

## SPECIFIC AGREEMENT C

### MASTER NODE NETWORK SITING AND LICENSE AGREEMENT

THIS MASTER NODE NETWORK SITING AND LICENSE AGREEMENT is made as of \_\_\_\_\_, 2017 (the “Effective Date”), by and between the City of Yuma, an Arizona municipal corporation, One City Plaza, Yuma, AZ 85364 (“Licensor”) and anyCOMM Holdings Corporation, and Affiliates, with an address at 2377 Gold Meadow Way, Suite 170, Gold River, CA 95670 (“Licensee”).

#### 1. **Definitions.**

**“Affiliate”** means an entity controlling, majority-owned, or controlled or under common voting control by one of the parties, or a contractual or joint venture partner, possessing, whether by contract or otherwise, rights with respect to the respective rights or obligations.

**“Agreement”** means this Master Node Network Siting and License Agreement.

**“Approvals”** means all certificates, permits, licenses and other approvals that Licensee must obtain as required by law in order for Licensee or its agents or sublicensees to use the Licensed Premises for the purpose intended by this Agreement.

**“City Facilities”** means any and all existing facilities, inclusive of but not limited to all buildings and improvements owned by and under the possession and control of Licensor, including but not limited to conduit, fiber, utility poles, lamp posts, other utility facilities, fences, gates, and all roof tops of all such buildings, facilities and/or improvements. The maps of such facilities are attached as Exhibit G to the Master Smart Communities Agreement.

**“Defaulting Party”** means the party to this Agreement that has defaulted as provided for in Section 26 of this Agreement.

**“Harmful Interference”** means Interference that endangers the functioning of a radio navigation service or of other safety services or seriously degrades, obstructs, or repeatedly interrupts a radio communication service operating in accordance with both International Telecommunications Union Radio Regulations and the regulations of the Federal Communications Commission.

**“Hazardous Material”** means any substance which is (i) designated, defined, classified or regulated as a hazardous substance, hazardous material, hazardous waste, pollutant or contaminant under any Environmental Law, as currently in effect or as hereafter amended or enacted, (ii) a petroleum hydrocarbon, including crude oil or any fraction thereof and all petroleum products, (iii) PCBs, (iv) lead, (v) asbestos, (vi) flammable explosives, (vii) infectious materials, or (viii) radioactive materials.

**“Environmental Law(s)”** means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Section 9601 *et seq.*, Conservation and Recovery Act of 1976, 42 U.S.C. Section 6901 *et seq.*, the Toxic Substances Control Act, 15

U.S.C. Section 2601 *et seq.*, the Hazardous Materials Transportation Act, 49U.S.C. Section 5101 *et seq.*, and the Clean Water Act, 33 U.S.C. Section 1251 *et seq.*, as said laws have been supplemented or amended to date, the regulations promulgated pursuant to said laws and any other federal, state or local law, statute, rule, regulation or ordinance that regulates or proscribes the use, storage, disposal, presence, clean-up, transportation or release or threatened release into the environment of Hazardous Material.

**“Interference”** means the effect of unwanted energy due to one or a combination of emissions, radiations, or inductions upon reception in a radio communication system, manifested by any performance degradation, misinterpretation, or loss of information.

**“License Fees”** means compensation for use of the Public Rights-of-Way applied in accordance with local, state and federal law.

**“Licensed Premises”** means those portions of Licensor’s Property or City Facilities described in each Site Supplement and shown in Exhibit “1” to each Site Supplement.

**“Licensee”** means anyCOMM Holdings Corporation, and affiliates.

**“Licensee’s Notice Address”** means 2377 Gold Meadow Way, Suite 170, Gold River, CA 95670.

**“Licensor”** means City of Yuma, an Arizona municipal corporation.

**“Licensor’s Notice Address”** means One City Plaza, Yuma, AZ 85364.

**“Licensor’s Property(ies)”** means those properties owned or controlled by Licensor, excluding Public Rights-of-Way and City Facilities within the City of Yuma (each of which is a subject of this Agreement).

**“Node”** means a next generation router developed and manufactured by anyCOMM that can be placed on the photocell socket of retrofit LED streetlights, and other locations. Nodes have a broad set of capabilities and features that can be used to provide Services.

**“Node Network”** means a high speed wireless network infrastructure of Nodes and other equipment, cables and associated structures which creates the "backbone" used to provide Services.

**“Node Network Facilities”** means the Nodes and other equipment, cables and associated structures used to operate the Node Network.

**“Non-Defaulting Party”** means the party to this Agreement that has not defaulted as provided for in Section 26 of this Agreement.

**“Public Rights-of-Way”** means the surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, parkway, easement, or similar property in which the Licensor now or hereafter holds any property interest, which, consistent with the purposes for which it was dedicated, may be used for the purpose of installing and maintaining the Node Network Facilities. Public Rights-

of-Way shall not include any Licensor's Properties or City Facilities.

***"Rent"*** means any amount specified in a Site Supplement to be paid by Licensee to Licensor annually for each new Node Network Facility constructed on Licensed Premises under or pursuant to this Agreement.

***"Site Supplement"*** means that certain form of site license that will be entered into between Licensor and Licensee for each Licensed Premises, the form of which is attached hereto as Exhibit A-1 .

***"Services"*** means Telecommunications Services, Wireless Services, and non-telecommunications services provided via the Node Network. Services does not include Cable Services as defined in A.R.S. § 9-505, as amended, or facilities used in the provision of the same.

***"Sublicensee"*** means a third party to which Licensee has granted the right to use and occupancy of one or more of the Licensed Premises, subject to the terms and conditions contained herein.

***"Telecommunications Services"*** means the offering of telecommunications for a fee directly to the public, or to such users as to be effectively available directly to the public, regardless of the facilities used. "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received. The term does not include commercial mobile radio services, pay phone services, or cable services.

**“Wireless Telecommunications Services”** has the same meaning as “personal wireless services” in 47 U.S.C. § 332(c)(7)(C)(i).

2. **Licensor’s Cooperation.** During the Term, Licensor shall: (i) cooperate with Licensee in its efforts to obtain all of the Approvals and (ii) take no action that would adversely affect any of the Licensed Premises; provided, however, that if Licensor elects to replace infrastructure on the Licensed Premises that is unrelated to the delivery of services using the Node Network Facilities, then such replacement shall be accomplished in a manner calculated to minimize interference with the Node Network Facilities on the Licensed Premises. Licensor acknowledges that Licensee’s ability to use each of the Licensed Premises is contingent upon Licensee obtaining and maintaining the Approvals.

3. **Term.** The term of this Agreement shall commence on the date of the full execution of this Agreement and expire on the date of the expiration of the last Site Supplement for a Licensed Premise. The term of each Site Supplement (the “Initial Term”) shall begin when the site has been deployed and activated (“Commencement Date”), and shall continue for five (5) years, unless terminated as otherwise provided in this Agreement. Upon expiration of the Initial Term, this Agreement shall automatically renew for up to four (4) successive five-year terms (each, a “Renewal Term”) for an aggregate of twenty-five (25) years unless terminated as otherwise provided in this Agreement. The Initial Term and any Renewal Term(s) are collectively referred to herein as the “Term.” Upon renewal, the terms and conditions of this Agreement shall remain in full force and effect.

4. **License, Services and License Fees.**

a. **License.** There is hereby granted to Licensee, and its lawful successors and assigns, the non-exclusive right, privilege and license to construct, maintain and operate a Node Network as defined herein, upon, over, along, across, and under the present and future Public Rights-of-Way as defined herein. This License authorizes the use and occupancy of the Public Rights-of-Way for the installation of the Node Network Facilities (as defined herein) for the provision of Services to Licensor, and Telecommunications Services and Wireless Services to the public and other entities, and subject to payment of applicable License Fees. This License does not eliminate any obligation of the Licensee to obtain other Approvals as lawfully may be required to provide the Services. Nothing in this License is intended to expand or contract the Licensor’s rights to regulate the provision of services as those rights may exist under governing law, but rather is an exercise of the Licensor’s authority to consent to the occupancy and use of the Public Rights-of-Way by Licensee. Licensor shall not be liable to Licensee should Licensee construct facilities pursuant to this License in an area over which Licensor has erroneously exercised jurisdiction.

b. **Services and License Fees.**

1. *Services to Licensor.* Because any License Fees for use of the Public Rights-of-Way for the provision of Services to Licensor via the Node Network would be passed through to Licensor, no License Fees shall apply for use of the Public Rights-of-Way to provide Services to Licensor via the Node Network.
2. *Services to the Public.* To the extent Licensee provides Services directly to the

public via the Node Network, the Licensors can charge Licensee, and Licensee agrees to pay a License Fee equivalent to that charged by Licensors to other licensed users of the Public Rights-of-Way for provision of similar services.

