



## STAFF REPORT

**Date:** February 14, 2017  
**To:** City Council  
**From:** Bryan Montgomery, City Manager   
**SUBJECT:** **Non-Exclusive Master Cooperation Agreement with Philips Lighting North America Corporation for the Siting, Installation and Maintenance of certain Integrated Lighting and Communication Smart Poles**

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### Background and Analysis

Philips Lighting is proposing to help implement a component of Oakley's Smart City initiative by expanding the wireless broadband coverage throughout the City. At the same time, the proposal will significantly advance the conversion to LED street lighting of up to 750 street lights – providing a 50%+/- energy savings to the City. Mayor Kevin Romick, also in his role as a Commissioner of the Contra Costa Transportation Authority, brought Philips Lighting and City staff together late last year for some initial discussions. These discussions have led to this proposed agreement.

The expansion of the wireless broadband coverage is achieved by the installation of "smart poles" in strategic locations throughout the City. These smart poles would be available to broadband carriers to better "saturate" neighborhoods with coverage. (The smart pole would merely replace an existing light pole and an example is shown in Attachment 1). The proposed Agreement sets forth how Philips and the City would cooperate on the project.

If the Agreement is approved, Philips would work with various broadband carriers to determine interest and demand for increased coverage throughout the City's neighborhoods. The City would grant a *non-exclusive* right to Philips to install smart poles in areas desired by the broadband carriers. All of the costs of the poles and other equipment are borne by Philips and the City is paid an annual \$100 fee per pole location, and for each location fifteen (15) other City-owned street lights would receive an LED conversion at Philips' expense (at an approximate 50% savings on energy usage). The City would not charge Philips any encroachment fees or permits for the smart pole installation. The Agreement calls for up to fifty (50) poles and a 10-year term, renewable for three (3) additional five (5) year terms.

It is not known at this time how many neighborhoods would receive this saturated coverage, but Staff is confident that the expanded broadband coverage is something that would be of benefit to the community. Here is a publication that discusses more the concept of "saturating" areas with broadband coverage due to ever-increasing data usage: [http://www.jointventure.org/images/stories/pdf/JVSV\\_Wireless-Telecommunications-Handbook\\_SEP2016.pdf](http://www.jointventure.org/images/stories/pdf/JVSV_Wireless-Telecommunications-Handbook_SEP2016.pdf)

Here are some news articles that also discuss work being done by Philips in other communities:

<http://applications.nam.lighting.philips.com/blog/index.php/2015/04/09/philips-city-touch-connects-los-angeles/>

<http://www.philips.com/a-w/about/news/archive/standard/news/press/2015/20151208-Philips-and-City-of-San-Jose-partner-to-deploy-Philips-SmartPoles-pilot-project.html>

### **Fiscal Impact**

Until Philips obtains firm commitments from the broadband carriers, it is unknown what the fiscal impact will be. While there will be some staff time committed to assisting with the location process and encroachment permitting, the revenue from each pole and the cost savings for the LED conversions should far exceed any costs.

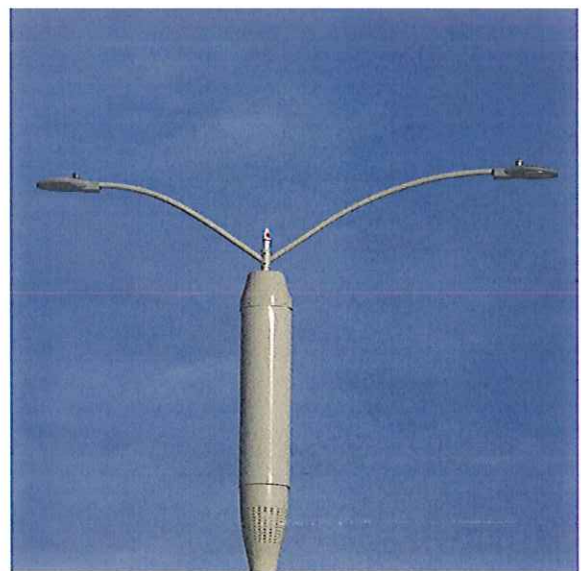
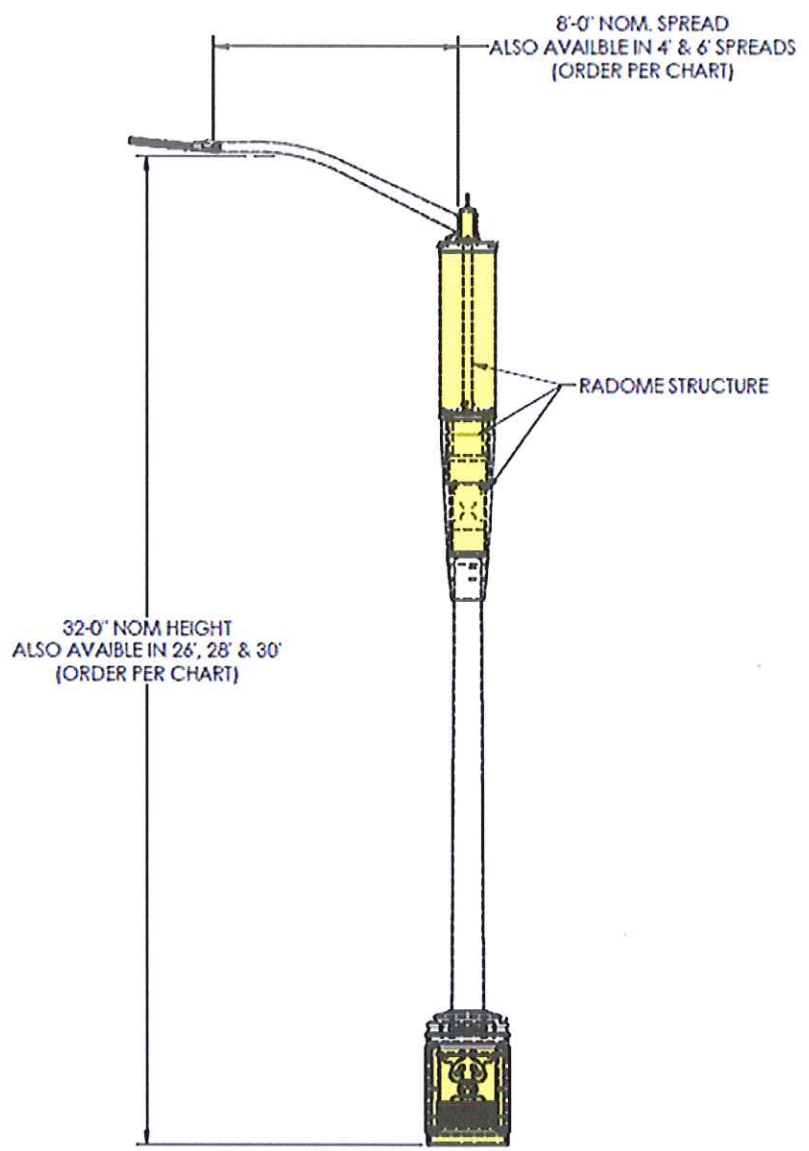
### **Recommendation**

