

# RESOLUTION OF THE CITY COUNCIL

No. 158

Approved April 29, 2016

WHEREAS, This resolution authorizes the City of Providence to execute the Telecommunications Attachment and Right-of-Way Agreement ("Agreement") between the City of Providence and ExteNet Systems, Inc.; and

WHEREAS, The Agreement permits ExteNet to use the right of way in the City of Providence ("ROW") for the placement of small cell equipment to City owned structures, use of City owned conduit, the placement of fiber within the ROW, the placement of new streetlight poles or other Pole Placement as defined in Section 1.8 of the Agreement, subject to the consent of the City; and

WHEREAS, Pursuant to the terms of the Agreement, ExteNet will be removing three (3) existing streetlights and replacing them with stealth streetlight poles capable of supporting the small cell equipment identified in the plans approved by the Department of Public Works (William Bombard, City Engineer); and

WHEREAS, Approval of this Resolution is explicitly conditioned upon the City of Providence taking ownership of the following utility poles:

- 1.) 175 Thayer Street: PL-15
- 2.) 82 Waterman Street: PLF-12
- 3.) 53 Stimson Street: PL-7

NOW, THEREFORE, BE IT RESOLVED, That His Honor, the Mayor is authorized to execute the Telecommunications Attachment and Right-of-Way Agreement between the City of Providence and Extenet Systems, Inc. substantially in the forms attached hereto.

IN CITY COUNCIL

APR 21 2016

READ AND PASSED

PRES.

CLERK

I HEREBY APPROVE

Date: 4/29/16



March 10, 2016

Ms. Lori L. Hagen - City Clerk  
Office of the City Clerk  
Providence City Hall  
25 Dorrance Street  
Providence, RI 02903

Via overnight morning  
Delivery, UPS

Re: ExteNet Systems, Inc. ("ExteNet") Petition to the Providence City Council to execute the Telecommunications Attachment and Right-of-Way Agreement between the City of Providence (the "City") and ExteNet Systems, Inc. (the "Agreement").

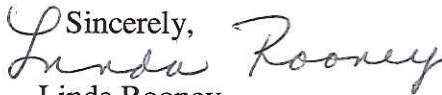
Dear Ms. Hagen:

Enclosed you will find the following:

- 1) three (3) partially executed Agreements, the form of which has been approved by Ms. Adrienne Southgate, which permits ExteNet to use the Rights-of-Way and City owned infrastructure within the City of Providence following approval and permitting required by the Department of Public Works;
- 2) A check in the amount of \$75.00 which represents the fee to set this matter before City Council;
- 3) Bond No. 0692494, in the amount of Ten Thousand (\$10,000.00) Dollars which represents the Security required pursuant to Section 10 of the Agreement; and
- 4) A Certificate of Insurance pursuant to Section 9 of the Agreement.

ExteNet is respectfully requesting that this matter be expedited, for introduction before the City Council at the March 17, 2016 City Council Meeting.

Please feel free to contact Linda Rooney, 734-905-7253 with any questions that you may have.

Sincerely,  
  
Linda Rooney  
Regional Director of Infrastructure  
ExteNet Systems, Inc.

**CITY OF PROVIDENCE**  
STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

**PETITION TO THE CITY COUNCIL**

TO THE HONORABLE CITY COUNCIL OF THE CITY OF PROVIDENCE:


*The undersigned respectfully petitions your honorable body*

Petition to execute the attached Telecommunications Attachment and Rights-of Way Agreement between the City of Providence and ExteNet Systems, Inc. (the "Agreement").

Whereas, the Agreement permits ExteNet to use the right of way in the City of Providence ("ROW") for the placement of small cell equipment to City owned structures, use of City owned conduit, the placement of fiber within the ROW, the placement of new streetlight poles or other Pole Placement as defined in Section 1.8 of the Agreement, subject to the consent of the City.

Whereas, pursuant to the terms of the Agreement, ExteNet will be removing three (3) existing streetlights and replacing with stealth streetlight poles capable of supporting the small cell equipment identified in the plans approved by the Department of Public Works (William Bombard, City Engineer). In consideration, ExteNet agrees to remit the fees provided for in Exhibit B of the Agreement.

EXTENET SYSTEMS, INC.

By:   
~~Daniel L. Timm~~ Oliver Valente  
Title: ~~CFO~~ COO  
Date: 3-10-16

3030 Warrenville Rd., Ste. 340  
Lisle, Illinois 60532

Please contact: Linda Rooney,  
734-905-7253



PERFORMANCE BOND

Bond No. 0692424

KNOWALL MEN BY THESE PRESENTS, That we ExteNet Systems, Inc., as Principal, and International Fidelity Insurance Company, as Surety, are held and firmly bound unto City of Providence (Rhode Island), as Oblige, in the penal sum of Ten Thousand Dollars and 00/100 Dollars (\$ 10,000.00 ), lawful money of the United States of America, to be paid to the said Oblige, its successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, The above bounden Principal has entered into a written Telecommunications Permit Agreement with the Oblige, for Use of the Public Ways in the City. The above mentioned agreement sets forth the terms and conditions which governs the use of such Telecommunications Permit Agreement and said agreement is hereby specifically referred to and made a part of this bond, with like force and effect as if herein at length set forth.

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION are that, if the Principal shall comply with all of the provisions of the City Telecommunications Permit Agreement for Use of the Public Ways with the Permittee, including removal of the Telecommunications Systems upon the expiration or earlier termination of such Agreement, and any order, permit or direction of any department, agency, commission, board, division, or office of City having jurisdiction over its acts, and shall have paid all claims, liens, fees, or taxes due City which arise by reason of the construction, installation, operation or maintenance of the Telecommunications System, and fully compensate City for any act or default of Permittee, including, but not limited to, costs incurred by City in connections with restoration work the Permittee failed to perform and complete, and any expenditure, damage, or loss incurred by City occasioned by Permittee's failure to comply with all Charters, Ordinances, rules, regulations, directives, memoranda, or permits, then this obligation shall be null and void, otherwise it shall remain in full force and effect.

The bond is subject, however, to the following express conditions:

FIRST: That in the event of a default on the part of the Principal, its successors or assigns, a written statement of such default with full details thereof shall be given to the Surety promptly, and in any event, within thirty (30) days after the Oblige shall learn of such default, such notice to be delivered to the Surety at its home office in One Newark Center, Newark, NJ 07102-5207, by registered mail.

SECOND: That no claim or action under this bond by reason of any such default shall be brought against the Surety unless asserted or commenced within twelve (12) months after the effective date of any termination or cancellation of this bond.

THIRD: At least sixty (60) days' prior written notice shall be given to the City by the surety of any intention to cancel, replace, or materially alter the bond, such notice to be given by registered mail to the Oblige & Principal. The liability of the Surety shall be limited to the amount set forth above and is to be cumulative.

FOURTH: That no right of action shall accrue under this bond to or for the use of any person other than the Oblige, its successors and assigns.

IN WITNESS WHEREOF, The above bounden Principal and the above bounden Surety have hereunto set their hands and seals, this 3rd day of March, 2016

Principal: ExteNet Systems, Inc.

By: \_\_\_\_\_

Surety: International Fidelity Insurance Company

By: \_\_\_\_\_

Harold Miller Jr.

Attorney-in-Fact





State of Illinois  
County of Dupage

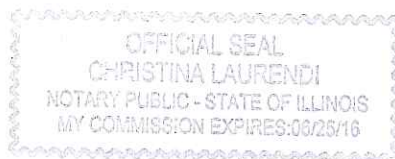
SURETY ACKNOWLEDGEMENT (ATTORNEY-IN-FACT)

I, Christina Laurendi Notary Public of Dupage County, in the State of Illinois,  
do hereby certify that Harold Miller Jr. Attorney-in-Fact, of the International Fidelity  
Insurance Company who is personally known to me to be the same person whose  
name is subscribed to the foregoing instrument, appeared before me this day in person, and  
acknowledged that he signed, sealed and delivered said instrument, for and on behalf of the  
International Fidelity Insurance Company for the uses and purposes therein set forth.

Given under my hand and notarial seal at my office in the City of Itasca in  
said County, this 3rd day of March, 2016.



Notary Public Christina Laurendi  
My Commission expires: June 25, 2016



POWER OF ATTORNEY  
INTERNATIONAL FIDELITY INSURANCE COMPANY

HOME OFFICE: ONE NEWARK CENTER, 20TH FLOOR  
NEWARK, NEW JERSEY 07102-5207

KNOW ALL MEN BY THESE PRESENTS: That INTERNATIONAL FIDELITY INSURANCE COMPANY, a corporation organized and existing laws of the State of New Jersey, and having its principal office in the City of Newark, New Jersey, does hereby constitute and appoint

Harold Miller Jr. as attorney-in-fact to execute the following Surety bond:  
Surety Bond Number: 0692424  
Principal: ExteNet Systems, Inc.  
Obligee: City of Providence (Rhode Island)

and the execution of such instrument in pursuance of these presents, shall be as binding upon the said INTERNATIONAL FIDELITY INSURANCE COMPANY, as fully and amply, to all intents and purposes, as if the same had been duly executed and acknowledged by its regularly elected officers at its principal office.

This Power of Attorney is executed, and may be revoked, pursuant to and by authority of Article 3-Section 3, of the By-Laws adopted by the Board of Directors of INTERNATIONAL FIDELITY INSURANCE COMPANY at a meeting called and held on the 7th day of February, 1974.

The President or any Vice President, Executive Vice President, Secretary or Assistant Secretary, shall have power and authority

- (1) To appoint Attorneys-in-fact, and to authorize them to execute on behalf of the Company, and attach the Seal of the Company thereto, bonds and undertakings, contracts of indemnity and other writings obligatory in the nature thereof and,
- (2) (2) To remove, at any time, any such attorney-in-fact and revoke the authority given.

Further, this Power of Attorney is signed and sealed by facsimile pursuant to resolution of the Board of Directors of said Company adopted at a meeting duly called and held on the 29th day of April, 1982 of which the following is a true excerpt:

Now therefore the signatures of such officers and the seal of the Company may be affixed to any such power of attorney or any certificate relating thereto by facsimile, and any such power of attorney or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by facsimile signatures and facsimile seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking to which it is attached.



IN TESTIMONY WHEREOF, INTERNATIONAL FIDELITY INSURANCE COMPANY has caused this instrument to be signed and its corporate seal to be affixed by its authorized officer, this 30th day of October, 2015.

STATE OF NEW JERSEY  
County of Essex

INTERNATIONAL FIDELITY INSURANCE COMPANY

Robert W. Minster, Chief Executive Officer

On this 30th day of October, 2015, before me came the individual who executed the preceding instrument, to me personally known, and, being by me duly sworn, said the he is the therein described and authorized officer of the INTERNATIONAL FIDELITY INSURANCE COMPANY; that the seal affixed to said instrument is the Corporate Seal of said Company; that the said Corporate Seal and his signature were duly affixed by order of the Board of Directors of said Company.

IN TESTIMONY WHEREOF, I have hereunto set my hand affixed my Official Seal, at the City of Newark, New Jersey the day and year first above written.



A NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires November 21st, 2020

CERTIFICATION

I, the undersigned officer of INTERNATIONAL FIDELITY INSURANCE COMPANY do hereby certify that I have compared the foregoing copy of the Power of Attorney and affidavit, and the copy of the Section of the By-Laws of said Company as set forth in said Power of Attorney, with the ORIGINALS ON IN THE HOME OFFICE OF SAID COMPANY, and that the same are correct transcripts thereof, and of the whole of the said originals, and that the said Power of Attorney has not been revoked and is now in full force and effect

IN TESTIMONY WHEREOF, I have hereunto set my hand this 3rd day of March, 2016.

Assistant Secretary





CERTIFICATE OF LIABILITY INSURANCE

EXTEN-3      OP ID: DH  
DATE (MM/DD/YYYY)  
03/03/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Waldman Bros. 6200 LBJ Freeway Suite 200 Dallas, TX 75240-6331 Todd Chanon	CONTACT NAME: <b>Waldman Bros.</b>	
	PHONE (A/C, No, Ext): <b>972-458-8700</b>	FAX (A/C, No): <b>972-458-8755</b>
INSURED  ExteNet Systems, Inc. ExteNet Systems (Virginia) LLC I5 Wireless, LLC ExteNet Systems California LLC ESI Advanced Wireless Networks 3030 Warrenville Rd., 3rd FL Lisle, IL 60532	E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	
	INSURER A : <b>National Fire Ins. Co.</b>	
	INSURER B : <b>American Casualty Co.</b>	
	INSURER C : <b>Continental Casualty</b>	
	INSURER D : <b>Catlin Insurance Company, Inc.</b>	
	INSURER E : <b>Columbia Casualty</b>	
INSURER F :		
NAIC #		

COVERAGES      CERTIFICATE NUMBER:      REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> <b>Owner/Cont Prot.</b> <input checked="" type="checkbox"/> <b>Stop Gap Liab (WA)</b> GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input checked="" type="checkbox"/> OTHER:			4013130714	01/27/2016	01/27/2017	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 Emp Ben. \$ 1,000,000
B	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS			4013130681	01/27/2016	01/27/2017	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
C	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			4013130700	01/27/2016	01/27/2017	EACH OCCURRENCE \$ 20,000,000 AGGREGATE \$ 20,000,000 \$
B	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	4013130695	01/27/2016	01/27/2017	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
D	<b>Pollution - Occur</b>			CPV6917871116	11/12/2015	11/12/2016	Limit 10,000,000
E	<b>Prof/Network Secur</b>			425654027	01/27/2016	01/27/2017	Limit 10,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER	CANCELLATION
CITYPRO  The City of Providence Director of City Property Attn: Alan Sepe City Hall, 25 Dorrance Street Providence, RI 02903	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 

The General Liability, Auto Liability and Umbrella policies include a blanket automatic additional insured endorsement that provides additional insured status to the certificate holder only when there is a written contract between the named insured & the certificate holder that requires such status.

The General Liability, Auto Liability, Umbrella, Workers Compensation, Pollution and Professional Liability policies include an endorsement providing that 30 days notice of cancellation [or coverage change] will be furnished to the certificate holder.

The General Liability policy contains a special endorsement with "Primary and Noncontributory wording.

