

CITY OF FONTANA MASTER ENCROACHMENT AGREEMENT

ARCADIAN INFRACOM 2, LLC

THIS MASTER ENCROACHMENT AGREEMENT (“AGREEMENT”) is by and between the CITY OF FONTANA, a California municipal corporation and general law city (“CITY”) and Arcadian Infracom 2, LLC, a Delaware limited liability company (“PERMITTEE”). CITY and PERMITTEE are sometimes hereinafter referred to individually as “PARTY” and collectively as the “PARTIES.”

RECITALS

A. CITY owns an interest in the RIGHT-OF-WAY (as defined below).

B. PERMITTEE holds a full-facilities based Certificate of Public Convenience and Necessity originally issued by the California Public Utilities Commission under Decision 21-03-027 to Arcadian Infracom, Inc. (U-7381-C), which certificate was transferred to PERMITTEE effective June 15, 2023 pursuant to Advice Letter No. 4, and as such is a telephone corporation that has a non-exclusive franchise to use the RIGHT-OF-WAY under Cal. Pub. Util. Code § 7901, subject to the exercise of the CITY’s police powers consistent with Cal. Pub. Util. Code §§ 7901 and 7901.1, and 2902.

C. PERMITTEE desires to install FACILITIES (as defined below) in such RIGHT-OF-WAY.

D. The purpose of this AGREEMENT is to provide the general framework within which PERMITTEE will apply for necessary encroachment permits and, subject to obtaining all required permits, install, operate, repair and maintain the FACILITIES within the RIGHT-OF-WAY within the corporate limits of the CITY. The parties do not intend the AGREEMENT to give PERMITTEE a right to the issuance of any such permits.

NOW THEREFORE THE PARTIES HEREBY AGREE AS FOLLOWS:

1. PERMITTEE agrees to abide by the terms and conditions contained herein, and in applicable permits, in connection with the installation, operation, repair and maintenance of its FACILITIES in the RIGHT-OF-WAY.

a. “FACILITIES” shall mean fiber optic cables, including tracer/locating wire and safety tape, conduits, handholes, manholes, vaults, cabinets, and fiber warner marker signs, and related facilities to be used or be useful for the transmission of telecommunications services (each a “FACILITY” or, collectively, “FACILITIES”). FACILITIES do not include any wireless facilities, including personal wireless services facilities as defined in 47 U.S. Code § 332(c)(7)(C)(ii), antennas, or radios.

b. "RIGHT-OF-WAY" shall mean the portion of any road or public way that is dedicated or deeded to the public for public use and under the control of CITY. For avoidance of doubt, the term does not include CITY-owned buildings, land or other property located outside of the RIGHT-OF-WAY, or any infrastructure located within the RIGHT-OF-WAY, including, without limitation PUBLIC IMPROVEMENTS (as defined in Section 2(a)) or other poles, traffic light poles, wires, fiber-optic strands, conduit and street light poles owned by CITY.

c. The installation and maintenance of, and any use of, any FACILITY shall be subordinate to any use and operations which CITY may conduct during the effective period of this AGREEMENT, and PERMITTEE shall not cause any unreasonable delay or interference with CITY'S access to the RIGHT-OF-WAY. PERMITTEE shall not interfere with the operations of CITY in the RIGHT-OF-WAY, whether or not such interference is considered material.

d. This AGREEMENT is made subject to all easements, restrictions, conditions, covenants, encumbrances, and claims of title which may affect the RIGHT-OF-WAY on or before the date of this AGREEMENT, and it is understood that PERMITTEE, at its own cost and expense, shall obtain such permission as may be necessary and consistent with any other prior rights still in effect. Notwithstanding the foregoing, no reference herein to a "RIGHT-OF-WAY" shall be deemed to be a representation or guarantee by CITY that its interest or other rights to control the use of such property is sufficient to permit its use for PERMITTEE'S purposes, and PERMITTEE shall be deemed to gain only those rights to use as are properly in CITY and as CITY may have the undisputed right and power to give.

e. This AGREEMENT does not grant permission to use or occupy CITY property other than the RIGHT-OF-WAY. This AGREEMENT does not grant permission to use or occupy property of CITY located within the RIGHT-OF-WAY (such as poles, traffic light poles, wires, fiber-optic strands, conduit and street light poles) nor does it grant permission to use or occupy property not belonging to, or under the control of CITY; and permission to use or occupy such property must be obtained from the owner or controller of such property, separate from and in addition to this AGREEMENT.

f. This AGREEMENT does not guarantee receipt of any particular permit or approval. PERMITTEE hereby acknowledges that CITY may, consistent with applicable law, reject the design drawings for any proposed construction and/or require any changes thereto if CITY determines, in the exercise of its police powers, that such action is necessary to ensure CITY can adequately inspect, clean, maintain, repair, and replace CITY'S existing PUBLIC IMPROVEMENTS and/or install additional PUBLIC IMPROVEMENTS within the RIGHT-OF-WAY.

