

## **LICENSE AGREEMENT**

**THIS LICENSE AGREEMENT** ("AGREEMENT") is entered into by and between the DOWNTOWN POMONA OWNERS ASSOCIATION ("LICENSEE"), and the CITY OF POMONA ("LICENSOR" or "CITY"), collectively referred to hereinafter as the Parties.

### **RECITALS**

**WHEREAS**, LICENSOR is the owner of concrete or steel standard street light poles excluding decorative or historical light poles, and LICENSEE is the owner of concrete or steel standard street light poles excluding decorative or historical light poles, commonly known as the Light Pole and located as shown in Exhibit A within the Downtown area of Pomona, California 91767 (the "**Light Pole**");

**WHEREAS**, LICENSEE desires to make use of the Light Pole for the purpose of installing, operating and maintaining security cameras and related equipment on the top or the side of the Light Pole as part of the Downtown Pomona Owners Association's video management platform;

**WHEREAS**, LICENSEE has obtained Encroachment Permits from the City for the installation and use of LICENSEE owned Light Pole(s), as shown in Exhibit A; and

**WHEREAS**, LICENSOR desires to grant nonexclusive use of the Light Pole to LICENSEE in furtherance of its video management platform, and subject to the specified terms and conditions set forth herein.

**NOW, THEREFORE**, the Parties agree as follows:

1. **TERM.** This AGREEMENT shall become effective as of \_\_\_\_\_, and its terms shall continue until further amended by mutual written agreement by Parties or terminated in accordance with Section 12.

2. **REPRESENTATIVES OF THE PARTIES AND SERVICE OF NOTICE.** The representatives of the Parties who are primarily responsible for the administration and performance of the AGREEMENT, and to whom formal notice, demands and communications shall be given, are as follows:

2.1. The principal representative of LICENSOR shall be:

Rene Guerrero, PE, City Engineer  
City of Pomona  
Public Works Department  
505 South Garey Avenue  
Pomona, CA 91766  
(909) 620-2440

2.2. The principal representative of LICENSEE shall be:

Larry Egan, Executive Director  
Downtown Pomona Owners Association  
119 W. 2nd St.,  
Pomona, CA 91766  
(909) 469-1121

2.3. Formal notices, demands and communications to be given hereunder by either party shall be made in writing and may be affected by personal delivery or by mail. Formal notices and demands sent by E-mail or facsimile shall not be acknowledged.

2.4. If the name of the principal representative designated to receive the notices, demands or communications, or the address of such person, is changed, written notice shall be given within five (5) working days of said changes.

### **3. SCOPE OF AGREEMENT.**

3.1. Provided that all of the terms and conditions of this AGREEMENT are fully satisfied, LICENSOR hereby grants to LICENSEE and its authorized agents a nonexclusive right to encroach upon and occupy the Light Pole for the sole purpose of installing, operating and maintaining security cameras onto the Light Pole. Such use shall include the installation of security cameras, wireless radios, and related equipment (the "Equipment") onto the Light Pole, and the operation and maintenance of the Equipment. Any and all rights expressly granted to LICENSEE under this AGREEMENT shall be exercised at LICENSEE's sole cost and expense. LICENSEE shall not use the Light Pole for any other purpose whatsoever except for that expressly set forth herein, or as otherwise agreed to in advance by LICENSOR in writing.

3.2. Subject to the conditions herein, the LICENSOR hereby authorizes and permits LICENSEE to access the Light Pole and to locate, place, attach, install, operate, maintain, control, remove, reattach, reinstall, relocate, and replace the Equipment onto the Light Pole for the purposes of operating the Downtown Pomona Owners Association's video management platform.

3.3. LICENSEE shall ensure that LICENSEE's Equipment is maintained in a safe condition and in good repair. LICENSEE shall employ reasonable care at all times in the installation and maintenance of LICENSEE's Equipment. LICENSEE shall, within forty-eight (48) hours after occurrence, report to LICENSOR any incident causing property damage or any injury to persons resulting from any of LICENSEE's activities pursuant to this AGREEMENT.

