

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (the "MOU") is entered into as of this __ day of March, 2019 (the "Effective Date") by and among the City of San Diego, a municipal corporation ("San Diego" or "City") and Verizon Business Network Services Inc., and Verizon Wireless (VAW) LLC on behalf of themselves and for the benefit of their Affiliates, as defined below, (collectively, hereinafter "Verizon"). For the purpose of this MOU, the term "Affiliate" shall mean an entity controlled by, controlling, or under common control with Verizon Business Network Services Inc. or Verizon Wireless LLC, where the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of any such entity whether through the ownership of voting securities, by contract, or otherwise, but such entity shall be deemed to be an Affiliate only so long as such control exists. Verizon and San Diego are individually referred to herein as a "Party", and collectively as the "Parties."

Whereas, San Diego is an innovative, technology pioneering city focused on delivering world class high-tech services to the residents, visitors, businesses of and government entities located in the City and supports the deployment of advanced wireless and wireline broadband facilities that offer residents access to high quality broadband and telecommunications services, help facilitate digital inclusion, and foster innovation; and

Whereas, Verizon is a global leader in the design, implementation and operation of information and communications technology providing proven, turnkey, technologically advanced solutions, consisting of network connectivity and broadband reach for digital inclusion, and many other applications; and

Whereas, Verizon intends to make significant investments in information and communications technology in San Diego by enhancing and further densifying its existing wireless network to provide users with more wireless broadband capacity for current and future needs, and by further expanding its state-of-the-art fiber wireline network to improve the availability of services, including a focus on digital inclusion, and to enhance competition for broadband services; and

Whereas, San Diego and Verizon share a mutual interest in the accelerated deployment of information and communications technology infrastructure in order to provide government, residents, visitors and businesses the benefits of a state-of-the-art digitally connected community, and for that purpose the Parties desire to develop a mutually beneficial strategic and collaborative non-exclusive relationship (hereinafter referred to as "Collaboration");

Whereas, such accelerated infrastructure deployment will require improved and streamlined wireline and wireless infrastructure permitting and related procedures as well as access to City-owned assets and rights-of-way; and

Whereas, Verizon acknowledges that City has not performed a cost study regarding the cost of deploying Small Cell Wireless Communication Facilities in the right-of-way and also acknowledges that the value of this Collaboration extends beyond the ability to use City-owned assets for its deployment and that it is difficult to place a value on the goodwill engendered by such a Collaboration, or the value of having a large city in which to deploy its Smart City solutions in order to demonstrate to other cities and counties the value of having such Smart City solutions, and Verizon agrees that all services potentially being provided herein, and all compensation anticipated to be paid under the MUOA (as defined below),

related to the deployment of Small Wireless Facilities in the right-of-way, is being provided voluntarily by Verizon in exchange for the additional values of goodwill and opportunities to expeditiously deploy wireless and wireline facilities as well as to deploy Smart City solutions for a trial period in order to use the data to show the real life impacts and benefits that other jurisdictions may derive from the services.

Now therefore for valuable consideration, the sufficiency of which is hereby acknowledged, the Parties hereby agree to enter into this binding MOU to facilitate the Collaboration as follows:

ARTICLE 1: OBLIGATIONS OF THE PARTIES

Section 1.1 Obligations of the City.

- a. To facilitate acceleration of wireline and wireless infrastructure deployment related to Small Cell Wireless Communication Facilities and fiber in the right-of-way, the City agrees to review and bring forth proposed amendments to the sections of the San Diego Municipal Code, the Land Development Manual requirements, and other policies and procedures that interpret those legal requirements and establish current City regulatory permitting processes and other procedures applicable to such deployments, subject to conducting appropriate environmental review on any proposed amendments and subject to City Council's approval in its sole discretion, if required, as needed to accomplish the following:
 - i. City shall review and work in good faith to revise current permitting processes and staffing levels to review applications under the following timelines:
 1. For Master Structural Plan ("MSP") submissions, the City will provide the first cycle of reviewer's comments, if any, within ten (10) days of submission of the MSP for review. For MSP resubmissions, the City will provide any additional cycle of reviewer's comments within ten (10) days of resubmission.
 2. For construction permits as that term is defined in the San Diego Municipal Code section 113.0103, City will provide the first cycle of reviewer's comments, if any, within ten (10) days of submission of the application. For resubmissions of construction permits, City will provide any additional cycle of reviewer's comments within five (5) days of resubmission. If during the second resubmission, the City determines that a third resubmission is required, City staff will escalate the matter to the Deputy Chief Operating Officer ("DCOO") overseeing the Department of Development Services to identify and review any outstanding issues, and contact the appropriate Verizon team member to ensure that outstanding issues are addressed within ten (10) days. Provided that all outstanding issues are addressed to the City's satisfaction, the City will issue the permit within ten (10) days. The City shall not be required to issue the permit(s) within this timeframe if Verizon fails to correct the deficiencies with the application.
 3. City is not waiving its right to charge express processing fees or revise its fee schedule if necessary to allow for processing pursuant to the timelines listed above.

- ii. The City will adopt and consistently apply a uniform policy regarding its requirements for regulatory permit applications to be approved. This will include publication of an Information Bulletin, and aesthetic guidelines related to Small Cell Wireless Communication Facilities in the right-of-way that update and establish the requirements for permit applications for the Small Cell Wireless Communication Facilities to be approved. City will, in good faith, consider any input that Verizon provides regarding the submittal requirements and aesthetic guidelines, to ensure that they are clear and can be consistently applied by both the City reviewers and applicants to reduce the need for extensive revisions or request for additional information.
- iii. The City will work in good faith to establish best practices for permit applications, taking into consideration Verizon's input and concerns regarding the permit application process that will not require intake appointments, but will provide for an electronic permit process, including map submissions, available at least Monday through Friday. If an electronic process is established, permits will be deemed submitted on the day they are received, Monday through Friday, only if received prior to 5:00 p.m. Permits received after 5:00 p.m. or on a Saturday, Sunday, or holiday, will be deemed submitted on the next business day. Verizon acknowledges and agrees that if such a process requires additional software, or expenditures that would require appropriations to be approved by City Council, any such appropriations or expenditures are within the sole discretion of City Council, and failure of the City Council to approve those expenditures will not be a violation of this MOU.
- iv. City will make good faith efforts to develop a submittal process that allows for applicants to obtain a right-of-way permit to install aerial attachments based on certification that a proposed installation complies with an approved MSP. The City agrees to meet and work together with Verizon to understand Verizon's needs and to develop a certification process that meets the needs of both the City and the industry. The Parties' goal is to implement the certification process within sixty (60) days of the Effective Date. Verizon acknowledges and agrees that if such a process requires additional software, or expenditures that would require appropriations to be approved by City Council, that any such appropriations or expenditures are within the sole discretion of City Council, and the failure of City Council to approve such expenditures will not be considered a violation of this MOU.
- v. The City will work in good faith to ensure that any application process developed continues to allow for "batching" of aerial attachment submissions based on a single design. The City may reject a single location within the group while approving the other locations.
- vi. The City will work in good faith to develop permit requirements that will not require a dedicated power source to Small Cell Wireless Communication Facilities. In addition, the City shall allow Verizon to draw 30 amps of power from a non-dedicated circuit wherever technically feasible. Verizon acknowledges that where the City and Verizon are using the same circuit, the City may require that Verizon conduct an asset management review if Verizon draws more than 5 amps on the same circuit. Additionally, Verizon agrees that City is not prohibited from using available power on the circuit, for municipal purposes, and City shall not be required to notify Verizon that

it is doing so, provided that City determines that City's use will not interfere with Verizon's then current use, i.e. the City is not required to hold up to 30 amps on any particular circuit just because Verizon is also using that circuit if Verizon is not actually using 30 amps. Verizon acknowledges that any process established, or permit granted (in addition to the terms of the MUOA) shall require Verizon to repair any damage to City equipment caused by Verizon installation's draw of power. Verizon shall indemnify the City for damages associated with or incurred as a result of any claim, action, or proceeding brought by a third party arising out of or relating to Verizon's negligence, recklessness, or willful misconduct or omissions in performing its obligations that result in personal injury (including death) or damage to tangible property.

- vii. The City will amend Note 5 on the City of San Diego Standard Drawing SDG-165 Micro-Trenching Backfill for Dry Utilities and the associated dimension on the drawing to allow conduit to be placed at sixteen inch (16") depth and up to one and a half inch (1.5") width. All remaining guidance in the City's micro-trenching standards will remain in place.
- viii. The City will work in good faith to develop an application process that allows applications related to installing fiber so that within twelve (12) weeks of the Effective Date and during the Term, it shall process and issue an average of twenty (20) Verizon wireline permits per week. The City shall track the permit processing performance and if it fails to meet these permitting averages for four (4) consecutive weeks, the City shall meet internally and with Verizon to identify permit processing improvements necessary to maintain the agreed-upon permit time frames and volumes specified above and shall promptly implement such improvements. Fiber segment lengths shall be permitted in the right-of-way to include up to five thousand feet of fiber segment lengths in a single construction permit.
- ix. The City shall not require Verizon to provide vertical & horizontal profiles of every existing utility in a right-of-way; however, Verizon will be required to provide crossing notes which will detail the (i) the depth of the utility that the construction is crossing; (ii) the vertical clearance of the conduit to the utility; (iii) whether the conduit is above or below the utility and (iv) the reference drawing number that built the utility. Verizon will obtain the reference drawing number from the City's records. Verizon shall also comply with California Government Code section 4260 *et seq.*, the state's Dig Alert underground damage prevention law.
- x. The City shall allow multiple Verizon construction crews to work concurrently in the same area of the City, including on the same street, where doing so will not be unreasonably disruptive or otherwise create unreasonable conditions in the City's reasonable discretion.
- xi. Field inspections shall occur within three (3) business days of request by Verizon provided that no more than five (5) field inspection requests are made in any individual week. City inspectors shall work with Verizon crews and shall allow them to immediately rectify any violations, (within reason) before shutting them down.

- xii. The City shall provide a copy of the City's street repair schedule for the next twelve months. The City shall provide an update to its schedule quarterly.
 - xiii. City will work in good faith to develop an expedited blanket permit process for deploying fiber in the right-of-way. In developing this process, City will meet with Verizon to understand Verizon's needs and concerns related to the blanket permit process, and will work to address those concerns by any policy/process ultimately developed by the City. The Parties will work together to coordinate and implement three (3) blanket permit trials to be held within the Mission Valley neighborhood and two other neighborhoods in the City to be mutually determined. At the conclusion of the trials, the City will determine if blanket permits are feasible, and if feasible, will develop a process for the submission of applications for blanket permits using the information gathered during the trials. If City determines for any reason that blanket permits are not feasible, City will provide Verizon the reasons that the City has determined the process is not feasible.
 - xiv. The City shall provide information to Verizon regarding availability of City-owned conduit, such as maps, capacity, survey results, future requirements, and other information within fourteen (14) days of the Effective Date. Verizon shall conduct surveys and proofing operations of City-owned conduit to determine the usability of City-owned conduit at locations where Verizon intends to place fiber and its access points. The City shall cooperate in any such survey and proofing activity, and provide information as required. If the City wants an employee to be on site when the surveying and proofing is being done, Verizon shall compensate the City for that employee at City's standard, published cost-based rates for time expended by that City employee during surveying and proofing. The conduit survey shall be completed within ninety (90) days of the Effective Date. If based on the conduit survey, the Parties determine that City conduit is available for Verizon's use in its planned build, the Parties shall negotiate a conduit occupancy agreement within ninety (90) days of completion of the conduit survey.
 - xv. City will work in good faith to develop submittal requirements that do not require permit drawings larger than 11"x17" unless the size of segment length is greater than five thousand (5,000) feet.
 - xvi. If printed plans or drawings are required, no more than four (4) paper copies shall be required.
- b. The City shall bring forward proposed changes to the San Diego Municipal Code ("SDMC") that the City, in its sole discretion, determines will result in accelerated deployment of wireless and wireline infrastructure and that promote and protect the health, safety and welfare of the citizens of City, and the community aesthetics and character. Verizon agrees and acknowledges that approval of any changes brought forward are subject to City Council's approval, in its sole and absolute discretion, and that such changes must be reviewed under the California Environmental Quality Act. In drafting these changes, City agrees to consider in good faith proposed changes that Verizon believes will accelerate wireline and wireless infrastructure deployment, including the following:

- i. Adding a definition to the SDMC for “Small Cell Wireless Communication Facilities” that is broad enough to encompass wireless equipment associated with 5G deployments;
- ii. Permitting Small Cell Wireless Communication Facilities to be installed as a limited use through a ministerial process, without the necessity of a discretionary development permit or approval on City Poles, including replacing City Poles with a like pole if required; installations on existing third-party poles pursuant to the terms of a separate agreement with the owner of such poles; and installations on Proprietary Poles that include a luminaire arm with LED lights.
- iii. If the definition of Small Cell Wireless Communication Facilities does not include Proprietary Poles, permitting Proprietary Poles that include light standards (arm with luminaire) to be placed in the rights-of-way pursuant to a ministerial permit or similar municipal authorization without zoning or CUP review or approval.

Section 1.2 Obligations of Verizon.

- a. Verizon will enhance and further densify its existing wireless and wireline networks through the deployment of wireless communications facilities and fiber with the objective of providing users in the City with more broadband capacity for current and future needs.
- b. Verizon shall provide the City with recommended revisions to the SDMC within thirty (30) days after the Effective Date, and shall attend any related Planning Commission or City Council meetings as requested by City staff.
- c. Verizon shall conform to all existing state laws pertaining to monument preservation and perpetuation.
- d. Verizon shall work in good faith with the City to deploy Small Cell Wireless Communication Facilities on up to one thousand five hundred (1,500) City Poles, including associated fiber, on or before December 31, 2022 pursuant to the terms of the MUOA that will be executed concurrently with this MOU. If as a result of the Collaboration and cooperation with the City required by this MOU (regardless of whether any one particular process change described herein has been completed), Verizon, working in good faith, is able to deploy Small Cell Wireless Communication Facilities, it shall enter into an agreement(s), which the Parties agree to negotiate in good faith, to provide the funding and services as follows:
 - i. Verizon shall provide the City with funding for the City to purchase up to two hundred (200) LED luminaires to be deployed exclusively on newly installed Verizon-owned poles at locations Verizon selects in consultation with the City. Verizon’s total cost for the luminaires shall not exceed four hundred thousand dollars (\$400,000). Verizon shall own these poles and shall have all associated rights, including the right to attach Verizon’s equipment, including but not limited, 4G equipment, 5G equipment, city hubs or other equipment, to these poles at no charge and after installation the City shall own and maintain the LED luminaires. Verizon shall provide power to the poles for its uses and the City shall pay for the power for the luminaires.

