

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

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AGREEMENT

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THIS AGREEMENT is made and entered, in duplicate, as of MAY 4, 2016 for reference purposes only, pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting on MAY 3, 2016, by and between SR HOLDINGS GROUP, INC., a California corporation doing business as FAMOUS DAVE'S LEGENDARY PIT BAR-B-QUE ("Customer"), with a place of business at 3633 East Broadway, Suite 100, Long Beach California 90803, and the CITY OF LONG BEACH, a municipal corporation ("City").

WHEREAS, the City has constructed a fiber optic infrastructure, including but not limited to the fiber optic strands, conduit, hand holes, manholes, Dense Wavelength Division Multiplexing equipment, customer premise equipment, switches, routers, and other lit fiber optic-related appurtenances and components (the "Fiber System"); and

WHEREAS, Customer wishes to obtain short-term use of lit fiber as more particularly described herein, along a portion of the Fiber System, subject to the terms and conditions set forth in this Agreement; and

WHEREAS, City and Customer seek to enter into this Agreement to permit Customer a limited nonexclusive use of certain lit fiber on a portion of the Fiber System on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual terms, covenants, and conditions in this Agreement, the parties agree as follows:

1. SCOPE OF WORK OR SERVICES.

A. City hereby grants to Customer a short term limited nonexclusive use of a wavelength or a Virtual LAN (VLAN) of a portion of the Fiber System (the "Lit Fiber") as described in the Lit Fiber Addendum attached hereto as Exhibit "A," and incorporated herein by this reference.

B. From time to time, the Customer may request, and the City may

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grant, additional Lit Fiber using the Lit Fiber Addenda in the form attached hereto as Exhibit "B", and incorporated herein by this reference, for additional wavelength or a VLAN of a wavelength. Each Lit Fiber Addendum shall specify the business to which Customer intends to provide broadband services in accordance with Section 1.C. No such Lit Fiber Addendum shall be executed without the City's approval for that business to receive such services.

C. Permitted Activities. This Agreement authorizes Customer to do the following: (i) to use the Lit Fiber for its own business use; and, (ii) other activities as set forth in this Agreement, provided that at all times Customer may not sublease, multiplex, swap, assign, license, sublicense, sell or share the Lit Fiber or any portion thereof. The City shall at all times maintain exclusive and full control of the Lit Fiber of the Fiber System. Except as specifically authorized in this Section 1.C herein, Customer shall not use the Lit Fiber for any other activity or use. Customer shall warrant that the use of the Lit Fiber or any of the activities for the activation or use of the Lit Fiber or removal thereof shall not impact the ability of the City (or any of the third parties authorized by the City) to use any other portion of the Fiber System.

D. Installation of Lit Fiber; Lit Fiber Testing and Lit Fiber Delivery; Acceptance of Service. Following the installation of the Lit Fiber, the City shall conduct testing ("Lit Fiber Testing") to verify that the Lit Fiber are installed and. When the City notifies Customer that the Lit Fiber are installed and are performing according to the Specifications, the City shall notify Customer electronically that the installation and service delivery is complete ("Lit Fiber Delivery"). If Lit Fiber Testing is delayed as a result of Customer's failure to fulfill its obligations under the Agreement (including without limitation, failure to provide City the means to access a Customer location or install termination panel(s), the City will give Customer written notice to cure such failure within thirty (30) calendar days. If Customer fails

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to cure within such period, the Lit Fiber Delivery will be deemed complete upon the expiration of such thirty (30) day period.

E. Customer's Obligation to Notify within Evaluation Period. Within five (5) calendar days of the Lit Fiber Delivery (the "Evaluation Period"), if Customer determines that the Lit Fiber does not meet the Specifications, Customer shall notify the City in writing and specify the portions of the Lit Fiber do not meet the Specifications. The City shall complete corrective action as quickly as possible to bring the installation and operating standards of such Lit Fiber within the Specifications. After taking corrective action, the City shall notify Customer of the completion of corrective action and shall provide Customer with prior notice of the Lit Fiber Delivery, and Customer shall have the right to have representatives present to observe the Lit Fiber Delivery. The cycle described above of testing, taking corrective action and re-testing shall take place as necessary to ensure that the Lit Fiber meets the Specifications.

F. Acceptance Date. On the date that Customer either: (i) provides written notice of its acceptance of the Lit Fiber, or (ii) fails to reject the Lit Fiber Delivery within the Evaluation Period, the Lit Fiber shall be accepted by Customer and the City shall have no further liability to Customer related to the Lit Fiber Delivery. Customer's acceptance shall not constitute a waiver of the City's obligations to maintain and repair the Lit Fiber Costs and Expenses. Customer shall be responsible for the cost of any equipment needed to connect to the City's Lit Fiber in the Main Point of Entry ("MPOE") of Customer demarcation, and for the costs and expenses identified in Section 3.

