

FIBER LICENSE AGREEMENT BETWEEN CITY OF SAN LEANDRO AND  
COMMON NETWORKS, INC. FOR ACCESS TO CITY DARK FIBER NETWORK  
FOR WIRELESS NETWORK DATA SERVICE

THIS FIBER LICENSE AGREEMENT (“Agreement”), effective as of \_\_\_\_\_, 2019 (the “Effective Date”), is by and between the City of San Leandro, a California municipal corporation organized as a charter city (“City”), and Common Networks, Inc. (“Common” and together, the “Parties”).

WHEREAS, the City designed, owns dark fiber strands in City owned conduit, which includes fiber strands within 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”) and fiber strands in City-owned cable bundles (together the “City Fibers”); and

WHEREAS, Common would like to access and use the City Fibers for data service and connectivity as part of its network to deliver wireless residential internet service in San Leandro, subject to the terms and conditions set forth in this Agreement; and

WHEREAS, the City is willing to license usage of City Fibers for rates negotiated in a fair market arrangement, acceptable to the Parties.

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

- The Licensed Fiber is two (2) dark fiber strands.
- The City of San Leandro assigns fiber strands XXX in Fiber Bundle X to Common.

Sections 1.a is more thoroughly depicted in Exhibit A, which is attached hereto and made a part hereof, although this agreement sets forth terms for any and all areas where City Fibers are available and for which Common may have business interests in, now and in the future, regardless of the map depicted in Exhibit A, which is for illustrative purposes only.

c. Payment for access and use of the Licensed Fiber shall be \$0.03 per linear foot per strand per month, paid by Common to the City per year for the term of this

Agreement. The License Fee shall increase by three percent (3%) upon the one-year anniversary of the effective date of the License Agreement and annually thereafter.

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 Common 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 Common's request written evidence, in a form and substance satisfactory to Common, 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 (2) of the strands owned, managed, and maintained by the City for Common's use pending approval by the City Council.

b. City use its best efforts to maintain the Licensed Fiber and City Fibers in good condition and repair throughout the term of this Agreement such that the Licensed Fiber maintains a reliability rating of at least 99%. City shall not do anything that will disconnect or sever the Licensed Fiber throughout the term of this Agreement and shall provide Common with reasonable prior notice if it will perform any work or other activities that may reduce the effectiveness of the Licensed Fiber more than five (5%). Such notice shall include the dates and times Common should expect a drop in the effectiveness of the Licensed Fiber and the duration of such drops.

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. Common agrees to indemnify and hold City harmless against all risks, claims, expenses, liabilities and costs associated with strict liability, negligence or willful misconduct of Common, related to its usage of 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. Common agrees to indemnify and hold City harmless for all environmental contamination or damage that may be caused by Common's usage of the Licensed Fiber.

d. Insurance. Prior to commencing any activities under this Agreement, Common shall procure, or cause to be procured, and keep in full force and effect during the life of this Agreement, at Common'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, Common 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 Common.

(vi) Worker's Compensation. This policy or policies shall cover the entire liability of Common 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. Assignment. Company shall have no right to sublicense, assign or transfer this Agreement, or rights arising under this Agreement, except, Company shall have the right to assign this Agreement and all Site Agreements (a) to an entity who controls, is under common control of, or is controlled by Company, or (b) any person or entity that directly or indirectly acquires, through merger, sale of stock, purchase or otherwise, all or substantially all of the assets of Company.

f. Term. The term of this Agreement shall commence on the full execution and delivery of this Agreement and the approval of the City Attorney ("Commencement Date"), and shall continue until either party elects, upon 90 days' written notice, to terminate this Agreement. Upon termination, Common shall pay the pro-rated amount of any License fees due and owing to the City up to the date of termination.

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

h. Service Level Agreement. As the Licensed Fiber is contained within the Lit San Leandro Fiber Network, it shall be governed under the terms of Amendment 1 to the San Leandro Dark Fiber License Agreement with the City of San Leandro, Exhibits 4 and 5, incorporated herein as Exhibit B.

i. 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 Common, and to San Leandro City Hall, 835 East 14<sup>th</sup> Street, San Leandro, California, 94577.

