

MEMORANDUM OF UNDERSTANDING
REGARDING USE OF TRANSMISSION TOWERS
35013

THIS MEMORANDUM OF UNDERSTANDING ("Agreement") is made and entered, in duplicate, this 12th day of June, 2018, pursuant to an order of the City Council of the City of Long Beach, at its meeting held on November 7, 2017, by and between the CITY OF LONG BEACH, a municipal corporation ("Long Beach"), and the CITY OF SIGNAL HILL, a municipal corporation ("Signal Hill").

WHEREAS, Long Beach currently owns and operates an Advanced Metering Infrastructure System ("AMI System") pursuant to which utility usage data is wirelessly transmitted from Long Beach-owned gas meters to certain Long Beach-owned transmission towers ("Base Stations"), which accept the data and subsequently send it to Regional Network Interfaces ("RNIs") for further processing and billing pursuant to an agreement dated September 1, 2014 between Long Beach and Sensus USA, Inc. ("Data Agreement"); and

WHEREAS, Signal Hill has recently received a grant to facilitate and investigate the possibility of transitioning its water meters to an AMI System of its own; and

WHEREAS, Signal Hill desires to use the Long Beach Base Stations to transmit information sent from smart water meters in Signal Hill during a "beta" testing phase, which is anticipated to last for approximately six (6) months, and is aimed at determining the feasibility of implementing a City-wide smart meter program ("Beta Phase"); and

WHEREAS, Signal Hill does not yet know when it will be ready to begin the Beta Phase but anticipates that it will be ready to begin the Beta Phase in September 2018; and

WHEREAS, Long Beach is willing to cooperate with Signal Hill in order to allow Signal Hill to use the Long Beach Base Stations during the Beta Phase;

NOW, THEREFORE, in consideration of the mutual terms, covenants, and

conditions in this Agreement, Long Beach and Signal Hill agree as follows:

1. LONG BEACH FACILITIES. As used herein, "Long Beach Facilities" shall mean those certain cellular transmission towers or Base Stations located in the City of Long Beach, which form part of Long Beach's AMI System.

2. TERM. Unless earlier terminated in accordance with this Section, this Agreement shall continue in full force and effect until the end of the Beta Phase, but in any event, no longer than December 1, 2019. Either party has the right to terminate this Agreement at any time and for any reason provided that the terminating party notifies the other in writing at least thirty (30) days prior to the date the terminating party wishes to terminate this Agreement.

3. SERVICES. When Signal Hill is ready to commence the Beta Phase, Signal Hill shall send a written notice to Long Beach with a proposed date for commencing services ("Commencement Date"). Within seven (7) days of receiving said notice, Long Beach shall either agree to the proposed Commencement Date or else propose a new date that is no more than seven (7) days after the proposed Commencement Date. Beginning on the agreed upon Commencement Date, Long Beach shall provide Signal Hill with continuous access to and use of the Long Beach Facilities for the express purpose of the reception of data transmitted from water meters located in Signal Hill and the subsequent transmission of that data to Regional Network Interfaces (RNIs). Long Beach may cease Signal Hill's use of the Long Beach Facilities immediately, without notice, if Signal Hill's use of the Long Beach Facilities adversely impacts Long Beach's ability to use the Long Beach Facilities.

4. PAYMENT. Beginning on the agreed upon Commencement Date, Signal Hill shall pay to Long Beach the fee of \$1.72 per month for each smart water meter transmitting data to the Long Beach Base Stations for the duration of this Agreement. This fee does not indicate a per meter rate for use of the Long Beach Base Stations beyond the Beta Phase of the Signal Hill water AMI project.

5. INDEMNITY AND RELEASE. In lieu of and notwithstanding the pro

1 rata risk allocation which might otherwise be imposed between the Parties pursuant to
2 Government Code section 895.6, the Parties agree that all losses or liabilities incurred by
3 a party shall not be shared pro rata but instead all Parties agree that pursuant to
4 Government Code section 895.4, each of the Parties hereto shall fully indemnify and hold
5 each of the other Parties, their officers, board members, employees and agents, harmless
6 from any claim, expense or cost, damage or liability, including reasonable attorneys' fees,
7 imposed for injury (as defined by Government Code section 810.8) occurring by reason of
8 the negligent acts or omissions or willful misconduct of the indemnifying party, its officers,
9 board members, employees or agents, under or in connection with or arising under this
10 Agreement. No party, nor any officer, board member, employee or agent thereof shall be
11 responsible for any damage or liability occurring by reason of the negligent acts or
12 omissions or willful misconduct of other Parties hereto, their officers, board members,
13 employees or agents, under or in connection with or arising under this Agreement. Long
14 Beach makes no representation or warranty that the Long Beach Facilities will be suitable
15 for Signal Hill's intended use of the Long Beach Facilities, and Signal Hill hereby releases
16 Long Beach from any losses or liabilities it may suffer as a result of any operational
17 incompatibility between the Long Beach Facilities and Signal Hill's intended use of said
18 Facilities.

