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CITY OF HERMOSA BEACH

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COUNTY: Los Angeles

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## FIBER OPTIC CABLE EASEMENT AND ASSOCIATED CONSTRUCTION EASEMENT

**THE CITY OF HERMOSA BEACH**, hereinafter referred to as Grantor, for the consideration specified in this Easement Agreement, does hereby grant to **MC Global BP4, INC.**, and its successors and assigns, hereinafter referred to as Grantee, a non-exclusive easement for fiber optic cables purposes and an exclusive easement for construction purposes as provided below. These easements consist of the following attached and incorporated parts:

Section 1	Summary of Basic Provisions
Section 2	Special Provisions
Section 3	Description of Easement Areas
Section 4	General Provisions

Tax declaration

Transfer tax due: \$

City representative declaring \$ transfer tax due:

Linda E. Abbott, DEPUTY CITY CLERK

*LEA* 7/20/2016

## Section 1

### SUMMARY OF BASIC PROVISIONS

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#### MAILING ADDRESSES:

MC Global BP4, Inc  
268 Bush Street, #77  
San Francisco, CA 94104  
Attn: Russell Matulich, Chief Executive Officer

City of Hermosa Beach  
1315 Valley Drive  
Hermosa Beach California 90254  
Attn: City Manager

#### LOCATION:

Through the public right of way in the locations described in Section 3 and across the beach, tidelands and submerged lands in the locations described in Section 3.

#### LAND USE OR PURPOSE:

The construction, installation, operation, maintenance, and use of no more than four fiber optic cable systems. Such improvements will provide additional capacity for global voice and data transmission and global access to planned and existing land-based communication networks in the project area.

#### TERM:

25 years with two five year options that may be exercised by Grantee.

#### CONSIDERATION FOR EASEMENT TO USE BEACH AND WITHIN THE PUBLIC RIGHT OF WAY:

Consideration paid for the easement to use **the beach and public rights of way** by the four cable systems shall aggregate to a lump sum amount of \$1,100,000 plus annual payments for the four cable systems totaling \$300,000. The schedule of payments will be in accordance with Section 2.5.

#### CONSIDERATION FOR EASEMENT WITHIN TIDELANDS AND SUBMERGED LANDS:

Consideration for the easement to use **tide lands and submerged lands** by the four cable systems shall aggregate to a lump sum amount of \$800,000. The schedule of payments will be in accordance with Section 2.6.

## Section 2

### SPECIAL PROVISIONS

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#### **2.1 Fiber Optic Cables Easement**

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 four 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.

#### **2.2 Construction Easement**

During periods of construction of each of the four 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.

#### **2.3 Term**

Except as otherwise provided herein, the term of this Cable Easement is twenty five (25) years (the "Term"), beginning on the System Operational Date of the first Cable to be installed.

#### **2.4 Extension of Term**

Grantee shall have the option to extend this Cable Easement 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.

## **2.5 Compensation for Cable Easement and Associated Construction Easement for the use of the Beach and Public Right of Way**

In exchange for those rights granted under this Easement Agreement in the beach and public right of way for the four Cables, Grantee shall pay to Grantor an aggregate sum of One Million One Hundred Thousand Dollars (\$1,100,000) plus annual payments totaling Three Hundred Thousand Dollars (\$300,000). This consideration will be paid according to the following schedule: .

1. For the **first** cable system:
  - a. Lump sum consideration in the amount of \$330,000 will be paid within 30 days of the System Operational Date (as defined in Section 2.12) of the first cable system, including its segment landing in the City (the "**First System Operational Date**"); and
  - b. Annual consideration in the amount of \$90,000 will be paid in quarterly installments of \$22,500 each beginning on the first anniversary of the First System Operational Date and continuing quarterly for the Term of the Easement.
2. For the **second** cable system:
  - a. Lump sum consideration in the amount of \$264,000 will be paid within 30 days of the Systems Operational Date of the second cable system, including its segment landing in the City (the "**Second System Operational Date**"); and
  - b. Annual consideration in the amount of \$72,000 will be paid in quarterly installments of \$18,000 each beginning on the first anniversary of the Second System Operational Date and continuing quarterly for the Term of the Easement.
3. For the **third** cable system:
  - a. Lump sum consideration in the amount of \$253,000 will be paid within 30 days of the System Operational Date of the third cable system, including its segment landing in the City (the "**Third System Operational Date**"); and
  - b. Annual consideration in the amount of \$69,000 will be paid in quarterly installments of \$17,250 each beginning on the first anniversary of the Third System Operational Date and continuing quarterly for the Term of the Easement.
4. For the **fourth** cable system:
  - a. Lump sum consideration in the amount of \$253,000 will be paid within 30 days of the System Operational Date of the fourth cable system, including its segment landing in the City (the "**Fourth System Operational Date**"); and
  - b. Annual consideration in the amount of \$69,000 will be paid in quarterly installments of \$17,250 each beginning on the first anniversary of the Fourth System Operational Date and continuing quarterly for the Term of the Easement.

