

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (this “**MOU**”) is made and entered into as of the ____ day of _____, 2018 (the “**MOU Date**”) by and between RTI Infrastructure, Inc., a California corporation (“**RTI-I**”), and the City of Hermosa Beach (the “**City**”). For purposes hereof, RTI-I and the City may be individually referred to as a “**Party**” and together as the “**Parties**”.

RECITALS

WHEREAS, the City has granted RTI-I a Fiber Optic Cable Easement and Associated Construction Easement recorded as document number 20160974447 with the Office of the Recorder, Los Angeles County, California on August 17, 2016 (the “**Easement**”);

WHEREAS, the Easement provides for the installation of up to four (4) subsea fiber optic cable systems and associated facilities;

WHEREAS, RTI-I desires to amend the Easement to allow for the installation of up to two (2) additional subsea fiber optic cable systems and associated facilities, bringing the total allowed under the easement to six (6) (the “**Easement Amendment**”);

WHEREAS, Section 2.10 of the Easement requires RTI-I to enter into good faith negotiations with the City to attempt to negotiate an agreement with the City which would allow for the landing of additional cable(s) within the City prior to negotiating with other entities within the Santa Monica Bay;

WHEREAS, RTI-I has presented a formal offer to the City concerning the financial consideration and other elements of the amendment being sought (the “**Offer**”), which financial consideration elements of said Offer are set forth in Sections 4 and 5 below;

WHEREAS, the Parties desire to enter into this MOU to set forth the general framework for good faith negotiations of potential definitive binding agreements concerning this requested Easement Amendment, including the Offer made by RTI-I to the City;

WHEREAS, the Parties acknowledge and agree that a transaction of this type involves essential terms and conditions that may have not yet been agreed upon, and it is expressly contemplated by the Parties that, in order to effectuate the proposed Easement Amendment, binding agreements will have to be negotiated, agreed to by the Parties and ultimately submitted to the City Council for approval; and

WHEREAS, the Parties desire to enter into this MOU in order to establish the principal terms and conditions, including commercial elements, of the Offer made by RTI-I regarding the proposed Easement Amendment, should the Offer subsequently be accepted and the Easement Amendment be granted by the City;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. To Negotiate in Good Faith. The Parties agree to negotiate in good faith regarding RTI-I’s Offer to the City. The Parties agree that this MOU is not intended to create any binding contractual obligations on any Party or to commit any Party to a particular course of action regarding the proposed Easement Amendment, other than to: (a) negotiate in good faith regarding the Offer and type of the proposed Easement Amendment sought; (b) set forth the conditions of the Offer to the City; (c) set forth the understanding of the Parties that the City will not seek any additional monetary compensation for the

proposed Easement Amendment beyond that which is set forth in the Offer; (d) set forth the understanding of the Parties as to the terms and conditions of the proposed Easement Amendment as set forth in Exhibit A and that neither Party will seek substantive modifications to the Easement Amendment without the consent of the other party until after the environmental review processes mandated by the California Environmental Quality Act (“CEQA”) has been considered and evaluated by the City; and (e) to keep RTI-I’s Offer open until it is considered by the City following completion of the aforementioned associated environmental review process. No further legal obligations will exist unless and until the Parties have negotiated, executed and delivered mutually acceptable agreements based upon and subsequent to information produced from the environmental review process and on such other public review and hearing processes as may be applicable.

2. **On the Type of Easement Amendment Sought.** RTI-I seeks an amendment to the Easement that is substantially the same as the Easement Amendment attached hereto as Exhibit A.

3. **On the Cable System Elements to be installed.** As reflected in the form of the Easement Amendment attached hereto as Exhibit A, the proposed Easement Amendment, if granted, shall allow for the installation in the City of up to two (2) additional subsea cable system and associated facilities, bringing the total to six (6) authorized independent subsea cable systems and associated facilities. Each such subsea cable system would include marine fiber optic system cables, terrestrial fiber optic system cables, horizontal directional bore pipe, a buried terrestrial conduit system, an ocean ground bed system, a power feed equipment facility and other ancillary facilities.

4. **On the Offer of Beach and Public Rights of Way Easement Consideration.** As reflected in the form of the proposed Easement Amendment attached hereto as Exhibit A.

5. **On the Tide Lands and Submerged Lands Easement Consideration.** As reflected in the form of the proposed Easement Amendment attached hereto as Exhibit A.

