

SMALL CELL LICENSE AGREEMENT

THIS SMALL CELL LICENSE AGREEMENT (the "Agreement") is dated as of DECEMBER 18, 2017 (the "Effective Date"), and entered into by and between the City of Huntington Beach, a municipal corporation of the State of California ("LICENSOR" or "City"), and Mobilitie, LLC, a Nevada limited liability company ("LICENSEE").

Recitals

A. WHEREAS, the LICENSOR is the owner of certain Poles located in the Rights-of-Way of the City of Huntington Beach; and

B. WHEREAS, LICENSEE desires to use space on certain of the LICENSOR's Poles for installation, operation, maintenance, repair and replacement of its Small Cell and/or Equipment, permitted by the Federal Communications Commission ("FCC") and/or PUC and in accordance with all Laws including but not limited to FCC rules and regulations and the City's Municipal Code; and

C. WHEREAS, LICENSEE wishes to locate, place, attach, install, operate, control, and maintain Small Cell and/or Equipment on the Poles in the Rights-of-Way, owned by the LICENSOR; and

D. WHEREAS, LICENSEE acknowledges that before obtaining a license, LICENSEE must first obtain a Site Permits; and

E. WHEREAS, LICENSEE is willing to compensate the LICENSOR in exchange for a grant and right to license portions of the Poles, on the terms and conditions set forth herein and the respective Site Permits.

Agreement

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to the following covenants, terms, and conditions:

1. DEFINITIONS. The following definitions shall apply generally to the provisions of this Agreement:

1.1 Equipment. "Equipment" means the equipment cabinets, antennas, high power radios (up to 2), utilities and underground fiber optic cables, wires, meters and related equipment, whether referred to singly or collectively, to be installed and operated by LICENSEE only as approved by the City under a particular Site Permit and that comprise a Small Cell installation.

1.2 **Information service.** "Information service" means generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information and content via telecommunications, and includes electronic publishing, as the same may evolve over time.

1.3 **Laws.** "Laws" means any and all applicable Federal, State and Local statutes, constitutions, ordinances, resolutions, regulations, judicial decisions, rules, tariffs, administrative orders, certificates, orders, or other legal requirements as such Laws may be amended from time to time.

1.4 **Municipal Facilities.** "Municipal Facilities" means LICENSOR-owned property including City-owned Poles, lighting fixtures, or electroliers located within the ROW and may refer to such facilities in the singular or plural, as appropriate to the context in which used.

1.5 **Network.** "Network" or collectively "Networks" means the telecommunication network operated by LICENSEE to serve its customers.

1.6 **Poles.** "Poles" or "City Poles" shall mean any light pole(s) that is owned and/or licensed by the LICENSOR.

1.7 **PUC.** "PUC" means the California Public Utilities Commission.

1.8 **Rights-of-Way.** "Rights-of-Way" or "ROW" means public property including air space, owned, dedicated, granted, held, prescriptively used, by LICENSOR or otherwise authorized, for or by LICENSOR.

1.9 **Small Cell.** "Small Cell" shall mean equipment at a node/location that transmits and/or provides connection to a mobile communication system and complies with Huntington Beach Municipal Code and Public Works Design Standards and be affixed to an existing City Pole including a light standard.

1.10 **Site.** "Site" shall mean the location of the Pole(s) described in Exhibit "A" and depicted in Exhibit "B", attached hereto.

1.11 **Site Permit.** "Site Permit" shall mean a Permit pursuant to Section 12.13.010 of the City of Huntington Beach Municipal Code and a Wireless Permit as set forth pursuant to Huntington Beach Zoning and Subdivision Ordinance ("HBZSO") Section 230.96.

1.12 **Telecommunications Services.** "Telecommunications Services" or "Services" has the same meaning as that term is defined in the United States Code, 47 U.S.C. 153 (53) or any other use authorized by the PUC and/or the FCC to LICENSEE.

2. TERM.

2.1 The initial term of this Agreement shall be for a period of five (5) years (the "Initial Term"), commencing on the first day of the month following mutual execution of this Agreement (the "Agreement Commencement Date") and ending on the fifth (5th) anniversary thereof, or until the expiration of the last remaining Site Permit, whichever is later, unless this Agreement is sooner terminated as provided herein. The Initial Term may be extended for one (1) additional five (5) year period (the "Renewal Term") upon an amendment to this Agreement executed in writing. The Initial Term and Renewal Term shall be collectively referred to herein as the "Term." City may withhold consent to extend this Agreement with or without cause, in which case this Agreement shall terminate.

2.2 The initial term for each particular Site shall be the first day of the month following the date LICENSEE has commenced installation of its Small Cell and/or Equipment at a particular Site pursuant to the applicable Site Permit (the "Commencement Date") and shall be for an initial term of five (5) years ("Site Initial Term"). Each Site Initial Term may be extended for one (1) additional five (5) year period upon an amendment to this Agreement executed in writing (the "Site Permit Renewal Term"). Unless otherwise authorized by the City, in writing, the Commencement Date shall not be later than ninety (90) days from approval of the Site Permit, or within one hundred eighty (180) days if a Replacement Pole is to be installed. Unless otherwise authorized by the City Manager or his/her designee, in writing, should LICENSEE fail to commence construction within the ninety (90) or one hundred eighty (180) day periods, respectively, the license and Site Permit as to that Small Cell shall terminate.

2.3 The Site Permit Initial Term and Site Permit Renewal Term shall be collectively referred to herein as the "Site Permit Term." Notwithstanding anything herein, after the expiration of this Agreement, its terms and conditions shall survive and govern with respect to any remaining Small Cell location that has a Site Permit in effect until the expiration or termination of the Site Permit.

3. **REPRESENTATION CONCERNING SERVICES; TERMINATION.** This Agreement shall automatically terminate without any notice from City in the event the LICENSEE ceases to operate as a provider of Telecommunications Services under applicable Laws. In the event this Agreement terminates as described above, LICENSEE shall remove its Small Cell and/or Equipment no later than ninety (90) days from the date of such termination at its sole cost and expense, and shall be required to return the Site to its condition prior to installation as required by the City Engineer at the LICENSEE's sole cost and expense.

