

EXHIBIT “A”

EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT

This Exclusive Negotiating Rights Agreement (this “**Agreement**”) is entered into as of this 22nd day of June, 2021 (the “**Effective Date**”), by and between the City of Salinas, a California charter city and municipal corporation (the “**City**”) and Underline Infrastructure Services, LLC, a Delaware Limited Liability Corporation (hereafter “**Underline**”) for the development of a broadband network on the basis of the following facts:

RECITALS

- 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 low-cost, reliable consumer broadband service, delivered to residents at download and upload speeds sufficient to enable full and unrestricted access to online services.
- C. City received five responses to the RFP, including the proposal submitted by Underline attached hereto as “Exhibit A” (the “**Proposal**”).
- D. The RFP responses were evaluated and scored by City staff and consultants, and Underline received the highest score of the five responses.
- E. Both City staff and Underline desire to enter into a due diligence period to allow Underline to collect additional information regarding its implementation of the Proposal, and to allow City to verify that Underline has the expertise, funding, and capacity to execute the Proposal.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and promises contained in this Agreement and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties mutually agree as follows:

ARTICLE 1.

EXCLUSIVE NEGOTIATIONS; PRE-DEVELOPMENT EXPENSES

Section 1.1 Good Faith Negotiations. The City and Underline shall negotiate diligently and in good faith, during the Negotiating Period described in Section 1.2, to complete the tasks included herein. During the Negotiating Period, the parties shall use good faith efforts to accomplish the respective tasks outlined in Article 2. The City and Underline shall each devote such personnel and other resources as may be reasonably required to complete negotiations during the Negotiating Period.

Section 1.2 Negotiating Period. The initial negotiating period (the “**Negotiating Period**”) under this Agreement shall be one hundred twenty (120) days commencing on the Effective Date. Provided that Underline is not in default as defined in this Agreement and the Agreement has not been terminated pursuant to Section 3.6, the Negotiating Period may be further extended up to four times in increments of thirty (30) additional days upon the mutual written agreement of both parties. The City Manager may enter into such one-month extensions on behalf of the City.

Section 1.3 Exclusive Negotiations. During the Negotiating Period (as such Negotiating Period may be extended pursuant to Section 1.2), the City shall not negotiate with any entity, other than Underline, regarding the granting of a License to utilize the City’s right-of-way for the purpose of providing an open-access fiber network, or solicit or entertain bids or proposals to do so. The foregoing shall not prevent the City from providing information, if required by law, regarding the Proposal and/or the City’s activities

related to the Proposal to persons or entities other than Underline. The foregoing shall further not prevent the City from issuing encroachment permits within City's right-of-way to those that otherwise have a legal right to make use of the right-of-way, nor shall it prevent City from entering into License Agreements for the installation of fiber or other communications equipment when such fiber or equipment is for purposes other than that proposed by Underline or contemplated in the RFP.

Section 1.4 No Reimbursement for Pre-development Expenses. During the Negotiating Period Underline will incur expenses related to the due diligence and pre-development activities outlined in Article 2 below (the "**Pre-development Costs**"). Underline understands that the City is under extreme financial pressure, and agrees that under no circumstance, including without limitation even if the City is in default under this Agreement, will the City reimburse Underline for Pre-development Costs or be liable for any other monetary payment to Underline.

ARTICLE 2. NEGOTIATION TASKS

Section 2.1 Overview. The parties shall use reasonable good faith efforts to accomplish the tasks set forth in this Article 2 in a timeframe that will support the completion of the tasks identified herein within the Negotiating Period. Time is of the essence of each and every provision hereof in which time is a factor.

Section 2.2 Responsibilities of Underline. Within the Negotiating Period, Underline shall complete and deliver to the City for its analysis the following:

- (i). High-level design and engineering and acquisition of initial bids for construction of the broadband network specified in the Proposal, including materials and supply chain analysis;
- (ii). Economic analysis, including quantifying the "economic gaps" (if any) that will need to be creatively filled in order to ensure universal access;
- (iii). Draft contracts for the City and/or school districts/anchor institutions setting forth services, requirements, pricing, and access for Underline to the City's right-of-way and/or infrastructure as well as an agreement setting forth the terms and conditions pursuant to which the City could elect at its option to purchase any installed broadband infrastructure in the future;
- (iv). Community Outreach/Engagement Strategy; and
- (v). Proof of financing commitment.

