



Office of the City Clerk

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Legislation Text

File #: O2013-5621, **Version:** 1

AUTHORIZATION FOR EXECUTION OF USE AGREEMENT WITH EXTENET SYSTEMS, INC. FOR CONSTRUCTION AND INSTALLATION OF CONDUIT, FIBER AND NODE FACILITIES IN THE PUBLIC WAYS AND FOR THE EXECUTION OF AN INDEFEASIBLE RIGHT OF USE AGREEMENT WITH EXTENET SYSTEMS, INC. GRANTING THE CITY THE PERPETUAL USE OF ONE HUNDRED AND FORTY-FOUR DEDICATED SINGLE MODE STRANDS OF FIBER OPTIC CABLE

WHEREAS, The City of Chicago (the "City") as a home rule unit under Article VII, Section 6 of the Constitution of the State of Illinois "may exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, The City wishes to encourage the development of high speed communications facilities throughout the City; and

WHEREAS, ExteNet Systems, Inc. is a Delaware corporation holding a Certificate of Public Convenience and Necessity issued by the Illinois Commerce Commission to provide' telecommunications ("Grantee"); and

WHEREAS, Grantee is in the business of providing point-to-point signal transport services and telecommunications facilities for use by telecommunications retail carriers who in turn primarily provide wireless telecommunications services to consumers and businesses at the retail level (the "Wireless Carriers"); and

WHEREAS, Grantee desires to construct and install by open/cut trench or other City of Chicago Department of Transportation ("CDOT) approved methods in, under and over the public way six (6) distinct telecommunications networks each of which consist of an aerial cable path (collectively the "Aerial Path") and five (5) of which also consist of an underground conduit path (collectively the "Underground Path" and together with the Aerial Path, the "Conduit and Cable Paths") in certain portions of the City, as further set forth in the Plans (as hereinafter defined); and

WHEREAS, the Underground Path will consist of three (3) one and one-quarter (1 ¹/₄) inch innerducts and the Aerial Path will consist of one (1) cable of the standard size to accommodate at least one hundred forty four (144) optical fiber strands and up to two hundred eighty eight (288) optical fiber strands to be attached on utility poles owned by ComEd, all to be operated by ExteNet as a telecommunications network for use by one or more Wireless Carriers to serve such Wireless Carriers' retail customers, other than the IRU Fiber granted to the City which will be used on an exclusive basis by the City. The Underground Path being identified and set forth in Grantee's thirteen (13) Under Ground Fiber Optic Facility plans prepared by the civil engineer at Gabe's Construction Company, Inc. ("Contractor") originally dated December 7, 2012, each as conditionally approved by CDOT on: June 10, 2013 (OUC EFP File #57586), June 11, 2013 (OUC EFP File #57623, #57629 and #57630), June 13, 2013 (OUC EFP File #57651, ExteNet- Ordinance_(7-23-13)_ (FINAL).doc 1

#57652, and #57653), June 21, 2013 (OUC EFP File #57829 and #57830), July 1, 2013 (OUC EFP File #57909 and #57910), July 5, 2013 (OUC EFP File #57911), and July 10, 2013 (OUC EFP File #58017) (the "Authorized Underground Routes"), and attached hereto as Exhibit A. The Aerial Path being identified and set forth in Grantee's six (6) aerial cable and equipment plans, as delivered to the City on July 16, 2013 (the "Authorized Aerial Routes" and together with the Authorized Underground Routes, the "Authorized Routes"), and attached hereto as Exhibit B; and

WHEREAS, Grantee also desires to install, operate and maintain twenty-four (24) nodes, which will consist of (i) an antenna of approximately twenty-three (23) inches in height and a diameter of ten (10) inches (tube-like), (ii) a remote radio head unit approximately twenty-four (24) inches, fourteen (14) inches in width and nine (9) inches in depth, (iii) a battery of approximately thirty-two (32) inches in height, twenty-three (23) inches in width and fifteen (15) inches in depth on utility poles owned by ComEd, and (iv) a total of six (6) manholes each approximately three (3) feet in height, three (3) feet in width and three (3) feet in length (collectively, the "Conduit and Cable Facilities," and together with the Conduit and Cable Paths, the "Conduit and Cable Improvements") in connection with the Conduit and Cable Paths in a portion of the City's public way as depicted in the Plans (except for those portions owned by parties other than the City, the "Authorized Facility Locations," and together with the Authorized Routes, the "Authorized Locations"); and

WHEREAS, Grantee will also be using numerous hub facilities located on certain private property that will be connected and used in conjunction with the Conduit and Cable Improvements; and