2. Construction. PERMITTEE'S right to install, repair, maintain, and use a FACILITY in RIGHTS-OF-WAY is limited and conditioned upon PERMITTEE applying for and receiving the site-specific permits, and paying the requisite fees including any required plan check and inspection fees, that are allowed by applicable law and otherwise required by the City of Fontana, including its Municipal Code, and implementing the protective measures and physical construction standards imposed herein, and in connection with the original approval and/or permitting of a FACILITY, including as follows, to the extent allowed by applicable law:

a. A schedule of construction activities within the RIGHT-OF-WAY will be provided by PERMITTEE to and approved by City Engineer prior to the commencement of any construction work.

b. PERMITTEE shall install and maintain each FACILITY in strict compliance with its approved final design drawings, and no changes or deviations shall be permitted without PERMITTEE first obtaining the prior written consent of CITY, which may be granted or denied in the CITY's reasonable discretion. For any such modifications or deviations from the approved final design drawings, the issuance of a new encroachment permit, in addition to any other permits originally required for approval of the FACILITY, by the CITY for those changes and modifications shall be presumed to constitute the consent required under this AGREEMENT.

c. Immediately following completion of permitted construction activities within the RIGHT-OF-WAY and installing a FACILITY, PERMITTEE shall repair and restore both the RIGHT-OF-WAY, and repair and restore any improvements of the CITY in the RIGHT-OF-WAY including, without limitation, parkway landscaping with irrigation, landscape planters, sewer and water pipelines, Asphalt-Concrete/Portland Cement Concrete ("AC/PCC") pavement, traffic signals, conduit, and appurtenances thereto, and other infrastructure occupying the RIGHT-OF-WAY ("PUBLIC IMPROVEMENTS"), to their original conditions in accordance with the then-current City Standards and to the satisfaction of the City Engineer.

d. No heavy equipment shall be operated within or traverse the RIGHT-OF-WAY, when there is less than twenty-four (24) inches of soil over the existing pipelines.

e. No vibratory compaction will be allowed within the RIGHT-OF-WAY unless approved in advance in writing by CITY.

f. All construction shall be open and subject to inspection by CITY, and PERMITTEE shall give notice and allow CITY to inspect any underground improvements prior to backfilling.

g. PERMITTEE shall not alter, replace, or otherwise change a FACILITY without complying with the terms of this Section 2, the CITY's Municipal Code, or any rules and policies the CITY implements.

h. **Restoration & Repair of Damage.** Any damage or disrepair to the RIGHT-OF-WAY or to CITY's PUBLIC IMPROVEMENTS and other CITY property caused directly or indirectly by PERMITTEE and/or any FACILITY, including during installation, operation, maintenance, removal, relocation, temporary disconnection, or modification of any FACILITY for any reason, or due to neglect of a FACILITY, shall be repaired by PERMITTEE at its sole cost and expense, within forty-five (45) days after receiving written notice from CITY. In no event shall PERMITTEE have any claim against the CITY for any of the costs of repairing RIGHT-OF-WAY or PUBLIC IMPROVEMENTS and other CITY property caused directly or indirectly by PERMITTEE and/or any FACILITY.

i. Notwithstanding PERMITTEE's obligation in (i), if the PARTIES have mutually agreed that CITY will perform the required repair and restoration work, or PERMITTEE

fails to timely restore or repair the RIGHT OF WAY and/or the PUBLIC IMPROVEMENTS or other CITY property within the specified timeframe, or if CITY determines in its sole discretion that it must immediately perform such work in the event of an emergency or to perform legally mandated duties, CITY may proceed with such work at the expense of PERMITTEE, and PERMITTEE shall reimburse CITY for any and all expenses incurred by CITY within thirty (30) days after receiving written demand and a statement from CITY detailing such costs.

3. Term. This AGREEMENT shall be effective upon the date of full execution by both PARTIES (“EFFECTIVE DATE”). Unless earlier terminated pursuant to its terms, this AGREEMENT shall continue in full force and effect for fifteen (15) years following the EFFECTIVE DATE (“INITIAL TERM”).

a. Provided that PERMITTEE is not in default of this AGREEMENT beyond applicable notice and cure periods and neither PARTY has provided written notice to the other PARTY of its intention to terminate this AGREEMENT more than one hundred and eighty (180) days prior to the expiration of the INITIAL TERM, this AGREEMENT shall automatically be extended for unlimited additional, one (1) year terms (each a “RENEWAL TERM”). Either PARTY may terminate this AGREEMENT during any RENEWAL TERM by providing at least one hundred and eighty (180) days written notice to the other PARTY.