**SIGNATURES ON THE NEXT PAGE**

DRAFT

**COMMON NETWORKS, INC.:**

\_\_\_\_\_

By:\_\_\_\_\_

Print Name:

Title:

**CITY OF SAN LEANDRO:**

\_\_\_\_\_

Jeff Kay, City Manager

Attest

\_\_\_\_\_

Leticia I. Miguel, City Clerk

Approved As To Form:

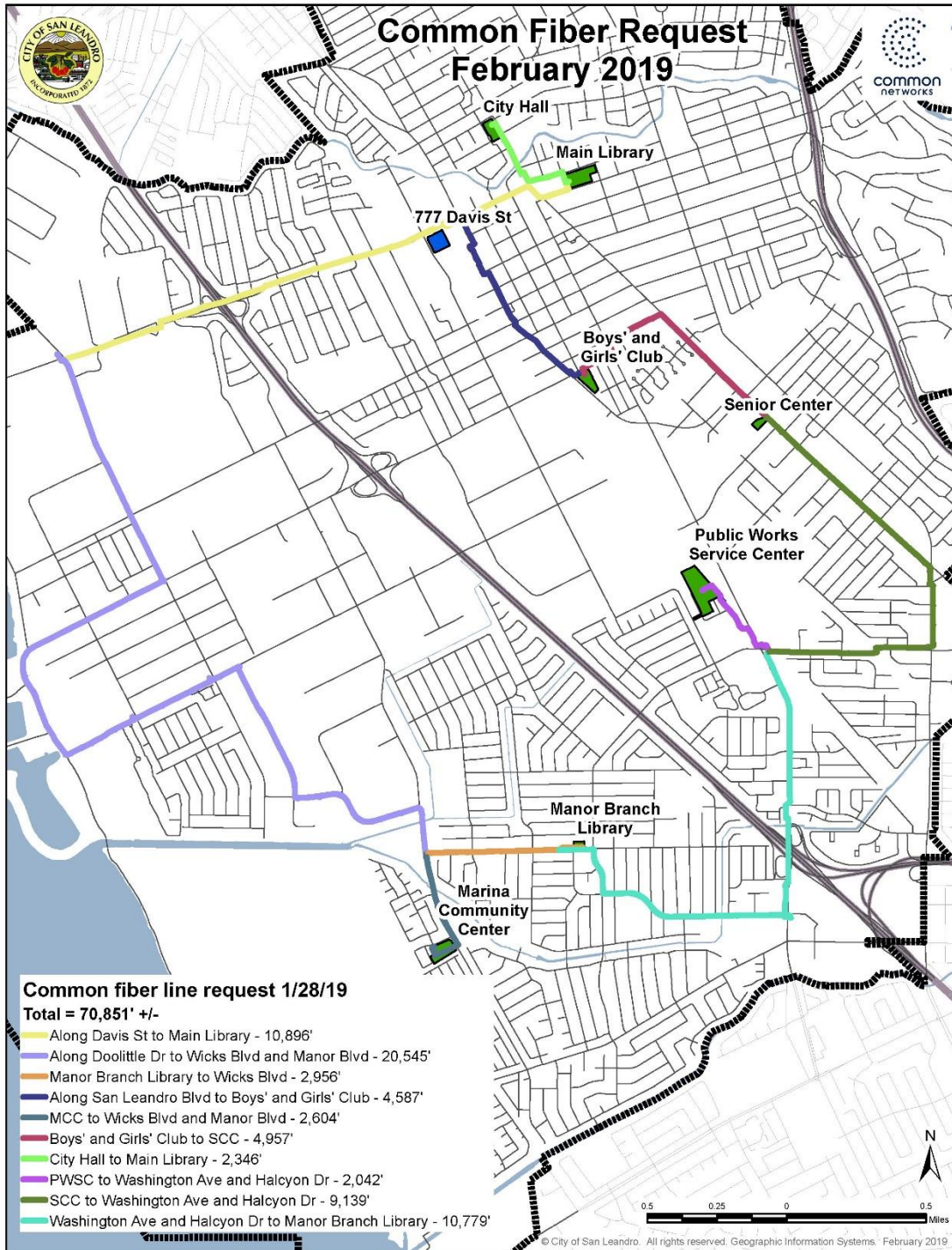
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Richard D. Pio Roda, City Attorney

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# EXHIBIT A

## PROPOSED MAP OF PROJECT



## EXHIBIT B

### FIBER OPTIC RESPONSIBILITY MATRIX

- Main – Conduit or cable that terminates at both ends at a box or manhole within the public right of way.
- Lateral – A conduit or cable that terminates at one end in a box or manhole within the public right of way and the other end serves as a point of connection for an end device (*i.e.* modem, termination panel, etc.)
- SLDF – San Leandro Dark Fiber
- CoSL – City of San Leandro
- PO – Property Owner served by lateral (2)