WHEREAS, Grantee has proposed that Grantee be permitted to construct, install, repair, replace, use, operate and maintain the Conduit and Cable Improvements in the Authorized Locations, and to provide the Conduit and Cable Improvements for use by Wireless Carriers; and

WHEREAS, in lieu of certain right of way fees applicable to the installation of the Conduit and Cable Improvements in the Authorized Locations, as further set forth in Exhibit C hereto, Grantee shall furnish the City with one (1) one and one-quarter (1 ¹/₄) inch innerduct (the "City Innerduct") containing one hundred and forty-four (144) dedicated strands of single mode fiber in the Underground Path, as and to the extent the Underground Path and Conduit and Cable Facilities are constructed and ready for use, and an equal amount of single mode fiber in the Aerial Path, as and to the extent the Aerial Path and Conduit and Cable Facilities are constructed and ready for use, for the City's exclusive use in perpetuity (the "IRU Fiber"); provided however, that in addition to providing the City Innerduct and IRU Fiber, Grantee shall pay compensation and fees, as set forth in Exhibit C, related to the construction, installation, repair, replacement, use, operation, and maintenance of the Conduit and Cable Improvements by Grantee in the Authorized Locations (collectively, the "Compensation"); and

WHEREAS, the City desires to accept the Compensation and the right to use and access the City Innerducts and the IRU Fiber within the Conduit and Cable Paths; and ExteNet-Ordinance_(7-23-13)_FINAL.doc 2

WHEREAS, the City and the Grantee have reached an agreement as to the basic terms under which

Grantee will be permitted to construct, install, repair, replace, use, operate and maintain the Conduit and Cable Improvements, including the City Innerduct and IRU Fiber, in the Authorized Locations; and

WHEREAS, Grantee and the City are willing to negotiate and enter into a Conduit and Cable Path and Facility Use Agreement ("Use Agreement") containing the basic terms ("Basic Terms") in substantially the form attached hereto as Exhibit C, upon approval of the Basic Terms by ordinance of this City Council;

WHEREAS, Grantee and the City are also willing to negotiate and enter into an Indefeasible Right of Use (IRU) agreement ("IRU Agreement") containing basic terms (the "IRU Basic Terms") in substantially the form attached hereto as Exhibit D, upon approval of the IRU Basic Terms by ordinance of this City Council; now, therefore,

Be It Ordained by the City Council of the City of Chicago:

SECTION 1. Subject to approval of the Corporation Counsel as to form and legality, the Executive Director of the City's Office of Emergency Management and Communications ("OEMC"), the Commissioners of CDOT, the Department of Business Affairs and Consumer Protection ("BACP"), the Department of Innovation and Technology ("DoIT") (or any successor departments thereto) or any of their respective designees (collectively, the "Commissioners"), are authorized to execute, on behalf of the City, and the City Clerk is authorized to attest to, a Use Agreement between the City and the Grantee, incorporating the Basic Terms attached hereto as Exhibit C, subject to such changes as may be approved by the Commissioners, including the relocation of the Authorized Locations, subject to approval of the Corporation Counsel, their execution of the Use Agreement constituting conclusive evidence of their approval and this City Council's approval of any such changes or revisions therein from the Basic Terms, provided, however, that no such change or revision may permit installation of the Conduit and Cable Improvements anywhere but within the public ways accommodating the Authorized Locations, extend the term of the Use Agreement beyond that which is provided in the Basic Terms, reduce the consideration contrary to the provisions of the Basic Terms, or reduce the security provided the City below the level set forth in the Basic Terms without further action of this City Council.

SECTION 2. Subject to approval of the Corporation Counsel as to form and legality, the Commissioners are authorized to execute, on behalf of the City, and the City Clerk is authorized to attest to, the IRU Agreement between the City and the Grantee, incorporating the IRU Basic Terms attached hereto as Exhibit D, subject to such changes as may be approved by the Commissioners, including the relocation of the Authorized Locations, subject to approval of the Corporation Counsel, their execution of the IRU Agreement constituting conclusive evidence of their approval and this City Council's approval of any such changes or revisions therein from the IRU Basic Terms, provided, however, that no such change or revision may permit installation of the Conduit and Cable Improvements anywhere but within the public ways accommodating the

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Exhibit A Underground Routes

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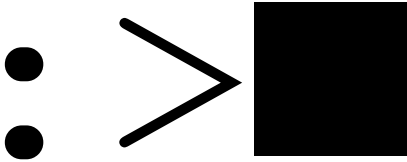
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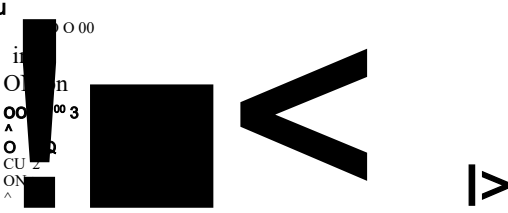
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Exhibit B Aerial Routes

