

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

LICENSE AGREEMENT

**32776**

THE CITY OF LONG BEACH (“City”) is the surface fee owner of the real property depicted on Exhibit “A” (“City Property”) attached hereto and incorporated herein. City hereby grants to SOUTHERN CALIFORNIA EDISON COMPANY, a California corporation (“Licensee”), a non-exclusive revocable license to use certain utility poles (the “Poles”) located on City Property, more particularly shown on Exhibit “A”, on the terms and conditions stated below, pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting held on September 4, 2012.

1. USE. Licensee, its employees and valid contractors (all of which shall be considered “Licensee” for purposes of this License Agreement), at their own cost, shall use the Poles for the purpose of installation, operation and maintenance of fiber optic cable on and between the Poles. Any other uses shall be subject to the prior approval of the City Manager of the City or designee (“City Manager”), which may be withheld in his or her sole and absolute discretion. Licensee acknowledges and agrees that the Poles shall also be used by City. In its use of the Poles, Licensee shall not significantly interfere with or impede use of the City Property by City or members of the public. Licensee represents that the Poles have been inspected by Licensee, and that Licensee accepts use of the same, without recourse to City, in the condition or state in which they now are, without representation or warranty by City, expressed or implied in fact or by law, as to the nature, condition, or usability of the Poles, or as to the use or uses to which the Poles may be put.

2. INITIAL TERM. The term of this License Agreement shall commence on September 5, 2012 and shall continue for a period of ten (10) years thereafter. This License Agreement may be terminated by either party, at any time, for any reason, with sixty (60) days’ advance written notice to the other party.

3. FEE. Licensee shall make no payments to City.

4. COMPLIANCE. Licensee shall comply with all City, state and federal

1 laws, regulations, rules, and codes relating to the use of the Poles. Failure to do so may  
2 result in immediate revocation or suspension of this License Agreement.

3 5. PERMITS, LICENSES, AND TAXES. Licensee shall obtain, pay for  
4 and carry or display, as required, all permits or licenses required by law, regulation, or  
5 code for the use of the Poles. In addition, Licensee shall pay all taxes which may be  
6 levied against Licensee's interest in the Poles, including possessory interest taxes, if any.

7 6. NUISANCE. Licensee shall not use the Poles in any manner that will  
8 create a nuisance or unreasonable annoyance to the public.

9 7. UTILITIES. No utilities shall be provided to Licensee at, on or  
10 around the Poles.

11 8. INSPECTION. City shall have the right to observe and inspect  
12 Licensee's use of the Poles at any time for the purpose of determining whether the Poles  
13 are being used in compliance with the requirements of this License Agreement, the law,  
14 regulations, and codes.

15 9. TEMPORARY REVOCATION. City shall have a right to deny access  
16 by Licensee to the Poles when the operations of City or its other licensees on the City  
17 Property reasonably require such temporary denial of access. In the event of a  
18 temporary denial of access, City shall restore Licensee's full access to the Poles as soon  
19 as is practicable.

20 10. IMPROVEMENTS. Licensee shall not erect or maintain, or cause to  
21 be erected or maintained, any structure or improvements on the Poles or the City  
22 Property other than the fiber optic cable described in Section 1.

23 11. INSURANCE. Concurrent with the effective date of this License and  
24 in partial performance of Licensee's obligations hereunder, Licensee shall procure and  
25 maintain the following insurance coverages at Licensee's sole expense for the duration of  
26 this License and any extensions, renewals, or holding over thereof, from insurance  
27 companies admitted to write insurance in the State of California or from non-admitted  
28 insurers that are on California's List of Eligible Surplus Lines Insurers (LESLI) and that

1 have a minimum rating of or equivalent to A:VIII by A.M. Best Company:

2           A.     Commercial General Liability equivalent in coverage scope to  
3           Insurance Services Office, Inc. (ISO) form CG 00 01 11 85 or 11 88 in an amount  
4           not less than One Million Dollars (\$1,000,000) per occurrence and Two Million  
5           Dollars (\$2,000,000) general aggregate. This insurance shall include coverage for  
6           products and completed operations liability and, if applicable, coverage for  
7           explosion, collapse, and underground (XCU) and electric and magnetic fields  
8           (EMF) hazards, and shall not exclude or limit coverage for contractual liability,  
9           independent contractors, or cross liability protection. This insurance shall be  
10          endorsed to include the City of Long Beach, and its officials, employees, and  
11          agents as additional insureds by an endorsement equivalent in coverage scope to  
12          ISO form CG 20 26 11 85 and to waive the insurer's rights of subrogation against  
13          the City, its officials, employees, and agents.