The General Liability, Auto Liability, Workers Compensation policy include a blanket automatic waiver of subrogation endorsement that provides this feature only when there is a written contract between the named insured and the certificate holder that requires it.

30 Day Notice of Cancellation.

Umbrella Coverage is Follow Form

Professional Liability Policy includes Copyright Infringement.



**TELECOMMUNICATIONS ATTACHMENT AND  
RIGHTS-OF-WAY AGREEMENT**

**between**

**The City of PROVIDENCE**

**and**

**EXTENET SYSTEMS**

## TELECOMMUNICATIONS ATTACHMENT AND RIGHTS-OF-WAY AGREEMENT

The City of PROVIDENCE (“City”), and EXTENET SYSTEMS, INC., a corporation, organized and existing under the laws of Delaware (“ExteNet”), hereby enter into this Telecommunications Attachment and Rights-of-Way Agreement (“Agreement”) effective as of \_\_\_\_\_, 2016 (the “Effective Date”).

**WHEREAS** the State of Rhode Island Public Utilities Commission issued an Order, effective December 16, 2005, for ExteNet’s predecessor ClearLinx Network Corporation, to operate as a Competitive Local Exchange Carrier with authority to operate throughout the State of Rhode Island to provide telecommunications services; and

**WHEREAS** City is required by federal and State statutes, regulations and orders to grant all telecommunications service providers access to and occupancy of the public rights-of-way in City on a non-discriminatory basis for the purpose of installing facilities to provide telecommunications services; and

**WHEREAS** the jurisdictional boundaries of City include public rights-of-way and facilities that are used by, and useful to, telecommunications providers; and

**WHEREAS** City is authorized by State statutes, regulations and orders to recover just and reasonable costs for administering telecommunications providers’ access to the public rights-of-way within City’s jurisdictional boundaries.

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

### 1. Definitions

Except as the context may otherwise require, each capitalized word or phrase in this Agreement shall have the meaning specified herein. All other terms in this Agreement shall be interpreted in accord with common usage in the telecommunications industry. Without limiting the generality of the foregoing, for purposes of this Agreement, the terms listed below are defined as follows:

- 1.1. “Attachment” means the placement, attachment or installation of one or more items of Equipment on, over, under or within any City ROW or to any City Facility.
- 1.2. “Commission” or “PUC” means the State of Rhode Island Public Utilities Commission.
- 1.3. “Equipment” means any and all radios, amplifiers, optical converters, multiplexers, antennae, cables, wires, conduits, innerducts, pedestals, boxes, cabinets, primary and auxiliary power supplies, power meters, support structures,



mounting hardware, and all related or ancillary devices which may be owned by ExteNet or ExteNet's customers which shall be installed, maintained, operated or used by ExteNet to provide Service.

- 1.4. "ExteNet" shall mean ExteNet Systems, Inc., a corporation organized under the laws of the State of Delaware and to which the Commission has issued a certificate to operate as a provider of telecommunications services.
- 1.5. "Fee" means any one-time or recurring amount to be paid by ExteNet pursuant to this Agreement. Without limiting the generality of the foregoing. "Attachment Fees" means Fees paid in consideration of Attachments to or use of Facilities, and "ROW Fees" means Fees paid to cover the reasonable costs for City to administer access to its ROW.
- 1.6. "Facility" or "Facilities" means any City-owned or leased structure upon or within which it is technically feasible to place Equipment, including, but not limited to any City -owned light poles or fixtures, traffic signal poles, or conduit in City ROW.
- 1.7. "Node Poles" means those utility poles or Facilities to which ExteNet proposes to attach items of Equipment, other than wires and fiber optic cabling, as illustrated in Exhibit A.
- 1.8. "Pole Placement" means the placement of a new wooden, metal or concrete pole or other vertical structure in City ROW when necessary or useful for ExteNet's provision of Service. "Pole Placement" does not include replacement of existing Utility Infrastructure poles.
- 1.9. "Restore" means returning a City Facility or ROW to the condition it was in prior to Attachment, excepting reasonable wear and tear.
- 1.10. "Rights-of-Way" or "ROW" means the public ways and other areas now or hereafter existing that are owned by or otherwise subject to the jurisdiction and control of City, including without limitation, all space in, upon, above, along, across, under, and over any or all of the following: highways, streets, roads, lanes, courts, ways, alleys, boulevards, paths, curbs, sidewalks, bridges, overpasses, underpasses, tunnels, parks, parkways, waterways, easements, conduit, vaults, access manholes and "handholes".
- 1.11. "Service" means the transport, transmission and reception of signals carrying voice and data communications, including but not limited to format and/or protocol conversion and point-to-point transport of signals over fiber optic cables and other wireline connections as ExteNet provides as authorized by the PUC or Federal Communications Commission.
- 1.12. "State" means the State of Rhode Island.

- 1.13. “Utility Infrastructure” means existing poles and/or conduits owned or controlled by public or private utility companies, other than City-owned utility companies that are located in the ROW.

## **2. Grant of Access and Occupancy Rights**

2.1 Attachment to Third-Party Property. Subject to obtaining an existing utility easement or other suitable form of written permission of the owner(s) of the affected property, City hereby authorizes and permits ExteNet to enter upon the ROW and to attach, install, operate, maintain, remove, reattach, reinstall, relocate, and replace Equipment in or on Utility Infrastructure or other structures lawfully owned and operated by public utility companies or other property owners and located within or outside the Rights-of-Way. Upon request by City, ExteNet shall furnish to the City documentation in a form reasonably acceptable to the City of such permission from the individual utility or property owner. City shall provide a response to ExteNet within thirty days of submission of a completed application to access the ROW. A denial of an application for the Attachment of Equipment to Utility Infrastructure or other third-party poles or structures shall not be based upon the size, quantity, shape, color, weight, configuration, or other physical properties if ExteNet’s Equipment proposed for use conforms to one of the pre-approved configurations and the Equipment specifications set forth in Exhibit A or is not materially different in size, shape and color of telecommunications or electrical equipment then existing in the ROW. The reason for any denial shall be provided in writing with the denial.

2.2 Approval of Equipment Design, Configurations and Attachments. ExteNet will submit to City an application with a proposed design for any Equipment that ExteNet proposes to use in City ROW. Such application shall include a map or annotated aerial photograph identifying which Utility infrastructure or Facilities ExteNet seeks to use for Attachments. Once the City verifies that the Equipment proposed in the design complies with the pre-approved configurations and the Equipment specifications set forth in Exhibit A, the City will approve the particular Utility Infrastructure and Facilities to which ExteNet can attach its Equipment.

2.2.1 Change in Equipment. If ExteNet proposes an Attachment or installation of Equipment that differs in a material way from the pre-approved configurations and Equipment specifications attached hereto as Exhibit A, then ExteNet shall first obtain the written approval for the use and installation of the Equipment from an authorized representative of City.

2.3 Equipment Attachment to Facilities. City hereby grants to ExteNet the nonexclusive right, privilege, and license to enter and occupy City’s Rights-of-Way. Such right to enter and occupy shall be for purposes of, and/or in



connection with, Attachments of Equipment, and shall be subject to applicable rules, regulations or statutes setting forth non-discriminatory and reasonable controls as to the time, place and manner in which City's ROW are accessed and occupied in order to protect the health, safety and welfare of the public.

2.4 Pole Placements. In the event that an ExteNet application for Attachment is deemed impractical or denied by City due to lack of existing Facilities, the parties agree that either ExteNet shall be granted the right for Pole Placement in the ROW or City shall place a Facility for Attachment of ExteNet's Equipment. City shall provide a response to ExteNet within thirty days of submission of a completed application. The reason for any denial shall be provided in writing with the denial. A denial of an application for Pole Placement shall not be based upon the size, quantity, shape, color, weight, configuration, or other physical properties of ExteNet's Equipment if the Equipment proposed conforms to one of the pre-approved configurations and specifications set forth in Exhibit A.

2.4.1 If the parties agree that Pole Placement is to be effected by ExteNet, ExteNet shall bear the entire cost and expense of all placement, installation, construction, and maintenance for Pole Placement.

2.5 Structural Integrity of Facility. If ExteNet selects a Facility that is structurally inadequate to accommodate Equipment, ExteNet may at its sole cost and expense replace the Facility with one that is acceptable to and approved by the City and dedicate such Facility to the City, provided that ExteNet shall be entitled to a credit against the Attachment Fees otherwise payable with respect to such Facility that is equal to the out-of-pocket cost of such replacement Facility paid by or for the account of ExteNet.

2.6 Assignment of Cost. Except as otherwise provided in this Agreement, ExteNet shall bear the entire cost and expense of all placement, installation, construction, maintenance, and operation of Equipment and/or Attachments and Pole Placements by ExteNet in the Rights-of-Way, and shall hold City harmless from any such costs or expense.

2.7 Power for Equipment and Facilities. ExteNet will be solely responsible for establishing electrical power services for all of its Equipment and for the payment of all electrical utility charges to the applicable utility company. Notwithstanding this provision, City and ExteNet may mutually agree that ExteNet may power its Equipment Attachments to Facilities from a power source available at or associated with the relevant City Facilities.

2.8 Additional Future Attachments. ExteNet may apply to City to expand its initial Network installation through the same process as specified in this Section 2.

### 3. Term

Unless otherwise agreed, the term of this Agreement shall commence on the Effective Date and continue thereafter for an initial period of ten (10) years (the "Initial Term"). ExteNet shall have the right to extend this Agreement for up to two renewal terms of five (5) years. The Agreement shall renew unless either City or ExteNet gives the other written notice of its election not to renew this Agreement not less than 180 days prior to the expiration of the Initial Term or a Renewal Term.

### 4. Fees

4.1. ROW Fees. ExteNet shall pay ROW Fees to cover City's reasonable cost of administering ExteNet's access to and occupancy of City's ROW for new Pole Placement and for installation of ExteNet Equipment within, over or under City's ROW, including Attachments to facilities owned by third parties. Such ROW Fees shall be computed on the basis of the rates set forth in Exhibit B attached and shall be based only on the number of Node Poles in use by ExteNet within the geographic boundaries of City during the relevant period. Subject to Section 5.3, ExteNet may remove any Equipment or Attachments in the ROW at any time and the corresponding ROW Fees shall cease upon removal.

4.2. Attachment/Use Fees. ExteNet shall pay Attachment/Use Fees to City for each City-owned or leased Facility to which ExteNet makes an Attachment or in which ExteNet installs Equipment. Such Attachment/Use Fees shall be computed on the basis of the rates set forth in Exhibit B attached. Notwithstanding the foregoing, ExteNet shall not be liable for payment of any Attachment/Use Fee if for any reason City's Facility is or subsequently becomes unusable for Attachments or use, or ExteNet withdraws its application for Attachment to or use of such Facility before completing such Attachment or use or putting the Equipment into productive service. Subject to Section 5.3, ExteNet may remove any Attachment and/or Equipment at any time and the corresponding Attachment/Use Fees shall cease upon removal.

4.3. Other Fees and Compensation. The foregoing Fees are in addition to and not in lieu of any other non-discriminatory administrative fees and charges, imposed by City in connection with the issuance of construction permits, provision of copies of records, etc.

4.4. Payment Terms. All Fees payable pursuant to this Section 4 shall be paid annually in advance no later than January 31<sup>st</sup> of each year, and shall be based on the total Fees due for all Equipment, Attachments, and/or Node Poles occupying City ROW and/or Facilities as of December 31<sup>st</sup> of the previous year. Initial Fees for all new Equipment, Attachments, and/or Node Poles placed on City ROW and/or Facilities shall be paid in advance and due within 30 days of the date on which construction of the Equipment, Attachments, and/or Node Poles is completed. There shall be no proration of Fees.



4.5. Changes to Laws and Regulations Affecting Fee Rates. ExteNet and City acknowledge and agree that, in order to expedite the development and construction of ExteNet's DAS Network for the benefit of residents and visitors in City the rates set forth in Exhibit B have been negotiated by the parties without complete information concerning their reasonableness relative to the costs to be incurred by City or the rates being charged to others for similar access, use and attachments in the same or contiguous market areas, and without regulatory review. Therefore, during the term of this Agreement if: (a) lower rates are established or charged to ExteNet's competitors as a result of any ordinance or regulation subsequently adopted by City or by the State or any federal agency having jurisdiction over such determinations; or (b) a court or regulatory agency makes a final, non-appealable determination that the rates set forth in Exhibit B or any portion thereof or any rates for similar access, use or attachments in the same or contiguous market areas that are equal to or lower than such rates are not reasonable or legal, then the parties shall negotiate in good faith to reduce the rates set forth in Exhibit B accordingly. Further, (c) if by the State or any federal agency having jurisdiction over such determinations, or a court or regulatory agency makes a final, non-appealable determination that the terms and conditions of access to the ROW or rights of attachment to Facilities is materially different from or in addition to the rights set forth herein, the Parties will negotiate in good faith to amend the Agreement to reflect such determinations.

## 5. **Construction**

5.1. City Approval. Prior to commencing construction, ExteNet shall identify to the Department of Public Works those portions of City's Rights-of-Way that ExteNet needs to access and/or occupy, and City's Facilities, if any, upon which ExteNet seeks to make Attachments. Further, ExteNet shall provide a map or annotated aerial photograph identifying which Facilities ExteNet seeks to use for Attachments. Once the City verifies that the Equipment proposed in the design complies with the pre-approved configurations and the Equipment specifications set forth in Exhibit A, the City will identify those Facilities to which ExteNet can attach its Equipment. City shall have thirty (30) days to review and approve ExteNet's construction plans, which approval shall not be unreasonably withheld, conditioned or delayed. City shall notify ExteNet in writing of its approval or disapproval of ExteNet's proposed construction plans and Attachments. In the event that City personnel fail to deliver to ExteNet written notice of approval or disapproval of such plans and Attachments within forty five (45) days, such plans and Attachments shall be deemed approved by City.

5.2. Avoidance of Interference. ExteNet agrees that the placement, installation, construction, maintenance, operation and removal of Equipment installed in City ROW and its Attachments to City Facilities or Utility Infrastructure shall be carried out in such locations and in such manner so as not to unreasonably interfere with water, gas, sewer pipe, traffic signal, street light and other utilities and conduits already existing.