b. Subject to paragraph c, upon termination of this AGREEMENT, and upon written request by CITY, PERMITTEE, at its own cost and expense, shall remove or, at CITY's discretion, abandon in place some or all of its FACILITIES from the RIGHT-OF-WAY and restore said RIGHT-OF-WAY within ninety (90) days following termination. If PERMITTEE fails to abide by the removal order of CITY within the time prescribed, CITY shall have the right to remove the FACILITIES and restore the RIGHT-OF-WAY at PERMITTEE's sole cost and expense, and PERMITTEE shall reimburse CITY for any and all expenses incurred by CITY within thirty (30) days after receiving written demand and a statement from CITY detailing such costs.

c. Notwithstanding the termination of this AGREEMENT, to the extent PERMITTEE's FACILITIES may lawfully remain in the RIGHT-OF-WAY, PERMITTEE shall comply with reasonable time, place and manner regulations or any other lawful regulations imposed by the CITY that are authorized by Public Utilities Code Sections 7901 and 7901.1 or other applicable state or federal laws.

4. Permanent Removal, Relocation, and Abandonment. Subject to the provisions of this Section 4, CITY may require PERMITTEE, at PERMITTEE's sole expense and without cost or expense to CITY, to properly remove, relocate, or abandon any or all of the FACILITIES installed, used, and maintained under this AGREEMENT, if and when such FACILITIES may be deemed by CITY or any other governmental entity, in its sole discretion, to be detrimental to the public health, safety, or welfare; necessary due to traffic conditions; required due to any CITY or other public agency construction, public works, utility installation or maintenance, or public improvement project; required due to RIGHT-OF-WAY vacation; in conflict vertically and/or horizontally with any proposed CITY installation; interfere with any CITY construction project; or required to be removed, relocated, or abandoned due to any abandonment, change of grade, alignment or width of any street, sidewalk or other public facility, by CITY or other public agency,

including the construction, maintenance, or operation of any other CITY underground or aboveground facilities including, but not limited to any PUBLIC IMPROVEMENTS owned by City or any other public agency; provided, however, that PERMITTEE shall not be required to bear the expense of a removal, relocation or abandonment requested under this Section on behalf of, or for the benefit of, any private party unaffiliated with either PARTY.

a. If PERMITTEE is required to relocate its FACILITIES, CITY shall reasonably cooperate with PERMITTEE to determine a mutually acceptable location on the RIGHT-OF-WAY where PERMITTEE may relocate said FACILITIES. PERMITTEE will be required to apply for a new PERMIT to conduct work to relocate and re-install FACILITIES in the new location, the approval of which PERMIT shall not be unreasonably withheld.

b. Such removal, relocation, or abandonment shall be completed within **ninety (90) days** of written notice delivered by CITY, specifying the affected FACILITIES and the action required, unless exigencies dictate a shorter or longer period, which shall be stated in the written notice (the "RRA NOTICE PERIOD"). If removal, relocation, or abandonment cannot reasonably be accomplished within the RRA NOTICE PERIOD, CITY may approve an extension, which shall be documented in writing.

c. If PERMITTEE has not complied with such written request for removal, relocation, or abandonment within the RRA NOTICE PERIOD or executed a written agreement to extend the RRA NOTICE PERIOD within the RRA NOTICE PERIOD, then, on the first business day immediately following the last day of the RRA NOTICE PERIOD, CITY may cause the work to be done at PERMITTEE's sole cost and expense and, in the case of relocation, CITY may use its sole discretion to determine a new location for the FACILITIES. Under such circumstances, CITY shall only be obligated to perform such work in a manner consistent with the standard practices of CITY in performing street work and construction. Subject to applicable law, CITY shall not be responsible for any damages whatsoever to PERMITTEE as a result of CITY performing such work, unless CITY performs such work in a grossly negligent or reckless manner. Subject to applicable law, PERMITTEE shall reimburse CITY for all reasonable and actual documented expenses incurred by CITY, including administrative, legal, and consultant costs, within thirty (30) days after receiving written demand and a statement from CITY detailing such costs.

d. In the event of an emergency, or where FACILITIES create or contribute to an imminent danger to health, safety, or property, CITY may remove or relocate any or all portions of the FACILITIES without prior notice; however, CITY shall make reasonable efforts to provide prior notice when practicable.

e. If CITY determines that any portions of the FACILITIES covered under this AGREEMENT are, for a period of one-hundred and eighty (180) calendar days or more, are either (a) no longer used by PERMITTEE, or (b) not operational, CITY shall send written notice to PERMITTEE seeking confirmation that such FACILITIES have been abandoned or are not in use. Within sixty (60) days of notice, PERMITTEE shall respond to the notice by confirming PERMITTEE has not abandoned the FACILITIES, or by removing the FACILITIES at its own expense, or, with CITY's permission, by abandoning some or all the FACILITIES in place. If PERMITTEE does not respond to the notice within the required period, CITY may, at its option,

proceed with removal at the expense of PERMITTEE, and PERMITTEE shall reimburse CITY for any and all expenses incurred by CITY within thirty (30) days after receiving written demand and a statement from CITY detailing such costs, or assume ownership of the FACILITIES. After such abandonment, PERMITTEE shall have no further rights to the FACILITIES. Under such circumstances, PERMITTEE shall cooperate in good faith to execute any documents necessary to convey title to the FACILITIES to the CITY.