3. *Services to Other Entities.* To the extent Licensee provides use of any of its Node Network Facilities or provides Telecommunications Services or Wireless Telecommunications Services via the Node Network to other entities who hold a license or franchise from the Licensors to use the Public Rights-of-Way to provide Telecommunications Services or Wireless Telecommunications Services to the public and are paying License Fees, Licensee shall not be required to pay a License Fee for provision of such Node Network Facilities or Telecommunications Services or Wireless Telecommunications Services to such entities. However, prior to providing any such Node Network Facilities or Telecommunications Services or Wireless Telecommunications Services to the entity, Licensee must notify Licensors in writing specifying the name and contact information for the other entity.

c. This License shall not act as a bar or in any respect prevent Licensors from imposing lawful conditions related to other activities by Licensee, or prevent Licensors from requiring additional authorizations, or additional compensation, in connection with the use and occupancy of the Public Rights-of-Way for other purposes other than those expressly authorized, whether such use involves the same, or facilities in addition to those used to provide the Services listed in Section 4(b). Any additional compensation conditions shall be applied in accordance with state and federal law.

## 5. **Rent.**

a. Rent. From and after the Commencement Date under each Site Supplement, Licensee shall pay Rent, if applicable, for each of the Licensed Premises. Licensee shall make the first payment of Rent under any Site Supplement within ninety (90) days of the full execution of the Acknowledgment (as defined in the Site Supplement). Thereafter, Rent shall be paid on or before each anniversary of the Commencement Date during the Term.

b. Rental Documentation. Licensors hereby agree to provide to Licensee certain documentation (the "Rental Documentation") evidencing Licensors' interest in, and right to receive Rent payments under, this Agreement, including without limitation: (i) a complete and fully executed Internal Revenue Service Form W-9, or equivalent, in a form acceptable to Licensee, for any party to whom rental payments are to be made pursuant to this Agreement; and (ii) other documentation requested by Licensee in Licensee's reasonable discretion. From time to time during the Term of this Agreement and within thirty (30) days of a written request from Licensee, Licensors agree to provide updated Rental Documentation in a form reasonably acceptable to Licensee. Delivery of Rental Documentation to Licensee shall be a prerequisite for the payment of any rent by Licensee and notwithstanding anything to the contrary herein, Licensee shall have no obligation to make any rental payments until Rental Documentation has been supplied to Licensee as provided herein.

## 6. **Operations.**

- a. Licensee shall have the right to use each Licensed Premises for its Node Network Facility as provided herein.
- b. Each proposed Node Network Facility must not affect, detract, or impact the operation of existing Licensor facilities, particularly traffic signal control and street lighting devices. If a Node Network Facility materially affects, detracts, or impacts the operation of existing Licensor facilities, and Licensee is not able to resolve the issue within a commercially reasonable period of time, Node Network Facility shall be removed or relocated at Licensee's sole cost.
- c. Licensee shall propose new locations for Node Network Facilities to Licensor, and Licensor shall have the final authority to approve or reject said locations. Such approval will be documented pursuant to a Site Supplement.
- d. In the event of damage, Licensor is not obligated to repair or restore the Node Network Facility to normal operating conditions unless Licensor is the primary and direct cause of such damage. As between Licensee and Licensor, Licensee shall bear all other costs incurred to repair or restore Node Network Facilities.
- e. Licensee shall make every reasonable effort to restore Licensor facilities in a safe and efficient manner.
- f. Licensee shall give Licensor reasonable notice (of no less than fourteen (14) days) prior to impacting Licensor facilities in a manner that is beyond the routine maintenance and operation of Node Network Facilities.
- g. If Licensee selects a pole to install its Node Network Facilities that is structurally inadequate to accommodate Equipment, Licensee may at its sole cost and expense replace the pole (a "Replacement Pole") with one that is acceptable to and approved by the Licensor, or alternatively, if requested by Licensee, Licensor shall replace the pole with the Replacement Pole at Licensee's cost (which shall be first be approved by Licensee). Licensee shall dedicate such Replacement Pole to the Licensor. In the event a Replacement Pole is provided, Licensee shall have the option to provide a spare pole for storage by Licensor in its yard free of charge. In the event the Replacement Pole needs to be replaced, City will immediately replace the damaged Replacement Pole with the spare pole at Licensee's cost (which shall be limited to Licensor's reasonable out of pocket costs), and Licensee shall replace the same within one hundred twenty (120) days.
- h. Licensor shall maintain all City Facilities upon which Licensee has installed Node Network Facilities in good condition and repair, and in compliance with all applicable laws.

