

NETWORK FACILITY SITES MASTER LICENSE AGREEMENT

This Network Facility Sites Master License Agreement ("Agreement" or "License") is entered into this ____ day of _____, 2015, between and by the City of Los Angeles, California, a municipal corporation ("City"), organized under the laws of the State of California, acting by and through its [**insert applicable Department, Board, or Bureau**] and the [**insert vendor name**], a _____ ("Licensee"). City and Licensee agree to the terms and conditions set forth below in this Agreement. The City and Licensee may individually each be referred to as a "Party" and collectively as the "Parties."

BACKGROUND

Licensee has been selected as a winning vendor in the CityLinkLA RFP and, after obtaining the appropriate legal rights, intends to construct and operate a network to provide broadband communications services in the City of Los Angeles. Licensee's network will need various sites for locating hubs and other facilities.

AGREEMENT

In consideration of the mutual covenants, terms and conditions and remunerations herein provided, and the rights and obligations created hereunder, the Parties agree as follows:

1. **Allowed Use.**

a. Licensee desires rights to occupy and use various sites ("Network Facility Sites") that are located on real property owned by the City or under the City's management or control ("City Property"). This Master Agreement is not an agreement to license any particular Network Facilities Sites. Pursuant to individual Network Facility Site Licenses (defined below in Sec. 2.c.), Licensee shall be granted rights to exclusive use of designated Network Facility Sites and non-exclusive utility, pedestrian, and vehicular access rights to the City Property for the limited purpose of installation, operation, and maintenance of Licensee's structures housing network equipment and facilities ("Network Facility" or "Network Facilities") solely as a part of Licensee's network and for no other uses except with City's prior express written approval. The construction of each Network Facility will be in accordance with the specifications described in the corresponding Network Facility Site License exhibit executed and attached to this Agreement, which may be amended only by mutual written agreement of the parties. In the event any term or condition of a Network Facility Site License exhibit conflicts with this Master Agreement, the term or condition of the Network Facility Site License exhibit will control.

b. Licensee shall have the right to improve the City Property and the Network Facility Site as necessary for the Network Facility as specified in the corresponding Network Facility Site License exhibit. However, other than the installation of the Network Facilities themselves, no buildings, structures or multi-story improvements may be altered or constructed on City Property without prior written approval of the City. Licensee shall be responsible for knowledge of and compliance with all City building and safety, zoning, planning and other requirements.

c. All personal property, including but not limited to furniture, brought onto any City Property by Licensee shall be owned by Licensee, and removed at the Licensee's expense at the

earlier of the expiration or termination of the Network Facility Site License or this Agreement. All improvements that are attached to or made upon the City Property, including but not limited to asphalt, striping, curbs, gutters, drainage facilities, sidewalks, lighting and landscaping at the expiration or termination of this Agreement shall, at the City's option, either become part of the City Property or be removed at the Licensee's expense. Any property left on City Property after the expiration of the License shall be deemed surrendered or subject to removal and associated costs by the City against the Licensee.

d. For any Network Facility Site License exhibit executed and attached to this Agreement, the Licensee agrees that it is fully aware of the condition of the corresponding City Property. City shall have no responsibility for any repairs or improvements to the City Property prior to, during the Term of the Network Facility Site License or as a condition of, Licensee's occupancy or use of the City Property. City makes no representations, covenants or warranties respecting the condition and suitability of the City Property, fitness for a particular use, any other condition of the City Property or regarding the other uses allowed upon said City Property.

e. Upon the earlier of the termination of the applicable Network Facility Site License exhibit or this License, Licensee shall surrender the Network Facility Site(s) and City Property to City in as good condition as when received, ordinary wear and tear excepted, and including any repairs or improvements made by Licensee and accepted by the City.

