

Honorable Mayor and Members  
of the City Council  
City Hall  
Torrance, California

Members of the Council

**SUBJECT: Community Development Department – Approve license agreement  
for existing private underground communication conduits**

### **RECOMMENDATION**

Recommendation of the Community Development Director that City Council approve renewal of a License Agreement with Phenomenex, Inc., previously held under two (2) License Agreements, for existing underground communication conduits for a period of ten (10) years.

### **FUNDING**

No funding required.

### **BACKGROUND AND ANALYSIS**

The City Council has previously approved and adopted License Agreements C97-026 and C2000-038 for two (2) underground communication conduits, which have expired.

Phenomenex, Inc. have two (2) existing License Agreements for underground communication conduits between its facilities at 2320 West 205<sup>th</sup> Street, 431 Amapola Avenue, and 2311 West 205<sup>th</sup> Street. The purpose is to integrate the telephone system they currently use to allow communication between their buildings through one telephone unit. To do this, it was necessary that a two (2) inch and three (3) inch conduits containing private communications lines be installed in the public right-of-way.

The existing two (2) and three (3) inches conduits have lengths of approximately 60 feet and 1100 feet respectively within the public right-of-way. Exhibit "A" (see attached License Agreement), shows the location of the existing conduits. The expired

License Agreements which had authorized the initial installation of these conduits will be combined into one (1) License Agreement.

A copy of the License Agreement with Phenomenex, Inc. is attached. The agreement requires a \$40,000 bond, a \$1,000,000 liability insurance, and a \$612 license fee, which covers the cost of processing the agreement. It exempts the City from financial or legal encumbrances associated with the construction and operation of communication conduits.

Respectfully submitted,

JEFFERY W. GIBSON  
Community Development Director

By:   
FELIPE SEGOVIA  
Building Regulations Administrator

CONCUR:

  
JEFFERY W. GIBSON  
Community Development Director

  
LeROY J. JACKSON  
City Manager

Attachments:

- A. License Agreement Renewal with Exhibit "A"
- B. Expired License Agreements C97-0026 and C2000-038

IGM/cks2444

## RENEWAL OF LICENSE AGREEMENT – PRIVATE LINES

**THIS LICENSE AGREEMENT**, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2011, in the City of Torrance, by and between the **CITY OF TORRANCE**, a municipal corporation, hereinafter called the “**CITY**” and **PHENOMENEX, INC.**, hereinafter called “**Grantee.**”

**WHEREAS**, License Agreements C2000-038 and C97-026 for private communication lines, which are expired, and

**WHEREAS**, Grantee and City desire to renew said license for a term of ten (10) years.

**WHEREAS**, said conduit is to be used for the installation of private communication lines beneath 205<sup>th</sup> Street and Amapola Avenue in the City of Torrance; and

**WHEREAS**, the location and general description of the conduit remains satisfactory to the Community Development Director.

**NOW, THEREFORE** the City hereby grants to Grantee a renewal subject to the terms listed in Articles I through XXI.

### ARTICLE 1 NATURE OF LICENSE

#### **A. Existing Conduits**

There is hereby granted to Phenomenex, Inc., a California corporation, hereinafter referred to as “**Grantee,**” for a term of ten (10) years from and after the effective date of this Agreement, subject however to all the limitations and restrictions herein contained, the right and privilege to erect, maintain, operate, repair, renew, remove, and abandon conduit in, under, along, and across the public streets, highways, and alleys (hereinafter collectively referred to as “**streets**”) in the City of Torrance as described and shown on Exhibit A, attached hereto and made a part hereof. If at any time during the Agreement the Grantee no longer has ownership or lease rights to either parcel, said Agreement shall be terminated.

#### **B. Appurtenances**

The Grantee shall have the right to operate, maintain, repair or replace such fiber optic cable, conduit, and other appurtenances (hereinafter for convenience collectively referred to as “**appurtenances**”) as may be necessary or convenient for the proper maintenance and operation of the fiber optic system under this License. Said appurtenances shall be kept flush with the surface of the streets and so located as to conform to any order of the Community Development Director in regard thereto and not to interfere with the use of the street for travel. The Grantee shall have the right, subject to such ordinance, rules, or regulations as are now or may hereafter be in force, to make all necessary excavations in said streets for the repair of said conduit and appurtenances.

**ARTICLE 2**  
**MAINTENANCE OF CONDUIT**

**A. Hindrance to Traffic**

So far as is practicable, the work of maintaining the said conduit shall be conducted with the least possible hindrance to the use of the streets for purposes of travel.

**B. Replacement**

Replacement of conduit and appurtenances and all other facilities necessary for the installation, operation, and maintenance shall be laid and maintained only pursuant to permit issued by the Community Development Director. All such installations shall be reviewed by the Community Development Director as to the most desirable location across 205<sup>th</sup> Street and Amapola Avenue and his decision shall be final and binding on the Grantee.

**ARTICLE 3**  
**CONFORMANCE REQUIREMENTS; RECORDS AND PERIODIC REPORTS**

**A. Conformance with City Ordinances and Permits**

The conduit and appurtenances shall be operated, maintained, replaced or repaired in conformity with all ordinances, rules or regulations in effect at the time of granting of this License, or as prescribed by the City Council, and in accordance with the terms and conditions of any permit issued by the Community Development Director.

**B. Records and Periodic Reports**

At all reasonable times, Grantee shall permit the City, at the request of the Community Development Director, to examine all property of Grantee erected, constructed, laid, operated or maintained pursuant to the License, together with any appurtenant property of Grantee, and to examine and transcribe any and all books, accounts, papers, maps, and other records kept or maintained by Grantee or under its control, with regard to safety issues associated with the License.

Grantee during the life of the License, within twenty (20) days upon request of the Community Development Director, shall file two copies of a report verified by the oath of a duly authorized representative of Grantee showing for the immediately preceding License period the length of conduit in street and the diameter of such conduit.

**ARTICLE 4**  
**STREET EXCAVATION RULES**

**A. Permit Required**

Except in an emergency, the Grantee shall not excavate in a City street right-of-way

without having first applied for and obtained a Construction and Excavation Permit from the Community Development Director. Such application may include a traffic control plan and other information as required by the Community Development Director. For the purpose of this Article, "City Street" shall mean any public street, alley, way, or any property owned by the City. The Grantee shall pay any fees (including inspection and mapping) required by such permit.

## **ARTICLE 5** **DAMAGE TO PUBLIC PROPERTY**

If any portion of any street shall be damaged by reason or any conduit operated or maintained under this License, the Grantee shall, at its own expense, immediately repair or cause to be repaired any such damage and put such street, sidewalk, sewer, storm drain or other facility in as good condition as it was before such break, to the satisfaction of the Community Development Director. Such cleanups shall be accomplished in a timely manner, with as little public disruption as possible.

Any damage done directly or indirectly to any public property by Grantee, in exercising directly or indirectly any right, power, or privilege under this License, or in performing any duty under or pursuant to the provisions of this License, shall be promptly repaired by Grantee at its sole cost and expense.

If the Grantee, within ten (10) days after receipt of written notice from the City, instructing it to repair any damage, shall fail to commence to comply with such instructions, or, thereafter, shall fail diligently to prosecute such work to completion, then the City immediately may do whatever work is necessary to carry out said instructions at the cost and expense of the Grantee, which cost and expense, by the acceptance of the License, the Grantee agrees to pay upon demand. If such damage constitutes an immediate danger to the public health or safety requiring the immediate repair thereof, the City without notice may repair such damage and the Grantee agrees to pay the reasonable cost thereof upon demand.

Grantee shall be responsible to reimburse the City for all costs associated with City services provided during such break. The reimbursement shall include the current rate of overhead being charged by the City for reimbursable work. Reimbursable work shall include, but not be limited to, inspection, traffic control, police, fire, street, environmental, and other City response forces.

## **ARTICLE 6** **COMPENSATION TO THE CITY**

As consideration for the License granted herewith, the Grantee herewith, the Grantee shall pay to the City the following fees:

### **A. License Fee**

Prior to the effective date of this License, Grantee shall pay to City a License fee of \$612 a one-time payment for ten (10) years.

**B. License Bond**

This Agreement is granted on the condition that the Grantee has now and shall at all times during the life of this Agreement keep on file with the City a bond or other instrument of equal value running to the City in the sum of Forty Thousand Dollars (\$40,000) executed by a reputable indemnity company entitled to do business in the State of California. The provisions of this paragraph shall not exempt the Grantee from compliance with any of the laws of the City in force during the term hereof, which require the Grantee to post a Bond other than the bond required by this paragraph.

**C. Place of Payment**

License fee shall be paid, without deduction or offset except as herein provided, to the Office of the Director of Finance of the City at 3031 Torrance Boulevard, Torrance, CA 90503, or at such place as the City shall from time to time designate in writing.

