FIBER LICENSE AGREEMENT

THIS FIBER LICENSE AGREEMENT ("Agreement"), made effective as of January 5, 2014/15 (the "Effective Date"), by and between the City of San Leandro, a charter city and California municipal corporation ("City"), and the San Leandro Unified School District ("SLUSD" or the "District").

WHEREAS, the City owns fiber strands within the fiber optic cable facility commonly known as the San Leandro Dark Fiber Loop (the "Fiber System") as evidenced by a current agreement between the City and San Leandro Dark Fiber, LLC (the "License Agreement"); and

WHEREAS, the District wishes to access and use specific fibers along various portions of the Fiber System subject to the terms and conditions set forth in this Agreement;

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

1. **License Price and Rights**

a. The City grants to the District a license for exclusive access to and use of specific fibers (the "Licensed Fiber") along a specified route as will be identified. Notwithstanding the District's exclusive right to access and use the Licensed Fiber, the parties agree that subsequent to the execution of this Agreement, the City will enter into a license agreement with the District's chosen telecommunications provider, who will be allowed to connect to the Licensed Fiber.

b. Payments for access and use of the Licensed Fiber shall be one dollar ($1.00) per year for the term of the Agreement.

c. District shall license from City two dark fiber strands from the City's allotment of dark fiber strands, as defined and provided in the License Agreement.

d. Upon termination of this Agreement, District shall pay thereafter no more than the one dollar ($1.00) per year. Any additional strands licensed, or strands licensed to the District after the conclusion of this Agreement shall be provided at an additional rate of one dollar ($1.00) per year.

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

2. **Service Level Agreement and Further Assurances**

a. The District's access to the Licensed Fiber is conditioned on the District's telecommunications provider executing a license agreement, to include a Service Level Agreement with the City. At a minimum, the Service Level Agreement will address the City's response time to interruptions that occur upon any portion of the Licensed Fiber.

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

3. **Additional Terms.**

a. **Costs.**

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

b. **Environmental Matters.**

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

c. **Indemnification.**

i. General Indemnity. District agrees to indemnify and hold City harmless against all risks and costs associated with District operations on the Licensed Fiber, including but not limited to any copyright, trademark, or software infringement that may occur due to or over the Licensed Fiber.

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

d. **Assignees.** District shall be prohibited from assigning its interest in this Agreement to another entity. Notwithstanding the foregoing, it is expressly understood that District's chosen telecommunications provider will have access to the Licensed Fiber and will execute a separate license agreement with the City.

e. **Term.** The term of this Agreement shall commence on the date first signed by both parties, and shall terminate twenty (20) years from that date.

SAN LEANDRO UNIFIED SCHOOL DISTRICT:
(Date)

Michael McLaughlin, Superintendent of Schools

Chris Zapata, City Manager

Richard Pio Roda- City Attorney, City of San Leandro

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