

## NETWORK DEPLOYMENT and SERVICE AGREEMENT

This Network Deployment and Service Agreement ("Agreement") is entered into this 14<sup>th</sup> day of December, 2021, by and between

Underline Monterey, LLC, a Delaware Limited Liability Company authorized to do business in California ("Underline"), and the

City of Salinas, a California Charter City and municipal corporation ("City").

Underline and City are sometimes referred to herein individually as a "Party" or collectively as the "Parties."

**WHEREAS**, this Agreement is made in light of the following premises and circumstances, all of which are a part of this Agreement:

- A. The City desires to expand access to broadband services to residents and businesses within the city of Salinas;
- B. In order to facilitate the expansion of broadband services, City issued a Request for Proposals (RFP) on March 19, 2021 to identify partners to provide affordable, reliable consumer broadband service, delivered to residents at download and upload speeds sufficient to enable full and unrestricted access to online services;
- C. Underline submitted a response to City's RFP ("Underline's Proposal") with a proposal to provide a privately-funded and owned open access fiber network within the City;
- D. Following the receipt of Proposals, the City has been engaged in discussions with Underline to explore the implementation of Underline's Proposal;
- E. Underline proposes to install an open access fiber network within and in proximity to the boundaries of City to offer service to all residents and businesses;
- F. Under an open-access network, Underline will provide its proprietary software-based marketplace where numerous service providers are empowered to compete to provide services, and customers can select desired services based on clear, accurate and competitive service options. In addition, the Underline open access fiber infrastructure can serve as the essential foundation for connected utilities, new wireless solutions (e.g., for 5G mobile phone carriers), and other modernized infrastructure, including responsible energy and water systems;
- G. For residential subscribers, Underline's initial proposal is that the 500/500 megabits per second ("Mbps") Broadband Internet Service will be available for \$49/month and the symmetrical gigabit connection will cost \$65/month; in addition, 500/500 Mbps will be available at a reduced price for qualifying households as part of its Groundwork Program; and

- H. For micro-enterprises, proposed pricing is \$79 /month for 500/500 Mbps service and symmetrical gigabit service for \$95 /month. Pricing for small, medium, and enterprise business customers will be dependent on specific needs; and
- I. For the physical infrastructure, Underline plans to install, use, operate, and maintain a fiber optic cable network that will be placed within a conduit and/or micro-duct in, on, or over portions of the rights-of-way of the City and/or City-owned land, including the fiber optic cable and its component parts and appurtenances, other components, facilities, Cabinets, conduits, connectors, wireline and wireless transmitters, Vaults, flower pots, appliances, splitters, apparatus, and appurtenances.

**NOW THEREFORE**, in consideration of the promises and mutual covenants contained herein, Underline and City, for valuable consideration, the sufficiency of which is hereby acknowledged, hereby agree as follows:

## **1. Definitions**

For the purpose of this Agreement, the following terms when used herein shall have the following meanings:

- (i) “Access Point” means a Manhole, Vault, handhole, Cabinet, or Junction Box through which the Underline Fiber may be accessed for the purposes of installation or splicing fibers to interconnect to other networks or facilities.
- (ii) “Authorized Contractors” means third party contractors (whether independent or affiliated with Underline) that have been approved and authorized by Underline to utilize Access Points and to make splices or perform other work on the Underline Network as provided for in this Agreement.
- (iii) “Broadband Internet Service” means internet service of at least 500 Mbps (download and upload speeds).
- (iv) “Cabinet” means an above ground structure used to store, terminate, splice, or transfer fiber optic cable, network electronics, patch panels, and switches.
- (v) “Fiber” means the fiber optic cable and/or conduit to be installed by Underline, whether aerial or underground, comprising the optical fiber components of the Network as deployed and as may be changed from time to time.
- (vi) “Groundwork Program” means a program developed by Underline to support universal access to Broadband Internet Services within the city through a combination of providing an open-access network, providing discounted pricing for Broadband Internet Service to Qualifying Households, performing ongoing outreach efforts to provide information to community members, and offering Broadband Internet Service and the use of the Network to the City at a competitive price.

