

**AGREEMENT
BETWEEN
MEDIA 3 COMMUNICATIONS, INC.
AND
CITY OF CHULA VISTA
FOR THE
EXCHANGE OF FIBER AND FACILITIES**

FIBER AND FACILITIES EXCHANGE AGREEMENT

THIS FIBER AND FACILITIES EXCHANGE AGREEMENT (“Agreement”) is made and entered into this 14th day of December, 2021 (“Effective Date”), by and between **Media 3 Communications, Inc.**, a Nevada corporation (“Media 3”) and the **City of Chula Vista**, a chartered California municipal corporation (“City”). City and Media 3 may be individually referred to herein as a “Party” or collectively as “the Parties”.

RECITALS

- A. **WHEREAS**, Media 3 is a privately held corporation that was issued a Video Franchise, Franchise Number 0059, by the State of California, Public Utilities Commission to provide video or cable service; and
- B. **WHEREAS**, Media 3 is expanding and upgrading its existing video and cable network to a 100% fiber network in Chula Vista, California and desires to create redundant fiber connections in order to expand the effectiveness of its fiber-optic network and related investments; and
- C. **WHEREAS**, City and Media 3 have determined that an exchange of single mode fiber-optic strands in each other’s existing fiber-optic cable networks would support each party’s fiber-optic network needs by enhancing network reliability and performance while reducing the need for new, costly infrastructure projects; and
- D. **WHEREAS**, City and Media 3 agree that the term under this Agreement will commence on the Effective Date and will remain in full force and effect unless terminated in accordance with this Agreement.

NOW THEREFORE, for good, valuable, and sufficient consideration received and acknowledged by the City and Media 3, the City and Media 3 agree as follows:

AGREEMENT

- 1. Definitions.
 - a. “City Facility” means any City-owned, controlled or operated facility identified on the Exhibit “A”, as may be amended from time to time. Exhibit “A” is attached hereto and incorporated herein by this reference.
 - b. “Fiber Facilities” or “Facilities” means any and all fiber-optic strands, cables, lines, conduits, pull boxes, vaults, access manholes, handholes, pedestals, cross-connect cabinets, termination enclosures, and other similar equipment and devices owned, used or operated by Media 3, and reasonable access thereto.
 - c. “Existing Fiber Network” means all Fiber Facilities owned or controlled by Media 3, or its successors, assigns, or transferees, within the jurisdiction of the City of Chula Vista as of the Effective Date.
 - d. “Access Point” means the access point on the Fiber Network near the individual City Facilities as depicted on Exhibit “A” and used to connect to the contiguous

network of 24 fiber-optic strands transferred to the City from the Fiber Network to serve the City Facilities.

- e. "Indemnified City Party" or "Indemnified City Parties" means the City and its agents, employees, directors, officers, contractors, subcontractors or representatives, invitees, elected and appointed officials and volunteers.
 - f. "Integrated Network and System" means the City's integrated network and system of fiber-optic strands as described in Section 2(c) of this Agreement.
 - g. "Media 3" means Media 3 Communications, Inc., a Nevada Corporation, California Corporate Number C3397276, and its employees, agents, contractors, successors, assigns, and transferees.
 - h. "Media 3 Cables" means any and all fiber-optic cables owned by Media 3, or its successors, assigns, or transferees, within the Fiber Network located within the City's jurisdiction.
 - i. "Transferred Fibers" means 24 dark fiber-optic strands within the Fiber Network up to and including each Access Point, including any fibers, vault, handhole, conduit, pull box, pedestal, cabinet, enclosure or other similar equipment or device needed for the Access Point, which are transferred from Media 3 to the City under the terms of this Agreement.
 - j. "Fiber Network" means the Existing Fiber Network and Future Fiber Network.
 - k. "Future Fiber Network" means all future Fiber Facilities owned or controlled by Media 3, or its successors, assigns, or transferees, within the jurisdiction of the City of Chula Vista.
 - l. "Pass" or "Passed" means to go along, upon, across, over, under or through any public right-of-way, street, alley, highway, sidewalk, curb, gutter, driveway, parkway, or other public place primarily used or dedicated for vehicular or pedestrian travel, at any location therein that abuts the property line, boundary or improvement associated with any City Facility.
 - m. "Non-Commercial Use" means the City's internal use of the Transferred Fibers. In addition, the City's Non-Commercial Use shall include the authorized use (including authorizing an internet service provider to use) of such Transferred Fibers for the benefit of any City agency or City-related entity (i.e. non-profit entity formed by City, created by City, performing City or other municipal, or otherwise benefitting City or its constituents) at the City Facilities identified on Exhibit "A". For the avoidance of doubt, Non-Commercial Use shall not (1) mean, and the City may not, transfer title, resell, lease or allow the use of the Transferred Fiber by any third party (other than as described above); and (2) apply to any network elements paid for, built or used by the City that did not result from any transfer by Media 3.
2. Exchange of Fiber-Optic Strands. City and Media 3 agree to exchange fiber-optic strands as described below:

- a. Media 3's Transfer of Dark Fiber in its **Future Fiber Network** to City. As Media 3 expands its Fiber Network from its Existing Fiber Network to future points-of-service in its Future Fiber Network, Media 3 will, as provided herein, transfer title and ownership of the Transferred Fiber to the City to an Access Point at each City Facility on Exhibit "A" that is Passed during such expansion. Media 3 will furnish and install, and provide title and ownership to, one City-approved splice vault (approximately 36" x 36" x 36"), including Transferred Fiber from the Future Fiber Network that Media 3 will connect into such splice vault, at each City facility Passed in its Future Fiber Network. The specifications for and location of the splice vault is subject to approval by the City Engineer or designee. Such transfers shall be made via quitclaim or bill of sale and shall not require any additional consideration. After transfer, such Transferred Fiber shall be for the City's Non-Commercial Use as provided herein.
- i. The transfer of title and ownership of Transferred Fiber per Section 2(a) does not include trenching, conduit installation, patching in, or connections from Media 3's Fiber Network termination point at the Access Point to the City Facility. Media 3 agrees to notify the City Engineer by no later than sixty (60) days prior to constructing Fiber Facilities in its Fiber Network that Pass a City Facility, so that City can coordinate for its own trenching, conduit installation, patching in, and connections to a City Facility.
 - ii. The transfer of title and ownership of Transferred Fiber per Section 2(a) shall include Media 3's installation of vaults of sufficient size to accommodate fiber splice enclosures so that City is not required to upsize existing vaults when the City elects to connect the Transferred Fiber to the City Facility.
 - iii. Media 3 shall designate and clearly identify all Transferred Fiber transferred to City pursuant to Section 2(a) and provide the City an updated KMZ file identifying the location of all Media 3 Transferred Fiber within sixty (60) after receipt of written notice from the City.
- b. Media 3's Transfer of Existing Dark Fiber in its **Existing Fiber Network** to City. Media 3 will transfer to City title and ownership of the Transferred Fiber at each City Facility Passed throughout its Existing Fiber Network for City's exclusive, Non-Commercial Use, by quitclaim or bill of sale. Media 3 will furnish and install, and provide title and ownership to, one City-approved splice vault (approximately 36" x 36" x 36") , including Transferred Fiber from the Existing Fiber Network that Media 3 will connect into such splice vault, at each City facility Passed in its Existing Fiber Network by no later than twenty-four (24) months after the Effective Date. The specifications for and location of the splice vault is subject to approval by the City Engineer or designee. Media 3 represents that it has previously provided City with information regarding the current locations of all Facilities in its Existing Fiber Network, as shown in Exhibit "D" attached hereto and incorporated herein by this reference. Concurrently with the execution of this Agreement, Media 3 further agrees to provide City with an updated KMZ file identifying the location of all Facilities in its Existing Fiber Network and to provide City with an updated KMZ file with location of all Facilities in its Fiber Network within thirty (30) days after receipt of written notice from the City. Media 3 shall designate and clearly identify all Transferred Fiber transferred to City pursuant to this Section 2(b).

- c. Integrated Network and System; Acceptance Testing.
 - i. Integrated Network and System. All Transferred Fiber transferred to the City pursuant to Section 2(a) or 2(b) above shall consist of a contiguous route or routes of dark fiber within Media 3 Cables to and from other locations that can be used as an integrated network and system to effectively transport data and communications signals between points of connection to and from all such City Facilities. City shall have the right to splice the fibers transferred by Media 3 to new or other fibers as the City deems necessary; provided, however, that the City shall provide Media 3 ten (10) days' written notice before the City performs any splicing and Media 3 shall have the opportunity to supervise the City's work subject to Media 3's reasonable satisfaction.
 - ii. Acceptance Testing. All Transferred Fiber shall be subject to the City's approval and acceptance. Following Media 3's installation of any Transferred Fiber, Media 3 shall conduct any testing necessary to verify that the Transferred Fiber is operating and installed in accordance with the City's specifications. Media 3 shall deliver the testing results to the City within ten (10) days after any Transferred Fiber has been installed. Media 3 shall make any and all necessary corrections to any Transferred Fiber within thirty (30) days after a rejection by the City. Within ten (10) days after the City provides written notice of acceptance, Media 3 shall provide the City the quitclaim or bill of sale that transfers title and ownership of the Transferred Fiber to the City.
 - d. Relocation of Cables Underground. For the avoidance of doubt, Media 3's subsequent removal and relocation of its aerial cable or other Facilities to underground installations shall not affect City's ownership or title interests in the Transferred Fiber acquired pursuant to Sections 2(a) or 2(b) above. Media 3's removal and relocation of aerial cable or other Facilities, which include Transferred Fiber transferred pursuant to Sections 2(a) or 2(b) above, shall be completed at Media 3's sole cost and expense.
 - e. City's Transfer of Existing Fiber-optic Strands to Media 3. City agrees to transfer title and ownership of forty-eight (48) fiber-optic strands to Media 3 in the South Bay Interconnect from the northerly City boundary to the southerly City boundary by quitclaim or bill of sale. City shall designate and clearly identify all fiber-optic strands transferred to Media 3 pursuant to Section 2(d). Such City transferred fiber is described and depicted on Exhibit "E".
3. City's Grant of Access for Use of Conduit (Salt Creek) and City's License of Existing Fiber-optic strands to Media 3 Along the Same Route. City agrees to grant Media 3 the perpetual non-exclusive right to use and access one of the two telecommunications conduits constructed within the Salt Creek Sewer alignment from Olympic Parkway to the frontage road west of Interstate 5 (the "Salt Creek and Main Street Conduit"). This right of access and use shall include any existing electrical/communications conduits serving the Elite Athlete Training Center and Otay Ranch Village 11 from the Salt Creek Sewer, for the installation of Fiber Facilities. City agrees to license forty-eight (48) fiber-optic strands to Media 3 along the same route as the Salt Creek Main Street Conduit for a

period of forty-eight (48) months from the Effective Date in accordance with a license agreement ("License Agreement") which is intended to be negotiated and entered into by and between the City and Media 3 within forty-five (45) days of the Effective Date of this Agreement and consistent with the standard form License Agreement attached hereto as Exhibit "G". To the extent the Parties do not negotiate and execute the License Agreement within said forty-five (45) day timeframe, then the Parties agree the form of agreement attached as Exhibit "G" shall govern as the License Agreement. Such City conduit access and licensed fiber is described and depicted on Exhibit "E".

4. City's Consideration of Future Grant of Access. City agrees to consider future grants of access to Media 3 for the non-exclusive use of City-owned conduits such as traffic signal, streetlight and telecommunications conduits, and signal interconnect conduits, including but not limited to, those within "H" Street/East "H" Street, Otay Lakes Rd. from East Palomar St. to Bonita Rd., Fourth Avenue, Main Street and Broadway. All such potential future grants of conduit access are subject to the City Engineer's approval in his/her sole discretion based on available spare conduit(s), and other City priorities and considerations, and a written agreement duly entered into between the Parties.
5. City's Consideration of Future Grant of Access (Non-Signal Interconnect Conduits). Nothing in this Agreement shall be construed to prohibit or prevent City from considering future grants of conduit access to Media 3 for the non-exclusive use of City-owned conduits such as traffic signal, streetlight, and telecommunications conduits in accordance with City's standards for such grants.
6. Conduit Installation During City Public Works Projects. The City agrees to invite Media 3 to attend Utility Coordination Meetings where City provides information about future City public works projects (including but not limited to trenching projects, paving projects, and projects extending City's traffic signal and telecommunications conduit network). City agrees to consider Media 3's reasonable proposals to install conduits and/or related improvements in conjunction with a City public works project where the proposed installation does not interfere or conflict with the public works project, interfere or conflict with any existing or future City or municipal use, or conflict or interfere with any of the City's municipal functions or operations, as determined by the City Engineer in his/her sole discretion. In the event that Media 3 installs conduits or related improvements pursuant to this section, Media 3 will be required to directly negotiate the installation of its facilities and all other costs, subject to applicable laws, directly with the contractor, unless the City and Media 3 make other written arrangements prior to construction. In the event that Media 3 installs conduits or related improvements pursuant to this section, Media 3 represents and agrees that it shall not cause any delay or negatively impact the City's design or construction efforts on any public works project, and Media 3 agrees that it shall be responsible for and, in addition to any other defense and indemnification provisions herein, shall defend, indemnify and hold the City and all Indemnified City Parties harmless for any and all claims, losses, damages, costs, and expenses incurred by City due to any act or omission of Media 3, its employees, agents, or contractors during any installations under this section.
7. Mutual Construction, Operation, Maintenance and Repair. Media 3 and the City will perform and complete all construction, operation, repair, removal, and maintenance of their respective facilities in a safe and timely manner and in accordance with all applicable federal, state and local laws and regulations, including but not limited to all zoning laws, construction codes, and City's standard specifications and details, as the same may exist

now, or be hereafter issued, amended, or revised and any supplements thereto. Media 3 and the City shall comply with all City and NEC standards for conduit fill. The City shall be responsible for network maintenance for all Access Points. Media 3 and the City shall be responsible for their respective network maintenance for all Transferred Facilities and the Licensed fibers subject to the Operation and Maintenance Agreement (“Operation and Maintenance Agreement”) which is intended to be negotiated and entered into by and between the City and Media 3 within forty-five (45) days of the Effective Date of this Agreement and consistent with the industry standard form Operation and Maintenance Agreement attached hereto as Exhibit “F”. The Parties acknowledge that as of the Effective Date the terms and conditions of such Operation and Maintenance Agreement have not yet been agreed upon and that the final terms and conditions of such Operation and Maintenance Agreement shall be subject to the approval of the City Manager or designee in his or her sole discretion. To the extent the Parties do not negotiate and execute the Operation and Maintenance Agreement within said forty-five (30) day timeframe, then the Parties agree the form of agreement attached as Exhibit “F” shall govern.

8. Taxes. Media 3 will be solely responsible for the payment of any and all taxes, charges, excises, fees, exactions and assessments, including without limitation any possessory interest taxes, relating to its construction, operation, placement, and maintenance of the Facilities. Media 3 shall not allow or suffer any lien for any taxes, assessments, charges, excises, fees or excises to be imposed on or in connection with any City property. In the event that the City receives any tax or assessment notices on or in connection with the City property in connection with this Agreement, the City shall forward the same, together with reasonably sufficient written documentation that details any increases in the taxable or assessable amount attributable to Media 3’s Facilities. Media 3 understands and acknowledges that this Agreement may create a possessory interest subject to taxation and that Media 3 will be required to pay any such possessory interest taxes. Media 3 further understands and acknowledges that any sublicense or assignment under this Agreement and any options, extensions or renewals in connection with this Agreement may constitute a change in ownership for taxation purposes and therefore result in a revaluation for any possessory interest created under this Agreement.
9. Permits/Fees. Prior to commencing any construction, installation, work or other actions in connection with this Agreement, Media 3 shall obtain all licenses, permits and other approvals necessary for Media 3 to install, operate and maintain Facilities within the City, including without limitation a Master Encroachment Agreement (attached hereto as Exhibit “B” (and other permits as may be required by the City) for all work associated with construction, operation, repair, and maintenance of its Facilities and each project within the public right-of-way. Media 3 shall be responsible for all costs and fees for obtaining and maintaining such licenses, permits and other approvals.
10. Damage to Private/Public Improvements. Media 3 will be responsible for, at Media 3’s sole expense, any and all damage to any City street, curb, gutter, sidewalk, or any other public or private improvement or facility that occurs as a result of, or is in any way connected with any construction, operation, installation, maintenance, repair, or removal of the Facilities, or any other act or omission of Media 3 in connection with this Agreement. Media 3 will be required to promptly repair, replace, and restore in-kind, at Media 3’s sole expense, all damaged improvements or facilities to the same condition as found immediately prior to when said improvements or facilities were damaged. In the event that Media 3 fails to timely cure any such damage within thirty (30) days after Media

3's written notice from the City, City may, but is not obligated to, repair the damage at Media 3's sole expense and Media 3 shall reimburse City for such expense by no later than thirty (30) days after being notified by the City of such expense. The City may exercise its rights to perform Media 3's obligations under this Section 10 if Media 3 has not completed its repair within thirty (30) days following Media 3's receipt of written notice from the City or without prior notice to Media 3 when the City determines that the repair and/or restoration is immediately necessary to protect public health or safety.

