

FIBER LICENSE AGREEMENT BETWEEN CITY OF SAN LEANDRO AND
CONTERRA WIRELESS BROADBAND, LLC FOR ACCESS TO CITY DARK
FIBER NETWORK BETWEEN CITY OF SAN LEANDRO CITY HALL AND
SAN LEANDRO MAIN LIBRARY

THIS FIBER LICENSE AGREEMENT (“Agreement”), effective as of _____, 2016 (the “Effective Date”), is by and between the City of San Leandro, a California municipal corporation organized as a charter city (“City”), and Conterra Wireless Broadband, LLC, a North Carolina Limited Liability Company (“Conterra” and together, the “Parties”).

WHEREAS, the City designed, built and owns dark fiber strands in City owned conduit running between San Leandro City Hall and the San Leandro Main Library and the San Leandro Main Library and the intersection of Harrison Street and Estudillo Avenue (together the “City Fibers”); and

WHEREAS, the San Leandro Unified School District, by and through Conterra, would like to access and use the City Fibers for data service and connectivity between the School District’s San Leandro City Hall offices and its offices on Juniper Street, subject to the terms and conditions set forth in this Agreement; and

WHEREAS, the City is willing to license access for such use, as long as Conterra will pay fair market value for licensed access to the City Fibers -- outside of and not a part of the Lit San Leandro Fiber System, which was developed by the City as a public private partnership between the City and San Leandro Dark Fiber (the “Lit San Leandro Fiber System”). The Parties acknowledge and agree that the City has a separate fiber license agreement with the San Leandro Unified School District to access four dark fiber strands to connect the School District’s schools.

NOW THEREFORE, in consideration of the mutual promises set forth below, the Parties agree as follows:

1. License Price and Rights

a. The City grants to Conterra a license for exclusive access to and use of specific fibers (the “Licensed Fiber”) from the City’s Fibers as follows:

- The Licensed Fiber is 2 dark fiber strands within and from the City Fibers in a 72-strand bundle (“Fiber Bundle A”), which are installed within City conduit running from the San Leandro City Hall Main Entrance to the San Leandro Main Library and, in addition, 2 dark fiber strands within and from City Fibers in a separate 72-strand bundle (“Fiber Bundle B”), running from the San Leandro Main Library to a splice box located at the intersection of Harrison Street and Estudillo Avenue.

- The City of San Leandro assigns fiber strands 13/14 in both Fiber Bundle A and Fiber Bundle B to Conterra.

b. Conterra shall take the following steps or actions to connect to the City Fibers:

- At the San Leandro Main Library, Conterra shall use a fiber jumper to connect the assigned City Fibers in Fiber Bundle A to the assigned City Fibers in Fiber Bundle B, thereby creating a continuous connection from the San Leandro City Hall Main Entrance to the splice box at Harrison Street & Estudillo Avenue.

- Lit San Leandro shall splice the assigned City Fibers in Fiber Bundle B at the Harrison Street & Estudillo Avenue splice box to connect it to the 288 strand Lit San Leandro Fiber System.

Sections 1.a and 1.b. are more thoroughly depicted in Exhibit A, which is attached hereto and made a part hereof.

c. Payment for access and use of the Licensed Fiber shall be \$0.03 per linear foot per strand per month for a total of \$1,764.00 (2,450 feet of total ground level distance from Estudillo/Harrison Streets to the main entrance at San Leandro City Hall) paid by Conterra to the City per year for the term of this Agreement. The City reserves the right to increase the per linear foot per strand per month license payment upon 30 days' written notice, although the per linear foot per strand payment price shall at a minimum increase annually and automatically by the San Francisco Oakland Bay Area Consumer Price Index (CPI), unless the CPI is zero or negative for a particular year, in which case the payment shall remain the same as the previous year. City shall invoice Conterra annually.

d. This Agreement is for the use of the Licensed Fiber only, subject to the terms and conditions herein. As between the parties, the Licensed Fiber will remain the sole and exclusive property of the City, and nothing contained herein shall be interpreted to give or convey to Conterra any property right, title or interest in such Licensed Fiber, which will at all times be and remain City's personal property.

2. Further Assurances

a. The City will provide at Conterra's request written evidence, in a form and substance satisfactory to Conterra, that City has title to the Licensed Fiber and City Fibers, clear of all liens and encumbrances, including but not limited to any mortgage encumbrances and any option agreements and rights of first refusal. City provides written assurance by the City Manager's signature hereto that the City has already reserved two of the strands owned, managed, and maintained by the City for Conterra's use pending approval by the City Council.

