installed by Sonic within the City System which are capable of providing asymmetrical gigabit broadband service delivered to homes and businesses over fiber to the home (FTTH) or fiber to the premise (FTTP) and the Leased Fibers.

“Priority 1 Public Facilities” means those City Public Facilities that are to be connected to the Sonic Network as the Sonic Network is being installed, subject to the provisions of Exhibit D, Paragraph 4 and related sub-paragraphs.

“Priority 2 Public Facilities” means those City Public Facilities that are to be connected to the Sonic Network under separate agreement, subject to the provisions of Exhibit D, Paragraph 4 and related sub-paragraphs.

“Related Fixtures” means cabinets, pull boxes, communication equipment, and other facilities necessary to provide Services and Future Services, as defined in Exhibit E.

Article 2. Lease & Partial Waiver of Fees

2.1 Subject to the terms and conditions of this Lease Agreement, City hereby leases the Leased Conduit and the Leased Fibers to Sonic and Sonic hereby leases the Leased Conduit and the Leased Fibers from City, on an “as is where is basis” and without warranty.

2.2 Sonic shall have non-exclusive use of the Leased Conduit.

2.3 Sonic shall have exclusive use of the Leased Fibers.

2.4 During the initial Term of this Lease, as defined in Section 4.1, City hereby waives fees for permits and/or inspections that are processed in the regular course of City business and are solely relating to conduit and fiber installed by Sonic under this Lease Agreement, or for any encroachment permit necessary for the use of City property pursuant to Section 5.2. Notwithstanding the foregoing, in the event that Sonic requires faster turnaround than is offered in the regular course of City business, City may, at Sonic’s request, pay overtime to City staff and/or the hire outside consultants to meet Sonic’s proposed timeline (“**Expedited Processing**”). Sonic shall be responsible for all costs associated with Expedited Processing; staff costs shall be determined per the City’s Cost Allocation Plan, and outside consultant costs shall be billed per the actual amount paid to consultants, in a manner consistent with the current City procedures.

Article 3. Consideration

3.1 Commitments and Contributions in Lieu of Rent. In consideration for the grant of lease in the Leased Conduit and Leased Fibers and the partial waiver of fees described in Article 2, Sonic agrees to the following commitments and contributions:

(a) Sonic shall comply with the Conduit Construction Requirements in Exhibit C.

(b) Sonic shall comply with the Fiber Infrastructure Build Out Requirements in Exhibit D.

(c) Sonic shall comply with the Services Roll-Out Commitments in Exhibit E.

(d) Sonic hereby agrees to dedicate the City-Dedicated Fiber to the City under the terms set forth herein.

(e) City shall have exclusive use of the City-Dedicated Fiber; provided, however, that during the term of this Lease Agreement and any renewal hereof, City will not lease City-Dedicated Fiber to third parties or otherwise use it to offer services in competition with Sonic.

3.2 City Remedy for Sonic Breach. Should Sonic fail to comply materially with the commitments and contributions set out in Section 3.1 and related Exhibits and fail timely to cure same, in addition to any other remedies City may have under this Agreement, City may thereafter, at its option and upon written notice to Sonic, charge Sonic market-based rent, as determined by public bid, for use of the Leased Conduit and Leased Fiber and, if applicable, for use of any City property or right of way.

Article 4. Term

4.1 Commencement. The term of this Lease (the “**Term**”) shall commence on the Effective Date and shall expire ten (10) years following the Effective Date.

4.2 Automatic Renewals. Provided that Sonic is not in material default under this Lease Agreement at the end of the Term and has the necessary governmental permits, licenses (including a business license issued by the City), easements, franchises and approvals that may lawfully be required by federal, state or local law, statute, regulation or ordinance, the Agreement shall automatically extend for additional periods of ten (10) years each (the “**Renewal Terms**”), unless Sonic notifies City in writing of its election not to extend this Lease not less than six (6) months prior to the expiration date of the Term. The Renewal Terms shall be upon all of the terms, covenants, and conditions of this Lease Agreement.

4.3 Termination by City for Cause. City may terminate this lease for any material, uncured default under this Agreement, pursuant to the provisions of Section 11.3 herein.

Article 5. Network Access

5.1 Shared Facilities. City hereby grants to Sonic a non-exclusive license, subject to the limitations and other provisions of this Lease Agreement, to use all manholes and handholes that are ancillary to the City Network (the “**Ancillary Facilities**”) solely in connection with its performance of the terms of this Lease Agreement. Sonic shall notify City at least forty-eight (48) hours in advance if it wishes access to an Ancillary Facility, and City shall have the right to have a representative present during any access to an Ancillary Facility. In event of the necessity to access due to an emergency, Sonic, Sonic may access the Ancillary Facilities immediately, and shall notify City of such emergency access by the end of the next business day. Sonic shall verify the location of all Ancillary Facilities in the field.

5.2. Use of City Yards. City shall allow Sonic to make temporary use of City space within City property as a storage area for storage of materials and equipment, where such Sonic storage can be reasonably accommodated without additional expense to City. Use of any City property for any purpose shall be allowed upon issuance of an encroachment permit to Sonic, subject to all conditions and requirements attached thereto.

5.3 Costs. Sonic shall pay City its Costs in connection with each access to an Ancillary Facility, within thirty (30) days of the date of Sonic’s receipt of City’s invoice therefor. For purposes of this Lease Agreement, “**Costs**” means all reasonable and direct costs paid or payable by City for Expedited Processing or to any third party in accordance with generally accepted accounting principles and incurred for necessary work or services performed on facilities within the City System. City shall not charge a fee for having a representative present if elected under 5.1 above.

Article 6. Permits; Underlying Rights; Relocation

6.1 Underlying Rights. City has obtained certain rights of way for construction and operation of

the City Network and City System (the “**Underlying Rights**”). This Lease Agreement is subject to the terms of the Underlying Rights, and subject to the terms under which the right of way and other property interests are owned or held by the grantor of the Underlying Rights, including, but not limited to, covenants, conditions, restrictions, easements, reversionary interests, bonds, mortgages and indentures, and other matters, whether or not of record, and to the rights of tenants and licensees in possession. Sonic agrees to use the Leased Conduit and Leased Fibers only in a manner consistent with the Underlying Rights, and that its rights shall in all respects be subject to the terms and conditions of the Underlying Rights. Sonic agrees not to cause or allow to be caused any default under the Underlying Rights.

6.2 Governmental Approvals, Permits and Consents.

(a) Except as provided in Section 2.4, above, Sonic at its sole cost and expense, shall obtain and maintain any and all necessary easements, licenses, and building access agreements, as well as all governmental permits, licenses, easements, franchises and approvals that may lawfully be required by federal, state or local law, statute, regulation or ordinance and shall continuously comply with all such laws, statutes, regulations or ordinances as may now or in the future be applicable to (1) its operation or use of the Sonic Network, Leased Conduit and Leased Fibers; (2) Sonic’s use of City-owned property for a storage or staging area, pursuant to Section 5.2, above; (3) Sonic’s other rights and obligations under this Lease Agreement.

(b) Sonic shall require in any written contracts or agreements with its customers in the City that they comply with all applicable federal, state or local laws, statutes, regulations or ordinances as may now or in the future be applicable to the Sonic’s customers’ use of the services provided over the Sonic Network and the Leased Fibers.

(c) If Sonic shall at any time fail to maintain such approvals or comply with all applicable legal requirements described in paragraphs 6.2 (a) above, City shall give notice to Sonic of its non-compliance. Thereafter Sonic shall file or submit such applications as may be necessary to cure such deficiency. If Sonic does not take such action within sixty days after receipt of such notice from the City, the City may terminate this Lease Agreement under Article 11, without liability and without restriction to any other legal, equitable, or administrative remedy available to City. Sonic may contest the applicability or validity of any alleged legal requirement asserted against it or its customers, provided that Sonic gives prompt notice of such contest to City, adheres to proper legal procedures applicable to any such challenge, and indemnifies and holds harmless City and its affiliates and their officers, directors, employees, agents, servants, and assigns from any loss, damage, claims or proceedings to the extent resulting from such challenge or from the failure of Sonic to comply with this Section 6.2.

(d) Nothing in this Section 6.2 shall be construed as a limitation to actions against Sonic by third party agencies. Sonic shall indemnify and hold City harmless for any action taken against City by a third party agency for any action, or failure to act, on the part of Sonic, its contractors, subcontractors, agents, employees, or assigns.

