

**DRAFT**

**RESOLUTION 20xx-xxx**

**RESOLUTION CONSENTING TO A SUBLEASE BETWEEN CCMH SAN DIEGO LLC, A DELAWARE LIMITED LIABILITY COMPANY, AND MOBILITIE MANAGEMENT, LLC, A DELAWARE LIMITED LIABILITY COMPANY, TO INSTALL, OPERATE, AND MAINTAIN A MULTI-CARRIER, NEUTRAL HOST DISTRIBUTED ANTENNA SYSTEM AND/OR SIMILAR SYSTEM, FOR A TEN-YEAR TERM WITH ONE TEN-YEAR OPTION TO EXTEND (SUBLEASE) AND POTENTIAL FUTURE SUBLEASE OR SUBLICENSE OF THE NETWORK TO SPECIFIC CARRIERS (AT&T, VERIZON, T-MOBILE, OR SPRINT)**

**WHEREAS**, the San Diego Unified Port District (District) is a public corporation created by the Legislature in 1962 pursuant to Harbors and Navigation Code Appendix I; and

**WHEREAS**, Section 21 of the Port Act authorizes the Board of Port Commissioners (BPC) to pass all necessary ordinances and resolutions for the regulation of the District; and

**WHEREAS**, Section 87(b) of the Port Act grants authority to the District to lease the tidelands or submerged lands, or parts thereof, for limited periods, not exceeding 66 years, for purposes consistent with the trusts upon which those lands are held, by the State of California; and

**WHEREAS**, the BPC adopted BPC Policy No. 355 to establish general policies for leasing District real estate assets; and

**WHEREAS**, the District entered into a sixty-six (66) year amended restated and combined lease (Lease) with Pacific Gateway, Ltd. (dba Marriott Marquis San Diego Marina), on December 1, 1995 for the operation of two hotel towers providing 1,355 guest rooms, meeting and banquet space, restaurants and a 446-slip marina, located at 333 West Harbor Drive, in the City of San Diego (Hotel); and

**WHEREAS**, CCMH San Diego, LLC (CCMH) leases the Hotel building and subleases the property from Pacific Gateway, Ltd. Marriott International Inc. (Marriott) manages and operates the hotel on behalf of CCMH San Diego, LLC pursuant to a hotel management agreement consented to by the District; and

**WHEREAS**, CCMH requests the District's consent to a Sublease Agreement (Sublease) for (1) approximately eighty-three (83) square feet of the hotel as equipment space, and (2) additional areas located within and around the hotel for

20xx-xxx

the placement of antennas, conduit, and other associated facilities to Mobilitie Management, LLC (Mobilitie), for the installation, construction, use, and maintenance of a multi-carrier, neutral host distributed antenna system and/or similar system (such as a small cell antenna system) (System); and

**WHEREAS**, the System and associated equipment (e.g., antennas) will be dictated by the needs of the individual carriers that will potentially use the System; and

**WHEREAS**, the Sublease mandates that any System installations not materially interfere with the operation of the hotel as a first-class accommodation; and

**WHEREAS**, the Sublease also specifies that, once details of the System are known, additional approvals from the District and any and all other applicable governmental approvals, may be required for physical improvements; and

**WHEREAS**, once the System is installed, guests of the hotel will have improved cellular coverage within and around the hotel; and

**WHEREAS**, the Sublease would specifically consent to Mobilitie's sublease or sublicense of the System to specific cellular carriers (AT&T, Verizon, T-Mobile or Sprint) through a Carrier Agreement; and

**WHEREAS**, any Carrier Agreement executed by Mobilitie and an approved carrier must be (1) in substantial conformance with the Form Carrier Agreement, attached to the Sublease as Exhibit 3: Form Carrier Agreement, and (2) submitted to the District within ninety (90) days of execution; and

**WHEREAS**, if the District determines that any executed Carrier Agreement is not in substantial conformance with the Form Carrier Agreement, the Carrier Agreement shall be void and District's prior written consent is required; and

**WHEREAS**, if approved by the BPC, the proposed Sublease with Mobilitie would be for a term of ten (10) years and include one ten (10) year option to extend the term; and

**WHEREAS**, the proposed Sublease is consistent with the terms and conditions established in the Lease and Board of Port Commissioners Policy No. 355 (BPC 355).

**WHEREAS**, for long term subleases (more than five (5) years), BPC 355 states they must meet the following conditions as a requirement to consent of the sublease:

- Sublease must meet current District lease requirements

20xx-xxx

- Provide that the subtenant shall be obligated to pay any master lease rent increases that are applicable to the subleased premises
- Provide that in the event of a conflict between the master lease and the sublease, the master lease shall prevail

**WHEREAS**, Mobilitie's assignment of its interest in the Sublease requires the District's consent, unless the assignment is to one of two specified affiliate entities: (1) Mobilitie Investments III, LLC or (2) Mobilitie Investments IV, LLC; and

**WHEREAS**, Mobilitie provided District staff with information about Mobilitie Investments III, LLC and Mobilitie Investments IV, LLC, and staff has determined that those affiliated entities satisfy the District's tenant qualification requirements, as outlined in BPC 355; and

**WHEREAS**, District staff has determined that the proposed Sublease is consistent with BPC 355. Staff recommends that the BPC adopt a Resolution consenting to the Sublease between Marriott Marquis San Diego Marina and Mobilitie.

**NOW THEREFORE, BE IT RESOLVED** that the Board of Port Commissioners of the San Diego Unified Port District, hereby consents to a sublease between Marriott Marquis San Diego Marina and Mobilitie Management, LLC, a Delaware Limited Liability Company, to install, operate, and maintain a multi-carrier, neutral host distributed antenna system and/or similar system, for a ten-year term with one ten-year option to extend and potential future sublease or sublicense of the network to specific carriers (AT&T, Verizon, T-Mobile, or Sprint).

APPROVED AS TO FORM AND LEGALITY:  
GENERAL COUNSEL

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By: Assistant/Deputy

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 18<sup>th</sup> day of August 2020, by the following vote: