



CITY OF SOLANA BEACH

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CITY OF SOLANA BEACH COMMUNITY DEVELOPMENT DEPARTMENT

REQUEST FOR QUALIFICATIONS/PROPOSALS: TO REVIEW WIRELESS COMMUNICATIONS FACILITIES FOR COMPLIANCE WITH FEDERAL LAW AND LOCAL DESIGN GUIDELINES

DUE DATE: 5:00 PM, October 22, 2025

DATE OF RELEASE: September 22, 2025

I. OVERVIEW

The City of Solana Beach Community Development Department is seeking proposals from qualified consulting firm(s) to review Wireless Communications Facilities (WCF) Permit Applications and Modifications for compliance with Federal and State Laws as well as compliance with the City's Municipal Code and City Council Policy 21 guidelines. The City will, based on qualifications presented in response to this RFP, select the firm most experienced with applicable federal and state laws and local regulations and able to provide plan review and inspection services in a timely manner. The anticipated term of the agreement would be for three (3) years with the opportunity to extend the agreement for two (2) additional one (1) year extensions.

II. PROPOSAL DUE DATE, TIME AND LOCATION

Proposals shall be submitted in an electronic PDF version by email to: jlim@cosb.org
Or can be submitted on a USB flash drive in a sealed envelope clearly marked "Proposal for On-Call Wireless Communication Facilities Plan Review and Inspection Services" by mail or drop off at the Office of the City Clerk:

JOSEPH LIM, COMMUNITY DEVELOPMENT DIRECTOR
COMMUNITY DEVELOPMENT DEPARTMENT
CITY OF SOLANA BEACH
635 S. HIGHWAY 101
SOLANA BEACH, CA 92075

By no later than 5:00 PM on Wednesday, October 22, 2025.

III. Questions regarding this RFP are to be directed by e-mail to: Corey Andrews, Principal Planner at candrews@cosb.org. Such contact shall be for clarification purposes only. The City must receive all questions no later than 5:00 PM on Friday, October 3rd. Material changes, if any, to the scope of services or proposal procedures will only be transmitted

by written addendum and posted to the City's website. Addendums and answers to submitted questions will be available via the City's website under "Notice" for the RFP announcement.

Proposals arriving after the specified date and time will not be considered. Each consultant assumes responsibility for timely submission of its proposal. Any proposal may be withdrawn or modified by a written request signed by the Consultant and received by the City prior to the final time and date for the receipt of proposals. Once the deadline is passed, Consultants are obligated to fulfill the terms of their proposal. The City reserves the right to accept any proposal, to reject any and all proposals, and to call for new proposals, or dispense with the proposal process.

IV. PROPOSAL EVALUATION AND CONTRACT AWARD

All timely received responsive proposals will be reviewed and evaluated by the City in order to determine which Consultants best meet the City's needs by demonstrating the competence and qualifications necessary for the satisfactory performance of the required services, and will be based on a determination of which services offered serve the best interest of the City, except as otherwise provided by law.

For each evaluation criteria listed below, all proposals will be reviewed and evaluated based on their relative strengths, deficiencies, and weaknesses:

1. Firm Experience
2. Qualifications and Experience of Key Personnel and/or Sub-Consultants
3. Understanding of Work to be Performed - Work Plan
4. Pricing/Cost of Services (efficient use of resources and subs, if any)
5. Supportive Information/References

If necessary, interviews may be scheduled with the top-ranked firms to help the City determine the most-qualified Consultant. Negotiations will be made with the selected Consultant based on internal rankings, with the intent of awarding the contracts. The City intends to award one contract. Nothing herein shall obligate the City to award a contract to any responding Consultant.

V. PROPOSAL PROCESS SCHEDULE

The City intends to follow, but will not be bound by, the following schedule:

Public Notification of RFP:	September 22, 2025
Proposals Due:	5:00 PM on Wednesday, October 22, 2025
Consultant(s) Selection/Negotiation:	October-November 2025

VI. GUIDELINES FOR PROPOSAL

The following guidelines are provided for standardizing the preparation and submission

of proposals. The intent is to assist respondents in the preparation of their submissions and to assist the City by simplifying the review process providing standards for comparison of submissions.

Statements submitted in response to this RFP shall include a complete response to the requirements in this section in the order presented. Statements should be a straightforward delineation of the respondent's capability to satisfy the intent and requirements of this RFP and should not contain redundancies and conflicting statements.

Proposals shall contain the following information in the order listed:

A. Introductory Letter

The introductory letter should be addressed to:

Joseph Lim
Community Development Director
City of Solana Beach
635 S. Highway 101
Solana Beach, CA 92075

The letter should state the Prime Consultant and include the Consultant's name submitting the proposal, their mailing address, telephone number, and contact name. The letter shall address the Consultant's understanding of the project based on this RFP and any other information the Consultant has gathered. The letter should include a statement discussing the Consultant's interest and qualifications for this type of work. A principal of the firm authorized to legally bind the firm shall sign the letter.

B. Table of Contents

Consultants shall insert a comprehensive table of contents within their proposals denoting Sections C through I, as indicated below:

C. Firm Experience

Demonstrate experience relative to the work provided in the scope below; capacity to balance multiple projects/priorities; ability to provide a full range of services; and/or work on similar projects.

D. Qualifications and Experience of Key Personnel

Describe the Consultant's capability for actually undertaking and performing the work as described in this RFP. Include qualifications of each key team member and their Consultant affiliation (prime or sub-consultant). List types and locations of similar work performed by the Consultant in the last five (5) years that best characterizes the quality and past performance. Include names and current phone numbers of references. References may be contacted as part of the selection process.

E. Work Plan

The work plan should indicate the Consultant's ability to meet the requirements of the RFP as outlined in the Scope of Work (see Exhibit A). The plan should be simple, easy

to read and follow, and should address the objectives and specifications as listed in the Scope of Work. Particular attention shall be paid to how the Consultant proposes to address matters of quality control/quality assurance and deliver work product within identified timelines.

F. Pricing

This section shall include the cost for requested services outlined in the Scope of Work (see Exhibit A). Consultants shall provide a summary of any and all staff by position classifications, responsibilities and hourly rates dedicated to each major professional service task. The City requests that all administrative services necessary to support the scope of services in this proposal be reflected in your overhead/indirect cost rate. Administrative services including travel, training, billing/invoicing, equipment/supplies, rent/utilities, and similar, and shall not be billed directly. No cost increases during the selection process shall be passed onto the City after the proposal has been submitted, except as otherwise provided for in the contract.

G. Supportive Information/References

Consultants are encouraged to include graphs, charts, photos, resumes, references, and similar, in support of their qualifications.

H. Changes to the Standard On-Call Contract

Attached to the RFP (Exhibit B) is a copy of the City's standard Professional Services Agreement (Contract). The City's standard Contract may be modified, in the City's sole discretion, to address the specific provisions of this RFP and Consultants should note that any specifications or other requirements specific to this RFP shall be included in the Contract and Contract's exhibits following an award of the Contract. The duration of this contract would be three (3) years with the opportunity to sign two (2) additional one (1) year extensions.

Please review the Contract carefully and note in your proposal any exceptions or alterations to the Contract. Alterations or changes to the Contract that are not in the Consultant's response shall not be allowed after the selection of the Consultant. This includes alterations, exceptions, or changes to the insurance and indemnity provisions. By requiring these requests up front, the City can compare all respondents on an equal basis. However, the City reserves the right, in its sole discretion, to accept or reject any and all proposed changes to the City's standard Contract.

Exhibits:

A – Scope of Work

B – City Council Policy 21 – WCF guidelines

C – Professional Services Agreement

EXHIBIT “A”

SCOPE OF WORK RFP FOR WIRELESS COMMUNICATIONS FACILITIES PLAN REVIEW AND INSPECTION SERVICES

The City of Solana Beach has adopted City Council Policy 21, which establishes the regulations, standards, and procedures for the review and approval of Wireless Communications Facility (WCF) installations and modifications. These procedures align with applicable Federal and State laws, as well as the City's Municipal Code and Zoning Ordinance.

To ensure compliance and timely processing of WCF applications, the City is seeking the services of a qualified consulting firm to assist in the review of:

1. Wireless sites subject to a Conditional Use Permit (CUP),
2. Wireless sites subject to a Discretionary Use Permit (DUP), and
3. Small Wireless Facilities located within the public right-of-way.

The scope of services includes shot clock management, technical review, regulatory compliance evaluation, and recommendations for approval or denial based on applicable law and policy.

The City anticipates an annual volume of approximately:

- 3–5 discretionary reviews (CUP/DUP), and
- 5–10 building permit reviews for WCF installations.

The selected Consulting firm(s) must be prepared to perform the following:

1. Wireless Communications Facility Application Reviews

At the City's request, the consultant shall provide expert review services for wireless communications facility discretionary applications. This includes reviewing applications for completeness, evaluating compliance with applicable regulations, and issuing written analyses in the form of memoranda.

A. Memorandum Content and Timeline Requirements

1. Incomplete Memorandum:

Upon receipt of a discretionary application, the consultant shall review the submission for completeness in accordance with the requirements outlined in City Council Policy 21.

If the application is found to be incomplete, the consultant shall deliver an “Incomplete Memorandum” to the City within the following timeframes:

- **Initial Submittal:** Within **five (5) calendar days** of receipt of a new application.
- **Resubmittal:** Within **five (5) calendar days** of receipt of a resubmitted application previously deemed incomplete.

The “Incomplete Memorandum” shall identify all missing or deficient items necessary for a complete review.

2. Project Memorandum:

Once the discretionary application is deemed complete, the consultant shall provide a professional, written analysis of applications for conformance with local ordinances, design standards, and aesthetic requirements. This memo may include but not be limited to the following:

- i. **Regulatory Classification:** Identify the applicable legal classification (e.g., Section 6409(a), Small Wireless Facility, Major Modification, New Site, etc.).
- ii. **Design and concealment analysis:** Reviewing visual impact analyses and photo simulations to ensure proposed facilities are designed to minimize visual or physical impacts through concealment methods.
- iii. **Time, Place, and Manner:** Evaluate time, place, and manner considerations for WCFs located within the public right-of-way.
- iv. **Third-party radio frequency (RF) compliance:** Verifying carrier-submitted reports to ensure compliance with Federal Communications Commission (FCC) RF emission standards.
- v. **Safety Compliance:** Review compliance with applicable safety regulations, including those from the California Public Utilities Code and San Diego Gas and Electric.
- vi. **Additional Issues:** Identify any other issues relevant to the application, based on the consultant’s expertise and judgment.
- vii. **Conditions of Approval:** Draft site-specific conditions of project approval.

3. Building Permit Plan Review:

Review of subsequent building permit plans for compliance with the approved design and conditions of approval from associated discretionary permit.

4. Inspection Services:

If deemed necessary at the Discretionary Review, provide on-site inspection including but not limited to testing for RF compliance, compliance with required screening conditions of approval, correct installation of safety signage, etc.

B. Attendance of Meetings

At the City's request, the consultant shall attend public hearings, staff meetings, or other relevant in-person or virtual meetings. This includes providing expert testimony or technical explanations as needed during City Council hearings.

C. General Consulting Services

As requested by the City, the consultant shall provide additional general wireless consulting services, which may include but are not limited to:

- Advising on updates to Policy 21 or relevant zoning ordinances.
- Providing training or briefings to City staff.
- Assisting with drafting findings for approvals or denials.
- Reviewing federal or state regulatory updates and advising the City accordingly.

CITY OF SOLANA BEACH	Policy No. 21
COUNCIL POLICY	Adopted: 10/22/2008 Revised: 10/11/2017 Revised: 4/10/2019
GENERAL SUBJECT: WIRELESS COMMUNICATION FACILITIES	
SPECIFIC SUBJECT: Review and operation guidelines for wireless communication facilities including small wireless facility deployments	

PURPOSE:

Wireless communication facilities, or WCFs, refer to the many facilities with antennas and supporting equipment that receive and transmit signals and together enable mobile or other “wire-free” communication and information services. Unlike ground-wired telecommunications, such as the land-based telephone system, wireless communication technologies, by their operational nature, require a network of antennas mounted at various heights and attached typically to buildings, structures and poles. A common name for WCF is “cell site.”

As the popularity and variety of wireless services grow, providers may need to install more facilities to improve coverage and gain user capacity. To address such needs as 5G, providers are looking to install small wireless facilities to compliment the existing infrastructure which allow for greater speeds and connectivity, but require more frequently placed antennas.

This policy’s purpose is to guide the public, applicants, and staff in reviewing the placement, construction, and modification of WCFs. The intentions behind this policy are as follows:

- The City of Solana Beach (“**City**”) intends this policy to establish reasonable, uniform and comprehensive standards and procedures for small wireless facilities deployment, construction, installation, collocation, modification, operation, relocation and removal within the City’s territorial boundaries, consistent with and to the extent permitted under federal and California state law. The standards and procedures contained in this policy are intended to, and should be applied to, protect and promote public health, safety and welfare, and balance the benefits that flow from robust, advanced wireless services with the City’s local values, which include without limitation the aesthetic character of the City, its neighborhoods and community. This Policy is also intended to reflect and promote the community interest by (1) ensuring that the balance between public and private interests is maintained; (2) protecting the City’s visual character from potential adverse impacts and/or visual blight created or exacerbated by small wireless facilities and related communications infrastructure; (3) protecting and preserving the City’s environmental resources; (4) protecting and preserving the City’s public

rights-of-way and municipal infrastructure located within the City's public rights-of-way; and (5) promoting access to high-quality, advanced wireless services for the City's residents, businesses and visitors.

- This policy is intended to establish clear procedures for application intake and completeness review. The City of Solana Beach City Council ("**City Council**") finds that chronically incomplete applications significantly contribute to unreasonable delay and create barriers to infrastructure deployment. Chronically incomplete applications unfairly prejudice other applicants who may be prepared to submit complete applications for infrastructure in the same or substantially the same location. Chronically incomplete applications also unfairly prejudice the City's ability to act on such applications within the "presumptively reasonable" timeframes established by the FCC. The provisions in this policy afford applicants and City staff opportunities for direct, real-time communication about completeness issues to mitigate incomplete applications prior to submittal. The provisions in this policy also encourage applicants to timely respond to incomplete notices.
- This policy is intended to establish regulations, standards and guidelines for all infrastructure deployments unless specifically prohibited by applicable law. The City Council recognizes that different infrastructure deployments may be managed through other mechanisms, such as franchise or license agreements. Although such deployments may be exempt from the "ROW use permit" established in this policy, the City Council intends that the City official or department that administers such deployment shall apply the same regulations, standards and guidelines to the permit or other approval issued in connection with a request for authorization under such franchise, license or other agreement. The City Council also recognizes that different infrastructure deployments may have different impacts on the public rights-of-way that require different regulations, standards or guidelines to protect public health, safety and welfare. However, to the extent that different regulations, standards or guidelines are applied to small wireless facilities or other infrastructure deployments, the City Council intends that one set be no more burdensome than the other when viewed under the totality of the circumstances.
- This policy is not intended to, nor shall it be interpreted or applied to: (1) prohibit or effectively prohibit any personal wireless service provider's ability to provide personal wireless services; (2) prohibit or effectively prohibit any entity's ability to provide any telecommunications service, subject to any competitively neutral and nondiscriminatory rules, regulations or other legal requirements for rights-of-way management; (3) unreasonably discriminate among providers of functionally equivalent personal wireless services; (4) deny any request for authorization to place, construct or modify personal wireless service facilities on the basis of environmental effects of radio frequency emissions to the extent that such wireless facilities comply with the FCC's regulations concerning such emissions; (5) prohibit any collocation or modification that the City may not deny under federal or California state law;

(6) impose any unreasonable, discriminatory or anticompetitive fees that exceed the reasonable cost to provide the services for which the fee is charged; or (7) otherwise authorize the City to preempt any applicable federal or California law.

This policy applies to all commercial providers of wireless communication services including small wireless facilities. It does not apply to amateur (HAM) radio antennas and dish and other antennas installed on a residence for an individual's private use.

Pursuant to Resolution 2019-043, adopted by the City Council on April 10, 2019, the City Manager is authorized to adapt this policy to conform to changes in applicable law.

POLICY STATEMENT

Background:

To secure the right to provide wireless services to a region, companies obtain airwave licenses that are auctioned by the Federal Communications Commission (FCC), the federal agency that regulates the telecommunications industry. The FCC mandates the licensees establish their service networks as quickly as possible.