## **7. Interference with City Facilities and Communications Systems**

Notwithstanding any other provisions this Agreement, Licensee agrees to operate any and all of its Node Network Facilities governed by this Agreement in full compliance with the technical standards set forth in the Rules and Regulations of the Federal Communications Commission ("FCC") as codified in 47 C.F.R. and upon notice of non-compliance agrees to take all steps necessary to bring its operation into full compliance. Licensee recognizes and stipulates that City's public safety communications systems are vital to the life, health, and safety of the public safety

personnel and of members of the general public, and agree that protecting such systems against harmful interference is an integral responsibility of this Agreement. Licensee also recognizes and stipulates that the primary purpose of the City Facilities is to serve the public, that this Agreement does not provide Licensee with exclusive use of any City Facility, and that Licensor retains the right to install and to permit others to install equipment or devices in or on City Facilities. Licensor is willing to permit the installation of Licensee's Node Network Facilities on City Facilities only where such use will not interfere with the existing primary service requirements and facilities, or the primary service requirements others authorized to use the City Facilities as of the date of the applicable Supplement.

a. Licensee agrees to meet and confer with the City on a case-by-case basis, and at the request of the City, in the event that additions or changes to Node Network Facilities governed by this Agreement cause incompatibilities with the City's installed communications system(s).

b. Licensee agrees that in the event of Harmful Interference or degradation to City's public safety radio operations, City may require on a case-by-case basis that the use of the interfering Node Network Facility be suspended upon reasonable notice by the City to Licensee pending resolution of the cause and cure of such interference or degradation.

c. Licensee agrees to install equipment of the type and frequency which will not cause Harmful Interference which is measurable in accordance with then existing industry standards to any equipment of Licensor or other licensees of the Licensor's Property, Public Rights-of-Way or City Facilities which existed on the pertinent Licensor's Property, Public Rights-of-Way or City Facilities prior to the date the applicable Site Supplement is executed by the parties. In the event any after-installed Node Network Facility causes such interference, within fifteen (15) days after Licensor has notified Licensee in writing of such interference, Licensee will take all commercially reasonable steps necessary to correct and eliminate the interference, including but not limited to, at Licensee's option, powering down such equipment and later powering up such equipment for intermittent testing.

The provisions of this Section shall be binding on Licensee, any Sublicensee, and any successor, assignee, or service provider designated by Licensee and/or Sublicensee.

8. **Construction, Engineering, and Other Costs.** Licensor shall have no financial responsibility for planning, construction, or engineering costs associated with the implementation of this Agreement.

9. **Licensed Premises; Survey.** Exhibit 1 to each Site Supplement shall depict and identify the boundaries of each Licensed Premises and the Utility Licenses, if applicable.

10. **Access/Utilities.** Conditioned upon and subject to commencement of the Site Supplement term and issuance of any applicable encroachment and excavation permits, Licensor grants to Licensee and Licensee's employees, agents, contractors, sublicensees, licensees and their employees, agents and contractors access to land located within Licensor's Property, for the purpose of constructing, repairing, maintaining, replacing, demolishing and removing the facility to be located upon each Licensed Premises as necessary to obtain or comply with any Approvals (the "Access License"). Licensee shall have the right to space across Licensor's Property as

required for power and fiber (the "Utility License"). Licensee may request and Licensors shall not unreasonably deny or withhold the granting of an alternate Utility License either to Licensee or directly to the public utility at no cost and in a location acceptable to Licensee and the public utility. The Access Licenses and Utility Licenses (collectively, the "Access/Utility Licenses") shall be documented in the applicable Site Supplement and utilized for the purposes provided during the Site Supplement Term and thereafter for a reasonable period of time necessary for Licensee to remove the Node Network Facility.

11. **Use of Property.** The Licensed Premises and the Access/Utility Licenses shall be used for the purpose of constructing, maintaining and operating the Node Network Facility and for uses incidental thereto. All Node Network Facilities shall be constructed at no expense to Licensors. All Node Network Facilities, inclusive of security fences (if applicable), shall comply with the requirements of the Yuma City Code and all other laws and regulations applicable thereto, and Licensee shall obtain all required and necessary governmental agency Approvals and permits. Licensee will maintain the Licensed Premises in a safe condition. Licensee's Node Network Facility shall not constitute a fixture.