G. Lit Fiber Equipment. City shall provide Customer access to the Lit Fiber at the Demarcation Points identified in the applicable Lit Fiber Addendum attached hereto. The location where the City's equipment will be mounted/located should be fire a retardant backboard, or at least treated or painted with fire retardant

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paint. The City of Long Beach is not responsible for any physical damage its equipment may cause, such as fire, short electrical or electronic circuits or any damage it may cause to the lessee's equipment including routers, firewalls, switches or computers and services including personal devices. The City of Long Beach is not responsible for data security and any loss of data loss or corruption due to internet connectivity issues. The City of Long Beach is not responsible for the lessee's data security. This connection is wide open with unfettered access to the internet with, no firewalls, anti-virus or filters on it. It is the lessee's responsibility to secure their network from this connection and secure their data transmission over this internet connection. The lessee shall not transact anything illegal over this connection.

H. Requirement of Customer to Obtain Governmental Authority. Customer shall obtain the approval of any governmental entity or other authority necessary to access and to use the Lit Fiber.

I. Deliverables. The term "Deliverables" shall mean and refer to the documentation regarding the as-built condition of the Lit Fiber consisting of the following: (i) a map depicting the route of the Lit Fiber and (ii) rack, panel and port numbers at the Demarcation Points of City Lit Fiber Equipment. At the time of the Lit Fiber Delivery, the City shall provide to Customer the Deliverables for the Lit Fiber. The Lit Fiber being a pilot program for the City, there will be no guarantees about performance. The City shall provide its best effort to maintain the service level in Exhibit "A", Lit Service Addendum. The City advises the lessee to keep its current internet connection as a backup.

J. Ownership of Lit Fiber. Lit Fiber will remain the sole and exclusive property of the City. Nothing contained herein shall be interpreted to give or convey to Customer any property right, title or interest in the Lit Fiber (including any leasehold interest). The Lit Fiber will at all times be and remain the City's

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property notwithstanding that it may be or become attached to or embedded in realty.

2. TERM. The term of this Agreement shall be for a period of one (1) year (the "Initial Term"), beginning on the Effective Date and terminating one calendar year thereafter (the "Termination Date"), unless extended by mutual agreement of the parties.

3. SHORT TERM USE FEE.

A. Customer shall pay the following amounts to the City for the Lit Fiber ("Use Fee"):

i. Monthly Recurring Charge. The use amount identified as the Monthly Recurring Charge ("MRC") in Exhibit "A" or any additional Lit Fiber Addenda or other modification thereof. The MRC represents the monthly, 1-month base use fee, payable in advance, without deduction or offset.

ii. Non-Recurring Charge. Installation charges identified as a Non-Recurring Charge ("NRC") in Exhibit "A" or any additional Lit Fiber Addenda or other modification thereof. The NRC represents the Cost incurred by the City for the construction and installation of the Lit Fiber at the specific Demarcation Points, payable in advance, without deduction or offset and as otherwise specified in the applicable Lit Fiber Addendum. The term "Cost" as used in this Agreement shall mean and refer to all actual, project-specific and documented costs incurred by the City for the construction and installation of the Lit Fiber at the Demarcation Points and as otherwise specified in the applicable Lit Fiber Addendum, which shall be paid in advance by Customer.

B. Rates and Form of Payments. Customer shall pay the Use Fee, without offset or deduction, by check or money order payable to the City of Long Beach, and shall be mailed or delivered to the following address: City of Long

1 Beach, Technology & Innovation Department, Attn: Administration, 333 W. Ocean
2 Blvd., 12th floor, Long Beach, California 90802

3 C. Payments and Invoices. Customer shall pay the Use Fee as
4 follows:

5 i. MRC for Lit Fiber. The City shall invoice Customer in
6 advance for the MRC for the first three months of the Initial Term following
7 the Lit Fiber Delivery. The City shall invoice Customer in advance for the
8 MRC in 3-month intervals following the Acceptance Date through termination
9 of this Agreement.

10 ii. Non-Recurring Charge. The City shall invoice Customer
11 for the NRC following the execution of this Agreement. Customer shall pay
12 such amount within thirty (30) days of receipt of the City's invoice.

13 D. Nonpayment. If Customer fails to pay the Use Fee when due,
14 the City may, in addition to any remedy provided by law, assess a late fee of five
15 percent (5%) per month (or the maximum rate allowed under state law, whichever
16 is less) on all amounts payable under this Agreement if not paid when due.

17 4. TAXES, FEES, SURCHARGES AND OTHER GOVERNMENTAL
18 IMPOSITIONS.

19 A. Definition of Taxes. The term "Taxes" as used herein shall
20 mean and refer to any and all taxes, fees, surcharges and other related charges that
21 may be imposed or levied on Customer, or imposed or levied on the City and passed
22 through to Customer, by any federal, state, county and local governmental agency.

23 B. Obligation to Pay Taxes. Customer shall pay all Taxes in
24 connection with this Agreement or Customer's use of the Lit Fiber. The City shall
25 pay any tax levied on the City based upon (a) the City's net profit, net income or
26 payroll, or (b) franchise taxes measured by the City's capital, capital stock or net
27 worth, or (c) the City's property or assets, or (d) right-of-way fees, or (e) any
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business or occupation tax assessed on the City.