11. Damage to Media 3 Cables. Media 3 is responsible to repair, replace, and restore in-kind, at Media 3's sole expense, any and all damage to Media 3 Cables in which City has fiber-optic strands, unless such damage is caused by City, by no later than fourteen (14) days after receipt of notice from City of such damage. In the event that Media 3 fails to timely repair, replace, or restore in-kind any such damage, City may, but is not obligated to, repair the damage at Media 3's sole expense and Media 3 shall reimburse City for such expense by no later than thirty (30) days after being notified by the City of such expense.
12. Damage to City's South Bay Interconnect Cable. The South Bay Interconnect Cable consists of a 288-strand fiber cable with shared operations and maintenance responsibilities. The City is responsible to repair, replace, and restore in-kind any and all damage to its fiber optic strands, including Media 3 acquired fiber optic strands, within the South Bay Interconnect Cable at City's sole expense, unless such damage is caused by Media 3, by no later than fourteen (14) days after receipt of notice from Media 3 of such damage. In the event that the City fails to timely repair, replace, or restore in-kind any such damage, Media 3 may, but is not obligated to, repair the damage at City's sole expense and City shall reimburse Media 3 for such expense by no later than thirty (30) days after being notified by the Media 3 of such expense.
13. Participation with Utilities. Media 3 will cooperate in the planning, locating, and constructing of its Facilities in joint trenches or common duct banks and to participate in cost-sharing for the joint trench and ducts, when two or more service or utility providers are proposing placement of facilities in the same public right-of-way or when an underground project is being planned by City.
14. Assignment. Media 3 shall not directly or indirectly assign its interests or rights, whether in whole or in part, in connection with this Agreement without the City's prior written consent. The City shall not unreasonably withhold its consent to any proposed Assignment.
 - a. Permitted Assignment. Without the City's prior written consent, but upon notice to the City as provided below, the City agrees that Media 3 will be permitted to enter into an Assignment of this Agreement (a "Permitted Assignment") to: (i) Media 3's parent; (ii) Media 3's subsidiary; or (iii) an entity that acquires or purchases a majority or all of Media 3's assets in the market in which the market area is located (San Diego County). Notwithstanding the foregoing, Media 3 has notified the City of (i) its planned S-Corp inversion restructuring (which will result in Media 3 becoming a limited liability company). Media 3 shall provide the notice required under Section 14.b and the assignee or transferee shall agree in a separate writing that it accepts all the obligations of Media 3 under this Agreement. Upon providing such notice and the Effective Date of this Agreement, the City hereby consents to

and approves the above referenced corporate restructuring and acquisition transaction.

- b. Notice. In the event that Media 3 desires to assign its interests or rights under this Agreement, Media 3 shall first send a written assignment notice to the City, which states in detail the proposed terms and conditions for the assignment including but not limited to financial statements, references, and any other specific information, financial or otherwise, about the proposed assignee, that City determines, in its sole discretion, it will need to consent to or refuse to consent to the proposed assignment. In the event that Media 3 does not provide all the such information simultaneously with the assignment notice, City agrees to inform Media 3 of the same and the assignment notice shall not be deemed received by the City until Media 3 delivers all such information to the City. Concurrently with notice of assignment, Media 3 will also provide an executed quitclaim or bill of sale for all Transferred Fiber transferred to City under this Agreement. Any assignment notice pursuant to this section shall also be accompanied by a written confirmation from the proposed assignee that, prior to the effective date of any proposed assignment, the proposed assignee agrees to enter into a written agreement with Media 3 and City, in a form approved by City in its sole discretion, to confirm the title and ownership of any and all Transferred Fiber transferred to City under this Agreement as of the date of the assignment notice and that it agrees to unconditionally assume and be responsible for all rights, obligations, and responsibilities contained in this Agreement.
- c. Response. After receipt of a complete assignment notice and other documentation as required by City per Section 14(b), the City shall review a request for consent to an assignment contained in the assignment notice within 30 business days. If the City disapproves a proposed assignment, City shall provide Media 3 the reasons for the disapproval which will allow Media 3 an additional 30 days to submit additional documents or information in response to the City's reasons for disapproval. If the City fails to respond within thirty (30) days after receipt of a complete assignment notice and other documentation as required in Section 14(b), Media 3 shall contact both the City Manager and the City Attorney via electronic mail and Registered Mail ("Second Notice") at the contact information to inform them of the City's alleged failure to respond:

Attn: City Manager
City of Chula Vista
276 Fourth Avenue
Chula Vista, CA 91910
citymanager@chulavistaca.gov

Attn: City Attorney
City of Chula Vista
276 Fourth Avenue
Chula Vista, CA 91910
CityAttorney@ci.chula-vista.ca.us

Upon actual receipt of the Second Notice, the City agrees to review and provide a response to the Second Notice within thirty (30) business days.