**ARTICLE 7**  
**REARRANGEMENT OF FACILITIES**

**A. Expense of Grantee**

Whenever, during the existence of this License, the City shall change the grade, width or location of any street or improve any street in any manner, including the laying of any sewer, storm drain, pipes, gas, water, electric or other utility system, or other conduits owned or operated by the City or any other public agency, or construct any pedestrian tunnels, or other work of the City (the right to do all of which is specifically reserved to the City without any admission on its part that it would not otherwise have such rights) and such work shall, in the opinion of the Community Development Director, render necessary any change in the position or location of any facilities of the Grantee in the street, the Grantee shall, at its own cost and expense, do any and all things to effect such change in position or location, in conformity with the written notice of the Community Development Director as provided in Paragraph D below; provided, however, that the City shall not require the Grantee to remove its conduits or appurtenances entirely from the street.

If the Grantee, after reasonable notice, fails or refuses to relocate permanently or temporarily its facilities located in, on, upon, along, under, over, across or above any highway or to pave, surface, grade, repave, resurface or regrade as required, pursuant to any provision of the License, the City or other public entity may cause the work to be done and shall keep an itemized account of the entire cost thereof, and the Grantee shall hold harmless the City, its officers and employees from any liability which may arise or be claimed to arise from the moving, cutting, or alteration of any of the Grantee's facilities, or the turning on or off of water, oil, or other liquid, gas, or electricity. The Grantee agrees to, and shall, reimburse the City or other public entity for such cost within thirty (30) days after presentation to said Grantee of an itemized account of such costs.

**B. Expense of Others**

Except as provided in Paragraph A of this Article 7, when rearrangement of facilities is done for the accommodation of any person, firm or corporation other than City or any other public agency, the cost of such rearrangement shall be borne by the accommodated party. Such accommodated party, in advance of such rearrangement, shall (a) deposit with the Grantee either cash or a corporate surety bond in an amount, as in the reasonable discretion of the Grantee shall be required to pay the costs of such rearrangement; and (b) shall execute the instrument agreeing to indemnify and hold harmless the grantee from any and all damages or claims caused by such rearrangement.

**C. Rearrangement of the Facilities of Others**

Nothing contained in this License shall be construed to require the City to move, alter or relocate any of its facilities upon said street, at its own expense, for the convenience, accommodation or necessity of any other public utility, person, firm or corporation; or to require the City or any person, firm or corporation now or hereafter owning a public utility system of any type or nature, to move, alter or relocate any part of its system upon said streets for the convenience, accommodation or necessity of the Grantee.

**D. Notice**

The Grantee shall be given not less than sixty (60) days written notice of any rearrangement of facilities which the Grantee is required to make hereunder. Such notice shall specify in reasonable detail the work to be done by the Grantee and shall specify the time that such work is to be accomplished. In the event that the City shall change the provisions of any such notice given to the Grantee, the Grantee shall be given an additional period not less than sixty (60) days to accomplish such work. In case the Grantee shall fail to commence work in compliance with such written notice within thirty (30) days after service of same upon the Grantee (unless the Grantee shall be unable to comply with such notice by reason of strikes, riots, acts of God, or act of public enemies), the Community Development Director may cause the work required in said notice to be done by the City or at the election of the City, by a private contractor.

**ARTICLE 8**  
**SUSPENSION OF OPERATIONS**

If, for any reason, Grantee suspends use of the conduit governed by this License for a period in excess of ninety (90) days, it shall notify the Community Development Director. During this period of suspended operations, the Grantee shall maintain its normal conduit surveillance and all appurtenances to insure conduit integrity. This shall continue until such a time as the line is returned to service or abandoned according to Article 9 herein.

**ARTICLE 9**  
**REMOVAL OR ABANDONMENT OF FACILITIES**

**A. Application to Community Development Director**

At the expiration, revocation, or termination of this License or of the permanent

discontinuance of the use of its facilities or any portion thereof, the Grantee shall, within thirty (30) days thereafter, make a written application to the Community Development Director for authority either (a) to abandon all or a portion of such facilities in place; or (b) to remove all or a portion of such facilities. Such application shall describe the facilities desired to be abandoned or removed by reference to the map or maps required by Article 2 of this License and shall also describe with reasonable accuracy the relative physical condition of such facilities.

At the time of abandonment or removal, the Grantee shall offer ownership of the conduit within the public right-of-way to the City. The City shall accept or reject the offer to acquire within sixty (60) days of the offer.

**B. Determination of Community Development Director**

The Community Development Director shall determine whether such abandonment or removal which is thereby proposed may be affected without detriment to the public interest or under what conditions such proposed abandonment or removal may be safety affected. He shall then notify the Grantee, and according to such requirements as shall be specified in the Community Development Director's order, the Grantee shall, within ninety (90) days thereafter, either:

1. Remove all or a portion of such facilities; or
2. Abandon in place all or a portion of facilities, as set forth in the Community Development Director's order.

**C. Failure to Properly Abandon**

If any facilities to be abandoned in place subject to prescribed conditions shall not be abandoned in accordance with all such conditions, then the Community Development Director may make additional appropriate orders, including, if he deems desirable, an order that the Grantee shall remove all such facilities in accordance with applicable requirements. In the event the Grantee shall fail to remove any facilities which it is obligated to remove in accordance with such applicable requirements within such time as may be prescribed by the Community Development Director, then the City may remove or cause to be removed such facilities at the Grantee's expense and the Grantee shall pay to the City the actual cost thereof plus the current rate of overhead being charged by the City for reimbursable work.

**D. Abandonment at Future Time**

Should any conduit or portions thereof under this License be abandoned, whether or not payments therefore have terminated, and said conduit or portions thereof interfere at a future time with any public works project, Grantee shall, upon request of Community Development Director, remove said conduit or portions thereof at Grantee's expense.

**ARTICLE 10**  
**INDEMNIFICATION BY GRANTEE**

Grantee will indemnify, defend, and hold harmless, CITY, the City Council, each member thereof, present and future, its officers, agents and employees from and against any and all liability, expenses, including defense costs and legal fees, and claims for damages whatsoever, including, but not limited to, those arising from breach of contract, bodily injury, death, personal injury, property damage, loss of use, or property loss however the same may be caused and regardless of the responsibility for negligence. The obligation to indemnify, defend and hold harmless includes, but is not limited to, any liability or expense, including defense costs and legal fees, arising from the negligent acts or omissions, or willful misconduct of GRANTEE, its officers, employees, agents, subcontractors or vendors. It is further agreed, Grantee's obligations to indemnify, defend and hold harmless will apply even in the event of concurrent negligence on the party of CITY, the City Council, each member thereof, present and future, or its officers, agents and employees, except for liability resulting solely from the negligence or willful misconduct of CITY, its officers, employees or agents. Payment by CITY is not a condition precedent to enforcement of this indemnity. In the event of any dispute between GRANTEE and CITY, as to whether liability arises from the sole negligence of the CITY or its officers, employees, agents, subcontractors or vendors, GRANTEE will be obligated to pay for CITY's defense until such time as a final judgment has been entered adjudicating the CITY as solely negligent. GRANTEE will not be entitled in the event of such a determination to any reimbursement of defense costs including but not limited to attorney's fees, expert fees, and costs of litigation.

## **ARTICLE 11** **INSURANCE REQUIREMENTS**

### **A. Type and Amount**

Within five (5) days after the effective date of this License, the Grantee shall furnish to the City Clerk evidence of insurance applicable to all operations conducted under this License and including the liability arising out of the existence of real property, in the following forms and amounts:

1. Automobile Liability, including owned, non-owned and hired vehicles, with at least the following limits of liability:
  - a) Primary Bodily Injury with limits of at least \$250,000 per person, \$500,000 per occurrence; and
  - b) Primary Property Damage of at least \$100,000 per occurrence; or
  - c) Combined single limits of \$1,000,000 per occurrence.
2. General Liability including coverage for premises, products, and completed operations, independent contractors/vendors, personal injury and contractual obligations with combined single limits of coverage of at least \$1,000,000 per occurrence.
3. Workers' Compensation with limits as required by the State of California and Employers Liability with limits of at least \$500,000.

**B.** City, the City Council, and each member thereof, members of boards and commissions, every officer, agent, official, employee, and volunteer must be named as additional insured under the automobile and general liability policies.

**C.** Grantee must provide certificates of insurance and/or endorsements to the City Clerk of the City of Torrance at the request of the City Clerk.

**D.** Each insurance policy required by this paragraph must contain a provision that no termination, cancellation or change of coverage can be made without thirty (30) days notice to the City.

**E.** Insurance required by this Agreement will be satisfactory only if issued by companies admitted to do business in California, rated "B+" or better in the most recent edition of Best's Key Rating Guide, and only if they are of a financial category Class VII or better, unless these requirements are waived by the Risk Manager of City ("Risk Manager") due to unique circumstances. In the event the Risk Manager determines that an increased or decreased risk of loss is posed to City, Grantee agrees that the minimum limits of any insurance policies or performance bonds required by this Agreement may be changed accordingly upon receipt of written notice from the Risk Manager; provided that Grantee will have the right to appeal a determination of increased coverage by the Risk manager to the City Council of the City of Torrance within ten (10) days of receipt of notice from the Risk Manager.