In the event the LICENSOR at its sole discretion determines LICENSEE has failed to fulfill its material obligation as provided under this Agreement, LICENSOR shall provide LICENSEE written notice detailing the material obligations which the LICENSOR claims LICENSEE has failed to fulfill and notify LICENSEE that it is deemed to be in

default of this Agreement. The determination of material obligations shall be at LICENSEE's discretion. LICENSEE shall have thirty (30) days to cure the default; provided, however, where such default cannot reasonably be cured within thirty (30) days, LICENSEE shall not be in default if it commences to cure such default within said thirty (30) day period and diligently pursues cure to completion, not to exceed ninety (90) days. If default is not cured within the prescribed time frame, then the LICENSOR may terminate the Agreement by issuing written notice to LICENSEE and this Agreement shall terminate no sooner than ten (10) days from the date of issuance of the notice. Upon termination, LICENSEE shall remove its Equipment pursuant to Section 6.4.

LICENSEE may terminate this Agreement or any Site Permit by providing LICENSOR with sixty (60) days written notice. Upon the removal of the Small Cell and/or Equipment related to a terminate Site Permit, the obligation of LICENSEE to pay any and all fees hereunder shall automatically cease. In the event this Agreement is terminated, City shall determine at its sole discretion whether any particular Site Permit shall also terminate. In the case of any Site Permit termination, LICENSOR shall remove all Small Cell components and/or Equipment from City ROW installed pursuant to this Agreement no later than ninety (90) days from the date of such termination and return the ROW (including Pole) to its condition before the installation, reasonable wear and tear excepted, at LICENSEE's sole cost.

4. SCOPE OF AGREEMENT. Any and all rights expressly granted to LICENSEE under this Agreement, which shall be exercised at LICENSEE's sole cost and expense, shall be subject to the prior and continuing right of the LICENSOR under applicable Laws to use any and all parts of the ROW exclusively or concurrent licenses with any other person or entity and shall be further subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record which may affect the ROW as of the date of the individual Site.

4.1 Plan for Attachment to City Poles or Municipal Facilities. Prior to installation, LICENSEE will submit to the authorized representative of the LICENSOR a proposed plan for the design for any proposed Small Cell installations that will include all Equipment LICENSEE proposes to use. LICENSEE shall include in the plan proof of insurance, a provision to provide City employees and contractors with safety training related to the Small Cell and/or Equipment and installations. City may reject the plan including any component thereto at its sole discretion and said Small Cell shall not be allowed as part of this Agreement. Any approved plan shall be included as part of an applicable Site Permit.

4.1.1 Subject to the conditions of this Agreement and as authorized by the Huntington Beach Municipal Code including the HBZSO, LICENSEE may enter upon the ROW to locate, place, attach, install, operate, maintain, control, remove, reattach, reinstall, relocate, and replace Small Cell and/or Equipment permitted and approved by the City in or on City Pole providing Telecommunications Services.

4.1.2 LICENSEE will make arrangements with Southern California Edison to provide the Equipment with power as approved in the construction plans. Payment for said power is the sole responsibility of LICENSEE. LICENSEE will power its equipment in a way as to reduce the disruption to City-owned equipment or facilities. All work contracted or subcontracted by LICENSEE, including electric work, shall be performed by a licensed contractor that is approved by the LICENSOR. LICENSOR agrees to promptly approve or disapprove LICENSEE's proposed contractors, a list of whom may be submitted in advance of any Site Permits or the commencement of any work related thereto.

4.1.3 Prior to commencement of any work to install or operate a Small Cell or Equipment, LICENSEE shall obtain and/or possess any required City, State or Federal permits or licenses.

4.1.4 If LICENSEE selects a Pole that is structurally inadequate to accommodate Equipment, at the City's sole discretion with prior written approval, LICENSEE may, at its sole cost and expense, replace the Pole (a "Replacement Pole") with one that is acceptable to and approved by the LICENSOR and dedicate such Replacement Pole to the LICENSOR upon installation thereof. If LICENSEE's Small Cells or Equipment are installed on any Replacement Poles, LICENSEE shall provide and deliver to LICENSOR one (1) additional Replacement Pole (excluding mast arm) so that a replacement is immediately available to LICENSOR in case an existing Replacement Pole in use by LICENSEE is damaged or destroyed and is no longer suitable to support LICENSEE's Small Cell or Equipment. If an existing standard Pole has been replaced with a Replacement Pole and such Replacement Pole is damaged or destroyed or is no longer suitable to support LICENSEE's Small Cell or Equipment, LICENSEE shall be responsible for the cost difference, if any, in replacing such Replacement Pole.

4.2 No Interference. LICENSEE in the performance and exercise of its rights and obligations under this Agreement shall not interfere in any manner with the existence and operation of any and all public and private rights-of-way, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electrical and telephone wires, traffic signals, wired and wireless telecommunications facilities owned by the LICENSOR or any third party; electroliers, cable television, location monitoring services, public safety and other then existing telecommunications equipment, utility, or municipal property, without the express written approval of the owner or owners of the affected property or properties, except as permitted by applicable Laws or this Agreement. However, the LICENSOR agrees that its tenants, licensees, or users of the ROW who currently have or in the future take possession of space within the ROW within three hundred feet (300') of any LICENSEE Small Cells will be permitted to install only such components and/or equipment that is of the type and

frequency which will not cause harmful interference which is measurable in accordance with then existing industry standards to the then existing Equipment of LICENSEE.

4.3 Permits; Default. Whenever LICENSEE is in default of this Agreement or an applicable Site Permit, after notice and a thirty (30) day cure period, or where such default cannot reasonably be cured within thirty (30) days but LICENSEE commences to cure such default within said thirty (30) day period and diligently pursues cure to completion, not to exceed ninety (90) days, in all instances, in any of its obligations under this Agreement, the LICENSOR may suspend this Agreement and/or deny encroachment, excavation or similar work until such time as LICENSEE cures all of its defaults.

4.4 No Authorization to Provide Other Services. LICENSEE represents, warrants and covenants that its Small Cell and/or Equipment installed pursuant to this Agreement and each Site Permit will be utilized solely for providing the Telecommunications Services identified herein and LICENSEE is not authorized to and shall not use its Small Cell and/or Equipment to offer or provide any other services not specified herein.

4.5 Nonexclusive Use Rights. Notwithstanding any other provision of this Agreement, any and all rights expressly or impliedly granted to LICENSEE under this Agreement shall be non-exclusive, and shall be subject and subordinate to LICENSOR's use of the ROW including: (1) the continuing right of the LICENSOR to use, and to allow any other person or persons to use, any and all parts of the ROW or Municipal Facilities, exclusively or concurrently with any other person or persons, and (2) the public easement for streets and any and all other deeds, easements, dedications, conditions, covenants, restrictions, encumbrances and claims of title (collectively, "Encumbrances") which may affect the ROW or Municipal Facilities now or at any time during the Term of this Agreement, including, without limitation any Encumbrances granted, created or allowed by the LICENSOR at any time.

