

GENERAL TERMS AND CONDITIONS

(Culver Connect Network and Other City-Owned Facilities)

City Contract No. _____

These **GENERAL TERMS AND CONDITIONS** (these "**GTCs**") are entered into this ____ day of _____, _____ ("**Effective Date**") by and between _____, a _____ ("**User**") and the CITY OF CULVER CITY, a charter city of the State of California (the "**City**") with reference to the facts set forth below. User and the City are also referred to herein individually as a "**Party**" and collectively as the "**Parties**".

RECITALS

A. The City is building on and expanding an existing fiber network of the City by installing fiber network infrastructure and ancillary facilities in Culver City in order to, among other purposes, encourage the growth of broadband services and facilitate economic and technological development in Culver City. The City's fiber network and components and services relating thereto are referred to herein and defined below in these GTCs as the Culver Connect Network.

B. The City also owns certain other physical assets in Culver City, such as streetlight poles, that are not a component of the Culver Connect Network and that the City desires to make available for use in order to meet the community's demand for increased communications services and to facilitate economic and technological development in Culver City. These other City owned assets are referred to herein and defined below in these GTCs as the Other City-Owned Facilities.

C. The purpose of these GTCs is to establish terms and conditions under which the City may issue to User one or more Orders and execute one or more Addendums for User's use of a Facility and/or a Service, all as defined below in these GTCs.

D. These GTCs shall be incorporated into each Order and each Addendum, as defined below in these GTCs, and there shall be no grant to User of access to the Culver Connect Network, the Other City-Owned Facilities, or Services, or any portion thereof, until these GTCs and the applicable Order and Addendum, each as defined in these GTCs, are fully executed by the Parties.

NOW THEREFORE, in consideration of the foregoing Recitals, the mutual promises, covenants and agreements set forth in these GTCs, and other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, the User and the City hereby agree as follows:

1. DEFINITIONS.

Capitalized terms used herein but not otherwise defined will have the meaning ascribed to them in this Section. The definitions apply equally to singular and plural uses of the defined term.

Agreement. The term Agreement means and includes collectively all of the following: (1) these GTCs, (2) the Addendum duly executed by the Parties, but solely with respect to the Facilities or Services covered by that Addendum; (3) the Order duly executed by the Parties, but solely with respect to the Facilities or Services covered by that Order; (4) all exhibits incorporated by reference into any of the above; and (5) all amendments to any of the above duly executed by the Parties.

Activation Date. The date on which the Facilities or Services first become available for User's use under the applicable Order, as determined in accordance with the process set forth in the Order or applicable Addendum.

Addendum (singular) or Addenda (plural). An addendum to these GTCs executed by the Parties that describes the Facility(ies) or Service(s) available to be ordered by User pursuant to these GTCs and that includes additional terms and conditions applicable specifically to such Facility(ies) or Service(s). The term Addendum herein refers to either a Facility Addendum or a Service Addendum, as defined below in this Section. Each Addendum duly executed by the Parties will be valid and applicable for all additional Orders duly executed by the Parties thereafter for the same type of Facility or Service, unless and until the City issues a new or revised Addendum for the applicable Facility or Service, as described in Section 2.5 of these GTCs. Each Addendum incorporates by reference these GTCs as if the GTCs are fully set forth therein.

Applicable Standards. All applicable rules and regulations and engineering and safety standards governing the access to network facilities or services and the performance of all work in public and private rights-of-way, and includes the most current versions of National Electric Safety Code ("**NESC**"); the National Electrical Code ("**NEC**"); the regulations of the Federal Communications Commission ("**FCC**"); the Occupational Safety and Health Administration ("**OSHA**"); provisions of the City's, County of Los Angeles', or State of California's building, construction, zoning, and safety codes; and rules and regulations relating to permits for occupation of public rights-of-way; each of which is incorporated by reference into the Agreement, and/or other reasonable safety, engineering, architectural or aesthetic requirements of the City, state or federal authority having jurisdiction over such facilities or services.

Authorizations. The permissions a Party must have to perform its obligations under the Agreement, which may include franchises; licenses; permits; zoning approvals; variances; exemptions; grants of authority to use public rights-of-way or facilities; agreements to make attachments to poles, ducts, conduits, towers, buildings, rooftops, manholes, and the like; and any other approval of a governmental authority or third persons with respect to (i) the construction, installation, repair, maintenance, operation or use of tangible or intangible property, as the case may be, or (ii) any requirement by a governmental authority for the engagement in a business or enterprise.

Change of Law. As such term is defined in Section 17.16 of these GTCs.

City Representatives. The City and its elected and appointed officers, agents, officials, employees, representatives, consultants and contractors.

Claims. Any and all suits, claims, actions, processes, procedures, or proceedings in which rights or obligations under the Agreement are asserted by or against the City or any City Representatives.

Culver Connect Network. The Culver Connect Network consists of a backbone of three interconnected geographical rings of fiber optic cable (dark fiber strands) within Culver City which may be available for use by other parties in furtherance of the purposes of the Culver Connect Network. The Culver Connect Network also consists of additional fiber and ancillary facilities, such as associated conduit, troughing, pedestals, splice enclosures, patch panels, and rack space in network hubs, that are owned, controlled or operated by the City, as well as any and all additional facilities and services approved (and as may be approved) by the City as a component of the Culver Connect Network in furtherance of the purposes of the Culver Connect Network.

Default. As the context requires, a term encompassing either a User Default or a City Default, as defined in Section 5 of these GTCs.

Default Notice. A written notice delivered by a Party in accordance with the notice requirements of Section 17.10 of these GTCs alleging a breach of the term(s) of the Agreement that, if not cured within the time periods provided by Section 5 of these GTCs, will constitute a Default.

Disclosing Party. As such term is defined in Section 9.1 of these GTCs.

Due Date. The date that is thirty (30) calendar days after the City's delivery of an invoice to User, unless the time period is otherwise stated differently in an applicable Addendum or Order.

Early Termination Charge. A charge described in Section 3.1(d) of these GTCs that the City may require User to pay if User terminates an Order for convenience pursuant to Section 3.1(d).

End User. Any person or entity to whom User provides services derived from the Facilities and/or Services or who uses the Facilities and/or Services through User, including without limitation, sublicensees.

Facility (singular) or Facilities (plural). A physical component of either (i) the Culver Connect Network or (ii) the Other City-Owned Facilities to which the City grants User a license pursuant to these GTCs for use pursuant to an applicable Facility Addendum and Order. Examples of Facilities include (i) dark fiber strands as a component of the Culver Connect Network and (ii) streetlight poles as a component of the Other City-Owned Facilities.

Facility Addendum (singular) or Facility Addenda (plural). A type of an Addendum to these GTCs, as defined above, to be executed by the Parties that describes the Facility(ies) available to be ordered by User and that includes additional terms and conditions applicable specifically to such Facility(ies). Examples of Facility Addenda include (i) a Dark Fiber Facility Addendum and (ii) a Light Pole Facility Addendum.

Fee Dispute Notice. A written notice to the City regarding the amount of a disputed Fee, which notice shall include supporting documentation clearly identifying the nature of the alleged dispute.

Fees. All non-recurring and recurring charges stated in an Order, together with Taxes, any other fees, costs, charges, reimbursements and expenses that User is obligated to pay to the City pursuant to the terms of the Agreement, including, if applicable, the Early Termination Charge.

Force Majeure. A cause or event as defined in Section 10 of these GTCs.

Initial Order Term. The initial number of months or years that the City shall provide User a specific Facility or Service as stated in the Order. The Initial Order Term begins on the Activation Date and continues for the number of months or years stated in such Order.

Interest. One and one-half percent (1.5%) simple interest per month, or the maximum rate permissible at law, whichever is lower.

Losses. All costs, expenses, damages, losses, and liabilities, including, without limitation, any and all expenses of investigating and defending against same including, without limitation, attorneys' fees and costs and expert witness fees and costs.

Order (singular) or Orders (plural). An order for the Facility(ies) or Service(s) issued by the City to User pursuant to these GTCs, and executed by both Parties, that describes such Facility(ies) or Service(s) ordered by User and that includes at a minimum (i) the Initial Order Term and (ii) the applicable Fees. Each Order incorporates by reference these GTCs and the applicable Addendum as if the GTCs and the applicable Addendum are fully set forth therein. Each Order executed by the Parties is a distinct and separate contractual arrangement between the Parties and is severable from any other Orders and shall not affect any other Orders executed by the Parties.

Other City-Owned Facilities. Certain other physical assets owned by the City in Culver City, such as streetlight poles and traffic signals, that are not a component of the Culver Connect Network and that the City desires to make available for use in order to meet the community's demand for increased communications services and to facilitate economic and technological development in Culver City.

Order Term. The Initial Order Term combined with each applicable Renewal Order Term of an Order.

Proprietary Information. As such term is defined in Section 9.1 of these GTCs.

Recipient Party. As such term is defined in Section 9.1 of these GTCs.

Renewal Order Term. As stated in an Order, the number of months or years that an Order will automatically renew following the Initial Order Term as stated in the Order or, if not so stated in the Order, then successive automatically-renewing twelve (12) month terms following the Initial Order Term, each subject to either Party's right to terminate such Order by providing written notice of non-renewal at least ninety (90) calendar days before the expiration of the then-current term.

