

**REVISED MASTER AGREEMENT**

**Between**

**THE CITY OF AURORA ("Grantor")**

**and**

**ON LIGHT AURORA ("Grantee")**

**Dated \_\_\_\_\_, 2015~~12~~**

## **EXHIBITS**

- Exhibit A Fiber Route Designation Schedule
- Exhibit B Acceptance Testing Standards and Specification
- Exhibit C Maintenance
- Exhibit D Notices

## REVISED MASTER AGREEMENT

THIS REVISED MASTER AGREEMENT FOR INDEFEASIBLE RIGHT OF USE OF DARK FIBERS, hereinafter (the "~~Master Agreement~~Revised Master Agreement") is made as of this \_\_\_ day of October, 20152, (the "Effective Date") by and between the City of Aurora, an Illinois municipality ("Grantor"), and On Light Aurora, a Section 501(c)(3) Organization that allows for federal tax exemption of nonprofit organizations, as well as On Light L3C, a limited liability corporation subsidiary of On Light Aurora~~an Illinois not-for-profit corporation~~ ("Grantee") (the Grantor and Grantee sometimes referred to as "Party" or collectively referred to as the "Parties")~~;~~ which supplants and replaces the Master Agreement of May 8, 2012.

### WITNESSETH:

WHEREAS, the Grantor owns a fiber optic backbone network, which is ~~currently a forty-seven in excess of sixty (4760)~~ 144 strand optical network (the "Aurora Network"). This underground network is designed and implemented with 144 strands located within a single 1 and ¼" PVC conduit in most locations and 288 strands within 2" conduit north of the I-88 Tollway. The majority of this fiber path also includes 2, 1 and ¼" additional, empty, conduits for future growth or expansion; and

WHEREAS, Grantee is a ~~non-profit corporation~~ 501(C)3 Organization formed at the recommendation of City of Aurora Mayor Tom Weisner's "Technology and Broadband Round Table" in 2012 and tasked with initiating, managing and promoting access to the Aurora Network by community anchor institutions, who are intended to be end users that will enter into separate license agreements with Grantee (the "End Users"). It is Grantee's mission to contribute to community improvement and economic development by entering into license agreements with such End Users including ~~hospitals~~ healthcare providers, schools, social service providers and non-profit organizations and other ~~not-for-profit~~ businesses located in Aurora that ~~directly~~ seek higher-speed Internet network connectivity, and faster higher-Internet bandwidth to supplement their exiting broadband, or alternative, redundant network paths to Internet backbones utilizing Aurora's Fiber Network; and

WHEREAS, Grantee seeks to create opportunities for the use of the Aurora Network to accomplish the following purposes:

- (a) Empowering economic expansion opportunities;
- (b) Winning business relocation opportunities;

- (c) Enhancing education and training opportunities for students and adults;
- (d) Helping ~~county~~ governmental al partners to provide services in new ways;
- (e) Supporting the data availability needs in the delivery of world-class health services;
- (f) Expanding opportunities for cultural and arts institutions; and
- (g) Providing cost-effective high-speed Internet access organizations that serve ~~to~~ the under-served and impoverished in the City of Aurora, Illinois.

WHEREAS, Grantor is willing to convey an exclusive and indefeasible right of use (“IRU”) in certain designated unlit, single mode fibers to Grantee, and Grantee wishes to accept an IRU in such fibers from Grantor from time to time during the term of this Revised Master Agreement at various, yet to be determined, route locations throughout the Aurora Network; and

WHEREAS, each IRU route shall be documented in a fiber route designation schedule (the “IRU Schedule” and collectively the “IRU Schedules”), which shall be executed by mutual agreement of the Parties from time to time, the form of which is attached hereto as Exhibit A and, upon acceptance by Grantor, the Parties agree to be bound by such Schedule(s) and the terms and conditions of this Revised Master Agreement.

WHEREAS, the Grantor approved an Addendum to this agreement on August 27, 2013 and it has been deemed in the best interest of the Parties to incorporate the Addendum into this Revised Master Agreement, the form of ~~of~~ which is attached hereto as Addendum #1.

NOW THEREFORE, in consideration of the premises and the mutual agreements set forth herein, and in exchange for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Purpose and Scope.** The purpose of this Revised Master Agreement is to establish the terms and conditions under which Grantor is to convey an IRU to Grantee in fibers that comprise a network transport utilizing frequencies of light, or colors of light, traveling over glass for the transport of data and voice services within the Aurora Network (the “Fibers”), as to be identified in the IRU Schedules to be agreed upon by the Parties from time to time.

2. **Grant of Rights.** During the Term of this Revised Master Agreement, as defined below, Grantor agrees to obtain and maintain in full force and effect for and during the Term all rights, licenses, permits, authorizations franchises, rights of way, easements and other approvals which are necessary for Grantor to obtain in order to permit Grantor to install and maintain the Aurora Network. It is the express intent of the parties that, except to exercise the right to use the Fibers as conveyed herein, in no event shall Grantee have any rights to any portion of Grantor's legal and equitable rights, if any, under any leases, license agreements, easements, right-of-way agreements, grants, and in any other land-use agreements of any kind or nature to the extent that any such rights are applicable to the use of the Fibers and/or the real property on which the Fibers are located (collectively, as amended, modified or supplemented, the "Easements").

3. **Interconnection and/or New Construction Work.** As the Grantor issues IRU Schedules to the Grantee, the Parties shall agree on what Party or Parties shall pay for the costs of any interconnection and/or new construction required in connection with the IRU Schedule.

4. **Demarcation/Colocation.** Grantor shall provide Grantee access to interconnect at Grantor designated points of demarcation. The demarcation points shall be described in each IRU Schedule, and such points shall establish where Grantor shall be responsible to provide access to Grantee to interconnect to the Aurora Network and at which points Grantee is responsible for all costs associated with such interconnection, and for extending the fibers within its facilities beyond said demarcation points.