Section 1.3 Joint Obligations of the City and Verizon.

- a. The Parties shall agree on reasonable and objective design or aesthetic standards for structures and facilities that are consistent with the City's applicable standards, as may be revised pursuant to Section 1.1(b) above, and which will not limit Verizon's equipment type based on the fact that it is emerging technology.
- b. The Parties shall establish a Joint Collaboration Team ("JCT") to help to ensure proper diligence occurs prior to providing permits and shall work in partnership with each other towards a best in class process. The JCT is defined as and shall consist of:
 - i. Executive team members from Verizon and the City who shall provide leadership towards the above objectives identified herein, identify working teams, resolve issues as required, and regularly evaluate success of the Collaboration set forth herein and attainment of the goals.
 - ii. Working teams consisting of members from Verizon and the City who shall meet on a regular basis to identify areas needing attention, create a process for issue resolution, and make recommendations to the executives as needed to resolve issues. Such meetings shall include, but not be limited to, the following: Within thirty (30) days of the Effective Date and each quarter until Verizon achieves its planned deployment of Small Cell Wireless Communication Facilities in the City, the City and Verizon shall meet and confer regarding (i) the status of the Collaboration, (ii) the number of Small Cell Wireless Communication Facility sites constructed, and (iii) Verizon's anticipated Small Cell Wireless Communication Facility build plan for the coming three (3) month period. The City may request that Verizon consider building in certain areas of the City as part of the meetings, and Verizon shall consider each request in good faith and may in its sole discretion decide to amend its build plan to accommodate such request. The Parties shall agree upon a target number of Small Cell Wireless Communication Facilities to build in the coming twelve (12) month period consistent with Verizon's planned Small Cell Wireless Communication Facility deployment.
 - iii. The initial JCT members will be identified no later than one (1) week after the Effective Date of this MOU. Any changes to the JCT should be provided to the other Party in writing in advance.
- c. The Parties agree to coordinate such implementation and management of the Collaboration through the following:
 - i. City will ensure that the JCT is made up of City-staff that can address all permitting submission, review, and resolution issues. City members of the JCT shall be available during all normal business hours, and will identify back-ups for periods of absence. All members of the JCT will be knowledgeable regarding the City/Verizon shared goals and objectives for the build. The City's executive team member of the JCT shall have authority to obtain City-wide resources necessary to meet the agreed-upon permitting performance objectives, including requiring expedited processing or review by any City department or official, as necessary. However, Verizon acknowledges that City's obligations under this MOU will not require City to violate any agreements that it may have with labor organizations representing City employees, and failure of City to

implement any specific process if City doing so would violate a labor agreement or other contract of any sort, will not constitute a default under this MOU.

- ii. The appropriate City JCT member shall make a reasonable attempt to provide responses to Verizon within one (1) business day on all routine inquiries seeking clarification of requirements or process, status of applications, guidance on permitting requirements, and scheduling of meetings.
 - iii. JCT members shall meet regularly to discuss ways to enhance the application process including streamlining the process.
 - iv. Verizon shall have the option to work directly with the City for all Small Cell Wireless Facility deployments and shall not be required to work through a City agent.
 - v. The Parties shall agree upon metrics that establish clear milestones to measure the undertakings, and an agreed upon performance measurement approach based on such metrics.
 - vi. The Parties shall establish a work plan (with related action items and milestones) relating to the implementation of the business plan for each of the referred initiatives.
- d. Except as specifically set forth herein, each Party shall remain solely responsible for its own expenses, under or arising thereunder.
- e. Concurrently with execution of this MOU the Parties shall enter into a Master Use and Occupancy Agreement ("MUOA") to allow Verizon the right to use portions of City's public rights-of way for the construction, operation and maintenance of Small Cell Wireless Communication Facilities for a term of ten (10) years and that includes the following provisions. All defined terms in this Section 1.3(e)(i)-(v) shall have the meaning as set forth in the MUOA.
- i. For attachments of Small Cell Wireless Facilities to City Poles, Verizon shall pay the City one hundred dollars (\$100) per Pole by check annually for a term of ten (10) years, plus delivering in-kind compensation as required therein and more fully described below, for a total Annual Fee per Pole payable to the City in the amount of two hundred seventy (\$270). The start of the term for each Verizon Pole attachment shall begin on the Effective Date of the Use and Occupancy Permit issued for that specific pole.
 - ii. PERMITTEE will perform a field collection of data specific to approximately sixty thousand (60,000) poles, which data shall be captured and then populated into applicable mutually agreed to attributes (such as attachments, licensing and pole reservations), which attributes shall be provided to CITY via geographic information systems ("GIS") technology and merged with the CITY's then-existing corresponding GIS layers of information. This field collection of data shall commence promptly following the Effective Date of this Master Agreement, and the Parties shall make good faith efforts to deliver the data within 120 days following the Effective Date of the Master Agreement. Thereafter, for a period of two (2) years, PERMITTEE will provide

reasonable inventory management support services to CITY via a discrete user interface (or dashboard) specific to CITY's reasonable specifications. The value of the goods and services provided by PERMITTEE pursuant to this Section will not exceed one million five hundred thousand dollars (\$1,500,000). CITY shall inspect the In-Kind Consideration set forth in Section 1 of this Exhibit E within thirty (30) days of receipt ("Inspection Period"). Receipt shall be deemed to occur upon PERMITTEE's delivery of notice of completion of the field inspection and merger of the data collected into the CITY's GIS layers of information, and provision of the discrete user interface. CITY will be deemed to have accepted the In-Kind Consideration unless it notifies PERMITTEE in writing of any deficiencies during the Inspection Period and furnishes such written evidence or other documentation as reasonably required by PERMITTEE. If CITY timely notifies PERMITTEE of any deficiencies, PERMITTEE shall promptly correct such deficiencies and notify the CITY of the correction. Such 30-day inspection process shall subsequently repeat itself until deemed acceptance or PERMITTEE corrects the deficiencies to CITY's reasonable satisfaction.

- iii. Police Officer Smartphones and Fire Department Tablets. If by December 31, 2019, PERMITTEE making good faith efforts to do so, has applied for and CITY has issued to PERMITTEE, UOPs authorizing PERMITTEE's use and occupancy on at least 500 Approved Sites which are "Traffic Ready," PERMITTEE shall provide at no charge to the CITY's Police Department five hundred (500) of the most current (at the time of issuance) Samsung android smartphones, and fifty (50) of the most current (at the time of issuance) 10" iPad Air or equivalent tablets at no charge to the CITY's Fire Department. The term "Traffic Ready" means all necessary permits have been issued by the CITY for PERMITTEE's delivery of fiber (including backhaul) to, and installation of the Communications Equipment on the Approved Site (including all necessary wireless and wireline permits and municipal approvals covering placement of fiber from the pole to the Centralized Radio Access Network ("CRAN") hub location); CITY has issued all required permits and approvals needed for power to be delivered to the Approved Site for which complete applications (in accordance with the City's written guidelines) have been submitted; and the CITY has provided PERMITTEE access to the Approved Site for the purpose of installing the Communications Equipment all necessary permits subject to the timelines required by the MOU. A permit shall be deemed issued if it is available for pickup at DSD's permit desk by PERMITTEE or its authorized agent or representative without condition, except for the payment of issuance fees due at the time a permit is ready to issue. PERMITTEE will be providing the smart phone and tablet equipment only.
- iv. Intersection Safety Analytics. If by December 31, 2020, PERMITTEE has applied for and CITY has issued to PERMITTEE UOPs authorizing PERMITTEE'S use and occupancy on at least 1000 Approved Sites which are Traffic Ready, PERMITTEE shall assist with the CITY's implementation of its Vision Zero Program by providing an Intersection Safety Analytics ("ISA") solution at five (5) traffic intersections at locations to be mutually determined. PERMITTEE's Intersection Safety Analytics solution will allow the CITY to use the analytic insights gathered at traffic intersections to guide the required traffic engineering, enforcement, or education initiatives that can help improve traffic safety. Where the video sensors are deployed, the CITY shall agree to provide appropriate

infrastructure at no cost to PERMITTEE, including a light pole with an LED luminaire, standard five (5) or seven (7) PIN NEMA sockets on the luminaire, sufficient power supply 24x7 in the socket and pole, and additional necessary infrastructure that may be identified later. Also, at mutually determined traffic intersections, the CITY shall provide PERMITTEE permission in the form of CITY approved permits to install signal phase data capture hardware in the traffic cabinets. PERMITTEE shall provide the ISA solution free of charge for twenty-four (24) months.

- v. Traffic Data Services. If by December 31, 2021, PERMITTEE has applied for and CITY has issued to PERMITTEE UOPs authorizing PERMITTEE's use and occupancy on at least 1,500 Approved Sites, which are Traffic Ready. PERMITTEE shall provide a Smart Community Traffic Data Services ("TDS") to the City which will involve collecting traffic data to deliver insights about traffic patterns and congestion and origin - destination insights in a turnkey Software-as-a-Service model. Key traffic metrics, such as segment level vehicle speed, the direction of travel and travel time, shall be collected on a near real-time basis to help understand vehicular traffic flow for a mutually agreed upon set of routes totaling seventy-five (75) directional miles on arteries or on off-street multi-use facility. Verizon shall also provide the capability to configure and receive data for virtual counting stations along the selected facilities. In addition, Verizon shall provide basic Origin/Destination ("O/D") traffic analytics reports as well as visitor and weekend O/D traffic analytics reports two (2) times per year, plus congestion mitigation reports on two (2) mutually agreed upon congestion corridors/congestion events. Verizon shall provide this TDS solution free of charge for a total of twenty-four (24) months.

ARTICLE 2:

TRADEMARKS

Section 2.1 Trademarks, Service Marks, and Name.

- a. Each Party ("Grantor") grants to the other Party ("Grantee") the right to use the Grantor's Trademarks, Service Marks and Name (collectively "Grantor Marks") for the sole purpose of announcing the existence and content of this MOU to third parties, provided that the conditions for such announcements, as set forth in Section 6.7 (Publicity) have been satisfied. Any other use by the Grantee of Grantor Marks shall require previous written consent of Grantor. For avoidance of doubt, the inclusion of other marks in any product guide or other written policies of Grantor shall not grant the Grantee the right to use any such other marks apart from the specific rights granted in respect of the Grantor's Marks as expressly set forth in this Section 3 or in an amendment or a specific agreement. The Grantee agrees not to affix or otherwise reference any Grantor Marks to or with (as applicable) products and services other than Grantor products or services as contemplated in this MOU.
- b. The goodwill arising from any permitted use of the Grantor Marks by the Grantee shall inure to the benefit of Verizon. The City shall have no claim or right in the Grantor Marks, including but not limited to trademarks, service marks, or trade names owned, used or claimed now or which Grantor has authority to grant the Grantee the right to use in the future.

ARTICLE 3:

WARRANTIES

Section 3.1 Disclaimer of Warranties. VERIZON MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH REGARD TO ANY SOLUTIONS, SERVICES, VERIZON MATERIALS, THIRD PARTY APPLICATIONS OR OTHER ITEMS UNDER THIS MOU (INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT OR CONDITIONS OF SATISFACTORY QUALITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY IMPLIED WARRANTY ARISING OUT OF COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE). VERIZON MAKES NO WARRANTIES REGARDING THE ACCURACY, COMPLETENESS OR TIMELINESS OF ANY INFORMATION PROVIDED IN CONNECTION WITH OR RESULTS OBTAINED THROUGH USE OF THE SOLUTIONS OR SERVICES. VERIZON DOES NOT WARRANT THAT USE OF ANY OF THE SOLUTIONS OR SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE OR THAT VERIZON WILL CORRECT ALL DEFECTS OR PREVENT THIRD PARTY DISRUPTIONS OR UNAUTHORIZED THIRD PARTY ACCESS.

ARTICLE 4:

LIMITATIONS OF LIABILITY

Section 4.1 Damage Cap and No Consequential Damages.

EXCLUDING LIABILITIES RELATED TO (A) THIRD PARTY CLAIMS SUBJECT TO INDEMNIFICATION OBLIGATIONS HEREUNDER OR (B) BREACH OF THE TERMS OF A LICENSE GRANT, THE LIABILITY OF EITHER PARTY TO THE OTHER PARTY ARISING OUT OF, RESULTING FROM OR RELATED TO THE PERFORMANCE OR NON-PERFORMANCE UNDER THIS MOU SHALL BE LIMITED TO FOUR HUNDRED THOUSAND DOLLARS (\$400,000.00). FURTHER, EXCLUDING LIABILITIES RELATED TO (A) THIRD PARTY CLAIMS SUBJECT TO INDEMNIFICATION OBLIGATIONS HEREUNDER, AND (B) BREACH OF THE TERMS OF A LICENSE GRANT, NEITHER PARTY NOR ANY ITS AFFILIATES, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, OWNERS, SUPPLIERS, NETWORK SERVICE PROVIDERS, OR THE PROVIDERS OF THIRD PARTY APPLICATIONS WILL BE LIABLE TO THE OTHER PARTY OR ANY AUTHORIZED USERS, FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, SPECIAL OR EXEMPLARY DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR ANY LOSS OF PROFIT, VALUE, REVENUE, DATA, BUSINESS, GOODWILL, ANTICIPATED SAVINGS, USE, DAMAGE TO REPUTATION, OR BUSINESS INTERRUPTION) ARISING FROM OR RELATED TO ANY PROVISION OF THIS MOU, SOLUTIONS, THE VERIZON MATERIALS OR ANY SOFTWARE (INCLUDING THIRD PARTY APPLICATIONS), SERVICES OR OTHER ITEMS PROVIDED IN CONNECTION THEREWITH, OR THE FAILURE OF A PARTY TO PERFORM ITS OBLIGATIONS, REGARDLESS OF ANY NEGLIGENCE BY THAT PARTY AND EVEN IF THE PARTY RESPONSIBLE FOR THE BREACH OR VIOLATION OR ACT GIVING RISE TO THE CLAIM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

ARTICLE 5

CONFIDENTIALITY

Section 5.1 Definition of Confidential Information. The term "Confidential Information" means Verizon Materials, Verizon trade secrets, and other Verizon proprietary or business information provided to the City that is clearly labeled, marked or otherwise identified as "confidential" or "proprietary information," or would otherwise normally be considered Confidential Information in the ordinary course and scope of business.