2. Identification of Sites for Network Facilities.

a. Licensee will identify and propose to the City the locations of various City Properties where it desires to install Network Facilities. Licensee and City will work together to identify and agree upon specific Network Facility Sites within the City Properties. These may include sites which City, as a part of preparing the CityLinkLA Request for Proposals ("RFP"), has identified potential sites where the City may agree to Network Facilities of a certain size and type being installed, or other City Properties not identified in the RFP. Licensee will accept any and all Network Facility Sites, however identified, "as is" and with all faults.

b. If Licensee needs to enter any City Property to perform non-invasive surveys, tests and other engineering procedures to determine whether Licensee's use as a potential Network Facility Site will be compatible with Licensee's engineering specifications, system design, and operations, City and Licensee must enter into a separate Temporary Access License for that purpose. Nothing in this Agreement requires the City to agree to allow Licensee to use any particular City Property as an actual Network Facility Site.

c. If Licensee and City agree upon the specific terms of use of a specific Network Facility Site on a specific City Property, the parties will complete and sign the form attached as **Exhibit A** to this Agreement. ("Network Facility Site License") for each Network Facility Site. The Network Facility Site License includes a site map of the Network Facility Site, a description of Network Facilities to be installed, the fees to be paid for use of the Network Facility Site and any other special terms or requirements applicable to the Network Facility Site, including any maintenance and access conditions. City will have the right to enter upon and inspect any Network Facility Site for fire, safety, emergency or any other reasonable purposes, in which case City will give Licensee written notice as soon as practicable.

d. Nothing herein constitutes a waiver of the City's regulatory authority to otherwise enforce any laws applicable to the Network Facility Sites. Licensee's occupancy and use of each Network Facility Site will be subject to this Agreement, including the terms set forth in the applicable Network Facility Site License.

3. Licensee Rights and Obligations.

a. City grants to Licensee the right to access, enter, occupy and use each Network Facility Site at any time for the purpose of constructing, operating and maintaining each Network Facility, subject to any site specific provisions in the applicable Network Facility Site License exhibit . No third party collocation or use of the Network Facility Site shall be allowed except with the prior written approval of City. City grants these rights solely to the extent it has such rights, title and interest in to the Network Facility Site, without any express or implied warranties.

b. Licensee will obtain all applicable licenses, permits, land use approvals and other authorizations required to construct, operate and maintain the Network Facility and offer Licensee's services.

c. The construction of each Network Facility will be based on the specifications described in the applicable Network Facility Site License exhibit, subject to any modifications that may be required by land use approvals and other legal requirements.

d. Licensee will construct the Network Facility in accordance with all applicable laws and permitting requirements and conditions imposed by this Agreement, including applicable Network Facility Site License exhibits. Licensee will use and maintain the Network Facility Site in accordance with all applicable laws and permit requirements, including all environmental and hazardous material regulations. Licensee will keep the site secure and reasonably free from debris, litter and graffiti on an ongoing basis. Licensee shall, at its sole cost and expense, keep the Network Facility Site free of noxious weeds and trash or other debris, and in good and proper condition in compliance with all applicable laws and regulations concerning the use of Network Facility Site. Licensee shall also not cause trash or other debris to be placed on the City Property. All Network Facility Sites shall be maintained in good and workable order and good appearance, provided that any noticeable degradation or discoloration of the Network Facility Site in comparison with their original appearance shall be deemed not to constitute "good appearance" for purposes of this section, in accordance with City's written direction which may be provided from time to time, including but not limited to, painting and screening. In addition, Licensee shall make any repairs to the Network Facility Site or City Property caused by or incident to Licensee's use of the Network Facility Site or implementation of this License.

e. This each Network Facility Site License is subject to all existing easements, servitudes, licenses, and rights of way for roads, highways, and telephone, electric power and other public utility lines, and other purposes (including use by approved concessionaires, and by the Department, Board, or Bureau), whether or not of record. City reserves the right to grant additional easements, servitudes, licenses, and rights of way for roads, highways, and telephone, electric power and other public utility lines, and other purposes, as necessary on City Property and may relocate Networks Facilities with reasonable prior notice and at City cost in order to facilitate any such additional easements, in City's reasonable discretion.

f. Licensee shall not assign this Agreement or sublicense all or any portion of any Network Facility Site without the prior express written consent of the City; provided, however, Licensee may assign this License, or sublicense a Network Facility Site, without increasing the number or substantially changing the type of facilities on the Network Facility Site, to any of its subsidiaries or successor legal entities, or to any entity acquiring substantially all of the assets of Licensee. Except as set forth in the preceding sentence, Licensee shall not sublicense all or any portion of the Network Facility Site without the express written consent of the City, which consent may be withheld in the City's sole discretion, Licensee agrees to this notwithstanding sections 1995.260 and 1995.270 of the California Civil Code as they may be amended. Licensee acknowledges that City may refuse to give its consent to any proposed sublicense that involves the collocation of another carrier's facilities unless Licensee and/or the sub-licensee agree to pay increased annual fees in an amount acceptable to City. Any unauthorized assignment or sublicense shall be void and City shall have the right to immediately terminate this License.