Service (singular) or Services (plural). A service provided by the City to User under these GTCs pursuant to an applicable Service Addendum and Order in connection with the Culver Connect Network. An example of a Service is a data transport service from the Culver Connect Network to a third party data center.

Service Addendum (singular) or Service Addenda (plural). A type of an Addendum to these GTCs, defined above, to be executed by the Parties that describes the Service(s) available to be ordered by User and that includes additional terms and conditions applicable specifically to such Service(s). An example of a Service Addendum is a Transport Service Addendum.

Taxes. All federal, state or local sales, use, excise, value-added, possessory interest, personal property, income or other taxes, levies, assessments, surcharges, duties, fees, state and federal universal service fund surcharges, TRS fund surcharges, other tax-related surcharges, or any other charges, taxes, or fees in connection with the provision, sale or use of a Facility or Service furnished to User, including any charges, taxes, or fees stemming from such use that may be imposed on or collected from the City by governmental or regulatory agencies or others. Taxes include, without limitation, any taxes, special assessments, and government fees, including franchise, license, and permit fees, of any kind whatsoever that may be levied or assessed upon User for conducting business within Culver City, the County of Los Angeles, or the State of California or as a result of User's use of a Facility or Service.

Term. As such term is defined in Section 2.2 of these GTCs.

User Representatives. User's employees, officers, directors, members, shareholders, invitees, agents, representatives, consultants or contractors.

2. SCOPE OF AGREEMENT

2.1 **General.** The City shall provide to User the Facilities and/or Services specified in an Order, in each instance subject to the terms and conditions of the Agreement. The Agreement is non-exclusive, meaning that nothing in the Agreement shall prevent the City or User from entering into similar arrangements with any other person or entity. Nothing in the Agreement shall be construed to obligate either Party to execute any Order or Addendum.

2.2 **Term.** The term of these GTCs shall begin as of the Effective Date, as defined above in the Preamble of these GTCs, and shall continue in effect until the date on which all Orders executed by the Parties pursuant to these GTCs are no longer in effect. These GTCs may also be terminated by either Party in the event no Orders have been executed by the Parties within twelve (12) consecutive months following the Effective Date, upon prior written notice given by either Party to the other Party at any time after such twelve (12) month period.

2.3 **Effect of Termination.** For avoidance of doubt, at such time that all Orders are terminated, the Agreement shall be deemed terminated as well. Upon the termination of each Order, User's right to use the Facilities or Services provided thereunder is terminated and all rights previously granted to User revert to the City in their entirety. Notwithstanding any termination, User remains liable to the City for all Fees accrued and other obligations incurred through the effective date of termination. In addition, all other obligations that expressly survive expiration or termination of the Agreement or any particular Order shall survive such termination.

2.4 **Order of Precedence/Construction.** To the extent reasonably feasible, the provisions of these GTCs and the provisions of any Addendum and Order shall be read together and interpreted so as to avoid any conflict between and among them. In the event of a conflict between the provisions of these GTCs and the provisions of any Addendum and/or Order, precedence will be given to such document in the following order: (a) the Order, but solely with respect to the Facilities or Services covered by that Order; (b) the Addendum, but solely with respect to the Facilities or Services covered by that Addendum; and (c) these GTCs.

2.5 **Addendum.** Each Addendum must be duly executed by each Party in order to be valid and effective under the Agreement and is a condition of User placing an Order for the applicable Facility or Service. The City reserves its rights, in its sole discretion, to revise or add available Addenda or remove previously available Addenda proposed for execution by the Parties at any time for new or prospective Orders, but such new or revised Addenda will only apply prospectively to Orders executed by the Parties after the effective date of such new or revised Addenda and will have no effect on the validity of effective Addenda and Orders previously executed by the Parties.

2.6 Order. Each Order must be duly executed by each Party in order to be valid and effective under the Agreement.

2.7 Limitations. The Agreement does not grant User any right to use any property or receive any service of the City, except for the Facilities or Services specified in an Addendum and Order, or any property or service of any other private or government entity. Title to the Facilities, Services and every portion thereof is vested exclusively in the City. User's right to use the Facilities or receive Services from the City does not include: (a) the right to own, control, maintain, modify, relocate, repair or replace any of the Facilities, Services or any portion thereof, except as otherwise permitted in the applicable Addendum or Order; (b) the right to physically access any of the Facilities, Services or any portion thereof, except as otherwise permitted in the applicable Addendum or Order; (c) the right to encumber or grant a security interest in any of the Facilities, Services or any portion thereof in any manner whatsoever; (d) the right to use any of the Facilities, Services or any portion thereof, except as expressly set forth in the Agreement, and (e) any use of the Facilities or Services, or any portion thereof, which is detrimental to the City's ownership, operation, or financial viability of the Culver Connect Network, the Other City-Owned Facilities, or any other facility, activity or enterprise of the City. Unless otherwise stated in the applicable Addendum or Order, the Agreement does not include the right of User to place any User property on, in or within any City owned or controlled property, including, without limitation, the Culver Connect Network or Other City-Owned Facilities. Upon providing User thirty (30) calendar days' prior notice, the City may remove, without the consent of User and at User's sole cost and expense, any unauthorized property of User located on, in or within any City owned or controlled property, including, without limitation, the Culver Connect Network or the Other City-Owned Facilities, and the City shall have the right, but not the obligation, after such 30 calendar day period, to deem all such property of User remaining on, in or within the City owned or controlled property as abandoned and, in such case, ownership of all such property of User shall transfer automatically to the City without further notice, act or deed. Notwithstanding the foregoing, if User's unauthorized property causes interference with the operations of the City owned or controlled property, the City has the right to remove such property immediately without the obligation of providing User advance notice of such removal.

3. PAYMENT TERMS.

3.1 Fees.

(a) Recurring Fees. Unless otherwise stated in the applicable Addendum or Order, the City will begin billing User for the recurring Fees for a Facility or Service as stated in the applicable Addendum or Order as of the Activation Date. Recurring Fees will be invoiced in advance, on a quarterly basis, unless otherwise stated in the applicable Addendum or Order. User's failure to use, or delay in using, the Facility or Service on or after the Activation Date does not prevent the City from billing User for the Fees applicable to such Facility or Service and User from being liable to the City for all such Fees.

(b) Non-Recurring Fees. Non-recurring Fees, including, but not limited to, installation charges, construction fees, extended demarcation fees, facility entrance fees, and/or expedite fees, will be invoiced to User as of the Parties' execution date of the Order, unless otherwise stated in the applicable Addendum or Order.

(c) Other Fees. The City may invoice for, and User shall be responsible for paying, all other Fees (e.g., fees, costs, charges and expenses) as specified in an applicable Addendum or Order or that are incurred by the City due to acts or omissions of User, End Users or User Representatives, including, without limitation, those Fees that are the direct result of: (1) receipt of inaccurate information from User or User Representatives; (2) reinstallation charges following any suspension of an Order for cause by the City; (3) User's request for the City's assistance with respect to User's equipment or property issues or problems or a Facility or Service interruption or outage if not a result of the Facilities or Services or the negligent acts or omissions of the City and/or the City Representatives; or (4) maintenance or repair of the Services, Facilities or any other property of the City, necessitated by acts or omissions of User, End Users or User Representatives. All such other Fees incurred by the City under the Agreement will be invoiced by the City to User in accordance with the City's standard billing processes and procedures.

(d) Early Termination Charge. Unless otherwise stated in the applicable Addendum or Order, at any time during an Order Term, User has the right to terminate the Order for convenience, provided that: (a) User gives the City at least thirty (30) calendar days' prior written notice of such a termination, and (b) User pays the Early Termination Charge which is equal to the sum of: (1) all unpaid Fees accrued through the effective date of termination of such Order and (2) 100% of the unpaid recurring Fees for the first twelve (12) months of the Initial Order Term, plus seventy five percent (75%) of the unpaid recurring Fees for months 13-24 of the Initial Order Term, plus fifty percent (50%) of the unpaid recurring Fees for any additional remaining months of the Initial Order Term. The Parties each agree that the Early Termination Charge is reasonable and not a penalty. Such Early Termination Charge shall be due and payable by User in accordance with Section 3.2 of these GTCs.

(e) Pricing Adjustments After Initial Order Term. Unless otherwise stated in the applicable Addendum or Order, during any Renewal Order Term, the City shall have the right to modify the recurring Fees, but no more frequently than once in any rolling twelve (12) month period. The City shall provide User sixty (60) calendar days' prior written notice of such a modification of recurring Fees. User will have thirty (30) calendar days from receipt of such notice to terminate the applicable Order. Such termination will be subject to User's payment of all Fees incurred up to and including the date of termination, but will not incur an Early Termination Charge. If User does not terminate the applicable Order within such sixty (60) calendar day period, User will be deemed to have accepted the modified recurring Fees.