3.4. LICENSEE shall provide LICENSOR with written three (3) days' notice of LICENSEE's employees or agents being present at the Light Pole for the

purpose of pre-installation testing or inspection, or Equipment installation, maintenance, or removal. Notwithstanding the foregoing, in the event of an emergency, LICENSEE may immediately access the Light Pole for needed installation or maintenance and shall provide written notice of the entry within three (3) days' of LICENSEE accessing the Light Pole.

3.5. Nothing in this AGREEMENT shall be deemed or construed to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between the LICENSOR and LICENSEE other than the Parties' relationship pursuant to this AGREEMENT. This AGREEMENT only grants a license to use the Light Pole, and does not authorize or bestow any interest in real property, including any fee, leasehold interest, or easement. LICENSEE shall not avail itself of any rights afforded to tenants under the laws of the State of California.

3.6 The City Manager shall have the authority to execute any amendments on behalf of LICENSOR to this AGREEMENT to allow additional EQUIPMENT to be installed by LICENSOR on existing Light Pole(s).

#### **4. INSTALLATION AND MAINTENANCE OF EQUIPMENT.**

4.1. Except as otherwise provided herein, LICENSEE shall not install, maintain, or operate any Equipment in or on the Light Pole without the prior written approval of LICENSOR.

4.2. Prior to the installation of LICENSEE's Equipment, LICENSEE shall prepare a diagram which shall show the location and quantity of proposed Equipment, and any other requested details regarding LICENSEE's installation of Equipment on the top or the side of the Light Pole.

4.3. The installation, operation, and maintenance of LICENSEE's Equipment shall be performed by experienced and properly trained (and licensed, if applicable) installation and maintenance personnel.

4.4. LICENSEE shall, at its sole cost and expense and to the satisfaction of the LICENSOR: (a) remove, repair or replace any of its Equipment that is damaged or becomes detached; (b) repair any damage to the Light Pole caused by LICENSEE, its agents, employees or contractors in their actions relating to installation, operation, repair or maintenance of the Equipment; and/or (c) remove any of its equipment at the sole discretion of LICENSOR. Failure to remove any equipment in a timely manner will allow the City to remove and recover any costs associated with the removal.

4.5. If LICENSEE proposes to install additional equipment which is different in any material way from the Equipment, LICENSEE shall first obtain written approval for the use and installation of the additional equipment from LICENSOR.

4.6. Within thirty (30) days after termination of the AGREEMENT, LICENSEE shall promptly, safely and carefully remove the Equipment from the Light Pole.

4.7. LICENSEE shall comply with all applicable Federal, State, and local laws and codes related to the installation, operation, maintenance, and control of LICENSEE's Equipment installed on the Light Pole.

5. **NONEXCLUSIVE LICENSE.** LICENSEE acknowledges and understands that any and all rights granted hereunder are nonexclusive, and LICENSOR reserves the right to allow the Light Pole to be used by LICENSOR or other parties and to make additions, deletions, or modifications to thereto without the consent of or advanced notice to LICENSEE, except that LICENSOR will not disturb or allow other parties to disturb or interfere with the Equipment. LICENSEE's use of the Light Pole shall in no way impact or impair the use of the Light Pole by LICENSOR or its authorized third-parties, and the Light Pole shall be returned to its previous state following the termination of this AGREEMENT, whichever first occurs. LICENSEE acknowledges and understands that third-parties will have access to and use of the Light Pole, and LICENSOR does not guarantee the safety or security of LICENSEE's Equipment, except that LICENSOR will not disturb the Equipment or permit third parties to disturb or access the Equipment. In the event the Light Pole becomes unavailable for LICENSEE's use, regardless of whether such is the direct result of willful or negligent actions on the part of LICENSOR, LICENSEE shall have no remedy or recourse against LICENSOR.

