

COPY



CITY OF SAN DIEGO

ATTACHMENT AGREEMENT AND
RIGHT-OF-WAY TELECOMMUNICATIONS AGREEMENT

between

THE CITY OF SAN DIEGO

and

EXTENET SYSTEMS (California) LLC

Document No. C- 14309
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Office of the City Clerk
San Diego, California

**CITY OF SAN DIEGO
ATTACHMENT AGREEMENT AND
RIGHT-OF-WAY TELECOMMUNICATIONS AGREEMENT**

THIS CITY OF SAN DIEGO ATTACHMENT AGREEMENT AND RIGHT-OF-WAY TELECOMMUNICATIONS AGREEMENT ("Agreement") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and EXTENET SYSTEMS (California) LLC, a California limited liability company ("EXTENET"), to be effective upon execution by CITY (the "Effective Date") and approval by the City Attorney, as follows:

RECITAL

This Agreement is a master agreement between CITY and EXTENET, intended to govern the rights and obligations of such parties related to multiple parcels of real property and specified City facilities, identified herein as "Sites." In addition, this Agreement is intended to also apply to those portions of the Sites defined herein as "Permitted Areas" as if a separate agreement were written for each Permitted Area.

FOR VALUABLE CONSIDERATION, the sufficiency of which is acknowledged, the parties agree as follows:

1. EXHIBITS.

This Agreement contains EXHIBITS A through F, each of which is attached and made a part of this Agreement, identified as follows:

- EXHIBIT A: Site Descriptions
- EXHIBIT B: Site Plans/Locations
- EXHIBIT C: Equipment at the Sites
- EXHIBIT D: Memorandum of Agreement Form
- EXHIBIT E: Interference Protection Requirements
- EXHIBIT F: Emergency Maintenance Procedures

2. DEFINITIONS.

- 2.1. "Approved Pole" shall mean a CITY-approved pole installed by EXTENET at a "Site" (defined below) within a "City Right-of-Way" (defined below) and approved by CITY for EXTENET'S use as provided herein.

- 2.2. "City Right-of-Way" shall mean any of the public streets, roads, lanes, courts, ways, alleys, boulevards, and places, including without limitation any public utility easement and public service easement, as the same now or may hereafter exist under CITY'S jurisdiction, including without limitation all space in, upon, above, along, across, under, and over such things. Such term shall not include any other property owned by CITY, or any property owned by any person other than CITY, except as provided by applicable laws or pursuant to an agreement between CITY and such other person.
- 2.3. "Decorative Street Light Pole" shall mean any CITY streetlight pole that incorporates artistic design elements not typically found in standard steel or aluminum streetlight poles and does not have a mast arm for electrolier support. The term Decorative Streetlight Pole includes any historically designated or architecturally significant light poles owned by CITY and located in a City Right-of-Way.
- 2.4. "Equipment" shall mean the repeaters, radios, multiplexers, antennae, fiber optic cables, wires, and related equipment, whether referred to singly or collectively, to be installed and operated by EXTENET hereunder. Examples of typical Equipment types and installation configurations are shown in the drawings and photographs attached hereto as EXHIBIT C and incorporated herein by reference. Any Equipment and installation configuration not contained within EXHIBIT C must receive written CITY approval before it may be used on any Site.
- 2.5. "Gross Revenues" shall mean and include any and all income and other consideration collected, received, or in any manner gained or derived by EXTENET from or in connection with the provision of Service by EXTENET, either directly or through a reseller, if any, using a Site within the City of San Diego. Gross Revenues shall include any imputed revenue derived from commercial trades and barter equivalent to the full retail value of Service provided by EXTENET. Gross Revenue shall not include: (a) sales, ad valorem, or other types of "add-on" taxes, levies, or fees or surcharges collected by EXTENET that are calculated by gross receipts or gross revenues which might have to be paid to, or collected for, federal, state, or local government (exclusive of the Site Annual Fee paid to City as provided herein); (b) retail discounts or other promotions; (c) customer security deposits; (d) non-collectable amounts due EXTENET or its customers; (e) refunds or rebates; and (f) non-operating revenues such as interest income or gain from the sale of an asset.
- 2.6. "Permitted Areas" shall mean the portions of the Sites described in EXHIBIT B: Site Plans/Locations used by EXTENET to provide Service.
- 2.7. "Service" shall mean the transport of electronic communications via private virtual circuits, as described in EXTENET's tariffed Rate Schedule Section 4.1.1 and 4.1.2 on file with the CPUC, and for which EXTENET uses a Site within the jurisdictional boundaries of the CITY of San Diego.

2.8. "Site" shall mean a portion of a CITY Right-of-Way situated in the CITY of San Diego, County of San Diego, State of California, and located on a CITY-owned "Street Light Pole," "Decorative Street Light Pole," (as limited by Section 6.1) or "Traffic Signal" (as defined in this section), and used by EXTENET to provide Service to its customers. The Sites covered by this Agreement are more particularly described in EXHIBIT A: Site Descriptions.

2.9. "Street Light Pole" shall mean any CITY concrete, fiberglass, metal, or wooden pole that has a mast arm for electrolier support.

2.10 "Traffic Signal" shall mean any CITY pole that has traffic-controlling lights on it.

3. PERMITTED AREAS.

Under the terms and conditions of this Agreement, CITY agrees to allow EXTENET use of those certain portions of the Sites described in EXHIBIT B: Site Plans/Locations, which portions shall be called the "Permitted Areas." EXTENET, its agents, employees, contractors, guests and invitees may have access to the Sites on a 24-hour, non-exclusive basis.

4. CITY'S CONSENT, DISCRETION.

Whenever required under this Agreement, CITY'S consent or approval shall mean the written consent or approval of the City Manager of San Diego, or designee ("City Manager"), unless otherwise expressly provided. CITY'S discretionary acts hereunder shall be made in the City Manager's discretion, unless otherwise expressly provided.

5. SAN DIEGO'S STRONG MAYOR FORM OF GOVERNANCE.

All references to "City Manager" in this Agreement shall be deemed to refer to "the Mayor or designee." This section shall remain in effect for the duration CITY operates under the mayor-council (commonly referred to as "strong mayor") form of governance pursuant to Article XV of the San Diego City Charter.

6. USES.

The Permitted Areas are made available to EXTENET solely and exclusively for the purposes, with proper permits and approvals obtained, of installing, constructing, modifying, maintaining, operating, and removing, all at EXTENET'S sole expense, communications equipment as listed in the attached EXHIBIT C: Equipment at the Sites, and as defined as "Equipment" in Section 2 of this Agreement.

6.1. Other Uses. EXTENET may operate its Equipment and use the Permitted Areas for other related or incidental activities as may be first approved in writing by CITY, and for no other purpose whatsoever. Equipment installed on a Traffic Signal shall not interfere with the operation of the Traffic Signal, or cause visual impairment, distraction or

confusion to motorists. EXTENET shall not install any Communications Equipment on a Decorative Street Light Pole without additional written approval by CITY. EXTENET agrees that, in accordance with the CITY's policies, it will only seek to place Equipment on Traffic Signals when use of a Street Light Pole is not technically feasible and that its use of any Traffic Signal shall be subject to the permitting process and laws of the City of San Diego.

6.2. Continuous Use. EXTENET shall continuously use each Permitted Area from the date of installation of equipment throughout the term of this Agreement.

6.3. Unauthorized Use. The use of any Site or Permitted Area for any unauthorized or illegal purpose shall constitute a default of this Agreement. CITY shall notify EXTENET of any unauthorized or illegal activity and shall give EXTENET ten (10) days to correct or discontinue such activity. If such activity is not corrected or discontinued, then notwithstanding any provision of this Agreement to the contrary, CITY may, in its sole discretion, terminate this Agreement, either in whole or as to the particular Site or Permitted Area affected, immediately upon written notice to EXTENET.

7. TERM.

The term of this Agreement ("Term") shall be ten (10) years, commencing on the Effective Date. If the Effective Date is not the first day of a calendar month, the Term shall include the partial calendar month from and including the Effective Date through the last month of the full Term, so that the Term shall expire on the last day of a calendar month. "Agreement Year" as used in this Agreement shall mean each twelve (12) month period during the Term. The first Agreement Year shall include any partial month in which the Effective Date falls, through the last day of the twelfth month thereafter.

7.1. Termination. If EXTENET cannot obtain all permits or other approvals of a governmental authority required to install and operate the Communications Equipment (collectively, "Approvals"), or if a governmental authority cancels or denies the renewal of any such Approvals, EXTENET may terminate this Agreement solely as to the particular Permitted Area(s) affected thereby, upon thirty (30) days prior written notice to CITY. If EXTENET, for any other reason, in its sole discretion, determines that it is unable to use a Permitted Area, EXTENET may terminate this Agreement solely as to that particular Permitted Area upon sixty (60) days prior written notice to CITY, provided EXTENET pays to CITY on or before such termination a termination fee equal to the Site Annual Fee for each such Permitted Area at the then-current rate. Upon termination of this Agreement, in whole or in part, for any reason, CITY shall retain all prepaid fees, and other payments made under this Agreement related to such part of this Agreement so terminated.

7.2. Holdover. EXTENET may not continue in possession of any Permitted Area past the expiration or earlier termination of this Agreement. Any extension of the Term shall require approval by the City Council pursuant to City Council Policy 700-10: Disposition of City-Owned Real Property.

- 7.3. Quitclaim Deed. Upon termination of this Agreement, in whole or in part, and within five (5) days following written demand by CITY, EXTENET shall execute, acknowledge, and deliver to CITY a valid and recordable quitclaim deed covering each Permitted Area affected thereby. If EXTENET fails or refuses to deliver any such quitclaim deed, CITY may prepare and record a notice reciting EXTENET'S failure to perform such obligation, and such notice shall be conclusive evidence of the Agreement termination and of EXTENET'S right to possession of the affected Permitted Area(s).
- 7.4. Surrender. Upon the expiration or earlier termination of this Agreement, EXTENET shall surrender each Permitted Area to CITY free and clear of all liens and encumbrances caused by or resulting from EXTENET'S occupancy and use thereof. EXTENET shall surrender the Permitted Areas in the same condition as existed when first included in this Agreement, normal wear and tear excepted.
- 7.5. Memorandum of Agreement. Upon EXTENET'S request, CITY shall execute and deliver to EXTENET, a "Memorandum of Agreement" substantially in the form attached hereto as EXHIBIT D: Memorandum of Agreement Form, which EXTENET may record in the office of the San Diego County Recorder.