C. Tax Exemption Certificate. If applicable, Customer may furnish to the City a valid and properly executed tax exemption/resale certificate(s) for any request of exemption from Taxes. Any exemption/resale certificate shall be effective only for fees invoiced subsequent to the receipt of the exemption/resale certificate. City approval of Customer's tax exempt status will not be unreasonably withheld or delayed. City shall not bill Customer for any Taxes covered by a City- approved exemption/resale certificate.

D. Agreement to Cooperate. The parties agree to make commercially reasonable efforts to cooperate with each other and coordinate their mutual efforts concerning audits, or other such inquiries, filings, reports, etc., as may relate solely to the provision, sale or use of purchases, activities or transactions arising from or under this Agreement, which may be required or initiated from or by Customer, the City or any duly authorized governmental authority relating to Taxes.

E. Payment of Additional Fee. To the extent that any payment of Taxes by Customer is deemed by any taxing authority to constitute additional revenue that is also subject to the Tax imposed by that authority, City shall "gross-up" the Tax reimbursement. The "gross-up" payment shall be an additional Use Fee paid to City to result in City receiving on an after-tax basis (except for taxes excluded under paragraph (a)), the full agreed Use fee.

5. REQUIRED RIGHTS. The City represents and warrants that it has secured the rights necessary for the installation and maintenance of the Fiber System ("Required Rights"). The City shall maintain the Required Rights and will, at its cost, exercise any renewal right thereunder, and will use its best efforts to acquire extensions, additions or replacements as are necessary to cause the Required Rights to continue through the Initial Term and any Extension Terms.

6. ACCESS AND USE OF THE LIT FIBER.

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A. Interconnection at the Demarcation Points. Customer shall install, or cause to be installed, at its sole and complete expense, fiber optic cabling and any associated infrastructure from Customer's network ("Customer Fibers") to the Demarcation Points set forth in the Lit Fiber Addendum. The City shall interconnect Customer network equipment to the Lit Fiber at the Demarcation Points.

B. Approved Connection of Lit Fiber. The Lit Fiber that is the subject of this Agreement and connections thereto are identified in the Lit Fiber Addendum or Addenda attached hereto. Customer's proposed use of any other services within the Fiber System (including any other Lit Fiber), or any other connection to other telecommunication fiber systems or facilities within the Fiber System, or to any connections within the Fiber System other than the Demarcation Points set forth in the Lit Fiber Addendum shall be subject to the City's sole and complete discretion. Customer is prohibited from multiplexing fiber connections at any of the sites under this agreement, any Lit Fiber Addendum under this Agreement or at any of its Customer sites that are under separate Lit Fiber use agreements or Lit Fiber Addendum with the City.

C. No Access to Other Parts of Fiber System. Except for the Lit Fiber that is the subject of this Agreement, Customer shall not access any part of the Fiber System, Lit Fiber, Equipment, or rack space without the prior written consent of City, and then only subject to the terms and conditions specified by City.

D. Compliance with Applicable Law. Customer warrants that its use of the Lit Fiber shall comply with all applicable governmental codes, ordinances, laws, rules, regulations, and restrictions.

E. No Interference. The City shall not use the Fiber System in a way that interferes in any way with or adversely affects the use of the Lit Fiber by Customer. Customer shall not use the Lit Fiber in a way that interferes with or

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adversely affects the use of Fiber System. In the event of interference caused by Customer, the City will provide notice to Customer, and Customer shall take immediate steps to block the interference.

F. If Customer is unsuccessful in doing so, the City may take reasonable steps to block the interference to the extent necessary. If Customer is experiencing interference, Customer will notify the City through a request for Non-Routine Maintenance, and the City will take reasonable steps, as outlined and established in Exhibit "C," Maintenance and Operations Specifications and Procedures Section, to block the interference.

G. Cooperation. The parties agree to cooperate with and support each other in complying with any requirements applicable to the Fiber System by any governmental or regulatory agency or authority. The parties agree to execute such further instruments as may be necessary or appropriate to carry out the intent of this Agreement.

H. No Liens. Customer shall not cause or permit any part of the Fiber System to become subject to any mechanics' liens, or other liens for labor, services, supplies, equipment or material incurred by it, and Customer will, at all times, promptly and fully pay and discharge and wholly protect, defend, indemnify and hold harmless the City in the event any such liens are filed.

I. Network Equipment. Customer is responsible for providing and operating any network equipment and cables needed to connect to the City's Lit Fiber Equipment to transmit information across the Lit Fiber. This Agreement shall not in any way convey title to or any interest in the equipment of Customer utilized in connection with its enjoyment of the Use Agreement.

J. Damages. If Customer or any of its contractors or consultants damages the Fiber System or any other property owned by the City, Customer shall reimburse the City for all documentable costs to repair the Fiber System or other

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property.

7. MAINTENANCE.

A. Maintenance of Structural Aspects. The City shall maintain the structural aspects of Lit Fiber and Fiber System in good operating condition to conform to the Specifications, utilizing sound engineering practices in accordance with the Maintenance and Operations Specifications and Procedures attached hereto as Exhibit C and incorporated herein by reference.