CPI Adjustment. The annual fees for each cable system set forth in this Section shall be adjusted beginning with the payment due upon the fifth anniversary of the System Operational Date of the first Cable , -and again each five years thereafter for the remainder of the Term. The adjustment shall be up or down in accordance with the change in the United States Department of Labor,

Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers, Los Angeles/Anaheim/Riverside Average, Subgroup "All Items" (or in accordance with a comparable index if that Consumer Price Index is no longer available) as calculated using the most recent three year average for the index. Such adjustment shall be capped, without regard to the change in the index, at a maximum of plus or minus ten percent for the interval of adjustment.

## **2.6 Compensation for Easement to Use Tidelands, and Submerged Lands and Associated Construction Easement**

In exchange for those rights granted Grantee under this Easement Agreement for use by the four Cables of the tidelands and submerged lands, Grantee shall pay to Grantor amounts aggregating to Eight Hundred Thousand Dollars (\$800,000). This consideration will be paid according to the followings schedule:

1. Within 30 days of the First System Operational Date: a lump sum amount of \$240,000 will be paid.
2. Within 30 days of the Second System Operational Date: a lump sum amount of \$192,000 will be paid.
3. Within 30 days of the Third System Operational Date: a lump sum amount of \$184,000 will be paid.
4. Within 30 days of the Fourth System Operational Date: a lump sum amount of \$184,000 will be paid.

## **2.7 Default and Termination**

Any material failure to comply with a material term of this Cable Easement or the conditions of Hermosa Beach Precise Development Plan No.14-11 shall be considered a material breach of this Easement Agreement. The party aggrieved by such breach may deliver a Notice of Default to the party in breach specifying such noncompliance and the appropriate cure. If the breach has not been corrected within a period of 120 days after receipt of the Notice of Default, or in the case of breach of an obligation to pay money or to maintain required insurance in full force and effect, within thirty (30) days after receipt of the Notice of Default, then the aggrieved party may terminate this Easement Agreement. Notwithstanding the foregoing, if the breach cannot reasonably be corrected during its applicable cure period, then the aggrieved party may not terminate this Easement Agreement if the breaching party begins to correct such noncompliance during the cure period and thereafter diligently pursues corrective measures to completion.

## **2.8 Non Exclusivity and Non Interference**

Grantee acknowledges that the Cable Easement is non-exclusive. However, Grantor may not lease, convey, or encumber the Cable Easement Area to third parties for facilities or improvements that may cross over or under any of the Cables except upon written approval of Grantee. Grantee shall approve any such request to lease, convey or encumber the Cable

Easement Area within thirty (30) days of receipt if Grantee reasonably determines that the proposed use of the Cable Easement Area will not be inconsistent with the Cable Easement, incompatible with the Cable Easement or interfere with Grantee's or any of its permitted assignee's use of the Cable Easement Area, including, without limitation, Grantee's or any such permitted assignee's ability to maintain and repair any of the Cables.

For clarity, Grantee shall be required to pay the amounts referenced in this Section 2.5 in respect of a particular Cable only if the Cable is installed in the Cable Easement Area or Construction Easement Area. However, should Grantee fail to install a particular Cable in the Cable Easement Area or the Construction Easement Area within one year of the Effective Date, any such easement granted to Grantee with respect to that Cable shall automatically terminate.