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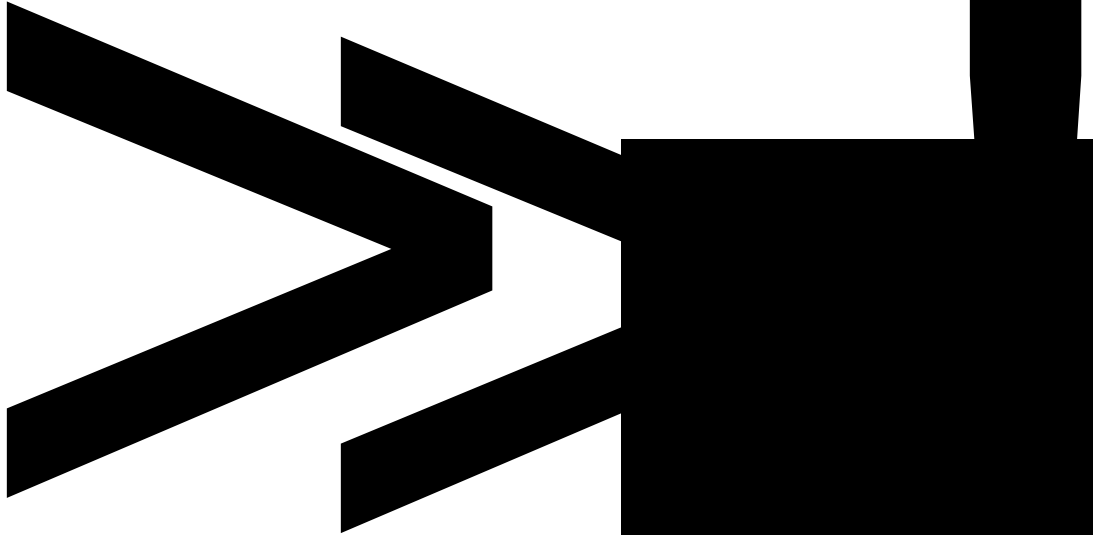
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Exhibit C

Use Agreement Basic Terms

Conduit and Cable Path and Facility Use Agreement ("Use Agreement").

Re: Proposed License for a Conduit Facility and related Conduit and Cable Paths In, Over and Under the Public Way

Grantor: City of Chicago, an Illinois municipal corporation ("City")

Grantee: ExteNet Systems, Inc., a Delaware corporation that is registered as a telecommunications carrier under federal and Illinois law and is a telecommunications provider that does not operate as a

telecommunications retailer ("Grantee").

Description of Conduit and Cable

Paths: The conduit and cable paths ("Conduit and Cable Paths") will be located in, over and under the public ways (i) as described in Grantee's thirteen (13) Under Ground Fiber Optic Facility plans ("Underground Plans") prepared by the civil engineer at Gabe's Construction Company, Inc. ("Contractor") originally dated December 7, 2012, each as conditionally approved by CDOT on: June 10, 2013 (OUC EFP File #57586), June 11, 2013 (OUC EFP File #57623, #57629 and #57630), June 13, 2013 (OUC EFP File #57651, #57652, and #57653), June 21, 2013 (OUC EFP File #57829 and #57830), July 1, 2013 (OUC EFP File #57909 and #57910), July 5, 2013 (OUC EFP File #57911), and July 10, 2013 (OUC EFP File #58017), and (ii) as set forth in Grantee's six (6) aerial cable and equipment plans ("Aerial Plans" and together with the Underground Plans, the "Plans"), originally dated: August 27, 2012, November 5, 2012, December 7, 2012, February 15, 2013, and July 8, 2013, and delivered to the City on July 16, 2013 (collectively, the "Authorized Routes"). The total linear footage of underground public way and airspace over the public way to be used is forty thousand eighty three (40,083) linear feet, with twenty-eight thousand one hundred eighty (28,180) linear feet above the public way and eleven thousand nine hundred three (11,903) linear feet under the public way. The Underground Path will contain approximately three (3) one and one-quarter (1 ¹/₄) inch innerducts, including the City Innerduct. The Aerial Path will consist of one (1) cable of the standard size to accommodate at least one hundred forty four (144) optical fiber strands and a maximum of two hundred eighty eight (288) optical fiber strands to be attached on utility poles owned by ComEd. The ExteNet-_Ordinance_(7-23-13)_ (FINAL).doc 7

Conduit and Cable Paths will be installed within the public way after approval from the Office of Underground Coordination ("OUC") and the City's Department of Transportation ("CDOT"). Any revisions to the Plans are subject to the approval of the Executive Director of OEMC, the Commissioner of CDOT, Commissioner of DoIT and Commissioner of BACP, or their respective designees (collectively, the "Commissioners"), which approval shall not be unreasonably withheld.