B. Delegation of Maintenance Services. The City may subcontract for testing, maintenance, repair, restoration, relocation, or other operational and technical services for the maintenance of the Fiber System.

C. Notification of Problems. Customer shall promptly notify the City of any matters pertaining to any damage or impending damage to or loss of the use of the Fiber System that are known to it and that could reasonably be expected to adversely affect the Fiber System. The City shall promptly notify Customer of any matters pertaining to any damage or impending damage to or loss of the Lit Fiber or the Fiber System that are known to it and that could reasonably be expected to adversely affect the Lit Fiber or Customer's use thereof.

8. RELOCATION.

A. Relocation of Lit Fiber. If relocation of the Lit Fiber is required by a governmental agency or is determined by the City to be necessary based on reasonable business needs of the City, the City shall have the right to relocate the Lit Fiber within the Fiber System upon one hundred twenty (120) days prior written notice of any relocation. Customer will cooperate in good faith with the City to facilitate such relocation. The City shall be solely responsible for the costs and expenses to relocate the Lit Fiber, including the direct costs to reestablish the Lit Fiber connections in a quantity and quality materially equivalent to those connections obtained by Customer before the relocation and installation of Lit Fiber.

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The City agrees to use commercially reasonable efforts, in cooperation with Customer, to minimize and avoid: (i) any interruption to Customer's enjoyment of the Lit Fiber, (ii) any material impact on the route diversity of Customer's network, or (iii) any material impact on Customer's ability to carry traffic on the Lit Fiber with the equipment Customer was using for the Lit Fiber prior to the relocation. If a Lit Fiber relocation would materially impact the route diversity of Customer's network, Customer has the right to terminate this Agreement as to any affected Lit Fiber Addendum or Addenda by providing written notice within thirty (30) days of receipt of the City's notice of the planned relocation.

B. Payment for Relocation. If the City relocates building access entry to Lit Fiber demarcations, or any part of the Fiber System or rack space, at the request of Customer, Customer shall pay for the reasonable and documented Costs of the City in connection with such relocation.

9. WARRANTY.

A. The City warrants and represents that the Lit Fiber is designed, engineered, installed and constructed in accordance with all applicable building, construction and safety codes for such construction and installation, as well as any and all other applicable governmental laws, codes, ordinances, statutes and regulations.

B. City shall maintain the Fiber System in good operating condition for normal use.

C. EXCEPT AS OTHERWISE PROVIDED HEREIN, CITY EXPRESSLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY BEYOND THE MANUFACTURERS' WARRANTY AS TO THE FITNESS OF ANY MATERIALS, EQUIPMENT OR ANY OTHER PART OR ALL OF THE LIT FIBER, CONSTRUCTED OR TO BE CONSTRUCTED. THE WARRANTIES AND REMEDIES SET FORTH ABOVE CONSTITUTE THE ONLY WARRANTIES AND

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REMEDIES WITH RESPECT TO THIS AGREEMENT AND ARE IN LIEU OF ALL OTHER WARRANTIES, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE.

10. INDEMNIFICATION. Customer shall indemnify, defend and hold harmless the City, its City Council, boards and commissions, employees, agents, contractors, and consultants from and against all third- party liability, loss, cost, damage, expense, claims or cause of action of any nature whatsoever, including, but not limited to, reasonable attorneys' fees, arising out of or resulting from Customer's use of the Lit Fiber under this Agreement.

11. LIMITATION OF LIABILITY.

A. IN NO EVENT WILL THE CITY BE LIABLE TO CUSTOMER FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, RELIANCE, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE WHATSOEVER, INCLUDING BUT NOT LIMITED TO ANY LOST PROFITS, LOST REVENUES, LOST SAVINGS, OR HARM TO CUSTOMER'S BUSINESS OR CUSTOMER'S PROVIDERS IN CONNECTION WITH THE USE OF THE FIBER OPTICS OR THIS AGREEMENT. CUSTOMER HEREBY RELEASES THE CITY FROM ANY SUCH CLAIM.

B. Disclaimer of Internet Performance. The City does not and cannot control the flow of data to and from Customer via the internet. Such flow depends in large part on the performance of internet services provided or controlled by third parties. At times, actions or inactions of third parties can impair and disrupt Customer's use of the Lit Fiber. The City will use commercially reasonable efforts as it deems appropriate to remedy and avoid such events but cannot guarantee that such events will not occur. The City disclaims any and all liability resulting from or relating such events.

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C. Limitation of Damages. Customer agrees that no claim or cause of action by Customer against the City arising out of or connected with this Agreement shall exceed the amount of fees paid by Customer to City within the prior year.

12. INSURANCE. Upon the Execution Date, Customer shall maintain insurance in compliance with the terms set forth in the Insurance Requirements attached hereto as Exhibit "D" and shall provide evidence of such coverage to the City upon written request. In addition, throughout the Term of this Agreement, Customer shall also maintain sufficient property insurance to cover any Customer's equipment and that Customer shall look solely to its own insurance policies for any recovery of damages to Customer's equipment. City will ensure any contractor performing construction services on behalf of City will have adequate insurance to perform the services as set forth in the Insurance Requirements attached hereto as Exhibit "D".