6.3 Relocations. City may relocate all or any portion of the City Network or City System or any of the facilities used or required in providing Sonic with the Leased Conduit and Leased Fibers:

(1) if a third party with legal authority to do so orders or threatens to order such relocation (e.g., through filing or threatening to file a condemnation suit); (2) in order to comply with applicable laws; (3) to prevent or abate interference with or interruption of the City Network or City System, or an unreasonable risk thereof, due to the existence of physical conditions (e.g. rock slides, seismic conditions); or (4) if it determines to do so in its reasonable judgment. City shall provide Sonic as much advance notice as possible but shall use reasonable efforts to provide at least sixty (60) calendar days' prior notice of any such relocation, if reasonably feasible. Sonic shall bear its own costs of relocating its facilities located in the Leased Conduit or connected to the Leased Fibers. The costs of relocation shall be allocated pro rata by and among Sonic, City and other users, if any, based on their proportional use of the affected facilities (i.e., the relative number of strands or conduits dedicated for use by each user, as determined by City).

Article 7. Use of Leased Fiber and Leased Conduit, Maintenance

7.1 Interference. Sonic shall not use its system in a way that interferes in any way with or adversely affects the use of the City or any other person using the City Network or the City System. Sonic acknowledges that the City Network and the City System may include other users, including City and other owners and users of telecommunication systems.

7.2 Maintenance. Except as provided in Section 2.4, Sonic shall bear all costs associated with its use of the Leased Fibers and the Leased Conduit, including without limitation the cost of installation, connection, and maintenance of fiber optic cable facilities and equipment. In addition, Sonic shall be responsible for costs associated with maintenance and repairs of the City System and the City Network. Such installation, maintenance and repairs shall be performed in a good and workmanlike manner, in conformity with the specifications of this Lease Agreement and with such requirements and specifications as City may from time to time reasonably prescribe, in accordance with the National Electrical Safety Code, the National Electrical Code and any statewide electric codes adopted by the State of California or any department or agency thereof, applicable industry standards, and in accordance with laws and regulations of any federal, state or local government, or any agency or instrumentality thereof, having competent jurisdiction over Sonic or the Leased Conduit including applicable General Orders of the Public Utilities Commission of State of California and any supplements thereto and revisions thereof. Sonic shall be responsible for the proper design and maintenance of its cable and other equipment, and shall perform work in a safe and workmanlike manner and at its sole cost. Sonic shall permanently identify, by tags or other suitable means, all of its cables and other equipment that are placed in or near the Leased Conduit or placed in connection with use of the Leased Fiber. Any potential arrangement concerning joint maintenance activity between the Parties will be subject to the terms of a separate written agreement.

7.3 Damage to Facilities.

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

(b) Any damage to the facilities caused by Sonic or any third party within the City Network that

results in a loss of service shall be repaired by Sonic, at Sonic's sole cost, within a reasonable time period. Provided that nothing contained herein shall be deemed to release or limit claims that Sonic may have against any third party arising from or related to such damage to facilities.

(c) If Sonic damages City facilities or facilities owned by third parties within the City Network or City System, Sonic shall immediately notify City and, if the damaged facility is owned by a third party, take reasonable efforts to notify the owner of the damaged facility. If required by City, Sonic shall effect repairs to the damaged facilities within a reasonable time period, based on the nature of the damage conditions at the site.

(d) In the event of damages described in sub-paragraphs 7.3 (b) and (c), above, City may elect to hire a third party contractor to effect repairs to any damaged facility if, in City's sole discretion, Sonic will not or cannot effect repairs within a reasonable time period. and, pursuant to Section 5.3, present an invoice to Sonic for all Costs incurred in connection with the damaged facilities, including, but not limited to, staff time costs, traffic control, police services, notification of third parties, and consultant and contractor costs.

(e) For the purposes of this Section 7.3, a "reasonable time period" shall mean that a crew must be mobilized at the repair site within twenty-four (24) hours of the first interruption of Services and work diligently and continuously until any outage is resolved.

(f) Within thirty (30) days of the Execution Date, Sonic shall provide to City for its review and approval a Protocol Document and Escalation Matrix, outlining procedures to be followed in the event of service loss.

7.4 No Sub-Lease. Sonic may not sublease any conduit or fibers within the City System without the prior express written consent of City, which may only be withheld for cause, including lack of or insufficient consideration or inability of the proposed sub- Sonic to fulfill the obligations of this Agreement. Provided, however, that (1) such consent shall not be unreasonably withheld and (2) that the provision of services by Sonic to its customers shall under no circumstances be deemed a sublease of conduit or fibers within the City System.

7.5 No Liens. Sonic shall keep the City Network and City System, including the Leased Conduit, Leased Fibers, City-Dedicated Fibers, Ancillary Facilities, and any City property utilized by Sonic ("**City Interests**") free and clear from any and all liens, claims, and demands for work performed, materials furnished, or operations conducted on or within said City Interests. Provided, however, that Sonic's use of its interest in this Lease Agreement may be used or pledged in conjunction with financing Sonic's operations, so long as no liens or claims are placed on City Interests.

7.6 Right of Inspection. City shall have the right to inspect the Leased Conduit, Leased Fibers, and City-Dedicated Fibers, and the Sonic Network installed in the Leased Conduit during the Term.

Article 8. Limitation of Liability and Indemnity

8.1 Notwithstanding any provision of this Lease Agreement to the contrary, neither Party shall be

liable to the other Party for any special, incidental, indirect, punitive or consequential costs, liabilities or damages, whether foreseeable or not, arising out of, or in connection with, such Party's performance of its obligations or its failure to perform under this Lease Agreement.

8.2 Sonic shall indemnify, protect, defend and hold harmless City, the City System, the City Network, City's agents, employees, public officials, council members, and the respective agents and employees of each of these parties (each a "**City Party**," collectively "**City Parties**"), from and against any and all claims, loss of rents and/or damages, losses, costs, liens, judgments, penalties, loss of permits, reasonable attorneys' and consultants' fees, expenses and/or liabilities (collectively "**Claims**") arising out of, involving, or in connection with this Lease Agreement; the use or occupancy of the Leased Conduit or the Leased Fiber; the conduct of Sonic's business; any act, omission, fault or neglect of Sonic, its agents, employees, representatives, contractors, customers, subcontractors, licensees, invitees or other visitors; and out of any default or breach by Sonic in the performance in a timely manner of any obligation on Sonic's part to be performed under this Lease Agreement including, without limitation, any third party claim for damages to its facilities or for failure to effect timely repairs to damaged facilities, or violation of or failure to comply with laws; excepting only to the extent such Claims are caused by the negligent or willful acts or omissions of City or its authorized representatives. The foregoing indemnity shall include, but not be limited to, the defense or pursuit of any claim or any action or proceeding involved therein, and whether or not (in the case of Claims made against City and/or any City's Party) litigated and/or reduced to judgment. In case any action or proceeding is brought against City or any City's Party by reason of any of the foregoing matters, Sonic upon notice from City shall defend the same at Sonic's expense by counsel reasonably satisfactory to the indemnified Party and City shall cooperate with Sonic in such defense. The indemnified Party need not have first paid any such claim in order to be so indemnified. The obligations of Sonic under this Section 8.2 shall survive the expiration or termination of this Lease Agreement. Notwithstanding the foregoing provisions, Sonic shall not be obligated to indemnify City for any Claims arising (i) outside the City System to the extent not caused by the negligence or willful misconduct of Sonic, or Sonic's employees, invitees or guests, agents or contractors, or (ii) inside the City System to the extent arising from the negligence or willful misconduct of City, or City's employees, invitees or guests, agents or contractors. The indemnity obligations of Sonic under this Section 8.2 are not intended to, and shall not, (i) restrict or modify Sonic's insurance and other obligations under this Lease Agreement; (ii) be restricted, limited or modified by Sonic's compliance with its insurance and other obligations under this Lease Agreement or (iii) supersede any inconsistent agreement of the Parties set forth in any other provision of this Lease Agreement.