## **2.9 Schedule and Liquidated Damages**

Prior to commencement of construction of a Cable, Grantee shall provide to Grantor a schedule for construction of the Cable that is reasonably acceptable to Grantor. The schedule shall provide for ninety (90) calendar days between the Effective Date of each Cable and the date of commencement of construction for the Cable (the "Commencement Date"). Upon presentation of a proposed schedule to Grantor, Grantor shall have fifteen business days to review the schedule. Unless Grantor provides Grantee with written notice that the schedule is not acceptable within that fifteen business day period, then the schedule shall be deemed accepted.

## **2.10 Future Landings**

Prior to entering into any agreement with a local government to land any other underwater fiber optic cable system wholly owned by Grantee within Santa Monica Bay, Grantee shall enter into a thirty (30) day good faith negotiating period with Grantor to attempt to negotiate an agreement with Grantor which would provide that Grantee shall land the fiber optic cable within the City of Hermosa Beach.

## **2.11 Effective Date**

This Easement Agreement shall not become effective as to each particular Cable unless and until Grantee receives a Coastal Development Permit and any additional approvals and permits required from the California Coastal Commission, and all other United States federal, state and local approvals and permits required to construct and operate the Cable and Grantor and Grantee each accept the conditions imposed upon the permits by those agencies. The date on which this Easement Agreement becomes effective as to each Cable is referred to herein as the "Effective Date" for the Cable.

Upon obtaining all required United States federal, state and local approvals and permits and acceptance by Grantor and Grantee of the conditions contained in those approvals and permits as to the first Cable, the parties hereto shall record a notice designating the date upon which this Easement Agreement becomes effective as to the first Cable.

## **2.12 System Operational Date**

Each Cable will have its own System Operational Date. The "System Operational Date" of each Cable shall be that date at which the Cable is fully installed, the associated system-wide testing is completed and the Cable is approved to carry commercial traffic. Grantee shall notify Grantor of the System Operational Date of each Cable.

## **2.13 Internal Conflicts**

In the event of any conflict between the provisions of Section 2 and Section 4 of this Easement Agreement, the provisions of Section 2 shall prevail.



## Section 3

### DESCRIPTION OF CABLE EASEMENT AREA

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#### 3.1 Description of Cable Easement Area for the First Cable

The first Cable will be the SEA-US Cable System. The description of its terrestrial and marine easement areas hereunder are as follows (as also shown in the attached figure “Proposed Terrestrial Facilities.”

**Terrestrial Description:** As part of the first phase of work, four landing pipes will be installed. Two will be installed into each of two landing sites. Additionally, a separate conduit system will be connected from each landing site to the building located at 1601 Pacific Coast Highway.

Longfellow Avenue - Landing Pipes: From the intersection of Longfellow Avenue and Hermosa Avenue, two alignments will extend westerly (seaward) along the Longfellow Avenue right of way to the beach; thence each will continue offshore a distance of approximately 3,000 feet to their respective termination points in the Pacific Ocean. The coordinates for each termination point will be provided once they are installed in accordance with Section 4.

Longfellow Avenue - Conduit System: From the landward end of the Landing Pipes described above, located within the Longfellow Avenue right of way near Hermosa Avenue, the conduit alignment will continue easterly within the Longfellow Avenue right of way to Manhattan Avenue; thence southerly within the Manhattan Avenue right of way to Twenty-Eighth Street; thence easterly within the Twenty-Eight Street right of way to the Greenbelt Bike Path; thence southerly within the Greenbelt Bike Path right of way to Sixteenth Street; thence easterly within the Sixteenth Street right of way to the building located at 1601 Pacific Coast Highway, Hermosa Beach, California.

Twenty-Fifth Street – Landing Pipes: From the intersection of Twenty-Fifth Street and Hermosa Avenue, two alignments will extend westerly (seaward) along the Twenty-Fifth Street right of way to the beach; thence each will continue offshore a distance of approximately 3,000 feet to their respective termination points in the Pacific Ocean. The coordinates for each termination point will be provided once installed in accordance with Section 4.