f. In the event PERMITTEE removes, relocates, or abandons its FACILITIES or any portion thereof, it shall be so completed consistent with all applicable local, state, and federal requirements. Should PERMITTEE remove FACILITIES from RIGHTS-OF-WAY, PERMITTEE shall, within ten (10) days after such removal, give notice thereof to CITY specifying the RIGHT-OF-WAY affected and the location thereof as well as the date of removal. Before proceeding with any of the actions listed above, PERMITTEE shall obtain any necessary Permits from CITY. PERMITTEE acknowledges that PERMITTEE is not entitled to relocation assistance or any other benefits under the Uniform Relocation Assistance Act or any other applicable provision of law during the term of this Agreement or upon termination of this Agreement.

5. Assumption of Risk. Subject to applicable law, PERMITTEE hereby assumes all risk of damage to the FACILITY in, upon, or about the RIGHT-OF-WAY or any property under the control or custody of PERMITTEE while upon the RIGHT-OF-WAY incident to the use of the RIGHT-OF-WAY.

6. Access, Restricted Use, and Temporary Removal of Improvements. PERMITTEE acknowledges that the RIGHT-OF-WAY contains PUBLIC IMPROVEMENTS. In order for CITY to exercise its rights with respect to the PUBLIC IMPROVEMENTS, PERMITTEE hereby agrees that upon written or telephonic notice from CITY, PERMITTEE shall at its own cost and expense do one or more of the following as requested by CITY in the notice: (a) within twenty-four (24) hours after receiving notice, remove any restrictions to CITY access to the RIGHT-OF-WAY (or the appropriate portion thereof); and/or (b) within twenty-four (24) hours after receiving notice, temporarily restrict use of the FACILITY for the reasonable period requested by CITY as may be necessary to allow CITY continuous access to the FACILITY and unrestricted use of the RIGHT-OF-WAY; and/or (c) within five (5) days after receiving notice as required by CITY, temporarily remove the FACILITY (or the appropriate portion thereof) as may be necessary to allow CITY to make any repairs, replacement, or improvements, and when notified restore the FACILITY to its working condition. If PERMITTEE fails to restrict or remove, whichever is applicable, the FACILITY (or appropriate portion thereof) within said time period, for whatever reason, then CITY shall have the right to remove the FACILITY (or the appropriate portion thereof) from the RIGHT-OF-WAY at PERMITTEE's sole cost and expense. In the case of an emergency, CITY shall have immediate access to the RIGHT-OF-WAY and may move or restrict the FACILITY (or the appropriate portion thereof) at PERMITTEE's sole cost and expense, without written or telephonic notice to PERMITTEE or reimbursement to PERMITTEE. PERMITTEE shall reimburse CITY for any and all expenses incurred by CITY within thirty (30) days after receiving written demand and a statement from CITY detailing such costs. CITY shall provide notice of the emergency to PERMITTEE as soon as possible, and upon receipt of such notice PERMITTEE shall immediately cease all further use of the FACILITY until the emergency

has been mitigated. The term “emergency” shall be defined in accordance with California law and in general, shall be considered as an unforeseen circumstance which calls for immediate action.

7. Enforcement of Agreement. The terms of this AGREEMENT may be enforced by CITY or its successors or assigns.

8. Termination by CITY.

a. Notwithstanding any other term or provision of this AGREEMENT, CITY shall have the right to terminate this AGREEMENT, after notice and an opportunity to cure as provided by this Section if PERMITTEE’s Certificate of Public Convenience and Necessity terminates, is revoked, or is abandoned.

b. Notice of CITY’s intent to terminate for cause shall be in writing, and PERMITTEE shall have thirty (30) days to cure. Any waiver by CITY of any breach by PERMITTEE shall not constitute a waiver of the right to revoke this AGREEMENT for any subsequent breach which may occur, or to enforce any other provision of this AGREEMENT. Upon revocation, subject to Section 3(c), PERMITTEE shall remove all FACILITIES and restore the RIGHT-OF-WAY.

9. Master Plan. PERMITTEE is required to submit a master plan (“Master Plan”), showing at a minimum the location and specific details (*i.e.*, underground depth, above-ground height, etc.) of all FACILITIES presently installed within the CITY’s limits and intended to be installed over the five (5) year period from the Effective Date. The Master Plan shall be attached hereto as Exhibit A. PERMITTEE is required to update the Master Plan every five (5) years by sending a copy to CITY at the address provided in Section 15.c.