5. **Term.** ~~The original~~ Master Agreement ~~shall have had~~ an initial term of twenty (20) years commencing on ~~the Effective Date~~ May 8, 2012, ~~and it shall~~ This Revised Master Agreement shall automatically renew for successive ~~one-two~~ (24) year terms unless a Party gives written notice to the other ~~p~~Party of its election not to renew this Revised Master Agreement not less than one hundred eighty (180) calendar days before the end of the initial term or any renewal term thereafter (the "Term"). The Grantor acknowledges that during the Term of the Agreement, the Grantee may enter into IRU agreements of up to 20 years with an End User, and further agrees to continue to provide fiber availability to any End User with a valid written IRU Agreement through the duration of any such valid written agreement.

6. **Payment Address.** Grantee shall make those payments as are required by the IRU Schedules. Payments shall be sent to the following address:

City of Aurora  
44 East Downer Place  
Aurora, IL 60507

Attn: Accounting/Finance Department

Payments shall be due within thirty (30) days of the date of invoice and Grantee agrees upon failure to pay when due, interest/late payment charges at the rate of 1.5% per annum for any outstanding invoiced amounts that remain due and payable after thirty (30) days.

7. **Regulations.** It is specifically agreed and understood by the parties hereto that this Revised Master Agreement is not being offered as a public utility service. To the extent that the Revised Master Agreement is determined to be subject to the jurisdiction of a regulatory agency, it shall at all times be subject to such changes, modifications, orders, or rulings by that regulatory agency, including any advanced approval in which case it shall not be effective until fifteen (15) days thereafter. If such regulatory agency accepts the contract in part or rejects it in material part, either party may cancel this Revised Master Agreement without penalty or liability.

8. **Acceptance of Fibers.** Before the Grantor delivers Fibers subject to an IRU Schedule, it shall conduct testing of the Fibers, confirming that the Fibers meet or exceed the specifications set forth in Exhibit B hereto (the "Specifications"). If the results of the Fiber testing indicate that the Fibers meet the Specifications, then Grantor shall send a written notice to that effect to Grantee, which notice will include the test results of Grantor's testing (the "Completion Notice"). If Grantee shall fail to accept or fail to reject the Fibers in writing within such five (5) business day period, Grantee shall be deemed to have accepted the Fibers and the "Acceptance Date" for the Fibers shall be the close of business on the fifth business day after the date of the Completion Notice; provided however, if Grantee has provided written notice of acceptance or rejection within such five (5) business day period, the Acceptance Date shall be the earlier of the: (i) the date of Grantee's written acceptance, (ii) the date the Fibers are first determined to meet the Specifications following Grantee's written rejection thereof and the re-testing provided herein, or (iii) the date of Grantee's first use of the Fibers (other than any use for the purposes of testing as described herein). If the results of Grantee's test indicate that the Fibers fail to meet the Specifications, Grantor will use commercially reasonable efforts to correct any defects as soon as practicable. Grantor shall send a Completion Notice and route map to Grantee within thirty (30) days of the Acceptance Date. The Parties understand and realize that the Specifications as set forth in Exhibit B hereto may change with advances or changes in technology. The Parties may, by written agreement, amend the Specifications as set forth in Exhibit B.

9. **Maintenance and Restoration.** Maintenance (includes "Routine Maintenance" and "Non-Routine Maintenance") and restoration services to be performed on the Fibers granted through this Revised Master Agreement and the IRS Schedules shall be performed by the Grantor in accordance with Exhibit C

attached hereto and incorporated herein. Grantor will have no obligation with regard to maintenance of any property or equipment owned by Grantee.

10. **Relocation.** Should any governmental authority or unaffiliated third party require the relocation or threaten the taking of the fibers identified on an IRU Schedule, Grantor will provide Grantee with written notice not less than 180 days, or as soon as practical, in advance of the projected date of relocation identifying the Fibers of any outstanding IRU Schedule that will be affected, and the Parties shall amend any outstanding IRU Schedule accordingly. Grantor shall be solely responsible for the costs of any relocation.

11. **Indemnification and Insurance.** Grantee shall ensure compatibility with the Aurora Network in operation of its equipment and systems. Grantee shall be responsible for any damage to facilities of Grantor, its affiliates or other third parties caused by Grantee or its contractors, agents, servants or employees and to otherwise comply with the indemnification and insurance provisions set forth below:

a. Grantee agrees to indemnify and hold Grantor, Grantor's employees, subcontractors, agents, directors, officers, owners, affiliates, attorneys, volunteers, and subsidiaries and their respective employees, subcontractors, agents, directors, attorneys, volunteers, and officers (each, an "Indemnitee") harmless from and against any and all liabilities, damages, losses, claims, causes of action, fines, penalties, demands, judgments, costs, and expenses, including the cost of defense thereof and attorneys' fees actually incurred (collectively, "Claims"), which arise (directly or indirectly) out of, result from or are based upon the grant of rights by Grantor to Grantee herein, the use and enjoyment of such rights by Grantee or the acts or omissions of Grantee or anyone acting under its direction or control or on its behalf, including, without limitation, Claims asserted by or in favor of Grantee's customers, arising out of damage to property or to the environment and/or injury, sickness, or disease to persons (including death) or based on violations or alleged violations of applicable federal, state or local laws, breaches of any representation, warranty or promise by Grantee in connection with this **Revised** Master Agreement, all regardless of whether Grantor, its employees, subcontractors, agents, directors, officers, affiliates, owners or subsidiaries are negligent in whole or in part, and even as a result of the sole, joint, contributory, comparative or concurrent negligence of Grantor, its employees, subcontractors, agents, directors, officers, affiliates, owners and subsidiaries. Notwithstanding the foregoing indemnity, the parties agree that Grantee shall have no liability to Grantor to the extent that any such liabilities, damages, losses, claims, demands, judgments, costs and expenses (other than claims asserted by or through Grantee's customers) are the result of Grantor's willful misconduct.