12. **Removal of Obstructions.** Licensee may remove obstructions from Licensors' Property after written approval by the Licensors, which approval shall be requested in writing by Licensee. Potential obstructions include but are not limited to vegetation, which may encroach upon, interfere with or present a hazard to Licensee's use of the Licensed Premises or the Access/Utility Licenses. Licensee shall dispose of any materials removed.

13. **Hazardous Materials.** Licensee's Obligation and Indemnity. Licensee shall not (either with or without negligence) cause or permit the escape, disposal or release of any Hazardous Materials on or from the Licensed Premises in any manner prohibited by law. Licensee shall indemnify, defend, and hold Licensors harmless from and against any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses (including, without limitation, any and all sums paid for settlement of claims, attorneys' fees, and consultants' and experts' fees) from the release of any Hazardous Materials on the Licensed Premises if caused by Licensee or persons acting under Licensee.

14. **Real Estate Taxes.** Licensee shall pay all applicable federal, state, county, city, and local excise, sales, consumer use, possessory interest, or other similar taxes required by law that are levied upon this Agreement or upon Licensee's services under this Agreement. Licensee agrees to reimburse Licensors for any documented increase in real estate or personal property taxes levied against Licensors' Property that are directly attributable to the Node Network Facility. Licensors agree to provide Licensee any documentation evidencing the increase and how such increase is attributable to Licensee's use. Licensee reserves the right to challenge any such assessment, and Licensors agree to cooperate with Licensee in connection with any such challenge.

15. **Insurance.** At all times during the License term, Licensee, at its sole expense, shall obtain and keep in force the required insurance as set forth in the attached Exhibit "B". The insurance provisions shall be separate and independent from the indemnification and defense provisions between the Licensee and Licensors and shall not in any way limit the applicability, scope or obligations of the indemnification defense provisions in Section 14.

16. **Indemnification.** In addition to the indemnifications set forth in Section 13, above, Licensee shall indemnify, defend, and hold harmless Licensors, its elected and appointed officials, officers, employees, agents, and contractors, from and against liability, claims, demands, losses, damages, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, and the costs and expenses incurred in connection therewith, including reasonable attorneys' fees and costs of defense, to the extent directly or proximately resulting from Licensee's activities undertaken pursuant to this Agreement, except to the extent arising from or caused by the negligence or willful misconduct of Licensors, its elected and appointed officials, officers, employees, agents, or contractors. This provision includes any intentional, reckless, or negligent acts, errors, mistakes, directives, or omissions of Licensee's employees, agents, contractors, sub-licensees, or any other person for which Licensee may be legally liable, in the performance of this Agreement. Licensors shall promptly notify Licensee of any claim, action or proceeding covered by this Section 15.

17. **Right of First Refusal.** If, during the License term, Licensors receive an offer to purchase, make a loan, or give any consideration in exchange for any of the following interests in all or a portion of any of the Licensed Premises: (i) fee title, (ii) a perpetual or other easement, a lease, (iv) any present or future possessory interest, (v) any or all portions of Licensors' interest in this Agreement including rent, or (vi) an option to acquire any of the foregoing, Licensors shall provide written notice to Licensee of said offer ("Licensors' Notice"). Licensors' Notice shall include the prospective buyer's name, the purchase price being offered, any other consideration being offered, the other terms and conditions of the offer, the due diligence period, the proposed closing date and, if a portion of Licensors' Property is to be sold, a description of said portion. Licensee shall have a right of first refusal to purchase, at its election and on the same terms and conditions as in Licensors' Notice, a fee simple interest in Licensors' Property or the Licensed Premises or a perpetual easement for the Licensed Premises. If the Licensors' Notice is for more than the Licensed Premises, Licensee shall have the option of purchasing the property subject to Licensors' Notice in its entirety, or in the alternative, negotiating with the proposed purchaser to acquire a perpetual easement in only the Licensed Premises. If Licensee does not exercise its right of first refusal by written notice to Licensors given within thirty (30) days, Licensors may sell the property described in the Licensors' Notice. If Licensee declines to exercise its right of first refusal, then this Agreement shall continue in full force and effect and Licensee's right of first refusal shall survive any such conveyance.

18. **Sale of Property.** If during the Term, Licensors sell all or part of Licensors' Property, of which the Licensed Premises is a part, then such sale shall be subject to this Agreement.

19. **Surrender of Property.** Upon expiration or termination of the applicable Site Supplement, Licensee shall, within ninety (90) calendar days thereafter, remove all above and below ground Node Network Facilities and restore the Licensed Premises to its original condition.