8. FEES.

EXTENET shall be solely responsible for the payment of all lawful fees in connection with EXTENET'S performance under this Agreement, including those set forth below.

- 8.1. Site Annual Fee. In order to compensate City for EXTENET'S use of City approved Sites, EXTENET shall pay to the City an annual fee (the "Site Annual Fee") in the amount of Five Hundred Dollars (\$500.00) for the use of each Site, upon which Equipment has been installed pursuant to this Agreement. The aggregate Site Annual Fee with respect to each year of the term shall be an amount equal to the number of CITY Sites used by EXTENET during the preceding twelve (12) months multiplied by the Annual Fee, prorated as appropriate.
- 8.2. Right-of-Way Fee. In addition to the Site Annual Fee and in exchange for the use of City's Public Rights-of-Way, EXTENET shall pay to City on a quarterly basis, in lawful money of the United States, five percent (5%) of EXTENET'S Gross Revenues received by EXTENET from the provision or sale of Service using a Site within the jurisdictional boundaries of the City of San Diego. Right-of-Way Fees payments made to City by EXTENET pursuant to this Section are in addition to any applicable City administration fees, such as inspection fees, business taxes, permit fees, other regulatory charges, and the Annual Fee pursuant to this Agreement.
- 8.3. Annual Fee Adjustments. Commencing on the third (3rd) anniversary of the Installation Date, the Site Annual Fee shall be adjusted with a cumulative increase of six percent (6%) over the Site Annual Fee for the preceding year. Thereafter, during the remainder of the term, the Site Annual Fee shall be increased by three percent (3%)

over the Site Annual Fee for each preceding Agreement year throughout the term of the Agreement.

- 8.4. Time and Place of Payment. The Site Annual Fee is to be remitted annually in advance on or before the first day of each Agreement Year. If the Effective Date is not the first day of a calendar month, then the accrued Right-of-Way-Fee for the partial month at the beginning of the Term shall be prorated on a per diem basis, and paid in conjunction with the Fees for the first Agreement Year. The Right-of-Way Fee shall be paid quarterly on or before the 30th day after each calendar quarter ending March 31, June 30, September 30, and December 31 during the term of this Agreement, and Thirty (30) days after the expiration of the term of this Agreement. All fees required by this Agreement shall be made payable to City Treasurer and mailed to:

City of San Diego
Office of City Treasurer
P.O. Box 122289
San Diego, California 92112-4165

or hand delivered to:

Office of City Treasurer
Civic Center Plaza
1200 Third Avenue, First Floor
San Diego, California 92101

EXTENET shall include CITY'S customer account number for EXTENET on the payment so CITY can apply the Fee to the appropriate account. The place of payment may be changed at any time by CITY upon thirty (30) days prior written notice to EXTENET. Mailed Fee payments shall be deemed paid upon the date the payment is postmarked by the postal authorities. If a postmark is illegible, the payment shall be deemed paid upon actual receipt by City Treasurer. EXTENET assumes all risk of loss and responsibility for late payment charges if payments are made by mail. If payment is made via overnight delivery service, payment shall be deemed paid upon the date the payment is desposited with the delivery service.

- 8.5. Delinquent Fees. If EXTENET fails to pay Fees when due, EXTENET shall pay, in addition to the unpaid Fees, five percent (5%) of the delinquent fees. If the Fees are still unpaid at the end of fifteen (15) days past due, EXTENET shall pay an additional five percent (5%) [being a total of ten percent (10%)], which is mutually agreed by the parties to be appropriate to compensate CITY for loss resulting from Fee delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account. Acceptance of late charges and any portion of the late payment by CITY shall neither constitute a waiver of EXTENET'S default with respect to late payment nor prevent CITY from exercising any other rights and remedies available at law or in equity.

8.6. Inspection of Records. EXTENET shall maintain, in accordance with generally accepted accounting principles (GAAP), complete and accurate financial records showing all income recognized from EXTENET's provision or sale of Service using a Site within the jurisdictional boundaries of the City of San Diego. EXTENET shall make any and all of its records and accounts relating to provision or sale of Service using a Site available to CITY for inspection at a mutually agreeable location and times so that CITY can determine EXTENET'S compliance with the Fee requirements in Section 8.2 of this Agreement. EXTENET'S failure to keep and maintain records in accordance with GAAP, and to make such records available for inspection by CITY shall be a default of this Agreement, in whole or in part. CITY shall give EXTENET fifteen (15) days to cure this default. EXTENET shall maintain all records and accounts for a minimum period of five (5) years past the expiration or earlier termination of this Agreement, in whole or in part. This section shall survive the expiration or earlier termination of this Agreement, in whole or in part. CITY agrees and acknowledges that all of EXTENET's financial information is confidential and proprietary, and that City shall take all reasonable steps to protect EXTENET'S financial information from public disclosure.

9. RELATED COUNCIL ACTIONS.

By entering into this Agreement, neither CITY nor the City Council is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to development or operation of the Permitted Areas. Discretionary action includes, but is not limited to, rezonings, variances, environmental clearances or any other governmental agency approvals that may be required for EXTENET'S development and operation of the Permitted Areas. EXTENET shall diligently seek and obtain, at its sole cost, all entitlements and actions from both CITY and other governmental agencies with jurisdiction over the Sites and the Permitted Area, as may be necessary for EXTENET to occupy and use the Permitted Areas.

10. CONSTRUCTION.

EXTENET shall comply with all applicable federal, State, and City technical specifications and requirements and all applicable State and local codes related to the construction, installation, operation, maintenance, and control of EXTENET's Equipment installed at Sites or Permitted Areas. EXTENET shall not attach, install, maintain, or operate any Equipment at Sites or Permitted Areas without the prior written approval of the City for each location.

10.1. Obtaining Required Permits. If the attachment, installation, operation, maintenance, or location of the Equipment in the Public Way shall require any permits, EXTENET shall, as required under applicable CITY ordinances, apply for the appropriate permits and pay any standard and customary permit fees. CITY shall promptly respond to EXTENET requests for permits and shall otherwise cooperate with EXTENET in facilitating the deployment of Equipment at Sites or Permitted Areas in a reasonable and timely manner

- 10.2. Location of Equipment. The proposed locations of EXTENET's planned initial installation of Equipment shall be provided to the CITY promptly after EXTENET's review of maps showing Street Light, Decorative Street Light Pole and Traffic Signals prior to installation of Equipment. Prior to installation of Equipment at Sites or Permitted Areas, EXTENET shall obtain written approval for such installation at Sites or Permitted Areas from City. City may approve or disapprove a location and installation, based upon reasonable regulatory factors, including but not limited to, the location of other existing or planned communication facilities, efficient use of scarce physical space to avoid premature exhaustion, potential interference with other communication facilities and services, the public safety and other critical services; provided however, that approval shall not be unreasonably conditioned, delayed, or withheld. Upon the completion of Equipment installation, EXTENET promptly shall furnish to the CITY a current pole list and map showing the exact location of the Equipment at Sites or Permitted Areas.
- 10.3. Zoning Height Restrictions. Notwithstanding anything to the contrary in this Agreement (including specifications attached hereto in EXHIBIT C), no portion of EXTENET's Equipment shall extend higher than thirty feet (30') above grade with respect to attachments to Streetlight Poles and utility poles located in (a) the Coastal Height Overlay Zone west of I-5 and (b) City's residential zones.
- 10.4. Street Furniture Cabinets. EXTENET understands that above-ground street furniture and equipment cabinets located in the Public Rights-Of-Way are disfavored as a matter of CITY policy and that any such installation of above-ground street furniture or equipment cabinets will require a Conditional Use Permit under applicable ordinances. EXTENET agrees to comply with City's current ordinances regarding such installations as well as any future regulations that may be adopted by City with respect to such installations.
- 10.5. Visual Impact of Cross-arm Installations. EXTENET agrees that, in order to minimize the visual impact of its attachments on utility poles, in any instance where a cross-arm is set on a utility pole as the locus for attachment of Equipment, such Equipment shall be attached at the point on the cross-arm that is as close to the pole as is possible consistent with the requirements of General Order 95 of the California Public Utilities Commission ("CPUC").
- 10.6. Relocation and Displacement of Equipment. EXTENET understands and acknowledges that CITY may require EXTENET to relocate Equipment at a Site or Permitted Area. EXTENET shall, at CITY's direction, relocate such Equipment at EXTENET's sole cost and expense within thirty (30) days, which period may be extended upon written approval by CITY, whenever CITY reasonably determines that the relocation is needed for any of the following purposes: (a) because the Equipment is interfering with or adversely affecting proper operation of CITY-owned Street Lights, Decorative Street Light Poles or, Traffic Signals, or other municipal facilities; or (c) to protect or preserve the public health or safety. EXTENET shall relocate

Equipment at a Site or Permitted Area within thirty (30) days, which period may be extended upon written approval by CITY if required for the construction, completion, repair, relocation, or maintenance of a CITY project. For any relocation of EXTENET Equipment at a Site or Permitted Area, CITY shall use its best efforts to afford EXTENET a reasonably equivalent alternate location. If a reasonably equivalent alternate location is made available by CITY and EXTENET shall fail to relocate any Equipment as requested by the CITY within the required periods stated in this subsection following notice in accordance with this subsection, CITY shall be entitled to relocate the Equipment at EXTENET's sole cost and expense, without further notice to EXTENET. To the extent the CITY has actual knowledge thereof, the CITY will attempt promptly to inform EXTENET of the displacement or removal of any pole on which any Equipment is located. In the event EXTENET desires to relocate any Equipment installed at a Site or Permitted Area to another, EXTENET shall so advise CITY and such relocation shall be subject to City's approval