13. TERMINATION.

A. Either party shall have the right to terminate this Agreement for any reason or no reason at any time by giving thirty (30) calendar days prior written notice to the other party. In the event of termination under this Section, Customer shall pay City for services satisfactorily performed and costs incurred up to the effective date of termination for which Customer has not been previously paid.

B. Obligation to Remove Connection Upon Termination. Upon termination, the City will disconnect and remove the Lit Fiber connection from the Fiber System. The City shall not be liable or responsible for any damage caused by such removal.

14. GOVERNING LAWS. Any action related to this Agreement will be governed the laws of the State of California. The parties hereby exclusively and irrevocably submit to, and waive any objection against, the personal jurisdiction and venue in the United States District Court for the Central District of California, or the state courts of the

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State of California for the County of Los Angeles.

15. RELATIONSHIP OF THE PARTIES. The relationship between the parties shall not be that of partners, agents or joint venturers for one another, and nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including, but not limited to federal income tax purposes. In performing any of their obligations hereunder, the parties shall be independent contractors or independent parties and shall discharge their contractual obligations at their own risk.

16. NOTICES. Any notice hereunder shall be in writing and shall be delivered by personal service or by United States certified or registered mail, with postage prepaid, or by facsimile addressed as follows:

- To the City: City of Long Beach
 333 W. Ocean Blvd., 12th floor
 Long Beach, California 90802
 Attention: Infrastructure Services Bureau
- To Customer: SR Restaurant Holdings Group, Inc.
 dba Famous Dave's Legendary Pit Bar-B-Que
 3633 E. Broadway, Suite 100
 Long Beach, CA 90803,

Either party, by similar written notice, may change the address to which notices shall be sent.

17. ASSIGNMENT. Customer shall not assign, hypothecate, sublet, transfer, sublease, swap, license, sublicense, sell or share the Lit Fiber or any portion thereof, this Agreement or any interest therein directly or indirectly, by operation of law or otherwise, without the prior written consent of the City which may be withheld at its sole discretion. Any attempt to do so without the City's consent shall be null and void, and any assignee, sub lessee, hypothecate, transferee, licensee or sub licensee shall acquire no

1 right or interest by reason of such attempted assignment, sublease, hypothecation,
2 transfer, license or sublicense.

3 18. FORCE MAJEURE. Neither party shall be deemed in violation of this
4 Agreement if it is prevented from performing any of the obligations under this Agreement
5 by reason of severe weather and storms, earthquakes or other natural occurrences, strikes
6 or other labor unrest, power failures, nuclear or other civil or military emergencies, acts of
7 legislative, judicial, executive or administrative authorities, acts of third parties (other than
8 the City's employees, contractors or agents), or any other circumstances which are not
9 within its reasonable control and ability to prevent (a "Force Majeure" event).

10 19. MISCELLANEOUS.

11 A. The covenants, undertakings, and agreements set forth in this
12 Agreement are solely for the benefit of and enforceable by the parties or their
13 respective successors or permitted assigns.

14 B. Except as otherwise expressly provided, the rights and
15 remedies set forth in this Agreement are in addition to, and cumulative of, all other
16 rights and remedies at law or in equity.

17 C. The headings in this Agreement are strictly for convenience
18 and do not amplify or limit any of the terms, provisions or conditions hereof.

19 D. In the event any term of this Agreement is held invalid, illegal
20 or unenforceable, in whole or in part, neither the validity of the remaining part of
21 such term nor the validity of the remaining terms of this Agreement will be in any
22 way affected.

23 E. This Agreement may be amended only by a written instrument
24 executed by the parties.

25 F. No failure to exercise and no delay in exercising, on the part of
26 either party, any right, power or privilege hereunder will operate as a waiver, except
27 as expressly provided herein.
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OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

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G. This Agreement may be executed in multiple counterparts, all of which taken together constitute one and the same instrument


H. If any conflict or contradiction exists between the Agreement and a Lit Fiber Addendum, the terms of the Lit Fiber Addendum shall control.

20. ENTIRE AGREEMENT. This Agreement supersedes any and all other agreements and representations respecting the Lit Fiber and contains all the terms, conditions and obligations of the parties with respect to this Agreement. This Agreement may only be amended or modified in writing signed by both parties. If any provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement shall remain in full force and effect.

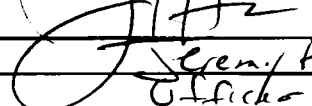
IN WITNESS WHEREOF, the parties have caused this document to be duly executed with all formalities required by law as of the date first stated above.

SR HOLDINGS GROUP, INC., a California corporation doing business as FAMOUS DAVE'S LEGENDARY PIT BAR-B-QUE

7/21, 2016

By 
Name Kurt Schneider
Title President

7/21, 2016

By 
Name Jeremy Howard
Title Officer

"Customer"

CITY OF LONG BEACH, a municipal corporation

Aug. 1, 2016

By 
City Manager
Assistant City Manager

EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER.

