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LEASE BETWEEN THE CITY OF SAN LEANDRO AND BANDWIDTH IG, LLC

This Lease consists of this summary and the following attached and incorporated parts:

- Section 1 Basic Provisions
- Section 2 Special Provisions Amending or Supplementing Section 1 or 3
- Section 3 General Provisions
- Exhibit A Land Description
- Exhibit B Site and Location Map
- Exhibit C Mitigation Monitoring Program

SECTION 1: BASIC PROVISIONS

THE CITY OF SAN LEANDRO, hereinafter referred to as "Lessor" for consideration specified in this Lease, does hereby lease, demise, and let to **BANDWIDTH IG, LLC**, hereinafter referred to as Lessee, those certain lands described in

Exhibit A hereinafter referred to as Lease Premises, subject to the reservations, terms, covenants, and conditions of this Lease.

MAILING ADDRESS:

530 Lakeside Drive, Suite 190
Sunnyvale, CA 94085

LEASE TYPE: General Lease – Right-of-Way Use

LAND TYPE: Sovereign

LOCATION (LEASE PREMISES): 7,104 linear feet of San Francisco Bay lands and 1,508 linear feet of terrestrial lands within San Leandro, as described in Exhibit A attached and by this reference made a part hereof.

LAND USE OR PURPOSE (PROJECT): Installation, maintenance, and use of two 2-inch-diameter buried fiber optic cable and one 8-inch-diameter high-density polyethylene (HDPE) conduit.

TERM: 25 years; beginning _____, 2023; ending _____, 2048, unless sooner terminated as provided under this Lease.

CONSIDERATION: \$35,520.00 per year for the submerged lands portion, with an annual Consumer Price Index adjustment, and \$12,604.00 per year for the terrestrial lands portion with an annual Consumer Price Index adjustment. A formal appraisal of the terrestrial land will be conducted within one (1) year of the Effective Date in accordance with the provisions outlined in Paragraph 27(a) of Section 2. If the subsequent appraisal yields a higher amount per linear foot for the terrestrial lands, then Bandwidth’s rent for the terrestrial portion will be adjusted to reflect the higher appraised amount. Such higher rental amount will be memorialized in a written amendment to this Lease. Rent is subject to modification by Lessor as specified in Paragraph 27 of section 2 – Special Provisions, after review of as-built plans and post-lay cable survey as described in Paragraph 21(b) and 22 of Section 2, Special Provisions, and Paragraph 3(c) of Section 3 – General Provisions.

AUTHORIZED IMPROVEMENTS:

X **TO BE CONSTRUCTED:** Two horizontal directionally drilled (HDD) 8-inch-diameter landing conduits and two 2-inch-diameter fiber optic cables. City conduits and vaults along Lewelling Blvd. and Wicks Blvd. represented as segments 7 and 8 in the attached Exhibit B.

COMMERCIAL GENERAL LIABILITY INSURANCE: In an amount of no less than \$5 million per occurrence during construction and \$2 million per occurrence during ongoing operations and maintenance, or as specified further in Section 3.9.

POLLUTION LIABILITY COVERAGE: In an amount no less than \$1,000,000 per occurrence.

WORKER'S COMPENSATION: In conformance with statutory requirements.

AUTOMOBILE LIABILITY: In an amount no less than \$5,000,000 per occurrence.

SURETY BOND OR OTHER SECURITY: \$150,000 due within 60 days of lease authorization and subject to modification as described in Section 2 - Special Provisions, Subsection 10.

SECTION 2: SPECIAL PROVISIONS

BEFORE THE EXECUTION OF THIS LEASE, ITS PROVISIONS ARE AMENDED, REVISED, OR SUPPLEMENTED AS FOLLOWS:

1. Lessee will fully carry out, implement, and comply with all mitigation measures and reporting obligations identified as Lessee's, Applicant's, or Responsible Party's responsibility as set forth in the Mitigation Monitoring Program (MMP), part of the MND No. 813 (SCH No. 2023040125), prepared and certified by the California State Lands Commission for this Agreement and as adopted by Lessor or as modified by Lessor as permitted by law, attached hereto as Exhibit C and by this reference made a part of this Lease.
2. Lessee acknowledges and agrees:
 - a) The site may be subject to hazards from natural geophysical phenomena including, but not limited to waves, storm waves, tsunamis, earthquakes, flooding and erosion.
 - b) To unconditionally waive any claim or damage or liability against Lessor, its officers, agents, and employees for injury or damage from such hazards.
 - c) To the fullest extent permitted by law, indemnify, hold harmless and, defend the Lessor, its officers, agents, and employees, against and for any and all liability, claims, demands, damages, or injuries or costs of any kind and from any cause (including costs and fees incurred in the defense of such claims), expenses, and amounts paid in settlement arising from any alleged or actual injury, damage or claim due to site hazards or connected in any way with respect to this property, the Project, or issuance of this Lease, any new lease, renewal, amendment or assignment by Lessor.
3. Lessee shall exercise its rights under this Lease so as to avoid, to the fullest extent reasonably possible, interference with the Lessor's use of the Lease Premises or with the public's right to use the Lease Premises for Public Trust purposes, including without limitation, waterborne commerce, navigation, fishing, water-related recreation, habitat preservation, and open space.
4. Lessee is authorized to maintain only those improvements as listed in Section 1. In accordance with the provisions of Section 3, Paragraph 5, Lessee shall secure the written approval of Lessor prior to any additions to, alteration or modification of the improvements, including without limitation, the buried cables authorized hereunder.

5. The right of occupation granted herein applies only to land actually occupied by the cables and landing pipes, regardless of the Lease Premises described in Exhibit A and depicted in Exhibit B.
6. Lessee asserts that it has entered into this Lease as a principal, and not in the capacity of agent for any third party. Furthermore, it is understood and agreed by Lessor and Lessee that no person or entity other than Lessee, and those holding an interest in the premises with the formal approval of Lessor in accordance with Section 3, Paragraph 11 ("Assignment, Encumbrancing, or Subletting"), shall acquire any interest in the Lease Premises or enforceable rights under this Lease.
7. In addition to the rights reserved to Lessor under Section 3, Paragraph 6 ("Reservations, Encumbrances, and Rights-of-Way"), Lessor expressly reserves the right to lease, convey, or encumber the Lease Premises to third parties for facilities or improvements that may cross over or under Lessee's authorized improvements. Lessee shall cooperate fully to facilitate the installation, operation, maintenance and removal of such third-party facilities. From and after the installation of Lessee's facilities, any agreement entered into by Lessor authorizing third-party use of the Lease Premises for installation of facilities that will cross Lessee's improvements shall provide: (i) that the rights granted thereunder will be exercised so as to minimize, to the fullest extent reasonably possible, interference with Lessee's use of the Lease Premises or damage to Lessee's improvements; (ii) that the third party give notice to Lessee prior to the commencement of construction of the crossing; and (iii) that the third party give Lessee a reasonable opportunity to negotiate and enter into a crossing agreement on such terms and conditions as may address and accommodate the respective rights and uses of each party. The failure of Lessee and any such third party to agree on the terms and conditions of a crossing agreement shall not prevent or unreasonably delay the third party from proceeding with the construction of such crossing.
8. Notwithstanding anything contained in Section 3, Paragraphs 5(e) ("Enjoyment") and 6(a)(4) ("Reservations") to the contrary, should Lessor lease, convey, or encumber the Lease Premises, in whole or in part, to a third party, and should the proposed installation of any improvements by such third party require the relocation of Lessee's authorized improvements, or any portion thereof, Lessor reserves the right to require Lessee to relocate its improvements, provided however, the relocation shall be at no cost to Lessee.
9. Lessee may elect to terminate this Lease prior to the end of the lease term, thereby terminating its rights and obligations from the date of termination through the end of the lease term, provided that a) Lessee notifies Lessor in writing of the date on which this Lease will terminate, which date shall be no sooner than two

years from the date of written notice, b) complies with all the conditions of this Lease, and c) submits an application and obtains approval from Lessor and to the extent applicable, from the California State Lands Commission to restore the Lease Premises.

10. Lessee agrees to submit no later than 2 years prior to the expiration of this Lease either: (a) an application and minimum expense deposit for a new lease for the continued use of the Lease Premises or (b) a plan for restoration of the Lease Premises to be completed no later than the expiration of the Lease Term, pursuant to Section 3, Paragraph 13.
11. Lessee must submit all required pre-construction documents and permits as required by Section 2, Paragraphs 12, 13, and 14 for staff review and approval of a Notice to Proceed.
12. At least fifteen (15) days prior to (i) start of the Horizontal Directional Drilling (HDD) operation, and (ii) start of the marine cable laying activity, Lessee shall submit a Local Notice to Mariners to the United States Coast Guard (USCG). A copy of each published Notice shall be immediately filed by the Lessee with the Lessor.
13. At least thirty-five (35) days prior to the start of construction of the Project as defined in the Mitigated Negative Declaration (MND), Lessee shall provide the following for Lessor's review:
 - a) Engineering design drawings as issued for construction, certified (stamped, signed, and dated) by a California Registered Civil/Structural Engineer, showing details of the proposed cables/conduits and associated facilities of the Project (terrestrial and marine) with key control points referenced to the California Coordinate System (CCS83) and vertical profile data with elevations referenced to Mean Lower Low Water (MLLW) datum, the North American Vertical Datum of 1988 (NAVD 88), or other applicable local vertical control datum in both plan view and profile. The drawings shall also show all existing pipelines and utilities, and design separation between them and the proposed cables/conduits in both plan view and profile. In addition, the drawings shall delineate the Lease Premises. For the proposed cable/conduit segments to be installed using the HDD method, the drawings shall provide information such as pipe grade and material specifications, minimum bend radius, and coordinates of the entry and exit points.
 - b) A site-specific geotechnical report certified (stamped, signed, and dated) by a California registered Geotechnical Engineer, including boring logs, confirmation of the fitness of purpose of the HDD method, and any geotechnical recommendations for safe installations of HDD, cable landing vaults, and cable laying of the Project. The report should also include the

seismic hazard evaluation/geophysical investigations to determine the presence of geological and/or seismic hazards that might impact the safety of the proposed cables/conduits (if any). The report should also include details of the proposed geologic/seismic mitigation plan and safety provisions (if any).

c) A set of calculations, certified (stamped, signed, and dated) by a California Registered Civil/Structural Engineer, to determine the required pulling load during pullback operations including any buoyancy control plan to successfully install the conduits at the proposed two HDD sites.

14. At least thirty (30) days prior to the start of Project construction as defined in the MND, Lessee shall provide the followings for Lessor's review:

a) For the conduit segments to be installed using the HDD method:

- i. A detailed drilling program together with detailed specifications of the boring machine to be used, including but not limited to, the maximum pulling and snubbing capabilities, the directional survey methods to be used including equipment and controls, allowable bore deviation tolerances, verification that the completed bore is within the lease right-of-way and achieves the required clearance. Preventive measures to avoid damage to any existing utilities including but not be limited to East Bay Dischargers Authority's 96-inch-diameter force main shall be included.
- ii. Detailed specifications of the mud system and a complete listing of additives to be used including a copy of the Material Safety Data Sheet (MSDS) for the drilling mud.
- iii. A detailed inadvertent return contingency plan. The plan shall include procedures to be implemented in the event of an inadvertent frac-out into the waterway during construction and the name and telephone number of the on-site person who will have responsibility for implementing the plan. The plan will also include a complete list of the agencies (with telephone number) to be notified in case of frac-out including, but not limited to, Lessor and the California State Lands Commission's 24-hour emergency notification number (562) 590-5201.
- iv. Any abandonment contingency plans in case the HDD operations are forced to be suspended and a partially completed bore hole abandoned.

b) A set of technical/construction contract specifications.

c) A construction contractor's work execution plan for the entire Project (terrestrial

and marine) providing details of manpower, equipment, work vessels, construction methods and procedures to be employed for each significant work activity, safety procedures, site cleanup, etc. Please note that dumping of any debris into State waters is not allowed.

- d) A project specific hazardous spill contingency plan. The plan shall include but not be limited to procedures to be implemented, specific designation of the on-site person who will have responsibility for implementing the plan, on-site spill response materials/tools/equipment, and spill notification protocol and procedures. The plan shall include a complete list of the agencies (with telephone number) to be notified including, but not limited to, Lessor and California State Lands Commission's 24-hour emergency notification number (562) 590-5201, California Governor's Office of Emergency Services (Cal OES) contact number (800) 852-7550, etc. The primary work vessel, including barges, will be required to carry on board a minimum 400 feet of sorbent boom, 5 bales of sorbent pads at least 18-inch by 18-inch square, and small powered boat for rapid deployment to contain and clean up any small spill or sheen on the water surface. The plan shall provide for the immediate call out of additional spill containment and cleanup resources in the event of an incident that exceeds the rapid clean up capability of the on-site work force.
- e) A critical operations and curtailment plan. The plan shall define the limiting conditions of sea state, wind, or any other weather conditions that exceed the safe operation of offshore vessels and equipment or divers in the water, that hinder potential spill cleanup, or that in any way pose a threat to personnel or the safety of the environment. The plan shall provide for a minimum ongoing five (5) day advance favorable weather forecast during offshore operations. The plan shall also identify the on-site person with authority to determine critical conditions and suspend work operations when needed.
- f) A vessel anchoring plan. The anchoring plan shall provide a map of the proposed anchor spread and anchor locations or offshore temporary mooring location for each work vessel, and narrative description of the anchor setting and retrieval procedures to be employed that will result in minimal impacts on the ocean bottom. The proposed anchor locations shall avoid any existing pipelines, utilities, wellheads, hard bottom areas, and sensitive habitats. Please note that anchor dragging along the bay bottom is not allowed. Coordinates of all dropped anchor points during construction shall be recorded and included on the post construction bay floor survey map.
- g) For crossings between the proposed cables/conduits and any existing utilities, a minimum of 24-inch clearance shall be maintained. A copy of written consent from each utility owner including minimum clearance as required by the utility owner (if any) at all crossings (terrestrial and marine) between the

existing utilities and the proposed cables/conduits shall be provided.

- h) A construction schedule timeline chart showing all significant work activities planned during the course of the Project.
- 15. During construction, Lessee shall report project activities to Lessor by daily job logs (via email) before noon the following day.
- 16. Lessee shall require the contractor(s) to maintain a logbook during construction operations conducted in the water to keep track of any debris or objects that fall into the water. The logbook shall include the type of debris, date, time, and location to facilitate identification and location of debris for recovery and site clearance verification. All waste material and debris created by Lessee or its contractors shall be promptly and entirely removed from the Lease Premises and lands subject to Lessor's jurisdiction.
- 17. Any vehicles, equipment, or machinery to be used on the Lease Premises are limited to those which are directly required to perform the authorized use and shall not include any vehicles, equipment, or machinery that may cause damage to the Lease Premises or lands subject to Lessor's jurisdiction.
- 18. No vehicle or equipment refueling, maintenance, or repairs will be permitted within the Lease Premises or lands subject to Lessor's jurisdiction.
- 19. All vehicles, equipment, machinery, tools, or other property taken onto or placed within the Lease Premises or lands subject to Lessor's jurisdiction shall remain the property of the Lessee and/or its contractors. Such property shall be promptly and properly removed by Lessee, at its sole risk and expense.
- 20. Lessee acknowledges and agrees that Lessor shall not be responsible for damage to any property, including but not limited to, any vehicles, equipment, machinery, or tools within the Lease Premises or lands subject to Lessor's jurisdiction.
- 21. Within sixty (60) days of completing construction, Lessee shall provide post construction project verification including:
 - a) A set of "as built" drawings for the entire Project, certified (stamped, signed, and dated) by a California registered Civil/Structural Engineer, showing all design changes or other amendments to the construction as originally approved.
 - b) A post-construction bay floor survey map that shows graphic records of the final locations of the marine cables and conduits, crossings, burial depths of the cables, and coordinates of all anchor points that were deployed.
 - c) A post-construction ROV or diver video survey along the length of the

completed facility, with voice overlay, to verify the cable as-laid condition.

d) A post construction written narrative report confirming completion of the Project with discussion of any significant field changes or other modifications to the approved design or execution plan, and providing details of any extraordinary occurrences such as frac-out/spill incidents, critical operations curtailment, accidents involving serious injury or loss of life etc. Also, it shall include pre- and post-Project bay floor surveys of the Project area confirming site cleanup. Any anomalous objects that were not already found and identified in the pre-Project survey and that remain unidentified from the post-Project survey would be positively identified using methods such as divers or an ROV. All Project-related debris must be removed within 120 days of Project completion.

22. After Lessor's staff has reviewed the "as-built" plans required by Section 2, Paragraph 21, Lessor shall replace Exhibit A (Land Description) and Exhibit B (Site and Location Map) to the Lease as necessary to accurately reflect the final location of the authorized improvements. Once approved by Lessor's Executive Officer or designee and by Lessee, the revised Exhibits shall replace the Exhibits incorporated in the Lease at the time of Lease execution and shall be incorporated in the Lease as though fully set forth therein. The revised Exhibits shall be deemed approved by Lessee unless objected to by Lessee in writing within 30 days of provision of the revised Exhibits. Lessor hereby grants a license to access the Lease Premises as reasonably necessary for installation, inspection, and maintenance of the buried cables and landing pipes.
23. Should Lessor's staff review of as-built plans identify a change in the improvements that necessitates a change in annual rent, Lessee shall submit an application, within 60 days following notice from Lessor's staff, to request a lease amendment to reflect such changes.
24. The Bay lands cables/conduits are required to be buried so as to maintain a minimum five (5) feet of cover over the cables/conduits in the area with water depths from zero (0) to fifteen (15) feet below Ordinary High-Water Mark (OHWM), except in areas where the cables/conduits are exiting the water onto the terrestrial lands. Within twelve (12) months of completing construction and at least once every twelve (12) months thereafter, Lessee shall perform burial depth surveys of the Bay lands cables/conduits in the area mentioned. The survey schedule may be modified by mutual agreement among the parties hereto. Lessor's Executive Officer or designee may approve the modified schedule on behalf of Lessor. Within sixty (60) days of each survey completion and at no cost to Lessor, Lessee shall submit to Lessor copies of the burial depth survey results and a remediation plan with timeline for Lessor's review if the survey reveals that the cover is less than five (5) feet. This does not apply to the terrestrial lands/conduits.

25. Lessee shall comply with all existing and subsequently enacted laws or regulations promulgated by the federal, State, and local agencies having lawful authority and jurisdiction over the facilities within the Lease Premises.

26. All future repairs or structural modifications to any part of the facilities within the Lease Premises will require prior review and approval of the Lessor. In the event of an urgent repair requiring immediate action, Lessee shall contact the Commission's 24-hour emergency notification number (562) 590-5201.

27. **Consideration:**

a) Terrestrial Land Appraisal and Rent Adjustment

- i. Lessor will conduct and pay for a formal appraisal of the terrestrial land within one (1) year of the Effective Date. If the formal appraisal yields a higher rental amount for the terrestrial lands, then Lessee's rent for the terrestrial lands shall be adjusted upwards and such adjustment will be memorialized in amendment to this Lease. If Lessee disagree with the appraisal amount, Lessee may procure its own appraisal of the terrestrial land. If Lessee's appraisal yields a different amount, the Parties shall meet and confer and make good faith efforts to agree on an appraisal amount. If the Parties are still unable to agree on an appraisal amount, then the Parties' appraisers shall identify and agree on a third appraiser to conduct an appraisal. The Parties agree to accept the third appraiser's appraised value. Lessee shall bear any costs associated with all appraisals subsequent to Lessor's appraisal. If the third appraisal is less than the original rental amount for the terrestrial lands, the Lessor is not obligated to adjust the rent downwards.

b) Annual Rent Adjustment

- i. Except as otherwise provided herein, rent specified in Section 1, Consideration, of this Lease (Base Rent) and any other amounts owed for the first year of the Lease shall be due and payable without deduction, delay, or offset within 60 days following Lease authorization. If Lessee does not remit the full amounts owed on or before the due date, penalties and interest shall accrue on any unpaid portion owed pursuant to Section 3, Paragraph 3.
- ii. Notwithstanding the provisions of Section 3, Paragraph 3(c), beginning _____, the Base Rent specified in Section 1 will be adjusted annually by the shelter component of the Consumer Price Index (CPI). Lessor may provide a courtesy invoice 30 days prior to the date rent is due specifying the updated rent at the address currently on file for the Lessee. If Lessor does not send a courtesy invoice, Lessee shall submit rent in the amount of the prior year's rent when due and contact Lessor within 30 days to determine the balance due. Lessee acknowledges that such invoicing is for Lessee's convenience and that Lessor's failure to invoice shall not

relieve Lessee of its obligation to timely pay rent as otherwise stated in this Lease.

c) Base Rent – Periodic Adjustment

- i. Notwithstanding the provisions of Section 3, Paragraph 3, Lessor may, at its option, elect to establish a new Base Rent on each tenth anniversary of this Lease. The new Base Rent may be established using any methods and other factors deemed suitable for the circumstances and in the City's best interests.
 - ii. The new Base Rent shall thereafter be used as a basis to calculate the adjusted rent for subsequent years, through application of the provisions specified herein until a new Base Rent is established.
 - iii. If Lessor elects to prepare an appraisal to establish a new Base Rent, Lessee may, at its option, also provide a timely independent appraisal at its sole expense for Lessor's review and consideration. Prior to Lessee's contracting for such appraisal, Lessor and Lessee shall negotiate in good faith and agree upon the terms and conditions for such third-party appraisal, including but not limited to the highest and best use, appraisal methodology, and minimum appraiser credentials. Such appraisal shall be prepared in accordance with generally accepted appraisal standards as they are adopted from time to time by the Appraisal Standards Board of the Appraisal Foundation and Lessor's Appraisal Guidelines. Lessor will not be obligated to use the conclusions of Lessee's appraisal as a basis for setting the new Base Rent.
 - iv. Should Lessor elect not to exercise its right to establish a new Base Rent on each tenth anniversary of this Lease, it may do so at any one of the next nine anniversaries following such tenth anniversary, without prejudice to its right to elect to establish a new Base Rent on the next or succeeding tenth anniversary. Lessor shall give Lessee at least 30 days' notice prior to the effective date of the new Base Rent.
 - v. If a new Base Rent is not established, rent shall continue to be adjusted annually as provided herein.
28. The Consideration in Section 1 is based upon the improvements expressly authorized by this Lease. Any activities or improvements associated with additional improvements will require Lessee to submit an application for amendment. Lessee acknowledges that such an amendment may result in an increase in rent, insurance, bond, or other security.
29. In the event this Lease is assigned or terminated prior to its expiration date from any cause whatsoever, the annual rental paid in advance shall not be prorated.

30. **Surety Bond:**

a) Prior to the issuance of any permit hereunder, Lessee shall provide Lessor with a performance bond naming Lessor as obligee in the amount of \$150,000 for the work to be performed by or on behalf of Lessee within and affecting the property described herein to guarantee and assure the faithful performance of Lessee's obligations under this Lease. Lessor shall have the right to draw against the performance bond in the event of a default by Lessee or in the event that Lessee fails to meet and fully perform any of Lessee's obligations. The form of the performance bond shall be approved by Lessor. The performance bond shall remain in full force for two (2) years after the work to be performed is completed, inspected, accepted and released by the Lessor.

31. **Lease Management Agreement** – Lessee shall reimburse Lessor in full for all reasonable costs and expenses incurred by Lessor related to Lessee's occupation of the Lease Premises that Lessee may incur which are not already covered by the Consideration. In the event Lessor has cost or expenses to submit to Lessee under this section, the Parties shall meet and confer with respect to such costs and come to an agreement on the amount prior to Lessee issuing an invoice for the same. Lessor shall provide a statement of costs to Lessor and include any supporting documentation for such costs and expenses. Lessee shall inform Lessor in advance of such costs and expenses so such costs and expenses can be mitigated by Lessee, except in the case of an emergency in which case Lessor shall inform Lessee as soon as practicable about such costs and expenses.

Lessor will advise Lessee in writing if its actual costs in any given year exceed the Estimated Cost. This does not create an obligation for Lessor to perform any specific work or provide any specific services. Lessor assumes no liability for the work contemplated. The parties agree and acknowledge that this does not create an employment or fiduciary relationship. Any work performed by Lessor shall be done within Lessor's duties and obligations as a public agency. Lessor retains ownership of any work product created and retains full discretion to act in the best interests of the City in managing and monitoring this Lease.

a) **Scope of Work** – Lessor's staff shall perform work (as applicable) required to manage the Lease which may include, but shall not be limited to, receiving and reviewing surveys, Mitigation Monitoring Program reports, the 10-year Base Rent adjustment, construction drawings, geotechnical reports, and other engineering materials, hazardous spill contingency plans, fire protection and emergency response plans, as-built drawings, plans for removal of improvements and reclamation of Lease Premises; and inspection of the lease premises by Lessor.

b) **Billing** – Lessor's staff time costs incurred pursuant to this paragraph shall be billed in arrears on a monthly basis. All payments are due 30 days from the

date of the invoice.

- c) Payment Form – Payment by Lessee shall be in a form and manner required by Lessor’s staff and consistent with the requirement of State law.

- d) Disputes – Any dispute arising under or relating to Lessor’s work which is not resolved by agreement of Lessee and Lessor’s staff shall be addressed by Lessor’s City Manager or designee, who shall provide a written decision in regard to the dispute and shall transmit a copy thereof to Lessee within thirty (30) days of notice of the dispute. The decision of the City Manager or designee shall be final and conclusive, unless within thirty (30) days from the date of receipt of such copy, Lessee transmits to Lessor a written appeal. Said appeal shall be supported with specificity.
 - i. In connection with any appeal proceeding under this clause, Lessee shall have an opportunity to be heard before the City Council within ninety (90) days of the receipt by staff of Lessee’s written appeal and to offer evidence in support of its appeal. Pending the final decision of any such dispute, Lessee shall proceed in accordance with the written decision of the City Manager or designee, which is the subject of Lessee’s appeal including the payment of invoices to the City.
 - ii. The procedure described herein shall not prejudice or deny Lessee’s remedies at law. However, Lessee agrees to exhaust the procedure described herein before pursuing remedies at law. All amounts paid to the City under protest shall be held by the City in trust until the dispute is resolved.

- e) Invoicing and Payment – Lessee agrees to reimburse Lessor for all reasonable costs associated with lease management, including but not limited to the work and costs described in the Scope of Work above. Staff costs shall include salaries and wages, related staff benefits, and administrative overhead. Invoices shall be mailed to Lessee at the address identified in Section 1 of this Lease, unless otherwise directed in writing by Lessee. Payments shall reference the lease number and must be mailed to the following address:

City of San Leandro
City Hall
835 E. 14th Street
San Leandro CA 94577 Attention:
City Engineer

- f) Notices and Authorities – Any notice or other written communications required or permitted may be personally delivered in writing, or may be sent by certified mail, return receipt requested, to the address stated above and shall, based on such delivery or sending, be deemed to have been effectively communicated. Any notice given other than as provided above, shall not be deemed to be effectively communicated until received in writing.

SECTION 3

GENERAL PROVISIONS

1. GENERAL

In the case of any conflict between these General Provisions and Special Provisions found in Section 2, the Special Provisions control.

2. DEFINITIONS

For the purposes of this Lease, the following terms shall be defined as stated below:

"Additions" shall be defined as any use or Improvements other than those expressly authorized in this Lease.

"Alterations" shall be defined as any material change in the size, scope, density, type, nature, or intensity of Improvements on the Lease Premises from what is authorized in this Lease. Alterations shall also include any modifications, alterations, or renovations of the land or waterways on the Lease Premises other than those authorized by this Lease.

"Breach" shall be defined as a party's unjustified or unexcused nonperformance of a contractual duty the party is required to immediately perform.

"Damages" shall include all liabilities, demands, claims, actions or causes of action whether regulatory, legislative or judicial in nature; all assessments, levies, losses, fines, penalties, judgments, damages, costs and expenses, including, without limitation: (i) reasonable attorneys', accountants', investigators', and experts' fees and expenses sustained or incurred in connection with the defense or investigation of any such liability, and (ii) costs and expenses incurred to bring the Lease Premises into compliance with Environmental Laws, a court order, or applicable provisions of a Regulatory Agency. The term "Damages" also includes, expressly, those Damages that arise as a result of strict liability, whether arising under Environmental Laws or otherwise.

"Default" shall be defined as a material Breach of magnitude sufficient to justify termination of the Lease.

"Environmental Law" shall be defined as and include all federal, state, and local environmental, health, and safety laws, statutes, ordinances, regulations, rules, judgments, orders, and notice requirements, which were in effect as of the date of execution of this Lease or are subsequently enacted and lawfully applied hereto, which regulate or relate to (a) the protection or clean-up of the environment; (b) the use, treatment, storage, transportation, handling or disposal of hazardous, toxic or otherwise dangerous substances, wastes or materials; (c) the quality of the air and the discharge of airborne wastes, gases, particles, or other emissions; (d) the preservation or protection of waterways, groundwater, or drinking water; (e) the health and safety of persons or property; or (f) impose liability with

respect to any of the foregoing, including without limitation, the California Environmental

Quality Act (CEQA) [PRC §§ 21000 et seq.]; the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) [42 USCS §§ 9601 et seq.]; the Resource Conservation and Recovery Act of 1976 (RCRA) [42 USCS §§ 6901 et seq.]; the Clean Water Act, also known as the Federal Water Pollution Control Act (FWPCA) [33 USCS §§ 1251 et seq.]; the Toxic Substances Control Act (TSCA) [15 USCS §§ 2601 et seq.]; the Hazardous Materials Transportation Act (HMTA) [49 USCS §§ 1801 et seq.]; the Insecticide, Fungicide, Rodenticide Act [7 USCS §§ 136 et seq.]; the Superfund Amendments and Reauthorization Act [42 USCS §§ 6901 et seq.]; the Clean Air Act [42 USCS §§ 7401 et seq.]; the Safe Drinking Water Act [42 USCS §§ 300f et seq.]; the Solid Waste Disposal Act [42 USCS §§ 6901 et seq.]; the Surface Mining Control and Reclamation Act [30 USCS §§ 1201 et seq.]; the Emergency Planning and Community Right to Know Act [42 USCS §§ 11001 et seq.]; the Occupational Safety and Health Act [29 USCS §§ 655 and 657]; the California Underground Storage of Hazardous Substances Act [H & S C §§ 25280 et seq.]; the California Hazardous Substances Account Act [H & S C §§ 25300 et seq.]; the California Hazardous Waste Control Act [H & S C §§ 25100 et seq.]; the California Safe Drinking Water and Toxic Enforcement Act [H & S C §§ 24249.5 et seq.]; the Porter-Cologne Water Quality Act [Water C §§ 13000 et seq.] together with any amendments of or regulations promulgated under the statutes cited above.

“Hazardous Material” shall be defined as and include any substance which falls within the definition of hazardous substance, hazardous waste, hazardous material, toxic substance, solid waste, pollutant, or contaminant, under any Environmental Law.

“Improvements” shall be defined as any modification, alteration, addition, or removal of any material, and any other action which serves to change the condition of the Lease Premises from the natural state whether situated above, on, or under the Lease Premises.

Improvements include, but are not limited to buildings, structures, facilities, decks, docks, wharves, piers, walks, curbs, bridges, buoys, landscaping, roadways, shoreline protective structures of all types, foundations, pilings or similar support structures whether above or below the water line, fences, utilities, pipelines, and any other construction of any type situated on the Lease Premises.

“Lease” shall be defined as this lease contract together with all amendments and exhibits.

“Lease Premises” shall be defined as the area of land, together with any improvements located thereon, the use and occupancy of which is authorized by this Lease.

“Lessor” shall be defined as the City of San Leandro, acting by and through the City Council, , the City Manager, and the staff of the City.

“Regulatory Agency” shall include any Federal, State, County, Municipal, or Local agency having jurisdiction over the Lease Premises.

“Repairs” shall be defined as all work of any kind made to maintain, change, restore, strengthen, replace, alter, or otherwise affect any Improvement on the Lease Premises.

