



# County of Santa Cruz

0549

## COUNTY ADMINISTRATIVE OFFICE

701 OCEAN STREET, SUITE 520, SANTA CRUZ, CA 95060-4073

(831) 454-2100 FAX: (831) 454-3420 TDD: (831) 454-2123

SUSAN MAURIELLO, J.D., COUNTY ADMINISTRATIVE OFFICER

January 15, 2014

Agenda: January 28, 2014

BOARD OF SUPERVISORS  
County of Santa Cruz  
701 Ocean Street  
Santa Cruz, CA 95060

### **UPDATE ON IMPLEMENTING RECOMMENDED ACTIONS TO EXPAND BROADBAND IN SANTA CRUZ COUNTY**

Dear Members of the Board,

On November 5, 2013, your Board directed staff to return on today's agenda with an update on implementing recommended actions to expand broadband in Santa Cruz County. Staff in the Information Services, Planning and Public Works Departments continue to work on administrative and planning initiatives that could lead to greater investment in broadband infrastructure in the County. This letter and the attached report provided an update on their efforts.

Information Services staff has worked with Public Works staff to draft conduit specifications, a template Master Lease Agreement and a "dig once" ordinance to facilitate the deployment of broadband infrastructure. Example specifications, agreements and ordinances from other jurisdictions were used as guides in determining the best approach for the County of Santa Cruz. Information Services and County Counsel were also consulted and provided their input. The attached report further discusses these items and provides drafts and a proposed ordinance for your Board's consideration.

In addition, Planning is working on proposed changes to County regulations to remove any requirement for broadband infrastructure within the public right of way to obtain a discretionary land use permit and to streamline the application process and comply with the 2006 Digital Infrastructure and Video Competition Act. Proposed amendments to the Santa Cruz County Code will require CEQA review and a Planning Commission public hearing and recommendation before they are brought to the Board. Planning intends to provide more information on these amendments in March 2014. At that time, Planning will also report on the status of establishing a Broadband Master Plan and the outcome of meetings with broadband providers to discuss economic vitality and development opportunities in the County.

It is therefore RECOMMENDED that your Board take the following actions:

1. Accept and file this update on implementation of the broadband recommendations.
2. Direct Public Works to finalize and implement the attached conduit specifications for future construction projects in the County of Santa Cruz.
3. Direct Public Works to finalize the attached Master Lease Agreement allowing the installation of telecommunications equipment on County assets and develop a rate structure and Facilities Lease Agreement to use in the implementation of specific installations.
4. Adopt in concept the attached ordinance adding Chapter 12.25 to the Santa Cruz County Code to facilitate the installation and upgrades of telecommunications infrastructure in or adjacent to County rights of way, and direct the Clerk of the Board to place the ordinance on the next available agenda for final consideration.
5. Direct Planning to report on the status of amendments to land use regulations and efforts to establish a Broadband Master Plan, as well as the outcome of meetings with broadband providers, on or before March 18, 2014.

Very truly yours,



SUSAN A. MAURIELLO  
County Administrative Officer

Attachments

cc: Information Services Director  
Planning Director  
Public Works Director

# Update on Implementing Recommended Actions to Expand Broadband

---

Prepared for the Board of Supervisors

1/15/2014

**Prior Reports:**  
**September 10, 2013**  
**November 5, 2013**

## Table of Contents

0552

<b>Section 1: Information Services .....</b>	<b>2</b>
<b>Rec. 1: Conduit Specifications .....</b>	<b>2</b>
<b>Rec. 2: Master Lease Agreements .....</b>	<b>2</b>
<b>Section 2: Planning .....</b>	<b>3</b>
<b>Rec. 3: Encroachment Permits .....</b>	<b>3</b>
<b>Rec. 4: Application Process and Costs .....</b>	<b>3</b>
<b>Rec. 5: County Regulations .....</b>	<b>4</b>
<b>Rec. 6: Economic Development.....</b>	<b>4</b>
<b>Section 3: Public Works .....</b>	<b>5</b>
<b>Rec. 7: Utility Companies .....</b>	<b>5</b>
<b>Rec. 8: Dig Once Ordinance.....</b>	<b>5</b>
<b>Attachment A: Draft Conduit Specifications .....</b>	<b>6</b>
<b>Attachment B: Draft Master Lease Agreement.....</b>	<b>8</b>
<b>Attachment C: Proposed Telecommunications Infrastructure</b>	
<b>Ordinance.....</b>	<b>36</b>