6. **INDEMNITY.** LICENSEE hereby agrees to protect, indemnify and hold LICENSOR and its employees, officers and servants free and harmless from any and all losses, claims, liens, demands and causes of action of every kind and character including, but not limited to, the amounts of judgment, interests, court costs, legal fees, expert costs, expert fees and all other expenses incurred by LICENSOR to the maximum extent allowed by law arising in favor of any party, including claims, liens, debts, personal injuries, including employees of LICENSOR, death or damages to property (including property of LICENSOR) and without limitation by enumeration, all other claims or demands of every character occurring or arising directly out of or as a consequence of the negligent acts or omissions or willful misconduct of LICENSEE, LICENSEE's subcontractors, officers, employees, agents and representatives arising out of or in connection with the performance of this AGREEMENT. This provision is not intended to create any cause of action in favor of any third party against LICENSEE or LICENSOR or to enlarge in any way the LICENSEE's liability but is intended solely to provide for indemnification of LICENSOR for liability for damages or injuries to third persons or property arising from LICENSEE's negligent performance hereunder.

7. **INSURANCE.**

7.1. LICENSEE shall maintain for the duration of this AGREEMENT general liability insurance and workers' compensation, if required by applicable law, to

protect against claims for injuries to persons or damages to property which may arise from or in connection with this AGREEMENT.

7.2. The general liability insurance shall have a per-occurrence limit of not less than One Million Dollars (\$1,000,000). LICENSEE shall satisfy the general liability insurance requirement through a program of self-insurance, commercial insurance, or any combination thereof.

7.3. The workers' compensation insurance, if required by applicable law, shall insure LICENSEE's obligations and liabilities under the workers' compensation laws of California. LICENSEE shall satisfy the general liability insurance requirement through a program of self-insurance, commercial insurance, or any combination thereof.

7.4. LICENSEE shall provide to LICENSOR (i) a letter or certificate of self-insurance as evidence of self-insurance indicating a self-insured retention equal to or exceeding the limits required under this section; and (ii) a letter from LICENSEE, in a form satisfactory to LICENSOR's Director of Risk Management, in which LICENSEE indemnifies LICENSOR with LICENSEE's self-insurance as primary insurance, not contributing with and not supplemental to the coverage that LICENSOR may carry, and naming and extending coverage to LICENSOR as additionally insured.

8. **LICENSOR'S REPRESENTATIONS.** LICENSEE hereby acknowledges that LICENSOR makes no representations, warranties, guarantees, or assurances with respect to the Light Pole, including but not limited to its condition or safety, or its utility for the purposes set forth herein. On behalf of itself and its authorized agents, LICENSEE hereby assumes the risk of property damage and/or loss and or physical injury that may result from LICENSEE's use of the Light Pole under this AGREEMENT.

9. **OWNERSHIP OF SECURITY FOOTAGE.** All security camera footage, documents or other written material developed by LICENSEE in the performance of this AGREEMENT shall be and remain the exclusive property of LICENSEE without restriction or limitation upon its use or dissemination by LICENSEE. LICENSOR shall have all rights and privileges to access the materials at no cost.

10. **ACCESS TO RECORDINGS.** In exchange for LICENSEE's use of the Light Pole at no cost, LICENSEE agrees to provide LICENSOR unrestricted access to all live footages and recordings derived from the security cameras and related equipment on the Light Pole. LICENSOR shall have unrestricted access to the recordings derived from the security cameras and related equipment on the Light Pole for no less than thirty (30) calendar days after the date of such recording at no cost. Within one (1) business day of LICENSOR's written request, LICENSEE shall furnish copies of recordings derived from security cameras and related equipment placed on the Light Pole(s) upon the request of LICENSOR in the electronic format which LICENSOR requests at no cost.

11. **ELECTRICITY.** In exchange for LICENSOR's unrestricted access to all recordings derived from the security cameras and related equipment on the Light Pole outlined in Section 10, LICENSOR agrees not to charge LICENSEE for its use of electricity to power security cameras and related equipment.

12. **TERMINATION.**

12.1. Either Party may terminate this AGREEMENT at any time without cause by giving thirty (30) calendar days written notice of such termination and specifying the effective date thereof.

12.2 If for any reason, either Party shall fail to fulfill in a timely and proper manner its obligation under this AGREEMENT, or if either Party shall violate any of the covenants or stipulations of this AGREEMENT, the affected Party shall have the right to terminate this AGREEMENT by giving a five (5) calendar day written notice to the other Party. The notice shall refer to this clause, shall specify the nature of the alleged default, and shall specify the effective date of the termination.