Staff recommends the Council adopt the resolution authorizing the City Manager to execute a Non-Exclusive Cooperation Agreement with Philips Lighting North America Corporation.

### **Attachments**

1. Smart Pole examples
2. Proposed Cooperation Agreement
3. Resolution

# Smart Pole examples



## Non-Exclusive Master Cooperation Agreement The City of Oakley, California

This Non-Exclusive Master Cooperation Agreement (the “**Master Agreement**”), dated \_\_\_\_\_, 2017, is entered into between Philips Lighting North America Corporation (“**Applicant**”) and the City of Oakley, California (the “**City**”) and establishes the provisions and procedures applicable to the (i) siting, installation and maintenance of certain integrated lighting and communication smart poles (the “**Smart Poles**”) which will replace certain of the City’s existing street lighting poles, (ii) Applicant’s leasing of space within such Smart Pole and (iii) replacement of certain LED luminaires on certain existing light poles located in the City (“**LED Replacement**”).

In consideration of the terms and covenants contained herein, the Applicant and the City agree as follows:

### SECTION 1. LOCATION SELECTION RIGHT

- (A) Location Selection Right – The City hereby grants to Applicant the nonexclusive right to develop opportunities to construct install, maintain, repair and operate certain Smart Poles within the City for the purpose of providing street lighting for the City and subleasing a portion of the Smart Pole to certain telecommunications service providers or other third parties (“**Communication Provider**”) in order for them to install certain telecommunications and/or data transmission equipment (“**Communications Equipment**”), within the Smart Pole, which shall be exercised at Applicant’s sole cost, expense and liability as set forth in this Master Agreement, and which shall be subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record which may affect the applicable public way. Nothing in this Master Agreement shall be deemed to grant, convey, create or vest in Applicant a real property interest in land, including any fee, leasehold interest, or easement.
- (B) Location Selection Term – The Location Selection Term shall be for a period of ten (10) years from the date hereof (the “**Location Selection Term**”). The Location Selection Term may be automatically renewed for three (3) additional five (5) year terms provided the Applicant is not in default, is not in arrears with regard to, and does not dispute, any amount of Location Selection Fees.
- (C) Location Selection Fee – For the right to construct, install, maintain, repair and operate certain Smart Poles, including the right to sublease a portion of such Smart Pole to a telecommunications service provider, in the City, Applicant shall pay to the City a Location Selection Fee in the amount of one hundred dollars (\$100.00) per year (the “**Location Selection Fee**”) for each Smart Pole installed during the initial ten (10) year Location Selection Term. City reserves the right to negotiate a higher Location Selection Fee in subsequent Terms, if renewed; however, the City agrees that the Location Selection Fee shall never exceed one thousand dollars (\$1000.00) per year per Smart Pole Payment shall be made no later than 30 days following the conclusion of each fiscal year.

### SECTION 2. APPLICATION FOR PERMIT

(A) Permit Application – This section sets forth the basic terms and conditions upon which the Applicant may submit for approval from the City certain clusters of locations for the Smart Poles to be installed.

(i) From time to time during the Location Selection Term, Applicant may submit to the City for approval up to Fifty (50) proposed locations (each, a “**Smart Pole Location**”) in which the Applicant intends to install Smart Poles (each, a “**Cluster**”) in the form of a written Cluster Permit Application substantially in the form attached hereto as Attachment A or as otherwise mutually agreed between the City and Applicant.