Section 5.2 Exceptions. Notwithstanding the foregoing, "Confidential Information" shall exclude (and the City shall not be under any obligation to maintain in confidence) any information (or any portion thereof) disclosed to the City by Verizon to the extent that such information:

- a. Is in the public domain at the time of disclosure; or
- b. At the time of or following disclosure, becomes generally known or available through no act or omission on the part of Verizon; or
- c. Is known, or becomes known, to the City from a source other than Verizon or its representatives, provided that disclosure by such source is not in breach of a confidentiality agreement with Verizon provided City does not have any knowledge that disclosure by such source is in breach of a confidentiality agreement with Verizon;
- d. Is independently developed by the City without violating any of its obligations under this Agreement; or
- e. May be legally required to be disclosed under state or local law, including the California Public Records Act, Government Code section 6250 *et seq.* or ("Public Records Act") or by judicial or other governmental action; or
- f. Is permitted to be disclosed by a formal written agreement executed by and between the Parties.

Section 5.3 Duty to Keep Confidential. The City agrees to maintain as confidential, to the extent permitted or required by applicable law, including the Public Records Act, all Confidential Information furnished or otherwise made available to the City by Verizon.

Section 5.4 Requests for Disclosure Pursuant to the Public Records Act.

- a. Verizon acknowledges that the City is a public agency subject to the requirements of the Public Records Act and the state constitution. Verizon acknowledges that it may submit to or otherwise provide the City with access to Confidential Information, which may or may not be exempt from public disclosure under applicable law.
- b. Where any third party (the "Requestor") not otherwise authorized to access Confidential Information under this Agreement makes a demand or request to the City for access to Confidential Information (the "Request"), including, without limitation, the terms and conditions being negotiated, or the production, inspection or copying of other information

designated by Verizon as Confidential Information, City will notify Verizon prior to disclosing any records determined to be responsive to the Request, and City will allow ten (10) business days for Verizon to review the request and notify the City in writing if Verizon objects to disclosure of records determined to be responsive to the Request before disclosing any records of the Request before responding to the Requestor; however, Verizon shall be solely responsible for taking whatever legal steps Verizon deems necessary to protect information determined by Verizon to be Confidential Information and to prevent release of information to the Requestor (including the release of such information by the City). Verizon is responsible for all costs associated with pursuit of such legal steps, including the pursuit of any legal remedies.

- c. Verizon understands and acknowledges that the Public Records Act may compel the City to respond to Requests within a specific number of days from receipt of a Request (the "City Deadline"). Where the City has met its obligation to timely notify Verizon as set forth in subsection 5.4 (b) and Verizon fails to notify the City that it will seek a protective order or other legal remedy to bar the disclosure of information Verizon considers Confidential Information prior to the City Deadline, the City may, without liability hereunder, disclose the Confidential Information that is necessary to be disclosed in response to the Request.
- d. Without limiting the more general indemnity terms of this Agreement, Verizon will indemnify, defend, and hold harmless the City from any claim, costs, or liability arising from such Requests, including City's refusal to disclose information Verizon considers to be Confidential Information in response to any Verizon demand that such information not be disclosed.

Section 5.5 Execution, Return, Disposal. Upon termination or expiration of this Agreement, City shall, at Verizon's direction, make reasonable efforts to either return or destroy all Confidential Information consistent with applicable law; provided, however, any Confidential Information found in electronic format as part of City's off-site or on-site data storage/archival process system, will be held by City and kept subject to the terms of this provision or destroyed pursuant to the City's document retention schedule. The obligations of this provision will survive termination or expiration of this Agreement for a period of three (3) years.

ARTICLE 6

GENERAL PROVISIONS

Section 6.1 Term. The term of this MOU shall be co-terminous with the MUOA.

Section 6.2 Termination. Notice of termination must be provided in accordance with the terms of Section 6.5 (Notices) of this MOU. The following will be causes for the early termination of the MOU:

- a. Mutual agreement of the Parties; or
- b. Failure to fulfill or breach of any of the material terms and conditions of the MOU (collectively, a "Default") by either Party. If either Party commits a Default under this MOU or any Exhibits herein, then the non-defaulting Party shall give the defaulting Party written notice of the breach or default (including a statement of the facts relating to the breach or default, the provisions of this MOU that have been breached or caused default and the action

required to cure the breach or default) and written notice that the MOU may be terminated pursuant to this provision if Default is not cured within sixty (60) calendar days after receipt of notice (or such later date as specified by the non-defaulting Party or as mutually agreed upon by the Parties). If the defaulting Party fails to cure the specified breach or default within sixty (60) calendar days after receipt of such notice (or such later date as may be specified in such notice by the non-defaulting Party or as mutually agreed upon by the Parties), then the non-defaulting Party will have the unilateral right to terminate the MOU immediately or at any time thereafter.

The Parties agree, prior to any notice of Default and the start of any cure period, to escalate any matters that a Party believes is cause for termination to the Executive Sponsors for resolution prior to issuing a notice of breach or exercising their termination rights above. The Executive Sponsors agree to try to resolve such issue within thirty (30) calendar days, which time period may be extended by mutual written agreement of the Parties.

Section 6.3 Counterparts. This MOU may be executed in any number of counterparts including by tele-facsimile, each of which when executed and delivered shall be deemed an original, but which counterparts together shall constitute one and the same instrument.

Section 6.4 Successor Contracts. Should Parties enter into subject-specific successor contracts on Collaboration areas, terms and conditions of such subject-specific agreements or contracts shall supersede those of this MOU in relation its subject matter and to such specific Collaboration areas.

Section 6.5 Notices. Any notice, approval, request, authorization, direction, or other communication under this MOU shall be given in writing, directed to the addresses of the Parties below, and shall be deemed to have been delivered and given for all purposes: (i) on the next business day if delivered by electronic mail, and with return receipt requested; or (ii) on the delivery date if delivered personally to the Party to whom the same is directed; or (iii) one (1) business day after deposit with a commercial overnight carrier with written verification of receipt; or (iv) five (5) business days after the mailing date whether or not actually received, if sent by U.S. mail, return receipt requested, postage and charges prepaid, or any other means of rapid mail delivery for which a receipt is available to the contact at the address of the Party to whom the same is directed. Either Party may from time to time change its address for purposes of this paragraph by giving the other Party notice of the change in accordance with this paragraph.

In the case of Verizon:

Verizon Access Transmission Services
400 International Parkway, Floor 2
Richardson, Texas 75081
Attn: Contracts Manager
VZB-NetworkContracts@one.verizon.com

In the case of the City:

Ronald H. Villa, Assistant Chief Operating Officer
202 C Street, Suite 900
San Diego, CA 92101

Section 6.6 Applicable Law. This MOU and any action related thereto shall be governed, controlled, interpreted and defined by and under the laws of the State of California and the United States, without regard to the conflict of law provisions thereof. Venue for any action under this MOU shall be in the state and federal courts located in San Diego County.

- Section 6.7 Publicity. Marketing, advertising, promotional materials (e.g., marketing collateral), press releases or other public announcements regarding this MOU, the activities hereunder, any Exhibit, or any agreement executed pursuant hereto, shall be made only after receiving the prior written consent of the other Party, except as required by law, in which case the other Party shall be consulted to the extent reasonably practicable as to the content and timing of such release, announcement or statement. Notwithstanding the foregoing, each Party may generally describe the collaborative nature of the relationship with the other Party in presentations, and proposals, and Verizon may publicly disclose performance results of the Intersection Safety Analytics and Traffic Data Services solutions.
- Section 6.8 Independent Contractors. The Parties to this MOU are independent contractors. Neither Party is an agent, representative, or partner of the other Party. Neither Party shall have any right, power, or authority to enter into any agreement for, or on behalf of, or incur any obligation or liability of, or to otherwise bind, the other Party. This MOU shall not be interpreted or construed to create an association, agency, joint venture, or legal partnership between the Parties or to impose any liability attributable to such a relationship upon either Party.
- Section 6.9 No Disqualification. Nothing herein contained in this MOU is intended to limit future Verizon bids for City business opportunities in any way, and provided that applicable law permits, nothing in this MOU shall preclude Verizon or its affiliates from pursuing on any future City procurement opportunity.
- Section 6.10 Assignment. The rights and obligations assumed by each of the Parties under this MOU shall not be assigned or otherwise transferred, in whole or in part, without the written prior consent of the other Party which consent shall not be unreasonably withheld, delayed or conditioned.
- Section 6.11 Amendments. The activities and Collaboration described herein in addition to other agreements between the Parties within the scope of this MOU (as applicable), may require that the Parties enter into amendments or specific agreements related to the LED lighting or other services or solutions. The Parties agree to work in good faith to negotiate those amendments and agreements.
- Section 6.12 Attorneys' Fees. Other than as provided in subsection 17.4 (Indemnity) of the MOUA and Section 26 (Indemnification) of the MOUA and subsection 5.5(d) of this MOU (Confidentiality) herein in any suit or proceeding relating to this MOU each Party shall be responsible for its own costs and fees incurred in connection with the suit or proceeding unless otherwise required by law.
- Section 6.13 Waiver. The failure of either Party to insist upon or enforce performance by the other Party of any provision of this MOU, or to exercise any right or remedy under this MOU or otherwise by law, will not be construed as a waiver or relinquishment of such Party's right to assert or rely upon the provision, right, or remedy in that or any other instance; rather the provision, right or remedy will be and remain in full force and effect.
- Section 6.14 Force Majeure. Neither Party shall be deemed in breach of this MOU if it is prevented from performing any of the obligations under this MOU by reason of severe weather and storms; levee breaches; earthquakes or other natural occurrences; strikes or other labor unrest; power failures; nuclear or other civil or military emergencies; acts of terrorism; acts of legislative, judicial, executive or administrative authorities; or any other circumstances which are not within its reasonable control. A delay beyond a Party's control automatically extends the time, in an amount

equal to the period of the delay, for that Party to perform the obligation under this MOU. The Parties shall prepare and sign an appropriate document acknowledging any extension of time under this Section 6.14.

- Section 6.15 Compliance with Laws. In performance of its respective obligations under this MOU, each Party will comply with applicable law. The City agrees that the services, solutions, products, equipment or monies that are offered in this term sheet that are subsequently provided pursuant to an agreement between Verizon and the City will not be provided or distributed to, or used by, any entity that participates or is eligible to participate in the Schools and Libraries Universal Service Support Program (commonly referred to as the "E-rate Program"), which is administered by the Universal Service Administrative Company ("USAC") under the direction of the Federal Communications Commission.
- Section 6.16 Non-Discrimination. All City fees for telecommunications infrastructure will be cost-based, and charged in a non-discriminatory manner when required by law. The City acknowledges that under current law, the City may not charge an access fee for ground space in the public right-of-way, which is separate and distinct from the City charging an Annual Fee for attachments on City-owned infrastructure in the public right-of-way, which Verizon acknowledges the City has the right to do consistent with applicable law.
- Section 6.17 Remedies. In addition to any specific remedies listed in this MOU, except where binding arbitration has been specified, the Parties shall have the right to bring any remedy in law or equity to enforce the provision of this MOU.
- Section 6.18 Severability. This MOU will be enforced to the fullest extent permitted by Applicable Law. If any provision of this MOU is held to be illegal, invalid or unenforceable to any extent, then such provision shall be excluded to the extent of such illegality, invalidity or unenforceability; all other provisions hereof shall remain in full force and effect; and, to the extent permitted and possible, the excluded provision shall be deemed replaced by a provision that is valid and enforceable and that comes closest to expressing the intention of such excluded provision. If application of this Severability provision should materially and adversely affect the economic substance of the transactions contemplated hereby, the Party adversely impacted, in its sole discretion, shall be entitled to either (i) compensation for such adverse impact or (ii) shall have the right to terminate the MOU upon thirty (30) days advance written notice, provided such notice is given within sixty (60) days of the determination of illegality, invalidity or unenforceability. The foregoing remedies are only available to the adversely impacted Party if the reason for the illegality, invalidity or unenforceability of a term is not due to misconduct of the Party seeking compensation or termination.
- Section 6.19 Survival. The following provisions of this MOU shall survive expiration or termination of this MOU for *any* purpose: Article 5 (Confidentiality), Sections 6.1 and 6.2 (Term and Termination), Section 6.22 (Dispute Resolution), Article 3 (Warranties), and Article 4 (Limitations of Liability and Consequential Damages Waiver) and the following provisions of this MUOA shall survive expiration or termination of this MUOA for *any* purpose: subsection 17.4 and Section 26 (Indemnity and Indemnification).
- Section 6.20 Order of Precedence. The order of precedence between and among this MOU, its Exhibits and any amendments that are or will be attached hereto and incorporated herein by reference, with respect to a conflict between the same subject matter, shall be as follows, but provided that the

prevailing term shall apply only to (i) the conflicting terms and (ii) the extent necessary to resolve the conflict:

- a. Amendments or specific agreements;
- b. The terms and conditions set forth herein; and
- c. Exhibits attached hereto.

Section 6.21 Dispute Resolution Process. In the event that a dispute arises between the Parties pertaining to the subject matter of the Collaboration (a "Dispute"), prior to the initiation of any formal legal action, the following dispute resolution process shall apply.

- a. Any Dispute (except for those related to permits and those set forth in subparagraph b) will be submitted in writing for discussion and resolution to the Parties' respective Relationship Managers. The Relationship Managers will have thirty (30) days after referral of the Dispute to resolve it to the Parties' mutual satisfaction and if unable to do so, will refer the matter to the Executive Sponsors. The Executive Sponsors will have an additional thirty (30) days after referral of the Dispute to resolve it to the Parties' mutual satisfaction. In the event of a Dispute related to permitting requirements hereunder, the Relationship Managers will have five (5) days after referral of the Dispute to resolve it to the Parties' mutual satisfaction. If the Relationship Managers are unable to resolve the permitting Dispute within the time provided, they will refer the matter to the Executive Sponsors. The Executive Sponsors will have an additional five (5) days after referral of the permitting Dispute to resolve it to the Parties' mutual satisfaction. If the Parties are unable to resolve a Dispute after exhaustion of the process specified in this subparagraph a, then the Parties shall be free to pursue any remedies available to them at law or equity
- b. For Disputes relating to an alleged or actual breach of the confidentiality obligations or any intellectual property ownership or licensing issues, the Parties may submit the matter for discussion and resolution to the Executive Sponsor for Verizon, and to the Deputy Chief Operating Officer over the Department of Development Services for the City. These individuals shall use good faith efforts to resolve the Dispute within ten (10) days, or such longer time as the Parties may agree. Notwithstanding the foregoing, each Party, without waiving any remedy under this MOU, may seek an injunction or other equitable relief in the court of its choosing, subject to the venue provisions set forth herein, to protect Confidential Information and Intellectual Property Rights.