**F. Increase in Requirements**

Such insurance shall be maintained by the Grantee for the life of this License, and each year on the anniversary of this License, Grantee will provide updated evidence that such insurance is in force. The City has the right during the terms of this License to amend the insurance requirements to increase the amount and scope of coverage. The City covenants that it will not exercise such right in an unreasonable manner.

**ARTICLE 12**  
**DEFAULT**

**A. Non-Curable Default**

In the event the Grantee shall default in the performance of any of the terms, covenants or conditions herein and such default is not curable, the City may declare this License forfeited. Upon giving written notice thereof to the Grantee, this License shall be void and the rights of the Grantee hereunder shall cease and terminate, and the Grantee shall execute an instrument of surrender and deliver the same to the City.

**B. Curable Default**

In the event the Grantee shall default in the performance of any of the terms, covenants and conditions herein and such default is curable, the City may give written notice to the Grantee of such default. In the Grantee does not, within the noticed period, begin the

work of compliance or after such beginning does not prosecute the work with due diligence to completion, the City may hold a hearing at which the Grantee shall have the right to appear and be heard, and thereupon the City may determine whether such conditions are material and essential to the License and whether the Grantee is in default with respect thereto and may declare the License suspended or forfeited. Notice of said hearing shall be given to the Grantee not less than five (5) days prior to said hearing.

**C. Force Majeure**

In the event Grantee is unable to perform any of the terms of this License by reason Of strikes, riots, acts of God, acts of public enemies, or other such cause beyond its control, it shall be deemed to be in default or have forfeited its rights hereunder unless it shall commence and prosecute such performance with reasonable promptness as soon as it is possible to do so.

**D. Cumulative Remedies**

No provision herein made for the purpose of securing the enforcement of the terms and conditions of this License shall be deemed an exclusive remedy, or to afford the exclusive procedure, for the enforcement of said terms and conditions, but the remedies and procedures herein provided, in addition to those provided by law, shall be deemed to be cumulative.

**ARTICLE 13**  
**SCOPE OF RESERVATION**

The enumeration herein of specific rights reserved shall not be construed as exclusive or as limiting any general reservation herein made or as limiting such rights as the City may now or hereafter have in law.

**ARTICLE 14**  
**NOTICE**

Any notice required to be given under the terms of this License, the manner of services of which is not specifically provided for, may be served as follows:

1. Upon the City, by serving City Clerk personally, or by addressing a written notice to the City Clerk of the City of Torrance, City Hall, 3031 Torrance Boulevard, Torrance, California 90503, and depositing such notice in the United States mail, postage prepaid; or
2. By addressing a written notice to Phenomenex, Inc., 411 Madrid Avenue, Torrance, California 90501, and depositing such notice in the United States Mail postage prepaid.

Notice may also be provided to such other address as may from time to time be furnished in writing by one party to the other, by depositing said notice in the United States mail, postage prepaid.

When the service of any notice is made by mail, the time of such notice shall begin with and run from the date of the deposit of same in the United States mail.

### **ARTICLE 15** **SUCCESSORS**

The terms herein shall inure to the benefit of or shall bind, as the case may be, the successors and assigns of the parties hereto.

### **ARTICLE 16** **ACCEPTANCE OF LICENSE**

This License is granted and shall be held and enjoyed only upon the terms and conditions herein contained, and the Grantee must, within thirty (30) days after the passage of granting said License, file with the City Clerk of the City of Torrance a written acceptance of such terms and conditions.

### **ARTICLE 17** **SCOPE OF RESERVATION**

Nothing herein contained shall ever be construed so as to exempt the Grantee from compliance with all ordinances of the City now in effect or which may be hereafter adopted which are not inconsistent with the terms of this License. The enumeration herein of specific rights reserved shall not be construed as exclusive, or as limiting the general reservation herein made or as limiting such rights as the City may now or hereafter have in law or equity.

### **ARTICLE 18** **ASSIGNMENT**

The Grantee shall not sell, transfer, assign or lease the License or any part thereof, except with the consent of the City Council. Such sale, transfer, assignment or lease shall be made only by filing with the City Council a copy of the duly executed instrument of such sale, transfer, assignment or lease and a written request for the consent of the City Council to such sale, transfer, assignment or lease. If such duly executed instrument and such written request is not filed with the City Council before the expiration of sixty (60) days after the effective date of such sale, transfer, assignment or lease, then, upon the expiration of said sixty (60) days, the License shall be subject to forfeiture and the City Council may, without notice, by ordinance, repeal the License. As a condition to the granting of consent to such sale, transfer, assignment or lease, the City Council may impose such additional terms and conditions upon the License and upon the Grantee or assignee, which the City Council may deem to be in the public interest. Nothing herein contained shall be construed to grant to the Grantee the right to sell, transfer, assign or lease the License, or any part thereof, except in the manner aforesaid. This section applies to any assignment, whether by operation of law, by a voluntary act of the Grantee, or otherwise.

### **ARTICLE 19** **SEVERABILITY**

If any section, subsection, sentence, clause or phrase of this License is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the License. The City Council hereby declares that it would have approved this License and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases are declared invalid or unconstitutional.

**ARTICLE 20**  
**APPROVALS**

Whenever, in this License Agreement, the consent of any party is called for, such consent shall not be unreasonably withheld.

**ARTICLE 21**  
**SPECIAL PROVISIONS**

This Agreement is granted on the condition that the Grantee shall at all times during the duration of this License be a member of the Underground Service Alert (USA).

**IN WITNESS WHEREOF**, the parties hereto have executed this License Agreement on the date and year first above written.

**CITY OF TORRANCE, a Municipal Corporation**

**Phenomenex, Inc, a California Corporation**

\_\_\_\_\_  
Frank Scotto, Mayor

  
\_\_\_\_\_  
Fasha Mahjoor, President

**ATTEST:**

*- see attached notary*

\_\_\_\_\_  
Sue Herbers, City Clerk

APPROVED AS TO FORM:  
JOHN L. FELLOWS III  
City Attorney

By: \_\_\_\_\_  
Patrick Q. Sullivan  
Assistant City Attorney

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

CIVIL CODE § 1189

State of California

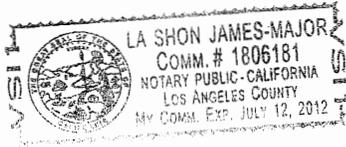
County of Los Angeles

On 8/23/11  
Date

before me, Lashon James Major, Notary Public  
Here Insert Name and Title of the Officer

personally appeared Fasha Mahjar  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is/are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: Lashon James-Major  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: Renewal of license Agreement

Document Date: \_\_\_\_\_ Number of Pages: 11

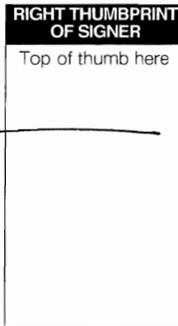
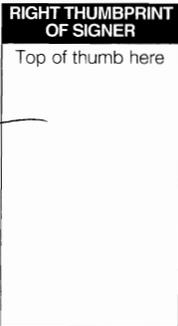
Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_ Signer's Name: \_\_\_\_\_

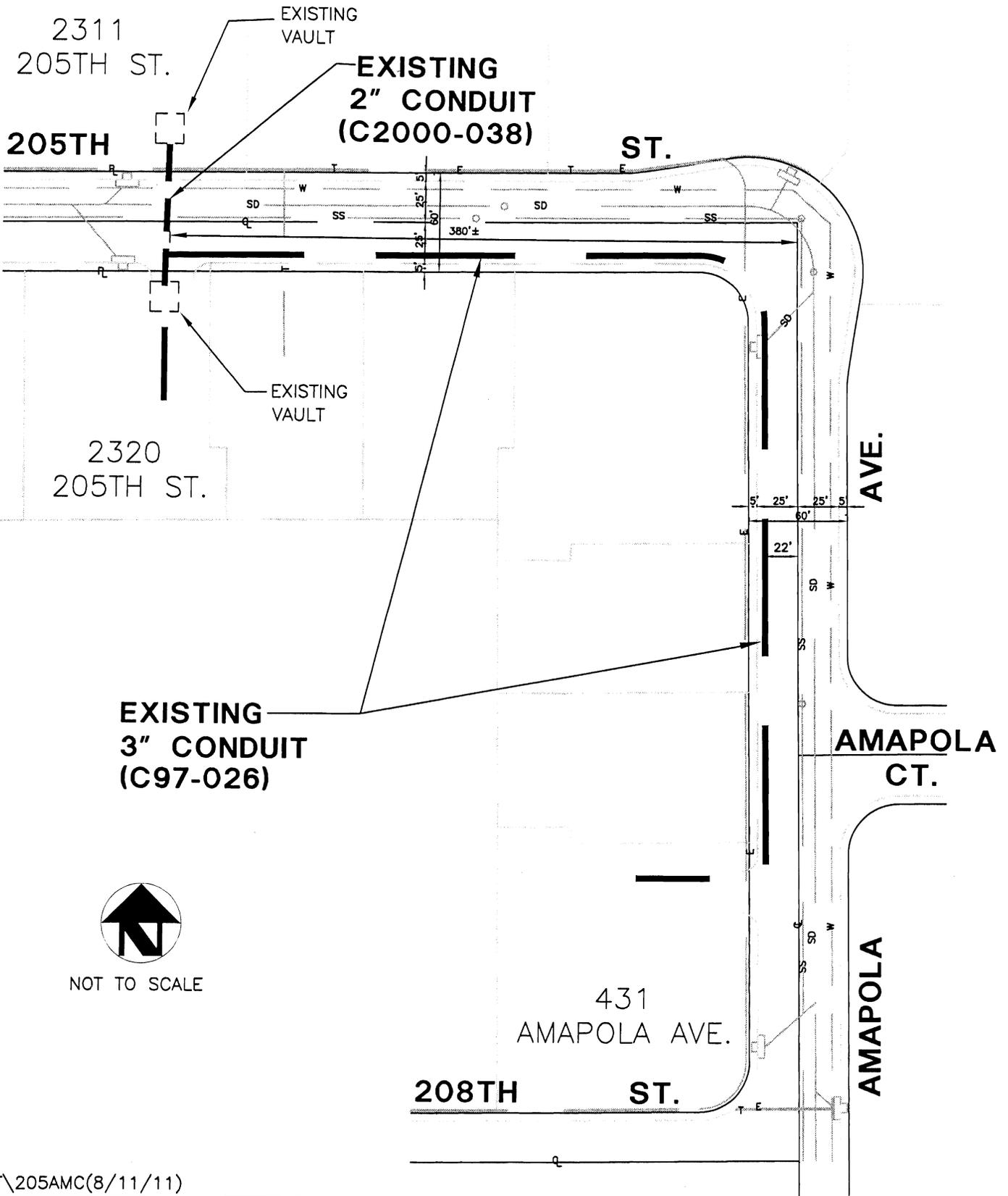
Corporate Officer — Title(s): \_\_\_\_\_  Corporate Officer — Title(s): \_\_\_\_\_

Individual  Partner —  Limited  General  Attorney in Fact  Trustee  Guardian or Conservator  Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_ Signer Is Representing: \_\_\_\_\_

# EXISTING UNDERGROUND COMMUNICATIONS LINES





LICENSE AGREEMENT

**THIS LICENSE AGREEMENT**, made and entered into this 18 day of 1, 2000, in the City of Torrance, by and between the **CITY OF TORRANCE**, a municipal corporation, hereinafter called the "City" and **PHENOMENEX**, hereinafter called "Grantee."

**WHEREAS**, Grantee desires to install a private conduit across 205<sup>th</sup> Street, a public street at locations shown on the attached map (Exhibit "A"); and

**WHEREAS**, said conduit is to be used for the installation of private communication lines beneath 205<sup>th</sup> Street in the City of Torrance; and

**WHEREAS**, the location and general description of the conduit is satisfactory to the Engineering Director.

**NOW, THEREFORE**, the parties hereto agree that **PHENOMENEX** shall be granted a license for installation and maintenance of a conduit, under terms and conditions set forth below:

**ARTICLE 1**  
**NATURE OF LICENSE**

**A. Proposed Conduit.**

There is hereby granted to Phenomenex Corporation, a California corporation, hereinafter referred to as "Grantee," for a term of five (5) years from and after the effective date of this Agreement, subject however to all the limitations and restrictions herein contained, the right and privilege to construct, erect, maintain, operate, repair, renew, remove and abandon conduit in, under, along and across the public streets, highways, and alleys (hereinafter collectively referred to as "streets") in the City of Torrance as described and shown on Exhibit A, attached hereto and made a part hereof. If at any time during the Agreement the Grantee no longer has ownership or lease rights to either parcel, said Agreement shall be terminated.

**B. Appurtenances.**

The Grantee shall have the right to operate, maintain, repair or replace such fiber optic cable, conduit, and other appurtenances (hereinafter for convenience collectively referred to as "appurtenances") as may be necessary or convenient for the proper maintenance and operation of the fiber optic system under this License. Said appurtenances shall be kept flush with the surface of the streets and so located as to conform to any order of the Engineering Director in regard thereto and not to interfere with the use of the street for travel. The Grantee shall have the right, subject to such ordinance, rules, or regulations as are now or may hereafter be in force, to make all necessary excavations in said streets for the construction and repair of said conduit and appurtenances.

C00-038

**ORIGINAL COPY**

**ARTICLE 2**  
**MAINTENANCE OF CONDUIT**

**A. Hindrance to Traffic.**

So far as is practicable, said conduit hereinafter laid, shall be located across 205<sup>th</sup> Street to the satisfaction of the Engineering Director so as not unreasonably to disturb the flow of traffic. The work of maintaining the said conduit shall be conducted with the least possible hindrance to the use of the streets for purposes of travel.

**B. Inspection Fees.**

The Grantee shall pay any and all permit and inspection fees of the City.

**C. Drawings and Maps.**

Within ninety (90) days following the date by which any facility has been constructed under the Agreement, the Grantee shall file as-built drawings and maps, in such form as may be required by the Engineering Director, showing accurately the location and size of all of its facilities, or upon removal, change or abandonment of all or any portion thereof, file revised as-built drawings and maps showing the location of all such additional, removed or abandoned facilities as of that date.

As-built drawing and map format shall be determined by the Engineering Director and may, in the future, include microfilm, computer disc and optical laser disc. Grantee is to submit all data in the format requested by Engineering Director or pay all costs to have information converted to that format. Maps of all facilities in the City shall be submitted annually no later than January 20<sup>th</sup> of the subsequent year.

**D. New Installation or Replacement.**

New installation or replacement of conduit and appurtenances and all other facilities necessary for the installation, operation and maintenance shall be laid and maintained only pursuant to permit issued by the Engineering Director. All such installations shall be reviewed by the Engineering Director as to the most desirable location across 205<sup>th</sup> Street and his decision shall be final and binding on the Grantee.

**E. Completion Statement.**

Upon the completion of the construction of any conduit or appurtenances constructed pursuant to said License, the Grantee shall submit a statement identifying the permit or permits issued by the Department, the total length of conduit, the construction of which was authorized under such permit or permits, and the total length of conduit or appurtenance actually laid.

**ARTICLE 3**  
**CONFORMANCE REQUIREMENTS; RECORDS AND PERIODIC REPORTS**

**A. Conformance with City Ordinances and Permits.**

The conduit and appurtenances shall be constructed, operated, maintained, replaced or repaired in conformity with all ordinances, rules or regulations in effect at the time of granting of this License, or as prescribed by the City Council, and in accordance with the terms and conditions of any permit issued by the Engineering Director.

**B. Records and Periodic Reports.**

At all reasonable times, Grantee shall permit the City, at the request of the Engineering Director, to examine all property of Grantee erected, constructed, laid, operated or maintained pursuant to the License, together with any appurtenant property of Grantee, and to examine and transcribe any and all books, accounts, papers, maps, and other records kept or maintained by Grantee or under its control, with regard to safety issues associated with the License.

Grantee during the life of the License, within twenty (20) days upon request of the Engineering Director, shall file two copies of a report verified by the oath of a duly authorized representative of Grantee showing for the immediately preceding License period the length of conduit in street and the diameter of such conduit.

**ARTICLE 4**  
**STREET EXCAVATION RULES**

**A. Permit Required.**

Except in an emergency, the Grantee shall not excavate in a City street right-of-way without having first applied for and obtained a Construction and Excavation Permit from the Engineering Director. Such application may include a traffic control plan and other information as required by the Engineering Director. For the purpose of this Article, "City Street" shall mean any public street, alley, way, or any property owned by the City. The Grantee shall pay any fees (including inspection and mapping) required by such permit.

**B. Duty to Repair Streets.**

As soon as any conduit work is completed, all portions of the street excavated or otherwise damaged thereby shall be placed in as good condition as they were before the commencement of such work, to the satisfaction of the Engineering Director. All street repair work shall be made by the Grantee at the expense of the Grantee in accordance with the ordinances of the City and the conditions of the Construction and Excavation Permit issued therefor by the Engineering Director.

**ARTICLE 5**  
**DAMAGE TO PUBLIC PROPERTY**

If any portion of any street shall be damaged by reason of any conduit operated or maintained under this License, the Grantee shall, at its own expense, immediately repair or cause to be repaired any such damage and put such street, sidewalk, sewer, storm drain or other facility in as good condition as it was before such break, to the satisfaction of the Engineering Director. Such cleanups shall be accomplished in a timely manner, with as little public disruption as possible.