3.2 Payment Obligations.

(a) Due Date. User shall pay all undisputed Fees on or before the Due Date (or other date as stated in the applicable Addendum or Order). If payment is not received by the City on, or disputed in good faith by User by, the next business day after the

Due Date (or other date as stated in the applicable Addendum or Order), the balance due shall be subject to an Interest charge until paid in full. All payments due to the City hereunder are due and payable without set off. Partial payment of any invoice will be applied to the accrued Interest amount as determined by the City and then to User's outstanding Fees. The City's acceptance of partial payment of Fees owed by User shall not constitute a waiver by the City of any rights of the City to collect the full balance owed under the Agreement and the applicable Order. User agrees to pay all costs of collection and related fees, including, but not limited to, attorneys' fees incurred by or on behalf of the City to collect past due Fees and the accrued Interest amount owed by User under the Agreement. The remedies provided by this Section are not exclusive and do not preclude the City from pursuing any other or additional remedy in the event that payments become overdue by more than thirty (30) calendar days.

(b) Disputed Invoices. If User in good faith disputes any portion of an invoice, User shall timely pay the undisputed portion of the invoice and submit a Fee Dispute Notice by the Due Date (or other date as stated in the applicable Addendum or Order). User waives the right to dispute any Fees not disputed in accordance with this Section 3.2. The City will respond to each Fee Dispute Notice within thirty (30) calendar days of receiving such Notice. If a dispute continues to exist after the City issues its response, then the Parties shall negotiate in good faith to attempt to resolve the dispute identified in the Fee Dispute Notice within sixty (60) calendar days of the City's receipt of such Notice. In the event that the dispute is resolved against User and User has withheld payment, User shall pay such amounts, together with accrued Interest on such amounts from the Due Date (or other date as stated in the applicable Addendum or Order), on the next invoice cycle after resolution of such dispute. In the event that the dispute is resolved in favor of User and User has made payment, the City shall credit such amounts (without Interest on such amounts) on the next invoice cycle after resolution of such dispute. If, after participating in good faith negotiations to resolve the dispute identified in the Fee Dispute Notice within the sixty (60) calendar day period, the Parties are unable to resolve such dispute, then either Party shall have the right to exercise its rights and remedies available under the Agreement.

3.3 Taxes and Surcharges.

(a) Generally. User shall be responsible for paying, and shall pay when due, all Taxes, which shall all be payable by User in addition to the other Fees described in Section 3.1 above. If User reasonably believes that it is exempt from the payment of any Taxes, User will provide to the City an exemption certificate acceptable to the City evidencing such claimed exemption and shall thereafter provide such exemption certificate to the City no less frequently than annually. Exemption certificates will not be applied retroactively to Taxes billed prior to the date the exemption certificate is received by the City, and the City will not refund any payments made to the City even if User was eligible for an exemption from those Taxes. Notwithstanding the foregoing, User shall ultimately be responsible for paying, and shall pay when due, all such Taxes if the taxing authority refuses to accept the exemption certificate and demands payment. User shall indemnify, protect, defend and hold the City and the City Representatives harmless from any and all Losses suffered by the City or any of the City Representatives, arising out of any Claim for Taxes or related to an exemption claimed by User, including, without limitation, any attachments, fines or penalties, except to the extent such Losses are caused by the established gross negligence or willful misconduct of the City or any of the City Representatives. The foregoing indemnification, protection, defense and hold harmless obligations of User set forth in this Section shall survive the termination or expiration of the Agreement or any particular Order.

(b) City is a public entity. In accordance with California Revenue and Taxation Code Section 107.6(a), the City states that by granting the rights in an Order to and for the benefit of User and by entering into the Agreement, a possessory interest of User subject to property taxes may be created. User or any other party in whom the possessory interest is vested may be subject to the payment of property taxes levied on such interest. User shall be responsible for paying, and shall pay when due, any and all possessory interest tax or other taxes and assessments imposed as a result of an Order and the rights granted by the City to and for the benefit of User as provided in the Agreement.

4. USER RESPONSIBILITIES AND COVENANTS.

4.1 No Restrictions.

(a) Culver Connect Network. If a User executes an Addendum and Order to use the Culver Connect Network, User represents that, with respect its use of the Culver Connect Network, it is not currently party to, and agrees that it will not in the future enter into, any contractual, physical, or legal restriction or other type of restriction that would restrain competition in the use or operation of the Culver Connect Network.

(b) All Facilities and Services. User represents that nothing in the Agreement conflicts with any other legal obligation to which User is bound. Such restrictions may include exclusive easements, exclusive marketing agreements, exclusive wiring agreements, exclusive bulk take-or-pay agreements, and other similar agreements. If at any time any such restriction(s) exists in breach of the Agreement, then: (a) User shall immediately disclose such restriction(s) and provide copies of the relevant documents, if applicable, to the City; and (b) the City shall have the right, in its sole discretion, to exercise all applicable remedies at law or in equity including, without limitation, seeking injunctive relief against User.

4.2 No Third Party Liens or Claims on Facilities. User represents and agrees that it shall keep the Facilities and all portions of the Culver Connect Network and the Other City-Owned Facilities free from any liens, rights or claims of any third parties attributable to any action or inaction of User, End User or User Representatives. If such a lien, right or claim is filed or asserted, User shall indemnify, protect, defend and hold the City and City Representatives harmless from any and all costs and expenses to remove such lien, right or claim including, without limitation, attorneys' fees incurred, and including through any appeal process, except to the extent caused by the established gross negligence or willful misconduct of the City or any of the City Representatives. The foregoing indemnification, protection, defense and hold harmless obligations of User set forth above in this Section 4.2 shall survive the termination or expiration of the Agreement or any particular Order.

4.3 Authority of the Parties. User represents and warrants that the person on behalf of User executing the Agreement, including these GTCs and any Addendum and Order, has been duly authorized, and has full power and authority, to enter into and execute the Agreement on User's behalf. The City represents and warrants that the person on behalf of the City executing the Agreement, including these GTCs and any Addendum and Order, has been duly authorized, and has full power and authority, to enter into and execute the Agreement on the City's behalf.

4.4 Property of City. User agrees for itself, End Users, User Representatives, and User's heirs, executors, administrators, successors, assigns, and personal representatives that each and every Facility, including all components of the Culver Connect Network and the Other City-Owned Facilities, shall be and remain the property of the City and that all such Facilities, or any portion thereof, shall not be accessed, moved, altered, obstructed, disturbed, changed, or removed without the express prior written approval of the City or except as otherwise permitted in the applicable Addendum or Order.

4.5 User Status. User represents and warrants that User has not previously been and is not currently, debarred, suspended, or proposed for debarment, declared ineligible, voluntarily excluded from transactions by any federal or state department or agency, or subject to any inquiry, investigation, or proceeding regarding the foregoing. User represents and warrants that User owns and/or controls, maintains and operates a telecommunications network.

4.6 City Information Requests. User agrees that User shall promptly and comprehensively respond to all City requests for non-confidential and non-proprietary information relating to all matters concerning the Agreement including, but not limited to, information pertaining to User's End Users and User Representatives with respect to matters concerning the Agreement.

4.7 No Pledge of Agreement, Facilities, or Services. User understands, acknowledges, and agrees for itself, End Users, User Representatives, and User's heirs, executors, administrators, successors, assigns, and personal representatives that User is prohibited from pledging the Agreement or any portion thereof (such as an Order) or any of the Facilities or the Services or any portion thereof as an asset for any purpose whatsoever.

4.8 City Rules and Regulations. The Agreement is entered into by the City in the City's proprietary capacity. Nothing in the Agreement shall limit in any way User's obligation to comply with regulatory requirements of the City. To the fullest extent permitted by applicable law now or in the future, the City reserves the right to adopt or issue rules, regulations, orders, or other directives governing users of its public rights-of-way and public facilities or property, including, without limitation, the Culver Connect Network and the Other City-Owned Facilities. Unless otherwise stated in the applicable Addendum or Order, User shall abide by and adhere to, and ensure that User Representatives and End Users abide by and adhere to, such City rules, regulations, orders, or other directives adopted pursuant to applicable law and as may be amended, superseded, or supplemented from time to time.

4.9 Compliance with Applicable Law, Regulations, and Other Authorizations. User's right to use the Facilities and/or Services is contingent upon User having obtained all applicable governmental and other Authorizations, and User shall comply with all applicable law, regulations, orders, and Applicable Standards applicable to its use of the Facilities and/or Services. Upon request by the City, User shall promptly provide written evidence that it is in compliance with this Section 4.9. The City shall have no responsibility or liability whatsoever for regulatory compliance obligations of User or enforcement actions against User relating to User's use of the Facilities and/or Services.

4.10 End Users. The Agreement applies only to those Facilities and Services provided directly to User and not to offerings by User to its End Users. User is solely responsible for all dealings with its End Users including, but not limited to, sales, contracts, orders, activations, customer care, customer premises equipment installation, configuration and support, and IP assignments, associated functions and routing. Unless otherwise stated in the applicable Addendum or Order, User may sublicense the Facilities or resell the Services that it has been provided use or access to under these GTCs subject to the following requirements: (i) the terms and conditions of User's agreement with its End Users will be no less restrictive than the Agreement and will contain provisions commensurate to Sections 6.1 and 6.2 of these GTCs for the benefit of the City; (ii) User will not act or purport to act on behalf of the City or any City Representative; (iii) User will ensure that its End Users act in conformity with the provisions of the Agreement; and (iv) the City shall not have, or shall not be deemed to have, any obligations to any End User. Notwithstanding any authorized sublicensing of Facilities or resale of Services, User remains responsible to the City for the performance of all obligations under the Agreement including the payment of all Fees owed under the Agreement. User shall indemnify, protect, defend and hold the City and the City Representatives harmless from any and all Losses suffered by the City or any of the City Representatives, arising out of Claims asserted by (i) an End User, and (ii) any third party relating to such End User and/or End User's use of the Facilities and/or Services (including without limitation any Claim with respect to any of the services provided by User which may incorporate any of the Facilities or Services provided by the City), except to the extent such Losses are caused by the established gross negligence or willful misconduct of the City or any of the City Representatives. The foregoing indemnification, protection, defense and hold harmless obligations of User set forth in this Section shall survive the termination or expiration of the Agreement or any particular Order.