## Section 1: Information Services

**Summary:** While providers have done extensive build outs of the County's fiber backbone, there is still room for improvement. Many areas of the County are limited to a single provider. To address this issue, the County could make it easier for the Internet Service Providers to work through the regulatory and permitting process, as discussed by Planning.

**Rec. 1:** Finalize conduit specifications in collaboration with Public Works and broadband providers.

The Information Services Department has worked with the Department of Public Works to develop conduit specifications for future construction projects in the County of Santa Cruz. After review of proposed specifications from other public and private entities, staff determined the best approach is to develop a written specification appropriate for vehicle impacts over the lifetime of the conduit.

In early October, Public Work Directors from the cities of Capitola, Santa Cruz, Scotts Valley and Watsonville and the County met and discussed the topic of conduit specifications and construction with a focus on the need to have a consistent countywide approach. Draft specifications (see Attachment A) were presented and reviewed by the Department of Public Works and Information Services Department. In December 2013, the regional group of Public Works Directors held a follow-up meeting to further this effort.

**Rec. 2:** Work with County Counsel and Public Works to establish master lease agreements that allow the installation of broadband infrastructure on utility poles, light standards and County assets.

The County currently lacks a template Master Lease Agreement and Facilities Lease Agreement for the installation of broadband infrastructure on utility poles, light standards or property. The Department of Public Works, which includes the County's Real Property Division, took the lead and drafted a Master Lease that addresses appropriate fee structures, agreement duration and renewal terms, access and responsibilities of the County and broadband providers, co-location rights and the legal language to protect County-owned infrastructure (see Attachment B). Several public entities, including the City of San Jose, have developed similar agreements, and they were reviewed as examples. The draft Master Lease has been reviewed by Information Services and County Counsel. Upon approval of the Master Lease by your Board, a rate structure and Facilities Lease to use in the implementation of specific installations will be developed and returned to your Board for approval. The County may find it useful to contract with a consultant as part of this process because it is a specialized area.

## Section 2: Planning

**Summary:** Efforts to expand broadband would benefit businesses, residents and students in Santa Cruz County. To assist providers in deploying new and improved infrastructure, the County could support a number of changes to its regulatory and permitting processes.

**Rec. 3:** Allow the installation of equipment within public right of ways, subject only to “time, place and manner” of access, through the County’s encroachment permit process.

The Department of Public Works already evaluates projects within the public right of way in this manner through the revocable encroachment permit process. Existing land use regulations require a land use permit for certain broadband facilities (i.e., boxes, cabinets, wireless facilities) within public rights of way, as well as on private property. The Planning Department is working on proposed amendments to the Zoning Ordinance in order to remove any requirement for a discretionary land use permit for facilities within public rights of way. These changes will take into account the Board’s interest in maintaining a public process. In addition, fees for any building permits that are required will remain in place. The Planning Department will provide more information on these amendments in March 2014, and the proposed ordinance, after CEQA review and a Planning Commission public hearing and recommendation, will be ready for Board consideration in June 2014.

**Rec. 4:** Streamline the application process and ensure permit fees are based on actual costs.

The Planning Department reviewed its fees, as part of the County Unified Fee Schedule update in December 2013, and determined that discretionary planning permits for broadband activity are already charged at cost. This practice will continue per your Board’s direction.