4. Effective Date and Term.

a. This Agreement is effective on the last date it has been signed by both parties ("Effective Date"). The Agreement shall remain effective throughout the Network Facility Site License term (as defined in the applicable Network Facility Site License exhibits) last to expire or terminate.

b. Nothing contained herein shall grant Licensee the right to any such holding over after this Agreement or any Network Facility Site License has expired or been terminated. If Licensee nevertheless does remain in possession of all or any part of the Network Facility Sites at the expiration or termination of this License, or has otherwise failed to remove all of its equipment and facilities, without the prior written consent of City to do so, such holding over shall be unlawful and Licensee equipment and property shall be subject to removal within thirty (30) days, and Licensee shall be obligated to pay to City all costs or expenses to remove such equipment and property. During such holdover occupancy, Licensee shall pay as a holdover fee City two hundred percent (200%) of the fees (as defined in the applicable exhibit(s) for such Network Facility Site(s) in effect at the expiration of this Agreement on a monthly basis. Licensee shall be bound by all of the terms, covenants, agreements and conditions of the License, so far as applicable. In addition and not in lieu of the foregoing, Licensee agrees that the inconvenience and other damage to City in the event of Licensee's failure to timely remove Network Facilities is impossible to measure precisely, but agrees that the holdover fee is a reasonable estimate of City's damages.

5. Termination of Agreement or Site .

a. City may terminate this Agreement or an individual Network Facility Site License in the event of a material breach by Licensee and if Licensee fails to cure the breach within 10 days, for any monetary default or 30 days for any non-monetary default after written notice from City.

b. City may also terminate the Site Terms for a Network Facility Site by providing a minimum of one hundred eighty (180) days written notice to Licensee if the City determines that the applicable Network Facility Site is needed for a reasonable and necessary public or park purpose or poses a safety or health hazard to the community, or Licensee does not use the Network Facility Site for the purposes set forth in this Agreement for one hundred eighty (180) days. Following such written notice of a public or park purpose need, City agrees to use its reasonable

best efforts to find an alternative City-owned site that Licensee may use as a replacement. If the City determines that the applicable Network Facility Site poses a public safety or health hazard to the community, then the City may require disuse and/or removal of the Network Facility Site as required to address the public safety or health hazard. Following disuse or removal of the Network Facility Site for public safety or health hazards, the City agrees to use its reasonable best efforts to allow use to resume as soon as possible or find an alternative City-owned site that Licensee may use as a replacement.

d. Upon any termination or expiration of this Agreement, in whole or in relation to a particular Network Facility Site, Licensee will vacate premises and return Site to its original condition in which it was provided to Licensee.

6. Fees and Costs; Possessory Interest Tax; Utilities.

a. Licensee shall be responsible for all its costs associated with construction, operation and maintenance of the Network Facility and Network Facility Site.

b. Licensee agrees to pay to City the fee specified in the applicable Network Facility Site License exhibit for each corresponding Network Facility Site. The fees shall be paid on an annual calendar year basis for each Network Facility Site. Annual fees will be paid prorated for any partial calendar year. The annual fees shall be subject to an annual escalation factor of three percent (3%).

b. Payments shall be delivered by Licensee within forty-five (45) days of the payment due date agreed upon by the parties. All other fees, charges, taxes, or monies required to be paid to City arising from the Agreement shall be payable as they become due, or as otherwise required by this Agreement. Any fee installments unpaid by the due date will bear interest at the rate of one and a half percent (1.5%) per month.