4.11 No Interference.

User, in the performance and exercise of its rights and obligations under the Agreement, shall not interfere in any manner with the existence and operation of any City facilities or property, private facilities or property, public systems, or rights-of-way. User shall conduct all operations and use the Facilities or Services provided under these GTCs in a manner that does not interfere with, disrupt or interrupt the Facilities or the Services or any portion thereof or the use of such Facilities or Services or any portion thereof by the City or any other user. If such interference should occur, User shall take corrective measures to eliminate such interference. In the event that such interference does not cease promptly, User acknowledges that continuing interference may cause irreparable injury and harm, and therefore, in addition to any other remedies, and without limitation of any other remedy, the City may seek temporary and permanent injunctions against the breach of this Section.

5. DEFAULT AND REMEDIES.

5.1 User Default.

(a) Each of the following shall be a "**User Default**": (1) User fails to pay any undisputed Fees by the Due Date, subject to a cure period of ten (10) calendar days following the City's delivery of a Default Notice; (2) User fails to cure any other breach of any provision of the Agreement, or any portion thereof, within thirty (30) calendar days of the City's delivery of a Default Notice to User; provided, that, if any such breach cannot reasonably be cured within said thirty (30) calendar day period, then User shall not be in Default if User promptly commences cure and thereafter diligently pursues cure to completion and completes the cure within sixty (60) calendar days of receiving the Default Notice (or within such longer period of time permitted by the City in writing in the City's sole discretion); or (3) files or initiates a proceeding, or has a proceeding filed or initiated against it, seeking liquidation, reorganization or other relief (such as the appointment of a trustee, receiver, liquidator, custodian or such other official) under any bankruptcy, insolvency or other similar law and such proceeding is not dismissed within sixty (60) calendar days after User's receipt of notice of such proceeding.

(b) In the event of a User Default, the City may take any of the following actions upon providing written notice to User, but without limiting any other remedies available to the City at law or in equity: (1) suspend User's right to use any or all Facilities and/or Services provided pursuant to the Agreement until User remedies and cures the User Default; (2) terminate any or all Orders then in effect provided pursuant to the Agreement; and/or (3) exercise any remedy or power described in an applicable Addendum. The City may, at its sole option, but without any obligation, and with prior notice to User, cure a non-monetary User Default at User's sole cost and expense at any point prior to any such termination, and shall invoice User for all actual costs and expenses associated with the same, together with reasonable supporting documentation, which amount of such costs and expenses shall be subject to Interest and shall be due and payable by User within thirty (30) calendar days after User's receipt of such invoice.

5.2 City Default.

(a) A "**City Default**" shall be deemed to have occurred if the City fails to cure any breach of any provision of the Agreement, or any portion thereof, within thirty (30) calendar days of User's delivery of a Default Notice to the City; provided, that, if any such breach cannot reasonably be cured within said thirty (30) calendar day period, then the City shall not be in Default if the City promptly commences cure and thereafter diligently pursues cure to completion and completes the cure within sixty (60) calendar days of receiving the Default Notice (or within such longer period of time permitted by User in writing in User's sole discretion).

(b) In the event of a City Default, User may terminate the affected Order upon providing the City thirty (30) calendar days' prior written notice of such termination.

5.3 Rights and Remedies of Parties. Except with respect to rights and remedies expressly declared to be exclusive in the Agreement, or any portion thereof, and subject to the waiver and limitation of certain damages set forth in Section 6 of these GTCs, in the event of a Default, the non-defaulting Party may, at its option, commence any of the following: (i) an action for specific performance of the terms and conditions of the Agreement pertaining to such Default; and/or (ii) an action for damages against the defaulting Party pertaining to such Default. Moreover, except with respect to rights and remedies expressly declared to be exclusive in the Agreement, or any portion thereof, (a) the rights and remedies of the Parties are cumulative, and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same Default or any other Default by the other Party, and (b) the remedies hereunder are in addition to and not a substitute for all other remedies contained in the Agreement or as otherwise available to the City or User at law or in equity.

6. LIMITATION OF CERTAIN LIABILITIES; WAIVER OF CERTAIN DAMAGES; DISCLAIMER OF WARRANTIES.

6.1 Limitation of Certain Liabilities.

(a) The City shall not incur any liability under the Agreement by reason of its review and/or approval of plans or inspection of the Services or the Facilities including any portion of the Culver Connect Network or the Other City-Owned Facilities. The City does not give, and shall not be deemed to have given, any warranty or representation as to the compliance with applicable local, state or federal laws, rules, regulations and requirements or as to the engineering, construction methods or structural integrity or fitness of the Services or the Facilities including any portion of the Culver Connect Network or the Other City-Owned Facilities, or as to the construction methods used in connection with the construction of any such improvement or facilities, solely by reason of its review and/or approval of plans under the Agreement. Moreover, User understands, acknowledges, and agrees that the City shall have no responsibility, and shall not incur any liability whatsoever, under the Agreement or otherwise for services delivered via the Services or the Facilities including any portion of the Culver Connect Network or the Other City-Owned Facilities, or any additional infrastructure necessary to deliver or access such services.

(b) The City shall not incur any liability under the Agreement for damage caused to the Services or the Facilities including any portion of the Culver Connect Network or the Other City-Owned Facilities by independent third parties not under contract with the City that are engaged in construction or other business operations which damage the Services or the Facilities, except to the extent such damage is caused by the established gross negligence or willful misconduct of the City or any of the City Representatives.

6.2 Waiver of Certain Claims.

(a) EXCEPT WITH RESPECT TO ANY CLAIMS MADE UNDER OR PURSUANT TO THE OBLIGATIONS TO INDEMNIFY, PROTECT, DEFEND AND HOLD HARMLESS DESCRIBED IN THE AGREEMENT, NEITHER PARTY, NOR ANY PARTY CLAIMING THROUGH SUCH A PARTY, SHALL HAVE ANY RIGHT TO, OR BE ENTITLED TO, ANY SPECIAL,

INCIDENTAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE COSTS, LIABILITIES, LOSS, EXPENSE, OR DAMAGES, INCLUDING WITHOUT LIMITATION ECONOMIC LOSS, COMMERCIAL LOSS, LOST BUSINESS, LOST PROFITS, LOST REVENUES, INTERRUPTIONS OF SERVICE, OR ANY DELAY, ERROR OR LOSS OF DATA OR INFORMATION, WHETHER FORESEEABLE OR UNFORESEEABLE, AGAINST THE OTHER PARTY, AND NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY, OR ANY PARTY CLAIMING THROUGH SUCH A PARTY, FOR ANY SUCH COSTS, LIABILITIES, LOSS, EXPENSE, OR DAMAGES, UNDER ANY PROVISION OF THE AGREEMENT OR ARISING OUT OF, OR IN CONNECTION WITH, THE AGREEMENT OR ARISING FROM OR RELATED TO ANY DEFAULT OF A PARTY, TERMINATION OF THE AGREEMENT, ADDENDUM, ORDER, OR FACILITY OR SERVICE, PERFORMANCE OR NON-PERFORMANCE OF A PARTY, BREACH OR OTHER ACTION OR INACTION UNDER THE AGREEMENT, THE CONDITION OF A FACILITY, IN THE EVENT THE CITY EXERCISES ITS RIGHT TO SUSPEND OR TERMINATE THE AGREEMENT, OR ANY PORTION THEREOF, OR FOR ANY OTHER REASON, AND WHETHER BASED ON BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER LEGAL THEORY, EVEN IF SUCH PARTY HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH COSTS, LIABILITIES, LOSS, EXPENSE, OR DAMAGES, AND EACH PARTY HEREBY WAIVES ON BEHALF OF ITSELF AND ANY PARTY CLAIMING THROUGH SUCH A PARTY THE RIGHT TO CLAIM THE SAME AGAINST THE OTHER PARTY.

In connection with the foregoing release, User acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

“A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.”

User acknowledges that the releases contained herein include all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. User realizes and acknowledges that it has agreed upon the Agreement in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The releases contained herein shall survive any expiration, cancellation or termination of the Agreement, or any portion thereof.

USER'S INITIALS

(b) Unless otherwise stated in the applicable Addendum or Order, during the Term of these GTCs, User represents and warrants that it shall include a waiver of special, incidental, indirect, consequential, or punitive costs, liabilities, loss, expense, or damages including, without limitation, economic loss, commercial loss, lost business, lost profits, lost revenues, interruptions of service, or any delay, error or loss of data or information, whether foreseeable or unforeseeable, against the City and the City Representatives, as an underlying provider of the Facilities and/or Services, in any and all agreements with its End Users and other third parties relating to the Facilities and/or Services including any portion of the Culver Connect Network or the Other City-Owned Facilities.