Section 2.3 Responsibilities of City. Within the Negotiating Period, City shall make all reasonable efforts to assist Underline in the completion of its tasks identified in Section 2.2 by responding to requests for information and documentation. This information may include, but not be limited to, the following:

- (i). Maps or GIS files, where possible, related to the locations of existing City infrastructure e.g. fiber, conduit, water mains, electricity poles etc.;
- (ii). Copies of existing regulations, policies, standard plans, and contracts or agreements related to broadband and internet services;
- (iii). Information related to City's communications infrastructure as it relates to City's operations, as well as other planned or considered "smart city" initiatives; and
- (iv). CDBG or other state and federal grant funds identified by City with the potential to close any "economic gaps" identified in the economic analysis; and
- (v). Introduction to Extenet, Crown Castle, and other appropriate entities so that Underline may commence discussions regarding their infrastructure in the City.

Requests for information in the public domain which is already available shall be provided promptly by City; requests for information that is not within the public domain or which would require additional City staff time to assemble will be evaluated on a case-by-case basis.

Section 2.4 Environmental Review. During the Negotiating Period the City and Underline shall review the Proposal and applicable laws to determine what level of environmental review would be necessary pursuant to the California Environmental Quality Act (CEQA) for the execution of the Proposal. Nothing in this Agreement shall be construed to compel the City to approve or make any particular findings with respect to such CEQA documentation.

Section 2.5 Progress Reports. Every thirty (30) days during the Negotiating Period or any Extension period thereof, Underline shall submit a written progress report advising the City on studies being made and matters being evaluated by Underline with respect to this Agreement and the Development. In addition, Underline and the City should also aim to meet online at least every two weeks, and in person on several occasions in the City, where possible.

The Progress Reports and additional meetings shall clarify the status of the tasks being pursued and advance additional tasks for successful project implementation. For example, as part of the economic analysis, if economic gaps to universal access are quantified, the parties will work together to identify potential sources of funds to close those gaps, including seeking community development block grants and/or Federal and State stimulus dollars available for broadband which stimulus or grant dollars would likely be directed specifically at the cost of infrastructure necessary to provide discounted internet access to low-income families in the City.

Section 2.6 Attorney's Fees. In the event of any action or proceeding brought by any party against another party(ies) under this Agreement, the prevailing party shall be entitled to recover all costs and expenses including its attorney's fees in such action or proceeding in such amount as the court may adjudge reasonable. Attorney's fees for in-house City Attorney staff, if awarded, shall be calculated at the market rate. The prevailing party shall be determined by the court based on an assessment of which party's major arguments made or positions taken in the proceedings could fairly be said to have prevailed over the other party's major arguments or positions on major disputed issues in the court's decision. If the party which shall have commenced or instituted the action, suit, or proceeding shall dismiss or discontinue it without the concurrence of the other party, such other party shall be deemed the prevailing party. The provisions of this Section shall survive termination of this Agreement.

ARTICLE 3. GENERAL PROVISIONS

Section 3.1 Limitation on Effect of Agreement. This Agreement shall not obligate either the City or Underline to enter into any particular agreement. By execution of this Agreement (and any extension of the Negotiating Period), the City is not committing itself to or agreeing to enter into any License Agreement or other agreement, agreeing to provide any City assistance, agreeing to approve any land use entitlements, agreeing to certify any environmental documents, undertake construction, or undertake any other acts or activities relating to the subsequent independent exercise of discretion by the City. Execution of this Agreement by the City is merely an agreement to conduct a period of exclusive negotiations in accordance with the terms hereof, reserving for subsequent City action the final discretion and approval regarding the execution of the Proposal and all proceedings and decisions in connection therewith. Any agreements resulting from negotiations pursuant to this Agreement shall become effective only if and after such agreement has been considered and approved by the City Council, following conduct of all legally required procedures, and executed by duly authorized representatives of the City and Underline. Execution of this Agreement by Underline is an agreement to negotiate diligently and in good faith toward execution of the Proposal, reserving final approval by the governing board and/or authorized officers of Underline, as applicable, as to such business terms and final agreements. Until and unless an agreement is signed by Underline, approved by the City Council, and executed by the City, no agreement drafts, actions, deliverables, term sheets, outlines, memoranda, or communications arising from the performance of this Agreement shall impose any legally binding obligation on either party to enter into or support entering into

an agreement or be used as evidence of any oral or implied agreement by either party to enter into any other legally binding document. As such, the City retains the absolute discretion before the execution of any agreement to determine not to proceed with the Project or any portion thereof.