Review Restrictions:

The Federal Telecommunications Act of 1996 (TCA) (codified at 47 U.S.C. §§ 609 *et seq.*) preserves the City's ability to regulate the placement, construction, and modification of wireless communication facilities subject to the following restrictions, as contained in TCA Section 704:

- ***The City may not favor any carrier.***
Regulations may not unreasonably discriminate among competitive networks.
- ***The City may not prevent completion of a network.***
Regulations may not prohibit or have the effect of prohibiting the provision of wireless communication services.
- ***Applications are to be processed in a reasonable time.***
A city must act on an application for WCFs within a "reasonable" amount of time, roughly the same time as for any similar application.
- ***The City cannot deny an application because of perceived radio frequency health hazards.***
If federal standards are met, cities may not deny permits or leases on the grounds that radio frequency emissions are harmful to the environment or to the health of residents. However, local governments may require wireless carriers to prove compliance with the standards. The FCC has established procedures to enforce compliance with its rules.

- ***A decision to deny an application must be supported by substantial evidence.***
A decision to deny a WCF application must be in writing and supported by substantial evidence contained in a written record.
- ***Federal law mandates local approval for certain collocations and modifications to existing WCFs.***
Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96, codified as 47 U.S.C. § 1455(a) (“Section 6409”), generally requires that State and local governments “may not deny, and shall approve” requests to collocate, remove or replace transmission equipment at an existing tower or base station.

In *Airtouch Cellular v. City of El Cajon* (9th Cir. 2000) 83 F.Supp.2d 1158, 1166, the court ruled that a city may consider factors such as community aesthetics and noise in regulating the placement, construction, or modification of WCFs.

Health Concerns & Safeguards:

Possible health risks from exposure to the radio frequency (RF) electromagnetic fields generated by WCFs are a significant community concern. Accordingly, the FCC requires facilities to comply with RF exposure guidelines published in the Code of Federal Regulations (see 47 CFR §1.1307 and 47 CFR §1.1310). The limits of exposure established by the guidelines are designed to protect the public health with a very large margin of safety as they are many times below the levels that generally are accepted as having the potential to cause adverse health effects. Both the Environmental Protection Agency and Food and Drug Administration have endorsed the FCC’s exposure limits, and courts have upheld the FCC rules requiring compliance with limits.

Most WCFs create maximum exposures that are only a small fraction of the limits. Furthermore, because the antennas in a PCS, cellular, or other wireless network must be in a line of sight arrangement to effectively transmit, their power is focused on the horizon instead of toward the sky or ground. Generally, unless a person is physically next to and the same height as the antenna, it is not possible to be exposed to the established limits for RF exposure.

The FCC requires providers, upon license application, renewal, or modification, to demonstrate compliance with RF exposure guidelines. Where two or more wireless operators have located their antennas at a common location (called “collocation”), the total exposure from all antennas taken together must be within FCC guidelines. Many facilities are exempt from having to demonstrate compliance with FCC guidelines, however, because their low power generation or height above ground level is highly unlikely to cause exposures that exceed the guidelines.

POLICY PROCEDURES

Review and Approval Guidelines:

Solana Beach Municipal Code Section 17.60.120(G) allows WCFs in all zones with the approval of a permit as specified in this policy. These guidelines shall be followed in the review of permits for new wireless facilities as well as collocations, modifications and other extensions and amendments to CUPs for existing installations.

A conditional use permit (CUP), subject to review and approval by the city council, shall be required for (1) all new WCFs and (2) all collocations, modifications or other changes or expansions to existing WCFs that do not qualify for mandatory approval under Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 (codified at 47 U.S.C. § 1455(a)). In addition to a CUP, an ROW permit, subject to review and approval by the City Engineer, shall be required for all WCFs located on public property. The guidelines in Part I of this policy shall be followed in the review of permits for WCFs subject to a CUP.

A director's use permit (DUP), subject to review and approval by the director of community development or the director's designee, shall be required for all collocations, modifications or other changes or expansions subject to mandatory approval under Section 6409(a). In addition to a DUP, an ROW permit and encroachment maintenance and removal agreement, subject to review and approval by the City Engineer, shall be required for all WCFs located on public property. The guidelines in Part II of this policy shall be followed in the review of permits for WCFs subject to a DUP.

In addition to the guidelines in Part I (CUP) or Part II (DUP) of this policy, as applicable, the guidelines in Part III of this policy shall be followed in the review of permits for small wireless facilities (SWFs) in the ROW.

Definitions

The definitions below are applicable to the terms, phrases and words in this policy. Undefined terms, phrases or words will have the meanings assigned to them in 47 U.S.C. § 151 or, if not defined therein, will have the meaning assigned to them in Solana Beach Municipal Code or, if not defined in either therein, will have their ordinary meanings. If any definition assigned to any term, phrase or word conflicts with any federal or state-mandated definition, the federal or state-mandated definition will control.

“accessory equipment” means equipment other than antennas used in connection with a small wireless facility or other infrastructure deployment. The term includes “transmission equipment” as defined by the FCC in 47 C.F.R. §§ 1.6100(b)(8) and 1.40001(b)(8), as may be amended or superseded.

“antenna” means the same as defined by the FCC in 47 C.F.R. § 1.6002(b), as may be amended or superseded.

“base station” means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(1), as may be amended, which defines that term as a structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined in 47 C.F.R. § 1.40001(b)(9) or any equipment associated with a tower. The term includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul. The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including distributed antenna systems and small-cell networks). The term includes any structure other than a tower that, at the time the relevant application is filed with the State or local government under this section, supports or houses equipment described in 47 C.F.R. § 1.40001(b)(1)(i)-(ii) that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support. The term does not include any structure that, at the time the relevant application is filed with the State or local government under this section, does not support or house equipment described in 47 C.F.R. § 1.40001(b)(1)(i)-(ii).

“batched application” means more than one application submitted at the same time.

“bicycle boulevard” means a two-lane roadway that provides pedestrian, bicycle, and automobile access, although non-motorized modes are distinctly prioritized through traffic calming, traffic diversion, and various bicycle treatments, such as vertical and horizontal signage, priority phasing for cyclists at signalized intersections, and wayfinding. The term “bicycle boulevard” as used in this policy is defined in the Solana Beach General Plan, Section IV, Circulation Element.

“collocation” means the same as defined by the FCC in 47 C.F.R. § 1.6002(g), as may be amended or superseded.

“community connector” means a two-lane divided or undivided roadway that provides for a balanced mix of pedestrian, bicycle, and automobile access between residential neighborhoods, the City’s multi-modal boulevards, and points outside the City. The term “community connector” as used in this policy is defined in the Solana Beach General Plan, Section IV, Circulation Element.

“CPUC” means the California Public Utilities Commission established in the California Constitution, Article XII, § 5, or its duly appointed successor agency.

“decorative pole” means any pole that includes decorative or ornamental features, design elements and/or materials intended to enhance the appearance of the pole or the public rights-of-way in which the pole is located.

“Director” means the Director of Community Development or the Director’s designee.

“Eligible Facilities Request” means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(3), as may be amended, which defines that term as any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving: (i) collocation of new transmission equipment; (ii) removal of transmission equipment; or (iii) replacement of transmission equipment.

“Existing” means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(4), as may be amended, which provides that a constructed tower or base station is existing for purposes of the FCC’s Section 6409 regulations if it has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition.

“FCC” means the Federal Communications Commission or its duly appointed successor agency.

“FCC Shot Clock” means the presumptively reasonable time frame, accounting for any tolling or extension, within which the City generally must act on a request for authorization in connection with a personal wireless service facility, as such time frame is defined by the FCC and as may be amended or superseded.

“local street” means a two-lane undivided roadway that provides access to adjacent residential land uses. These roadways should include traffic calming techniques to control vehicular speed and discourage cut-through traffic. The term “local street” as used in this policy is defined in the Solana Beach General Plan, Section IV, Circulation Element.

“ministerial permit” means any City-issued non-discretionary permit required to commence or complete any construction or other activity subject to the City’s jurisdiction. Ministerial permits may include, without limitation, any building permit, construction permit, electrical permit, encroachment permit, excavation permit, traffic control permit and/or any similar over-the-counter approval issued by the City’s departments.

“multi-modal boulevard” means a four-lane or two-lane divided roadway that provides access to major community amenities, commercial uses, and services within the City and serve as regional connections to cities to the north, south, and east of the City. The term “multi-modal boulevard” as used in this Policy is defined in the Solana Beach General Plan, Section IV, Circulation Element.

“OTARD” means an “over-the-air reception device” and includes all antennas and antenna supports covered by 47 C.F.R. § 1.4000(a)(1), as may be amended or superseded. This definition includes antennas less than one meter in diameter “used to receive direct broadcast satellite service, ... receive or transmit fixed wireless signals via satellite, ... receive video programming services via multipoint distribution services,

...receive fixed wireless signals other than via satellite, ... [and] receive television broadcast signals.”

“**pedestrian corridor**” means a two-lane roadway that provides pedestrian, bicycle, and automobile access, although pedestrian travel is distinctly prioritized through traffic calming and pedestrian treatments, such as raised crosswalks, high visibility crosswalks, bulb-outs, and pedestrian priority phasing at signalized crossings. The term “pedestrian corridor” as used in this policy is defined in the Solana Beach General Plan, Section IV, Circulation Element.

“**personal wireless services**” means the same as defined in 47 U.S.C. § 332(c)(7)(C)(i), as may be amended or superseded.

“**personal wireless service facilities**” means the same as defined in 47 U.S.C. § 332(c)(7)(C)(i), as may be amended or superseded.

“**persons entitled to notice**” means the record owners and legal occupants of all properties within 300 feet from the proposed project site. Notice to the legal occupants shall be deemed given when sent to the property’s physical address.

“**public right-of-way**” or “**public rights-of-way**” means land or an interest in land which by deed, conveyance, agreement, easement, dedication, usage or process of law is reserved for or dedicated to or open to the use by the general public for road or highway purposes. The term does not include private or public utility easements unless such easement is reserved for or dedicated to or open to the use by the general public for road or highway purposes.

“**RF**” means radio frequency or electromagnetic waves.

“**Section 6409**” means Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156, codified as 47 U.S.C. § 1455(a), as may be amended or superseded.

“**shot clock days**” means calendar days counted toward the presumptively reasonable time under the applicable FCC Shot Clock. The term “shot clock days” does not include any calendar days on which the FCC Shot Clock is tolled (i.e., “paused”). As an illustration and not a limitation, if an applicant applies on April 1, receives a valid incomplete notice on April 5 and then resubmits on April 20, only four “shot clock days” have elapsed because the time between the incomplete notice and resubmittal are not counted.

“**Site**” means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(6), as may be amended, which provides that for towers other than towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground.

“small wireless facility” means the same as defined by the FCC in 47 C.F.R. § 1.6002(l), as may be amended or superseded.

“Substantial Change” means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(7), as may be amended, which defines that term differently based on the particular wireless facility type (tower or base station) and location (in or outside the public right-of-way). For clarity, this definition organizes the FCC’s criteria and thresholds for a substantial change according to the wireless facility type and location.

- a. For towers outside the public rights-of-way, a substantial change occurs when:
 - i. The proposed collocation or modification increases the overall height more than 10% or the height of one additional antenna array not to exceed 20 feet (whichever is greater); or
 - ii. The proposed collocation or modification increases the width more than 20 feet from the edge of the wireless tower or the width of the wireless tower at the level of the appurtenance (whichever is greater); or
 - iii. The proposed collocation or modification involves the installation of more than the standard number of equipment cabinets for the technology involved, not to exceed four; or
 - iv. The proposed collocation or modification involves excavation outside the current boundaries of the leased or owned property surrounding the wireless tower, including any access or utility easements currently related to the site.
- b. For towers in the public rights-of-way and for all base stations, a substantial change occurs when:
 - i. The proposed collocation or modification increases the overall height more than 10% or 10 feet (whichever is greater); or
 - ii. The proposed collocation or modification increases the width more than 6 feet from the edge of the wireless tower or base station; or
 - iii. The proposed collocation or modification involves the installation of any new equipment cabinets on the ground when there are no existing ground-mounted equipment cabinets; or
 - iv. The proposed collocation or modification involves the installation of any new ground-mounted equipment cabinets that are ten percent (10%) larger in height or volume than any existing ground-mounted equipment cabinets; or
 - v. The proposed collocation or modification involves excavation outside the area in proximity to the structure and other transmission equipment already deployed on the ground.
- c. In addition to the applicable criteria in (a) and (b) above, for all towers and base stations wherever located, a substantial change occurs when:

- i. The proposed collocation or modification would defeat the existing concealment elements of the support structure as reasonably determined by the Director; or
- ii. The proposed collocation or modification violates a prior condition of approval, provided however that the collocation need not comply with any prior condition of approval related to height, width, equipment cabinets or excavation that is inconsistent with the thresholds for a substantial change described in this section.

“support structure” means a “structure” as defined by the FCC in 47 C.F.R. § 1.6002(m), as may be amended or superseded.

“technically infeasible” means a circumstance in which compliance with a specific requirement within this policy is physically impossible and not merely more difficult or expensive than a noncompliant alternative.

“Tower” means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(9), as may be amended, which defines that term as any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site. Examples include, but are not limited to, monopoles, mono-trees and lattice towers.

“Transmission Equipment” means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(8), as may be amended, which defines that term as equipment that facilitates transmission for any FCC-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

“underground district” means any area in the City within which overhead wires, cables, cabinets and associated overhead equipment, appurtenances and other improvements are either (1) prohibited by ordinance, resolution or other applicable law; (2) scheduled to be relocated underground within 18 months from the time an application is submitted; or (3) primarily located underground at the time an application is submitted.

“Wireless” means any FCC-licensed or authorized wireless communication service transmitted over frequencies in the electromagnetic spectrum.

PART I. Guidelines for WCFs Subject to a CUP

A. Location Guidelines for Placement of WCFs

1. *Preferred Locations* - WCFs are encouraged to locate on existing buildings and structures. In addition, WCFs should locate in the following zones and areas, which are listed in order of descending preference:
 - a. Collocation to existing facilities located in non-residential zones.
 - b. Industrial zones.
 - c. Commercial Zones.
 - d. Other non-residential zones, except open space.
 - e. Public right-of-way of roads adjacent to industrial and commercial zones and identified on the Circulation Plan contained in the Circulation Element of the city's General Plan.
 - f. Public property (e.g., city facilities) not in residential areas.
 - g. Major power transmission towers in non-residential zones or areas.
 - h. Public and private utility installations (not publicly accessible) open space zones (e.g., water tanks, reservoirs, or the existing communications towers).
 - i. Parks and community facilities (e.g., places of worship, community centers) in residential zones or areas.
 - j. Public right-of-way roads adjacent to residential zones and identified on the Circulation Plan contained in the Circulation Element of the city's General Plan.
2. *Discouraged Locations* - WCFs should not locate in any of the following zones or areas unless the applicant demonstrates no feasible alternative exists as required by Application and Review Guideline D.2.
 - a. Open space zones and lots (except as noted in Location Guideline A.2.).
 - b. Residential zones or areas (except as noted in Location Guideline A.1.)
 - c. Major power transmission towers in corridors located in/or next to a residential zone or area.
 - d. Environmentally sensitive habitat.
 - e. Public right-of-way of roads not identified on the Circulation Plan contained in the Circulation Element of the city's General Plan.
 - f. On vacant land.
 - g. Scenic highways as identified on the Circulation Element of the city's General Plan.
3. *Visibility to the Public* - In all areas, WCFs should locate where least visible to the public and where least disruptive to the appearance of the host property. Furthermore, no WCF should be installed on an exposed ridgeline or in a location readily visible from a public place, recreation area, scenic area or residential area unless it is satisfactorily located and/or screened so it is hidden or disguised to fit with the surrounding site design, architecture, and landscaping.
4. *Collocation* - Collocating with existing or other planned wireless communication facilities is recommended whenever feasible. Service providers are also encouraged to collocate with major power transmission

and distribution towers, and other utility structures when in compliance with these guidelines.

5. *Monopoles* - No new ground-mounted monopoles shall be permitted unless the applicant demonstrates no existing monopole, building, or structure can accommodate the applicant's proposed antenna as required by Application and Review Guideline D.3. The term "monopole" is defined as a cylinder self-supporting structure which supports the antennas and cables associated with a WCF. The cables and antennas may be contained within the monopole or may be external to the monopole. A camouflaged monopole may include design configuration such as mono-pine, mono-palm, mono-elm, or other similar structures that are constructed utilizing a monopole for the base. Monopoles may be permitted if it is satisfactorily located and/or screened so it is hidden or disguised to fit with the surrounding site design, architecture, and landscaping.

B. Design Guidelines

1. *Stealth Design* - All aspects of a WCF, including the supports, antennas, screening methods, and equipment shall exhibit "stealth" design techniques so they visually blend into the background or the surface on which they are mounted. Subject to City approval, developers should use false architectural elements (e.g., cupolas, bell towers, dormers, and chimneys), architectural treatments (e.g., colors and materials), elements replicating natural features (e.g., trees and rocks), landscaping, and other creative means to hide or disguise WCFs. Stealth can also refer to facilities completely hidden by existing improvements, such as parapet walls.
2. *Equipment* - Equipment shall be located within existing buildings to the extent feasible. If equipment must be located outside, it shall be screened with walls, plants, or some other screening device. If small outbuildings are constructed specifically to house equipment, they should be designed and treated to match nearby architecture or the surrounding landscape.
3. *Collocation* - Whenever feasible and appropriate, WCF design and placement should promote and enable collocation.
4. *Height* - WCFs should adhere to the existing height limitations for structures and buildings of the zone in which they are located.
5. *Setbacks* - WCFs, including all equipment, should adhere to the building setback requirements of the zone in which they are located, with the following clarifications:
 - a. If on a site next to a residential zone, the WCF should be set back from the residential boundary a minimum distance equal to the above-ground height of the antenna.