5. COMPENSATION. LICENSEE shall be solely responsible for the payment of all fees in connection with LICENSEE's performance under this Agreement, including those set forth below.

5.1 License Fee. In order to compensate the LICENSOR for LICENSEE's entry upon and deployment of Small Cell and/or Equipment on City-owned Poles, LICENSEE shall pay to the LICENSOR, on an annual basis, an amount of two thousand seven hundred dollars (\$2,700.00) per Site if LICENSEE has nine (9) or fewer Site Permits in effect, or two thousand four hundred fifty dollars (\$2,450.00) per Site if LICENSEE has ten (10) to nineteen (19) Site Permits in effect, or two thousand two hundred dollars (\$2,200.00) per Site if LICENSEE has twenty (20) or more Site Permits in effect (the "License Fee"). LICENSEE shall make the first payment of License Fee under any Site Permit within thirty

(30) days of the applicable Commencement Date for the applicable Site. For the first payment, the total number of Site Permits in effect as of the Site Permit's Commencement Date shall determine the amount owed for that License Fee. Thereafter, License Fees shall be paid on or before each anniversary of the Commencement Date during the Site Permit Term and the total number of Site Permits in effect as of that anniversary of the Site Permit's Commencement Date shall determine the amount owed for that License Fee.

5.2 License Fee Adjustment. Effective on the first anniversary of the Commencement Date of any Site Permit Term, and continuing annually thereafter during the applicable Site Permit Term, the License Fee shall be subject to adjustment ("Adjusted License Fee"), in the manner hereinafter set forth, with a floor of three percent (3%) and a ceiling of five percent (5%), for increases compared to the previous year in the index known as United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index, All Urban Consumers, Los Angeles-Anaheim-Riverside Statistical Area Average, All Items, (1982-84=100) ("CPI") or the successor index that most closely approximates the CPI. In no event shall the Adjusted License Fee, after adjustment under the provisions set forth above, be less than the amount of License Fee in effect hereunder immediately prior to such adjustment.

5.3 Business License. The LICENSEE shall obtain a Business License from the City and pay all applicable taxes, or fees associated with performance of the terms contained herein.

5.4 Payment. LICENSEE shall pay the License Fee monthly to City at the City Treasurer's Office, P.O. Box 711, Huntington Beach, California, 92648, or at such other place or places as City may from time-to-time designate by written notice delivered to LICENSEE. LICENSEE shall pay the License Fee, which must be received by the City Treasurer within fifteen (15) calendar days ("Due Date") on the anniversary of the Commencement Date, or on the next business day if the fifteenth day falls on a weekend or holiday. License Fee mailed payments shall be deemed paid upon the date such payment is officially postmarked by the United States Postal Service. If postmarks are illegible to read, the payment shall be deemed paid upon actual receipt. LICENSEE assumes all risk of loss and responsibility for late payment charges if payments are made by mail.

Notwithstanding the foregoing, upon agreement of the parties, LICENSEE may pay License Fee by electronic funds transfer and in such event, the LICENSOR agrees to provide to LICENSEE bank routing information for such purpose upon request of LICENSEE.

5.5 Delinquent Payment. If LICENSEE fails to pay any amounts due pursuant to this Agreement after sixteen (16) days from the Due Date, or the next business day if the day falls on a weekend or holiday, LICENSEE shall pay the following late charge and penalty: a late payment charge shall equal ten percent (10%) of the amount due to the City, or ten percent (10%) of the amount remaining unpaid to the City if a portion was timely paid. Interest shall accrue on all unpaid monies due, exclusive of late payment charges, at the rate of one half of one percent per month of the total amount due from the date the amount becomes delinquent until the date that all delinquent amounts are paid to the City.

5.6 Additional Remedies. The remedy provisions set forth in §5.5 above are not exclusive, and do not preclude the LICENSOR from pursuing any other or additional remedy including terminating this Agreement and all Site Permits issued thereto in the event that payments become overdue by more than sixty (60) days.

6. CONSTRUCTION. LICENSEE shall comply with all applicable Federal, State, and City codes related to the construction, installation, operation, maintenance, and control of LICENSEE's Small Cell and/or Equipment installed in the ROW. Except as otherwise provided herein, LICENSEE shall not attach, install, maintain, or operate any Small Cell and/or Equipment in or on the ROW without obtaining all City permits including a Site Permit and with additional prior written approval of an authorized representative of the LICENSOR for each location whose approval is required by the City Municipal Code.

6.1 Obtaining Required Site Permits; Modifications. LICENSEE shall apply for and obtain all appropriate permits and pay all applicable permit fees and/or taxes as a condition precedent to installation of any Small Cell and/or Equipment contemplated in this Agreement. LICENSEE shall maintain all appropriate permits and pay all applicable permit fees and/or taxes.

6.2 Relocation and Displacement of Equipment. LICENSEE understands, acknowledges and agrees that LICENSOR may require LICENSEE to relocate one or more of its Small Cell and/or Equipment installations. LICENSEE shall at LICENSOR's direction and upon one hundred eighty (180) days prior written notice to LICENSEE for subsection (a) below, or upon ninety (90) days prior written notice to LICENSEE for subsections (b) and (c) below, relocate such Small Cell and/or Equipment at LICENSEE's sole cost and expense whenever LICENSOR reasonably determines that the relocation is needed for any of the following purposes: (a) if required for the construction, modification, completion, repair, relocation, or maintenance of a LICENSOR or other public agency project; (b) because the Small Cell and/or Equipment is interfering with or adversely affecting proper operation of LICENSOR-owned Poles, traffic signals, communications, or other Municipal Facilities; or (c) to protect or preserve the public health or safety including aesthetics as determined by the LICENSOR at its sole discretion. In any such case, LICENSOR shall use reasonable efforts to