6. **To Complete All Necessary Environmental Reviews Prior to Acceptance of Offer.** At RTI-I’s sole expense, all necessary environmental review will be conducted and completed, and considered prior the Offer being accepted or rejected by the City. The Parties agree that the City retains the absolute sole discretion to: (i) create and enter into transactional documents and/or modify the proposed Easement Amendment as may, in the City’s sole discretion, be necessary to comply with CEQA and any other law, rule, regulation, and/or ordinance; (ii) select other feasible alternatives to avoid significant environmental impacts; (iii) balance the benefits of the Easement Amendment against any significant environmental impacts prior to taking final action if such significant impacts cannot otherwise be avoided; and/or (iv) ultimately decide not to grant the proposed Easement Amendment at all. The Parties agree that no legal obligations will exist, and the Offer cannot be accepted, nor the proposed Easement Amendment be granted, unless and until the Parties have negotiated, executed and delivered mutually acceptable agreements based upon information produced from the CEQA environmental review process and on any and all other public review and hearing processes required by federal, state and local law, rule, regulation, and/or ordinance related to the Easement Amendment. The Parties agree that nothing contained in this MOU shall in any way be construed as a commitment by the City to enter into a further agreement, contract, lease, permit, license, certificate, or other entitlement regarding RTI-I’s proposed Easement Amendment. Further, the Parties agree that agreements, if any, resulting from these good faith negotiations will only become binding if approved by the City Council at a duly noticed meeting in accordance with the Ralph M. Brown Act.

7. **Offer Contingent on Grant of Easements.** The Parties agree that should the City, following the environmental review process, elect to alter the proposed Easement Amendment, RTI-I may withdraw or modify its Offer set forth in Sections 4 and 5, above.

8. **Expenses.** RTI-I shall pay for its own fees and expenses (including, without limitation, those of its legal advisors) related to the negotiation, preparation, execution and delivery of this MOU and the proposed Easement Amendment. Further, RTI-I shall pay any and all reasonable costs, expenses, and fees incurred by the City, including, without limitation, any and all reasonable legal fees incurred by the City, related to the negotiation, preparation, execution, and/or defense of this MOU and/or the proposed Easement Amendment and/or subsequently granted easement amendment and/or any related environmental studies, reports, and/or reviews that (in the City's sole discretion) are necessary to comply with CEQA or any other law, rule, regulation, or ordinance. The provisions of this section, including but not limited to the duty to pay the City's costs to defend any legal challenges as set forth herein, shall survive the termination of this MOU.

9. **Governing Law.** This MOU shall be subject to and construed under the laws of the State of California, without regard to any conflict of law provisions contained therein.

10. **MOU Termination.** This MOU shall terminate in its entirety upon the earliest to occur of the following: (i) the Parties mutually agree to terminate this MOU, (ii) RTI-I unilaterally terminates this MOU based on its election not to participate in a transpacific cable system or (iii) the Easement Amendment is granted.

11. **Systems Landings.** For clarity, neither RTI-I nor any other entity shall be required to land any cable system in the City, notwithstanding this MOU or the Easement Amendment grant, if any.

12. **Counterparts.** This MOU may be executed in one or more counterparts. Each such counterpart shall be deemed to be an original instrument, but all such counterparts shall constitute one original instrument.

[Signature Page Follows]

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

RTI Infrastructure, INC.

By: _____
Brian Mass, Chief Financial Officer

THE CITY OF HERMOSA BEACH

By: _____
Suja Lowenthal, City Manager

EXHIBIT A
FORM OF EASEMENT AMENDMENT

EXHIBIT A

RECORDED AT THE REQUEST OF
AND WHEN RECORDED MAIL TO:

CITY OF HERMOSA BEACH
City Clerk's Office
1315 Valley Drive
Hermosa Beach, California 90254

CITY OF HERMOSA BEACH

OFFICIAL BUSINESS
Document entitled free recordation
pursuant to Government Code Section
27383

COUNTY: Los Angeles

SPACE ABOVE THIS LINE FOR RECONDER'S USE

AMMENDMENT TO EASEMENT

THE CITY OF HERMOSA BEACH, hereinafter referred to as Grantor or City, for the consideration specified in this Amendment and RTI Infrastructure, Inc. do hereby agree to amend Fiber Optic Cable Easement and Associated Construction Easement recorded as document number 20160974447 with the Records Office, County of Los Angeles, California ("**Amendment**") as specified herein effective on the date last signed below.