- 5.3. Permits. ExteNet further agrees to obtain all necessary excavation or encroachment permits setting forth time, place and manner restrictions necessary to protect the health, safety and welfare of the public, prior to commencing construction required for Equipment Attachment or Pole Placement in City's ROW or Facilities. City agrees to cooperate in expediting the issuance of such permits as reasonably requested by ExteNet in order to meet the reasonable requirements of ExteNet's customers and the telecommunications services needs of end users served by them.
- 5.4. Street Furniture Cabinets. If a portion of ExteNet's Equipment, not including antennas, cannot be accommodated on City's Facilities, the parties agree that, upon approval by the Providence City Council and payment of appropriate easement fees, ExteNet may place such equipment in above-ground street furniture and equipment cabinets located in the Rights-of-Way. In no instance shall the installation of any of ExteNet's Equipment in street furniture or equipment cabinets block pedestrian walkways in the ROW or result in violation of the Americans with Disabilities Act. If ExteNet cannot obtain necessary permits, approvals or other authorizations to place street furniture or equipment cabinets in the ROW, parties agree that ExteNet may place Equipment in below-ground vaults, and that City shall authorize such vaults expeditiously pursuant to applicable City Code zoning and undergrounding provisions. In such instance, ExteNet will be responsible for all costs associated with such below-ground vaults, including without limitation relocation costs of any public improvements or public utilities facilities.
- 5.5. Compliance with Law. When placing, installing, constructing, maintaining, operating, removing or relocating Equipment or Pole Placement in City Rights-of-Way, or making Attachments to City Facilities, ExteNet shall comply with all applicable federal and State statutes, regulations and orders, including but not limited to any relevant state regulatory or legislative construction standards, the National Electric Code (NEC), and/or the National Electric Safety Code (NESC). ExteNet shall also comply with all City technical specifications and requirements that are reasonable and non-discriminatory with respect to their impact on telecommunications services and ExteNet as a provider thereof, and all applicable national, State and local building, electrical and safety codes.
- 5.6. Restoration. If the placement, installation, construction, maintenance, operation, removal or relocation of Equipment or poles by ExteNet disturbs or alters City Rights-of-Way or Facilities, ExteNet, at its own expense shall restore such City Rights-of-Way or City Facilities to their original condition, normal wear and tear excepted.

## 6. **Maintenance**

- 6.1. Proper Maintenance. ExteNet shall maintain its Equipment and poles located in



City Rights-of-Way and its Attachments in such condition that they shall not constitute a danger to the health, safety and welfare of the public.

6.2. Right of Entry. ExteNet may enter upon City Rights-of-Way and City Facilities to maintain or repair Equipment or poles from time to time without prior approval of City.

6.3. Removal or Replacement of Equipment. ExteNet may remove or replace any items of Equipment as reasonably required in connection with the ongoing provision of Services without prior approval of City, so long as any replacement Equipment is substantially the same as that which has been removed with regard to size, weight and physical configuration. Removal of Equipment from any ROW or Attachment shall not constitute termination of this Agreement.

6.4. Permits. In the event maintenance or repair activities will disturb or block pedestrian or vehicular traffic in City Rights-of-Way, ExteNet shall obtain all permits required by City prior to commencing such maintenance or repair.

## **7. Relocation of Equipment**

7.1. Notice. City may request relocation of ExteNet's Equipment by delivering written notice to ExteNet identifying the need for such relocation and alternative City ROW and/or City Facilities to which ExteNet may relocate its Equipment.

7.2. Timeframe. After receiving notice, ExteNet shall relocate its Equipment to alternative City ROW and City Facilities identified by City as soon as practicable, but in no event sooner than one-hundred and eighty (180) days after receipt of such notice. ExteNet and City may mutually agree to relocation of Equipment in less than 180 days to respond to emergencies or other similar extraordinary circumstances.

7.3. Cost of Relocation. In the event relocation of Equipment is necessitated by construction, repair, maintenance, relocation or elimination of any City Rights-of-Way and City fails or refuses to provide ExteNet access to and use of reasonably comparable alternative locations in the ROW or alternative Facilities for such relocation City, the cost and expense of such relocation shall be borne by City (or such other party as City may designate), and ExteNet shall not be required to relocate such Equipment until adequate assurance of payment or reimbursement is delivered to ExteNet or suitable alternative ROW access or Facilities are identified, engineered and approved by City to support said relocation activities. Similarly, in the event relocation of Equipment is necessitated by the needs of another party (other than City), the cost and expense of such relocation shall be borne by such other party, and ExteNet shall not be required to relocate such Equipment until adequate assurance of payment or reimbursement is delivered to ExteNet by such other party. Notwithstanding any other provision hereof, in the event that City or the State enacts an ordinance, law

or regulation requiring that all aerial (e.g., pole-mounted) wires and cables in some or all of the geographic area of the City be relocated to underground installations in the ROW, ExteNet shall be permitted to participate in any joint build program for underground installation of telecommunications and other compatible utility wirelines and cables and to pay only its reasonably determined proportional share of the cost of all such relocations covered by the joint build program. In all other events, the cost and expense of relocation of Equipment shall be borne by ExteNet.

7.4. Exclusions. ExteNet shall not be required to relocate any poles ExteNet has placed in City ROW excepting only such actions initiated as a result of an approved acquisition by City or other such entity exercising their rights under eminent domain.

7.5. Relocations at ExteNet's Request. In the event ExteNet desires to relocate any Equipment from one Facility to another, ExteNet shall so advise City. City will use reasonable efforts to accommodate ExteNet by making another reasonably equivalent Facility available for use in accordance with and subject to the terms and conditions of this Agreement.

## **8. Indemnification**

8.1. Scope of Indemnification for City. ExteNet shall indemnify and hold harmless City, its elected and appointed officers, its council members, boards, commissions, employees, and agents from any and all injury, claim, demand, judgment, liability, or damage arising out of or resulting from ExteNet's negligence in the placement, installation, construction, maintenance, operation and removal of Equipment in City's Rights-of-Way or on City Facilities or otherwise in the performance of this Agreement. ExteNet shall not be obligated to hold harmless or indemnify City for any injury, claims, demands, judgments, liabilities or damage to the extent that they are due solely to the gross negligence or intentional and/or willful acts of City, or any of its officers, council members, boards, commissions, employees, or agents.

8.2. Scope of Indemnification for ExteNet. City shall indemnify and hold harmless ExteNet and its officers, directors, shareholders, employees, and agents from any and all injury, claim, demand, judgment, liability, or damage arising out of or resulting from any negligence by City or its officers, boards, commissions, employees, or agents in connection with this Agreement. City shall not be obligated to hold harmless or indemnify ExteNet for any injury, claims, demands, judgments, liabilities or damage to the extent that they are due solely to the gross negligence or intentional and/or willful acts of ExteNet.

8.3. Excluded Damages. In no event shall either party be liable for any punitive, consequential, incidental, or special damages or lost profits incurred, or alleged to have been incurred, by anyone.



- 8.4. Notice. Any party seeking indemnification hereunder ("Indemnatee") shall notify the other party ("Indemnitor") within fifteen (15) days of the nature and amount of a claim arising under this Section, and the method and means proposed by the Indemnatee for defending or satisfying such claim.
- 8.5. Representation. The Indemnitor shall pay for all costs and expenses, including reasonable legal fees, of defense for Indemnatee in any claims or actions subject to indemnification hereunder, provided that so long as the Indemnitor has undertaken and is vigorously pursuing such defense it shall not be responsible for additional legal fees and expenses incurred by the Indemnitor. The Indemnatee shall cooperate and consult with the Indemnitor respecting the defense and satisfaction of such claims, including the selection of and direction to legal counsel, and the Indemnatee shall not pay or settle any such claim without the prior written consent of the Indemnitor, which consent shall not be unreasonably withheld. The Indemnatee will be allowed, at its own expense, to appear and defend or assist Indemnitor in the defense of such claims.
- 8.6. Breach of Agreement. In the event that any claim, complaint or litigation is brought by either party to this Agreement against the other for breach of this Agreement, or for an interpretation of this Agreement, each party shall bear its own costs, including legal fees and expenses.

## 9. Insurance

- 9.1. General Liability Insurance. ExteNet shall maintain and keep in effect during the Term of this Agreement, commercial general liability insurance with a combined single limit with respect to each occurrence of not less than \$1,000,000, insuring ExteNet (and naming City as an additional insured) against loss, damage, cost, expense or liability for any damage to any property or injury, illness or death of any person occurring or arising as a result of the negligence of ExteNet in connection with the placement, installation, construction, maintenance, operation and removal of Equipment in City's Rights-of-Way or in connection with any Attachment on City Facilities.
- 9.2. Other Insurance. ExteNet shall maintain and keep in effect during the Term of this Agreement, worker's compensation insurance as required by law.
- 9.3. Proof of Insurance. ExteNet shall provide insurance certificates or other reasonable evidence of all insurance coverage required under this Agreement to City upon request.

## 10. Security

Not less than ten (10) business days prior to the first Attachment of ExteNet Equipment to City Facilities or the first installation of ExteNet Equipment within, over or under the

City's ROW, ExteNet shall provide City with security for the proper removal of such Equipment and restoration of such Facilities or ROW in the form of a bond in the amount of Ten Thousand (\$10,000.00) Dollars. The Bond shall conform substantially to Exhibit C attached to this Agreement or otherwise be reasonably acceptable to City, and such Bond or a substantially equivalent replacement shall be maintained in effect throughout the term of this Agreement, subject only to adjustments to the amount to reflect changes in the number of Attachments or in the portion of City's ROW occupied by ExteNet.

## **11. Assignment**

- 11.1 Assignment without approval. ExteNet shall have the right to assign this Agreement and all rights and obligations accorded ExteNet to a wholly-owned subsidiary or a parent entity of ExteNet without the prior written consent of City. In the event ExteNet assigns this Agreement to a subsidiary or parent entity, ExteNet shall provide City with prior written notice of such assignment.
- 11.2 Assignment requiring approval. ExteNet must obtain the prior written consent of City in order to assign this Agreement, or any right or obligation under this Agreement, to a third party other than a wholly-owned subsidiary or parent entity of ExteNet. Such consent shall not be unreasonably withheld, conditioned or delayed by City.
- 11.3 Sub-licensing. ExteNet, as an integral part of its business operations, shall be permitted to sub-license or sublease to third-party wireless telecommunications providers any, all, or a portion of its rights under this Agreement, including but not limited to placement of Attachments within City ROW, without the City's prior written consent. Furthermore, the installation and use of internal space within ExteNet's Attachments for third party wireless providers utilizing ExteNet's Service and/or the use of ExteNet's Attachments by third parties (including but not limited to leases of dark fiber) that involves no additional Attachment or overlash is expressly permitted by this Paragraph 11.3.
- 11.4 Financing Arrangements. City acknowledges that ExteNet may enter into financing arrangements including promissory notes and financial and security agreements for the financing of the Equipment (the "Collateral") with third party financing entities. In connection therewith, City (i) consents to the installation of the Collateral consistent with the other terms of this Agreement; (ii) disclaims any interest in the Collateral, as fixtures or otherwise; and (iii) agrees that the Collateral shall be exempt from execution, foreclosure, sale, levy, attachment, or distress for any rent due or to become due and that such Collateral may be removed at any time consistent with the other terms of this Agreement without recourse to legal proceedings.



## 12. Termination

- 12.1 Termination by ExteNet. ExteNet may terminate this Agreement, at its election and without cause, by providing written notice of termination to City at least ninety (90) days prior to the effective date of such termination.
- 12.2 Termination by either party. Either City or ExteNet may terminate this Agreement for an uncured material breach by the other party. The party asserting a breach must first provide written notice of the existence of a material breach to the breaching party. Such notice shall state the grounds for termination in reasonable detail. The party receiving notice of termination for cause shall have thirty (30) days to cure, or commence and vigorously pursue good faith efforts to cure the alleged material breach if such breach cannot reasonably be cured within 30 days. A notice of termination for cause issued by City shall be issued only after the completion of a public proceeding, during which ExteNet shall have a full opportunity to be heard and to respond to any notice of grounds to terminate.

## 13. Notices

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

- 13.2 Notice shall be given to the following:

City:  
Name: Alan Sepe  
Title: Director of City Property  
Address: City Hall, 25 Dorrance Street  
Providence, RI 02903

With a copy to:

Jeffrey Dana, City Solicitor  
444 Westminister Street, Suite 220  
Providence, RI 02903

ExteNet:  
Name: Dan Timm  
Title: Chief Financial Officer  
Address: 3030 Warrenville Rd., Ste 340  
Lisle, IL 60532

With a copy to "General Counsel" at the same address.

#### 14. **Validity and Construction of Agreement**

- 14.1 Counterpart Execution. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be deemed an original, all of which together shall constitute the same instrument. Execution and delivery may be accomplished by facsimile or other electronic means.
- 14.2 Severability. If one or more of the provisions in this Agreement are held by an agency or court of competent jurisdiction, in a final, non-appealable order, to be invalid, void, voidable, unenforceable or illegal, such provision shall be deemed severable from the remaining provisions of this Agreement. Such invalid, void, voidable, unenforceable or illegal provision shall not affect the remaining provisions of this Agreement so long as the material purposes of this Agreement can be determined and effected.
- 14.3 Entire Agreement. This Agreement states the entire agreement between the parties and supersedes all prior agreements and understandings, whether oral or written, between the parties with respect to the subject matter hereof, and may not be amended or modified except by a written instrument executed by the parties hereto. This Agreement contains the entire understanding of the parties with respect to the subject matter hereof. No waiver of any right or remedy hereunder shall be effective unless and until set forth in a writing delivered to the other party, and a waiver, forbearance or other failure to enforce any right or remedy on any given occasion or under any specified circumstance shall not be construed as, or have the effect of, a waiver of such rights or remedies on any other occasion or under any other circumstances.
- 14.4 Amendment. This Agreement may be amended only by the Parties hereto by an entrustment in writing signed by or on behalf of each of the parties hereto.
- 14.5 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Rhode Island, without reference to its conflicts of laws principles.