b. If any claim or action shall be brought or alleged against an Indemnitee in respect of which indemnity is to be sought against Grantee under

this Section 12, the Grantor shall timely notify Grantee in writing, and Grantee shall have the option to assume the defense thereof, with counsel reasonably satisfactory to the Grantor, and after notice from Grantee to the Grantor of its election to assume the defense thereof. Grantee shall not be liable to indemnify an Indemnitee for any settlement of any such action effected without the authority and written consent of Grantee. Notwithstanding the foregoing, Grantor may, at its sole discretion, participate in such defense to the extent it deems necessary to protect its own interest and Grantee shall cooperate with Grantor in any such defense.

c. Grantee agrees to obtain and maintain during the term of this Revised Master Agreement Comprehensive General Liability (CGL) insurance with a single occurrence limit of at least Two Million (\$2,000,000) Dollars and an aggregate limit of at least ~~Twenty-Ten~~ Million (~~\$120,000,000~~) Dollars. Prior to the Grantee entering into any End User Agreement, Grantee shall furnish an insurance certificate to Grantor and if such certificate has an expiration date, Grantee shall furnish an updated insurance certificate, certifying to the foregoing coverage. However, Grantor through the Mayor or his designee, shall have the sole discretion to waive the furnishing of an insurance certificate until such time that the Grantee can provide such insurance coverage or other similar insurance coverage can be obtained or provided, whether by the Grantee or Grantor. The certificate shall include name of insurance company, policy number and expiration date; the coverage required whether claims made or occurrence, and the limits on each (all deductibles for the account of Grantee); a statement that Grantor shall receive not less than thirty (30) days notice of cancellation or modification of the policy; and, a statement that Grantor has been named an additional non-contributory insured (except for worker's compensation) on such policy; and the contract number, or statement of blanket applicability. Grantee hereby waives any rights of subrogation which Grantee or any of Grantee's insurers may have against Grantor and/or the Grantor's agents, employees, affiliates, subsidiaries and Parent.

12. **Exclusion of Warranties; Limitations of Liability.** EXCEPT AS SPECIFICALLY SET FORTH IN THIS REVISED MASTER AGREEMENT, GRANTOR MAKES NO WARRANTY TO GRANTEE OR ANY OTHER PERSON, WHETHER EXPRESS, IMPLIED OR STATUTORY, AS TO THE INSTALLATION, DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS, USEFUL LIFE, FUTURE ECONOMIC VIABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY FIBERS, THE TELECOM NETWORK OR ANY SERVICE PROVIDED UNDER THIS REVISED REVISED MASTER AGREEMENT OR DESCRIBED IN THIS REVISED MASTER AGREEMENT, OR AS TO ANY OTHER MATTER, ALL OF WHICH WARRANTIES ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED. IN NO EVENT SHALL EITHER PARTY (OR SUCH PARTY'S AFFILIATES, OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, ATTORNEYS, VOLUNTEERS, OR AGENTS) BE LIABLE TO THE OTHER PARTY



HEREUNDER FOR ANY SPECIAL, INDIRECT, PUNITIVE, EXEMPLARY, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY TYPE, WHETHER FORESEEABLE OR NOT, DUE TO CLAIMS (INCLUDING, BUT NOT LIMITED TO, ANY CLAIMS (I) FOR LOST SALES, INCOME, REVENUES OR PROFITS, (II) BY IT OR ITS CUSTOMERS FOR LOST SERVICES OR LOST USE, (III) FOR COST OF CAPITAL, OR (IV) FOR ANY COST OF SUBSTITUTE FACILITIES OR SERVICES) ARISING UNDER OR RELATED TO THIS REVISED MASTER AGREEMENT OR FROM ANY BREACH OR PARTIAL BREACH OF ANY PROVISION OF THIS REVISED MASTER AGREEMENT WHETHER IN AN ACTION FOR OR ARISING OUT OF BREACH OF CONTRACT, TORT, VIOLATION OF LAW, BREACH OF WARRANTY, INDEMNITY OR FROM ANY OTHER LEGAL THEORY OR STATE OF FACTS, EVEN IF THE PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. WITHOUT LIMITING THE FOREGOING, GRANTOR'S MAXIMUM LIABILITY FOR ANY DIRECT PROVEN DAMAGES ARISING UNDER OR RELATED TO THIS REVISED MASTER AGREEMENT OR FROM ANY BREACH OR PARTIAL BREACH OF ANY PROVISION OF THIS REVISED MASTER AGREEMENT WHETHER IN AN ACTION FOR OR ARISING OUT OF BREACH OF CONTRACT, TORT, VIOLATION OF LAW, BREACH OF WARRANTY, INDEMNITY OR FROM ANY OTHER LEGAL THEORY OR STATE OF FACTS SHALL NOT EXCEED THE TOTAL PAYMENTS PAID BY GRANTEE OVER THE TERM OF THIS REVISED -MASTER AGREEMENT.

13. **End User Agreements.** Grantee shall be permitted to enter into end user agreements with End Users ("End User Agreements"). Under an End User Agreement, Grantee shall be permitted to grant, to End Users, an exclusive or non-exclusive access to those Fibers granted to Grantee under an IRU Schedule. Each End User Agreement shall be subject to this Revised Master Agreement and shall provide that in the event that this Revised Master Agreement is terminated, the End User Agreement shall also terminate, unless the Grantor and End User agree to continue the End User Agreement.

14. **Termination.** Either Party shall have the right to terminate this Revised Master Agreement with one hundred eighty (180) days prior written notice to the other party. Upon the termination of this Revised Master Agreement, all IRU Schedules and End User Agreements shall also terminate. However, Grantor shall retain the right to continue, by agreement with an End User, any End User Agreement.

15. **Grantee's Equipment.** Upon expiration of the term of each individual IRU Schedule or the termination of the IRU Schedule, Grantee's right to use the Fibers identified in that IRU Schedule shall immediately terminate and Grantor shall owe no additional duties or consideration to Grantee with respect to such use. Upon such expiration or termination of the IRU Schedule, Grantee shall convey title to its equipment to the Grantor free of any consideration.

Defaults or obligations of the Parties existing prior to such expiration or termination shall expressly survive the same. The Grantee shall not pledge or otherwise collateralize its equipment associated with the operation and access to the Aurora Network.

16. **Ownership of Laterals.** Regardless of which Party pays for the construction of a network connection ("**Laterals**") from the Aurora Network to a served facility (~~"Laterals"~~), all Laterals shall become the property of Grantor upon completion of construction. All End User Agreements shall provide that the ownership of the Lateral providing access to the Aurora Network to the End User shall be the property of the Grantor, and shall remain the property of the Grantor upon the expiration of the End User Agreement.

17. **Taxes.** As a result of this **Revised** Master Agreement, if any *ad valorem*, occupation or similar tax should arise, Grantee shall be the Party solely responsible for the payment of said taxes. Grantee shall indemnify, defend and hold harmless the Grantor against any imposition of said taxes, including applying for any tax exemptions that may otherwise be available.

18. **Disputes.** All disputes shall be finally settled by arbitration in accordance with the American Arbitration Association, except that it is expressly understood and agreed that damages in excess of compensatory damages shall not be awarded and each party waives any right to damages in excess of compensatory damages.

19. **Force Majeure.** Neither Party shall be liable for any failure of performance due to causes beyond its reasonable control, including but not limited to, loss of power, acts of God, fire, flood, or other catastrophes, any regulatory action, national emergencies, insurrection, riots, wars, unavailability of rights-of-way or materials, or strikes, lock-outs, unforeseeable work stoppages or other unforeseeable labor disputes.

20. **Confidentiality.** The following shall apply to Parties' Proprietary Information, as defined in subsection 20(a) below:

a. Subject to the exceptions set forth below, each of the Parties shall hold in confidence any non-public information obtained by it pursuant to the performance of the obligations required hereby or the transactions contemplated hereby, including but not limited to, proprietary or confidential information disclosed by either party to the other for the purposes hereunder shall mean any document or material clearly identified in writing as being such ("Proprietary Information"). Proprietary Information shall be safeguarded and protected in the same manner as the recipient's procedures require to ensure protection and nondisclosure of recipient's proprietary and confidential information. The recipient's obligation to safeguard and not disclose such Proprietary Information shall not apply to information in the public domain, lawfully in the recipient's possession prior to receipt hereunder or lawfully obtained from third parties. The

parties acknowledge that Proprietary Information may be disclosed as part of any normal reporting and review procedure with auditors and attorneys, or with any outside lender, or any proposed or actual successor in interest; provided, however, that prior to such disclosure, the third party to receive such disclosure shall agree to maintain the confidentiality of the Proprietary Information.

b. If required by order of a governmental or judicial body, recipient may release to such body the Proprietary Information required by such order; provided, however, recipient agrees that prior to such release it shall promptly notify the other party of the order and allow the other party to contest any release of the Proprietary Information; and provided, further, recipient shall use all reasonable efforts to prevent such Proprietary Information from becoming disclosed to the public.

c. Notwithstanding any term in this Agreement to the contrary, Grantee acknowledges the requirements of the Illinois Freedom of Information Act ("FOIA") and agrees to comply with all requests made by Grantor for public records (as that term is defined by Section 2(c) of FOIA) in Grantee's possession and to provide the requested public records to Grantor within two (2) business days of the request being made by Grantor. The Grantee agrees to indemnify and hold harmless the Grantor from all claims, costs, penalty, losses and injuries (including but not limited to, attorney's fees, other professional fees, court costs and/or arbitration or other dispute resolution costs) arising out of or relating to its failure to provide public records to the Grantor as set forth in this Revised Master Agreement.

21. **Notices.** Any and all notices, demands, requests or other communications required to be given in connection with this Revised Master Agreement shall be in writing and shall be directed to the person at the addresses designated on Exhibit D hereto. Such notices, demands, requests or other communications may be hand-delivered, sent by FedEx or any similar overnight service, delivered by first-class, registered or certified mail, postage prepaid and return receipt requested, or transmitted by facsimile (with electronic confirmation of receipt) or other electronic means; provided that the original is sent to the receiving party by mail or courier. Each party may designate by notice in writing, at least five (5) business days before its effective date, new address or addressee to which or whom any notice may thereafter be given, or sent. Each notice which is given, served or sent in the manner specified in this Section 21 shall be deemed to have been given and received as of the date it is delivered (with the return receipt or the delivery receipt being deemed conclusive evidence of such delivery), or as of the date on which delivery is refused by the addressee upon proper presentation.

22. **Assignment.** This Revised Master Agreement may not be assigned by Grantee without the prior written consent of Grantor, which may be denied at the sole and exclusive discretion of Grantor. Grantee shall be

permitted, from time to time, to add its subsidiaries to this Revised Master Agreement by providing written notice to Grantor. In said event, Grantee shall remain subject to the terms of this Revised Master Agreement and its subsidiary shall also be subject to the terms of this Revised Master Agreement.

23. **Use of Internet Bandwidth.** Grantee shall have the right to access the Grantor's Internet Bandwidth, at no charge, until such time that the aggregate monthly use of the End Users of Grantor meet or exceeds ~~one-two~~ (42) Gigabit. Thereafter, Grantee shall pay to Grantor the same price at which Grantor purchases the Internet Bandwidth that the Grantee uses. From that point on, Grantor shall have the discretion to allow Grantee to aggregate the Internet Bandwidth as used by the Parties, including the End Users, in order that the Parties may benefit from access to multiple Internet backbones otherwise called multi-homed Internet bandwidth and the best available pricing receive the greatest volume discount in the purchase of Internet Bandwidth.