Section 6.22 No Third-Party Beneficiaries. This MOU and any separate agreements created pursuant to this MOU are solely for the benefit of the City and Verizon. They are not intended to benefit any third parties.

Section 6.23 Construction of Document. The Parties acknowledge that this document shall not be construed in favor of or against the drafter by virtue of said Party being the drafter and that this MOU shall not be construed as a binding offer until signed by both Parties.


Section 6.24 Captions. The captions preceding the sections of this MOU are intended only for convenience of reference and in no way define, limit, or describe the scope of this MOU or the intent of any provision hereof.

Section 6.25 Authorized. Each person signing this MOU represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this MOU. Each Party represents and warrants to the others that the execution and delivery of the MOU and the performance of such Party's obligations hereunder have been duly authorized.

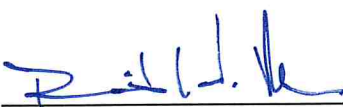
Section 6.26 Final Agreement. This MOU, together with all Exhibits hereto and any amendments that are or will be attached hereto and incorporated herein by reference, sets forth the entire agreement between the Parties relating to the Collaboration, and supersedes any and all prior or contemporaneous agreements and representations written or oral, of the Parties with respect to the subject matter set forth herein.

IN WITNESS WHEREOF, the Parties hereto have executed this MOU as of the Effective Date.


VERIZON BUSINESS NETWORK SERVICES INC.

By: 
Name: Ed Chan
Title: SVP - Engineering
Date: 29th March, 2019

THE CITY OF SAN DIEGO

By: 
Name: RONALD VILLA
Title: ASST. C.O.O.
Date: 4.3.2019

VERIZON WIRELESS (VAW), LLC

By: 
Name: Ed Chan
Title: SVP - Engineering
Date: 29th March, 2019

APPROVED AS TO FORM


By: 
Name: Melissa Ahles
Title: Deputy City Attorney
Date: 4/4/2019

EXHIBIT A: MASTER USE AND OCCUPANCY AGREEMENT





CITY OF SAN DIEGO

MASTER USE AND OCCUPANCY AGREEMENT

between

THE CITY OF SAN DIEGO

and

**VERIZON WIRELESS (VAW), LLC,
a Delaware limited liability company**

for

Small Cell Installations on Various Poles

**CITY OF SAN DIEGO
MASTER SMALL CELL USE AND OCCUPANCY AGREEMENT**

This CITY OF SAN DIEGO MASTER USE AND OCCUPANCY AGREEMENT ("Master Agreement") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY") and VERIZON WIRELESS (VAW) LLC, a Delaware limited liability company ("PERMITTEE") hereinafter collectively referred to as the "Parties," to be effective on the first day of the first month following the date of execution by CITY ("Effective Date"), once the Master Agreement is signed by the San Diego City Attorney.

RECITALS

- A. CITY is the record owner of certain public rights-of-way within the City of San Diego.
- B. PERMITTEE desires to erect, maintain and operate small wireless facilities within the CITY's public rights-of-way further defined below as "Communications Equipment."
- C. PERMITTEE is a provider of "commercial mobile radio service" or "commercial mobile data service," as those terms are defined in Section 20.3 of Title 47 of the Code of Federal Regulations, using spectrum radio frequencies licensed to it by the Federal Communications Commission or any successor agency.
- D. CITY is willing to enter into this Master Agreement with PERMITTEE governing the right to use portions of CITY's public rights-of-way, specifically CITY Street Light Poles, for the construction, operation and maintenance of the Communications Equipment (defined below) in order for PERMITTEE to provide better service to its customers.
- D. Notwithstanding anything to the contrary contained in this Master Agreement, no provision contained herein shall be construed to mean that PERMITTEE is paying a use fee for any ground space portion of the public right-of-way.
- E. CITY and PERMITTEE share an interest in the accelerated deployment of an advanced wireless communications network to serve residents, visitors and businesses in San Diego and are entering into this Master Agreement to further such interest.
- F. The Parties also have a mutual interest in accelerated deployment of an enhanced fiber network and smart city solutions' pilots in order to provide, in conjunction with advanced wireless facilities, the benefits of a state-of-the-art connected community to CITY residents, visitors and businesses.
- G. The Parties wish to enter into this Master Agreement to accelerate the deployment of such infrastructure and technology to serve San Diego's residents, businesses and visitors.
- H. The Parties desire to facilitate the planning, implementation and management of the accelerated deployment of an advanced wireless communications network as well as deployment of fiber and associated services ("Advanced Wireless Communications Network").

I. The CITY acknowledges that the joint goal of accelerated deployment of an Advanced Wireless Communications Network may require changes to the San Diego Municipal Code ("SDMC") and other permitting processes currently applicable to these deployments, and the CITY is willing to commit to reviewing the applicable SDMC provisions and current permitting processes in good faith, to consider any proposed changes that PERMITTEE believes will accelerate deployment.

J. The CITY will work to bring forward any changes to the City Council to the SDMC that the CITY, in its sole discretion, determines will result in an accelerated deployment of an Advanced Wireless Communications Network and that promote the health, safety and welfare of the citizens of CITY, and that protect the community aesthetics and ensure that deployments are consistent with the character of the community.

FOR VALUABLE CONSIDERATION, including the consideration provided under Sections 1 through 5 of Exhibit E (the "In-Kind Consideration"), the sufficiency of which is hereby acknowledged, the Parties hereby agree to be bound as follows:

1. DEFINITIONS.

As used in this Master Agreement, the terms listed below are defined as follows:

- 1.1. "Approved Site" – a Site (defined below) for which all approvals required for construction or installation to commence have been obtained.
- 1.2. "Communications Equipment" – may consist of, but are not limited to, PERMITTEE's antennas, radios, mounting brackets, aerially mounted equipment enclosures, AC disconnects, switches, conduits, grounding plates, grounding wires, grounding pipes, coils, NEMA boxes, power sources, fiber optic cables, conduits, and shrouds installed by PERMITTEE, and more particularly described and depicted in the Master Structural Plan ("MSP") attached as Exhibit A.
- 1.3. "Emergency" – imminent or current network outage or danger to the public health, safety or welfare or property.
- 1.4. "Hazardous Substances" – those hazardous substances listed by the Environmental Protection Agency ("EPA") in regularly released reports and any other substances incorporated into the State of California's list of hazardous substances, and all types of petroleum-related substances and their chemical constituents.
- 1.5. "Permit Areas" – Up to a maximum of 1,500 Approved Sites (defined below), more particularly described and depicted in Exhibit A as updated from time to time.
- 1.6. "PERMITTEE's Operations" – PERMITTEE's development, occupancy, use, and/or maintenance of the Permit Areas.
- 1.7. "Signalized Pole" - any pole equipped with either vehicle signal indications, pedestrian signal indications, pedestrian pushbuttons, emergency vehicle preemption equipment, or any other components that comprise any part of a traffic signal/traffic control device that

serves to control and direct traffic, including pedestrian traffic, by display of steady or flashing lighted indications.

- 1.8. "Site" – a Street Light Pole (defined below) or Signalized Pole, where the Communications Equipment may be installed pursuant to this Master Agreement and subsequent Use and Occupancy Permits ("UOPs") (defined below).
- 1.9. "Street Light Pole" – any Caltrans Type 15 pole (rounded, metal street light pole that has a luminaire arm and luminaire for the purpose of providing roadway lighting), the ownership of which shall be retained by the CITY.
- 1.10. "Use and Occupancy Permit" – an additional agreement entered into for one or more Approved Sites, in substantially the form attached hereto as Exhibit B, to install Communications Equipment on one or more Approved Sites which is approved by the CITY in accordance with Section 7.

2. USE OF PERMIT AREAS.

PERMITTEE shall use the Permit Areas solely for the purposes, with proper permits and approvals obtained, of installing, constructing, operating, modifying, upgrading, maintaining, repairing, and removing, all at PERMITTEE's sole cost and expense, the Communications Equipment ("Permit Use") only as provided in this Master Agreement.

- 2.1. Primary Purpose of Sites. Any Street Light Pole is for the primary purpose of providing lighting and in some instances traffic control, and any Signalized Pole is for the primary purpose of controlling and directing traffic, including pedestrian traffic, but any Site may have the secondary purpose of accommodating PERMITTEE's Operations at the Permit Area.
- 2.2. Other Uses. PERMITTEE shall not operate the Communications Equipment or use the Permit Areas for other related or incidental activities of any kind without CITY's prior written consent, which consent shall be in CITY's sole discretion consistent with applicable law. Communications Equipment shall not interfere with the operation of the Street Light, or cause a safety-related visual impairment, distraction, or confusion to motorists.
- 2.3. No Nuisance. PERMITTEE shall not use the Permit Area in any manner which creates a nuisance, as defined in California Civil Code Section 3479.
- 2.4. No Limitation. Nothing contained in this Master Agreement shall be construed as a limitation, restriction or prohibition against CITY entering into agreements with other parties regarding the use of the Permit Areas, Sites or other facilities or the CITY issuing permits for the use of its rights-of-way.

3. RIGHT TO ENTER AND OCCUPY.

- 3.1. Grant. Subject to the terms and conditions of this Master Agreement, and the UOPs subsequently entered into by the Parties, CITY will grant permission to PERMITTEE, its officers, employees, agents, and contractors to enter upon and occupy the Permit Areas

solely for the purpose of the Permit Use seven (7) days a week, twenty-four (24) hours a day.

- 3.2. License Only. This Master Agreement is a license to use CITY-owned property. It is not a lease; however, this Master Agreement and each UOP are binding contracts between the Parties.

4. TERM.

- 4.1. Term of Master Agreement. The term of this Master Agreement ("Term") shall be ten (10) years, commencing on the Effective Date. The Parties may enter into a Use and Occupancy Permit ("UOP") only during the first four (4) years of the Term of this Master Agreement, unless an extension is mutually agreed upon as set forth in Section 5 of Exhibit E.
- 4.2. Term of Subsequent Use and Occupancy Permits. The term of each Use and Occupancy Permit ("UOP Term") will be ten (10) years, commencing on the effective date of the particular UOP ("UOP Effective Date"). PERMITTEE shall provide the date on which it desires a particular UOP to be effective at the time of requesting the UOP, and CITY will include that effective date in the UOP, provided that such date is prior to PERMITTEE commencing any construction on the Approved Site(s). "Permit Year" shall mean each twelve (12) month period during the UOP Term, starting on the UOP Effective Date and terminating on the same day minus one day the following year, for example if the UOP's Effective Date was February 15, 2019, the first Permit Year would end on February 14, 2020. In no event will any UOP Term exceed ten (10) years. The terms and conditions of the Master Agreement shall be incorporated by reference in to each UOP.
- 4.3. Holdover. Any holding over by PERMITTEE after expiration or termination shall not be considered as a renewal or extension of this Master Agreement. The occupancy of the Site after expiration or termination shall continue, and all other terms and conditions of this Master Agreement shall continue in full force and effect; provided, however, CITY shall have the right to apply a reasonable increase in the Annual Fee as permitted by applicable law at that time, and to terminate the holdover at will. Calculation of all prorated rents under this section shall be based on a 30-day month. Notice of any such increase in Annual Fee shall be given in writing at least thirty (30) days prior to becoming effective.

5. ANNUAL FEE.

- 5.1 PERMITTEE shall pay to CITY an annual fee in the amount of two hundred and seventy dollars (\$270.00) per Approved Site ("Annual Fee"). However, if CITY's 2019 cost study determines that the CITY'S reasonable costs that are reasonably related to these deployments are less than two hundred and seventy dollars (\$270.00) CITY shall notify PERMITTEE in writing within thirty (30) days of the conclusion of the 2019 cost study, and going forward the Annual Fee shall be reduced to the amount of the CITY's reasonable costs as determined by the 2019

cost study. The Annual Fee shall be paid as follows: (a) PERMITTEE shall pay one hundred dollars (\$100.00) per Approved Site in cash to the CITY on or before the first day of each Permit Year, except for the First Permit Year which shall be paid within 30 days of the UOP Effective Date; and (b) PERMITTEE shall also perform and deliver to the CITY the In-Kind Consideration in accordance with the requirements of Exhibit E. If the Annual Fee is reduced as a result of the 2019 cost study, the CITY and PERMITTEE shall adjust the amount of the check accordingly. The terms and conditions for the equipment, services and Smart City solutions that constitute the In-Kind Consideration shall be memorialized into amendments or specific agreements, which the Parties agree to negotiate in good faith. Notwithstanding anything contained elsewhere in this MUOA to the contrary, the Parties (whether directly or through one or more affiliates) agree to execute the amendments or specific agreements required by this section which will be in the form of amendments or exhibits that will be attached and incorporated by reference to this Master Agreement. This Master Agreement is a comprehensive agreement under which the Parties will undertake all of the activities identified herein and will negotiate and execute the necessary agreements.

- 5.2. Time and Place of Payment. The Annual Fee is due in advance on or before the first day of each Permit Year during the Term, except for the first Permit Year which shall be paid as specified in Section 5.1 above (referred to hereinafter as the "Annual Payment"). The Annual Fee check shall be made payable to "City Treasurer" and delivered to the Office of the City Treasurer, Civic Center Plaza Building, 1200 Third Avenue, First Floor, San Diego, California 92101, or mailed with an invoice to:

The City of San Diego
Office of the City Treasurer
P.O. Box 129030
San Diego, California 92112-9030

PERMITTEE shall include CITY's customer account number for PERMITTEE on each of the checks used for the Annual Payment so CITY can apply the Annual Payment to the appropriate account. The place of payment may be changed at any time by CITY upon thirty (30) calendar days' written notice to PERMITTEE. Mailed Annual Payments shall be deemed paid upon the date the payments are postmarked by the postal authorities. If a postmark is illegible, the payment shall be deemed paid upon actual receipt by the City Treasurer. PERMITTEE assumes all risk of loss and responsibility for late payment charges if payments are made by mail.

- 5.3. Delinquent Payments. If PERMITTEE fails to pay the Annual Payment when due, PERMITTEE shall pay, in addition to the unpaid Annual Payment, five percent (5%) of the delinquent Annual Payment. If any portion of the Annual Payment is still unpaid fifteen (15) calendar days after the first day of the Permit Year, PERMITTEE shall pay an additional five percent (5%), for a total of ten percent (10%) of the delinquent Annual Payment, which is agreed by the Parties to be appropriate to compensate CITY for loss resulting from fee delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account. In no event shall the charge for late payments of

the Annual Fee be less than twenty-five dollars (\$25). Acceptance of late charges and any portion of the late payment by CITY shall neither constitute a waiver of PERMITTEE's default with respect to late payment nor prevent CITY from exercising any other rights and remedies available at law or in equity.