6.3. Limitation of Damages. Subject to the provisions of Section 11 of these GTCs, the City's total liability for any claim, demand, or Losses of User arising in any manner out of, or in connection with, the Agreement shall not exceed the total amount of the Fees paid by User to the City under the Agreement, including any applicable Addendum and Order, for the six (6) months prior to the date of the claim or demand.

6.4. Disclaimer. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE CITY STATES ON BEHALF OF ITSELF AND THE CITY REPRESENTATIVES THAT IT DOES NOT MAKE, AND IT EXPRESSLY EXCLUDES AND DISCLAIMS, ANY REPRESENTATIONS, WARRANTIES, COVENANTS OR ASSURANCES OF ANY KIND, WHETHER EXPRESS, IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE, NONINFRINGEMENT, AND PERFORMANCE OR INTEROPERABILITY OF THE SERVICES OR THE FACILITIES WITH ANY USER EQUIPMENT. NO WARRANTY IS MADE OR PASSED ON WITH RESPECT TO ANY SERVICES OR FACILITIES PROVIDED BY OR FURNISHED BY ANY THIRD PARTY. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE CITY DOES NOT WARRANT THAT THE FACILITIES AND/OR SERVICES PROVIDED TO USER HEREUNDER WILL BE UNINTERRUPTED OR ERROR-FREE, THAT THE FACILITIES AND/OR SERVICES WILL MEET USER'S REQUIREMENTS, OR THAT THE FACILITIES AND/OR SERVICES WILL PREVENT UNAUTHORIZED ACCESS BY THIRD PARTIES. ALL FACILITIES AND SERVICES ARE PROVIDED "AS IS" AND "WITH ALL FAULTS" UNLESS OTHERWISE SPECIFIED IN WRITING BY THE CITY.

7. INDEMNIFICATION.

7.1 As a material part of the consideration for the Agreement, and to the maximum extent permitted by law, User shall indemnify, protect, defend and hold the City and the City Representatives harmless, with legal counsel reasonably acceptable to the City, from and against any and all Claims and Losses suffered by the City or any of the City Representatives, due to or arising out of any of the following: (a) the use of the Services or the Facilities including any portion of the Culver Connect Network or the Other City-Owned Facilities by User, End Users, or any of the User Representatives or their authorized parties, (b) the failure to comply with any applicable federal, state or local law, regulation, order or any other authorization by User, End Users or any of the User Representatives or their authorized parties, (c) any Default or breach by User of any terms of the Agreement, or User's obligations,

representations, warranties or covenants set forth in the Agreement, (d) any willful misconduct or negligent act or omission attributable to User, End Users or any of the User Representatives or their authorized parties, (e) injury or death arising out of the use of the Services or the Facilities including any portion of the Culver Connect Network or the Other City-Owned Facilities by User, End User or any of the User Representatives or their authorized parties, (f) interference with the City's use and enjoyment of the Services or the Facilities including any portion of the Culver Connect Network or the Other City-Owned Facilities by User, End Users, or any of the User Representatives or their authorized parties, (g) content accessed through the Facilities and/or Services, (h) any infringement or violation of any third party rights arising from the use of the Facilities and/or Services by User, End Users or any of the User Representatives or their authorized parties, or (i) the fact that any Services or Facilities were or were not made available to any person or group of people or entity by User, End Users, or any of the User Representatives or their authorized parties in violation of applicable law or the Agreement; or (j) User's obligations pursuant to Sections 3.3, 4.2, 4.10, and 9 of these GTCs. User shall be liable to the City and the City Representatives for all such Claims and Losses suffered by the City or any of the City Representatives, except to the extent caused by the established gross negligence or willful misconduct of the City or any of the City Representatives.

7.2 The indemnification, protection, defense and hold harmless obligations of User set forth in the Agreement shall not be limited by any insurance held by or available to User or any of the User Representatives, or by any insurance held by or available to the City or any of the City Representatives.

7.3 The indemnification, protection, defense and hold harmless obligations of User set forth in the Agreement shall survive the termination or expiration of the Agreement or any portion thereof including any particular Order.

7.4 The foregoing indemnification, protection, defense and hold harmless obligations of User set forth above supplements and in no way limits, and is in no way limited by, the scope of indemnification, protection, defense and hold harmless provisions set out elsewhere in the Agreement or in any other agreement to which the City and User are parties.

7.5 The indemnification, protection, defense and hold harmless obligations of User set forth in the Agreement are binding on the successors, assigns, nominees, or heirs of User.

7.6 The City shall promptly notify User of the filing or assertion of any Claims or Losses suffered by the City or any of the City Representatives, as described in the Agreement, and shall cooperate with the defense thereof. User shall not settle or compromise the defense of any such Claims or Losses on behalf of the City or any of the City Representatives, or permit a default judgment to be taken against the City or any of the City Representatives, without the prior written approval of the City. User (and the City if solely within the City's control) shall use reasonable efforts to mitigate the Losses hereunder.

7.7 If the City, in good faith, determines that its interests or the interests of any of the City Representatives are not adequately protected by being provided a defense by User pursuant to the terms hereof, the City, on behalf of itself and/or any of the City Representatives, may, at the City's election, conduct the defense or participate in the defense of any Claims or Losses related in any way to User's indemnification. If the City, on behalf of itself and/or any of the City Representatives, makes the foregoing election to conduct its own defense or obtain independent legal counsel in defense of any such Claims or Losses related to this indemnification, then User shall pay all of the actual costs and expenses related thereto including, without limitation, the City's attorneys' fees and costs, and the amount of any settlement or judgment.

8. **INSURANCE.** Throughout the Term of these GTCs and the Order Term, User shall maintain at its sole cost and expense the insurance policies and policy limits as set forth in Exhibit "A" or as otherwise stated in an applicable Addendum, as such requirements may be modified from time to time by the City, in its sole discretion, upon no less than ninety (90) calendar days prior written notice to User.

9. **NON-DISCLOSURE OF PROPRIETARY INFORMATION.**

9.1 The City and User each agree that if either Party (the "**Disclosing Party**") provides confidential or proprietary, non-public information which includes written documentation ("**Proprietary Information**") to the other Party (the "**Recipient Party**"), such Proprietary Information shall be held in confidence to the extent permitted by applicable law, and the Recipient Party shall use, maintain and store the Proprietary Information with reasonable care as permitted by applicable law in an effort to prevent disclosure to, or the unauthorized use by, any third party. Proprietary Information means information furnished by either Party or, in the case of the City, the City Representatives, or, in the case of User, the User Representatives, including, without limitation, information provided by such Party's attorneys, accountants, consultants, or financial advisors. Proprietary Information shall not include information which (a) at the time of disclosure is fully within the public domain through no Default or breach of the Agreement by either Party; (b) is shown by evidence to have been, and in fact has been, known or independently developed by and is currently in the possession of either Party prior to disclosure hereunder; (c) was or is acquired by either Party from a third party who did not default or breach an obligation of confidentiality by disclosing it to either Party; or (d) is required to be disclosed to comply with any applicable law, levy, order, regulation, or ruling provided, however, the Recipient Party shall give notice to the Disclosing Party of such disclosure of information of the Disclosing Party and, if permissible within applicable law and regulations and not detrimental to the Recipient Party, an opportunity for the Disclosing Party to seek to prevent the disclosure of the Proprietary Information. Both Parties recognize and acknowledge that the City and its departments are subject to the California Public Records Act (California Government Code Section 6250 *et seq.*) and, as such, the City may be obligated under applicable law or regulations to disclose any such Proprietary Information or other information of a Disclosing Party.

9.2 The City shall have the right, in its sole discretion, but not the obligation, to join in any legal proceedings instituted by User relating to the requested disclosure of Proprietary Information or purported Proprietary Information. In any legal proceedings involving such information of User, User shall indemnify, protect, defend and hold the City and the City Representatives harmless from and

against all Claims and Losses that the City may incur due to the legal proceedings and/or due to the City's withholding of such information. Unless such disclosure is otherwise a violation of the terms of Section 9 of these GTCs, the City shall not be liable to User for any Claims or Losses relating to the City's good faith disclosure of any information of User pursuant to a request for same under applicable law or regulations. The foregoing indemnification, protection, defense and hold harmless obligations of User set forth in this Section 9.2 shall survive the termination or expiration of the Agreement or any particular Order.

10. FORCE MAJEURE. Except for the payment of Fees, neither Party shall be liable for any failure or delay of performance hereunder due to a cause or event beyond a Party's reasonable control and not caused or created by such Party, including, without limitation, war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation, unusually severe weather, inability to secure necessary labor, material or tools (without fault of the Party claiming an extension), delays of any contractor, subcontractor or supplier, acts of the other Party, acts or failure to act of any public or governmental agency or entity, or any causes beyond the control or without the fault of the Party claiming an extension of time to perform (each referred to herein as a "**Force Majeure**" event), nor shall any such failure or delay constitute a Default. A Party shall make commercially reasonable efforts to mitigate the effects of a Force Majeure event. The time of delay or inability to perform is limited to the period of a Force Majeure event.