#### 15. **Force Majeure.**

No failure by a party to perform its obligations in accordance with this Agreement shall be deemed a material breach or grounds for termination if such failure to perform occurred as a




result of circumstances beyond such party’s reasonable control as described below. Further, the time for performance of any duties or obligation of City or ExteNet shall be extended for the period during which performance was delayed or impeded due to causes beyond such party’s control, including but not limited to strikes, lockouts, labor disputes, supply shortages, utility outages, cable dig-up by third party, civil disorders, actions of governmental authorities, actions of civil or military authority, national emergency, insurrection, riots, war, acts of terrorism, 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 preventing circumstance or delay. If ExteNet or City claims the existence of a circumstance preventing performance, 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 circumstance. Economic hardship, misfeasance, or malfeasance of a party’s directors, officers, employees, council, officials or agents shall not be considered as a condition beyond the fault or control of the defaulting party.

16. Confidentiality

Non-public information provided by either party to this Agreement, including network deployment plans and technical and operational details, shall to the extent allowed by law be kept confidential and used only for purposes related to the performance of this Agreement. Both City and ExteNet shall take reasonable steps to protect confidential information obtained from the other in connection with performance of this Agreement from public disclosure or unauthorized use.

IN WITNESS THEREOF, the parties hereby bind themselves legally to the terms and conditions set forth in this Agreement, as evidenced by the signature of their duly authorized representatives.

CITY OF PROVIDENCE	EXTENET SYSTEMS, INC.
By: _____	By:  _____
Title: _____	Title: Executive Vice President and <del>CFO</del> <u>COO</u>
Date: _____	Date: 3/10/16

Approved as to form and correctness:

\_\_\_\_\_  
Jeffrey Dana, City Solicitor

## **Exhibit A**

### **ExteNet Equipment Specifications**

The **Parties** will agree upon the ExteNet Equipment Specifications and pre-approved equipment designs within thirty days of the Effective Date.



Exhibit B

Fee Rates

TELECOMMUNICATIONS ATTACHMENT & RIGHT OF WAY ACCESS FEES	
ROW Fees	
Placem <del>ent</del> of Equipment cabinet on ground space within ROW	\$360.00 per yr., per equipment cabinet
Placem <del>ent</del> of new, ExteNet-owned pole, upon which ExteNet will place Equipment in ROW	\$360.00 per yr., per pole
Placem <del>ent</del> of Equipment upon Utility Infrastructure in ROW	\$360.00 per yr., per pole
Placem <del>ent</del> of new, ExteNet-owned conduit within the ROW	\$0.50 per linear foot of ROW occupied, one-time fee
Attachment/Use Fees	
Attachm <del>ent</del> of Equipment to City-owned Facility	\$360.00 per yr., per pole
Placem <del>ent</del> of ExteNet fiber in City-owned conduit	\$0.50 per linear foot of conduit occupied, one-time fee

## **Exhibit C**

### **Security for Removal & Restoration**

Final 2/23/16

Proprietary & Confidential – ExteNet Systems, Inc.



**TELECOMMUNICATIONS ATTACHMENT AND  
RIGHTS-OF-WAY AGREEMENT**

**between**

**The City of PROVIDENCE**

**and**

**EXTENET SYSTEMS**

## TELECOMMUNICATIONS ATTACHMENT AND RIGHTS-OF-WAY AGREEMENT

The City of PROVIDENCE (“City”), and EXTENET SYSTEMS, INC., a corporation, organized and existing under the laws of Delaware (“ExteNet”), hereby enter into this Telecommunications Attachment and Rights-of-Way Agreement (“Agreement”) effective as of \_\_\_\_\_, 2016 (the “Effective Date”).

**WHEREAS** the State of Rhode Island Public Utilities Commission issued an Order, effective December 16, 2005, for ExteNet’s predecessor ClearLinx Network Corporation, to operate as a Competitive Local Exchange Carrier with authority to operate throughout the State of Rhode Island to provide telecommunications services; and

**WHEREAS** City is required by federal and State statutes, regulations and orders to grant all telecommunications service providers access to and occupancy of the public rights-of-way in City on a non-discriminatory basis for the purpose of installing facilities to provide telecommunications services; and

**WHEREAS** the jurisdictional boundaries of City include public rights-of-way and facilities that are used by, and useful to, telecommunications providers; and

**WHEREAS** City is authorized by State statutes, regulations and orders to recover just and reasonable costs for administering telecommunications providers’ access to the public rights-of-way within City’s jurisdictional boundaries.

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

### 1. Definitions

Except as the context may otherwise require, each capitalized word or phrase in this Agreement shall have the meaning specified herein. All other terms in this Agreement shall be interpreted in accord with common usage in the telecommunications industry. Without limiting the generality of the foregoing, for purposes of this Agreement, the terms listed below are defined as follows:

- 1.1. “Attachment” means the placement, attachment or installation of one or more items of Equipment on, over, under or within any City ROW or to any City Facility.
- 1.2. “Commission” or “PUC” means the State of Rhode Island Public Utilities Commission.
- 1.3. “Equipment” means any and all radios, amplifiers, optical converters, multiplexers, antennae, cables, wires, conduits, innerducts, pedestals, boxes, cabinets, primary and auxiliary power supplies, power meters, support structures,



mounting hardware, and all related or ancillary devices which may be owned by ExteNet or ExteNet's customers which shall be installed, maintained, operated or used by ExteNet to provide Service.

- 1.4. "ExteNet" shall mean ExteNet Systems, Inc., a corporation organized under the laws of the State of Delaware and to which the Commission has issued a certificate to operate as a provider of telecommunications services.
- 1.5. "Fee" means any one-time or recurring amount to be paid by ExteNet pursuant to this Agreement. Without limiting the generality of the foregoing. "Attachment Fees" means Fees paid in consideration of Attachments to or use of Facilities, and "ROW Fees" means Fees paid to cover the reasonable costs for City to administer access to its ROW.
- 1.6. "Facility" or "Facilities" means any City-owned or leased structure upon or within which it is technically feasible to place Equipment, including, but not limited to any City -owned light poles or fixtures, traffic signal poles, or conduit in City ROW.
- 1.7. "Node Poles" means those utility poles or Facilities to which ExteNet proposes to attach items of Equipment, other than wires and fiber optic cabling, as illustrated in Exhibit A.
- 1.8. "Pole Placement" means the placement of a new wooden, metal or concrete pole or other vertical structure in City ROW when necessary or useful for ExteNet's provision of Service. "Pole Placement" does not include replacement of existing Utility Infrastructure poles.
- 1.9. "Restore" means returning a City Facility or ROW to the condition it was in prior to Attachment, excepting reasonable wear and tear.
- 1.10. "Rights-of-Way" or "ROW" means the public ways and other areas now or hereafter existing that are owned by or otherwise subject to the jurisdiction and control of City, including without limitation, all space in, upon, above, along, across, under, and over any or all of the following: highways, streets, roads, lanes, courts, ways, alleys, boulevards, paths, curbs, sidewalks, bridges, overpasses, underpasses, tunnels, parks, parkways, waterways, easements, conduit, vaults, access manholes and "handholes".
- 1.11. "Service" means the transport, transmission and reception of signals carrying voice and data communications, including but not limited to format and/or protocol conversion and point-to-point transport of signals over fiber optic cables and other wireline connections as ExteNet provides as authorized by the PUC or Federal Communications Commission.
- 1.12. "State" means the State of Rhode Island.

- 1.13. "Utility Infrastructure" means existing poles and/or conduits owned or controlled by public or private utility companies, other than City-owned utility companies that are located in the ROW.

## 2. **Grant of Access and Occupancy Rights**

2.1 Attachment to Third-Party Property. Subject to obtaining an existing utility easement or other suitable form of written permission of the owner(s) of the affected property, City hereby authorizes and permits ExteNet to enter upon the ROW and to attach, install, operate, maintain, remove, reattach, reinstall, relocate, and replace Equipment in or on Utility Infrastructure or other structures lawfully owned and operated by public utility companies or other property owners and located within or outside the Rights-of-Way. Upon request by City, ExteNet shall furnish to the City documentation in a form reasonably acceptable to the City of such permission from the individual utility or property owner. City shall provide a response to ExteNet within thirty days of submission of a completed application to access the ROW. A denial of an application for the Attachment of Equipment to Utility Infrastructure or other third-party poles or structures shall not be based upon the size, quantity, shape, color, weight, configuration, or other physical properties if ExteNet's Equipment proposed for use conforms to one of the pre-approved configurations and the Equipment specifications set forth in Exhibit A or is not materially different in size, shape and color of telecommunications or electrical equipment then existing in the ROW. The reason for any denial shall be provided in writing with the denial.

2.2 Approval of Equipment Design, Configurations and Attachments. ExteNet will submit to City an application with a proposed design for any Equipment that ExteNet proposes to use in City ROW. Such application shall include a map or annotated aerial photograph identifying which Utility infrastructure or Facilities ExteNet seeks to use for Attachments. Once the City verifies that the Equipment proposed in the design complies with the pre-approved configurations and the Equipment specifications set forth in Exhibit A, the City will approve the particular Utility Infrastructure and Facilities to which ExteNet can attach its Equipment.

2.2.1 Change in Equipment. If ExteNet proposes an Attachment or installation of Equipment that differs in a material way from the pre-approved configurations and Equipment specifications attached hereto as Exhibit A, then ExteNet shall first obtain the written approval for the use and installation of the Equipment from an authorized representative of City.

2.3 Equipment Attachment to Facilities. City hereby grants to ExteNet the nonexclusive right, privilege, and license to enter and occupy City's Rights-of-Way. Such right to enter and occupy shall be for purposes of, and/or in



connection with, Attachments of Equipment, and shall be subject to applicable rules, regulations or statutes setting forth non-discriminatory and reasonable controls as to the time, place and manner in which City's ROW are accessed and occupied in order to protect the health, safety and welfare of the public.

2.4 Pole Placements. In the event that an ExteNet application for Attachment is deemed impractical or denied by City due to lack of existing Facilities, the parties agree that either ExteNet shall be granted the right for Pole Placement in the ROW or City shall place a Facility for Attachment of ExteNet's Equipment. City shall provide a response to ExteNet within thirty days of submission of a completed application. The reason for any denial shall be provided in writing with the denial. A denial of an application for Pole Placement shall not be based upon the size, quantity, shape, color, weight, configuration, or other physical properties of ExteNet's Equipment if the Equipment proposed conforms to one of the pre-approved configurations and specifications set forth in Exhibit A.

2.4.1 If the parties agree that Pole Placement is to be effected by ExteNet, ExteNet shall bear the entire cost and expense of all placement, installation, construction, and maintenance for Pole Placement.

2.5 Structural Integrity of Facility. If ExteNet selects a Facility that is structurally inadequate to accommodate Equipment, ExteNet may at its sole cost and expense replace the Facility with one that is acceptable to and approved by the City and dedicate such Facility to the City, provided that ExteNet shall be entitled to a credit against the Attachment Fees otherwise payable with respect to such Facility that is equal to the out-of-pocket cost of such replacement Facility paid by or for the account of ExteNet.

2.6 Assignment of Cost. Except as otherwise provided in this Agreement, ExteNet shall bear the entire cost and expense of all placement, installation, construction, maintenance, and operation of Equipment and/or Attachments and Pole Placements by ExteNet in the Rights-of-Way, and shall hold City harmless from any such costs or expense.

2.7 Power for Equipment and Facilities. ExteNet will be solely responsible for establishing electrical power services for all of its Equipment and for the payment of all electrical utility charges to the applicable utility company. Notwithstanding this provision, City and ExteNet may mutually agree that ExteNet may power its Equipment Attachments to Facilities from a power source available at or associated with the relevant City Facilities.

2.8 Additional Future Attachments. ExteNet may apply to City to expand its initial Network installation through the same process as specified in this Section 2.

### 3. Term

Unless otherwise agreed, the term of this Agreement shall commence on the Effective Date and continue thereafter for an initial period of ten (10) years (the "Initial Term"). ExteNet shall have the right to extend this Agreement for up to two renewal terms of five (5) years. The Agreement shall renew unless either City or ExteNet gives the other written notice of its election not to renew this Agreement not less than 180 days prior to the expiration of the Initial Term or a Renewal Term.

### 4. Fees

4.1. ROW Fees. ExteNet shall pay ROW Fees to cover City's reasonable cost of administering ExteNet's access to and occupancy of City's ROW for new Pole Placement and for installation of ExteNet Equipment within, over or under City's ROW, including Attachments to facilities owned by third parties. Such ROW Fees shall be computed on the basis of the rates set forth in Exhibit B attached and shall be based only on the number of Node Poles in use by ExteNet within the geographic boundaries of City during the relevant period. Subject to Section 5.3, ExteNet may remove any Equipment or Attachments in the ROW at any time and the corresponding ROW Fees shall cease upon removal.

4.2. Attachment/Use Fees. ExteNet shall pay Attachment/Use Fees to City for each City-owned or leased Facility to which ExteNet makes an Attachment or in which ExteNet installs Equipment. Such Attachment/Use Fees shall be computed on the basis of the rates set forth in Exhibit B attached. Notwithstanding the foregoing, ExteNet shall not be liable for payment of any Attachment/Use Fee if for any reason City's Facility is or subsequently becomes unusable for Attachments or use, or ExteNet withdraws its application for Attachment to or use of such Facility before completing such Attachment or use or putting the Equipment into productive service. Subject to Section 5.3, ExteNet may remove any Attachment and/or Equipment at any time and the corresponding Attachment/Use Fees shall cease upon removal.

4.3. Other Fees and Compensation. The foregoing Fees are in addition to and not in lieu of any other non-discriminatory administrative fees and charges, imposed by City in connection with the issuance of construction permits, provision of copies of records, etc.

4.4. Payment Terms. All Fees payable pursuant to this Section 4 shall be paid annually in advance no later than January 31<sup>st</sup> of each year, and shall be based on the total Fees due for all Equipment, Attachments, and/or Node Poles occupying City ROW and/or Facilities as of December 31<sup>st</sup> of the previous year. Initial Fees for all new Equipment, Attachments, and/or Node Poles placed on City ROW and/or Facilities shall be paid in advance and due within 30 days of the date on which construction of the Equipment, Attachments, and/or Node Poles is completed. There shall be no proration of Fees.



