

change to this wireless facility, which includes without limitation any permits or other approvals deemed-granted or deemed-approved under federal or state law, will not extend this term limit unless expressly provided otherwise in such permit or approval or required under federal or state law.

- (2) **Permit Renewal.** Within one (1) year before the expiration date of this permit, the permittee may submit an application for permit renewal. To be eligible for administrative review and renewal, the permittee must demonstrate that the subject wireless facility is in compliance with all the conditions of approval associated with this permit and all applicable provisions in the Gardena Municipal Code and this policy that exist at the time the decision to renew the permit is rendered. The Approval Authority shall have discretion to modify or amend the conditions of approval for permit renewal on a case-by-case basis as may be necessary or appropriate to ensure compliance with this policy. Upon renewal, this permit will automatically expire 10 years and one day from its issuance, except when California Government Code § 65964(b), as may be amended or superseded in the future, authorizes the City to establish a shorter term for public safety reasons or substantial land use reasons.
- (3) **Post-Installation Certification.** Within 60 calendar days after the permittee commences full, unattended operations of a small wireless facility approved or deemed-approved, the permittee shall provide the Approval Authority with documentation reasonably acceptable to the Approval Authority that the small wireless facility has been installed and/or constructed in strict compliance with the approved construction drawings and photo simulations. Such documentation shall include without limitation as-built drawings, GIS data and site photographs.
- (4) **Build-Out Period.** This small cell permit will automatically expire one (1) year from the approval date (the “**build-out period**”) unless the permittee obtains all other permits and approvals required to install, construct and/or operate the approved small wireless facility, which includes without limitation any permits or approvals required by the any federal, state or local public agencies with jurisdiction over the subject property, the small wireless facility or its use. If this build-out period expires, the City will not extend the build-out period but the permittee may resubmit a complete application, including all application fees, for the same or substantially similar project.
- (5) **Site Maintenance.** The permittee shall keep the site, which includes without limitation any and all improvements, equipment, structures, access routes, fences and landscape features, in a neat, clean and safe condition in accordance with the approved construction drawings and all conditions in this small cell permit. The permittee shall keep the site area free from all litter and debris at all times. The permittee, at no cost to the City, shall remove and remediate any graffiti or other vandalism at the site within 48 hours after the

permittee receives notice or otherwise becomes aware that such graffiti or other vandalism occurred.

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

officials, staff or other designees while any such inspection or emergency access occurs.

- (9) **Permittee's Contact Information.** Within 10 days from the final approval, the permittee shall furnish the City with accurate and up-to-date contact information for a person responsible for the small wireless facility, which includes without limitation such person's full name, title, direct telephone number, facsimile number, mailing address and email address. The permittee shall keep such contact information up-to-date at all times and promptly provide the City with updated contact information if either the responsible person or such person's contact information changes.
- (10) **Indemnification.** The permittee and, if applicable, the property owner upon which the small wireless facility is installed shall defend, indemnify and hold harmless the City, City Council and the City's boards, commissions, agents, officers, officials, employees and volunteers (collectively, the "**indemnitees**") from any and all (i) damages, liabilities, injuries, losses, costs and expenses and from any and all claims, demands, law suits, writs and other actions or proceedings ("**claims**") brought against the indemnitees to challenge, attack, seek to modify, set aside, void or annul the City's approval of this small cell permit, and (ii) other claims of any kind or form, whether for personal injury, death or property damage, that arise from or in connection with the permittee's or its agents', directors', officers', employees', contractors', subcontractors', licensees' or customers' acts or omissions in connection with this small cell permit or the small wireless facility. In the event the City becomes aware of any claims, the City will use best efforts to promptly notify the permittee and the private property owner (if applicable) and shall reasonably cooperate in the defense. The permittee expressly acknowledges and agrees that the City shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the City's defense, and the property owner and/or permittee (as applicable) shall promptly reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. The permittee expressly acknowledges and agrees that the permittee's indemnification obligations under this condition are a material consideration that motivates the City to approve this small cell permit, and that such indemnification obligations will survive the expiration, revocation or other termination of this small cell permit.
- (11) **Performance Bond.** Before the Building Division issues any permits required to commence construction in connection with this permit, the permittee shall post a performance bond from a surety and in a form acceptable to the Director in an amount reasonably necessary to cover the cost to remove the improvements and restore all affected areas based on a written estimate from a qualified contractor with experience in wireless facilities removal. The written estimate must include the cost to remove all equipment and other improvements, which includes without limitation all antennas, radios, batteries,

generators, utilities, cabinets, mounts, brackets, hardware, cables, wires, conduits, structures, shelters, towers, poles, footings and foundations, whether above ground or below ground, constructed or installed in connection with the wireless facility, plus the cost to completely restore any areas affected by the removal work to a standard compliant with applicable laws. In establishing or adjusting the bond amount required under this condition, and in accordance with California Government Code § 65964(a), the Director shall take into consideration any information provided by the permittee regarding the cost to remove the wireless facility to a standard compliant with applicable laws. The performance bond shall expressly survive the duration of the permit term to the extent required to effectuate a complete removal of the subject wireless facility in accordance with this condition.

- (12) **Permit Revocation.** Any permit granted under this policy may be revoked in accordance with the provisions and procedures in this condition. The Director may initiate revocation proceedings when the Director has information that the facility may not be in compliance with all applicable laws, which includes without limitation, any permit in connection with the facility and any associated conditions with such permit(s). Before the Director may conduct a public hearing to revoke any permit granted under this policy, the Director must issue a written notice to the permittee that specifies (i) the facility; (ii) the violation(s) to be corrected; (iii) the timeframe in which the permittee must correct such violation(s); and (iv) that, in addition to all other rights and remedies the City may pursue, the City may initiate revocation proceedings for failure to correct such violation(s). A permit granted under this policy may be revoked only by the City Council after a duly notice public hearing. The City Council may revoke a permit when it finds substantial evidence in the written record to show that the facility is not in compliance with any applicable laws, which includes without limitation, any permit in connection with the facility and any associated conditions with such permit(s). Any decision by the City Council to revoke or not revoke a permit shall be final and not subject to any further appeals. Within five business days after the City Council adopts a resolution to revoke a permit, the Director shall provide the permittee with a written notice that specifies the revocation and the reasons for such revocation.
- (13) **Record Retention.** Throughout the permit term, the permittee must maintain a complete and accurate copy of the written administrative record, which includes without limitation the small cell permit application, small cell permit, the approved plans and photo simulations incorporated into this approval, all conditions associated with this approval, any ministerial permits or approvals issued in connection with this approval and any records, memoranda, documents, papers and other correspondence entered into the public record in connection with the small cell permit (collectively, "**records**"). If the permittee does not maintain such records as required in this condition, any ambiguities or uncertainties that would be resolved by inspecting the missing records will be construed against the permittee. The permittee shall protect all records from

damage from fires, floods and other hazards that may cause deterioration. The permittee may keep records in an electronic format; provided, however, that hard copies or electronic records kept in the City's regular files will control over any conflicts between such City-controlled copies or records and the permittee's electronic copies, and complete originals will control over all other copies in any form. The requirements in this condition shall not be construed to create any obligation to create or prepare any records not otherwise required to be created or prepared by other applicable laws. Compliance with the requirements in this condition shall not excuse the permittee from any other similar record-retention obligations under applicable law.

- (14) **Abandoned Wireless Facilities.** The small wireless facility authorized under this small cell permit shall be deemed abandoned if not operated for any continuous six-month period. Within 90 days after a small wireless facility is abandoned or deemed abandoned, the permittee and/or property owner shall completely remove the small wireless facility and all related improvements and shall restore all affected areas to a condition compliant with all applicable laws, which includes without limitation the Gardena Municipal Code. In the event that neither the permittee nor the property owner complies with the removal and restoration obligations under this condition within said 90-day period, the City shall have the right (but not the obligation) to perform such removal and restoration with or without notice, and the permittee and property owner shall be jointly and severally liable for all costs and expenses incurred by the City in connection with such removal and/or restoration activities.
- (15) **Landscaping.** The permittee shall replace any landscape features damaged or displaced by the construction, installation, operation, maintenance or other work performed by the permittee or at the permittee's direction on or about the site. If any trees are damaged or displaced, the permittee shall hire and pay for a licensed arborist to select, plant and maintain replacement landscaping in an appropriate location for the species. Only International Society of Arboriculture certified workers under the supervision of a licensed arborist shall be used to install the replacement tree(s). Any replacement tree must be substantially the same size as the damaged tree. The permittee shall, at all times, be responsible to maintain any replacement landscape features.
- (16) **Cost Reimbursement.** The permittee acknowledges and agrees that (i) the permittee's request for authorization to construct, install and/or operate the wireless facility will cause the City to incur costs and expenses; (ii) the permittee shall be responsible to reimburse the City for all reasonable costs incurred in connection with the permit, which includes without limitation costs related to application review, permit issuance, site inspection and any other costs reasonably related to or caused by the request for authorization to construct, install and/or operate the wireless facility; (iii) any application fees required for the application may not cover all such reimbursable costs and that the permittee shall have the obligation to reimburse City for all such costs 10 days

after a written demand for reimbursement and reasonable documentation to support such costs; and (iv) the City shall have the right to withhold any permits or other approvals in connection with the wireless facility until and unless any outstanding costs have been reimbursed to the City by the permittee.

- (b) **Conditions for Small Wireless Facilities in the Public Rights-of-Way.** In addition to all conditions in subsection (a), all small cell permits for small wireless facilities in the public rights-of-way issued under this Section 4 shall be automatically subject to the conditions in this subsection (b).

- (1) **Future Undergrounding Programs.** Notwithstanding any term remaining on any small cell permit, if other utilities or communications providers in the public rights-of-way underground their facilities in the segment of the public rights-of-way where the permittee's small wireless facility is located, the permittee must also underground its equipment, except the antennas and any approved electric meter, at approximately the same time. Accessory equipment such as radios and computers that require an environmentally controlled underground vault to function shall not be exempt from this condition. Small wireless facilities installed on wood utility poles that will be removed pursuant to the undergrounding program may be reinstalled on a streetlight that complies with the City's standards and specifications. Such undergrounding shall occur at the permittee's sole cost and expense except as may be reimbursed through tariffs approved by the state public utilities commission for undergrounding costs.
- (2) **Electric Meter Upgrades.** If the commercial electric utility provider adopts or changes its rules obviating the need for a separate or ground-mounted electric meter and enclosure, the permittee on its own initiative and at its sole cost and expense shall remove the separate or ground-mounted electric meter and enclosure. Prior to removing the electric meter, the permittee shall apply for any encroachment and/or other ministerial permit(s) required to perform the removal. Upon removal, the permittee shall restore the affected area to its original condition that existed prior to installation of the equipment.
- (3) **Rearrangement and Relocation.** The permittee acknowledges that the City, in its sole discretion and at any time, may: (i) change any street grade, width or location; (ii) add, remove or otherwise change any improvements in, on, under or along any street owned by the City or any other public agency, which includes without limitation any sewers, storm drains, conduits, pipes, vaults, boxes, cabinets, poles and utility systems for gas, water, electric or telecommunications; and/or (iii) perform any other work deemed necessary, useful or desirable by the City (collectively, "**City work**"). The City reserves the rights to do any and all City work without any admission on its part that the City would not have such rights without the express reservation in this small cell permit. If the Public Works Director determines that any City work will require the permittee's small wireless facility located in the public rights-of-way to be rearranged and/or relocated, the permittee shall, at its sole cost and expense,

do or cause to be done all things necessary to accomplish such rearrangement and/or relocation. If the permittee fails or refuses to either permanently or temporarily rearrange and/or relocate the permittee's small wireless facility within a reasonable time after the Public Works Director's notice, the City may (but will not be obligated to) cause the rearrangement or relocation to be performed at the permittee's sole cost and expense. The City may exercise its rights to rearrange or relocate the permittee's small wireless facility without prior notice to permittee when the Public Works Director determines that the City work is immediately necessary to protect public health or safety. The permittee shall reimburse the City for all costs and expenses in connection with such work within 10 days after a written demand for reimbursement and reasonable documentation to support such costs.