- b. If in a residential zone and in a public utility installation, park, or community facility, the WCF should be set back from the property boundaries of the utility installation, park, or community facility a minimum distance equal to the above-ground height of the antenna.
 - c. The City Council may decrease or increase these setbacks if it finds such changes would improve the overall compatibility of the WCF based on the factors contained in Application and Review Guideline D.4.
- 6. *Building or Structure-Mounted WCFs:*
 - a. Antennas and their associated mountings should not project outward more than 18 inches from the face of the building.
 - b. Roof mounted antennas should not be placed on roof peaks.
 - c. If permitted, WCFs on residential buildings shall only be allowed if disguised as a typical residential feature (e.g., a chimney, a dormer) and if all equipment is located inside, not outside, the building.
- 7. *Ground-mounted Monopoles:*
 - a. All antennas should be mounted as close as possible to the monopole to improve facility appearance.
 - b. The placement, screening, and disguise of the monopole should fit with the surrounding site design, architecture, and landscaping. Tree disguises may be acceptable depending on their quality and compatibility with the landscaping nearby.
 - c. Landscaping should be provided as necessary to screen, complement, or add realism to a monopole. Landscaping should include mature shrubs and trees. Some of the trees should be tall enough to screen at least three-quarters of the height of the monopole at the time of planting. Sometimes, landscaping may not be needed because of the monopole's location or vegetation already nearby.
 - d. When possible and in compliance with these guidelines, monopoles should be placed next to tall buildings, structures, or tall trees.
- 8. *Lattice Towers*
 - a. New lattice towers shall not be permitted in the City. Lattice tower is defined as a free-standing framework tower, typically 3 or 4 sided.
 - b. On the existing lattice towers, all antennas shall be mounted as close as possible to the tower so they are less noticeable.
- 9. *Undergrounding* - All utilities shall be placed underground.
- 10. *Regulatory Compliance* - WCFs shall comply with all FCC, FAA (Federal Aviation Administration), and local zoning and building code requirements.

C. Performance Guidelines

1. *Noise* - All equipment, such as emergency generators and air conditioners shall be designed and operated consistent with the City noise standards.
2. *Maintenance* - All facilities, related equipment, and landscaping shall be maintained in good condition and free from trash, debris, graffiti, and any form of vandalism. Damaged equipment and damaged, dead or decaying landscaping shall be replaced promptly. Replacement of landscaping that provides facility screening should be, as much as possible, of similar size (including height), type, and screening capability at the time of planting as the plant(s) being replaced.
3. *Maintenance Hours* - Routine maintenance of equipment located in residential zones or within 100 feet of a residential district shall be conducted only during the hours of 8 am and 5 pm weekdays, not including holidays. In other areas, routine maintenance may be conducted at any time. Emergency repairs and maintenance shall be conducted within a reasonable length of time to be determined by the City Manager or his designee in the cases of power outages and equipment failure or malfunction. Equipment "change out" and overhaul can occur any time with 30 days notice to the Director of Community Development to allow notice to property owners and residents within 300 feet of the facility. Maintenance should not take place on Sundays or holidays.
4. *Lighting* - Security lighting should be kept to a minimum and should only be triggered by a motion detector where practical.
5. *Compliance with FCC RF Exposure Guidelines* - Within six (6) months after the issuance of occupancy, and with each time extension or amendment request, the developer/operator shall submit to the Planning Director either verification that the WCF is categorically excluded from having to determine compliance with the guidelines per 47 CFR §1.1307(b)(1) or a project implementation report that provides cumulative field measurements of radio frequency (RF) electromagnetic fields of all antennas installed at the subject site. The report shall quantify the RF emissions and compare the results with currently accepted ANSI/IEEE standards as specified by the FCC. The Planning Director shall review the report for consistency with the project's preliminary proposal report submitted with the initial project application and the accepted ANSI/IEEE standards. If, on review, the Planning Director finds the project does not meet ANSI/IEEE standards, the City may take any action necessary, as provided by law, to require compliance, including but not limited to revoking the conditional use permit.
6. *Abandonment* - Any WCF that is not operated for a continuous period of 90 days will be considered abandoned. Within 90 days of receipt of notice from the City notifying the owner of such abandonment, the WCF owner must remove the facility and restore the site, as much as is reasonable and practical, to its prior condition. If such WCF is not removed within 90

days, the WCF will be considered a nuisance and in addition to any other available remedy, will be subject to abatement under Chapter 6.04 of the Solana Beach Municipal Code. If there are two or more users of a single WCF, then this provision will not become effective until all users stop using the WCF. The provider or owner must give notice to the City of the intent to discontinue use of any facility before discontinuing the use.

D. Application and Review Guidelines

1. Besides the typical submittal requirements for a conditional use permit (including plans, landscape details, and color and material samples, as appropriate), all WCF applications shall include the following items:
 - a. A description of the site selection process undertaken for the WCF proposed. Coverage objectives and the reasons for selecting the proposed site and rejecting other sites should be provided.
 - b. A description or map of the applicant's existing and other proposed sites.
 - c. A description of the wireless system proposed (e.g., cellular, PCS, etc.) and its consumer features (e.g., voice, video, and data transmissions).
 - d. Verification that the proposed WCF will either comply with the FCC's guidelines for human exposure to radio frequency (RF) electromagnetic fields or will be categorically excluded from having to determine compliance with the guidelines per 47 CFR §1.1307(b)(1). If WCFs are proposed for collocation, the verification must show the total exposure from all facilities taken together meets the FCC guidelines.
 - e. Color photo-simulation exhibits, prepared to scale, of the proposed WCF to show what the project would look like at its proposed location and from surrounding viewpoints. The Planning Director may waive the requirement to provide the exhibits if s/he determines they are unnecessary.
2. For WCFs proposed in a zone or area that is a discouraged WCF location as listed in Location Guideline A.2, the applicant shall provide evidence that no location in a preferred zone or area as listed in Location Guideline A.1 can accommodate the applicant's proposed facility. Evidence shall document that preferred zone or area locations do not meet engineering, coverage, location, or height requirements, or have other unsuitable limitations.
3. For proposed new ground-mounted monopoles, the applicant shall also provide evidence to the City's satisfaction that no existing monopole, building, structure, or WCF site ("existing facility") could accommodate the proposal. Evidence should demonstrate any of the following.
 - a. No existing facility is located within the geographic area or provides the height or structural length needed to meet the applicant's engineering requirements.

- b. The applicant's proposed WCF would cause electromagnetic interference with the existing antennae array or vice versa.
 - c. The fees, costs, or contractual provisions required by the owner to locate on an existing facility or to modify the same to enable location are unreasonable. Costs exceeding new monopole development are presumed to be unreasonable.
 - d. The applicant demonstrates to the City Council's satisfaction that there are other limiting factors that render an existing facility unsuitable.
- 4. In considering a Conditional Use Permit for a WCF, the City Council shall consider the following factors:
 - a. Compliance with these guidelines.
 - b. Height and setbacks.
 - c. Proximity to residential uses.
 - d. The nature of uses on adjacent and nearby properties.
 - e. Surrounding topography and landscaping.
 - f. Quality and compatibility of design and screening.
 - g. Impacts on public views and the visual quality of the surrounding area.
 - h. Availability of other facilities and buildings for collocation.
- 5. A minimum deposit of \$3,000.00 is required at the time of application for a WCF for the services of an independent third party expert consultant, as selected by the City, for technical plan review, staff report preparation and attendance at City Council hearings as required as part of the application process. The actual costs of the services rendered by the independent third party consultant, as retained by the City, shall be borne by the applicant. These costs are independent of, and in addition to the conditional use permit fee.

E. Conditions of Approval

- 1) **Standard Conditions.** Except as may be authorized in subsection (2), all permits issued under Part I shall be automatically subject to the conditions in this subsection (1).
 - a. **Permit Term.** This CUP will automatically expire 10 years and one day from its issuance unless California Government Code § 65964(b) authorizes the City to establish a shorter term for public safety reasons. Any other permits or approvals issued in connection with any collocation, modification or other change to this wireless facility, which includes without limitation, any permits or other approvals deemed-granted or deemed-approved under federal or state law, will not extend this term limit unless expressly provided otherwise in such permit or approval or required under federal or state law.
 - b. **Permit Renewal.** Not more than one year before this CUP expires, the permittee may apply for permit renewal. The permittee must

demonstrate that the subject wireless facility or other infrastructure deployment complies with all the conditions of approval associated with this CUP and all applicable provisions in the Solana Beach Municipal Code, this Policy and other applicable law that exist at the time the decision to renew or not renew is rendered. The Director may modify or amend the conditions on a case-by-case basis as may be necessary or appropriate to ensure compliance with the Solana Beach Municipal Code, this Policy or other applicable law. Upon renewal, this CUP will automatically expire 10 years and one day from its issuance.

- c. **Post-Installation Certification.** Within 60 calendar days after the permittee commences full, unattended operations of a wireless facility or other infrastructure deployment approved or deemed-approved, the permittee shall provide the Director with documentation reasonably acceptable to the Director that the wireless facility or other infrastructure deployment has been installed and/or constructed in strict compliance with the approved construction drawings and photo simulations. Such documentation shall include without limitation as-built drawings, GIS data and site photographs.
- d. **Build-Out Period.** This CUP will automatically expire 12 months from the approval date (the “build-out period”) unless the permittee obtains all other permits and approvals required to install, construct and/or operate the approved wireless facility or other infrastructure deployment, which includes without limitation any permits or approvals required by the any federal, state or local public agencies with jurisdiction over the subject property, support structure or the wireless facility or other infrastructure deployment and its use. The permittee may request in writing, and the City may grant in writing, one six-month extension if the permittee submits substantial and reliable written evidence demonstrating justifiable cause for a six-month extension. If the build-out period and any extension finally expires, the permit shall be automatically void but the permittee may resubmit a complete application, including all application fees, for the same or substantially similar project.
- e. **Site Maintenance.** The permittee shall keep the site, which includes without limitation any and all improvements, equipment, structures, access routes, fences and landscape features, in a neat, clean and safe condition in accordance with the approved construction drawings and all conditions in this CUP. The permittee shall keep the site area free from all litter and debris at all times. The permittee, at no cost to the City, shall remove and remediate any graffiti or other vandalism at the site within 48 hours after the permittee receives notice or otherwise becomes aware that such graffiti or other vandalism occurred.
- f. **Compliance with Laws.** The permittee shall maintain compliance at all times with all federal, state and local statutes, regulations, orders or other rules that carry the force of law (“laws”) applicable to the permittee, the subject property, the wireless facility or other infrastructure deployment or any use or activities in connection with the use authorized in this CUP, which includes without limitation any laws

applicable to human exposure to RF emissions. The permittee expressly acknowledges and agrees that this obligation is intended to be broadly construed and that no other specific requirements in these conditions are intended to reduce, relieve or otherwise lessen the permittee's obligations to maintain compliance with all laws. No failure or omission by the City to timely notice, prompt or enforce compliance with any applicable provision in the Solana Beach Municipal Code, this Policy any permit, any permit condition or any applicable law or regulation, shall be deemed to relieve, waive or lessen the permittee's obligation to comply in all respects with all applicable provisions in the Solana Beach Municipal Code, this Policy, any permit, any permit condition or any applicable law or regulation.

- g. **Adverse Impacts on Other Properties.** The permittee shall use all reasonable efforts to avoid any and all unreasonable, undue or unnecessary adverse impacts on nearby properties that may arise from the permittee's or its authorized personnel's construction, installation, operation, modification, maintenance, repair, removal and/or other activities on or about the site. The permittee shall not perform or cause others to perform any construction, installation, operation, modification, maintenance, repair, removal or other work that involves heavy equipment or machines except during normal construction work hours authorized by the Solana Beach Municipal Code. The restricted work hours in this condition will not prohibit any work required to prevent an actual, immediate harm to property or persons, or any work during an emergency declared by the City or other state or federal government agency or official with authority to declare an emergency within the City. The Director may issue a stop work order for any activities that violates this condition in whole or in part.
- h. **Inspections; Emergencies.** The permittee expressly acknowledges and agrees that the City's officers, officials, staff, agents, contractors or other designees may enter onto the site and inspect the improvements and equipment upon reasonable prior notice to the permittee. Notwithstanding the prior sentence, the City's officers, officials, staff, agents, contractors or other designees may, but will not be obligated to, enter onto the site area without prior notice to support, repair, disable or remove any improvements or equipment in emergencies or when such improvements or equipment threatens actual, imminent harm to property or persons. The permittee, if present, may observe the City's officers, officials, staff or other designees while any such inspection or emergency access occurs.
- i. **Permittee's Contact Information.** Within 10 days from the final approval, the permittee shall furnish the City with accurate and up-to-date contact information for a person responsible for the wireless facility or other infrastructure deployment, which includes without limitation such person's full name, title, direct telephone number, facsimile number, mailing address and email address. The permittee shall keep such contact information up-to-date at all times and

promptly provide the City with updated contact information if either the responsible person or such person's contact information changes.

- j. **Indemnification.** The permittee and, if applicable, the property owner upon which the wireless facility or other infrastructure deployment is installed shall defend, indemnify and hold harmless the City, City Council and the City's boards, commissions, agents, officers, officials, employees and volunteers (collectively, the "indemnitees") from any and all (i) damages, liabilities, injuries, losses, costs and expenses and from any and all claims, demands, law suits, writs and other actions or proceedings ("claims") brought against the indemnitees to challenge, attack, seek to modify, set aside, void or annul the City's approval of this CUP, and (ii) other claims of any kind or form, whether for personal injury, death or property damage, that arise from or in connection with the permittee's or its agents', directors', officers', employees', contractors', subcontractors', licensees' or customers' acts or omissions in connection with this CUP or the wireless facility or other infrastructure deployment. In the event the City becomes aware of any claims, the City will use best efforts to promptly notify the permittee and the private property owner (if applicable) and shall reasonably cooperate in the defense. The permittee expressly acknowledges and agrees that the City shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the City's defense, and the property owner and/or permittee (as applicable) shall promptly reimburse the City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. The permittee expressly acknowledges and agrees that the permittee's indemnification obligations under this condition are a material consideration that motivates the City to approve this CUP, and that such indemnification obligations will survive the expiration, revocation or other termination of this CUP.
- k. **Permit Revocation.** Any permit granted under this Policy may be revoked in accordance with the provisions and procedures in this condition. The Director may initiate revocation proceedings when the Director has information that the facility may not be in compliance with all applicable laws, which includes without limitation, any permit in connection with the facility and any associated conditions with such permit(s). Before any public hearing to revoke a permit granted under this policy, the Director must issue a written notice to the permittee that specifies (i) the facility; (ii) the violation(s) to be corrected; (iii) the timeframe in which the permittee must correct such violation(s); and (iv) that, in addition to all other rights and remedies the City may pursue, the City may initiate revocation proceedings for failure to correct such violation(s). A permit granted under this policy may be revoked only by the City Council after a duly notice public hearing. The City Council may revoke a permit when it finds substantial evidence in the written record to show that the facility is not in compliance with any applicable laws, which includes without limitation, any permit in connection with the facility and any associated conditions with such

permit(s). Any decision by the City Council to revoke or not revoke a permit shall be final and not subject to any further appeals. Within five business days after the City Council adopts a resolution to revoke a permit, the Director shall provide the permittee with a written notice that specifies the revocation and the reasons for such revocation.