afford LICENSEE a reasonably equivalent alternate location. If LICENSEE shall fail to relocate any Small Cell and/or Equipment as requested by the LICENSOR in accordance with the foregoing provision, LICENSOR shall be entitled to remove or relocate the Small Cell and/or Equipment at LICENSEE's sole cost and expense, without further notice to LICENSEE. LICENSEE shall pay to the LICENSOR actual costs and expenses incurred by the LICENSOR in performing any removal work and any storage of LICENSEE's property after removal within thirty (30) days of the date of a written demand for this payment from the LICENSOR. To the extent the LICENSOR has actual knowledge thereof, the LICENSOR will attempt promptly to inform LICENSEE of the displacement or removal of any Pole on which any Small Cell and/or Equipment is located. If the Municipal Facility is damaged or downed for any reason, and as a result is not able to safely hold the Equipment, the LICENSOR will have no obligation to repair or replace such Municipal Facility for the use of LICENSEE's Equipment and assume no loss whatsoever to LICENSEE. LICENSEE shall bear all risk of loss as a result of damaged or downed Municipal Facilities pursuant to §6.8 below, and may choose to replace such Municipal Facilities pursuant to the provisions of §4.1.5 above. Nothing in this Agreement shall limit LICENSOR's right to act to protect the public if the condition of a Municipal Facility, Pole, Small Cell, or Equipment at any Site poses an immediate threat to public health or safety. In such instances, if LICENSOR is unable to provide LICENSEE with prior notice, LICENSOR shall provide LICENSEE with notice about the action LICENSOR took to protect the public from an immediate threat at any Site within a reasonable period of time after LICENSOR takes such action.

6.3 Damages Caused by LICENSEE. LICENSEE shall, at its sole cost and expense and to the satisfaction of the LICENSOR: (a) remove, repair or replace any of its Small Cell and/or Equipment that is damaged or becomes detached; and/or (b) repair any damage to ROW, City Pole or other property, whether public or private, caused by LICENSEE, its agents, employees or contractors in their actions relating to attachment, operation, repair or maintenance of Small Cell and/or Equipment, reasonable wear and tear excepted. If LICENSEE does not remove, repair or replace such damage to its Small Cell and/or Equipment or to ROW, City Pole or other property, the LICENSOR shall have the option, upon thirty (30) days' prior written notice to LICENSEE, to perform or cause to be performed such removal, repair, or replacement on behalf of LICENSEE and shall charge LICENSEE for the actual costs incurred by the LICENSOR. If such damage causes a public health or safety emergency, as reasonably determined by the LICENSOR, the LICENSOR may immediately perform reasonable and necessary repair or removal work on behalf of LICENSEE and will notify LICENSEE as soon as practicable; provided, such repair work only involves reattachment of LICENSEE's Small Cell and/or Equipment to a Pole or repair of the Pole itself, and shall not include any technical work on LICENSEE's Equipment. Upon the receipt of a demand for payment by the LICENSOR, LICENSEE shall within thirty (30) days of such receipt reimburse the LICENSOR for such costs. The terms of this provision shall survive the

expiration, completion or earlier termination of this Agreement.

6.4 Removal of Equipment. Within ninety (90) days after the expiration or earlier termination of this Agreement, and/or a Site Permit, LICENSEE shall at its sole cost, safely and carefully remove the Small Cell and/or Equipment from all Municipal Facilities and ROW. Such obligation of LICENSEE shall survive the expiration or earlier termination of this Agreement. If LICENSEE fails to complete this removal work pursuant to this Section, then the LICENSOR, upon written notice to LICENSEE, shall have the right at the LICENSOR's sole election, but not the obligation, to perform this removal work and charge LICENSEE for the actual costs and expenses, including, without limitation, reasonable administrative costs. LICENSEE shall pay to the LICENSOR actual costs and expenses incurred by the LICENSOR in performing any removal work and any storage of LICENSEE's property after removal within thirty (30) days of the date of a written demand for this payment from the LICENSOR. After the LICENSOR receives the reimbursement payment from LICENSEE for the removal work performed by the LICENSOR, the LICENSOR shall promptly make available to LICENSEE the property belonging to LICENSEE and removed by the LICENSOR pursuant to this Section at no liability to the LICENSOR. If the LICENSOR does not receive reimbursement payment from LICENSEE within such thirty (30) days, or if LICENSOR does not elect to remove such items at the LICENSOR's cost after LICENSEE's failure to so remove pursuant to this Section, or if LICENSEE does not remove LICENSEE's property within thirty (30) days of such property having been made available by the LICENSOR after LICENSEE's payment of removal reimbursement as described above, any items of LICENSEE's property remaining on or about the ROW, Municipal Facilities, or stored by the LICENSOR after the LICENSOR's removal thereof may, at the LICENSOR's option, be deemed abandoned and the LICENSOR may dispose of such property in any manner by Law. If LICENSOR incurs e-waste and hazardous disposal fees as part of any Federal, State, or Local regulatory environmental requirements, LICENSOR shall have the option to bill LICENSEE for said disposal fees and LICENSEE agrees to reimburse LICENSOR within thirty (30) days of receiving reimbursement request. Alternatively, the LICENSOR may elect to take title to abandoned property, provided that LICENSEE shall submit to the LICENSOR an instrument satisfactory to the LICENSOR transferring to the LICENSOR the ownership of such property. The provisions of this Section shall survive the expiration or earlier termination of this Agreement.

6.5 Risk of Loss. LICENSEE acknowledges and agrees that LICENSEE, subject to the terms of this Agreement bears all risks of loss or damage or relocation or replacement of its Small Cell and/or Equipment and materials installed in the ROW or on Municipal Facilities pursuant to this Agreement from any cause, and the LICENSOR shall not be liable for any cost of replacement or of repair to damaged Equipment, including, without limitation, damage caused by the LICENSOR's removal of the Equipment, except to the extent that such loss or damage was caused by the willful misconduct or negligence of the LICENSOR,

including, without limitation, each of its elected officials, department directors, managers, officers, agents, employees, and contractors, subject to the limitation of liability provided in §7.2 below.

In the event of damage by fire or other casualty to the Municipal Facilities, Poles, Small Cell, or Equipment that cannot reasonably be expected to be repaired within forty-five (45) days following same, or, if the Municipal Facilities, Poles, Small Cell, or Equipment are damaged by fire or other casualty so that such damage may reasonably be expected to disrupt LICENSEE's operations for more than forty-five (45) days, then LICENSEE may, at any time following such fire or other casualty, provided LICENSOR has not completed the restoration required at Municipal Facilities or Poles to permit LICENSEE to resume its operations, terminate the Site Permit upon fifteen (15) days prior written notice to LICENSOR. Any such notice of termination shall cause the Site Permit to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of the Site Permit and the parties shall make an appropriate adjustment, as of such termination date, with respect to payments due to the other under the Site Permit. Notwithstanding the foregoing, the rent shall abate during the period of repair following such fire or other casualty in proportion to the degree to which LICENSEE's operations are impaired.