c. City hereby provides notice pursuant to California Revenue and Taxation Code Section 107.6, and Licensee acknowledges that this Agreement may create a possessory interest and Licensee may be subject to property taxes levied on such interest, as described in California Revenue and Taxation Code Section 107. Licensee shall pay real property taxes assessed and levied on the Network Facility Site within 45 days of written notice by City. If the Network Facility Site comprises only a portion of the assessed City Property due to use by other private persons, Licensee shall pay a prorated portion of the taxes billed owing to its use of the Network Facility Site. As used herein, the term "real property taxes" shall not include business license fees, excise taxes, sales taxes, corporation taxes, income taxes, or any tax on personal property which may be imposed or assessed by any city, county, state, or federal government or any special district or agency, and those taxes remain the responsibility of Licensee.

d. Licensee shall pay all costs associated with its utility consumption, or utility expenses associated with its use of the Network Facility Site. At its own expense, Licensee shall arrange for separate meters for any utility services required for its use of the Network Facility Sites.

e. City reserves the right to require security by Licensee for the performance of its obligation under this Agreement.

7. Intentionally Left Blank

8. Limitation of Liability.

a. WITH THE EXCEPTION OF THE INDEMNIFICATION PROVISIONS SET OUT HEREIN, NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES IN CONNECTION WITH THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, DAMAGES IN THE NATURE OF LOSS OF REVENUES OR PROFITS, LOSS OF USE OF FACILITIES OR EQUIPMENT, OR LOST SALES BECAUSE OF DELAY OR INTERRUPTION IN CONSTRUCTION OR OPERATION OF NETWORK FACILITIES. THE PARTIES ACKNOWLEDGE THAT THIS LIMITATION SHALL BE SUBJECT TO AND MAY BE LIMITED BY APPLICABLE STATE LAW.

b. Licensee, as a material part of the consideration to City, hereby assumes all risk of damage to the City Property and its property including, but not limited to, Licensee's improvements or alterations, if any, or illness or injury to persons in, upon or about the City Property, arising from any cause, and Licensee hereby expressly releases City and waives all claims in respect thereof against City, except only such claims as are caused solely by City's gross negligence or willful misconduct. Licensee hereby agrees that City shall not be liable for injury to Licensee's business or any loss of income on the City Property or for damage to the property of Licensee, or injury to or illness or death of Licensee or any Licensee Party or any other person in or about the City Property, whether such damage, illness or injury is caused by fire, electricity, gas, water or rain, or from the breakage, leakage or other defects of sprinklers, wires, landscaping, paving or lighting fixtures, or from any other cause, and whether said damage, illness or injury results from conditions arising upon the City Property, or from other sources or places, and regardless of whether the cause of such damage, illness or injury or the means of repairing the same is inaccessible to Licensee, except only damage, illness or injury caused solely by City's gross negligence or willful misconduct. City shall not be liable for any damages arising from any action, inaction or neglect by any contractor or other Licensee, if any, of the City Property.

9. City Required Provisions.

The City required contract terms and conditions are attached hereto as Exhibit B. In addition to those provisions, Licensee shall be subject to other terms required by applicable City laws and policies.

10. Notice.

All notices related to this Agreement will be in writing and sent to the address set forth in each signature block to this Agreement or to such other address as the receiving party specifies in writing. Notices are effective (a) when delivered in person, (b) upon confirmation of a receipt when transmitted by facsimile transmission or by electronic mail, (c) upon receipt after dispatch by registered or certified mail, postage prepaid, (d) on the next business day if transmitted by

overnight courier (with confirmation of delivery), or (e) three (3) days after the date of mailing, whichever is earlier.

If to City:

If to Licensee:

11. Indemnification of City.

Licensee shall defend, indemnify, assume all responsibility for, and hold the City, and the City's representatives, volunteers, officers, employees and agents, harmless from any and all claims, demands, damages, defense costs or liability of any kind (including attorney's fees and costs), that arise from this Agreement (other than those damages caused by the breach of the Agreement by City or by the gross negligence or willful misconduct of the City's representatives, officers, employees and agents) including, but not limited to, Licensee's failure to pay, if required, prevailing wages on the construction and development of the Network Facility. Licensee shall be solely responsible for determining and effectuating compliance with prevailing wage laws, and the City makes no representation as to the applicability or non-applicability of any of such laws to the development and construction of the Network Facility or any part thereof. Licensee hereby expressly acknowledges and agrees that the City has not previously affirmatively represented to Licensee or its contractor(s), in writing or otherwise, in a call for bids or otherwise, that the development or construction of the Network Facility is not a "public work," as defined in Section 1720 of the Labor Code.

