

**City of Watsonville
City Manager's Office**

APPROVED
By Carlos J. Palacios at 8:49 am, Sep 04, 2013

M E M O R A N D U M

DATE: September 3, 2013

TO: Carlos J. Palacios, City Manager

FROM: Mario E. Maldonado, Deputy City Manager

SUBJECT: Charter Communications Cable Service Agreement

AGENDA ITEM: September 10, 2013

City Council

APPROVED
By Mario E. Maldonado at 5:21 pm, Sep 03, 2013



RECOMMENDATION:

That the City Council authorize the City Manager to sign a settlement agreement with Charter Communications, Inc. to continue providing complimentary cable service to public facilities and use of a dedicated Institutional Network through June 30, 2014.

BACKGROUND:

The City of Watsonville has a franchise agreement with Charter Communications, Inc that is due to expire in July 1, 2014. Part of this agreement requires that Charter offer free Internet service and cable service to selected public facilities. Charter also provides the City access to a dedicated Institutional Network (I-Net) that is used to connect to six (6) remote City facilities. Lastly, Charter provides the City with four (4) public access programming channels.

Under the Digital Infrastructure and Video Competition Act (DIVCA) of 2006, the California Public Utilities Commission (CPUC) is charged with issuing State Franchises for video services to telephone companies and incumbent cable providers. Local municipalities no longer have the ability to sign local franchise agreements with cable companies. Both AT&T and Charter applied and received approval for a state video franchise to provide television services in Watsonville. Under DIVCA cable providers are no longer required to provide free cable or Internet service to local governments. Cable companies also are not required to provide I-Net services. However, the law allowed for an exception for counties with a consent decree with a cable company. The County of Santa Cruz is subject to a consent decree.

DISCUSSION:

Under DIVCA, the incumbent cable operator can invalidate an existing franchise agreement if a competitor such as AT&T begins to offer video services in the City.

The only exception in the DIVCA language is what we call the John Laird clause [Section 5930(a)] which basically says that if there is a consent decree in place in a county then the

incumbent operator cannot seek a state franchise prior to July 1, 2014. It is the City's position that since there is a valid consent decree in Santa Cruz County then Charter cannot breach the contract prior to July 1, 2014. The CPUC staff agreed with City's view that if indeed there was a valid consent decree in place, and then the entire county would be subject to the language in Section 5930(a). In late 2009 the City provided the CPUC with a copy of the consent decree in place in Santa Cruz County, but the CPUC never issued a written response. Charter was approved for a state franchise in 2009 due to CPUC inaction on the application.

On October 12, 2010 staff requested and received an explanation from the CPUC indicating how Charter received a state franchise. The CPUC did not take official action on Charter's application, thus by law the State Franchise is deemed granted. However, **the CPUC did say that "if the City's reading of the statute [Sec 5930] is correct, Charter does not have a state franchise by operation of law, and in fact, the prior local franchise is still in effect."** According to the CPUC, the City would have to take legal action against Charter to enforce Section 5930(a) of DIVCA. There is a four year statute of limitation in California to sue over breach of contract. Therefore a dispute arose between Charter and the City regarding the natural expiration of the local franchise.

In an effort to avoid legal action by either party, Charter has offered to settle the matter and honor obligations outlined in the City's April 11, 2000 franchise agreement though June 30, 2014. Charter commits to continue offering free Internet service and cable service to selected public facilities (City and Schools) and to provide the City access to the I-Net. There would be no changes to the City's use of four PEG channels.

In accordance with the spirit of Section 5930(a) of DIVCA, City staff negotiated an agreement with Charter that ensures complimentary cable and Internet services to public facilities through June 30, 2014. Similarly, complimentary I-Net services will continue to be offered at no cost for one more year. The City has notified the school district that this free cable service will end on June 30, 2014. City staff is working on an alternative to both the I-Net and cable service to public facilities. Both Charter and AT&T have expressed interest in offering discounted services to public entities. Come July 1, 2014 these services will be managed by Charter Business and the City can elect to pay or discontinue the service.

The Memorandum of Understanding (settlement agreement) regarding complimentary cable services, Internet service and I-Net to public facilities lists all the locations currently receiving these free services. The MOU also references the "Master Fiber Agreement" which delineates the terms and conditions for use of the I-Net and is marked "confidential". Charter was made aware that as part of the City's approval process the document will be made public. Their legal team approved public release of agreement on August 23, 2013.

FINANCIAL IMPACT:

There is no financial impact associated with this agreement.

ATTACHMENT:

- A. Charter e-mail regarding Master Fiber Agreement being marked confidential.

cc: City Attorney



Mario Maldonado <mario.maldonado@cityofwatsonville.org>

Fwd: Charter MOU and Draft Fiber Agreement

Mario Maldonado <mario.maldonado@cityofwatsonville.org>

Tue, Sep 3, 2013 at 8:40 AM

To: Irwin Ortiz <irwin.ortiz@cityofwatsonville.org>

Cc: Beatriz Flores <beatriz.flores@cityofwatsonville.org>

Hi Irwin,

This email confirms that Charter was made aware that the Master Fiber Agreement marked "confidential" would be made public as part of the City Council approval process. Their legal team signed off on it on August 23rd.

Mario

----- Forwarded message -----

From: **Ludovici, Lisa M** <Lisa.Ludovici@charter.com>

Date: Fri, Aug 23, 2013 at 1:01 PM

Subject: RE: Charter MOU and Draft Fiber Agreement

To: Mario Maldonado <mario.maldonado@cityofwatsonville.org>

Mario – Charter is fine with these documents going to City Council. Thank you for giving us the opportunity to consider the situation.



Lisa Ludovici, Senior Manager, Government Relations

Central and Northern California

Office: 805-783-4945 | Mobile: 805-550-1627

270 Bridge Street, San Luis Obispo, CA 93401



I AM CHARTER

RESOLUTION NO. _____ (CM)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WATSONVILLE APPROVING MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF WATSONVILLE AND CCO SOCIAL I, LLC., A LIMITED LIABILITY COMPANY, REGARDING COMPLIMENTARY CABLE SERVICES TO PUBLIC FACILITIES AND USE OF A DEDICATED INSTITUTIONAL NETWORK THROUGH JUNE 30, 2014, AND DIRECTING THE CITY MANAGER TO EXECUTE SAME

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WATSONVILLE, CALIFORNIA, AS FOLLOWS:

1. That the Memorandum of Understanding between the City of Watsonville and CCO SoCal I, LLC., a limited liability company, regarding complimentary cable services to public facilities and use of a dedicated Institutional Network through June 30, 2014, a copy of which is attached hereto and incorporated herein by this reference, is fair and equitable and is hereby ratified and approved.

2. That the City Manager be and is hereby authorized and directed to execute such Memorandum of Understanding for and on behalf of the City of Watsonville.

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CITY OF WATSONVILLE
AND
CCO SOCAL I, LLC
REGARDING COMPLIMENTARY CABLE SERVICES TO PUBLIC FACILITIES**

THIS MEMORANDUM OF UNDERSTANDING is entered into by and between the **City of Watsonville**, a duly authorized municipal corporation of the State of California ("City"), and **CCO SoCal I, LLC** ("Charter") this _____ day of September 2013. The City and Charter agree as follows:

IT IS AGREED BETWEEN THE PARTIES AS FOLLOWS:

WHEREAS, Charter Communications, Inc has operated a Cable System in the City pursuant to City Ordinance No. 1054-98 (CM), dated June 9, 1998 and Franchise Agreement authorized by Resolution No. 98-00 (CM), dated April 11, 2000 (Local Franchise); and

WHEREAS, on September 29, 2009, Charter applied to the CPUC to amend State Franchise No. 0009 issued to Charter Communications Properties LLC (CCP LLC), to include the City of Watsonville (State Franchise) under Section 5920(c) related to a telecommunications competitor entering the video marketplace; and

WHEREAS, on November 1, 2011, CCP LLC amended its State Franchise to name CCO SoCal I, LLC as the holder of the State Franchise;

WHEREAS, the Digital Infrastructure Video and Competition Act of 2006 (DIVCA) requires that when a competitor enters the marketplace and notifies the incumbent cable operator, the incumbent cable operator has the right to move the local franchise to a State Franchise; and

WHEREAS, DIVCA also requires that the incumbent cable operator must continue providing free cable services to community buildings and fulfills Institutional Network (I-NET) obligations under the terms identified in the local franchise until the natural expiration of the former franchise; and

WHEREAS, a dispute has arisen between Charter and the City regarding the natural expiration date of the Local Franchise;

WHEREAS, Charter and the City desires to establish a Memorandum of Understanding (MOU) between the City and Charter regarding complimentary cable services to public facilities and fiber access through an I-NET provided to the City under the former cable franchise; and

WHEREAS, The City Council has determined that public interest would be served by this MOU agreement with Charter.

NOW, THEREFORE, the City and Charter do hereby agree as follows:

The City agrees that the State Franchise governs.