Section 3.2 Notices. Formal notices, demands and communications (other than day-to-day routine communications) between the City and Underline shall be sufficiently given if, and shall not be deemed given unless: (i) dispatched by certified mail, postage prepaid, return receipt requested, (ii) sent by express delivery or overnight courier service with a delivery receipt, (iii) personally delivered with a delivery receipt, or (iv) sent by electronic mail with a copy delivered by one of the previous three methods, to the office of the parties shown as follows, or such other address as the parties may designate in writing from time to time:

City: City of Salinas
Attn: Andrew Myrick
200 Lincoln Avenue
Salinas, CA 93901
Email: andym@ci.salinas.ca.us

With a copy to: City Attorney
City of Salinas
200 Lincoln Avenue
Salinas, CA 93901
Email: chrisc@ci.salinas.ca.us

Underline: Eva Arevuo
Attn: Underline
The Yard
33 Nassau Avenue #28
New York, NY 11222

Email: earevuo@underline.com
Phone: (415) 404-0991

With a copy to: Mark Kropilak, General Counsel
Attn: Underline
The Yard
33 Nassau Avenue #28
New York, NY 11222

Email: mkropilak@underline.com
Phone: (610) 710-5381

Such written notices, demands, and communications shall be effective on the date shown on the delivery receipt as the date delivered or the date on which delivery was refused.

Section 3.3 Waiver of Lis Pendens. It is expressly understood and agreed by the parties that no lis pendens shall be filed with respect to this Agreement or any dispute or act arising from it.

Section 3.4 Costs and Expenses. Except as otherwise defined in this Agreement, each party shall be responsible for its own costs and expenses in connection with any activities and negotiations undertaken in connection with this Agreement, and the performance of each party's obligations under this Agreement. The City will keep track of its costs and may, for its internal purposes, consider these costs a "contribution" to the construction and operation of the Proposal, without acquiring an ownership interest

in any of the underlying assets unless mutually agreed by the parties.

Section 3.5 No Commissions. Underline acknowledges that City has not retained the services of any broker, agent or finder with respect to the Proposal or in connection with any matters relating to this transaction of the subject discussions, and agrees to hold the City harmless from and against any claim for commission, fee, or other remuneration by any broker, agent, or finder under any claimed retainer for services with respect thereto. The City shall not be liable for any real estate commissions or brokerage fees that may arise from this Agreement, unless the City retains a broker, agent or finder.

Section 3.6 Parties' Discretion to Terminate Agreement. Both parties agree to pursue the completion of the tasks identified herein with all good faith and diligence; however, if at any time during the Negotiating Period Underline, in its sole discretion, reasonably determines that completion of the Proposal is no longer feasible or desirable, Underline can exercise its right to provide written notification to City of its intent to terminate the Agreement, effective upon receipt of such notice by the City.

City recognizes that Underline will be expending funds and assuming risk in reliance upon City's representations in this Agreement. Therefore, City may not unilaterally terminate this Agreement prior to the termination of the Negotiating Period, or any extension thereof, unless Underline is in violation of the terms of this Agreement. If Underline is in violation of any part of this Agreement, City may provide written notice of said violation(s) to Underline and may direct Underline to cure the violation(s). If Underline has not cured said violation(s) within thirty (30) days of the City's notification, City may then terminate this Agreement effective immediately by providing written notice to Underline; such termination shall be effective immediately upon receipt of such notice by Underline.

The parties may also elect, by mutual written agreement, to terminate this agreement at any time.

Following any termination of this Agreement, each party shall be free to negotiate with any other party with regard to the nature and scope of the items described herein, and shall assume responsibility for all of the party's own expenses and costs incurred up to and including the date of termination of this Agreement. Except as expressly provided in this Agreement, no party shall have any liability to any other party for damages, nor shall any party have any other claims with respect to performance under this Agreement. Each party specifically waives and releases any such rights or claims it may otherwise have at law or in equity. In the event of the expiration or earlier termination of this Agreement, the City shall be free to negotiate with any persons or entities.