10. Hazardous Materials Use.

a. PERMITTEE covenants that it will not handle or transport Hazardous Materials on a FACILITY or the RIGHT-OF-WAY. As used in this AGREEMENT, the term “Hazardous Materials” means: (a) any substance, products, waste, or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 United States Code Section 9601 et seq.; the Resources Conservation and Recovery Act, 42 United States Code Section 6901 et seq.; the Hazardous Materials Transportation Conservation and Recovery Act, 42 United States Code Section 1801 et seq.; the Clean Water Act, 33 United States Code Section 1251 et seq.; the Toxic Substances Control Act, 15 United States Code Section 2601 et seq.; the California Hazardous Waste Control Act, Health and Safety Code Section 25100 et seq.; the Hazardous Substance Account Act, Health and Safety Code Section 25330 et seq.; the California Safe Drinking Water and Toxic Enforcement Act, Health and Safety Code Section 25249.5 et seq.; California Health and Safety Code Section 25280 et seq. (Underground Storage of Hazardous Substances); the California Hazardous Waste Management Act, Health and Safety Code Section 25170.1 et seq.; California Health and Safety Code Section 25501 et seq. (Hazardous Materials Release Response Plans and Inventory); or the California Porter-Cologne Water Quality Control Act, Water Code Section 13000 et seq., all as amended (the above cited California state statutes are hereinafter collectively referred to as “the State Toxic Substances Law”); or any other federal,

state, or local statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance, now or at any time hereinafter in effect; (b) any substance, product, waste or other material of any nature whatsoever which may give rise to liability under any of the above statutes or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or federal court; (c) petroleum or crude oil, other than petroleum and petroleum products which are contained within regularly operated motor vehicles; and (d) asbestos.

In the event a FACILITY is now or in the future used in the handling or transporting of Hazardous Materials, PERMITTEE agrees fully to comply with all applicable federal, state, and local laws, rules, regulations, orders, decisions and ordinances (hereinafter referred to as "Hazardous Materials Standards") concerning Hazardous Materials. PERMITTEE further agrees that at CITY's request it will furnish CITY with proof, satisfactory to CITY that PERMITTEE is in such compliance.

b. Notwithstanding anything else contained in this AGREEMENT and to the extent permitted by law, in case of a breach of the obligations contained in this Section, PERMITTEE agrees to assume liability for and to save and hold harmless CITY from and against any and all injuries to any person, including wrongful death, and damage to property, including without limitation, property of CITY and PERMITTEE, and all related expenses, including mitigation costs resulting in whole or in part from PERMITTEE's failure to comply with any Hazardous Materials Standards issued by any governmental authority concerning Hazardous Materials. PERMITTEE, at its cost, shall assume the defense of all claims, in accordance with Section 14 hereof. PERMITTEE agrees to reimburse CITY for all reasonable costs of any kind incurred as a result of the PERMITTEE's failure to comply with this Section, including, but not limited to, judicial or administrative fines, penalties, clean-up and disposal costs, and reasonable legal costs incurred as a result of PERMITTEE's handling, transporting, or disposing of Hazardous Materials on, over, or across any FACILITY and RIGHT-OF-WAY.

11. Standards. PERMITTEE shall comply with all statutes, ordinances, rules, regulations, orders and decisions (hereinafter referred to as "STANDARDS") issued by any federal, state or local governmental body or agency established thereby relating to PERMITTEE's installation, operation, repair and maintenance of any FACILITY and use of RIGHT-OF-WAY hereunder. In its use of a FACILITY and RIGHT-OF-WAY, PERMITTEE shall at all times be in full compliance with all STANDARDS, present or future, including, but not limited to, STANDARDS concerning air quality, water quality, noise, and Hazardous Materials. In the event PERMITTEE fails to be in full compliance with STANDARDS, CITY may, but shall not be obligated to, after giving notice of the failure to PERMITTEE, and if PERMITTEE, within fifteen (15) days of such notice, fails to correct such non-compliance, remove the offending FACILITIES at PERMITTEE's sole cost and expense.

12. Tests and Inspections. CITY shall have the right at any time to inspect any FACILITY, RIGHT-OF-WAY, or PUBLIC IMPROVEMENTS so as to monitor compliance with this AGREEMENT. If any installation, use, or condition of a FACILITY may have an adverse effect on the PUBLIC IMPROVEMENTS, RIGHT-OF-WAY, or CITY's operations. If CITY identifies any installation, use, or condition of a FACILITY as having an adverse effect on the

PUBLIC IMPROVEMENTS, RIGHT-OF-WAY, or CITY's operations, it shall give PERMITTEE written notice of the condition and thirty (30) days from receipt of the notice to cure. If PERMITTEE fails to cure within the applicable period, CITY may, at its option, perform any necessary corrective work and PERMITTEE shall pay or reimburse CITY, as appropriate, for all reasonable costs and expenses incurred due to any necessary corrective work and inspections thereafter within thirty (30) days of a request for payment and a statement detailing such costs and expenses. Nothing in this section is meant to limit the City's right to take action without notice in the event of an emergency as provided in Section 4(d) and Section 6.