The Planning Department is working on proposed amendments to land use regulations in order to streamline the application process, include new definitions as needed, and reflect compliance with the 2006 Digital Infrastructure and Video Competition Act (DIVCA). The Planning Department will provide more information on these amendments in March 2014, and the proposed ordinance, after CEQA review and a Planning Commission public hearing and recommendation, will be ready for Board consideration in June 2014.

**Rec. 5: Draft amendments to County regulations that facilitate the deployment of broadband technology.**

The Planning Department is working on proposed amendments to land use regulations in order to remove any requirement for broadband infrastructure within the public right of way to obtain a discretionary land use permit. The proposed amendments to regulations will also streamline the application process, include new definitions as needed, and reflect compliance with DIVCA. The Planning Department will provide more information on these amendments in March 2014, and the proposed ordinance, after CEQA review and a Planning Commission public hearing and recommendation, will be ready for Board consideration in June 2014.

The Planning Department continues to support efforts of the Department of Public Works and the Information Services Department to present new specifications for broadband deployment, including methods and conduit requirements. The Planning Department will also be present, as requested, at quarterly meetings that the Department of Public Works holds with service providers, and will assist Public Works as needed with its efforts to create a yearly coordination letter to all utility companies and service providers.

**Rec. 6: Work with broadband providers on economic development opportunities.**

The Planning Department's Economic Development division will coordinate meetings three times a year with all service providers to provide education and information regarding new projects and planning efforts that are being undertaken to support economic vitality and development projects. The first meetings are scheduled to take place in February 2014.

The Planning Department will ensure that the proposed Economic Vitality Strategy includes goals, policies and actions supportive of the broad deployment and public access to broadband technology. In addition, areas identified as opportunities in the County's Economic Vitality Strategy planning process will be incorporated into a Broadband Master Plan per your Board's direction. The Planning Department will work with the Information Services Department on establishing this plan and reporting back to the Board in March 2014.

### Section 3: Public Works

**Summary:** Broadband infrastructure could be added to a number of utility improvement projects in the County based on available funding. A coordinated approach to installing a County-wide communication network could be accomplished by establishing a “dig once” ordinance similar to proposed legislation in the City and County of San Francisco.

**Rec. 7:** Work with utility companies on their financing and installation of conduit as part of County projects.

The Department of Public Works has had a number of meetings with local utility companies on these issues, and progress is being made. We will continue these efforts and keep the Board informed of all developments.

**Rec. 8:** Draft an ordinance based on the San Francisco “dig once” model for the County of Santa Cruz.

The Department of Public Works carefully reviewed San Francisco's proposed ordinance in addition to a number of others, both within and outside California. We adapted the best of these to meet the County's unique needs and used flexible language to allow our standards to be updated over time without the need for a new ordinance. The Department of Public Works prepared an ordinance to implement your Board's direction to facilitate installation and upgrades of telecommunications infrastructure in or adjacent to County rights of way (see Attachment C).



# Attachment A

---

## Draft Conduit Specifications

## INSTALLATION REQUIREMENTS - CONDUIT FOR FIBER OPTIC CABLE

**Fiber Optic Cable Conduit:** Cables shall be run in conduit, except overhead and temporary installations, and where cables are run inside poles. Conduit and conduit fittings shall be Underwriter's Laboratory Inc. (UL) or Electrical Testing Laboratory (ETL) listed, and shall be UV-rated where located aboveground. Conduit shall be used to protect the cable from the top of the conduit riser to the span messenger where the cable is to be lashed. Ensure that the conduit fill ratio (outer cable diameter to inner conduit/duct diameter) does not exceed 50%. Install the conduit system so the fiber optic cable maintains a minimum bend radius of 20 times the cable diameter.

Conduit shall be laid to a depth of not less than 18 inches below grade in concrete sidewalk areas and not less than 30 inches below finished grade in all other areas. Excavation and backfill within the roadway shall conform to Figure EP-1 of the Design Criteria. New conduit shall not pass through foundations for standards. Existing substructure may require fiber placement in roadway.