24. **Original Funding.**

a. The Grantor, upon execution of this Original Master Agreement, shall provide to the Grantee an amount of Twenty Five Thousand and No/100 Dollars (\$25,000).

b. The Grantor, upon execution of ~~this the original~~ Master Agreement, shall loan to Grantee the amount ~~up to of~~ One Hundred Fifty Thousand and No/100 Dollars (\$150,000) (the "Loan"). Grantee, beginning with the first month anniversary of the May 8, 2012 Effective Date, shall ~~repay accrue~~ interest to the Grantor at the rate of 2.5% per annum. No principal shall be due under the Loan, until ~~the third anniversary of the Effective Date~~ December 8, 2015, at which time the ~~entire~~ principal balance and any unpaid interest shall ~~become immediately due and~~ payable to the Grantor by means of a monthly schedule of payments to the Grantor in an amount of no less than \$2,500 monthly, which is to be applied to the principle first. If Grantee fails to make any payment due under Loan for a period in excess of ten (10) business days, Grantee shall pay to Grantor a late charge of five cents (5¢) for each dollar so overdue in order to defray part of the increased cost of collection resulting from such late payments. If any attorney is engaged by Grantor: (a) to collect the indebtedness evidenced hereby or due under the Loan, whether or not legal proceedings are thereafter instituted by the Grantor; (b) to represent the Grantor in any bankruptcy or other proceedings affecting creditors' rights and involving a claim under this Loan; (c) to represent the Grantor in any other proceedings whatsoever in connection with this Loan; or (d) to represent the Grantor in monitoring the loan evidenced by this Loan or any renewal, restructure, amendment, or the like applicable thereto, then Grantee shall pay to the Grantor all reasonable attorneys' fees and expenses incurred or determined to be due in connection therewith, in addition to all other amounts due hereunder. The Grantor shall not, by any other omission or act, be deemed to waive any of its

rights or remedies hereunder unless such waiver is in writing and signed by the Grantor, and then only to the extent specifically set forth therein. A waiver in connection with one event shall not be construed as continuing or as a bar to or waiver of any right or remedy in connection with a subsequent event. The Grantor: (a) waives and renounces any and all redemption and exemption rights and the benefit of all valuation and appraisal privileges against the indebtedness evidenced hereby or by any extension or renewal hereof; (b) waives presentment and demand for payment, notices of nonpayment and of dishonor, protest of dishonor, and notice of protest; (c) waives all notices in connection with the delivery and acceptance hereof and all other notices in connection with the performance, default, or enforcement of the payment hereof or hereunder; (d) waives any and all lack of diligence and delays in the enforcement of the payment hereof; (e) agrees that the liability of the Grantee shall be unconditional and without regard to the liability of any other person or entity for the payment hereof and shall not in any manner be affected by any indulgence or forbearance granted or consented to by the Grantor with respect hereto; and (f) consent to any and all extensions of time, renewals, waivers, or modifications that may be granted by the Grantor with respect to the payment or other provisions hereof, and to the release of any security at any time given for the payment hereof, or any part thereof, with or without substitution, and to the release of any person or entity liable for the payment hereof.

25. **Miscellaneous.** The following miscellaneous terms and conditions shall also apply to this Revised Master Agreement:

a. This Revised Master Agreement may be executed in multiple counterpart originals, each of which, when fully executed, shall be deemed to have the same force and effect as an original.

b. The provisions of this Revised Master Agreement are for the benefit only of the Parties and their respective successors and assigns, and the Parties do not intend to create or to confer any benefits upon any persons, firms or entities not a party to this Revised Master Agreement, and no third party shall have the right to enforce the provisions hereof. Notwithstanding the immediately preceding sentence, City of Aurora shall be a third party beneficiary of this Revised Master Agreement.

c. This Revised Master Agreement and the rights and obligations of the Parties hereunder shall be governed by and construed in accordance with the laws of the State of Illinois, without regard to principles of conflicts of law.

d. This Revised Master Agreement may not be modified, amended or discharged, and no provision hereof may be waived, except by an instrument in writing and duly executed by an authorized signatory for the party

against whom enforcement of the amendment, modification, discharge or waiver is sought.

e. In the event that any one or more of the provisions of this Revised Master Agreement is for any reason held to be invalid or unenforceable, the remaining provisions of this Revised Master Agreement shall be unimpaired.

f. By this Revised Master Agreement, neither party is an agent for the other, nor does this Revised Master Agreement create a partnership or joint venture between the Parties.

g. The captions or headings in this Revised Master Agreement are strictly for convenience and shall not be considered in interpreting this Revised Master Agreement or as amplifying or limiting any of its contents.

h. The Parties hereby acknowledge that they have been represented by the same law firm in connection with the drafting and negotiations regarding this Revised Master Agreement. The Parties were notified of the potential and actual conflicts in connection with the joint representation. The Parties waived any potential and actual conflict and agreed to the joint representation.

i. The Parties acknowledge that all or portions of this Revised Master Agreement may be required to be disclosed by the Grantor in accordance with the Freedom of Information Act ("FOIA"). However, the Parties understand and realize that there is information and documents associated with the Revised Master Agreement and its exhibits that include trade secrets or commercial or financial information being furnished under a claim that they are proprietary, privileged or confidential, and that disclosure of the trade secrets or commercial or financial information would cause competitive harm to the Parties.

j. In the event that Grantee applies for grant funding or other funding sources, Grantor will provide its support to Grantee to assist Grantee in obtaining said funding. ~~The Grantor will consider, but will not be obligated, shall to co-sign guarantee the repayment of any grant commitments or loan instruments up to a total principle value of \$500,000 provided the terms and conditions are reviewed and approved by the Chief Financial Officer of the Grantor. outside financing for which the Grantee applies. In the event that Grantor guarantees any loan instrument, the Grantee agrees to provide the Grantor any and all statements and documents related to the repayment of the loan within 30 days of receipt of such statement or document.~~

k. In the event that Grantee secures sufficient grant funding from its application to the State of Illinois pending "Gigabit Challenge," or similar grant funding, the Parties shall re-negotiate the payment under the IRU Schedules as set forth in Exhibit A.



I. To the extent that Grantee encounters bad debt as a result of nonpayment from its End Users, if Grantee writes off this bad debt after it demonstrates actions to collect this debt to Grantor, then, after consultation between the Parties to determine the amount of debt to write off, Grantor will forgive payments due from Grantee.

26. **Entire Agreement.** This Revised Master Agreement comprises the entire agreement of the Parties with respect to the subject matter hereof. This Revised Master Agreement may be modified, changed or amended only by an express written agreement signed by the Parties. The failure of any party to insist upon strict adherence to any provision of this Revised Master Agreement on any occasion shall not be considered a waiver of any right thereafter to insist upon strict adherence to that provision or any other provision of this Revised Master Agreement.