- 5.4. Yearly Accounting for UOPs. PERMITTEE shall make one payment for the total Annual Fee owed under all of the Use and Occupancy Permits entered into under this Master Agreement. PERMITTEE shall provide an annual accounting with that payment to CITY separately identifying each UOP included in the payment, the number of Sites covered by that UOP, and the amount of the payment to be allocated to that UOP. It is the Parties intention that the Use and Occupancy Permits will be numbered sequentially for ease of reference as they are entered into. Failure to provide the yearly accounting may result in penalties for delinquent Annual Payment and shall constitute a breach of this Master Agreement.
- 5.5. Financial Records. PERMITTEE shall maintain, in accordance with generally accepted accounting practices, complete and accurate financial records showing all receipts from its use of the Site and/or Permit Area. PERMITTEE shall make any and all of its records and accounts relating to its use of the Site or Permit Area available to CITY for inspection at a reasonable time and location within the City of San Diego so that CITY can determine PERMITTEE's compliance with this Master Agreement. PERMITTEE's failure to keep and maintain records and make them available for CITY inspection shall be a default of this Master Agreement subject to Section 30.1(b)(ii). PERMITTEE shall maintain all such financial records for a minimum period of five (5) years past the expiration or earlier revocation or termination of this Master Agreement. This section shall survive the expiration or earlier revocation or termination of this Master Agreement.

6. INSURANCE.

PERMITTEE shall not begin any work on any portion of the Permit Areas until it has (a) provided to CITY insurance certificates reflecting evidence of all insurance required below; however, CITY reserves the right to request, and PERMITTEE shall submit, copies of any policy upon reasonable request by CITY; (b) obtained CITY approval of each insurance company or companies; and (c) confirmed with CITY that all policies contain the specific provisions required below. PERMITTEE shall obtain and maintain throughout the Term of this Master Agreement, at its sole cost and expense, all insurance required by this Master Agreement. PERMITTEE's liabilities under this Master Agreement, including without limitation PERMITTEE's indemnity obligations, shall not be deemed limited in any way to the insurance coverage required herein. PERMITTEE's maintenance of the required insurance coverage is a material consideration for this Master Agreement. Notwithstanding any provision of this Master Agreement to the contrary, if PERMITTEE fails to maintain or renew the insurance coverage required herein, or fails to deliver a certificate of insurance to CITY, PERMITTEE shall be in default of this Master Agreement if not timely cured as provided in Section 30.1(b)(ii). PERMITTEE shall not modify any policy or endorsement thereto which increases CITY's exposure to loss.

- 6.1 Commercial General Liability Insurance. Commercial General Liability Insurance ("CGL") written on an *ISO Occurrence form CG 00 01 07 98* or a later version of such form or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all bodily injury, including death, and property damage with limits of at least Five Million Dollars (\$5,000,000) per occurrence and general aggregate of Five Million Dollars (\$5,000,000). There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs: insured claims or contractual liability.
- 6.2 Commercial Automobile Liability Insurance. Commercial Automobile Liability Insurance, providing coverage for all bodily injury, including death, and property damage on an *ISO form CA 00 01 12 90* or a later version of such form or an equivalent form providing coverage at least as broad for a combined single limit of at least One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of any vehicle (including owned, hired, and non-owned vehicles) operated in performing any and all work pursuant to this Master Agreement.
- 6.3 Worker's Compensation Insurance. Workers' Compensation Insurance, as required by applicable laws, for all of PERMITTEE's employees who are subject to this Master Agreement, with employers' liability coverage with a limit of at least One Million Dollars (\$1,000,000), including a waiver of the right of subrogation against The City of San Diego and its elected officials, officers, employees, and representatives.
- 6.4 Additional Insureds. To the fullest extent allowed by law, including without limitation California Insurance Code Section 11580.04, each policy excluding workers' compensation and employer's liability shall include as an insured "The City of San Diego and its elected officials, officers, employees, and representatives" with respect to liability arising out of: (a) ongoing operations performed by PERMITTEE or on PERMITTEE's behalf; (b) PERMITTEE's products; (c) PERMITTEE's work, including without limitation PERMITTEE's completed operations performed by PERMITTEE or on PERMITTEE's behalf; or (d) the Premises.
- 6.5 Primary & Non-Contributory. The Commercial General Liability policy is primary to any insurance or self-insurance of The City of San Diego and its elected officials, officers, employees, and representatives as respects operations of the named insured. Any insurance maintained by The City of San Diego and its elected officials, officers, employees, and representatives shall be in excess of PERMITTEE's insurance and shall not contribute to it.
- 6.6 Severability of Interest. Each policy, excluding workers' compensation and employer's liability and the causes of loss - special form property insurance, shall provide that PERMITTEE's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.
- 6.7 Qualified Insurer(s). Except for the State Compensation Insurance Fund, all insurance required by this Master Agreement shall only be carried by insurance companies with a

rating of at least "A-, VII" by A.M. Best Company that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by CITY. CITY may accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers (i.e., the LESLI list). All policies of insurance carried by non-admitted carriers shall be subject to all of the requirements for policies of insurance provided by admitted carriers described herein. Each insurer shall be subject to CITY's approval in each instance.

- 6.8 Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of PERMITTEE. PERMITTEE shall provide CITY with a letter ("Verification Letter") confirming that PERMITTEE's parent company has a net worth of at least \$100,000,000, which Verification Letter shall be provided to CITY within thirty (30) days after this Master Agreement is fully executed. Thereafter, PERMITTEE shall provide Verification Letter on or before each annual anniversary of the Effective Date upon the CITY's request.
- 6.9 Continuity of Coverage. All policies shall be in effect on or before the first day of the Term. The policies shall be kept in force for the duration of the Term. Within thirty (30) days after the expiration of each insurance policy, PERMITTEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Master Agreement. PERMITTEE shall provide proof of continuing insurance at least annually during the Term and otherwise upon CITY's request. If insurance lapses or is discontinued for any reason, PERMITTEE shall immediately obtain replacement insurance as soon as possible.
- 6.10 Modification. To assure protection from and against the kind and extent of risk existing with the Allowed Uses, CITY, at its reasonable discretion, may require the revision of amounts and coverage at any time by giving PERMITTEE thirty (30) days prior written notice. PERMITTEE shall also obtain any additional insurance required by CITY for new improvements, changed circumstances, or CITY's reasonable re-evaluation of risk levels related to the Allowed Uses.
- 6.11 Accident Reports. PERMITTEE shall immediately, or as soon as practicable and not more than 48 hours after PERMITTEE becomes aware of such accident, report to CITY any accident causing property damage in excess of \$50,000 or injury to persons on the Premises or otherwise related to the Allowed Uses. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.
- 6.12 Causes of Loss - Special Form Property Insurance. PERMITTEE shall obtain and maintain, at its sole cost, Causes of Loss - Special Form Property Insurance on all of PERMITTEE's insurable property related to the Allowed Uses of the Premises under this Master Agreement or the Premises in an amount to cover one hundred percent (100%) of the replacement cost. PERMITTEE shall deliver a certificate of such insurance to CITY's Real Estate Assets Department.

7. **SUBSEQUENT USE AND OCCUPANCY PERMITS.**

Upon obtaining any necessary regulatory permits from the Development Services Department ("DSD"), or any other required permits, PERMITTEE shall provide a list of Sites for which it requires a UOP in order to move forward with the installation of the Communications Equipment. The CITY will execute a UOP in substantially the form attached hereto as Exhibit B, for any Approved Sites that comply with the Master Structural Plan attached hereto as Exhibit A. If the Communications Equipment does not comply with the Master Structural Plan, CITY shall review the request for a UOP according to the standards and timelines set forth for Minor Modifications and Major Modifications in Sections 10.2.1 and 10.2.2 of this Master Agreement. PERMITTEE shall include all Sites in a particular polygon in one UOP, but may include more than one polygon if it chooses to do so. If there is a change in law that is required to be incorporated in future UOPs in order for the CITY to comply with that law, other than those affecting the rate of the Annual Fee, the length of the Term of this Master Agreement, or the UOP Term, the Parties agree that CITY will be permitted to incorporate any mandatory language required by such change of law into any future UOPs executed after the effective date of such change in law; or if such change in law does not have mandatory language associated with it, the Parties will meet and confer to determine the appropriate language to be added to any future UOPs in order to implement such change in law.

8. **PERMITTEE'S RISK.**

PERMITTEE shall bear all risks and liability arising out of or in any manner directly or indirectly connected with PERMITTEE's Operations and any damages to the improvements on, under, or in the vicinity of the Permit Areas resulting directly or indirectly thereby.

9. **ACCEPTANCE OF PERMIT AREAS.**

PERMITTEE represents and warrants that PERMITTEE will independently inspect the Site and Permit Area and make all tests, investigations, and observations necessary to satisfy itself of the condition of the Site and Permit Area and the suitability for the Permit Use. PERMITTEE acknowledges and agrees that PERMITTEE is not relying on any representation by CITY as to the condition of the Site or its suitability for the Permit Use, and PERMITTEE agrees that PERMITTEE is relying solely on its independent inspections, tests, investigations, and observations in entering into any UOPs pursuant to this Master Agreement. PERMITTEE acknowledges that the Site and Permit Area will be in the condition called for herein, that CITY has performed or will perform all work with respect to the Site and Permit Area that is necessary and/or required by this Master Agreement, and that PERMITTEE shall not hold CITY responsible for any defects, whether apparent or latent, in the Site and/or Permit Area. PERMITTEE accepts and assumes all risk of harm to all persons and property, including without limitation, PERMITTEE'S employees, from and defects within the Site and Permit Area, and shall be solely responsible therefor. PERMITTEE acknowledges that it has been or will be given the opportunity to investigate the Site and Permit Area for the presence of any Hazardous Substances, including, without limitation, the opportunity to perform soil borings and other tests. PERMITTEE shall notify CITY if PERMITTEE'S investigations indicate the presence of any Hazardous Substances

on the Site and Permit Area. PERMITTEE waives any claims against CITY which may result from the presence of Hazardous Substances on the Site and Permit Area.

10. DEVELOPMENT OF SITES AND MODIFICATION OF PERMIT AREA.

10.1 Approved Sites. Prior to the execution of this Master Agreement, and at any time during the first four (4) years of the Term that PERMITTEE desires to add Sites to the Permit Area, PERMITTEE shall provide to CITY's Real Estate Assets Department a list of Approved Sites for which PERMITTEE has received all required permits and on which PERMITTEE is ready to install their Communications Equipment as depicted and described in the MSP attached hereto as Exhibit A. CITY shall prepare a UOP substantially in the form of the UOP attached hereto as Exhibit B for the Parties execution. PERMITTEE acknowledges and understands that any requests for amendments to the Master Agreement, including those related to adding sites with equipment that is not depicted and described on the MSP, will be subject to appropriate environmental review subject to the California Environmental Quality Act ("CEQA").

10.2 Master Structural Plan. In lieu of site plans for each individual Site, PERMITTEE has provided to CITY, prior to the execution of this Master Agreement, a master design plan which contains full and complete design plans that show all of the Communications Equipment that PERMITTEE proposes to install or construct in the Permit Area, which is attached as Exhibit A. If during the Term, PERMITTEE desires to modify the Communications Equipment that is being placed on an Approved Site from what is shown in the approved MSP, PERMITTEE shall do the following:

10.2.1 Minor Modifications. If the new equipment is the same size or smaller in all dimensions and weighs the same or less than the equipment previously approved through the MSP (a "Minor Modification"), PERMITTEE may submit a form factor drawing with sufficient information for READ to determine the actual size, weight, location, and aesthetics of the new equipment in the Permit Area. PERMITTEE acknowledges that this form factor drawing, which may be sufficient for the CITY as the property owner to approve the amendment may not be sufficient for DSD to review and approve construction permits, and this requirement does not relieve PERMITTEE of its obligations to provide DSD staff with all required information for review and issuance of regulatory permits (construction, right-of-way, or any other type of permit determined necessary by DSD). Subject to the foregoing, the CITY will either consent to or deny consent, in its reasonable discretion, to the requested Minor Modification in writing within thirty (30) days of receiving the form factor drawing, provided that any applicable review required by CEQA has been completed and any associated appeal periods have run without an appeal being filed.

10.2.2 Major Modifications. If the new equipment is larger in any dimension than the previously approved equipment, or if the new equipment weighs more than the previously approved equipment (a "Major Modification"), PERMITTEE shall prepare a new MSP and submit that plan at the time the request for amendment of

this Master Agreement is submitted to READ. Subject to the foregoing, the CITY will either consent to or deny consent, in its sole discretion consistent with applicable law, to the requested Major Modification in writing within thirty (30) days of receiving the new MSP, provided that any applicable environmental review required by CEQA has been completed and any associated appeal periods have run without an appeal being filed.

- 10.3 Timing of Development: PERMITTEE shall not develop any requested Site in the Permit Area unless and until this Master Agreement and a UOP for the Approved Site has been executed (or if applicable, amended) by the Parties. PERMITTEE shall develop each Site in the Permit Areas in accordance with the Master Structural Plan and any modifications authorized for the specific Approved Site(s) as attached to the UOP for those Approved Sites. CITY may, in its reasonable discretion, authorize changes to the Master Structural Plan, or specific site plans, provided the principal components thereof are not modified.

11. IMPROVEMENTS AND ALTERATIONS.

Other than as approved by the MSP depicted in Exhibit A, PERMITTEE shall not construct any improvements, structures, or installations in the Permit Areas, or make any alterations to the Permit Areas (with the exception of necessary maintenance and/or repairs that does not include swapping out or replacing any of the Communications Equipment) without CITY's prior written consent, which consent shall be in CITY's sole discretion consistent with applicable law or, when associated with a Minor Modification, such consent shall be in the CITY's reasonable discretion. This includes modifications that are considered "eligible facilities" under Section 6409 of the Middle Class Tax Relief and Job Creation Act. PERMITTEE shall not make any structural or architectural design alterations to approved improvements, structures, or installations in the Permit Areas without CITY's prior written consent, which consent shall be in CITY's sole discretion consistent with applicable law or, when associated with a Minor Modification, such consent shall be in the CITY's reasonable discretion. CITY shall not be obligated by this Master Agreement to make, or assume any expense for, any improvements or alterations.

- 11.1 Alterations to Communications Equipment. PERMITTEE shall not make any alterations, additions or improvements to the Communications Equipment except for routine maintenance that does not include swapping out or replacing any of the Communications Equipment, unless: (1) PERMITTEE obtains CITY's prior written consent, which consent shall be in CITY's discretion as set forth above for Minor or Major Modifications; (2) the alterations, additions, or improvements do not: (a) damage or interfere with any adjacent improvements in the Permit Areas or (b) interfere with third party communications signals operated in compliance with applicable law; and (3) the alterations, additions, or improvements comply with the requirements set forth in Exhibit C. Nothing in this Section shall be construed to eliminate PERMITTEE's obligation to obtain development and construction related permits and approvals for any alterations to the Communications Equipment that may be required by CITY's Development Services Department or any other governmental agency. CITY, in its proprietary capacity, through READ, retains the right to deny any request for modification or alteration of a Site as a proprietary right, even if CITY's DSD is required by federal law to approve or permit

such a request.

- 11.2 Information to Permitting Authorities. In obtaining any required permits for improvements, structures, installations, and/or alterations in the Permit Areas, PERMITTEE shall inform permitting authorities, in writing, that the Permit Areas are CITY-owned property.
- 11.3 Repair and Restoration. Nothing in this Section shall relieve PERMITTEE of any obligation under this Master Agreement to maintain the Permit Areas in a decent, safe, healthy and sanitary condition, as required in this Master Agreement.
- 11.4 Emergency. In the event of an Emergency, as soon as practicable thereafter and not later than three (3) business days after having taken such action, PERMITTEE shall advise CITY in writing of the emergency work performed or the action taken with respect to any emergency modification or alteration of PERMITTEE's Communications Equipment. PERMITTEE shall acquire any necessary permits, if any, to cover the emergency work performed.
- 11.5 Accidental Damage by CITY. In the event CITY should cut or damage PERMITTEE's communication line, PERMITTEE agrees to perform all repairs expeditiously after notice thereof from CITY. Simultaneously, CITY agrees to cease any and all work to the affected portion of the Permit Areas for a maximum of twenty-four (24) hours or until PERMITTEE completes all repairs, whichever is less.

12. COMPETENT MANAGEMENT.

Throughout the Term, PERMITTEE shall provide competent management of the Permit Areas for the Permit Use to the reasonable satisfaction of CITY. "Competent management" shall mean demonstrated ability in the management and operation of Communication Equipment and related activities in a responsible manner and in accordance with industry standards.

13. COMPLIANCE WITH LAWS AND POLICIES.

- 13.1. General. PERMITTEE's Operations shall, at all times, comply with all applicable laws, statutes, ordinances, and regulations of CITY, county, state, and federal governments, at PERMITTEE's sole cost and expense. Upon receipt of the same, PERMITTEE shall comply with any and all notices issued by CITY under the authority of all laws, statutes, ordinances, or regulations.
- 13.2. Nondiscrimination/Equal Opportunity. PERMITTEE shall not discriminate in any manner against any person or persons on account of race, color, religion, gender, gender identity, gender expression, sexual orientation, medical status, national origin, age, marital status, or disability in PERMITTEE's Operations.

14. WATER QUALITY ASSURANCES.

- 14.1. CITY and PERMITTEE are committed to the implementation of controls (best management practices, or BMPs) to manage activities on the Site and Permit Area in a manner which aids in the protection of the City of San Diego's precious water resources. It is PERMITTEE's responsibility to identify and implement an effective combination of BMPs so as not to cause pollutant discharges to the storm drain system in violation of San Diego Storm Water Management and Discharge Control Ordinance (San Diego Municipal Code Section 43.0301 to 43.0312). Therefore, PERMITTEE shall at a minimum implement and comply, as applicable, with the Minimum Industrial and Commercial BMPs adopted under the San Diego Municipal Code Section 43.0307(a). It is ultimately PERMITTEE's responsibility to prevent pollutant discharges to the storm drain system. Therefore, PERMITTEE will identify and implement any additional BMPs that may be required to avoid the discharge of pollutants to the storm drain system.

15. TELECOMMUNICATIONS PROVISIONS.

- 15.1. Entire Installation. PERMITTEE warrants that the Communications Equipment listed in Exhibit A constitutes the entire installation at each Site within the Permit Areas. PERMITTEE shall update Exhibit A from time to time as any changes to the Communications Equipment are made, or within thirty (30) calendar days after CITY's demand for such an update. No changes to the Communications Equipment shall be made without first obtaining written approval by CITY as further provided under this Master Agreement.
- 15.2. Radio Frequency Radiation. PERMITTEE shall maintain any radio frequency ("RF") radiation associated with the Communications Equipment within the levels allowed by federal regulations set forth in Section 1.1310 of Title 47 of the Code of Federal Regulations and the Federal Communications Commission's ("FCC") OET Bulletin 65. Any portion of the Permit Areas casually accessible by the general public or by any worker at ground level shall be maintained below limits stated for General Population/Uncontrolled Exposure. PERMITTEE shall report to CITY any portion of the Permit Areas discovered by PERMITTEE to exceed these federally mandated limits. PERMITTEE shall defend and hold CITY harmless for any liabilities, fines or other penalties claimed or imposed against CITY that result from the existence of excessive levels of radiation that are caused by PERMITTEE's Operations; provided, however, that the duty to indemnify shall not extend to any liabilities, fines, or other penalties claimed or imposed against the CITY arising from CITY's established sole negligence or willful misconduct. Hazardous RF radiation levels may be encountered when climbing on antenna structures (refer to FCC OET Bulletin 65). Any Communications Equipment installed within the Permit Areas may, at times, require shutdown to allow scheduled maintenance on antenna structures. PERMITTEE shall allow shutdown periods when required for this scheduled maintenance (which shall not include Emergencies), provided CITY shall give prior notice to PERMITTEE of these shutdowns and ensure that these shutdowns do not occur during peak hours of operation. Protection of employees performing service on buildings, roofs, air-conditioning equipment, water tanks, communications equipment, or any other maintenance work is a primary concern. Any areas in which these employees may be subjected to radiation levels that exceed the

General Population/Uncontrolled Exposure limits must be clearly identified as required by CAL-OSHA. PERMITTEE shall provide CITY with written shutdown procedures, contact names, and telephone numbers. PERMITTEE shall notify CITY, in writing, of any changes to the shutdown procedures, contact names, or telephone numbers at least ten (10) calendar days prior to such a change. Once the installation is complete, the PERMITTEE shall perform an on-air test and provide documentation to demonstrate that the Communications Equipment is operating within federally mandated limits. After the initial test, the PERMITTEE shall perform an on-air test within fifteen days of CITY requesting such a test.

- 15.3. Radio Frequency Interference. PERMITTEE warrants that all Communications Equipment installations, modifications, operation, and maintenance will not result in degraded performance or RF interference to any existing uses of the Site, by fulfilling the requirements of Exhibit C, which may be updated from time to time by the Parties.
- 15.4. Industry Standards. PERMITTEE shall perform all Communications Equipment installations, modifications, operation, and maintenance in adherence to industry standards set by the "Standards and Guidelines for Communications Sites" Motorola R56© Manual, or any succeeding regulations or standards. In addition to the requirements of the Motorola R56© publication, installations on CITY property shall comply with the following supplemental requirements:
 - 15.4.1. PERMITTEE shall remove all of its trash and debris from the Permit Areas at the end of each workday and on completion of each project;
 - 15.4.2. Tower and structure climbing shall be done in compliance with all CAL-OSHA requirements and General Orders promulgated by the CPUC; and
 - 15.4.3. All transmitters shall have all necessary protection, such as cavity filtering and transmitter isolators, to eliminate any RF degradation of the receive signal to any other user within the Permit Areas.
- 15.5. Collocation. PERMITTEE shall not access any third party wireless communication facility or CITY-owned communications equipment (including any towers) within the Permit Areas without CITY's prior written consent, and if applicable a third-party owner's written consent.
- 15.6. Interference with CITY Operations or Public Use. PERMITTEE's Operations shall not unreasonably interfere with CITY operations or public use of CITY-owned property.

16. WASTE, DAMAGE, OR DESTRUCTION.

PERMITTEE shall immediately give notice to CITY of any fire or any other material damage that PERMITTEE has knowledge of that occurs on or within the Permit Areas that occurs either during or after the completion of construction of approved improvements. If PERMITTEE causes any damage to any portion of the Permit Areas that puts any portion of the Permit Area into a condition which is not decent, safe, healthy, and sanitary PERMITTEE shall make, or cause to be made, full

repair of the damage and restore the Permit Areas to the condition which existed prior to the damage; or, at CITY's option, PERMITTEE shall clear and remove from the Permit Areas all debris resulting from the damage and restore the Permit Areas in accordance with plans and specifications previously submitted to and approved by CITY, in writing, in order to replace in kind and scope the operation which existed prior to the damage. PERMITTEE shall commence preliminary steps toward performing repairs and/or restoration of the Permit Areas as soon as practicable, but no later than ten (10) calendar days after the occurrence of the fire or damage, and shall complete the required repairs and/or restoration of the Permit Areas within sixty (60) calendar days after such occurrence. Failure to timely repair damage to the Site and/or Permit Areas will be considered a default under the Master Agreement.

17. HAZARDOUS MATERIALS.

PERMITTEE shall not allow the illegal installation, storage, utilization, generation, sale or release of any Hazardous Substance or otherwise regulated substances in, on, under or from the Permit Areas by any of PERMITTEE's officers, employees, agents, contractors, invitees and guests. PERMITTEE and PERMITTEE's officers, employees, agents, contractors, invitees and guests shall not install, store, utilize, generate or sell any Hazardous Substance on the Permit Areas without CITY's prior written consent. PERMITTEE shall, prior to initiating any operations, obtain all required permits from applicable regulatory agencies, including without limitation the San Diego County Department of Environmental Health, local fire agencies, the San Diego County Department of Weights and Measures, the San Diego County Air Pollution Control District, and the San Diego Regional Water Quality Control Board. Installing, utilizing, storing, or any other presence of a Hazardous Substance includes boxes, bags, bottles, drums, cylinders, above or below ground tanks, equipment with tanks, or any other type of container, equipment or device which holds or incorporates a Hazardous Substance or hazardous waste.

- 17.1. Release. For all purposes of this Master Agreement, a "release" shall include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or otherwise disposing of a Hazardous Substance.
- 17.2. Remediation. If PERMITTEE's occupancy, use, development, maintenance, or restoration of the Permit Areas results in a release of a Hazardous Substance, PERMITTEE shall pay all costs of remediation and removal to CITY's satisfaction for unrestricted reuse of the Permit Areas, and in accordance with all applicable laws, rules, and regulations of governmental authorities.
- 17.3. Removal. If PERMITTEE or PERMITTEE's officers, employees, agents, contractors, invitees and guests have received approval and permits to store, utilize, generate or install, or otherwise bring Hazardous Substances to the Permit Areas, PERMITTEE shall remove all Hazardous Substances in any type of container, equipment or device from the Permit Areas immediately upon or prior to the expiration or earlier termination of this Master Agreement. CITY reserves the right to conduct inspections of the Permit Areas and/or request documentation demonstrating the legal removal and/or disposal of the hazardous materials, wastes or other containers, equipment or devices from the Permit Areas. PERMITTEE shall be responsible for any and all costs incurred by CITY to remove any container, equipment or device requiring disposal or removal as required by this provision.

- 17.4. Indemnity. PERMITTEE shall protect, defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from PERMITTEE's occupancy, use, development, maintenance, or restoration of the Permit Areas, including without limitation: (i) costs of environmental assessments; (ii) costs of regulatory remediation oversight; (iii) costs of remediation and removal; (iv) any necessary CITY response costs; (v) all fines, penalties or fees assessed by any regulatory agency; (vi) damages for injury to natural resources, PERMITTEE's officers, employees, invitees, guests, agents or contractors, or the public; and (vii) all costs of any health assessments or health effect studies; provided, however, that PERMITTEE's duty to indemnify and hold harmless shall not include any established liability arising from the sole negligence or willful misconduct of CITY, its elected officials, officers, representatives, agents and employees.
- 17.5. Notice of Release. If PERMITTEE knows or has reasonable cause to believe that a Hazardous Substance has been released on, from or beneath any portion of the Permit Areas, PERMITTEE shall immediately notify CITY and any appropriate regulatory or reporting agency pursuant to California Code of Regulations Title 19 and any other applicable laws or regulations. PERMITTEE shall deliver a written report thereof to CITY within three (3) days after receipt of the knowledge or cause for belief and submit any required written reports to regulatory or reporting agencies as required by regulation or law. If PERMITTEE knows or has reasonable cause to believe that such substance is an imminent release or is an imminent substantial danger to public health and safety, PERMITTEE shall take all actions necessary to alleviate the danger. PERMITTEE shall immediately notify CITY in writing of any violation, notice to comply, or notice of violation received or the initiation of environmental actions or private suits related to the Permit Areas.
- 17.6. Environmental Assessment. Upon reasonable cause to believe that PERMITTEE's occupancy, use, development, maintenance, or restoration of the Permit Areas resulted in any Hazardous Substance being released on, from or beneath any portion of the Permit Areas, CITY may cause an environmental assessment under regulatory oversight of the suspect area to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist or Registered Civil Engineer. The environmental assessment shall be obtained at PERMITTEE's sole cost and expense, and shall establish what, if any, Hazardous Substances have more likely than not been caused by PERMITTEE's occupancy, use, development, maintenance, or restoration of any affected portion of the Permit Areas, and in what quantities. If any such Hazardous Substances exist in quantities greater than allowed by CITY, county, state or federal laws, statutes, ordinances or regulations, or require future restricted re-use of the Permit Areas, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect unrestricted re-use and in compliance with those laws or statutes, and estimates of the cost of such remediation or removal. PERMITTEE shall cause, or if PERMITTEE fails to do so within a reasonable period of time, as determined by CITY in its sole discretion, then CITY may cause, the remediation and/or removal recommended in the environmental assessment such that unrestricted re-use of the Permit

Areas and compliance with environmental laws and regulations are achieved, and PERMITTEE shall pay all costs and expenses therefor.