“Residence” shall be defined as any Improvement, whether permanent, movable, or temporary, or a portion thereof, which is for the time being a home or place of lodging. A Residence includes any Improvement affixed to the land such as trailers or cabins, built on a raised foundation such as stilts or pilings, and floating residences such as boats, barges, arks, and houseboats, and any combination of such Improvements which provide residential accommodations to the Lessee or others. “Residence” shall not include transitory, intermittent, recreational use of facilities such as campgrounds.

“Residential Use” shall be defined as Improvements such as, but not limited to, sundecks, and sunrooms which are extensions of, or additions to, the upland property and are not water-dependent uses. Although the various uses or Improvements which may fall under this definition may vary by geographic area, lease type, or other factors, it is the intention of the parties to include in this definition all uses and Improvements which are not water-dependent but residential in nature, or those uses and Improvements which are not consistent with common law public trust principles and values.

3. **CONSIDERATION**

(a) **Absolute Triple Net Lease**

This Lease is an absolute triple net lease, pursuant to which Lessor has no obligation with respect to the payment of taxes, insurance, the cost of maintenance, utilities and repairs or other costs or obligations associated with the Leased Premises, except as expressly stated herein.

(b) **Rent**

Lessee agrees to pay Lessor rent as stated in this Lease, in annual installments, for the use and occupancy of the Lease Premises. The first installment shall be due on or before the beginning date of this Lease and all subsequent installments shall be due on or before each anniversary of its beginning date during each year of the Lease term, or as otherwise provided in this Lease. Said sums shall be paid in lawful money of the United States of America. Lessee shall send said rent to the mailing address of Lessor. Timeliness of receipt of remittances sent by mail shall be governed by the postmark date as stated in Government Code Section 11002. Invoices for rent due may be provided by Lessor as a courtesy. Lessor’s failure to, or delinquency in, providing invoices shall neither excuse Lessee from paying rent, nor extend the time for paying rent.

(c) **Modification**

Lessor may modify the method, amount, or rate of consideration effective on each fifth anniversary of the beginning date of this Lease. Should Lessor fail to exercise such right effective on any fifth anniversary it may do so effective on any one (1) of the next four (4) anniversaries following such fifth anniversary, without prejudice to its right to effect such modification on the next or any succeeding fifth anniversary of the beginning date. No

such modification shall become effective unless Lessee is given at least thirty (30) days' notice prior to the effective date of the increase.

(d) Penalty and Interest

Any installments of rent accruing under this Lease not paid when due shall be subject to a delinquency charge equal to five percent (5%) of the principal sum due. Non-Monetary Consideration

If the consideration to Lessor for this Lease is the public use, benefit, health, or safety, Lessor shall have the right to review such consideration at any time and set a monetary rental if the Lessor, at its sole discretion, determines that such action is in the best interest of the City. Lessee's assignment or transfer of this Lease pursuant to Section 3 Paragraph 11 below to any third party which results in royalties, profits, or any form of compensation, whether monetary or otherwise, shall give Lessor the right to reevaluate the requirements of this Lease as stated in Section 3 Paragraph 11. Lessee shall be given at least thirty (30) days' notice prior to the date of the City Council meeting wherein the rent modification is considered, or thirty (30) days' notice prior to the effective date that this Lease is converted to a monetary rental, whichever provides more notice.

(e) Place for Payment of Rent

All rent that becomes due and payable under this Lease shall be paid to Lessor in person or by United States mail at City Hall of the City of San Leandro, currently at 835 E. 14th Street, San Leandro, CA 94577, or at any other place or places that Lessor may designate by written notice to Lessee.

Alternately, Lessee may contact Lessor's accounting department for Lessor's current practices for payment by credit card or electronic fund transfer.

4. BOUNDARIES

This Lease is not intended to establish the City's boundaries and is made without prejudice to either party regarding any boundary or title claims which may be asserted presently or in the future.

5. LAND USE

(a) General

(1) Lessee shall use the Lease Premises only for the purpose or purposes stated in this Lease and only for the operation and maintenance of the Improvements expressly authorized in this Lease. Lessee shall commence use of the Lease Premises within ninety (90) days of the beginning date of this Lease or within ninety (90) days of the date set for construction to commence as set forth in this Lease, whichever is later.

(2) All demolition, construction, remodeling, reconstruction, maintenance, repairs, removal, or remediation performed on the Lease Premises at any time by Lessee shall first be authorized by all appropriate Regulatory Agencies. Lessee is solely responsible for determining what approvals, authorizations, or certifications are required, and shall be solely responsible for all costs incurred thereby. In addition, Lessee shall obtain and comply with preventative or remedial measures required by any environmental reports, assessments, or inspections, including, but not limited to those required by the California Environmental Quality Act and/or the National Environmental Policy Act, or as otherwise required by law or reasonably requested by Lessor. Nothing in this Lease shall be interpreted as a pre-approval of any permit, certification, or any other precondition required for the use of the Lease Premises.

(b) Continuous Use

Lessee's use of the Lease Premises shall be continuous from commencement of the Lease until its expiration. Lessee's discontinuance of such use for a period of ninety (90) days shall be presumed to be an abandonment unless Lessee demonstrates to Lessor's satisfaction that Lessee's use of the Lease Premises is consistent with similarly situated properties. In the event of an abandonment, Lessor may elect to terminate the Lease as provided in Paragraph 12(a)(3). Abandonment of the Lease Premises shall not relieve Lessee of any obligations under this Lease.

(c) Repairs and Maintenance

(1) Lessor shall not be required to make any Repairs in, on, or about all or part of the Lease Premises. Lessee shall, at all times during the term of this Lease and without any cost or expense to Lessor, keep and maintain the Lease Premises, including all Improvements, in good order and repair and in a clean, safe, sanitary, and orderly condition.

(2) Lessee shall make, or cause to be made, any Repairs which may be required by any Regulatory Agency. Lessee shall observe and comply with, any law, statute, ordinance, plan, regulation, resolution, or policy applicable to the Lease Premises in making such Repairs. All work shall be performed with reasonable diligence, completed within a reasonable time, and performed at the sole cost and expense of Lessee.

(3) Lessee expressly accepts the Lease Premises "as is" and expressly acknowledges that:

(i) Lessor has made no representations or warranties as to the suitability of the Lease Premises for any Improvements. Lessee shall conduct all tests necessary to determine the suitability of the Lease Premises for any proposed use or

Improvements authorized; and

(ii) Lessor has made no representations or warranties as to the quality or value of any Improvements found on the Lease Premises, or of their conformity to any applicable building codes, zoning ordinances, or other regulations. Lessee agrees to inspect any preexisting Improvements at its own cost to determine whether such Improvements are safe and suitable for the Lessee's intended use; and

(iii) Lessee shall neither be entitled to any reduction in rent, nor any extension of the terms of this Lease because of damage to or destruction of any Improvements on the Lease Premises.

(iv) Lessee and Lessor agree that any Improvements on the Lease Premises constitute the personal property of Lessee and that fixture law does not apply.

(4) In the event that the Lease Premises is partly, or in whole, comprised of tidal, submerged, or waterfront property, Lessee expressly accepts the hazards involved in using or improving such lands. Lessor is not responsible for, and Lessee shall not be reimbursed for nor receive any offset of rent for, any damages or reduced use of the Lease Premises caused by: local or invasive flora or fauna, flooding, erosion, sea level rise, storms, freezing, inclement weather of any kind, acts of god, maintenance or failure of protective structures, and any other such hazards.

(d) Additions, Alterations, and Removal

No Improvements other than those expressly authorized in this Lease shall be constructed by the Lessee on the Lease Premises without the prior written consent of Lessor. Any Additions or Alterations are expressly prohibited. Lessee is also prohibited from any Additions or Alterations which cause a material change to the environmental impact on or around the Lease Premises.

(e) Enjoyment

This Lease is non-exclusive, and is subject to the provisions of Section 3, Paragraph 6 below. Lessee shall have the right to exclude persons from the Lease Premises only when their presence or activity constitutes a material interference with Lessee's use and enjoyment of the Lease Premises.

(f) Discrimination

Lessee, in its use of the Lease Premises, shall not discriminate against any person or class of persons on any basis protected by federal, state, or local law, including but not limited to: race, color, creed, religion, national origin, sex, sexual orientation, gender identity, age, marital/parental status, veteran status, or disability.

(g) Residential Use

Unless otherwise provided for in this Lease, no portion of the Lease Premises shall be used as a location for a Residence, for the purpose of mooring or maintaining a structure which is used as a Residence, or for Residential Uses.

(h) Commercial Use

Unless otherwise provided for in this Lease, the Lease Premises is to be used by Lessee and Lessee's invitees or guests only. Use of the Lease Premises for commercial purposes; conducting a business, whether for profit or otherwise; and any subleasing, rental, or any transaction whereby Lessee directly or indirectly receives compensation from a third party in exchange for use of the Lease Premises shall constitute an immediate Default of this lease with no cure period.

6. RESERVATIONS, ENCUMBRANCES, AND RIGHTS-OF-WAY

(a) Reservations

(1) Lessor expressly reserves all natural resources in or on the Lease Premises, including but not limited to timber, minerals, and geothermal resources as defined under Public Resources Code sections 6401, 6407, and 6903, respectively; the right to grant and transfer the same; as well as the right to grant leases in and over the Lease Premises which may be necessary or convenient for the extraction of such natural resources. Such leasing shall be neither inconsistent nor incompatible with the rights or privileges of Lessee under this Lease.

(2) Lessor expressly reserves a right to go on the Lease Premises and all Improvements for any purposes associated with this Lease or for carrying out any function required by law, or the rules, regulations, or management policies of the City of San Leandro. Lessor shall have a right of reasonable access to the Lease Premises across Lessee owned or occupied lands adjacent to the Lease Premises for any purpose associated with this Lease.

(3) Lessor expressly reserves to the public an easement for convenient access across the Lease Premises to other City-owned lands located near or adjacent to the Lease Premises and a right of reasonable passage across and along any right-of-way granted by this Lease; however, such easement or right-of-way shall be neither inconsistent nor incompatible with the rights or privileges of Lessee under this Lease.

(4) Lessor expressly reserves the right to lease, convey, or encumber the Lease Premises, in whole or in part, during the Lease term for any purpose not inconsistent or incompatible with the rights or privileges of Lessee under this Lease.

(b) Encumbrances

The Lease Premises may be subject to pre-existing contracts, leases, licenses,

easements, encumbrances, and claims and is made without warranty by Lessor of title, condition, or fitness of the land for the stated or intended purpose.

7. RULES, REGULATIONS, AND TAXES

(a) Lessee shall comply with and be bound by all presently existing or subsequently enacted rules, regulations, statutes or ordinances of the City of San Leandro, State of California, State Lands Commission, or any Regulatory Agency. Occupancy or use of the Lease Premises provides no exemption from applicable regulations including, but not limited to, federal, state, county and local regulations, regulations promoting public health, safety, or welfare, building codes, zoning ordinances, and sanitation regulations. Lessee expressly acknowledges that Regulatory Agencies have jurisdiction over the Lease Premises unless such laws are in direct conflict with state law or public trust principles.

(b) Lessee understands and agrees that a necessary condition for the granting and continued existence of this Lease is that Lessee obtains and maintains all permits or other entitlements. Lessee expressly acknowledges that issuance of this Lease does not substitute for, or provide preference in obtaining authorizations from other Regulatory Agencies.

(c) Taxes

(1) In addition to the rent due under this Lease, Lessee accepts responsibility for and shall pay any and all real and personal property taxes, including possessory interest taxes, assessments, special assessments, user fees, service charges, and other charges of any description levied, imposed on, assessed, or associated with the leasehold interest, Improvements on the Lease Premises, any business or activity occurring on the Lease Premises, the Lease Premises itself, or any portion thereof, levied by any governmental agency or entity. Such payment shall not reduce rent due Lessor under this Lease and Lessor shall have no liability for such payment.

(2) In the event that this Lease commences, terminates or expires during a tax year, Lessee shall pay the taxes for the period of such year during which this Lease was in effect.

(3) Any and all taxes and assessments and installments of taxes and assessments required to be paid by Lessee under this Lease shall be paid when due and the official and original receipt for the payment of such tax, assessment, or installment shall be delivered to Lessor upon request.

(4) Lessee shall indemnify and hold Lessor, the Lease Premises, and any Improvements

now or hereafter located thereon, free and harmless from any liability, loss, or Damages resulting from any taxes, assessments, or other charges required by this Lease to be paid by Lessee and from all interest, penalties, and other sums imposed thereon and from any sales or other proceedings to enforce collection of any such taxes, assessments, or other charges.

8. INDEMNITY

(a) Lessee's use of the Lease Premises and any Improvements thereon is at Lessee's sole and exclusive risk.

(b) In addition to any other obligation to indemnify Lessor as otherwise provided in this Lease, except to the extent caused by the sole negligence and/or willful misconduct of the Lessor, Lessee shall indemnify, hold harmless, and, at the option of Lessor, defend Lessor, its officers, agents, and employees from any and all Damages resulting from Lessee's occupation and use of the Lease Premises. Lessee shall reimburse Lessor in full for all reasonable costs and attorneys' fees, specifically including, without limitation, any Damages arising by reason of: (1) The issuance, enjoyment, interpretation, Breach, or Default of this Lease; (2) The challenge to or defense of any environmental review upon which the issuance of this Lease is based; (3) The death or injury of any person, or damage to or destruction of any property from any cause whatever in any way connected with the Lease Premises, or with any of the Improvements or personal property on the Lease Premises; (4) The condition of the Lease Premises, or Improvements on the Lease Premises; (5) An act or omission on the Lease Premises by Lessee or any person in, on, or about the Lease Premises; (6) Any work performed on the Lease Premises or material furnished to the Lease Premises; (7) Lessee's failure to comply with any material legal or other requirement validly imposed on Lessee or the Lease Premises by a Regulatory Agency.

(c) The reimbursement provisions of this Paragraph 8 shall not apply to any claims, litigation, or other actions which may be brought by either Lessee or Lessor against each other.

(d) Nothing in this paragraph shall be construed as requiring that Lessor defend itself against all or any aspect of any challenge to this Lease or any associated environmental review. However, Lessee may take whatever legal action is available to it to defend this Lease or any associated environmental review against any challenge by a third party, whether or not Lessor chooses to raise a defense against such a challenge.

(e) Lessee shall notify Lessor immediately in case of any accident, injury, or casualty on the Lease Premises.

9. INSURANCE

(a) Lessee shall obtain and maintain in full force and effect during the term of this Lease comprehensive general liability insurance, automobile liability, pollution liability, and

property damage insurance, with such coverage and limits as specified in Section 1 or as may be reasonably requested by Lessor from time to time, but in no event for less than the sum(s) specified against any and all claims or liability arising out of the ownership, use, occupancy, condition, or maintenance of the Lease Premises and all Improvements. If Commercial General Liability Insurance and umbrella coverage or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit including umbrella coverage shall be twice the required occurrence limit.

(b) The insurance policy shall identify the Lease by its assigned number. The specific Improvements shall also be generally identified, as well as their location on city owned property. The coverage provided shall be primary and non-contributing. Lessee shall keep such policy current. Lessor shall be named as an "additional insured" on the policy. The insurance policies shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising in connection with this Lease. Lessee shall provide Lessor with a current certificate of insurance at all times. At Lessor's request, Lessee shall provide a full copy of the current insurance policy, along with any and all endorsements or other such documents affecting the coverage. Lessor will not be responsible for any premiums or other assessments on the policy. In the event that any policy provided under this Lease includes a self-insured retention that includes a requirement that such retention be paid by the named insured, such policy shall be modified by endorsement to permit payment of the retention by additional insureds.

(c) The insurance coverage specified in this Lease shall be in effect at all times during the Lease term and subsequently until Lessor has either accepted all of the Lease Premises as improved or restored by Lessee as provided elsewhere in this Lease. Lessee shall notify Lessor within five (5) business days if the insurance is canceled for any reason.

(d) Notwithstanding the Insurance Amounts specified in Section 1 "Basic Provisions," Lessor may, at its option, elect to establish new Insurance Requirements no more frequently than every five (5) years during the term of this Lease. Lessor shall provide notice to Lessee in writing of such increased insurance amounts and Lessee shall have six (6) months to provide Lessor with confirmation that such increased insurance coverage has been obtained. In the event that Lessee is unable to obtain the required increased insurance, Lessee shall provide evidence acceptable to Lessor that such insurance amounts are not commercially available. If Lessee fails to obtain increased insurance amounts and fails to provide Lessor with evidence acceptable to Lessor that such increased insurance coverage is not commercially available, then Lessor may elect to terminate this Lease upon thirty (30) days' notice.