- (vii) “Internet Service Provider” means a company that provides information services over the Network that Underline will install.
- (viii) “Junction Box” means a box where fiber optic cable splices and connections are made and accessed.
- (ix) “Manhole” means a subsurface enclosure which qualified personnel may enter and use for the purpose of installing, operating, and maintaining facilities.
- (x) “Network” means all components of a system designed to provide Broadband Internet Service, including Fiber, Cabinets, conduits, connectors, wireline and wireless transmitters, Vaults, appliances, splitters, apparatus, and other related components and appurtenances.
- (xi) “Open Access Network” means a Network which is available for use by multiple Internet Service Providers to provide Broadband Internet Service, and other services, and which provides consumer choice among Internet Service Providers utilizing the Network.
- (xii) “Qualifying Households” means households with incomes below 180% of the Federal Poverty Level.
- (xiii) “Vault” means a buried box, with a lid that is even with the surface of the ground, used to store, terminate, splice, or transfer fiber optic cable.

## **2. License**

City hereby grants to Underline a License and all necessary rights to install, operate, and maintain Fiber, conduit, and other Network equipment and components within the public right-of-way, in accordance with the terms and provisions of the License Agreement set forth in **Exhibit A**.

For any and all encroachment and other permits that are required for Underline to exercise its license rights to use the public right-of-way, the City will provide efficient and diligent review of all applications for permits submitted by Underline and its representatives and contractors.

## **3. Groundwork Program**

### **3.1 Service to Community**

Underline shall provide the following services in the City:

- (i) Underline shall utilize the Fiber and Network equipment to provide an Open Access Network to enable third-party Internet Service Providers to provide Broadband Internet Service to the residents and businesses of Salinas on a competitive basis; and

- (ii) Underline shall offer Broadband Internet Service to all properties in the City of Salinas within five years of the execution of this Agreement; and
- (iii) Underline shall offer Broadband Internet Service at a reduced price to Qualifying Households.

### **3.2 Ongoing Outreach Efforts**

Underline shall implement Ongoing Outreach Efforts as outlined below, with the goal of ensuring that all residents (including Qualifying Households) and businesses have access to its broadband offerings:

- (i) Develop targeted messages and varied approaches to reach as many people as possible
  - Ongoing digital engagement
  - Earned media and thought leadership
  - Advertising and marketing
- (ii) Maintain local relationships, with special attention to underserved communities
  - Ongoing partnerships with grassroots organizations
  - Recruiting champions
- (iii) Monitor home sales and new development
  - Targeted mailers
  - Direct outreach to developers and property managers
- (iv) Ongoing tracking of relevant KPIs
  - Take rate by neighborhood
  - Selection of performance and value-added service offerings by client segment
  - Customer satisfaction reviews and commentaries of various ISPs
  - Direct measurable positive impact on families in the digital divide

### **3.3 Service to the City as Anchor Customer**

Underline shall offer Broadband Internet Service and other available services to City buildings and facilities in accordance with the terms and provisions of a Master Service Agreement, to be developed between the parties based on good faith negotiations.

## **4. Maintenance**

- (i) Underline shall have sole responsibility for maintaining all of its Network equipment, electronics, lasers, fiber, and other facilities.
- (ii) Any equipment, electronics, lasers, or interconnecting fiber or other Network facilities shall be installed and maintained in accordance with the requirements and specifications of the then current editions of the National Electrical Code (NEC), and the National Electrical Safety

Code (NESC), each of which are incorporated by reference in this Agreement. Further, Underline and its consultants and contractors shall at all times comply with the applicable rules and regulations of the Occupational Safety and Health Act of 1970 (OSHA), with all applicable state and federal statutes and laws, and with all applicable regulations, rules and orders issued by any state or federal agency having jurisdiction thereof.

- (iii) City reserves the right to conduct inspections of Underline's construction sites or of Underline Fiber at any time to ensure compliance with regulatory requirements. If ordered by City, Underline shall correct all sites and/or work that are found to be noncompliant with applicable building or safety codes and/or approved permits within 30 days of receipt of such notice by City. City reserves the right to remove any facilities within the City right-of-way for which no permit has been issued and/or finalized and may seek the actual costs incurred in so doing. The City's failure to act as to unauthorized facilities on or under the right-of-way shall not be deemed an approval of such use.

## **5. Indemnification**

- (i) Underline (as "Indemnifying Party") hereby agrees to indemnify, defend and hold harmless the City and its officers, employees, agents, and representatives (as "Indemnitee") from and against any third party demand, claim, action, suit, or proceeding ("Claim") and any resulting loss, liability, cost, expense, or fine, including court and appeal costs and reasonable attorneys' fees and expenses ("Losses"), that are caused by or arise out of the actual acts or omissions, whether negligent or willful, of the Indemnifying Party, its personnel, agents or contractors, in connection with the performance under this Agreement or otherwise in connection with the construction (including any excavation), installation, operation, maintenance or use of the Underline Fiber or any equipment or facilities interconnected or associated therewith.
- (ii) Notwithstanding the foregoing, Underline's respective obligations as an Indemnifying Party under paragraph (i) above shall not include any liability or obligation to defend:
  - a. to the extent that Losses arise out of or are caused by the Indemnitee's intentional misconduct and/or gross negligence;
  - b. to the extent that the defense of any Claim is prejudiced, or the resulting Losses are caused by the Indemnitee's failure or refusal to provide the Indemnifying Party with timely notice of the Claim, or to cooperate in the defense thereof; or
  - c. to the extent that Losses result from the Indemnitee's failure or refusal to take commercially reasonable actions as the Indemnifying Party may request, and at the Indemnifying Party's sole cost and expense, in order to mitigate or lessen such Losses.
- (iii) The Indemnitee shall give the Indemnifying Party timely written notice of any Claim covered by this Section 5. The Indemnitee shall tender the defense of the Claim to the Indemnifying Party and such defense shall be carried out under the control, and at the expense of, the Indemnifying Party. The Indemnitee may participate in the defense of a Claim at any time, provided that, during all periods in which such defense has been assumed and is being carried out by the Indemnifying Party with qualified counsel, the incremental costs of the

Indemnitee's participation shall be at its own expense.

## **6. Assignment and Beneficiaries**

- (i) With the exception of a transfer or assignment to an entity that is affiliated with or partly-owned or managed by Underline, Underline shall not assign, transfer, sublease, or sell the privileges granted in this agreement without the prior written consent of the City, which shall not be unreasonably delayed or denied. An affiliated entity is any entity that directly or indirectly (through one or more intermediaries) controls, is controlled by, or is under common control with, such Party.
- (ii) Neither this Agreement nor any term or provision hereof, nor any inclusion by reference shall be construed as being for the benefit of any person or entity not a signatory hereto.

## **7. Agreement Term and Termination**

### **7.1 Term of Agreement**

This Agreement shall have an initial term of 30 years and shall then continue in perpetuity so long as the Underline Network (or any portion thereof) remains in place and is in use by Underline and its successors in interest or assigns.

### **7.2 Termination of Agreement**

The Parties shall have the right to terminate this Agreement and the Licenses granted herein under the following circumstances:

- (i) In the event there are events of material noncompliance or defaults (collectively "Defaults") that, according to City, affect the overall agreement, City may, at its option, send written notice to Underline that Underline is in Default under the terms of this Agreement. Within 30 days following City's issuance of said notice, Underline shall cure or cause to be cured all Defaults identified in the City's notice; provided, however, that if any such failure cannot reasonably be cured within such thirty (30) day period, then City shall not have the right to terminate this Agreement so long as Underline promptly commences the curing of any such failure and thereafter proceeds in good faith and with due diligence to remedy and correct such failure within a reasonable period of time; provided, however, that such period shall not extend for more than ninety (90) days after the date of the City's notice to Underline.
- (ii) In the event Underline fails to cure any Default within the required timeframe, City may send Underline notice that it intends to terminate this Agreement for cause ("Written Notice"), subject to the following dispute resolution provisions that shall be applicable at the request of the Underline:

- a. The Parties shall hold a meeting attended by representatives of City and Underline with sufficient authority regarding the dispute to attempt to negotiate in good faith a resolution to the Default (the "Formal Initial Meeting"). The meeting shall be held promptly, but in no event later than thirty (30) days after the Written Notice. Such meeting shall not be deemed to reduce or eliminate the obligations and liabilities of the Parties or be deemed a waiver by a Party of any remedies to which such Party would otherwise be entitled, unless otherwise agreed to by the Parties in writing.
  - b. If, within thirty (30) days after such meeting, the Parties have not succeeded in negotiating a resolution of the dispute, they agree to submit the matter to non-binding mediation and to bear equally the costs of mediation.
  - c. The Parties will jointly appoint a mutually acceptable mediator; if they fail to do so within thirty (30) days from the conclusion of the Formal Initial Meeting, they shall each select a mediator. The two mediators will then appoint a third mediator who shall, as the sole mediator, conduct mediation for the Parties.
  - d. The Parties will schedule the mediation for a date within thirty (30) days after selection of the mediator(s). The Parties agree to participate in good faith in the mediation and negotiations related thereto for a period of thirty (30) days after the start of mediation. The substantive and procedural law of the State of California shall apply to the proceedings.
  - e. If the Parties are not successful in resolving the dispute through mediation, then the Parties shall be free to litigate the matter, and agree that in the event of such litigation, the exclusive venue for such litigation shall be the Superior Court of Monterey County, California or, if necessary for exclusive federal questions, the United States District Court for the Northern District of California.
  - f. During the pendency of any dispute or appeal, the agreement and permits shall remain in effect and Network shall remain in place. Notwithstanding the above, the City may order the removal of Network equipment and/or the cessation of operations during the pendency if it determines that failure to do so would result in immediate harm to public health and safety.
- (iii) Termination of this Agreement for any other reason shall require the mutual consent of both parties.

### **7.3 Effect of Termination**

- (i) In the event of termination in accordance with this Agreement, the City may purchase the fiber Network for fair market value.
- (ii) If the City does not purchase the Network, Underline may transfer the system to another entity that is qualified to provide Broadband Internet Service. Said entity shall agree to continue to abide by the terms of this Agreement in its continued operation of the Network.
- (iii) In the absence of a transfer to the City or another entity, the below ground facilities may be abandoned in place, however, Underline shall remove any Cabinets and above ground facilities unless City allows these facilities to remain. If the above-ground facilities are not removed, City may remove the facilities and dispose of them at the expense of Underline.

## **8. General Provisions**

## 8.1 Notices

- (i) All notices required or permitted to be given to either party by the other party under any provisions of this Agreement shall be in writing. Notice shall be deemed served when delivered by hand or sent by a nationally recognized overnight courier service to the other party's address set forth below during normal business hours. If a Notice is mailed, service is deemed complete upon the earlier of actual delivery or the close of business on the third business day following the date when the Notice is placed in a receptacle regularly maintained by the U.S. Postal Service addressed to the party at the address set forth below with postage pre-paid.
- (ii) Notices shall be given to the following:

If to **City**:

City Manager  
200 Lincoln Avenue  
Salinas, CA 93901

With a copy to City Attorney at the same address.

If to **Underline**

Bob Thompson  
200 Park Avenue South  
Suite 1611  
New York, NY 10003  
Phone Number: 914 704 7474  
Email Address: rthompson@underline.com

With a copy to General Counsel at the following email address: mkropilak@underline.com

Or to such other addresses and persons as City or Underline may hereafter designate in a notice given in accordance with this Section 8.1.

## 8.2 Non-Waiver

Failure of either Party to take action to enforce compliance with any of the terms or conditions of this Agreement, or to give notice or declare this Agreement or any authorization granted hereunder terminated, or to exercise any right or privilege hereunder, shall not be construed as a continuing or future waiver of such term, condition, right, or privilege, but the same shall be and remain at all times in full force and effect.

## 8.3 Headings



All headings contained in this agreement are for convenience only and are not intended to affect the meaning or interpretation of any part of this Agreement.