Description of Conduit and Cable

Facilities: The separately located conduit and cable facilities (the "Conduit and Cable Facilities" and together with the "Conduit and Cable Paths, the "Conduit and Cable Improvements") will be located in the portion of the City's public way identified and set forth in the Plans (the "Authorized Facility Location," and together with the Authorized Routes, the "Authorized Locations"). The total cubic feet of underground public way used by the manholes is approximately one hundred and sixty-two (162) cubic feet. The total volume of airspace above the public way used by the nodes is approximately two hundred and sixty-four (264) cubic feet. The Conduit and Cable Facilities will be installed after approval from the Office of Underground Coordination and/or other divisions of CDOT and after the execution of all necessary agreements including the Use Agreement and the IRU Agreement. Any revisions to the Plans are subject to the approval of the Commissioners which approval shall not be unreasonably withheld.

Relocation: The exact locations of the Conduit and Cable Improvements within the Authorized Locations may be changed by the Executive Director of OEMC and the Commissioner of CDOT

and the Conduit and Cable Improvements may be relocated in whole or in part in the Public Way, either during or after the construction of the Conduit and Cable Improvements at Grantee's sole cost and expense upon at least 30 days advance written notice for a public purpose, including but not limited to utility or transportation purposes of the City or another governmental entity. The City will reasonably cooperate with Grantee in finding an alternate route for the affected Conduit and Cable Improvements. In the case of an emergency, as determined by the Executive Director of OEMC and the Commissioner of CDOT in their discretion, such relocation may occur in a shorter time frame as set forth in the Use Agreement.

Grant of

License: The grant of license ("License") in the Use Agreement shall be for a maximum initial term of fifteen (15) years, and renewable for a maximum of three (3) additional terms (each, an "Extension"), with each Extension ExteNet-_Ordinance_(7-23-13)_ (FINAL).doc 8

not to exceed five (5) years, upon the mutual agreement of the parties as

set forth in the Use Agreement. The License shall provide for the right of

the Grantee to go in the Authorized Locations in connection with the

construction, installation, repair, replacement, use, operation and

maintenance of the Conduit and Cable Improvements, including the City

Innerducts and IRU Fiber, for the purposes set forth in the Use Agreement

and the IRU Agreement, as authorized by the City Council of the City of

Chicago on _____, 2013.

Purpose of Conduit and Cable Improvements:

Grantee's primary purpose for the Conduit and Cable Improvements is to enhance the broadband

communications infrastructure in the affected areas of the City in order to improve the coverage, capacity (numbers of simultaneous users and data throughput), operating efficiency and reliability of the wireless telecommunications carriers who use it. Nothing in the Use Agreement or the IRU Agreement shall affect the obligations and liabilities of telecommunications providers, cable television companies and other users of the public way under Illinois law and City ordinance. No entity may occupy or use any of the Conduit and Cable Improvements unless such entity has authority to be in the public ways under City ordinance and is complying with the terms thereof, including related agreements and/or applicable City regulations and provisions of the Municipal Code of Chicago (the "Code"). The proposed locations of the Conduit and Cable Improvements within the public ways are subject to final location approval by CDOT and the Office of Underground Coordination, which approval shall not be unreasonably withheld.

Payment for License:

In lieu of paying the City's standard Telecommunications Provider Permit fees under Municipal Code Section 10-30-040 ("ROW Fees"), Grantee proposes to setoff such fees (the "Setoff") by including in the underground Conduit Path one (1) three-quarter (3/4) inch innerduct ("City Innerduct") and to install within the City Innerduct one hundred and forty-four (144) dedicated single mode fiber strands, and to install an equal amount of single mode fiber strands in the Aerial Path, all dedicated solely to the perpetual use of the City for governmental and commercial use per the IRU Agreement ("IRU Fiber").