4.5. Changes to Laws and Regulations Affecting Fee Rates. ExteNet and City acknowledge and agree that, in order to expedite the development and construction of ExteNet's DAS Network for the benefit of residents and visitors in City the rates set forth in Exhibit B have been negotiated by the parties without complete information concerning their reasonableness relative to the costs to be incurred by City or the rates being charged to others for similar access, use and attachments in the same or contiguous market areas, and without regulatory review. Therefore, during the term of this Agreement if: (a) lower rates are established or charged to ExteNet's competitors as a result of any ordinance or regulation subsequently adopted by City or by the State or any federal agency having jurisdiction over such determinations; or (b) a court or regulatory agency makes a final, non-appealable determination that the rates set forth in Exhibit B or any portion thereof or any rates for similar access, use or attachments in the same or contiguous market areas that are equal to or lower than such rates are not reasonable or legal, then the parties shall negotiate in good faith to reduce the rates set forth in Exhibit B accordingly. Further, (c) if by the State or any federal agency having jurisdiction over such determinations, or a court or regulatory agency makes a final, non-appealable determination that the terms and conditions of access to the ROW or rights of attachment to Facilities is materially different from or in addition to the rights set forth herein, the Parties will negotiate in good faith to amend the Agreement to reflect such determinations.

## 5. Construction

- 5.1. City Approval. Prior to commencing construction, ExteNet shall identify to the Department of Public Works those portions of City's Rights-of-Way that ExteNet needs to access and/or occupy, and City's Facilities, if any, upon which ExteNet seeks to make Attachments. Further, ExteNet shall provide a map or annotated aerial photograph identifying which Facilities ExteNet seeks to use for Attachments. Once the City verifies that the Equipment proposed in the design complies with the pre-approved configurations and the Equipment specifications set forth in Exhibit A, the City will identify those Facilities to which ExteNet can attach its Equipment. City shall have thirty (30) days to review and approve ExteNet's construction plans, which approval shall not be unreasonably withheld, conditioned or delayed. City shall notify ExteNet in writing of its approval or disapproval of ExteNet's proposed construction plans and Attachments. In the event that City personnel fail to deliver to ExteNet written notice of approval or disapproval of such plans and Attachments within forty five (45) days, such plans and Attachments shall be deemed approved by City.
- 5.2. Avoidance of Interference. ExteNet agrees that the placement, installation, construction, maintenance, operation and removal of Equipment installed in City ROW and its Attachments to City Facilities or Utility Infrastructure shall be carried out in such locations and in such manner so as not to unreasonably interfere with water, gas, sewer pipe, traffic signal, street light and other utilities and conduits already existing.

- 5.3. Permits. ExteNet further agrees to obtain all necessary excavation or encroachment permits setting forth time, place and manner restrictions necessary to protect the health, safety and welfare of the public, prior to commencing construction required for Equipment Attachment or Pole Placement in City's ROW or Facilities. City agrees to cooperate in expediting the issuance of such permits as reasonably requested by ExteNet in order to meet the reasonable requirements of ExteNet's customers and the telecommunications services needs of end users served by them.
- 5.4. Street Furniture Cabinets. If a portion of ExteNet's Equipment, not including antennas, cannot be accommodated on City's Facilities, the parties agree that, upon approval by the Providence City Council and payment of appropriate easement fees, ExteNet may place such equipment in above-ground street furniture and equipment cabinets located in the Rights-of-Way. In no instance shall the installation of any of ExteNet's Equipment in street furniture or equipment cabinets block pedestrian walkways in the ROW or result in violation of the Americans with Disabilities Act. If ExteNet cannot obtain necessary permits, approvals or other authorizations to place street furniture or equipment cabinets in the ROW, parties agree that ExteNet may place Equipment in below-ground vaults, and that City shall authorize such vaults expeditiously pursuant to applicable City Code zoning and undergrounding provisions. In such instance, ExteNet will be responsible for all costs associated with such below-ground vaults, including without limitation relocation costs of any public improvements or public utilities facilities.
- 5.5. Compliance with Law. When placing, installing, constructing, maintaining, operating, removing or relocating Equipment or Pole Placement in City Rights-of-Way, or making Attachments to City Facilities, ExteNet shall comply with all applicable federal and State statutes, regulations and orders, including but not limited to any relevant state regulatory or legislative construction standards, the National Electric Code (NEC), and/or the National Electric Safety Code (NESC). ExteNet shall also comply with all City technical specifications and requirements that are reasonable and non-discriminatory with respect to their impact on telecommunications services and ExteNet as a provider thereof, and all applicable national, State and local building, electrical and safety codes.
- 5.6. Restoration. If the placement, installation, construction, maintenance, operation, removal or relocation of Equipment or poles by ExteNet disturbs or alters City Rights-of-Way or Facilities, ExteNet, at its own expense shall restore such City Rights-of-Way or City Facilities to their original condition, normal wear and tear excepted.

## **6. Maintenance**

- 6.1. Proper Maintenance. ExteNet shall maintain its Equipment and poles located in



City Rights-of-Way and its Attachments in such condition that they shall not constitute a danger to the health, safety and welfare of the public.

- 6.2. Right of Entry. ExteNet may enter upon City Rights-of-Way and City Facilities to maintain or repair Equipment or poles from time to time without prior approval of City.
- 6.3. Removal or Replacement of Equipment. ExteNet may remove or replace any items of Equipment as reasonably required in connection with the ongoing provision of Services without prior approval of City, so long as any replacement Equipment is substantially the same as that which has been removed with regard to size, weight and physical configuration. Removal of Equipment from any ROW or Attachment shall not constitute termination of this Agreement.
- 6.4. Permits. In the event maintenance or repair activities will disturb or block pedestrian or vehicular traffic in City Rights-of-Way, ExteNet shall obtain all permits required by City prior to commencing such maintenance or repair.

## **7. Relocation of Equipment**

- 7.1. Notice. City may request relocation of ExteNet's Equipment by delivering written notice to ExteNet identifying the need for such relocation and alternative City ROW and/or City Facilities to which ExteNet may relocate its Equipment.
- 7.2. Timeframe. After receiving notice, ExteNet shall relocate its Equipment to alternative City ROW and City Facilities identified by City as soon as practicable, but in no event sooner than one-hundred and eighty (180) days after receipt of such notice. ExteNet and City may mutually agree to relocation of Equipment in less than 180 days to respond to emergencies or other similar extraordinary circumstances.
- 7.3. Cost of Relocation. In the event relocation of Equipment is necessitated by construction, repair, maintenance, relocation or elimination of any City Rights-of-Way and City fails or refuses to provide ExteNet access to and use of reasonably comparable alternative locations in the ROW or alternative Facilities for such relocation City, the cost and expense of such relocation shall be borne by City (or such other party as City may designate), and ExteNet shall not be required to relocate such Equipment until adequate assurance of payment or reimbursement is delivered to ExteNet or suitable alternative ROW access or Facilities are identified, engineered and approved by City to support said relocation activities. Similarly, in the event relocation of Equipment is necessitated by the needs of another party (other than City), the cost and expense of such relocation shall be borne by such other party, and ExteNet shall not be required to relocate such Equipment until adequate assurance of payment or reimbursement is delivered to ExteNet by such other party. Notwithstanding any other provision hereof, in the event that City or the State enacts an ordinance, law

or regulation requiring that all aerial (e.g., pole-mounted) wires and cables in some or all of the geographic area of the City be relocated to underground installations in the ROW, ExteNet shall be permitted to participate in any joint build program for underground installation of telecommunications and other compatible utility wirelines and cables and to pay only its reasonably determined proportional share of the cost of all such relocations covered by the joint build program. In all other events, the cost and expense of relocation of Equipment shall be borne by ExteNet.

7.4. Exclusions. ExteNet shall not be required to relocate any poles ExteNet has placed in City ROW excepting only such actions initiated as a result of an approved acquisition by City or other such entity exercising their rights under eminent domain.

7.5. Relocations at ExteNet's Request. In the event ExteNet desires to relocate any Equipment from one Facility to another, ExteNet shall so advise City. City will use reasonable efforts to accommodate ExteNet by making another reasonably equivalent Facility available for use in accordance with and subject to the terms and conditions of this Agreement.

## **8. Indemnification**

8.1. Scope of Indemnification for City. ExteNet shall indemnify and hold harmless City, its elected and appointed officers, its council members, boards, commissions, employees, and agents from any and all injury, claim, demand, judgment, liability, or damage arising out of or resulting from ExteNet's negligence in the placement, installation, construction, maintenance, operation and removal of Equipment in City's Rights-of-Way or on City Facilities or otherwise in the performance of this Agreement. ExteNet shall not be obligated to hold harmless or indemnify City for any injury, claims, demands, judgments, liabilities or damage to the extent that they are due solely to the gross negligence or intentional and/or willful acts of City, or any of its officers, council members, boards, commissions, employees, or agents.

8.2. Scope of Indemnification for ExteNet. City shall indemnify and hold harmless ExteNet and its officers, directors, shareholders, employees, and agents from any and all injury, claim, demand, judgment, liability, or damage arising out of or resulting from any negligence by City or its officers, boards, commissions, employees, or agents in connection with this Agreement. City shall not be obligated to hold harmless or indemnify ExteNet for any injury, claims, demands, judgments, liabilities or damage to the extent that they are due solely to the gross negligence or intentional and/or willful acts of ExteNet.

8.3. Excluded Damages. In no event shall either party be liable for any punitive, consequential, incidental, or special damages or lost profits incurred, or alleged to have been incurred, by anyone.



- 8.4. Notice. Any party seeking indemnification hereunder ("Indemnatee") shall notify the other party ("Indemnitor") within fifteen (15) days of the nature and amount of a claim arising under this Section, and the method and means proposed by the Indemnatee for defending or satisfying such claim.
- 8.5. Representation. The Indemnitor shall pay for all costs and expenses, including reasonable legal fees, of defense for Indemnatee in any claims or actions subject to indemnification hereunder, provided that so long as the Indemnitor has undertaken and is vigorously pursuing such defense it shall not be responsible for additional legal fees and expenses incurred by the Indemnitor. The Indemnatee shall cooperate and consult with the Indemnitor respecting the defense and satisfaction of such claims, including the selection of and direction to legal counsel, and the Indemnatee shall not pay or settle any such claim without the prior written consent of the Indemnitor, which consent shall not be unreasonably withheld. The Indemnatee will be allowed, at its own expense, to appear and defend or assist Indemnitor in the defense of such claims.
- 8.6. Breach of Agreement. In the event that any claim, complaint or litigation is brought by either party to this Agreement against the other for breach of this Agreement, or for an interpretation of this Agreement, each party shall bear its own costs, including legal fees and expenses.

## 9. Insurance

- 9.1. General Liability Insurance. ExteNet shall maintain and keep in effect during the Term of this Agreement, commercial general liability insurance with a combined single limit with respect to each occurrence of not less than \$1,000,000, insuring ExteNet (and naming City as an additional insured) against loss, damage, cost, expense or liability for any damage to any property or injury, illness or death of any person occurring or arising as a result of the negligence of ExteNet in connection with the placement, installation, construction, maintenance, operation and removal of Equipment in City's Rights-of-Way or in connection with any Attachment on City Facilities.
- 9.2. Other Insurance. ExteNet shall maintain and keep in effect during the Term of this Agreement, worker's compensation insurance as required by law.
- 9.3. Proof of Insurance. ExteNet shall provide insurance certificates or other reasonable evidence of all insurance coverage required under this Agreement to City upon request.

## 10. Security

Not less than ten (10) business days prior to the first Attachment of ExteNet Equipment to City Facilities or the first installation of ExteNet Equipment within, over or under the

City's ROW, ExteNet shall provide City with security for the proper removal of such Equipment and restoration of such Facilities or ROW in the form of a bond in the amount of Ten Thousand (\$10,000.00) Dollars. The Bond shall conform substantially to Exhibit C attached to this Agreement or otherwise be reasonably acceptable to City, and such Bond or a substantially equivalent replacement shall be maintained in effect throughout the term of this Agreement, subject only to adjustments to the amount to reflect changes in the number of Attachments or in the portion of City's ROW occupied by ExteNet.

## 11. Assignment

- 11.1 Assignment without approval. ExteNet shall have the right to assign this Agreement and all rights and obligations accorded ExteNet to a wholly-owned subsidiary or a parent entity of ExteNet without the prior written consent of City. In the event ExteNet assigns this Agreement to a subsidiary or parent entity, ExteNet shall provide City with prior written notice of such assignment.
- 11.2 Assignment requiring approval. ExteNet must obtain the prior written consent of City in order to assign this Agreement, or any right or obligation under this Agreement, to a third party other than a wholly-owned subsidiary or parent entity of ExteNet. Such consent shall not be unreasonably withheld, conditioned or delayed by City.
- 11.3 Sub-licensing. ExteNet, as an integral part of its business operations, shall be permitted to sub-license or sublease to third-party wireless telecommunications providers any, all, or a portion of its rights under this Agreement, including but not limited to placement of Attachments within City ROW, without the City's prior written consent. Furthermore, the installation and use of internal space within ExteNet's Attachments for third party wireless providers utilizing ExteNet's Service and/or the use of ExteNet's Attachments by third parties (including but not limited to leases of dark fiber) that involves no additional Attachment or overlashing is expressly permitted by this Paragraph 11.3.
- 11.4 Financing Arrangements. City acknowledges that ExteNet may enter into financing arrangements including promissory notes and financial and security agreements for the financing of the Equipment (the "Collateral") with third party financing entities. In connection therewith, City (i) consents to the installation of the Collateral consistent with the other terms of this Agreement; (ii) disclaims any interest in the Collateral, as fixtures or otherwise; and (iii) agrees that the Collateral shall be exempt from execution, foreclosure, sale, levy, attachment, or distress for any rent due or to become due and that such Collateral may be removed at any time consistent with the other terms of this Agreement without recourse to legal proceedings.



## 12. Termination

- 12.1 Termination by ExteNet. ExteNet may terminate this Agreement, at its election and without cause, by providing written notice of termination to City at least ninety (90) days prior to the effective date of such termination.
- 12.2 Termination by either party. Either City or ExteNet may terminate this Agreement for an uncured material breach by the other party. The party asserting a breach must first provide written notice of the existence of a material breach to the breaching party. Such notice shall state the grounds for termination in reasonable detail. The party receiving notice of termination for cause shall have thirty (30) days to cure, or commence and vigorously pursue good faith efforts to cure the alleged material breach if such breach cannot reasonably be cured within 30 days. A notice of termination for cause issued by City shall be issued only after the completion of a public proceeding, during which ExteNet shall have a full opportunity to be heard and to respond to any notice of grounds to terminate.