#### **8.4 Force Majeure**

Notwithstanding anything in this Agreement to the contrary, no default, delay, or failure to perform on the part of any Party shall be considered a breach of this Agreement if such default, delay, or failure to perform is shown to be due entirely to causes beyond the reasonable control of the Party charged with a default, including, but not limited to, causes such as strikes or other labor disputes, riots, civil disturbances, actions of governmental authorities, epidemics, lockdowns due to pandemics, war, embargoes, unusually severe weather, fire, earthquakes, acts of God or the public enemy, or nuclear disasters. The excused Party shall use reasonable efforts under the circumstances to avoid or remove such causes of non-performance and shall proceed to perform with reasonable dispatch whenever such causes are removed or ceased.

#### **8.5 No Rights to the System**

The City expressly agrees that, except as may be expressly set forth in this Agreement, it does not and shall not claim at any time any interest or estate of any kind or extent whatsoever in the Network, throughout the term of this Agreement. Underline shall, at all times, retain title to and ownership of the Network and all future extensions of the Network, and shall have the right to lease the Network or parts thereof to a provider of internet, data, voice, video, and other services.

#### **8.6 Governing Law**

This Agreement and the rights and obligations contained in it shall be construed in accordance with, and governed by, the laws of the State of California without regard to its choice of law provisions.

#### **8.7 Counterparts**

This Agreement may be executed in any number of counterparts, each of which when executed shall be deemed an original, but all of which together shall constitute one and the same instrument.

#### **8.8 Confidentiality**

The parties acknowledge that Underline will disclose proprietary and confidential network and business information to City in order to perform this Agreement. City agrees to take all reasonable steps to protect such proprietary and confidential information from public disclosure, and to make available such information internally only to City personnel with a need to know or to its legal counsel. City shall not disclose the contents of this Agreement except as required by law in response to a formal request pursuant to an applicable freedom of information law. City shall notify Underline within 48 hours of receiving such a request for information about this Agreement.

#### **8.9 Venue**

Venue for any complaint, cause, case or action arising from or related to this Agreement shall be in Monterey County Superior Court or the appropriate federal court with jurisdiction over the matter.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement as of the date first written above.

**CITY OF SALINAS**

DocuSigned by:

*Kimbley Craig*

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Kimbley Craig, Mayor

**APPROVED AS TO FORM:**

DocuSigned by:

*Christopher A. Callihan*

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Christopher A. Callihan, City Attorney

**ATTEST:**

DocuSigned by:

*Patricia Barajas*

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Patricia M. Barajas, City Clerk

**UNDERLINE MONTEREY, LLC**

DocuSigned by:

*Robert Thompson*

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Robert Thompson, Chief Executive Officer

## **EXHIBIT A**

### **LICENSE AGREEMENT**

**THIS LICENSE AGREEMENT** (“Agreement”) is made as of this 14<sup>th</sup> day of December, 2021 (the “Effective Date”) by and between

City of Salinas, a California Charter City and municipal corporation (“City” or “Licensor”) and

Underline Monterey, LLC, a Delaware Limited Liability Company authorized to do business in California (“Underline” or “Licensee”), and the

Underline and City are sometimes referred to herein individually as a “Party” and collectively as the “Parties.”

#### **RECITALS**

As part of its plan to deploy a broadband network in the City, Underline plans to install, use, operate, and maintain a fiber optic cable network that will be placed within a conduit and/or micro-duct in, on, or over portions of the rights-of-way (“ROW”) of the City and/or City-owned land, including the fiber optic cable and its component parts and appurtenances, other components, facilities, Cabinets, conduits, connectors, wireline and wireless transmitters, Vaults, flower pots, appliances, splitters, apparatus, and appurtenances.

Underline desires to install a Network in, over and/or under the public ROW within the geographic boundaries of City for the provision of broadband service.

City and Underline are concurrently entering into a Network Deployment and Service Agreement (the “Service Agreement”), of which this License Agreement is an Exhibit.

City will permit Underline to access and utilize the ROW subject to the terms and conditions set forth in this License Agreement and the Service Agreement.

**NOW, THEREFORE**, in consideration of the foregoing Recitals, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, hereby agree as follows:

#### **1. GRANT**

The City hereby grants to Underline the right to install, operate, and maintain Fiber and other Network equipment and components within the City’s ROW, in accordance with the terms of this Agreement, the Service Agreement, and City’s laws and regulations.