- 10.7. Damage to Public Way. Whenever the removal or relocation of Equipment is required or permitted under this Agreement, and such removal or relocation shall cause the Public Way to be damaged, EXTENET, at its sole cost and expense, shall promptly repair and return the Public Way in which the Equipment are located to a safe and satisfactory condition in accordance with applicable Laws, normal wear and tear excepted. If EXTENET does not repair the site as just described, then the CITY shall have the option, upon fifteen (15) days' prior written notice to EXTENET, to perform or cause to be performed such reasonable and necessary work on behalf of EXTENET and to charge EXTENET for the proposed costs to be incurred or the actual costs incurred by the CITY at CITY's standard rates. Upon the receipt of a demand for payment by the CITY, EXTENET shall promptly reimburse the CITY for such costs.
- 10.8. Change in Equipment. If EXTENET proposes to install Equipment which is different in any material way from the specifications attached hereto as EXHIBIT C, then EXTENET shall first obtain the approval for the use and installation of the equipment from City. City may approve or disapprove of the use of the different equipment from the specifications set forth in EXHIBIT C, pursuant to the factors enumerated in Paragraph 10.2 above, and such approval shall not be unreasonably withheld.
- 10.9. Removal of Equipment. Upon sixty (60) days' written notice by City pursuant to the expiration or earlier termination of this Agreement for cause, EXTENET shall promptly, safely and carefully remove the Equipment from all Sites and Permitted Areas. Such obligation of EXTENET shall survive the expiration or earlier termination of this Agreement. If EXTENET fails to complete this removal work on or before the sixty (60) days subsequent to the issuance of notice pursuant to this Section, then City, upon written notice to EXTENET, shall have the right at City's sole election, but not the obligation, to perform this removal work and charge EXTENET for the actual costs and expenses, including, without limitation, reasonable administrative costs and remedies under Section 11 below (Security Deposit). EXTENET shall pay to City actual costs and expenses incurred by City in performing any removal work and any storage of EXTENET's property after removal within ten

(10) business days of the date of a written demand for this payment from City. After City receives the reimbursement payment from EXTENET for the removal work performed by City, City shall promptly return to EXTENET the property belonging to EXTENET and removed by City pursuant to this Section at no liability to City. If City does not receive reimbursement payment from EXTENET within such ten (10) business days, or if CITY does not elect to remove such items at City's cost after EXTENET's failure to so remove prior to sixty (60) days subsequent to the issuance of notice pursuant to this Section, any items of EXTENET's property remaining on or about a Site or Permitted Area, or stored by City after City's removal thereof may, at City's option, be deemed abandoned and City may dispose of such property in any legal manner. Alternatively, City may elect to take title to abandoned property, provided that EXTENET shall submit to City an instrument satisfactory to City transferring to City the ownership of such property. The provisions of this Section shall survive the expiration or earlier termination of this Agreement.

- 10.10. Risk of Loss. EXTENET acknowledges and agrees that EXTENET bears all risks of loss or damage of its Equipment and materials installed at a Site or Permitted Area pursuant to this Agreement from any cause, and City shall not be liable for any cost of repair to damaged Equipment, including, without limitation, damage caused by City's removal of the Equipment, except to the extent that such loss or damage was caused by the willful misconduct or negligence of City, including, without limitation, each of its elected officials, department directors, managers, officers, agents, employees, and contractors, subject to the limitation of liability provided in Section 21.3 below.

11. SECURITY DEPOSIT.

In order to secure its performance of its obligations under this Agreement, EXTENET agrees to provide the following security deposit:

- 11.1. Construction and Faithful Performance Deposit. Before EXTENET installs Equipment under this Agreement, EXTENET shall procure and provide City with a security deposit in the form of a Certificate of Deposit, letter of credit, or performance bond naming City as obligee, or such other security as may be acceptable to City ("Security Deposit"), in the amount of Five Thousand and No/100 Dollars (\$5,000.00). Such Security Deposit shall be used as security for the use of up to one hundred (100) Street Light Poles, Decorative Street Light Poles or Traffic Signals. For every twenty-five (25) additional Street Light Poles, Decorative Street Light Poles or Traffic Signals on which EXTENET will install Equipment under this Agreement, EXTENET shall provide to City an additional Security Deposit in the amount of One Thousand Two Hundred Fifty and No/100 Dollars (\$1,250.00). All Security Deposits shall be paid before the date of installation of Equipment on a Street Light Pole, Decorative Street Light Pole or Traffic Signal. The Security Deposit guarantees and assures the faithful performance of EXTENET's obligations under this Agreement. City shall have the right to draw against the security in the event of a default that is not cured within five (5) days by EXTENET or in the event that EXTENET fails to meet and fully perform any of its obligations under this Agreement. Within thirty (30) days of receipt of

written notice from City, EXTENET shall renew or replace such sums of money as shall bring the security deposit or alternative form of security current to the full amount stipulated herein.

- 11.2. Required Endorsement. The Security Deposit (in the form of a Certificate of Deposit, letter of credit, or performance bond) shall be subject to the approval of the San Diego City Attorney and shall contain the following endorsement:

"It is hereby understood and agreed that this security instrument may not be cancelled until Sixty (60) days after receipt by the City of San Diego's City Attorney, by registered mail, return receipt requested, of a written notice of intent to cancel or not to renew."

- 11.3. Return of Deposit. In the event EXTENET terminates this Agreement or defaults under the terms of this Agreement, CITY will return the Security Deposit within 30 days of removal of all Equipment on condition that all Equipment is removed in a safe and non-harmful manner, and all accounts are current.

- 11.4. Reservation of Rights. The rights reserved by City with respect to the security instrument herein are in addition to all other rights and remedies City may have under this Agreement or any other law

12. QUIET POSSESSION.

EXTENET, paying the Fees and performing its obligations under this Agreement, shall peaceably and quietly have, hold, and enjoy the Site or Permitted Areas at all times during the Term. If during the Term EXTENET is temporarily dispossessed through action or claim of a title superior to CITY'S, then this Agreement shall not be voidable nor shall CITY be liable to EXTENET for any loss or resulting damage, but there shall be determined and stated in writing by CITY a proportionate reduction of the Fees set forth in Section 8 for the period or periods during which EXTENET is prevented from having the quiet possession of all or a portion of any Site or Permitted Area.

13. SUPERIOR INTERESTS.

This Agreement is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, Agreements and licenses, easements, and rights of way pertaining to the Sites and Permitted Areas, whether or not of record. EXTENET shall obtain all licenses, permits, and agreements from such third parties as may be or become necessary to allow its use of the Permitted Areas, relative to any such superior interest. If EXTENET'S use of any Permitted Area is or becomes inconsistent or incompatible with a preexisting, superior interest, EXTENET shall take such actions and pay all costs and expenses necessary to remove such inconsistency or incompatibility to the satisfaction of the holder of the superior interest.

14. EASEMENTS AND RESERVATIONS.

- 14.1. Reservation. CITY reserves all rights, title, and interest in any and all subsurface natural gas, oil, minerals, and water on or within the Sites.
- 14.2. Grant. CITY may grant and use easements or establish and use rights-of-way over, under, along, and across the Sites for utilities, thoroughfares or access as it deems advisable, in its sole discretion, for the public good.
- 14.3. Entry. CITY may enter the Sites or Permitted Areas at any time to develop or make repairs to municipal resources and services. However, if CITY unreasonably or substantially interferes with EXTENET'S use of any Site or Permitted Area, CITY shall reimburse EXTENET for physical damages, if any, to Equipment occasioned thereby. Such reimbursement may include a reduction in Fees set forth in Section 8 proportionate to the amount of physical damage, as determined by CITY. CITY shall pay the costs of maintenance and repair of all CITY installations made pursuant to the rights reserved hereinabove.

15. COMPETENT MANAGEMENT.

Throughout the Term, EXTENET shall provide competent management for the Sites and Permitted Areas for their intended uses to the satisfaction of CITY. For the purposes of this section, "competent management" shall mean demonstrated ability in the management and operation of Equipment and related activities in a fiscally responsible manner in accordance with industry standards.

16. CO-LOCATION.

Where a Site is a shared site, EXTENET shall not access any other party's Equipment or CITY-owned communications equipment or facility, including any towers, without CITY'S prior consent.

17. ASSIGNMENT AND SUBLETTING.

EXTENET shall not assign this Agreement or any interest in this Agreement, and shall not sublet, in whole or in part, any Site or Permitted Area, or permit any other person, except EXTENET'S employees, agents, and contractors, to install and operate Equipment at any Site or Permitted Area without City's prior written consent in each instance, which consent shall not be unreasonably withheld. Consent to any assignment, subletting, occupation, or use of a Site or Permitted Area by any other person shall not be deemed consent to any subsequent assignment, subletting, occupation, or use by the same or any other person. If EXTENET assigns this Agreement, in whole or in part, or subcontracts use of the Permitted Areas, in whole or in part, without CITY'S prior written consent, CITY may declare EXTENET in default of this Agreement and thereupon terminate this Agreement in whole or in part. Neither this Agreement nor any interest herein shall be assignable as to EXTENET'S interest herein by operation of law without CITY'S prior written consent.

17.1. Assignment. For the purposes of this section, "assignment" shall include any transfer of any ownership interest in this Agreement by EXTENET or by any partners, principals, or controlling stockholders, as the case may be, from the original EXTENET, its general partners, or principals.

17.2. Assumption by Assignee. CITY'S approval of any assignment or subcontract shall be conditioned upon the assignee or subcontractor agreeing in writing that it will assume the rights and obligations assigned or subcontracted and that it will keep and perform all covenants, conditions, and provisions of this Agreement which are applicable to the rights acquired.