- d. Effect of Assignment. No assignment by Media 3, whether a Permitted Assignment or not, or consent to assignment by the City will relieve Media 3 of any obligation on its part under this Agreement, unless expressly provided in a writing signed by the City. Any assignment that is not in compliance with this section will be null and

void and be deemed a material default by Media 3 under this Agreement without a requirement for notice of default or a right to cure.

- e. Successors and Assigns. The terms, covenants, and conditions contained in this Agreement shall bind and inure to the benefit of the City and Media 3, except as otherwise provided herein.
15. Insurance. Media 3 shall procure, keep, and maintain adequate insurance in accordance with Exhibit "C".
16. Representations and Warranties. Media 3 hereby represents and warranties to City of the date hereof that:
- a. Organization and Good Standing. Media 3 is a corporation duly organized, validly existing and in good standing under the laws of the State of Nevada with full corporate power and authority to conduct its business as it is now conducted, to own and use the properties and assets that it purports to own or use, and to perform all of its contractual obligations. Media 3 is duly qualified to do business as a corporation and is in good standing in the State of California.
 - b. Authority. Media 3 has the absolute and unrestricted right, power and authority to execute and deliver this Agreement and such action has been duly authorized by Media 3's Board of Directors.
 - c. Conflicts. Neither the execution and delivery of this Agreement nor the performance of the actions therein contemplated will directly or indirectly (i) contravene any provision of any law, decree, license or permit applicable to Media 3; (ii) conflict with or result in a breach of any material agreement to which Media 3 may be bound or subject; or (iii) violate any provision of the governing documents of Media 3.
 - d. Consents and Governmental Approvals. No consent or authorization of, filing with or other act by or in respect of any federal, state, or local government or any other person is required in connection hereunder. Media 3 is in compliance with all applicable approvals and permits for the contemplated actions hereof from state and federal regulatory agencies including the California Public Utilities Commission and the Federal Communications Commission as may be necessary for the activities contemplated by the Agreement.
 - e. CITY EXPRESSLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY BEYOND THE MANUFACTURERS' WARRANTY AS TO THE FITNESS OF ANY MATERIALS, EQUIPMENT OR ANY OTHER PART OR ALL OF THE FIBERS AND OTHER IMPROVEMENTS TRANSFERRED BY THE CITY TO MEDIA 3. THE WARRANTIES AND REPRESENTATIONS PROVIDED HEREIN CONSTITUTE THE ONLY WARRANTIES AND REPRESENTATIONS WITH RESPECT TO THIS AGREEMENT AND ARE IN LIEU OF ALL OTHER WARRANTIES, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE.
17. Default and Remedies.

a. Events of Default. The occurrence of any one or more of the following events shall constitute an "Event of Default":

(i) any failure to perform or observe any term, condition, obligation or other provision in this Agreement;

(ii) Media 3 shall at any time (A) apply or consent to the appointment of a receiver, trustee, custodian or liquidator of Media 3 or all or a substantial part of such assets, or (B) file a voluntary petition in bankruptcy for liquidation or reorganization;

(iii) the execution, delivery or performance of any agreement by Media 3 that violates any applicable law, regulation, or order.

b. Remedy. Upon an Event of Default, the non-defaulting Party may, but it is not obligated to, send a notice of default ("Notice of Default") to the defaulting Party. Upon receipt of a Notice of Default from the non-defaulting Party, the defaulting Party shall have 30 calendar days from said receipt to comply or cure the Event of Default. If the Event of Default cannot be cured within such period but the defaulting Party takes action, in good faith, during said 30 day period, then the defaulting Party shall have 60 calendar days, or other reasonable timeframe and implementation plan agreed to in writing by the non-defaulting Party after receipt of the non-defaulting Party's Notice of Default to cure said Event of Default. Should the defaulting Party fail to cure the Event of Default, the non-defaulting Party shall, in addition to all other rights and remedies available to the non-defaulting Party at law, at contract, or in equity, the non-defaulting Party shall have the right to terminate this Agreement. Upon such termination, the non-defaulting Party shall, to the extent transferred or granted under this Agreement, retain the right, interest, title and/or ownership in the fiber or other property transferred or granted under this Agreement. To the extent that the City terminates this Agreement for Media 3's uncured default, all the Access Points provided in Exhibit A and their associated Transferred Fibers shall be deemed transferred to the City, and Media 3's obligations to perform such transfer shall survive the City's termination of this Agreement.

c. In no event will either Party be liable to the other Party for any indirect, consequential, special, incidental, reliance, or punitive damages of any kind or nature whatsoever, including but not limited to any lost profits, lost revenues, lost savings, or harm to the other Party's business, operations or customers in connection with the use of the property or improvements transferred or granted under this Agreement. Each party hereby releases the other party from any such claim.

18. Defense and Indemnification.

a. By City. To the fullest extent permitted by law, City agrees to defend, indemnify and hold Media 3, its officers, agents and employees harmless from and against all claims, losses, damages, bodily injury or death of any persons whomsoever (including employees of the parties) or damage to any property, including property of City or Media 3 (whether owned, leased or licensed), and all costs and expenses, including legal expenses, incurred or sustained in enforcing this indemnification, caused by, arising from or growing out of (i) the sole active negligence or willful misconduct of City its agents, employees or contractors, or (ii) City's breach of this Agreement.