Article 9. Insurance

9.1 Each Party shall obtain and maintain in force, at its own expense, and shall require each of its contractors and subcontractors to obtain and maintain in force:

- (a) Not less than \$2,000,000 combined single limit liability insurance, on an occurrence basis, for personal injury and property damage, including, without limitation, injury or damage arising from the operation of vehicles or equipment and liability for completed

operations;

(b) Workers' compensation insurance in amounts required by applicable law and employers' liability insurance with a limit of at least \$1,000,000 per occurrence;

(c) Automobile liability insurance covering death or injury to any person or persons, or damage to property arising from the operation of vehicles or equipment, with limits of not less than \$2,000,000 per occurrence; and

(d) Any other insurance coverages specifically required of such Party pursuant to City's right-of-way agreements, so long as these are coverages applicable to Sonic as an indirect user of the rights of way, and Sonic is informed of the requirement in writing by City.

Each Party shall be listed as an additional insured on all commercial general liability and commercial automobile insurance policies maintained by the other Party and such other Party's contractors and subcontractors.

9.2 Both Parties expressly acknowledge that the City shall be deemed to be in compliance with the provisions of this Article if it maintains a self-insurance program providing for a retention of up to \$1,000,000. If either Party provides any of the foregoing coverages on a claims-made basis, such policy or policies shall be for at least a three-year extended reporting or discovery period. Unless otherwise agreed, Sonic's and City's insurance policies shall be obtained and maintained with companies rated "A" or better by *Best's Key Rating Guide* and each Party shall provide the other with an insurance certificate confirming compliance with this requirement for each policy providing such required coverage.

9.3 If either Party fails to obtain the required insurance or fails to obtain the required certificates from any contractor and a claim is made or suffered, such Party shall indemnify and hold harmless the other Party from any and all claims for which the required insurance would have provided coverage. Further, in the event of any such failure which continues after seven (7) days' written notice thereof by the other Party, such other Party may, but shall not be obligated to, obtain such insurance and will have the right to be reimbursed for the cost of such insurance by the Party failing to obtain such insurance.

9.4 If coverage is denied or reimbursement of a properly presented claim is disputed by the carrier for the insurance provided above, the Party carrying such coverage shall make good faith efforts to pursue such claim with its carrier.

Article 10. Notices

10.1 All notices and other communications required or permitted under this Lease Agreement shall be in writing and shall be given by United States first class mail, postage prepaid, registered or certified, return receipt requested, or by hand delivery (including by means of a professional messenger service or overnight mail) addressed as follows:

All notices and other communications shall be given to Sonic at:

Sonic Telecom, LLC

c/o Sonic.net, Inc.
2260 Apollo Way
Santa Rosa, CA 95407
Attn: Dane Jasper, CEO
With a copy via email to: dane@corp.sonic.net

All notices and other communications shall be given to City at:

City of Brentwood
150 City Park Way
Brentwood, CA 94513
Attn: Director of Finance and Information Systems

With a copy to:

City of Brentwood
150 City Park Way
Brentwood, CA 94513
Attn: City Attorney

10.2 Any such notice or other communication shall be deemed to be effective when actually received or refused. Either Party may by similar notice given change the address to which future notices or other communications shall be sent.

10.3 Other Contacts: City and Sonic shall ensure a single point of contact to facilitate a timely permitting and inspection process for the initial installation of Sonic facilities. City and Sonic shall provide contacts and an escalation list for any problems related to the Leased Fiber.

Article 11. Default

11.1 Defined. A “**Default**” shall be deemed to have occurred under this Lease Agreement if a Party materially breaches the Lease Agreement and fails to cure such material breach within thirty (30) days after notice specifying such material breach, provided that if the material breach is of a nature that it cannot be cured within thirty (30) days, a Default shall not have occurred so long as the materially breaching Party has notified the non-defaulting Party and commenced to cure within said time period, and thereafter diligently pursues such cure to completion.

11.2 Remedies. Upon the failure of a Party to timely cure any Default after notice thereof from the other Party and expiration of the above cure periods, then the non-defaulting Party may, subject to the terms of Article 8 (Limitation of Liability) pursue all remedies provided for in this Lease Agreement and/or any legal remedies it may have under applicable law or principles of equity relating to such Default.

11.3 City Remedies. In addition to the remedies set forth in Section 11.2, if Sonic fails to cure any Default within the cure periods described in Section 11.1 above, City may, in addition to any other remedies that it may have under this Lease Agreement or by law, in its sole discretion, take the following actions upon sixty (60) calendar days’ notice if the Default is not cured within such

60-day period (provided that if the breach is of a nature that it cannot be cured within sixty (60) days, a Default shall not have occurred so long as the breaching Party has notified the non-defaulting Party and commenced to cure within said time period, and thereafter diligently pursues such cure to completion):

(a) Disconnect the Leased Fibers from any End Point/Terminating Point or Connecting Point; and/or

(b) Terminate this Lease Agreement.

11.4 No Waiver. A waiver by either Party at any time of any of its rights as to anything herein contained shall not be deemed to be a waiver of any breach of covenant or other matter subsequently occurring.

11.5 Interest. If Sonic fails to make any payment under this Lease Agreement when due, such amounts shall accrue interest, from the date such payment is due until paid, including accrued interest, at an annual rate of eighteen percent (18%) compounded monthly or, if lower, the highest percentage allowed by law.

11.6 Performance Security. Licensee shall provide performance security in a form acceptable to City, consistent with the bonding requirements for contractors performing work within City right of way, to cover the secure the performance of its obligations under this Lease Agreement.

Article 12. Abandonment

12.1 Should Sonic, for any reason, abandon all or part of its use of the Sonic Network installed in Leased Conduit pursuant to this Lease Agreement, then the below provisions shall apply. “**Abandon**” shall be defined for the purposes of this Lease Agreement as failure to use the Sonic Network in the Leased Conduit for more than two years or at such time that written notice of abandonment or voluntary termination by Sonic is provided by Sonic. Provided, however, to the extent that such non-use is due in whole or substantial part to circumstances beyond Sonic’s control, including without limitation, acts or omissions of the City or its employees or agents, this provision shall not apply.

(a) If City rejects all or a portion of the proposed transfer of abandoned Sonic Network facilities from Sonic, then Sonic shall remove, at Sonic’s sole expense, any facilities it proposed to abandon which were rejected by City within ninety (90) days of City’s rejection. If the Sonic fails to so remove the abandoned rejected facilities, then City may remove them at Sonic’s expense, which shall be paid within thirty (30) days of receipt of the invoice.

(b) At the time of any accepted abandonment, Sonic shall have no further rights with respect to the abandoned facilities. At such time, City shall have the authority to remove, reuse, or resell the abandoned facilities.

(c) Unless expressly rejected by City in writing within 90 days of a written abandonment notification, Sonic's abandoned facilities shall be transferred to the ownership of City.

Article 13. Termination

13.1 Leased Fibers, Leased Conduit, and City-Dedicated Fibers. At the termination of this Lease, all rights of Sonic to use the Leased Conduit and Leased Fibers and City-Dedicated Fibers, or any part thereof, shall cease. All rights to the use of the Leased Conduit and Leased Fibers shall revert to City without reimbursement of any Lease fee or other sums, costs, fees or expenses previously made with respect thereto. From and after such time, Sonic shall have no further rights or obligations hereunder with respect to the Leased Conduit, Leased Fibers or City-Dedicated Fibers unless such rights or obligations are specifically provided herein to survive the Term. Sonic shall be liable to City for any loss, damages or liability of City resulting from Sonic's failure to vacate upon the termination of this Lease. If Sonic fails to surrender the Leased Conduit and Leased Fibers or any part thereof upon the termination of the Lease Agreement despite City's demand to do so, Sonic shall indemnify, defend, protect and hold City harmless from all claims, losses, costs, expenses, damages and liabilities, including attorneys' fees, City incurs as a result of Sonic's failure to surrender, including, without limitation, any claim made by any succeeding tenant founded on or resulting from such failure.

13.2 Title.

(a) City Network and City System. It is understood and agreed that City shall maintain legal title to the entire City Network and City System, including all City-Dedicated Fiber and all Ancillary Facilities and Related Fixtures necessary to maintain service to City Public Facilities, subject to this Lease Agreement.