(ii) The Cluster Permit Application for each Cluster shall include (1) a specific reference to the City approved Smart Pole designs for the Cluster, (2) maximum power consumption for each Smart Pole configuration, (3) a description of the portion of the Smart Pole that Applicant intends to sublease to one or more Communications Provider (the “**Leased Portion**”) and (4) location of each existing street light fixtures that Applicant intends to convert into LED for each Smart Pole (“**LED Fixture Location**”) and (5) such other information as the City may reasonably request.

(iii) In connection with each Cluster Permit Application, the Applicant agrees to pay the fees described on Attachment B.

(iv) The City shall process and respond to each Cluster Permit Application within thirty (30) days after receipt thereof, provided, however, the City shall use good faith efforts to process and respond to each Cluster Permit Applications within fifteen (15) days after receipt thereof.

(B) Issuance of Cluster Permit – Upon approval of the Cluster Permit Application by the City, the Applicant and the City shall enter into a Cluster Permit for such Cluster and each Smart Pole shall be installed and located in accordance with (a) any conditions or qualifications set forth in the Cluster Permit, and (b) the provisions of this Master Agreement. In the event of a discrepancy or inconsistency between the terms and conditions of a Cluster Permit and the terms and conditions of this Master Agreement, the terms and conditions of this Master Agreement shall govern.

(C) City Representative – The City shall designate one or more of its personnel to act as coordinator for each approved Cluster Permit. The coordinator will facilitate accelerated Cluster Permit Application preparation and approval.

### SECTION 3. CLUSTER PERMIT

(A) LED Conversion – In consideration for the rights granted herein for each Smart Pole Location, the Applicant hereby agrees that it will convert fifteen (15) of the City’s existing street light fixtures into LED lighting fixtures (the “**LED Fixtures**”). The locations of each LED Fixture Location shall be listed on the Cluster Permit Application as described in Section 2 above. Except with respect to the standard product warranty offered by Applicant

in connection with such LED Fixtures, the Parties hereby agree and acknowledge that Applicant shall have no further responsibility with respect to the LED Fixtures following the City's acceptance of the installed LED Fixtures and associated Smart Poles.

(B) Rights Associated with Cluster Permit – The City hereby agrees that for each Cluster Permit, the Applicant shall be granted the following rights:

- (i) the Applicant and its subcontractors and Sublessees shall have access to each Smart Pole Location for the purpose of installing the Smart Poles and Communications Equipment;
- (ii) the Applicant and its subcontractors shall have access to each LED Fixture Location for the purpose of (1) replacing the existing street lights to LED fixtures, as further described on **Attachment [ A ]**; and
- (iii) during the Permit Term (as defined below), the Applicant shall have exclusive rights to sublease the Leased Portion to a Communications Provider (the “**Sublessee**”) for the purpose of installing, maintaining and operating the Communications Equipment and exclusive use of the Smart Pole for any telecommunications or Data Communications use other than communications related to electrical power metering and LED Fixture(s) control systems, and such Sublessee shall have access to each Smart Pole Location and surrounding property within the public easement for the purpose of maintaining and operating the Communications Equipment.
- (iv) In the event there are not sufficient electric, telecommunications or fiber utility sources located within the Smart Pole site, the City will grant Applicant, its designee or the local utility provider the right to install such utilities in, or to a connection point at the site necessary for Sublessee to operate its Communications Equipment within the site, provided the location of such utilities shall be as reasonably designated by the City. The City will use reasonable efforts to respond promptly to requests by Applicant for access needed for Applicant to bring electricity, telecommunications, or fiber optic lines to each Smart Pole location, to the extent the City has jurisdiction to grant such access.

(C) Permit Term – The initial Permit Term of each Cluster Permit (the “**Permit Term**”) shall be for twenty five (25) years commencing on the date specified in each Cluster Permit or, if no date specified, the date which is the later of (i) the date the Applicant completes installation of all of the Smart Poles within a Cluster as further described in the Cluster Permit or (ii) one hundred and twenty (120) days after the execution of the Cluster Permit by both the City and Applicant (the “**Commencement Date**”).

- (i) The Parties agree that the Permit Term and Location Selection Term shall run independently of each other. In the event that the Location Selection Term terminates or expires prior to the Permit Term, the Permit Term shall continue pursuant to the terms hereto.