7. INDEMNIFICATION AND WAIVER. LICENSEE agrees to indemnify, defend, protect, and hold harmless the City of Huntington Beach, its City Council or any elected official its members, officers, officials, employees or agents (collectively, the "Indemnitees") from and against any and all claims, demands, losses, including Pole warranty invalidation, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, and all costs and expenses incurred in connection therewith, including attorney's fees and costs of defense (collectively, the "Losses") resulting from this Agreement, except to the extent that the Losses are caused by the Indemnitees' negligence or willful misconduct.

7.1 Waiver of Claims. LICENSEE waives any and all claims, demands, causes of action, and rights it may assert against the LICENSOR on account of any loss, damage, or injury to any Small Cell and/or Equipment or any loss or degradation of the Telecommunications Services or Information Service as a result of any event or occurrence which is beyond the reasonable control of the LICENSOR.

7.2 Waiver of Subrogation. The parties hereby waive and release any and all rights of action for negligence against the other which may hereafter arise on account of damage to Municipal Facilities, Small Cell or to the ROW, resulting from any fire, or other casualty of the kind covered by standard fire insurance policies with extended coverage, regardless of whether or not, or in what amounts, such insurance is now or hereafter carried by the parties, or either of them. These waivers and releases shall apply between the parties and they shall

also apply to any claims under or through either party as a result of any asserted right of subrogation. All such policies of insurance obtained by either party concerning the Municipal Facilities, Small Cell or the ROW shall waive the insurer's right of subrogation against the other party.

7.3 Limitation on Consequential Damages. Neither party shall be liable to the other, or any of their respective agents, representatives, employees for any lost revenue, lost profits, loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, loss of data, or interruption or loss of use of service, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise

8. SECURITY FOR PERFORMANCE. Before any construction begins in the ROW by LICENSEE, and if requested by LICENSOR, LICENSEE shall provide the LICENSOR with performance bonds, and if considered necessary by the LICENSOR, payment bonds, in amounts equal to the full amount of the replacement of each Pole. The payment bond shall be solely for the protection of claimants supplying labor or materials for the required construction work and the performance bond shall be solely for the protection of the LICENSOR, conditioned upon the faithful performance of the required construction work. Bonds shall be executed by a surety company duly authorized to do business in the State of California, and acceptable to the LICENSOR and shall be kept in place for the duration of the work.

9. INSURANCE. LICENSEE shall obtain and maintain at all times during the term of this Agreement Commercial General Liability insurance with a limit of \$2,000,000 per occurrence for bodily injury and property damage and \$2,000,000 general aggregate including premises-operations, contractual liability, personal injury and products completed operations; and Commercial Automobile Liability insurance covering all owned non-owned and hired vehicles with a limit of \$1,000,000 each accident for bodily injury and property damage. In any case, the Commercial General Liability insurance policy shall name the LICENSOR, its commission members, officers, and employees as additional insured as respects any covered liability arising out of LICENSEE's performance of work under this Agreement. Coverage shall be in an occurrence from and in accordance with the limits and provisions specified herein. Upon receipt of notice from its insurer LICENSEE shall use its best efforts to provide the LICENSOR with thirty (30) days prior written notice of cancellation. LICENSEE shall be responsible for notifying the LICENSOR of such change or cancellation.

9.1 Filing of Certificates and Endorsements. Prior to the commencement of any work pursuant to this Agreement, LICENSEE shall file with the LICENSOR the required certificate(s) of insurance with blanket additional insured endorsements, which shall state the following:

- (a) the policy number; name of insurance company; name and address of the agent or authorized representative; name and address of insured; project name; policy expiration date; and specific coverage amounts;

(b) that LICENSEE's Commercial General Liability insurance policy is primary as respects any other valid or collectible insurance that the LICENSOR may possess, including any self-insured retentions the LICENSOR may have; and any other insurance the LICENSOR does possess shall be considered excess insurance only and shall not be required to contribute with this insurance; and

(c) that LICENSEE's Commercial General Liability insurance policy waives any right of recovery the insurance company may have against the LICENSOR.

The certificate(s) of insurance with endorsements and notices shall be mailed to the LICENSOR at the address specified in §10 below.

9.2 Workers' Compensation Insurance. LICENSEE shall obtain and maintain at all times during the term of this Agreement statutory workers' compensation and employer's liability insurance in an amount not less than One Million Dollars (\$1,000,000) and shall furnish the LICENSOR with a certificate showing proof of such coverage.

9.3 Insurer Criteria. Any insurance provider of LICENSEE shall be admitted and authorized to do business in the State of California and shall carry a minimum rating assigned by *A.M Best & Company's Key Rating Guide* of "A" Overall and a Financial Size Category of "VII."

9.4 Severability of Interest. "Severability of interest" or "separation of insureds" clauses shall be made a part of the Commercial General Liability and Commercial Automobile Liability policies.

10. NOTICES.

10.1 Method and Delivery of Notices. All notices which shall or may be given pursuant to this Agreement shall be in writing and delivered personally or transmitted (a) through the United States mail, by registered or certified mail, postage prepaid; or (b) by means of prepaid overnight delivery service, addressed as follows:

If to the LICENSOR:
City of Huntington Beach
Office of Business Development
Attention: Deputy Director
1685 Main Street
Huntington Beach, CA 90401

if to LICENSEE:

Mobilitie, LLC
Attn: Legal Department
660 Newport Center Drive
Suite 200
Newport Beach, CA 92660

With a copy to:

Mobilitie, LLC
Attn: Asset Management
660 Newport Center Drive
Suite 200
Newport Beach, CA 92660

10.2 Date of Notices; Changing Notice Address. Notices shall be deemed given upon receipt in the case of personal delivery, three (3) days after deposit in the mail, or the next business day in the case of facsimile, email, or overnight delivery. Either party may from time to time designate any other address for this purpose by written notice to the other party delivered in the manner set forth above.

11. RESERVED

12. ASSIGNMENT. This Agreement may be assigned by LICENSEE to any parent company, subsidiary, affiliate, or any person, firm, or corporation that shall control, be under the control of, or be under common control of the LICENSEE or to any entity into which LICENSEE may have merged, consolidated, acquired the assets of the LICENSEE that are subject to this Agreement in its entirety, substantially, or partially, with the express written consent of the LICENSOR, of which consent shall not be unreasonably withheld, conditioned or delayed.