19 6. USE OF DATA. Long Beach shall not access, store, use, sell, or
20 transmit any data produced by Signal Hill smart water meters except as authorized by this
21 Agreement without the written consent of Signal Hill.

22 7. NOTICES. Any notices to be given under this Agreement shall be in
23 writing and personally served or deposited in the U.S. Postal Service, first class, postage
24 prepaid, to Signal Hill at 2175 Cherry Avenue, Signal Hill, California 90755, Attn: City
25 Manager and to Long Beach at 2400 E Spring Street, Long Beach CA 90806, Attn: Director.
26 Change of address shall be given in the same manner as stated herein for notices. Notice
27 shall be deemed given on the date deposited in the mail or on the date personal service is
28 obtained, whichever is applicable.

1 8. ASSIGNMENT. Neither party shall assign its rights or delegate its
2 duties hereunder, or any interest herein, or any portion hereof, without the prior written
3 approval of the other party. Any attempted assignment or delegation shall be void, and
4 any assignee or delegate shall acquire no right or interest by reason of such attempted
5 assignment or delegation.

6 9. AMENDMENT. This Agreement shall not be amended, nor any
7 provision or breach hereof waived, except in writing signed by the Parties which expressly
8 refers to this Agreement.

9 10. GOVERNING LAW. This Agreement shall be governed by and
10 construed pursuant to the laws of the State of California.

11 11. INTEGRATION. This Agreement constitutes the entire understanding
12 between the Parties and supersedes all other agreements, oral or written, with respect to
13 the subject matter herein.

14 12. NONDISCRIMINATION. In connection with performance of this
15 Agreement and subject to applicable rules and regulations, neither party shall discriminate
16 on the basis of race, religion, national origin, color, age, gender, sexual orientation, gender
17 identity, AIDS, HIV status, handicap or disability.

18 13. WAIVER. The acceptance of any service or payment of any money
19 shall not operate as a waiver of any provision of this Agreement, or of any right to damages
20 stated herein. The waiver of any breach of this Agreement shall not constitute a waiver of
21 any other of subsequent breach of this Agreement.

22 14. FORCE MAJEURE. Except as to the payment of money, in any case
23 where either party is required to do any act, the inability of that party to perform, or delay
24 in performance of that act caused by or resulting from fire, flood, earthquake, explosion,
25 acts of God, war, civil commotion, strikes, lockouts, or any other cause whether or not
26 similar to the foregoing which is beyond the control of that party and not due to that party's
27 fault or neglect shall be excused and such failure to perform or such delay in performance
28 shall not be a default or breach hereunder. Financial inability to perform shall not be

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considered cause beyond the reasonable control of the party.

15. SUCCESSORS IN INTEREST. This Agreement shall be binding on and inure to the benefit of the Parties and their successors, heirs, personal representatives, transferees, and assignees except as provided in Section 8.

16. JOINT EFFORT. This Agreement was entered as a joint effort between the Parties.

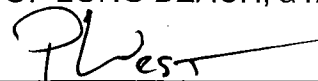
OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Lana Beach, CA 90802-4664

1 IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the
2 date and year first-above written.

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4 CITY OF SIGNAL HILL, a municipal corporation

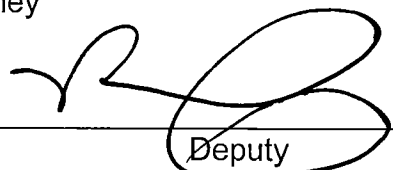
5 By 
6 Charlie Honeycutt, City Manager

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8 CITY OF LONG BEACH, a municipal corporation

9 By 
10 General Manager


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12 This Agreement is approved as to form on July 9, 2018.

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14 CHARLES PARKIN, Long Beach City
15 Attorney

16 By 
17 Deputy

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19 This Agreement is approved as to form on _____, 2018.

20 DAVID J. ALESHIRE, Signal Hill City
21 Attorney

22 By 
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