Any damage done directly or indirectly to any public property by Grantee, in exercising directly or indirectly any right, power, or privilege under this License, or in performing any duty under or pursuant to the provisions of this License, shall be promptly repaired by Grantee at its sole cost and expense.

If the Grantee, within ten (10) days after receipt of written notice from the City, instructing it to repair any damage, shall fail to commence to comply with such instructions, or, thereafter, shall fail diligently to prosecute such work to completion, then the City immediately may do whatever work is necessary to carry out said instructions at the cost and expense of the Grantee, which cost and expense, by the acceptance of the License, the Grantee agrees to pay upon demand. If such damage constitutes an immediate danger to the public health or safety requiring the immediate repair thereof, the City without notice may repair such damage and the Grantee agrees to pay the reasonable cost thereof upon demand.

Grantee shall be responsible to reimburse the City for all costs associated with City services provided during such break. The reimbursement shall include the current rate of overhead being charged by the City for reimbursable work. Reimbursable work shall include, but not be limited to, inspection, traffic control, police, fire, street, environmental and other City response forces.

**ARTICLE 6**  
**COMPENSATION TO THE CITY**

As consideration for the License granted herewith, the Grantee shall pay to the City the following fees:

**A. License Fee.**

Prior to the effective date of this License, Grantee shall pay to City a License fee of \$150 a one-time payment for 5 years.

**B. License Bond.**

This Agreement is granted on the condition that the Grantee has now and shall at all times during the life of this Agreement keep on file with the City a bond or other instrument of equal value running to the City in the sum of Thirty Thousand Dollars (\$30,000) executed by a reputable indemnity company entitled to do business in the State of California. The provisions of this paragraph shall not exempt the Grantee from compliance with any of the laws of the City

in force during the term hereof, which require the Grantee to post a Bond other than the bond required by this paragraph.

**C. Place of Payment.**

License fee shall be paid, without deduction or offset except as herein provided, to the office of the Director of Finance of the City at 3031 Torrance Boulevard, Torrance, CA 90503, or at such place as the City shall from time to time designate in writing.

**ARTICLE 7**  
**REARRANGEMENT OF FACILITIES**

**A. Expense of Grantee.**

Whenever, during the existence of this License, the City shall change the grade, width or location of any street or improve any street in any manner, including the laying of any sewer, storm drain, pipes, gas, water, electric or other utility system, or other conduits owned or operated by the City or any other public agency, or construct any pedestrian tunnels, or other work of the City (the right to do all of which is specifically reserved to the City without any admission on its part that it would not otherwise have such rights) and such work shall, in the opinion of the Engineering Director, render necessary any change in the position or location of any facilities of the Grantee in the street, the Grantee shall, at its own cost and expense, do any and all things to effect such change in position or location, in conformity with the written notice of the Engineering Director as provided in Paragraph D below; provided, however, that the City shall not require the Grantee to remove its conduits or appurtenances entirely from the street.

If the Grantee, after reasonable notice, fails or refuses to relocate permanently or temporarily its facilities located in, on, upon, along, under, over, across or above any highway or to pave, surface, grade, repave, resurface or regrade as required, pursuant to any provision of the License, the City or other public entity may cause the work to be done and shall keep an itemized account of the entire cost thereof, and the Grantee shall hold harmless the City, its officers and employees from any liability which may arise or be claimed to arise from the moving, cutting, or alteration of any of the Grantee's facilities, or the turning on or off of water, oil, or other liquid, gas, or electricity. The Grantee agrees to, and shall, reimburse the City or other public entity for such cost within thirty (30) days after presentation to said Grantee of an itemized account of such costs.

**B. Expense of Others.**

Except as provided in Paragraph A of this Article 7, when rearrangement of facilities is done for the accommodation of any person, firm or corporation other than City or any other public agency, the cost of such rearrangement shall be borne by the accommodated party. Such accommodated party, in advance of such rearrangement, shall (a) deposit with the Grantee either cash or a corporate surety bond in an amount, as in the reasonable discretion of the Grantee shall be required to pay the costs of such rearrangement; and (b) shall execute the instrument agreeing to indemnify and hold harmless the grantee from any and all damages or claims caused by such rearrangement.

**C. Rearrangement of the Facilities of Others.**

Nothing contained in this License shall be construed to require the City to move, alter or relocate any of its facilities upon said street, at its own expense, for the convenience, accommodation or necessity of any other public utility, person, firm or corporation; or to require the City or any person, firm or corporation now or hereafter owning a public utility system of any type or nature, to move, alter or relocate any part of its system upon said streets for the convenience, accommodation or necessity of the Grantee,

**D. Notice.**

The Grantee shall be given not less than sixty (60) days written notice of any rearrangement of facilities which the Grantee is required to make hereunder. Such notice shall specify in reasonable detail the work to be done by the Grantee and shall specify the time that such work is to be accomplished. In the event that the City shall change the provisions of any such notice given to the Grantee, the Grantee shall be given an additional period not less than sixty (60) days to accomplish such work. In case the Grantee shall fail to commence work in compliance with such written notice within thirty (30) days after service of same upon the Grantee (unless the Grantee shall be unable to comply with such notice by reason of strikes, riots, acts of God, or act of public enemies), the Engineering Director may cause the work required in said notice to be done by the City or at the election of the City, by a private contractor.

**ARTICLE 8**  
**SUSPENSION OF OPERATIONS**

If, for any reason, Grantee suspends use of the conduit governed by this License for a period in excess of ninety (90) days, it shall notify the Engineering Director. During this period of suspended operations, the Grantee shall maintain its normal conduit surveillance and all appurtenances to insure conduit integrity. This shall continue until such a time as the line is returned to service or abandoned according to Article 9 herein.

**ARTICLE 9**  
**REMOVAL OR ABANDONMENT OF FACILITIES**

**A. Application to Engineering Director.**

At the expiration, revocation or termination of this License or of the permanent discontinuance of the use of its facilities or any portion thereof, the Grantee shall, within thirty (30) days thereafter, make a written application to the Engineering Director for authority either (a) to abandon all or a portion of such facilities in place; or (b) to remove all or a portion of such facilities. Such application shall describe the facilities desired to be abandoned or removed by reference to the map or maps required by Article 2 of this License and shall also describe with reasonable accuracy the relative physical condition of such facilities.

At the time of abandonment or removal, the Grantee shall offer ownership of the conduit within the public right-of-way to the City. The City shall accept or reject the offer to acquire within 60 days of the offer.

**B. Determination of Engineering Director.**

The Engineering Director shall determine whether such abandonment or removal which is thereby proposed may be affected without detriment to the public interest or under what conditions such proposed abandonment or removal may be safely affected. He shall then notify the Grantee, and according to such requirements as shall be specified in the Engineering Director's order, the Grantee shall, within ninety (90) thereafter, either:

- (1) Remove all or a portion of such facilities; or
- (2) Abandon in place all or a portion of facilities, as set forth in the Engineering Director's order.

**C. Failure to Properly Abandon.**

If any facilities to be abandoned in place subject to prescribed conditions shall not be abandoned in accordance with all such conditions, then the Engineering Director may make additional appropriate orders, including, if he deems desirable, an order that the Grantee shall remove all such facilities in accordance with applicable requirements. In the event the Grantee shall fail to remove any facilities which it is obligated to remove in accordance with such applicable requirements within such time as may be prescribed by the Engineering Director, then the City may remove or cause to be removed such facilities at the Grantee's expense and the Grantee shall pay to the City the actual cost thereof plus the current rate of overhead being charged by the City for reimbursable work.

**D. Abandonment at Future Time.**

Should any conduit or portions thereof under this License be abandoned, whether or not payments therefor have terminated, and said conduit or portions thereof interfere at a future time with any public works project, Grantee shall, upon request of Engineering Director, remove said conduit or portions thereof at Grantee's expense.

**ARTICLE 10**  
**INDEMNIFICATION BY GRANTEE**

Grantee will indemnify, defend, and hold harmless CITY, the City Council, each member thereof, present and future, its officers, agents and employees from and against any and all liability, expenses, including defense costs and legal fees, and claims for damages whatsoever, including, but not limited to, those arising from breach of contract, bodily injury, death, personal injury, property damage, loss of use, or property loss however the same may be caused and regardless of the responsibility for negligence. The obligation to indemnify, defend and hold harmless includes, but is not limited to, any liability or expense, including defense costs and legal fees, arising from the negligent acts or omissions, or willful misconduct of GRANTEE, its officers, employees, agents, subcontractors or vendors. It is further agreed, Grantee's obligations to indemnify, defend and hold harmless will apply even in the event of concurrent negligence on the part of CITY, the City Council, each member thereof, present and future, or its officers, agents and employees, except for liability resulting solely from the negligence or willful misconduct of CITY, its officers, employees or agents. Payment by CITY is not a

condition precedent to enforcement of this indemnity. In the event of any dispute between GRANTEE and CITY, as to whether liability arises from the sole negligence of the CITY or its officers, employees, agents, subcontractors or vendors, GRANTEE will be obligated to pay for CITY's defense until such time as a final judgment has been entered adjudicating the CITY as solely negligent. GRANTEE will not be entitled in the event of such a determination to any reimbursement of defense costs including but not limited to attorney's fees, expert fees and costs of litigation.