Installation of conduit shall be as shown in the plans and in conformance with the National Electric Code (NEC). Provide all fittings and incidental materials necessary to construct a complete installation. Use approved methods for connecting inner duct or conduit within or between plowed portions, trenched portions, and bored portions.

**Fiber Optic Cable Locate Wire:** Locate wire shall be installed in the trench or bore with all underground conduits. Locate wire shall be installed above the conduit but not more than 3 inches. Do not install locate wire within a conduit containing fiber optic cable.

Terminate locate wires at the first and last pull boxes in the conduit run. Ensure that wire termination occurs only at the top of a pull box. Core-drill the access point wall at the conduit diameter and at the location indicated in the plans. After placement, apply a non-shrink grout or other acceptable material around the conduit/locate wire to seal the hole.

Make locate wire splices in a flush grade-level pull box. Ensure that locate wire splices at the pull box meet NEC requirements. Ensure that locate wire splices include a mechanical crimp connection with a butt sleeve, an oxide-preventing aerosol lacquer, mastic electrical splicing tape, and standard electrical tape using methods and materials approved by the Engineer. Perform continuity tests and insulation resistance tests on all locate wires. At the completion of the installation, provide the Engineer with as-built drawings that document all conduit and splice locations.

### **Payment and Measurement**

Payment for conduit placed in the ground or used on bridge decks will be based on the horizontal path of the installed conduit as measured in a straight line between the centers of pull boxes, cabinets, poles, etc. No allowance will be made for sweeps or vertical distances above or below the ground or the bridge deck.

The contract price paid per foot for furnishing and placing Conduit shall include full compensation for furnishing all labor, materials, tools, equipment and incidentals, and for doing all the work involved in furnishing and constructing the fiber optic cable conduit complete in place to the dimensions shown, including hardware, locate wire, testing, trenching, backfilling, and restoration as shown on the plans, as specified in the Standard Specifications, these special provisions, and as directed by the Engineer, and no additional compensation will be allowed therefor.

# Attachment B

---

## Draft Master Lease Agreement

***DRAFT***

**TELECOMMUNICATIONS EQUIPMENT**

**MASTER LEASE AGREEMENT**

**between**

**COUNTY OF SANTA CRUZ**

**and**

---

TABLE OF CONTENTS

0561

SECTION	PAGE
1. Master Lease .....	4
2. Facilities Lease .....	4
3. Use, Zoning and Access .....	4
4. Interference .....	6
5. Term .....	7
6. Rent .....	7
7. Telecommunications Equipment .....	9
8. Acceptance of County Facilities.....	11
9. Electric Service.....	11
10. Safety Requirements Pertaining to Telecommunications Equipment.....	11
11. Termination .....	12
12. Condemnation and Casualty.....	13
13. Taxes and Fees.....	13
14. Indemnity and Insurance .....	13
15. Limitation of Liability .....	14
16. Notices .....	14
17. Quiet Enjoyment, Title and Authority.....	15
18. Assignment and Subleasing.....	16
19. Waiver of Landlord's Lien.....	16
20. Default and Remedies.....	17

**21. Waiver of Relocation Assistance Benefits.....18**  
**22. General Provisions .....18**  
**23. Signature Page.....22**

**EXHIBITS**

**EXHIBIT A: FACILITY LEASE RATES .....23**  
**EXHIBIT B: INSURANCE.....24**

**MASTER LEASE AGREEMENT**  
**TELECOMMUNICATIONS EQUIPMENT**

THIS MASTER LEASE AGREEMENT ("Master Lease") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ ("Commencement Date"), between THE COUNTY OF SANTA CRUZ, a political subdivision of the State of California ("County"), and

\_\_\_\_\_  
("Lessee").