17.3. Additional Consideration to CITY. As a condition to CITY'S approval of any subcontractor other fee agreement or assignment as allowed under this Agreement, EXTENET shall pay to CITY fifty percent (50%) of the gross revenues payable to EXTENET under any such subcontract or other agreement, and CITY may further require that this Agreement or the requested subcontract otherwise be revised to comply with then-current CITY Agreement requirements. The City Manager or an authorized designee shall review and approve every person or entity which will have any direct or indirect interest in this Agreement as a subcontract or assignee, which approval may not be unreasonably withheld.

17.4. Provisions Binding on Successors. Except as otherwise provided in this Agreement, all of the terms, covenants, and conditions of this Agreement shall apply to, benefit, and bind the successors and assigns of the respective parties, jointly and individually.

18. ENCUMBRANCES.

EXTENET shall not permit any encumbrance on CITY Street Light Poles, Decorative Street Light Poles, Traffic Signals, or other CITY facilities or property at any Permitted Area or Site. CITY may, in its sole discretion, consent to such an encumbrance if exclusively related to development of a Permitted Area. If an encumbrance is placed on a Site, EXTENET shall diligently seek and obtain, at its sole cost, the removal of the encumbrance as soon as possible upon completion of the development, if the encumbrance was authorized by CITY, or, if unauthorized, immediately upon CITY'S demand

19. DEFAULT AND REMEDIES.

Upon EXTENET'S default under this Agreement, CITY may pursue any one or more of the remedies listed in this section, in addition to any other remedies now or later available to CITY at law or in equity. Such remedies shall be cumulative and not exclusive.

19.1. Default. Each of the following shall constitute an event of default under this Agreement:

19.1.1. EXTENET'S failure to make any payment required under this Agreement

when due, if the failure continues for five (5) days past due; or

19.1.2. EXTENET breaches any of its obligations under this Agreement, other than those requiring payment to CITY, and EXTENET either: (i) fails to cure the breach within thirty (30) days following written notice from CITY; or, (ii) if such breach is not curable within thirty (30) days, fails to commence to cure the breach within thirty (30) days and diligently pursue the cure to completion; or

19.1.3. EXTENET voluntarily files any petition under any bankruptcy or insolvency act or law; or

19.1.4. EXTENET has involuntarily filed against it any petition under any bankruptcy or insolvency act or law, and the matter is not dismissed within ninety (90) days after filing; or

19.1.5. EXTENET is adjudicated a bankrupt; or

19.1.6. EXTENET makes a general assignment for the benefit of creditors; or

19.1.7. EXTENET uses a Site or Permitted Area for any unauthorized purpose.

19.2. Remedies.

19.2.1. For Monetary Default. Upon a monetary default of this Agreement by EXTENET, CITY may, at its option, either give EXTENET, or any person claiming rights through EXTENET, a written "Five-Day Notice to Pay or Quit," or CITY may terminate this Agreement, in whole or in part, and all right of EXTENET and of all persons claiming right through EXTENET to all or some of the Permitted Areas, or to possession of all or some of the Permitted Areas, and CITY may enter and take possession of the Permitted Areas, or any of them, and may recover the amount set forth below.

19.2.2. For Non-monetary Default. Upon a non-monetary, default of this Agreement by EXTENET, CITY may, at its option, terminate this Agreement, in whole or in part, and all right of EXTENET and of all persons claiming right through EXTENET to all or some of the Permitted Areas or possession of all or some of the Permitted Areas, and CITY may enter and take possession of the Permitted Areas, or any of them, and may recover from EXTENET the amount set forth below. If any non-monetary default is not curable within thirty (30) days after notice to EXTENET, CITY will not terminate this Agreement pursuant to the default, if EXTENET immediately commences to cure the default and diligently pursues the cure to completion within 180 days.

19.2.3. CITY'S Recovery Upon Termination. Upon termination of this Agreement, in whole or in part, due to EXTENET'S default, CITY may recover the sum of:

19.2.3.1. The amount, at the time of award, of any unpaid Fee in Section 8 that was due at the time of termination; plus

19.2.3.2. The amount, at the time of award, of the unpaid Fees in Section 8 that would have been earned after termination until the time of award, minus the amount of Fees lost, if any, as EXTENET affirmatively proves could have been reasonably avoided; plus

19.2.3.3. The amount, at the time of award, of the unpaid Fees in Section 8 for the balance of the Term after the time of the award, minus the amount of Fees lost, if any, as EXTENET affirmatively proves could be reasonably avoided; plus

19.2.3.4. Any other amount necessary to compensate CITY for the detriment proximately caused by EXTENET'S failure to perform EXTENET'S obligations, or that, in the ordinary course of things, would be likely to result; plus

19.2.3.5. All other amounts in addition to or in lieu of those previously stated as may be permitted by California law.

19.2.3.6. As used in clauses 19.2.3.1 and 19.2.3.2 of this Section, the "amount at time of award" is computed by allowing interest at the rate of ten percent (10%) per annum. As used in clause 19.2.3.3 of this Section, the "amount at the time of award" is computed by discounting that amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus two percent (2%). As used in this section, the term "Fees" shall include those Fees described in Section 8.

19.2.4. Deed of Trust or Mortgage. If there is a deed of trust or mortgage on the EXTENET's interest under this Agreement, and EXTENET has provided CITY with an address where notice can be sent to the respective mortgagee or beneficiary, CITY shall give the mortgagee or beneficiary written notice of a default, and the mortgagee or beneficiary shall have thirty (30) days after receipt of the notice to cure the default, or, if the default is not curable within thirty (30) days, to commence to cure the default and diligently pursue the cure to completion. The 30-day period may be extended upon written request by mortgagee or beneficiary if mortgagee or beneficiary is pursuing the cure with reasonable diligence. If the mortgagee or beneficiary is required to exercise its right to cure the default through litigation or through foreclosure, then CITY shall have the following options to expeditiously correct the default:

19.2.4.1. CITY may correct the default and charge the costs thereof to EXTENET'S account, which charge shall be due and payable within thirty (30) days following CITY'S delivery to EXTENET and mortgagee or beneficiary of a statement of such costs.

19.2.4.2. CITY may correct the default and recover the costs thereof from the proceeds of any insurance fund held by CITY, CITY and EXTENET or by CITY and mortgagee or beneficiary, or CITY may use the funds of any faithful-performance or cash bond on deposit with CITY, or CITY may call on the bonding agent to correct the default or pay the cost of correction performed by or at the direction of CITY.

19.2.4.3. CITY may terminate this Agreement, in whole or in part, as to the rights of EXTENET by assuming or causing the assumption of liability for any trust deed or mortgage. EXTENET shall assume and pay any and all penalties or bonuses required by the beneficiaries, trustees or mortgagees as a condition of early payoff of the related obligations by CITY. CITY may, as an alternative, substitute for the terminated EXTENET a new tenant reasonably satisfactory to the mortgagee or beneficiary. EXTENET shall pay all reasonable costs incurred by CITY in entering into a new Agreement with a new tenant under substantially the same terms and conditions as this Agreement.

19.2.4.4. If a default is not curable by EXTENET, then any lender holding a beneficial interest in the subject Agreement, whose qualifications as an assignee have been approved by CITY, shall have the absolute right to substitute itself in place of EXTENET under this Agreement and to commence performance of the Agreement. If the mortgagee or beneficiary gives notice in writing of its election to so substitute itself within the thirty (30) day period after receiving written notice from CITY of the default, and the default is cured by the mortgagee or beneficiary, then this Agreement will not terminate pursuant to the default. In that event, CITY consents to the substitution and authorizes the mortgagee or beneficiary to perform under this Agreement all the rights, privileges, and obligations of EXTENET, and EXTENET expressly agrees to assign all its interest in and to the subject interest under this Agreement to the mortgagee or beneficiary.

- 19.3. Abandonment by EXTENET. If EXTENET breaches this Agreement by abandoning all or any Permitted Areas after installation of Equipment without notice of termination pursuant to Sections 7.1 or 27.2, this Agreement shall continue in effect as long as CITY does not terminate this Agreement, and CITY may enforce all its rights and remedies under this Agreement, including but not limited to the right to recover Fees as they become due, plus damages allowed by law or in equity.
- 19.4. Waiver. CITY'S waiver of a default shall not be a waiver of any other default. Any waiver of a default must be in writing and executed by CITY in order to constitute a valid and binding waiver. CITY'S delay or failure to exercise a remedy or right is not a waiver of that or any other remedy or right under this Agreement. The use of one remedy or right for any default shall not waive the use of another remedy or right for the same default or for another or later default. CITY'S acceptance of any

Fees shall not be a waiver of any default preceding the Fee payment. The property constituting the Site is CITY-owned and held in trust for the benefit of the citizens of the City of San Diego. Any failure by CITY to discover a breach or default or take prompt action to require the cure of any breach or default shall not result in an equitable estoppel, but CITY may at all times require the cure of any breach or default, regardless of when discovered.

20. EMINENT DOMAIN.

If CITY becomes aware that all or part of a Site or Permitted Area is taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the CITY shall promptly notify EXTENET. In the event of a condemnation or taking of a Site or Permitted Area, the interests of CITY and EXTENET (or beneficiary or mortgagee) shall be as follows:

- 20.1. Full Taking. If an entire Site is taken, this Agreement shall terminate as to that Site on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- 20.2. Partial Taking – Remainder Unusable. If a partial taking of a Site occurs and, in the opinion of CITY, the remaining part of the Site is unsuitable for the use specified in this Agreement, then this Agreement shall terminate as to that Site on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- 20.3. Partial Taking – Remainder Usable. If a partial taking of a Site occurs and, in the opinion of CITY, the remaining part of the Site is suitable for the use specified in this Agreement, then, this Agreement shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken. The Fees shall be equitably reduced to reflect the portion of the Site taken, but only to the extent that EXTENET'S operations are reduced or impaired.
- 20.4. Award. All monies awarded in any taking shall belong to CITY.. EXTENET shall be entitled to any award attributable to the taking of, or damages to, EXTENET'S then-remaining interest under this Agreement (if any) and EXTENET'S installations or improvements. CITY shall have no liability to EXTENET for any award not provided by the condemning authority.
- 20.5. Transfer. CITY may transfer CITY'S interests in a Site in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If such a transfer occurs, EXTENET shall retain whatever interest it may have in the fair market value of any improvements placed by it on the Site in accordance with this Agreement.
- 20.6. No Inverse Condemnation. CITY'S exercise of any right under this Agreement shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for inverse condemnation.