Section 3.7 Confidentiality of Information. The parties acknowledge that each party will need sufficient, detailed information from the other party about the proposed Development to make informed decisions about the execution of the Proposal. The parties understand and agree that City is subject to the California Public Records Act (Government Code Section 6253 *et seq.*) and cannot guarantee that any such information received from the other party can remain confidential.

If the City receives a request for any information provided by Underline under the Public Records Act, the City shall immediately notify Underline of such event. Within three business days of this notification, Underline may provide City with a list of any requested information that it believes is not subject to disclosure under the Public Records Act, including a brief description of its reasoning. This request shall not be binding upon City; however, City shall take any information provided by Underline into consideration when making its determination whether the requested information is disclosable under the Public Records Act.

The parties agree that each party may share information provided by the other party of a financial and potential proprietary nature with third party consultants who have been contractually engaged to advise the respective parties concerning matters related to this Agreement and with each party's officers, agents, and employees to the extent necessary for the negotiation and decision-making process. Accordingly, those outside consultants shall treat the information as confidential, and said information shall be used only to

evaluate the prospects for the subject transaction and shall not be provided to any additional third party unless directed to do so by the City pursuant to a Public Records Act request. If this Agreement is terminated without the execution of an agreement, each party shall return to the other party any confidential information submitted by the other party under this Agreement. If any litigation is filed seeking to make public any information either party submitted to the other party in confidence, the City and Underline shall cooperate in defending the litigation. Each party shall pay the party's own costs of defending such litigation.

Section 3.8 Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California without reference to choice of law principles, and venue for any action under this Agreement shall be in the Superior Court of the County of Monterey, or in the appropriate federal court with jurisdiction over the matter.

Section 3.9 Entire Agreement. Underline and the City understand and agree that neither Party is under any obligation whatsoever to enter into an Agreement. This Agreement constitutes the entire agreement of the Parties hereto with respect to the subject matter hereof. There are no agreements or understandings between the Parties and no representations by either Party to the other as an inducement to enter into this Agreement, except as expressly set forth herein. All prior negotiations between the Parties are superseded by this Agreement. The City and the officers, members, staff and agents have not made any representations, warranties or promises to Underline other than any that are expressly set forth herein.

Section 3.10 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement.

Section 3.11 Assignment. Underline may not transfer or assign any or all of its rights or obligations hereunder except with the prior written consent of the City, which consent shall be granted or withheld in the City's reasonable discretion, and any such attempted transfer or assignment without the prior written consent of City shall be void. Notwithstanding the foregoing, Underline shall have the right to assign its rights and obligations under this Agreement to a new entity controlled or managed by Underline. The City shall have the right to review and approve, which approval shall not be unreasonably withheld, the organizational documents of such entity and the entities comprising such entity. Any agreement, if and when approved, would be between the City and Underline or such assignee.

Section 3.12 Non-Recourse Agreement. No member, official, employee, agent, or consultant of any party to this Agreement shall be personally liable to any other party, or any successor in interest or person claiming by, through or under any party, in the event of any default or breach, or for or on account of any amount which may be or become due, or in any claim, cause or obligation whatsoever under the terms of this Agreement.

Section 3.13 No Third Party Beneficiaries. This Agreement is made and entered into solely for the benefit of the City and Underline and no other person shall have any right of action under or by reason of this Agreement.

Section 3.14 Actions by the City. Whenever this Agreement calls for or permits the approval, consent, authorization or waiver of the City, the approval, consent, authorization, or waiver of the City Manager of the City shall constitute the approval, consent, authorization or waiver of the City without further action of the City Council, including amendments to the Schedule within the time frame of the Negotiating Period and any extensions thereto as set forth in Section 1.2.

Section 3.15 Amendment. This Agreement may not be altered, amended or modified except by a writing duly approved and executed by all Parties.

Section 3.16 Compliance with Regulations. Underline acknowledges that Underline shall be required to comply with (and to cause its contractors, subcontractors, tenants to comply with) the City's laws, policies, rules, and regulations.

IN WITNESS WHEREOF, this Agreement has been executed by the parties on the date first above written.

CITY:

City of Salinas, a California Charter City and Municipal Corporation

By: _____
Steven Carrigan, City Manager

UNDERLINE:

Underline Infrastructure Services, LLC, a Delaware Limited Liability Company

By: _____
Robert Thompson, CEO

APPROVED AS TO FORM:

By: _____
Christopher A. Callihan, Esq. City Attorney

EXHIBIT “A”

PROPOSAL BY UNDERLINE