In consideration of the mutual covenants contained in this Master Lease and other good and valuable consideration, the receipt of which is hereby acknowledged, County and Lessee hereby agree as follows:

**1. Master Lease**

This Master Lease sets forth the general terms and conditions upon which County shall lease to Lessee a portion of certain towers, poles, conduit, buildings, rights of way and related facilities, equipment and structures ("County Facilities") owned by County for the installation, operation and maintenance of Lessee's Telecommunications Equipment, as defined in Section 3. This Master Lease does not provide for the use of any County Facility. The terms and conditions for use of specific County Facilities shall be set forth in a separate Facilities Lease Agreement. This Master Lease is not and shall not be deemed to be an exclusive agreement for the use of the County Facilities.

**2. Facilities Lease**

Upon the parties' mutual agreement for the use of specific County Facilities, the parties will execute a Facilities Lease Agreement ("Facilities Lease"), which shall be attached to this Master Lease and be deemed a part hereof. The Facilities Lease shall describe: a) the County Facilities and its location; b) the Lessee's Telecommunications Equipment, as defined in Section 3, and the method of installation on the County Facilities, c) the term and rent for use of the County Facilities, and d) other terms and conditions as the parties shall agree. In the event of a discrepancy or inconsistency between the terms and conditions of this Master Lease and the terms and conditions of the Facilities Lease, the terms and conditions of the Facilities Lease shall govern and control. Entering into this Master Lease does not obligate County or Lessee to enter into any Facilities Lease.

**3. Use, Permits, Zoning and Access**

**3.1 Permitted Use**

Lessee's use of the County Facilities shall be limited to the installation, operation and maintenance of antennas, cables, utility lines, computer equipment, batteries and emergency

backup generators, equipment cabinets and related equipment ("Telecommunications Equipment") owned by the Lessee for the transmission and reception of telecommunications. Lessee's use shall be lawful and in compliance with all federal, state and local laws, rules, regulations, orders or other governmental requirements applicable to the installation and use of Lessee's Telecommunications Equipment.

### **3.2 Permits; Zoning**

Lessee, at Lessee's expense, shall obtain all necessary licenses, construction permits, encroachment permits, zoning and land use approvals, or similar approvals ("Governmental Approvals") for the installation and operation of the Telecommunications Equipment on the County Facilities. Lessee's use of County Facilities under this Master Lease is entirely at Lessee's own risk. County does not warrant, represent, or guaranty the issuance of any Governmental Approvals. County agrees to reasonably cooperate with Lessee in obtaining such Governmental Approvals. Lessee shall provide to County copies of such licenses, permits, easements, zoning, land use or similar approvals needed for Lessee's installation, operation and maintenance of the Telecommunications Equipment on the County Facilities.

### **3.3 Access**

Where the County may legally convey such rights and for the term of a Facilities Lease, County hereby grants to Lessee a non-exclusive right of entry to access the the County Facilities ("Right of Entry"). The Right of Entry will be adequate to service the County Facilities and the Telecommunications Equipment applicable to any Facilities Lease. County agrees to reasonably cooperate with Lessee's efforts, at Lessee's expense, to obtain such easements and/or rights of entry as are needed for County Facilities where the County may not legally convey such rights.

Lessee shall be entitled access to the County Facilities between the hours of 6:00 a.m. and 6:00 p.m., seven (7) days per week. If an emergency repair is necessary, Lessee may be allowed reasonable access to the County Facilities between the hours of 6:00 p.m. and 6:00 a.m., provided that Lessee obtains the County Public Workers Director's or designee's permission prior to entry. The County shall provide Lessee with the phone number of the County's emergency contact ("Emergency Contact"), which number shall permit contact with the Emergency Contact, or his/her designate, twenty-four (24) hours per day.

Where the public has limited or no access to the County Facilities, Lessee agrees to give County reasonable notice prior to access to such County Facilities. Lessee will be responsible for notifying nearby property owners, users and residents in writing one week advance of any work which might be disruptive. Where the County Facilities are near or adjacent to residential property, Lessee will make reasonable accommodations to minimize disturbance to residents.