- (D) Compensation – Except with respect to the Location Selection Fee, conversion of the City’s existing street lighting fixtures to LED Fixtures as described in each Cluster Permit Application shall be the City’s sole compensation in connection with each Cluster Permit. Except for those identified on Attachment B, no other fees, (including, but not limited to, any permit fees, inspection fees, bonds or otherwise) or rent shall be payable by the Applicant to the City in connection with each Cluster Permit.
- (E) Title to Smart Pole – Title to the Smart Poles and all related risk of loss shall transfer automatically to the City upon their installation by the Applicant, provided, however, such transfer shall, in no event, include any Communications Equipment installed in such Smart Pole. Installation of a Smart Pole and LED Fixtures shall be deemed accepted by the City upon delivery of a certificate of acceptance by the City to Applicant substantially in the form attached hereto as **Attachment D**. Final inspection shall be completed by the City within 5 business days of notice from Applicant that all of the punch list items in the permit has been completed.
- (F) Replacement Smart Pole – The Parties agree that should any Smart Poles be knocked down on account of a traffic accident or vandalism, or should a Smart Pole otherwise become inoperable (other than because of the City’s failure to perform regular maintenance), the Applicant shall provide a replacement Smart Pole at no additional charge the City further agrees that it will not maintain, interfere or in any way handle the Communications Equipment without written approval from Applicant.
- (G) City Requested Removal – The City has the right to order the removal of a previously installed Smart Pole only in the event (i) that the safety of the public requires such removal or (ii) the City Council makes a final and un-appealable determination that such Smart Pole is required to be removed. In such event, the City shall provide Applicant with at least ninety (90) days prior written notice requiring the removal of the Smart Pole. During the ninety (90) day notice period, the City and Applicant will takes such steps as may reasonably be required to remedy the concern or, if such remedy is proven not to be feasible, identify a suitable replacement location for the Smart Pole that must be removed. Applicant or its Customer will remove their Communications Equipment from the Smart Pole to be removed. The City will be responsible for installing a replacement standard street light pole at the City’s cost in place of the Smart Pole to be removed. The City will reinstall the removed Smart Pole at the new location at Applicant’s cost. Applicant or Sublessee may reinstall the Communications Equipment in the re-sited Smart Pole.

#### **SECTION 4. INSTALLATION OF SMART POLE AND LED FIXTURES**

- (A) Access – The City hereby grants to the Applicant the right to use on a non-exclusive basis
- (i) each Smart Pole Location for the purpose of installing a Smart Pole at such location and
  - (ii) each LED Fixture Location for the purpose of replacing the existing street light to LED.
- Such right to use shall include:
- a. non-exclusive right of ingress and egress from a public right-of-way day to each Smart Pole Location and LED Fixture Location, including surround property, for the purpose of installation of the Smart Pole, Communications Equipment and LED

Fixtures in a manner consistent with the terms of the improvement permit required for construction;

- b. a right of access sufficient for the Applicant or its representatives to install the Smart Pole, Communications Equipment and/or LED Fixture, as applicable, including access to such wires and cables as required to connect the Smart Pole or Communications Equipment to electrical utility sources and fiber optic or telecommunications lines located at the Smart Pole Location.

(B) Working Time – All installation and ongoing maintenance of Communications Equipment shall be in compliance with all traffic laws and restrictions. Work that impedes traffic lanes shall not be completed between the hours of 7:00 to 9:00 am and 3:30 to 6:00 pm. At all other times throughout the term of this Master Agreement and with reasonable notice to City, and at no additional charge to Applicant, Applicant and its Customers and their respective employees, agents, and subcontractors, will have twenty-four (24) hour per day, seven (7) day per week pedestrian and vehicular access to the Smart Poles, for the installation, maintenance and operation of the Communication Equipment and any utilities fiber optic or telecommunications lines serving the Smart Poles.

(C) Spare Parts and Disposal of Existing Pole – The parties agree that Applicant may provide certain spare parts to the City and the City agrees that title to and risk of loss of such items shall transfer to the City upon delivery of such items to the City’s facilities. Upon installation of each Smart Pole the street light pole that is being replaced may be recycled by the City into existing spare stock or scrapped by the City at the City’s direction. The Applicant shall be responsible for removing any street light poles being replaced by a Smart Pole. At its discretion, the City may receive these removed poles at its maintenance yard for other use.

(D) Maintenance of Smart Pole – The City shall be responsible, at its cost, for day to day maintenance of the Smart Poles in good operating condition, provided, however, City shall in no event be responsible for, and hereby agrees that it will not handle in anyway, the Communications Equipment located within a Smart Pole. Applicant and its Sublessee shall be responsible at their sole cost for maintenance of any Communications Equipment.

(E) Hazardous Materials – The City makes no representations or warranties regarding the suitability, condition or fitness of any property, LED Fixture Location or Smart Pole Location for the installation, maintenance or use of LED Fixtures or the Communications Equipment, as applicable, provided, however, Company shall in no way be responsible for any hazardous materials found at the Smart Pole Location or LED Fixture Location, including, without limitation, the existence of any substances, chemicals, compounds, solids, liquids, gases, materials, pollutants, contaminants, hazardous substances, hazardous wastes, toxic materials, oil or petroleum products, asbestos or substances containing asbestos, polychlorinated biphenyls or any other material subject to regulation under any environmental law (“**Hazardous Materials**”) that may be at such location or encountered in the performance of the Applicant’s obligations described herein. Upon discovery of such Hazardous Materials at a Smart Pole Location or LED Fixture Location, Applicant will notify City immediately and cease work at such location until proper remediation



procedures have been completed. To the extent that installation of a Smart Pole is not feasible due to such Hazardous Materials, the Parties shall use reasonable efforts to identify a relocation site that is mutually acceptable. All actions or services relating to the existence, use, detection, removal, storage, handling, transportation, treatment, disposal, discharge, removal, abatement or containment of Hazardous Materials which are not specifically provided for in this Master Agreement as the responsibility of Applicant, are the responsibility of City.