SECTION 4.6. LOCATION REQUIREMENTS

- (a) **Preface to Location Requirements.** This subsection (a) provides guidance as to how to interpret and apply the location requirements in this Section 4.6. To better assist applicants and decisionmakers understand and respond to the community's aesthetic preferences and values, subsections (b), (c), (d), (e) and (f) set out listed preferences for locations and support structures to be used in connection with small wireless facilities in ordered hierarchies. Applications that involve lesser-preferred locations or structures may be approved so long as the applicant demonstrates that either (1) no more preferred locations or structures exist within 300 feet from the proposed site; or (2) any more preferred locations or structures within 300 feet from the proposed site would be technically infeasible as supported by clear and convincing evidence in the written record. Subsection (g) identifies "prohibited" support structures on which the Approval Authority shall not approve any small cell permit application for any competitor or potential competitor.
- (b) **Locations in the Public Rights-of-Way.** The City prefers small wireless facilities in the public rights-of-way to be installed in locations based on zoning districts as the first priority, and roadway classifications as the second. As an illustration, a location within a residential zone on or along an arterial roadway is less preferred than a location in a non-residential zone on or along a local street.
- (c) **Zoning Preference.** Whether in the public right-of-way or on private property, the following is the order of preferred zoning, ordered from most-preferred to least preferred:
 - (1) parcels within industrial (M-1/M-2) zones or approved for an industrial use;
 - (2) parcels within commercial (C-2/C-3/C-4) zones or approved for a commercial use;
 - (3) parcels within the parking (P) zone;

- (4) parcels within the official (O) zone or approved for an official use;
 - (5) parcels within a mixed-use overlay (MU), home business (H-B), or business and professional (C-P) zone or approved for such uses with a residential component;
 - (6) parcels in residential zones other than R-1 or R-2 district, including Specific Plan zones;
 - (7) parcels within a commercial-residential (C-R) zone;
 - (8) parcels within a single-family (R-1) or low-density multiple-family (R-2) residential zone.
- (d) **Roadway Classifications.** The City prefers small wireless facilities in the public right-of-way to be installed on or along roadway classifications, ordered from most-preferred to least preferred, as follows:
- (1) arterial roadways;
 - (2) major collector roadways;
 - (3) collector roadways;
 - (4) local streets.
- (e) **Support Structures in the Public Rights-of-Way.** The City prefers small wireless facilities to be installed on support structures in the public rights-of-way, ordered from most preferred to least preferred, as follows:
- (1) existing or replacement streetlight poles;
 - (2) existing or replacement wood utility poles;
 - (3) new, non-replacement streetlight poles;
 - (4) new, non-replacement poles for small wireless facilities.
- (f) **Support Structures Outside the Public Rights-of-Way.** The City prefers small wireless facilities to be installed on support structures outside the public rights-of-way, ordered from most preferred to least preferred, as follows:
- (1) existing buildings or other non-tower structures previously approved for use as a support structure for personal wireless service facilities;
 - (2) other existing buildings or non-tower structures;

- (3) existing or replacement poles or towers;
 - (4) new, non-replacement towers for small wireless facilities.
- (g) **Prohibited Support Structures.** The City prohibits small wireless facilities to be installed on the following support structures, whether located in the public rights-of-way or not:
- (1) decorative poles;
 - (2) traffic signals, signs, poles, cabinets and related devices;
 - (3) any utility pole scheduled for removal or relocation within 12 months from the time the Approval Authority acts on the small cell permit application;
 - (4) new, non-replacement wood poles.

SECTION 4.7. DESIGN STANDARDS

(a) **General Design Standards.**

- (1) **Noise.** Small wireless facilities and all accessory equipment and transmission equipment must comply with all applicable noise control standards and regulations in the Gardena General Plan and Gardena Municipal Code Chapter 8.36, as may be amended or superseded, and shall not exceed, either on an individual or cumulative basis, the noise limit in the applicable district. In the event a duly authorized federal, state, county or City official declares an emergency within a region that includes the City in whole or in part, backup power generators may exceed the applicable noise control standards and regulations to the extent reasonably necessary to operate the facility until the declared emergency is lifted or power is restored to the affected facility.
- (2) **Lights.** Small wireless facilities shall not include any lights that would be visible from publicly accessible areas, except as may be required under Federal Aviation Administration, FCC, other applicable regulations for health and safety. All equipment with lights (such as indicator or status lights) must be installed in locations and within enclosures that mitigate illumination impacts visible from publicly accessible areas. The provisions in this subsection shall not be interpreted or applied to prohibit installations on streetlights or luminaires installed on new or replacement poles as may be required under this Section.
- (3) **Landscape Features.** Small wireless facilities shall not displace any existing landscape features unless: (A) such displaced landscaping is replaced with native and/or drought-resistant plants, trees or other landscape features

approved by the Approval Authority and (B) the applicant submits and adheres to a landscape maintenance plan. The landscape plan must include existing vegetation, and vegetation proposed to be removed or trimmed, and the landscape plan must identify proposed landscaping by species type, size and location. Landscape maintenance must be performed in order to avoid the landscaping becoming a nuisance as specified in accordance with Gardena Municipal Code Section 8.64.020, as may be amended.

- (4) **Site Security Measures.** Small wireless facilities may incorporate reasonable and appropriate site security measures, such as locks and anti-climbing devices, to prevent unauthorized access, theft or vandalism. The Approval Authority shall not approve any barbed wire, razor ribbon, electrified fences or any similarly dangerous security measures. All exterior surfaces on small wireless facilities shall be constructed from or coated with graffiti-resistant materials.
- (5) **Signage; Advertisements.** All small wireless facilities must include signage that accurately identifies the site owner/operator, the owner/operator's site name or identification number and a toll-free number to the owner/operator's network operations center. Small wireless facilities may not bear any other signage or advertisements unless expressly approved by the City, required by law or recommended under FCC, OSHA or other United States governmental agencies for compliance with RF emissions regulations.
- (6) **Compliance with Health and Safety Regulations.** All small wireless facilities shall be designed, constructed, operated and maintained in compliance with all generally applicable health and safety regulations, which includes without limitation all applicable regulations for human exposure to RF emissions.

(b) **Small Wireless Facilities in the Public Right-of-Way.**

- (1) **Overall Height.** Small wireless facilities may not exceed either: (A) the minimum separation from electrical lines required by applicable safety regulations, plus ~~four~~ six feet; or (B) ~~four~~ six feet above the existing support structure.
- (2) **Antennas.**
 - (A) **Concealment.** All antennas and associated mounting equipment, hardware, cables or other connectors must be completely concealed within an opaque antenna shroud or radome. The antenna shroud or radome must be painted a flat, non-reflective color to match the underlying support structure.
 - (B) **Antenna Volume.** Each individual antenna may not exceed three cubic feet in volume and all antennas may not exceed six cubic feet in volume.

(3) **Accessory Equipment.**

- (A) **Installation Preferences.** All non-antenna accessory equipment shall be installed in accordance with the following preferences, ordered from most preferred to least preferred: (i) underground in any area in which the existing utilities are primarily located underground; (ii) on the pole or support structure; or (iii) integrated into the base of the pole or support structure. Applications that involve lesser-preferred installation locations may be approved so long as the applicant demonstrates that no more preferred installation location would be technically infeasible as supported by clear and convincing evidence in the written record.
- (B) **Undergrounded Accessory Equipment.** All undergrounded accessory equipment must be installed in an environmentally controlled vault that is load-rated to meet the City's standards and specifications. Underground vaults located beneath a sidewalk must be constructed with a slip-resistant cover. Vents for airflow shall be flush-to-grade when placed within the sidewalk and may not exceed two feet above grade when placed off the sidewalk. Applicants shall not be permitted to install an underground vault in a location that would cause any existing tree to be materially damaged or displaced.
- (C) **Pole-Mounted Accessory Equipment.** All pole-mounted accessory equipment must be installed flush to the pole to minimize the overall visual profile. If any applicable health and safety regulations prohibit flush-mounted equipment, the maximum separation permitted between the accessory equipment and the pole shall be the minimum separation required by such regulations. All pole-mounted equipment and required or permitted signage must be placed and oriented away from adjacent sidewalks and structures. Pole-mounted equipment may be installed behind street, traffic or other signs to the extent that the installation complies with applicable public health and safety regulations. All cables, wires and other connectors must be routed through conduits within the pole, and all conduit attachments, cables, wires and other connectors must be concealed from public view. To the extent that cables, wires and other connectors cannot be routed through the pole, applicants shall route them through a single external conduit or shroud that has been finished to match the underlying support structure.
- (D) **Base-Mounted Accessory Equipment.** All base-mounted accessory equipment must be installed within a shroud, enclosure or pedestal integrated into the base of the support structure. All cables, wires and other connectors routed between the antenna and base-mounted equipment must be concealed from public view.

- (E) **Ground-Mounted Accessory Equipment.** On collector roads and local roads, the City prefers ground-mounted accessory equipment to be concealed as follows: (A) within a landscaped parkway, median or similar location, behind or among new/existing landscape features and painted or wrapped in flat natural colors to blend with the landscape features; and (B) if landscaping concealment is not technically feasible, disguised as other street furniture adjacent to the support structure, such as, for example, mailboxes, benches, trash cans and information kiosks. On arterial roads outside underground districts, proposed ground-mounted accessory equipment should be completely shrouded or placed in a cabinet substantially similar in appearance to existing ground-mounted accessory equipment cabinets. All ground-mounted accessory equipment cabinets must comply with the City's public safety visibility requirements.
- (F) **Accessory Equipment Volume.** All accessory equipment associated with a small wireless facility installed above ground level shall not cumulatively exceed: (i) nine (9) cubic feet in volume if installed within 300 feet from a residential district; or (ii) seventeen (17) cubic feet in volume if installed in all other locations. The volume calculation shall include any shroud, cabinet or other concealment device used in connection with the non-antenna accessory equipment. The volume calculation shall not include any equipment or other improvements placed underground.
- (4) **Streetlights.** Applicants that propose to install small wireless facilities on an existing streetlight must remove and replace the existing streetlight with one substantially similar to the City's standards and specifications but designed to accommodate wireless antennas and accessory equipment. To mitigate any material changes in the streetlighting patterns, the replacement pole must: (A) be located as close to the removed pole as possible; (B) be aligned with the other existing streetlights; and (C) include a luminaire at substantially the same height and distance from the pole as the luminaire on the removed pole. All To the extent feasible, antennas must be installed above the pole within a single, canister-style shroud or radome that tapers to the pole.
- (5) **Wood Utility Poles.** Applicants that propose to install small wireless facilities on an existing wood utility pole must install all antennas above the pole unless the applicant demonstrates that mounting the antennas above the pole would be technically infeasible as supported by clear and convincing evidence in the written record. Side-mounted antennas on a stand-off bracket or extension arm must be concealed within a shroud. All cables, wires and other connectors must be concealed within the side-arm mount or extension arm. The maximum horizontal separation between the antenna and the pole shall be the minimum separation required by applicable health and safety regulations.
- (6) **New, Non-Replacement Poles.** Applicants that propose to install small wireless facilities on a new, non-replacement pole must install a new streetlight

substantially similar to the City's standards and specifications but designed to accommodate wireless antennas and accessory equipment located immediately adjacent to the proposed location. If there are no existing streetlights in the immediate vicinity, the applicant may install a metal or composite pole capable of concealing all the accessory equipment either within the pole or within an integrated enclosure located at the base of the pole. The pole diameter shall not exceed twelve (12) inches and any base enclosure diameter shall not exceed sixteen (16) inches. All antennas, whether on a new streetlight or other new pole, must be installed above the pole within a single, canister style shroud or radome.