(b) Sonic-Installed Facilities. Except as provided in paragraph 13.2(a) above, title to all Sonic Fiber, Ancillary Facilities and Related Fixtures installed by Sonic under this Lease Agreement ("**Sonic-Installed Facilities**") shall remain with Sonic and its successors, heirs and assigns throughout the term of this Lease Agreement and any extension thereof.

i. If Sonic voluntarily terminates the Lease Agreement, City will, at its option, accept title to Sonic-Installed Facilities. In the event that the City chooses to accept title, it will accept title to the Sonic-Installed Facilities in their as-is condition without any warranties and without any warranties and without the need for any further actions from either party; provided, however, that City may perform a pre-notice inspection and Sonic agrees to perform any maintenance or repairs that reasonably should have been performed by Sonic in compliance with its maintenance and repair obligations under Sections 7.2 and 7.3, and further, that Sonic agrees to execute any mutually agreeable additional documents that may be reasonably necessary to effectuate the transfer of ownership any Sonic-Installed Facilities within the City Network and City System to City. Alternatively, at City's option, the Parties may seek to negotiate a transaction for third-party purchase of the remainder of Sonic's assets and rights to utilize said assets,

pursuant to Section 13.4, below.

ii. If the Lease Agreement is terminated without Abandonment per Article 12 and without Sonic's consent, the Parties will seek in good faith to negotiate a commercially reasonable operating agreement for the continued use of the existing Sonic Network and use of conduit in the City System necessary for operation of the Sonic Network, pursuant to Section 13.4.

13.3. Upon termination of this Lease Agreement, the Parties agree that the following steps will be taken:

(a) If the termination occurs after service has begun to customers, the Parties will undertake a transition as contemplated by Section 13.4.

(b) Upon termination of this Lease Agreement, Sonic shall not remove any Leased Conduit (including conduit dedicated to City pursuant to Section 3.1(a)), Leased Fiber, City-Dedicated Fiber, Ancillary Facilities, or Related Fixtures without the express written approval of City. Any removal of the non-Leased Fiber portions of the Sonic Network or Sonic's facilities or equipment from City right of way shall be at Sonic's own cost.

(c) To the extent that Sonic wishes to leave the Sonic Network or any equipment or property in City locations or right-of-way at the time of termination, it will cooperate with City in doing so in accordance with Article 12.

(d) Sonic will take all reasonable steps to restore the locations where it has operated under this Agreement to their original condition, ordinary wear and tear excepted.

(e) Unless a transition occurs pursuant to Section 13.4, then at the time of termination, services for customers will be terminated, but in no case will such services be terminated on less than ninety (90) days' notice, unless a shorter time is provided by law or regulation, including but not limited to any applicable mass migration requirements.

(f) Upon termination of the Lease Agreement, if all or any portion of the Sonic Network is to be dedicated to City under the terms of this Lease Agreement, Sonic agrees to execute any mutually agreeable additional documents that may be reasonably necessary to effectuate the transfer of ownership any Sonic-Installed Facilities within the City Network and City System to City.

13.4. Prior to termination of this Lease Agreement by Sonic after service begins to customers, if Sonic does not intend to operate the Sonic Network within the City thereafter, the Parties will seek in good faith to negotiate a commercially reasonable operating agreement for the continued use of the existing Sonic Network, which could involve operation of the Sonic Network by a third party or, at City's option, by City, subject to fair and adequate compensation to Sonic for such operation.

Article 14. Transfers and Assignments

Sonic may not transfer or assign all or any part of its interest in this Lease Agreement or in the Leased Conduit, Leased Fibers, Related Fixtures or City-Dedicated Fibers, in whole or in part, or delegate any duties, burdens, or obligations arising hereunder, without the prior written consent of City, which consent shall not be unreasonably delayed or withheld. A transfer or assignment in violation of this Article shall be void and shall constitute a material breach of this Lease Agreement.

Article 15. Representations, Warranties and Acknowledgments

15.1 Each Party represents and warrants that:

- (a) It has the full right and authority to enter into, execute, deliver and perform its obligations under this Lease Agreement; and
- (b) This Lease Agreement constitutes a legal, valid and binding obligation enforceable against such Party in accordance with its terms, subject to bankruptcy, insolvency, creditors' rights and general equitable principles.

15.2 CITY MAKES NO WARRANTY, EXPRESS OR IMPLIED WITH RESPECT TO THE LEASED CONDUIT OR LEASED FIBERS, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ALL SUCH WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED.

15.3 Sonic warrants that all workmanship, facilities and materials which it provides to City under this Lease Agreement or any Exhibit shall be free from material defects and shall conform to any drawings, submittals, and specifications as to kind, quality, function and characteristic of materials, facilities and workmanship reasonably specified by City, and shall remain in good condition and shall be free from any fault or defect for a period of one (1) year from the date of final acceptance by City. THE FOREGOING WARRANTIES ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER EXPRESS AND IMPLIED WARRANTIES INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Article 16. Force Majeure

Neither Party shall be liable to the other Party and each Party's performance under this Lease Agreement shall be excused, if and to the extent that any failure or delay in such Party's performance of one or more of its obligations hereunder caused by any of the following conditions, and such Party's performance of such obligations or obligations shall be excused and extended for and during the period of any such delay: act of God; failure of public utility power or brownout; fire, flood; war or civil disorder; strikes or other labor disputes; failure of a third party to grant or recognize an Underlying Right; inability of a Party to obtain rights of way, easements, building access or other rights from private property owners; or any other cause beyond the reasonable control of such Party ("**Force Majeure Event**"). The Party claiming relief under this Article shall notify the other in writing of the existence of the Force Majeure Event relied on and the cessation or termination of said Force Majeure Event, and the Party claiming relief shall exercise reasonable commercial efforts to minimize the time of any such

delay; PROVIDED HOWEVER THAT, the provisions of this paragraph shall not operate so as to excuse or release Sonic from the prompt payment of any amounts due and payable under this Lease Agreement; PROVIDED FURTHER THAT, if the Leased Conduit is totally destroyed, or rendered unusable, by a Force Majeure Event, which cannot be repaired or replaced within a reasonable period, City may terminate this Lease Agreement, without liability to Sonic, as of the date of such Force Majeure Event.

Article 17. General

17.1 Binding Effect. The failure of either Party hereto to enforce any of the provisions of this Lease Agreement, or the waiver thereof in any instance shall not be construed as a general waiver or relinquishment on its part of any such provision, but the same shall nevertheless be and remain in full force and effect.

17.2 Taxes. Sonic agrees that it will be solely responsible for the payment of any and all applicable taxes, fees and assessments levied on its ownership, use and maintenance of the Sonic Network, Leased Conduit, Leased Fibers and this Agreement. Pursuant to Section 107.6 of the California Revenue and Taxation Code, City hereby advises, and Sonic recognizes and understands, that Sonic's use of the City's rights-of-way, the Leased Conduit and Leased Fibers, and /or other non-rights-of-way City property and facilities may create a possessory interest subject to real property taxation and that Sonic may be subject to, and responsible for, the payment of real property taxes levied on such interest. Sonic will co-operate with the Contra Costa County Assessor in providing any information necessary for the Assessor to make a property tax determination. Sonic reserves the right to challenge any such assessment, and City agrees to cooperate with Sonic, by providing any necessary documentation pertinent to this Agreement and its execution, in connection with any such challenge.

17.3 Governing Law. This Lease Agreement shall be governed by and construed in accordance with the domestic laws of the State of California, without reference to its choice of law principles. Any action brought in a court of law to enforce this Agreement shall be brought in the Superior Court of the County of Contra Costa.

17.4 Rules of Construction. The captions or headings in this Lease Agreement are strictly for convenience and shall not be considered in interpreting this Lease Agreement or as amplifying or limiting any of its content. Words in this Lease Agreement which import the singular connotation shall be interpreted as plural, and words which import the plural connotation shall be interpreted as singular, as the identity of the parties or objects referred to may require.

(a) Unless expressly defined herein, words having well known technical or trade meanings shall be so construed. All listing of items shall not be taken to be exclusive, but shall include other items, whether similar or dissimilar to those listed, as the context reasonably requires.

(b) Except as set forth to the contrary herein, any right or remedy of Sonic or City shall be cumulative and without prejudice to any other right or remedy, whether contained herein or not.

(c) Nothing in this Lease Agreement is intended to provide any legal rights to anyone not an executing Party of this Lease Agreement.

(d) This Lease Agreement has been fully negotiated between and jointly drafted by the Parties.

