

IN THE CITY COUNCIL OF THE CITY OF SAN LEANDRO

RESOLUTION NO. 2023-

RESOLUTION INDEPENDENTLY CONSIDERING THE MITIGATED NEGATIVE DECLARATION (MND) AND AFTER EVALUATING THE ENVIRONMENTAL IMPACTS ASSOCIATED WITH THE AGREEMENT AND PROJECT, (1) CONCLUDING THAT THE MND COMPLIES WITH CEQA AND THE CEQA GUIDELINES, (2) CONCLUDE THAT THE MND IS ADEQUATE TO SUPPORT THE CITY'S APPROVAL OF THE LEASE FOR THE PROJECT, AND (3) IMPOSES THE MITIGATION MEASURES AS A CONDITION OF THE CITY'S APPROVAL OF THE LEASE FOR THE PROJECT AND APPROVING A LEASE AGREEMENT BETWEEN THE CITY OF SAN LEANDRO AND BANDWIDTH IG, LLC FOR INSTALLATION, MAINTENANCE, AND USE OF FIBER OPTIC CABLE IN SUBMERGED SAN FRANCISCO BAY LANDS AND TERRESTRIAL LANDS WITHIN THE JURISDICTION OF SAN LEANDRO

WHEREAS, the City of San Leandro ("City") owns certain real property comprised of a portion of San Francisco Bay submerged lands (APNs: 80G-910-5-2, 80G-910-4-2 and 80G-900-1-7) and some terrestrial land on the shoreline (APN: 80G-910-1-6); and

WHEREAS, Bandwidth IG, LLC ("Bandwidth") desires to install and use two 2-inch-diameter fiber optic cables and one 8-inch diameter high-density polyethylene (HDPE) conduit on submerged land in the San Francisco Bay between Brisbane and San Leandro (the "Project"); and

WHEREAS, the Project, as currently contemplated, includes both submerged land and terrestrial land owned by the City; and

WHEREAS, City desires to lease 7,104 linear feet of this portion of the submerged land and 1,508 linear feet of terrestrial land ("Premises") to Bandwidth for the Project for a twenty-five year term in accordance with the terms and conditions outlined in the lease agreement, attached hereto and incorporated herein as Exhibit A ("Lease"); and

WHEREAS, the California State Lands Commission ("CSLC") is the lead agency for the Project and on June 5, 2023, CSLC certified a Mitigated Negative Declaration (NO. 813) ("MND") and approved a Lease for the portion of land within the Project area owned by the CSLC; and

WHEREAS, the City is a Responsible Agency for the Project under the California Environmental Quality Act ("CEQA"), which requires the City to consider the environmental consequences of a project subject to its discretionary approval under CEQA Guidelines Section 15096; and

WHEREAS, the City has independently reviewed and determined that the MND adequately discloses and evaluates the impacts of the Project, including all impacts of the Project contemplated therein, and imposes adequate mitigation measures to the extent feasible; and

WHEREAS, the City, after independently considering the MND and after evaluating the environmental impacts associated with the Agreement and Project, (1) concludes that the MND complies with CEQA and the CEQA Guidelines, (2) concludes that the MND is adequate to support the City's approval of the Lease for the Project, and (3) imposes the mitigation measures as a condition of the City's approval of the Lease for the Project; and

WHEREAS, the purposes and work of Bandwidth are of interest and benefit to, and will promote the general welfare of the residents of San Leandro; and

WHEREAS, the City desires to lease the City-owned land to Bandwidth, and Bandwidth desires to lease from the City the City-owned by execution of the Lease Agreement in the form attached to this Resolution, and as detailed in the Staff Report accompanying this Resolution; and

WHEREAS, under the Lease, Bandwidth will pay the City an annual rental fee in the amount of \$5 per linear foot for the submerged land for the twenty-five (25) year term of the Lease and such rental amount will be adjusted annually in accordance with the CPI; and

WHEREAS, under the Agreement, Bandwidth will pay the City an annual rental fee in the amount of \$8 per linear foot for the first year of the Lease for the terrestrial portion of the Project and conduct a formal appraisal within one (1) year of the effective date of the Lease and adjust the rental amount accordingly if justified by the appraisal; and

WHEREAS, additionally, Bandwidth agrees to install city conduits and vaults along Lewelling Boulevard and Wicks Boulevard represented as segments 7 and 8 of the attached Exhibit B of the Lease Agreement at an estimated value of \$549,334.50.

NOW, THEREFORE, the City Council of the City of San Leandro finds that the foregoing recitals are true and correct and are made a part of this Resolution and does **RESOLVE** as follows:

1. Approves the form of the Lease, attached hereto and incorporated herein as Exhibit A.
2. Authorizes the City Manager to execute the Lease, subject to any minor modifications, corrections, and clarifications approved by the City Attorney.
3. Authorizes the City Manager to take any other related action reasonably necessary to further the intent of this Resolution.

Introduced by Councilmember _____ and passed and adopted this 18th day of September 2023, by the following vote:

AYES: _____ ()

NOES: _____ ()

ABSENT: _____ ()

ATTEST: _____
Kelly B. Clancy, CMC
City Clerk