1. Service to Public Facilities

a. Charter agrees to continue providing one (1) courtesy outlet of basic cable video service to all public facilities listed below until **June 30, 2014**, after which, all complimentary services will be transitioned to a paying status with Charter's business services. The City will notify Charter Business prior to June 30, 2014 of locations, if any, that should continue to receive basic cable services on a paying status.

| PUBLIC FACILITIES | ADDRESS |
|---|------------------------------|
| <i>City of Watsonville Buildings</i> | |
| Watsonville Ramsay Family Center | 1301 Main Street |
| Watsonville Senior Center | 114 E 5 th Street |
| Watsonville Marinovich Community Center | 120 2 nd Street |
| Watsonville GHWR Youth Center | 30 Maple Ave |
| Watsonville Child Care Center | 32 Madison Street |
| City Administration Civic Plaza | 275 Main Street, Suite 400 |
| Watsonville Fire Department Station 1 | 115 2 nd St |
| Watsonville Fire Department Station 2 | 370 Airport Blvd |
| Watsonville Main Library | 275 Main Street, Suite 100 |
| Cabrillo Community College | 310 Union Street |
| Old City Hall | 250 Main Street |
| Watsonville Veteran Memorial Hall | 215 East Beach St. |
| City of Watsonville ECYN Computer Lab | 231 Union Street |
| Watsonville Police Department | 215 Union Street. |
| Fowle Reservoir | 1509 Freedom Blvd. |
| Watsonville Municipal Airport | 100 Aviation Way |
| Municipal Service Center | 320 Harvest Drive |
| Watsonville Police Department | 215 Union St. |
| Fowle Reservoir | 1509 Freedom Blvd. |
| Watsonville Municipal Airport | 100 Aviation Way |
| Municipal Service Center | 320 Harvest Drive |
| <i>PVUSD Public Schools</i> | |
| EA Hall Middle School | 201 Brewington Ave |
| Watsonville High School | 250 Beach Street |
| HA Hyde Elementary School | 125 Alta Vista St. |
| Linscott Elementary School | 220 Elm St. |
| MacQuidy School | 330 Martinelli St |
| Amesti Elementary School | 25 Amesti Rd |
| Calabastas Elementary School | 202 Calabastas Rd |
| Tornley School | 330 Martinelli St, Rear |
| New Pajaro School | 521 Main St. Ste R |
| Ohlone Elementary School | 21 Bay Farms Rd |
| Starlight Elementary School | 225 Hammer Dr. |

b. In addition, the following three (3) locations currently receiving the lowest speed of high speed data service (5mg upstream /512kbs downstream) will continue to receive one (1) free outlet of that current level of Internet service, subject to Charter's acceptable use policy, until **June 30, 2014**, after which, all complimentary services will be transitioned to a paying status with Charter Business Services.

The one (1) connection to the three (3) locations shall be made to one (1) computer and shall not be used to connect to an Ethernet router, a wireless router or for any other wireless or wired networking purpose not otherwise authorized herein:

- i. Watsonville Fire Department Station 2, 370 Airport Blvd, Watsonville;
- ii. City of Watsonville ECYN Computer Lab, 231 Union Street, Watsonville; and
- iii. New Pajaro School, 521 Main St. Ste R, Watsonville.

The City will notify Charter Business prior to June 30, 2014 of locations, if any, that should continue to receive high speed data services on a paying status.

2. Dedicated Fiber I-NET. Charter agrees to continue providing dedicated dark fiber optic cable for video and data transmission to all public facilities listed below and identified in I-Net fiber map in **Exhibit A** under the terms and conditions included in the agreement known as the Master Fiber Agreement until **June 30, 2014**. After which, all I-NET complimentary services will be transitioned to a paying status with Charter Business Services. The City will notify Charter Business Services prior to June 30, 2014 of locations, if any, that should continue to receive I-NET Services on a paying status.

1. Watsonville Fire Station #2
2. Freedom Branch Library
3. Fowle Reservoir
4. Ramsay Park Family Center
5. Wastewater Treatment Facility
6. Watsonville Vets Hall
7. Watsonville High School, Video Academy (Rm. 126)
8. Watsonville Civic Plaza Council Chambers

3. The City acknowledges that CCO SoCal I, LLC provides Broadband service to the City of Watsonville as a State Franchise holder under the oversight of the California Public Utilities Commission Video Franchise Division and agrees that, except

as provided herein above, all provisions of DIVCA that apply to the holders of a State Franchise are applicable to the services provided by CCO SoCal I, LLC to the City.

IN WITNESS WHEREOF, the parties hereto have executed this MOU the day and year first hereinabove written.

CITY

CITY OF WATSONVILLE

CHARTER

CCO SOCAL I, LLC

By _____
Carlos J. Palacios
City Manager

By _____
Mark E. Brown
Corporate Vice President, Gov Affairs
Charter Communications, Inc

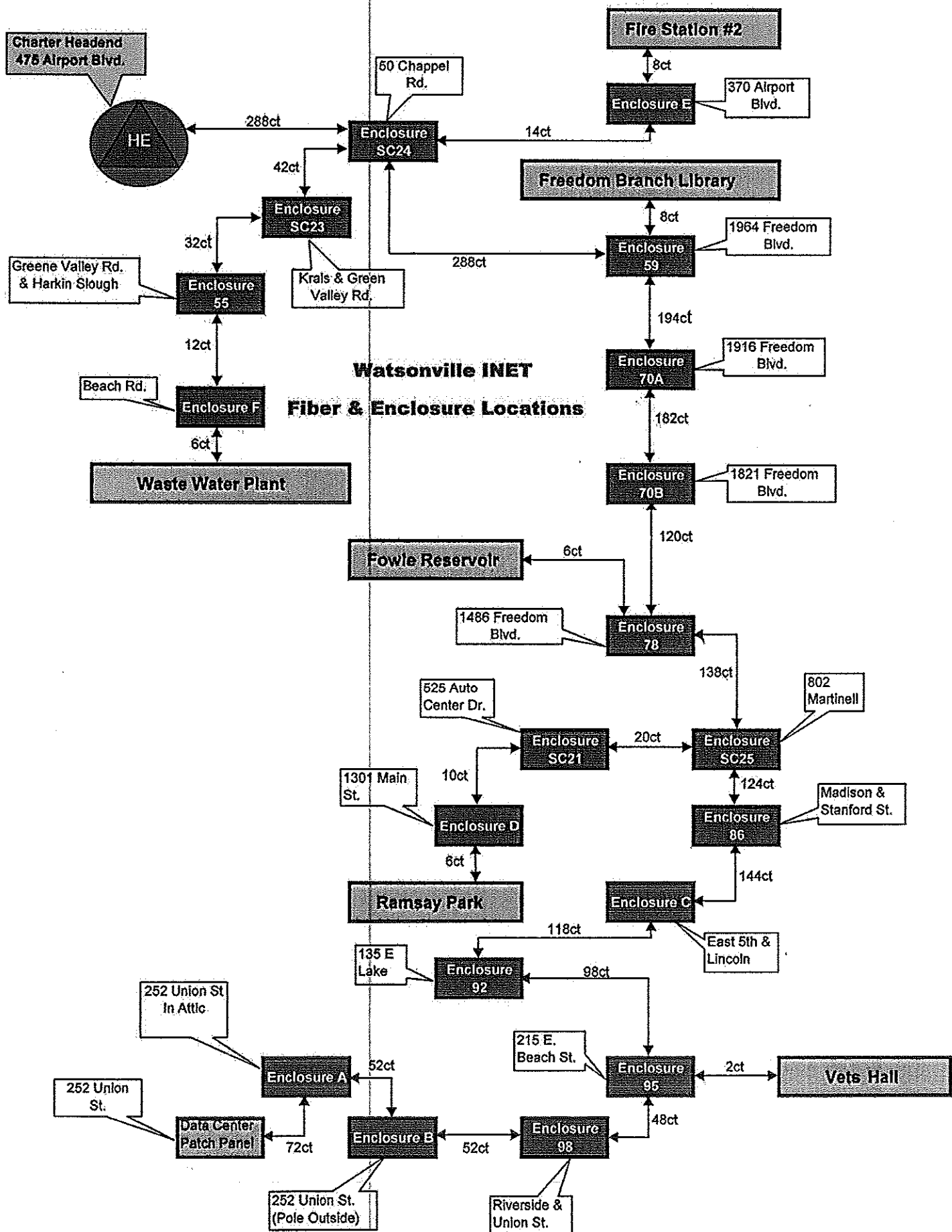
ATTEST:

By _____
Beatriz V. Flores
City Clerk

APPROVED AS TO FORM:

By _____
Alan J. Smith
City Attorney

EXHIBIT A



RESOLUTION NO. _____ (CM)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WATSONVILLE APPROVING MASTER FIBER AGREEMENT BETWEEN THE CITY OF WATSONVILLE AND CCO SOCIAL I, LLC., A LIMITED LIABILITY COMPANY, REGARDING COMPLIMENTARY USE OF DEDICATED INSTITUTIONAL NETWORK THROUGH JUNE 30, 2014, AND DIRECTING THE CITY MANAGER TO EXECUTE SAME

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WATSONVILLE, CALIFORNIA, AS FOLLOWS:

1. That the Master Fiber Agreement between the City of Watsonville and CCO SoCal I, LLC., a limited liability company, regarding complimentary use of a dedicated Institutional Network for video and data transmission to public facilities through June 30, 2014, a copy of which is attached hereto and incorporated herein by this reference, is fair and equitable and is hereby ratified and approved.

2. That the City Manager be and is hereby authorized and directed to execute such agreement for and on behalf of the City of Watsonville.

MASTER FIBER AGREEMENT

Between

The City of Watsonville

and

CCO SoCal I, LLC

Dated 9/10/2013

MASTER FIBER AGREEMENT

This Master Fiber Agreement (the "Agreement") is made as of ____ day of September, 2013 by and between CCO SoCal I, LLC ("Charter Business" or "Charter"), a Delaware limited liability company on behalf of itself and any of its Affiliates ("Provider") and the **City of Watsonville** ("Recipient"), each a "Party."

RECITALS

WHEREAS, Recipient and Provider wish to establish an agreement under which Recipient has previously obtained from Provider a license to exclusively use dark fibers along such route of Provider for Recipient's use, each as specified in Fiber Attachment. The form of consideration paid shall be set forth in Fiber Attachment. With respect to all matters in which Provider is providing fibers or other associated rights to Recipient, Provider shall be referred to as "Provider" and the Recipient receiving those fibers shall be referred to as "Recipient".

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereto agree as follows:

ARTICLE 1. DEFINITIONS

As used in this Agreement, the following terms shall have the following meanings ascribed to them:

"Affiliate" shall mean any Person that directly or indirectly controls or is controlled by or is under common control with, or is managed by, the specified Person. For purposes of this definition only, "control" means (i) in the case of corporate entities, direct or indirect ownership of at least fifty percent (50%) of the stock or participating shares entitled to vote for the election of directors, and (ii) in the case of non-corporate entities, direct or indirect ownership of at least fifty percent (50%) of the equity interest with the power to participate in the management and policies of such non-corporate entity.

"Force Majeure Event" means an unforeseen event beyond the reasonable control of a Party.

"Cable" shall mean all Provider fiber optic cable now or hereafter containing the Licensed Fiber(s).

"Claims" shall mean causes of action, losses, claims, liabilities, costs (including reasonable attorneys' fees and related necessary legal costs), damages for injury to or death of Persons, impairment to the environment, and loss of or damage to property.