- l. **Record Retention.** Throughout the permit term, the permittee must maintain a complete and accurate copy of the written administrative record, which includes without limitation the CUP application, CUP, the approved plans and photo simulations incorporated into this approval, all conditions associated with this approval, any ministerial permits or approvals issued in connection with this approval and any records, memoranda, documents, papers and other correspondence entered into the public record in connection with the CUP (collectively, “records”). If the permittee does not maintain such records as required in this condition, any ambiguities or uncertainties that would be resolved by inspecting the missing records will be construed against the permittee. The permittee shall protect all records from damage from fires, floods and other hazards that may cause deterioration. The permittee may keep records in an electronic format; provided, however, that hard copies or electronic records kept in the City’s regular files will control over any conflicts between such City-controlled copies or records and the permittee’s electronic copies, and complete originals will control over all other copies in any form. The requirements in this condition shall not be construed to create any obligation to create or prepare any records not otherwise required to be created or prepared by other applicable laws. Compliance with the requirements in this condition shall not excuse the permittee from any other similar record-retention obligations under applicable law.
- m. **Abandoned Facilities.** The wireless facility or other infrastructure deployment authorized under this CUP shall be deemed abandoned if not operated for any continuous six-month period. Within 90 days after a wireless facility or other infrastructure deployment is abandoned or deemed abandoned, the permittee and/or property owner shall completely remove the wireless facility or other infrastructure deployment and all related improvements and shall restore all affected areas to a condition compliant with all applicable laws, which includes without limitation the Solana Beach Municipal Code. In the event that neither the permittee nor the property owner complies with the removal and restoration obligations under this condition within said 90-day period, the City shall have the right (but not the obligation) to perform such removal and restoration with or without notice, and the permittee and property owner shall be jointly and severally liable for all costs and expenses incurred by the City in connection with such removal and/or restoration activities.
- n. **Landscaping.** The permittee shall replace any landscape features damaged or displaced by the construction, installation, operation, maintenance or other work performed by the permittee or at the permittee’s direction on or about the site. If any trees are damaged or

displaced, the permittee shall hire and pay for a licensed arborist to select, plant and maintain replacement landscaping in an appropriate location for the species. Only International Society of Arboriculture certified workers under the supervision of a licensed arborist shall be used to install the replacement tree(s). Any replacement tree must be substantially the same size as the damaged tree or as otherwise approved by the City. The permittee shall, at all times, be responsible to maintain any replacement landscape features.

- o. **Cost Reimbursement.** The permittee acknowledges and agrees that (i) the permittee's request for authorization to construct, install and/or operate the wireless facility will cause the City to incur costs and expenses; (ii) the permittee shall be responsible to reimburse the City for all costs incurred in connection with the permit, which includes without limitation, costs related to application review, permit issuance, site inspection and any other costs reasonably related to or caused by the request for authorization to construct, install and/or operate the wireless facility or other infrastructure deployment; (iii) any application fees required for the application may not cover all such reimbursable costs and that the permittee shall have the obligation to reimburse the City for all such costs 10 days after a written demand for reimbursement and reasonable documentation to support such costs; and (iv) the City shall have the right to withhold any permits or other approvals in connection with the wireless facility until and unless any outstanding costs have been reimbursed to the City by the permittee.
- p. **Electric Meter Upgrades.** If the commercial electric utility provider adopts or changes its rules obviating the need for a separate or ground-mounted electric meter and enclosure, the permittee on its own initiative and at its sole cost and expense shall remove the separate or ground-mounted electric meter and enclosure. Prior to removing the electric meter, the permittee shall apply for any encroachment and/or other ministerial permit(s) required to perform the removal. Upon removal, the permittee shall restore the affected area to its original condition that existed prior to installation of the equipment.
- q. **Truthful and Accurate Statements.** The permittee acknowledges that the City's approval relies on the written and/or oral statements by permittee and/or persons authorized to act on permittee's behalf. In any matter before the City in connection with the CUP or the wireless facility or other infrastructure approved under the CUP, neither the permittee nor any person authorized to act on permittee's behalf shall, in any written or oral statement, intentionally provide material factual information that is incorrect or misleading or intentionally omit any material information necessary to prevent any material factual statement from being incorrect or misleading.

- 2) **Modified Conditions.** The City Council may modify, add or remove conditions to any CUP as the City Council deems necessary or appropriate to: (1) protect and/or promote the public health, safety and welfare; (2) tailor the standard conditions in subsection (1) to the particular

facts and circumstances associated with the deployment; and/or (3) memorialize any changes to the proposed deployment need for compliance with the Solana Beach Municipal Code, this policy, generally applicable health and safety requirements and/or any other applicable laws. To the extent required by applicable FCC regulations, the City Council shall take care to ensure that any different conditions applied to wireless facilities are no more burdensome than those applied to other infrastructure deployments.

PART II. Guidelines for WCFs Subject to a DUP

A. General Overview for Section 6409(a) Applications

Section 6409(a) generally requires that State and local governments “may not deny, and shall approve” requests to collocate, remove or replace transmission equipment at an existing tower or base station. FCC regulations interpret this statute and establish procedural rules for local review, which generally preempt certain subjective land-use regulations, limit permit application content requirements and provide the applicant with a potential “deemed granted” remedy when the State or local government fails to approve or deny the request within 60 days after submittal (accounting for any tolling periods). Moreover, whereas Section 704 of the Telecommunications Act of 1996, Pub. L. 104-104, codified as 47 U.S.C. § 332, applies to only “personal wireless service facilities” (e.g., cellular telephone towers and equipment), Section 6409(a) applies to all “wireless” facilities licensed or authorized by the FCC (e.g., cellular, Wi-Fi, satellite, microwave backhaul, etc.).

The guidelines in this Part II shall be applied to DUP applications submitted for approval pursuant to Section 6409(a). If the Director finds that Section 6409(a) does not apply, any denials shall be without prejudice to allow the applicant the opportunity to resubmit an application for a CUP for the same modification to be reviewed under the City’s guidelines in Part I of this policy.

B. Decisions

1. Administrative Review. The Director shall administratively review a complete and duly filed application for a DUP and may act on such application without prior notice or a public hearing.
2. Decision Notices. Within five working days after the Director acts on an application for a DUP or before the FCC shot clock expires (whichever occurs first), the Director shall send a written notice to the applicant. In the event that the Director denies the application, the written notice to the applicant must contain (1) the reasons for the decision; (2) a statement that the denial will be without prejudice; and (3) instructions for how and when to file an appeal.

4. Required Findings for Approval. The Director may approve or conditionally approve any application for a DUP when the Director finds that the proposed project:
 - a. Involves collocation, removal or replacement of transmission equipment on an existing wireless tower or base station; and
 - b. Does not substantially change the physical dimensions of the existing wireless tower or base station.
5. Criteria for Denial Without Prejudice. Notwithstanding any other provision in this policy, and consistent with all applicable federal laws and regulations, the Director may deny without prejudice any application for a DUP when the Director finds that the proposed project:
 - a. Does not meet the findings for approval;
 - b. Involves the replacement of the entire support structure; or
 - c. Violates any legally enforceable law, regulation, rule, standard or permit condition reasonably related to public health and safety.
6. Conditional Approvals. Subject to any applicable limitations in federal or state law, nothing in this policy is intended to limit the director's authority to conditionally approve an application for a DUP to protect and promote the public health and safety.

C. Application Requirements

1. Application Required. The director shall not approve any request for a collocation or modification submitted for approval pursuant to Section 6409 except upon a duly filed application consistent with this Section C and any other written rules the City or the director may establish from time to time in any publicly-stated format.
2. Application Content. All applications for a DUP must include the following information and materials:
 - a. Application Form and Fee. The applicant must submit the appropriate and completed application submittal package as described in the General Project Application and fee required for a DUP.
 - b. Title Report and Owner's Authorization. For facilities proposed on private property, the applicant must provide a title report prepared within the six months prior to the application filing date. No title report will be required for facilities proposed to be located within the public rights-of-way. For all facilities, if the applicant does not own the subject property or support structure, the application must include a written authorization signed by the property owner that empowers the applicant to file the application and perform all wireless facility construction, installation, operation and maintenance to the extent described in the application.
 - c. Regulatory Authorizations and Approvals. All applications for a DUP or CUP must include the following information and materials:

- i. Documented evidence that the applicant holds all current licenses and registrations from the FCC, the CPUC and any other applicable regulatory bodies where such license(s) and/or registration(s) are necessary to provide wireless services utilizing the proposed wireless facility.
 - ii. To the extent that the applicant claims any regulatory authorization, franchise or other legal right, which includes without limitation a CPCN, to access and use the public right-of-way to provide telecommunications services, the applicant must provide a true, correct and complete copies of such certificates, licenses, franchises, notices to proceed or other regulatory authorizations.
 - iii. True, correct and complete copies of all permits and/or other regulatory approvals issued by the City (or other local public agency with jurisdiction over the subject wireless tower or base station) in connection with the initial construction or installation and any subsequent collocations, modifications or renewals of the subject wireless tower or base station. Alternatively, the applicant may submit a written justification that sets forth reasons why prior permits or other regulatory approvals were not required for the subject wireless tower or base station at the time it was constructed or modified.
- d. Project Plans. A fully dimensioned site plan and elevation drawings prepared and sealed by a California-licensed engineer showing any existing wireless facilities with all existing transmission equipment and other improvements, the proposed wireless facility with all proposed transmission equipment and other improvements and the legal boundaries of the leased or owned area surrounding the proposed wireless facility and any associated access or utility easements. The plans must specifically depict and call out the original overall height of the structure and, if the structure was constructed prior to February 22, 2012, the overall height that existed on February 22, 2012. The plans must also contain cut sheets that contain detailed equipment specifications for all existing and proposed equipment in connection with the site. In addition, the plans must contain all other elements and details required for site plans submitted with a CUP application.
- e. Site Photos and Photo Simulations. Photographs and photo simulations that show the existing wireless facility and proposed changes in context of the site from reasonable line-of-sight locations from public streets or other adjacent viewpoints, together with a map that identifies the photo location of each view angle.
- f. Acoustic Analysis. A written report that analyzes acoustic levels for the proposed wireless facility and all associated equipment including without limitation all environmental control units, sump pumps, temporary backup power generators, and permanent backup power generators in order to demonstrate compliance with

applicable provisions in the Solana Beach Municipal Code. The acoustic analysis must be prepared and certified by a qualified engineer and include an analysis of the manufacturers' specifications for all noise-emitting equipment and a depiction of the proposed equipment relative to all adjacent property lines. As an alternative to the report, the applicant may submit written evidence from the equipment manufacturer that the ambient noise emitted from all the proposed equipment will not, both individually and cumulatively, exceed the applicable limits.

- g. Verification that the proposed WCF will either comply with the FCC's guidelines for human exposure to radio frequency (RF) electromagnetic fields or will be categorically excluded from having to determine compliance with the guidelines per 47 CFR §1.1307(b)(1). If WCFs are proposed for collocation, the verification must show the total exposure from all facilities taken together meets the FCC guidelines.
- h. Section 6409 Justification Analysis. A written statement that explains in plain factual detail whether and why Section 6409 and the related FCC regulations at 47 C.F.R. §§ 1.40001 et seq. require approval for the specific project. A complete written narrative analysis will state the applicable standard and all the facts that allow the City to conclude the standard has been met—bare conclusions not factually supported do not constitute a complete written analysis. As part of this written statement the applicant must also include (i) whether and why the support structure qualifies as an existing tower or existing base station; and (ii) whether and why the proposed collocation or modification does not cause a substantial change in height, width, excavation, equipment cabinets, concealment or permit compliance. The written justification analysis described in this subsection (B)(7) may be substituted by a form or worksheet developed or otherwise approved by the Director.
- i. A minimum deposit of \$3,000.00 is required at the time of application for a WCF for the services of an independent third party expert consultant, as selected by the City, for technical plan review, Director's Decision preparation and attendance at Directors Use Permit hearings as required as part of the application process. The actual costs of the services rendered by the independent third party consultant, as retained by the City, shall be borne by the applicant. These costs are independent of, and in addition to the DUP fee.

D. Conditions of Approval

- 1) **Standard Conditions.** Except as may be authorized in subsection (2), all permits issued under Part II shall be automatically subject to the conditions in this subsection (1).
 - a. **Permit Term.** This DUP will automatically expire 10 years and one day from its issuance unless California Government Code § 65964(b)

authorizes the City to establish a shorter term for public safety reasons. Any other permits or approvals issued in connection with any collocation, modification or other change to this wireless facility, which includes without limitation any permits or other approvals deemed-granted or deemed-approved under federal or state law, will not extend this term limit unless expressly provided otherwise in such permit or approval or required under federal or state law.

- b. **Permit Renewal.** Not more than one year before this DUP expires, the permittee may apply for permit renewal. The permittee must demonstrate that the subject wireless facility or other infrastructure deployment complies with all the conditions of approval associated with this DUP and all applicable provisions in the Solana Beach Municipal Code, this Policy and other law that exist at the time the decision to renew or not renew is rendered. The Director may modify or amend the conditions on a case-by-case basis as may be necessary or appropriate to ensure compliance with the Solana Beach Municipal Code, this Policy or other applicable law. Upon renewal, this DUP will automatically expire 10 years and one day from its issuance.
- c. **Post-Installation Certification.** Within 60 calendar days after the permittee commences full, unattended operations of a wireless facility or other infrastructure deployment approved or deemed-approved, the permittee shall provide the Director with documentation reasonably acceptable to the Director that the wireless facility or other infrastructure deployment has been installed and/or constructed in strict compliance with the approved construction drawings and photo simulations. Such documentation shall include without limitation as-built drawings, GIS data and site photographs.
- d. **Build-Out Period.** This DUP will automatically expire 12 months from the approval date (the “build-out period”) unless the permittee obtains all other permits and approvals required to install, construct and/or operate the approved wireless facility or other infrastructure deployment, which includes without limitation any permits or approvals required by the any federal, state or local public agencies with jurisdiction over the subject property, support structure or the small wireless facility or other infrastructure deployment and its use. The permittee may request in writing, and the City may grant in writing, one six-month extension if the permittee submits substantial and reliable written evidence demonstrating justifiable cause for a six-month extension. If the build-out period and any extension finally expires, the permit shall be automatically void but the permittee may resubmit a complete application, including all application fees, for the same or substantially similar project.
- e. **Site Maintenance.** The permittee shall keep the site, which includes without limitation any and all improvements, equipment, structures, access routes, fences and landscape features, in a neat, clean and safe condition in accordance with the approved construction drawings and all conditions in this DUP. The permittee shall keep the site area free from all litter and debris at all times. The permittee, at no cost to

the City, shall remove and remediate any graffiti or other vandalism at the site within 48 hours after the permittee receives notice or otherwise becomes aware that such graffiti or other vandalism occurred.

- f. **Compliance with Laws.** The permittee shall maintain compliance at all times with all federal, state and local statutes, regulations, orders or other rules that carry the force of law (“laws”) applicable to the permittee, the subject property, the wireless facility or other infrastructure deployment or any use or activities in connection with the use authorized in this DUP, which includes without limitation any laws applicable to human exposure to RF emissions. The permittee expressly acknowledges and agrees that this obligation is intended to be broadly construed and that no other specific requirements in these conditions are intended to reduce, relieve or otherwise lessen the permittee’s obligations to maintain compliance with all laws. No failure or omission by the City to timely notice, prompt or enforce compliance with any applicable provision in the Solana Beach Municipal Code, this Policy any permit, any permit condition or any applicable law or regulation, shall be deemed to relieve, waive or lessen the permittee’s obligation to comply in all respects with all applicable provisions in the Solana Beach Municipal Code, this Policy, any permit, any permit condition or any applicable law or regulation.
- g. **Adverse Impacts on Other Properties.** The permittee shall use all reasonable efforts to avoid any and all unreasonable, undue or unnecessary adverse impacts on nearby properties that may arise from the permittee’s or its authorized personnel’s construction, installation, operation, modification, maintenance, repair, removal and/or other activities on or about the site. The permittee shall not perform or cause others to perform any construction, installation, operation, modification, maintenance, repair, removal or other work that involves heavy equipment or machines except during normal construction work hours authorized by the Solana Beach Municipal Code. The restricted work hours in this condition will not prohibit any work required to prevent an actual, immediate harm to property or persons, or any work during an emergency declared by the City or other state or federal government agency or official with authority to declare an emergency within the City. The Director may issue a stop work order for any activities that violates this condition in whole or in part.
- h. **Inspections; Emergencies.** The permittee expressly acknowledges and agrees that the City’s officers, officials, staff, agents, contractors or other designees may enter onto the site and inspect the improvements and equipment upon reasonable prior notice to the permittee. Notwithstanding the prior sentence, the City’s officers, officials, staff, agents, contractors or other designees may, but will not be obligated to, enter onto the site area without prior notice to support, repair, disable or remove any improvements or equipment in emergencies or when such improvements or equipment threatens actual, imminent harm to property or persons. The permittee, if present, may observe

the City's officers, officials, staff or other designees while any such inspection or emergency access occurs.