10. SURETY BOND

(a) When required by Section 1 of this Lease, Lessee shall provide a surety bond or other security device acceptable to Lessor, for the specified amount, and naming the City of San Leandro as the assured, to guarantee to Lessor the faithful observance and performance by Lessee of all of the terms, covenants, and conditions of this Lease.

(b) Lessor may require an increase in the amount of the surety bond or other security device to cover any additionally authorized Improvements, any modification of consideration, or to provide for inflation or other increased need for security. The surety bond or other security device may be increased on each fifth anniversary of the beginning date of this Lease. Should Lessor fail to exercise such right effective on any fifth anniversary, it may do so effective on any one (1) of the next four (4) anniversaries following such fifth anniversary without prejudice to its right to effect such modification on the next or any succeeding fifth anniversary. No such modification shall become effective unless Lessee is given at least thirty (30) days' notice prior to the effective date of the increase.

(c) The surety bond or other security device shall be maintained in full force and effect at all times during the Lease term and subsequently until Lessor has either accepted all of the Lease Premises as improved or restored by Lessee as provided elsewhere in this Lease. Lessee must first seek approval of Lessor before changing the type of security device used, or the bond holder.

11. ASSIGNMENT, ENCUMBRANCING, OR SUBLETTING

(a) Lessee shall not either voluntarily or by operation of law, assign, transfer, mortgage, pledge, hypothecate or encumber this Lease and shall not sublet the Lease Premises, in whole or in part, or allow any person other than the Lessee's employees, agents, servants and invitees to occupy or use all or any portion of the Lease Premises without the prior written consent of Lessor, which consent shall not be unreasonably withheld.

(1) Notice to Lessor of Successor Trustee(s): In the event this Lease is held in trust, and the Lessee is a trustee thereof, the substitution or succession of a new trustee shall not be an assignment or transfer for the purposes of this Paragraph. Lessee (and by operation of law, any successor trustee) agrees to provide prompt notice to Lessor of any succession or substitution of trustee in accordance with Paragraph 16(c) of General Provisions, no later than sixty (60) days after the named trustee as appears on the face of this Lease becomes unable or ceases to serve as trustee for any reason.

(b) The following shall be deemed to be an assignment or transfer within the meaning of this Lease:

(1) If Lessee is a business entity, any dissolution, merger, consolidation or other reorganization of Lessee, or the sale or other transfer of substantially all the assets of

Lessee. If Lessee is a publicly traded entity, transfers of interests in Lessee shall not constitute an assignment requiring the consent of Lessor.

(2) If Lessee is a partnership, a transfer of any interest of a general partner, a withdrawal of any general partner from the partnership, or the dissolution of the partnership.

(c) If this Lease is for sovereign lands appurtenant to adjoining littoral or riparian land, Lessee shall not transfer or assign its ownership interest or use rights in such adjoining lands separately from the leasehold rights granted herein without the prior written consent of Lessor.

(d) If Lessee desires to assign, sublet, encumber or otherwise transfer all or any portion of the Lease Premises, Lessee shall do all of the following:

(1) Give not less than 90 days' prior written notice to Lessor;

(2) Provide the name, complete business organization, operational structure, and formation documents of the proposed assignee, sublessee, secured third party, or other transferee; and the nature of the use of and interest in the Lease Premises proposed by the assignee, sublessee, secured third party or other transferee.

(3) Provide the terms and conditions of the proposed assignment, sublease, or encumbrance or other transfer;

(4) Provide audited financial statements for the two most recently completed fiscal years of the proposed assignee, sublessee, secured party or other transferee; and provide pro forma financial statements showing the projected income, expense and financial condition resulting from use of the Lease Premises; and

(5) Provide such additional or supplemental information as Lessor may reasonably request concerning the proposed assignee, sublessee, secured party or other transferee.

(6) Lessor will evaluate proposed assignees, sublessees, secured third parties and other transferees and grant approval or disapproval according to standards of commercial reasonableness considering the following factors within the context of the proposed use: the proposed party's financial strength and reliability, their business experience and expertise, their personal and business reputation, their managerial and operational skills, their proposed use and projected rental, as well as other relevant factors.

(e) Lessor shall have a reasonable period of time from the receipt of all documents and other information required under this provision to grant or deny its approval of the

proposed party. Lessor may reevaluate the rent, insurance and/or bond provisions of this Lease, and may condition its approval of the proposed assignment, sublease, hypothecation, mortgage, or other transfer on the party's acceptance of the new terms. Lessee's rights stated in this paragraph shall apply regardless of whether the proposed transfer coincides with a regular rent review period as stated in Section 3 Paragraph 3(c) above.

(f) Lessee's mortgage or hypothecation of this Lease, if approved by Lessor, shall be subject to terms and conditions imposed by a separately negotiated encumbering agreement.

(g) Upon the express written assumption of all obligations and duties under this Lease by an assignee approved by Lessor, the Lessee may be released from all liability under this Lease arising after the effective date of assignment and not associated with Lessee's use, possession or occupation of or activities on the Lease Premises; except as to any hazardous wastes, substances or materials as defined under federal, state or local law, regulation, or ordinance manufactured, generated, used, placed, disposed, stored or transported on the Lease Premises during Lessee's tenancy.

(h) If the Lessee files a petition or an order for relief is entered against Lessee, under Chapters 7, 9, 11 or 13 of the Bankruptcy Code (11 USC Sect. 101, et seq.) then the trustee or debtor-in-possession must elect to assume or reject this Lease within sixty (60) days after filing of the petition or appointment of the trustee, or the Lease shall be deemed to have been rejected, and Lessor shall be entitled to immediate possession of the Lease Premises. No assumption or assignment of this Lease shall be effective unless it is in writing and unless the trustee or debtor-in-possession has cured all Defaults under this Lease (monetary and non-monetary) or has provided Lessor with adequate assurances (1) that within ten (10) days from the date of such assumption or assignment, all monetary Defaults under this Lease will be cured; and (2) that within thirty (30) days from the date of such assumption, all non-monetary Defaults under this Lease will be cured; and (3) that all provisions of this Lease will be satisfactorily performed in the future.

(i) In the event of any transfer or assignment, under this Paragraph 11 or by any other means authorized by this Lease, the Lease terms shall be for the remaining years existing on the Lease prior to the transfer or assignment. A transfer or assignment shall not extend the term of this Lease.

12. **DEFAULT AND REMEDIES**

(a) **Default**

The occurrence of any one or more of the following events shall immediately and

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without further notice constitute a Default of this Lease:

(1) Lessee's failure to make any payment of rent, royalty, or other consideration as required under this Lease; or

(2) Lessee's failure to obtain or maintain liability insurance or a surety bond or other security device as required under this Lease; or

(3) Lessee's abandonment of the Lease Premises (including the covenant for continuous use as provided for in Paragraph 5(b)) during the Lease term; or

(4) Lessee's failure to obtain and maintain all necessary governmental permits or other entitlements; or

(5) The maintenance of the Lease Premises in violation of, or failure to comply with, any applicable provisions of any Regulatory Agency, Environmental Law, or maintenance of the Lease Premises in a condition constituting nuisance; or

(6) Lessee's Failure to commence to construct and to complete construction of the Improvements authorized by this Lease within the time limits specified in this Lease.

(7) Lessee is found to sublet or otherwise surrender daily management and control of the Lease Premises to a third party without the knowledge, expressed written consent or authorization of the Lessor.

(b) Lessee's failure to observe or perform any other term, covenant, or condition of this Lease when such failure shall continue for a period of thirty (30) days after Lessor's giving written notice shall constitute a Default of this lease. However, if the nature of Lessee's Default under this paragraph is such that more than thirty (30) days are reasonably required for its cure, then Lessee shall not be deemed to be in Default if Lessee commences such cure within such thirty (30) day period and diligently proceeds with such cure to completion.

(c) Should Lessee Breach any term, covenant, or condition of this Lease under Paragraph 12(b) above three (3) times in any three hundred and sixty-five (365) day period, the third Breach will be a Default under this Lease and Lessor will be entitled to immediately terminate this Lease, and take other appropriate action. Lessor will provide written notice of each Breach as provided above, and provide written notice that future Breaches will constitute immediate Default with no cure period.

(d) Remedies

In the event of a Default by Lessee and Lessee's failure to cure such Default if such a cure period is applicable, Lessor may at any time and with or without notice do any one or more of the following in addition to any rights or remedies permitted by law:

(1) Re-enter the Lease Premises, remove all persons and property, and repossess and enjoy such premises; or

(2) Terminate this Lease and Lessee's right of possession of the Lease Premises by any lawful means. The termination shall not relieve Lessee of any obligation, monetary or otherwise, which has accrued prior to the date of termination. Such termination shall be effective upon Lessor's giving written notice and upon Lessee's receipt of such notice. Lessee shall immediately surrender possession of the Lease Premises to Lessor. Lessor shall be entitled to recover from Lessee all amounts to which Lessor is entitled pursuant to Section 1951.2 of the California Civil Code, or any other provision of law, including any necessary Repair, renovation, alteration, remediation, or removal of Improvements; or

(3) Maintain this Lease in full force and effect and recover any rent, royalty, or other consideration as it becomes due without terminating Lessee's right of possession regardless of whether Lessee shall have abandoned the Lease Premises, subject to the conditions imposed by Cal. Civil Code § 1951.2; or

(4) Exercise any other right or remedy which Lessor may have at law or equity.

(e) Determination of Rental Value

If rent under this Lease is calculated as a percentage of Lessee's income attributable to the Lease Premises and Lessee abandons the Lease Premises during some or all of the applicable period, then the reasonable rental value shall be the percentage of proceeds Lessor would have received had Lessee operated the Lease Premises in the usual and customary manner.

(f) Waiver of Rights

The failure or delay of either party to exercise any right or remedy shall not be construed as a waiver of such right or remedy or any Breach by the other party. Lessor's acceptance of any rent shall not be considered a waiver of any preexisting Breach by Lessee other than the failure to pay the particular rent accepted regardless of Lessor's knowledge of the preexisting Breach at the time rent is accepted.

13. RESTORATION OF LEASE PREMISES AND ENVIRONMENTAL MATTERS

(a) Restoration of Lease Premises

(1) Upon expiration or sooner termination of this Lease, Lessee must immediately surrender possession of the Lease Premises to Lessor. Prior to the time of surrender, Lessee must remove all or any Improvements together with the debris and all parts of any such Improvements at its sole expense and risk, regardless of whether Lessee actually constructed or placed the Improvements on the Lease Premises; or Lessor, at its sole and absolute discretion, may itself remove or have removed all or any portion of such Improvements at Lessee's sole expense. Lessor may waive all or any part of this obligation in its sole discretion if doing so is in the best interests of the State.

(2) As a separate and related obligation, Lessee shall restore the Lease Premises as nearly as possible to the conditions existing prior to the installation or construction of any Improvements. For purposes of this Lease, restoration includes removal of any landscaping; removal of any Hazardous Materials; and to the extent possible, undoing any grading, fill, excavation, or similar alterations of the natural features of the Lease Premises. Lessor may waive all or any part of this obligation in its sole and absolute discretion.

(3) Unless otherwise provided for in this Lease, Lessee shall submit to Lessor no later than one (1) year prior to the expiration of this Lease either: (a) an application and minimum expense deposit for a new lease for the continued use of the Lease Premises, or (b) a plan for the restoration of the Lease Premises to be completed prior to the expiration of the lease term together with a timeline for obtaining all necessary permits and conducting the work prior to the expiration of this Lease.

(4) In removing any or all Improvements, or conducting any restoration work, Lessee shall be required to obtain any permits or other governmental approvals as may then be required by any Regulatory Agency, including, without limitation, any Environmental Law.

(5) Lessor may, upon written notice, in its sole and absolute discretion, accept title to any or all Improvements at the termination of this Lease. Lessor shall notify Lessee that Lessor intends to take title to any or all Improvements within six (6) months of Lessee submitting a plan for restoration under Paragraph 13(a)(3)(b) above. If Lessor elects to take title to any such Improvements, Lessee shall deliver to Lessor such documentation as may be necessary to convey title to such Improvements to Lessor free and clear of any liens, mortgages, loans, or any other encumbrances. Lessor shall not pay, and Lessee shall not be entitled to compensation for Lessor's taking title to such property.

(b) Environmental Matters

(1) Lessee's Obligations:

(i) Lessee will not use, occupy, or permit any portion of the Lease Premises to be used or occupied in violation of any Environmental Law. Lessee shall not manufacture or generate or store Hazardous Material on the Lease Premises unless specifically authorized under other terms of this Lease.

(ii) Lessee shall practice conservation of water, energy, and other natural resources.

(iii) Lessee shall notify Lessor and the appropriate governmental emergency response agency, or agencies immediately in the event of any release or threatened release of any Hazardous Material.

(2) Lessor may at any time during the Lease term require Lessee to conduct at its own expense and by a contractor approved by Lessor an independent environmental site assessment or inspection for the presence or suspected presence of Hazardous Material generated, used, placed, disposed, stored, or transported on the Lease Premises during the term of the Lease. Lessee shall provide the results of the assessment or inspection to Lessor and the appropriate governmental response agency or agencies and shall further be responsible for removing or taking other appropriate remedial action regarding such Hazardous Material in accordance with applicable Environmental Law.

(3) Environmental Indemnity.

Lessee shall indemnify, defend, and hold Lessor and Lessor's officers, appointees, volunteers, employees, agents, successors and assigns free and harmless from and against all Damages that may at any time be imposed upon, incurred by, or asserted or awarded against Lessor in connection with or arising from any Breach of Lessee's obligations hereunder; or out of any violation by Lessee of any Environmental Law; or resulting in the imposition of any lien or claim for the recovery of any costs for environmental cleanup or other response costs relating to the release or threatened release of Hazardous Materials on the Lease Premises during the Lessee's tenancy. This obligation shall include any prior leases between Lessor and Lessee and will continue through any periods Lessee is in holdover, unlawful detainer, or any subsequent month-to-month tenancies created by operation of law. Lessee's obligations hereunder will survive the expiration or sooner termination of this Lease.

(4) Violation of this section shall constitute grounds for termination of the Lease. Lessor, shall notify Lessee when, in Lessor's opinion, Lessee has violated the provisions of this section. Lessee shall immediately discontinue the conduct and respond within five (5) business days. Lessee shall take all measures necessary to remedy the condition.

14. QUITCLAIM

Lessee shall, upon the early termination of this Lease and at Lessor's request, execute and deliver to Lessor in a form provided by Lessor a good and sufficient release of all rights under this Lease. Should Lessee fail or refuse to deliver such a release, Lessor may record a written notice reciting such failure or refusal. This written notice shall, from the date of its recordation, be conclusive evidence against Lessee of the termination of this Lease and all other claimants.

15. HOLDING-OVER

(a) This Lease shall terminate without further notice upon the expiration of the term of this Lease. Lessee shall have removed any Improvements and completed any restoration as required by Lessor prior to the expiration of this Lease, and shall surrender possession of the Lease Premises. Any failure by the Lessee to remove Improvements, restore the Lease Premises, and/or surrender possession of the Lease Premises at the expiration or sooner termination of this Lease shall not constitute a renewal or extension and shall not give Lessee any rights in or to the Lease Premises or any part thereof except as expressly provided in this Lease. Lessee shall be deemed in unlawful detainer of the Lease Premises and Lessor shall be entitled to all resulting legal remedies.

(b) Lessor may, in its sole discretion, choose to accept Rent for the Lease Premises instead of immediately taking legal action to recover possession of the Lease Premises. Any tenancy created by operation of law on Lessor's acceptance of rent shall be deemed a month-to-month tenancy regardless of what sum or sums Lessee delivers to Lessor. Except as set forth below, any subsequent tenancy created in this manner shall be on the same terms, covenants, and conditions set forth in this Lease insofar as such terms, covenants, and conditions can be applicable to a month-to-month tenancy

(c) In recognition of the increased accounting, land management, and supervisory staff time required for month-to-month tenancies, the rent for each month or any portion thereof during such holdover period may be an amount equal to one hundred fifty percent (150%) of one-twelfth (1/12) of the total compensation for the most recent year paid. In the event this Lease does not require monetary compensation, Lessor shall have the right to establish rent based on the fair market value of the Lease Premises. The month-to-month tenancy may be terminated by Lessee or Lessor upon thirty (30) calendar days' prior written notice to the other.