(e) All actions, activities, consents, approvals and other undertakings of the Parties in this Lease Agreement shall be performed in a reasonable and timely manner, it being expressly acknowledged and understood that time is of the essence in the performance of obligations required to be performed by a date expressly specified herein. Except as specifically set forth herein, for the purpose of this Lease Agreement the standards and practices of performance within the telecommunications industry in the relevant market shall be the measure of a party's performance.

17.5 Entire Agreement. This Lease Agreement constitutes the entire and final agreement and understanding between the Parties with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits referred to herein are integral parts hereof and are hereby made a part of this Lease Agreement. To the extent that any of the provisions of any Exhibit hereto are inconsistent with the express terms of this Lease Agreement, the terms of the Exhibit shall prevail. This Lease Agreement including the Exhibits may only be modified or supplemented by an instrument in writing executed by each Party and delivered to the Party relying on the writing.

17.6 Relationship of the Parties. The relationship between Sonic and City shall not be that of partners, agents, or joint venturers for one another, and nothing contained in this Lease Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including, but not limited to, federal income tax purposes. Sonic and City, in performing any of their obligations hereunder, shall be independent contractors or independent parties and shall discharge their contractual obligations at their own risk subject, however, to the terms and conditions hereof.

17.7 Severability. If any term, covenant or condition contained herein is, to any extent, held invalid or unenforceable in any respect under the laws governing this Lease Agreement, the remainder of this Lease Agreement shall not be affected thereby, and each term, covenant or condition of this Lease Agreement shall be valid and enforceable to the fullest extent permitted by law.

17.8 No Use of Trade Property. Neither Party may use marketing, advertising, or other promotional materials that are the property of the other Party, or the other Party's trade names, trademarks, or service marks, without the prior written approval of the other Party.

17.9 Confidentiality. The Parties will use reasonable efforts to avoid sharing Confidential Information with each other. However, during the term of this Agreement, the Parties may provide each other with Confidential Information. Each Party will:

(a) Identify information and materials disclosed to the other Party that the disclosing Party believes to be Confidential Information.

(b) Maintain the confidentiality of the other Party's Confidential Information and not

disclose it to any third party, except as authorized by the disclosing Party in writing or as required by a court of competent jurisdiction;

(c) Restrict disclosure of the Confidential Information to its employees who have a “need to know” and not copy or reproduce the Confidential Information;

(d) Take necessary and appropriate precautions to guard the confidentiality of the Confidential Information, including informing its employees who handle the Confidential Information that it is confidential and is not to be disclosed to others, but these precautions will be at least the same degree of care that the receiving Party applies to its own confidential information and will not be less than reasonable care; and

(e) Use the Confidential Information only in furtherance of the performance of this Agreement.

Confidential Information is and will at all times remain the property of the disclosing Party, and no grant of any proprietary rights in the Confidential Information is given or intended, including any express or implied license, other than the limited right of the recipient to use the Confidential Information in the manner and to the extent permitted by this Agreement. Sonic acknowledges that City is a public agency that is subject to document requests pursuant to the California Public Records Act (the “Act”). City shall notify Sonic within five (5) business days of receiving a request under the Act for any records which would constitute Confidential Information and to the extent allowed by law, City shall apply exceptions to disclosure of the Confidential Information that are applicable under the Act, including but not limited to the confidential trade secrets exception to disclosure, provided by law. If a suit is filed by a member of the public with respect to any such request, City will cooperate in any action to intervene filed by Sonic, by providing any necessary documentation and information pertinent to this Agreement and its execution. Notwithstanding any provision in this Agreement to the contrary, Sonic will indemnify and hold harmless City for any and all costs and attorney fees awarded to a prevailing plaintiff arising out of or related to a suit which result from City’s actions, taken at Sonic’s request, in compliance with this provision in protecting the Confidential Information from public disclosure, but only to the extent that the City is required to pay the prevailing Party’s costs and attorney fees.

17.10 Environmental. Sonic agrees that it will not use, generate, store or dispose of any Hazardous Material on, under, about or within the right-of-way in violation of any law or regulation, and will comply with any and all applicable laws, rules, regulations, codes, ordinances and principles of common law regulating or imposing standards of liability or conduct with regard to protection of the environment or worker health and safety as may now or at any time hereafter be in effect, to the extent applicable to activity conducted in the City . Sonic agrees to defend, indemnify and hold harmless City and City’s agents and employees against any and all losses, liabilities, claims and/or costs (including reasonable attorneys’ fees and costs) arising from any breach of any representation, warranty or agreement contained in this paragraph. As used in this paragraph, “**Hazardous Material**” shall mean hazardous or radioactive material, polychlorinated biphenyls, friable asbestos or other hazardous or medical waste substances as defined by the Comprehensive Environmental Response, Compensation and Liability Act, as amended, or by any other federal, state or local law, statute, rule, regulation or order (including any Governmental Requirements) concerning

environmental matters, or any matter which would trigger any employee or community “right-to-know” requirements adopted by any such body, or for which any such body has adopted any requirements for the preparation or distribution of a material safety data sheet. This paragraph shall survive the termination of this Lease Agreement.

Article 18. Prevailing Wages

18.1 Prevailing Wages. **Sonic** acknowledges that City has made no representation, express or implied, to Sonic or any person associated with Sonic regarding whether or not laborers employed relative to the construction of the improvements to be constructed pursuant to this Agreement must be paid the prevailing per diem wage rate for their labor classification, as determined by the State of California, pursuant to Labor Code Section 1720, *et seq.* (“**Prevailing Wage Laws**”). Sonic agrees with City that Sonic shall assume any and all responsibility and be solely responsible for determining whether or not laborers employed relative to the construction undertaken pursuant to this Agreement must be paid the prevailing per diem wage rate pursuant to the Prevailing Wage Laws or other applicable law.

18.2 Sonic, on behalf of itself, its successors, and assigns, waives and releases City from any right of action that may be available to any of them pursuant to Labor Code Section 1781 or any similar law. Relative to the waiver and release set forth in this Section, Sonic acknowledges the protections of Civil Code Section 1542, which reads as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

By signing below, Sonic knowingly and voluntarily waives the provisions of Section 1542 or any similar law solely in connection with the waivers and releases contained in this Section.

In confirmation of their consent and agreement to the terms and conditions contained in this Lease Agreement and intending to be legally bound hereby, the Parties have executed this Lease Agreement as of the date first above written.

SONIC.NET, INC.:

CITY:

* By: _____

Printed Name: Dane Jasper
Title: President

By: _____
Paul R. Eldredge, City Manager

ATTEST:

** By: _____

Printed Name: Jennifer Codarre
Title: Secretary

By: _____
Margaret Wimberly, City Clerk

APPROVED AS TO FORM:

By: _____
Damien Brower, City Attorney

If required by City, proper notarial acknowledgment of execution by Sonic must be attached. If a Corporation, Amendment must be signed by one corporate officer from each of the following two groups.

***Group A.**
Chairman,
President, **or**
Vice-President

****Group B.**
Secretary,
Assistant Secretary,
CFO **or** Assistant Treasurer

Otherwise, the corporation must attach a resolution certified by the secretary or assistant secretary under corporate seal empowering the officer(s) signing to bind the corporation.