13. Insurance.

a. Types; Amounts. PERMITTEE shall obtain, and shall require any subcontractor to obtain, insurance in the amounts described below unless specifically altered or waived by CITY ("Required Insurance"). If any of the Required Insurance contains a general aggregate limit, such insurance shall apply separately or shall be no less than two times the specified occurrence limit.

- (i) *General Liability Insurance.* PERMITTEE shall maintain occurrence version general liability insurance, or equivalent form, with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence, with an aggregate limit of not less than Two Million Dollars (\$2,000,000.00) with respect to bodily injury, death, or property damage.
- (ii) *"All Risk" Property Insurance.* PERMITTEE shall maintain a policy of property insurance for perils usual to a standard "all risk" insurance policy on all its improvements or alterations in, on, or about the RIGHT-OF-WAY, with limits equal to the value of all such improvements or alterations. The insurance required by this subsection (ii) shall also name the CITY as the "loss payee."
- (iii) *Workers' Compensation Coverage.* PERMITTEE shall maintain, and any and all contractors and subcontractors shall maintain coverage in amounts equal to statutory limits. A waiver of subrogation in favor of the City, its directors, officials, officers, employees, agents and volunteers shall apply.

b. General Provisions. The Required Insurance policies shall name CITY, its elected officials, officers, employees and agents as additional insureds as their interests may contractually appear. The Required Insurance shall be primary with respect to any insurance or self-insurance programs covering CITY, its elected officials, officers, employees and agents, or if in excess stand in an unbroken chain of coverage in excess of PERMITTEE's scheduled underlying coverage. The Required Insurance shall contain standard separation of insureds provisions, and shall contain no special limitations on the scope of its protection to CITY, its elected officials, officers, employees and agents.

c. Certificates; Insurer Rating; Cancellation Notice. Prior to conducting any work in RIGHT-OF-WAY, PERMITTEE shall furnish to CITY properly executed certificates of insurance which evidence all Required Insurance. PERMITTEE shall maintain the Required

Insurance at all times while this AGREEMENT is in effect, and shall replace any certificate, policy, or endorsement which will expire prior to that date. All policies shall be endorsed to provide the Required Insurance shall not be suspended, voided, reduced, canceled, or allowed to expire except on thirty (30) days prior written notice to CITY. Unless approved in writing by CITY, PERMITTEE shall place the Required Insurance with insurers licensed to do business in the State of California and with a current A.M. Best rating of at least A-:VIII.

d. Waiver of Subrogation. PERMITTEE releases CITY its directors, officials, officers, employees, agents and volunteers from any claims for damage or harm to any person, the RIGHT-OF-WAY, or a FACILITY, caused by, or which result from, risks insured under any insurance policy carried by the PARTIES at the time of such damage or harm. PERMITTEE shall cause each insurance policy obtained by them to provide that the insurance company waives all right of recovery by way of subrogation against the other in connection with any damage or harm covered by such policy.

14. Indemnity. Subject to applicable law, PERMITTEE hereby agrees to defend, indemnify and hold CITY, its elective and appointive boards, commissions, directors, officials, officers, agents, employees, and volunteers, and any successors to CITY's interest (collectively, "CITY PARTIES"), free and harmless from and against any and all claims, demands, causes of action, losses, liabilities, fines, penalties, charges, administrative or judicial proceedings or orders, judgments, remedial actions, costs, cleanup actions, damages or injuries of any kind in law or equity, to persons or property, including wrongful death, arising out of or incident to any acts, omissions or willful misconduct of PERMITTEE, its partners, affiliates, agents officials, officers or employees in performance of this AGREEMENT, use of the RIGHT-OF-WAY, or the construction, use, or operation of a FACILITY (collectively, "LOSSES"). PERMITTEE's obligation to defend CITY and CITY PARTIES under this Section is immediate and independent of any other obligations under this AGREEMENT; applies to any LOSSES that actually or potentially fall within the scope of this Section, regardless of whether the allegations are groundless, false, or fraudulent; and arises at the time the LOSSES are tendered to PERMITTEE by CITY and continues thereafter. PERMITTEE shall defend, at PERMITTEE's sole expense, any and all aforesaid suits, actions or proceedings, legal or affirmative, that may be brought or instituted against CITY and CITY PARTIES. Subject to applicable law, PERMITTEE shall pay and satisfy any judgment, award or decree that may be rendered against CITY and CITY PARTIES. PERMITTEE's obligation shall survive termination or expiration of this AGREEMENT, and shall not be restricted to insurance proceeds, if any, received by CITY or CITY PARTIES.