13. RECORDS; AUDITS.

13.1 Records Required by Code. LICENSEE will maintain complete records pursuant to all applicable Laws.

13.2 Additional Records. The LICENSOR may require such additional reasonable non-confidential information, records, and documents from LICENSEE from time to time as are appropriate in order to reasonably monitor compliance with the terms of this Agreement.

13.3 Production of Records. LICENSEE shall provide such records within twenty (20) business days of a request by the LICENSOR for production of the same unless additional time is reasonably needed by LICENSEE, in which case,

LICENSEE shall have such reasonable time as needed for the production of the same. If any person other than LICENSEE maintains records on LICENSEE's behalf, LICENSEE shall be responsible for making such records available to the LICENSOR for auditing purposes pursuant to this Section.

14. MISCELLANEOUS PROVISIONS. The provisions that follow shall apply generally to the obligations of the parties under this Agreement.

14.1 Waiver of Breach. The waiver by either party of any breach or violation of any provision of this Agreement shall not be deemed to be a waiver or a continuing waiver of any subsequent breach or violation of the same or any other provision of this Agreement.

14.2 Severability of Provisions. If any one or more of the provisions of this Agreement shall be held by a court of competent jurisdiction in a final judicial action to be void, voidable, or unenforceable, such provision(s) shall be deemed severable from the remaining provisions of this Agreement and shall not affect the legality, validity, or constitutionality of the remaining portions of this Agreement. Each party hereby declares that it would have entered into this Agreement and each provision hereof regardless of whether any one or more provisions may be declared illegal, invalid, or unconstitutional.

14.3 Contacting LICENSEE. LICENSEE shall be available to the staff employees of any LICENSOR department having jurisdiction over LICENSEE's activities 24 hours a day, seven days a week, regarding problems or complaints resulting from the attachment, installation, operation, maintenance, or removal of the Equipment. The LICENSOR may contact by telephone the network control center operator at telephone number (877) 244-7889 regarding such problems or complaints.

14.4 Governing Law; Jurisdiction. This Agreement shall be governed and construed by and in accordance with the laws of the State of California, without reference to its conflicts of law principles with jurisdiction in the courts of the County of Orange. If suit is brought by a party to this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California.

14.5 Attorneys' Fees. Should any dispute arising out of this Agreement lead to litigation, the prevailing party shall NOT be entitled to recover its costs of suit, including (without limitation) reasonable attorneys' fees,

14.6 Consent Criteria. In any case where the approval or consent of one party hereto is required, requested or otherwise to be given under this Agreement, such party shall not unreasonably delay, condition, or withhold its approval or consent.

14.7 Representations and Warranties. Each of the parties to this Agreement represents and warrants that it has the full right, power, legal capacity, and authority to enter into and perform the party's respective obligations hereunder and that such obligations shall be binding upon such party without the requirement of the approval or consent of any other person or entity in connection herewith, except as provided in § 4.2 above. This Agreement shall not be revocable or terminable except as expressly permitted herein.

14.8 Amendment of Agreement. This Agreement may not be amended except pursuant to a written instrument signed by both parties.

14.9 Entire Agreement. This Agreement contains the entire understanding between the parties with respect to the subject matter herein. There are no representations, agreements, or understandings (whether oral or written) between or among the parties relating to the subject matter of this Agreement which are not fully expressed herein. In witness whereof: and in order to bind themselves legally to the terms and conditions of this Agreement, the duly authorized representatives of the parties have executed this Agreement as of the Effective Date.

14.10 Public Records. LICENSEE acknowledges that information submitted to the LICENSOR may be open to public inspection and copying under state law.

14.11 Non-Exclusive Remedies. No provision in this Agreement made for the purpose of securing enforcement of the terms and conditions of this Agreement shall be deemed an exclusive remedy or to afford the exclusive procedure for the enforcement of said terms and conditions, but the remedies herein provided are deemed to be cumulative.

14.12 No Third-Party Beneficiaries. It is not intended by any of the provisions of this Agreement to create for the public, or any member thereof, a third-party beneficiary right or remedy, or to authorize anyone to maintain a suit for personal injuries or property damage pursuant to the provisions of this Agreement. The duties, obligations, and responsibilities of the LICENSOR with respect to third parties shall remain as imposed by state law.

14.13 Construction of Agreement. The terms and provisions of this Agreement shall not be construed strictly in favor of or against either party, regardless of which party drafted any of its provisions. This Agreement shall be construed in accordance with the fair meaning of its terms.

14.14 Effect of Acceptance. LICENSEE (a) accepts and agrees to comply with this Agreement and all applicable federal, state and local laws and regulations; (b) agrees that this Agreement was granted pursuant to processes and procedures consistent with applicable law; and (c) agrees that it will not raise any claim to the contrary or allege in any claim or proceeding against the LICENSOR that at the

time of acceptance of this Agreement any provision, condition or term of this Agreement was unreasonable or arbitrary, or that at the time of the acceptance of this Agreement any such provision, condition or term was void or unlawful or that the LICENSOR had no power or authority to make or enforce any such provision, condition or term.

14.15 Time is of the Essence. Time is of the essence with regard to the performance of all of the parties' obligations under this Agreement.

14.16 Compliance with Law. LICENSEE shall at all times comply with all applicable Federal, State and Local laws and regulations, including any permit requirements or conditions.

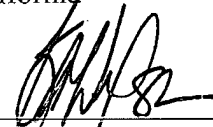
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed the day and year first above written.

“LICENSEE”

“LICENSOR” and “CITY”

CITY OF HUNTINGTON BEACH,
Municipal corporation of the State of
California

By: _____

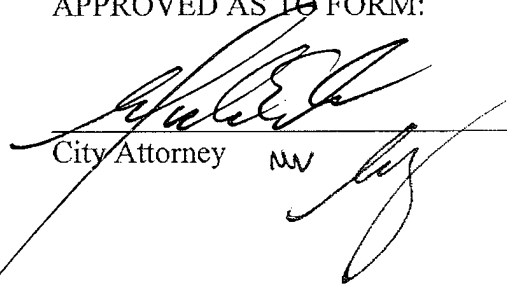


City Manager

Its: _____

APPROVED AS TO FORM:

COUNTERPART



City Attorney *MM*

Signed in Counterpart

Exhibits:

Exhibit A – GPS Coordinates & Depiction

Exhibit B – Site Permit

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed the day and year first above written.