WHEREAS, the City of Hermosa Beach ("**City**") granted to RTI Infrastructure, Inc. ("**RTI-I**"), formerly known as MC Global BP4, Inc., a Fiber Optic Cable Easement and Associated Construction Easement recorded as document number 20160974447 with the Records Office, County of Los Angeles, California ("**Easement**").

WHEREAS, MC Global BP4, Inc. has formally changed their name to RTI Infrastructure, Inc. with the California Secretary of State as of December 4, 2016

WHEREAS, the Easement provided for the installation of up to four (4) subsea fiber optic cable systems and associated infrastructure and appurtenances across City lands and within City rights of way.

WHEREAS, RTI-I and the City desire to increase the number of subsea fiber optic cable systems allowed under the Easement to a maximum of six (6).

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and RTI-I agree as follows:

1. Section 2.3 Term shall be replaced with the following:

1. Except as otherwise provided herein, the term of this Cable Easement for the First, Second, Third and Forth Cable systems is twenty-five (25) years (the “Term”), beginning January 5, 2018, the System Operational Date of the First Cable installed.
2. Except as otherwise provided herein, the term of this Cable Easement for the Fifth (5th) Cable system is twenty-five (25) years, beginning on the System Operational Date of the Fifth (5th) Cable or three (3) years after the date of this Amendment, whichever date comes first.
3. Except as otherwise provided herein, the term of this Cable Easement for the Sixth (6th) Cable system is twenty-five (25) years, beginning on the System Operational Date of the Sixth (6th) Cable or five (5) years after the date of this Amendment, whichever date comes first.

1. Section 2.4 Extension of Term shall be replaced with the following:

2.4 Extension of Term

1. For the First, Second, Third and Fourth Cable Systems installed: Grantee shall have the option to extend this Cable Easement for the first four Cable Systems installed for two (2) additional terms of five (5) years each. Grantee shall exercise this option by providing written notice of its election to extend the term at least six (6) months prior to the expiration of the Term (the “Notice of Extension”). Grantee shall not be entitled to extend the Term if it is in default under the terms of this Easement Agreement at the time the option to renew is exercised. The terms and conditions of any extension shall be the same as set forth in this Easement Agreement.
2. For the Fifth and Sixth Cable Systems installed: The Cable Easement may be extended for the Fifth and Sixth Cable Systems installed by two (2) additional terms of five (5) years each upon mutual consent between Grantee and Grantor. Grantee shall initiate this option by providing written notice of its desire to extend the term at least six (6) months prior to the expiration of the Term (the “Notice of Extension”). RTI-I and the City agree to negotiate in good faith to determine the fair market value of the extension. All other terms and conditions of any extension shall be the same as set forth in the Easement and this Amendment.

2. **Section 1 Summary of Basic Provisions** shall be amended as follows:

- a. **CONSIDERATION FOR EASEMENT TO USE BEACH AND WITHIN THE PUBLIC RIGHT OF WAY**, shall be replaced with the following:

Consideration paid for easement to use **the beach and public rights of way** by the six cable systems shall aggregate to a lump sum amount of \$1,650,000 plus annual payments for the six cable systems totaling \$450,000. The schedule of payments will be in accordance with Section 2.5.

- b. **CONSIDERATION FOR EASEMENT WITIN TIDELANDS AND SUBMERGED LANDS**, shall be replaced with the following:

Consideration for the easement to use **tide lands and submerged lands** by the six cable systems shall aggregate to a lump sum amount of \$1,200,000. The schedule of payments will be in accordance with Section 2.6.

2. **Section 2.1 Fiber Optic Cables Easement**, shall be replaced with the following:

Grantor for itself and for its successors and assigns, hereby grants, establishes and conveys to Grantee, its successors and assigns a nonexclusive easement (the "Cable Easement") along, over, under and across the property described in Section 3 (the "Cable Easement Area") for the purposes of installing, using, operating, maintaining, upgrading, repairing, modifying, relocating and removing no more than **six** fiber optic cable systems and any related appurtenances and equipment, which appurtenances and equipment include, without limitation, conduit and manholes, power cables (collectively, the "Cables"). The terrestrial, portion of the Cables shall be located underground and the marine portion of the Cables shall be buried as described in the certified environmental impact report prepared for each Cable project. Grantor also grants to Grantee access to, over and across the Cable Easement Area to the extent reasonably necessary to effectuate any of the purposes for which this Cable Easement is granted. Each Cable shall be laid (or relocated, if necessary) within reasonable proximity to the location described in Section 3. Additionally, the parties agree that the description of the Cable Easement Area will be conformed to match a centerline identified by the precise location of each Cable disclosed by its "as built" survey required under Section 4.1.

3. **Section 2.2 Construction Easement** shall be replaced with the following:

During periods of construction of each of the **six** cable systems, Grantor, for itself and for its successors and assigns, hereby grants, establishes and conveys to Grantee, its successors and assigns a temporary exclusive easement (the "Construction Easement") along, over, under and across the Property described as the Construction Easement Area in Section 3 and shown schematically in Section 3 (the "Construction Easement Area") for the purposes of installing, constructing and locating each Cable. Grantor also grants to Grantee access to, over and across the Construction Easement Area to the extent reasonably necessary to effectuate any of the purposes for which this Construction Easement is granted. The temporary Construction Easement for each Cable shall terminate 30 days after its "System Operational Date", as defined in Section 2.12.

4. **Section 2.5 Compensation for Cable Easement and Associated Construction Easement for the use of the Beach and Public Right of Way**, shall be amended as follows:

- a. **The introductory paragraph** for Section 2.5 shall be replaced with the following:

In exchange for those rights granted under this Easement Agreement in the beach and public right of way for the **six** Cables, Grantee shall pay to Grantor an aggregate sum of One Million Eight Hundred Thousand Dollars (\$1,800,000) plus annual payments totaling Four Hundred and Fifty Thousand Dollars (\$450,000). This consideration will be paid according to the following schedule:

- b. The following shall be added to Section 2.5 addressing the addition of the fifth and sixth cable systems:

5. For the **fifth** cable system:

- a. Lump sum consideration in the amount of \$275,000 will be paid within 30 days of the System Operational Date of the fifth cable system, including its segment landing in the City (the “**Fifth System Operational Date**”); and
- b. Annual consideration in the amount of \$75,000 will be paid in quarterly installments of \$18,750 each beginning on the first anniversary of the Fifth System Operational Date and continuing quarterly for the Term of the Easement; and
- c. Lump sum consideration in the amount of \$75,000 will be paid within 30 days of the System Operational Date of the fifth cable system, including its segment landing in the City (the “**Fifth System Operational Date**”) for the use by the City in support of a “Green Initiative” to be selected solely at the City’s discretion;

6. For the **sixth** cable system:

- a. Lump sum consideration in the amount of \$275,000 will be paid within 30 days of the System Operational Date of the sixth cable system, including its segment landing in the City (the “**Sixth System Operational Date**”); and
- b. Annual consideration in the amount of \$75,000 will be paid in quarterly installments of \$18,750 each beginning on the first anniversary of the Sixth System Operational Date and continuing quarterly for the Term of the Easement; and
- c. Lump sum consideration in the amount of \$75,000 will be paid within 30 days of the System Operational Date of the sixth cable system, including its segment landing in the City (the “**Sixth System Operational Date**”) for the use by the City in support of a “Green Initiative” to be selected solely at the City’s discretion;

5. Section 2.6 Compensation for Easement to Use Tidelands, and Submerged Lands and Associated Construction Easement shall be amended as follows:

- a. **The introductory paragraph** for Section 2.6 shall be replaced with the following:

In exchange for those rights granted Grantee under this Easement Agreement for use by the **six** Cables of the tidelands and submerged lands, Grantee shall pay to Grantor amounts aggregating to One Million Two Hundred Thousand Dollars (\$1,200,000). This consideration will be paid according to the followings schedule:

- b. The following shall be added to Section 2.6 addressing the addition of the fifth and sixth cable systems:

5. Within 30 days of the Fifth System Operational Date: a lump sum amount of \$200,000 will be paid.
6. Within 30 days of the Sixth System Operational Date: a lump sum amount of \$200,000 will be paid.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date hereafter affixed.

GRANTEE:
RTI Infrastructure, Inc.

GRANTOR
City of Hermosa Beach

By (signature)_____

By (signature)_____

Name (Print)_____

Name (Print)_____

Title: _____

Title: Mayor, City of Hermosa Beach

Date: _____

Date: _____

ATTEST

By (signature)_____

Name (Print)_____

Title: City Clerk, City of Hermosa Beach

Date: _____

ACKNOWLEDGEMENT