16. ADDITIONAL PROVISIONS

(a) Waiver

(1) No term, covenant, or condition of this Lease and no omission, neglect, Default or Breach of any such term, covenant or condition shall be deemed to have been waived by Lessor's acceptance of a late or nonconforming performance or otherwise, unless such a waiver is expressly acknowledged by Lessor in writing. No delay or omission of Lessor to exercise any right or power arising from any omission, neglect, Default or Breach of term, covenant, or condition of this Lease shall be construed as a waiver or any acquiescence therein.

(2) Any such waiver shall not be deemed to be a waiver of any other term, covenant or condition; of any successive Breaches of the same term, covenant, or condition; or of any other Default or Breach of any term, covenant or condition of this Lease.

(b) Time

Time is of the essence for this Lease and each and all of its terms, covenants or conditions in which performance is a factor.

(c) Notice

All notices required to be given under this Lease shall be given in writing, sent by U.S. Mail with postage prepaid, to Lessor at San Leandro City Hall, 835 E. 14th Street, San Leandro, CA 94577, and the Lessee at the address specified in this Lease. Lessee shall give Lessor notice of any change in its name or address.

(d) Consent

Where Lessor's consent is required under this Lease its consent for one transaction or event shall not be deemed to be a consent to any subsequent occurrence of the same or any other transaction or event.

(e) Changes

This Lease may be terminated and its term, covenants, and conditions amended, revised, or supplemented only by mutual written agreement of the parties.

(f) Successors

The terms, covenants, and conditions of this Lease shall extend to and be binding upon and inure to the benefit of the heirs, successors, and assigns of the respective parties.

(g) Joint and Several Obligation

If more than one Lessee is a party to this Lease, the obligations of the Lessees shall be joint and several.

(h) Captions

The section and paragraph captions used in this Lease are for the convenience of the parties. The captions are not controlling and shall have no effect upon the construction or interpretation of this Lease.

(i) Severability

If any term, covenant or condition of this Lease is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and each term and provision of this Lease shall remain valid and enforceable to the fullest extent permitted by law.

(j) Representations

Lessee agrees that no representations have been made by Lessor or by any person or agent acting for Lessor. Lessor and Lessee agree and acknowledge that this document contains the entire agreement of the parties, that there are no verbal agreements, representations, warranties or other understandings affecting this Lease, and Lessor and Lessee, as a material part of the consideration of this Lease, waive all claims against the other for rescission, damages, or otherwise by reason of any alleged covenant, agreement or understanding not contained in this Lease.

(k) Gender and Plurality

In this Lease, the masculine gender includes both the feminine and neuter, and the singular number includes the plural whenever the context so requires.

(l) Survival of Certain Covenants

All covenants pertaining to bond, insurance, indemnification, restoration obligations, Breach, Default, and remedies shall survive the expiration or earlier termination of this Lease until Lessee has fulfilled all obligations to restore the Lease Premises as required by this Lease.

(m) Counterparts

This agreement may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and all of which together shall constitute one and the same agreement.

(n) Delegation of Authority

Lessor and Lessee acknowledge Lessor as defined herein includes the City of San Leandro City Council Members, their alternates or designees, the City Manager, and the staff of the City of San Leandro. The ability of the City Manager of the City of San Leandro to give consent, or take other discretionary actions described herein will be as described in the then-current delegation of authority to the City Manager. All other powers are reserved to the City Council.

This Lease shall become effective only when approved by and executed on behalf of the City of San Leandro and a duly executed copy has been delivered to Lessee. The submission of this Lease by Lessor, its agent, or representative for examination by Lessee does not constitute an option or offer to lease the Lease Premises upon the terms and conditions contained herein, or a reservation of the Lease Premises in favor of Lessee. Lessee's submission of an executed copy of this Lease to Lessor shall constitute an offer to Lessor to lease the Lease Premises on the terms and conditions set forth herein.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the date hereafter affixed.

LESSEE:

BANDWIDTH IG, LLC

LESSOR:

CITY OF SAN LEANDRO

By: _____

Title: _____

Date: _____

By: _____

Title: City Manager _____

Date: _____

EXHIBIT A

LEGAL DESCRIPTION

A-3655

ESTUDILLO FLOOD CONTROL CANAL to SAN LEANDRO CITY WESTERN BOUNDARY

A portion of tide and submerged land lying in the bed of the San Francisco Bay, situated Southwest of the City of San Leandro, Alameda County, State of California, being a 5 foot wide strip of land extending 2.5 feet perpendicular on both sides from the centerline: **BEGINNING** at Latitude 37° 41' 27.15" North and a Longitude 122° 11' 00.48" West; **THENCE** along said center line of the pipe bore and cable the following courses and distances;

THENCE South 15°04'31" East, 93.75 feet to a point; having a Northing of 2078315.6446 and an Easting of 6074608.2874;

THENCE South 32°07'05" East, 820.04 feet.

THENCE South 58°03'19" East, 55.06 feet.

THENCE South 27°14'11" East, 78.84 feet.

THENCE South 27°05'19" East, 460.92 feet.

THENCE South 34°15'27" West, 1,198.83 feet.

THENCE South 13°23'34" West, 370.35 feet.

THENCE South 1°20'54" East, 432.25 feet.

THENCE South 15°57'13" East, 413.22 feet.

THENCE South 29°23'14" East, 488.19 feet.

THENCE South 42°56'08" East, 2,227.52 feet.

THENCE South 35°12'19" East, 516.24 feet.

THENCE South 20°26'50" East, 517.54 feet.

THENCE South 5°45'31" East, 556.40 feet.

THENCE South 9°07'17" West, 376.29 feet.

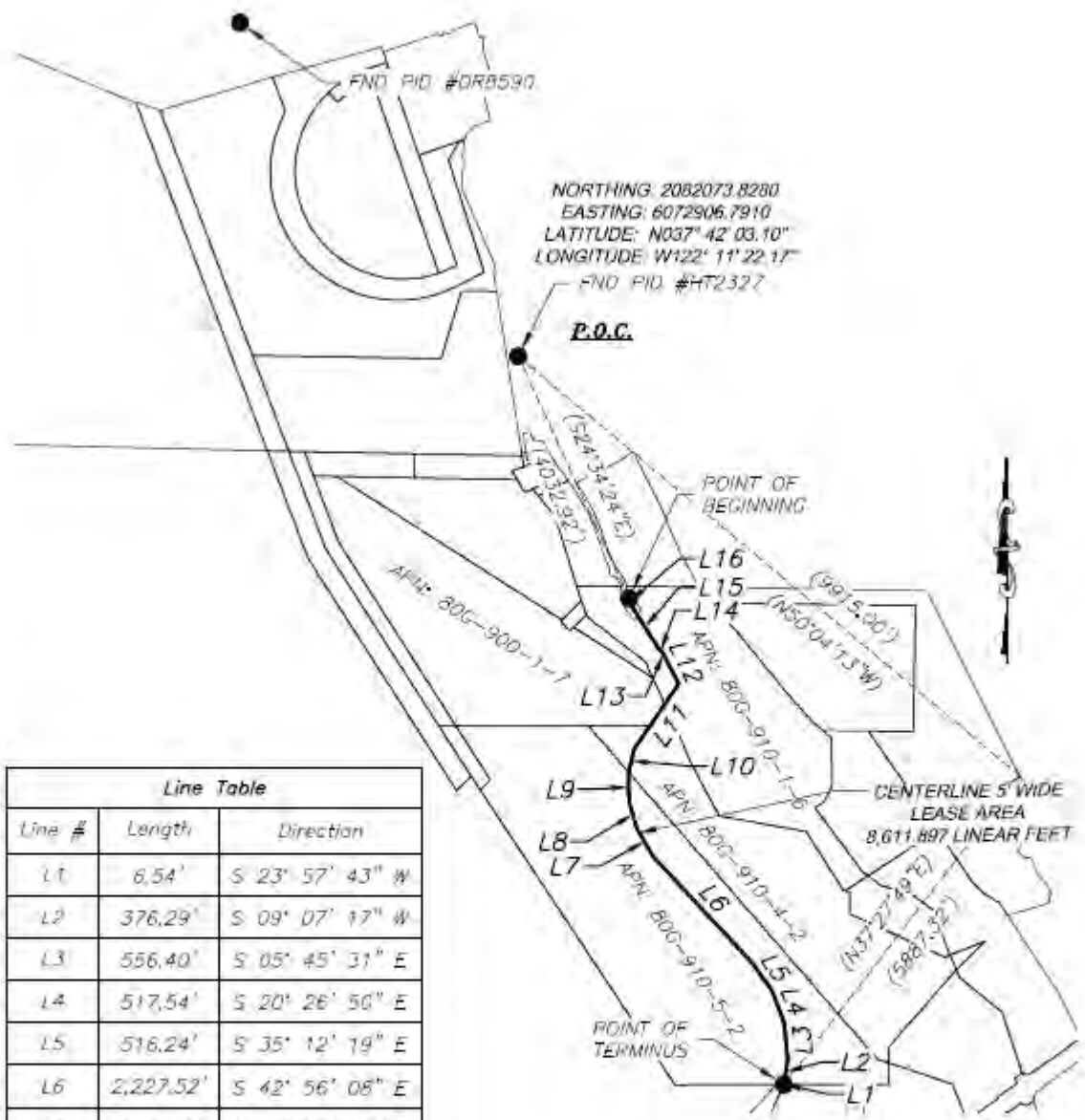
THENCE South 23°57'43" West, 6.54 feet to a point; having a Northing of 2071036.9279 and an Easting of 6076928.9191 and being the **POINT OF TERMINUS**.

The centerline of said strip shall begin at a point onshore and South of Estudillo Flood Control Canal and terminate at the offshore boundary line of the City of San Leandro (APN 806-910-5-2) and the State of California (APN 42-4545-6). Having a Latitude of 37° 40' 14.71" North and a Longitude of 122° 10' 29.67" West. It is intended that the centerline follow the centerline of the pipe bore and cable. The location of installed utilities would control over any ambiguity found within the metes and bounds description herein.

The basis of bearing for this description is North American Datum 1983(2011) California State Planes, Zone 3. Geographic coordinates stated herein were provided by the applicant or produced from files and data provided by the applicant. Geographic Coordinates are based on WGS84 Datum.

James M. Powers, PLS
PLS #8541

SHEET 1 OF 2



NORTHING: 2082073.8280
 EASTING: 6072906.7910
 LATITUDE: N037° 42' 03.10"
 LONGITUDE: W122° 11' 22.17"

| Line Table | | |
|------------|-----------|-----------------|
| Line # | Length | Direction |
| L1 | 6.54' | S 23° 57' 43" W |
| L2 | 376.29' | S 09° 07' 17" W |
| L3 | 556.40' | S 05° 45' 31" E |
| L4 | 517.54' | S 20° 26' 50" E |
| L5 | 516.24' | S 35° 12' 19" E |
| L6 | 2,227.52' | S 42° 56' 08" E |
| L7 | 488.19' | S 29° 23' 14" E |
| L10 | 370.35' | S 13° 23' 34" W |
| L9 | 432.25' | S 07° 20' 54" E |
| L8 | 413.22' | S 15° 57' 13" E |
| L11 | 1,198.83' | S 34° 15' 27" W |
| L15 | 78.84' | S 27° 14' 11" E |
| L12 | 460.92' | S 27° 05' 19" E |
| L14 | 55.06' | S 58° 03' 19" E |
| L15 | 820.04' | S 32° 07' 05" E |
| L16 | 93.75' | S 15° 04' 31" E |

LIST OF ABBREVIATIONS
 FND - FOUND
 P.O.T. - POINT OF TERMINUS
 P.O.B. - POINT OF BEGINNING
 P.O.C. - POINT OF COMMENCEMENT

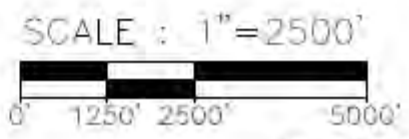


EXHIBIT B

SEGMENTS 7 & 8 - CITY CONDUITS TO BE INSTALLED BY BANDWIDTH IG

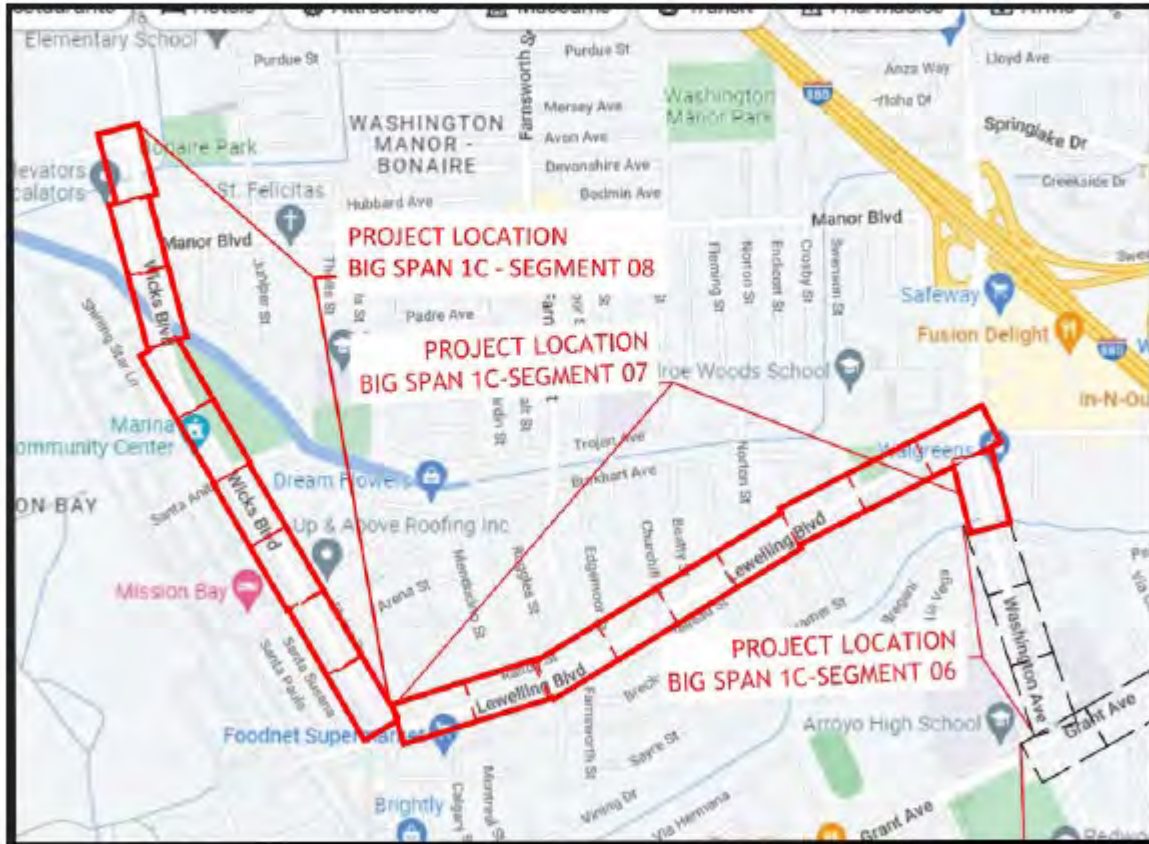


EXHIBIT C - MITIGATION MONITORING PROGRAM

1 The State Lands Commission (CSLC) is the lead agency under the California
2 Environmental Quality Act (CEQA) for the San Francisco Bay Fiber Optic Cables
3 Project (Project). In conjunction with its approval of this Project, the CSLC adopts
4 this Mitigation Monitoring Program (MMP) for implementing mitigation measures
5 (MMs) for the Project to comply with Public Resources Code § 21081.6,
6 subdivision (a) and State CEQA Guidelines §§ 15074, subdivision (d), and 15097.

7 The Project authorizes Bandwidth IG, LLC (Applicant or Bandwidth) to build
8 infrastructure in terrestrial and marine areas connecting Brisbane (San Mateo
9 County) to San Leandro (Alameda County) in California.