- (F) Concealed or Unknown Conditions – To the extent the Applicant encounters any conditions at the Smart Pole Location or LED Fixture Location that are (a) that differ materially from those ordinarily found to exist in properties of a type and condition similar to such site or (b) unknown, concealed or materially differ from the conditions observed during the preliminary site visit or information provided by the Applicant, the parties shall use reasonable efforts to identify a relocation site that is mutually acceptable. In the event Applicant needs to relocate a site pursuant to this section, Applicant shall restore the property to its prior condition if practicable given the unknown, concealed or materially different condition of the site.

## **SECTION 5. COMMUNICATIONS EQUIPMENT**

- (A) Maintenance of Communications Equipment – During the Permit Term, in connection with the rights granted by the City of the Leased Portion pursuant to Section 3 above, the Sublessee shall have non-exclusive right of ingress and egress from a public right-of-way, seven (7) days a week, twenty four (24) hours a day for the purpose of maintaining and operating of the Communications Equipment, subject to Section 4(B) above. Applicant shall be responsible for all costs associated with restoring any alteration, damage or disturbance to the public right-of-way, including any improvements thereon directly caused by the Applicant.
- (B) Communication Equipment – All Communication Equipment installed within the Smart Poles shall comply with all Federal Communications rules and regulations. Any adjustments, updates, additions or other modifications that substantially change the physical dimensions of the existing Smart Pole must be approved by City.
- (C) Interference Testing – Radio equipment that is operated in the unlicensed spectrum has potential to interfere with other applications and equipment in the nearby vicinity. Therefore, the City reserves the right to require that such unlicensed radio equipment be tested by an independent third party satisfactory to both Applicant and the City at the Applicant's expense if interference is detected. In the event any unlicensed installed equipment causes unreasonable interference with pre-existing equipment owned by the City or located on City property, and after the City has notified Applicant in writing of such interference, Applicant and its Customer will take all commercially reasonable steps necessary to correct and eliminate the interference, including but not limited to, at their option, powering down such equipment and later powering up such equipment for intermittent testing. In no event will the City be entitled to terminate the permit for a Smart Pole Location or relocate the equipment as long as Applicant and its Customer are making a good faith effort to remedy the interference issue. Failure to remedy such interference

will lead to Applicant relocating the Smart Pole and/or equipment and shall bear any and all costs of the relocation.

- (D) Energy Usage – Unless otherwise provided in the Cluster Permit Application, the City shall, at all times during the Permit Term of each Cluster Permit, provide electrical service to each Smart Pole. For avoidance of doubt, Applicant will not be required to pay for any utilities consumed by the lighting element of the Smart Poles, and Applicant will only be required to pay for utility consumption for the Communications Equipment. Division of such utility power costs will be made possible by way of appropriate supplemental metering equipment integrated on or within the Smart Pole or other methods as may be mutually agreed between Applicant, City and the electric utility(s). Any costs associated with establishing such separate metering shall be borne by the Applicant.
- (E) Annual Inspection and Required Insurance – At the City’s request, the Applicant shall submit an annual inspection report to the City to verify that all units have been inspected. In addition, the Applicant shall ensure that all customers of the Applicant have valid commercial general liability insurance with limits not less than \$1 million per incident and \$3 million in the aggregate.
- (F) Auditing – Auditing may be conducted by the City at its sole discretion. An audit may be conducted by the City or by an independent auditor selected by the City. The Applicant may be responsible for the reasonable cost of the audit, if audit findings (as proven by an on-site inspection by Applicant) determine material inventory inaccuracies in the City’s favor (i.e. a material amount of additional rent would have been due but for the inaccuracies). Upon ten (10) days prior written notice, Applicant will provide access to the equipment and provide assistance to the City and its auditor to accomplish the audit, including, without limitation, identifying, locating and accessing the equipment. If inventory inaccuracies are discovered, the City shall have the right to collect all reasonable costs associated with any additional work, including but not limited to, field verification, auditing of devices, bench testing, and field amp reads.
- (G) Regulatory Standards/Maintenance – Upon City’s design review approval, the Smart Poles shall be installed by the Applicant at Applicant’s cost by a third party vendor operating together with the City pursuant to one or more separate agreements between such third party vendor and the City and/or Applicant, and thereafter day to day maintenance shall be performed by the City, as required to maintain the same in good operating condition, in accordance with all design standard and requirements of the specifications for the Smart Poles and with all applicable laws, rules and regulations by any governmental authority with jurisdiction. Notwithstanding the foregoing, the City shall not be obligated to maintain any Communications Equipment and in performing maintenance or inspections, the City shall not interfere with the operation of any such Communications Equipment. However, Applicant shall be responsible for ensuring that the design of the Smart Poles and Communications Equipment operated thereon shall be consistent with all City design standards and requirements of the specifications for the Smart Poles and with all applicable laws, rules and regulations by any governmental authority with jurisdiction. Applicant shall be responsible to correct all identified violations of laws related to the design of the Smart Poles, operation of Communications Equipment thereon, and any replacement Smart

Poles provided by Applicant and all identified deviations from the City reasonable standards. Where the City makes corrections as provided below, the Applicant shall be responsible for all reasonable costs, , for the City to remedy any notices of violation or infractions imposed on the City as a result of the Applicant installation or operation of the equipment. Except when otherwise required by law or in the event that the City determines that the violation, deviation, or infraction caused by the Smart Poles pose a threat to the public or worker(s) or that the installed equipment adversely impacts service reliability, or the safe operation of the City faculties, prior to the Applicant remedying such violation, deviation or infraction, the City will give the Applicant written notice and the opportunity to remedy the same. If the Applicant fails to correct the violation, deviation or infraction within thirty (30) days of such notice, the City may, but shall not be obligated to, remedy such violation, deviation or infraction at Applicant's expense.