- i. **Permittee's Contact Information.** Within 10 days from the final approval, the permittee shall furnish the City with accurate and up-to-date contact information for a person responsible for the wireless facility or other infrastructure deployment, which includes without limitation such person's full name, title, direct telephone number, facsimile number, mailing address and email address. The permittee shall keep such contact information up-to-date at all times and promptly provide the City with updated contact information if either the responsible person or such person's contact information changes.
- j. **Indemnification.** The permittee and, if applicable, the property owner upon which the wireless facility or other infrastructure deployment is installed, shall defend, indemnify and hold harmless the City, City Council and the City's boards, commissions, agents, officers, officials, employees and volunteers (collectively, the "indemnitees") from any and all (i) damages, liabilities, injuries, losses, costs and expenses and from any and all claims, demands, law suits, writs and other actions or proceedings ("claims") brought against the indemnitees to challenge, attack, seek to modify, set aside, void or annul the City's approval of this DUP, and (ii) other claims of any kind or form, whether for personal injury, death or property damage, that arise from or in connection with the permittee's or its agents', directors', officers', employees', contractors', subcontractors', licensees' or customers' acts or omissions in connection with this DUP or the wireless facility or other infrastructure deployment. In the event the City becomes aware of any claims, the City will use best efforts to promptly notify the permittee and the private property owner (if applicable) and shall reasonably cooperate in the defense. The permittee expressly acknowledges and agrees that the City shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the City's defense, and the property owner and/or permittee (as applicable) shall promptly reimburse the City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. The permittee expressly acknowledges and agrees that the permittee's indemnification obligations under this condition are a material consideration that motivates the City to approve this DUP, and that such indemnification obligations will survive the expiration, revocation or other termination of this DUP.
- k. **Permit Revocation.** Any permit granted under this Policy may be revoked in accordance with the provisions and procedures in this condition. The Director may initiate revocation proceedings when the Director has information that the facility may not be in compliance with all applicable laws, which includes without limitation, any permit in connection with the facility and any associated conditions with such permit(s). Before any public hearing to revoke a permit granted under this Policy, the Director must issue a written notice to the permittee that specifies (i) the facility; (ii) the violation(s) to be corrected; (iii) the

timeframe in which the permittee must correct such violation(s); and (iv) that, in addition to all other rights and remedies the City may pursue, the City may initiate revocation proceedings for failure to correct such violation(s). A permit granted under this Policy may be revoked only by the City Council after a duly notice public hearing. The City Council may revoke a permit when it finds substantial evidence in the written record to show that the facility is not in compliance with any applicable laws, which includes without limitation, any permit in connection with the facility and any associated conditions with such permit(s). Any decision by the City Council to revoke or not revoke a permit shall be final and not subject to any further appeals. Within five business days after the City Council adopts a resolution to revoke a permit, the Director shall provide the permittee with a written notice that specifies the revocation and the reasons for such revocation.

- l. **Record Retention.** Throughout the permit term, the permittee must maintain a complete and accurate copy of the written administrative record, which includes without limitation the DUP application, DUP, the approved plans and photo simulations incorporated into this approval, all conditions associated with this approval, any ministerial permits or approvals issued in connection with this approval and any records, memoranda, documents, papers and other correspondence entered into the public record in connection with the DUP (collectively, “records”). If the permittee does not maintain such records as required in this condition, any ambiguities or uncertainties that would be resolved by inspecting the missing records will be construed against the permittee. The permittee shall protect all records from damage from fires, floods and other hazards that may cause deterioration. The permittee may keep records in an electronic format; provided, however, that hard copies or electronic records kept in the City’s regular files will control over any conflicts between such City-controlled copies or records and the permittee’s electronic copies, and complete originals will control over all other copies in any form. The requirements in this condition shall not be construed to create any obligation to create or prepare any records not otherwise required to be created or prepared by other applicable laws. Compliance with the requirements in this condition shall not excuse the permittee from any other similar record-retention obligations under applicable law.
- m. **Abandoned Facilities.** The wireless facility or other infrastructure deployment authorized under this DUP shall be deemed abandoned if not operated for any continuous six-month period. Within 90 days after a wireless facility or other infrastructure deployment is abandoned or deemed abandoned, the permittee and/or property owner shall completely remove the small wireless facility or other infrastructure deployment and all related improvements and shall restore all affected areas to a condition compliant with all applicable laws, which includes without limitation the Solana Beach Municipal Code. In the event that neither the permittee nor the property owner complies with the removal and restoration obligations under this condition within said 90-day

period, the City shall have the right (but not the obligation) to perform such removal and restoration with or without notice, and the permittee and property owner shall be jointly and severally liable for all costs and expenses incurred by the City in connection with such removal and/or restoration activities.

- n. **Landscaping.** The permittee shall replace any landscape features damaged or displaced by the construction, installation, operation, maintenance or other work performed by the permittee or at the permittee's direction on or about the site. If any trees are damaged or displaced, the permittee shall hire and pay for a licensed arborist to select, plant and maintain replacement landscaping in an appropriate location for the species. Only International Society of Arboriculture certified workers under the supervision of a licensed arborist shall be used to install the replacement tree(s). Any replacement tree must be substantially the same size as the damaged tree or as otherwise approved by the City. The permittee shall, at all times, be responsible to maintain any replacement landscape features.
- o. **Cost Reimbursement.** The permittee acknowledges and agrees that (i) the permittee's request for authorization to construct, install and/or operate the wireless facility will cause the City to incur costs and expenses; (ii) the permittee shall be responsible to reimburse the City for all costs incurred in connection with the permit, which includes without limitation costs related to application review, permit issuance, site inspection and any other costs reasonably related to or caused by the request for authorization to construct, install and/or operate the wireless facility or other infrastructure deployment; (iii) any application fees required for the application may not cover all such reimbursable costs and that the permittee shall have the obligation to reimburse the City for all such costs 10 days after a written demand for reimbursement and reasonable documentation to support such costs; and (iv) the City shall have the right to withhold any permits or other approvals in connection with the wireless facility until and unless any outstanding costs have been reimbursed to the City by the permittee.
- p. **Electric Meter Upgrades.** If the commercial electric utility provider adopts or changes its rules obviating the need for a separate or ground-mounted electric meter and enclosure, the permittee on its own initiative and at its sole cost and expense shall remove the separate or ground-mounted electric meter and enclosure. Prior to removing the electric meter, the permittee shall apply for any encroachment and/or other ministerial permit(s) required to perform the removal. Upon removal, the permittee shall restore the affected area to its original condition that existed prior to installation of the equipment.
- q. **Truthful and Accurate Statements.** The permittee acknowledges that the City's approval relies on the written and/or oral statements by permittee and/or persons authorized to act on permittee's behalf. In any matter before the City in connection with the DUP or the wireless facility or other infrastructure approved under the DUP, neither the permittee nor any person authorized to act on permittee's behalf shall,

in any written or oral statement, intentionally provide material factual information that is incorrect or misleading or intentionally omit any material information necessary to prevent any material factual statement from being incorrect or misleading.

- 2) **Modified Conditions.** The Director may modify, add or remove conditions to any DUP as the Director deems necessary or appropriate to: (1) protect and/or promote the public health, safety and welfare; (2) tailor the standard conditions in subsection (1) to the particular facts and circumstances associated with the deployment; and/or (3) memorialize any changes to the proposed deployment need for compliance with the Solana Beach Municipal Code, this policy, generally applicable health and safety requirements and/or any other applicable laws. To the extent required by applicable FCC regulations, the Director shall take care to ensure that any different conditions applied to wireless facilities are no more burdensome than those applied to other infrastructure deployments.

PART III. Guidelines for Small Wireless Facilities in Right-of-Way

A. Applicability

- 1) **Small Wireless Facilities.** Except as expressly provided otherwise, the provisions in this policy shall be applicable to all existing small wireless facilities and all applications and requests for authorization to construct, install, attach, operate, collocate, modify, reconstruct, relocate, remove or otherwise deploy small wireless facilities within the public rights-of-way within the City's jurisdictional and territorial boundaries.
- 2) **Other Infrastructure Deployments.** To the extent that other infrastructure deployments, including without limitation any deployments that require approval pursuant to Solana Beach Municipal Code Sections 11.20.200 and 11.20.210, involve the same or substantially similar structures, apparatus, antennas, equipment, fixtures, cabinets, cables or improvements, the City Engineer is responsible to review and approve or deny requests for authorization in connection with such other infrastructure deployment shall apply the provisions in this policy unless specifically prohibited by applicable law.

B. Required Permits and Approvals

- 1) **DUP.** A "Director's Use Permit", subject to the Director of Community Development's review and approval in accordance with this policy, shall be required for all small wireless facilities and other infrastructure deployments located in whole or in part within the public rights-of-way ("ROW").
- 2) **ROW use permit.** A "ROW use permit", subject to the City Engineer's review and approval in accordance with this policy, shall be required for all

small wireless facilities and other infrastructure deployments located in whole or in part within the public rights-of-way.

- 3) **Exemptions.** Notwithstanding anything in this policy to the contrary, a DUP and ROW use permit shall not be required for:
 - a. wireless facilities or other infrastructure deployments owned and operated by the City for its use;
 - b. OTARD facilities;
 - c. requests for approval to collocate, replace or remove transmission equipment at an existing wireless tower or base station submitted pursuant to Section 6409; or
 - d. wireless facilities or other infrastructure deployments covered by a valid franchise, pole license or other encroachment agreement between the applicant and the City.
- 4) **Other Permits and Approvals.** In addition to a DUP and ROW use permit, the applicant must obtain all other permits and regulatory approvals as may be required by any other federal, state or local government agencies, which includes without limitation any ministerial permits and/or other approvals issued by other City departments or divisions. All applications for ministerial permits submitted in connection with a proposed small wireless facility or other infrastructure deployment must contain a valid ROW use permit issued by the City for the proposed facility. Any application for any ministerial permit(s) submitted without such ROW use permit may be denied without prejudice. Any ROW use permit granted under this Policy shall remain subject to all lawful conditions and/or legal requirements associated with such other permits or approvals. Furthermore, and to avoid potential confusion, an exemption from the ROW use permit requirement under Section B(3) does not exempt the same wireless facilities or other infrastructure deployments from any other permits or approvals, which includes without limitation any ministerial permits from the City.

C. Application and Review Procedures

- 1) **Application Requirements for Small Wireless Facilities.** In addition to any other publicly-stated requirements, all DUP and ROW use permit applications for small wireless facilities must include the following information and materials:
 - a. **Application Form.** The applicant shall submit a complete, duly executed DUP and ROW use permit application on the then-current form prepared by the City.
 - b. **Application Fee.** The applicant shall submit the applicable DUP and ROW use permit application fees established by City Council resolution. Batched applications must include the applicable DUP and ROW use permit application fees for each small wireless facility in the batch. If no DUP or ROW use permit application fee has been established, then the applicant must submit a signed written statement that acknowledges

that the applicant will be required to reimburse the City for its reasonable costs incurred in connection with the application within 10 days after the City issues a written demand for reimbursement.

- c. **Construction Drawings.** The applicant shall submit true and correct construction drawings, prepared, signed and stamped by a licensed or registered engineer, that depict all the existing and proposed improvements, equipment and conditions related to the proposed project, which includes without limitation any and all poles, posts, pedestals, traffic signals, towers, streets, sidewalks, pedestrian ramps, driveways, curbs, gutters, drains, handholes, manholes, fire hydrants, equipment cabinets, antennas, cables, trees and other landscape features. The construction drawings must: (i) contain cut sheets that contain the technical specifications for all existing and proposed antennas and accessory equipment, which includes without limitation the manufacturer, model number and physical dimensions; (ii) identify all potential support structures within 500 feet from the proposed project site and call out such structures' overall height above ground level; (iii) depict the applicant's preliminary plan for electric and data backhaul utilities, which shall include the anticipated locations for all conduits, cables, wires, handholes, junctions, transformers, meters, disconnect switches, and points of connection; and (iv) demonstrate that proposed project will be in full compliance with all applicable health and safety laws, regulations or other rules, which includes without limitation all building codes, electric codes, local street standards and specifications, and public utility regulations and orders.
- d. **Site Survey.** For any small wireless facility, the applicant shall submit a survey prepared, signed and stamped by a licensed or registered engineer. The survey must identify and depict all existing boundaries, encroachments and other structures within 75 feet from the proposed project site and any new improvements, which includes without limitation all: (i) traffic lanes; (ii) all private properties and property lines; (iii) above and below-grade utilities and related structures and encroachments; (iv) fire hydrants, roadside call boxes and other public safety infrastructure; (v) streetlights, decorative poles, traffic signals and permanent signage; (vi) sidewalks, driveways, parkways, curbs, gutters and storm drains; (vii) benches, trash cans, mailboxes, kiosks and other street furniture; and (viii) existing trees, planters and other landscaping features.
- e. **Photo Simulations.** The applicant shall submit site photographs and photo simulations that show the existing location and proposed small wireless facility in context from at least three vantage points within the public streets or other publicly accessible spaces, together with a vicinity map that shows the proposed site location and the photo location for each vantage point. At least one simulation must depict the small wireless facility from a vantage point approximately 50 feet from the proposed support structure or location. The photo simulations and vicinity map shall be incorporated into the construction plans submitted with the application.

- f. **Project Narrative and Justification.** The applicant shall submit a written statement that explains in plain factual detail whether and why the proposed facility qualifies as a “small wireless facility” as defined by the FCC in 47 C.F.R. § 1.6002(l). A complete written narrative analysis will state the applicable standard and all the facts that allow the City to conclude the standard has been met—bare conclusions not factually supported do not constitute a complete written analysis. As part of the written statement the applicant must also include (i) whether and why the proposed support is a “structure” as defined by the FCC in 47 C.F.R. § 1.6002(m); and (ii) whether and why the proposed wireless facility meets each required finding for a DUP and ROW use permit as provided in Section F(2).
- g. **RF Compliance Report.** The applicant shall submit an RF exposure compliance report that certifies that the proposed small wireless facility, both individually and cumulatively with all other emitters that contribute more than 5% to the cumulative emissions in the vicinity (if any), will comply with applicable federal RF exposure standards and exposure limits. The RF report must be prepared and certified by an RF engineer acceptable to the Director. The RF report must include the actual frequency and power levels (in watts effective radiated power) for all existing and proposed antennas at the site and exhibits that show the location and orientation of all transmitting antennas and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC) and also the boundaries of areas with RF exposures in excess of the controlled/occupational limit (as that term is defined by the FCC). Each such boundary shall be clearly marked and identified for every transmitting antenna at the project site. If the applicant submits a batched application, a separate RF report shall be prepared for each facility associated with the batch.
- h. **Public Notices.** The applicant shall include with the application a list that identifies all persons entitled to notice (as defined in this Policy) together with three preaddressed envelopes with correct postage for each person entitled to notice.
- i. **Regulatory Authorization.** The applicant shall submit evidence of the applicant’s regulatory status under federal and California law to provide the services and construct the small wireless facility proposed in the application.
- j. **Pole License Agreement.** For any small wireless facility proposed to be installed on any structure owned or controlled by the City and located within the public rights-of-way, the applicant shall submit an executed Pole License Agreement on a form prepared by the City that states the terms and conditions for such non-exclusive use by the applicant. No changes shall be permitted to the City’s Pole License Agreement except as may be indicated on the form itself. Any unpermitted changes to the City’s Pole License Agreement shall be deemed a basis to deem the application incomplete. Refusal to accept the terms and conditions in the City’s Pole License Agreement shall be

an independently sufficient basis to deny the application without prejudice.

- k. **Title Report and Property Owner's Authorization.** For any small wireless facility proposed to be installed on any private property not owned or controlled by the City, whether in whole or in part, the applicant must submit: (i) a title report issued within 30 days from the date the applicant filed the application; and (ii) if the applicant is not the property owner, a written authorization signed by the property owner identified in the title report that authorizes the applicant to submit and accept a small cell permit in connection with the subject property. For any small wireless facility proposed to be installed on a support structure in the public right-of-way, the applicant must submit a written authorization from the support structure owner(s).
- l. **Acoustic Analysis.** The applicant shall submit an acoustic analysis prepared and certified by a licensed engineer for the proposed small wireless facility and all associated equipment including all environmental control units, sump pumps, temporary backup power generators and permanent backup power generators demonstrating compliance with the City's noise regulations. The acoustic analysis must also include an analysis of the manufacturers' specifications for all noise-emitting equipment and a depiction of the proposed equipment relative to all adjacent property lines. In lieu of an acoustic analysis, the applicant may submit evidence from the equipment manufacturer(s) that the ambient noise emitted from all the proposed equipment will not, both individually and cumulatively, exceed the applicable noise limits.

- 2) **Voluntary Presubmittal Conference.** The City strongly encourages, but does not require, applicants to schedule and attend a presubmittal conference with the Director and other City staff. This voluntary, presubmittal conference does not cause the FCC Shot Clock to begin and is intended to streamline the review process through collaborative, informal discussion that includes, without limitation, the appropriate project classification and review process; any latent issues in connection with the proposed project and/or project site, including compliance with generally applicable rules for public health and safety; potential concealment issues or concerns (if applicable); coordination with other City departments implicated by the proposed project; and application completeness issues. Presubmittal conferences are especially encouraged when an applicant seeks to submit one or more batched applications so that the Director may advise the applicant about any staffing or scheduling issues that may hinder the City's ability to meet the presumptively reasonable timeframes under the FCC Shot Clock. To mitigate unnecessary delays due to application incompleteness, applicants are encouraged (but not required) to bring any draft applications, plans, maps or other materials so that City staff may provide informal feedback and guidance about whether such applications or other materials may be incomplete or unacceptable in their then-current form. The Director will use reasonable efforts to provide the applicant with an appointment within approximately five working days after

receiving a written request and any applicable fee or deposit to reimburse the City for its reasonable costs to provide the staff time and services rendered in the presubmittal conference.