18. **SIGNS.**

PERMITTEE shall only post signs required by federal, state, or local regulations, including, without limitation, safety signs required by OSHA, FAA, CPUC and/or FCC. PERMITTEE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising within the Permit Areas without CITY's prior written consent, which consent shall be in CITY's sole discretion. If any such unauthorized item is found within the Permit Areas, PERMITTEE shall remove the item, at PERMITTEE's sole cost and expense, upon forty-eight (48) hours' notice by CITY, or CITY may then enter the Permit Areas and remove the item at PERMITTEE's sole cost and expense. PERMITTEE shall post a clearly marked sign at each Site within the Permit Areas indicating PERMITTEE's name and emergency telephone number.

19. **MAINTENANCE OF PERMIT AREAS.**

PERMITTEE shall, at its sole cost and expense, continuously maintain the Permit Areas throughout the Term. In doing so, PERMITTEE shall, at its sole cost and expense, make all repairs, restoration, and replacements (including structural repairs and restoration of damaged or worn improvements) necessary to maintain and preserve the Permit Areas in a decent, safe, healthy, and sanitary condition, reasonable wear and tear excepted. All such maintenance, repairs, restoration, and replacements shall be completed to the satisfaction of CITY, in conformance with the Master Structural Plan set forth in Exhibit A, and in compliance with all applicable codes and standards of CITY, state, and federal agencies.

19.1. **CITY Maintenance.** CITY reserves the right to perform any needed routine maintenance within the Permit Areas at any time without providing notice to PERMITTEE, including, but not limited to, the replacement of light bulbs on a Street Light Pole. However, should CITY perform non-routine maintenance, including, but not limited to, the replacement of a Street Light Pole, CITY shall provide PERMITTEE with at least forty-eight (48) hours' notice prior to commencing the work (except in the event of an emergency, in which case, no prior notice shall be required, but CITY shall give PERMITTEE notice in compliance with Exhibit D), and PERMITTEE shall comply with all applicable safety requirements issued by CITY to ensure the safety of CITY personnel performing such maintenance within the Permit Areas. In the event CITY's non-routine maintenance includes replacing a Street Light Pole, CITY shall give thirty (30) days advance notice to PERMITTEE so that PERMITTEE may remove its Communications Equipment prior to the replacement of the Street Light Pole.

19.2. **Maintenance Procedures for Parties.** The Parties shall comply with the emergency maintenance procedures set forth in Exhibit D, including the requirement to notify the other Party, in writing, of any changes to its emergency contacts and telephone numbers. PERMITTEE shall provide and install an emergency shut-off switch which will terminate electrical service to PERMITTEE's Communications Equipment, with the switch to be used only as set forth in Exhibit D.

20. ENTRY AND INSPECTION.

CITY may, at any time, enter the Permit Areas for the purpose of viewing and ascertaining the condition of the Permit Areas, or to protect CITY's interest in the Permit Areas, or to inspect the operations conducted within the Permit Areas. If CITY's entry or inspection discloses that any portion of the Permit Areas is not in a decent, safe, healthy, and sanitary condition, (reasonable wear and tear excepted), CITY may, after ten (10) days written notice to PERMITTEE, have any necessary maintenance work done in order to keep the Permit Areas in a decent, safe, healthy, and sanitary condition, all at PERMITTEE's sole cost and expense, and PERMITTEE shall promptly pay any and all costs incurred by CITY in having the necessary maintenance work done. If at any time CITY determines that any portion of the Permit Areas is not in a decent, safe, healthy, and sanitary condition, CITY may, in its reasonable discretion, without additional notice, require PERMITTEE to file with CITY a faithful performance bond to assure prompt correction of any condition which is not decent, safe, healthy, and sanitary. The bond shall be in an amount adequate, in CITY's opinion, to correct the unsatisfactory condition. PERMITTEE shall pay all costs associated with the bond. The rights reserved in this Section shall not create any obligation on CITY or increase CITY's obligations elsewhere in this Master Agreement. As part of its standard practice, PERMITTEE shall schedule a pre-construction and post-construction inspection for each Site within the Permit Area.

21. UTILITIES.

PERMITTEE shall order, obtain, and pay for all utilities, including installation and service charges, in connection with PERMITTEE's Operations. All electric utilities shall be installed underground unless such utilities are aerial on existing poles and shall only be used by PERMITTEE for PERMITTEE's Operations.

22. TAXES.

PERMITTEE shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon PERMITTEE or the Permit Areas, including the land, any buildings, structures, machinery, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed or maintained by PERMITTEE, or levied by reason of PERMITTEE's Operations, including any licenses or permits. PERMITTEE acknowledges that this Master Agreement may create a possessory interest subject to property taxation, and that PERMITTEE may be subject to the payment of taxes levied on that interest. PERMITTEE shall pay all such possessory interest taxes. PERMITTEE's payment for such taxes, assessments, and/or fees shall not reduce any payment due CITY.

23. SUPERIOR INTERESTS.

This Master Agreement is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, permits, licenses, easements, and rights-of-way pertaining to the Permit Areas, whether or not of record. PERMITTEE shall obtain all licenses, permits, and agreements from such third parties as may be or become necessary or reasonably advisable to allow

PERMITTEE's use of the Permit Areas, relative to any such superior interest. If PERMITTEE's use of the Permit Areas is or becomes inconsistent or incompatible with a preexisting superior interest, PERMITTEE shall take such actions and pay all costs and expenses necessary to remove such inconsistency or incompatibility to the satisfaction of the holder of the superior interest.

24. ENCUMBRANCES.

PERMITTEE shall not permit any encumbrance related to PERMITTEE's Operations. CITY may, in its reasonable discretion, consent to such an encumbrance if exclusively related to PERMITTEE's development of the Permit Areas. If an encumbrance is placed on any portion of the Permit Areas, PERMITTEE shall diligently seek and obtain, at its sole cost and expense, the removal of the encumbrance as soon as possible upon completion of the development, if the encumbrance was authorized by CITY, or, if unauthorized, immediately upon CITY's demand.

24.1. Liens. PERMITTEE shall, at all times, protect, defend, indemnify, and hold CITY harmless from and against any and all claims for labor or materials in connection with PERMITTEE's Operations, and all costs of defending against such claims, including, without limitation, reasonable attorneys' fees. If PERMITTEE's Operations result in a lien or notice of lien being filed against any portion of the Permit Areas, PERMITTEE shall, within thirty (30) calendar days after such filing, either: (a) take all actions necessary to record a valid release of the lien; or (b) deliver to CITY a bond, cash, or other security acceptable to CITY in an amount sufficient to pay in full all claims of all persons seeking relief under the lien.

25. ASSIGNMENT AND SUBLICENSING.

25.1 Assignment. The rights and obligations assumed by each of the Parties under this Master Agreement shall not be assigned or otherwise transferred, in whole or in part, without the written prior consent of the other Party which consent will not be unreasonably withheld, delayed or conditioned.

25.2 Sublicensing. PERMITTEE shall not sublicense, in whole or in part, the Site, or any right or appurtenant privilege to the Site, or attempt to transfer any other interest or right to use the Permit Area, in whole or in part, the Site or any right or appurtenant privilege to the Site, without CITY'S prior written consent, which consent shall be in CITY'S sole discretion following disclosure of any information required by San Diego Charter section 225, and shall require additional compensation as required by San Diego Council Policy 700-10 at the time of the request. The provision of capacity, bandwidth or grant of use in the Communications Equipment, or any portion thereof, to another person shall not constitute a breach of this Section 25 or require consent, provided that PERMITTEE shall at all times retain control over the entire Communications Equipment, remains fully responsible for compliance with the terms of this Master Agreement, does not allow any entity to physically occupy the Site or Permit Area, and does not allow installation of additional equipment not included in the MSP.

25.3 Provisions Binding on Successors. Except as otherwise provided in this Master

Agreement, all of the terms, covenants, and conditions of this Master Agreement shall apply to, benefit, and bind the successors and assigns of the respective parties, jointly and individually.

26. INDEMNIFICATION.

PERMITTEE shall protect, defend, indemnify, and hold CITY, its elected officials, officers, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to PERMITTEE's officers, employees, agents, contractors, invitees and guests, which arise out of or are in any manner directly or indirectly connected with this Master Agreement or PERMITTEE's occupancy, use, development, maintenance, or restoration of the Permit Areas, including damages arising out of release of hazardous materials, and all expenses of investigating and defending against same, including without limitation reasonable attorney fees and costs; provided, however, that PERMITTEE's duty to indemnify and hold harmless shall not include any established liability arising from the sole negligence or willful misconduct of CITY, its elected officials, officers, representatives, agents and employees. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, PERMITTEE shall pay all reasonable costs related thereto, including without limitation reasonable attorney fees and costs.

27. OTHER GOVERNMENTAL ACTIONS.

By entering into this Master Agreement, neither CITY nor the City Council is obligating itself to PERMITTEE or to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to the development, occupancy, use, or maintenance of the Permit Areas. Discretionary action includes, but is not limited to, rezonings, variances, environmental clearances, or any other governmental agency approvals that may be required for PERMITTEE's Operations. PERMITTEE shall diligently seek, at its sole cost and expense, all entitlements and actions from both CITY and other governmental agencies with jurisdiction over the Permit Areas, as may be necessary for PERMITTEE's Operations.

28. CITY'S RESERVATION OF RIGHTS.

- 28.1. Resources. CITY reserves all rights, title, and interest in any and all subsurface natural gas, oil, minerals, and water on or within the Permit Areas.
- 28.2. Use. CITY may grant and use easements or establish and use rights-of-way over, under, along, and across the Permit Areas for utilities, thoroughfares, or access as CITY deems advisable, in its sole discretion for the public good.
- 28.3. Entry. CITY may enter the Permit Areas at any time to develop or make repairs to municipal resources and services.

29. REASSIGNMENT OF SPACE.

CITY may reassign PERMITTEE to an equivalent amount of space in a different location within the Permit Areas or different Site acceptable to PERMITTEE, if and when reasonably necessary due to: (i) construction, expansion, repair, relocation, or maintenance of a street or other public improvement project; or (ii) maintenance, upgrade, expansion, replacement, or relocation of CITY traffic light poles and/or traffic signal light system; or (iii) permanent closure of a street or sale of CITY property; or (iv) projects and programs undertaken to protect or preserve the public health or safety; or (v) activities undertaken to eliminate a public nuisance; or (vi) duty otherwise arising from applicable law. PERMITTEE will, at the direction of CITY, relocate its Communications Equipment at PERMITTEE's sole cost and expense not later than one hundred eighty (180) days after receiving written notice from CITY. This Section shall not apply to underground vault sites. PERMITTEE shall cooperate with CITY and its contractors during any such relocation or any renovation, repair, or other alteration of the Permit Areas. During physical relocation of the Communications Equipment to the relocation site, CITY will work with PERMITTEE to reasonably attempt to secure an alternative CITY-approved site for PERMITTEE to operate temporary installed communications equipment, which will be installed and maintained at PERMITTEE's sole cost and expense. CITY warrants that every effort will be made to ensure continuous, uninterrupted broadcast and/or receiving capability during any such activity. If any relocation is not satisfactory to PERMITTEE, then PERMITTEE may, in its sole discretion, terminate this Master Agreement or the specific Approved Site or Permit Area upon thirty (30) calendar days' written notice to CITY, without further obligation therefor.

30. REVOCATION AND TERMINATION.

30.1. Revocation by CITY.

- a. Revocable License. This Master Agreement and all subsequent Use and Occupancy Permits are not a lease; they are a license to use CITY-owned property. However, this Master Agreement and each subsequent Use and Occupancy Permit are binding contracts between the Parties. The Parties hereby acknowledge and agree that CITY, as the licensor, may revoke this Master Agreement and any or all UOPs associated with it, at will and at any time during the Term. However, CITY agrees that CITY will not exercise its right to revoke this Master Agreement and all of the UOPs associated with it at will unless CITY determines, that PERMITTEE is in default of this Master Agreement as set forth in Section 30.1(b)(i)-(ii), which default is pervasive and consistent, and has affected more than one-half of all of the UOPs then issued, or PERMITTEE is in default as set forth in Section 30.1(b)(iii)-(vi). CITY further agrees not to revoke a specific UOP except in the event of default as set forth in Section 30.1(b)(i)-(ii) provided that such default is related to the specific UOP, and such revocations shall not impact this Master Agreement or any other UOPs that have been issued under it. Upon default, CITY may thereafter, in its sole discretion, exercise its right to revoke this Master Agreement and such UOPs at will and at any time during the Term, as provided in this Section. If CITY exercises its right to revoke this Master Agreement and such UOPs, CITY will provide PERMITTEE written notice of the revocation, and upon PERMITTEE's receipt of the notice, PERMITTEE shall promptly cease PERMITTEE's Operations and remove PERMITTEE's improvements and personal property from the Permit Areas

(pursuant to Section 30 of this Master Agreement).

- b. Events of Default. Each of the following shall constitute an event of default under this Master Agreement or a subsequent UOP:
- i. PERMITTEE's failure to make any payment required under this Master Agreement or a subsequent UOP when due, including delivering or performing the additional consideration set forth in Exhibit E, if the failure continues for twenty (20) calendar days following written notice of the failure by CITY;
 - ii. PERMITTEE's breach of any of its obligations under this Master Agreement or a subsequent UOP, other than those requiring payment to CITY, and PERMITTEE either:
 - a. fails to cure the breach within thirty (30) calendar days following written notice from CITY;
 - b. if such breach is not curable within thirty (30) calendar days following written notice from CITY, fails to promptly commence to cure the breach and to diligently pursue the cure to completion; or
 - c. PERMITTEE uses any portion of the Permit Areas for any unauthorized purpose.
 - iii. PERMITTEE voluntarily files any petition under any bankruptcy or insolvency act or law;
 - iv. PERMITTEE has involuntarily filed against it any petition under any bankruptcy or insolvency act or law and the matter is not dismissed by a court of competent jurisdiction within ninety (90) calendar days of filing;
 - v. PERMITTEE is adjudicated a bankrupt; or
 - vi. PERMITTEE makes a general assignment for the benefit of creditors.

30.2 Termination by PERMITTEE. PERMITTEE may terminate this Master Agreement or a subsequent UOP, or remove any Communications Equipment thereby terminating PERMITTEE's right to use the corresponding Site(s) or Permit Area(s), for any reason upon thirty (30) days prior written notice to CITY. Upon PERMITTEE's termination, PERMITTEE shall promptly cease PERMITTEE's Operations and remove the Communications Equipment from the affected Permit Areas (pursuant to Section 30 of this Master Agreement).

30.3 No Obligation. Except as otherwise provided in Section 5 of Exhibit E, CITY shall not be obligated for any loss, financial or otherwise, which may be incurred by PERMITTEE as a result of CITY's revocation or PERMITTEE's termination of this Master Agreement. PERMITTEE expressly waives any claim for expense or loss which PERMITTEE might

incur as a result of CITY's revocation or PERMITTEE's termination of this Master Agreement.