21. INDEMNITY.

- 21.1. EXTENET'S Indemnity Obligation. EXTENET shall protect, defend, indemnify, and hold CITY, its elected officials, officers, representatives, agents and employees, harmless from and against any and all claims asserted or liability established which arise out of or are in any manner directly or indirectly connected with this Agreement or EXTENET'S occupancy, development, use, or maintenance of the Permitted Areas and the Sites, and all costs and expenses of investigating and defending against same, including without limitation reasonable attorney fees and costs; provided, however, that EXTENET'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole negligence, or sole willful misconduct of CITY, its elected officials, officers, representatives, agents, and employees. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, or participate in its own defense, EXTENET shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs.
- 21.2. Waiver of Claims. EXTENET waives any and all claims, demands, causes of action, and rights it may assert against the CITY on account of any loss, damage, or injury to any Equipment or any loss or degradation of the Services as a result of any event or occurrence which is beyond the reasonable control of the CITY.
- 21.3. Limitation of CITY'S Liability. The CITY shall be liable only for the cost of repair or replacement of damaged Equipment arising from the negligence or willful misconduct of CITY, its employees, agents, or contractors and shall in no event be liable to indirect or consequential damages. CITY's total liability under this Agreement shall be limited to the annual aggregate (Municipal Facility Annual Fee and Right-of-Way Fee) fees paid by EXTENET to City in the year under which such liability arises

22. INSURANCE.

Prior to EXTENET'S occupation of the Permitted Areas, EXTENET shall deliver to CITY a current certificate of insurance for a Commercial General Liability policy providing coverage for bodily injury, including death, personal injury, and property damage with limits of at least Two Million Dollars (\$2,000,000) per occurrence, subject to an annual aggregate of Four Million Dollars (\$4,000,000).

- 22.1. All-Risk Property Insurance. EXTENET shall obtain and maintain, at its sole cost, All-Risk Property insurance on all insurable EXTENET property on the Permitted Area in an amount to cover 100 percent (100%) of the replacement cost. EXTENET shall deliver to CITY a certificate of such insurance.
- 22.2. Additional Insureds. Pursuant to a separate endorsement [CG2010 (11/85) or equivalent form], "The City of San Diego, its elected officials, officers, employees,

representatives, and agents" shall be named as additional insureds in all policies.

- 22.3. Primary and Non-Contributory. Insurance policies shall be endorsed such that the coverage is primary and non-contributory to any coverage carried or maintained by CITY. The policies shall be kept in force for the duration of the Term and any extended use. The certificate(s) of insurance shall be filed with CITY'S Real Estate Assets Department upon execution of this Agreement.
- 22.4. Qualified Insurer(s). All insurance required by the terms of this Agreement shall be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide and which are acceptable to CITY. CITY may accept non-admitted surplus lines insurers, provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet CITY requirements.
- 22.5. Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy shall be the sole responsibility of EXTENET, and shall be disclosed and subject to CITY'S approval at the time evidence of insurance is provided.
- 22.6. Continuity of Coverage. All insurance policies shall be in effect prior to EXTENET'S installation of Equipment at Sites or Permitted Areas, except "course of construction fire insurance" shall be in force on commencement of all authorized construction, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. EXTENET shall maintain all insurance required by this Agreement throughout the Term and any extended use, without lapse. When a new insurance policy is obtained, or when an insurance policy is renewed or extended, EXTENET shall deliver to CITY, within ten (10) days thereafter, a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Agreement.
- 22.7. Modification. To assure protection from and against the kind and extent of risk existing on the Permitted Areas, CITY, at its discretion, may require the reasonable revision of amounts and coverage at any time during the Term by giving EXTENET thirty (30) days prior written notice. EXTENET shall also obtain any additional insurance required by CITY for new improvements, in order to meet the requirements of this Agreement.
- 22.8. Accident Reports. EXTENET shall immediately report to CITY any accident causing property damage or injury to persons on the Site. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.
- 22.9. Failure to Comply. If EXTENET fails or refuses to obtain and maintain the required insurance, or fails to provide proof of coverage, CITY may obtain the insurance. EXTENET shall reimburse CITY for the premiums paid, with interest at the maximum

allowable legal rate then in effect in California. CITY shall notify EXTENET of such payment of premiums stating the amount paid, the name(s) of the insurer(s), and the rate of interest. EXTENET shall pay such reimbursement and interest on the first (1st) day of the month following CITY'S notice. **Notwithstanding any other provision of this Agreement, if EXTENET fails or refuses to obtain or maintain insurance as required by this Agreement, or fails to provide proof of insurance, CITY may terminate this Agreement, in whole or in part, immediately upon such breach. Upon such termination, EXTENET shall immediately cease its use of the Permitted Areas and commence and diligently pursue the removal of its property from the Sites.**

23. WASTE, DAMAGE OR DESTRUCTION.

EXTENET shall immediately give notice to CITY of any fire or any other damage that occurs on a Site or Permitted Area. EXTENET shall not commit or allow to be committed any waste or injury or any public or private nuisance. EXTENET shall keep each Permitted Area clean and clear of refuse and obstructions, and dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY. If EXTENET damages the Site or Permitted Area by any cause which puts the Site into a condition which is not decent, safe, healthy, and sanitary, EXTENET shall make or cause to be made full repair of the damage and restore the Site or Permitted Area to the condition which existed prior to the damage; or, at CITY'S option, EXTENET shall clear and remove from the Site or Permitted Area all debris resulting from the damage and restore the Site in accordance with plans and specifications previously submitted to CITY and approved in writing in order to replace in kind and scope the operation which existed prior to the damage, using for either purpose the insurance proceeds as set forth above. EXTENET shall commence preliminary steps toward performing repairs, restoration, or replacement of the Site or Permitted Area as soon as practicable, but no later than thirty (30) days after the occurrence of the fire or damage, and shall complete the required repairs, restoration, or replacement of the Site within one hundred eighty (180) days unless EXTENET cannot do so due to circumstances set forth in Section 47 below.

24. ACCEPTANCE OF SITE.

EXTENET represents and warrants that it has independently inspected the Permitted Area and made all tests, investigations, and observations necessary to satisfy itself of the condition of the Permitted Areas. EXTENET agrees it is relying solely on its independent inspections, tests, investigations, and observations in entering into this Agreement. EXTENET acknowledges that the Permitted Areas are in the condition called for herein, that CITY has performed all work with respect to the Permitted Areas, and that EXTENET shall not hold CITY responsible for any defects, whether apparent or latent, in the Permitted Areas. EXTENET has been given the opportunity to investigate the Permitted Areas for the presence of any "hazardous substances," as defined below, including without limitation the opportunity to perform soil borings and other tests. EXTENET shall notify CITY if EXTENET'S investigations indicate the presence of any hazardous substances on the Permitted Areas. EXTENET waives any claims against CITY

which may result from the presence of hazardous substances on or within the Permitted Areas.

25. ENTRY AND INSPECTION.

CITY may at any time, without any obligation to do so, enter the Permitted Areas for the purpose of viewing and ascertaining the condition of the Permitted Areas, or to protect its interests in the Permitted Areas, or to inspect the operations conducted on the Permitted Areas. If CITY'S entry or inspection discloses that the Permitted Areas are not in a decent, safe, healthy, and sanitary condition, due to EXTENET's actions or inactions, CITY may, after ten (10) days written notice to EXTENET, have any necessary maintenance work done in order to keep the Permitted Areas in a decent, safe, healthy, and sanitary condition, all at EXTENET'S sole cost and expense, and if EXTENET fails to have such work done, it shall promptly pay any and all costs incurred by CITY in having the necessary maintenance work done. If at any time CITY determines that the Permitted Areas are not in a decent, safe, healthy, and sanitary condition, due to the action or inaction of EXTENET, CITY may at its sole option, without additional notice, require EXTENET to file with CITY a faithful performance bond to assure prompt correction of any condition which is not decent, safe, healthy, and sanitary. The bond shall be in an amount adequate in CITY'S opinion, to correct the unsatisfactory condition. EXTENET shall pay the cost of the bond. The rights reserved in this section shall not create any obligation on CITY or increase CITY'S obligations elsewhere in this Agreement.

26. MAINTENANCE.

EXTENET shall, at its sole cost and expense, continuously operate and maintain the Permitted Areas throughout the Term. EXTENET shall make all repairs and replacements necessary to maintain and preserve the Permitted Areas in a decent, safe, healthy, and sanitary condition satisfactory to CITY and in compliance with EXHIBIT B: Site Plans/Locations, and with all applicable laws. All applicable codes and standards of CITY, state and federal agencies shall be observed in all maintenance, repairs, and replacements on the Permitted Areas. EXTENET shall submit in writing any changes necessary to update the emergency contacts and telephone numbers as referenced in EXHIBIT F: Emergency Maintenance Procedures.

27. IMPROVEMENTS/ALTERATIONS.

EXTENET shall not construct any improvements, structures, or installations on a Site, or make any alterations to a Permitted Area (with the exception of equipment replacements or repairs) without CITY'S prior written approval. EXTENET shall not make major structural or architectural design alterations to approved improvements, structures, or installations on a Permitted Area without CITY'S prior written approval, which may not be unreasonably withheld. This provision shall not relieve EXTENET of any obligation under this Agreement to maintain a Permitted Area in a decent, safe, healthy, and sanitary condition, including structural repair and restoration of damaged or worn improvements. CITY shall not be obligated by this Agreement to make or assume any expense for any improvements or alterations.