## 13. Notices

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

- 13.2 Notice shall be given to the following:

City:  
Name: Alan Sepe  
Title: Director of City Property  
Address: City Hall, 25 Dorrance Street  
Providence, RI 02903

With a copy to:

Jeffrey Dana, City Solicitor  
444 Westminister Street, Suite 220  
Providence, RI 02903

ExteNet:  
Name: Dan Timm  
Title: Chief Financial Officer  
Address: 3030 Warrenville Rd., Ste 340  
Lisle, IL 60532

With a copy to "General Counsel" at the same address.

#### 14. **Validity and Construction of Agreement**

- 14.1 Counterpart Execution. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be deemed an original, all of which together shall constitute the same instrument. Execution and delivery may be accomplished by facsimile or other electronic means.
- 14.2 Severability. If one or more of the provisions in this Agreement are held by an agency or court of competent jurisdiction, in a final, non-appealable order, to be invalid, void, voidable, unenforceable or illegal, such provision shall be deemed severable from the remaining provisions of this Agreement. Such invalid, void, voidable, unenforceable or illegal provision shall not affect the remaining provisions of this Agreement so long as the material purposes of this Agreement can be determined and effected.
- 14.3 Entire Agreement. This Agreement states the entire agreement between the parties and supersedes all prior agreements and understandings, whether oral or written, between the parties with respect to the subject matter hereof, and may not be amended or modified except by a written instrument executed by the parties hereto. This Agreement contains the entire understanding of the parties with respect to the subject matter hereof. No waiver of any right or remedy hereunder shall be effective unless and until set forth in a writing delivered to the other party, and a waiver, forbearance or other failure to enforce any right or remedy on any given occasion or under any specified circumstance shall not be construed as, or have the effect of, a waiver of such rights or remedies on any other occasion or under any other circumstances.
- 14.4 Amendment. This Agreement may be amended only by the Parties hereto by an entrustment in writing signed by or on behalf of each of the parties hereto.
- 14.5 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Rhode Island, without reference to its conflicts of laws principles.

#### 15. **Force Majeure.**

No failure by a party to perform its obligations in accordance with this Agreement shall be deemed a material breach or grounds for termination if such failure to perform occurred as a

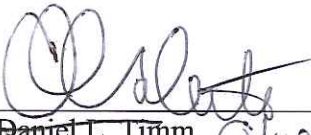


result of circumstances beyond such party's reasonable control as described below. Further, the time for performance of any duties or obligation of City or ExteNet shall be extended for the period during which performance was delayed or impeded due to causes beyond such party's control, including but not limited to strikes, lockouts, labor disputes, supply shortages, utility outages, cable dig-up by third party, civil disorders, actions of governmental authorities, actions of civil or military authority, national emergency, insurrection, riots, war, acts of terrorism, 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 preventing circumstance or delay. If ExteNet or City claims the existence of a circumstance preventing performance, 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 circumstance. Economic hardship, misfeasance, or malfeasance of a party's directors, officers, employees, council, officials or agents shall not be considered as a condition beyond the fault or control of the defaulting party.

16. Confidentiality

Non-public information provided by either party to this Agreement, including network deployment plans and technical and operational details, shall to the extent allowed by law be kept confidential and used only for purposes related to the performance of this Agreement. Both City and ExteNet shall take reasonable steps to protect confidential information obtained from the other in connection with performance of this Agreement from public disclosure or unauthorized use.

IN WITNESS THEREOF, the parties hereby bind themselves legally to the terms and conditions set forth in this Agreement, as evidenced by the signature of their duly authorized representatives.

CITY OF PROVIDENCE	EXTENET SYSTEMS, INC.
By: _____	By:  _____
Title: _____	Title: Executive Vice President and <del>CFO</del> <i>COO</i>
Date: _____	Date: 3/10/16

Approved as to form and correctness:

\_\_\_\_\_  
Jeffrey Dana, City Solicitor

Final 2/23/16

## **Exhibit A**

### **ExteNet Equipment Specifications**

The **Parties** will agree upon the ExteNet Equipment Specifications and pre-approved equipment designs within thirty days of the Effective Date.



Exhibit B

Fee Rates

TELECOMMUNICATIONS ATTACHMENT & RIGHT OF WAY ACCESS FEES	
ROW Fees	
Placem <del>ent</del> of Equipment cabinet on ground space within ROW	\$360.00 per yr., per equipment cabinet
Placem <del>ent</del> of new, ExteNet-owned pole, upon which ExteNet will place Equipment in ROW	\$360.00 per yr., per pole
Placem <del>ent</del> of Equipment upon Utility Infrastructure in ROW	\$360.00 per yr., per pole
Placem <del>ent</del> of new, ExteNet-owned conduit within the ROW	\$0.50 per linear foot of ROW occupied, one-time fee
Attachment/Use Fees	
Attachm <del>ent</del> of Equipment to City-owned Facility	\$360.00 per yr., per pole
Placem <del>ent</del> of ExteNet fiber in City-owned conduit	\$0.50 per linear foot of conduit occupied, one-time fee

## **Exhibit C**

### **Security for Removal & Restoration**

Final 2/23/16

Proprietary & Confidential – ExteNet Systems, Inc.



**TELECOMMUNICATIONS ATTACHMENT AND  
RIGHTS-OF-WAY AGREEMENT**

**between**

**The City of PROVIDENCE**

**and**

**EXTENET SYSTEMS**

## TELECOMMUNICATIONS ATTACHMENT AND RIGHTS-OF-WAY AGREEMENT

The City of PROVIDENCE (“City”), and EXTENET SYSTEMS, INC., a corporation, organized and existing under the laws of Delaware (“ExteNet”), hereby enter into this Telecommunications Attachment and Rights-of-Way Agreement (“Agreement”) effective as of \_\_\_\_\_, 2016 (the “Effective Date”).

**WHEREAS** the State of Rhode Island Public Utilities Commission issued an Order, effective December 16, 2005, for ExteNet’s predecessor ClearLinx Network Corporation, to operate as a Competitive Local Exchange Carrier with authority to operate throughout the State of Rhode Island to provide telecommunications services; and

**WHEREAS** City is required by federal and State statutes, regulations and orders to grant all telecommunications service providers access to and occupancy of the public rights-of-way in City on a non-discriminatory basis for the purpose of installing facilities to provide telecommunications services; and

**WHEREAS** the jurisdictional boundaries of City include public rights-of-way and facilities that are used by, and useful to, telecommunications providers; and

**WHEREAS** City is authorized by State statutes, regulations and orders to recover just and reasonable costs for administering telecommunications providers’ access to the public rights-of-way within City’s jurisdictional boundaries.

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

### 1. Definitions

Except as the context may otherwise require, each capitalized word or phrase in this Agreement shall have the meaning specified herein. All other terms in this Agreement shall be interpreted in accord with common usage in the telecommunications industry. Without limiting the generality of the foregoing, for purposes of this Agreement, the terms listed below are defined as follows:

- 1.1. “Attachment” means the placement, attachment or installation of one or more items of Equipment on, over, under or within any City ROW or to any City Facility.
- 1.2. “Commission” or “PUC” means the State of Rhode Island Public Utilities Commission.
- 1.3. “Equipment” means any and all radios, amplifiers, optical converters, multiplexers, antennae, cables, wires, conduits, innerducts, pedestals, boxes, cabinets, primary and auxiliary power supplies, power meters, support structures,



mounting hardware, and all related or ancillary devices which may be owned by ExteNet or ExteNet's customers which shall be installed, maintained, operated or used by ExteNet to provide Service.

- 1.4. "ExteNet" shall mean ExteNet Systems, Inc., a corporation organized under the laws of the State of Delaware and to which the Commission has issued a certificate to operate as a provider of telecommunications services.
- 1.5. "Fee" means any one-time or recurring amount to be paid by ExteNet pursuant to this Agreement. Without limiting the generality of the foregoing. "Attachment Fees" means Fees paid in consideration of Attachments to or use of Facilities, and "ROW Fees" means Fees paid to cover the reasonable costs for City to administer access to its ROW.
- 1.6. "Facility" or "Facilities" means any City-owned or leased structure upon or within which it is technically feasible to place Equipment, including, but not limited to any City -owned light poles or fixtures, traffic signal poles, or conduit in City ROW.
- 1.7. "Node Poles" means those utility poles or Facilities to which ExteNet proposes to attach items of Equipment, other than wires and fiber optic cabling, as illustrated in Exhibit A.
- 1.8. "Pole Placement" means the placement of a new wooden, metal or concrete pole or other vertical structure in City ROW when necessary or useful for ExteNet's provision of Service. "Pole Placement" does not include replacement of existing Utility Infrastructure poles.
- 1.9. "Restore" means returning a City Facility or ROW to the condition it was in prior to Attachment, excepting reasonable wear and tear.
- 1.10. "Rights-of-Way" or "ROW" means the public ways and other areas now or hereafter existing that are owned by or otherwise subject to the jurisdiction and control of City, including without limitation, all space in, upon, above, along, across, under, and over any or all of the following: highways, streets, roads, lanes, courts, ways, alleys, boulevards, paths, curbs, sidewalks, bridges, overpasses, underpasses, tunnels, parks, parkways, waterways, easements, conduit, vaults, access manholes and "handholes".
- 1.11. "Service" means the transport, transmission and reception of signals carrying voice and data communications, including but not limited to format and/or protocol conversion and point-to-point transport of signals over fiber optic cables and other wireline connections as ExteNet provides as authorized by the PUC or Federal Communications Commission.
- 1.12. "State" means the State of Rhode Island.

- 1.13. “Utility Infrastructure” means existing poles and/or conduits owned or controlled by public or private utility companies, other than City-owned utility companies that are located in the ROW.

## **2. Grant of Access and Occupancy Rights**

- 2.1 Attachment to Third-Party Property. Subject to obtaining an existing utility easement or other suitable form of written permission of the owner(s) of the affected property, City hereby authorizes and permits ExteNet to enter upon the ROW and to attach, install, operate, maintain, remove, reattach, reinstall, relocate, and replace Equipment in or on Utility Infrastructure or other structures lawfully owned and operated by public utility companies or other property owners and located within or outside the Rights-of-Way. Upon request by City, ExteNet shall furnish to the City documentation in a form reasonably acceptable to the City of such permission from the individual utility or property owner. City shall provide a response to ExteNet within thirty days of submission of a completed application to access the ROW. A denial of an application for the Attachment of Equipment to Utility Infrastructure or other third-party poles or structures shall not be based upon the size, quantity, shape, color, weight, configuration, or other physical properties if ExteNet’s Equipment proposed for use conforms to one of the pre-approved configurations and the Equipment specifications set forth in Exhibit A or is not materially different in size, shape and color of telecommunications or electrical equipment then existing in the ROW. The reason for any denial shall be provided in writing with the denial.
- 2.2 Approval of Equipment Design, Configurations and Attachments. ExteNet will submit to City an application with a proposed design for any Equipment that ExteNet proposes to use in City ROW. Such application shall include a map or annotated aerial photograph identifying which Utility infrastructure or Facilities ExteNet seeks to use for Attachments. Once the City verifies that the Equipment proposed in the design complies with the pre-approved configurations and the Equipment specifications set forth in Exhibit A, the City will approve the particular Utility Infrastructure and Facilities to which ExteNet can attach its Equipment.
- 2.2.1 Change in Equipment. If ExteNet proposes an Attachment or installation of Equipment that differs in a material way from the pre-approved configurations and Equipment specifications attached hereto as Exhibit A, then ExteNet shall first obtain the written approval for the use and installation of the Equipment from an authorized representative of City.
- 2.3 Equipment Attachment to Facilities. City hereby grants to ExteNet the nonexclusive right, privilege, and license to enter and occupy City’s Rights-of-Way. Such right to enter and occupy shall be for purposes of, and/or in



connection with, Attachments of Equipment, and shall be subject to applicable rules, regulations or statutes setting forth non-discriminatory and reasonable controls as to the time, place and manner in which City's ROW are accessed and occupied in order to protect the health, safety and welfare of the public.

2.4 Pole Placements. In the event that an ExteNet application for Attachment is deemed impractical or denied by City due to lack of existing Facilities, the parties agree that either ExteNet shall be granted the right for Pole Placement in the ROW or City shall place a Facility for Attachment of ExteNet's Equipment. City shall provide a response to ExteNet within thirty days of submission of a completed application. The reason for any denial shall be provided in writing with the denial. A denial of an application for Pole Placement shall not be based upon the size, quantity, shape, color, weight, configuration, or other physical properties of ExteNet's Equipment if the Equipment proposed conforms to one of the pre-approved configurations and specifications set forth in Exhibit A.

2.4.1 If the parties agree that Pole Placement is to be effected by ExteNet, ExteNet shall bear the entire cost and expense of all placement, installation, construction, and maintenance for Pole Placement.

2.5 Structural Integrity of Facility. If ExteNet selects a Facility that is structurally inadequate to accommodate Equipment, ExteNet may at its sole cost and expense replace the Facility with one that is acceptable to and approved by the City and dedicate such Facility to the City, provided that ExteNet shall be entitled to a credit against the Attachment Fees otherwise payable with respect to such Facility that is equal to the out-of-pocket cost of such replacement Facility paid by or for the account of ExteNet.

2.6 Assignment of Cost. Except as otherwise provided in this Agreement, ExteNet shall bear the entire cost and expense of all placement, installation, construction, maintenance, and operation of Equipment and/or Attachments and Pole Placements by ExteNet in the Rights-of-Way, and shall hold City harmless from any such costs or expense.

2.7 Power for Equipment and Facilities. ExteNet will be solely responsible for establishing electrical power services for all of its Equipment and for the payment of all electrical utility charges to the applicable utility company. Notwithstanding this provision, City and ExteNet may mutually agree that ExteNet may power its Equipment Attachments to Facilities from a power source available at or associated with the relevant City Facilities.

2.8 Additional Future Attachments. ExteNet may apply to City to expand its initial Network installation through the same process as specified in this Section 2.

### 3. Term

Unless otherwise agreed, the term of this Agreement shall commence on the Effective Date and continue thereafter for an initial period of ten (10) years (the "Initial Term"). ExteNet shall have the right to extend this Agreement for up to two renewal terms of five (5) years. The Agreement shall renew unless either City or ExteNet gives the other written notice of its election not to renew this Agreement not less than 180 days prior to the expiration of the Initial Term or a Renewal Term.