"Costs" shall mean one hundred and fifteen percent (115%) of all direct internal and third party costs incurred by Provider in performing the services or work and which it utilizes in billing third parties for reimbursable projects.

"Imposition" shall mean all taxes, fees, levies, imposts, duties, charges or withholdings of any nature (including, without limitation, gross receipts taxes and franchises, license, and/or permit fees) together with any penalties, fines, assessments or interest thereon, arising out of the transactions contemplated by this Agreement and/or imposed upon the Licensed Fiber(s) by any federal, state, or local government or other public taxing authority of competent jurisdiction.

"Person" shall mean any individual, partnership, corporation, limited liability company, joint venture, trust, business trust, cooperative or association, and the heirs, executors, administrators, legal representatives, successors and assigns of such Person where the context so admits.

"Licensed Fiber(s)" shall mean the optical fibers in the number and of the type specified in Fiber Attachment along the System Route and licensed to Recipient.

"Rights of Way" shall mean the land and other rights granted to Provider by a third party through or by way of the Underlying Rights.

“Specifications” shall mean the specifications set forth in Exhibit B attached hereto with respect to the Licensed Fiber(s).

“System” shall mean the fiber optic communication system along the System Route.

“System Route” shall mean the route of the Licensed Fiber(s) set forth in Fiber Attachment.

“Term” shall mean a time period of One (1) years from the Effective Date of this Agreement.

“Underlying Rights” shall mean all deeds, leases, easements, rights of way, licenses, franchises, permits and other rights, titles or interests pertaining to the underlying real property and/or rights-of-way over and/or within which the Licensed Fiber(s) shall be located, as are necessary for the construction, installation, operation, maintenance or repair of the System, including all uses of the System by Recipient hereunder.

ARTICLE 2. GRANT OF LICENSE

2.1. Grant of License to Recipient. In exchange for the consideration referenced in Fiber Attachment, and subject to the conditions hereinafter set forth, Provider grants to Recipient a license to use the Licensed Fiber(s) for the Term (“License”); Recipient acknowledges that this grant of License expressly excludes the grant by Provider to Recipient of any rights or interest in the Underlying Rights. Provider agrees to use commercially reasonable efforts to maintain all Underlying Rights through the Term.

2.3 Legal Title. Legal title to the System, including fiber and cable sheathing and any bridge attachments, conduits, brackets, insulators, fixtures, guy wires, anchors, splice boxes, fiber distribution centers and other hardware needed or used to fasten or support the Cable, shall remain with and be held by Provider. Neither anything contained in this Agreement, nor any use, however extended, of the Licensed Fiber(s), nor any placement of Recipient’s facilities on or in the System shall create or vest (or be construed as creating or vesting) in Recipient any right, title or interest in or to any real or personal property owned by Provider other than the rights specified herein with regard to the Licensed Fiber(s).

2.4 No Liens/Encumbrances. Recipient shall keep the System free from any encumbrances, liens, rights or claims of any third party attributable to Recipient that adversely affects or impairs directly or indirectly Provider’s exclusive ownership and use of the System.

2.5 Permits; Physical Plant and Required Rights. Provider shall obtain (and cause to remain effective throughout the Term) all Underlying Rights. Notwithstanding anything in this Agreement to the contrary, it is expressly understood that Recipient shall be solely responsible for compliance with all legal and regulatory requirements associated with its business, operation or use of the Licensed Fiber(s) including maintaining all required franchises, permits, authorizations, licenses, approvals or other consents (other than the Underlying Rights), and Provider shall have no responsibility or liability whatsoever in connection therewith, *provided, however*, that except for any increases in pole attachment rates that may be predicated, based upon, or caused by Recipient’s use of the Licensed Fiber(s), which Provider shall be entitled to pass through to Recipient and Recipient shall pay to Provider within forty-five (45) days of Recipient’s receipt of an invoice therefore, Provider shall remain responsible for obtaining and maintaining during the Term for Recipient, at Provider’s sole cost and expense, all Underlying Rights to freely use without additional permissions of any kind, the Licensed Fiber(s) to which Recipient is granted the License.

ARTICLE 3. ACCEPTANCE and MAINTENANCE

3.1 Maintenance.

(a) Provider shall maintain and repair the Licensed Fiber(s) pursuant to the specifications set forth in Exhibit C so as to assure the continuing conformity of the Licensed Fiber(s) with their respective specifications. Notwithstanding any provision in this Agreement to the contrary, upon expiration of the complementary use of the Licensed Fiber(s) Recipient is receiving from Provider, the Costs of procurement, installation, splicing, splice testing and other Costs associated with the replacement or restoration of the Cable for Provider facilities in excess of \$10,000 for any event or series of closely related events shall be shared pro-rata among all users of the Cable according to the total number of fibers each user has/is using in the same route as the Cable which is to be restored or replaced provided that such restoration or repair is not the result of the negligence or willful misconduct of one of the parties hereto, in which case the damage-causing party shall bear the entire cost thereof (proportionate to such party's responsibility if both respective parties are at fault). Provider, at Recipient's sole expense and at Provider's then-prevailing rates, shall perform maintenance and repair necessitated by Recipient's negligence or willful misconduct or upon Recipient's elective maintenance or repair requests. For cases where pro-rata cost of repair/replacement of the Licensed Fiber(s) exceeds \$25,000 unless the same was caused by the negligence or willful misconduct of the Recipient, in which case Recipient shall reimburse Provider for the entire cost thereof (proportionate to such Recipient's responsibility if other parties are at fault), Recipient may choose to not pay such expenses and consequently forfeit all rights to the Licensed Fiber(s) requiring replacement or restoration, and Provider shall have no obligations with respect to such affected Licensed Fiber(s). Recipient shall not be responsible for any maintenance or repair of any Provider equipment except as set forth above.

(b) Provider shall respond to any interruption of service or failure of the Licensed Fiber(s) to operate in accordance with this Agreement and in accordance with the procedures set forth in Exhibit C.

(c) Work and associated costs of such work outside of that described herein shall be agreed to by the parties and documented in an Amendment to this Agreement (and signed by Recipient and Provider).

(d) Provider shall be responsible for routine maintenance of Cable and costs thereof not specifically due to requirements of Recipient as set forth in Exhibit C, including Cable locates.

3.2 Relocation. If, (i) Provider is required by a governmental or other authority to relocate any portion of the System (including, without limitation, the grantor of the Underlying Rights if such relocation is not being required as a result of Provider's failure to observe and perform its obligations under such Underlying Rights or this Agreement), including any of the facilities used or required in providing the License in the Licensed Fiber(s), including any condemnation or taking under the power of eminent domain of all or any portion of the System, or (ii) with Recipient's concurrence upon Provider's request, Provider may relocate such portion of the System, then Provider shall give Recipient sixty (60) days prior notice of any such relocation, if possible, and shall proceed with such relocation, including, but not limited to, the right to determine the extent of, the timing of, and methods to be used for such relocation; provided that any such relocation shall entail construction and testing in accordance with the Specifications and requirements set forth herein. Provider shall deliver to Recipient updated as-builts or building plans, as applicable, with respect to any relocated facilities not later than one hundred eighty (180) days following the completion of such relocation. The cost of any relocation not reimbursed by such governmental or other authority shall be allocated pro-rata pursuant to Section 3.1(a) unless the allocated pro rata costs of such relocation exceed \$10,000.00, in which case Recipient shall have the right to elect in its sole discretion not pay such expenses within six (6) months after having received notice from Provider of such planned relocation and consequently forfeit all rights to the Licensed Fiber(s) to be relocated.

ARTICLE 4. DELIVERY, USE AND CONNECTION

4.1 Access. Provider will provide Recipient with access to the Licensed Fiber(s) at such hand holes and splice points with existing slack coils on the System Route ("Connecting Points") as reasonably requested by Recipient, subject only to the requirements in the Underlying Rights and provided that such access points do not materially interfere with any Provider facilities.

For Licensed Fiber(s) terminating on and/or traversing across Recipient's (or its contractor's or agent's) property, Recipient will provide Provider with access to the Licensed Fiber(s) at any point along the fiber up to and including the splice point and/or demarcation.

4.2 Use of Facilities. Recipient may use the Licensed Fiber(s) for its internal uses to provide any lawful communications services *provided, however*, that Recipient shall not resell, re-License, or permit a third party to use or otherwise convey in any manner, directly or indirectly, the Licensed Fiber(s) it receives herein. Additionally, Recipient shall not use the Licensed Fiber(s) in any manner that is not in compliance with (i) any and all applicable government codes, ordinances, laws, rules, regulations and/or restrictions, and (ii) the Underlying Rights, as such may be amended from time to time. Recipient shall not use any product or service that fails to comply with any applicable standard industry safety rules or that would cause any Cable or related facility of Provider to violate any state or federal environmental laws. Recipient shall have no limitations on the types of electronics or technologies employed to utilize the Licensed Fiber(s) subject to its use of commercially reasonable safety procedures and so long as such electronics or technologies do not interfere with the quiet use and enjoyment of or create any risk of damage to all or any portion of the System used by Provider or any other user of the System.

Except as otherwise set forth herein, the Recipient may use the institutional network for any legitimate governmental purpose that does not compete with any service or product offered by Provider. Unless otherwise prohibited herein, the Recipient shall have no limitations on the types of electronics or technologies employed to utilize the institutional network subject to its use of commercially reasonable safety procedures and so long as such electronics or technologies do not damage the institutional network or interfere with or create any risk of damage to all or any portion of Provider's cable system. The Recipient shall not lease, sub-license, provide transport services over or sell any portion of the institutional network, including any bandwidth provided by it, to any other entity, whether commercial, noncommercial or governmental, nor engage or allow any party authorized by the Recipient to engage in any activities that would result in business competition between the Recipient and Provider, or that may result in loss of business opportunity for Provider. The Recipient shall not use the institutional network in any manner that is not in compliance with any and all applicable government codes, ordinances, laws, rules, regulations and/or restrictions. The Recipient shall not use or permit third-parties to use the institutional network to achieve unauthorized access to any computer systems, software, data, or other copyright or patent protected material. The Recipient agrees not to interfere with other customer's use of Provider's cable system and services.