"City"

This Agreement is approved as to form on July 25, 2016

CHARLES PARKIN, City Attorney

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Lana Beach, CA 90802-4664

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By  Deputy

EXHIBIT A

LIT FIBER ADDENDUM

Segment	Demarcation Points		Estimated Route-km	Lit Fiber Quantity	Connection Fee Non-Recurring Charge (NRC)	Construction Non-Recurring Charge (NRC)	Monthly Recurring Charge (MRC)	Committed Delivery Date
	A-Location	Z-Location						
1	City Lit Fiber Equipment to be installed in Customer Main Point of Entry at 300 South Pine Dr, Long Beach, CA 90802 (See Note 1 and Note 3)	Port in City Equipment located at Data Center 333 W. Ocean Blvd 90802. (See Note 1 and Note 4)	1 Mile	2 strands 50Mbps	N/A.	N/A. (See Note 2)	\$999.00 MRC (See Note 5)	Ninety (90) days following receipt of building plans from building owner.
Annual Total							\$11,988.00	

NOTES

1. See the maps below for demarcation locations.
2. Construction Non-recurring charge is estimated. City to obtain Customer approval in advance for any charges above 115% of this amount. Construction estimate does not include cost of internal cabling beyond Customer MPOE. Customer is responsible for internal cabling from Customer workstations or Suites to MPOE.
3. For the Famous Dave's 300 South Pine Dr, Long Beach, CA 90802 connection (Location A), City will splice City Lit Fiber Optic Cable and install City Equipment at the Main Point of Entry for Customer to use Lit Fiber. Customer is responsible for any internal fiber optic cabling beyond City Equipment at Main Point of Entry.
4. For the Lit Fiber connection at 333 W. Ocean Blvd. (Location Z), City will establish connection from Location A to Customer ISP Port at Location Z. Customer shall select Internet Service Provider (ISP) port of an ISP with established connection to City's Lit Fiber Network. ISP port selection shall exist for Initial Term of Agreement, and ISP port selection may change during Extension Term upon 90 days advance notice of Extension Term Date. An ISP Port selection change request by Customer during Initial Term or Extension Term is subject to \$500 Connection Fee per change request. IP costs of applicable ISP port shall apply to Customer Quarterly Recurring Cost.
5. Quarterly Recurring Charge includes City lit fiber costs and IP costs from an established Internet Service Provider (ISP). Should ISP selection change, IP costs may change and customer may be required to pay IP costs directly to ISP dependent upon City ISP agreement.
6. Customer intends to use this Lit Fiber Addendum to obtain services in accordance with the Agreement for Customer and only to Customer using the Lit Fiber connection at these locations as described in this addendum.

Famous Dave's a Restaurant located at The Pike at Rainbow Harbor
300 South Pine Dr, Long Beach, CA 90802.
(Location A1)



City shall pull, splice and test City fiber optic cable between demarcation points. City shall install and configure required City Lit Fiber Equipment and deliver Lit Services to Customer at Location A1 MPOE. Customer shall pull Customer internal cabling to length required for City to connect Customer cabling to City's Lit Fiber Equipment, and leave Cabling loop 10 feet from City Lit Fiber Equipment to provision Lit Fiber.

333 W. Ocean Blvd (Location Z1)

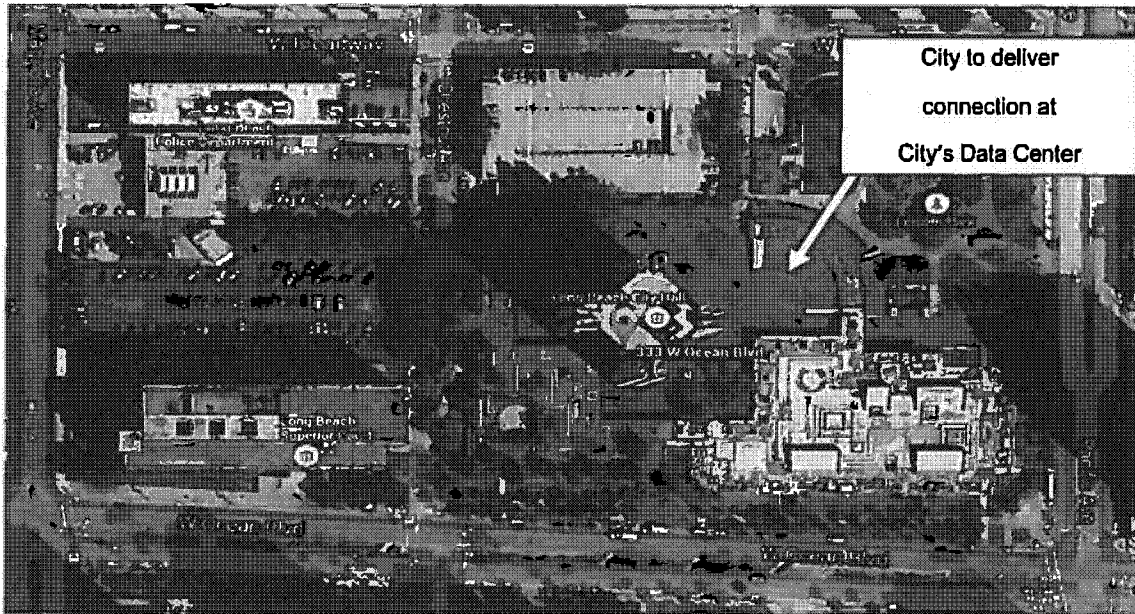


EXHIBIT B

FORM OF LIT FIBER SHORT TERM USE
ADDENDUM: None

EXHIBIT C

MAINTENANCE AND OPERATIONS SPECIFICATIONS AND PROCEDURES

1. Defined Terms

- a. "Routine Maintenance" is all preventive maintenance activities, upgrades and repairs, including but not limited to those activities outlined in this Exhibit.
- b. "Non-Routine Maintenance" is all efforts and activities in response to an emergency circumstance which requires restoration.