Exhibit A. Leased Conduit Route

Sheet 1: Traffic Signal Conduit

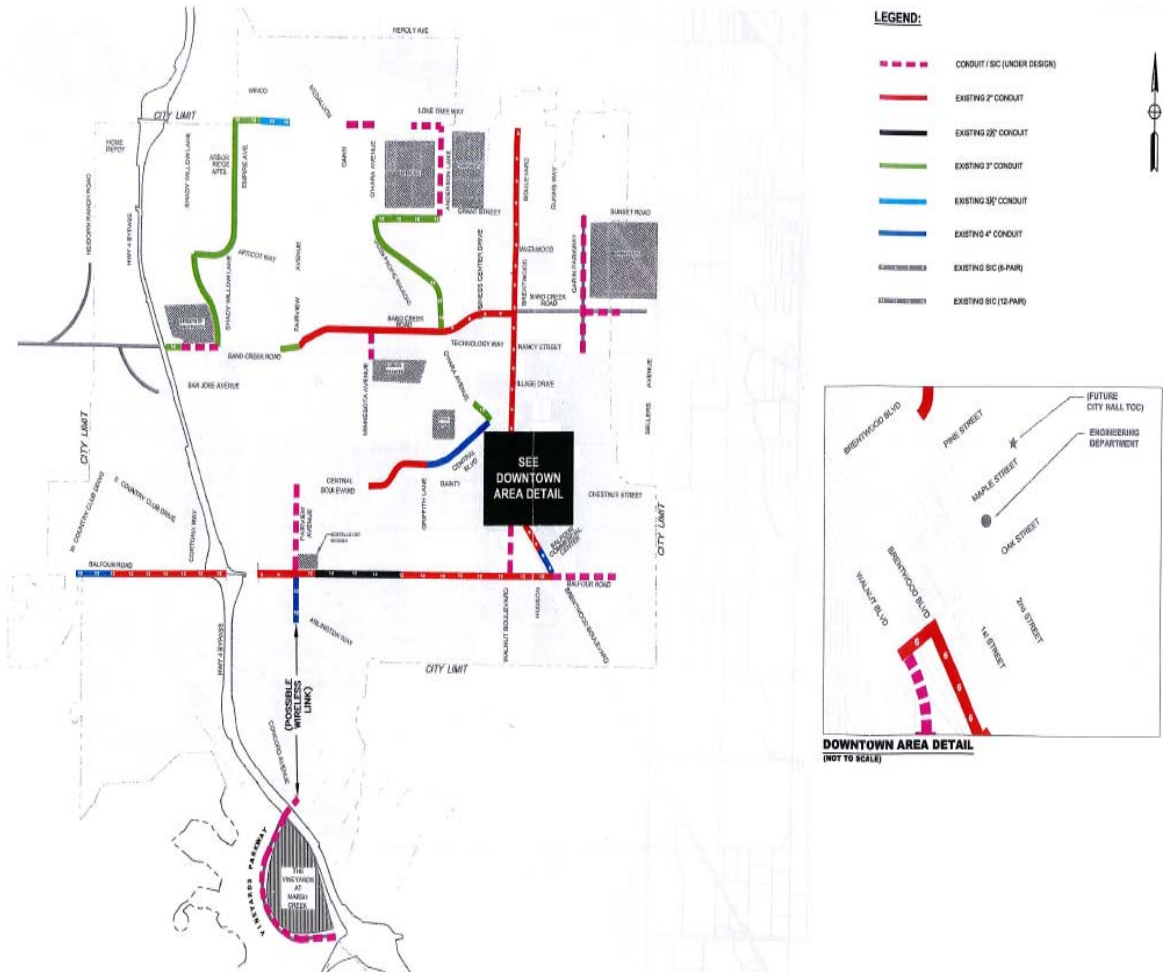


Exhibit A. Leased Conduit Route
Sheet 2: Existing City Conduit

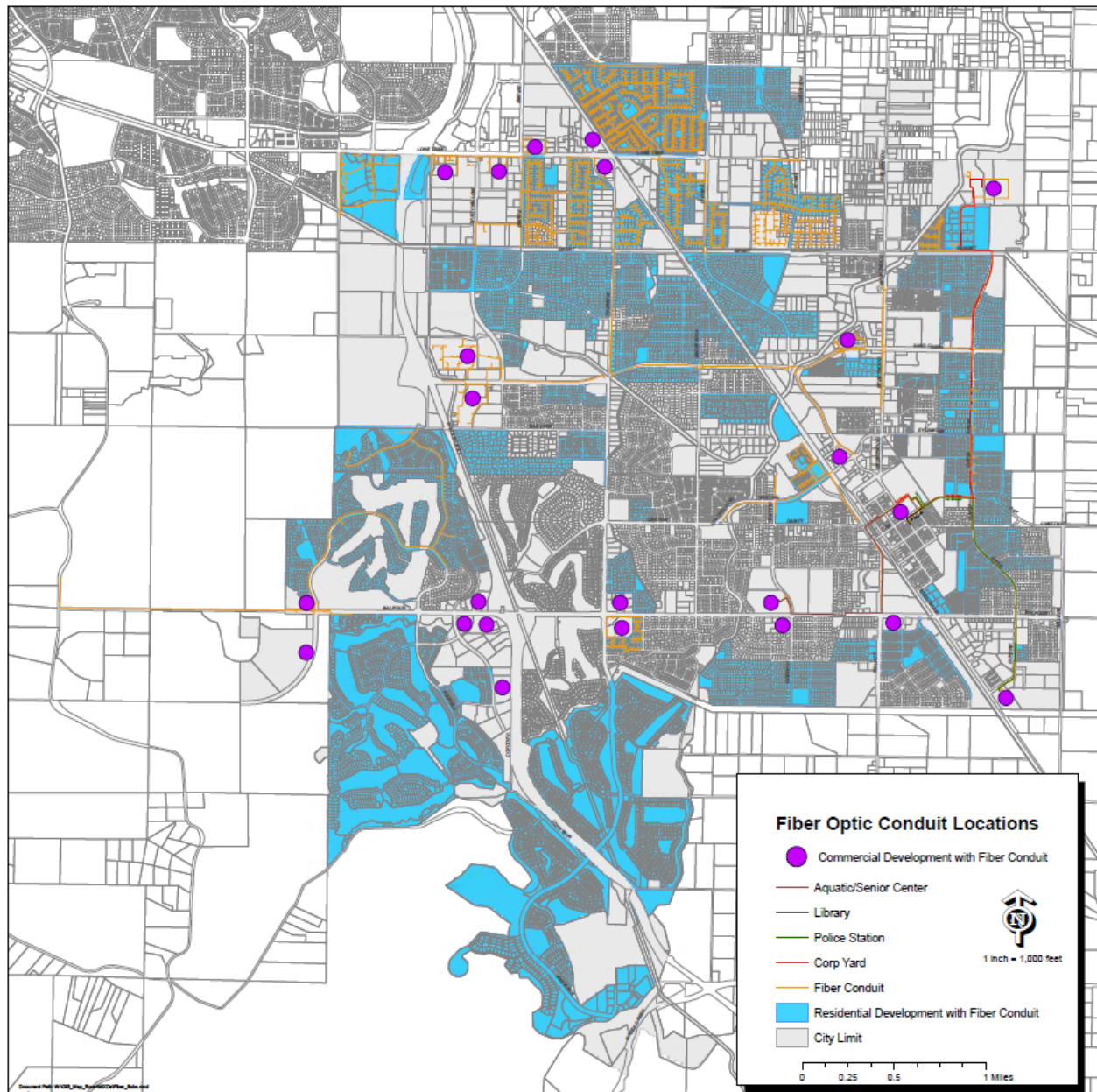


Exhibit B. Leased Fibers Route

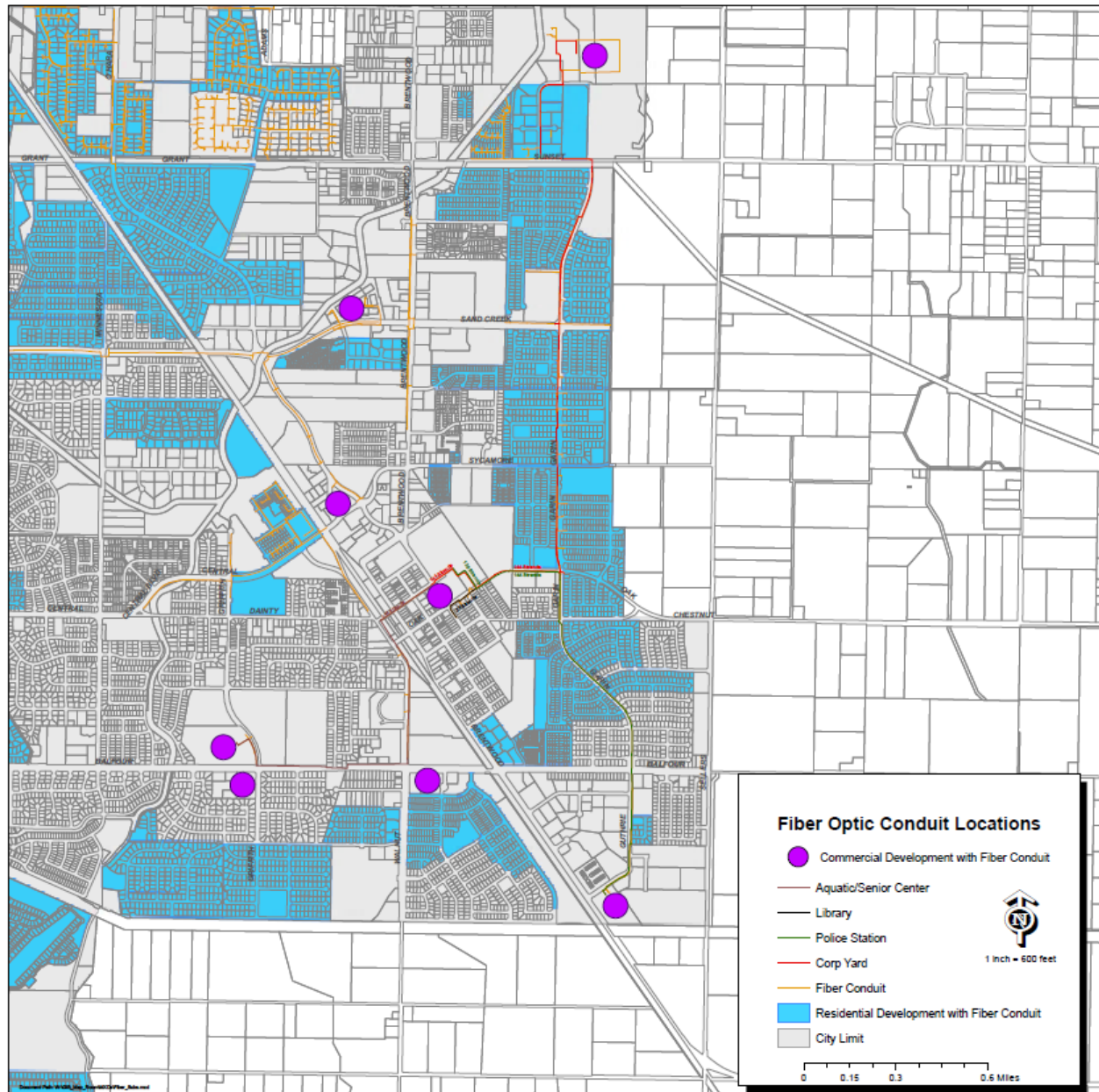


Exhibit C. Conduit Construction Requirements

1. Sonic acknowledges that Exhibit A generally identifies the location of the City Network and City System at the time of execution of this Agreement, but the City does not represent or warrant that all the conduit depicted on the map is in usable condition or without gaps.
2. Sonic shall, at its sole cost and expense, inspect the City System as identified in Exhibit A and determine (a) whether any conduit is in need of repair or replacement, and (b) the locations of gaps in the conduit within the City System. Sonic shall provide a written report of its findings to City, including specifications for any new conduit to be installed, and a schedule for performing repairs and construction to complete the City System.
3. Upon approval by City of the report and schedule, Sonic shall (a) repair or replace any conduit determined to be in need of repair or replacement; and (b) procure and install new conduit determined to be necessary to fill identified gaps in the City System. Except as provided in Section 2.4 of the Lease Agreement, all costs associated with this paragraph shall be borne by Sonic.
4. All conduit installed pursuant to Section 3 of this Exhibit C shall consist of a minimum of three conduits, each 1.25 inches (1.25") in diameter. All conduit installed to service individual residences or premises shall be a minimum of (0.75") in diameter.
5. All conduit newly installed pursuant to Section 3 of this Exhibit C shall be dedicated to the City according to the following procedure. Upon completion of the construction, Sonic shall notify City in writing and City shall have thirty (30) days to accept the conduit or specify in writing to the Sonic the deficiencies which must be corrected. Sonic shall correct any such deficiencies and repeat the notice procedure until such time as all the conduit is accepted by City, at which time the conduit shall be considered an integral part of the City System and become the property of City, and shall be included as Leased Conduit for the purposes of the Lease Agreement. Sonic agrees to take such actions and enter into and deliver to City such documents as City reasonably requests in order to effect and memorialize City's ownership of the conduit newly constructed and incorporated into the City System.
6. After completion of the above steps, Sonic shall, at its sole cost and expense, procure and provide to City as built maps of the conduit additions to the City System constructed pursuant to Section 3 of this Exhibit C, including the number and size of conduits, the length of the routes, the number of manholes/handholes, and manhole/handhole arrangement. The routes should be described in linear feet, and each street should be identified.
7. Sonic shall make reasonable efforts to provide GPS locations for fiber boxes and provide the necessary GPS devices and related training to City staff for this purpose. As-built drawings shall include GPS coordinates compatible with City base maps.
8. Installation of all facilities shall be consistent with applicable City standards, as may be updated from time to time, including Section 160, "Fiber Optic Facilities," of the City of Brentwood Standard Plans and Specifications and the City's Advance Technology Master Plan," which is included in the City's Engineering Procedures

Manual (collectively, “**City Standards**”). When directional boring is performed by Sonic, a maximum of three 1.25” HDPE conduits will be placed at Sonic expense on any single bore path, and Sonic may, at its option, install three (3) 1.25” HDPE conduits along any path where PVC conduit is required. Any further deviation from City Standards shall require the approval of the City’s Public Works Director.

Exhibit D. Infrastructure Build Out Requirements

1. Sonic shall commence installation of the Sonic Network within 60 days of the Effective Date of the Lease Agreement.