20. **Recording.** Licensee shall have the right to record a memorandum of this Agreement with the Yuma County Recorder's Office. Licensors shall execute and deliver each such memorandum, for no additional consideration, promptly upon Licensee's request.

21. **Licensors' Covenant of Title.** Licensors covenants that Licensors holds good and marketable fee simple title to Licensors' Property and each of the Licensed Premises and has full authority to enter into and execute this Agreement. Licensors further covenants that there are no

encumbrances or other impediments of title that might interfere with or be adverse to Licensee.

22. **Interference with Licensee's Business.** Licensee shall have the non-exclusive right to construct, install and operate Node Network Facilities that emit radio frequencies on Licensed Premises, subject to applicable law. Licensors may permit the construction, installation or operation on Licensors' Property, Public Rights-of-Way, City Facilities or Licensed Premises of any additional wireless or telecommunications facilities. Licensors agree that it will not permit any equipment or device that interferes with Licensee's use of the Licensed Premises for a Node Network Facility, subject to applicable law. Each of the covenants made by Licensors in this Section is a covenant running with the Licensors' Property for the benefit of the Licensed Premises.

23. **Title Insurance.** Licensee, at Licensee's option, may obtain title insurance on each of the Licensed Premises and Access/Utility Licenses at Licensee's sole cost and expense. Licensors shall cooperate with Licensee's efforts to obtain title insurance by executing documents or obtaining requested documentation as required by the title insurance company. If Licensors fail to provide the requested documentation reasonably necessary to Licensee for Licensee to obtain title insurance within thirty (30) calendar days of Licensee's request, Licensee, at Licensee's option, may withhold and accrue, without interest, the Rent until such time as Licensee receives all such documentation.

24. **Default.**

a. Notice of Default; Cure Period. If there is a default by Licensors or Licensee (the "Defaulting Party") with respect to any of the provisions of this Agreement or Licensors' or Licensee's obligations under this Agreement, the other party (the "Non-Defaulting Party") shall give the Defaulting Party written notice of such default. After receipt of such written notice, the Defaulting Party shall have thirty (30) calendar days in which to cure any monetary default and sixty (60) calendar days in which to cure any non-monetary default. The Defaulting Party shall have such extended periods as may be required beyond the sixty (60) calendar day cure period to cure any non-monetary default if the nature of the cure is such that it reasonably requires more than sixty (60) calendar days to cure, and the Defaulting Party commences the cure within the sixty (60) calendar day period and thereafter continuously and diligently pursues the cure to completion. The Non-Defaulting Party may not maintain any action or effect any remedies for default against the Defaulting Party unless and until the Defaulting Party has failed to cure the same within the time periods provided in this Section.

b. Consequences of Licensee's Default.—If Licensee is in default beyond the applicable periods set forth above in Section 24(a), Licensors may, at its option, upon written notice: (i) terminate the affected Site Supplement or this Agreement if such default generally affects all of Licensed Premises and be relieved from all further obligations under this Agreement; (ii) perform the obligation(s) of Licensee specified in such notice, in which case any expenditures reasonably made by Licensors in so doing shall be deemed paid for the account of Licensee and Licensee agrees to reimburse Licensors for said expenditures upon demand; (iii) take any actions that are consistent with Licensors' rights; and/or (iv) sue for injunctive relief. In no event shall Licensee be liable to Licensors for indirect or speculative damages in connection with or arising out of any default.

c. Consequences of Licensors' Default. If Licensors are in default beyond the applicable periods set forth above in Section 24(a), Licensee may, at its option, upon written notice: (i) terminate the affected Site Supplement or this Agreement if such default generally affects all of Licensed Premises, vacate the affected Licensed Premises and be relieved from all further obligations under this Agreement; (ii) perform the obligation(s) of Licensors specified in such notice, in which case any expenditures reasonably made by Licensee in so doing shall be deemed paid for the account of Licensors and Licensors agree to reimburse Licensee for said expenditures upon demand; (iii) take any actions that are consistent with Licensee's rights; (iv) sue for injunctive relief, and/or (v) set-off from Rent any amount reasonably expended by Licensee as a result of such default.