## **SECTION 6. TERMINATION; REVOCATION**

(A) Termination; Revocation – This Master Agreement shall remain in effect until terminated pursuant to terms hereto. This Master Agreement may be terminated upon ninety (90) days prior written notice and the completion of the removal of any Communications Equipment: (a) by Applicant, which termination may at Applicant's option be with respect to particular Clusters or individual Smart Poles only, and which shall result in termination of service for the applicable Clusters or Smart Poles, or (b) by the City only for cause upon Applicant's material uncured default of any of the stated terms, covenants, conditions and provisions of this Master Agreement, and in such case, only with respect to the particular Smart Poles for which a material uncured default exists. Any notice of termination of this Master Agreement by the City for default shall specify the nature of the default. Applicant may utilize ninety (90) days to cure plus, such additional time as is required to accomplish such cure, so long as Applicant is proceeding diligently to cure such default. On or before any termination of this Master Agreement with respect to a Smart Pole, Applicant shall remove any Communications Equipment located therein. The Parties hereby agree that any termination by City due to non-payment of the Location Selection Fee shall result only in termination of the Location Selection Term and any existing Cluster Permit shall not be affected except as provided in this Section 6(A).

## **SECTION 7. MISCELLANEOUS**

(A) Written Notification – All notices required herein shall be given in writing and delivered personally by United States Postal Service, or other nationally recognized courier service, to the appropriate address below. Addresses may be changed by the City or Applicant as business needs change.

If to Applicant:

Philips Lighting North America Corporation  
200 Franklin Square Drive  
Somerset, NJ 08873  
Email: William.McShane@philips.com  
Attn: Bill McShane

With a copy to:

Philips Lighting North America Corporation  
200 Franklin Square Drive  
Somerset, NJ 08873  
ATTN: General Counsel

If to the City: City Manager  
CITY OF OAKLEY, CA  
3231 Main Street  
Oakley, CA 94561

With a copy to:  
City Attorney  
CITY OF OAKLEY, CA  
3231 Main Street  
Oakley, CA 94561

- (B) Confidentiality – Each party acknowledges that it may come in contact with confidential and proprietary information of the other party (“**Proprietary Information**”) through its performance of this Master Agreement. For the purpose of this Master Agreement, Proprietary Information includes, but is not limited to, the existence of this Master Agreement, hardware and software design data, engineering data, scientific data, specifications, instructions for use and training materials, methods, operations, technical information, designs, processes, procedures, passwords, discoveries, patents, patent applications, trade secrets, concepts, ideas, and other intellectual property of a party or its affiliates. Each party will hold in confidence all such Proprietary Information and will use such information solely for the purpose of this Master Agreement. This obligation will endure permanently. Proprietary Information does not include information which (i) is or hereafter becomes a part of the public domain without breach of this Master Agreement; (ii) was already known to the receiving party prior to disclosure by the disclosing party; (iii) is disclosed to the receiving party by a third party without an obligation of confidentiality; (iv) must be disclosed by the receiving party to comply with any requirement of law or any administrative or judicial action or subpoena, provided that the receiving party will notify the disclosing party prior to disclosure so that the disclosing party may, at its expense, take appropriate steps to protect its proprietary rights; or (v) where disclosure is reasonably required in connection with any lawsuit between Applicant and the City. Nothing herein shall prevent Applicant from disclosing this Master Agreement, any Cluster Permit, or the location or other details concerning Smart Poles to Applicant’s current or potential Customers, as well as current or potential purchasers, investors, lenders, assignees, sublessees, or licensees.
- (C) Indemnification of the City – To the fullest extent permitted by law, Applicant shall indemnify, defend and hold harmless the City from and against any and all third party claims, actions, suits, proceedings, losses, liabilities, penalties, fines, damages, costs or

expenses (each, a “**Claim**”), including without limitation reasonable attorneys’ fees resulting from any breach of the representations, warranties, covenants and obligations of Applicant under this Master Agreement. This indemnification obligation shall not apply to the extent that such injury, lost or damage is caused by the City’s negligence or willful misconduct. the City shall indemnify and hold Applicant harmless against any claim of liability or loss from personal injury or property damage resulting from or arising out of the negligence or willful misconduct of the City, its employees, contractors or agents, except to the extent such claims or damages may be due to or caused by the negligence or willful misconduct of the Applicant, or its employees, contractors or agents.