### 4. Fees

4.1. ROW Fees. ExteNet shall pay ROW Fees to cover City's reasonable cost of administering ExteNet's access to and occupancy of City's ROW for new Pole Placement and for installation of ExteNet Equipment within, over or under City's ROW, including Attachments to facilities owned by third parties. Such ROW Fees shall be computed on the basis of the rates set forth in Exhibit B attached and shall be based only on the number of Node Poles in use by ExteNet within the geographic boundaries of City during the relevant period. Subject to Section 5.3, ExteNet may remove any Equipment or Attachments in the ROW at any time and the corresponding ROW Fees shall cease upon removal.

4.2. Attachment/Use Fees. ExteNet shall pay Attachment/Use Fees to City for each City-owned or leased Facility to which ExteNet makes an Attachment or in which ExteNet installs Equipment. Such Attachment/Use Fees shall be computed on the basis of the rates set forth in Exhibit B attached. Notwithstanding the foregoing, ExteNet shall not be liable for payment of any Attachment/Use Fee if for any reason City's Facility is or subsequently becomes unusable for Attachments or use, or ExteNet withdraws its application for Attachment to or use of such Facility before completing such Attachment or use or putting the Equipment into productive service. Subject to Section 5.3, ExteNet may remove any Attachment and/or Equipment at any time and the corresponding Attachment/Use Fees shall cease upon removal.

4.3. Other Fees and Compensation. The foregoing Fees are in addition to and not in lieu of any other non-discriminatory administrative fees and charges, imposed by City in connection with the issuance of construction permits, provision of copies of records, etc.

4.4. Payment Terms. All Fees payable pursuant to this Section 4 shall be paid annually in advance no later than January 31<sup>st</sup> of each year, and shall be based on the total Fees due for all Equipment, Attachments, and/or Node Poles occupying City ROW and/or Facilities as of December 31<sup>st</sup> of the previous year. Initial Fees for all new Equipment, Attachments, and/or Node Poles placed on City ROW and/or Facilities shall be paid in advance and due within 30 days of the date on which construction of the Equipment, Attachments, and/or Node Poles is completed. There shall be no proration of Fees.



4.5.Changes to Laws and Regulations Affecting Fee Rates. ExteNet and City acknowledge and agree that, in order to expedite the development and construction of ExteNet's DAS Network for the benefit of residents and visitors in City the rates set forth in Exhibit B have been negotiated by the parties without complete information concerning their reasonableness relative to the costs to be incurred by City or the rates being charged to others for similar access, use and attachments in the same or contiguous market areas, and without regulatory review. Therefore, during the term of this Agreement if: (a) lower rates are established or charged to ExteNet's competitors as a result of any ordinance or regulation subsequently adopted by City or by the State or any federal agency having jurisdiction over such determinations; or (b) a court or regulatory agency makes a final, non-appealable determination that the rates set forth in Exhibit B or any portion thereof or any rates for similar access, use or attachments in the same or contiguous market areas that are equal to or lower than such rates are not reasonable or legal, then the parties shall negotiate in good faith to reduce the rates set forth in Exhibit B accordingly. Further, (c) if by the State or any federal agency having jurisdiction over such determinations, or a court or regulatory agency makes a final, non-appealable determination that the terms and conditions of access to the ROW or rights of attachment to Facilities is materially different from or in addition to the rights set forth herein, the Parties will negotiate in good faith to amend the Agreement to reflect such determinations.

## **5. Construction**

5.1. City Approval. Prior to commencing construction, ExteNet shall identify to the Department of Public Works those portions of City's Rights-of-Way that ExteNet needs to access and/or occupy, and City's Facilities, if any, upon which ExteNet seeks to make Attachments. Further, ExteNet shall provide a map or annotated aerial photograph identifying which Facilities ExteNet seeks to use for Attachments. Once the City verifies that the Equipment proposed in the design complies with the pre-approved configurations and the Equipment specifications set forth in Exhibit A, the City will identify those Facilities to which ExteNet can attach its Equipment. City shall have thirty (30) days to review and approve ExteNet's construction plans, which approval shall not be unreasonably withheld, conditioned or delayed. City shall notify ExteNet in writing of its approval or disapproval of ExteNet's proposed construction plans and Attachments. In the event that City personnel fail to deliver to ExteNet written notice of approval or disapproval of such plans and Attachments within forty five (45) days, such plans and Attachments shall be deemed approved by City.

5.2. Avoidance of Interference. ExteNet agrees that the placement, installation, construction, maintenance, operation and removal of Equipment installed in City ROW and its Attachments to City Facilities or Utility Infrastructure shall be carried out in such locations and in such manner so as not to unreasonably interfere with water, gas, sewer pipe, traffic signal, street light and other utilities and conduits already existing.

- 5.3. Permits. ExteNet further agrees to obtain all necessary excavation or encroachment permits setting forth time, place and manner restrictions necessary to protect the health, safety and welfare of the public, prior to commencing construction required for Equipment Attachment or Pole Placement in City's ROW or Facilities. City agrees to cooperate in expediting the issuance of such permits as reasonably requested by ExteNet in order to meet the reasonable requirements of ExteNet's customers and the telecommunications services needs of end users served by them.
- 5.4. Street Furniture Cabinets. If a portion of ExteNet's Equipment, not including antennas, cannot be accommodated on City's Facilities, the parties agree that, upon approval by the Providence City Council and payment of appropriate easement fees, ExteNet may place such equipment in above-ground street furniture and equipment cabinets located in the Rights-of-Way. In no instance shall the installation of any of ExteNet's Equipment in street furniture or equipment cabinets block pedestrian walkways in the ROW or result in violation of the Americans with Disabilities Act. If ExteNet cannot obtain necessary permits, approvals or other authorizations to place street furniture or equipment cabinets in the ROW, parties agree that ExteNet may place Equipment in below-ground vaults, and that City shall authorize such vaults expeditiously pursuant to applicable City Code zoning and undergrounding provisions. In such instance, ExteNet will be responsible for all costs associated with such below-ground vaults, including without limitation relocation costs of any public improvements or public utilities facilities.
- 5.5. Compliance with Law. When placing, installing, constructing, maintaining, operating, removing or relocating Equipment or Pole Placement in City Rights-of-Way, or making Attachments to City Facilities, ExteNet shall comply with all applicable federal and State statutes, regulations and orders, including but not limited to any relevant state regulatory or legislative construction standards, the National Electric Code (NEC), and/or the National Electric Safety Code (NESC). ExteNet shall also comply with all City technical specifications and requirements that are reasonable and non-discriminatory with respect to their impact on telecommunications services and ExteNet as a provider thereof, and all applicable national, State and local building, electrical and safety codes.
- 5.6. Restoration. If the placement, installation, construction, maintenance, operation, removal or relocation of Equipment or poles by ExteNet disturbs or alters City Rights-of-Way or Facilities, ExteNet, at its own expense shall restore such City Rights-of-Way or City Facilities to their original condition, normal wear and tear excepted.

## **6. Maintenance**

- 6.1. Proper Maintenance. ExteNet shall maintain its Equipment and poles located in



City Rights-of-Way and its Attachments in such condition that they shall not constitute a danger to the health, safety and welfare of the public.

- 6.2. Right of Entry. ExteNet may enter upon City Rights-of-Way and City Facilities to maintain or repair Equipment or poles from time to time without prior approval of City.
- 6.3. Removal or Replacement of Equipment. ExteNet may remove or replace any items of Equipment as reasonably required in connection with the ongoing provision of Services without prior approval of City, so long as any replacement Equipment is substantially the same as that which has been removed with regard to size, weight and physical configuration. Removal of Equipment from any ROW or Attachment shall not constitute termination of this Agreement.
- 6.4. Permits. In the event maintenance or repair activities will disturb or block pedestrian or vehicular traffic in City Rights-of-Way, ExteNet shall obtain all permits required by City prior to commencing such maintenance or repair.

## **7. Relocation of Equipment**

- 7.1. Notice. City may request relocation of ExteNet's Equipment by delivering written notice to ExteNet identifying the need for such relocation and alternative City ROW and/or City Facilities to which ExteNet may relocate its Equipment.
- 7.2. Timeframe. After receiving notice, ExteNet shall relocate its Equipment to alternative City ROW and City Facilities identified by City as soon as practicable, but in no event sooner than one-hundred and eighty (180) days after receipt of such notice. ExteNet and City may mutually agree to relocation of Equipment in less than 180 days to respond to emergencies or other similar extraordinary circumstances.
- 7.3. Cost of Relocation. In the event relocation of Equipment is necessitated by construction, repair, maintenance, relocation or elimination of any City Rights-of-Way and City fails or refuses to provide ExteNet access to and use of reasonably comparable alternative locations in the ROW or alternative Facilities for such relocation City, the cost and expense of such relocation shall be borne by City (or such other party as City may designate), and ExteNet shall not be required to relocate such Equipment until adequate assurance of payment or reimbursement is delivered to ExteNet or suitable alternative ROW access or Facilities are identified, engineered and approved by City to support said relocation activities. Similarly, in the event relocation of Equipment is necessitated by the needs of another party (other than City), the cost and expense of such relocation shall be borne by such other party, and ExteNet shall not be required to relocate such Equipment until adequate assurance of payment or reimbursement is delivered to ExteNet by such other party. Notwithstanding any other provision hereof, in the event that City or the State enacts an ordinance, law

or regulation requiring that all aerial (e.g., pole-mounted) wires and cables in some or all of the geographic area of the City be relocated to underground installations in the ROW, ExteNet shall be permitted to participate in any joint build program for underground installation of telecommunications and other compatible utility wirelines and cables and to pay only its reasonably determined proportional share of the cost of all such relocations covered by the joint build program. In all other events, the cost and expense of relocation of Equipment shall be borne by ExteNet.

7.4. Exclusions. ExteNet shall not be required to relocate any poles ExteNet has placed in City ROW excepting only such actions initiated as a result of an approved acquisition by City or other such entity exercising their rights under eminent domain.

7.5. Relocations at ExteNet's Request. In the event ExteNet desires to relocate any Equipment from one Facility to another, ExteNet shall so advise City. City will use reasonable efforts to accommodate ExteNet by making another reasonably equivalent Facility available for use in accordance with and subject to the terms and conditions of this Agreement.

## **8. Indemnification**

8.1. Scope of Indemnification for City. ExteNet shall indemnify and hold harmless City, its elected and appointed officers, its council members, boards, commissions, employees, and agents from any and all injury, claim, demand, judgment, liability, or damage arising out of or resulting from ExteNet's negligence in the placement, installation, construction, maintenance, operation and removal of Equipment in City's Rights-of-Way or on City Facilities or otherwise in the performance of this Agreement. ExteNet shall not be obligated to hold harmless or indemnify City for any injury, claims, demands, judgments, liabilities or damage to the extent that they are due solely to the gross negligence or intentional and/or willful acts of City, or any of its officers, council members, boards, commissions, employees, or agents.

8.2. Scope of Indemnification for ExteNet. City shall indemnify and hold harmless ExteNet and its officers, directors, shareholders, employees, and agents from any and all injury, claim, demand, judgment, liability, or damage arising out of or resulting from any negligence by City or its officers, boards, commissions, employees, or agents in connection with this Agreement. City shall not be obligated to hold harmless or indemnify ExteNet for any injury, claims, demands, judgments, liabilities or damage to the extent that they are due solely to the gross negligence or intentional and/or willful acts of ExteNet.

8.3. Excluded Damages. In no event shall either party be liable for any punitive, consequential, incidental, or special damages or lost profits incurred, or alleged to have been incurred, by anyone.



- 8.4. Notice. Any party seeking indemnification hereunder ("Indemnitee") shall notify the other party ("Indemnitor") within fifteen (15) days of the nature and amount of a claim arising under this Section, and the method and means proposed by the Indemnitee for defending or satisfying such claim.
- 8.5. Representation. The Indemnitor shall pay for all costs and expenses, including reasonable legal fees, of defense for Indemnitee in any claims or actions subject to indemnification hereunder, provided that so long as the Indemnitor has undertaken and is vigorously pursuing such defense it shall not be responsible for additional legal fees and expenses incurred by the Indemnitor. The Indemnitee shall cooperate and consult with the Indemnitor respecting the defense and satisfaction of such claims, including the selection of and direction to legal counsel, and the Indemnitee shall not pay or settle any such claim without the prior written consent of the Indemnitor, which consent shall not be unreasonably withheld. The Indemnitee will be allowed, at its own expense, to appear and defend or assist Indemnitor in the defense of such claims.
- 8.6. Breach of Agreement. In the event that any claim, complaint or litigation is brought by either party to this Agreement against the other for breach of this Agreement, or for an interpretation of this Agreement, each party shall bear its own costs, including legal fees and expenses.

## 9. Insurance

- 9.1. General Liability Insurance. ExteNet shall maintain and keep in effect during the Term of this Agreement, commercial general liability insurance with a combined single limit with respect to each occurrence of not less than \$1,000,000, insuring ExteNet (and naming City as an additional insured) against loss, damage, cost, expense or liability for any damage to any property or injury, illness or death of any person occurring or arising as a result of the negligence of ExteNet in connection with the placement, installation, construction, maintenance, operation and removal of Equipment in City's Rights-of-Way or in connection with any Attachment on City Facilities.
- 9.2. Other Insurance. ExteNet shall maintain and keep in effect during the Term of this Agreement, worker's compensation insurance as required by law.
- 9.3. Proof of Insurance. ExteNet shall provide insurance certificates or other reasonable evidence of all insurance coverage required under this Agreement to City upon request.

## 10. Security

Not less than ten (10) business days prior to the first Attachment of ExteNet Equipment to City Facilities or the first installation of ExteNet Equipment within, over or under the

City's ROW, ExteNet shall provide City with security for the proper removal of such Equipment and restoration of such Facilities or ROW in the form of a bond in the amount of Ten Thousand (\$10,000.00) Dollars. The Bond shall conform substantially to Exhibit C attached to this Agreement or otherwise be reasonably acceptable to City, and such Bond or a substantially equivalent replacement shall be maintained in effect throughout the term of this Agreement, subject only to adjustments to the amount to reflect changes in the number of Attachments or in the portion of City's ROW occupied by ExteNet.