- (7) **Strand-Mounted Wireless Facilities.** No more than one strand-mounted wireless facility may be installed (A) on any single span between two poles or (B) adjacent to any single pole. The Approval Authority shall not approve any ground-mounted equipment in connection with any strand-mounted wireless facility, except for a remote power source that delivers power to a cluster of strand-mounted wireless facilities. All equipment and other improvements associated with a strand-mounted wireless facility must comply with all applicable health and safety regulations. Strand-mounted wireless facilities shall not exceed one cubic foot in total volume. Any accessory equipment mounted on the pole shall be finished to match the underlying pole. "Snow shoes" and other spooled fiber or cables are prohibited.
- (8) **Encroachments over Private Property.** Small wireless facilities may not encroach onto or over any private or other property outside the public rights-of-way without the property owner's express written consent.
- (9) **Backup Power Sources.** Fossil-fuel based backup power sources shall not be permitted within the public rights-of-way; provided, however, that connectors or receptacles may be installed for temporary backup power generators used in an emergency declared by federal, state or local officials.
- (10) **Obstructions; Public Safety.** Small wireless facilities and any associated equipment or improvements shall not physically interfere with or impede access to any: (A) worker access to any above-ground or underground infrastructure for traffic control, streetlight or public transportation, including without limitation any curb control sign, parking meter, vehicular traffic sign or signal, pedestrian traffic sign or signal, barricade reflectors; (B) access to any public transportation vehicles, shelters, street furniture or other improvements at any public transportation stop; (C) worker access to above-ground or underground infrastructure owned or operated by any public or private utility agency; (D) fire hydrant or water valve; (E) access to any doors, gates, sidewalk doors, passage doors, stoops or other ingress and egress points to any building appurtenant to the rights-of-way; (F) access to any fire escape; or (G) any public access way subject to the Americans with Disabilities Act.

- (11) **Utility Connections.** All cables and connectors for telephone, data backhaul, primary electric and other similar utilities must be routed underground in conduits large enough to accommodate future collocated wireless facilities. Undergrounded cables and wires must transition directly into the pole base without any external doghouse. All cables, wires and connectors between the underground conduits and the antennas and other accessory equipment shall be routed through or concealed from view within: (A) internal risers or conduits if on a concrete, composite or similar pole; or (B) a cable shroud or conduit mounted as flush to the pole as possible if on a wood pole or other pole without internal cable space. All external cable shrouds or conduit must match the color of the support structure. The Approval Authority shall not approve new overhead utility lines or service drops merely because compliance with the undergrounding requirements would increase the project cost.
- (12) **Spools and Coils.** To reduce clutter and deter vandalism, excess fiber optic or coaxial cables shall not be spooled, coiled or otherwise stored on the pole outside equipment cabinets or shrouds.
- (13) **Electric Meters.** Small wireless facilities shall use flat-rate electric service or other method that obviates the need for a separate above-grade electric meter. If flat-rate service is not available, applicants may install a shrouded smart meter. The Approval Authority shall not approve a separate ground-mounted electric meter pedestal unless all more-preferred options are technically infeasible.
- (14) **Street Trees.** To preserve existing landscaping in the public rights-of-way, all work performed in connection with small wireless facilities shall not cause any street trees to be trimmed, damaged or displaced. If any street trees are damaged or displaced, the applicant shall be responsible, at its sole cost and expense, to plant and maintain replacement trees at the site for the duration of the permit term.

(c) **Small Wireless Facilities Outside the Public Right-of-Way.**

- (1) **Overall Height.** Small wireless facilities on private property may not exceed the applicable height limit for structures in the applicable zoning district or overlay zone.
- (2) **Setbacks.** Small wireless facilities on private property may not encroach into any applicable setback for structures in the subject zoning district.
- (3) **Backup Power Sources.** The Approval Authority shall not approve any diesel generators or other similarly noisy or noxious generators in or within 300 feet from any residence; provided, however, the Approval Authority may approve sockets or other connections used for temporary backup generators.

- (4) **Parking; Access.** Any equipment or improvements constructed or installed in connection with any small wireless facilities must not reduce any parking spaces below the minimum requirement for the subject property. Whenever feasible, small wireless facilities must use existing parking and access rather than construct new parking or access improvements. Any new parking or access improvements must be the minimum size necessary to reasonably accommodate the proposed use.
- (5) **Towers, Poles and Other Freestanding Small Wireless Facilities.** All new towers, poles or other freestanding structures that support small wireless facilities must be made from a metal or composite material capable of concealing all the accessory equipment, including cables, mounting brackets, radios, and utilities, either within the support structure or within an integrated enclosure located at the base of the support structure. All antennas must be installed above the pole in a single, canister-style shroud or radome. The support structure and all transmission equipment must be painted with flat/neutral colors that match the support structure. The pole height shall not exceed thirty-five (35) feet or the height limit for the applicable zoning district or overlay zone, whichever is less. The pole diameter shall not exceed twelve (12) inches and any base enclosure diameter shall not exceed sixteen (16) inches.
- (6) **Building-Mounted Small Wireless Facilities.**
- (A) **Preferred Concealment Techniques.** All applicants must propose new non-tower small wireless facilities that are completely concealed and architecturally integrated into the existing facade or rooftop features with no visible impacts from any publicly accessible areas at ground level (examples include, but are not limited to, antennas behind existing parapet walls or facades replaced with RF-transparent material and finished to mimic the replaced materials). Alternatively, if the applicant demonstrates with clear and convincing evidence that integration with existing features is technically infeasible, the applicant may propose completely concealed new structures or appurtenances designed to mimic the support structure's original architecture and proportions (examples include, but are not limited to, steeples and chimneys).
- (B) **Facade-Mounted Equipment.** When small wireless facilities cannot be placed behind existing parapet walls or other existing screening elements, facade-mounted equipment must be concealed behind screen walls and mounted flush to the facade. The Approval Authority may not approve "pop-out" screen boxes. Except in industrial zones, the Approval Authority may not approve any exposed facade-mounted antennas, including but not limited to exposed antennas painted to match the facade.

SECTION 5 TEMPORARY WIRELESS FACILITIES

SECTION 5.1. REQUIRED PERMITS

- (a) **Temporary Use Permit.** A temporary use permit, subject to the Director's prior review and approval in accordance with the procedures and standards in this Section 5, is required for any temporary wireless facility, unless deployed in connection with an emergency pursuant to Section 5.4.
- (b) **Other Permits and Regulatory Approvals.** In addition to any permit required under this Section 5, the applicant must show that the temporary wireless facility will comply with FCC maximum exposure limits for human exposure to radio frequency and also obtain all other permits and approvals as may be required by any other federal, state or local government agencies, which includes, without limitation, any other permits and/or approvals issued by other City departments or divisions. Furthermore, any permit or approval granted under this Section 5 (or deemed granted or deemed approved by law) shall remain subject to any and all lawful conditions and/or legal requirements associated with such other permits or approvals.

SECTION 5.2. APPLICATIONS AND SUBMITTAL PROCEDURES

- (a) **Application Required.** The Director shall not approve any temporary wireless facility subject to a temporary use permit except upon a duly filed application and any other written application requirements or procedures the Director may publish in any publicly-stated format.
- (b) **Minimum Application Requirements.** Applicants for a temporary wireless facility shall submit at a minimum: (1) a temporary use permit application on the most current form prepared by the Community Development Department; (2) the applicable fee for the application; (3) a site plan that shows the proposed temporary wireless facility and its equipment, physical dimensions and placement on the proposed site relative to property lines and existing structures; (4) an RF compliance report in accordance with the City's requirements; and (5) an insurance certificate for general commercial liability that names the City as an additional insured, includes coverage for the time period in which the temporary wireless facility will be placed and carries at least \$1,000,000 in coverage per occurrence.
- (c) **Procedures for a Duly Filed Application.** Applications must be submitted in person to the City unless the Director grants written consent to receive an application by mail or electronic means. No pre-application conference or appointment is required for a temporary use permit application.

SECTION 5.3. DECISIONS AND APPEALS

- (a) **Required Findings for Temporary Wireless Facilities.** The Director may approve or conditionally approve a temporary use permit for a temporary wireless facility only when the Director finds:
- (1) the proposed temporary wireless facility will not exceed the overall zone height limit of the zoning district in which it is located; and
 - (2) the proposed temporary wireless facility complies with all setback requirements applicable to the proposed location; and
 - (3) the proposed temporary wireless facility will not involve any excavation or ground disturbance; and
 - (4) the proposed temporary wireless facility will be compliant with all generally applicable public health and safety laws and regulations, which include without limitation maximum permissible exposure limits for human exposure to RF emissions established by the FCC; and
 - (5) the proposed temporary wireless facility will not create any nuisance or violate any noise limits applicable to the proposed location; and
 - (6) the proposed temporary wireless facility will be identified with a sign that clearly identifies the (i) site operator, (ii) the operator's site identification name or number and (iii) a working telephone number answered 24 hours per day, seven days per week by a live person who can exert power-down control over the antennas; and
 - (7) the proposed temporary wireless facility will be removed within 30 days after the Director grants the administrative use permit, or such longer time as the Director finds reasonably related to the applicant's need or purpose for the temporary wireless facility (but in no case longer than one year); and
 - (8) the applicant has not been denied an approval for any permanent wireless facility in substantially the same location within the previous 365 days.
- (b) **Appeals.** Any applicant may appeal the Director's written decision to deny a temporary use permit for a temporary wireless facility in accordance with Gardena Municipal Code § 18.60.090.

SECTION 5.4. EMERGENCY TEMPORARY WIRELESS FACILITIES

- (a) **Authorization.** Temporary wireless facilities may be placed and operated within the City without a temporary use permit only when a duly authorized federal, state,

county or City agency or official declares an emergency within a region that includes the City in whole or in part.

- (b) **Notice.** All temporary wireless facilities deployed in an emergency shall bear a sign that clearly identifies the site operator and the contact information for the person responsible for such temporary wireless facility. Any person or entity that places temporary wireless facilities pursuant to this Section 5.4 must send a written notice that identifies the approximate site location and person responsible for its operation to the Director as soon as reasonably practicable. One notice may cover multiple temporary wireless facilities.
- (c) **Removal.** Any temporary wireless facilities placed pursuant to this Section 5.4 must be removed within 15 days after the date the emergency is lifted. The Director may authorize a longer timeframe for emergency temporary wireless facilities when the Director finds that (1) the temporary wireless facilities were deployed to temporarily replace permanent wireless facilities destroyed or otherwise rendered inoperable in connection with the emergency or (2) removal within the default timeframe would threaten public health, safety or welfare.