14          B.     If applicable, "All Risk" Property covering the full replacement  
15          value of Licensee's personal property and equipment on or about the Premises.  
16          Licensee and City hereby waive all rights of subrogation, one against the other,  
17          but only to the extent that collectible commercial insurance is available for said  
18          damage.

19          C.     Workers' Compensation as required by the State of California  
20          and employer's liability insurance in an amount not less than One Million Dollars  
21          (\$1,000,000) per accident or occupational illness.

22                 All insurance required hereunder shall be separately endorsed to require at  
23          least thirty (30) days' prior written notice of cancellation (ten (10) days if cancellation is for  
24          nonpayment of premium), non-renewal, or material changes in coverage (other than  
25          reduction of limits due to claims paid) and to provide that coverage shall be primary and  
26          not contributing to any other insurance or self-insurance maintained by the City of Long  
27          Beach or its officials, employees, and agents.

28                 Licensee may self-insure the insurance requirements above. Any self-

1 insurance program, self-insured retention or deductible must be declared in writing to  
2 City's Risk Manager or designee and shall protect the City of Long Beach, and its  
3 officials, employees, and agents in the same manner and to the same extent as they  
4 would have been protected had the policy or policies not contained such retention or  
5 deductible provisions.

6 Licensee shall require any contractors and sublicensees to procure and  
7 maintain the following insurance required herein unless otherwise agreed in writing by  
8 City's Risk Manager or designee.

9 Upon the execution of this License, Licensee shall deliver to City certificates  
10 of insurance and the required endorsements (if applicable), evidencing the coverage  
11 required by this License, or if applicable, a letter of self-insurance. Licensee shall also  
12 require, as applicable, Licensee's contractors and sub-licensees to deliver to City  
13 certificates of insurance and required endorsements (if applicable), evidencing the  
14 coverage required of it by the Licensee. The certificates and endorsements for each  
15 insurance policy shall contain signatures of persons authorized by that insurer to bind  
16 coverage on its behalf. Licensee shall provide City with copies of certificates of  
17 insurance and endorsements for renewal policies within thirty (30) days of policy  
18 termination. City reserves the right to require complete certified copies of all said policies  
19 at any time.

20 Such insurance as required herein shall not be deemed to limit Licensee's  
21 liability relating to performance under this License. The procuring of insurance shall not  
22 be construed as a limitation on liability or as full performance of the indemnification and  
23 hold harmless provisions of this License. City makes no representation that the limits or  
24 forms of coverage of insurance specified herein are adequate to cover Licensee's liability  
25 or obligations under this License.

26 Any modification or waiver of the insurance requirements herein shall be  
27 made only with the written approval of City's Risk Manager or designee.

28 12. INDEMNIFICATION.

1           A.     Licensee shall indemnify, protect and hold harmless City, its  
2 Boards and Commissions, and their officials, employees and agents (“Indemnified  
3 Parties”), from and against any and all liability, claims, demands, damage, loss,  
4 obligations, causes of action, proceedings, awards, fines, judgments, penalties,  
5 costs and expenses, including attorneys’ fees, court costs, expert and witness  
6 fees, and other costs and fees of litigation, arising or alleged to have arisen, in  
7 whole or in part, out of or in connection with (1) Licensee’s breach or failure to  
8 comply with any of its obligations contained in this License Agreement, or (2)  
9 negligent or willful acts, errors, omissions or misrepresentations committed by  
10 Licensee, its officers, employees, agents, subcontractors, or anyone under  
11 Licensee’s control, in the use of the Poles (collectively “Claims” or individually  
12 “Claim”).