30.4 Cumulative Remedies. CITY's rights and remedies under this Master Agreement are cumulative and shall not limit or otherwise waive or deny any of its respective rights or remedies at law or in equity.

30.5 Waiver. The property constituting the Permit Areas is publicly owned and held in trust for the benefit of CITY's citizens. The failure of either Party to insist upon the strict performance of any of the other Party's obligations under this Master Agreement, in one or more instances, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. The waiver of a default shall not be a waiver of any other default. Any waiver of a default must be in writing and executed by the non-defaulting Party to constitute a valid and binding waiver. A Party's delay or failure to exercise a right or seek a remedy shall not be deemed a waiver of that or any other right or remedy under this Master Agreement, at law or in equity. The exercise of any particular right or the use of any particular remedy for any default shall not waive the use of any other right or remedy for the same default or for another or later default. CITY's acceptance of any Annual Fee shall not be a waiver of any default preceding such payment. The failure to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but the Parties may, at any and all times, require the cure of the default.

30.6 Effect of Termination of Specific Approved Site or Permit Area. Following the early revocation or termination of a specific Approved Site or Permit Area by either CITY or PERMITTEE, no Annual Fee will be due to the CITY for that Approved Site or Permit Area.

31 REMOVAL OF IMPROVEMENTS AND PERSONAL PROPERTY.

31.2 Improvements. Upon the expiration or termination of this Master Agreement or upon the termination of a specific Site or Permit Area, PERMITTEE shall, at PERMITTEE's sole cost and expense, remove the Communications Equipment, its improvements, trade fixtures, structures, installations, and/or additions (except Street Light Poles that were installed by PERMITTEE) as soon as practicable, but in no event later than one hundred twenty (120) calendar days after the expiration or earlier termination of this Master Agreement or a subsequent Use and Occupancy Permit. If any removal of such improvements, trade fixtures, structures, installations, and/or additions by PERMITTEE results in damage to any portion of the Permit Areas, PERMITTEE shall repair all such damage at PERMITTEE's sole cost and expense. If PERMITTEE fails to remove any such improvements; trade fixtures, structures, installations, and/or additions identified by CITY, CITY may, at its option, remove them at PERMITTEE's sole cost and expense.

31.3 Personal Property. Upon expiration of this Mater Agreement (without the Parties execution of a new permit or agreement for the Permit Areas) or upon earlier revocation or termination of this Master Agreement or any specific Use and Occupancy Permit

subsequently issued for Approved Sites, PERMITTEE shall remove machines, appliances, equipment (other than trade fixtures), and other items of personal property installed by the expiration or earlier revocation or termination of this Master Agreement. If any removal of such personal property by PERMITTEE results in damage to any portion of the Permit Areas, PERMITTEE shall repair all such damage at PERMITTEE's sole cost and expense. Any such items which PERMITTEE fails to remove shall be deemed abandoned and become CITY's property free of all claims and liens, or CITY may, at its option, remove such items at PERMITTEE's sole cost and expense.

- 31.4 Performance Bond. PERMITTEE shall obtain and provide CITY on a yearly basis proof of security in the form of a performance bond in the amount of one thousand dollars (\$1,000.00) per Site, in favor of CITY, to cover the cost to dismantle or remove PERMITTEE's Communications Equipment ("Removal Performance Bond") constructed, installed or erected by PERMITTEE or PERMITTEE's sublicensees, contractors, or subcontractors within the Permit Areas. The Removal Performance Bond shall be for a term of one (1) year and shall be continuously renewed, extended or replaced so that it remains in place for the entire Term of this Master Agreement or the expiration of all subsequent UOPs issued under this Master Agreement, whichever occurs later; or until PERMITTEE's secured removal obligations are performed to the satisfaction of CITY, if that occurs sooner than the expiration or termination of either the Master Agreement or all subsequent UOPs. In order to ensure continuous renewal of the Removal Performance Bond with no lapse, each bond shall be extended or replaced at least one month in advance of its expiration date. Removal costs may, at CITY's reasonable discretion, be reevaluated at the conclusion of the fifth (5th) year of the Term of this Master Agreement to ensure sufficient funds for removal. PERMITTEE shall adjust the amount of the Removal Performance Bond at CITY's request. Failure to secure the Removal Performance Bond and all renewals and extensions thereof shall constitute breaches of the PERMITTEE under this Master Agreement.

32 NOTICES.

Any notice required or permitted to be given under this Master Agreement shall be in writing and may be served personally, sent by United States mail, postage prepaid, or sent by reliable overnight courier, addressed to the Parties as follows, or to any mortgagee, trustee, or beneficiary, as applicable, at the appropriate address designated, in writing, by the respective party:

If to PERMITTEE:

Verizon Wireless (VAW) LLC
d/b/a Verizon Wireless
180 Washington Valley Road
Bedminster, New Jersey 07921
Attention: Network Real Estate

with a copy to:

Verizon Wireless (VAW) LLC

d/b/a Verizon Wireless
15505 Sand Canyon Avenue
Irvine, CA 92618
Attention: Legal Department
Maintenance contact phone # 800-264-6620
Agreement contact phone # 800-862-4404

If to CITY:

City of San Diego
Real Estate Assets Department
Attn: Real Estate Assets Director
1200 Third Avenue, Suite 1700, MS 51A
San Diego, CA 92101-4155
Contact phone # 619-236-6020

If to CITY's Transportation Stormwater:

City of San Diego
Streets Division
Attn: Deputy Director
2781 Caminito Chollas
San Diego, CA 92105
Maintenance contact phone # (619) 527-7500 (Station 38)

- 32.2 Address Changes. Any Party entitled or required to receive notice under this Master Agreement may, by like notice, designate a different address to which notices shall be sent.
- 32.3 When Effective. Notice shall be effective upon personal service, or five (5) calendar days after deposit in the United States mail.

33 MISCELLANEOUS PROVISIONS.

- 33.2 Governing Law. This Master Agreement shall be governed, construed, and enforced in accordance with the laws of the State of California, and the United States, without regard to the conflict of law provisions thereof. Venue for any action under this Master Agreement shall be the state and federal courts located in San Diego County.
- 33.3 Entire Understanding. This Master Agreement, including all Exhibits attached hereto, contains the entire understanding of the Parties. CITY and PERMITTEE agree that there is no other written or oral understanding between them with respect to PERMITTEE's Operations. Each Party has relied on its own examination of the Permit Areas, advice from its own attorneys, and the warranties, representations, and covenants within the Master Agreement itself. Each party agrees that no other party, agent, or attorney of any other party has made any promise, representation, or warranty whatsoever which is not contained in this Master Agreement. The failure or refusal of any party to read this Master Agreement or other documents, inspect the Permit Areas, and obtain legal or other advice relevant to this

transaction shall constitute a waiver of any objection, contention, or claim that might have been based on such actions.

- 33.4 Modifications of Smart City Solutions. At any time, the Parties may mutually agree to modify the Intersection Safety Analytics and Traffic Data Services solutions (collectively, "Solutions") provided by Verizon under the MUOA, including changing the location or timing of deployment of individual Solutions or replacing individual Solutions with alternative Smart City solutions offered by Verizon ("Replacement Solutions"), so long as any such modification is of comparable value as determined by Verizon.
- 33.5 No Affiliation. Nothing contained in this Master Agreement shall be deemed or construed to create a partnership, joint venture, or other affiliation between the Parties, or between CITY and any other entity or party, or cause CITY to be responsible in any way for the debts or obligations of PERMITTEE or any other party or entity.
- 33.6 Standard of Conduct. PERMITTEE and its employees shall, at all times, conduct themselves and PERMITTEE's Operations in a creditable manner and in accordance with industry standards.
- 33.7 Joint and Several Liability. If PERMITTEE is comprised of more than one person or legal entity, such persons and entities, and each of them, shall be jointly and severally liable for the performance of each and every obligation of PERMITTEE under this Master Agreement.
- 33.8 Unavoidable Delay. If the performance of any act required of CITY or PERMITTEE under this Master Agreement is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes, or other causes beyond the reasonable control of the Party required to perform an act, that Party shall be excused from performing that act for a period equal to the period of the prevention or delay. If CITY or PERMITTEE claims the existence of such a delay, the Party claiming the delay shall notify the other party, in writing, of that fact within ten (10) calendar days after the beginning of any such claimed delay and the Parties shall prepare and sign an appropriate document acknowledging any extension of time under this Section.
- 33.9 CITY's Consent or Approval. Whenever required under this Master Agreement, CITY's consent or approval shall mean the written consent or approval of CITY's Mayor or his designee, unless otherwise expressly provided. CITY's discretionary acts hereunder shall be made at the Mayor's discretion, unless otherwise expressly provided.
- 33.10 Agreement Modifications. This Master Agreement shall not be modified, altered, or amended unless the modification, alteration, or amendment is in writing and signed by the Parties.
- 33.11 Cost Recovery. CITY collects various fees to offset the administrative costs incurred for CITY staff services. CITY shall process each of PERMITTEE's service requests upon receipt of PERMITTEE's payment of the applicable fee. The fee schedule, which is on file with the Office of the City Clerk, may be updated from time to time in CITY's sole

discretion.

- 33.12 Survival. Any obligation under this Master Agreement that requires a party's performance of that obligation after the expiration or earlier revocation or termination of this Master Agreement shall survive such expiration, revocation, or termination.
- 33.13 Number and Gender. In this Master Agreement, words in the singular number shall include the plural, and *vice versa*, as appropriate to the context. Words of either gender shall include the other gender.
- 33.14 Publicity. Marketing, advertising, promotional materials (e.g., marketing collateral), press releases or other public announcements regarding this Master Agreement, the activities hereunder, any Exhibit, any specific agreement or any agreement or amendment executed hereunder attached hereto, shall be made only after receiving the prior written consent of the other Party, except as required by law, in which case the other Party shall be consulted to the extent reasonably practicable as to the content and timing of such release, announcement or statement. Notwithstanding the foregoing, each Party may generally describe the collaborative nature of the relationship with the other Party in presentations, and proposals, and PERMITTEE may publicly disclose performance results of the Solutions.
- 33.15 Attorneys' Fees. Other than as provided in Section 26 (Indemnification) in any suit or proceeding relating to this Master Agreement each Party shall be responsible for its own costs and fees incurred in connection with the suit or proceeding unless otherwise required by law.
- 33.16 Severability. This Master Agreement will be enforced to the fullest extent permitted by applicable law. If any provision of this Master Agreement is held to be illegal, invalid or unenforceable to any extent, then such provision shall be excluded to the extent of such illegality, invalidity or unenforceability; all other provisions hereof shall remain in full force and effect; and, to the extent permitted and possible, the excluded provision shall be deemed replaced by a provision that is valid and enforceable and that comes closest to expressing the intention of such excluded provision. If application of this Severability provision should materially and adversely affect the economic substance of the transactions contemplated hereby, the Party adversely impacted, in its sole discretion, shall be entitled to either (i) compensation for such adverse impact or (ii) shall have the right to terminate the Master Agreement upon thirty (30) days advance written notice, provided such notice is given within sixty (60) days of the determination of illegality, invalidity or unenforceability. The foregoing remedies are only available to the adversely impacted Party if the reason for the illegality, invalidity or unenforceability of a term is not due to misconduct of the Party seeking compensation or termination.
- 33.17 Counterparts. The Parties may sign this Master Agreement in counterparts, each of which will be considered an original, but all of which will constitute the same agreement. Facsimile and portable document format (PDF) signatures shall be binding as if original.

- 33.18 No Third-Party Beneficiaries. This Master Agreement and any separate agreements created pursuant to this Agreement are solely for the benefit of the CITY and PERMITTEE. They are not intended to benefit any other third parties.
- 33.19 Construction of Document. The parties acknowledge that this document shall not be construed in favor of or against the drafter by virtue of said Party being the drafter and that this Master Agreement shall not be construed as a binding offer until signed by both Parties.
- 33.20 Captions. The captions preceding the Sections of this Master Agreement are intended only for convenience of reference and in no way define, limit, or describe the scope of this Agreement or the intent of any provision hereof.
- 33.21 Authority to Execute and Deliver Agreement. Each individual executing this Master Agreement on behalf of another person or legal entity represents and warrants that he or she is authorized to execute and deliver this Master Agreement on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Master Agreement is binding upon such person or entity in accordance with its terms. Each person executing this Master Agreement on behalf of another person or legal entity shall provide CITY with evidence, satisfactory to CITY, that such authority is valid and that such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association, in good standing in its home state, and that such entity is qualified to do business in the State of California.
- 33.22 Exhibits Incorporated. All Exhibits referenced in this Master Agreement are incorporated into this Master Agreement by this reference.
- 33.23 Order of Precedence. The order of precedence between and among this Master Agreement and its Exhibits, which are or will be attached hereto and incorporated herein by reference, with respect to a conflict between the same subject matter, shall be as follows, but provided that the prevailing term shall apply only to (i) the conflicting terms and (ii) the extent necessary to resolve the conflict:
- 33.23.1.1 Memorandum of Understanding executed concurrently herewith ("MOU") (and its Exhibits);
 - 33.23.1.2 This Master Agreement;
 - 33.23.1.3 Exhibit E of this Master Agreement;
 - 33.23.1.4 Exhibits to this Master Agreement (other than Exhibit E);

33.23.1.5 Amendments or specific agreements

IN WITNESS WHEREOF, this Master Agreement is executed by CITY and PERMITTEE, to be effective as of the Effective Date.

Date: 4.3.2019

THE CITY OF SAN DIEGO, a California municipal corporation

By [Signature]
~~Cybele L. Thompson~~ RONALD VILLA
~~Director, Real Estate Assets~~
ASST. CAO.

Date: 29th March, 2019

VERIZON WIRELESS (VAW) LLC, a Delaware limited liability company

By [Signature]
(Print Name) Ed Chan
(Title) Sr - Engineering

ENVIRONMENTAL ANALYSIS SECTION:

THIS ACTIVITY IS EXEMPT FROM CEQA PURSUANT TO CEQA SECTIONS 15301 (EXISTING FACILITIES) AND 15303 (NEW CONSTRUCTION)

Date: 4/3/2019

By [Signature]
Name: ~~Anna L. McPherson~~ JEFF SZYMANSKI
Title: Senior Planner

APPROVED AS TO FORM:

Date: 4/3/2019

MARA W. ELLIOTT, City Attorney

By [Signature]
Melissa Ables, Deputy City Attorney