4.3 Connection.

(a) If Recipient desires to connect other fiber optic cables to the Licensed Fiber(s) or create connections with buildings or other structures along the System Route, Recipient shall make known such details, in writing, to Provider and Provider will then have the option to agree to such connections. Should Provider agree, Provider will cooperate with Recipient to the extent necessary to enable Recipient to acquire rights to connect to the Licensed Fiber(s) via available Rights of Way and Provider will place connecting facilities on the Rights of Way between the Licensed Fiber(s) and such adjoining properties, subject to (i) the ability to do so pursuant to the Underlying Rights and (ii) Recipient's agreement to pay any incremental increase in Costs arising from or otherwise due to Recipient's proposed use thereof. Such additional connections activity shall be at Recipient's sole cost and expense (including Costs incurred by Provider in providing oversight of any contractors excavating on the Rights of Way or near the Cable to make such connection). Each connection to the Licensed Fiber(s) requiring a Cable to be connected will be performed by Provider at Recipient's sole expense. In order to schedule a connection of this type, Recipient shall contact Provider to undertake the work at least fourteen (14) days in advance of the date the connection is requested to be completed. Such work will be at times mutually agreed to by the parties or as otherwise agreed to in writing for specific projects.

(b) If Recipient desires to construct fiber to connect to the Licensed Fiber(s) and Provider has agreed to such connection in writing and subject to (i) restrictions affecting the same as mandated by the Underlying Rights and Provider's advance written approval thereof, not to be unreasonably withheld, Provider will allow Recipient or Recipient's agent provided they meet Provider's reasonable contractor qualification standards to perform such construction, *provided, however*, that an agent of Provider is present during such construction (and Recipient pays for the cost of such Provider agent overseeing such construction on the Rights of Way or near the Cable) and that agent shall have the absolute ability to direct the activities of that contractor when performing construction activities on the Underlying Rights or in areas adjacent to the facilities of Provider.

ARTICLE 5. CONSIDERATION

5.1 License Fee. The consideration paid by Recipient to Provider for the grant of the License to the Licensed Fiber(s) is set forth in Fiber Attachment.

5.2 Late Payments. Past due amounts bear interest at a rate of one and one half percent (1.5%) per month beginning from the date first due until paid in full. A past due payment shall be (i) any payment received after the period specified herein for such payment (unless otherwise agreed in a specific Fiber Attachment, payments due hereunder shall be due forty-five (45) days from the date of the invoice) , and/or (ii) any payment of disputed amounts that is received more than forty—five days after the date such payment is determined to have been due in a final resolution of such dispute in accordance with Article 11 hereof.

ARTICLE 6. WARRANTIES, RISK ALLOCATION, INDEMNIFICATION

AND REPRESENTATIONS

6.1 Disclaimer of Warranties. Except as may be otherwise provided herein, Provider disclaims any and all warranties, express or implied, as to the use or condition of the Licensed Fiber(s) or any other matter hereunder, including without limitation warranties of merchantability, workmanship, quality or fitness for a particular purpose and Recipient agrees to look solely to the manufacturer of all materials and equipment subject to the grant of any license or other rights to Recipient hereunder for any recovery for Claims of Recipient relating to such materials and equipment. Provider shall provide reasonable assistance to Recipient in good faith in the event a warranty claim arises with the manufacturer of the materials or equipment.

6.2 Warranty Acknowledgment. By executing this Agreement, Recipient acknowledges that, except as may be otherwise provided herein, Provider has made no warranty or representation with respect to the Licensed Fiber(s) and Recipient agrees to assume all risk of conducting Recipient's activities using the Licensed Fiber(s) or associated services.

6.3 Third Party Warranties. In the event any maintenance or repairs to facilities provided to Recipient are required as a result of a breach of any warranty made by any third party manufacturers, contractors or vendors and such breach of a warranty had a material adverse affect on Recipient's use of the Licensed Fiber(s), Provider shall share with Recipient on an equitable basis any recovery from any such manufacturers, contractors or vendors should Provider elect to pursue the same in its reasonable discretion.

6.4 Insurance. City shall maintain the insurance coverage as provided in the insurance coverage document provided as an Exhibit A to this Agreement.

6.5 Provider's Indemnity. Provider shall indemnify and hold harmless each of Recipient, any corporation, partnership, limited liability company or other legal entity affiliated with Recipient and any stockholder, partner, member, director, officer, employee or agent of any of them, in his, her or its capacity as such, from and against all Claims brought by third parties which any such Indemnified Party (defined below) is required to pay or to assume to the full extent that such have resulted from Provider's breach of any duty or obligation imposed by the provisions of this Agreement or applicable by law, including statutes, ordinances, regulations, orders, decrees, judgments and the law of torts (including without limitation gross negligence, strict liability, or willful misconduct).

6.6 Recipient's Indemnity. Recipient shall indemnify and hold harmless each of Provider, any corporation, partnership, limited liability company or other legal entity affiliated with Provider and any stockholder, partner, member, director, officer, employee or agent of any of them, in his, her or its capacity as such, from and against all Claims brought by third parties which any such Indemnified Party (defined below) is required to pay or to assume to the full extent that such have resulted from (i) Recipient's breach of any duty or obligation imposed by the provisions of this Agreement or by the provisions of applicable law, including without limitation that of applicable statutes, ordinances, regulations, orders, decrees, judgments, the law of torts (including without limitation gross negligence, strict liability, or willful misconduct) or (ii) the violation, misappropriation, or infringement of/upon the intellectual property rights (including without limitation patent, copyright, and/or trademark rights) of any third party by Recipient or any Recipient downstream customer, licensee, or otherwise an end user of the Licensed Fiber(s) gaining access thereto or using capacity thereof through facilities controlled or operated by Recipient (with or without Recipient's authorization to the extent allowed by applicable law).

6.7 Notice and Defense of Third-Party Actions. Each Person entitled to indemnification under this Article 6 (an "Indemnified Party") shall give prompt written notice to each Person that is obligated to provide such indemnification (an "Indemnifying Party") of the commencement or assertion of any Claim by a third party (collectively, a "third-party action") in respect of which an Indemnified Party will seek indemnification hereunder, which notice shall state, to the extent known to the Indemnified Party, the basis on which the claim for indemnification is made, the facts giving rise to or the alleged basis of the third-party action, and the amount (which may be estimated) of liability asserted by reason of the Claim; such notice shall also include a copy of the document (if any) by or in which the third-party action is commenced or asserted. Any failure so to notify the Indemnifying Party shall not relieve it from any obligation that it may have to the Indemnified Party under this Article 6 unless the failure to give such notice materially and adversely prejudices the Indemnifying Party and then only to the extent of such prejudice. The Indemnifying Party shall have the right to assume control of the defense of or settle or otherwise dispose of such third-party action on such terms as the Indemnifying Party deems appropriate; *provided, however*, that:

(a) The Indemnified Party shall be entitled, at its own expense, and without unreasonable interference with the actions of the Indemnifying Party, to participate in the defense of third-party actions;

(b) The Indemnifying Party shall obtain the prior written consent of the Indemnified Party before entering into any settlement or compromise requiring the admission or any acknowledgment of facts or any liability in respect thereof or the affirmative obligation of the Indemnified Party, which consent shall not be unreasonably withheld;

(c) No Indemnifying Party shall consent to the entry of any judgment or enter into any settlement that does not include as an unconditional term thereof the giving by each claimant or plaintiff to each Indemnified Party of a release from all liability in respect of such third-party action; and

(d) The Indemnifying Party shall not be entitled to control (but shall be entitled to participate at its own expense in the defense of) and the Indemnified Party shall be entitled to have sole control over, the defense or settlement, compromise, admission or other acknowledgment of any third-party action (i) as to which the Indemnifying Party fails to assume the defense within a reasonable length of time or (ii) to the extent the third-party action seeks an order, injunction or other equitable relief against the Indemnified Party which, if successful, would have a material adverse effect on the business, financial condition, operations or properties of the Indemnified Party; *provided, however*, that the Indemnified Party shall make no settlement or

compromise requiring the admission or other acknowledgment which would give rise to liability on the part of the Indemnifying Party or affirmative obligation of the Indemnified Party without the prior written consent of the Indemnifying Party, which consent shall not be unreasonably withheld.

6.8 Cooperation. The Parties and their Affiliates shall cooperate with each other in the defense of any third-party action that is the subject of this Article 6 and shall furnish each other all such further information that they have the right and power to furnish as may reasonably be necessary to defend such third-party action.

6.9 Representations and Warranties. In addition to any other representations and warranties contained in this Agreement, each Party hereto represents and warrants to the other that:

- (a) It has the full right and authority to enter into, execute, deliver and perform its obligations under this Agreement;
- (b) It has taken all requisite corporate or company action to approve the execution, delivery and performance of this Agreement;
- (c) This Agreement constitutes a legal, valid and binding obligation enforceable against such party in accordance with its terms; and
- (d) Its execution of and performance under this Agreement shall not violate any applicable existing regulations, rules, statutes, or court orders of any local, state or federal government agency, court, or body.

ARTICLE 7. DELAYS AND LIMITATION OF LIABILITY

7.1 Outage Liability; Restoration Delays. Under no circumstances shall either Provider or Recipient ever be liable for any delay in restoring any service or Licensed Fiber(s) or any operational aspect of the System containing such Licensed Fiber(s) which has been subjected to an outage, interference or interruption, unless and to the limited extent such outage, interference or interruption arises out of the gross negligence or willful misconduct of Provider or Recipient, or unless and to the limited extent Provider's delay in restoration arises out of its gross negligence or willful misconduct.

7.2 Limitation of Liability. No claims for damages with respect to this Agreement may be made more than two (2) years after the date that the event giving rise to such claim is known or reasonably should have been known to the person or entity making such claim; and no claim for indemnity under the provisions of Section 6 hereof may be made more than two (2) years after the first notice of any claim received by the Party claiming under such indemnity provision.