15. Miscellaneous.

a. Payments. If any amounts due to CITY under this AGREEMENT are not timely paid, CITY may assess interest at a rate of ten percent (10%) per annum from the payment due date up until payment is made. In the event payment is not made within ninety (90) days of its due date, PERMITTEE shall be considered to have materially breached this AGREEMENT. CITY's exercise of its rights hereof shall not release PERMITTEE from any liability or obligation hereunder, whether of indemnity or otherwise.

b. Amendments. The provisions of this AGREEMENT may only be amended by mutual written consent of both PARTIES.

c. Notices. All notices permitted or required under this AGREEMENT shall be given to the respective PARTIES via certified mail at the following address, or at such other address as the respective PARTIES may provide in writing for this purpose, or via email at the email address provided below:

PERMITTEE:

Arcadian Infracom 2, LLC
101 S. Haley Road, Suite 550
Clayton, MO 63105
Attn: General Counsel
Telephone: 314.806.3837
E-Mail: legal@arcadianinfra.com

CITY:

City of Fontana
Engineering Department
Land Development Division
8353 Sierra Ave, Fontana, CA 92335
Attn: Engineering Manager
E-Mail: engineering@fontanaca.gov

With a copy to:

Fontana City Attorney
c/o Best Best & Krieger LLP
2855 E. Guasti Rd., Suite 400
Ontario, CA 91761
Attn: Ruben Duran
Telephone: (909) 989-8584
E-Mail: ruben.duran@bbklaw.com

Such notice shall be deemed made: (1) when sent by confirmed electronic mail if sent during normal business hours of the recipient (9am-5pm Pacific Standard Time on a weekday), and if not so confirmed, then on the next business day, or (2) upon actual delivery via certified mail.

d. Emergency Contact Information for PERMITTEE. The emergency contact phone number to reach PERMITTEE twenty-four (24) hours a day, seven (7) days a week is 888-481-6280. Should this number be disabled or revised for any reason, PERMITTEE shall give the CITY immediate notice of an alternate emergency contact number.

e. Tax Notice. CITY hereby provides notice pursuant to California Revenue and Taxation Code Section 107.6, and PERMITTEE acknowledges, that this AGREEMENT may create a possessory interest and PERMITTEE may be subject to property taxes levied on such interest by the appropriate taxing authority, as described in California Revenue and Taxation Code Section 107. PERMITTEE is required to pay any such tax directly to the appropriate taxing authority.

f. Entire Understanding. This AGREEMENT constitutes the entire understanding between the PARTIES, and supersedes all offers, negotiations and other agreements concerning the subject matter contained herein.

g. Force Majeure. Neither PARTY shall be in breach of its obligations under this AGREEMENT (other than payment obligations) or incur any liability to the other PARTY for any losses or damages of any nature whatsoever incurred or suffered by that other (otherwise than under any express indemnity in this AGREEMENT) if and to the extent that it is prevented from carrying out those obligations by, or such losses or damages are caused by, an event beyond the control of the PARTY (“Force Majeure Event”), which shall include, without limitation, natural disasters, wildfires, earthquakes, floods, extreme weather, acts of God, labor disputes, supply chain disruptions, utility outages, pandemics, acts of government, delays in obtaining permits or approvals despite timely and complete applications, or third-party damage to PERMITTEE’s facilities, except to the extent that the relevant breach of its obligations would have occurred, or the relevant losses or damages would have arisen, even if the Force Majeure Event had not occurred (in which case this subsection shall not apply to that extent). A PARTY claiming a Force Majeure Event shall give written notice to the other PARTY as soon as reasonably practicable, and the affected obligations shall be suspended for the duration of the Force Majeure Event. As soon as reasonably practicable following the date of commencement of a Force Majeure Event, and within a reasonable time following the date of termination of a Force Majeure Event, any PARTY invoking it shall submit to the other PARTY reasonable proof of the nature of the Force Majeure Event and of its effect upon the performance of the PARTY’s obligations under this AGREEMENT.

h. No Consequential Damages. Notwithstanding anything to the contrary in this AGREEMENT, and subject to applicable law, in no event will CITY be liable or responsible to PERMITTEE for special, incidental, indirect, punitive, or consequential damages, whether foreseeable or not, including, without limitation, economic loss, lost revenues, lost profits, or third party damages from loss of service downtime, in connection with this AGREEMENT or CITY’s performance or non-performance of its obligations under this AGREEMENT, regardless of the form of action, whether under contract, warranty, tort, or otherwise, all claims for which are hereby specifically waived.

i. Invalidity. If any provision of this AGREEMENT is invalid or unenforceable with respect to any PARTY, the remainder of this AGREEMENT or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, shall not be affected and each provision of this AGREEMENT shall be valid and enforceable to the fullest extent permitted by law. By entering into this AGREEMENT the PERMITTEE expressly reserves and does not waive all rights it may have now or in the future under applicable law to challenge any requirement, condition, fee, or policy the CITY may impose on PERMITTEE,

including the requirements, conditions, fees and policies the CITY may impose on PERMITTEE under this AGREEMENT. Nothing in the previous sentence shall be construed to permit the PERMITTEE to challenge the requirements, conditions, fees, or policies that are expressly set forth in this AGREEMENT, except in connection with a dispute regarding the interpretation or enforcement of this AGREEMENT or a claim for breach.