The Setoff amount shall be equal to Grantee's cost of constructing the IRU Fiber to the City ("Total IRU Fiber Cost"). For purposes of the Setoff, the City and Grantee agree that the Total IRU Fiber Cost shall be \$1,387,000 for 40,083 linear feet of IRU Fiber ("Total IRU Fiber Amount"); provided

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however, that the City reserves the right not to accept any portions of the IRU Fiber for purposes of the Setoff if the IRU Fiber is not built and ready for the City's use within two (2) years from the date of the IRU Agreement; provided further, however, that if Grantee provides less than the Total IRU Fiber Amount, then the Total IRU Fiber Cost shall be reduced in direct proportion to the reduced amount of IRU Fiber (E.g. If Grantee provides City with 50% of the Total IRU Fiber Amount, or 20,042 linear feet of IRU Fiber, then the Total IRU Fiber Cost shall be reduced by 50% to \$693,500). For the avoidance of doubt, Grantee shall still be permitted, subject to the Use Agreement, to construct any Conduit and Cable Improvements not ready for use by the City within a two (2) year period, even if the City chooses to reject the corresponding IRU Fiber pursuant to this paragraph.

Upon execution of the Agreement, the Setoff shall be applied to the applicable ROW Fees until such time as the IRU Fiber Cost has been paid by the City through the Setoff of such ROW Fees that would have otherwise been charged to ExteNet (the "Setoff Period"). During the Setoff Period, the annual ROW Fees applicable to Grantee shall be calculated using the following rates: \$6 per linear foot of Conduit Path, and \$1 per linear foot of Aerial Path.

In no event shall the City have any obligation to pay or reimburse Grantee for the IRU

Fiber other than through the Setoff, or as otherwise set forth in the IRU Agreement and Use Agreement. For the period following the conclusion of the Setoff Period, including any Extensions, Grantee shall pay the Telecommunications Provider Permit fees applicable at such time for the balance of the Use Agreement.

Administrative Fee:

Grantee shall also pay the City an administrative fee consisting of a onetime non-refundable fee of thirty thousand dollars (\$30,000) for certain administrative costs including attorney's fees. Subject to extension by the Corporation Counsel, this fee shall be due and payable five (5) days after the date this Ordinance is passed by the City Council unless Grantee elects not to pursue its Plans at such time.

**Assignment
of License:**

The Use Agreement and the IRU Agreement may be assigned or transferred by Grantee to an affiliated entity with the prior written consent of the Commissioners of CDOT, DoIT and BACP and with proper disclosure of ownership interests in the assignee in compliance with the

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requirements of the Code, which consent shall not be unreasonably withheld. Such assignment shall be provided for in the Use Agreement and the IRU Agreement and shall include at a minimum full assumption by the assignee of Grantee's and Guarantor's (as hereinafter defined) obligations and liabilities with or without recourse as set forth in the Use Agreement and the IRU Agreement.

**Construction of Conduit and
Cable**

Improvements:

Grantee, or its contractor or subcontractors, shall at its sole cost and expense, construct the Conduit and Cable Improvements, including the City Innerduct and IRU Fiber, in accordance with the Code, the Use Agreement, the IRU Agreement, all applicable City regulations and City permits.

Maintenance of Conduit and Cable

Improvements:

Throughout the term of the Use Agreement, Grantee, at its sole cost and expense, shall be responsible for the construction, installation, repair, replacement, use, operation and maintenance of the Conduit and Cable Improvements; provided that the City shall have reasonable access to the City Innerduct and IRU Fiber upon reasonable notice for installation and/or connection of facilities and for emergency repairs. Grantee shall perform such work in such manner and at such times as shall not interfere with the Authorized Locations or the Public Way without proper City permits. No maintenance to the Conduit and Cable Improvements requiring access to or creating potential

interference with the Public Way shall be performed unless and until such access has been approved by permit issued by the Commissioner of CDOT. Grantee, at its sole cost and expense, shall be responsible for and make such repairs as are required to restore any portion of the Public Way which is damaged as a result of the construction, installation, repair, replacement, use, operation and maintenance of Grantee, or any of its contractors, subcontractors, or occupants of its Conduit and Cable Improvements as described in the Use Agreement, except that Grantee shall not be responsible for any damage resulting from the negligent use by the City or its contractors of the City Innerduct and IRU Fiber, as described in the IRU Agreement. All repairs to the Public Way shall meet CDOT construction standards applicable to the Public Way as set forth in the Code or applicable City regulations. Grantee, upon reasonable notice, at its expense and at no cost or liability to the City, shall support, protect and repair the Conduit and Cable Improvements during construction of public projects. Notwithstanding the foregoing and subject to the express provisions of the Use Agreement and

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the IRU Agreement, ExteNet may terminate the Use Agreement and cease occupancy and use of all or any portion of the Authorized Locations at any time during the term of this Agreement.