#### **2. TERMS OF USE**

This Grant is a nonexclusive license to encroach upon the City’s public right-of-way for the purpose

of construction, installation, operation, placement, protection, repair, maintenance, and removal of Fiber cable and conduit, and any Network equipment necessary for the good operation and repair of these facilities, subject to the following:

- (i) Prior to installation of any facilities, Underline shall obtain an Encroachment Permit from City. Underline shall be responsible to pay City its normally applicable permit application and inspection fees and shall ensure that all appropriate inspections by City occur. City may require reasonable information to be submitted with the applications, including, but not limited to, the location of installation, construction methods, existing infrastructure, and traffic control measures.
- (ii) Installations of Fiber, conduits, Vaults, and equipment shall be made below-ground except that fiber cable may be installed above-ground when immediately adjacent to previously-existing above-ground utilities including, but not necessarily limited to, fiber, telephone, and/or electrical lines. Furthermore, Cabinets, wireless transmitters, receivers and any associated fiber lines or infrastructure required may be installed above ground.
- (iii) When not in conduit, Fiber shall be stored, terminated, spliced, or transferred in Vaults, except that Cabinets may be used in connection with active electronics and heating/cooling equipment. Underline shall cooperate with the City in determining appropriate locations for the Cabinets, consistent with their function in the Network and their need for power to operate the active electronics housed inside the Cabinets.
- (iv) Except as provided by applicable laws or this Agreement, Underline shall not interfere in any manner with the existence and operation of any and all public and private rights-of-way, sanitary sewers, water mains, storm drains, gas mains, poles, overhead and underground electric and telephone wires, street lights, traffic signals, cable television, conduit, other telecommunication facilities, and City property without prior approval of the owners of such property.
- (v) Underline may utilize the Fiber and Network for any lawful purpose.
- (vi) Underline shall conduct itself in compliance with all federal, State, and local laws, Ordinances, Resolutions, rules, and regulations, including the City's "Dig Once" Policy (Resolution 20810), as such may be amended from time-to-time.
- (vii) The rights granted to Underline may be exercised by its Authorized Contractors when operating under Underline's direction.

The City reserves the right to grant, renew, or extend similar licenses to others. Notwithstanding the foregoing, the City expressly conditions approval of other licenses to private parties for telecommunications purposes so as not to cause disruption or interference with any Underline Fiber. Underline shall have the right to take appropriate action against any interfering party. City shall not be liable for expenses or damages suffered by Underline as a result of interference.

### **3. NO INTEREST IN PROPERTY**

Except as otherwise expressly provided in this License Agreement, the permissions granted by this Agreement shall not constitute an easement or an encumbrance upon City property or against any City right-of-way. Aside from the occupancy rights inherent in this grant of License, no ownership right, title, or interest in the public right-of-way, or any part thereof, shall vest or accrue by reason of this Agreement, by issuance of a Permit, or by exercise of any privilege given thereby.

### **4. PERSONAL INTEREST AND ASSIGNMENT**

This License is personal to Underline only and is not transferable without the written consent of City, except as permitted by the following Assignment clause:

With the exception of a transfer or assignment to an entity that is affiliated with or partly-owned or managed by Underline, Underline shall not assign, transfer, sublease or sell the privileges granted in this agreement without the prior written consent of the City, which shall not be unreasonably delayed or denied. An affiliated entity is any entity that directly or indirectly (through one or more intermediaries) controls, is controlled by, or is under common control with, such Party.

Neither this Agreement nor any term or provision hereof, nor any inclusion by reference shall be construed as being for the benefit of any person or entity not a signatory hereto.

### **5. TERM OF LICENSE**

The term of the License granted hereby for occupancy of the public rights-of-way shall have an initial term of 30 years and shall then continue in perpetuity so long as the Underline Network (or any portion thereof) remains in place and is in use by Underline and its successors in interest or assigns.