- b. By Media 3. To the fullest extent permitted by law, Media 3, for itself and its successors and assigns, agrees to defend, indemnify and hold City, its officers, agents, and employees, harmless from and against all claims, losses, damages, bodily injury or death of any persons whomsoever (including employees of the parties), or damage to any property, and all costs and expenses, including legal expenses, incurred or sustained in enforcing this indemnification provision, caused by, arising from, or growing out of, in whole or in in part, any act or omission by Media 3, or any of its employees, agents, contractors, invitees, or other persons or entities under its control (each a “Media 3 Party”; collectively the “Media 3 Parties”) in connection with this Agreement or any Facilities whether any negligence may be attributed to any Indemnified City Parties or not, whether any liability without fault is imposed or sought to be imposed on any Indemnified City Parties or not, but except to the extent that that such Claim caused by the sole active negligence or willful misconduct of the City, the Indemnified City Parties, or any of them.
19. Covenant of Good Faith Cooperation and Coordination. City and Media 3 acknowledge that access to the transferred facilities and the need to keep all facilities in good working condition for the benefit of the other Party will require the City and Media 3 to work together in good faith, including the following:
- a. Each Party shall grant reasonable access to the other Party for design or construction activity, or to access the other Party’s Facilities. Notwithstanding the foregoing sentence, Media 3 acknowledges and agrees that City may not grant access where it interferes or conflicts with any City project, any existing or future City or municipal use, or any essential City’s municipal functions or operations, as determined by the City Engineer in his/her sole discretion. Each Party recognizes the potential time-sensitivity of access needed to resolve network connection problems and will take all reasonable steps to expedite access to the other Party’s access to its Facilities.
 - b. Each Party shall make reasonable efforts to keep its fiber-optic system operational at all times, but does not warrant or otherwise guarantee its availability.
 - c. Any improvements or facilities placed or modified pursuant to this Agreement shall be designed, constructed, and maintained in accordance with all applicable local, state, and federal requirements, standards, and policies.
 - d. The Parties agree to reasonably cooperate in allowing the other Party to add future access connection points along the route of existing cables. Except as otherwise provided for in this Agreement, the Party desiring future access connection points shall be responsible for all costs associated with such establishment, as well as for obtaining any necessary permits required for such establishment.
 - e. In the event an individual fiber strand, including without limitation fiber strands within any Access Point, is beyond its useful life or cannot be reasonably repaired, or the strand is scheduled for routine replacement, the granting Party may substitute alternate strands so long as the strands are of comparable quality and location. After title and ownership in any strands are transferred or granted and granting Party elects to substitute a fiber strand, the granting Party

shall also be responsible for the actual, reasonable and documented costs related to connecting the substitute fiber strands to the grantee or transferee's facilities.

- f. Consistent with federal and California state law, the City does not intend this Agreement to grant Media 3 any exclusive right to use or occupy the public rights-of-way within the City's territorial and/or jurisdictional boundaries, and Media 3 expressly acknowledges that the City may in its sole discretion enter into similar or identical agreements with other entities, which include without limitation Media 3's competitors.
- g. Media 3 acknowledges that the City is a public entity under the laws of the State of California. Furthermore, the parties acknowledge that this Agreement constitutes a public record that the City must publicly disclose under (a) the California Public Records Act, California Government Code §§ 6250 *et seq.*; (b) Title 17, California Code of Regulations §§ 91000 *et seq.*; (b) Article I, § 3, of the California State Constitution; and (d) any other applicable law that may require the City to disclose public records.

20. General Obligations. City and Media 3 agree to the following mutual responsibilities regarding this Agreement

- a. This Agreement may be amended in writing at any time by the mutual consent of all Parties. No amendment shall have any force or effect unless executed in writing by all Parties.
- b. This Agreement shall be construed and interpreted under the laws of the State of California. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court of competent jurisdiction within the County of San Diego in the State of California.
- c. This Agreement, including any exhibits and documents incorporated herein and made applicable by reference, constitutes the complete and exclusive statement of the terms and conditions of the Agreement between the Parties concerning any fiber exchange and supersedes all prior representations, understandings, and communications between the parties as to the subject matter hereof. The above-referenced Recitals are true and correct and are incorporated by reference herein.
- d. All written notices hereunder and communications regarding the interpretation of the terms of this Agreement, or changes thereto, shall be affected by delivery of said notices in person by a nationally recognized overnight courier or by depositing said notices in the U.S. mail via certified or registered mail, or by sending to a designated E-mail address, and addressed as follows:

For Media 3:
Jeffrey Nunez
President
Media 3 Communications, Inc.
26 Calle Ameno
San Clemente, CA 92672
Phone: (646) 207-7809

For City of Chula Vista:
City Manager
City of Chula Vista
276 Fourth Ave.
Chula Vista, CA. 91910
Email: citymanager@chulavistaca.gov

E-Mail: jgn@atmedia3.com

e. This Agreement may be executed and delivered in any number of counterparts, each of which, when executed and delivered shall be deemed an original and all of which together shall constitute the same agreement.

f. No suit or arbitration shall be brought arising out of this Agreement against City unless a claim has first been presented in writing and filed with City and acted upon by City in accordance with the procedures set forth in Chapter 1.34 of the Chula Vista Municipal Code, as same may be amended, the provisions of which, including such policies and procedures used by City in the implementation of same, are incorporated herein by this reference.

g. The prevailing Party in any final or non-appealable decision on the merits that arises from or in connection with this Agreement may be entitled to its reasonable attorneys' fees and costs, which includes without limitation reasonable witness, expert and consultant fees, at the court's sole discretion. With respect to any provision in this Agreement that provides for payment of attorneys' fees, such fees will be deemed to include reasonable fees incurred through any applicable appeal process and will include, but not be limited to, fees attributable to legal services provided by any in-house counsel and staff to the prevailing or indemnified party. For purposes in this Agreement, all services rendered by all attorneys and their staff will be valued at the average rates for independent counsel prevailing in the County of San Diego, California.