13. **ASSIGNMENT.** Neither party shall assign or subcontract the rights or responsibilities under this AGREEMENT without the express, written consent of the other party, which may be withheld for any reason or for no reason.

14. **RESOLUTION OF DISPUTES.**

14.1. Disputes regarding the interpretation or application of any provisions of this AGREEMENT shall, to the extent reasonably feasible, be resolved through good faith negotiations between the Parties.

14.2. If any action, at law or in equity, is brought to enforce or to interpret any provisions of this AGREEMENT, the prevailing party in such action shall be entitled to recover reasonable attorney's fees, costs and necessary disbursements, in addition to such other relief as may be sought and awarded.

15. **WAIVER.** No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a party shall give the other party any contractual rights by custom, estoppel, or otherwise.

16. **NON-DISCRIMINATION.** LICENSEE represents and warrants that LICENSEE and LICENSEE's Subcontractors, officers, employees, agents and representatives shall comply with the following:

- (i) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d et seq., which prohibits discrimination on the basis of race, color, or national origin in any program or activity receiving Federal financial assistance;

- (ii) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681 et seq., which prohibits discrimination on the basis of sex in any education program or activity receiving Federal financial assistance;
- (iii) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of handicap in any program or activity receiving Federal financial funding;
- (iv) The Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 et seq., which prohibits discrimination on the basis of age in any program or activity receiving Federal financial assistance; and
- (v) All regulations, guidelines, and standards lawfully adopted under the above statutes by the United States Department of Education.

17. **FORCE MAJEURE.** The respective duties and obligations of the Parties hereunder shall be suspended while and so long as performance hereto is prevented or impeded by strikes, disturbances, riots, fire, severe weather, government action, war acts, acts of God, or any other cause similar or dissimilar to the foregoing which are beyond the control of the party from whom the affected performance was due.

18. **SEVERABILITY.** If any provision of this AGREEMENT is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions nevertheless will continue in full force and effect without being impaired or invalidated in any way.

19. **GOVERNING LAW.** This AGREEMENT shall be governed by and construed in accordance with laws of the State of California. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the County of Los Angeles. In the event of litigation in a U.S. District Court, exclusive venue shall lie in the Central District of California.

20. **ENTIRE AGREEMENT.** This AGREEMENT supersedes any and all other agreements, either oral or in writing, between the parties with respect to the subject matter herein. Each party to this AGREEMENT acknowledges that no representation by any party, which is not embodied herein, nor any other agreement; statement or promise not contained in this AGREEMENT shall be valid and binding. Any modification of the AGREEMENT shall be effective only if it is in writing and signed by all Parties.

21. **AUTHORITY.** Each Party warrants that the persons who have signed this AGREEMENT have the legal power, right and authority to make this AGREEMENT and bind each respective Party.

[END OF TEXT. SIGNATURE PAGE FOLLOWS.]

**IN WITNESS WHEREOF** this AGREEMENT is entered into by the Parties hereto on the dates set forth below.

“LICENSEE”  
DOWNTOWN POMONA OWNERS  
ASSOCIATION

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

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

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

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

APPROVED AS TO FORM:

\_\_\_\_\_

ATTEST:

\_\_\_\_\_

Approved by  
the Board \_\_\_\_\_

“LICENSOR”  
CITY OF POMONA

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

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

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

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

APPROVED AS TO FORM:

\_\_\_\_\_

Anita Lakhani, Deputy City Attorney

ATTEST:

\_\_\_\_\_

Eva Buice, City Clerk

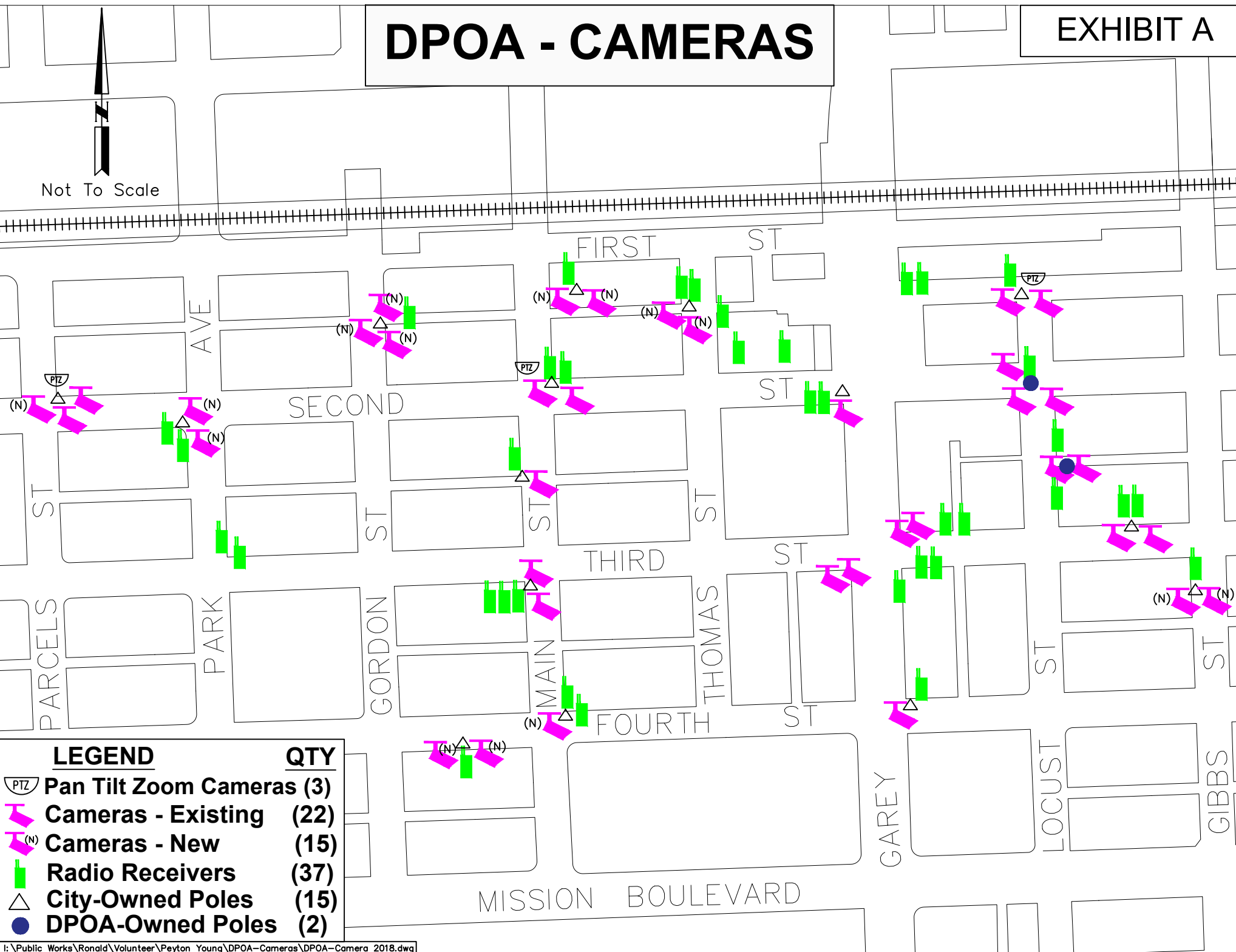
Approved by  
City Council \_\_\_\_\_



# DPOA - CAMERAS

EXHIBIT A

Not To Scale



## LEGEND

## QTY

|  |                              |             |
|--|------------------------------|-------------|
|  | <b>Pan Tilt Zoom Cameras</b> | <b>(3)</b>  |
|  | <b>Cameras - Existing</b>    | <b>(22)</b> |
|  | <b>Cameras - New</b>         | <b>(15)</b> |
|  | <b>Radio Receivers</b>       | <b>(37)</b> |
|  | <b>City-Owned Poles</b>      | <b>(15)</b> |
|  | <b>DPOA-Owned Poles</b>      | <b>(2)</b>  |