- (D) Notice and Defense of Claim – The party seeking indemnification hereunder (“**Indemnitee**”) shall give the party from whom it seeks indemnification (“**Indemnitor**”) prompt written notice of any Claim. Failure or delay in giving such notice shall not diminish Indemnitor’s indemnity obligations unless and only to the extent that Indemnitor is materially adversely affected thereby. Indemnitor shall be permitted to control the defense of such Claim and Indemnitee will give Indemnitor reasonable assistance and cooperation in investigation, preparation, settlement and defense of the Claim. Any settlement by Indemnitor is subject to Indemnitee’s written approval, not to be unreasonably withheld, delayed or conditioned (except that any settlement requiring any admission of liability shall be subject to Indemnitee’s written approval in its sole discretion). Where Indemnitor is controlling the defense as provided above, if Indemnitee wishes to retain counsel it shall be at its own expense.
- (E) Survival – Applicants obligations to indemnify the indemnified parties shall survive the expiration or termination of this Master Agreement.
- (F) Assignment – This Master Agreement, and any Cluster Permit and interest in a Leased Portion, may be sold, assigned, subleased, licensed, or transferred by the Applicant without any approval or consent of the City to the Applicant’s customers or Sublessees (which may include one or more entities installing and operating Communications Equipment), principal, affiliates, subsidiaries of its principal or to any entity which acquires all or substantially all of Applicant’s assets (or, with respect to a Cluster Permits all or substantially all of Applicant’s rights with respect to such Cluster Permit) by reason of a merger, acquisition (of assets or equity interests) or other business reorganization. A sublease or license pursuant to the previous sentence hereof may be with respect to particular Clusters or Smart Poles only, and there may be multiple subleases or licenses for each Smart Pole, to accommodate co-location by one or more Customers. A transfer or assignment pursuant to the first sentence of this Paragraph may be a partial transfer or assignment of Applicant’s rights with respect to one or more Clusters and the related Cluster Permit, and such assignment or transfer may occur on account of a sale, or enforcement by lender of its rights under a collateral assignment of Applicant’s rights in particular Cluster Permit. In the event of an assignment or transfer of Applicant’s rights affecting only particular Cluster Permit, (x) Applicant shall be released of any further obligations in respect of the Cluster Permits so assigned or transferred, (y) such assigned or transferred Cluster Permits shall be considered to have been issued under a separate agreement, so that a default under the transferred or assigned Cluster Permits shall not constitute a default or breach with respect to other Cluster Permits retained by Applicant,

and vice versa, and (z) upon Applicant's request, Applicant, the City, and the transferee shall execute such documents as may be reasonably required to document the bifurcation of the Master Agreement into separate agreements as contemplated by this sentence. As to other transfers not covered in the first sentence of this Paragraph, the Master Agreement, nor any Cluster Permit, may be sold, assigned or transferred without the written consent of the City, which such consent will not be unreasonably withheld, delayed or conditioned. No change of stock ownership, partnership interest or control of Applicant or transfer upon partnership or corporate dissolution of Applicant shall constitute an assignment hereunder.

(G) Title – The City represents and warrants to Applicant as of the execution date of any applicable Cluster Permit, and covenants during the term of any Cluster Permit, that the City is seized of good and sufficient title and interest to the applicable light pole and Smart Pole installation site and has full authority to enter into and execute the same. the City covenants that Applicant, upon Installation of the Smart Poles and LED Fixtures and performing the covenants herein and in a Cluster Permit, shall peaceably and quietly have, hold and enjoy its rights in the Smart Pole locations provided hereunder free from interference by the City, or any entity claiming by, through, or under the City.

(H) Successors – This Master Agreement shall extend to and bind the heirs, personal representative, successors and assigns of the parties hereto.