### **6. TERMINATION OF AGREEMENT**

The Parties shall have the right to terminate this License Agreement under the following circumstances:

- (i) In the event there are events of material noncompliance or defaults (collectively "Defaults"), the City may, at its option, send written notice to Underline that Underline is in Default under the terms of this Agreement. Within 30 days following City's issuance of said notice, Underline shall cure or cause to be cured all Defaults identified in the City's notice; provided, however, that if any such failure cannot reasonably be cured within such thirty (30) day period, then City shall not have the right to terminate this Agreement so long as Underline promptly commences the curing of any such failure and thereafter proceeds in good faith and with due diligence to remedy and correct such failure within a reasonable period of time; provided, however, that such period shall not extend for more than ninety (90) days after the date of the City's notice to Underline.
- (ii) In the event Underline fails to cure any Default within the required timeframe, City may send

Underline notice that it intends to terminate this Agreement for cause (“Written Notice”), subject to the following dispute resolution provisions that shall be applicable at the request of the Underline:

- a. The Parties shall hold a meeting attended by representatives of City and Underline with sufficient authority regarding the dispute to attempt to negotiate in good faith a resolution to the Default (the “Formal Initial Meeting”). The meeting shall be held promptly, but in no event later than thirty (30) days after the Written Notice. Such meeting shall not be deemed to reduce or eliminate the obligations and liabilities of the Parties or be deemed a waiver by a Party of any remedies to which such Party would otherwise be entitled, unless otherwise agreed to by the Parties in writing.
  - b. If, within thirty (30) days after such meeting, the Parties have not succeeded in negotiating a resolution of the dispute, they agree to submit the matter to non-binding mediation and to bear equally the costs of mediation.
  - c. The Parties will jointly appoint a mutually acceptable mediator; if they fail to do so within thirty (30) days from the conclusion of the Formal Initial Meeting, they shall each select a mediator. The two mediators will then appoint a third mediator who shall, as the sole mediator, conduct mediation for the Parties.
  - d. The Parties will schedule the mediation for a date within thirty (30) days after selection of the mediator(s). The Parties agree to participate in good faith in the mediation and negotiations related thereto for a period of thirty (30) days after the start of mediation. The substantive and procedural law of the State of California shall apply to the proceedings.
  - e. If the Parties are not successful in resolving the dispute through mediation, then the Parties shall be free to litigate the matter, and agree that in the event of such litigation, the exclusive venue for such litigation shall be the Superior Court of Monterey County, California or, if necessary for exclusive federal questions, the United States District Court for the Northern District of California.
  - f. During the pendency of any dispute or appeal, the agreement and permits shall remain in effect and Network shall remain in place. Notwithstanding the above, the City may order the removal of Network equipment and/or the cessation of operations during the pendency if it determines that failure to do so would result in immediate harm to public health and safety.
- (iii) Termination of this Agreement for any other reason shall require the mutual consent of both parties.

## **7. DEFINITIONS**

Terms used in this Agreement shall have the same meaning as those terms are used and defined in the Service Agreement. For the avoidance of doubt and convenience of reference, the following terms shall have the following meanings:

- (i) “Cabinet” means an above ground structure used to store, terminate, splice or transfer fiber optic cable, network electronics, patch panels, and switches.
- (ii) “Fiber” means the fiber optic cable and/or conduit to be installed by Underline, whether aerial

or underground, comprising the optical fiber components of the Network as deployed and as may be changed from time to time.

- (iii) "Network" means all components of a system designed to provide Broadband Internet Service, including Fiber, Cabinets, conduits, connectors, wireline and wireless transmitters, Vaults, appliances, splitters, apparatus, and other related components and appurtenances.
- (iv) "Vault" means a buried box, with a lid that is even with the surface of the ground, used to store, terminate, splice, or transfer fiber optic cable.

## 8. AMENDMENT

This Agreement may not be modified or amended except by a written agreement executed by the Parties.

## 9. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of California.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement as of the date first written above.

### CITY OF SALINAS

DocuSigned by:

*Kimbley Craig*

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Kimbley Craig, Mayor

### APPROVED AS TO FORM:

DocuSigned by:

*Christopher A. Callihan*

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Christopher A. Callihan, City Attorney

### ATTEST:

DocuSigned by:

*Patricia Barajas*

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Patricia M. Barajas, City Clerk

### UNDERLINE MONTEREY, LLC

DocuSigned by:

*Robert Thompson*

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Robert Thompson, Chief Executive Officer