3. Additional Terms.

a. Costs. The Parties shall be solely responsible for their own costs to prepare and review this Agreement, including but not limited to attorneys' and any consultants' or experts' fees, costs or expenses.

b. Environmental Matters. Each Party shall be responsible for its own environmental analysis of the approval of the Agreement, including any fees, costs or expenses related to any remediation.

c. Indemnification

i. General Indemnity. Conterra agrees to indemnify and hold City harmless against all risks, claims, expenses, liabilities and costs associated with strict liability, negligence or willful misconduct of Conterra, including but not limited to work related to the installation, splicing, operations, and data sent or exchanged on the Licensed Fiber. This indemnity includes any claims, actions, or costs related to defense of any copyright, trademark, or software infringement that may occur due to or over the Licensed Fiber.

ii. Environmental Indemnity. Conterra agrees to indemnify and hold City harmless for all environmental contamination or damage that may be caused by Conterra's construction to connect to the Licensed Fiber.

d. Insurance. Prior to commencing any activities under this Agreement, Conterra shall procure, or cause to be procured, and keep in full force and effect during the life of this Agreement, at Conterra's sole cost and expense, all of the following types of insurance:

<u>Type of Insurance Policy</u>	<u>Limits</u>
Commercial general liability policy, combined single limit	\$2,000,000
Comprehensive automobile liability coverage	\$2,000,000
Worker's compensation	Statutory

For purposes of this Agreement, the foregoing insurance shall be referred to herein as "Required Insurance."

(i) Qualifications of Insurers and Deductibles. All of the Required Insurance shall be issued by an admitted insurer or insurers as defined by the California Insurance Code with a Bests' rating of no less than A:VII. The deductibles under each of the policies issued for the Required Insurance shall be reasonable in amount and in no event shall exceed the sum of Ten Thousand Dollars (\$10,000.00) under each such policy.

(ii) Additional Insured; Form of Endorsement. All policies for Required Insurance will be required to name City and its respective elected officials, officers, employees, agents and representatives as additional insureds by way of an endorsement.

Prior to the effective date of this Agreement, Conterra shall furnish City with certificates of insurance in a form acceptable to City evidencing the Required Insurance coverage and duly executed endorsements evidencing such additional insured status.

(iii) Cancellation Provisions. All of the Required Insurance shall provide (by way of endorsement or otherwise) that no cancellation, expiration, reduction or modification in such Required Insurance can occur or be implemented without first notifying City with at least thirty (30) days prior written notice.

(iv) Primary Insurance Endorsement. All Required Insurance shall contain an endorsement providing that such insurance is primary and that any insurance maintained by City is noncontributory with the Required Insurance. All Required Insurance shall also contain language to the effect that any loss shall be payable notwithstanding any act or negligence of City that might otherwise result in the forfeiture of the Required Insurance.

(v) Waiver of Subrogation. All Required Insurance shall also contain an endorsement providing for a waiver of subrogation against City by Conterra.

(vi) Worker's Compensation. This policy or policies shall cover the entire liability of Conterra to employees as determined by California law. The policy shall contain a waiver of subrogation against City.

(vii) Comprehensive General Liability. General Liability Insurance must be Two Million Dollars (\$2,000,000.00) combined single limit per event and annual aggregate for bodily injury and property damage liability arising out of all activities performed under this Agreement.

e. Assignees. Conterra is prohibited from assigning its interest in this Agreement to another entity without the express written consent of City.

f. Term. The term of this Agreement shall commence on the date first signed by both parties, and shall continue as long as Conterra or its authorized assignees or successors in interest remain the District's provider, or this Agreement is terminated. Either Party may terminate this Agreement with or without cause upon 60 days' written notice. Upon termination, Conterra shall pay the pro-rated amount of any License fees due and owing to the City.

g. Amendment. This Agreement may not be amended except in a writing executed by both Parties.

h. Miscellaneous. No provisions in this Agreement shall be interpreted against the drafter. This Agreement may be executed in counterparts. Any disputes shall first be subject to a meet and confer between the Parties' authorized representatives, then mediation, and then binding arbitration subject to the rules and regulations of the

American Arbitration Association. Any notice required to be sent under this Agreement shall be sent to the corporate office of Conterra, and to San Leandro City Hall, 835 East 14th Street, San Leandro, California, 94577.

Conterra Wireless Broadband, LLC:
(Date)

By _____
Its _____

City of San Leandro
(Date)

Chris Zapata, City Manager

City Attorney

Richard D. Pio Roda

2643749.1

EXHIBIT A

MAP OF PROJECT