Facility	Time Period	Ownership	Maintenance /	Operation	USA Marking	Notes
Conduit Mains	Constructed Prior to 2011	CoSL	CoSL	CoSL	CoSL	Available for use by SLDF in conduits as shown
	Constructed by SLDF	CoSL	CoSL	CoSL	CoSL	Requires written consent by City per Section 8.6 An encroachment
	Constructed	CoSL	CoSL	CoSL	CoSL	Not available to SLDF by
	Constructed	CoSL	CoSL	CoSL	CoSL	Not available to SLDF by
Conduit	Constructed	CoSL	CoSL	CoSL	CoSL	Not available to SLDF by
	Constructed	SLDF (4)	SLDF (4)	SLDF (4)	SLDF	Customer agreements state
	Constructed	CoSL	CoSL	CoSL	CoSL	Not available to SLDF by
Fiber	Main Cable	CoSL	CoSL	CoSL	CoSL	
	Main Cable Installed by SLDF	SLDF	SLDF	SLDF	SLDF *	* CoSL will mark if conduit containing cable has been accepted into
	Lateral Cable	CoSL	CoSL	CoSL	CoSL	
	Lateral Cable installed by	SLDF	SLDF	SLDF	SLDF * (3)	* CoSL may mark at its sole discretion (If “City

	Facility	Owner ship	Mainten ance /	Operation	USA Marking	Notes
Fbr Strands	W/n cable installed by CoSL	CoS	CoS	CoSL	*	* See Fiber Cable that contains the strands
	W/n cable installed by SLDF	SLD	SLD	SLDF	*	* See Fiber Cable that contains the strands
	Within Cable installed by SLDF owned (5) by CoSL per	CoS L (1)	SLD F	CoSL	*	* See Fiber Cable that contains the strands + SLDF to make all connections to "City
	Within cable installed by third party	TB D	T B	TBD	TB D	AC Transit BRT for Example Not determined at this time
Other	Boxes Installed on Main Lines *	CoS	CoS	CoSL	CoSL	* Includes boxes where laterals connect to
	Boxes Installed on Lateral Lines	SLDF	SLDF	SLDF (4)	SLDF (4)	
	CoSL Installed Boxes	CoS	CoS	CoSL	N/	
	CoSL Installed Splice Enclosures	CoS	CoS	CoSL	N/	
	SLDF Installed Splice Enclosures	SLD	SLD	SLDF	N/	
	End devices (modems, termination panels, etc.)	See Notes	See Notes	See Notes	See Notes	Responsibility is determined by the fiber strand connected to the device

(1) Revised 7/3/2014(2) Revised 7/10/2014 (3) Revised 7/15/2014(4) Revised 9/18/2014 Comments from Jim Morrison SLDF  
(5) Revised 10/14/2014



**CITY PUBLIC WORKS DEPARTMENT SERVICE LEVEL AGREEMENT  
FOR THE PROJECT INSTALLED IN THE PROPERTY OR EXPANDED PROPERTY**

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

(b) Any damage to the Property caused by SLDF or SLDF-affiliated third parties that results in a loss of service shall be repaired by SLDF, at SLDF's sole cost, within a reasonable time period. Provided that nothing contained herein shall be deemed to release or limit claims that SLDF may have against any third party arising from or related to such damage to facilities.

(c) Any damage to the Property, including conduit or other City infrastructure, by third parties unaffiliated with either Party shall be promptly repaired by the City.

(d) If SLDF or SLDF-affiliated third party damages City Fibers and related facilities or facilities owned by third parties within the Property, SLDF shall immediately notify City and, if the damaged facility is owned or leased by a third party, take reasonable efforts to notify the owner of the damaged facility. If required by City, SLDF shall effect repairs to the damaged facilities within a reasonable time period based on the nature of the damage conditions at the site.

(e) In the event of damages described herein, City may elect to hire a third party contractor to effect repairs to any damaged facility within the Project if, , SLDF notifies the City that it will not or cannot effect repairs within a reasonable time period and, present an invoice to SLDF for all Costs directly incurred for repairs to the damaged facilities, including, but not limited to, staff time costs, traffic control, police services, notification of third parties, and consultant and contractor costs.

(f) For the purposes of these requirements, a “reasonable time period” shall mean that SL Dark Fiber must mobilize personnel to respond to the repair site within four (4) hours after the time of becoming aware of an event requiring Emergency Unscheduled Maintenance of Services and work diligently and continuously until any outage is resolved with restoration of service. This provision shall not be applied if SL Dark Fiber notifies the City of a Force Majeure event.(g) Within thirty (30) days of the First Amendments execution date, SLDF shall provide to City for its review and approval a Protocol Document and Escalation Matrix, outlining procedures to be followed in the event of service loss.

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