## ARTICLE 11 INSURANCE REQUIREMENTS

### **A. Type and Amount.**

Within five (5) days after the effective date of this License, the Grantee shall furnish to the City Clerk evidence of insurance applicable to all operations conducted under this License and including the liability arising out of the existence of real property, in the following forms and amounts:

- (1) Automobile Liability, including owned, non-owned and hired vehicles, with at least the following limits of liability:
  - (a) Primary Bodily Injury with limits of at least \$250,000 per person, \$500,000 per occurrence; and
  - (b) Primary Property Damage of at least \$100,000 per occurrence; or
  - (c) Combined single limits of \$1,000,000 per occurrence.
- (2) General Liability including coverage for premises, products and completed operations, independent contractors/vendors, personal injury and contractual obligations with combined single limits of coverage of at least \$1,000,000 per occurrence.
- (3) Workers' Compensation with limits as required by the State of California and Employers Liability with limits of at least \$500,000.

**B.** City, the City Council, and each member thereof, members of boards and commissions, every officer, agent, official, employee and volunteer must be named as additional insured under the automobile and general liability policies.

**C.** Grantee must provide certificates of insurance and/or endorsements to the City Clerk of the City of Torrance at the request of the City Clerk.

**D.** Each insurance policy required by this Paragraph must contain a provision that no termination, cancellation or change of coverage can be made without thirty days notice to City.

**E.** Insurance required by this Agreement will be satisfactory only if issued by companies admitted to do business in California, rated "B+" or better in the most recent edition of Best's Key Rating Guide, and only if they are of a financial category Class VII or better,

unless these requirements are waived by the Risk Manager of City ("Risk Manager") due to unique circumstances. In the event the Risk Manager determines that an increased or decreased risk of loss is posed to City, Grantee agrees that the minimum limits of any insurance policies or performance bonds required by this Agreement may be changed accordingly upon receipt of written notice from the Risk Manager; provided that Grantee will have the right to appeal a determination of increased coverage by the Risk Manager to the City Council of City within 10 days of receipt of notice from the Risk Manager.

**F. Increase in Requirements.**

Such insurance shall be maintained by the Grantee for the life of this License, and each year on the anniversary of this License, Grantee will provide updated evidence that such insurance is in force. The City has the right during the terms of this License to amend the insurance requirements to increase the amount and scope of coverage. The City covenants that it will not exercise such right in an unreasonable manner.

**ARTICLE 12**  
**DEFAULT**

**A. Non-Curable Default.**

In the event the Grantee shall default in the performance of any of the terms, covenants or conditions herein and such default is not curable, the City may declare this License forfeited. Upon giving written notice thereof to the Grantee, this License shall be void and the rights of the Grantee hereunder shall cease and terminate, and the Grantee shall execute an instrument of surrender and deliver the same to the City.

**B. Curable Default.**

In the event the Grantee shall default in the performance of any of the terms, covenants and conditions herein and such default is curable, the City may give written notice to the Grantee of such default. In the Grantee does not, within the noticed period, begin the work of compliance or after such beginning does not prosecute the work with due diligence to completion, the City may hold a hearing at which the Grantee shall have the right to appear and be heard, and thereupon the City may determine whether such conditions are material and essential to the License and whether the Grantee is in default with respect thereto and may declare the License suspended or forfeited. Notice of said hearing shall be given to the Grantee not less than five (5) days prior to said hearing.

**C. Force Majeure.**

In the event Grantee is unable to perform any of the terms of this License by reason of strikes, riots, acts of God, acts of public enemies, or other such cause beyond its control, it shall be deemed to be in default or have forfeited its rights hereunder unless it shall commence and prosecute such performance with reasonable promptness as soon as it is possible to do so.

**D. Cumulative Remedies.**

No provision herein made for the purpose of securing the enforcement of the terms and conditions of this License shall be deemed an exclusive remedy, or to afford the exclusive procedure, for the enforcement of said terms and conditions, but the remedies and procedures herein provided, in addition to those provided by law, shall be deemed to be cumulative.

**ARTICLE 13**  
**SCOPE OF RESERVATION**

The enumeration herein of specific rights reserved shall not be construed as exclusive or as limiting any general reservation herein made or as limiting such rights as the City may now or hereafter have in law.

**ARTICLE 14**  
**NOTICE**

Any notice required to be given under the terms of this License, the manner of services of which is not specifically provided for, may be served as follows:

(1) Upon the City, by serving City Clerk personally, or by addressing a written notice to the City Clerk of the City of Torrance, City Hall, 3031 Torrance Blvd., Torrance, California 90503, and depositing such notice in the United States mail, postage prepaid; or

(2) By addressing a written notice to Phenomenex, 2320 West 205<sup>th</sup> Street, Torrance, California 90501, and depositing such notice in the United States mail, postage prepaid.

Notice may also be provided to such other address as may from time to time be furnished in writing by one party to the other, by depositing said notice in the United States mail, postage prepaid.

When the service of any notice is made by mail, the time of such notice shall begin with and run from the date of the deposit of same in the United States mail.

**ARTICLE 15**  
**SUCCESSORS**

The terms herein shall inure to the benefit of or shall bind, as the case may be, the successors and assigns of the parties hereto.

**ARTICLE 16**  
**ACCEPTANCE OF LICENSE**

This License is granted and shall be held and enjoyed only upon the terms and conditions herein contained, and the Grantee must, within thirty (30) days after the passage of granting said License, file with the City Clerk of the City of Torrance a written acceptance of such terms and conditions.

**ARTICLE 17**  
**SCOPE OF RESERVATION**

Nothing herein contained shall ever be construed so as to exempt the Grantee from compliance with all ordinances of the City now in effect or which may be hereafter adopted which are not inconsistent with the terms of this License. The enumeration herein of specific rights reserved shall not be construed as exclusive, or as limiting the general reservation herein made or as limiting such rights as the City may now or hereafter have in law or equity.

**ARTICLE 18**  
**ASSIGNMENT**

The Grantee shall not sell, transfer, assign or lease the License or any part thereof, except with the consent of the City Council. Such sale, transfer, assignment or lease shall be made only by filing with the City Council a copy of the duly executed instrument of such sale, transfer, assignment or lease and a written request for the consent of the City Council to such sale, transfer, assignment or lease. If such duly executed instrument and such written request is not filed with the City Council before the expiration of sixty (60) days after the effective date of such sale, transfer, assignment or lease, then, upon the expiration of said sixty (60) days, the License shall be subject to forfeiture and the City Council may, without notice, by ordinance, repeal the License. As a condition to the granting of consent to such sale, transfer, assignment or lease, the City Council may impose such additional terms and conditions upon the License and upon the Grantee or assignee, which the City Council may deem to be in the public interest. Nothing herein contained shall be construed to grant to the Grantee the right to sell, transfer, assign or lease the License, or any part thereof, except in the manner aforesaid. This section applies to any assignment, whether by operation of law, by a voluntary act of the Grantee, or otherwise.

**ARTICLE 19**  
**SEVERABILITY**

If any section, subsection, sentence, clause or phrase of this License is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the License. The City Council hereby declares that it would have approved this License and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases are declared invalid or unconstitutional.

**ARTICLE 20**  
**APPROVALS**

Whenever, in this License Agreement, the consent of any party is called for, such consent shall not be unreasonably withheld.

**ARTICLE 21**  
**SPECIAL PROVISIONS**

This Agreement is granted on the condition that the Grantee shall at all times during the duration of this License be a member of the Underground Service Alert (USA).

IN WITNESS WHEREOF, the parties hereto have executed this License Agreement on the day and year first above written.