## **11. Assignment**

- 11.1 Assignment without approval. ExteNet shall have the right to assign this Agreement and all rights and obligations accorded ExteNet to a wholly-owned subsidiary or a parent entity of ExteNet without the prior written consent of City. In the event ExteNet assigns this Agreement to a subsidiary or parent entity, ExteNet shall provide City with prior written notice of such assignment.
- 11.2 Assignment requiring approval. ExteNet must obtain the prior written consent of City in order to assign this Agreement, or any right or obligation under this Agreement, to a third party other than a wholly-owned subsidiary or parent entity of ExteNet. Such consent shall not be unreasonably withheld, conditioned or delayed by City.
- 11.3 Sub-licensing. ExteNet, as an integral part of its business operations, shall be permitted to sub-license or sublease to third-party wireless telecommunications providers any, all, or a portion of its rights under this Agreement, including but not limited to placement of Attachments within City ROW, without the City's prior written consent. Furthermore, the installation and use of internal space within ExteNet's Attachments for third party wireless providers utilizing ExteNet's Service and/or the use of ExteNet's Attachments by third parties (including but not limited to leases of dark fiber) that involves no additional Attachment or overlashing is expressly permitted by this Paragraph 11.3.
- 11.4 Financing Arrangements. City acknowledges that ExteNet may enter into financing arrangements including promissory notes and financial and security agreements for the financing of the Equipment (the "Collateral") with third party financing entities. In connection therewith, City (i) consents to the installation of the Collateral consistent with the other terms of this Agreement; (ii) disclaims any interest in the Collateral, as fixtures or otherwise; and (iii) agrees that the Collateral shall be exempt from execution, foreclosure, sale, levy, attachment, or distress for any rent due or to become due and that such Collateral may be removed at any time consistent with the other terms of this Agreement without recourse to legal proceedings.



## 12. Termination

- 12.1 Termination by ExteNet. ExteNet may terminate this Agreement, at its election and without cause, by providing written notice of termination to City at least ninety (90) days prior to the effective date of such termination.
- 12.2 Termination by either party. Either City or ExteNet may terminate this Agreement for an uncured material breach by the other party. The party asserting a breach must first provide written notice of the existence of a material breach to the breaching party. Such notice shall state the grounds for termination in reasonable detail. The party receiving notice of termination for cause shall have thirty (30) days to cure, or commence and vigorously pursue good faith efforts to cure the alleged material breach if such breach cannot reasonably be cured within 30 days. A notice of termination for cause issued by City shall be issued only after the completion of a public proceeding, during which ExteNet shall have a full opportunity to be heard and to respond to any notice of grounds to terminate.

## 13. Notices

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

- 13.2 Notice shall be given to the following:

City:  
Name: Alan Sepe  
Title: Director of City Property  
Address: City Hall, 25 Dorrance Street  
Providence, RI 02903

With a copy to:

Jeffrey Dana, City Solicitor  
444 Westminster Street, Suite 220  
Providence, RI 02903

ExteNet:  
Name: Dan Timm  
Title: Chief Financial Officer  
Address: 3030 Warrenville Rd., Ste 340  
Lisle, IL 60532

With a copy to "General Counsel" at the same address.

#### 14. **Validity and Construction of Agreement**

- 14.1 Counterpart Execution. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be deemed an original, all of which together shall constitute the same instrument. Execution and delivery may be accomplished by facsimile or other electronic means.
- 14.2 Severability. If one or more of the provisions in this Agreement are held by an agency or court of competent jurisdiction, in a final, non-appealable order, to be invalid, void, voidable, unenforceable or illegal, such provision shall be deemed severable from the remaining provisions of this Agreement. Such invalid, void, voidable, unenforceable or illegal provision shall not affect the remaining provisions of this Agreement so long as the material purposes of this Agreement can be determined and effected.
- 14.3 Entire Agreement. This Agreement states the entire agreement between the parties and supersedes all prior agreements and understandings, whether oral or written, between the parties with respect to the subject matter hereof, and may not be amended or modified except by a written instrument executed by the parties hereto. This Agreement contains the entire understanding of the parties with respect to the subject matter hereof. No waiver of any right or remedy hereunder shall be effective unless and until set forth in a writing delivered to the other party, and a waiver, forbearance or other failure to enforce any right or remedy on any given occasion or under any specified circumstance shall not be construed as, or have the effect of, a waiver of such rights or remedies on any other occasion or under any other circumstances.
- 14.4 Amendment. This Agreement may be amended only by the Parties hereto by an entrustment in writing signed by or on behalf of each of the parties hereto.
- 14.5 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Rhode Island, without reference to its conflicts of laws principles.

#### 15. **Force Majeure.**

No failure by a party to perform its obligations in accordance with this Agreement shall be deemed a material breach or grounds for termination if such failure to perform occurred as a




result of circumstances beyond such party's reasonable control as described below. Further, the time for performance of any duties or obligation of City or ExteNet shall be extended for the period during which performance was delayed or impeded due to causes beyond such party's control, including but not limited to strikes, lockouts, labor disputes, supply shortages, utility outages, cable dig-up by third party, civil disorders, actions of governmental authorities, actions of civil or military authority, national emergency, insurrection, riots, war, acts of terrorism, 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 preventing circumstance or delay. If ExteNet or City claims the existence of a circumstance preventing performance, 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 circumstance. Economic hardship, misfeasance, or malfeasance of a party's directors, officers, employees, council, officials or agents shall not be considered as a condition beyond the fault or control of the defaulting party.

16. Confidentiality

Non-public information provided by either party to this Agreement, including network deployment plans and technical and operational details, shall to the extent allowed by law be kept confidential and used only for purposes related to the performance of this Agreement. Both City and ExteNet shall take reasonable steps to protect confidential information obtained from the other in connection with performance of this Agreement from public disclosure or unauthorized use.

IN WITNESS THEREOF, the parties hereby bind themselves legally to the terms and conditions set forth in this Agreement, as evidenced by the signature of their duly authorized representatives.

CITY OF PROVIDENCE	EXTENET SYSTEMS, INC.
By: _____	By:  _____
Title: _____	Title: Executive Vice President and <del>CFO</del> COO
Date: _____	Date: 3/10/16

Approved as to form and correctness:

\_\_\_\_\_  
Jeffrey Dana, City Solicitor

Final 2/23/16

## **Exhibit A**

### **ExteNet Equipment Specifications**

The Parties will agree upon the ExteNet Equipment Specifications and pre-approved equipment designs within thirty days of the Effective Date.



Exhibit B

Fee Rates

TELECOMMUNICATIONS ATTACHMENT & RIGHT OF WAY ACCESS FEES	
ROW Fees	
Placement of Equipment cabinet on ground space within ROW	\$360.00 per yr., per equipment cabinet
Placement of new, ExteNet-owned pole, upon which ExteNet will place Equipment in ROW	\$360.00 per yr., per pole
Placement of Equipment upon Utility Infrastructure in ROW	\$360.00 per yr., per pole
Placement of new, ExteNet-owned conduit within the ROW	\$0.50 per linear foot of ROW occupied, one-time fee
Attachment/Use Fees	
Attachment of Equipment to City-owned Facility	\$360.00 per yr., per pole
Placement of ExteNet fiber in City-owned conduit	\$0.50 per linear foot of conduit occupied, one-time fee

## **Exhibit C**

### **Security for Removal & Restoration**

Final 2/23/16

Proprietary & Confidential – ExteNet Systems, Inc.





March 24, 2016

Ms. Lori L. Hagen  
Providence City Clerk  
25 Dorrance St.  
Providence, MA 02903

RE: Extenet Systems Proposed Distributed Antenna System (DAS).

Ms. Hagen,

Extenet Systems Inc. would like to formally request the support of the City of Providence in regards to the proposed Distributed Antenna System (DAS). I would like to formally request being added to the next possible City Council agenda (or other) for consent to move forward.

Our proposed Distributed Antenna System will provide a low/no visual impact cellular coverage solution in Providence where traditional cellular towers may not be practical. The DAS network requires antenna and a control cabinet be attached to steel utility poles connected by a fiber optic cable back to an existing wireless Hub facility. All proposed equipment will be grey in color. The three (3) locations listed below, would provide the residents with wireless telephone coverage throughout the City eliminating the numerous "dead" spots that exist today improving quality of life, including public safety, of residents and visitors.

The following is a reference list of the three (3) proposed node locations. (Address approximate)

	Location	Latitude	Longitude	Pole #
1.	175 Thayer St.	41.82632402	-71.40036861	P.L-15
2.	82 Waterman St.	42.82708897	-71.40218206	P.LF-12
3.	53 Stimson Ave.	42.82998682	-71.39514924	P.L-7

Included with this letter, I have attached the following:

1. A map showing the proposed node locations as listed above, including the fiber optic route.
2. Equipment specifications on Plans for the Utility pole attachments
3. Photographs of the proposed facilities showing a before and after picture.

In addition to the above noted attachments, Extenet has started its Due Diligence with

regards to the NEPA and SHPO requirements. Once these reports are obtained I will forward a copy for your review and records.

Should you have any questions or need additional information, please feel free to contact me. I look forward to hearing from you.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Brinn", with a stylized flourish at the end.

Keenan Brinn  
NB+C Contractor  
617-680-5464  
[kbrinn@nbcllc.com](mailto:kbrinn@nbcllc.com)



PROVIDENCE, RI - DAS - NODE BRU-002  
175 THAYER ST., PROVIDENCE, RI



EXISTING VIEW



PROPOSED VIEW

PREPARED FOR:



PREPARED BY:





PROVIDENCE, RI - DAS - NODE BRU-003  
82 WATERMAN ST., PROVIDENCE, RI



EXISTING VIEW



PROPOSED VIEW

PREPARED FOR:



PREPARED BY:





PROVIDENCE, RI - DAS - NODE BRU-005  
53 STIMSON AVE., PROVIDENCE, RI



EXISTING VIEW



PROPOSED VIEW

PREPARED FOR:



PREPARED BY:





PROVIDENCE, RI - DAS - NODE BRU-002  
175 THAYER ST., PROVIDENCE, RI



EXISTING VIEW



PROPOSED VIEW

PREPARED FOR:



PREPARED BY:





PROVIDENCE, RI - DAS - NODE BRU-003  
82 WATERMAN ST., PROVIDENCE, RI



EXISTING VIEW



PROPOSED VIEW

PREPARED FOR:



PREPARED BY:





PROVIDENCE, RI - DAS - NODE BRU-005  
53 STIMSON AVE., PROVIDENCE, RI



EXISTING VIEW



PROPOSED VIEW

PREPARED FOR:



PREPARED BY:







CITY OF PROVIDENCE

Memo

To: Councilman Michael J. Correia, Chairman, Committee on Public Works  
From: Russell P. Knight, Director of Public Works  
Date: April 13, 2016  
Re: April 13, 2016 Agenda Items

Agenda Item No.	Question & Request	Department Response
1.	Resolution requesting the Traffic Engineer to cause the implement of a traffic study along Lenox Ave between Broad and Niagara Streets	A speed, accident and traffic volume study will be conducted within 60 days.
2.	Resolution requesting the Traffic Engineer to cause the installation of a "Solar Power Blinking 15 mph Slow Curve Sign in the 700 block of Manton Ave due to the rash of motor vehicle accidents with several resulting in death.	There currently are high visibility chevrons to alert drivers of the upcoming curve. Based on the design of the curve, 15 mph may not be the appropriate speed advisory. I have asked for pricing for a Solar Powered "Slow Curve" lighted sign.
3.	Resolution requesting the Traffic Engineer to cause the installation of a "No Parking to Corner" sign located at Hooper Place at Linton Street.	Sign has been installed.
4.	Resolution requesting the Traffic Engineer to cause the installation of a "Four Way Stop" sign on Carleton Street at Fairview Street due to the increase in motor vehicle accidents.	Traffic Engineering will conduct a traffic accident and volume study to see if the accident count and volume meet the recommended criteria for installation of a 4 way stop at this intersection.

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5.	Resolution requesting the Traffic Engineer to cause the installation of a "Do Not Block Driveway" sign located at 1054 Atwells Avenue.	Sign has been installed.
6.	Resolution requesting the Director of Public Works to cause the installation of a "Handicap Parking" sign located at 170 Hendrick Street.	Sign has been installed.
7.	Resolution requesting the Traffic Engineer to cause the installation of a "Stop" sign at the corner of Elmhurst Avenue and Easton Street.	A work order has been issued to cause installation of a "Stop" sign at this location.
8.	Resolution requesting the Traffic Engineer to study traffic patterns on Farm street for the installation of "Stop" signs where appropriate to control traffic.	Traffic Engineering will conduct a detailed study based on existing traffic patterns to see if this additional sign will be effective.
9.	Resolution requesting the Traffic Engineer to cause the installation of Two (2) "Reduced Speed Limit 15 mph School Zone" signs on Higgins Avenue.	Traffic Engineering will install 20 mph signs in accordance with State law.
10.	Petition from Linda Rooney, Regional Director of Infrastructure, ExteNet Systems, Inc. dated March 10, 2016, requesting the City Council execute a Telecommunications Right-of-Way Agreement between the City of Providence and ExteNet Sytems, Inc.	From all indications, ExteNet Systems is a public utility and therefore does not need a ROW agreement.
11.	Petition from Karen Gager, MSW, Executive Director, HeadsUp, Inc., and Scott Budnick, Chair, Board of Trustees, Mathewson Street Church, dated February 6, 2015, requesting an easement for	This will be handled as a standard encroachment request. It is recommended Ms. Gager contact DPW.

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	handicapped access in the front of Mathewson Street Church at 128 Mathewson Street.	
12.	Discussion relative to the disposal of mattresses.	Ready to discuss. The mattress recycling council begins operations on May 1 <sup>st</sup> . DPW will continue operations as normal at its Allens Ave location. The additional advantage is constituents can take mattresses to the MRC East Providence recycling center for \$2/unit, up to 4 units/day, any day of the week.
13.	Discussion relative to utility cut-outs.	Ready to discuss. The utilities have begun replacing some temporary patches, but the bulk of the work will commence after May 1 <sup>st</sup> .
14.	Discussion relative to the installation of new street signs throughout the city with the \$40 million dollar improvement bond.	Ready to discuss. It is recommended that constituents use the PVD 311 application to report street sign issues, as well as to submit service requests for any City service.

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