Twenty-Fifth Street – Conduit System: From the landward end of the Landing Pipes described above, located within the Twenty-Fifth Street right of way near Hermosa Avenue, the conduit alignment will continue easterly within the Twenty-Fifth Street right of way to Twenty-Fourth Place; thence easterly within the Twenty-Fourth Place right of way to the Greenbelt Bike Path; thence southerly within the Greenbelt Bike Path right of way to Sixteenth Street; thence easterly within the Sixteenth Street right of way to the building located at 1601 Pacific Coast Highway, Hermosa Beach, California.

**Marine Description:** Beginning at a point in the Pacific Ocean at the westerly limit of the City of Hermosa Beach, located approximately 3 nautical miles (3.45 statute miles) offshore at approximately coordinate 33° 51.132' N, 118° 27.723' W; the cable alignment will follow an east-northeasterly course through the following coordinates: 33° 51.172' N, 118° 27.572' W; 33°

51.282' N, 118° 27.148' W; 33° 51.633' N, 118° 26.052' W; and terminating at the end of one of the Landing Pipes described above at approximately coordinate 33° 52.067'N, 118° 24.877'W.

### **3.2 Description of Cable Easement Area for the Second Cable**

The descriptions of the terrestrial and marine easement areas hereunder for the second Cable are as follows.

[The second cable system has not been identified as of the execution of this Easement Agreement. When the second cable system is identified, the appropriate legal descriptions will be provided and this Easement Agreement will be amended as necessary.]

Terrestrial Description: [General description (not surveyed legal description) to be provided]

Marine Description: [Route Position List to be provided]

### **3.3 Description of Cable Easement Area for the Third Cable**

The descriptions of the terrestrial and marine easement areas hereunder for the third Cable are as follows.

[The third cable system has not been identified as of the execution of this Easement Agreement. When the third cable system is identified, the appropriate legal descriptions will be provided and the Easement Agreement will be amended as necessary.]

Terrestrial Description: [General description (not surveyed legal description) to be provided]

Marine Description: [Route Position List to be provided]

### **3.4 Description of Cable Easement Area for the Fourth Cable**

The descriptions of the terrestrial and marine easement areas hereunder for the fourth Cable are as follows.

[The fourth cable system has not been identified as of the execution of this Easement Agreement. When the fourth cable system is identified, the appropriate legal descriptions will be provided and the Easement Agreement will be amended as necessary.]

Terrestrial Description: [General description (not surveyed legal description) to be provided]

Marine Description: [Route Position List to be provided]

## Section 4

### GENERAL PROVISION

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#### **4.1 As Built Drawings**

Within six (6) months after the System Operational Date for each of the four Cables, Grantee shall provide Grantor with an “as built” survey and drawings in a form reasonably satisfactory to Grantor, for the purpose of establishing a final Cable Easement Area for each such Cable as provided in Section 2.1.

#### **4.2 Notification of Maintenance Activities**

Except in cases of emergency, Grantee shall provide Grantor with fifteen (15) days written notice of any significant activities to be undertaken by Grantee in the Cable Easement Area after the Commencement Date of each Cable. In cases of emergency, including, without limitation, a fault in a Cable, Grantee shall notify Grantor of such activity conducted on land, or conducted in the water but from a land based operation, no later than twenty four (24) hours after such activity is commenced and shall notify Grantor of such activity conducted in the water from a water borne vessel, not later than seventy two (72) hours after such activity is commenced. “Significant activity” means any maintenance or other activity (other than entry to and exit from the Cable Easement Area) that will be readily noticeable from surrounding property.

#### **4.3 Permits**

This Easement Agreement shall not become effective as to each Cable unless Grantor issues all permits necessary to construct the Cable, the permits allow construction of the Cable to begin immediately upon issuance of the final permit required to construct the Cable, and no such permit includes conditions that are inconsistent with the rights granted by this Easement Agreement or in addition to the conditions included in this Easement Agreement and Precise Development Plan No.14-11 except for those standard conditions imposed upon construction activities to protect vehicular and pedestrian safety during construction on public property. Unless mutually agreed upon in writing, this Easement Agreement shall expire thirty months from the date of Grantor’s approval and signature of this Agreement if, for whatever reason, Grantee fails to obtain all necessary United States permits to construct the first Cable.