11. ENTERPRISE FUND; FISCAL OBLIGATIONS OF CITY; CITY REVENUE.

11.1 Culver Connect Network Enterprise Fund. The City has established a special fund of the City to function as an enterprise fund for all expenditures of the City related to the Culver Connect Network. During the effectiveness of the Agreement, or any portion thereof, and during the application of any provision herein or therein, all duties and obligations of the City under the Agreement and any liabilities of the City that may arise under the Agreement are payable, if at all, as a special and limited obligation of the City from said Culver Connect Network enterprise fund and are not a legal or equitable pledge, charge, lien, or encumbrance, upon any of the property of the City including, without limitation, the Facilities or any other portion of the Culver Connect Network, or upon any of the income, receipts, or revenues of the City except the funds contained in the said Culver Connect Network enterprise fund.

11.2 Fiscal Obligations of City. The Agreement is subject to the fiscal provisions of the Charter of the City of Culver City and the Culver City Municipal Code. Without limiting the foregoing, in the event the City has not appropriated sufficient funds for payment of any obligation or liability beyond each current fiscal year occurring during the effectiveness of the Agreement, and during the application of any provision herein and therein, the Agreement shall, as to each such fiscal year, only cover those costs incurred up to the conclusion of each current fiscal year. The requirements of the immediately preceding sentence shall also be applicable to any agreements referred to in the Agreement. In addition, the City has the right to terminate the Agreement, in its sole discretion, and without penalty or liability whatsoever, (a) at the end of any fiscal year in the event that funds are not appropriated for the City to perform its obligations hereunder for the following fiscal year, or (b) at any time within a fiscal year in the event that funds are only appropriated for a portion of the fiscal year and funds for the City's obligations are no longer made available. This Section 11.2 takes precedence in the event of a conflict with any other term or condition of the Agreement.

11.3 City's Right to Culver Connect Network and Other City-Owned Facilities Revenue. The City hereby acknowledges and User hereby acknowledges and agrees that the City is the sole owner and entity in control of the Culver Connect Network and the Other City-Owned Facilities. Therefore, except as may be expressly agreed to by the City in writing and except for any such revenue of User arising from User's lawful use of the Services or the Facilities that constitute a component of the Culver Connect Network or the Other City-Owned Facilities in accordance with and subject to the terms and conditions of the Agreement, all use, rental and license fees and other Culver Connect Network and Other City-Owned Facilities revenue generated from the use and operation of the Culver Connect Network, the Other City-Owned Facilities, or any portion thereof, shall be owned by and payable to the City. For clarity, there are no revenue-sharing obligations with respect to either Party arising from the Agreement. User hereby acknowledges and agrees that the Culver Connect Network and the Other City-Owned Facilities revenue is not, and will not be, pledged to User, and that User does not have and will not have any lien on or security interest in the Facilities or the Services, or right of setoff in respect of the Culver Connect Network or the Other City-Owned Facilities revenue for the payment of any Fees or for any other purpose whatsoever.

12. INDEPENDENT MUNICIPAL AUTHORITY. No part of the Agreement shall interfere with, amend, change, or modify, or be interpreted or deemed to interfere with, amend, change, or modify, in any way the rights of the City as a charter city and municipal corporation with respect to its regulatory or governmental authority under federal, state and local laws, rules, regulations and requirements including, without limitation, the application of land use, zoning and permitting processes applicable to User or User's property or equipment. The City's approvals under the Agreement do not include any approval of the City in its regulatory or governmental capacity with respect to entitlements, approvals or permits applicable to any development of User's property or equipment or applicable to any of User's services. The City expressly reserves the right at all times to exercise, in the public interest, full municipal superintendence and control over and in respect to all matters connected with the Agreement.

13. CONVEYANCE OR ABANDONMENT OF FACILITIES. The City shall have the right, in its sole and absolute discretion and without the consent of User, to sell, otherwise convey, or abandon, all or any portion of the Services or the Facilities including, without limitation, all or any portion of the Culver Connect Network or the Other City-Owned Facilities. In the event that, prior to the expiration or the earlier termination of the Agreement or any particular Order, the City decides or acts to sell or otherwise convey all or any portion of the Services or the Facilities including, without limitation, all or any portion of the Culver Connect Network or the Other City-Owned Facilities, then User's right to use the Facilities and Services as provided under an Order shall not be detrimentally affected during the Order Term, and any such sale or conveyance shall explicitly be made subject to the Orders then in effect hereunder. In the event of such a sale or conveyance, the City shall be allowed to assign the Agreement, and all portions thereof including any Orders and Addenda, to the assignee without the consent of User. In the event that, prior to the expiration or earlier termination of the Agreement or any particular Order, the City decides to abandon or acts to abandon all or any portion of the Services or the Facilities including, without limitation, all or any portion of the Culver Connect Network or the Other City-Owned Facilities, the

City agrees to reasonably cooperate with User to take such action as may be reasonably required to allow User to maintain the Facilities and/or Services under Orders then in effect.

14. NON-DISCRIMINATION REQUIREMENT. User shall not discriminate against any employee or applicant for employment because of gender, gender identity, gender expression, sexual orientation, sex, age, disability, medical condition, genetic information, marital status, race, color, religion, ancestry, or national origin. User shall take affirmative action to ensure that employees are treated during employment without regard to their gender, gender identity, gender expression, sexual orientation, sex, age, disability, medical condition, genetic information, marital status, race, color, religion, ancestry, or national origin. Such affirmative action shall include, but not be limited to, the advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

15. ADMINISTRATION; ADMINISTRATIVE AUTHORITY OF CITY MANAGER OR DESIGNEE. The City's rights and obligations set forth in the Agreement shall be administered by the City Manager or his/her designee. Whenever a reference is made in the Agreement to an action, finding or approval to be undertaken by the City, the City Manager or his/her designee is authorized to act on behalf of the City unless specifically provided otherwise or the context should require otherwise. Whenever a reference is made in the Agreement to an action, finding or approval to be undertaken by the City Manager, the City Manager's designee is authorized to act on behalf of the City Manager. The City Manager or his/her designee shall have the authority to issue interpretations, waive provisions and enter into amendments of the Agreement on behalf of the City so long as such actions (a) do not change the uses of the Culver Connect Network or the Other City-Owned Facilities, (b) do not substantially change the manner of development of the Culver Connect Network or the Other City-Owned Facilities, and (c) do not increase the costs of the Culver Connect Network or the Other City-Owned Facilities as set forth in the budget for such items, each as has been approved by the City Council. Notwithstanding the foregoing, the City Manager or his/her designee may in his or her sole and absolute discretion refer any matter to the City Council for action, direction or approval.

16. CITY'S PERFORMANCE OF OBLIGATIONS USING CONSULTANTS/CONTRACTORS. The City has the right, in its sole and absolute discretion, and is not limited in any respect, to fulfill any of its obligations or to exercise or enforce any of its rights under the Agreement through any of the City Representatives, and reference to the City herein with regard to performance of the City's obligations or to the exercise or enforcement of the City's rights hereunder shall also include reference to such City Representatives, including consultants and contractors now or hereinafter retained and utilized by the City for such purposes..

17. GENERAL PROVISIONS.

17.1 Relationship of Parties. The Agreement is not intended to create, nor shall it be construed to create, any partnership, joint venture, or employment relationship between the City and User, and neither Party shall be liable for the payment or performance of any debt, obligations, or liabilities of the other Party, unless otherwise specifically provided for in the Agreement or expressly and specifically assumed in writing. Each Party covenants that it shall not act in a manner that may be construed to be inconsistent with the foregoing nor otherwise act or purport to act on behalf of the other Party except as may be first expressly authorized in writing by such Party. The City and User, in performing any of their obligations hereunder, shall be independent parties and shall discharge their contractual obligations at their own risk.

17.2 No Third Party Beneficiaries. The terms of the Agreement are only for the direct benefit of the City and its successors and assigns and User and its permitted successors and assigns, and there are no other intended or incidental third party beneficiaries hereto and no such other third parties shall have any right of action hereon or hereunder or right to enforce any of the terms or provisions of the Agreement.

17.3 Assignment by User. Unless otherwise stated in the applicable Addendum or Order, User shall not assign or otherwise transfer in whole or in part (whether voluntarily or by action of law), directly, indirectly, or contingently these GTCs or any particular Addendum or Order, or any interest herein or therein, to any third party, without the prior written consent of City, which consent shall not be unreasonably withheld. Any approved assignee shall expressly agree in writing satisfactory to the City to be bound by all terms and conditions of the Agreement. User shall not be relieved of any obligations under the Agreement unless expressly relieved of same in writing signed by the City. Any unauthorized assignment or transfer of the rights granted to User by the Agreement, or any portion thereof, shall be void and of no effect. User's sublicensing of Facilities or resale of Services to the extent permitted under Section 4.10 of these GTCs does not constitute an assignment or transfer for purposes of this Section 17.3.

17.4 Intellectual Property. Nothing in the Agreement shall be construed as a grant of any right or license under any copyrights, inventions or patents now, or later owned or controlled by either Party, and nothing in the Agreement shall be construed as granting any right, title or interest in the other Party's trademarks, trade names, service marks or other intellectual property rights. The Parties agree not to use the trademarks, trade names, or service marks of the other Party without prior written permission of such Party.