WIRELESS FACILITY POLICY SUMMARY CHART

Type	Location	FCC Time Frame	Approval Authority	Notice	Incomplete Application	Resubmission	Deemed Approve/Granted Possible
Small Wireless Facility – Any Location	Attached to anything that is existing	60 days	Director; Appeal to City Manager	Notice to Neighbors within 100 feet	Notify within 10 days – reset shot clock back to 0 for 1 time only.	Notify within 10 days; pauses shot clock on subsequent incomplete notice	No – Operator must sue within 30 days after shot clock runs out
Small Wireless Facility – Any Location	New Structure	90 days	Director; Appeal to City Manager	Notice to Neighbors within 100 feet	Notify within 10 days – reset shot clock back to 0 for 1 time only.	Notify within 10 days; pauses shot clock on subsequent incomplete notice	No – Operator must sue within 30 days after shot clock runs out
Eligible Facility (§ 6409)	Will always be attached to an existing structure with a permitted wireless use	60 days	Director; Appeal to City Manager – applicant only	No notice	Notify within 30 days, but resubmission does not reset the shot clock, only pauses shot clock	Notify within 10 days; pauses shot clock on subsequent incomplete notice	Yes but applicant must provide notice to city application deemed granted
Macro Facility – Preferred Location	Attached to anything that is existing	90 days	Director; Appeal to City Council	Notice to Neighbors within 300 feet	Notify within 30 days, but resubmission does not reset the shot clock, only pauses shot clock	Notify within 10 days; pauses shot clock on subsequent incomplete notice	Yes but applicant must provide all public notices required by law and provide notice to City deemed granted
Macro Facility – Discouraged Location	Attached to anything that is existing	90 days	Planning Commission; Appeal to City Council	Notice to Neighbors within 300 feet; Planning Commission Meeting	Notify within 30 days, but resubmission does not reset the shot clock, only pauses shot clock	Notify within 10 days; pauses shot clock on subsequent incomplete notice	Yes but applicant must provide all public notices required by law and provide notice to City deemed granted
Macro Facility – Preferred Location	New structure	150 days	Director; Appeal to Planning Commission and then City Council	Notice to Neighbors within 300 feet	Notify within 30 days, but resubmission does not reset the shot clock, only pauses shot clock	Notify within 10 days; pauses shot clock on subsequent incomplete notice	Yes but applicant must provide all public notices required by law and provide notice to City deemed granted
Macro Facility – Discouraged Location	New structure	150 days	Planning Commission; Appeal to City Council	Notice to Neighbors within 300 feet; Planning Commission Meeting	Notify within 30 days, but resubmission does not reset the shot clock, only pauses shot clock	Notify within 10 days; pauses shot clock on subsequent incomplete notice	Yes but applicant must provide all public notices required by law and provide notice to City deemed granted



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July 15, 2019

VIA E-MAIL

City of Gardena City Council
1700 West 162nd Street
Gardena, CA 90247

Re: AT&T's Comments on the City of Gardena's Urgency Ordinance Related to
Wireless Facilities and Wireless Facilities Policy

Dear Mayor Cerda, Mayor Pro Tem Kaskanian and Councilmembers Henderson, Medina and Tanaka,

I write on behalf of New Cingular Wireless PCS, LLC d/b/a AT&T Mobility (AT&T) to provide comments on the City of Gardena's urgency ordinance related to wireless facilities ("Proposed Urgency Ordinance") and wireless facilities policy ("Proposed Policy"). AT&T appreciates that the City recognizes the need to address changes in applicable state and federal laws, including the Federal Communications Commission's *Infrastructure Order*.¹ With more than 72% of Americans relying exclusively or primarily on wireless telecommunications, it is especially important to encourage responsible deployments consistent with applicable law.

Unfortunately, the Proposed Urgency Ordinance and Proposed Policy would establish new rules at odds with state and federal laws. AT&T respectfully asks that the City consider these and other comments from the wireless industry to help make needed changes. AT&T offers the following summary of applicable laws along with specific comments on these proposed regulations.

Key Legal Concepts

The Federal Telecommunications Act of 1996 ("Act") establishes key limitations on local regulations. The Act defines the scope and parameters of the City's review of AT&T's applications. Under the Act, the City must take action on AT&T's applications "within a reasonable period of time."² The FCC has established and codified application "shot clocks" to implement this timing requirement.³ And the FCC has made clear that the City must grant all necessary approvals and authorizations within the applicable shot clock.⁴ The Act also requires

¹ See *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Declaratory Ruling and Third Report and Order, FCC 18-133 (September 27, 2018) ("*Infrastructure Order*").

² 47 U.S.C. § 332(c)(7)(B)(ii).

³ See 47 C.F.R. §§ 1.6001, *et seq.*

⁴ See *Infrastructure Order* at ¶¶ 132-137 (FCC concluded that shot clocks "apply to all authorizations a locality may require, and to all aspects and steps in the siting process, including license or franchise agreements to



that the City's review of AT&T's applications must be based on substantial evidence.⁵ Under the Act, state and local governments may not unreasonably discriminate among providers of functionally equivalent services.⁶

The Act also prohibits a local government from denying an application for a wireless telecommunications facility where doing so would "prohibit or have the effect of prohibiting" AT&T from providing wireless telecommunications services.⁷ The FCC has ruled that an effective prohibition occurs when the decision of a local government materially inhibits wireless services.⁸ The FCC explained that a local government "could materially inhibit service in numerous ways – not only by rendering a service provider unable to provide existing service in a new geographic area or by restricting the entry of a new provider in providing service in a particular area, but also by materially inhibiting the introduction of new services or the improvement of existing services."⁹

Under the *Infrastructure Order*, the FCC established a standard for lawful fees, which requires that: "(1) the fees are a reasonable approximation of the state or local government's costs, (2) only objectively reasonable costs are factored into those fees, and (3) the fees are no higher than the fees charged to similarly-situated competitors in similar situations."¹⁰ And the FCC provides a safe harbor for presumptively reasonable fees: (a) \$500 for non-recurring fees for an application including up to five small cells, plus \$100 for each small cell beyond five, or \$1,000 for non-recurring fees for a new pole to support small cells; and (b) \$270 per small cell per year for all recurring fees.¹¹ Higher fees are presumed to violate the Act.¹²

The FCC also established a standard for local aesthetic regulations that they must be (1) reasonable (i.e., has to be technically feasible), (2) no more burdensome than those applied to other infrastructure deployments, and (3) objective and published in advance.¹³ Regulations that do not meet these criteria are preempted as they are presumed to effectively prohibit wireless service in violation of the Act.¹⁴

AT&T has a statewide franchise right to access and construct telecommunications facilities in the public rights-of-way. Under Public Utilities Code Section 7901, AT&T has the right to access and construct facilities in public rights-of-way to furnish wireless services, so long as it does not "incommode" the public use of the public right-of-way. And under Section 7901.1, AT&T's right is subject only to the City's reasonable and equivalent time, place, and manner regulations.

access ROW, building permits, public notices and meetings, lease negotiations, electric permits, road closure permits, aesthetic approvals, and other authorizations needed for deployment").

⁵ 47 U.S.C. § 332(c)(7)(B)(iii).

⁶ 47 U.S.C. § 332(c)(7)(B)(i)(I).

⁷ 47 U.S.C. § 332(c)(7)(B)(i)(II).

⁸ See *Infrastructure Order* at ¶¶ 35-42; see also, *In the Matter of California Payphone Assoc. Petition for Preemption, Etc.*, Opinion and Order, FCC 97-251, 12 FCC Rcd 14191 (July 17, 1997).

⁹ *Infrastructure Order* at ¶ 37.

¹⁰ *Id.* at ¶ 50.

¹¹ *Id.* at ¶ 79.

¹² *Id.*

¹³ See *id.* at ¶ 86.

¹⁴ See *id.*



AT&T's Comment on the Proposed Urgency Ordinance

1. Consultants. Section 18.70.020 of the Proposed Urgency Ordinance requires providers to reimburse the City for the costs of consultants related to processing applications. While AT&T appreciates the City's desire to thoroughly review applications, consultants can unnecessarily increase the cost of deployment and slow down the permitting process. Use of consultants should limit review to appropriate and objective criteria, such as a structural safety assessment or compliance with FCC regulations of radio frequency emissions. And the City should be mindful that the cost of a consultant may not pass through to an applicant as only objectively reasonable costs can be passed on through application fees.¹⁵

AT&T's Comments on the Proposed Policy

1. Site Survey. With respect to small wireless facilities, AT&T objects to Section 1.4(a)(3) of the Proposed Policy, which requires applicants to submit a survey identifying and depicting all existing boundaries, encroachments and other structures within 300 feet from the proposed project site. Small wireless facilities are small and do not have a wide impact on nearby structures. For small wireless facilities and eligible facilities requests, a site survey should be limited to the immediate area surrounding the facility to be reasonable.

2. Submittal Appointment. Section 1.4(b)(1) requires providers to submit applications to the City at a pre-scheduled appointment, and provides that applications received without an appointment "will not be considered duly filed." While AT&T will certainly work to coordinate its submittals, the City cannot refuse to accept applications – or refuse to consider them "duly filed" – if appointments are unavailable as needed. The FCC flatly prohibits any express or de facto moratoria on filing applications as an unlawful prohibition on wireless facilities.¹⁶

3. Applications Deemed Withdrawn. Section 1.4(c) provides that an application is deemed withdrawn if an applicant does not respond to an incomplete notice within 60 calendar days. The City needs to eliminate this procedure. This is inconsistent with the mechanics of the FCC shot clocks. And responses are commonly delayed because the applicant and City staff are working together to resolve issues, which should be encouraged.

4. Other Permits Required. The Proposed Policy requires an applicant to apply for additional permits and approvals. The FCC has made clear that all associated permits and approvals are subject to the applicable shot clock.¹⁷

5. Undergrounding. Several provisions in the Proposed Policy mandate undergrounding of equipment. These requirements must be revised to the extent necessary to avoid unlawful

¹⁵ See *id.* at ¶ 70 (FCC warned that "any unreasonably high costs, such as excessive charges by third party contractors or consultants, may not be passed on through fees even though they are an actual 'cost' to the government").

¹⁶ *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Declaratory Ruling and Third Report and Order, FCC 18-111 (August 3, 2018), at ¶¶ 147, 149 (local actions that "effectively halt or suspend the acceptance, processing, or approval of applications or permits for telecommunications services or facilities ... prohibit or have the effect of prohibiting deployment of telecommunications services" in violation of the Telecommunications Act of 1996).

¹⁷ See *Infrastructure Order* at ¶¶ 132-137, 144.



discrimination or effectively prohibiting wireless services in violation of the Act. Wireless facilities cannot operate with all equipment underground. Antennas must be above ground to broadcast and receive and radio units must be placed above ground near antennas to function properly.

6. Appeals. Sections 2.5(b)(4), 3.4(f), 4.4(g) and 5.3(b) authorize appeals by interested persons. The City must take final action, inclusive of appeals, within the applicable shot clocks. The City should consider eliminating appeals for small cells and Section 6409(a) modifications that may otherwise add unnecessary pressure on the City to meet the FCC's shot clocks.

7. Indemnification and Abandoned Wireless Facilities. The City should not seek indemnity from an underlying property owner, as it does under Sections 2.6(a)(11), 3.5(l) and 4.5(a)(10) of the Proposed Policy. The City also should not seek to impose joint and several liability between the permittee and property owner for all costs and expenses incurred by the City in connection with removal of abandoned facilities in Sections 2.6(a)(15), 3.5(p) and 4.5(a)(14). Not only do these requirements risk interfering with existing leases, they also have the effect of interfering with prospective economic relations between AT&T and property owners. The indemnification provisions in the Proposed Policy need to carve out exceptions to indemnity in instances of the City's own negligence, and AT&T must retain the right to select its own counsel.

8. Cost Reimbursement. Sections 2.6(a)(17), 3.4(r) and 4.5(a)(16) state that applicants must "reimburse the City for all costs incurred in connection with the permit." It also states that the City has the right to withhold any permits or other approvals unless any outstanding costs have been reimbursed to the City by the permittee. This provision must be revised because only objectively reasonable costs that are recovered on a nondiscriminatory basis can be included in fees. To the extent the City's costs exceed the FCC's safe harbor for presumptively reasonable fees, the costs are preempted and unlawful. AT&T looks forward to working with the City to ensure its proposed fees comport with state and federal laws. And again, the City cannot refuse to accept and process applications, which would amount to an unlawful moratorium.

Specific Comments on the Provisions for Macro Wireless Facilities

1. Site Justification Analysis. The City must eliminate its requirement, in Section 2.2(a)(2), for propagation maps, as the FCC has emphatically rejected all coverage gap tests.¹⁸

2. Discouraged Locations. Under Section 2.3(b), the City strongly discourages new macro wireless facilities in locations within a commercial-residential zone. To the extent the concern about macro facilities in this area is based on aesthetics, the concern is fully addressed by the City's concealment requirements for macro facilities.

Specific Comment on the Special Provisions for Eligible Facilities Requests

1. Permit Term. AT&T objects to Section 3.5(a)'s requirement that permits for eligible facilities requests expire on the date the underlying permit expires, which conflicts with state law requiring a minimum duration of ten years for a wireless permit.¹⁹

¹⁸ See *Infrastructure Order* at ¶ 40, n. 94 (the FCC rejected all "coverage gap" tests, including "the version endorsed by the Second, Third, and Ninth Circuits (requiring applicants to show that the proposed facilities are the 'least intrusive means' for filling a coverage gap)").

¹⁹ See California Govt. Code Section 65964(b).