13           B.     In addition to Licensee’s duty to indemnify, Licensee shall  
14 have a separate and wholly independent duty to defend Indemnified Parties at  
15 Licensee’s expense by legal counsel approved by City, from and against all  
16 Claims, and shall continue this defense until the Claims are resolved, whether by  
17 settlement, judgment or otherwise. No finding or judgment of negligence, fault,  
18 breach, or the like on the part of Licensee shall be required for the duty to defend  
19 to arise. City shall notify Licensee of any Claim, shall tender the defense of the  
20 Claim to Licensee, and shall assist Licensee, as may be reasonably requested, in  
21 the defense.

22           C.     If a court of competent jurisdiction determines that a Claim  
23 was caused by the sole negligence or willful misconduct of Indemnified Parties,  
24 Licensee’s costs of defense and indemnity shall be (1) reimbursed in full if the  
25 court determines sole negligence by the Indemnified Parties, or (2) reduced by the  
26 percentage of willful misconduct attributed by the court to the Indemnified Parties.

27           D.     The provisions of this Section shall survive the expiration or  
28 termination of this License Agreement.

1           13. ASSIGNMENT. Licensee shall not assign this License Agreement  
2 without the written consent of the City Manager, which consent may be withheld in the  
3 sole and absolute discretion of the City Manager; nor shall Licensee in any manner  
4 transfer or convey or grant any of the rights or privileges herein granted without said  
5 written consent. Licensee shall not sublicense the Poles or any part thereof. Licensee  
6 shall not allow the Poles to be used by any other person or entity, or for any other use  
7 than that specified herein.

8           14. NOTICE. Any notice required or desired hereunder shall be in  
9 writing and personally served or deposited in the U.S. Postal Service, certified, return  
10 receipt, postage prepaid, to the City at 333 West Ocean Boulevard, Long Beach,  
11 California 90802 Attn: City Manager (phone: (562) 570-6916 – fax (562) 570-7650), and  
12 to Licensee at 2131 Walnut Grove Avenue, G.D. 3, 2nd Floor  
13 Rosemead, CA 91770 Attn: Brent Schornberg.

14           Change of address shall be given in the manner provided for notices.  
15 Notice shall be deemed received on the date shown on the certified, return receipt, or on  
16 the date personal service is obtained, whichever occurs first.

17           15. NON-RESPONSIBILITY. City shall not be responsible for and  
18 Licensee hereby waives all claims against the City for loss or damage by theft, fire, flood,  
19 burglary, vandalism or any other cause of any of Licensee's equipment and other  
20 property on the Poles, including loss caused by City's negligent acts or omissions, but  
21 excluding loss caused by City's willful misconduct.

22           16. NO TITLE. Licensee acknowledges that, by this License Agreement,  
23 Licensee does not acquire any ownership right, title or interest of any kind in the Poles or  
24 the City Property.

25           17. REVOCAION, SUSPENSION. This License Agreement may be  
26 revoked or suspended by the City Manager at any time that it is determined that the  
27 Licensee has violated any conditions of this License Agreement or any applicable code,  
28 law, rule or regulation, or that the City has evidence of unfair or bad faith dealing with the

OFFICE OF THE CITY ATTORNEY  
ROBERT E. SHANNON, City Attorney  
333 West Ocean Boulevard, 11th Floor  
Long Beach, CA 90802-4664

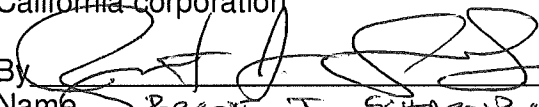
1 public or with the City by Licensee, or evidence of any action adversely affecting the  
2 health, welfare or safety of the public. In the event of suspension, the City Manager shall  
3 cancel the suspension upon Licensee's cure of the violation or other grounds for  
4 suspension.

5 18. DEFAULT. In the event Licensee fails, neglects or refuses to  
6 perform any of the conditions of this License Agreement or otherwise defaults in  
7 performance, then City may declare this License Agreement to be revoked. Any waiver  
8 by City of a default shall not be construed as, or constitute a waiver of, any subsequent  
9 default of the same or any other term.

10 IN WITNESS WHEREOF, the parties have executed this License  
11 Agreement on the respective dates set forth opposite their signatures.