#### **4.4 Repair of Damage**

Grantee shall promptly repair, at its sole cost, all damages to any improvements which damages are caused directly by Grantee’s activities. All work performed by Grantee shall be completed in a careful and worker like manner to Grantor’s reasonable satisfaction, free of any claims or liens. Upon completion of any work performed by Grantee, Grantee shall remove all debris and restore the Cable Easement Area and the Construction Easement Area, as nearly as reasonably possible, to their condition prior to commencement of the Cable construction.

## **4.5 Hazardous Substances**

Grantee covenants and agrees that Hazardous Substances will not be used, stored, generated, processed, transported, handled, released, or disposed of in, on, under, or above the Cable Easement Area or the Construction Easement Area, except in accordance with all applicable laws. In the event that during the construction and installation of a Cable, Hazardous Waste is discovered in the Cable Easement Area or the Construction Easement Area in any amount that would require remediation, and if such Hazardous Waste was not deposited in the subject Easement Area by Grantee, then Grantor shall promptly agree to any reasonable revision to the description of the subject Easement Area requested by Grantee in order to avoid further contact by the Cable or Grantee with such Hazardous Waste.

For the purposes of this Section, Hazardous Substances shall have the meaning given such term in Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C.

§ 9601 et seq., and applicable California law and the regulations promulgated thereunder. Also for the purposes of this Section, Hazardous Waste shall mean any hazardous, toxic or dangerous waste, substance or material, or contaminant, pollutant or chemical, known or unknown, defined or identified as such in (or for the purposes of) any existing or future local, State or federal law, statute, code, ordinance, rule, regulation, guideline, decree or order relating to human health or the environment or environmental conditions, including but not limited to the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C.

§ 6901 et seq.; the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2601 et seq.; the Federal Water Pollution Control Act, 49 U.S.C. § 1801 et seq.; the Safe Drinking Water Act, 42 U.S.C. § 300 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. App. § 1802 et seq.; and the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq.

## **4.6 Removal of Facilities**

Following the expiration of the Term or any earlier termination of the Cable Easement pursuant to Section 2.7, Grantor may require Grantee at its expense to remove the Cables from the Cable Easement Area and to restore the Cable Easement Area to its prior condition within a reasonable period of time specified by Grantor. Two years prior to the expiration of the Term of the Cable Easement, or any extension thereof, upon the request of Grantor, Grantee shall procure and file with Grantor a surety bond to secure the removal of the Cables and restoration of the Easement Area. The bond shall be issued by a surety authorized to do business in California and acceptable to Grantor and shall be in an amount mutually agreed upon by the parties to reflect the cost of removal of the Cables. In the alternative, Grantor may authorize Grantee to abandon the Cables in place. If Grantor authorizes Grantee to abandon the Cables in place, then Grantee shall cause to be executed, acknowledged, and delivered to Grantor such instruments as Grantor may require in order to convey ownership of the Cables to Grantor without payment of compensation or consideration of any kind.

#### 4.7 Indemnities

Grantee shall indemnify, defend, and hold harmless Grantor, its employees, officers, and agents from any and all liability, damages, expenses, causes of action, suits, claims, costs, fees (including attorney's fees), penalties, or judgments, of any nature whatsoever, brought by or owed to third parties arising out of the operations of Grantee, its contractors, subcontractors, invitees, agents, employees, licensees, or permittees, except as may arise solely out of the willful or negligent act of Grantor or Grantor's officials, employees, contractors, or agents.

In the event that Grantor must conduct maintenance, repair or other underground activities in or near a Cable, Grantor will notify Grantee and Grantee shall provide a monitor to guide any activity in a manner that will avoid interference with the Cable.

#### 4.8 Insurance

Grantee shall procure and maintain for the duration of the Cable Easement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with exercise of Grantee's rights under the Cable Easement or the Construction Easement. Insurance shall be of the type, in the amounts and subject to the provisions described below.