(a) NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR THE OTHER PARTY'S END-USERS FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES (INCLUDING WITHOUT LIMITATION, LOST BUSINESS, REVENUE, PROFITS, OR GOODWILL) ARISING IN CONNECTION WITH THIS AGREEMENT OR THE PROVISION OF SERVICES HEREUNDER (INCLUDING ANY SERVICE IMPLEMENTATION DELAYS AND/OR FAILURES), UNDER ANY THEORY OF TORT, CONTRACT, WARRANTY, STRICT LIABILITY OR NEGLIGENCE, EVEN IF THE PARTY HAS BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

(b) THE FOREGOING LIMITATION APPLIES TO ALL CAUSES OF ACTION AND CLAIMS SUFFERED BY THE OTHER, INCLUDING WITHOUT LIMITATION, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATION AND OTHER TORTS, *BUT SHALL NOT APPLY WITH RESPECT TO:* (a) breaches of confidentiality, (b) indemnification obligations set forth in this Agreement, or (c) injury or death to an individual, or (d) willful misconduct.

ARTICLE 8. CONFIDENTIALITY

8.1 Confidential Information. "Confidential Information" shall mean any and all information provided by one Party to this Agreement to the other Party for use in connection with the investigation, negotiation or performance of this Agreement. "Confidential Information" excludes any information that (i) the subject Party notifies the recipient in writing is not confidential, (ii) is or becomes available to the recipient on a non-confidential basis from a source other than the subject Party, any Person acting on behalf of the subject Party, or any Person who has confidentiality obligations (whether to the subject Party or otherwise) provided that such disclosure was not itself a breach of a confidentiality obligation running to the subject Party, (iii) is or becomes generally available to the public other than as a result of a disclosure by the recipient or any Person to whom such recipient disclosed the information, or (iv) is required to be disclosed by law, subject to the provisions of Section 8.3 hereof. Confidential Information may take the form of documentation, drawings, specifications, software, technical or engineering data, business information, the identity of Parties to a possible business transaction, the status and existence of discussions or negotiations among the Parties, the terms and conditions of any business transaction, plans and proposals relating thereto, and information concerning a Party's financial condition, results of operations, financial forecasts and projections, capital projects, research and development, design plans, management plans, business plans, marketing plans, and feasibility plans, markets, business, products, services, contracts, customers, suppliers, trade secrets, operating procedures, material and labor costs, sources and requirements, and technological means, methods and processes, as well as every study, report, analysis, notation, summary, synopsis, compilation and other document (collectively, "Work Product") containing, analyzing or otherwise reflecting any Confidential Information described above, and may be communicated orally, in writing, by electronic or magnetic media, by visual observation, or by other means.

8.2 Confidentiality. Each Party agrees to provide to the other Party such information (including Confidential Information) as shall be necessary to permit the performance of their respective obligations hereunder provided that in the event a Party is not at liberty to disclose such necessary information due to a confidentiality obligation running to a third party, the party to whom disclosure is not permitted but is otherwise necessary to permit the performance of its respective obligations hereunder, shall have the right to terminate the affected fibers in Fiber Attachment. Except as otherwise provided in Section 8.3, neither Party hereto will, without the prior written consent of the Party providing such Confidential Information, (i) use any portion of such Confidential Information for any purpose other than performance pursuant to this Agreement, or (ii) disclose any portion of such Confidential Information to any persons or entities other than the Affiliates of such Party and to the officers, employees and contractors of such Party who reasonably need to have access to such Confidential Information for purposes of performance under this Agreement and have agreed to comply with confidentiality terms no less stringent than those set forth in this Agreement in order to preserve the disclosing party's expectation of confidentiality hereunder. Each recipient Party agrees to guard Confidential Information utilizing the same degree of care utilized by such recipient Party in protecting its own Confidential Information, but in any event not less than a reasonable degree of care. The obligations of a recipient Party with respect to Confidential Information shall remain in effect during and after the Term of this Agreement.

8.3 Permitted Use. Confidential Information provided by Provider may be used by Recipient in connection with Recipient's use of the Licensed Fiber(s). If the receiving Party is compelled to disclose Confidential Information through lawful process in judicial or administrative proceedings or otherwise by law (other than under any securities laws and events covered by Section 8.5), the receiving Party shall, if possible, give written notice within a reasonable period of time to permit the disclosing Party the opportunity to seek suitable protective arrangements before the Confidential Information is disclosed, and the receiving Party shall cooperate fully in all reasonable respects with the disclosing Party's efforts to obtain such protective arrangements; *provided, however*, that if the receiving Party would otherwise be required to disclose Confidential Information under any securities law, the receiving Party shall use its reasonable efforts to take such steps as are available under such law (such as by providing a summary or synopsis) to avoid disclosure of such Confidential Information.

8.4 Return or Destruction. Confidential Information shall remain the property of the disclosing Party and shall, upon written request, if written or in other tangible form, including any copies thereof, be promptly returned to the disclosing Party or, in the case of the recipient's Work Product, be promptly destroyed at the recipient's option, such destruction to be promptly certified in writing to the disclosing Party.

8.5 Required Disclosures. The provisions of this Article 8 shall not apply to reasonably necessary disclosures in or in connection with filings under any public information laws/acts, securities laws, regulatory filings or proceedings, financial disclosures which in the good faith judgment of the disclosing Party are required by law (including, but not limited to State of Texas Public Information Act), disclosures required by court or tribunal or competent jurisdiction, or disclosures that may be reasonably necessary in connection with the performance or enforcement of this Agreement or any of the obligations hereof; *provided, however*, that if the receiving Party would otherwise be required to refer to or describe any aspect of this Agreement in any of the preceding circumstances, the receiving Party shall use its reasonable efforts to take such steps as are available under such circumstances (such as by providing a summary or synopsis) to avoid disclosure of the financial terms and conditions of this Agreement or in the case of the pending disclosures arising from public information laws/acts, Recipient shall give Provider notice of any open records request and Provider would be allowed to seek any redactions of the information with the applicable governing body. Notwithstanding any provisions of this Agreement to the contrary, either Party may disclose the terms and conditions of this Agreement in the course of a due diligence review performed in connection with prospective debt financing or equity investment by, or a sale to, a third Party, so long as the Persons conducting such due diligence review have agreed to maintain the confidentiality of such disclosure and not to use such disclosure for any purpose other than such due diligence review.

ARTICLE 9. PUBLICITY AND ADVERTISING

Neither Party hereto shall use any advertising, sales promotions, or other publicity materials that use the other Party's logo, trademarks, or service marks. Each Party shall have the right to review and approve any publicity materials, press releases or other public statements (other than filings required under the securities laws) by the other Party that discloses its identity. Except as otherwise expressly provided in Section 8.4 or otherwise agreed, neither Party shall release the text of this Agreement nor any material portion thereof (other than in a form modified to remove all references to the identity of the other Party) to any Person other than the Parties hereto for any purpose.

ARTICLE 10. FORCE MAJEURE

Notwithstanding any other provision of this Agreement, the performance of the obligations set forth in this Agreement, other than obligations to pay money (except as provided below), shall be suspended or excused in the event and only to the extent that such performance is prevented by an event of Force Majeure or its adverse effects. If the performance of a Party's obligations under this Agreement is suspended or excused by an event of Force Majeure or its adverse effects, such Party shall use commercially reasonable diligence to cause such event or effects to cease or be reduced. "Force Majeure" shall mean the occurrence or nonoccurrence of any act or event beyond the reasonable control of the Party relying thereon as justification for not performing an obligation or complying with any condition required of such Party pursuant to this Agreement.

The Party whose obligations are suspended or excused as described above shall, as soon as practical, give written notice to the other Party specifying the nature and anticipated duration of the Force Majeure event and outlining its recover plan, if any. To the extent the Licensed Fiber(s) are unavailable for use due to a Force Majeure event and Provider's obligations are suspended in accordance herewith, then Recipient's obligation to pay for the Licensed Fiber(s) shall be suspended, on a pro-rata basis, during such time Provider's obligations are also suspended. Either Party may terminate the affected fibers in Fiber Attachment if a Force Majeure event continues for more than one hundred eighty (180) days. In the event of such termination, Provider will reimburse Recipient a pro-rata amount of any pre-paid recurring fees for the services not received for the unexpired Term of the respective fibers in Fiber Attachment.

ARTICLE 11. DISPUTE RESOLUTION

11.1 Submission to Dispute Committee. Each Party to this Agreement agrees to use good faith efforts to negotiate and resolve any controversy or claim between the Parties hereto arising out of or relating to this Agreement or any breach thereof (hereinafter referred to as a "Dispute"). If a Dispute cannot be resolved through such efforts, then either Party may seek resolution of the Dispute by submitting such Dispute to a "Dispute Committee", consisting of one designee of each Party, by a written submission delivered to the other Party. The Dispute Committee shall consider the Dispute within the thirty (30) day period following the date of such submission.

11.2 Other Remedies. It is not the intention of the Parties that relief sought through preliminary injunctions, temporary restraining orders or other similar temporary procedures in a court of competent jurisdiction to obtain interim relief when deemed necessary by such court to preserve the status quo or prevent irreparable injury pending resolution, shall be in lieu of, or cause substantial delay to, any arbitration proceeding to which the parties may agree as a means of resolving any dispute.

ARTICLE 12. TAXES

12.1 Payment of Impositions. To the extent that Recipient holds/enjoys a license to the Licensed Fiber(s) hereunder, Recipient shall promptly reimburse Provider for its proportionate share of any and all Impositions imposed upon or with respect to the System Route during such periods Recipient has use of the Licensed Fiber(s). Recipient's share of such Imposition shall be one hundred percent (100%) in the event such Imposition results solely from Recipient's use of or activities with respect to the Licensed Fiber(s). Otherwise, Recipient's proportionate share of such Imposition shall be determined to the extent possible, based upon the manner and methodology used by the particular person or authority imposing such Impositions (e.g., on the cost of the relative property interests, historic or projected revenue derived therefrom, any combination thereof or otherwise). However, if the person or authority imposing such Imposition uses projected revenue or gross receipts, then Recipient's proportionate share shall be based on the relative number of Licensed Fiber(s) in the affected portion of the System Route compared to the total number of fibers in the affected portion of the System Route during the relevant period of use by Recipient. If Provider's assessed value, for property tax purposes, is based on its entire operation in any state (i.e., central assessment), Provider and Recipient shall work together in good faith to allocate a proper portion of said assessment to the System and Recipient's interest in the System Route. Provider shall provide Recipient with reasonable supporting documentation for Impositions for which Provider seeks reimbursement. The Parties agree that in the event Recipient submits to Provider a tax exemption certificate, such exempt taxes will not be applicable. The Parties agree that in the event Recipient submits to Provider a tax exemption certificate, such exempt taxes shall not be applicable.