CITY OF TORRANCE, a Municipal Corporation

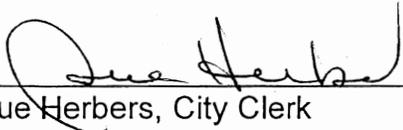
PHENOMENEX, a California Corporation



Dee Hardison, Mayor

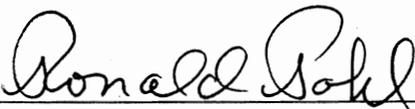
Fasha Mahjoor, President

ATTEST:

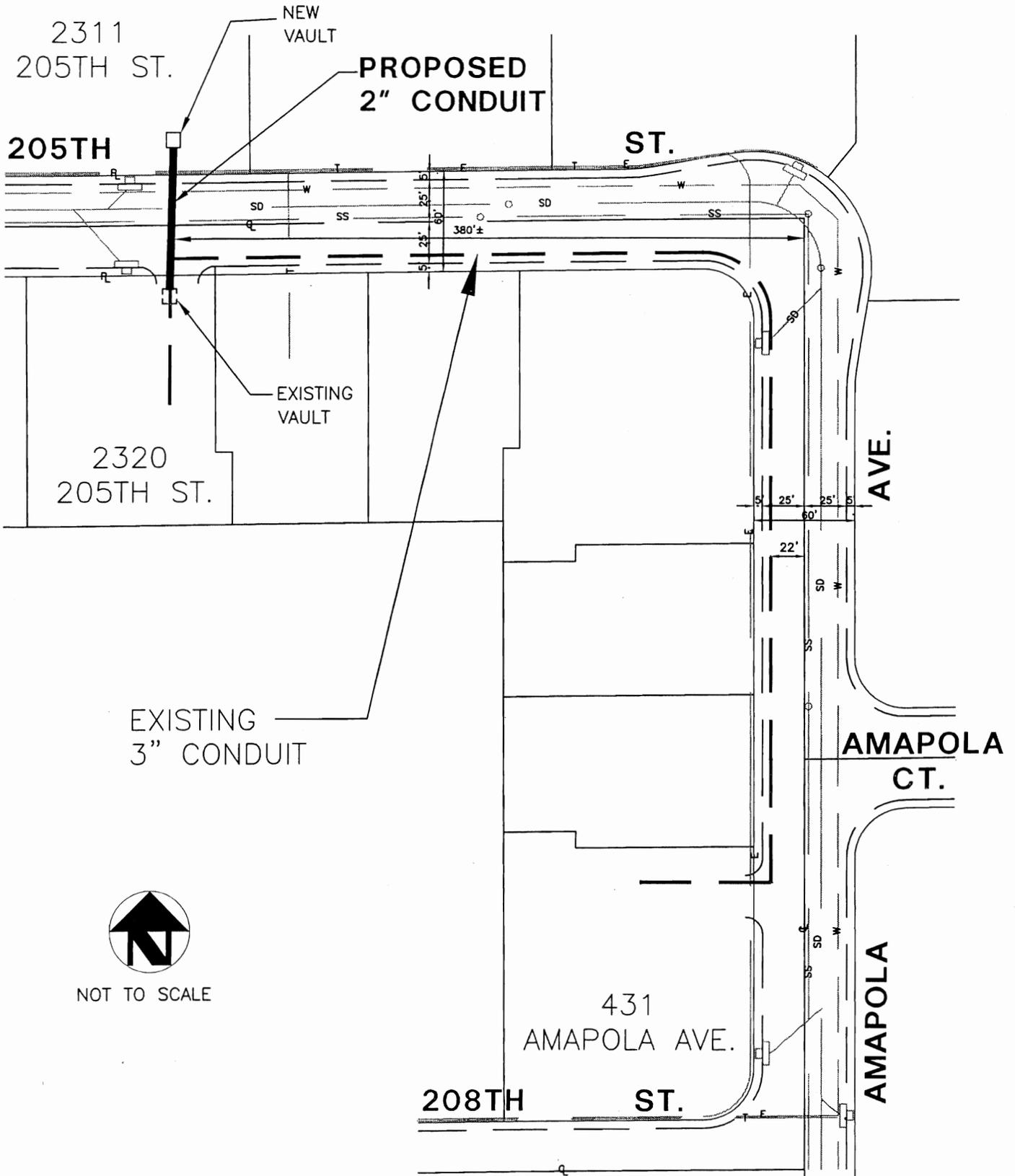


Sue Herbers, City Clerk

APPROVED AS TO FORM:  
JOHN L. FELLOWS III  
City Attorney

By:   
Heather K. Whitham  
Deputy City Attorney

# UNDERGROUND COMMUNICATION LINES



**LICENSE AGREEMENT FOR UNDERGROUND COMMUNICATION LINES**

**THIS AGREEMENT**, made and entered into in quadruplicate as of this 6 day of March, 1997, in the City of Torrance by and between the **CITY OF TORRANCE**, a municipal corporation, hereinafter called the "City", and **PHENOMENEX** hereinafter called "Grantee";

**WHEREAS**, Grantee desires to install a private conduit in a City street easement at locations shown on attached map (Exhibit A); and

**WHEREAS**, said conduit is for the purpose of installing private communication lines beneath 205th Street and Amapola Avenue in the City of Torrance; and

**WHEREAS**, the location and general description of the conduit is satisfactory to the City;

**NOW, THEREFORE**, the parties hereto agree as follows:

The City hereby grants to Grantee for the term of five (5) years from the effective date of this Agreement, subject to termination or extension at the discretion of the City Engineer on a year-by-year basis, subject, further, to all the special and general provisions attached hereto and made a part hereof, the right and privilege to construct, erect, maintain, operate, repair, renew, remove and abandon conduit in the City of Torrance as described and shown on Exhibit "A" attached hereto and made a part thereof. If at any time during this Agreement the Grantee no longer has ownership or lease rights to either parcel, said Agreement shall be terminated.

**GENERAL PROVISIONS**

- I. **LOCATION OF CONDUIT** - The conduit shall be located as described and shown in Exhibit "A".
- II. **INSTALLATION OF CONDUIT**
  - A. **Time of Construction**. The Grantee, in good faith, shall commence the work of construction within three (3) months from the date of this Agreement and shall complete such construction within two (2) months after commencing construction.
  - B. **As-Built Drawings and Maps**. Within thirty (30) days following the date in which any facilities have been constructed under this Agreement, the Grantee shall file as-built drawings and maps in such form as may be required by the City, showing accurately the location and size of all its facilities, or upon removal, change or abandonment of all or any portion thereof, file revised as-built drawings and maps showing the location and size of all such additional, removed or abandoned facilities as of that date.
  - C. **Other Approvals**. The installation and operation of the conduit shall be to existing requirements of the City of Torrance.

1 G97-026

**Original**  
**OPY**

### III. CONFORMANCE REQUIREMENTS

- A. Conformance with State Codes. The conduit and appurtenances shall be constructed in accordance with all State of California Standards for the construction of conduit as set forth in State laws, rules or regulations.
- B. Conformance with City Ordinances and Permits. The conduit and appurtenances shall be constructed in conformity with all City ordinances, rules and regulations in effect at the time of construction, or as prescribed by the City.

### IV. DAMAGE TO CITY PROPERTY

- A. If any portion of any street shall be damaged by reason of Grantee's construction, operation or maintenance of any facility constructed or maintained under this Agreement, due to operations by the Grantee, the Grantee shall, at its own expense, immediately repair or cause to be repaired any such damage and put such street, sidewalk, sewer, storm drain or other facility in as good condition as it was before such damage, to the satisfaction of the City. Such repairs shall be accomplished in a timely manner, with as little public disruption as possible.

### V. REARRANGEMENT OF FACILITIES

- A. Expense of Grantee. Whenever, during the existence of this Agreement, the City shall change the grade, width, or location of any street or improve any street in any manner, including the laying of any sewer, storm drain, conduits, gas, water or other pipes owned or operated by the City or any other public agency, or construct any pedestrian tunnels, or other work of the City (the right to do all of which is specifically reserved to the City without any admission in its part that it would not otherwise have such rights) and such work shall, in the opinion of the City, render necessary any change in the position or location of any facilities of the Grantee in the street, the Grantee shall, at its own cost and expense, do any and all things to effect such change in position or location, in conformity with the written notice of the City Engineer as provided in Paragraph D below.
- B. Expense of Others. When such change in construction or work is done for the accommodation of any person, firm or corporation, the cost of such rearrangement shall be borne by the accommodated party. Such accommodated party, in advance of such rearrangement, shall (a) deposit with the Grantee either cash or a corporate surety bond in an amount, as in the reasonable discretion of the Grantee shall be required to pay the costs of such change in work; and (b) shall execute an instrument agreeing to indemnify and hold harmless the Grantee from any and all damages or claims caused by such rearrangement.
- C. Rearrangement of the Facilities of Others. Nothing in this Agreement contained shall be construed to require the City to move, alter or relocate any of its facilities upon said streets, at its own expense, for the convenience, accommodation or necessity of any other public utility, person, firm or corporation, or to require the City or any person,

firm or corporation, now or hereafter owning a public utility system of any type or nature, to move, alter or relocate any part of its system upon said streets for the convenience, accommodation or necessity of the Grantee. If the conduit cannot be located as described in Exhibit "A", Grantor shall furnish Grantee with another reasonable acceptable location for such conduit in the immediate vicinity.

- D. Notice. The Grantee shall be given not less than thirty (30) days written notice of any change or relocation of facilities which the Grantee is required to make hereunder. Such notice shall specify in reasonable detail the work to be done by the Grantee and shall specify the time that such work is to be accomplished. In the event that the City shall change the provisions of any such notice given to the Grantee, the Grantee shall be given an additional period not less than thirty (30) days to accomplish such work.