“LICENSEE”

“LICENSOR” and “CITY”

CITY OF HUNTINGTON BEACH,
Municipal corporation of the State of
California

By: 

Its: SUB. GENERAL COUNCIL

City Manager

APPROVED AS TO FORM:

City Attorney

COUNTERPART

Exhibits:

Exhibit A – GPS Coordinates & Depiction

Exhibit B – Site Permit

Exhibit "A"

GPS Coordinates

To be submitted by Supplemental Communication

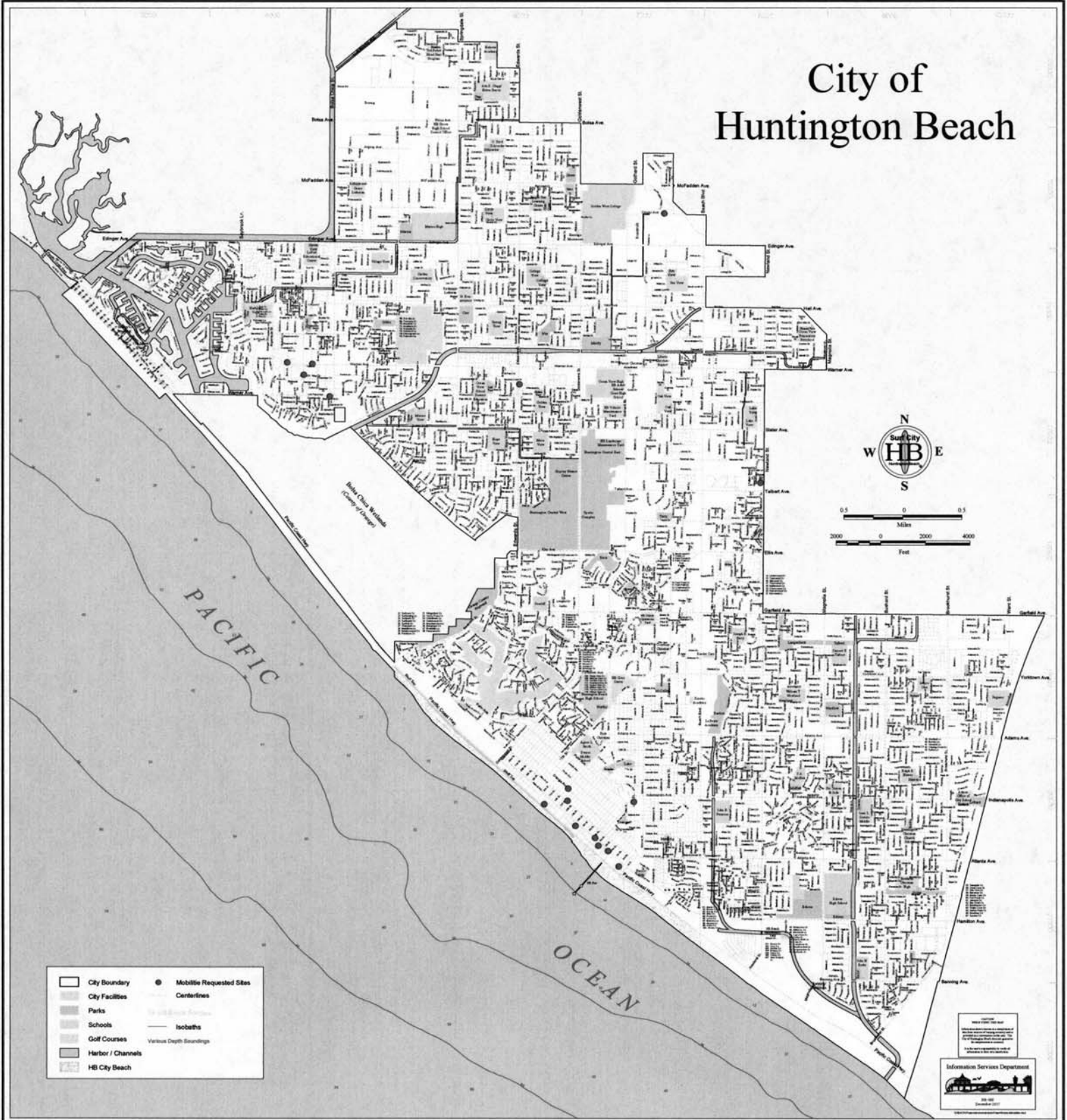
#	City	Cascade	Candidate Code	Mobilitie Candidate ID	Pole Type	Material Type	Lat	Long	Address	Zip Code
1	Huntington Beach city	OG90XS005	OG90XS005X	9CAB004647-X	Light Pole	Concrete	33.65827	-118.001492	401-451 Walnut Ave	92648
2	Huntington Beach city	OG90XS007	OG90XS007X	9CAB004649-X	Light Pole	Concrete	33.65961	-118.00103	500 - 548 Olive Ave	92648
3	Huntington Beach city	OG90XS008	OG90XS008B	9CAB004650-B	Light Pole	Concrete	33.659816	-118.003347	204 7th St	92648
4	Huntington Beach city	OG90XS009	OG90XS009A	9CAB004651-A	Light Pole	Concrete	33.664156	-118.007335	306 13th St	92648
5	Huntington Beach city	OG90XS010	OG90XS010A	9CAB004652-A	Light Pole	Concrete	33.665623	-118.007238	402 14th St	92648
6	Huntington Beach city	OG90XS011	OG90XS011G	9CAB004653-G	Light Pole	Concrete	33.663689	-118.01062	112 15th St	92648
7	Huntington Beach city	OG90XS020	OG90XS020A	9CAB004662-A	Light Pole	Concrete	33.714139	-118.045655	17082-17092 Lynn Lane	92649
8	Huntington Beach city	OG90XS021	OG90XS021A	9CAB004663-A	Light Pole	Concrete	33.715575	-118.047993	16971 Sims Lane	92649
9	Huntington Beach city	OG90XS023	OG90XS023J	9CAB004665-J	Light Pole	Concrete	33.711639	-118.041938	4900-4998 Los Patos Ave	92649
10	Huntington Beach city	OG90XSA55	OG90XSA55A	9CAB012089-A	Light Pole	Concrete	33.681811	-117.985835	19321 Weymouth Ln	92646
11	Huntington Beach city	OG90XSA67	OG90XSA67A	9CAB012101-A	Light Pole	Concrete	33.664164	-117.997957	701-715 Lake St	92648
12	Huntington Beach city	OG90XSB44	OG90XSB44A	9CAB012177-A	Light Pole	Concrete	33.71566	-118.016352	6407-6499 Warner Ave	92647
13	Huntington Beach city	OG90XSB45	OG90XSB45B	9CAB012178-B	Light Pole	Concrete	33.713433	-118.015137	17112-17130 Edwards St	92647
14	Huntington Beach city	OG90XSD04	OG90XSD04B	9CAB012335-B	Light Pole	Concrete	33.715473	-118.044465	4851 Warner Ave	92649
15	Huntington Beach city	OG90XSD11	OG90XSD11C	9CAB012342-C	Light Pole	Concrete	33.661199	-118.006152	116 10th St	92648
16	Huntington Beach city	OG90XSD15	OG90XSD15C	9CAB012346-C	Light Pole	Concrete	33.654357	-117.994744	Pacific View Ave	92648
17	Huntington Beach city	OG90XSD16	OG90XSD16C	9CAB012347-C	Light Pole	Concrete	33.658878	-118.002889	136-198 6th St	92648
18	Huntington Beach city	OG90XSD17	OG90XSD17X	9CAB012348-X	Light Pole	Concrete	33.65646	-117.999943	116 2nd St	92648
19	Huntington Beach city	OG90XSE78	OG90XSE78B	9CAB012508-B	Light Pole	Concrete	33.702243	-117.980829	8301-8441 Jaim Dr	92647
20	Huntington Beach city	OG90XSD76	OG90XSD76D	9CAB012508-D	Light Pole	Concrete	33.733967	-117.995059	7561 Center Avenue	92647