To the extent County has knowledge of any limitation or planned limitation on access to the County Facilities, County agrees to provide Lessee with written notice (in advance of such limitation to the extent possible) of any limitation on access, provided that in an emergency County shall not be obligated to provide such notice. County and Lessee agree to reasonably



cooperate with one another and with the other service providers to minimize any restricted access to the County Facilities.

#### **4. Interference**

##### **4.1. Interference by Lessee**

Lessee and its licensees, employees, invitees, contractors or agents shall not engage in any activity that interferes with access to and use of the County Facilities by County or County's other lessees ("Existing Tenants"). County agrees to notify Lessee of any Existing Tenants who has not yet installed, configured or operated Telecommunications Equipment prior to the date that the Facilities Lease is executed by Lessee. Lessee agrees that even if the Existing Tenant installs facilities to the County Facilities pursuant to its reserved rights under its Facilities Lease, and this occurs after Lessee's installation and interference results, then it is Lessee's responsibility to eliminate the interference in accordance with this Section.

##### **4.2 Interference by County**

Except as provided in paragraph 4.3 of this Section, County and its lessees, licensees, employees, invitees, contractors or agents shall not engage in any activity or use the County Facilities in any way that interferes with Lessee's authorized use of and access to the County Facilities.

##### **4.3 Resolving Interference**

Lessee agrees that if Lessee's use of the County Facilities causes interference with County's or Existing Tenant's use of the County Facilities, Lessee shall, at its expense, immediately discontinue use of the Telecommunications Equipment and County Facilities, or cease such activities causing such interference, or otherwise take action necessary to eliminate such interference. Lessee shall undertake such modification or other action immediately upon notice of the interference in the case of "Physical Interference" (i.e., materially preventing, hindering or impeding access and/or work by County or Existing Tenants) with County's use of the County Facilities, or within 60 days of notice in the case of any other interference (i.e., signal interference, such as RF or grounding interference) with County's or an Existing Tenant's use of the County Facilities. County shall attempt to notify Lessee of such interference in advance of the need to discontinue use or modify Lessee's activities if reasonably possible and if Lessee clearly identifies its Telecommunications Equipment and other equipment with its name and a telephone number of the appropriate contact person. County shall cooperate with Lessee in a reasonable manner and for a reasonable period of time to resolve such interference, provided such cooperation shall not include any obligation that materially interferes with County's use of the County Facilities. If Lessee is unable to eliminate such interference in a reasonable period of time to the satisfaction of County or such Existing Tenant, County may terminate the applicable Facilities Lease in accordance with Section 11.a herein. Lessee agrees that in the event of any interference with Lessee's use of the County Facilities caused by County or an Existing Tenant, Lessee shall cooperate with County or such Existing Tenant in a reasonable manner and for a reasonable period of time to mutually resolve such interference, provided such cooperation shall

not include any obligation which materially interferes with Lessee's reception and transmission of telecommunications. In the event that such interference cannot be mutually resolved within a reasonable period of time, Lessee may terminate the applicable Facilities Lease as provided in Section 11.a. herein. In the case of an emergency, County shall not be obligated to provide Lessee with any notice of work to be performed. Lessee shall be required to wait until all County's restoration activities have been completed prior to conducting any maintenance, repair, adjustment, or replacement work; such work to be performed in accordance with Section 10 herein.

## **5. Term**

### **5.1 Initial Term**

The term of this Master Lease shall commence on the Commencement Date set forth above, and shall continue for five (5) years, expiring at 11:59 p.m. on the fifth anniversary of said Commencement Date ("Expiration Date"), unless earlier terminated pursuant to the terms of this Master Lease.

### **5.2 Option to Extend**

Lessee shall have the option to extend the term of this Master Lease beyond the initial term described herein for one additional (5) year term on the same terms, covenants and conditions that are contained in this Master Lease; County shall increase the Rent during the option period in the manner provided in Section 6.2 below. Lessee shall exercise its option to extend this Master Lease, if at all, by providing County with written notice that Lessee intends to exercise its option no later than one hundred and eighty (180) days prior to the Expiration Date.