12. Compliance with Laws/Hazardous Materials.

a. Licensee, at Licensee's expense, shall comply with and cause all of Licensee's to comply with all applicable laws, ordinances, rules and regulations of governmental authorities applicable to the City Property or the use or occupancy thereof, including, without limitation, the law commonly known as the Americans With Disabilities Act and California Code of Regulations Title 8, Sections 3281 through 3299 (collectively, "Laws").

b. Licensee shall not cause or permit any Hazardous Materials, as defined below, to be brought upon, kept, used, discharged, deposited or leaked in or about the City Property by Licensee or by anyone in the City Property, except to the extent such Hazardous Materials are cleaning supplies customarily kept or used by typical hotel resorts, golf courses and parking users and are kept and used in accordance with all applicable laws. If Licensee breaches the obligations stated in the preceding sentence, or if the presence of any Hazardous Material on the City Property caused or suffered or permitted by Licensee or any of Licensee's Parking Users or by anyone on the City Property results in contamination of the City Property or any adjacent property, or if contamination of the City Property by any Hazardous Material otherwise occurs for which Licensee is legally liable, then Licensee shall indemnify, defend and hold City and City Indemnitees harmless from any and all claims, damages, costs, liabilities and expenses (including, without limitation, diminution in value or use of the City Property, attorneys' fees, consultant fees and expert fees) which arise during

or after the Term as a result of such contamination. This indemnification shall include, without limitation, costs incurred in connection with any investigation of site conditions or any clean-up, remedial, removal or restoration work on or under the City Property. "Hazardous Material" "Hazardous Substances" means, without limitation: (a) those substances included within the definitions of "hazardous substances," "hazardous materials," "toxic substances," or "solid waste" in CERCLA, RCRA, and the Hazardous Materials Transportation Act, 49 U.S.C. §1801 et seq., and in the regulations promulgated pursuant to those laws; (b) those substances defined as "hazardous wastes" in Section 25117 of the California Health & Safety Code, or as "hazardous substances" in Section 25316 of the California Health & Safety Code, and in the regulations promulgated pursuant to those laws; (c) those substances listed in the United States Department of Transportation Table (49 C.F.R. 172.101 and amendments thereto) or by the Environmental Protection Agency (or any successor agency) as hazardous substances (40 C.F.R. part 302 and amendments thereto); (d) any material, waste or substance which is (i) petroleum, (ii) asbestos, (iii) polychlorinated biphenyls, (iv) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. 1251 et seq. (33 U.S.C. 1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. 1317); (v) flammable explosives, or (vi) radioactive materials; and (e) such other substances, materials and wastes which are or become regulated under applicable local, state or federal law, or which are classified as hazardous or toxic under federal, state, or local laws

13. Default.

Each of the following shall constitute a default ("Event of Default") under this Lease:

- a. if Licensee fails to make any payment required by the provisions of this Agreement, when due;
- b. if Licensee fails within thirty (30) days after written notice to correct any breach or default of the other covenants, terms, or conditions of this Agreement;
- c. if Licensee abandons or surrenders the City Property before the end of the Term; or
- d. should Licensee make an assignment for the benefit of creditors, or be adjudicated bankrupt, or should Licensee institute any proceedings under any state or federal bankruptcy act in which Licensee seeks to be adjudicated bankrupt, or seeks to be discharged of debts, or should any voluntary proceeding be filed against Licensee under the bankruptcy laws and Licensee consents to it and acquiesces by pleading or default.

14. Remedies of City on Default by Licensee.

In the event of a default by Licensee under any of the terms of this Lease, City may, at its option, have the right to (a) terminate this Lease upon providing fifteen (15) days' notice to Licensee of City's intention to terminate; or (b) re-enter and repossess the City Property by summary proceedings, ejectment or any other legal action City determines to be necessary or desirable and the right to remove all persons and property therefrom. This provision is not a limitation of other legal or equitable remedies available to City, and City shall have all other rights and remedies available in equity or at law. Licensee shall surrender the City Property in a clean, and well maintained condition, and any failure to surrender the City Property shall be deemed and

agreed by the parties to constitute a willful, knowing and obstinate refusal to comply with the provisions of this Lease. Termination under this Section shall not relieve Licensee from the payment of any sum then due to City or from any claim for damages previously accrued against Licensee.