h. In the event that a court of competent jurisdiction over this Agreement holds any provision in this Agreement invalid or unenforceable with respect to either Media 3 or the City, or any third parties to whom this Agreement may become applicable or enforceable, (a) the valid or enforceable provisions will not be affected whatsoever; (b) the application of such invalid or unenforceable provision to persons or entities other than those as to whom it is held invalid or unenforceable shall not be affected; and (c) each provision in this Agreement shall be valid and enforceable to the fullest extent permitted under applicable law.

i. The Parties intend that all terms and conditions within this Agreement that by their sense or context should survive this Agreement's expiration, termination or cancellation, which includes without limitation any provision in this Agreement which necessarily requires performance after this Agreement expires or terminates, will survive this Agreement's expiration, termination or cancellation.

j. This Agreement is not intended to (and shall not be construed to) give any third party, which includes without limitation Media 3's customers or any other third-party beneficiaries, any right, title or interest in this Agreement or the real or personal property(ies) that may be affected by the same.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date first above written.

MEDIA 3 COMMUNICATIONS, INC.

By: _____ Dated: _____
Jeffrey Nunez, President

CITY OF CHULA VISTA

By: _____ Dated: _____
Maria Kachadoorian, City Manager

APPROVED AS TO FORM

Glen R. Googins, City Attorney

Exhibit A – City-Owned and City-Operated Public Facilities

Exhibit B – Master Encroachment Agreement

Exhibit C – Insurance Requirements

Exhibit D – Media 3 Existing Fiber Network

Exhibit E – Conduit Access and Fiber-optic Strand Transfer to Media 3

Exhibit F – Mutual Operation and Maintenance Agreement

Exhibit G – License Agreement (for 48 fibers from the City to Media 3)

Exhibit A – Existing City-Owned and City-Operated Public Facilities

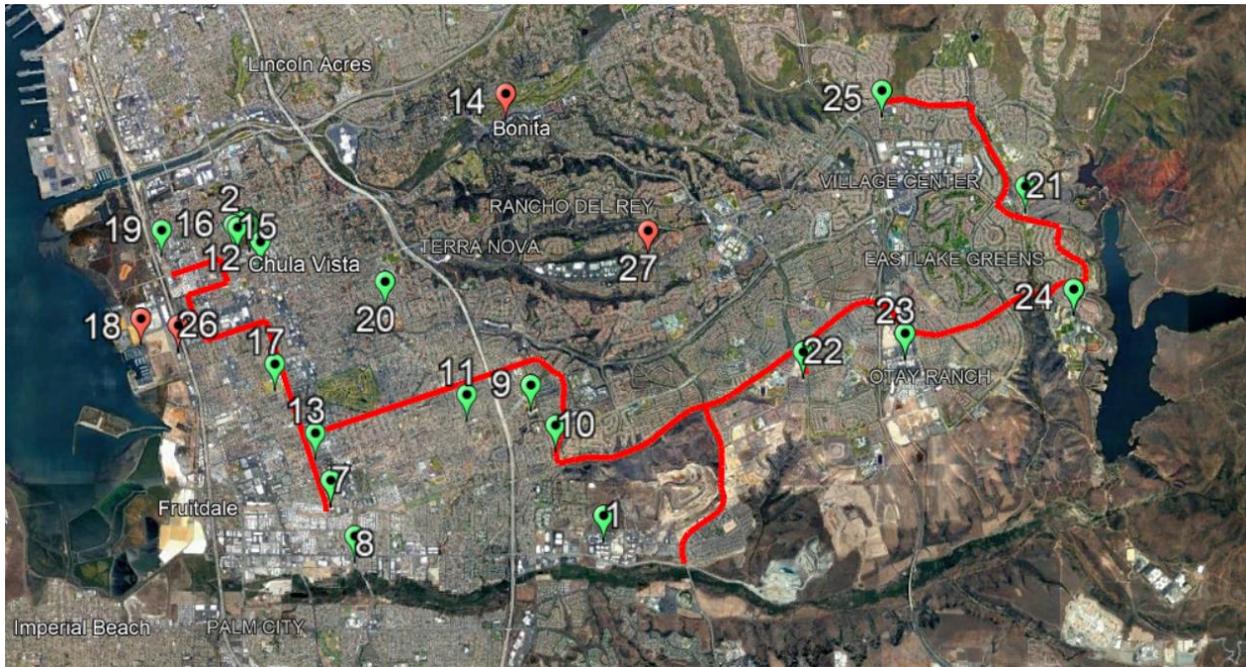
(see attached Map and Lists of Locations)

Exhibit B – Master Encroachment Agreement

(see attached Master Encroachment Agreement)

Exhibit C – Insurance Requirements
(see attached Insurance Requirements)

Exhibit D – Media 3 Existing Fiber Network



Total network distance: 20.09 route miles

Exhibit E – Conduit Access and Fiber-optic Strand Transfer to Media 3



Main Street – Frontage Rd./Hwy 5 to Heritage Rd. (4.95 route miles), Heritage Rd. to Olympic Pkwy (6.90 route miles) – total 11.85 route miles

4th Avenue to Main St. to Broadway – 5.14 route miles

Otay Lakes Rd. – Bonita Rd. to Palomar St. – 3.51 route miles

Total network distance: 20.50 route miles

Exhibit F – Mutual Operations and Maintenance Agreement

(Standard Form O&M Agreement to be negotiated)

SECTION I – OPERATION AND MAINTENANCE

1. General Provisions.

1.1 Media 3 will install, maintain, repair, replace, operate and control the Fiber Network and equipment. Subject to the terms of this Agreement, the City has been granted ownership of certain fibers within the Fiber Network, the Transferred Fibers. Media 3 shall provide the City with maintenance services on the Transferred Fibers within the Media 3 Fiber Network. The City shall not access Media 3's fiber network or equipment without Media 3's consent, which shall not be unreasonably withheld.