### **5.3 Holdover**

If Lessee shall remain in possession of the County Facilities at the Expiration Date, expiration of any option period, or any renewal term of a Facilities Lease, such possession shall be deemed a month-to-month tenancy under the same terms and conditions as this Master Lease and any Facilities Leases pertaining to such County Facilities, except that the Rent shall be increased as provided in Section 6 herein.

## **6. Rent**

### **6.1 Payment of Rent**

From and after the commencement of the term of each Facilities Lease, Lessee shall pay County, as rent, the agreed amount payable as rent for the County Facilities under such Facilities Lease ("Rent"). Exhibit "A" provides a schedule of Facility Lease Rates. Unless otherwise provided in the Facilities Lease, Rent shall be payable on the first day of each calendar year in advance at County's address specified in paragraph 6.3 of this Section. If the term of a Facilities Lease commences on other than the first day of a year, Rent shall be prorated, on a monthly basis, for

that first year for the number of full and partial months from the date of commencement of the Facilities Lease to the end of the year and such Rent shall be due within 30 days of the commencement date of the Facilities Lease. If a Facilities Lease is terminated on a day other than on the last day of a year, no Rent shall be refunded unless the termination is in accordance with Section 11.a, in which case the Rent shall be prorated as of the date of removal of the interfering Telecommunications Equipment from the County Facilities and the prepaid Rents shall be refunded to Lessee.

## **6.2 Adjustment of Rent**

Rent under a Facilities Lease shall automatically increase by four percent (4%) per year on the first day of each calendar year or as specified in the Facilities Lease.

## **6.3 Delivery of Rent Payments**

Lessee shall make one combined Rent payment for all Rent due under any Facilities Lease. Lessee shall include a schedule of Facilities Leases for which Rent is being paid with each combined Rent payment. Rent shall be made payable to the County of Santa Cruz, and shall be considered paid when delivered to:

COUNTY OF SANTA CRUZ  
 Department of Public Works  
 Attn: Real Property  
 701 Ocean Street, Room 410  
 Santa Cruz, CA 95060

County may, at any time, by written notice to Lessee, designate a different address to which Lessee shall deliver the Rent payments. Lessee is solely responsible for timely payment of Rent and County will not send rent invoices to Lessee.

## **6.4 Failure to Pay Rent; Late Charge**

- a) If Lessee fails to pay rent due hereunder at the time it is due and payable, such unpaid amounts shall bear interest at the rate of ten percent (10%) per year from the date due to the date of payment, computed on the basis of monthly compounding with actual days elapsed compared to a 360-day year. In addition to such interest, the late payment by Lessee of any rent due hereunder will cause County to incur certain costs and expenses not contemplated under this Lease, the exact amount of which costs being extremely difficult or impracticable to fix. Such costs and expenses will include, without limitation, administrative and collection costs, and processing and accounting expenses. Therefore, if any such rent is not received by County within ten (10) business days following the due date, Lessee shall immediately pay to County a late charge equal to five percent (5%) of such overdue amount. This late charge represents a reasonable estimate of such costs and expenses and is fair compensation to County for its loss caused by Lessee's nonpayment. Should Lessee pay said late charge but fail to pay contemporaneously therewith all

unpaid amounts of rent due hereunder, County's acceptance of this late charge shall not constitute a waiver of Lessee's default with respect to such nonpayment by Lessee nor prevent County from exercising all other rights and remedies available to County under this Lease or under law.

- b) In the event of a dispute between the parties as to the correct amount of rent owed by Lessee, County may accept any sum tendered by Lessee in payment thereof, without prejudice to County's claim as to the proper amount of rent owing. If it is later determined that Lessee has not paid the full amount of rent owing, the late charge specified herein shall apply only to that portion of the rent still due and payable from Lessee. Notwithstanding any provision of this Section to the contrary, however, County's Lease Administrator may waive any delinquency payment or late charge upon written application of Lessee.