Permits:

Grantee shall pay all applicable City taxes, right-of-way restoration fees and permit fees. Permits shall be obtained by Grantee using procedures consistent with the Code and applicable regulations which may be set forth in the Use Agreement to the extent deemed necessary by the Commissioners. Grantee is a telecommunications provider as provided by Chapter 10-30 of the Municipal Code of Chicago and is not a telecommunications retailer as provided by Chapter 3-73 of the Municipal Code of Chicago. Nothing herein restricts the Grantee from becoming a telecommunications retailer but if such designation shall occur it shall not affect in any way the rights and obligations contemplated by the Use Agreement and the IRU Agreement.

Indemnity:

Grantee shall indemnify, defend and hold harmless the City, its officials, employees, and agents for matters arising out of the use, occupation and control of the Conduit and Cable Improvements by Grantee or any of Grantee's authorized Wireless Carriers. Further, Grantee shall not be responsible to indemnify, defend and hold harmless the City, its officials, employees, and agents for matters arising out of the use, occupation or control by City of the City Innerduct and IRU Fiber where such use, occupation or control has been negligent or there has been wanton or willful misconduct in connection with such use, occupation or control. The indemnification of the City, its officials, employees, and agents shall survive any termination, expiration, or cancellation of the License, the Use Agreement, and/or the IRU Agreement.

Insurance and Security:

Grantee shall, at its sole cost and expense, procure and maintain during the term of the Use Agreement, insurance and security as reasonably required by the Commissioner of

CDOT as set forth in the Use Agreement and shall add the City as additional insured on a primary non-contributory basis to all applicable insurance policies which are specifically related to the Conduit and Cable Improvements.

The Grantee and the City agree that Grantee shall post, on an annual basis (with evergreen clause) for the entire term of the Use Agreement, or for such lesser term as the City Risk Manager and Commissioner of CDOT in their sole discretion may approve, a Letter of Credit ("LOC") in the amount of one hundred thousand (\$100,000) dollars; provided, however, the City reserves the right to request additional security in the form of

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performance bonds up to a total of five hundred thousand (\$500,000) dollars.

Other Provisions: M.B.E./W.B.E., Chicago residency, and other construction practices shall be consistent with City of Chicago ordinances related to use of the Public Way. In addition, the Shakman decree boilerplate language shall be part of the Use Agreement pursuant to the City's Shakman Contractor Policy.

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Exhibit D

IRU Agreement Basic Terms

Indefeasible Right of Use Agreement ("IRU Agreement").

Re: Proposed grant of an Indefeasible Right of Use ("IRU") with respect to certain dark fibers on Authorized Routes

ExteNet: ExteNet Systems, Inc., a Delaware corporation that is registered as a telecommunications carrier under federal and Illinois law and is a telecommunications provider that does not operate as a telecommunications retailer ("ExteNet")

City: City of Chicago, an Illinois municipal corporation ("City")

IRU Fiber: One hundred and forty-four (144) optical fiber strands of single mode fiber along the Authorized Routes as defined in the IRU Agreement.

The IRU Fiber will occupy on an exclusive basis: (i) for underground segments, one of the three (3) one and one-quarter (1 'A) inch innerducts within the conduit installed by ExteNet; and (ii) for aerial segments, will be enclosed with ExteNet's fiber in a common sheath as per the Plans depicted and described in Exhibit B of this Ordinance.

The IRU Fiber shall be "dark" fiber, which means that ExteNet shall have no obligation to assist the City or others in "lighting" and thus using the strands of fiber.

ExteNet and the City may mutually agree that the installation of some or all of the 144 strands comprising the IRU Fiber may not be desirable by the City or feasible for practical or technical reasons on certain portions of the Authorized Routes.

IRU Grant: ExteNet shall provide to the City an exclusive and irrevocable right to use the IRU Fibers, subject to

the terms and conditions of the IRU Agreement.

Term: The IRU Fibers granted to the City pursuant to the IRU Agreement shall be in perpetuity and at no cost to the City, subject to the specific costs which are or may become the City's responsibility as specifically provided herein, e.g. upon transfer of a network to the City.