2. All conduit newly installed within the City System shall be dedicated to the City according to the following procedure.
 - (a) Upon completion of the construction, Sonic shall notify City in writing and City shall have thirty (30) days to accept the new conduit or specify in writing to the Sonic the deficiencies which must be corrected.
 - (b) Sonic shall correct any such deficiencies and repeat the notice procedure until such time as all the new conduit are accepted by City, at which time the conduit shall be considered an integral part of the City Network and become the property of City.
 - (c) Sonic agrees to take such actions and enter into and deliver to City such documents as City reasonably requests in order to effect and memorialize City's ownership of the conduit newly constructed and incorporated into the City Network.
3. For all areas outside the City Network (as it exists as of the Effective Date) where Sonic installs the backbone fiber in Sonic Network, Sonic shall dedicate to the City a minimum of twelve (12) strands of dark fiber for the City's use. In addition, Sonic shall dedicate strands to the City where necessary in a number sufficient to meet requirements for servicing City Public Facilities during the Term of this Lease Agreement and any renewal hereof, including fibers needed to connect City Public Facilities to the City Network.
4. Sonic shall install fiber, the number of strands of which to be determined by the City on a case-by-case basis, to City Public Facilities that are passed by the Leased Conduit as Sonic installs the Sonic Network in the Leased Conduit to serve customers, with costs to be divided between Sonic and City as follows:
 - a. Sonic shall provide and pay for Lateral Construction as needed to reach from the main conduit to the edge of the street right of way. If a City Public Facility is not passed by the Leased Conduit, but is accessed by a collector street that intersects with a street that is included in the Sonic Network, then Sonic shall provide and pay for Lateral Construction as needed to reach from the main conduit to the right of way for that collector street. (In either case, such lateral will be referred to herein as “**Sonic-Provided Lateral.**”)
 - b. At least 30 days prior to commencement of installation of fiber or conduit in City right of way, Sonic shall provide to City an estimate of Sonic's cost to connect the Sonic-Provided Lateral for each of the City Public Facilities (“**Estimated Connection Cost**”). The Estimated Connection Cost shall not include any mark-up for Sonic profit.
 - c. Based on the Estimated Connection Cost for each City Public Facility, City shall assign each of those City Public Facilities to one of two categories: Priority 1 Public Facilities or Priority 2 Public Facilities.

d. For Priority 1 Public Facilities, Sonic shall provide Lateral Construction from the Sonic-Provided Lateral as needed to service the City Public Facility (“**Facility Connection**”), and City shall reimburse Sonic for the Estimated Connection Cost of such Facility Connection. Reimbursement for Facility Connection for Priority 1 Public Facilities shall be limited to the estimated cost to Sonic to perform such work. A list of all City Public Facilities that are to be designated as Priority 1 Public Facilities shall be provided by City to Sonic within 15 days of the date that Sonic provides the Estimated Connection Cost for each City Public Facility.

e. Facility Connections for Priority 2 Public Facilities shall be the subject of a future contract between the City and Sonic or another qualified installer, subject to a competitive bidding process. Sonic shall install a City-approved vault (“**Splice Vault**”) at the end of the Sonic-Provided Lateral to facilitate a future Facility Connection. Except in cases where the Sonic-Provided Lateral is terminated on a collector street pursuant to sub-paragraph 4.a, above, the Splice Vault shall be installed outside of the road right of way.

f. Sonic shall connect traffic signals that are passed by the traffic signal Leased Conduit to the City Network at no cost to City as Sonic installs the Sonic Network.