- 27.1. Upgrading. If changes in technology occur during the Term that require upgrading the Equipment, EXTENET may perform such upgrading, provided the upgrading does not

damage or interfere with any adjacent improvements on the Site, subject to EXHIBIT E: Interference Protection Requirements.

- 27.2. Reassignment of Space. CITY may reassign EXTENET to an equivalent amount of space in a different location within a Site or to a different Site if and when reasonably necessary. EXTENET shall cooperate with CITY and its contractors during any such relocation or any renovation, repair, or other alteration of the Permitted Area or the Site. CITY warrants that every effort will be made to ensure continuous, uninterrupted broadcast/receiving capability during any such activity. If any relocation is not satisfactory to EXTENET, then EXTENET may, in its sole and absolute discretion, terminate this Agreement as to the subject Permitted Area upon thirty (30) days written notice to CITY, without further obligation therefore.
- 27.3. Utilities. EXTENET shall order, obtain, and pay for all utilities and service and installation charges in connection with the development and operation of each Site or Permitted Area. All utilities, excluding metering equipment, shall be installed underground.
- 27.4. Liens. EXTENET shall at all times protect, defend, indemnify and hold CITY harmless from and against any and all claims for labor or materials in connection with EXTENET'S use, improvement, alteration, maintenance, or repair of the Permitted Areas, and all costs of defending against such claims, including without limitation reasonable attorney fees. If EXTENET'S use, improvement, alteration, maintenance, or repair of the Permitted Areas results in a lien or notice of lien being filed against the Permitted Areas, EXTENET shall, within five (5) days after such filing, either: (a) take all actions necessary to record a valid release of the lien; or (b) deliver to CITY a bond, cash, or other security acceptable to CITY in an amount sufficient to pay in full all claims of all persons seeking relief under the lien.

28. TAXES.

EXTENET shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon EXTENET or the Permitted Areas, including the land, any buildings, structures, machines, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by EXTENET, levied by reason of the business or other EXTENET activities related to the Permitted Areas, including any licenses or permits. EXTENET acknowledges that this Agreement may create possessory interests subject to property taxation, and that EXTENET may be subject to the payment of taxes levied on its interests under this Agreement. EXTENET'S payment of taxes, fees and assessments shall not reduce any Fees due CITY.

29. SIGNS.

EXTENET may only post signs required by federal, state or local regulations, including without limitation safety signs required by the OSHA, FAA, FCC, or CPUC. EXTENET shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees,

awnings, or similar devices or advertising on the Site. If any such unauthorized item is found on the Site, EXTENET shall remove the item at its sole expense upon twenty-four (24) hours notice by CITY, or CITY may then enter the Site and remove the item at EXTENET'S sole cost.

30. OWNERSHIP OF IMPROVEMENTS AND PERSONAL PROPERTY.

At the expiration or earlier termination of this Agreement, and at CITY'S option, any and all improvements, trade fixtures, structures, and installations or additions to the Permitted Areas, excluding EXTENET's Equipment, existing on the Effective Date or constructed on the premises by EXTENET during the Term shall be deemed to be part of the Permitted Areas and shall become CITY'S property free of all liens and claims, except as otherwise provided in this Agreement.

30.1. If CITY elects not to assume ownership of all or any improvements, trade fixtures, structures, and installations, CITY shall notify EXTENET at least one hundred eighty (180) days prior to the expiration of this Agreement, or upon the earlier termination of this Agreement, and EXTENET shall remove the improvements, trade fixtures, structures, and installations as directed by CITY, all at EXTENET'S sole cost and expense. If EXTENET fails to remove any improvements, structures, and installations as directed, CITY may cause their removal, and EXTENET shall reimburse CITY on demand for the full cost thereof.

30.2. On or before Agreement expiration, or as CITY may direct upon Agreement termination, EXTENET shall remove from the Permitted Areas its Equipment and any other EXTENET-owned machines, appliances, facilities (other than trade fixtures), and other personal property. If EXTENET fails to remove any of its personal property as required herein, then either: (a) the property shall be considered abandoned and become CITY'S property free of all claims and liens; or (b) CITY may cause the property's removal, and EXTENET shall reimburse CITY on demand for the full cost thereof.

30.2.1. EXTENET shall repair, at its sole cost and expense, all damage to the Permitted Areas resulting from the removal of EXTENET'S improvements, trade fixtures, structures, installations, and the Equipment, machines, appliances, facilities, and other personal property.

30.2.2. If the removal of any of EXTENET'S property by either EXTENET or CITY takes place after Agreement expiration or beyond CITY'S direction upon Agreement termination, EXTENET shall pay Fees to CITY at the rate in effect immediately prior to the expiration or earlier termination of this Agreement, until all of EXTENET'S property has been removed from the Sites.

30.2.3. If EXTENET wants to dispose of any of its personal property used at the Site or Permitted Areas, then CITY shall have the first right to acquire or purchase such property.

31. HAZARDOUS SUBSTANCES.

EXTENET shall not allow the installation or release of hazardous substances in, on, under, or from the Sites or Permitted Areas. EXTENET and EXTENET'S agents and contractors shall not store, utilize, or sell any hazardous substance on the Sites or Permitted Areas without CITY'S prior written consent. For the purposes of this provision, a release shall include but not be limited to any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly release reports and any other substances incorporated into the State of California's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the Office of the City Clerk as Document 769704 and by this reference is incorporated into this Agreement.

- 31.1. Remediation. If EXTENET'S occupancy, use, development or maintenance of a Site or Permitted Area results in a release of a hazardous substance, EXTENET shall pay all costs of remediation and removal of the hazardous substance in accordance with all applicable laws, rules and regulations of governmental authorities.
- 31.2. Indemnity. EXTENET shall protect, defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from EXTENET'S occupancy, use, development, or maintenance of the Sites or Permitted Areas, including but not limited to costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies.
- 31.3. Notice of Release. If EXTENET knows or has reasonable cause to believe that a hazardous substance has been released on or beneath the Sites or Permitted Areas, EXTENET shall immediately notify CITY and deliver a written report thereof to CITY within three (3) days of receipt of the knowledge or cause for belief. If EXTENET knows or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, EXTENET take all actions necessary to alleviate the danger. EXTENET shall notify CITY immediately of any notice of violation received or initiation of environmental actions or private suits related to the Sites or Permitted Areas.
- 31.4. Environmental Assessment. Upon reasonable cause to believe that EXTENET'S occupancy, use, development, or maintenance of the Sites or Permitted Areas ("EXTENET'S Operations"), resulted in any hazardous substance being released on or beneath a Site or Permitted Area, CITY may cause an environmental assessment of that Site or Permitted Area to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be obtained at EXTENET'S sole cost and expense, and shall establish what, if

any, hazardous substances have more likely than not been caused by EXTENET'S Operations on, in, or under the Site or Permitted Area, and in what quantities. If any such hazardous substances exist in quantities greater than allowed by CITY, county, state, or federal laws, statutes, ordinances, or regulations, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect compliance with those laws or statutes, and estimates of the cost of such remediation or removal. EXTENET shall cause, or if EXTENET fails to do so within a reasonable period of time, CITY may cause, the remediation and/or removal recommended in the environmental assessment such that compliance with environmental law is achieved, and EXTENET shall pay all costs and expenses therefore.

32. SITE PLANS/LOCATIONS.

EXTENET shall develop the Permitted Areas in accordance with plans approved by CITY'S Development Services Department and included in EXHIBIT B: Site Plans/Locations. CITY may, in its sole discretion, authorize changes to such plans, provided the principal components thereof are not modified, and a document evidencing approved changes is filed with CITY'S Real Estate Assets Department. EXTENET'S failure to comply with the approved plans shall be a default of this Agreement.

33. TELECOMMUNICATIONS PROVISIONS.

33.1. Radio Frequency Radiation. EXTENET shall maintain radio-frequency radiation within the levels allowed by Federal Regulations stated in Section 1.1310 of CFR 47 and OET Bulletin 65. Any area casually accessible by the general public or by any worker at ground level shall be maintained below limits stated for General Population/Uncontrolled Exposure. EXTENET shall report to CITY any areas discovered by EXTENET to exceed these federally mandated limits. EXTENET shall not hold CITY responsible for radiation levels found to exceed these limits. Hazardous RF radiation levels may be encountered when climbing on antenna structures [Refer to FCC OET Bulletin 65]. Any equipment installed on a Site may at times require shutdown to allow maintenance on antenna structures. EXTENET shall allow shutdown periods when required for this maintenance, provided CITY shall use reasonable efforts to ensure that these shutdowns do not occur during peak hours of operation. Protection of employees performing service on buildings, roofs, air-conditioning equipment, water tanks, communications equipment, or any other maintenance work is a primary concern. Any areas in which these employees may be subjected to radiation levels that exceed the General Population/Uncontrolled limits must be clearly identified as required by CAL-OSHA. EXTENET shall provide CITY with written shutdown procedures, contact names, and telephone numbers. EXTENET shall notify CITY in writing of any changes to the shutdown procedures, contact names or telephone numbers at least ten (10) days prior to such a change.

33.2. List of Equipment. EXTENET warrants that the Equipment listed in EXHIBIT C: Equipment at the Sites constitutes the entire installation. EXTENET shall update

EXHIBIT C from time to time as and when changes to the Equipment are made, or within thirty (30) days after CITY'S demand for such an update.

- 33.3. Radio Frequency Interference. EXTENET warrants that all Equipment installations, modifications, and maintenance will not result in degraded performance or radio frequency interference to any existing authorized uses of the Site by fulfilling the requirements of EXHIBIT E: Interference Protection Requirements, which may be updated from time to time at CITY'S sole discretion.
- 33.4. Industry Standards. EXTENET warrants that all Equipment installations, modifications, and maintenance will be performed in adherence to industry standards set forth in the National Electric Code and portions of the CPUC's General Order 95, General Order 120, or other order that applies to street lamps, if any, and any succeeding regulations or standards. To the extent applicable, Equipment installations shall adhere to the Motorola R56 standard. In addition, installations on CITY property shall comply with the following supplemental requirements:
- 33.4.1. EXTENET shall remove all of its trash and debris from the Site at the end of each workday and on completion of each project.
- 33.4.2. Tower and structure climbing shall be done in compliance with all CAL-OSHA requirements.
- 33.4.3. All transmitters shall have all necessary protection to eliminate any RF degradation of the receive signal to any other user on the Site, such as cavity filtering and transmitter isolators.