IN WITNESS WHEREOF, the Parties hereto set their hand and seal.

**City of Aurora (Grantor)**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**On Light Aurora (Grantee)**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## ADDENDUM 1

THIS ADDENDUM TO THE MAY 8, 2012 MASTER AGREEMENT (hereinafter "Addendum") is made as of this ———27th day of August, 2013, (the "Effective Date") by and between the City of Aurora, an Illinois municipality ("Grantor") and OnLight Aurora, an Illinois not-for-profit corporation ("Grantee") (collectively the "Parties").

### WITNESSETH:

WHEREAS, One year ago OnLight Aurora was tasked with initiating, managing and promoting access to the extra capacity purposely built into the Grantor's fiber network for the benefit of schools, hospitals and businesses seeking an upgrade to their communications abilities; and

WHEREAS, in the intervening year, OnLight has begun to connect the schools in Aurora, and is planning connections to the full spectrum of those entities it expects to serve, however the need for a lower cost alternative connection methodology has arisen; and

WHEREAS, lower bandwidth internet users require an alternative through radio point-to-point technology with one end of a connection at the fiber network and the other transmitted through radio link, and by allowing this type of lateral connection, upfront costs can be reduced by up to 40% with such users seeing no difference in their availability or bandwidth; and

WHEREAS, enabling such radio connections will require direct, unobstructed line-of-sight between the two locations, and one of the best ways to facilitate this is through use of a communications tower, which enables such communication to take place above the tree line and other building obstructions, as well as over long distances; and

WHEREAS, the provision for such towers and other smaller antennae on existing structures will require Grantor to provide access to Grantee for the addition of such antennae and towers, additionally, Grantor may need to assist Grantee in the obtainment of rights-of-way in order to provide for such additional communication facilities; and

WHEREAS, also in the intervening year, OnLight has applied to the IRS for a designation as a 501 (c) (3) in order to receive grants, and is currently awaiting that decision, while at the same time Grantee has established OnLight L3C, a limited profit subsidiary solely owned by Grantee, and established with the purpose of allowing for social entrepreneurship and limited profits, with all of any such limited profit going back to the not-for-profit Grantee, and therefore Grantee wishes to append the Agreement with Grantor to acknowledge these corporate structure changes.



NOW, THEREFORE, in consideration of the premises and the mutual agreements set forth herein, and in exchange for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties agree to this Addendum to the May 8, 2012 Master Agreement, as follows:

1. Addendum. The Parties agree that the terms of this Addendum shall amend the May 8, 2012 Master Agreement as indicated below, and the provisions of this Addendum shall override any conflicting provision contained within the Master Agreement, while any provision not specifically amended in this Addendum shall remain in full force and effect.

2. Additional Parties. The Parties acknowledge and agree that any subsidiary entities lawfully created by Grantee and approved in advance by the Mayor on behalf of Grantor, shall be considered Additional Parties to this Addendum and to the Master Agreement, with all of the attendant rights, duties and obligations of the original Parties thereto.

3. Purpose and Scope. The Parties wish to add to the Aurora Network described in the Master Agreement, by both expanding the miles of fiber contemplated in the Master Agreement, and by adding certain towers, antennae and structures that may already be in existence, or that may be built/constructed by Grantor or Grantee in the future. The Parties intend that all of these may be added to expand the Aurora Network and provide alternative connectivity for End Users. Therefore the Parties agree that, throughout the provisions of the Master Agreement, such additional miles of fiber, conduit, antennae, towers and structures shall be construed to be a part of the Aurora Network even though not explicitly set forth within the Master Agreement, with all of the same attendant rights, duties and obligations as set forth in the Master Agreement. The Parties shall agree in advance with regard to the location of any such towers, antennae and structures, and the Grantee agrees to submit through the City of Aurora approval process for location of same within the City of Aurora. The Grantor agrees to assist Grantee in obtaining any required permits, rights-of-way, easements, intergovernmental agreements or other required approvals for location of such towers and antennae to become part of the Aurora Network, and where said permits/approvals are within the complete control of the City of Aurora, the City will not charge Grantee for such permits/approvals. Where Grantee will utilize any existing City of Aurora equipment, it may do so without charge from Grantor.

4. Interconnection and/or New Construction Work. In addition to the existing provisions contained in the Master Agreement, the Parties agree that either the Grantor or the Grantee may charge End Users with all, or a portion of, the costs of any such towers and antennae, as well as the Fiber installation, through direct billing of such End Users.

**EXHIBIT A**

FORM OF FIBER ROUTE DESIGNATION SCHEDULE

THIS FIBER ROUTE DESIGNATION SCHEDULE ("IRU Schedule"), dated as of the date set forth below, by and between the City of Aurora, an Illinois municipality ("Grantor"), and On Light Aurora, ~~an Illinois not-for-profit corporation a 501(C)3 organization and On Light L3C, a limited liability corporation subsidiary to On Light Aurora~~ ("Grantee") (the Grantor and Grantee sometimes referred to as "Party" or collectively referred to as the "Parties").

The Parties hereby agree that all terms and conditions contained in that certain Master Agreement for Indefeasible Right of Use of Dark Fibers between Grantor and Grantee, dated \_\_\_\_\_, May 8, 2012 (the "Master Agreement") and any revisions or addendums subsequently approved, are hereby incorporated in and made part of this IRU Schedule as though fully set forth herein-. All capitalized terms not otherwise defined in this IRU Schedule shall have the meanings set forth in the Master Agreement. This IRU Schedule is subject to the terms and conditions of the Master Agreement,. In the event that any term or condition contained in this IRU Schedule conflicts with any term or condition contained in the Master Agreement, the terms and conditions of the Master Agreement shall control. The Parties hereby agree as follows:

Description of Route: The route shall consist of those Fibers, building entrances, interconnection points, and lateral routes owned by the Grantor generally located within the Aurora Network.