Specific Comments on the Special Provisions for Small Wireless Facilities

1. Construction Drawings. In Section 4.3(a)(2), the City requires wireless providers to provide construction drawings that identify all structures within 300 feet from the proposed project site. AT&T suggests that the City revise this requirement so that providers identify all structures within 25 feet from the proposed project site as construction of a small cell does not impact a very large area.
2. Site Agreement. Section 4.3(a)(4) states that applicants are not permitted to make any changes to the City's form site agreement to attach facilities to structures owned or controlled by the City in the public right-of-way. If applicants make any unpermitted changes, the City can deem the application incomplete. The City should remove this requirement. An application should not be considered incomplete if an applicant and the City are negotiating terms under the site agreement.
3. Batched Applications. AT&T objects to Section 4.3(b), which limits batched applications to five small wireless facilities and would deem an entire batch incomplete/withdrawn/or denied if any application in the batch is incomplete/withdrawn/or denied. This is inconsistent with the *Infrastructure Order* and the corresponding rule, which do not authorize batching limitations.²⁰ Moreover, federal law does not authorize denials based on denials of companion sites, or treating an application as withdrawn based on withdrawal of a companion site. Under the Act, the City can only deny an application based on substantial evidence. Further, such a process would be unreasonable and inefficient for both providers and jurisdictions.
4. Electric Meters. AT&T objects to Section 4.5(b)(2) requiring providers to remove a ground-mounted electric meter if a change in the electric provider's rules take away the need for a separate meter. Once AT&T installs a ground-mounted electric meter, the meter is permitted to remain for the permit term. AT&T will discuss removal of a ground-mounted electric meter in the context of a permit renewal. In addition, Section 4.7(b)(14) states that the City will not approve a separate ground-mounted electric meter pedestal, which contradicts Section 4.5(b)(2). Moreover, the City should delete this requirement as sometimes ground-mounted electric meter pedestals are the only feasible option for providers based on the electric provider's requirements.
5. Reimbursement for Rearrangement and Relocation Costs. Providers have ten days after a written demand to reimburse the City for all costs and expense related to rearranging or relocating the provider's small wireless facility in Section 4.5(b)(3). AT&T respectfully requests at least 60 calendar days to reimburse the City for such costs and expenses.
6. Location Requirements for Small Wireless Facilities. The Proposed Policy, in Sections 4.4(c)(2)&(4) and Section 4.6(a), requires the applicant to demonstrate that a proposed project would be in the most preferred location and on the most preferred support structure that are technically feasible within 300 feet of the proposed location under Sections 4.6's location requirements. The City can articulate appropriate location preferences, but AT&T has a legal right to place its facilities in the public rights-of-way. Further, the FCC's aesthetic standard for small cells precludes the City from requiring this type of analysis for wireless applications when the City does not require it from other infrastructure deployments.

²⁰ See 47 C.F.R. § 1.6003(c)(2) and *Infrastructure Order* at ¶114.



As a practical matter, the City should reconsider naming residential zones as the City's least preferred location for siting wireless facilities. Small cells are low-profile, low-power facilities that need to be placed near customers to provide and improve service. Thus, they need to be placed near where residents rely on wireless connectivity the most: in their homes. To the extent application of this preference materially inhibits AT&T from serving customers, it will violate the Act as an effective prohibition.

7. Prohibited Support Structures. The City should strike the proposed ban on the installation of enumerated support structures in Section 4.6(g) of the Proposed Policy, including decorative poles, traffic signals and new, non-replacement wood poles. First, the FCC made clear that its interpretations apply to all government owned or controlled structures within the right-of-way.²¹ These categorical bans on attaching facilities to certain structures will effectively prohibit wireless services in certain parts of the City in violation of the Act. And AT&T has the right to place wood poles, and this prohibition is discriminatory.

Moreover, many jurisdictions favor decorative pole designs for small cells, subject to a requirement that new or replacement decorative poles housing small cells are designed to look similar to nearby decorative poles. Further, it makes sense to allow traffic light installations, for instance, because it permits the wireless provider to cover multiple directions from one location, which a mid-block location may not support.

8. Overall Height. Section 4.7(b)(1) limits the overall height of small wireless facilities to four feet above the existing support structure. This limit may actually harm aesthetics by preventing AT&T's ability to deploy its most stealthy facilities. For example, AT&T's typical streetlight-top design extends up to six feet above the pole top.

9. Concealment. Many of the City's design standards in the Proposed Policy for small wireless facilities require concealment. But under the FCC's aesthetic standard for small cells, concealment cannot be required to a greater extent than imposed on other infrastructure deployments in the rights-of-way, and there are non-concealed electric distribution facilities throughout the City's rights-of-way. Further, some wireless components cannot be concealed.

10. Antenna Volume. Section 4.7(b)(2)(B) says "all antennas may not exceed six cubic feet in volume," which is inconsistent with the *Infrastructure Order* and 47 C.F.R. § 1.6002(i)(2) (capping individual antenna volume at three cubic feet but not placing a limit on total antenna volume). This Section should be revised to be consistent with the *Infrastructure Order*.

11. Accessory Equipment Installation Preferences. AT&T objects to Section 4.7(b)(3)(A) of the Proposed Policy, which provides installation preferences for all non-antenna accessory equipment, including undergrounding as a top priority. And in Section 4.7(b)(3)(E), the City states that if ground-mounted equipment cannot be concealed using landscaping, AT&T's facilities must be "disguised as other street furniture adjacent to the support structure, such as, for example, mailboxes, benches, trash cans and information kiosks." These preferences are more burdensome than restrictions imposed on other infrastructure deployments, such as electrical distribution facilities. Thus, they are unlawful under the FCC's aesthetic standard.

²¹ *Infrastructure Order* at ¶ 69.



12. Accessory Equipment Volume. Section 4.7(b)(3)(F) limits the volume of accessory equipment. This section must be revised to allow up to 28 cubic feet of equipment to be consistent with 47 C.F.R. §1.6002(l)(3).

13. Pole Top Requirement. Sections 4.7(b)(4)-(6) and Section 4.7(c)(5) require antennas on streetlights, wood utility poles, new, non-replacement poles and other freestanding structures to be installed above the pole. There may, however, be several reasons that inhibit installations on the top of the pole. For instance, top-mounted antennas may not be technically feasible or network parameters may prevent pole-top installation. Also, AT&T may only have rights to certain space on the pole, or the pole owner may impose restrictions on AT&T that prevent extending the height of the pole. This requirement should, therefore, be limited to the extent practical and feasible.

14. New, Non-Replacement Poles. Section 4.7(b)(6) allows the City to require that a new, non-replacement pole be a streetlight, and if there are no existing streetlights nearby, applicants may only install a metal or composite pole. The City cannot force AT&T to install streetlights and cannot ban use of other pole materials. AT&T has a state law right to set poles in the right-of-way under Section 7901. In addition, these requirements steer wireless installations onto City-owned structures in violation of state law, which prohibits the City from requiring "that all wireless telecommunications facilities be limited to sites owned by particular parties."²² And these restrictions are preempted by the FCC's aesthetic standard for small wireless facilities to the extent they are more burdensome than rules applied to other infrastructure deployments.

15. Pole Diameter. Section 4.7(b)(6) and Section 4.7(c)(5) state that the pole diameter shall not exceed 12 inches and any base enclosure diameter shall not exceed 16 inches. This requirement is too narrow and, thus, will lead to an effective prohibition.

Conclusion

AT&T appreciates the City's initial efforts to develop wireless facility siting regulations to accommodate new and emerging technologies and changes in law. By addressing the items we raise here, the City will go a long way toward encouraging deployments consistent with state and federal policies and to the great benefit of the City's residents and businesses.

Sincerely,

/s/ Gregory B. Mouroux

Gregory B. Mouroux

cc: Peter L. Wallin, City Attorney

²² California Govt. Code Section 65964(c).



TO: Mayor and City Council
FROM: Telecom Law Firm
DATE: July 18, 2019

RE: Gardena Small Cell Ordinance and Policy
Analysis of AT&T Comments

AT&T's Comment on the Proposed Urgency Ordinance

1. Consultants – No Change Required

The FCC expressly declined to preempt a state's or local government's ability to hire consultants or other independent contractors to assist with application review and to pass the objectively reasonable costs to the applicant. See *Small Cell Order* at ¶ 70. The proposed ordinance requires applicants to "reimburse the City for all *reasonable* consultant costs related to the processing of applications". Proposed Ordinance § 18.70.020 (emphasis added). Thus, the Proposed Ordinance is consistent with the *Small Cell Order*.

AT&T's Comment on the Proposed Policy

1. Site Survey – Change Made

AT&T objects to a 300-foot survey radius. The survey serves an important purpose in that it identifies any potential conflicts between uses and/or improvements in the public ROW. However, the policy has been revised to narrow this requirement to require a survey for all existing improvements within 75 feet from any proposed improvements. This will reduce the burden on the applicant and ensure the City receives information necessary to effectively manage the public ROW.

2. Submittal Appointment – No Change Required

AT&T objects to submittal appointments as *de facto* moratorium prohibited by the FCC. A *de facto* moratorium refers to an informal or unstated practice that results in "delay continu[ing] for an unreasonably long or indefinite amount of time such that providers are discouraged from filing applications, or the action or inaction has the effect of preventing carriers from deploying certain types of facilities or technologies." *Moratorium Order* at ¶ 150. The Policy requires staff to "use reasonable efforts to provide the applicant with an

appointment within five working days" from a request and makes no distinction based the type of facility or technology involved. On its face, the submittal appointment procedure is not a *de facto* moratorium.

3. Applications Deemed Withdrawn – Change Made

AT&T objects to the deemed-withdrawn procedure on the basis that it conflicts with the FCC's regulations and may be triggered even though the applicant is cooperating with staff. Nothing in the FCC's regulations prohibit this procedure, which is common in development codes and intended to expedite the review process. However, the City may wish to consider an extension to address situations in which the applicant cannot provide the incomplete materials for good-faith reasons outside the applicant's control. To implement this extension, the following text has be added after the last sentence in Section 1.4(c):

The Department may grant a one-time, 60-day extension if the applicant submits a written request that explains a good-faith reason outside the applicant's control for why the applicant cannot provide the complete materials.

Longer or additional extensions are not recommended. All application materials are published in advance and applicants can confer with staff prior to submittal. If the applicant cannot complete its application within 180 days, the applicant is not ready to file in the first place.

Additionally, if an applicant and City are truly trying to resolve issues, a tolling agreement can be used.

4. Other Permits – No Change Required

Staff is aware of this requirement.

5. Undergrounding – No Change Required

The undergrounding requirements in the Policy are consistent with applicable laws. In areas where undergrounding is required, the Policy does not require applicants to install equipment underground that must be above-ground, such as antennas, or above-ground for health and safety reasons, like electric meters.

6. Appeals – No Change Required

AT&T suggests that the City eliminate appeal procedures to ensure compliance with the FCC shot clock. Staff is aware that the shot clock includes appeals and has devised procedures to fit within these periods. Whether and how to balance the need for staff review time with the public's interest in an appeal is a policy question for the City Council.

The Council should note that an appeal process is recommended for macro facilities as existing case law suggests that these projects may implicate due process considerations under the California Constitution.

7. Indemnification – No Change Required

AT&T seeks various changes to the indemnification requirements. Broad indemnification for the local government is typical in development approvals. Moreover, as federal and state law continue to erode local discretion and force cities to review more applications in less time and with fewer resources, indemnifications that shift the risk to the applicant are a prudent requirement.

8. Cost Reimbursement – Minor Change Made

The FCC allows local governments to recover fees so long as:

- (1) the fees are a reasonable approximation of the state or local government's costs, (2) only objectively reasonable costs are factored into those fees, and (3) the fees are no higher than the fees charged to similarly-situated competitors in similar situations.¹

The FCC also established so-called "safe harbor" fees that are presumptively compliant with this standard. But these are not fee caps and costs above these safe harbor levels may be recovered. As AT&T has acknowledged, the City may recover reasonable costs and this requirement is included in the Ordinance. Nevertheless, sections 2.6(a)(17), 3.5(r), and 4.5(a)(16) have been amended to include the word "reasonable."