- 1) Commercial general liability coverage at least as broad as Insurance Services Office Commercial General Liability occurrence coverage ("occurrence" form CG0001, Ed. 11/88) with a limit of not less than \$2,000,000 per occurrence.
- 2) Business automobile liability insurance at least as broad as Insurance Services office form CA 0001 (Ed. 12/90) covering Automobile Liability, code 1 "any auto" and endorsement CA 0029 (Ed. 12/88) with a limit not less than \$1,000,000 per accident.
- 3) Workers Compensation Insurance as required by the State of California.
- 4) Construction Payment and Performance Insurance or bonding in an amount equal to 1,000,000. Coverage, however, may be discontinued after recordation of the Notice of Termination of Construction Easement.
- 5) Evidence of Coverage:
  - a) Prior to commencement of construction of the Cable, Grantee's shall file certificates of insurance with original endorsements evidencing coverage in compliance with this contract and in a form acceptable to Grantor. The certificate shall be on Grantor's standard proof of insurance form.
  - b) Grantee shall provide to Grantor, on request, a complete copy, including all endorsements and riders, of any applicable insurance policy.
  - c) During the Term, Grantee shall maintain current valid proof of insurance coverage with Grantor at all times. Proof of renewals shall be filed prior to expiration of any required coverage and shall be provided on Grantor's standard proof of insurance form.
- 6) All insurance coverages shall be provided by insurers with a rating of A-; VII, or better in the most recent edition of Best's Key Rating Guide, Property-Casualty Edition.
- 7) Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided or canceled and shall not be reduced in coverage or limits except after 30 days prior

written notice provided to Grantor. Upon prior request of the carrier, the notice period may be reduced to 10 days in the event of non-payment of premium.

- 8) All liability coverages shall name Grantor, and every elected official, officer, agent and employee of Grantor as additional insureds with respect to activities undertaken pursuant to the Cable Easement or the Construction easement.
- 9) Grantee's insurance and any insurance provided in compliance with these specifications shall be primary with respect to any insurance programs covering Grantor.
- 10) Where available, the insurer shall agree to waive all rights of subrogation against the Grantor and every officer, agent and employee of Grantor.
- 11) In the event that Grantee does not provide continuous insurance coverage, Grantor shall have the right, but not the obligation, to obtain the required insurance coverage at Grantee's cost, and reimbursement of insurance costs shall become a material obligation of the Cable Easement.

As an alternative to all other requirements of this Section 4.8, Grantee may provide self-insurance reasonably satisfactory in kind and amount to Grantor.

Additionally, on or after the fifteenth (15th) anniversary of the Commencement Date, Grantor may increase the minimum amount of the required commercial general liability insurance to four million dollars (\$4,000,000) per occurrence.

#### **4.9 Restoration Bond**

Prior to commencing any work on public property pursuant to the Cable Easement or the Construction Easement, Grantee shall provide, or shall cause its general contractor to provide, a restoration bond or corporate guaranty to guarantee that, upon any abandonment or other permanent cessation or termination of the work relating to the construction and installation of the Cable, Grantee's public property and public rights-of-way will be restored to the condition existing prior to such construction and installation work, reasonable wear and tear excepted. Any restoration bond must be issued by a surety authorized to conduct business in the State of California and shall remain in full force and effect until recordation of the Notice of Termination of Construction Easement. Grantor shall execute any documents necessary to release any bond or guaranty within thirty days after recordation of the Notice of Termination of Construction Easement. The restoration bond or guaranty will be in the sum of \$500,000. Grantor shall be named as the obligee in any restoration bond.

#### **4.10 Corporate Guaranty of Obligations**

#### **4.11 Within fifteen (15) days after the Effective Date of this Easement Agreement, Grantee shall provide to Grantor a Guaranty of Grantee's obligation executed by Tyco Telecommunications Ltd. The Guaranty shall be substantially in the form attached as Exhibit B. Such Guaranty may also be used to fulfill the requirements of Section 4.9.Taxes**

Grantee shall promptly pay all taxes relating to construction and operation of each Cable.

#### **4.12 Notices**

Notices, consents, requests and other communications required or permitted by this Easement Agreement shall be in writing and shall be deemed duly given by one party and received by the other party when: (a) personally delivered; or (b) sent by United States mail, postage prepared, certified mail, return receipt requested, and actually received by, or rejected by, the party to whom it is addressed. The notice shall be addressed to the applicable party at the respective address set forth above in the Summary of Basic Provisions with a copy to:

For MC Global:           MC Global BP4, Inc.  
268 Bush Street #77  
San Francisco, CA 94104  
Attn: Russell Matulich, Chief Executive Officer

With a copy to: [TBD]

For City:               City of Hermosa Beach  
1315 Valley Drive  
Hermosa Beach California 90254  
Attn: City Manager

With a copy to: Michael Jenkins  
Jenkins and Hugin  
1230 Rosecrans Suite 110

Any party may change its address by notifying the other party in accordance with the procedure set forth above.

#### **4.13 Assignment by Grantee**

Upon written notice submitted to Grantor not less than thirty (30) days prior to each transfer or assignment, the rights and obligations of Grantee pursuant to this Easement Agreement may be transferred or assigned by Grantee to a third party (the "Assignee"), in whole or in part, from time to time during the Term. Any such transfer or assignment shall be subject to the provisions of this Section and the controls and limitations contained herein.

Concurrently with the submission of the notice of impending transfer or assignment by Grantee, Grantee shall submit to Grantor: (a) a written notification signed by Grantee, identifying the particular rights hereunder being assigned (the "Assigned Rights"), including the portion of the Cable Easement Area and Construction Easement Area being assigned thereby, as well as the identity of the Assignee and the particular Cable as to which the Assigned Rights are being assigned; (b) a fully executed instrument, in form and content reasonably acceptable to Grantor, pursuant to which the Assignee expressly assumes and agrees for the benefit of the Grantor to perform the obligations of Grantee associated with the Assigned Rights, and (c) an acknowledgment, in form and content reasonably acceptable to Grantor and executed by the Assignee, pursuant to which the Assignee acknowledges that the Assignee has read and understands this Agreement and all of the provisions hereof. Grantor agrees to preapprove any form of proposed instruments submitted by Grantee provided that the form is reasonably acceptable to Grantor.

In addition to the notice referred to above, Grantee shall submit written notice to Grantor upon the consummation of any such partial or full transfer or assignment and shall include in such notice a fully executed copy (showing all recordation information for any recordable documents) of the instrument(s) by which the transfer or assignment was effected.

If Grantee transfers or assigns, in whole or in part, its interest in this Easement Agreement and complies with the provisions of this Section, Grantee shall be released from its obligations under this Easement Agreement associated with the Assigned Rights, provided that Grantor reasonably determines that Grantee's Assignee is reasonably capable of fulfilling the financial obligations of this Easement Agreement associated with the Assigned Rights. In order to make such determination, Grantor may require Grantee to provide Grantor with audited financial statements of the Assignee prepared in accordance with Generally Accepted Accounting Principles. Grantor shall provide notice to Grantee of its determination regarding the financial capability of the Assignee within sixty (60) days after receiving such financial statements. If Grantor fails to provide such notice within that sixty (60) day period, then Grantee shall provide Grantor with a final request for release. Grantor shall then provide Grantee with notice of its determination within fifteen (15) days of receiving such final request. If Grantor fails to provide such notice within such fifteen (15) day period, then the Assignee shall be deemed accepted by Grantor and



Grantee shall be released from its obligations under this Easement Agreement associated with the Assigned Rights.

Grantor shall accept any Assignee as reasonably capable of fulfilling the financial obligations of this Easement Agreement if the Assignee's financial capabilities equal or exceed those of Grantee. Furthermore, Grantor shall not reject an Assignee as not reasonably capable of fulfilling the financial obligations of this Easement Agreement associated with the Assigned Rights for the sole reason that the Assignee's financial capabilities are not equally as strong as those of Grantor. The parties anticipate that potential Assignees may be reasonably capable of fulfilling the obligations of this Easement Agreement associated with the Assigned Rights even though they do not possess the financial strength of Grantee.

#### **4.14 Limitation of Liability**

In no event shall Grantor be liable to Grantee for lost profits, special damages, incidental damages, indirect damages, consequential damages or any other damages of any kind whatsoever beyond direct damages, which direct damages would include the cost of remedial repairs.

In no event shall Grantee be liable to Grantor for special damages, incidental damages, indirect damages, consequential damages or any other damages of any kind whatsoever beyond direct damages, which direct damages, would include the cost of remedial repairs.