12.2 Contest of Impositions. Notwithstanding any provision herein to the contrary, Provider shall have the right to contest any Imposition to the full extent that such contest does not materially and adversely affect Recipient's ability to utilize any License or right granted hereunder and the associated Licensed Fiber(s). The out-of-pocket costs and expenses (including reasonable attorneys' fees) incurred by Provider in any such contest shall be shared by Provider and Recipient in the same proportion as that by which the Parties shared in any such Imposition as it was originally assessed, provided that Recipient does not elect to forgo the benefits of any such Imposition contest prior to its commencement of which Provider must give thirty (30) days prior notice, in which case Recipient shall not be obligated to share any of the costs thereof but shall not be entitled to any share of the relief obtained. In the event of any refunds or credits resulting from a contest brought by Provider, which Recipient did not elect to forgo prior to commencement of such contest, all such expenses shall first be paid from such refund or credit, after which such credit or refund shall be divided between Provider and Recipient in the same proportion as the Impositions are to be borne by Provider and Recipient hereunder. Further, where Provider does not contest an Imposition, Recipient shall have the right, after notice to Provider, to contest such Imposition as long as such contest does not materially and adversely affect the title, property or rights to the System, the Licensed Fiber(s) and/or otherwise the communications

business interests of Provider. The out-of-pocket costs and expenses (including reasonable attorneys' fees) incurred by Recipient and any refund or credit Imposition in any such contest shall not be shared by Provider.

12.3 Net Income Impositions. Notwithstanding anything to the contrary in this Article 12, Provider shall have complete authority over and discretion to control (including the authority to dismiss or not pursue) any contests relating to Impositions based upon the computation of Provider's taxable income under the Federal Internal Revenue Code or state income or franchise tax laws (hereinafter "Net Income Based Impositions"). Provider shall have no obligation to disclose to Recipient its income or franchise tax returns and records. Recipient shall have no liability for any Net Income Based Impositions.

12.4 Receipts Impositions. Following the Acceptance Date, Provider and Recipient, respectively, shall be separately responsible for any and all Impositions (i) expressly or implicitly imposed upon, based upon, or otherwise measured by the gross receipts, gross income, net receipts or net income received by or accrued to such Party due to its respective interest or use of the System Route and/or any facility to which rights are granted hereunder, or (ii) which have been separately assessed or imposed upon the respective interest of use by such third party on or with respect to the System Route and/or any Provided Facility. If the Licensed Fiber(s) are the only facilities located in the Cable from the point where the Cable leaves the System right-of-way to a Recipient point of interconnection, Recipient shall be solely responsible for any and all Impositions imposed on or Costs incurred with respect to such portion of the System Route.

ARTICLE 13. TERMINATION AND DEFAULT

13.1 Termination. This Agreement with respect to the fibers in a Fiber Attachment shall automatically terminate at the end of the Term of unless extended by the mutual consent of the parties via an amendment to this Agreement and executed by the Parties. **The Parties agree to negotiate in good-faith in an attempt to execute a new agreement for a lease of the fibers hereunder at least sixty (60) days in advance of the end of the Term. In the event the Parties are unable to reach a new consent, this Agreement will terminate accordingly** and upon such termination, Provider shall owe Recipient no additional duties or consideration with respect to the respective Licensed Fiber(s) or Recipient Building Spaces including no longer having the obligation to maintain the Underlying Rights to provide the right of Recipient to hold a License to the Licensed Fiber(s) or use or maintain the Licensed Fiber(s), and to the extent that Provider has title to the Licensed Fiber(s) and Recipient continues to use the Licensed Fiber(s) after the termination of this Agreement, Recipient shall indemnify, defend and hold Provider harmless from and against all Claims by third parties arising from or related to such continued use.

13.2 Default. A Party shall be in default under this Agreement upon the occurrence of an event in which such Party has failed to comply with any of its obligations as set forth in this Agreement (each an Event of Default; see Section 13.2 (b) below).

(a) Upon the occurrence of an Event of Default, other than an Event of Default based upon non-payment of any undisputed amounts owed under this Agreement, the defaulting Party shall have thirty (30) days after receipt of a notice of the Event of Default to cure the Event of Default (unless the Event of Default is waived in writing by the non-defaulting party within the thirty (30) day period). However, in such cases where an Event of Default cannot reasonably be cured within such thirty (30) day period, if the defaulting Party shall proceed promptly to cure the same and prosecute such curing with due diligence, the time for curing such Event of Default (except for Events of Default regarding making payments hereunder and Insolvency Defaults, as defined below) shall be extended for such period of time as may be necessary to complete such curing (unless the same is not or cannot be cured within one hundred twenty (120) days in which case the non-defaulting party shall have the right to terminate this Agreement without further liability at the expiration of such 120-period).

(b) Events of Default shall include, but not be limited to, the making by a Party of a general assignment for the benefit of its creditors, the filing of a voluntary petition in bankruptcy or the filing of a petition in bankruptcy or other insolvency protection against a Party which is not dismissed within ninety (90) days thereafter, or the filing by a

Party of any petition or answer seeking, consenting to, or acquiescing in reorganization, arrangement, adjustment, composition, liquidation, dissolution, or similar relief (collectively, an "Insolvency Default").

(c) Any Event of Default by a Party may be waived under the terms of this Agreement at the other Party's sole option. Upon the failure by a Party to timely cure any such Event of Default after written notice thereof, the other Party may (i) take such action as it determines, in its sole discretion, to be necessary to correct the Event of Default (except that neither Party shall perform any work on the other Party's fiber/network/system without the other Party's explicit consent), (ii) terminate this Agreement, and (iii) pursue any legal remedies it may have under applicable law or principles of equity relating to such Event of Default. When a party fails to pay any undisputed amounts owed hereunder by their due date, an Event of Default shall occur if the party owing such amount fails to cure same within ten (10) days after receipt of written notice thereof.

ARTICLE 14. GENERAL PROVISIONS

14.1 Amendments. This Agreement shall not be amended, altered or modified except by an instrument in writing duly executed by both Parties.

14.2 Assignment. Neither Party may assign its rights or obligations hereunder without the prior written consent of the other Party; *provided however*, that any Party may assign its rights or obligations hereunder pursuant to a merger or sale of all or substantially all of its assets or its underlying System to an Affiliate, in each said instance upon providing written notice to, but without the consent of, the other Party, and the use restrictions of Section 4.3 and all other terms herein shall apply to any assignee.

14.3 Limitation of Benefits. It is the explicit intention of the Parties hereto that no Person other than the Parties hereto is or shall be entitled to bring any action to enforce any provision of this Agreement against any Party hereto, and that covenants, undertakings, and agreements set forth in this Agreement shall be enforceable only by the Parties hereto or their respective successors or permitted assigns.

14.4 Notices. Unless otherwise provided in this Agreement, all notices, demands, requests, approvals or other communications which may be or are required to be given, served or sent pursuant to this Agreement shall be in writing and shall be mailed by registered or certified mail, return receipt requested, postage prepaid, or delivered by nationally recognized overnight courier addressed as follows:

If to Recipient:

City of Watsonville
Attn: City Clerk
275 Main Street, Suite 400
Watsonville CA. 95076

with a copy to:

City of Watsonville
Attn: IT Manager
250 Main St.
Watsonville CA. 95076

City of Watsonville
Attn: Deputy City Manager
275 Main Street, Suite 400
Watsonville CA. 95076

If to Provider: Charter Business
Attn: Sales Manager
8120 Camino Arroyo
Gilroy CA 953020

with copies to: Charter Communications
Attn: Contracts Manager – CB Corp.
12405 Powerscourt Drive
St. Louis, MO 63131
Phone: 314-288-3470

Charter Communications
Attn: Legal Department - Operations
12405 Powerscourt Drive
St. Louis, MO 63131
Phone: 314-543-2415

Each Party may designate by notice in writing a new address to which any notice, demand, request, report, approval or communication may thereafter be so given, served or sent. Each notice, demand, request, report, approval or communication which shall be mailed or delivered in the manner described above, shall be deemed sufficiently given, served, sent or received for all purposes at such time as it is delivered to the addressee (with the return receipt or the delivery receipt being deemed conclusive evidence of such delivery) or at such time as delivery is refused by the addressee upon presentation.

14.5 Severability. If any part of any provision of this Agreement or any other agreement, document or writing given pursuant to or in connection with this Agreement shall be held to be invalid or unenforceable under applicable law, said part shall be ineffective to the extent of such invalidity or enforceability only, without in any way affecting the remaining parts of said provision or the remaining provisions of said agreement; *provided, however*, that if any such ineffectiveness or unenforceability of any provision of this Agreement, in the good faith judgment of either Party, renders the benefits to such Party of this Agreement as a whole uneconomical in light of the obligations of such Party under this Agreement as a whole, then Provider and Recipient shall negotiate in good faith in an effort to restore insofar as possible the economic benefits of the transaction to the Parties.

14.6 Independent Contractors. In all matters pertaining to this Agreement, the relationship of Provider and Recipient shall be that of independent contractors, and neither Provider nor Recipient shall make any representations or warranties that their relationship is other than that of independent contractors. This Agreement is not intended to create nor shall it be construed to create any partnership, joint venture, employment or agency relationship between Provider and Recipient; and no Party hereto shall be liable for the payment or performance of any debts, obligations, or liabilities of the other Party, unless expressly assumed in writing herein or otherwise. Each Party retains full control over the employment, direction, compensation and discharges of its employees, and will be solely responsible for all compensation of such employees, including social security, tax withholding and worker's compensation responsibilities.

14.7 Labor Relations. Each Party hereto shall be responsible for labor relations with its own employees. Each Party agrees to notify the other immediately whenever it has knowledge that a labor dispute concerning its employees or its Affiliates' employees is delaying or threatens to delay timely performance of its obligations under this Agreement.