## VI. REMOVAL OR ABANDONMENT OF FACILITIES

- A. Application to City. At the expiration, revocation or termination of this Agreement or of the permanent discontinuance of the use of its facilities or any portion thereof, the Grantee shall, within thirty (30) days thereafter, make a written application to the City for authority (as determined by the Grantee) either (a) to abandon all, or a portion, of such facilities in place; or (b) to remove all, or a portion, of such facilities. Such application shall describe the facilities desired to be abandoned or removed by reference to the map or maps required by Article II.B of this Agreement and shall also describe with reasonable accuracy the relative physical condition of such facilities.
- B. Determination of City. The City shall determine whether such abandonment or removal which is thereby proposed may be effected without detriment to the public interest or under what conditions such proposed abandonment or removal may be safely effected. The City shall then notify the Grantee in writing within 30 days following its receipt of Grantee's application, and according to such reasonable conditions as shall be specified that the Grantee may either effect such abandonment or such removal shall, as appropriate, within ninety (90) days thereafter, either:
1. Remove all or a portion of such facilities; or
  2. Abandon in place all or a portion of such facilities, as set forth in the City Engineer's order.
- C. Failure to Properly Abandon. If any facilities to be abandoned in place subject to prescribed conditions shall not be abandoned in accordance with all such conditions, then the City may make additional appropriate orders, including, if deemed desirable, an order that the Grantee shall remove all such facilities in accordance with applicable requirements. In the event the Grantee shall fail to remove any facilities which the Grantee is obligated to remove in accordance with such applicable requirements within such time as may be prescribed by the City, then the City may remove or cause to be removed such facilities at the Grantee's expense and the Grantee shall pay to the City the actual cost thereof plus the current rate of overhead being charged by the City for reimbursable work.

## VII. INDEMNIFICATION BY GRANTEE

- A. The Grantee, by the acceptance or use of the Agreement hereby granted, agrees to keep and save free and harmless the City, its officers, agents, and/or employees against any and all claims, demands or causes of action which may be asserted, prosecuted or established against them, or any of them for damage to persons or property, of whatever nature, arising out of the use by it of the City streets hereunder or arising out of any of the operations or activities of the Grantee pursuant to this Agreement, whether such damage shall be caused by negligence or otherwise; excepting therefrom, however, any claim, demand or cause of action which may be asserted, prosecuted or established against the City under the provision of the Worker's Compensation Act for injury to, or the death of any of the City's officers, agents, or employees while acting within the scope of their employment; and further excepting therefrom any claim, demand or cause of action arising out of the sole negligence of the City, its officers, agents and/or employees.

## VIII. INSURANCE REQUIREMENTS

- A. Insurance Required: The Grantee must maintain at its sole expense the following insurance, which shall be full coverage not subject to self insurance provisions.
1. General Liability including coverage for premises, products and completed operations, independent Contractor/Vendors, personal injury and contractual obligations with combined single limits of coverage of at least \$500,000 per occurrence.
  2. Workers' compensation with limits as required by the Labor Code of the State of California and Employers Liability with limits of at least \$500,000 per occurrence.
- B. Acceptability of Insurers: Insurance is to be placed with insurers with a Best's rating of at least B- and a Best's financial size category of at least V.
- C. Additional Insured: The City of Torrance, the City Council, and officers and employees must be named as additional insureds under the automobile and general liability policies.
- D. Verification of Coverage: The Grantee shall provide certificates of insurance and/or endorsements to the City Clerk of the City of Torrance before the commencement of work.
- E. Insurance Termination, Cancellation or Change: Each insurance policy required by this clause shall contain a provision that no termination, cancellation or change of coverage can be made without 30-day notice to the City.

## IX. DEFAULT

- A. Effect of Default. In the event that the Grantee shall default in the performance of any of the terms, covenants and conditions herein and such default is curable, the City shall

give written notice to the Grantee of such default. In the event that the Grantee does not commence the work necessary to cure such default within thirty (30) days after such notice is sent or prosecute such work diligently to completion, the City may declare this Agreement forfeited. Upon giving written notice thereof to the Grantee, this Agreement shall be void and the rights of the Grantee hereunder shall terminate and the Grantee shall execute an instrument of surrender and deliver same to the City.

- B. Force Majeure. In the event Grantee is unable to perform any of the terms of this Agreement by reason of strikes, riots, acts of God, acts of public enemies or other such causes beyond its control, it shall not be deemed to be in default or have forfeited its rights hereunder if it shall commence and prosecute such performance with reasonable promptness as soon as possible to do so.
- C. Cumulative Remedies. No provision herein made for the purpose of securing the enforcement of the terms and conditions of this Agreement shall be deemed an exclusive remedy, or to afford conditions, but the remedies and procedures herein provided, in addition to those provided by law, shall be deemed to be cumulative.

#### X. SCOPE OF RESERVATION

The enumeration herein of specific rights reserved shall not be construed as exclusive or as limiting and general reservation herein made or as limiting such rights as the City may now or hereafter have in law.

#### XI. NOTICE

All notices, requests, demands, or other communications under this Agreement must be in writing. Notice will be sufficiently given for all purposes as follows:

- A. Personal delivery. When personally delivered to the recipient: notice is effective on delivery.
- B. First-class mail. When mailed first class to the last address of the recipient known to the party giving notice: notice is effective three mail delivery days after deposit in a United States Postal Service office or mailbox.
- C. Certified mail. When mailed certified mail, return receipt requested: notice is effective on receipt, if delivery is confirmed by a return receipt.
- D. Overnight delivery. When delivered by an overnight delivery service, charges prepaid or charged to the sender's account: notice is effective on delivery, if delivery is confirmed by the delivery service.
- E. Facsimile transmission. When sent by fax to the last fax number of the recipient known to the party giving notice: notice is effective on receipt, provided that (I) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery, or (ii) the receiving party delivers a written confirmation of receipt. Any notice given by fax will be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a nonbusiness day. Addresses for purpose of giving notice are as follows:

Grantee: Phenomenex  
 2320 West 205th Street  
 Torrance, CA 90501  
 Phone: (310) 212-0555  
 Fax: (310) 328-7768

City of Torrance: City Clerk  
 3031 Torrance Boulevard  
 Torrance, California 90503  
 Phone: (310) 618-2870  
 Fax: (310) 618-2931

Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified will be deemed effective as of the first date the notice was refused, unclaimed or deemed undeliverable by the postal authorities, messenger or overnight delivery service.

Any party may change its address or fax number by giving the other party notice of the change in any manner permitted by this Agreement.

**XII. SUCCESSORS**

The terms herein shall insure to the benefit of, or shall bind, as the case may be, the successors and assigns of the parties hereto.

**XIII. ACCEPTANCE OF AGREEMENT**

This Agreement is entered into and shall be held and enjoyed only upon the terms and conditions herein contained.

**XIV. AGREEMENT TO BE STRICTLY CONSTRUED AGAINST GRANTEE**

The Agreement is granted upon each and every condition herein contained and shall ever be strictly construed against Grantee. Nothing shall pass hereby unless it be granted in plain and unambiguous terms. Each of said conditions is a material and essential condition to the granting of this Agreement.

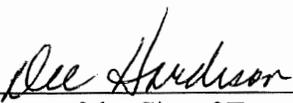
**XV. SPECIAL PROVISIONS**

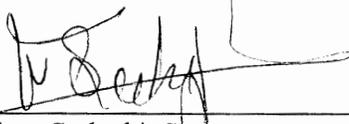
- A. Bond. This Agreement is granted on the condition that the Grantee has now and shall at all times during the life of this Agreement keep on file with the City a bond running to the City in the sum of Ten Thousand Dollars (\$10,000) executed by a reputable indemnity company entitled to do business in the State of California. The provisions of this paragraph shall not exempt the Grantee from compliance with any of the laws of the City in force during the term hereof, which require the Grantee to post a Bond other than the bond required by this paragraph.

- B. Fees. As consideration for the granting of this Agreement, the Grantee shall pay to the City in lawful money of the United States a fee of One Hundred Fifty Dollars (\$150). This payment shall be made to the City prior to the signing of this Agreement and if made by check shall be made payable to the City of Torrance.
  
- C. Underground Service Alert. This Agreement is granted on the condition that the Grantee shall at all times during the duration of this Agreement be a member of the Underground Service Alert (USA).

**CITY OF TORRANCE**  
 A Municipal Corporation

**PHENOMENEX**  
 A California Corporation

By   
 Mayor of the City of Torrance

By   
 Flora Sadeghi, Secretary

**ATTEST:**

  
 Sue Herbers  
 City Clerk of City of Torrance

**APPROVED AS TO FORM:**  
**JOHN L. FELLOWS III**  
 City Attorney

By   
 William G. Quale  
 Assistant City Attorney

IM:jd/#phenlic.doc - 2/3/97  
 Attachment: Exhibit A

# UNDERGROUND COMMUNICATION LINES