## **7. Telecommunications Equipment**

### **7.1 Installation and Material Alteration**

Lessee shall have the right, at its cost and expense, to install, construct, operate and maintain the Telecommunications Equipment on the County Facilities. Lessee shall have the right to modify, supplement, replace or upgrade the Telecommunications Equipment as reasonably necessary at any time during the term of a Facilities Lease; provided, however, that Lessee shall not relocate the Telecommunications Equipment or any portion thereof anywhere on the County Facilities without prior written permission from County. Lessee shall ensure that such work does not adversely affect the structural integrity, maintenance, operations or use of the County Facilities or access thereto.

Prior to commencing any installation or material alteration of the County Facilities, Lessee shall provide County with Lessee's plans for installation or alteration for County's review and approval. Such approval shall be in writing and shall indicate County's determination that the proposed installation will meet County of Santa Cruz Design Criteria, and that the reliability, safety and structural integrity of the County Facilities has not been compromised. Lessee shall obtain all necessary permits or other legal authorization for all installations or material alterations.

Lessee's changing-out equipment with equipment of the same size, weight, frequency, and power, in the course of repairs or upgrading of the Telecommunications Equipment, shall not be a material alteration. Material alterations are defined as anything other than changing out equipment with equipment of the same size, weight, frequency, and power, in the course of repairs or upgrading of the Telecommunications Equipment including the co-location of equipment on the County Facilities.

Approval by a licensed engineer of any structural work to facilitate installation of the Lessee's Telecommunications Equipment shall be the responsibility and at the sole cost of the Lessee. All of Lessee's work shall be performed at Lessee's sole cost and expense, in a good and

workmanlike manner, and in accordance with applicable laws and ordinances and Section 10 herein.

For alterations that are deemed not a material alteration, in the event the County does not furnish the Lessee with written response within sixty (60) days of County's receipt of the plans, County will be deemed to have approved them. After completion of any installation or alteration work, Lessee will provide County with as-built drawings of the County Facilities if there has been any change from the plans previously reviewed by County.

## **7.2 Liens**

Lessee is not authorized to contract for or on behalf of County for work on, or the furnishing of materials to, any County Facilities, and Lessee shall keep any County Facilities free from any liens arising from any work performed, materials furnished or obligations incurred by or at the request of Lessee, and Lessee shall discharge of record by payment, bond or otherwise, within ten (10) days subsequent to the date of its receipt of notice thereof from County, any mechanic's, laborer's or similar lien filed against any County Facilities for work or materials claimed to have been furnished to Lessee. If any lien is filed against any County Facilities as a result of the acts or omissions of Lessee, or Lessee's employees, agents, or contractors and Lessee fails to discharge or bond any lien within such period, then, in addition to any other right or remedy, County may, at its election, discharge the lien by either paying the amount claimed to be due or obtaining the discharge by deposit with a court or a title company or by bonding. Lessee shall pay on demand any amount paid by County for the discharge or satisfaction of any lien, and all reasonable attorneys' fees and other legal expenses County incurred in defending any such action or in obtaining the discharge of such lien, together with all necessary disbursements in connection therewith.

## **7.3 Removal of Property**

The Telecommunications Equipment shall remain the exclusive property of Lessee, and Lessee shall have the right to remove all or any portion of the Telecommunications Equipment at any time during the term of this Master Lease or the term of the relevant Facilities Lease and following any termination of the Facilities Lease or of this Master Lease. Upon expiration or termination of each Facilities Lease, Lessee shall remove the Telecommunications Equipment and all property of Lessee from the County Facilities and shall return the County Facilities in good condition, reasonable wear and tear excepted. Lessee's failure to remove the Telecommunications Equipment and other property of Lessee within thirty (30) days after the expiration or earlier termination of the Facilities Lease pertaining to such property shall be considered an abandonment of such property and County may remove or dispose of the Telecommunications Equipment and other property of Lessee at Lessee's sole cost and expense in any lawful manner without liability to County.