14.8 Exercise of Rights. No failure or delay on the part of either Party hereto in exercising any right, power or privilege hereunder and no course of dealing between the Parties shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

14.9 Additional Actions and Documents. Each of the Parties hereto hereby agrees to take or cause to be taken such further actions, to execute, acknowledge, deliver and file or cause to be executed, acknowledged, delivered and filed such further documents and instruments, and to use its commercially reasonable efforts to obtain such consents, as may be necessary or as may be reasonably requested in order to fully effectuate the purposes, terms and conditions of this Agreement, whether at or after the execution of this Agreement.

14.10 Survival. The obligations of the Parties under Article 6 (Warranties, Risk Allocation And Indemnification), Article 7 (Delays and Limitation of Liability), Article 8 (Confidentiality), Article 9 (Publicity and Advertising), Article 11 (Dispute Resolution), Article 12 (Taxes), Section 14.5 (Severability), and Section 14.13 (Governing Law) shall survive any termination of this Agreement.

14.11 Headings. Article headings contained in this Agreement are inserted for convenience of reference only, shall not be deemed to be a part of this Agreement for any purpose, and shall not in any way define or affect the meaning, construction or scope of any of the provisions hereof.

14.12 Incorporation of Exhibits. The Exhibits referenced in and attached to this Agreement shall be deemed an integral part hereof to the same extent as if written at length herein.

14.13 Governing Law. This Agreement and each of its provisions shall be governed by and construed and interpreted according to the substantive laws of the State of Texas without regard to its conflicts of law or choice of law provisions.

14.14 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be an original but all of which taken together shall constitute one and the same instrument.

14.15 Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the transaction contemplated herein, and supersedes all prior oral or written agreements, commitments or understandings with respect to the matters provided for herein.

14.16 Performance. Except as specifically set forth herein, for the purpose of this Agreement, the normal standards of performance within the communications industry in the relevant market shall be the measure of whether a Party's performance is reasonable and timely.

14.17 No Third Party Beneficiaries. The Parties agree that the terms of this Agreement and the Parties' respective performance of obligations hereunder are not intended to benefit any person or entity not a party to this Agreement, that the consideration provided by each under this Agreement only runs to the respective Parties hereto, and that no person or entity not a Party to this Agreement shall have any rights hereunder nor the right to require the performance hereunder by either of the respective Parties hereto.

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

Provider

Recipient

By: **CCO SoCal I, LLC**
By: Charter Communications, Inc., its Manager

By: **City of Watsonville**

Name: Mark E. Brown
Title: Vice President

Name: Carlos J. Palacios
Title: City Manager

Date: _____

Date: _____

FIBER ATTACHMENT

This Fiber Attachment represents those Licensed Fibers which Provider has granted specific license for use to Recipient and the monthly fees to be paid by Recipient to Provider in consideration of such license.

| System Route Length (miles) | Delivery Date | License Term (if applicable) | License Term Renewals (if applicable) |
|-----------------------------|---------------|------------------------------|---------------------------------------|
| 14.5 | Immediate | | This contact is valid until 7-1-2014 |

Both parties agree to use best efforts and/or negotiate in good faith to extend the term based on mutual agreement on pricing.

Customer will have physical access, subject to the terms of the Agreement and any Exhibits thereto, to the Licensed Fiber at each of the following addresses:

| <u>Facility Name</u> | <u>Address</u> | <u>Zip</u> |
|---|--------------------|------------|
| Watsonville Fire Station #2 | 370 Airport Blvd | 95019 |
| Freedom Branch Library | 2021 Freedom Blvd | 95019 |
| Wastewater Plant | 500 Clearwater Ln | 95076 |
| Fowle Reservoir | 1509 Freedom Blvd | 95019 |
| Ramsay Park Family Center | 1301 Main St | 95076 |
| Vets Hall | 215 East Beach St | 95076 |
| Watsonville High School, Video Academy (Room 126) | 250 East Beach St. | 95076 |
| Watsonville Civic Plaza, City Council Chambers r | 275 Main Street. | 95076 |

Consideration Paid for Fiber:

Check one:

☒ X

Payment Amount: 0

Installation: \$0.00

Payment Schedule: 0

Provider

By: **CCO SoCal I, LLC**

By: Charter Communications, Inc., its Manager

Name: Mark E. Brown

Title: Vice President

Date: _____

Recipient

By: **City of Watsonville**

Name: Carlos J. Palacios

Title: City Manager

Date: _____

EXHIBIT A
INSURANCE

PUBLIC AGENCY RISK SHARING AUTHORITY OF CALIFORNIA

LIABILITY MEMORANDUM OF COVERAGE

DECLARATION PAGE

This **Memorandum** specifies the liability protection afforded under the Public Agency Risk Sharing Authority of California Liability Program. Protection is afforded for **Bodily Injury, Property Damage, Personal Injury, and Public Officials Errors and Omissions** arising out of liability risks to which this **Memorandum** applies, subject to certain limitations, conditions, definitions and other provisions of this **Memorandum**.

California Government Code §990.4 provides that pooling of self-insured claims or losses by public entities does not constitute the business of insurance under the California Insurance Code. There is no transfer of risk from the **Member Entities** to the **Authority**, nor any assumption of risk by the **Authority**. The **Authority's** sole duty is to administer the **Program** adopted by the **Member Entities**, as outlined in the Joint Powers Agreement of the Public Agency Risk Sharing Authority of California.

The terms of this **Memorandum** shall be construed in accordance with the principles of California contract law. The **Memorandum** shall not be considered a contract of adhesion but rather a contract designed by mutual negotiation and consent of the **Member Entities**. If the language of the **Memorandum** is alleged to be ambiguous or unclear, the issue shall be resolved in a manner most consistent with the relevant terms of the **Memorandum** without any construction, interpretation, or presumption in favor of either the Protected Party or the **Authority**.

Words and phrases that are capitalized and appear in bold print in this Memorandum are defined in Section II.

- A. Member Entity:** City of Watsonville
Mailing Address: 275 Main St., Ste. 400, Watsonville, CA 95076
- B. Protection Period:** From July 1, 2013, 12:01 a.m. to June 30, 2014, 12:00 a.m. Pacific Daylight Savings Time.
- C. Limit of Protection:** \$500,000 **Ultimate Net Loss** as the result of any one **Occurrence** because of **Bodily Injury, Property Damage, Personal Injury, or Public Officials Errors and Omissions** or any combination thereof in excess of the Retained Limit.
- D. Retained Limit:** \$500,000 **Ultimate Net Loss** as the result of any one **Occurrence** because of **Bodily Injury, Property Damage, Personal Injury, or Public Officials Errors and Omissions** or any combination thereof.

Signed by:



Joanne Rennie, General Manager

Dated: June 13, 2013

Public Agency Risk Sharing Authority of California

**MEMORANDUM OF COVERAGE
OF THE SELF-INSURED WORKERS' COMPENSATION PROGRAM
DECLARATION PAGE**

This Memorandum of Coverage is not an insurance policy; it is a description of the **Program** through which certain specified and limited self-insured workers' compensation and employer's liability risks are administered by the **Authority** and shared by its **Participating Members**.

1. **PARTICIPATING MEMBER:** City of Watsonville

Mailing Address: 275 Main St., Ste. 400
Watsonville, CA 95076
2. **PROGRAM PERIOD:** From July 1, 2013 12:01 a.m. to June, 30, 2014
12:00 a.m., Pacific Daylight Savings Time
3. **PROTECTION AFFORDED BY THE PROGRAM:**
 - a. **Workers' Compensation:** Section III of this Memorandum applies to the Member's obligation under the California workers' compensation law.
 - b. **Employer's Liability:** Section IV of the Memorandum applies to work in California.
 - c. **Other States:** Section V of the Memorandum applies to workers' compensation protection outside of California.
4. **MAXIMUM AMOUNT OF PROTECTION:**

The Program's Maximum Protection Limits for each accident or each employee for disease in excess of the Participating Member's \$150,000 self-insured retention are:

- | | | |
|----|--|-----------|
| a. | Workers' Compensation: | \$350,000 |
| b. | Employer's Liability: | \$350,000 |
| c. | Workers' Compensation and Employer's Liability Combined: | \$350,000 |

Signed by:


Joanne Rennie, General Manager

Dated: June 13, 2013

EXHIBIT B. CONSTRUCTION & FIBER SPECIFICATIONS

A. CONSTRUCTION SPECIFICATIONS [RESERVED]

B. FIBER SPECIFICATIONS

OPTICAL SPECIFICATIONS

Attenuation

| Uncabled Fiber Attenuation Cells | | |
|----------------------------------|---------------------------|----------|
| Wavelength (nm) | Attenuation Cells (dB/km) | |
| | Premium | Standard |
| 1310 | <0.35 | <0.40 |
| 1550 | <0.25 | ≤0.30 |

| Attenuation vs. Wavelength | | |
|----------------------------|---------------------|-------------------------------|
| Range (nm) | Ref. λ (nm) | Max Increase α (dB/km) |
| 1285 - 1330 | 1310 | 0.05 |
| 1525 - 1575 | 1550 | 0.05 |

| Attenuation With Bending | | | |
|--------------------------|-----------------|-----------------|--------------------------|
| Mandrel Diameter (mm) | Number of Turns | Wavelength (nm) | Induced Attenuation (dB) |
| 32 | 1 | 1550 | < 0.50 |
| 75 | 100 | 1310 | < 0.05 |
| 75 | 100 | 1550 | < 0.10 |

Point Discontinuity

No point discontinuity greater than 0.10 dB at either 1310 nm or 1550 nm.

The attenuation in a given wavelength range does not exceed the attenuation of the reference wavelength λ by more than the value α

The induced attenuation due to fiber wrapped around a mandrel of a specified diameter.