j. Successors and Assigns. This AGREEMENT shall not be assigned by PERMITTEE without the prior written consent of CITY. This AGREEMENT shall be binding on and inure to the benefit of the successors and permitted assignees of the respective PARTIES.

k. Consent to Jurisdiction and Venue. This AGREEMENT shall be construed in accordance with and governed by the laws of the State of California. The PARTIES have a right to file and prosecute in any court of competent jurisdiction. Each PARTY waives the benefit of any provision of state or federal law providing for a change of venue to any other court or jurisdiction including, without limitation, a change of venue based on the fact that a governmental entity is a party to the action or proceeding. Without limiting the generality of the foregoing waiver, PERMITTEE expressly waives any right to have venue transferred pursuant to California Code of Civil Procedure Section 394.

l. Exhibits. All exhibits attached hereto form material parts of this AGREEMENT.

[Signatures on the Following Page]

CITY OF FONTANA

Arcadian Infracom 2, LLC

By: _____
Matthew C. Ballantyne
City Manager

By: _____
Name:
Title:

Attest:

By: _____
Germaine Key, City Clerk

Approved as to form:

Best Best & Krieger LLP
City Attorney

By: _____
Phillip Burum, Deputy City Manager
Development Services Organization

By: _____
Gia Lam Kim
Public Works Director/City Engineer

IN COMPLIANCE WITH INSURANCE ADMINISTRATION

By: _____
Rakesha L Voss, Director of Human
Resources and Risk Management

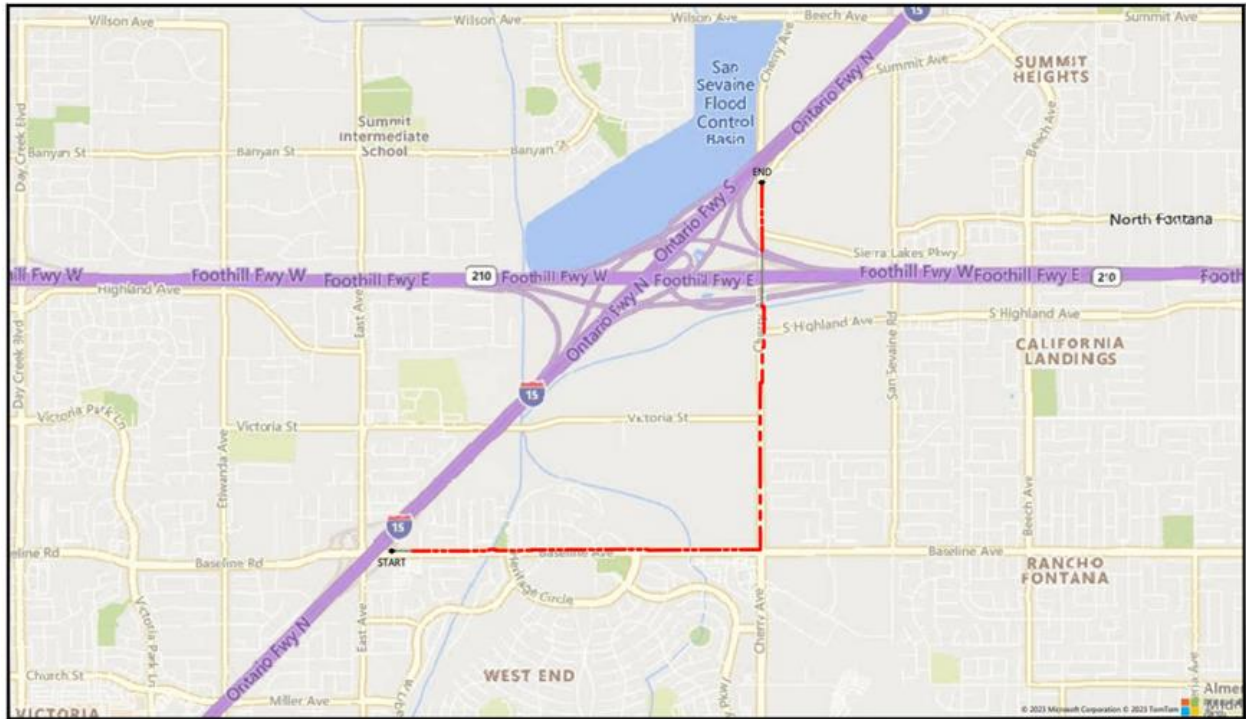
**IN COMPLIANCE WITH PURCHASING AND CONTRACT ADMINISTRATION
POLICIES/PROCEDURES**

Jessica Brown
Chief Financial Officer

Sid Lambert
Purchasing Manager

EXHIBIT "A"

RIGHT-OF-WAY MASTER PLAN



SITE LOCATION