17.5 Compliance with Applicable Law. Both Parties shall carry out their duties and obligations under the Agreement in conformity with all applicable federal, state, and local laws, codes, regulations and requirements including, without limitation, Applicable Standards, regulations set forth in the California Public Utilities Code, regulations issued by the Federal Communications Commission, labor laws, City zoning and development standards, building, plumbing, mechanical and electrical codes, provisions set forth in the Culver City Municipal Code, and disabled and handicapped access requirements (including without limitation the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, California Government Code Section 4450, *et seq.*, California Government Code Section 11135, *et seq.*, and the Unruh Civil Rights Act, California Civil Code Section 51, *et seq.*). If applicable to User's duties and obligations set forth in the Agreement, User agrees to comply with the prevailing wage requirements as specified in California Labor Code Section 1720, *et seq.* In the event that either Party receives a notice from any governmental agency or authority to the effect that such Party is in violation of any applicable federal, state or local law, rule, regulation or requirement in respect of the use of the Facilities or Services, the Party receiving such notice shall promptly transmit a copy thereof to the other Party.

17.6 Environmental Protection. The right to use the Facilities to the extent expressly permitted by the Agreement requires that User accept the obligations described herein including, but not limited to, the following:

(a) User shall not expose or subject any portion of the Facilities to any "**Hazardous Materials**" defined as any substance, material, or waste which is or becomes regulated by any local governmental authority, the State of California, or the federal government, including, but not limited to, asbestos; polychlorinated biphenyls (whether or not highly chlorinated); radon gas; radioactive materials; explosives; chemicals known to cause cancer or reproductive toxicity; hazardous waste, toxic substances or related materials; petroleum and petroleum product, including, but not limited to, gasoline and diesel fuel; those substances defined as a "Hazardous Substance", as defined by Section 9601 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601, *et seq.*, or as "Hazardous Waste" as defined by Section 6903 of the Resource Conservation and Recovery Act, 42 U.S.C. 6901, *et seq.*; an "Extremely Hazardous Waste," a "Hazardous Waste" or a "Restricted Hazardous Waste", as defined by The Hazardous Waste Control Law under Section 25115, 25117 or 25122.7 of the California Health and Safety Code, or is listed or identified pursuant to Section 25140 of the California Health and Safety Code; a "Hazardous Material", "Hazardous Substance," "Hazardous Waste" or "Toxic Air Contaminant" as defined by the California Hazardous Substance Account Act, laws pertaining to the underground storage of hazardous substances, hazardous materials release response plans, or the California Clean Air Act under Sections 25316, 25281, 25501, 25501.1 or 39655 of the California Health and Safety Code; "Oil" or a "Hazardous Substance" listed or identified pursuant to 311 of the Federal Water Pollution Control Act, 33 U.S.C. 1321; a "Hazardous Waste," "Extremely Hazardous Waste," or an "Acutely Hazardous Waste" listed or defined pursuant to Chapter 11 of Title 22 of the California Code of Regulations Sections 66261.1-66261.126; chemicals listed by the State of California under Proposition 65 Safe Drinking Water and Toxic Enforcement Act of 1986 as a chemical known by the State to cause cancer or reproductive toxicity pursuant to Section 25249.8 of the California Health and Safety Code; a material which due to its characteristics or interaction with one or more other substances, chemical compounds, or mixtures, materially damages or threatens to materially damage, health, safety, or the environment, or is required by any law or public agency to be remediated, including remediation which such law or government agency requires in order for the property to be put to the purpose proposed by this Agreement; any material whose presence would require remediation pursuant to the guidelines set forth in the California Leaking Underground Fuel Tank Field Manual, whether or not the presence of such material resulted from a leaking underground fuel tank; pesticides regulated under the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136 *et seq.*; asbestos, PCBs, and other substances regulated under the Toxic Substances Control Act, 15 U.S.C. 2601 *et seq.*; any radioactive material including, without limitation, any "source material," "special nuclear material," "by-product material," "low-level wastes," "high-level radioactive waste," "spent nuclear fuel" or "transuranic waste" and any other radioactive materials or radioactive wastes, however produced, regulated under the Atomic Energy Act, 42 U.S.C. 2011 *et seq.*, the Nuclear Waste Policy Act, 42 U.S.C. 10101 *et seq.*, or pursuant to the California Radiation Control Law, California Health and Safety Code, Sections 25800 *et seq.*; hazardous substances regulated under the Occupational Safety and Health Act, 29 U.S.C. 651 *et seq.*, or the California Occupational Safety and Health Act, California Labor Code, Sections 6300 *et seq.*; and/or regulated under the Clean Air Act, 42 U.S.C. 7401 *et seq.* or pursuant to the California Clean Air Act, Sections 3900 *et seq.* of the California Health and Safety Code; or any other substance, whether in the form of a solid, liquid, gas or any other form whatsoever, which by any governmental requirements either requires special handling in its use, transportation, generation, collection, storage, handling, treatment or disposal, or is defined as "hazardous" or harmful to human health or the environment.

(b) User shall not exacerbate any existing environmental condition concerning the Facilities. An environmental condition shall mean any condition in, on, beneath or involving the Facilities or any portion thereof (including, but not limited to, the presence, emission or release of Hazardous Materials and the violation of any applicable environmental law) that, if not properly mitigated or remedied, might have a material adverse effect on the use, occupancy, possession, value or condition of the property or any portion thereof.

(c) User shall immediately notify the City of the discovery of any environmental condition in any portion of the Facilities.

17.7 Records; Audits. User will maintain complete records pursuant to applicable law. The City may request non-confidential and non-proprietary information, records, and documents related to the Agreement, or any portion thereof, from User from time to time as are appropriate in order for the City to reasonably monitor compliance with the terms of the Agreement. User shall provide such records within twenty (20) business days of its receipt of a request from the City for production of the same, unless additional time to provide same is reasonably needed by User and the City agrees in writing to additional time for such production. If any person other than User maintains records on User's behalf, User shall be responsible for making such records available to City for auditing purposes pursuant to and in compliance with this Section.

17.8 Amendment or Modification of Agreement. The Agreement may not be amended or modified, nor may any of the terms, provisions or conditions be amended, modified or waived or otherwise affected, except in writing signed by both Parties.

17.9 Waiver. If, at any time, a Party waives any term, provision or condition of the Agreement, either before or after any Default or breach thereof, such Party shall not thereafter be deemed to have consented to any future failure of full performance under the Agreement.

17.10 Notices and Communication Between the Parties.

(a) Manner of Notice. Unless otherwise stated in these GTCs or in the applicable Addendum or Order, it shall be sufficient service or giving of any notice, request, certificate, demand or other communication if the same is in writing and sent by, and all notices required to be given by mail will be given by, first-class registered or certified mail, postage prepaid, return receipt requested, or by reputable private courier service, by overnight delivery or by personal service which provides evidence of delivery. Unless a different address is given by any Party as provided in this Section, all such communications will be addressed as follows:

To City: City of Culver City
Attn: Chief Information Officer
9770 Culver Boulevard
Culver City, California 90232-0507

Copy to: City of Culver City
Attn: City Attorney
9770 Culver Boulevard
Culver City, California 90232-0507

Copy to: Kane, Ballmer & Berkman
Attn: Kendall D. Levan, Esq.
515 S. Figueroa Street; Suite 780
Los Angeles, California 90071

To User: _____
Attn: _____

Copy to: _____
Attn: _____

(b) Receipt of Notice. Any notice or other communication shall be deemed received as of the date of its delivery shown by evidence of delivery if delivery is by private courier service, by overnight delivery or by personal delivery, and shall be deemed received on the fifth (5th) calendar day from the date it is postmarked if delivered by registered or certified mail.

(c) City Business Days. For purposes of obligations to be performed by the City or of calculation of noticing under the Agreement, a general business day on which the Culver City - City Hall is closed shall not constitute a business day applicable to the City in the Agreement.

17.11 Governing Law; Venue; Institution of Legal Actions. The laws of the State of California shall govern the interpretation and enforcement of the Agreement, without giving effect to its principles of conflicts of laws. In addition to any other rights or remedies, and except as otherwise provided in the Agreement and subject to any exclusive remedies set forth in the Agreement, either Party may institute a legal action to cure, correct or remedy any uncured Default, to recover damages for any Default (subject to limitation of damages set forth in the Agreement), or to obtain any other remedy consistent with the purpose of the Agreement. Such legal actions must be instituted in the Superior Court of the County of Los Angeles, State of California, in any other appropriate court of that county, or in the United States District Court for the Central District of California, and both Parties irrevocably consent to the personal jurisdiction of such courts.

17.12 Acceptance of Service of Process.

(a) Service on City. In the event that any legal action is commenced by User against the City, service of process on the City shall be made by personal service upon the City Clerk or in such other manner as may be provided by law.

(b) Service on User. In the event that any legal action is commenced by the City against User, service of process on User shall be made by personal service upon User's registered agent in the State of California or, if there is no such registered agent, upon an officer or member of User, or in such other manner as may be provided by law, and shall be valid whether made within or without the State of California.

17.13 Integrated Agreement. These GTCs, including the exhibits attached hereto, and applicable Orders and Addenda entered into by and between the Parties represent the entire agreement between the City and User regarding the matters addressed in the Agreement, and is a complete and exclusive statement of the terms of the Agreement between the Parties. No verbal agreement or implied covenant, including without limitation any preliminary negotiations and agreements, shall be held to vary the provisions of the Agreement.