AT&T also suggests that the City may not withhold permits for AT&T's failure to reimburse the City for its costs. The City is entitled to recover its costs and delay in reimbursement imposes additional costs while the City carries the out-of-pocket expense for staff time and materials to process applications. Withheld permits based on unreimbursed costs is not a *de facto* moratorium because a delay in deployment is caused by the applicant and not the City.

Specific Comments on Macro Facilities

1. Site Justification Analysis – No Change Required

AT&T contends that the City cannot require propagation maps under the FCC's rules. The FCC prohibits denials based on "significant gap" considerations like coverage and capacity.² However, the FCC does not prohibit decisions based on technically feasible

¹ *Small Cell Order* at ¶ 50.

² *See Small Cell Order* at ¶ 40 n.94.

alternatives and technical data – such as a propagation map – are a useful tool to evaluate whether potential alternatives would be technically feasible. Moreover, the City could not use the propagation maps for an improper purpose because Policy does not include coverage, capacity or other “significant gap” considerations as a basis for denial.

2. Discouraged Locations – No Change Required

AT&T contends that the City should not discourage macro facilities in commercial-residential zones because they can be adequately concealed. However, the City's preference list merely requires the applicant to reasonably pursue more preferred locations that would be technically feasible before proposing a location in a discouraged zone.

Specific Comment on the Special Provisions for Eligible Facilities Requests

1. Permit Term – No Change Required

AT&T contends the permit term on a modification to an existing site must be at least 10 years under state law. The Government Code statute referenced by AT&T applies only to discretionary projects. Eligible facilities requests are not discretionary and therefore the City is not obligated to grant a 10-year extension for every non-discretionary change to an existing facility.

Specific Comments on the Special Provisions for Small Wireless Facilities

1. Construction Drawings – No Change Required

AT&T requests to reduce the area shown in construction drawings from 300 feet to 25 feet. Unlike the survey, a cut sheet in a construction drawing showing the relative location of other structures is not a potentially burdensome requirement. This requirement also enables staff to more efficiently evaluate potential alternative sites in proximity to the proposed location.

2. Site Agreement – No Change Required

AT&T objects to the site agreement as a requirement for a complete application. However, the FCC includes time spent on agreements for access to municipal property within the shot clock. Thus, failure to provide all the elements necessary for an approval, including a site agreement, is a proper basis for an incomplete notice to toll the shot clock.

In addition, the City may not currently own any poles in the right-of-way, in such case this application requirement would not be applicable.

3. Batched Applications – Change Made

AT&T objects to the limits on batched applications and to the procedure by which one application's incompleteness or failure to meet the findings for approval affects the others in its batch. The policy has been amended to provide staff greater flexibility when dealing with individual applications in a batch that are defective.

4. Electric Meters – Change Made

AT&T points out a contradiction between the condition that requires AT&T to upgrade a ground-mounted electric meter and a prohibition on ground-mounted electric meters.

The policy has been amended to allow for ground-mounted electric meters, but only when all other options are infeasible.

5. Reimbursement for Rearrangement and Relocation Costs – No Change Required

The Policy requires applicants to "reimburse the City for all costs incurred in connection with the permit" within 10 days from a written demand that documents such costs. AT&T suggests that the City should extend the reimbursement period to 60 days. The requirement for reimbursement for rearrangement and relocation costs only occurs if a permittee "fails or refuses to either permanently or temporarily rearrange and/or relocate" the facility after the City's notice.

6. Location Requirements – No Change Required

AT&T contends that its rights under state and federal law prohibit the City from considering alternative sites. This contention is false. The California Supreme Court recently affirmed that the so-called state-wide franchise for telephone companies to use the public ROW does not displace local aesthetic authority. The FCC's regulations require aesthetic criteria to be reasonable, nondiscriminatory, objective and published in advance. The location requirements meet all these criteria: it merely requires that applicants use the most preferred location that is technically feasible within a short distance from the proposed site.

7. Prohibited Support Structures – No Change Required

A prohibition on specific support structures does not effectively prohibit deployment so long as the applicants have other options available to them, such as existing streetlights, joint utility poles or new poles.

8. Overall Height – Minor Change Made

AT&T suggests that a six-foot increase in the overall height limit would better facilitate stealth designs. A change has been made from four feet to six feet to provide some additional flexibility in order to better conceal facilities.

9. Concealment – No Change Required

AT&T suggests that the aesthetic requirements are invalid because the City doesn't require concealment for all infrastructure in the public ROW. The FCC rules require aesthetic regulations to be no more burdensome than those applied to other types of infrastructure deployments. This rule applies to competitors and potential competitors; not all infrastructure in the public ROW is deployed by competitors or potential competitors with communications providers. The Policy makes no distinction about the types of infrastructure or technology that the applicants may propose and applies the same rules to all competitors and potential competitors who propose similarly situated projects.

10. Antenna Volume – No Change Required

The limitation on cumulative antenna and/or accessory equipment volume is not inconsistent with the FCC's regulations. The FCC defines a small wireless facility based on volumetric standards but does not require the City to approve any facility that meets those standards. To the extent that the City adopts smaller volume limits, those limits constitute aesthetic regulations subject to the FCC's criteria – that such regulations are reasonable, nondiscriminatory, objective and published in advance. The proposed volume limits meet all these criteria because the equipment for a typical small cell can fit within the proposed limits, they apply equally to similarly situated competitors, and they draw a bright line standard in a publicly available format.

11. Accessory Equipment Installation Preferences – No Change Required

See response 9 (Concealment) above.

12. Accessory Equipment Volume – No Change Required

See response 10 (Antenna Volume) above.

13. Pole Top Requirement – Minor Change Made

AT&T contends that the City impermissibly requires all antennas to be mounted to the top of the pole. The Policy allows side-mounted antennas on wood utility poles if needed for technical feasibility and the same exception has been added for streetlight poles.

14. New, Non-Replacement Poles – No Change Required

This requirement is consistent with the City's aesthetic authority under both state and federal law. The requirement leaves open alternative options when the City's preferred streetlight design would be out of place, including dedicated poles with only wireless facilities installed.

15. Pole Diameter – No Change Required

AT&T suggests that the limit on pole diameter will lead to an effective prohibition but fails to offer an alternative. This limit only applies to new poles in the right-of-way as a last resort if no other existing structure in the right-of-way would be technically feasible, or a new streetlight pole would be viewed as inconsistent with the surrounding built environment. Moreover, the pole diameter specifications in this section were based on the measurements provided in product catalogs for various pole concealment manufacturers.



City of Gardena
City Council Meeting

Agenda Item No. 8. D. (1)

Department: GENERAL SERVICES

Meeting Date: July 23, 2019

AGENDA REPORT SUMMARY

TO: THE HONORABLE MAYOR AND CITY COUNCIL

AGENDA TITLE: APPROVE PLANS AND SPECIFICATIONS AND AWARD CONTRACT
FOR LOCAL STREET OVERLAY 2018, VARIOUS LOCATIONS, JN 921
TO SEQUEL CONTRACTORS INC. IN THE AMOUNT OF \$706,299.27

COUNCIL ACTION REQUIRED:

Action Taken

Approve Plans and Specifications and Award Contract to Sequel Contractors, Inc.

RECOMMENDATION AND STAFF SUMMARY:

Staff respectfully recommends that City Council:

1. Approve the Project Plans and Specifications.
2. Award the construction contract for Local Street Overlay 2018, Various Locations, JN 921, to Sequel Contractors, Inc., 13546 Imperial Hwy, Santa Fe Springs, CA 90670 in the amount of \$706,299.27 and approve expenditures of remaining budget, as needed.

The following bids were received on May 20, 2019:

- | | |
|--|--------------|
| 1. Sequel Contractors Inc., Santa Fe Springs | \$706,299.27 |
| 2. All American Asphalt, Corona | \$740,500.00 |
| 3. R.J. Noble Co., Orange | \$759,336.83 |
| 4. Hardy & Harper Inc., Lake Forest | \$775,000.00 |

The apparent low bidder, Sequel Contractors, Inc. is a state licensed contractor with verified successful construction experience in this field and will be required to meet all bonding and financial standards.

This project will overlay approximately 250,000 SF of asphalt pavement, slurry 450,000 SF of pavement and replace 45, 8-inch traffic signal heads with 12-inch LED traffic signal heads.

Sufficient funds to complete this project were appropriated by the City Council in the 2018-2019 Capital Improvement Budget using Gas Tax Funds.

FINANCIAL IMPACT/COST:

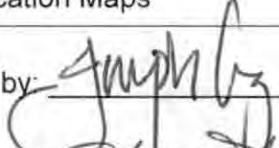
Amount of Expense: \$1,500,000 (Design, Construction Management & Inspection, Construction & Engineering)

Funding Source: Gas Tax Funds

Anticipated Revenue: \$1,500,000

ATTACHMENTS:

Project Location Maps

Submitted by: , Joseph Cruz, General Services Director

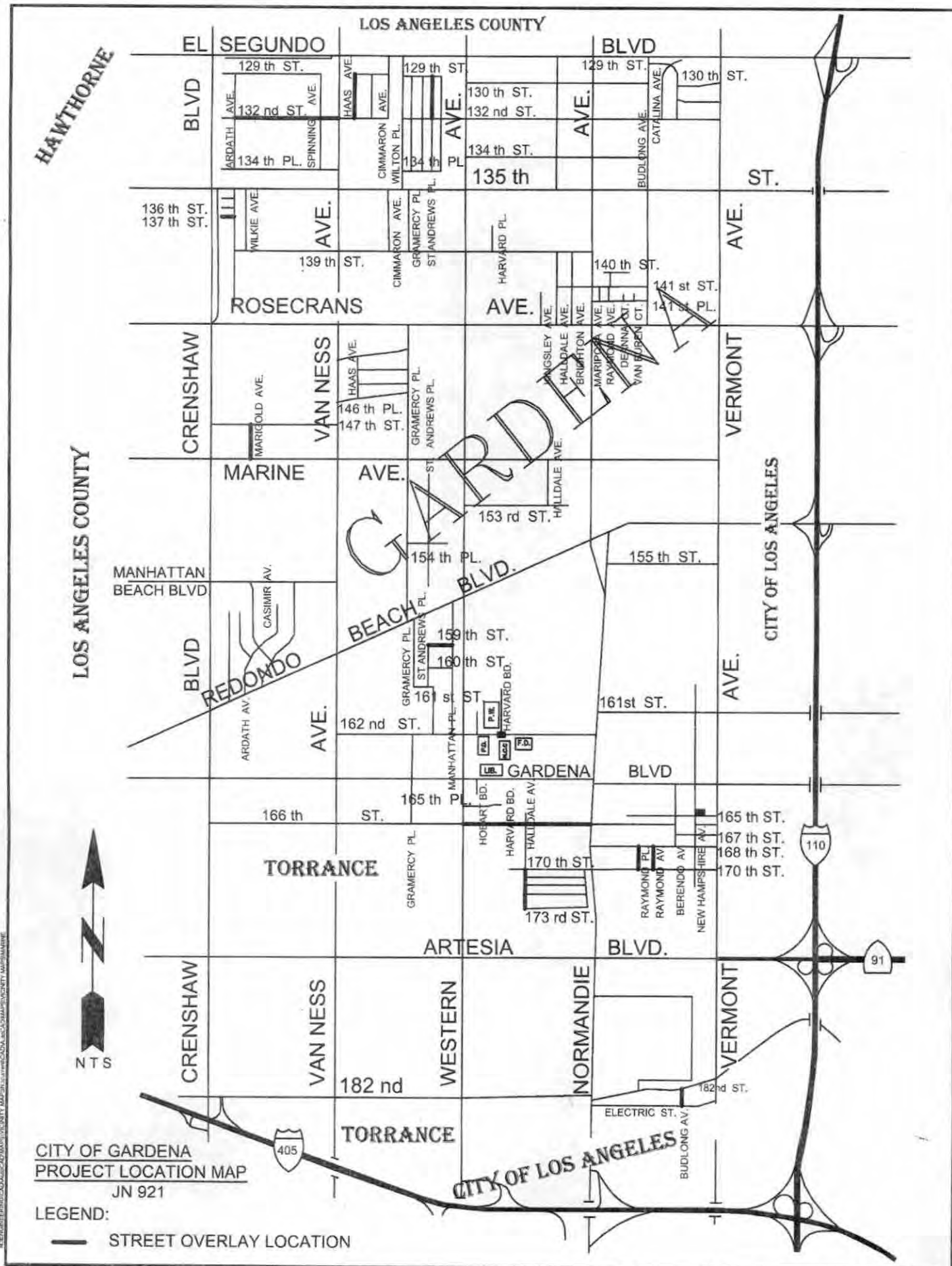
Date: 7/18/19

Concurred by: , Edward Medrano, City Manager

Date: 7/18/19

LEGEND:

— STREET OVERLAY LOCATION



HAWTHORNE

LOS ANGELES COUNTY

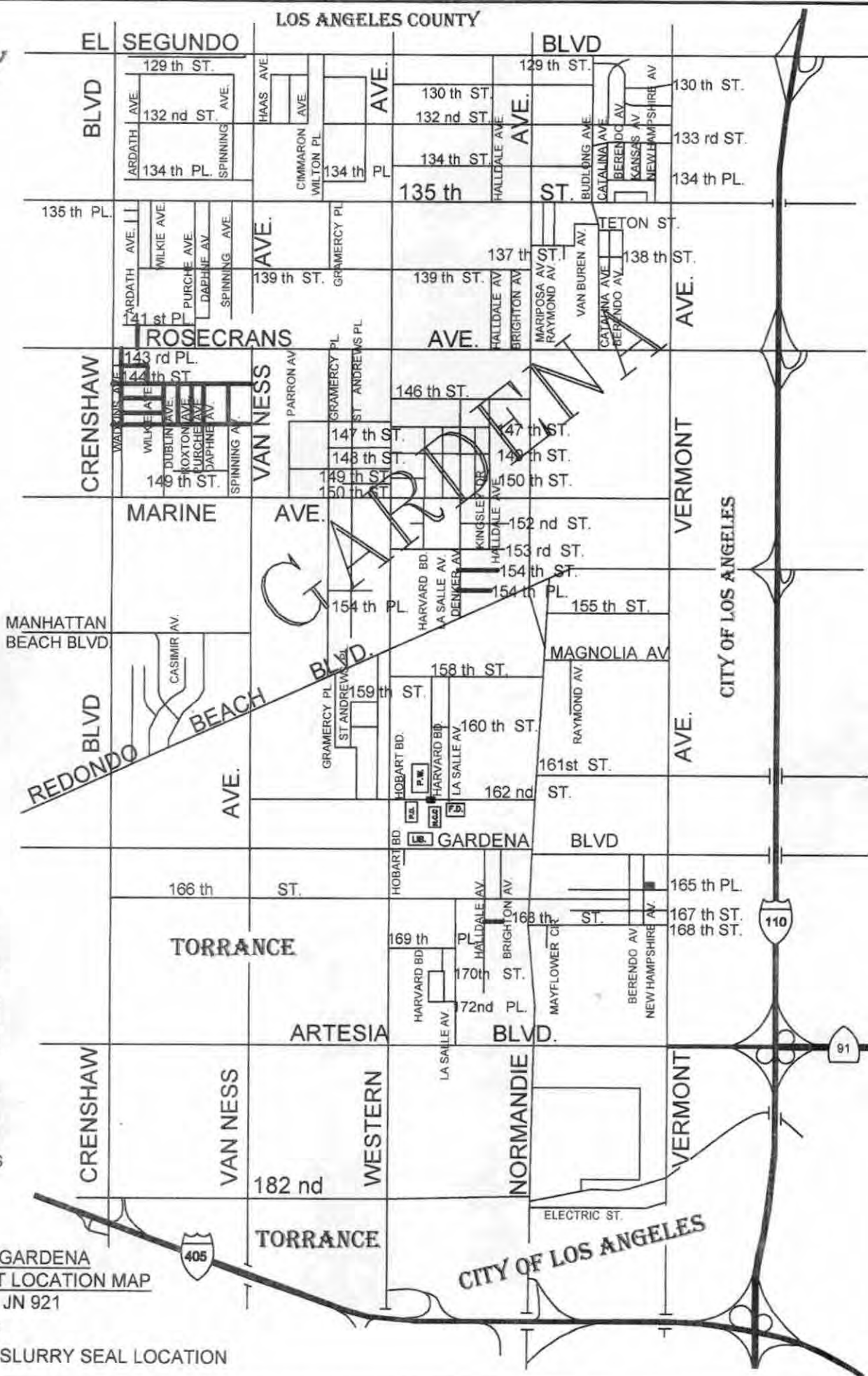
NTS

CITY OF GARDENA
PROJECT LOCATION MAP

JN 921

LEGEND:

SLURRY SEAL LOCATION



IN-ENGINEERING CAD AUTOCAD MAPPS VECTURY MATSHI, WWW.CAD.AUTOCAD MAPPS VECTURY MATSHI



City of Gardena

City Council Meeting

Agenda Item No: 8.F. (1)

Department: Recreation and
Human Services

Meeting Date: July 23, 2019

Resolution No: 6400

AGENDA REPORT SUMMARY

TO: THE HONORABLE MAYOR AND CITY COUNCIL

AGENDA TITLE: Resolution No. 6400, Approval of Local Agreement
Number CCTR-9077 with the California Department
of Education for FY 2019-2020

COUNCIL ACTION REQUIRED:

Adopt Resolution No. 6400 and Approve Local Agreement Number CCTR-9077
with the California Department of Education

Action Taken

RECOMMENDATION AND STAFF SUMMARY:

Staff respectfully recommends that City Council approve Local Agreement CCTR-9077 and adopt Resolution No. 6400 authorizing the Mayor and the City Clerk to execute the agreement with the California Department of Education which has been approved as-to-form by the City Attorney. The contract amount is \$2,433,772 which provides funding for the Gardena Family Child Care Program (GFCC) for FY 2019-20.

GFCC provides quality, educational, subsidized child care in licensed family child care homes in Gardena and bordering cities. Services are provided to low-income families whose parents are employed, in school/training seeking employment or are incapacitated and require assistance. Support services are also provided for the benefit of the total family.

GFCC staff not only works with children and families but also offers technical assistance to family child care providers in the GFCC network in areas such as curriculum, the child care environment, behavioral problems, and developmental and age appropriate practices.

FINANCIAL IMPACT/COST:

Revenue \$2,433,772 to the City of Gardena from the Department of Education for the Family Child Care Program.
No cost to the General Fund.

ATTACHMENTS:

1. Local Agreement Number CCTR-9077 with the California Department of Education
2. Encumbrance Page
3. Resolution No. 6400
4. Contractor Certification Clauses (CCC-04/2017)
5. California Civil Rights Laws Certification (CO-005)
6. Federal Certification (CO.8)

Submitted by

Stephany Santin, Acting Director,
Recreation / Human Services Dept.

Date 7/16/19

Concurred by

Edward Medrano, City Manager

Date 7/16/19

**CALIFORNIA DEPARTMENT OF EDUCATION**

1430 N Street

Sacramento, CA 95814-5901

F.Y. 19 - 20**LOCAL AGREEMENT FOR CHILD DEVELOPMENT SERVICES**

DATE: July 01, 2019

CONTRACT NUMBER: CCTR-9077

PROGRAM TYPE: GENERAL CHILD CARE &
DEV PROGRAMSPROJECT NUMBER: 19-2180-00-9CONTRACTOR'S NAME: CITY OF GARDENA

This Agreement is entered into between the State Agency and the Contractor named above. The Contractor agrees to comply with the terms and conditions of the CURRENT APPLICATION; the GENERAL TERMS AND CONDITIONS (GTC 04/2017)*; the GENERAL CHILD CARE AND DEVELOPMENT PROGRAM REQUIREMENTS*; and the FUNDING TERMS AND CONDITIONS (FT&C)*, which are by this reference made a part of this Agreement. Where the GTC 04/2017 conflicts with either the Program Requirements or the FT&C, the Program Requirements or the FT&C will prevail.

Funding of this Agreement is contingent upon appropriation and availability of sufficient funds. This Agreement may be terminated immediately by the State if funds are not appropriated or available in amounts sufficient to fund the State's obligations under this Agreement.

The period of performance for this Agreement is July 01, 2019 through June 30, 2020. For satisfactory performance of the required services, the Contractor shall be reimbursed in accordance with the Determination of Reimbursable Amount Section of the FT&C, at a rate not to exceed \$47.98 per child per day of full-time enrollment and a Maximum Reimbursable Amount (MRA) of \$2,433,772.00.

SERVICE REQUIREMENTS

Minimum Child Days of Enrollment (CDE) Requirement	50,729.0
Minimum Days of Operation (MDO) Requirement	252

APPROVED AS TO FORM

BY


PETER L. WALLIN
CITY ATTORNEY

Any provision of this Agreement found to be in violation of Federal and State statute or regulation shall be invalid, but such a finding shall not affect the remaining provisions of this Agreement.

Items shown with an Asterisk (*), are hereby incorporated by this reference and made part of this Agreement as if attached hereto. These documents can be viewed at <https://www.cde.ca.gov/fg/aa/cd/ftc2019.asp>

STATE OF CALIFORNIA		CONTRACTOR			
BY (AUTHORIZED SIGNATURE)		BY (AUTHORIZED SIGNATURE)			
PRINTED NAME OF PERSON SIGNING Jaymi Brown,		PRINTED NAME AND TITLE OF PERSON SIGNING TASHA CERDA, MAYOR			
TITLE Contract Manager		ADDRESS 1700 West 162nd Street, Gardena, CA 90247			
AMOUNT ENCUMBERED BY THIS DOCUMENT \$ 2,433,772 PRIOR AMOUNT ENCUMBERED FOR THIS CONTRACT \$ 0 TOTAL AMOUNT ENCUMBERED TO DATE \$ 2,433,772	PROGRAM/CATEGORY (CODE AND TITLE) Child Development Programs		FUND TITLE		Department of General Services use only
	(OPTIONAL USE) See Attached				
	ITEM See Attached	CHAPTER	STATUTE	FISCAL YEAR	
	OBJECT OF EXPENDITURE (CODE AND TITLE) 706				
	I hereby certify upon my own personal knowledge that budgeted funds are available for the period and purpose of the expenditure stated above.				
SIGNATURE OF ACCOUNTING OFFICER See Attached		T.B.A. NO.		B.R. NO.	
		DATE			

CONTRACTOR'S NAME: CITY OF GARDENA

CONTRACT NUMBER: CCTR-9077

AMOUNT ENCUMBERED BY THIS DOCUMENT \$ 528,832	PROGRAM/CATEGORY (CODE AND TITLE) Child Development Programs	FUND TITLE Federal
PRIOR AMOUNT ENCUMBERED \$ 0	(OPTIONAL USE)0656 FC# 93.596 13609-2180	PC# 000321
TOTAL AMOUNT ENCUMBERED TO DATE \$ 528,832	ITEM 30.10.020.001 6100-194-0890	CHAPTER B/A STATUTE 2019 FISCAL YEAR 2019-2020
	OBJECT OF EXPENDITURE (CODE AND TITLE) 706 SACS: Res-5025 Rev-8290	

AMOUNT ENCUMBERED BY THIS DOCUMENT \$ 243,100	PROGRAM/CATEGORY (CODE AND TITLE) Child Development Programs	FUND TITLE Federal
PRIOR AMOUNT ENCUMBERED \$ 0	(OPTIONAL USE)0656 FC# 93.575 15136-2180	PC# 000324
TOTAL AMOUNT ENCUMBERED TO DATE \$ 243,100	ITEM 30.10.020.001 6100-194-0890	CHAPTER B/A STATUTE 2019 FISCAL YEAR 2019-2020
	OBJECT OF EXPENDITURE (CODE AND TITLE) 706 SACS: Res-5025 Rev-8290	

AMOUNT ENCUMBERED BY THIS DOCUMENT \$ 1,661,840	PROGRAM/CATEGORY (CODE AND TITLE) Child Development Programs	FUND TITLE General
PRIOR AMOUNT ENCUMBERED \$ 0	(OPTIONAL USE)0656 23254-2180	
TOTAL AMOUNT ENCUMBERED TO DATE \$ 1,661,840	ITEM 30.10.020.001 6100-194-0001	CHAPTER B/A STATUTE 2019 FISCAL YEAR 2019-2020
	OBJECT OF EXPENDITURE (CODE AND TITLE) 706 SACS: Res-6105 Rev-8590	

I hereby certify upon my own personal knowledge that budgeted funds are available for the period and purpose of the expenditure stated above.	T.B.A. NO.	B.R. NO.
SIGNATURE OF ACCOUNTING OFFICER	DATE	

CONTRACT CHECKLIST

Please note that every form is required.