- 3) **Submittal Appointments.** All applications must be submitted in person to the City at a pre-scheduled appointment with the Director. Prospective applicants may generally submit one application per appointment, or up to five individual applications per appointment as a batch. Potential applicants may schedule successive appointments for multiple applications whenever feasible and not prejudicial to other applicants for any other development project as determined by the Director. The Director shall use reasonable efforts to offer an appointment within five working days after the Director receives a written request from a potential applicant. Any purported application received without an appointment, whether delivered in-person, by mail or through any other means, will not be considered duly filed, whether the City retains, returns or destroys the materials received.
- 4) **Incomplete Applications Deemed Withdrawn.** Any application governed under this policy shall be automatically deemed withdrawn by the applicant when the applicant fails to submit a substantive response to the Director within 60 calendar days after the Director deems the application incomplete by written notice. As used in this subsection (4), a “substantive response” must include, at a minimum, the complete materials identified as incomplete in the written incomplete notice.
- 5) **Additional Administrative Requirements and Regulations.** The City Council authorizes the Director to develop, publish and from time to time update or amend permit application requirements, forms, checklists, guidelines, informational handouts and other related materials that the Director finds necessary, appropriate or useful for processing any application governed under this policy. The City Council further authorizes the Director to establish other reasonable rules and regulations for duly filed applications, which may include without limitation regular hours for appointments and/or submittals without appointments, as the Director deems necessary or appropriate to organize, document and manage the application intake process. All such requirements, materials, rules and regulations must be in written form and publicly stated to provide all interested parties with prior notice.

D. Public Notices

- 1) **Application Submittal Notice.** Within approximately 10 calendar days after an application is received and prior to any approval, conditional approval or denial, the City shall mail public notice to all persons entitled to notice. The notice must contain: (1) a general project description; (2) the applicant’s identification and contact information as provided on the application submitted to the City; (3) contact information for the Director

for interested parties to submit comments; (4) a statement that the Director will act on the application without a public hearing but that any interested person or entity may appeal the Director's decision directly to the City Council; and (5) if the application is for a small wireless facility, a general statement that the FCC requires the City to take final action on such applications within 60 days for collocations and 90 days for facilities on new support structures.

- 2) **Application Decision Notice.** Within five calendar days after the Director acts on a DUP and ROW use permit application, the Director shall provide written notice to the applicant and all persons entitled to notice. If the Director denies an application (with or without prejudice) for a small wireless facility, the written notice must also contain the reasons for the denial.

E. Decisions

- 1) **Initial Administrative Decision.** Not less than 10 calendar days after the public notice required in Section D(1) is sent, and not more than 29 shot clock days after the application has been deemed complete, the Director shall approve, conditionally approve or deny a complete and duly filed ROW use permit application without a public hearing.
- 2) **Required Findings for Approval.** The Director may approve or conditionally approve a complete and duly filed application for a ROW use permit when the Director finds:
 - a. the proposed project complies with all applicable design standards in this policy;
 - b. the proposed project would be in the most preferred location within 500 feet from the proposed site in any direction or the applicant has demonstrated with clear and convincing evidence in the written record that any more-preferred location(s) within 500 feet would be technically infeasible;
 - c. the proposed project would not be located on a prohibited support structure identified in this Policy;
 - d. the proposed project would be on the most preferred support structure within 500 feet from the proposed site in any direction or the applicant has demonstrated with clear and convincing evidence in the written record that any more-preferred support structure(s) within 500 feet would be technically infeasible;
 - e. if the proposed project involves a wireless facility, the proposed project fits within the definition for a "small wireless facility" as defined by the FCC;
 - f. if the proposed project involves a wireless facility, the applicant has demonstrated that the proposed project will be in planned compliance with all applicable FCC regulations and guidelines for human exposure to RF emissions; and
 - g. all public notices required for the application have been given.

- 3) **Conditional Approvals; Denials Without Prejudice.** Subject to any applicable federal or California laws, nothing in this policy is intended to limit the Director's ability to conditionally approve or deny without prejudice any ROW use permit application as may be necessary or appropriate to ensure compliance with this policy.
- 4) **Appeals.** Any interested person or entity may appeal the decision by the Director to the City Council; provided, however, that appeals from an approval shall not be permitted when based solely on the environmental effects from radio frequency emissions that are compliant with applicable FCC regulations and guidelines. An appeal notice must be filed within seven calendar days after the date on the Director's decision notice. The notice must contain a short and plain statement about the basis for the appeal, which may be supplemented after the notice period has expired but before the appeal hearing. The City Council shall hear appeals *de novo* and issue the applicant and any person entitled to notice a written decision within five calendar days after the appeal hearing. If the City Council denies the application on appeal (whether by affirmation or reversal), the written notice shall contain the reasons for the decision.

F. Conditions of Approval. Small wireless facilities and other infrastructure deployments shall be subject to the conditions of approval as stated in Parts I and II, as applicable above.

G. Location Standards

- 1) **Location Preferences.** To better assist applicants and decision makers understand and respond to the community's aesthetic preferences and values, this subsection sets out listed preferences for locations to be used in connection with small wireless facilities in an ordered hierarchy. Applications that involve lesser-preferred locations may be approved so long as the applicant demonstrates by clear and convincing evidence in the written record that either (1) no more preferred locations or structures exist within 500 feet from the proposed site; or (2) any more preferred locations or structures within 500 feet from the proposed site would be technically infeasible as supported. The City prefers small cells in the public rights-of-way to be installed in locations, ordered from most preferred to least preferred, as follows:
 - a. locations within light industrial districts and office professional districts on or along multi-modal boulevards;
 - b. locations within light industrial districts, office professional districts, commercial districts on or along community connectors;
 - c. locations within light industrial districts, office professional districts, commercial districts on or along bicycle boulevards;
 - d. locations within light industrial districts, office professional districts, commercial districts on or along pedestrian corridors;

- e. locations within light industrial districts, office professional districts, commercial districts on or along local streets;
 - f. locations within residential districts and open space districts on or along multi-modal boulevards;
 - g. locations within residential districts and open space districts on or along community connectors;
 - h. locations within residential districts and open space districts on or along bicycle boulevards;
 - i. locations within residential districts and open space districts on or along pedestrian corridors;
 - j. locations within residential districts and open space districts on or along local streets;
 - k. any location within 500 feet from an existing small wireless facility;
 - l. any location within 500 feet from any structure approved for a residential use.
- 2) **Prohibited Support Structures.** Except when authorized as a pre-approved design pursuant to this policy, small wireless facilities shall not be permitted on the following support structures:
- a. decorative poles;
 - b. traffic signal poles, cabinets or related structures;
 - c. new, nonreplacement wood poles;
 - d. any utility pole scheduled for removal or relocation within 18 months from the time the Director acts on the small wireless facility application;
- 3) **Encroachments Over Private Property.** No small wireless antennas, accessory equipment or other improvements may encroach onto or over any private or other property outside the public rights-of-way without the property owner's express written consent.
- 4) **No Interference with Other Uses.** Small wireless facilities and any associated antennas, accessory equipment or improvements shall not be located in any place or manner that would physically interfere with or impede access to any: (1) worker access to any above-ground or underground infrastructure for traffic control, streetlight or public transportation, including without limitation any curb control sign, parking meter, vehicular traffic sign or signal, pedestrian traffic sign or signal, barricade reflectors; (2) access to any public transportation vehicles, shelters, street furniture or other improvements at any public transportation stop; (3) worker access to above-ground or underground infrastructure owned or operated by any public or private utility agency; (4) fire hydrant or water valve; (5) access to any doors, gates, sidewalk doors, passage doors, stoops or other ingress and egress points to any building appurtenant to the rights-of-way; or (6) access to any fire escape.
- 5) **Replacement Pole Location.** All replacement poles must: (1) be located as close to the removed pole as possible; (2) be aligned with the other existing poles along the public rights-of-way; and (3) be compliant with all

applicable standards and specifications by the City Engineer or his or her designee.

- 6) **Additional Placement Requirements.** In addition to all other requirements in this Policy, small wireless facilities, other infrastructure deployments and all related equipment and improvements shall:
 - a. be placed as close as possible to the property line between two parcels that abut the public rights-of-way;
 - b. not be placed directly in front of any door or window;
 - c. not be placed within any sight distance triangles at any intersections;
 - d. be placed at least 10 feet away from any driveway or established pedestrian pathway between a residential structure and the public rights-of-way;
 - e. be placed at least 50 feet away from any driveways for police stations, fire stations or other emergency responder facilities.

H. Design Standards

- 1) **Finishes.** All exterior surfaces shall be painted, colored and/or wrapped in flat, nonreflective hues that match the underlying support structure or blend with the surrounding environment. All surfaces shall be treated with graffiti-resistant sealant. All finishes shall be subject to the City Engineer's prior approval.
- 2) **Noise.** Small wireless facilities and all associated antennas, accessory equipment and other improvements must comply with all applicable noise control standards and regulations in the Solana Beach Municipal Code, Chapter 7.34 as either may be amended or superseded, the Noise Element in the Solana Beach General Plan and shall not exceed, either on an individual or cumulative basis, the noise limit in the applicable district.
- 3) **Lights.** All lights and light fixtures must be aimed and shielded so that their illumination effects are directed downwards and confined within the public rights-of-way in a manner consistent with any other standards and specifications by the City Engineer or his or her designee. All antennas, accessory equipment and other improvements with indicator or status lights must be installed in locations and within enclosures that mitigate illumination impacts visible from publicly accessible areas.
- 4) **Trees and Landscaping.** Small wireless facilities and other infrastructure deployments shall not be installed (in whole or in part) within any tree drip line. Small wireless facilities and other infrastructure deployments may not displace any existing tree or landscape features unless: (A) such displaced tree or landscaping is replaced with native and/or drought-resistant trees, plants or other landscape features approved by the City Engineer and (B) the applicant submits and adheres to a landscape maintenance plan. Only International Society of Arboriculture certified workers under a licensed arborist's supervision shall be used to install the

replacement tree(s). Any replacement tree must be substantially the same size as the damaged tree unless approved by the City Engineer. The permittee shall, at all times, be responsible to maintain any replacement landscape features.

- 5) **Signs and Advertisements.** All small wireless facilities and other infrastructure deployments that involve RF transmitters must include signage that accurately identifies the site owner/operator, the owner/operator's site name or identification number and a toll-free number to the owner/operator's network operations center. Small wireless facilities and other infrastructure deployments may not bear any other signage or advertisements unless expressly approved by the City, required by law or recommended under FCC or other United States governmental agencies for compliance with RF emissions regulations.
- 6) **Site Security Measures.** Small wireless facilities and other infrastructure deployments may incorporate reasonable and appropriate site security measures, such as locks and anti-climbing devices, to prevent unauthorized access, theft or vandalism. The Director shall not approve any barbed wire, razor ribbon, electrified fences or any similarly dangerous security measures. All exterior surfaces on small wireless facilities shall be constructed from or coated with graffiti-resistant materials.
- 7) **Compliance with Health and Safety Regulations.** All small wireless facilities and other infrastructure deployments shall be designed, constructed, operated and maintained in compliance with all generally applicable health and safety regulations, which includes without limitation all applicable regulations for human exposure to RF emissions and compliance with the federal Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 *et seq.*).
- 8) **Antennas.** The provisions in this subsection (8) are generally applicable to all antennas.
 - a. **Shrouding.** All antennas and associated cables, jumpers, wires, mounts, masts, brackets and other connectors and hardware must be installed within a single shroud or radome. For pole-top antennas, the shroud shall not exceed one and one-half times the median pole diameter and must taper down to pole. For side-arm antennas, the shroud must cover the cross arm and any cables, jumpers, wires or other connectors between the vertical riser and the antenna.
 - b. **Antenna Volume.** Each individual antenna associated with a single small wireless facility shall not exceed three cubic feet. The cumulative volume for all antennas on a single small wireless facility shall not exceed: (A) three cubic feet in residential areas; or (B) six cubic feet in nonresidential areas.
 - c. **Overall Height.** No antenna may extend more than five feet above the support structure, plus any minimum separation between the antenna

and other pole attachments required by applicable health and safety regulations.

- d. **Horizontal Projection.** Side-mounted antennas, where permitted, shall not project: (A) more than 18 inches from the support structure; (B) over any roadway for vehicular travel; or (C) over any abutting private property. If applicable laws require a side-mounted antenna to project more than 18 inches from the support structure, the projection shall be no greater than required for compliance with such laws.
- 9) **Accessory Equipment Volume.** The cumulative volume for all accessory equipment for a single small wireless facility or other infrastructure deployment shall not exceed: (A) nine cubic feet in residential areas or (B) 17 cubic feet in nonresidential areas. The volume limits in this subsection do not apply to any undergrounded accessory equipment.
- 10) **Undergrounded Accessory Equipment.**
- a. **Where Required.** Accessory equipment (other than any electric meter (where permitted) emergency disconnect switch) shall be placed underground when proposed in any (A) underground district or (B) any location where the Director or City Engineer finds substantial evidence that the additional above-ground accessory equipment would incommode the public's uses in the public rights-of-way. Notwithstanding the preceding sentence, the Director or City Engineer may grant an exception when the applicant demonstrates by clear and convincing evidence that compliance with this section would be technically infeasible.
 - b. **Vaults.** All undergrounded accessory equipment must be installed in an environmentally controlled vault that is load-rated to meet the City's standards and specifications. Underground vaults located beneath a sidewalk must be constructed with a slip-resistant cover. Vents for airflow shall be flush-to-grade when placed within the sidewalk and may not exceed two feet above grade when placed off the sidewalk.
- 11) **Pole-Mounted Accessory Equipment.** The provisions in this subsection (11) are applicable to all pole-mounted accessory equipment in connection with small wireless facilities and other infrastructure deployments.
- a. **Preferred Concealment Techniques.** Applicants should propose to place any pole-mounted accessory equipment in the least conspicuous position under the circumstances presented by the proposed pole and location. Pole-mounted accessory equipment may be installed behind street, traffic or other signs to the extent that the installation complies with applicable public health and safety regulations.
 - b. **Minimum Vertical Clearance.** The lowest point on any pole-mounted accessory equipment shall be at least 10 feet above ground level adjacent to the pole. If applicable laws require any pole-mounted accessory equipment component to be placed less than 10 feet above ground level, the clearance from ground level shall be no less than required for compliance with such laws.

- c. **Horizontal Projection.** Pole-mounted accessory equipment shall not project: (i) more than 18 inches from the pole surface; (ii) over any roadway for vehicular travel; or (iii) over any abutting private property. All pole-mounted accessory equipment shall be mounted flush to the pole surface. If applicable laws preclude flush-mounted equipment, the separation gap between the pole and the accessory equipment shall be no greater than required for compliance with such laws and concealed by opaque material (such as cabinet “flaps” or “wings”).***
 - d. **Orientation.** Unless placed behind a street sign or some other concealment that dictates the equipment orientation on the pole, all pole-mounted accessory equipment should be oriented away from prominent views. In general, the proper orientation will likely be toward the street to reduce the overall profile when viewed from the nearest abutting properties. If orientation toward the street is not feasible, then the proper orientation will most likely be away from oncoming traffic. If more than one orientation would be technically feasible, the Director may select the most appropriate orientation.
- 12) **Ground-Mounted or Base-Mounted Accessory Equipment.** The provisions in this subsection (12) are applicable to all ground-mounted and base-mounted accessory equipment in connection with small wireless facilities and other infrastructure deployments.
 - a. **Ground-Mounted Concealment.** On collector roads and local roads, the City prefers ground-mounted accessory equipment to be concealed as follows: (A) within a landscaped parkway, median or similar location, behind or among new/existing landscape features and painted or wrapped in flat natural colors to blend with the landscape features; and (B) if landscaping concealment is not technically feasible, disguised as other street furniture adjacent to the support structure, such as, for example, mailboxes, benches, trash cans and information kiosks. On arterial roads outside underground districts, proposed ground-mounted accessory equipment should be completely shrouded or placed in a cabinet substantially similar in appearance to existing ground-mounted accessory equipment cabinets.
 - b. **Public Safety Visibility.** To promote and protect public health and safety and prevent potential hazards hidden behind large equipment cabinets, no individual ground-mounted accessory equipment cabinet may exceed four feet in height or four feet in width. Ground-mounted and base-mounted equipment cabinets shall not have any horizontal flat surfaces greater than 1.5 square inches to prevent litter or other objects left on such surfaces.
- 13) **Utilities.** The provisions in this subsection (13) are applicable to all utilities and other related improvements that serve small wireless facilities and other infrastructure deployments.
 - a. **Overhead Lines.** The City Engineer shall not approve any new overhead utility lines in underground districts. In areas with existing overhead lines, new communication lines shall be “overlashed” with

existing communication lines. No new overhead utility lines shall be permitted to traverse any roadway used for vehicular transit.

- b. **Vertical Cable Risers.** All cables, wires and other connectors must be routed through conduits within the pole or other support structure, and all conduit attachments, cables, wires and other connectors must be concealed from public view. To the extent that cables, wires and other connectors cannot be routed through the pole, such as with wood utility poles, applicants shall route them through a single external conduit or shroud that has been finished to match the underlying pole.
- c. **Spools and Coils.** To reduce clutter and deter vandalism, excess fiber optic or coaxial cables shall not be spooled, coiled or otherwise stored on the pole outside equipment cabinets or shrouds.
- d. **Electric Meters.** Small cells and other infrastructure deployments shall use flat-rate electric service or other method that obviates the need for a separate above-grade electric meter. If flat-rate service is not available, applicants may install a shrouded smart meter. If the proposed project involves a ground-mounted equipment cabinet, an electric meter may be integrated with and recessed into the cabinet, but the City Engineer shall not approve a separate ground-mounted electric meter pedestal.
- e. **Existing Conduit or Circuits.** To reduce unnecessary wear and tear on the public rights-of-way, applicants are encouraged to use existing conduits and/or electric circuits whenever available and technically feasible. Access to any conduit and/or circuits owned by the City shall be subject to the City Engineer's prior written approval, which the City Engineer may withhold or condition as the City Engineer deems necessary or appropriate to protect the City's infrastructure, prevent interference with the City's municipal functions and public health and safety.

I. Pre-Approved Designs

- 1) **Purpose.** To expedite the review process and encourage collaborative designs among applicants and the City, the City Council authorizes the Director or City Engineer to designate one or more preapproved designs for small wireless facilities and other infrastructure deployments. This Section I sets out the process to establish or repeal a preapproved design and the expedited review procedures and findings applicable to these applications.
- 2) **Adoption.** The City Engineer may, in the Director's discretion, establish a preapproved design when the City Engineer finds that a proposed preapproved design exceeds the design standards in this policy. The City Engineer shall post a public notice posted at Solana Beach City Hall, with the City Clerk and in a newspaper of general circulation within the City. The notice must generally describe the preapproved design, include a photograph or photo simulation, specify whether the preapproved design would be limited or restricted in any districts and contain a reference to the

appeal procedure. Unless appealed pursuant to the Solana Beach Municipal Code, the preapproved design shall become effective 15 days from the notice required in this subsection. A decision by the City Engineer not to adopt a proposed preapproved design or the City Engineer's failure to act on a request for a proposed preapproved design is not appealable.

- 3) **Repeal.** The City Engineer may repeal any preapproved design by written notice posted at Solana Beach City Hall. The repeal shall be immediately effective. The City Engineer's repeal, refusal to repeal or failure to act on a request to repeal a preapproved design is not appealable.
- 4) **Modified Review Process.** In nonresidential districts, applications for a preapproved design shall not be subject to the notice requirements in Section D(1) or any potential appeals under Section E(4). In residential districts, applications for a preapproved design shall remain subject to the notice requirements in Section D and any potential appeals under Section E(4).
- 5) **Modified Findings.** When an applicant submits a complete application for a preapproved design, the Director shall presume that the findings for approval in Sections E(2)(a) and E(2)(e) are satisfied and shall evaluate the application for compliance with the findings for approval in Sections E(2)(b), E(2)(c), E(2)(d), and E(2)(f).
- 6) **Nondiscrimination.** Any applicant may propose to use any preapproved design whether the applicant initially requested that the City Engineer adopt such preapproved design or not. The City Engineer's decision to adopt a preapproved design expresses no preference or requirement that applicants use the specific vendor or manufacturer that fabricated the design depicted in the preapproved plans. Any other vendor or manufacturer that fabricates a facility to the standards and specifications in the preapproved design with like materials, finishes and overall quality shall be acceptable as a preapproved design.

City of Solana Beach
PROFESSIONAL SERVICES AGREEMENT
FOR WIRELESS COMMUNICATIONS FACILITIES PLAN REVIEW
AND INSPECTION SERVICES

This Professional Services Agreement ("AGREEMENT") is made and entered into this _____ day of _____, 2021 by and between the CITY OF SOLANA BEACH, a municipal corporation ("CITY"), and, [INSERT CONSULTANT LEGAL NAME (e.g., URBAN FUTURES, INC.)] a INSERT CONSULTANT ENTITY TYPE (e.g., California corporation)], ("CONSULTANT") (collectively "PARTIES").

WHEREAS, the CITY desires to employ a CONSULTANT to furnish [WIRELESS COMMUNICATIONS FACILITIES PLAN REVIEW AND INSPECTION SERVICES ("PROFESSIONAL SERVICES")] for [INSERT DESCRIPTION OF PROJECT] ("PROJECT"); and

WHEREAS, the CITY has determined that CONSULTANT is qualified by experience and ability to perform the services desired by CITY, and CONSULTANT is willing to perform such services; and

WHEREAS, CONSULTANT will conduct all the work as described and detailed in this AGREEMENT to be provided to the CITY.

NOW, THEREFORE, the PARTIES hereto mutually covenant and agree with each other as follows:

1. PROFESSIONAL SERVICES.

- 1.1. Scope of Services.** The CONSULTANT shall perform the PROFESSIONAL SERVICES as set forth in the written Scope of Services, attached as Exhibit "A" Scope of Services and Fee, at the direction of the CITY. CITY shall provide CONSULTANT access to appropriate staff and resources for the coordination and completion of the projects under this AGREEMENT. For all work to be performed on site in the City, the CITY and CONSULTANT agree that the CONSULTANT's work on the Scope of Services begins when the CONSULTANT arrives on site and terminates when the CONSULTANT leaves the site. Travel time to and from project site shall not be considered time on the job or compensated by the CITY.
- 1.2. Project Coordinator.** The Insert Title is hereby designated as the Project Coordinator for CITY and will monitor the progress and execution of this AGREEMENT. CONSULTANT shall assign a single Project Director to provide supervision and have overall responsibility for the progress and execution of this AGREEMENT for CONSULTANT. Insert Title is hereby designated as the Project Director for CONSULTANT.
- 1.3. City Modification of Scope of Services.** CITY may order changes to the Scope of Services within the general scope of this AGREEMENT consisting of additions, deletions, or other revisions. If such changes cause a change in the CONSULTANT's cost of, or time required for, completion of the Scope of Services, an equitable adjustment to CONSULTANT's compensation and/or contract time shall be made, subject to the CITY's approval. All such changes shall be authorized in writing, executed by the PARTIES.

2. DURATION OF AGREEMENT.

- 2.1. Term.** The term of this AGREEMENT shall be for a period of Three (3) years beginning from the date of execution of the AGREEMENT. Time is of the essence in the performance of work under this AGREEMENT, unless otherwise specified.

- 2.2. Extensions.** ☒ If marked, the CITY shall have the option to extend the AGREEMENT for Two (2) additional One (1) year periods or parts thereof for an amount not to exceed open-ended amount, funded by pass-through fees collected from property owners at the time of project application submittal per AGREEMENT year. Extensions shall be in the sole discretion of the City Manager and shall be based upon CONSULTANT's satisfactory past performance, CITY needs, and appropriation of funds by the City Council. The CITY shall give written notice to CONSULTANT prior to exercising the option.
- 2.3. Delay.** Any delay occasioned by causes beyond the CONSULTANT's control may merit an extension of time for the completion of the Scope of Services. When such delay occurs, CONSULTANT shall immediately notify the Project Coordinator in writing of the cause and the extent of the delay, whereupon the Project Coordinator shall ascertain the facts and the extent of the delay and grant an extension of time for the completion of the PROFESSIONAL SERVICES when justified by the circumstances.
- 2.4. City's Right to Terminate for Default.** Should CONSULTANT be in default of any covenant or condition hereof, CITY may immediately terminate this AGREEMENT for cause if CONSULTANT fails to cure the default within ten (10) calendar days of receiving written notice of the default.
- 2.5. City's Right to Terminate without Cause.** Without limiting its rights in the event of CONSULTANT's default, CITY may terminate this AGREEMENT, without cause, by giving written notice to CONSULTANT. Such termination is effective upon receipt of the written notice. CONSULTANT shall be compensated for all effort and material expended on behalf of CITY under the terms of this AGREEMENT, up to the effective date of termination. All personal property remaining in CITY facilities or on CITY property thirty (30) days after the expiration or termination of this AGREEMENT shall be, at CITY's election, considered the property of CITY.

3. COMPENSATION.

- 3.1. Total Amount.** The total cost for all work described in the Scope of Services and Fee (Exhibit "A") shall not exceed [ENTER AMOUNT IN WORDS AND DOLLAR FIGURES (e.g., twenty-four thousand nine hundred ninety-nine dollars (\$24,999))] without prior written authorization from CITY. CONSULTANT shall bill the CITY for work provided and shall present a written request for such payment monthly.
- 3.2. Additional Services.** CITY may, as the need arises or in the event of an emergency, request additional services of CONSULTANT. Should such additional services be required, CITY and CONSULTANT shall agree to the cost prior to commencement of these services.
- 3.3. Not a pledge of general funds.** The CITY does not pledge any general funds for the payment of the services rendered. The CITY shall establish a separate fund to pay the fees and costs incurred that are reflected in the monthly general account invoice. The separate fund shall be funded by monies collected from the CITY's permit applicants or other persons requiring the CITY's services pursuant to the adopted USER FEE schedule which CONSULTANT will provide according to the terms of this AGREEMENT.
- 3.4. Costs.** Any costs billed to the CITY shall be approved in writing in advance and in accordance with any terms negotiated and incorporated herein as part of Exhibit "A" Scope of Services and Fee.

4. INDEPENDENT CONTRACTOR.

- 4.1.** CONSULTANT is, for all purposes arising out of this AGREEMENT, an independent contractor. The CONSULTANT has and shall retain the right to exercise full control and supervision of all persons assisting the CONSULTANT in the performance of said services hereunder, the CITY only being concerned with the finished results of the work being performed. Neither CONSULTANT nor CONSULTANT's employees shall in any event be entitled to any benefits to which CITY employees are entitled, including, but not limited to, overtime, retirement benefits, workers' compensation benefits, injury leave or other leave benefits. CONSULTANT is solely responsible for all such matters, as well as compliance with social security and income tax withholding and all other regulations and laws governing such matters.
- 4.2 PERS Eligibility Indemnification.** In the event that CONSULTANT's employee providing services under this AGREEMENT claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS of the CITY, CONSULTANT shall indemnify, defend, and hold harmless CITY from such claims and for the payment of any employer and employee contributions for PERS benefits on behalf of the employee as well as for payment of any costs (including attorney fees and costs), and penalties and interest on such contributions which would otherwise be the responsibility of the CITY. Notwithstanding any other agency, state, or federal policy, rule, regulation, law, or ordinance to the contrary, CONSULTANT's employees providing service under this AGREEMENT shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation and benefit including but not limited to eligibility to enroll in PERS as an employee of CITY and entitlement to any contributions to be paid by CITY for employer contributions and/or employee contributions for PERS benefits.
- 4.3 Limitation of CITY Liability.** The payment made to CONSULTANT pursuant to this AGREEMENT shall be the full and complete compensation to which CONSULTANT and CONSULTANT's officers, employees, agents and subcontractors are entitled for performance of any work under this AGREEMENT. Neither CONSULTANT nor CONSULTANT's officers or employees are entitled to any salary or wages, or retirement, health, leave, or other fringe benefits applicable to employees of the CITY. The CITY will not make any federal or state tax withholdings on behalf of CONSULTANT. The CITY shall not be required to pay any workers' compensation insurance on behalf of CONSULTANT.
- 4.4 Indemnification for Employee Payments.** CONSULTANT agrees to defend and indemnify the CITY for any obligation, claim, costs (including attorney fees and expert costs), suit, or demand for tax, retirement contribution including any contribution to the PERS, social security, salary or wages, overtime payment, or workers' compensation payment which the CITY may be required to make for work done under this AGREEMENT.
- 4.5** The provisions of this section 4 are continuing obligations that shall survive expiration or termination of this AGREEMENT.

5. STANDARD OF PERFORMANCE.

While performing the PROFESSIONAL SERVICES, CONSULTANT shall exercise the reasonable professional care and skill customarily exercised by reputable members of CONSULTANT's profession practicing in the metropolitan Southern California Area, and will use reasonable diligence and best judgment while exercising its professional skill and expertise.

6. WARRANTY OF CONSULTANT'S LICENSE.

CONSULTANT warrants that CONSULTANT is properly licensed with the applicable government agency(ies) for any PROFESSIONAL SERVICES that require a license. If the CONSULTANT lacks such license, this AGREEMENT is void and of no effect.

7. AUDIT OF RECORDS.

- 7.1. At any time during normal business hours and as often as may be deemed necessary the CONSULTANT shall make available to a representative of CITY for examination all of its records with respect to all matters covered by this AGREEMENT and shall permit CITY to audit, examine, and/or reproduce such records. CONSULTANT shall retain such financial and program service records for at least four (4) years after termination or final payment under this AGREEMENT.
- 7.2. The CONSULTANT shall include the CITY's right under this section in any and all of their subcontracts, and shall ensure that these sections are binding upon all subcontractors.

8. CONFIDENTIALITY.

- 8.1. **Confidential Work Product.** All professional services performed by CONSULTANT, including but not limited to all drafts, data, correspondence, proposals, reports, research, and estimates compiled or composed by CONSULTANT, pursuant to this AGREEMENT, are for the sole use of the CITY, its agents, and employees. Neither the documents nor their contents shall be released to any third party without the prior written consent of the CITY. This provision does not apply to information that (a) was publicly known, or otherwise known to CONSULTANT, at the time that it was disclosed to CONSULTANT by the CITY, (b) subsequently becomes publicly known through no act or omission of CONSULTANT or (c) otherwise becomes known to CONSULTANT other than through disclosure by the CITY. Except for any CITY-approved subcontractors, neither the documents nor their contents shall be released to any third party without the prior written consent of the CITY. The sole purpose of this section is to prevent disclosure of CITY's confidential and proprietary information by CONSULTANT or subcontractors.
- 8.2. **Confidentiality.** Both PARTIES recognize that their respective employees and agents, in the course of performance of this AGREEMENT, may be exposed to confidential information and that disclosure of such information could violate the rights of private individuals and entities, including the PARTIES and third parties. Confidential information is nonpublic information that a reasonable person would believe to be confidential and includes, without limitation, personal identifying information (e.g., social security numbers) and trade secrets, each as defined by applicable state law, and all other information protected by applicable law ("Confidential Information"). The party receiving Confidential Information ("Receiving Party") of the other ("Disclosing Party") shall not, and shall cause its employees and agents who are authorized to receive Confidential Information, not to, use Confidential Information for any purpose except as necessary to implement, perform or enforce this AGREEMENT or comply with its legal obligations. Receiving Party will use the same reasonable efforts to protect the Confidential Information of Disclosing Party as it uses to protect its own proprietary information and data. The Receiving Party will not disclose or release Confidential Information to any third person without the prior written consent of the Disclosing Party, except for where required by law or for authorized employees or agents of the Receiving Party. Prior to disclosing the Confidential Information to its authorized employees or agents, Receiving Party shall inform them of the confidential nature of the Confidential Information and require them to abide by the terms of this AGREEMENT. Receiving Party will promptly notify Disclosing Party if Receiving Party discovers any improper use or disclosure of Confidential Information and will promptly commence all reasonable efforts to investigate and correct the causes of such improper use or disclosure. If Receiving Party believes the Confidential Information must be disclosed under applicable law, Receiving Party may do so provided that, to the extent permitted by law, the other party is given a reasonable notice and opportunity to contest such disclosure or obtain a protective order. Confidential Information does not include information that: (i) is or becomes known to the public without fault or breach of the Receiving Party; (ii) the Disclosing Party regularly discloses to third parties without restriction on disclosure; or (iii) the Receiving Party obtains from a third party without restriction on disclosure and without breach of a non-disclosure obligation. Notwithstanding any provision to the contrary in this AGREEMENT, Confidential Information

does not include any information that the CITY determines, in its sole discretion is required to be disclosed to the public pursuant to the laws of the United States and/or California such as the California Public Records Act. The non-disclosure and non-use obligations of this AGREEMENT will remain in full force with respect to each item of Confidential Information for a period of ten (10) years after the Receiving Party's receipt of that item.

- 8.3. Enforcement.** Each party acknowledges that any breach of any of the provisions of Section 8 of this AGREEMENT may result in irreparable injury to the other for which money damages would not adequately compensate. If there is a breach, then the injured party shall be entitled, in addition to all other rights and remedies which it may have, to have a decree of specific performance or an injunction issued by any competent court, requiring the breach to be cured or enjoining all persons involved from continuing the breach.