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IRU

Limitation: Grantee shall provide the IRU Fiber to the City for the City's, including its assignees', licensees', or contractors', exclusive use for any governmental purpose or purposes, including for the provision of telecommunication services to or by the City and other governmental entities. In addition, the City shall be entitled to use the IRU Fiber, or to assign, license, or otherwise grant use of the IRU Fiber to a third party or parties, for commercial telecommunications and broadband service purposes. The sole limitation on the City's commercial use of the IRU Fiber, including use by any assignees, licensees, contractors or third party or parties to whom the City has otherwise granted rights to use the IRU Fiber, shall be that the IRU Fiber cannot be used by the City or by any such entity or party to provide Distributed Network Services (as defined below) or as a component of a network that provides Distributed Network Services. For purposes of this limitation, the term "Distributed Network Services" means the provision of point-to-point signal transport and connectivity for outdoor or indoor distributed antenna system ("DAS") remote communications nodes, remote radio heads, small cells, or wireless access points deployed or used by wireless carriers, including but not limited to SMRS providers, that hold Federal Communications Commission licenses for radio frequency spectrum and provide voice and data services to end-user subscribers, whether directly or through other wireless carriers, provided that wireless access points employing only unlicensed radio frequency spectrum shall be included in this definition but only to the extent such wireless access points are deployed by or specifically for the use of such wireless carriers and their end-user subscribers. For the avoidance of doubt, the foregoing definition of Distributed Network Services does not mean or include the provision of infrastructure or "backhaul" signal transport and connectivity to traditional cellular antenna sites otherwise known in the industry as "macro cellular sites".

By way of example and not limitation, permitted uses of the IRU Fiber by the City, and/or any third party selected by the City, shall be: (i) the sale or provision of wired broadband voice and data services to business and residential customers; (ii) the sale or provision of wireless voice and data services to the general public in public spaces such as plazas and parks using unlicensed radio frequency spectrum, e.g., open Wi-Fi services, and that is not otherwise prohibited by the restrictions in the paragraph above; and (iii) the sale or provision of wireless voice and data services via macro cellular sites or other means, but without using any DAS nodes, remote radio heads, small cells or wireless access points on or connected with the IRU Fiber and without transporting DAS telecommunications traffic from any DAS nodes, remote radio heads, small cells or wireless access points

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through the IRU Fiber.

For the avoidance of doubt, notwithstanding anything in the Use Agreement or the IRU Agreement, the City's (including its assignees', licensees', or contractors') ability to install DAS nodes, remote radio heads, small cells or wireless access points on fiber or other telecommunications facilities that is not IRU Fiber ("Non-IRU Fiber") and/or to transport DAS traffic on Non-IRU Fiber is not prohibited.

Grantee shall agree that it will not take any steps relating to the IRU Fiber that would prohibit or functionally prevent the City's permitted governmental or commercial uses of the IRU Fiber.

If Grantee shall, pursuant to the IRU Agreement, transfer ownership to the City of any of the fiber comprising part of any of its six distributed networks contemplated by the Use Agreement, or, subject to any applicable cure periods under the IRU Agreement or the Use Agreement, if Grantee is found to have materially breached its obligations under the IRU Agreement to provide or maintain the IRU Fiber, the aforementioned limitation on the use of the IRU Fiber shall immediately and fully terminate as to the corresponding portion or portions of the IRU Fiber.

Access to

IRU Fiber: All of the IRU Fiber (aerial and underground) will be accessible via a separate splice box/case (or functionally similar way) at the Access/Splice Points (as hereinafter defined) so that the City's contractors and its assignees can access and splice the IRU Fiber without having access to ExteNet's optical fiber strands. "Access/Splice Point" means a specified location on the Authorized Routes, such as a handhole, where one fiber optic cable segment ends and another fiber optic cable segment begins and a splice box/case is installed.

The City will have access to the IRU Fiber at each Access/Splice Points. planned and constructed by ExteNet, and ExteNet will add additional Access/Splice Points as requested by the City, provided that the City pays ExteNet's actual and reasonable costs of the additional construction required to provide such additional Access/Splice Points and provided further that the City submits such requests in a timely manner so that the work required to effect such additional Access/Splice Points can be coordinated and carried out by ExteNet as part of its Plans.

In exercising its rights of access to the IRU Fiber, the City, its contractors and permitted assigns will cooperate with ExteNet and comply with reasonable requirements for advance notice, qualification or certification ExteNet- Ordinance (7-23-13) (FINAL).doc 16

of technicians or contractors performing the work, scheduling and coordination of non-emergency work, etc., as well as undertaking to indemnify ExteNet with respect to any damage or service interruption affecting ExteNet's fiber network that results from the intentional wrongdoing or the negligent acts or omissions of the City, its contractors or permitted assigns, all as provided in appropriate detail in the IRU Agreement.

Subject to reasonable confidentiality agreement provisions (to the extent such confidentiality is permitted by law), ExteNet will provide detailed as built maps to the City or its assignees of the aerial fiber and underground fiber installations containing the IRU Fiber and the associated

Access/Splice Points.

Operation and Maintenance of

IRU Fiber:

Grantee agrees that Grantee, its successors or permitted assigns will operate and maintain each of the six (6) networks described in the Use Agreement for at least five (5) years after the acceptance date of the IRU Fiber granted by Grantee to the City.