1. Effective Date: This Schedule shall become effective on the Acceptance Date.
2. Number of Fibers: The route consists of \_\_\_\_\_ strands of fiber across the entire Aurora Network.
3. Type of Fiber: Single Mode
4. Interconnection and/or New Construction Costs: The Grantee shall pay for the following interconnection and new construction costs as agreed to by the Parties:  
\_\_\_\_\_  
\_\_\_\_\_.

5. IRU Fee: The Grantee shall not be required to pay any IRU fee to Grantor during the first six (6) months of use of the Fiber, after which time the Grantee will pay the Grantor 10% of the revenue received by the Grantee from the use of said Fiber shall pay the Grantor a fee of up to Five Hundred and No/100 Dollars (\$500) per Fiber, per month, ~~for each Fiber~~ subject to the IRU Schedule. Should the Grantee lease Dark Fiber to a customer for a one-time fee, the Grantor will

instead receive a one-time payment in the amount of 20% of the revenue generated from that fee.

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5-6. Expiration Date: This Schedule shall expire ~~on [NEEDED]~~ upon expiration of the Master Agreement.

**City of Aurora (Grantor)**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**On Light Aurora (Grantee)**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## EXHIBIT B

### ACCEPTANCE TESTING STANDARDS AND SPECIFICATIONS

1. Splicing. All fiber splicing shall be accomplished by fusion splicing. Fusion splicers shall be capable of (a) performing splices of 0.2 dB loss or less for 95% of the splices performed and (b) measuring splice loss and recording or downloading measurement data and splice location data to electronic media, such as floppy disks or Windows-based software. Fiber optic cable shall be prepared in accordance with the cable manufacturer's and splice enclosure manufacturer's recommendations.
  
2. Testing.
  - 2.1 Test Equipment. Testing shall be accomplished using an industry-approved optical time domain reflectometer ("OTDR") with operating wavelengths of 1310 nm or 1550 nm.
  
  - 2.2 OTDR Test Procedures.
    - (a) The OTDR shall have the specific location and identification data inputted for the link and fiber trace for reviewing and archiving at a later date.
  
    - (b) Each fiber shall be bi-directionally tested at 1550 nm.
  
    - (c) The bi-directional splice loss average shall not exceed 0.20 dB. Each splice shall be considered individually.
  
    - (d) The OTDR bi-directional test results shall be forwarded to Grantee.
  
  - 2.3 Installed Span Loss. The installed span loss of the Grantee's Fibers shall be a bi-directional average of 0.4 dB/km or less, as measured using an industry-accepted optical loss test set at 1550 nm. The installed span loss includes the inherent attenuation of the glass, the backbone splice losses, the pigtail splice losses, the inherent loss in the pigtails, and any connector losses.
  
  - 2.4 Optical Return Loss. Optical return loss shall be recorded on the testing documentation for information only.
  
3. Fiber Specifications. Unless otherwise specified in Exhibit A, all fiber shall be single mode fiber SMF-28, SMF-28e, Non-Zero Dispersion-Shifted, MetroCor fiber, or equivalent.

## EXHIBIT C

### MAINTENANCE

Grantor, whether through its affiliates or agents, shall have the following obligations during the Term of the Master Agreement.

1. Maintenance. Grantor shall perform the following maintenance:
  - 1.1 Routine Maintenance. Grantor shall perform routine maintenance and repair of the Grantee's fibers ("Routine Maintenance"). Routine Maintenance shall consist of only the following activities:
    - (a) Maintenance of the fiber optic cable integrity with periodic inspections; and
    - (b) Responding to all applicable "Call-Before-You-Dig" program calls and all required and related cable locates.
  - 1.2 Non-Routine Maintenance. Grantor shall perform non-routine maintenance and repair of the Grantee's fibers that is not included as Routine Maintenance ("Non-Routine Maintenance", and together with Routine Maintenance, "Maintenance"). Non-Routine Maintenance shall consist of:
    - (a) "Emergency Non-Routine Maintenance" in response to an alarm identification by Grantee, Grantor or any third party of any failure, interruption or impairment in the operation of any of the Grantee's Fibers, or any event imminently likely to cause the failure, interruption or impairment in the operation of any of the Grantee's Fibers;
    - (b) "Non-Emergency Non-Routine Maintenance" in response to any potential service-affecting situation to prevent any failure, interruption or impairment in the operation of any of the Grantee's Fibers; and
    - (c) "Non-Emergency Non-Routine Cable Relocation" in response to requests by third parties to relocate existing sections of fiber optic cable in support of construction projects including but not limited to road construction, building installations, environmental considerations, etc.

2. Telecom Network Center.
  - 2.1 Generally. The Telecom Network Center (“TNC”) shall be operated and maintained 24 hours a day, 7 days a week, by trained and qualified personnel. Grantor shall have maintenance personnel available for dispatch 24 hours a day, 7 days a week.
  - 2.2 Telephone Number. Grantor shall maintain a telephone number to contact personnel at the TNC. The phone number is (630) 256.4621.
  - 2.3 Dispatch of Personnel. Grantor’s TNC personnel shall dispatch maintenance and repair personnel to handle and repair problems detected in the Grantee’s Fibers (a) through Grantor’s remote surveillance equipment, (b) upon notification by Grantee to Grantor or (c) upon notification by a third party. Grantor shall have its first maintenance employee at the site requiring Emergency Non-Routine Maintenance activity within 8 hours and will make best efforts to facilitate the repairs.
3. Cooperation and Coordination.
  - 3.1 Access by Grantee. Grantee is granted access to the Fibers at the demarcation points noted in the IRU Schedules to the Master Agreement or at points subsequently agreed upon by Grantor in writing.
  - 3.2 Standard of Care. In performing its services hereunder, Grantor shall take workmanlike care to prevent, to the extent feasible, impairment to the signal continuity and performance of the Grantee’s Fibers.
  - 3.3 Cooperation. Grantor shall reasonably cooperate with Grantee in sharing information and analyzing the disturbances regarding cable or fibers. If any Maintenance requires a traffic roll or reconfiguration involving cable, fiber, electronic equipment or regeneration or other facilities of Grantee, then Grantee shall, at Grantor’s reasonable request, make Grantee’s personnel available at Grantee’s sole cost and expense in order to accomplish such maintenance. Such personnel shall coordinate and cooperate with Grantor in performing such Maintenance. Grantee’s personnel shall satisfy all requirements imposed by the underlying property rights owner and by Grantor’s practices and procedures as in effect from time to time regarding access to the relevant portions of the fiber route.
  - 3.4 Notice. Grantor shall notify Grantee at least (10) ten business days in advance of any Routine Maintenance needed and as soon as possible after becoming aware of the need for Non-Routine Maintenance. Grantor shall not be responsible for monitoring the performance or operation of the Grantee’s fibers. Subject to applicable contractual, underlying real property and other third-party limitations and restrictions imposed by underlying property rights owners, Grantee shall have the right to be