1.2 Unless emergency action is required, Media 3 shall notify City no less than 24 hours in advance of any required network blockage, such as an unexpected temporary network relocation event. The Parties agree to mutually cooperate to avoid and resolve the underlying cause of any blockage, comply with generally accepted communications industry standards and restore the transmission path as promptly as practicable.

2. Maintenance and Repair. Media 3 will perform or cause the performance of all of Media 3's maintenance and repair functions on the facilities within the Fiber Network twenty-four (24) hours per day, seven (7) days per week, 365 days per year with the objective of causing the Fiber Network to perform in compliance in all material respects with Media 3's technical specifications. Maintenance services will include scheduled and unscheduled maintenance.

3. Splicing and Connecting Points.

3.1 Splice requests are considered scheduled maintenance. City will provide Media 3 with a request for splicing and/or the addition of a junction splice point (*i.e.*, handholes, regeneration or splice case site) assuming that an existing splice case or approved splice location is available for splicing. Such request will detail the requested location of the junction splice point and set forth the work required to be performed. City will provide a tie cable adequate to reach the junction splice point with an additional slack length sufficient to splice into any City fibers at the junction splice point. Media 3 will provide, at junction splice points approved by Media 3 engineering, a Media 3 tail from the splice point in the backbone to the junction splice point to enable the connection of the City lateral to the Fiber Network.

3.2 Unless City has hired Media 3 to perform such work, City will be responsible for the installation of fiber cable connecting its City Facility location to the Access Point and Media 3 will cooperate with this effort as reasonably required.

4. Scheduled Maintenance.

4.1 To the extent practicable, scheduled maintenance or other service functions performed by Media 3 on the Fiber Network which will or could reasonably be expected to result in a service outage will be coordinated and scheduled with City. City shall provide a list of City contacts for maintenance and escalation purposes and shall provide updated lists to Media 3 as necessary to keep such list current.

4.2 Media 3 will endeavor to, but shall not be required to, normally conduct maintenance which may require system “down time” after midnight and before 6 a.m. local time. Media 3 will use commercially reasonable efforts to notify City of maintenance that may require system “down time,” via telephone or electronic transmission, no less than three (3) business days prior to commencement of such maintenance activities. Notwithstanding the foregoing, City understands and agrees that Media 3 may perform: (a) unscheduled emergency maintenance at any time without prior notice to City, and (b) may perform scheduled maintenance subject to the notice requirements contained herein. Media 3 will provide City with such advance notice as is reasonable under the circumstances, and if advance notice cannot be given, will notify City as soon as practicable following such emergency or required maintenance activity. Media 3 will notify City upon completion of such activity.

SECTION II – SERVICE OUTAGE

1. **Procedure in the Event of Service Outage.** In the event that City experiences any service-related issues, City may contact Media 3 through the contact escalation information attached hereto, which may be amended by Media 3 from time to time upon written notice to City. Upon receipt of notice of service problems, the appropriate Media 3 departments will initiate diagnostic testing and isolation activities to determine the source and severity of any service issue. If there is a service outage, Media 3 and City will work cooperatively to restore service.
2. **Duration of Service Outage.** A service outage starts when City notifies Media 3 that City is experiencing a service outage, or Media 3 notifies City of a service outage, and ends when the fiber is operational and in material conformance with Media 3’s technical specifications; provided however, that, subtracted from such time shall be any period of time during which Media 3 is unable, through no fault of Media 3, to obtain access for testing and repair related to any service outages.
3. **Responsibility for Costs.** If Media 3 dispatches a field technician to perform diagnostic troubleshooting and the problem resides with City equipment or facilities or results in a “No Trouble Found,” or the failure is due to City’s acts or omissions, City will pay Media 3 for time and materials at Media 3’s then standard rates. If City dispatches City staff to perform or observe diagnostic troubleshooting, or other necessary inspection, and the problem resides with Media 3’s equipment or facilities or results in a “No Trouble Found,” or the failure is due to Media 3’s acts or omissions, Media 3 will pay City for time and materials at City fully burdened hourly rates.
4. **Service Outages.** Media 3 shall not be responsible for any service outage (i) resulting from scheduled maintenance performed during a maintenance window which maintenance is anticipated to be service impacting and noticed to the City under the terms herein, (ii) unscheduled emergency maintenance, or (iii) caused by a force majeure event.
5. **Mean Time to Respond.** Mean time to respond is the average time required for Media 3 to begin troubleshooting a reported failure. The ‘mean time to respond’ objective is two (2) hours from Media 3’s receipt from City of notice of such failure.

MEDIA 3 OPERATIONS AND MAINTENANCE

ESCALATION LIST

1st Level Support 9am – 5pm Local Time

Contact Name	
Contact Number	
Email	

2nd Level Support 9am-5pm Local Time

Contact Name	
Position	
Cell Phone	
Email	

3rd Level Support 9am-5pm Local Time

Contact Name	
Position	
Cell Phone	
Email	

Nights, Holidays, Weekends (after hours)

Contact Name	
Position	
Cell Phone	
Email	

**Exhibit G – License Agreement (for 48 fibers from the City to Media 3)
(Standard Form License Agreement to be negotiated and attached)**