9. CONFLICTS OF INTEREST.

- 9.1.** CONSULTANT shall at all times comply with all federal, state, and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices, including but not limited to California Government Code Section 81000 *et seq.* (Political Reform Act) and Section 1090 *et seq.* CONSULTANT shall immediately disqualify itself and shall not use its official position to influence in any way any matter coming before the CITY in which the CONSULTANT has a financial interest as defined in Government Code Section 87103. CONSULTANT represents that it has no knowledge of any financial interests which would require it to disqualify itself from any matter on which it might perform services for the CITY.
- 9.2.** If, in performing the PROFESSIONAL SERVICES set forth in this AGREEMENT, the CONSULTANT makes, or participates in, a "governmental decision" as described in Title 2, Section 18700.3(a) of the California Code of Regulations, or performs the same or substantially all the same duties for the CITY that would otherwise be performed by a CITY employee holding a position specified in the department's conflict of interest code, the CONSULTANT shall be subject to a conflict of interest code requiring the completion of one or more statements of economic interests disclosing the CONSULTANT's relevant financial interests.
- 9.3.** ☐ If checked, the CONSULTANT shall comply with all of the reporting requirements of the Political Reform Act. Specifically, the CONSULTANT shall file a Fair Political Practices Commission Form 700 (Assuming Office Statement) within thirty (30) calendar days of the CITY's determination that the CONSULTANT is subject to a conflict of interest code. The CONSULTANT shall also file a Form 700 (Annual Statement) on or before April 1 of each year of the AGREEMENT, disclosing any financial interests held during the previous calendar year for which the CONSULTANT was subject to a conflict of interest code.
- 9.4.** CITY represents that pursuant to California Government Code Section 1090 *et seq.*, none of its elected officials, officers, or employees has an interest in this AGREEMENT.

10. DISPOSITION AND OWNERSHIP OF DOCUMENTS.

- 10.1.** All documents, data, studies, drawings, maps, models, photographs, and reports prepared by CONSULTANT under this AGREEMENT, whether paper or electronic, shall become the property of CITY, and shall be turned over to the CITY upon completion of the PROJECT or any phase thereof, as contemplated by this AGREEMENT.
- 10.2.** Contemporaneously with the transfer of documents, the CONSULTANT hereby assigns to the CITY and CONSULTANT thereby expressly waives and disclaims, any copyright in, and the right to reproduce, all written material, drawings, plans, specifications, or other work prepared under this AGREEMENT, except upon the CITY's prior authorization regarding reproduction, which authorization shall not be unreasonably withheld. The CONSULTANT shall, upon request of the CITY, execute any further document(s) necessary to further effectuate this waiver and disclaimer.

- 10.3.** CONSULTANT warrants that all documents it drafts and completes pursuant to this AGREEMENT constitute original work. Specifically, CONSULTANT understands and agrees that use of artificial intelligence (AI) tools including, without limitation, ChatGPT, Microsoft's Bing Chat, Google's Bard, and Meta's LLaMA (Large Language Model Meta AI), in the performance of this AGREEMENT does not constitute an original work, i.e., submitting documents generated by such AI tools to CITY and representing it as CONSULTANT's original work constitutes a material breach of this AGREEMENT, constitutes a false claim, and may also violate applicable intellectual property right laws including, without limitation, United States Copyright Law. Accordingly, and notwithstanding any other provision of this AGREEMENT as to ownership, CITY specifically rejects ownership of such documents. CONSULTANT is required to indemnify and defend CITY to the fullest extent allowed by applicable law should it violate this Section.

11. INSURANCE

- 11.1.** CONSULTANT shall procure and maintain for the duration of the AGREEMENT insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the CONSULTANT, their agents, representatives, employees, or subcontractors. Insurance shall be placed with insurers with a current A.M. Best's rating of no less than "A" and "VII" unless otherwise approved in writing by the CITY's Risk Manager.
- 11.2.** CONSULTANT's liabilities, including but not limited to CONSULTANT's indemnity obligations, under this AGREEMENT, shall not be deemed limited in any way to the insurance coverage required herein. All policies of insurance required hereunder must provide that the CITY is entitled to thirty (30) days prior written notice of cancellation or non-renewal of the policy or policies, or ten (10) days prior written notice for cancellation due to non-payment of premium. Maintenance of specified insurance coverage is a material element of this AGREEMENT.
- 11.3. Types and Amounts Required.** CONSULTANT shall maintain, at minimum, the following insurance coverage for the duration of this AGREEMENT. If CONSULTANT maintains broader coverage and/or higher limits than the minimums shown below, the CITY shall be entitled to the broader coverage and/or the higher limits maintained by the CONSULTANT. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the CITY.
- 11.3.1.** ☒ **Commercial General Liability (CGL).** If checked the CONSULTANT shall maintain CGL Insurance written on an ISO Occurrence form or equivalent providing coverage at least as broad as CG 00 01 which shall cover liability arising from any and all personal injury or property damage, including ongoing and completed operations, in the amount no less than \$2,000,000.00 per occurrence and subject to an annual aggregate of \$4,000,000.00. If limits apply separately to this project (CG 25 03 or 25 04) the general aggregate limit shall not apply. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy. Any excess or umbrella policies being used to meet the required limits of insurance will be evaluated separately and must meet the same qualifications as the CONSULTANT's primary policy.
- 11.3.2.** ☒ **Commercial Automobile Liability.** If checked the CONSULTANT shall maintain Commercial Automobile Liability Insurance for all of the CONSULTANT's automobiles including owned, hired and non-owned automobiles, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit no less than \$1,000,000.00 per occurrence. Insurance certificate shall reflect coverage for any automobile (any auto).

- 11.3.3.** ☐ **Workers' Compensation.** If checked the CONSULTANT shall maintain Worker's Compensation insurance for all of the CONSULTANT's employees who are subject to this AGREEMENT and to the extent required by applicable state or federal law, a Workers' Compensation policy providing at minimum \$1,000,000.00 employers' liability coverage. The CONSULTANT shall provide an endorsement that the insurer waives the right of subrogation against the CITY and its respective elected officials, officers, employees, agents and representatives.
- 11.3.4.** ☒ **Professional Liability.** If checked the CONSULTANT shall also maintain Professional Liability (errors and omissions) coverage with a limit no less than \$1,000,000 per claim and \$2,000,000 annual aggregate. The CONSULTANT shall ensure both that (1) the policy retroactive date is on or before the date of commencement of the Scope of Services; and (2) the policy will be maintained in force for a period of three years after substantial completion of the Scope of Services or termination of this AGREEMENT whichever occurs last. The CONSULTANT agrees that for the time period defined above, there will be no changes or endorsements to the policy that increase the CITY's exposure to loss. All defense costs shall be outside the limits of the policy.
- 11.4. Self-Insured Retentions.** Any self-insured retentions are the responsibility of the CONSULTANT and must be declared to and approved by the CITY. At the option of the CITY, either (1) the insurer shall reduce or eliminate such self-insured retentions as respects the CITY, its officers, officials, employees, and volunteers, or (2) the CONSULTANT shall provide a financial guarantee satisfactory to the CITY guaranteeing payment of losses and related investigations, claim administration, and defense expenses.
- 11.5. Waiver of Subrogation.** CONSULTANT hereby grants to CITY and its respective elected officials, officers, employees, agents and representatives a waiver of any right to subrogation which any insurer of said CONSULTANT may acquire against the CITY by virtue of the payment of any loss under such insurance. CONSULTANT agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the CITY has received a waiver of subrogation endorsement from the insurer.
- 11.6. Additional Required Provisions.** The commercial general liability, including any excess or umbrella policies being used to meet the required limits of insurance, and automobile liability policies shall contain, or be endorsed to contain, the following provisions:
- 11.6.1.** The CITY, its officers, officials, employees, and representatives shall be named as additional insureds with respect to liability arising out of work or operations performed by or on behalf of the CONSULTANT including materials, parts, or equipment furnished in connection with such work or operations. The CITY's additional insured status must be reflected on additional insured endorsement form (20 10 1185 or 20 10 1001 and 20 37 1001) which shall be submitted to the CITY.
- 11.6.2.** The policies are primary and non-contributory to any insurance that may be carried by the CITY, as reflected in an endorsement at least as broad as CG 20 01 04 13 which shall be submitted to the CITY. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, or representatives shall be excess of the CONSULTANT's insurance and shall not contribute with it.

- 11.7. Verification of Coverage.** CONSULTANT shall furnish the CITY with original certificates and amendatory endorsements effecting coverage required by this Section 11, as well as a complete, certified copy of any general liability policy being used to meet the required limits of insurance, which shall include the declaration pages, a schedule of forms listing all policy endorsements, and all policy forms. The endorsements should be on forms approved by the CITY or on other than the CITY's forms provided those endorsements conform to CITY requirements. All certificates and endorsements are to be received and approved by the CITY before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The CITY reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.
- 11.8. Excess or Umbrella Policies.** If any Excess or Umbrella Liability policies are used to meet the limits of liability required by this agreement, said policies shall meet all of the insurance requirements stated in this document, including, but not limited to, the additional insured, contractual liability, "insured contract" definition, occurrence definition, primary and non-contributory, indemnity, and defense requirements. No insurance policies maintained by the Additional Insureds, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until the CONSULTANT's primary and excess liability policies are exhausted.
- 11.9. Special Risks or Circumstances.** CITY reserves the right to modify these requirements, including limits, based on the nature of risk, prior experience, insurer, coverage, or other special circumstances.

12. INDEMNIFICATION.

CONSULTANT agrees to indemnify, defend (with counsel acceptable to CITY), and hold harmless the CITY, and its officers, officials, agents, representatives, and employees from any and all claims, demands, costs or liabilities that arise out of, or pertain to, or relate to, directly or indirectly, the negligence, recklessness, or willful misconduct of CONSULTANT, its employees, agents, and subcontractors in the performance of or failure to perform services or obligations under this AGREEMENT. CONSULTANT's duty to indemnify under this section shall not include liability for damages for death or bodily injury to persons, injury to property, or other loss, damage or expense arising from the sole negligence or willful misconduct by the CITY or its elected officials, officers, agents, and employees. CITY may, at its own discretion, conduct the defense, or participate in the defense, of any claim related in any way to this indemnification. If the CITY elects to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, CONSULTANT shall pay the CITY for all costs related thereto, including without limitation, reasonable attorney's fees and costs. CONSULTANT's indemnification obligations shall not be limited by the insurance provisions of this AGREEMENT. The PARTIES expressly agree that any payment, attorney's fees, costs, or expense CITY incurs or makes to or on behalf of an injured employee under the CITY's self-administered workers' compensation is included as a loss, expense, or cost for the purposes of this section, and that this section will survive the expiration or early termination of this AGREEMENT.

13. SUBCONTRACTORS.

- 13.1.** The CONSULTANT's hiring or retaining of third parties (i.e. subcontractors) to perform services related to the PROJECT is subject to prior written approval by the CITY in each instance.

- 13.2.** All contracts entered into between the CONSULTANT and its subcontractor shall also provide that each subcontractor shall obtain insurance policies which shall be kept in full force and effect during any and all work on this PROJECT and for the duration of this AGREEMENT. The CONSULTANT shall require the subcontractor to obtain, all policies described in Section 11 in the amounts required by the CITY, which shall not be greater than the amounts required of the CONSULTANT.
- 13.3.** In any dispute between the CONSULTANT and its subcontractor, the CITY shall not be made a party to any judicial or administrative proceeding to resolve the dispute. The CONSULTANT agrees to defend and indemnify the CITY as described in Section 12 of this AGREEMENT should the CITY be made a party to any judicial or administrative proceeding to resolve any such dispute.

14. NON-DISCRIMINATION.

CONSULTANT shall not discriminate against any employee or applicant for employment because of sex, race, color, age, religion, ancestry, national origin, military or veteran status, disability, medical condition, genetic information, gender expression, marital status, or sexual orientation. CONSULTANT shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their sex, race, color, age, religion, ancestry, national origin, military or veteran status, disability, medical condition, genetic information, gender expression, marital status, or sexual orientation and shall make reasonable accommodation to qualified individuals with disabilities or medical conditions. Such action shall include, but not be limited to the following: employment, upgrading, demotion, transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. CONSULTANT agrees to post in conspicuous places available to employees and applicants for employment any notices provided by CITY setting forth the provisions of this non-discrimination clause.

15. NOTICES.

All communications to either party by the other party shall be delivered to the persons listed below. Any such written communications by mail shall be conclusively deemed to have been received by the addressee five (5) calendar days after the deposit thereof in the United States mail, postage prepaid and properly addressed as noted below.

NAME, TITLE, DEPARTMENT

City of Solana Beach
635 S. Highway 101
Solana Beach, CA 92075

Name

Address

Address

Address

16. ASSIGNABILITY.

This AGREEMENT and any portion thereof shall not be assigned or transferred, nor shall any of the CONSULTANT's duties be delegated or sub-contracted, without the express written consent of the CITY in each instance.

17. RESPONSIBILITY FOR EQUIPMENT.

CITY shall not be responsible nor held liable for any damage to persons or property consequent upon the use, misuse, or failure of any equipment used by CONSULTANT or any of CONSULTANT's employees or subcontractors, even if such equipment has been furnished, rented, or loaned to CONSULTANT by CITY. The acceptance or use of any such equipment by CONSULTANT, CONSULTANT's employees, or subcontractors shall be construed to mean that CONSULTANT accepts full responsibility for and agrees to exonerate, defend, indemnify, and hold harmless CITY from and against any and all claims for any damage whatsoever resulting from the use, misuse, or failure of such equipment.

18. CALIFORNIA LAW; VENUE.

This AGREEMENT shall be construed and interpreted according to the laws of the State of California. Any action brought to enforce or interpret any portion of this AGREEMENT shall be brought in the county of San Diego, California. CONSULTANT hereby waives any and all rights it might have pursuant to California Code of Civil Procedure Section 394.

19. COMPLIANCE WITH LAWS.

The Consultant shall comply with all laws, ordinances, regulations, and policies of the federal, state, and local governments applicable to this AGREEMENT whether now in force or subsequently enacted. This includes maintaining a City of Solana Beach Business Certificate.

20. ENTIRE AGREEMENT.

This AGREEMENT sets forth the entire understanding of the PARTIES with respect to the subject matters herein. There are no other understandings, terms or other agreements expressed or implied, oral or written, except as set forth herein. No change, alteration, or modification of the terms or conditions of this AGREEMENT, and no verbal understanding of the PARTIES, their officers, agents, or employees shall be valid unless agreed to in writing by both PARTIES.

21. NO WAIVER.

No failure of either the City or the Consultant to insist upon the strict performance by the other of any covenant, term or condition of this AGREEMENT, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this AGREEMENT shall constitute a waiver of any such breach of such covenant, term or condition.

22. SEVERABILITY.

The unenforceability, invalidity, or illegality of any provision of this AGREEMENT shall not render any other provision unenforceable, invalid, or illegal.

23. DRAFTING AMBIGUITIES.

The PARTIES agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms, and conditions of this AGREEMENT, and the decision of whether or not to seek advice of counsel with respect to this AGREEMENT is a decision which is the sole responsibility of each Party. This AGREEMENT shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the AGREEMENT.

24. CONFLICTS BETWEEN TERMS.

If an apparent conflict or inconsistency exists between the main body of this AGREEMENT and the Exhibits, the main body of this AGREEMENT shall control. If a conflict exists between an applicable federal, state, or local law, rule, regulation, order, or code and this AGREEMENT, the law, rule, regulation, order, or code shall control. Varying degrees of stringency among the main body of this AGREEMENT, the Exhibits, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement shall control. Each Party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this AGREEMENT.

25. EXHIBITS INCORPORATED.

All Exhibits referenced in this AGREEMENT are incorporated into the AGREEMENT by this reference.

26. SIGNING AUTHORITY.

- 26.1.** The representative for each Party signing on behalf of a corporation, partnership, joint venture, association, or governmental entity hereby declares that authority has been obtained to sign on behalf of the corporation, partnership, joint venture, association, or entity and agrees to hold the other Party or PARTIES hereto harmless if it is later determined that such authority does not exist.
- 26.2.** ☐ If checked, a proper notary acknowledgement of execution by CONSULTANT must be attached.

IN WITNESS WHEREOF, the PARTIES hereto have executed this AGREEMENT the day and year first hereinabove written.

CITY OF SOLANA BEACH, a municipal corporation

CONSULTANT'S NAME, a entity type

By:

By:

City Manager, Alyssa Muto

Signature

Print Name and Title

ATTEST:

City Clerk. Angela Ivey

APPROVED AS TO CONTENT:

Name, Title

APPROVED AS TO FORM:

City Attorney, Johanna N. Canlas

EXHIBIT "A"
SCOPE OF SERVICES AND FEE

Scope of Services and Fees Defined