34. NOTICES.

Any notice required or permitted to be given under this Agreement shall be in writing and may be served personally or by United States mail, postage prepaid, addressed to the parties as follows, or to any mortgagee, trustee, or beneficiary, as applicable, at the appropriate address designated in writing by the respective party:

If to EXTENET:

ExteNet Systems, Inc.
Attn: Terry Ray
1901 S. Meyers Rd. Suite 190
Oakbrook Terrace, IL 60181

If to CITY:

City of San Diego
Real Estate Assets Department
Attention: Real Estate Assets Director

1200 Third Avenue, Suite 1700, MS 51A
San Diego, CA 92101-4155

If to City Office of the Chief Information Officer:

City of San Diego
Office of the Chief Information Officer
Attention: Communications Division
Central Operations
1220 Caminito Centro
San Diego, CA 92102

34.1. Address Changes. Any party entitled or required to receive notice under this Agreement may by like notice designate a different address to which notices shall be sent.

34.2. When Effective. Notice shall be effective on documented receipt or five (5) days after deposit in U. S. mail.

35. COMPLIANCE WITH LAW.

EXTENET shall at all times in the occupancy, use, development, and maintenance of the Sites and Permitted Areas, comply with all applicable laws, statutes, ordinances, and regulations of CITY, county, state, and federal governments, at EXTENET'S sole expense. EXTENET shall comply with any and all notices issued by CITY under the authority of all current or future laws, statutes, ordinances, or regulations.

36. NONDISCRIMINATION.

EXTENET shall not discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status or physical disability in EXTENET'S occupancy, use, development, and maintenance of the Sites or Permitted Areas, including without limitation the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.

37. EQUAL OPPORTUNITY CONTRACTING PROGRAM.

If not otherwise exempt pursuant to San Diego Municipal Code Section 22.2703(a) (or another applicable provision of the San Diego Municipal Code), EXTENET shall comply with City Council Ordinance No. 18173 (San Diego Municipal Code Sections 22.2701 through 22.2708, as amended), *EQUAL EMPLOYMENT OPPORTUNITY OUTREACH PROGRAM* ("EEOOP"), a copy of which is on file in the Office of the City Clerk and incorporated herein. If not exempt pursuant to an applicable provision of the San Diego Municipal Code, EXTENET and all of its subcontractors shall be individually responsible for abiding by the EEOOP. EXTENET shall comply with Title VII of the Civil Rights

Act of 1964, as amended; Executive Orders 11246, 11375, and 12086, as well as the California Fair Employment Practices Act; and any other applicable federal and state laws and regulations hereafter enacted. EXTENET shall not discriminate against any employee or applicant for employment on any basis prohibited by law. If not exempt pursuant to an applicable provision of the San Diego Municipal Code, then on or before the Effective Date, EXTENET shall submit a current "Work Force Report" or a current Equal Employment Opportunity ("EEO") Plan as required by Section 22.2705 of the San Diego Municipal Code, which sets forth the actions that EXTENET will take to achieve CITY'S commitment to equal employment opportunities.

37.1. Contracts/Subcontracts. To the extent that EXTENET'S subcontractors are subject to EEOOP, EXTENET shall direct such subcontractors to insert the foregoing provisions in all contracts and subcontracts for any work covered by this Agreement so that the provisions will be binding upon each contractor and subcontractor.

38. LOCAL BUSINESS AND EMPLOYMENT.

EXTENET acknowledges that CITY promotes employment and business opportunities for local residents and firms in all CITY Agreements and contracts. To the extent legally possible, EXTENET shall solicit local residents and firms for employment applications, and contract bids and proposals related to this Agreement. EXTENET shall hire qualified local residents and firms whenever feasible.

39. PARTIAL INVALIDITY.

If any term, covenant, condition or provision of this Agreement is found invalid, void or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

40. LEGAL FEES.

If there is any litigation regarding this Agreement, the prevailing party shall be entitled to an award of reasonable legal costs, including without limitation court costs and attorney fees.

41. NUMBER AND GENDER.

Words of any gender used in this Agreement shall include any other gender and words in the singular number shall include the plural, and *vice versa*, as appropriate to the context.

42. CAPTIONS.

The section headings and captions used in this Agreement shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this Agreement. The numbers of the paragraphs and pages of this Agreement may not be

consecutive. The lack of consecutive numbers shall have no effect on the enforceability of this Agreement.

43. CITY EMPLOYEE PARTICIPATION POLICY.

CITY may, at its sole option, terminate this Agreement immediately if EXTENET employs an individual who, within the twelve (12) months immediately preceding employment, did in their capacity as a CITY officer or employee participate in negotiations with or otherwise have an influence on the recommendation made to the City Council in connection with the selection of EXTENET. These provisions shall not apply to members of the City Council

44. DRUG-FREE WORKPLACE.

EXTENET shall abide by all federal and state laws including, if applicable under federal law, the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:

- 44.1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of controlled substances are prohibited on the Sites and specifying the actions that will be taken against employees for violations of the prohibition.
- 44.2. Establish a drug-free awareness program to inform employees about all of the following:
 - 44.2.1. The dangers of drug abuse in the workplace;
 - 44.2.2. EXTENET'S policy of maintaining a drug-free workplace;
 - 44.2.3. Any available drug counseling, rehabilitation, and employees assistance programs; and
 - 44.2.4. The penalties that may be imposed upon employees for drug abuse violations.
- 44.3. EXTENET shall include in each subcontract agreement language which indicates the subcontractor's agreement to abide by these provisions of a drug-free workplace. EXTENET and subcontractors shall be individually responsible for their own drug-free workplace.

45. DISABLED ACCESS COMPLIANCE.

To the extent applicable, EXTENET shall at all times in the occupancy, use, development, and maintenance of the Sites and Leased Areas comply with the 1990 Americans with

Disabilities Act and Title 24 of the California Code of Regulations (i.e., building codes) as defined in Section 18910 of the California Health and Safety Code and any other applicable federal, state or local regulations hereafter enacted protecting the rights of persons with disabilities.

46. STANDARD OF CONDUCT.

EXTENET and its employees shall at all times conduct themselves and the operations on the Sites in a creditable manner and in accordance with industry standards.

47. UNAVOIDABLE DELAY.

If the performance of any act required of CITY or EXTENET is directly prevented or delayed by reason of strikes, lockouts, labor disputes, supply shortages, civil disorders, actions of governmental authorities, actions of civil or military authority, national emergency, insurrection, riots, war, acts of God, fire, floods, epidemics, freight embargoes or other causes beyond the reasonable control of the party required to perform an act, the party shall be excused from performing that act for a period equal to the period of the prevention or delay. If EXTENET or CITY claims the existence of such a delay, the party claiming the delay shall notify the other party in writing of that fact within ten (10) days after the beginning of any such claimed delay.

48. SUPERSEDURE.

As of the Effective Date, this Agreement shall supersede and annul all prior Agreements, right-of-entry permits, or other agreements concerning EXTENET'S occupancy, use, development, and maintenance of the subject Sites and Permitted Areas by and between CITY and EXTENET, and each such agreement shall be void and of no effect except as to any rentals and fees that may have accrued, or any rights and remedies accrued or granted to CITY under those agreements.

49. TIME OF THE ESSENCE.

Time is of the essence for each and every term, covenant, and condition of this Agreement.

50. AGREEMENT MODIFICATIONS.

This Agreement shall not be modified, altered or amended unless the modification, alteration or amendment is in writing and signed by all parties to this Agreement.

51. 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.

52. CONSENTS.

Unless otherwise expressly provided herein, no consent to be granted by either party pursuant to this Agreement may be unreasonably withheld or delayed.

53. SURVIVAL.

Any obligation which accrues under this Agreement prior to its expiration or termination shall survive such expiration or termination.

54. GOVERNING LAW.

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

55. COST RECOVERY.

CITY maintains a schedule of fees to offset administrative costs incurred for CITY staff services that are of benefit to EXTENET. CITY shall process each of EXTENET'S service requests upon receipt of EXTENET'S payment of the applicable fee. The fee schedule, which is maintained by the City Clerk's Office, may be updated from time to time at CITY'S sole discretion.

56. ENTIRE UNDERSTANDING.

This Agreement contains the entire understanding of the parties. CITY and EXTENET agree that there is no other written or oral understanding between them with respect to EXTENET'S occupancy, use, development, and maintenance of the Sites and Permitted Areas. Each party has relied on its own examination of the Sites, advice from its own attorneys, and the warranties, representations, and covenants within the Agreement itself. Each party agrees that no other party, agent, or attorney of any other party has made any promise, representation, or warranty whatsoever which is not contained in this Agreement. The failure or refusal of any party to read this Agreement or other documents, inspect the Sites, and obtain legal or other advice relevant to this transaction shall constitute a waiver of any objection, contention, or claim that might have been based on such actions.

57. JOINT AND SEVERAL LIABILITY.

If EXTENET is comprised of more than one person or legal entity, such persons and entities, and each of them, shall be jointly and severally liable for the performance of each and every obligation of EXTENET under this Agreement.

58. AUTHORITY.

Each individual executing this Agreement on behalf of another person or legal entity represents and warrants that they are authorized to execute and deliver this Agreement on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Agreement is binding upon such person or entity in accordance with its terms. Each person executing this Agreement on behalf of another person or legal entity shall provide CITY with evidence, satisfactory to CITY, that such authority is valid and that such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.

IN WITNESS WHEREOF, this Agreement is executed to be effective as of the Effective Date.