10 1.1 PURPOSE

11 Potentially significant environmental impacts from the Project must be mitigated
12 to the maximum extent feasible. The purpose of an MMP is to confirm
13 compliance with and implementation of MMs; this MMP will be used as a
14 working guide for implementation, monitoring, and reporting for the Project's
15 MMs.

16 1.2 ENFORCEMENT AND COMPLIANCE

17 The CSLC is responsible for enforcing the MMP. The Project Applicant is
18 responsible for successfully implementing and complying with the MMs identified
19 in this MMP. This includes all field personnel working for the Applicant.

20 1.3 MONITORING

21 CSLC staff may delegate duties and responsibilities for monitoring to other
22 environmental monitors or consultants as necessary. Some monitoring
23 responsibilities may be assumed by other agencies, such as affected jurisdictions
24 (San Mateo County and Alameda County). The CSLC or its designee shall
25 ensure that qualified environmental monitors are assigned to the Project.

26 **Environmental Monitors.** An environmental monitor must be on-site during all
27 Project activities with the potential to create significant environmental impacts
28 or impacts for which mitigation is required to confirm implementation and
29 success of MMs.

EXHIBIT C - MITIGATION MONITORING PROGRAM

1 Along with CSLC staff, the environmental monitor(s) are responsible for:

- 2 • Confirming the Applicant has completed all necessary agency reviews
3 and received all necessary approvals to perform the Project
- 4 • Coordinating with the Applicant to integrate the MM procedures during
5 Project implementation
- 6 • Confirming that the MMP is followed

7 If the Applicant or their contractors requested changes from the procedures in
8 this MMP, the environmental monitor will immediately relay those requests to
9 CSLC staff or its designee and will not allow the requested changes until CSLC
10 staff or its designee approve them.

11 **Workforce Personnel.** Implementing the MMP requires the full cooperation of
12 Project personnel and supervisors. Many of the MMs require action from site
13 supervisors and their crews. To facilitate successful implementation, relevant
14 mitigation procedures shall be written into contracts between the Applicant
15 and any contractors.

16 **General Reporting Procedures.** CSLC staff or its designated environmental
17 monitor will develop a monitoring process to track all procedures required for
18 each MM and will confirm that the timing specified for the procedures is
19 followed. The environmental monitor shall note any noncompliance or
20 discrepancies and take appropriate action to resolve them. Once the Project is
21 complete, copies of all logs will be submitted to CSLC staff.

22 **Public Access to Records.** Records and reports are public and will be provided
23 upon request.

24 1.4 MITIGATION MONITORING PLAN

25 The MMP contains MMs reducing or avoiding potentially significant impacts to
26 Air Quality; Biological Resources; Cultural Resources; Cultural Resources – Tribal;
27 Greenhouse Gas Emissions; Hazards and Hazardous Materials; Hydrology and
28 Water Quality; Noise; Recreation; Transportation; and Commercial and
29 Recreational Fishing. Project activities were found to have less than significant or
30 no impacts to all other environmental resource areas; therefore, they are not
31 included. The MMP includes the following information:

- 32 • **Potential Impact:** Impacts of the Project on the resource

EXHIBIT C - MITIGATION MONITORING PROGRAM

- 1 • **Mitigation Measure:** Full MM(s) text
- 2 • **Monitoring/Reporting Action:** Action to be taken by the environmental
- 3 monitor or Lead Agency
- 4 • **Effectiveness Criteria:** How the agency can know if the MM is effective
- 5 • **Responsible Party:** Entity responsible to comply with the MM
- 6 • **Timing:** Before, during, or after terrestrial or marine Project construction;
- 7 during Project operation; etc.

8 1.4.1 AIR QUALITY

9 **Potential Impact: Air Quality – Impacts from construction emissions**

10 **MM AIR-1: Use of Tier 4 Equipment.** All off-road diesel-powered heavy
11 equipment used to construct the Project shall be equipped with Tier 4 engines,
12 except for specialized equipment or when Tier 4 engines are not available.
13 Retrofits that achieve or exceed emission reductions equivalent to that of a
14 Tier 4 engine may be used in lieu of Tier 4 engines.

15 **Potential Impact: Air Quality – Impacts from construction emissions**

16 **MM AIR-2: Standard Control Measures for Construction Equipment.** The following
17 air quality control measures shall be implemented during terrestrial construction.

- 18 • Maintain all construction equipment in proper tune according to
- 19 manufacturer's specifications.
- 20 • Fuel all off-road and portable diesel-powered equipment with CARB-
- 21 certified motor vehicle diesel fuel (non-taxed version suitable for use
- 22 off-road).
- 23 • All on- and off-road diesel equipment shall not idle for more than
- 24 5 minutes continuously.
- 25 • Signs shall be posted in the designated queuing areas and job sites to
- 26 remind drivers and operators of the 5-minute idling limit.
- 27 • Diesel idling within 1,000 feet of sensitive receptors is not permitted.
- 28 • Staging and queuing areas shall not be located within 1,000 feet of
- 29 sensitive receptors.
- 30 • Electrify equipment when feasible.

EXHIBIT C - MITIGATION MONITORING PROGRAM

- 1 • Substitute gasoline-powered in place of diesel-powered equipment,
2 where feasible.
- 3 • Use alternatively fueled construction equipment on-site where feasible,
4 such as compressed natural gas (CNG), liquefied natural gas (LNG),
5 propane, or biodiesel.

6 **Location:** Terrestrial Project areas

7 **Monitoring/Reporting Action:** Contract specifications

8 **Effectiveness Criteria:** Reducing construction-related emissions

9 **Responsible Party:** Applicant

10 **Timing:** During construction

11 **Potential Impact: Air Quality – Impacts on localized dust levels**

12 **MM AIR-3: Minimize Fugitive Dust.** Minimize fugitive dust during construction by
13 implementing the following measures:

- 14 • Reduce the amount of disturbed area where possible.
- 15 • Use water trucks / construction trailers or sprinkler systems in dry weather in
16 sufficient quantity to prevent airborne dust from leaving the site.
- 17 • Implement dust control measures as soon as possible following completion
18 of any soil-disturbing activities.
- 19 • Establish a policy that vehicle speed for all construction vehicles is not to
20 exceed 15 miles per hour (24 kilometers per hour) on any unpaved
21 surface.
- 22 • Water all active construction areas (including storage piles) as needed to
23 suppress dust. Base the frequency on the type of operation and the soil
24 and wind exposure.
- 25 • Cover or maintain at least 2 feet (0.6 meter) of space between the
26 material and the top of the container on haul trucks transporting soil,
27 sand, or other loose material on and off the site.
- 28 • Sweep adjacent public roads if visible soil material is carried out from a
29 work site.

30 **Location:** Terrestrial Project areas

31 **Monitoring/Reporting Action:** Contract specifications

32 **Effectiveness Criteria:** Reducing increases in localized dust levels

33 **Responsible Party:** Applicant and Contractors

EXHIBIT C - MITIGATION MONITORING PROGRAM

1 **Timing:** During terrestrial Project construction

2 **1.4.2 BIOLOGICAL RESOURCES**

3 **Potential Impact: Biological Resources – Impacts on special-status species and**
4 **habitats**

5 **MM BIO-1: Provide Worker Environmental Awareness Training.** Bandwidth shall
6 provide environmental awareness training before starting construction activities
7 for all construction personnel (including new personnel as they are added to the
8 Project) working on the terrestrial and marine Project components. This training
9 would be given by biological monitors (approved by CSLC staff) to help the
10 trainees understand the following:

- 11 • Surrounding common and special-status species and their habitats
- 12 • Sensitive natural communities and ESHAs
- 13 • Applicable regulatory requirements
- 14 • MMs designed to avoid or minimize impacts on sensitive resource areas

15 The training materials shall be developed and approved by CSLC staff at least
16 30 days before starting Project activities in the terrestrial and marine work areas.
17 The biological monitors shall maintain a list of all contractors who have been
18 trained and shall submit this list and the final training material to CSLC staff within
19 30 days after construction starts and shall provide an updated final list after
20 construction is completed.

21 The lead biological monitor, which would be the monitor with the most
22 professional experience if more than one monitor is selected for the Project, shall
23 be the main contact for reporting any special-status species observed in or near
24 the Project area by any employee or contractor. Bandwidth shall provide the
25 contact information for the lead biological monitor and the biological monitors
26 to on-site construction workers, USFWS, CDFW, and CSLC staff before
27 construction starts.

28 **Location:** Terrestrial and marine Project areas

29 **Monitoring/Reporting Action:** Training materials approved by CSLC staff at least
30 30 days before Project activities.

31 On-site biological monitor to submit list of trained personnel and training
32 materials to CSLC within 30 days of the start of construction and after
33 completion.

EXHIBIT C - MITIGATION MONITORING PROGRAM

1 **Effectiveness Criteria:** Educating all personnel on potential special-status species
2 and habitats in the work area

3 **Responsible Party:** Applicant and CSLC

4 **Timing:** Before, during, and after terrestrial and marine Project construction

5 **Potential Impact: Biological Resources – Impacts on special-status species and**
6 **habitats**

7 **MM BIO-2: Conduct Biological Surveying and Monitoring.** A biological monitor
8 (typically with a college degree in a field of biology or environmental science,
9 knowledge of species surveying for, and experience with pre-construction and
10 construction monitoring), approved by CSLC staff, shall be present on-site to
11 survey the work area for special-status species and nesting birds (as applicable)
12 before starting work in the terrestrial work area to minimize potential impacts on
13 any special-status species or other wildlife that may be present during Project
14 construction. Because the eastern cable landing site is adjacent to the shoreline
15 and the potential western cable sites are not, the biological monitor would also
16 observe the shoreline adjacent to the eastern cable landing site for special-
17 status species before starting work in the terrestrial area. When work would
18 occur at the eastern or western marine HDD exit locations, the biological
19 monitor would observe the shallow tidal flats surrounding the HDD exit locations
20 for foraging by special-status species such as birds. Observations of the marine
21 HDD exit locations would occur from shore.

22 The biological monitor must be on-site full-time during the initial equipment
23 mobilization and site preparation (including fence installation), during the final
24 demobilization phase of construction at the cable landing sites, and during all
25 HDD exit location work (observed from the shore). In addition, the biological
26 monitor must make weekly site visits during Project construction for all work on
27 the cable landing site. From shore, the biological monitor would monitor the
28 work at the HDD exit locations in case of special-status species such as birds
29 foraging nearby during low tides. While on-site or observing the HDD exit
30 locations from shore, the biological monitor has the authority to stop all work,
31 and Bandwidth shall contact the appropriate agency, (i.e., CDFW or USFWS and
32 Commission staff) to discuss ways to protect the special-status species. If a
33 biological monitor was not monitoring the Project site during construction when
34 a special-status species was observed on the site, the biological monitor would
35 be contacted immediately to determine the appropriate course of action.

EXHIBIT C - MITIGATION MONITORING PROGRAM

1 Construction monitoring reports will be submitted daily during above-described
2 construction between the OHWM on the eastern and western locations within
3 CSLC's jurisdiction and otherwise weekly outside of CSLC's jurisdiction.

4 **Location:** Terrestrial and marine Project areas

5 **Monitoring/Reporting Action:** On-site biological monitor to verify.

6 The monitor will submit daily monitoring reports for work within the CSLC's
7 jurisdiction and weekly reports for work outside the CSLC's jurisdiction.

8 **Effectiveness Criteria:** Implementation of this MM will reduce the potential for
9 impacts on special-status species and habitats potentially present.

10 **Responsible Party:** Applicant and CSLC

11 **Timing:** Before and during construction

12 **Potential Impact: Biological Resources – Impacts on special-status species and**
13 **habitats**

14 **MM BIO-3: Delineate Work Limits to Protect Sensitive Biological Resources.**

15 Natural areas outside the construction work area shall not be disturbed. Before
16 starting Project construction, sensitive biological resource areas within and
17 adjacent to the cable landing site work areas shall be staked and flagged by
18 the biological monitor (**MM BIO-2**). The location of the staking and flagging and
19 barrier fencing, if applicable, would be documented in the daily monitoring log
20 and provided to CSLC before starting construction. These demarcated areas
21 shall be inspected daily by construction personnel throughout the construction
22 area to make sure that they are visible for construction personnel. If construction
23 personnel note damage to the demarcated areas, they shall notify the
24 biological monitor, who will come to the site, if not present, and fix the barriers.

25 **Location:** Terrestrial Project areas

26 **Monitoring/Reporting Action:** On-site biological monitor to delineate and
27 document in the monitoring log

28 **Effectiveness Criteria:** Implementation of this MM will reduce the potential for
29 impacts on special-status species and habitats potentially present.

30 **Responsible Party:** Applicant and CSLC

31 **Timing:** Before and during construction

32 **Potential Impact: Biological Resources – Impacts on sensitive biological**
33 **resources**

34 **MM BIO-4: Install Covers or Escape Ramps in Open Trenches.** To prevent wildlife
35 species from accidentally being entrapped during construction, all excavated

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1 holes to be left open overnight shall have a cover or soil ramp installed, allowing
2 wildlife an opportunity to exit. If escape ramps are installed, the construction
3 inspector or the biological monitor must inspect excavations before starting
4 construction each day to confirm that no wildlife species are entrapped. If any
5 wildlife species are entrapped and the biological monitor is not on the site, the
6 construction inspector shall notify the biological monitor, who will travel to the
7 site to remove wildlife species that are unable to escape on their own. Any
8 wildlife handling shall be conducted under the biological monitor's applicable
9 collection permit or as authorized by the appropriate wildlife agency. If a
10 biological monitor is not on-site, a local biologist (with appropriate permits) may
11 be called out to remove any species.

12 **Location:** Terrestrial Project areas

13 **Monitoring/Reporting Action:** On-site construction inspector/monitor to inspect
14 daily before starting construction

15 **Effectiveness Criteria:** Implementation of this MM will reduce the potential for
16 impacts on wildlife species potentially present.

17 **Responsible Party:** Applicant and CSLC

18 **Timing:** During construction

19 **Potential Impact: Biological Resources – Impacts on nesting birds**

20 **MM BIO-5: Conduct Pre-Construction Nesting Bird Surveys and Implement**

21 **Avoidance Measures.** If construction occurs during the bird nesting season (from
22 February 1 to September 1), the following conditions (designed to protect both
23 special-status and non-special-status birds) shall be implemented:

- 24 • No more than 1 week before starting Project-related construction, a
25 biological monitor, approved by CSLC staff, shall survey within the
26 biological study areas to look for nesting activity.
- 27 • If no active nests are detected during these surveys, no additional
28 measures are required.
- 29 • If an active nest is found, an appropriate avoidance buffer shall be
30 established around the bird nest site to avoid disturbance or destruction
31 of the nest until the end of the breeding season (generally August 31) or
32 until after the biological monitor determines that the young have fledged
33 and moved out of the area (this date varies by species). Suitable buffer
34 distances may vary between species. The extent of these buffers shall be
35 determined by the biological monitor in coordination with the applicable
36 wildlife agency (i.e., CDFW and/or USFWS) and would depend on the bird

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1 species, level of construction disturbance, line-of-sight between the nest
2 and the disturbance, ambient levels of noise and other disturbances, and
3 other topographical or artificial barriers. Disturbances shall not occur
4 within the protective buffer(s) until all young birds have fledged, as
5 confirmed by the biological monitor.

- 6 • A biological monitor shall be hired by Bandwidth, approved by the CSLC
7 (MM BIO-2), and shall be on-site every day if construction activities
8 happen during bird nesting season and a nest is identified within the
9 protective buffer area.

10 **Location:** Terrestrial Project areas

11 **Monitoring/Reporting Action:** If construction occurs during the nesting season,
12 conduct nesting bird surveys 1 week before starting Project construction.

13 On-site biological monitor to verify and coordinate with USFWS/CDFW.

14 **Effectiveness Criteria:** Implementation of this MM will reduce the potential for
15 impacts on nesting birds.

16 **Responsible Party:** Applicant and CSLC

17 **Timing:** Before and during construction

18 **Potential Impact: Biological Resources – Impacts on herring spawning**

19 **MM BIO-6: In-Water Work Window.** In-water work would occur only from June 1
20 through November 30 to protect herring spawning populations.