17.14 Severability. Each provision, term, condition, covenant, and restriction set forth in the Agreement shall be considered severable. In the event any provision, term, condition, covenant or restriction in the Agreement is declared invalid or void by a court of competent jurisdiction in a final, non-appealable order for any reason, such provision, term, condition, covenant or restriction shall not affect any other provision, term, condition, covenant and restriction set forth therein. The void or invalid provision, term, condition, covenant or restriction will be deemed not a part of the Agreement, and the remainder thereof shall continue in full force and effect to give maximum effect to the intent of the Parties unless the invalid, illegal or void matter significantly destroys the reasonable expectations of a Party. In the latter event, such Party shall have the right to terminate the Agreement upon prior written notice to the other Party.

17.15 Binding Effect. Each and all of the covenants and conditions of the Agreement shall be binding on and shall inure to the benefit of the Parties and their respective heirs, executors, administrators, successors, assigns, and personal representatives. For

these purposes, the term "successor" shall include, without limitation, any entity or other person to whom the City transfers its Facilities, in its sole and absolute discretion, without the consent of User.

17.16 Counterparts. The Agreement may be executed by the City and User in any number of counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same agreement.

17.17 Exhibits. All exhibits referred to in the Agreement are incorporated herein by reference.

17.18 Other Documents. Each Party shall promptly furnish to the other Party, upon request, such documents as may be reasonably required in order to carry out the provisions of the Agreement.

17.19 Change of Law. For purposes of this Section, the term "**Change of Law**" shall mean the enactment or promulgation of any new statute, regulation, rule, ordinance, or order by a government entity with authority over the matter or the issuance of a final, non-appealable judicial or administrative decision. Unless otherwise stated in the applicable Addendum or Order, if a Change of Law occurs after the Effective Date of these GTCs, and such Change of Law materially affects either Party's ability to lawfully fulfill any of its obligations under the Agreement, the Parties agree to negotiate in good faith and execute reasonable and appropriate modifications to the Agreement in order to comply with such Change of Law. If the Parties cannot negotiate mutually satisfactory modifications to the Agreement, either Party shall have the right to terminate the Agreement or a particular Order, without penalty or liability whatsoever, by giving the other Party at least ninety (90) calendar days' prior written notice of such termination. Unless otherwise stated in the applicable Addendum or Order, if a Change of Law occurs after the Effective Date of these GTCs and such Change of Law significantly (a) alters the economics of the Agreement or a particular Order and makes an affected Party's continued fulfillment of its obligations under the Agreement or a particular Order commercially infeasible, or (b) interferes with an affected Party's rights under applicable federal, state or local laws, rules, regulations and requirements as of the Effective Date, the affected Party shall have the right to terminate the Agreement or a particular Order, without penalty or liability whatsoever, by giving the other Party at least ninety (90) calendar days' prior written notice of such termination.

17.20 Attorneys' Fees. In the event of a dispute proceeding between the Parties with respect to the terms or conditions of the Agreement, the prevailing Party shall be entitled to collect from the other Party its reasonable attorneys' fees and costs as established by the judge or arbitrator presiding over such dispute.

17.21 Covenants and Conditions. Each term and each provision of the Agreement to be performed by User and the City shall be construed to be both a covenant and a condition.

17.22 Designated Representatives of Parties.

(a) The _____ shall be the designated representative of User under the Agreement and shall be responsible for negotiations, contractual matters, and coordination with the City.

(b) The City Manager of the City, or his/her designee, shall be the designated representative of the City under the Agreement and shall be responsible for negotiations, contractual matters, and coordination with User.

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[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed these GTCs as of the date first set forth above.

“USER”

Dated: _____

By: _____

Name: _____

Its: _____

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

"CITY"

CITY OF CULVER CITY,
a charter city of the State of California

Dated: _____

By: _____
John M. Nachbar
City Manager

APPROVED AS TO CONTENT:

By: _____
Michele Williams
Chief Information Officer

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
Carol Schwab
City Attorney

By: _____
KANE, BALLMER & BERKMAN
City Special Counsel

EXHIBIT "A"

Insurance Requirements

A. Commercial General Liability. A policy or policies of insurance using Insurance Services Office (ISO) form CG 00 01 or an equivalent form providing coverage at least as broad as the ISO form. Total limits shall be no less than Five Million Dollars (\$5,000,000) per occurrence and policy aggregate, and may be provided through any combination of primary and excess or umbrella policies. Any excess or umbrella policies shall "follow form" of the primary policy. Any excess or umbrella policy shall contain a clause stating that it takes effect and thereby drops down in the event the primary policy limits are impaired or exhausted. The City and its elected and appointed officers, agents, officials, employees, representatives, consultants and contractors (hereinafter collectively referred to as the "City Indemnified Parties"), shall be additional insureds under the policies required by this Exhibit "A".

B. Workers Compensation. A policy or policies of insurance providing statutory workers compensation benefits and employer's liability coverage. Employer's liability limits shall be no less than One Million Dollars (\$1,000,000) each accident, each employee, and policy limit. The workers' compensation policies shall provide the following:

- (1) A voluntary compensation endorsement;
- (2) An alternate employer endorsement; and
- (3) A provision extending coverage to all states operations as appropriate.

C. Automobile Liability. A policy of insurance using Insurance Services Office (ISO) form CA 00 01 or an equivalent form providing coverage at least as broad as the ISO form. Limits shall be no less than One Million Dollars (\$1,000,000) combined single limit. This insurance shall extend to all owned, non-owned and hired automobiles.

D. General Requirements Related to Insurance Provided by User.

(1) Maintenance of Coverage. User's failure to maintain all required insurance policies required by and in accordance with this Exhibit "A" shall constitute a Default of the Agreement by User.

(2) Primary Insurance. All insurance policies required to be provided by User are intended to apply first and on a primary, non-contributing basis in relation to any other insurance or self-insurance available to the City and/or City Indemnified Parties.

(3) Proof of Insurance. User shall provide to the City certificates of insurance and endorsements, including additional insured endorsements as required, as evidence of the insurance policies required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsements must be approved by the City prior to the effective date of the Agreement. Current evidence of insurance shall be provided by User to the City at all times during the Term of these GTCs. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

(4) Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact the business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger), in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City.

(5) Waiver of Subrogation. All insurance policies shall contain language or be endorsed to contain language to waive subrogation against the City and the City Indemnified Parties. Such endorsement or policy language shall not contain any additional restrictions. User hereby waives its own right of recovery against the City and the City Indemnified Parties, and User shall require similar written express waivers and insurance clauses from each of its contractors.

(6) Contractors. User shall require each of its contractors and any person directly or indirectly employed by any of them to provide and maintain insurance as required by this Section (D)(6) unless the contractor is covered by User's insurance. User shall require general liability, auto liability and workers' compensation/employer's liability insurance ("basic coverages") of its contractors. Other coverages shall be required by User of its contractors if their work involves specific exposures, including environmental and professional liability exposures, not covered by the basic coverages listed in this Section (D)(6). Limits of insurance required of its contractors shall be at User's discretion, but shall be consistent with custom and practice for such requirements in the geographical area where the work or services are being performed. User shall cause each contractor to include the City and the City Indemnified Parties as additional insureds under each such contractor's insurance policies obtained, except for any professional liability insurance. User shall require that each contractor obtain from his/her/its workers' compensation insurer a waiver of subrogation rights that such insurer may have against the City and the City Indemnified Parties. If requested by the City, User shall promptly provide certificates of insurance, endorsements, or copies of policies, as requested, evidencing coverage for each such contractor of User.

(7) Enforcement of Contract Provisions (non estoppel). User acknowledges and agrees that any actual or alleged failure on the part of the City to inform User of non-compliance with any requirement imposes no additional obligations on the City nor does it waive any rights hereunder.

(8) Specifications Not Limiting. Requirements of specific coverage features or limits contained in these Insurance Requirements are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.

- (9) Notice of Cancellation. All insurance policies required by these Insurance Requirements shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in coverage or in limits, except after providing the City with thirty (30) calendar days' prior written notice, except for nonpayment for which ten (10) calendar days' prior written notice is required. Such endorsement shall not include any limitation of liability of the insurer for failure to provide such notice.
- (10) Self-insured Retentions. User shall be responsible, and the City shall have no responsibility, for any self-insured retentions or deductibles. Any self-insured retentions must be declared to and approved by the City. The City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by the City.
- (11) Timely Notice of Claims. User shall give the City prompt and timely written notice of claims made or suits instituted that arise out of or result from User's actions or inactions under the Agreement, and that involve or may involve coverage under any of the required insurance policies.
- (12) Additional Insurance. User shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection in connection with the Agreement.
- (13) Renewal Policies. User shall promptly deliver to the City a certificate of insurance and copies of all required endorsements with respect to each renewal policy, as necessary to demonstrate the maintenance of the required insurance policies under the terms specified herein.
- (14) Support of Indemnifications. The insurance policies provided hereunder by User are not intended to, and shall not be considered, interpreted, or deemed to, limit User's obligations to indemnify, protect, defend and hold harmless under the Agreement.
- (15) No Recourse. There shall be no recourse against the City or the City Indemnified Parties for payment of premiums, deductibles, self-insured retentions or any other amounts with respect to insurance policies required by these Insurance Requirements, nor shall any policies of insurance require such payment from the City or the City Indemnified Parties.