2. General

- a. City shall provide a means for Customer to report trouble with the Lit Fiber to trained and qualified personnel, which may include a City contractor or consultant ("Technician") on best effort basis. Customer shall report trouble to the Technology & Innovation City Network Operations Center (562) 570-5483 or Technology & Innovation Trouble Desk (562) 570-6100 and provide security information corresponding to an established Approved Administrative Contact or Approved Technical Contact. City will provide Customer with an escalation list "Operations Escalation List" to be provided solely for Non-Routine Maintenance issues and only in the event City Network Operations Center was not able to resolve trouble ticket. The City shall dispatch a Technician along the Fiber System to handle and repair problems reported by Customer or otherwise discovered by the City, which require on-site support.

- b. City shall use best efforts to have its Technician at the site requiring an emergency maintenance activity as soon as available from notification by Customer or other discovery by the City, whichever occurs first.

- c. Customer shall utilize the Operations Escalation List provided by City, to report and seek immediate initial redress of exceptions noted in the performance of City in meeting maintenance service objectives. City may update the Operations Escalation List from time to time.

- d. City shall take workmanlike care to prevent impairment to the signal continuity and performance of the Lit Fiber. The precautions to be taken by City shall include notification to Customer. In addition, City shall reasonably cooperate with Customer in sharing information and analyzing the disturbances regarding the Lit Fiber and/or Fiber System.

- e. City shall notify Customer at least seven (7) days prior to the date of any planned non-emergency maintenance activity. In the event that a City-planned activity is canceled or delayed for any reason as previously notified, City shall notify Customer at City's earliest opportunity and will comply with the provisions of the previous sentence to reschedule any delayed activity.

- f. Non-emergency work that is reasonably expected to produce any signal discontinuity must be coordinated between the parties, and performed in accordance with Scheduled Maintenance Procedures. "Scheduled Maintenance Procedures" or "SMP"

means a pre-arranged period of time reserved for performing certain work on City's Fiber System that may impact communication services. Major Fiber System work such as fiber rolls and hot cuts will also be scheduled utilizing SMP.

g. City shall maintain the Lit Fiber in a manner that permits normal operation of the equipment associated with the Lit Fiber. Such maintenance includes, but is not limited to, landscaping, weed control, fence repair, smoke detectors, air conditioning, power, and trash removal.

h. Customer shall provide and maintain names and telephone numbers of primary and secondary contact personnel who are trained in trouble-shooting network problems. These personnel will diagnose potential problems with Customer's equipment and determine there are no problems with such equipment prior to making a Non-Routine Maintenance request to City.

3. Facilities

a. City shall maintain the Lit Fiber in conformance with the Specifications in a manner that permits normal operation of the Lit Fiber.

b. City shall perform appropriate Routine Maintenance on the Fiber System in accordance with City's then current preventive maintenance procedures that shall not substantially deviate from industry practice and shall be responsible for correcting dysfunction.

4. Lit Fiber Equipment and Fiber System.

a. City shall maintain the Fiber System in good and operable condition and shall repair the fiber in workmanlike manner.

b. City shall perform appropriate routine maintenance on the Fiber System in accordance with City's then current preventative maintenance procedures. City's maintenance procedures shall not substantially deviate from industry practice.

c. City responsibility ends at City's Lit Fiber Equipment. Testing would take place from City's Lit Fiber Equipment at Location A to demarcation location Z.

5. Restoration

a. When restoring Lit Fiber, the parties agree to work together to restore all traffic as quickly as possible. City, immediately upon arriving on the site of the outage, shall determine the best course of action to be taken to restore the Lit Fiber and shall begin restoration efforts.

b. It will be the responsibility of City and Customer to report to one another respectively of any known environmental hazards that would restrict or jeopardize any maintenance work activities in shelters or right of way areas of operations.

c. Upon notification of interruption of Lit Fiber, disrepair, impairment or other need for repair or restoration of the Lit Fiber and the location of the damaged Fiber System, City

shall pursue commercially reasonable efforts to mobilize technicians to achieve necessary repair or restoration, including, but without limitation, to have maintenance personnel at the affected site as soon as available after receipt of such notice with the required restoration material and equipment. If Customer's use of the Lit Fiber Equipment is interrupted due to the occurrence of a Force Majeure event, the non-performing party will contact the other party and repairs and restoration will be made as expeditiously as possible.