25. **Assignment, Sublease, Licensing and Encumbrance.** Licensee may assign this Agreement, in whole or in part, to a person or entity with demonstrated capacity to carry out Licensee's obligations under this Agreement. Licensee shall provide thirty (30) days prior written notice of such assignment to Licensors. Licensee may enter into subleases, licenses, or other authorizations ("Sub Authorizations") to allow a third party to utilize and operate from the Licensed Premises, so long as such third party has all necessary licenses and authorizations required by law. This Agreement, and any Site Supplement, may be sold, assigned or transferred by the Licensee without any approval or consent of the Licensors to the Licensee's principal, Affiliates, subsidiaries of its principal or to any entity which acquires all or substantially all of Licensee's assets in the market defined by the Federal Communications Commission in which the Licensors' Property is located by reason of a merger, acquisition or other business reorganization. No change of stock ownership, partnership interest or control of Licensee or transfer upon partnership or corporate dissolution of Licensee shall constitute an assignment hereunder.

[Signature Page Follows]

IN WITNESS WHEREOF, Licensors and Licensees having read the foregoing and intending to be legally bound hereby, have executed this Agreement as of the Effective Date.

CITY OF YUMA

anyCOMM Holdings Corporation

By \_\_\_\_\_  
Gregory K. Wilkinson, City Administrator

By \_\_\_\_\_

Print Name \_\_\_\_\_

ATTEST:

Title \_\_\_\_\_

\_\_\_\_\_  
Lynda L. Bushong, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Richard W. Files, City Attorney

## EXHIBIT A-1

### SITE SUPPLEMENT (anyCOMM INITIAL NODE DEPLOYMENT)

1. **Supplement.** This is a Site Supplement as referenced in that certain Master Node Network Siting and License Agreement between Licensor and Licensee dated \_\_\_\_\_, 2017 ("Agreement"). All of the terms and conditions of the Agreement are incorporated hereby by reference and made a part hereof without the necessity of repeating or attaching the Agreement. In the event of a contradiction, modification or inconsistency between the terms of the Agreement and this Supplement, the terms of this Supplement shall govern. Capitalized terms used in this Supplement shall have the same meaning described for them in the Agreement unless otherwise indicated herein.
2. **Project Description and Locations.** Licensee shall have the right to use City Facilities identified in Appendix 1 for installation of a Node Network Facility as further described in Appendix 1 attached hereto (the "Licensed Premises").
3. **Equipment.** The Node Network Facilities to be installed at the Licensed Premises are described in Appendix 1 attached hereto.
4. **Term/Termination.** The term of this Site Supplement shall be as set forth in Section 3 of the Master Node Network Siting and Licensing Agreement. Upon expiration or termination of this Site Supplement, Licensee shall, within ninety (90) calendar days thereafter, remove Node Network Facilities and replace the Nodes with a photocell.
5. **Rent.** Rent shall be waived for the term of this supplement.
6. **Commencement Date.** The commencement date of the Term shall be the date the last Node has been deployed and activated (the "Commencement Date"). Licensor and Licensee shall acknowledge in writing the Commencement Date (the "Acknowledgment").
7. **Approvals/Fiber.** It is understood and agreed that Licensee's ability to use the Licensed Premises is contingent upon its obtaining all of the certificates, permits and other approvals (collectively the "Governmental Approvals") that may be required by any Federal, State or Local authorities, as well as a satisfactory fiber and electrical connection which will permit Licensee use of the Licensed Premises as set forth above. In the event that (i) any of such applications for such Governmental Approvals should be finally rejected; (ii) any Governmental Approval issued to Licensee is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority; (iii) Licensee determines that such Governmental Approvals may not be obtained in a timely manner; or (iv) Licensee determines that it will be unable to obtain in a satisfactory manner, or maintain any fiber or power connection, Licensee shall have the right to terminate this Supplement. Notice of Licensee's exercise of its right to terminate shall be given to Licensee in writing by certified mail, return receipt requested, and shall be effective upon the mailing of such notice by Licensee, or upon such later date as designated by Licensee. Upon such termination this Supplement shall be of no further force or effect except to the extent of the representations, warranties and indemnities made by each party to the other hereunder.

## **Appendix 1 Licensed Premises and Node Network Facilities**

The photocell socket on each City owned streetlight in the Public Rights-of-Way .

Insert City of Yuma streetlight map.

anyCOMM Nodes shall be placed in the photocell socket of all City streetlights.

Node Network Facilities to be Installed:

1. Nodes

DRAFT

## **EXHIBIT B**

### **INSURANCE REQUIREMENTS**

Licensee shall procure and maintain and shall cause any sublicensee to procure and maintain substantially the same coverage with substantially the same limits as required of Licensee (Licensee and sublicensees shall be referred to hereinafter, as the context dictates, as “Contractor”), for the duration of the Agreement and any applicable sublicense entered into under and pursuant to the Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Licensee or its employees.