Cable Cutoff Wavelength (λ_{ccf})

$$\lambda_{ccf} < 1260 \text{ nm}$$

• Mode-Field Diameter

$$9.30 \pm 0.50 \text{ } \mu\text{m} \text{ at } 1310 \text{ nm}$$

$$10.50 \pm 1.00 \text{ } \mu\text{m} \text{ at } 1550 \text{ nm}$$

Dispersion

$$\text{Zero Dispersion Wavelength } (\lambda_0): 1301.5 \text{ nm} \leq \lambda_0 \leq 1321.5 \text{ nm}$$

$$\text{Zero Dispersion Slope } (S_0): \leq 0.092 \text{ ps}/(\text{nm}^2 \cdot \text{km})$$

$$\text{Fiber Polarization Mode Dispersion Coefficient (PMD): } \leq 0.5 \text{ ps}/\sqrt{\text{km}}$$

| Dispersion Calculation | |
|--|---|
| Dispersion = D (λ): $\approx \frac{S_0}{4} \left\{ \lambda - \frac{\lambda_0^4}{\lambda^3} \right\}$ | ps/(nm * km), for $1200 \text{ nm} \leq \lambda \leq 1600 \text{ nm}$ |
| (λ = Operating Wavelength) | |

ENVIRONMENTAL SPECIFICATION

| Environmental Test Condition | Induced Attenuation (dB/km) | |
|---|-----------------------------|---------|
| | 1310 nm | 1550 nm |
| Temperature Dependence -60° C to +85° C* | ≤0.05 | ≤0.05 |
| Temperature-Humidity Cycling 10° C to +85°C*, up to 98% RH | ≤0.05 | ≤0.05 |
| Water Immersion, 23°C | ≤0.05 | ≤0.05 |
| Heat Aging, 85°C | ≤0.05 | ≤0.05 |

Operating Temperature Range
-60° C to +85° C

*reference temperature = +23°C

DIMENSIONAL SPECIFICATIONS

Standard Length (km/reel): 2.2 – 25.2

**longer spliced lengths available at a premium.*

Glass Geometry

Fiber Curl: ≥ 4.0 m radius of curvature

Cladding Diameter: 125.0 ± 1.0 µm

Core-Clad Concentricity: ≤ 0.6 µm

Cladding Non-Circularity: ≤ 1.0%

Coating Geometry

Coating Diameter: 245 ± 10 µm

Coating –Cladding Concentricity < 12 µm

Defined as:
$$\left[\frac{\text{Min. Clad Diameter}}{\text{Max. Cladding Diameter}} - 1 \right] \times 100$$

MECHANICAL SPECIFICATIONS

Proof Test:

The entire length of fiber is subjected to a tensile proof stress ≥ 100 kpsi (0.7 GN/m²)*.

EXHIBIT C. OPERATIONS AND MAINTENANCE

I. PREVENTATIVE, DEMAND AND EMERGENCY MAINTENANCE

A. **Preventative Maintenance:** Preventative Maintenance refers to upgrades, and or routine maintenance or necessary alteration/repair of hardware or software or upgrades to increase capacity. Preventative Maintenance may temporarily degrade the quality of the service, including possible outages. Preventative Maintenance shall be undertaken only between the hours of 01:00:00 and 05:00:00 Local Time. The Party performing such maintenance shall provide at least three (3) days prior notice to the other Party of Preventative Maintenance.

Preventative Maintenance performed by Provider shall commence with respect to the Licensed Fiber(s) upon the commencement of the grant of License hereunder. Preventative Maintenance performed by Provider shall include the following activities:

(i) Patrol of System route on a regularly scheduled basis; (ii) Maintenance of a "Call-Before-You-Dig" program and all required and related cable locates; (iii) Maintenance of sign posts along the System right-of-way with the number of the local "Call-Before-You-Dig" organization and the "800" number for the appropriate "Call-Before-You-Dig" program; and (iv) Assignment of maintenance technicians to locations along the route of the System at approximately 200-mile intervals dependent upon terrain and accessibility.

(ii) Recipient shall immediately report the need for Unscheduled Maintenance to Provider in accordance with procedures promulgated by Provider from time to time. Provider will log the time of Recipient's report, verify the problem and dispatch personnel immediately to take corrective action.

B. **Emergency Maintenance (Unscheduled Maintenance or Repair):** Emergency Maintenance shall be performed by or under the direction of Provider in response to an alarm identification by Provider's Network Operations Center ("NOC"), notification by Recipient or notification by any third party of any failure, interruption or impairment in the operation of a Recipient Fiber, or any event imminently likely to cause the failure, interruption or impairment in the operation of a Recipient Fiber. Work to address an Emergency Maintenance situation may degrade the quality of or cause outages. Provider may undertake Emergency Maintenance at any time deemed necessary but shall make commercially reasonable efforts to perform such maintenance within the hours identified for Preventative Maintenance if possible. Provider shall provide notice of Emergency Maintenance to Recipient as soon as is commercially practicable under the circumstance but when reasonably possible; provide notice twenty-four (24) hours in advance. Whenever prior notice is given, Recipient agrees to acknowledge notice of the emergency event in a reasonable period of time and in all events, Recipient will take necessary steps to notify key personnel internally in order for the Provider to correct or repair the affected area.

C. **Demand Maintenance:** "Demand" maintenance is work necessary to restore service to one or more end-users of Provider and/or maintenance work required when a deficiency is found when performing Preventative Maintenance work. Provider may undertake Demand Maintenance immediately. Provider shall provide notice of Demand Maintenance to Recipient as soon as is commercially practicable under the circumstances.

D. **Notification:** Provider shall provide Recipient with notice of Preventative Maintenance or as soon as possible in the case of Emergency or Demand Maintenance to the following by means of electronic mail notification and telephone:

Recipient City of Watsonville, Mark Lamoreaux, IT Manager, (831) 768-3431,
mark.lamoreaux@cityofwatsonville.org

Recipient shall notify Provider of any failure, interruption or impairment in the operation of a Recipient Fiber, or any event imminently likely to cause the failure, interruption or impairment in the operation of a Recipient Fiber.

Provider:
Charter Business Network Operations Center (CB NOC):
Fiber Support One Call
Phone: (866) 603-3199
Email: CBNOC@chartercom.com

Recipient shall have the right to be present, at its sole cost and expense, during the performance of any Maintenance so long as this requirement does not interfere with Provider's ability to perform its obligations under this Agreement. In the event that Maintenance is canceled or delayed for whatever reason as previously notified, Provider shall notify Recipient at Provider's earliest opportunity, and will comply with the provisions of the previous sentence to reschedule any delayed activity.

II. CHARTER BUSINESS NETWORK OPERATIONS CENTER.

Provider operates and maintains an operations center, Charter Business Network Operations Center (CB NOC), which is staffed twenty-four (24) hours a day, seven (7) days a week. Provider shall have a maintenance employee at the site requiring Emergency or Demand Maintenance activity within four (4) hours after the time Provider becomes aware of an event requiring Emergency or Demand Maintenance, unless delayed by circumstances beyond the reasonable control of Provider.

III. COOPERATION AND COORDINATION.

Recipient shall utilize the Charter Business Performance Center Escalation List, as updated from time to time, to report and seek immediate initial redress of exceptions noted in the performance of Provider in meeting maintenance service objectives. The following is the initial Charter Business Network Operations Center Escalation List.

Charter Business Network Operations Center Escalation List

The purpose of escalations is to ensure that adequate resources are mobilized quickly, tracked appropriately and the issue is resolved in the shortest possible time. To that end, the Charter Business NOC performs internal and external escalations within Charter and provides this escalation list to our customers and service partners for the purpose of escalations within the CB NOC.

| Escalation Level | Charter Business NOC: 1-866-603-3199 | Contact Numbers |
|----------------------------------|--|--|
| | Name/Title/Email | |
| 1 st Level 1 Hour | Charter Business NOC Lead Engineer | 1-866-603-3199 |
| 2 nd Level 2 Hours | Charter Business NOC Supervisor | 1-866-603-3199 |
| 3 rd Level 3 Hours | Charter Business NOC Manager Tony Barcellona tbarcellona@chartercom.com | 502-420-7467 office 502-442-4494 cell |
| 4 th Level 4 Hours | Charter Business NOC Director Dan Davidson daniel.davidson@chartercom.com | 502-420-7419 office 502-619-2799 cell |
| 5 th Level 6 Hours | VP Network Ops & Engineer Services Keith Hayes keith.hayes@chartercom.com | 303-323-1347 office 770-378-3595 cell |

(a) TROUBLE REPORTING PROCEDURES

To report suspected problems on the Recipient Fiber please call our CBNOC: Fiber Support One Call at (866) 603-3199.

We will request the following information related to the problem you are reporting:

1. Company name
2. Your name
3. Your phone number
4. Customer Contact name and number
5. Customer account number
6. Customer trouble ticket number
7. Fiber origination and termination locations
8. Time of trouble onset
9. Nature of observed trouble
10. Is Licensed Fiber(s) released to Recipient for testing?

Once our CBNOC representative has received all of this information a Customer Trouble Ticket will be assigned and investigation of your report will begin. Once the status of your report has been determined the CBNOC will contact your designated contact individual at the appropriate number to discuss the findings. In any circumstance the initial response to Recipient will be within two (2) hours of the completion of the trouble reporting procedure.

(b) Provider will, as necessary, arrange for unescorted access for Recipient to all sites of the System, subject to applicable contractual, underlying real property and other third-party limitations and restrictions.

(c) In the event that any Maintenance hereunder requires a traffic roll or reconfiguration involving cable, fiber, electronic equipment, or regeneration or other facilities of the Recipient, then Recipient shall, at Provider's reasonable request, make such personnel of Recipient available as may be necessary in order to accomplish such maintenance, which personnel shall coordinate and cooperate with Provider in performing such maintenance as required of Provider hereunder.

IV. Facilities. Provider shall maintain the System in a manner which will permit Recipient's use, in accordance with the terms and conditions provided under the terms of the Agreement.

V. Cable/Fibers.

(a) Provider shall perform appropriate Preventative Maintenance on the System in accordance with Provider's then current preventative maintenance procedures, which shall not substantially deviate from standard industry practice.

(b) Provider shall have qualified representatives on site any time Provider has reasonable advance knowledge that another person or entity is engaging in construction activities or otherwise digging within five (5) feet of the Cable.

VI. Subcontracting. Provider may subcontract any of the maintenance services hereunder; provided that Provider shall require the subcontractor(s) to perform in accordance with the requirement and procedures set forth herein. The use of any such subcontractor shall not relieve Provider of any of its obligations hereunder.