d. The requirement for detection of the fault location is "as exact as possible" utilizing test records, fiber documentation, GPS coordinates and OTDR test results of the affected Fiber System. Subject to the priorities described above, if Customer's use of the Lit Fiber or City's Lit Fiber Equipment is interrupted due to an occurrence of a Force Majeure event, repairs and restoration shall be made as expeditiously as possible.

e. For purposes of this section, "commercially reasonable efforts" means activities and performances consistent with prudent utility practice, existing contract provisions for City hourly employees, preserving Fiber System integrity, and response times that do not jeopardize the health and safety of the employees and agents of City and Customer.

f. City maintenance employees or contractors shall be responsible for correcting or repairing fiber equipment, discontinuity or damage, including, but not limited to, the emergency repair of the Lit Fiber or Fiber System. City shall use commercially reasonable efforts to repair the Lit Fiber traffic-affecting discontinuity as soon as possible after learning of the discontinuity or the service affecting situation.

g. City shall maintain sufficient capability to teleconference with Customer during an emergency repair in order to provide continuous communication. Restoration of open fibers on fiber strands not immediately required for service, the repair shall be scheduled for the next available SMP.

EXHIBIT D

INSURANCE REQUIREMENTS

Contractor's Insurance

A. As a condition precedent to the effectiveness of this Agreement, Customer shall procure and maintain, at Customer's expense for the duration of this Agreement, from insurance companies that are admitted to write insurance in California and have ratings of or equivalent to A:V by A.M. Best Company or from authorized non-admitted insurance companies subject to Section 1763 of the California Insurance Code and that have ratings of or equivalent to A:VIII by A.M. Best Company, the following insurance:

(a) Commercial general liability insurance equivalent in scope to ISO form CG 00 01 11 85 or CG 00 01 10 93 in an amount not less than \$5,000,000 per each occurrence and \$5,000,000 general aggregate. This coverage shall include but not be limited to broad form contractual liability, advertising injury, copyright infringement, the perils of explosion, collapse, and underground (XCU), cross liability, independent contractors liability, and products and completed operations liability and shall not exclude coverage for claims directly or indirectly arising out of, resulting from or contributed to by electromagnetic fields, electromagnetic radiation, electromagnetism, radio waves or noise. City, its boards and commissions, and their officials, employees and agents shall be named as additional insureds by endorsement on City's endorsement form or on an endorsement equivalent in scope to ISO form CG 20 26 11 85, and this insurance shall contain no special limitations on the scope of protection given to City, its boards and commissions, and their officials, employees and agents. This policy shall be endorsed to state that the insurer waives its right of subrogation against City, its boards and commissions, and their officials, employees and agents.

(b) Workers' Compensation insurance as required by the California Labor Code and employer's liability insurance in an amount not less than \$1,000,000 per injury or occupational illness. This policy shall be endorsed to state that the insurer waives its right of subrogation against City, its boards and commissions, and their officials, employees and agents.

B. Any self-insurance program, self-insured retention, or deductible must be separately approved in writing by City's Risk Manager or designee and shall protect City, its officials, employees and agents in the same manner and to the same extent as they would have been protected had the policy or policies not contained retention or deductible provisions.

C. Each insurance policy shall be endorsed to state that coverage shall not be reduced, non-renewed or canceled except after thirty (30) days prior written notice to City, shall be primary and not contributing to any other insurance or self-insurance maintained by City, and shall be endorsed to state that coverage maintained by City shall be excess to and shall not contribute to insurance or self-insurance maintained by Customer. Customer shall notify City in writing within five (5) days after any insurance has been voided by the insurer or cancelled by the insured.

D. If this coverage is written on a "claims made" basis, it must provide for an extended reporting period of not less than one hundred eighty (180) days, commencing on the date this

Agreement expires or is terminated, unless Customer guarantees that Customer will provide to City evidence of uninterrupted, continuing coverage for a period of not less than three (3) years, commencing on the date this Agreement expires or is terminated.

E. Customer shall require that all of its customers or contractors that reuse the fiber in the performance of their services indemnify the City to the same extent as the Customer in this Agreement unless otherwise agreed in writing by City's Risk Manager or designee.

F. Prior to the start of performance, Customer shall deliver to City certificates of insurance and the endorsements for approval as to sufficiency and form. In addition, Customer shall, within thirty (30) days prior to expiration of the insurance, furnish to City certificates of insurance and endorsements evidencing renewal of the insurance. City reserves the right to require complete certified copies of all policies of Customer and Customer's sub Customers and contractors, at any time. Customer shall make available to City's Risk Manager or designee all books, records and other information relating to this insurance, during normal business hours.

G. Any modification or waiver of these insurance requirements shall only be made with the approval of City's Risk Manager or designee. Not more frequently than once a year, City's Risk Manager or designee may require that Customer, Customer's sub Customers and contractors change the amount, scope or types of coverages required in this Section if, in his or her sole opinion, the amount, scope or types of coverages are not adequate.

The procuring or existence of insurance shall not be construed or deemed as a limitation on liability relating to Customer's performance or as full performance of or compliance with the indemnification provisions of this Agreement.