15. General Provisions.

If any portion of this Agreement is ruled invalid, void or illegal by an order of the court, the remainder of the Agreement shall remain in full force and effect.

b. The parties agree the Background section of this Agreement is for information purposes only and has no legal effect.

c. The City Property has not been inspected by a Certified Access Specialist (“CASp”) pursuant to California Civil Code § 1938.

d. This Agreement, or an abstract or memorandum of this Agreement, may be recorded by either party, and neither party shall refuse to execute such an abstract or memorandum except upon good cause.

e. Should any suit be brought by either party against the other for the enforcement of any rights of such party against the other pursuant to the provisions of this Agreement, or by reason of any alleged breach of any of the provisions of this Agreement or arising from this Agreement, then and in such event the successful party in such action shall be entitled to receive from the unsuccessful party all costs incurred in connection with such suit, including a reasonable allowance for attorneys’ fees incurred by the successful party.

16. Interference.

a. Licensee shall operate the Network Facility Site in a manner that will not interfere with other licensees or lessees of pre-existing use of City Property. And Licensee will use its best efforts to not interfere with the prospective use by the City’s or its other licensee or lessees use of City Property. Licensee will not interfere with the communications systems operated by City, regardless of when such systems are installed or the systems’ uses commence.

b. In the event that the Network Facility Site causes interference with City’s public safety communications equipment, and such interference is not cured within ten (10) business days after Licensee’s receipt of notice from City, City may require relocation of the interfering Network Facility Site or a redesign of such facilities to reduce or eliminate interference. Any interference in violation of this Section 16 shall be deemed a material breach by Licensee, who shall, upon written notice from the City, be responsible for terminating said interference. In the event any such interference does not cease promptly, the Parties acknowledge that continuing interference may cause irreparable injury and, therefore, the City shall have the right, in addition to any other rights that it may have at law or in equity, to bring a court action to enjoin such interference or to terminate this License immediately upon written notice. The Parties agree to cooperate in developing solutions to interference problems, including determining which design changes may be necessary to end the interference. The Parties agree to cooperate in good faith to eliminate or minimize any potential for interference by City’s non-public safety communications equipment that City desires to install after installation of the Network Facility

Site. If relocation or redesign is deemed necessary by City due to interference with City's public safety communications caused by Licensee, Licensee shall redesign or relocate any or all of its equipment to alternate locations acceptable to City, at Licensee's sole cost and expense, or if such redesign or relocation is not acceptable to Licensee, Licensee may terminate this License.

c. Except in emergencies as agreed to by City, Licensee shall not perform or have performed any tests, construction, installation, operation, maintenance or repair activities on the City Property which will likely interfere with City's quiet enjoyment of the City Property not licensed to Licensee. All operations by Licensee shall be in compliance with all Federal Communications Commission ("FCC") requirements, as well as other applicable Federal, State and local laws, rules and regulations.

City:

The City of Los Angeles, a California
Municipal Corporation

Licensee:

By:

By:

Its:

[OTHER REQUIRED SIGNATURE
BLOCKS]

EXHIBIT A

NETWORK FACILITY LICENSE

1. Description of the City Property

(attach legal description of City Property)

2. Description of the Network Facility Site Location

(describe location and size (or attach legal description) and attach map depicting Site Location).

3. Description of the Network Facilities to be Installed

(describe facilities, including drawings)

4. License Fees:

[TO BE INSERTED]

5. Other terms or requirements applicable to Network Facility Site.

[Drafting Note: Parties may discuss addition of site specific provisions, including but not limited to:

- Access ;
- Compatibility and representations;
- Easements;
- Site specific requirements for design conditions and maintenance;
- Security;
- Term

LICENSEE:
(Authorized Signature)
(Name)
(Title)
Address:
Date:

CITY:
(Authorized Signature)
(Name)
(Title)
Address:
Date:

EXHIBIT B
CITY REQUIRED PROVISIONS

[to be inserted]

DRAFT