present during the performance of any Maintenance so long as this requirement does not interfere with Grantor's ability to perform its obligations under the Master Agreement. Grantee's personnel shall satisfy all requirements imposed by the underlying property rights owner and by Grantor's practices and procedures as in effect from time to time regarding access to the relevant portions of the Route. If Routine Maintenance is canceled or delayed for whatever reason as previously notified, Grantor shall notify Grantee at Grantor's earliest opportunity, and may reschedule such Routine Maintenance on at least five (5) business days notice or earlier if agreed upon by the Parties.

4. Facilities. Grantee shall be solely responsible for providing and paying for any and all maintenance of all Grantee's equipment, none of which is included in the maintenance services to be provided hereunder.
5. Cable/Fibers Maintenance Procedures. Grantor shall perform appropriate Routine Maintenance on the Fibers in accordance with Grantor's then-current preventive maintenance procedures, which shall not substantially deviate from standard industry practice.
6. Routine Maintenance Periods. Routine Maintenance that is reasonably expected to produce any signal discontinuity shall be coordinated between the Parties.
7. Restoration.
  - 7.1 Outages. Grantor shall respond to any event giving rise to the need for Non-Routine Maintenance (in any event, an "Outage") as quickly as possible (allowing for delays caused by a Force Majeure event) in accordance with the procedures set forth herein. The customer acknowledges and understands that parts of the Aurora Network are located in electric utility company power space, which space is under control of said electric utility company. As such, during time of utility company electrical emergency and restoration, the fiber optic system may become subordinate to that type of activity. The repair activity shall restore service as quickly as possible and such activity may include a temporary repair if determined to be appropriate. Permanent repairs will take place as soon as practical after the temporary repair is complete.
  - 7.2 Equipment and Materials. Grantor's representatives that are responsible for initial restoration of a cut cable shall carry on their vehicles the typically appropriate equipment that would enable a temporary splice, with the objective of restoring operating capability in as little time as possible. Grantor shall maintain and supply an inventory of spare cable in storage facilities supplied and maintained by Grantor at strategic locations to facilitate timely restoration.
  - 7.3 Cut Fibers. When restoring a cut cable in the Aurora Network, the parties

shall work together to restore all traffic as quickly as possible. Grantor, promptly upon arriving on the site of the cut, shall determine the course of action to be taken to restore the cable and shall begin restoration efforts. Grantor shall splice fibers in the manner that it determines to be the most appropriate in its reasonable judgment: provided that operating fibers in all buffer tubes, ribbons or fiber bundles shall have priority over any non-operating fibers in order to allow transmission systems to come back on line.

- 7.4 Repair. Grantor shall maintain sufficient communications capability with Grantee during any Emergency Non-Routine Maintenance in order to provide coordination during the repair process. In accordance with Section 7.1 - Outages, when correcting or repairing cable discontinuity or damage, including, without limitation, Emergency Non-Routine Maintenance, Grantor shall use reasonable effort to repair the traffic-affecting discontinuity within twenty-four (24) hours after the occurrence of such event. This may require the use of some type of mechanical splice to complete the temporary restoration. In such event, within twenty-four (24) hours after completion of any such Emergency Non-Routine Maintenance, Grantor shall commence its planning for permanent repair, and thereafter shall promptly notify Grantee of such plans, and shall implement such permanent repair within an appropriate time thereafter. Restoration of open fibers on fiber strands not immediately required for service shall be completed on a mutually agreed-upon schedule. If the fiber is required for immediate service, the repair shall be scheduled for the next available Routine Maintenance period.
- 7.5 Splicing. In performing permanent repairs, Grantor shall comply with the splicing specifications as set forth in Exhibit B. Grantor shall provide to Grantee any modifications to these specifications as may be necessary or appropriate in any particular instance.
8. Grantor Charges to Grantee for Support. The Grantor shall provide Internet protocol numbering and management, design and implementation assistance and other miscellaneous technology staff support to the Grantee for a period of two (2) years from the Effective Date. Grantee shall pay to Grantor the amount of Eighty Thousand and No/100 Dollars (\$80,000) per year, payable on a monthly basis (the "Support Fee"). However, for each month during the first two (2) years after the Anniversary Date in which Grantee does not receive Twenty-Five Thousand and No/100 Dollars (\$25,000) in revenue from its End Users, this monthly Support Fee shall be waived. In no event shall the Support Fee continue beyond the second anniversary of the May 8, 2012 Effective Date.



## EXHIBIT D

### NOTICES

1. To Grantee:

On Light Aurora  
Attn: Peter Lynch, President  
44 East Downer Place  
Aurora, IL 60507

Facsimile: (630) 256-3479  
E-Mail: [president@onlightaurora.com](mailto:president@onlightaurora.com)

2. To Grantor:

City of Aurora  
Attn: City Clerk  
44 East Downer Place  
Aurora, IL 60507

Facsimile: (630) 256-3079  
E-Mail: [evenheff@aurora-il.org](mailto:evenheff@aurora-il.org)[wmccambridge@aurora-il.org](mailto:wmccambridge@aurora-il.org)

With copy to:  
City of Aurora  
Attn: Corporation Counsel  
44 East Downer Place  
Aurora, IL 60507

Facsimile: (630) 256-3069  
E-Mail: [aweingartz@aurora-il.org](mailto:aweingartz@aurora-il.org)