Effective Date: 8/22/07

THE CITY OF SAN DIEGO, a California municipal corporation

By: _____
Name: _____
Title: _____

Date: 8-20-2007

EXTENET SYSTEMS (California), LLC, a California limited liability company

By: [Signature]
Name: ROSS W. MANIRE
Title: CEO

By: [Signature]
Name: Terry Ray
Title: CFO

APPROVED AS TO FORM AND LEGALITY:

Date: 8/28/07

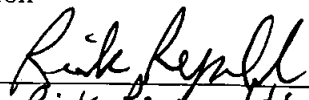
MICHAEL J. AGUIRRE, City Attorney

By: [Signature]
Name: Steven L. Laster, Esq.
Title: Deputy City Attorney

IN WITNESS WHEREOF, this Agreement is executed to be effective as of the Effective Date.

Effective Date: 8/22/07

THE CITY OF SAN DIEGO, a California municipal corporation

By: 
Name: Rick Reynolds
Title: Asst COO

Date: _____

EXTENET SYSTEMS (California), LLC, a California limited liability company

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM AND LEGALITY:

Date: 8/28/07

MICHAEL J. AGUIRRE, City Attorney

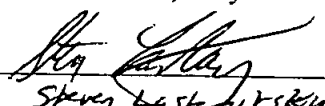
By: 
Name: Steven Gashirsky
Title: Deputy City Attorney

EXHIBIT A: Site Descriptions

The following Site shall be subject to the terms and conditions of that certain CITY OF SAN DIEGO ATTACHMENT AGREEMENT AND RIGHT-OF-WAY TELECOMMUNICATIONS MASTER AGREEMENT ("Agreement") by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and EXTENET SYSTEMS (California), LLC, a California limited liability company ("EXTENET"), and dated _____, 20____:

CITY Site No.: _____ Permitted Area No.: _____

Location: _____

Description: _____

Date: _____

THE CITY OF SAN DIEGO, a California municipal corporation

By: _____
Name: _____
Title: _____

Date: _____

EXTENET SYSTEMS (California), LLC, a California limited liability company

By: _____
Name: _____
Title: _____

ENVIRONMENTAL ANALYSIS SECTION ENVIRONMENTAL CLEARANCE:

Date: _____

By: _____
Name: _____
Title: _____

EXHIBIT B: Site Plans/Locations

EXHIBIT C: Equipment at the Sites

EXHIBIT D: Memorandum of Agreement Form

Recording Requested By and
When Recorded Return To:

FOR RECORDER'S USE ONLY

No APN: Street Right-of-Way

MEMORANDUM OF AGREEMENT

This MEMORANDUM OF AGREEMENT is entered into on _____, 20__ (the "Memorandum Date"), by and between THE CITY OF SAN DIEGO, a California municipal corporation ("city"), with an office at 1200 Third Avenue, Suite 1700, San Diego, CA 92101-4155, and EXTENET SYSTEMS (California), LLC, a California limited liability company ("EXTENET").

1. CITY and EXTENET entered into that certain CITY OF SAN DIEGO ATTACHMENT AGREEMENT AND RIGHT-OF-WAY TELECOMMUNICATIONS MASTER AGREEMENT ("Agreement") dated _____, 20__, for the purpose of installing, operating, and maintaining EXTENET'S telecommunications facilities and other improvements. All of the foregoing is set forth in the Agreement.
2. The term of the Agreement is ten (10) years.
3. The land which is the subject of the Agreement is described in EXHIBIT A, attached hereto.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Agreement to be effective as of the Memorandum Date.

CITY:

THE CITY OF SAN DIEGO, a California municipal corporation,

BY: _____
Name: _____
Title: _____

EXTENET:

EXTENET SYSTEMS (California), LLC, a California limited liability company

BY: _____
Name: _____
Title: _____

BY: _____
Name: _____
Title: _____

APPROVED AS TO FORM AND LEGALITY:

Date: _____

MICHAEL J. AGUIRRE, City Attorney

By: _____
Name: _____
Title: _____

EXHIBIT E: Interference Protection Requirements

1. Pre-installation Notification. If other parties are operating at a Site, EXTENET shall notify all operators/parties at the Site of the proposed installation/changes at least fourteen (14) days prior thereto. A listing of all Site users operating at the Site may be obtained from CITY and used to compile a notification list. The notification shall be in the form of a letter to each listed Site user giving a technical data summary of the proposed new/modified equipment or changed installation to be installed at the Site and shall specify the approximate date of installation or change. An additional notification letter shall be sent to CITY's Office of the CIO Communication Engineer. This letter shall include a list of all Site users notified. EXTENET shall make complete arrangements and conduct all tests and operations in accordance with applicable Federal/FCC Rules and Regulations.
2. Radio Frequency Interference to City Radio Equipment. The radio equipment use proposed by EXTENET shall not directly or indirectly result in degraded technical performance of CITY'S existing radio equipment installed at the Site or used in the general area. Resulting degraded technical performance in this instance will include, but is not limited to: (a) detectable or measurable received intermodulation; (b) audio distortion or noise; and (c) receiver desensitization in excess of 3.0 dB with respect to 12dB SINAD test.
3. Modifications to Equipment. Modifications to transmitting equipment that will change effective radiated power, transmitter frequency, transmitter modulation, or transmitter Spurious and Harmonic Emissions may require re-notification to existing Site users..
4. Resulting Interference. To the extent that newly installed Equipment ("New Installation") or a returned or modified Equipment installation ("Changed Installation") creates an interference problem at the Site or in the nearby surrounding area the party responsible for the New Installation, or the Changed Installation shall initiate mutually agreeable actions among the affected parties to mitigate or resolve the interference problem. If harmful interference cannot be resolved, CITY may recognize the right of other authorized users and withhold approval or disallow use of a New Installation or Changed Installation or other modification pending settlement of the interference problems between the party causing interference and other authorized users. CITY shall not be obligated for any loss, financial or otherwise, which may be incurred by EXTENET as a result of these Interference Protection Requirements, and, further, EXTENET expressly waives any claim for expense or loss which EXTENET might incur as a result of CITY'S enforcement thereof.

EXHIBIT F: Emergency Maintenance Procedures

If EXTENET discovers that any of the Equipment is damaged, EXTENET shall immediately notify **CITY'S Station 38 at (619) 527-7660**.

If CITY discovers that any of the Communications Equipment is damaged, CITY shall immediately notify **EXTENET'S Network Operation Call Center at**
_____.

CITY may require any replacement Equipment to be relocated as provided in this Agreement. If EXTENET'S Equipment causes any interference to CITY'S telecommunications equipment or system, CITY may require it to be removed, within a reasonable period of time, and permanently replaced at another location. EXTENET shall not interfere with pedestrian or vehicle traffic while installing or maintaining their Equipment.

If a party changes its emergency contact telephone information, that party shall immediately notify the other party at the number provided herein, followed within ten (10) days by written notice in accordance with this Agreement.

Table of Contents

1. EXHIBITS.....	1
2. DEFINITIONS.....	1
3. PERMITTED AREAS.....	3
4. CITY'S CONSENT, DISCRETION.....	3
5. SAN DIEGO'S STRONG MAYOR FORM OF GOVERNANCE.....	3
6. USES.....	3
7. TERM.....	4
8. FEES.....	5
9. RELATED COUNCIL ACTIONS.....	7
10. CONSTRUCTION.....	7
11. SECURITY DEPOSIT.....	10
12. QUIET POSSESSION.....	11
13. SUPERIOR INTERESTS.....	12
14. EASEMENTS AND RESERVATIONS.....	12
15. COMPETENT MANAGEMENT.....	12
16. CO-LOCATION.....	12
17. ASSIGNMENT AND SUBLETTING.....	12
18. ENCUMBRANCES.....	13
19. DEFAULT AND REMEDIES.....	13
20. EMINENT DOMAIN.....	17
21. INDEMNITY.....	18
22. INSURANCE.....	18
23. WASTE, DAMAGE OR DESTRUCTION.....	20
24. ACCEPTANCE OF SITE.....	20
25. ENTRY AND INSPECTION.....	21
26. MAINTENANCE.....	21
27. IMPROVEMENTS/ALTERATIONS.....	21
28. TAXES.....	22
29. SIGNS.....	22
30. OWNERSHIP OF IMPROVEMENTS AND PERSONAL PROPERTY.....	23
31. HAZARDOUS SUBSTANCES.....	24
32. SITE PLANS/LOCATIONS.....	25
33. TELECOMMUNICATIONS PROVISIONS.....	25
34. NOTICES.....	26
35. COMPLIANCE WITH LAW.....	27
36. NONDISCRIMINATION.....	27
37. EQUAL OPPORTUNITY CONTRACTING PROGRAM.....	27
38. LOCAL BUSINESS AND EMPLOYMENT.....	28
39. PARTIAL INVALIDITY.....	28
40. LEGAL FEES.....	28
41. NUMBER AND GENDER.....	28
42. CAPTIONS.....	28
43. CITY EMPLOYEE PARTICIPATION POLICY.....	29
44. DRUG-FREE WORKPLACE.....	29

45. DISABLED ACCESS COMPLIANCE.....	29
46. STANDARD OF CONDUCT.....	30
47. UNAVOIDABLE DELAY.....	30
48. SUPERSEDURE.....	30
49. TIME OF THE ESSENCE; BINDING EFFECT.....	30
50. AGREEMENT MODIFICATIONS.....	30
51. COUNTERPARTS.....	30
52. CONSENTS.....	31
53. SURVIVAL.....	31
54. GOVERNING LAW.....	31
55. COST RECOVERY.....	31
56. ENTIRE UNDERSTANDING.....	31
57. JOINT AND SEVERAL LIABILITY.....	31
58. AUTHORITY.....	32
EXHIBIT A: Site Descriptions.....	
EXHIBIT B: Site Plans/Locations.....	
EXHIBIT C: Equipment at the Sites.....	
EXHIBIT D: Memorandum of Agreement Form.....	
EXHIBIT E: Interference Protection Requirements.....	
EXHIBIT F: Emergency Maintenance Procedures.....	