Contractor name CITY OF GARDENA Contract # CCTR-9077

Place a check mark next to each item being returned.

- ☐ Checklist
- ☐ Two (2) signed (in blue ink) child care contracts with original signatures
 - Did you include your printed name, title, and address?
 - Is all of the contract language visible?
- ☐ Two (2) signed Contractor Certification Clauses (CCC-4/2017)
 - Did you fill in ALL spaces including Federal ID Number?
- ☐ Two (2) signed California Civil Rights Laws Certifications (CO-005)
- ☐ Board resolution or minutes authorizing execution of contract and/or authorizing delegation of authority (if applicable)

Mail all signed contracts and completed documents *as soon as possible* to:

**Contracts, Purchasing, and Conference Services
California Department of Education
1430 N Street, Suite 2213
Sacramento, CA 95814-5901**

RESOLUTION NO. 6400

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GARDENA,
CALIFORNIA, APPROVING LOCAL AGREEMENT CCTR-9077 WITH
THE CALIFORNIA DEPARTMENT OF EDUCATION

WHEREAS, the City of Gardena wishes to enter into a Contract with the California Department of Education which provides funds for child care and child development services; and

WHEREAS, it is necessary that the City of Gardena designate and authorize a representative to sign the Local Agreement/Contract in order to administer said services.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GARDENA, CALIFORNIA, DOES HEREBY FIND, DETERMINE, AND RESOLVE. AS FOLLOWS:

SECTION 1. Approves the California Department of Education Local Agreement No. CCTR-9077, attached hereto as Exhibit A.

SECTION 2. Designates the Mayor, or in her absence, the Mayor Pro Tem, and the City Clerk to execute the contract and all documents necessary to accompany said contract, including all amendments to said contract within the fiscal year.

SECTION 3. That this Resolution shall be effective immediately.

BE IT FURTHER RESOLVED that the City Clerk shall certify to the passage and adoption of this Resolution; shall cause the same to be entered among the original Resolutions of said City; and shall make a minute of the passage and adoption thereof in the records of the proceedings of the City Council of said City in the minutes of the meeting at which the same is passed and adopted.

Passed, approved, and adopted this 23rd day July, 2019.

TASHA CERDA, Mayor

ATTEST:

MINA SEMENZA, City Clerk

APPROVED AS TO FORM:



PETER L. WALLIN, City Attorney

CCC 04/2017

CERTIFICATION

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective Contractor to the clause(s) listed below. This certification is made under the laws of the State of California.

<i>Contractor/Bidder Firm Name (Printed)</i> CITY OF GARDENA		<i>Federal ID Number</i> 95-6000713
<i>By (Authorized Signature)</i> 		
<i>Printed Name and Title of Person Signing</i> TASHA CERDA, MAYOR		
<i>Date Executed</i> 07/23/2019	<i>Executed in the County of</i> LOS ANGELES	

CONTRACTOR CERTIFICATION CLAUSES

1. STATEMENT OF COMPLIANCE: Contractor has, unless exempted, complied with the nondiscrimination program requirements. (Gov. Code §12990 (a-f) and CCR, Title 2, Section 11102) (Not applicable to public entities.)

2. DRUG-FREE WORKPLACE REQUIREMENTS: Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:

a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.

b. Establish a Drug-Free Awareness Program to inform employees about:

- 1) the dangers of drug abuse in the workplace;
- 2) the person's or organization's policy of maintaining a drug-free workplace;
- 3) any available counseling, rehabilitation and employee assistance programs; and,
- 4) penalties that may be imposed upon employees for drug abuse violations.

c. Every employee who works on the proposed Agreement will:

- 1) receive a copy of the company's drug-free workplace policy statement; and,
- 2) agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: the Contractor has made false certification, or violated the

certification by failing to carry out the requirements as noted above. (Gov. Code §8350 et seq.)

3. NATIONAL LABOR RELATIONS BOARD CERTIFICATION: Contractor certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a Federal court, which orders Contractor to comply with an order of the National Labor Relations Board. (Pub. Contract Code §10296) (Not applicable to public entities.)

4. CONTRACTS FOR LEGAL SERVICES \$50,000 OR MORE- PRO BONO REQUIREMENT: Contractor hereby certifies that Contractor will comply with the requirements of Section 6072 of the Business and Professions Code, effective January 1, 2003.

Contractor agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services during each year of the contract equal to the lesser of 30 multiplied by the number of full time attorneys in the firm's offices in the State, with the number of hours prorated on an actual day basis for any contract period of less than a full year or 10% of its contract with the State.

Failure to make a good faith effort may be cause for non-renewal of a state contract for legal services, and may be taken into account when determining the award of future contracts with the State for legal services.

5. EXPATRIATE CORPORATIONS: Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Section 10286 and 10286.1, and is eligible to contract with the State of California.

6. SWEATFREE CODE OF CONDUCT:

a. All Contractors contracting for the procurement or laundering of apparel, garments or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, declare under penalty of perjury that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the state pursuant to the contract have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and Public Contract Code Section 6108.

b. The contractor agrees to cooperate fully in providing reasonable access to the contractor's records, documents, agents or employees, or premises if reasonably required by authorized officials of the contracting agency, the Department of Industrial Relations, or the Department of Justice to determine the contractor's compliance with the requirements under paragraph (a).

7. DOMESTIC PARTNERS: For contracts of \$100,000 or more, Contractor certifies that Contractor is in compliance with Public Contract Code section 10295.3.

8. GENDER IDENTITY: For contracts of \$100,000 or more, Contractor certifies that Contractor is in compliance with Public Contract Code section 10295.35.

DOING BUSINESS WITH THE STATE OF CALIFORNIA

The following laws apply to persons or entities doing business with the State of California.

1. CONFLICT OF INTEREST: Contractor needs to be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.

Current State Employees (Pub. Contract Code §10410):

1). No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.

2). No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

Former State Employees (Pub. Contract Code §10411):

1). For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.

2). For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

If Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void. (Pub. Contract Code §10420)

Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (Pub. Contract Code §10430 (e))

2. LABOR CODE/WORKERS' COMPENSATION: Contractor needs to be aware of the provisions which require every employer to be insured against liability for Worker's

Compensation or to undertake self-insurance in accordance with the provisions, and Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code Section 3700)

3. AMERICANS WITH DISABILITIES ACT: Contractor assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)

4. CONTRACTOR NAME CHANGE: An amendment is required to change the Contractor's name as listed on this Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.

5. CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA:

a. When agreements are to be performed in the state by corporations, the contracting agencies will be verifying that the contractor is currently qualified to do business in California in order to ensure that all obligations due to the state are fulfilled.

b. "Doing business" is defined in R&TC Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate contractor performing within the state not be subject to the franchise tax.

c. Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies will determine whether a corporation is in good standing by calling the Office of the Secretary of State.

6. RESOLUTION: A county, city, district, or other local public body must provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing execution of the agreement.

7. AIR OR WATER POLLUTION VIOLATION: Under the State laws, the Contractor shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

8. PAYEE DATA RECORD FORM STD. 204: This form must be completed by all contractors that are not another state agency or other governmental entity.

CALIFORNIA CIVIL RIGHTS LAWS CERTIFICATION

Pursuant to Public Contract Code section 2010, if a bidder or proposer executes or renews a contract in the amount of \$100,000 or more on or after January 1, 2017, the bidder or proposer hereby certifies compliance with the following:

1. CALIFORNIA CIVIL RIGHTS LAWS: For contracts \$100,000 or more, executed or renewed after January 1, 2017, the contractor certifies compliance with the Unruh Civil Rights Act (Section 51 of the Civil Code) and the Fair Employment and Housing Act (Section 12960 of the Government Code); and
2. EMPLOYER DISCRIMINATORY POLICIES: For contracts \$100,000 or more, executed or renewed after January 1, 2017, if a Contractor has an internal policy against a sovereign nation or peoples recognized by the United States government, the Contractor certifies that such policies are not used in violation of the Unruh Civil Rights Act (Section 51 of the Civil Code) or the Fair Employment and Housing Act (Section 12960 of the Government Code).

CERTIFICATION

I, the official named below, certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.		<i>Federal ID Number</i>
<i>Proposer/Bidder Firm Name (Printed)</i> CITY OF GARDENA		95-6000713
<i>By (Authorized Signature)</i>		
<i>Printed Name and Title of Person Signing</i> TASHA CERDA, MAYOR		
<i>Date Executed</i> 07/23/2019	<i>Executed in the County and State of</i> LOS ANGELES, CALIFORNIA	

CO.8 (REV. 5/07)

FEDERAL CERTIFICATIONS

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature on this form provides for compliance with certification requirements under 45 CFR Part 93, "New restrictions on Lobbying," and 45 CFR Part 78, "Government-wide Debarment and Suspension (Non procurement) and Government-wide requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 45 CFR Part 93, for persons entering into a grant or cooperative agreement over \$100,000 as defined at 45 CFR Part 93, Sections 93.105 and 93.110, the applicant certifies that:

(a) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress in connection with the making of any federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal grant or cooperative agreement:

(b) If any funds other than federal appropriated funds have been or will be paid to any person for influencing or attempting to influence an employee of Congress, or any employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form -LLL, "Disclosure Form to Report Lobbying," in accordance with this instruction;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by executive Order 12549, Debarment and Suspension, and other responsibilities implemented at 45 CFR Part 78, for prospective participants in primary or a lower tier covered transactions, as defined at 45 CFR Part 78, Sections 78.105 and 78.110.

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction violation of federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (federal, state, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 45 CFR Part 78, Subpart F, for grantees, as defined at 45 CFR Part 78, Sections 78.605 and 78.610-

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition.

(b) Establishing an on-going drug-free awareness program to inform employees about-

(1) The danger of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will -

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d) (2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title,

to: Director, Grants, and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W., (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571.

Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d) (2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee shall insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

CITY OF GARDENA, FAMILY CHILD CARE PROGRAM

1651 West 162nd Street, Gardena

Los Angeles County, California 90247

Check ☐ if there are workplaces on file that are not identified here:

**DRUG-FREE WORKPLACE
(GRANTEES WHO ARE INDIVIDUALS)**

As required by the Drug-Free Workplace Act of 1988, and implemented at 45 CFR Part 76, Subpart F, for grantees, as defined at 45 CFR Part 76, Sections 76.605 and 76.610-

a. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant, and

b. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and contracts Service, U.S. department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3) Washington, DC 20202-4571. Notice shall include the identification numbers(s) of each affected grant.

ENVIRONMENTAL TOBACCO SMOKE ACT

As required by the Pro-Children Act of 1994, (also known as Environmental Tobacco Smoke), and implemented at Public Law 103-277, Part C requires that:

The applicant certifies that smoking is not permitted in any portion of any indoor facility owned or leased or contracted and used routinely or regularly for the provision of health care services, day care, and education to children under the age of 18. Failure to comply with the provisions of this law may result in the imposition of a civil monetary penalty of up to \$1,000 per day. (The law does not apply to children's services provided in private residence, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for in-patient drug and alcohol treatment.)

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT (CONTRACTOR) CITY OF GARDENA	CONTRACT # CCTR-9077
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE TASHA CERDA, MAYOR	
SIGNATURE	DATE 07/23/2019