#### **4.15 Governing Law**

This Easement Agreement shall be interpreted under and governed by the laws of the State of California.

#### **4.16 Integration Clause**

This Easement Agreement sets forth the entire agreement of the parties with respect to the Cable Easement, the Construction Easement and other matters described herein. All other prior negotiations, representations, warranties and discussions of the parties in respect thereof are superseded by the provisions of this Easement Agreement, except that the parties recognize that the mitigation measures from the Environmental Impact Report prepared for the Project which have been incorporated into PDP No. 14-11 are also conditions of the exercise of rights under this Easement Agreement.

#### **4.17 Modification**

This Easement Agreement may be amended or modified only by a written instrument executed and acknowledged by the parties or their successors-in-interest and recorded in the Official Records of Los Angeles County, California.

#### **4.18 Compliance with Laws**

Grantee shall at its own expense, conform to all applicable laws, regulations, permits, orders, or requirements of any public authority concerning the Cables. Upon request, Grantee shall supply Grantor with copies of all United States federal, state and local permits or orders for the Cables within 5 business days of the request.

#### **4.19 Waiver**

No term, covenant, or condition of this document and no default or breach of any such term, covenant or condition shall be deemed to have been waived by either party's acceptance of a late or nonconforming performance or otherwise, unless such a waiver is expressly acknowledged in writing.

Furthermore, no such waiver shall be deemed to be a waiver of any other term, covenant or condition or any other default or breach of any term, covenant or condition of this document.

#### **4.20 Time**

Time is of the essence for each and all of the terms, covenants and conditions in which time of performance is a factor.

#### **4.21 Severability**

If any term, covenant or condition of the Cable Easement or the Construction Easement is determined by a court of competent jurisdiction to be invalid, it shall be considered deleted and shall not invalidate any of the remaining terms, covenants and conditions.

#### **4.22 Counterparts**

This Easement Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

#### **4.23 Authority**

The persons signing below warrant that they have authority to bind the party on whose behalf they are executing this Easement Agreement.

#### **4.24 Attorney Fees**

In any litigation between the parties concerning the terms of, or rising from, this agreement, including any claim of indemnity arising from this agreement, the prevailing party shall be entitled to recover its costs of suit and reasonable attorney fees.

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

GRANTEE:

MC Global BP4, Inc.

By (Signature)

*Chris Brungardt*

Name (Print):

Chris Brungardt

Title:

SR. Vice President

Date:

6-8-16

GRANTOR:

City of Hermosa Beach

By (Signature)

*Carolyn Petty*

Name (Print):

Carolyn Petty

Title: Mayor, City of Hermosa Beach

Date:

6/8/16

ATTEST

By (Signature)

*Elaine Doerfling*

Name (Print):

Elaine Doerfling

Title: City Clerk, City of Hermosa Beach

Date:

6/8/16

ACKNOWLEDGEMENT

*see attached*

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
 County of Los Angeles )  
 On 7/28/2016 before me, Linda E. Abbott, Notary Public,  
 Date Here Insert Name and Title of the Officer  
 personally appeared Carolyn J. Petty  
 Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that ~~he/she/they~~ executed the same in ~~his/her/their~~ authorized capacity(ies), and that by ~~his/her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature [Signature]  
 Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_ Document Date: \_\_\_\_\_  
 Number of Pages: \_\_\_\_\_ Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Individual ☐ Attorney in Fact  
☐ Trustee ☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_  
 Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Individual ☐ Attorney in Fact  
☐ Trustee ☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_  
 Signer Is Representing: \_\_\_\_\_

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

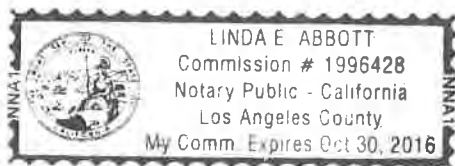
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
 County of Los Angeles )  
 On 8/3/2016 before me, Linda E. Abbott, Notary Public  
 Date Here Insert Name and Title of the Officer  
 personally appeared Elaine Carole Doerfling  
 Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature [Signature]  
 Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

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☐ Trustee ☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_  
 Signer Is Representing: \_\_\_\_\_

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☐ Trustee ☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_  
 Signer Is Representing: \_\_\_\_\_