21 **Location:** Marine Project area

22 **Monitoring/Reporting Action:** Contract specifications

23 **Effectiveness Criteria:** Implementation of this MM will reduce the potential for
24 Pacific herring to be impacted during the spawning season.

25 **Responsible Party:** Applicant

26 **Timing:** Before construction

27 **Potential Impact: Biological Resources – Impacts on fish species, including**
28 **longfin smelt**

29 **MM BIO-7: Fish Screen on the Jet Sled Intake.** A screen would be installed on the
30 jet sled intake to reduce the chance of fish being pulled into the jet sled intake
31 with the jetting water. The fish screen would adhere to the following criteria,
32 provided by the California Department of Fish and Wildlife:

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- 1 • The screen will be designed to allow uniform flow distribution through the
2 entire face of the screen during use.
- 3 • If the screen is self-cleaning, the specific screen intake velocity will be
4 0.2 feet per second, which is the protection velocity for delta smelt
5 (*Hypomesus transpacificus*) and is also considered protective of longfin
6 smelt. If the screen is not self-cleaning, the screen will be designed so that
7 the approach velocity is one fourth of the self-cleaning approach velocity
8 (0.05 feet per second). For non-self-cleaning screens, the frequency of
9 cleaning will be such that flow is not impaired and approach velocity is
10 not exceeded. A cleaning frequency of once per 5 minutes is considered
11 appropriate.
- 12 • The required screen area in square feet will be determined by dividing the
13 maximum diverted flow (cubic feet per second) by the allowable
14 approach velocity (feet per second) to get square feet of screen area
15 needed.
- 16 • The screen surface will have a minimum open area of 27 percent, but
17 open areas of 40 percent or greater are recommended. Round openings
18 will not exceed 5/32 inch (3.96 millimeter). Square openings will not
19 exceed 5/32 inch (3.96 millimeters) diagonally. Slotted openings will not
20 exceed 0.0689 inch (1.75 millimeters).
- 21 • Screens can be constructed of any rigid material that allows water
22 passage but excludes fish. Stainless steel is recommended to reduce
23 corrosion-associated clogging. No sharp edges or projections that could
24 harm fish will be present. The largest screen open area possible for the
25 project should be used. If anti-fouling materials are used, they should not
26 be deleterious to fish or other wildlife.
- 27 • The intake with the screen cover will be placed in the deepest area of
28 water possible for the jet sled location.
- 29 • The plans and design of the fish screen showing the applicable screening
30 criteria will be provided to the California Department of Fish and Wildlife
31 for approval.

32 **Location:** Marine Project area

33 **Monitoring/Reporting Action:** Equipment design specifications. Approval
34 required from California Department of Fish and Wildlife.

35 **Effectiveness Criteria:** Implementation of this MM will reduce the potential for
36 longfin smelt to be impacted during Project activities.

37 **Responsible Party:** Applicant

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1 **Timing:** Before construction

2 **Potential Impact: Biological Resources – Impacts on marine species from**
3 **entanglement with unburied cable**

4 **MM BIO-8: Cable Burial Surveys.** Bandwidth would conduct an initial survey and
5 periodic post-lay surveys of all installed fiber optic cables and conduits between
6 the mean high tide lines to verify that the fiber optic cables and conduits were
7 and would remain buried as initially planned or to the maximum extent feasible
8 as determined by the initial post-lay assessment. These surveys would assess and
9 report the following to CSLC:

- 10 • The depth of burial achieved along the fiber optic cable route.
- 11 • Any areas of fiber optic cable or conduit suspension greater than 3.3 feet
12 from the SF Bay floor and an explanation of why the fiber optic cables
13 could not be rerouted to avoid suspension.
- 14 • The consistency of fiber optic cable installation with the Project
15 description.

16 These post-lay surveys and assessments would be conducted as follows:

- 17 • “As-built” plans showing where the improvements have been placed
18 would be provided within 60 days of completing construction and
19 additional post-lay surveys at a frequency to be determined by lease
20 conditions.
- 21 • After any incident or activity, including but not limited to potential
22 commercial fishing gear snags, severe earthquake in the vicinity of the
23 fiber optic cables, or an extreme storm event that could result in excessive
24 SF Bay floor scouring, that could result in the fiber optic cables or conduit
25 exposure to the SF Bay floor surface.

26 Should a fiber optic cable be observed to have become unburied in any
27 location where it should have been buried or had been buried, Bandwidth
28 shall ensure reburial to the initial fiber optic cable burial depth at that
29 location. A survey and burial report would be prepared and distributed to
30 the CSLC and other responsible state agencies after each survey.

31 **Location:** Marine Project area

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- 1 **Monitoring/Reporting Action:** Conduct a post-lay inspection survey at a
2 frequency to be determined. The burial survey report will be distributed to
3 responsible State agencies following each survey.
4 **Effectiveness Criteria:** Implementation of this MM will reduce the potential for
5 marine wildlife to be exposed to the cable and the potential for entanglement.
6 **Responsible Party:** Applicant and CSLC
7 **Timing:** After construction

8 **Potential Impact: Biological Resources – Impacts on marine wildlife**

9 **MM BIO-9: Cable Entanglements and Gear Retrieval.** If fishing gear snags on a
10 fiber optic cable and it is lost or cut, or if Bandwidth snags fishing gear,
11 Bandwidth shall use all feasible measures (for example, deploying divers), in
12 discussion with and guided by the local Fishing Association (San Francisco
13 Community Fishing Association), to retrieve the fishing gear or inanimate object.
14 Retrieval shall occur no later than 42 days after discovering or receiving notice
15 of the incident. If full removal of gear is not feasible, Bandwidth shall remove as
16 much gear as practicable to minimize harm to wildlife (e.g., fishes, birds, and
17 marine mammals). Within 14 days of completing the recovery operation,
18 Bandwidth shall submit to CSLC staff a report describing the following:

- 19 • Nature and location of the entanglement (with a map and/or GPS
20 coordinates).
21 • Method used for removing the entangled gear or object, or the method
22 used for minimizing harm to wildlife if gear retrieval proves infeasible.

23 **Location:** Marine Project area

24 **Monitoring/Reporting Action:** Retrieval of gear within 42 days of discovery.
25 Submit recovery report to CSLC within 14 days of completing the recovery
26 operation.

27 **Effectiveness Criteria:** Implementation of this MM will reduce the potential for
28 impacts on marine species potentially present.

29 **Responsible Party:** Applicant and CSLC

30 **Timing:** Before, during, and after construction

31 **Potential Impact: Biological Resources – Impacts on marine native species**

32 **MM BIO-10: Control of Marine Invasive Species.** Bandwidth shall ensure that the
33 underwater surfaces of all Project vessels are clear of biofouling organisms
34 before arriving in state waters. The determination of underwater surface

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1 cleanliness shall be made in consultation with CSLC staff. Regardless of vessel
2 size, ballast water for all Project vessels must be managed consistent with the
3 CSLC's ballast management laws and regulations, and Ballast Water
4 Management Report and a Marine Invasive Species Program Annual Vessel
5 Reporting Form shall be submitted to CSLC staff at least 24 hours in advance of
6 arrival in state waters, as required by regulation.

7 **Location:** Marine Project area

8 **Monitoring/Reporting Action:** On-site monitor to verify

9 **Effectiveness Criteria:** Implementation of this MM will reduce the potential for
10 impacts on marine native species.

11 **Responsible Party:** Applicant and CSLC

12 **Timing:** During marine construction

13 **Other applicable MMs for potential impacts on biological resources**

14 **MM HYD-1: Develop and Implement Stormwater Pollution Prevention Plan** (see
15 Hydrology and Water Quality)

16 **MM HAZ-1: Develop and Implement Spill Contingency and Hazardous Materials**
17 **Management Plans.** (see Hazards and Hazardous Materials)

18 **MM HAZ-2: Prepare and Implement an Inadvertent Return Contingency Plan** (see
19 Hazards and Hazardous Materials)

20 **1.4.3 CULTURAL RESOURCES**

21 **Potential Impact: Cultural Resources – Impacts to shipwrecks, archaeological**
22 **sites, and/or historic, cultural, or tribal resources**

23 **MM CUL-1/TCR-1: Discovery of Previously Unknown Cultural or Tribal Cultural**
24 **Resources.** Before disturbing the ground, Bandwidth shall contact culturally
25 affiliated tribes and retain a culturally affiliated tribal monitor if requested.
26 Bandwidth shall also retain a qualified archaeologist, jointly with any requested
27 culturally affiliated tribal monitor, to train construction staff to be able to identify
28 potential cultural and tribal cultural resources. If potential cultural or tribal
29 cultural resources are uncovered during Project implementation, all earth-
30 disturbing work within 100 feet of the find must be suspended or redirected until
31 an approved archaeologist and tribal monitor, if retained, has evaluated the
32 nature and significance of the discovery.

33 If a potentially significant cultural or tribal cultural resource is discovered, the
34 CSLC, and any local, state, or federal agency with approval or permitting

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1 authority over the Project that has requested and/or required notification shall
2 be notified within 48 hours. The location of any such finds must be kept
3 confidential and measures shall be taken to secure the area from site
4 disturbance and potential vandalism. Impacts on previously unknown significant
5 cultural or tribal cultural resources shall be avoided through preservation in
6 place if feasible. Damaging effects on tribal cultural resources shall be avoided
7 or minimized following the measures identified in Public Resources Code section
8 21084.3, subdivision (b), if feasible, unless other measures are mutually agreed to
9 by the lead archaeologist and culturally affiliated tribal monitor that would be
10 as or more effective. A treatment plan, if needed to address a find, shall be
11 developed by the archaeologist and, for tribal cultural resources, the culturally
12 affiliated tribal monitor, and submitted to CSLC staff for review and approval
13 prior to implementation of the plan. If the archaeologist or tribe determines that
14 damaging effects on the cultural or tribal cultural resource shall be avoided or
15 minimized, then work in the area may resume.

16 Title to all abandoned shipwrecks, archaeological sites, historic or cultural
17 resources, and tribal cultural resources on or in the tide and submerged lands of
18 California is vested in the state and under CSLC jurisdiction. The final disposition
19 of archaeological, historical, and tribal cultural resources recovered on state
20 lands under CSLC jurisdiction must be approved by CSLC.

21 **Location:** Terrestrial and marine Project areas

22 **Monitoring/Reporting Action:** Qualified archaeologist retained and notification
23 of permitting agencies. A treatment plan may be developed as needed.

24 **Effectiveness Criteria:** Implementation of this MM will reduce the potential for
25 impacts on archaeological resources.

26 **Responsible Party:** Applicant and CSLC

27 **Timing:** Before and during construction

28 **Potential Impact: Cultural Resources – Impacts to human remains**

29 **MM CUL-2/TCR-2: Unanticipated Discovery of Human Remains.** If human remains
30 are encountered, all provisions provided in California Health and Safety Code
31 section 7050.5 and California Public Resources Code section 5097.98 shall be
32 followed. Work shall stop within 100 feet of the discovery, and both an
33 archaeologist and CSLC staff must be contacted within 24 hours. The
34 archaeologist shall consult with the County Coroner. If human remains are of
35 Native American origin, the County Coroner shall notify the Native American
36 Heritage Commission (NAHC) within 24 hours of this determination, and a Most

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1 Likely Descendent shall be identified. No work is to proceed in the discovery
2 area until consultation is complete and procedures to avoid or recover the
3 remains have been implemented.

4 **Location:** Terrestrial Project areas

5 **Monitoring/Reporting Action:** Contact retained archaeologist and the CSLC
6 within 24 hours of discovery.

7 Archaeologist will consult with County Coroner.

8 **Effectiveness Criteria:** Implementation of this MM will reduce the potential for
9 impacts on human remains.

10 **Responsible Party:** Applicant and CSLC

11 **Timing:** During construction

12 **Potential Impact: Cultural Resources – Impacts to previously unknown terrestrial**
13 **archaeological resources**

14 **MM CUL-3/TCR-3: Cultural and Tribal Resources Awareness Training.** Before
15 beginning construction, Bandwidth must hire a qualified archaeologist and a
16 culturally affiliated tribal monitor (if requested by culturally affiliated tribes) to
17 prepare a Cultural Resources Contractor Awareness Training subject to CSLC
18 approval. The training shall be given by a qualified archaeologist and a
19 culturally affiliated tribal monitor (if one is available) to all construction personnel
20 before working on the Project, and the training shall include, but not be limited
21 to, the following:

- 22 • Guidance on identifying potential cultural resources encountered
- 23 • The probability of exposing cultural resources
- 24 • Clear direction on procedures if a find is encountered

25 **Location:** Terrestrial Project areas

26 **Monitoring/Reporting Action:** Qualified archaeologist retained and training for
27 all personnel prior to working on the Project.

28 **Effectiveness Criteria:** Implementation of this MM will reduce the potential for
29 impacts on archaeological resources.

30 **Responsible Party:** Applicant and CSLC

31 **Timing:** Before construction

1 **1.4.4 CULTURAL RESOURCES - TRIBAL**

2 **Applicable mitigation measures for potential impacts on cultural resources -**
3 **tribal**

4 **MM CUL-1/TCR-1: Discovery of Previously Unknown Cultural or Tribal Cultural**
5 **Resources** (see Cultural Resources)

6 **MM CUL-2/TCR-2: Unanticipated Discovery of Human Remains** (see Cultural
7 Resources)

8 **MM CUL-3/TCR-3: Cultural and Tribal Resources Awareness Training** (see Cultural
9 Resources)

10 **1.4.5 GREENHOUSE GAS EMISSIONS**

11 **Applicable mitigation measures for potential impacts of greenhouse gas**
12 **emissions**

13 **MM AIR-1: Use of Tier 4 Equipment** (see Air Quality)

14 **MM AIR-2: Standard Control Measures for Construction Equipment** (see Air
15 Quality)

16 **1.4.6 HAZARDS AND HAZARDOUS MATERIALS**

17 **Potential Impact: Hazards and hazardous materials – Impacts from accidental**
18 **release of hazardous materials**

19 **MM HAZ-1: Develop and Implement Spill Contingency and Hazardous Materials**
20 **Management Plans.** At least 30 days before start of construction of the Project,
21 Bandwidth shall submit the following plans for review and approval by CSLC
22 staff:

23 **Worker Health and Safety Plan**

24 A final Worker Health and Safety Plan (WHSP) that has been reviewed and
25 approved by the San Mateo County Divisions of Environmental Health shall
26 address measures to minimize risks from landfill gases and potential worker
27 exposure to hazardous materials associated with construction activities at the
28 western cable landing sites and within 1,000 feet of the former Brisbane Landfill.
29 The WHSP shall be prepared by a qualified geologist or engineer.

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- 1 A. The WHSP shall include, at a minimum, measures to:
- 2 a) Address the potential for the presence and migration of landfill gases
- 3 during construction.
- 4 b) Minimize risks of exposure by construction workers to anticipated
- 5 hazardous materials, to potential unanticipated waste types, and to
- 6 potential landfill gas accumulation post-construction by operational and
- 7 maintenance personnel.
- 8 c) Assure Project stability and structural integrity associated with any
- 9 incompetent waste fill material that may be present.
- 10 B. Bandwidth shall undertake development in accordance with the approved
- 11 final WHSP. Any proposed changes to the approved final WHSP shall be
- 12 reported to CSLC and San Mateo County Division of Environmental Health.
- 13 No changes to the approved final WHSP shall occur without written approval
- 14 from CSLC and San Mateo County Division of Environmental Health.

15 **Soil and Waste Excavation and Management Plan**

16 A final Soil and Waste Excavation and Management Plan (SWEMP) that has

17 been reviewed and approved by the San Mateo County Division of

18 Environmental Health shall address soil and waste management for construction

19 activities at the western cable landing sites. The SWEMP shall be prepared by a

20 qualified geologist or engineer.