5. Prior to use of any newly installed fiber or conduit, Sonic shall, at its sole cost and expense, procure and provide to City as-built maps of any additions made by Sonic to the City System and City Network, including the number and size of fibers, the length of the routes, and the access points, and any unused conduit identified within the City System. The routes should be described in linear feet, and each street should be identified.

6. Additional build-out of the City Network beyond what is needed for the Sonic Network to service customers would be subject to separate negotiation between City and Sonic. Specific details shall be worked out during the Engineering phase for Sonic’s Network installation. If funding is available to the City to service individual schools, City may direct Sonic prioritize the connection of such schools to the City Network.

7. Pilot Program: Within 12 months of Effective Date of the Lease Agreement, Sonic shall develop and present to City plans for a Pilot Program where Sonic would install conduits and fiber in an existing subdivision outside of the City System, consisting of 250-500 homes (exact number to be determined by both Parties), that currently lacks conduit and meets certain specified criteria (to be developed and mutually agreeable to both Parties). The Parties agree that cost analysis and conclusions are Sonic’s confidential trade secrets, which shall be considered Confidential Information as defined herein, and which shall be kept confidential to the extent permissible under the California Public Records Act, the California Uniform Trade Secrets Act, and the California Evidence Code.

8. Sonic shall provide service to City Hall in the City at a minimum of 1 Gbps symmetric, subject to review for upgrade every five (5) years, at which point Sonic shall provide the faster of 1 Gbps symmetric or the most frequently subscribed internet service within the Sonic Network (adjusted to be symmetric).

9. When and if Sonic, in its sole discretion, offers a WiFi roaming service across the Sonic Network, Sonic will permit City access to this service at no additional charge.

10. When and if City permits third parties, including but not limited to competitors of Sonic, to place fiber within conduit installed by Sonic under the terms of this Lease Agreement, City shall require as a condition of conduit use that such third parties to bear a proportionate share of the cost of the installation of such conduit incurred by Sonic, by making a payment to Sonic based on Sonic's documented direct and indirect costs of such conduit installation.

Exhibit E. Services Roll-Out Commitments

1. Definitions.

Capitalized terms used in this exhibit but not defined below have the same meaning as in the Lease Agreement.

(a) “**Basic Broadband Service**” means broadband internet access service delivered to homes and businesses over fiber to the home (FTTH) or fiber to the premise (FTTP) with download speeds of at least 5 Mbps and upload speeds of at least 1 Mbps and no data usage cap.

(b) “**Copper Services**” means broadband internet access service delivered over traditional copper telephone lines already installed to homes and businesses using Digital Subscriber Line (DSL) or similar technology, including but not limited to Asymmetrical Digital Subscriber Line (ADSL), Symmetrical Digital Subscriber Line (SDSL), High-data-rate Digital Subscriber Line (HDSL) and Very High-data-rate Digital Subscriber Line (VDSL).

(c) “**Future Services**” means services that Sonic intends to offer through the City System at an undetermined future date, including telephone, television and other telecommunication services.

(d) “**Gigabit Service**” means gigabit broadband service delivered to homes and businesses over fiber to the home (FTTH) or fiber to the premise (FTTP).

(e) “**One-Time Connection Fee**” means a fee determined by Sonic to recover reasonable costs associated with Residential Customer sign-up and connection to Basic Broadband Service.

(f) “**Residential Customer**” means a resident of a residential dwelling unit passed by the Leased Conduit.

(g) “**School Area**” means the area serviced by any particular school, as defined by the school district’s school boundary map.

(h) “**Services**” means one or more of the following services: Gigabit Service, Basic Broadband Service, and Copper Services.

(i) “**Sign Up Period**” means the period of at least three (3) months during which Sonic will publicize and make available to the public a website for service signup, including free service. Publicity will include at least three mailings during this period of time to each household in the service area.

2. At a minimum, Sonic shall offer Services to residential, small business, enterprise, schools, libraries, and municipalities within the jurisdictional limits of the City of Brentwood, where conduit is available under the terms of this Lease Agreement. Provided Sonic has all necessary the governmental approvals, authorizations, and consents, Sonic may also offer any other communications services, including but not limited to voice and video services.

3. Gigabit Service shall be offered by Sonic to residential, small business; enterprise, schools, libraries, and municipal premises (“**Occupants**”) passed by the Leased Conduit within the City Network, and to Occupants of Future Subdivisions that are connected to the City Network as these Future Subdivisions acquire their occupancy permits.

4. Copper Services shall be offered in all areas of the City of Brentwood that are not passed by Leased Conduit. Copper services may have limitations in availability due to technical reach limitations.

5. Sonic shall offer free Basic Broadband Service for a minimum contract period of five (5) years to every Residential Customer to whose residence conduit is available without construction by Sonic and who agrees during the Sign Up Period to pay a One-Time Connection Fee established by Sonic in its sole discretion.

6. If 30% or more of eligible Residential Customers in a School Area subscribe to Gigabit Services provided by Sonic, Sonic shall offer free Gigabit Service to schools in the School Area. In areas where Gigabit Service is not available, if 30% or more of eligible Residential Customers in a School Area subscribe to Copper Services provided by Sonic, Sonic shall offer free Copper Service to schools in the School Area.

7. Sonic shall provide free Gigabit Service to all libraries and municipal facilities that are designated as City Public Facilities that are passed by Leased Conduit and for which Lateral Construction is provided, as described in Exhibit D, Paragraph 4 and related sub-paragraphs. A list of such locations shall be included in the list of City Public Facilities, as defined and provided for in Article I.

8. Timing:

(a) Sonic shall be capable of connecting the first customer within the City Network who orders Gigabit Service or Basic Broadband Service within nine (9) months of the Effective Date of the Lease Agreement.

(b) Sonic shall connect all customers in City Network who order Gigabit Service or Basic Broadband Service within fifteen (15) months of the Effective Date of the Lease Agreement.

(c) Sonic shall connect all customers within Future Subdivisions who order Gigabit Service or Basic Broadband Service not later than 6 months of the date of issuance of the first occupancy permit within each Future Subdivision.

(d) Sonic shall connect all City Public Facilities within the City Network within fifteen (15) months of the Effective Date of the Agreement. Each of the City Public Facilities within the City Network shall be connected within one (1) month of the completion of installation of fiber to a City Public Facility location.

9. Customer Connections:

(a) In order to connect a customer to the Sonic Network, the Sonic Network fiber will be terminated at an Optical Network Terminal (“ONT”) inside the customer’s premises, via a drop from the Sonic Network. The location and the method of the drop to the ONT will vary depending on the circumstances of the customer location.

(b) Sonic will enter into individual contracts with each customer regarding the connection to Sonic’s Network. City will not be a party to any agreement between the customer or a property owner and Sonic for connection to the Sonic Network.

(c) Provision of Services to single-family residences, may require installation of conduit from the Sonic Network demarcation point to the property (unless Leased Conduit is already available).

(d) Provision of Services to multiple-dwelling units, will generally involve a connection from the demarcation point in the building’s telecommunications or meet-me room.

(e) In all cases, Sonic will coordinate directly with the property owner on all matters related to the connection to Sonic’s Network.

10. Future Services:

(a) The Parties understand and agree that Sonic may provide Future Services to its customers within the Sonic Network, including telephone, television and other telecommunication services.

(b) Television services will be provided pursuant to the Digital Infrastructure and Video Competition Act of 2006 (DIVCA), which includes a local franchise fee. The Parties agree that any television services offered as Future Services shall be subject to a 5% franchise fee, payable to the City, to the extent allowable under DIVCA. In addition, television services shall be subject to a Public, Educational and Government (PEG) fee of 1%.

(c) In addition to the fees described above, telephone services provided by Sonic shall be subject to any applicable Utility Users Tax (UUT) that the City may institute City-wide which is applicable to all providers of telephone services in the City.