#### **A. General.**

1. *Insurer Qualifications.* Without limiting any obligations or liabilities of Contractor, Contractor shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Arizona pursuant to Arizona Revised Statutes (“A.R.S.”) § 20-206, as amended, with an AM Best, Inc. rating of A- or above with policies and forms satisfactory to the City. Failure to maintain insurance as specified herein may result in termination of this Agreement at the City’s option.
2. *No Representation of Coverage Adequacy.* The City reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement, but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Contractor from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.
3. *Additional Insured.* All insurance coverage and self-insured retention or deductible portions, except Workers’ Compensation insurance and Professional Liability insurance, if applicable, shall name and endorse, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, directors, officials and employees as Additional Insured as specified under the respective coverage sections of this Agreement.
4. *Waiver.* All policies, except for Professional Liability, shall contain an endorsed waiver of rights of recovery (subrogation) against the City, its agents, representatives, officials, officers and employees for any claims arising out of the work or services of Contractor. Contractor shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement.
5. *Coverage Term.* All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by the City, unless specified otherwise in this Agreement.
6. *Primary Insurance.* Contractor’s insurance shall be, or endorsed to be, primary, non-contributory insurance with respect to performance of this Agreement and in the protection of the City as an Additional Insured.

7. *Claims Made.* In the event any insurance policies required by this Agreement are written on a “claims made” basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three (3) years past completion and acceptance of the services. Such continuing coverage shall be evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required herein for the three-year period.
8. *Policy Deductibles and/or Self-Insured Retentions.* The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to the City. Contractor shall be solely responsible for any such deductible or self-insured retention amount.
9. *Use of Subcontractors.* If any work under this Agreement is subcontracted in any way, Contractor shall execute written agreements with its subcontractors containing the indemnification provisions set forth in this Agreement and insurance requirements set forth herein protecting the City and Contractor. Contractor shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.
10. *Evidence of Insurance.* Prior to receiving any funds, or commencing any work or services under this Agreement, Contractor will provide the City with suitable evidence of insurance in the form of certificates of insurance, endorsements, and a copy of the declaration page(s) of the insurance policies as required by this Agreement, issued by Contractor’s insurance insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. The City may reasonably rely upon the certificates of insurance, endorsements, and declaration page(s) of the insurance policies as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the policies required by this Agreement expire during the life of this Agreement, Contractor shall forward renewal certificates and declaration page(s) to the City thirty (30) days prior to the expiration date. All certificates of insurance and declarations required by this Agreement shall be identified by referencing the title or this Agreement. Certificates of insurance and declaration page(s) shall specifically include the following provisions:
  - a. The City, its agents, representatives, officers, directors, officials and employees are Additional Insureds for commercial general liability under Insurance Services Office, Inc., (“ISO”) Form CG 20 10 03 97 or equivalent.
  - b. Contractor’s insurance shall be primary, non-contributory insurance with respect to performance of the Agreement.
  - c. All policies, except for Professional Liability, including Workers’ Compensation, waive rights of recovery (subrogation) against City, its agents, representatives, officers, officials and employees for any claims arising out of work or services performed by Contractor under this Agreement.

B. Required Insurance Coverage.

1. *Commercial General Liability.* Contractor shall maintain “occurrence” form Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as ISO policy form CG 00 010 93 or equivalent thereof, including but not limited to, separation of insured’s clause. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, officials and employees shall be endorsed as an Additional Insured under ISO, Commercial General Liability Additional Insured Endorsement form CG 20 10 03 97, or equivalent. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance.
  2. *Vehicle Liability.* Contractor shall maintain Business Automobile Liability insurance with a limit of \$1,000,000 each occurrence on Contractor’s owned, hired and non-owned vehicles assigned to or used in the performance of the Contractor’s work or services under this Agreement. Coverage will be at least as broad as ISO coverage code “1” “any auto” policy form CA 00 01 12 93 or equivalent thereof. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, directors, officials and employees shall be endorsed as an Additional Insured under ISO Business Auto policy Designated Insured Endorsement form CA 20 48 or equivalent. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance.
  3. *Workers’ Compensation Insurance.* Contractor shall maintain Workers’ Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over Consultant’s employees engaged in the performance of work or services under this Agreement and shall also maintain Employers Liability Insurance of not less than \$500,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit.
- C. Cancellation and Expiration Notice. Insurance required herein shall not expire, be canceled, or be materially changed without thirty (30) days’ prior written notice to the City.