- 21 A. The SWEMP shall include, at a minimum, the following:
- 22 a) A description of the specific locations, methods, and procedures for
- 23 staging, stockpiling, managing, characterizing, testing, and disposing of
- 24 soil (including bentonite material), groundwater, and waste material
- 25 expected to be encountered during construction.
- 26 b) Procedures for managing unanticipated waste types that may be
- 27 encountered during construction.
- 28 c) BMPs for odor and dust control, including, but not limited to, measures to
- 29 reduce the potential for exposure of staged and stockpiled materials to
- 30 wind and stormwater runoff.
- 31 d) Provisions for characterizing and testing soil, groundwater, and waste
- 32 material in accordance with California Department of Toxic Substances
- 33 Control (DTSC) Protocol for Burn Dump Site Investigation and
- 34 Characterization. Testing should include, at a minimum, volatile organic
- 35 compounds (VOCs), semi-volatile organic compounds (SVOCs),

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1 polychlorinated biphenyls (PCBs), polycyclic aromatic hydrocarbons
2 (PAHs), dioxins and furans, organochlorine pesticides (OCPs), and
3 California Administrative Metals (CAM-17) heavy metals.

4 e) Provisions for proper waste disposal at authorized facilities capable of
5 receiving the waste(s).

6 B. Bandwidth shall undertake development in accordance with the approved
7 final SWEMP. Any proposed changes to the approved final SWEMP shall be
8 reported to CSLC and San Mateo County Division of Environmental Health.
9 No changes to the approved final SWEMP shall occur without written
10 approval from CSLC and San Mateo County Division of Environmental Health.

11 **Spill Contingency and Hazardous Materials Terrestrial Plan**

12 Measures for terrestrial operations shall include, but not be limited to, identifying
13 appropriate fueling and maintenance areas for equipment, a daily equipment
14 inspection schedule, and spill response procedures including maintaining spill
15 response supplies on-site. The Spill Contingency and Hazardous Materials
16 Terrestrial Plan (SCHMTP) could be prepared separately or the elements of the
17 SCHMTP could be included in the SWEMP.

18 The terrestrial SCHMTP will identify the actions and notifications to occur if
19 contaminated soil is encountered during onshore excavation. Bandwidth shall
20 notify the of San Mateo and Alameda Counties' Divisions of Environmental
21 Health within 24 hours of discovering contaminated materials during Project
22 construction activities. Work in the area suspected of contamination shall stop
23 until the notified agencies, together with Bandwidth, have determined the next
24 steps.

25 The terrestrial SCHMTP will identify, at a minimum, the following BMPs related to
26 using hazardous substances:

- 27 • Follow manufacturer's recommendations on use, storage, and disposal of
28 chemical products used in construction.
- 29 • Avoid overtopping construction equipment fuel gas tanks.
- 30 • During routine maintenance of construction equipment, properly contain
31 and remove grease and oils.
- 32 • Conduct all fueling of equipment at least 100 feet from wetlands and
33 other waterbodies.
- 34 • Properly dispose of discarded containers of fuels and other chemicals.

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- 1 • Maintain a complete list of agencies (with their telephone numbers) to be
2 notified of potential hazardous material spills, including but not limited to,
3 the CSLC's 24-hour emergency notification number and the California
4 Governor's Office of Emergency Services (Cal OES) contact number.

5 **Spill Contingency and Hazardous Materials Offshore Plan**

6 For offshore activities involving work vessels, the primary work vessel (cable-lay
7 vessel) will be required to carry onboard a minimum 400 feet of sorbent boom,
8 five bales of sorbent pads at least 18 inches by 18 inches square, and a small,
9 powered vessel for rapid deployment to contain and clean up any small
10 hazardous material spill or sheen on the water surface. The Spill Contingency
11 and Hazardous Materials Offshore Plan (SCHMOP) shall provide for the
12 immediate call out of additional spill containment and clean-up resources in the
13 event of an incident that exceeds the rapid clean-up capability of the on-site
14 work force. These offshore measures may be provided as part of a separate
15 SCHMOP or combined with the terrestrial plan (SCHMTP) as described above.

16 **Location:** Terrestrial and marine Project areas

17 **Monitoring/Reporting Action:** All plans to be submitted to CSLC at least 30 days
18 prior to start of construction

19 **Effectiveness Criteria:** Implementation of this MM will reduce the potential for a
20 release of hazardous materials to the environment.

21 **Responsible Party:** Applicant

22 **Timing:** Before and during construction

23 **Potential Impact: Hazards and hazardous materials – Impacts from horizontal**
24 **directional drilling (HDD) activities**

25 **MM HAZ-2: Prepare and Implement an Inadvertent Return Contingency Plan.** A
26 Final Inadvertent Return Contingency Plan (either one report that describes a
27 plan for both terrestrial and marine areas or separate reports for each area)
28 shall be submitted to CSLC staff for review and approval at least 30 days before
29 starting construction in terrestrial and marine areas. The plan(s) must include the
30 following:

- 31 • Measures to stop work, maintain appropriate control materials on-site,
32 contain and remove drilling mud before demobilization, prevent further
33 migration of drilling mud into the waterbody, and notify all applicable
34 authorities in the case of an inadvertent return of any size.

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- 1 • Control measures of constructing a dugout or settling basin at the cable
2 landing site to contain drilling mud to prevent sediment and other
3 deleterious substances from entering waterbodies.
- 4 • Requirements for onshore biological monitors to monitor onshore and
5 offshore to identify signs of an inadvertent release of drilling fluids, which
6 may include the use of Rhodamine dye.
- 7 • An abandonment contingency plan in case the HDD operations are
8 forced to be suspended and a partially completed bore hole is
9 abandoned.
- 10 • Complete list of the agencies (with telephone number) to be notified in
11 case of an inadvertent return of any size, including, but not limited to, the
12 CSLC's 24-hour emergency notification number (562) 590-5201 and the
13 California Governor's Office of Emergency Services (Cal OES) contact
14 number (800) 852-7550.

15 **Location:** Terrestrial Project areas

16 **Monitoring/Reporting Action:** Submit report to the CSLC at least 30 days before
17 starting construction.

18 Onshore and offshore biological monitors to identify signs of an inadvertent
19 release of drilling fluids.

20 **Effectiveness Criteria:** Implementation of this MM will reduce the potential for
21 impacts on wildlife species potentially present.

22 **Responsible Party:** Applicant and CSLC

23 **Timing:** Before and during construction

24 **Other applicable MMs for potential impacts on hazards and hazardous**
25 **materials**

26 **MM BIO-1: Provide Environmental Awareness Training** (see Biological Resources)

27 **MM BIO-3: Delineate Work Limits to Protect Sensitive Biological Resources** (see
28 Biological Resources)

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1 1.4.7 HYDROLOGY AND WATER QUALITY

2 **Potential Impact: Hydrology and Water Quality – Impacts on hydrology and**
3 **water quality**

4 **MM HYD-1: Develop and Implement Stormwater Pollution Prevention Plan.**

5 Bandwidth shall develop and implement a Stormwater Pollution Prevention Plan
6 (SWPPP) consistent with the Statewide NPDES Construction General Permit
7 (Order 2009-0009-DWQ). At a minimum, the SWPPP shall include measures for:

- 8 • Maintaining adequate soil moisture to prevent excessive fugitive dust
9 emissions, preservation of existing vegetation, and effective soil cover
10 (e.g., geotextiles, straw mulch, hydroseeding) for inactive areas and
11 finished slopes to prevent sediments from being dislodged by wind, rain, or
12 flowing water.
- 13 • Installing fiber rolls and sediment basins to capture and remove particles
14 that have already been dislodged.
- 15 • Establishing good housekeeping measures such as construction vehicle
16 storage and maintenance, handling procedures for hazardous materials,
17 and waste management BMPs, including procedural and structural
18 measures to prevent the release of wastes and materials used at the site.

19 The SWPPP shall also detail spill prevention and control measures to identify the
20 proper storage and handling techniques of fuels and lubricants, and the
21 procedures to follow in the event of a spill. The SWPPP shall be provided to CSLC
22 staff a minimum of 30 days prior to Project implementation.

23 **Location:** Terrestrial Project areas

24 **Monitoring/Reporting Action:** Develop SWPPP and provide to CSLC 30 days prior
25 to Project implementation.

26 **Effectiveness Criteria:** Implementation of this MM will reduce the Project impacts
27 on hydrology and water quality.

28 **Responsible Party:** Applicant and CSLC

29 **Timing:** During construction

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1 **Other applicable MMs for potential impacts on hydrology and water quality**

2 **MM HAZ-1: Develop and Implement Spill Contingency and Hazardous Materials**
3 **Management Plans** (see Hazards and Hazardous Materials)

4 **MM HAZ-2: Prepare and Implement an Inadvertent Return Contingency Plan** (see
5 Hazards and Hazardous Materials)

6 **1.4.8 NOISE**

7 **Potential Impact: Noise – Impacts on sensitive receptors**

8 **MM NOI-1: Implement Construction Noise Control Measures.** The Applicant shall
9 ensure that its contractor implements specific noise attenuation measures to
10 ensure compliance with applicable City and County noise ordinances for the
11 duration of the construction period. Noise measures shall include the following
12 and shall be included in the construction specifications:

- 13 • Limit construction activities to the hours specified in each local noise
14 ordinance.
- 15 • Maintain all equipment in accordance with manufacturer's
16 recommendations to minimize noise emissions.
- 17 • Inspect all gasoline and diesel-powered equipment to ensure they are
18 equipped with properly functioning exhaust mufflers and intake silencers.
- 19 • Limit unnecessary idling.
- 20 • Use low noise emission equipment where feasible and practical.

21 **Location:** Terrestrial Project areas

22 **Monitoring/Reporting Action:** Contract specifications

23 **Effectiveness Criteria:** Implementation of this MM will reduce the Project impacts
24 on sensitive receptors.

25 **Responsible Party:** Applicant and CSLC

26 **Timing:** Before and after construction

1 **1.4.9 RECREATION**

2 **Potential Impact: Recreation – Impacts on offshore recreational activities**

3 **MM REC-1: Advanced Local Notice to Mariners.** At least 15 days before (1) start
4 of the HDD operation, and (2) start of offshore cable laying activity, a Local
5 Notice to Mariners ([https://www.dco.uscg.mil/Featured-Content/Mariners/
6 Local-Notice-to-Mariners-LNMs/District-11/](https://www.dco.uscg.mil/Featured-Content/Mariners/Local-Notice-to-Mariners-LNMs/District-11/)) would be submitted to the USCG
7 describing all activities in the SF Bay. A copy of the published notice shall be
8 provided immediately to CSLC. The Notice must include:

- 9 • Type of operation (i.e., jet sledding, diving operations, construction)
- 10 • Specific location of operation or repair activities (including whether there
11 is a possibility of exposed cable), including latitude and longitude and
12 geographical position, if applicable
- 13 • Estimated schedule of activities, including start and completion dates (if
14 these dates change, the USCG needs to be notified)
- 15 • Vessels involved in the operation
- 16 • VHF-FM radio frequencies monitored by vessels on the scene
- 17 • Point of contact and 24-hour phone number
- 18 • Chart number for the area of operation

19 **Location:** Marine Project area

20 **Monitoring/Reporting Action:** Local Notice to Mariners submitted to USCG at
21 least 15 days prior to (1) start of HDD operation and (2) start of offshore cable
22 laying.

23 A copy of the published notice will be submitted to CSLC immediately.

24 **Effectiveness Criteria:** Implementation of this MM will reduce the Project impacts
25 on offshore recreational activities.

26 **Responsible Party:** Applicant and CSLC

27 **Timing:** Before and after construction

EXHIBIT C - MITIGATION MONITORING PROGRAM

1 1.4.10 TRANSPORTATION

2 **Potential Impact: Transportation – Impacts on local marine vessel traffic**

3 **MM TRA-1: Marine Anchor Plan.** At least 30 days before starting construction,
4 Bandwidth will submit a Marine Anchor Plan to CSLC staff for review and
5 approval with the following:

- 6 • Map of the proposed acceptable anchor locations and exclusion zones
7 or offshore temporary anchoring or mooring for work vessels.
- 8 • Narrative description of the anchor setting and retrieval procedures to be
9 employed that will result in minimal impacts on the bay sediments and
10 floor. Anchor dragging along the bay bottom is not allowed.
- 11 • Coordinates of all dropped anchor points during construction shall be
12 recorded and included on the post-construction bay floor survey map.

13 **Location:** Marine Project area

14 **Monitoring/Reporting Action:** Provide plan to CSLC 30 days prior to construction

15 **Effectiveness Criteria:** Implementation of this MM will reduce the Project impacts
16 on local vessel traffic and provide safe anchoring.

17 **Responsible Party:** Applicant and Applicant's contractor

18 **Timing:** Before and during construction

19 **Potential Impact: Transportation – Reduce hazards on local roadways**

20 **MM TRA-2: Traffic Control Plan.** Before starting the Project activities, a Traffic
21 Control Plan shall be submitted to CSLC staff for review and approval. It shall
22 include measures such as appropriate signage, detour routes, and lane closure
23 to reduce potential hazards to motorists and workers during the Project. In
24 addition, the Traffic Control Plan shall address measures to allow emergency
25 vehicle access, and reduction of impacts to circulation, potential hazards to
26 motorists, bicyclists, pedestrians, and workers during the Project.

27 **Location:** Terrestrial Project areas

28 **Monitoring/Reporting Action:** Provide plan to CSLC 30 days prior to construction

29 **Effectiveness Criteria:** Implementation of this MM will reduce the Project impacts
30 on local traffic.

31 **Responsible Party:** Applicant and Applicant's contractor

32 **Timing:** Before construction

EXHIBIT C - MITIGATION MONITORING PROGRAM

1 **Other applicable MMs for potential impacts on transportation**

2 **MM REC-1: Advanced Local Notice to Mariners** (see Recreation)

3 **1.4.11 COMMERCIAL AND RECREATIONAL FISHING**

4 **Applicable mitigation measures for potential impacts on commercial and**
5 **recreational fishing**

6 **MM BIO-7: In-Water Work Window** (see Biological Resources)

7 **MM BIO-8: Fish Screen on the Jet Sled Intake** (see Biological Resources)

8 **MM BIO-9: Cable Burial Surveys** (see Biological Resources)

9 **MM BIO-10: Cable Entanglement and Gear Retrieval** (see Biological Resources)

10 **MM BIO-11: Control of Marine Invasive Species** (see Biological Resources)

11 **MM REC-1: Advanced Local Notice to Mariners** (see Recreation)

12 **MM TRA-1: Marine Anchor Plan** (see Transportation)

13 **1.4.12 LIST OF ABBREVIATIONS AND ACRONYMS**

14 Applicant = Bandwidth IG, LLC

15 BIO = Biological

16 BMP = best management practice

17 Cal OES = California Governor's Office of Emergency Services

18 CAM = California Administrative Metals

19 CARB = California Air Resources Board

20 CDFW = California Department of Fish and Wildlife

21 CEQA = California Environmental Quality Act

22 CNG = compressed natural gas

23 CSLC = California State Lands Commission

24 CUL = Cultural

25 DTSC = California Department of Toxic Substances Control

26 ESHA = environmentally sensitive habitat area

27 HAZ = Hazardous

28 HDD = horizontal directional drilling

29 HYD = Hydrology

30 LNG = liquefied natural gas

31 MM = mitigation measure

32 MMP = Mitigation Monitoring Program

33 NAHC = Native American Heritage Commission

34 NOI = Noise

35 NPDES = National Pollutant Discharge Elimination System

36 OCPs = organochlorine pesticides

EXHIBIT C - MITIGATION MONITORING PROGRAM

- 1 OHWM = ordinary high water mark
- 2 PAHs = polycyclic aromatic hydrocarbons
- 3 PCBs = polychlorinated biphenyls
- 4 REC = Recreation
- 5 SCHMOP = Spill Contingency and Hazardous Materials Offshore Plan
- 6 SCHMTP = Spill Contingency and Hazardous Materials Terrestrial Plan
- 7 SF Bay = San Francisco Bay
- 8 SVOCs = semi-volatile organic compounds
- 9 SWEMP = Solid Waste Excavation and Management Plan
- 10 SWPPP = Stormwater Pollution Prevention Plan
- 11 TCR = Tribal Cultural Resources
- 12 TRA = Transportation
- 13 USCG = U.S. Coast Guard
- 14 USFWS = U.S. Fish and Wildlife Service
- 15 VHF-FM = very high frequency – frequency modulation
- 16 VOCs = volatile organic compounds
- 17 WHSP = Worker Health and Safety Plan

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