The City of Oakley, CA          Philips Lighting North America Corporation

Name: Bryan H. Montgomery

Name: \_\_\_\_\_

Title: City Manager

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_



4. LED Fixture Locations

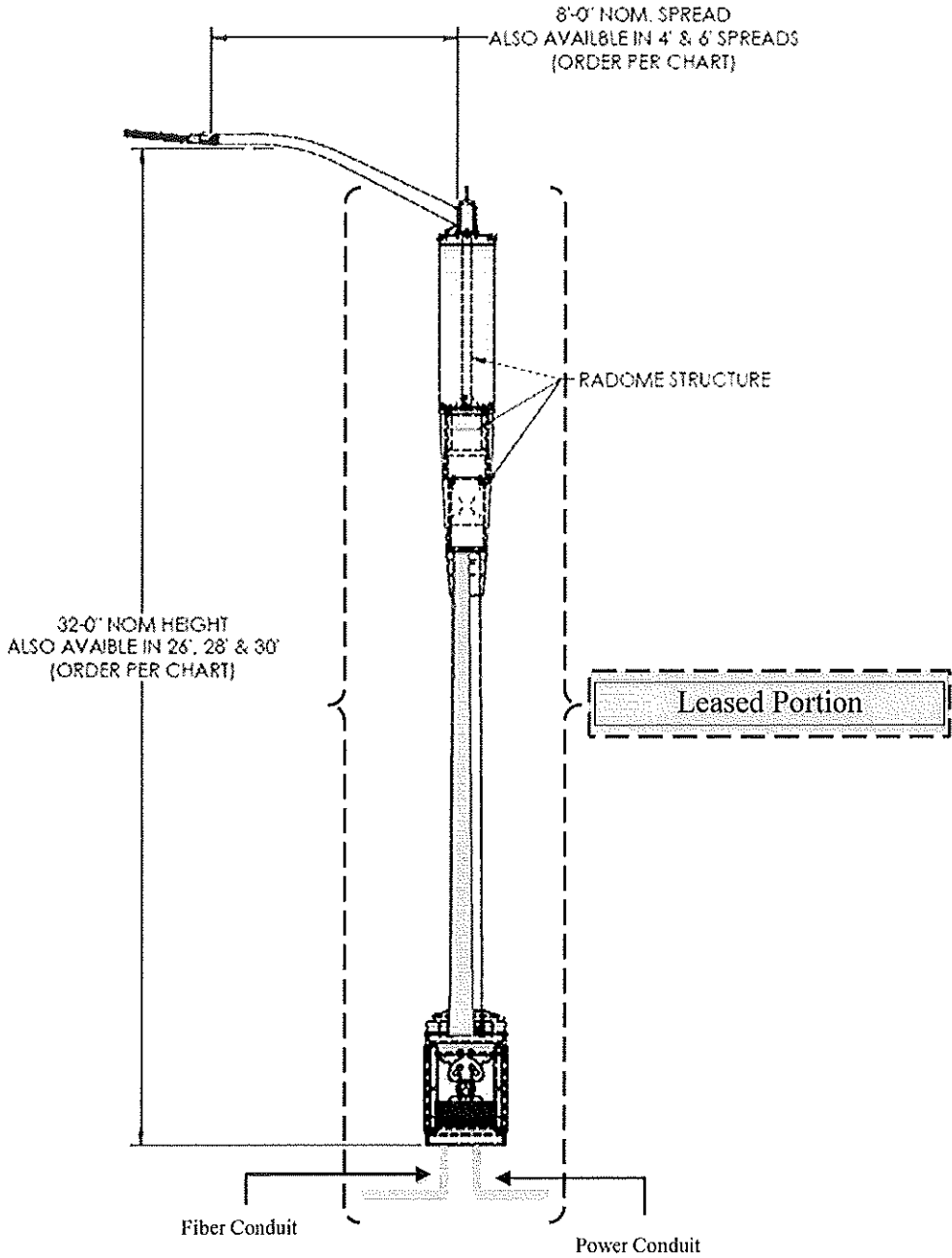
LED Luminaires per Smart Pole: 15  
Other LED fixtures per Smart Pole: 0

Pole ID #	LATITUDE	LONGITUDE	Type of LED Fixture



5. Leased Portion of Smart Pole

**LEASED PORTION**



- 6. Smart Pole Location Map: See Attachment (Visual description of locations)
- 7. CITY Cluster Permit No:
- 8. Upon delivery of a certificate of acceptance by the City to Applicant substantially in the form attached hereto as Attachment C, such date shall be recorded on the Cluster Permit.

“CITY”  
**City of Oakley, California**  
a municipal corporation

“COMPANY”  
**Philips Lighting North America Corporation**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ATTACHMENT B – SMART POLE LOCATION APPROVAL FEES**

*[TO BE DEVELOPED BETWEEN APPLICANT AND CITY]*

**ATTACHMENT C**  
**CERTIFICATE OF ACCEPTANCE**

**Philips Lighting North America**  
**Corporation**  
**200 Franklin Square Drive**  
**Somerset, NJ 08873**

Date: *{Insert Date}*

Project Name: Philips Smart Pole Permit *{Insert #}* (the "Project")

Cluster Reference:

Reference is hereby made to that Development and Master Permit Agreement, dated as of *{Insert Date}* (the "Agreement"), between City of City of Oakley, CA ("City") and Philips Lighting North America Corporation ("Philips"). This document shall serve as notification, that Philips has completed the work at the above referenced cluster in accordance with the Agreement.

I *{Insert Name}* , as the Authorized Representative of the City, for the above aforementioned Project, hereby accept the work performed by Philips in connection with the above referenced Project and find the Project to be:

- Complete and accepted in accordance with the Agreement
- Not complete and final inspection to be rescheduled for a later date
- Accepted subject to punch list (punch list document attached)

Signature \_\_\_\_\_  
Name: \_\_\_\_\_  
Agency/Company \_\_\_\_\_  
Title \_\_\_\_\_  
Phone /email \_\_\_\_\_

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OAKLEY  
AUTHORIZING THE CITY MANAGER TO EXECUTE A NON-EXCLUSIVE  
MASTER COOPERATION AGREEMENT WITH PHILLIPS LIGHTING NORTH  
AMERICA CORPORATION FOR THE SITING, INSTALLATION AND  
MAINTENANCE OF CERTAIN INTEGRATED LIGHTING AND  
COMMUNICATION SMART POLES**

**NOW, THEREFORE, BE IT RESOLVED** that the City Council hereby approves the Non-Exclusive Master Cooperation Agreement with **Philips Lighting North America Corporation**, a true and accurate copy of which is attached as Exhibit A, and authorizes the City Manager to execute the document.

The foregoing resolution was adopted at a regular meeting of the City Council held on the 14<sup>th</sup> day of February, 2017 by the following vote:

AYES:

NOES:

ABSTENTION:

ABSENT:

APPROVED:

\_\_\_\_\_  
Sue Higgins, Mayor

ATTEST:

\_\_\_\_\_  
Libby Vreonis, City Clerk                      Date