Exhibit "B"

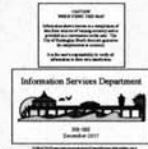
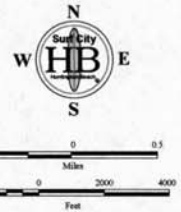
Map

To be submitted by Supplemental Communication

City of Huntington Beach



- | | | | |
|--|-------------------|--|-------------------------|
| | City Boundary | | Mobile Requested Sites |
| | City Facilities | | Centerlines |
| | Parks | | Isobaths |
| | Schools | | Various Depth Soundings |
| | Golf Courses | | |
| | Harbor / Channels | | |
| | HB City Beach | | |





INSURANCE AND INDEMNIFICATION WAIVER MODIFICATION REQUEST

- Requested by: Carlos Marquez
- Date: 12/15/2017
- Name of contractor/permittee: Mobilitie, LLC
- Description of work to be performed: Installation of small cell equipment on City-owned street lights
- Value and length of contract: \$44,000 annually, 10 years
- Waiver/modification request: General Liability waiver in lieu of Umbrella policy
- Reason for request and why it should be granted: Mobilitie is submitting an umbrella policy that provides \$6million total occ and \$7 million total aggregate.
- Identify the risks to the City in approving this waiver/modification: In addition Mobilitie is required to submit plans and obtain permits subject to City discretionary review, which also mandates that all insurance certificates are approved by Risk Management. Staff will not issue any encroachment permits until all certs are approved by RM.

[Handwritten Signature]

Department Head Signature

12/15/17

Date:

APPROVALS

Approvals must be obtained in the order listed on this form. Two approvals are required for a request to be granted. Approval from the City Administrator's Office is only required if Risk Management and the City Attorney's Office disagree.

1. Risk Management

Approved Denied

[Handwritten Signature]

Signature

Date

2. City Attorney's Office

Approved Denied

[Handwritten Signature]

Signature

Date

3. City Manager's Office

Approved Denied

Signature

Date

If approved, the completed waiver/modification request is to be submitted to the City Attorney's Office along with the contract for approval. Once the contract has been approved, this form is to be filed with the Risk Management Division of Human Resources

Liability Insurance

Endorsement

Policy Period NOVEMBER 11, 2017 TO NOVEMBER 11, 2018

Effective Date NOVEMBER 11, 2017

Policy Number 3603-68-68 PLE

Insured

Name of Company FEDERAL INSURANCE COMPANY

Date Issued NOVEMBER 15, 2017

This Endorsement applies to the following forms:

GENERAL LIABILITY

Under **Who Is An Insured**, the following provision is added.

Who Is An Insured

City of Huntington Beach, its commission members, officers, and employees

**Additional Insured -
Scheduled Person
Or Organization**

Persons or organizations shown in the Schedule are **insureds**; but they are **insureds** only if you are obligated pursuant to a contract or agreement to provide them with such insurance as is afforded by this policy.

However, the person or organization is an **insured** only:

- if and then only to the extent the person or organization is described in the Schedule;
- to the extent such contract or agreement requires the person or organization to be afforded status as an **insured**;
- for activities that did not occur, in whole or in part, before the execution of the contract or agreement; and
- with respect to damages, loss, cost or expense for injury or damage to which this insurance applies.

No person or organization is an **insured** under this provision:

- that is more specifically identified under any other provision of the **Who Is An Insured** section (regardless of any limitation applicable thereto).
- with respect to any assumption of liability (of another person or organization) by them in a contract or agreement. This limitation does not apply to the liability for damages, loss, cost or expense for injury or damage, to which this insurance applies, that the person or organization would have in the absence of such contract or agreement.

Liability Endorsement

(continued)

Under Conditions, the following provision is added to the condition titled **Other Insurance**.

Conditions

**Other Insurance –
Primary, Noncontributory
Insurance – Scheduled
Person Or Organization**

If you are obligated, pursuant to a contract or agreement, to provide the person or organization shown in the Schedule with primary insurance such as is afforded by this policy, then in such case this insurance is primary and we will not seek contribution from insurance available to such person or organization.

Schedule

Persons or organizations that you are obligated, pursuant to a contract or agreement, to provide with such insurance as is afforded by this policy.

All other terms and conditions remain unchanged.

Authorized Representative





City of Huntington Beach

2000 Main Street ♦ Huntington Beach, CA 92648

(714) 536-5227 ♦ www.huntingtonbeachca.gov

Office of the City Clerk
Robin Estanislau, City Clerk

December 22, 2017

Mobilitie, LLC
Attn: Natalia Morales, Legal Department
660 Newport Center Drive, Suite 200
Newport Beach, CA 92660

Dear Ms. Morales:

Enclosed for your records is a copy of the fully executed "Small Cell License Agreement."

Sincerely,

Robin Estanislau, CMC
City Clerk

RE:pe

Enclosure