Grantee will be responsible for maintaining and repairing the IRU Fiber at Grantee's sole cost and expense except for the costs and expense incurred for the repairing of any damage caused by the negligence of the City, its contractors or any third parties to whom the City has granted access and use with respect to the IRU Fiber. At any time after five (5) years after the acceptance date of the IRU Fiber by the City pursuant to the IRU, Grantee, its successors or permitted assigns may cease operating one (1) or more of the six (6) telecommunications networks described in the Use Agreement. In that event, upon six (6) months notice to the City, responsibility for maintaining and repairing the IRU Fiber in the particular network or networks abandoned may be transferred to the City. No maintenance and operating responsibilities may be transferred to the City under any circumstances for less than a complete network. Grantee shall cooperate with the City in ensuring that the transfer of this responsibility for repairing and maintaining the IRU Fiber be conducted in a reasonable and orderly manner. At no time, shall the City have the responsibility to maintain and repair Grantee's fiber, nodes, hubs, its fiber networks or any other Grantee facilities.

Grantee will be solely responsible for all DIGGER obligations at all times, unless operating and maintenance responsibilities for a particular network or networks is transferred to the City as provided for above, at which time

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DIGGER obligations will also transfer to the City for that particular network, or networks.

Third Party Agreements Relating to

IRU Fiber:

In the event that Grantee, its successors or permitted assigns cease operating one (1) or more of the six (6) telecommunications networks described in the Use Agreement after five (5) years after the acceptance date of the IRU Fiber by the City pursuant to the IRU, Grantee, its successors, or permitted assigns agree to undertake all commercially reasonable actions that are reasonably necessary to ensure that the City's rights under the IRU Agreement for the IRU Fiber associated with such network or networks shall not be negatively impacted in any way. By way of example, and without limiting the foregoing: Grantee, its successors or permitted assigns agree to the following: (i) Grantee, its successors and permitted assigns shall exert commercially reasonable efforts to prohibit and prevent the City's Innerduct and IRU Fiber from being physically disturbed; (ii) Grantee, its successors and permitted assigns shall not encumber the City's Innerducts and IRU fiber by or through any liens, judgments, creditor claims, or other encumbrances; (iii) Grantee, its successors and permitted assigns will maintain its third party agreements (E.g. pole attachments and private property agreements) to allow for continued use and access by the City of the City Innerduct and IRU Fiber until such time that the City has had a reasonable opportunity, which in no event shall be less than two (2) years, to negotiate its own agreements with such third parties on reasonable terms and conditions.

During such time that the City is undertaking efforts to secure its own third party agreements, the City shall reimburse Grantee for the actual fees and costs that it pays such third parties and to operate and maintain the IRU Fiber. The City shall have the option to notify Grantee that it has no interest in securing any separate third party agreements for the IRU Fiber associated with any one (1) or more of the six (6) networks, in which event, Grantee's obligations under the IRU Agreement with respect thereto shall be terminated.

Grantee shall indemnify, defend and hold harmless the City, its officials, employees, and agents for matters arising out of the use, occupation and control of all Grantee facilities, including but not limited to any facilities located on private property, regardless of whether those facilities are related to the use and access of City Innerduct and IRU Fiber.

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OFFICE OF THE MAYOR
CITY OF CHICAGO

RAHM EMANUEL
MAYOR

July 24, 2013

TO THE HONORABLE, THE CITY COUNCIL OF THE CITY OF
CHICAGO

Ladies and Gentlemen:

At the request of the Commissioner of Transportation and the Chief Information Officer, I transmit herewith an ordinance authorizing the execution of an agreement with ExteNet.

Your favorable consideration of this ordinance will be appreciated.

Mayor

Very truly yours,

;...NV -

Authorized Locations, extend the term of the IRU Agreement beyond that which is provided in the IRU Basic Terms or, reduce the consideration contrary to the provisions of the IRU Basic Terms.

SECTION 3. The Commissioners are also authorized, subject to approval of the Corporation Counsel, to enter into such other agreements.as may. be necessary to carry out the intent of the Use Agreement and the IRU Agreement. Only upon the execution of the Use Agreement and the IRU Agreement by the Commissioners and the Grantee and the fulfillment of any preconditions set forth in the Use Agreement and the IRU Agreement shall Grantee be authorized to construct, install, repair, replace, use, operate, maintain and provide the Conduit and Cable Improvements along the Authorized Locations pursuant to the terms of the Use Agreement and the IRU Agreement.

SECTION 4. This ordinance shall be in full force and . effect upon its passage and approval. •-

SECTION 5. All ordinances and resolutions, or parts thereof, in conflict with this ordinance are, to the extent of such conflict, hereby amended.

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