12  
13  
14 September 10, 2012

SOUTHERN CALIFORNIA EDISON, a  
California corporation

By   
Name Brent J. Staroberg  
Title Manager Information/MS

15  
16 \_\_\_\_\_, 2012

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

"Licensee"

17  
18  
19  
20 9/12, 2012


CITY OF LONG BEACH, a municipal  
corporation

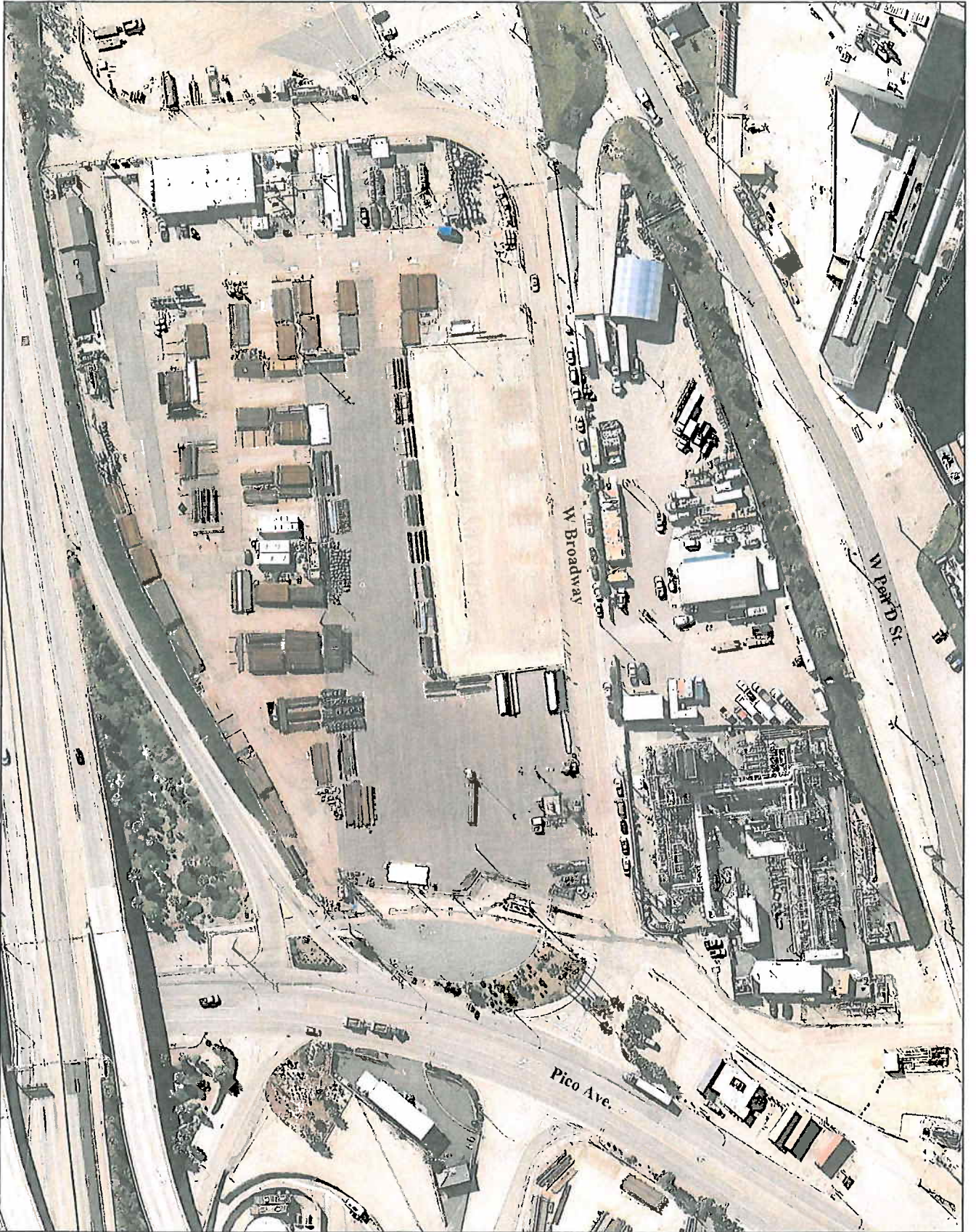
By   
City Manager

"City"

21  
22  
23 This Agreement is approved as to form on September 11, 2012

ROBERT E. SHANNON, City Attorney

24  
25 By   
26 Deputy  
27  
28



**EXHIBIT "A"**