

Exhibit A

ENCROACHMENT AGREEMENT BETWEEN THE CITY OF SOUTH SAN FRANCISCO AND BANDWIDTH IG, LLC FOR THE INSTALLATION OF TELECOMMUNICATIONS NETWORK FACILITIES WITHIN PUBLIC RIGHT-OF-WAY

This Agreement (“Agreement”), dated this ____ day of _____, 2022 (“Effective Date”) is by and between the CITY OF SOUTH SAN FRANCISCO, a municipal corporation (herein termed "City"), and **BANDWIDTH IG, LLC** (herein termed "COMPANY"). COMPANY and CITY are sometimes individually referred to herein as a “Party” and collectively as the “Parties.”

RECITALS

- A. COMPANY has received, or has a pending application for, a Certificate of Public Convenience and Necessity (“CPCN”) from the Public Utilities Commission of the State of California ("PUC") to operate as a provider of facilities-based and resold local exchange and interexchange communications services; and
- B. COMPANY desires, subject to its possession of the CPCN, to construct, install, and maintain Telecommunications Network Facilities within the Public Right-of-Way and/or public utility and/or service easements within City in order to provide Telecommunications Services; and
- C. Pursuant to applicable Laws, City has the authority to regulate the terms and conditions for the use of Public Right-of-Way for the construction, installation, and maintenance of the Telecommunications Network Facilities by telecommunications services providers; and
- D. In order to encourage telecommunications infrastructure development and to promote the management of the rights-of-way in the interest of public health, safety, and welfare, the City desires to permit COMPANY to construct Telecommunications Network Facilities, as defined herein, in accordance with the terms, conditions, and covenants contained in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the recitals and the mutual promises contained herein, City and COMPANY agree as follows:

1. DEFINITIONS.

- 1.1. "Authorized Routes" shall mean the Public Right-of-Way within the City as set forth on the maps attached as Exhibit A, as such routes may be modified from time to time during the term of this Agreement upon COMPANY’s request and with the written approval of the City Engineer, which approval shall be given or denied consistent with applicable Laws and standards.
- 1.2. "City" means the City of South San Francisco, a municipal corporation of the State of California, and includes the duly elected or appointed officers, agents, employees, and volunteers of the City of South San Francisco, individually or collectively.

- 1.3. "City Engineer" means the individual designated as the Director of Public Works of the City, including any individual expressly designated to exercise functions with respect to the rights and obligations of the Director of Public Works under this Agreement and any other individual, person, division, department, bureau, or agency of the City as may, from time to time, exercise functions equivalent or similar to those now exercised by the Director of Public Works.
- 1.4. "COMPANY" shall mean Bandwidth IG, LLC, and its lawful successors or assigns as permitted by Section 4.4, hereinafter.
- 1.5. "Default" shall mean a failure on the part of any Party to perform any material obligation imposed upon such Party.
- 1.6. "Emergency" is defined as a complete or partial failure or breakage of any portion of the City infrastructure which impacts services. An emergency repair is defined as remedial activity to protect the public health and safety, in the judgment of the City.
- 1.7. "Encroachment Permit" shall mean that permit required by Chapter 13.04 of the South San Francisco Municipal Code.
- 1.8. "Force Majeure" means an unforeseen cause beyond a Party's control, including but not limited to: any incidence of fire, flood, explosion, war, or embargo; acts of God; commandeering of materials, products, plants, or facilities by the federal, state, or local government; national fuel shortage; or a material act or omission by the other Party; when satisfactory evidence of such cause is presented to the other Party, and provided further that such nonperformance is unforeseeable, beyond the control and is not due to the fault or negligence of the Party not performing.
- 1.9. "Laws" means any applicable order, certificate, judicial decision, statute, constitution, ordinance, resolution, regulation, rule, tariff, administrative order, authorization, permits, or other requirement of any municipality, county, state, federal, or other agency having joint or several jurisdiction over the parties to this Agreement, in effect either at the time of execution of this Agreement or at any time during the location of the Facilities in the Public Right-of-Way including, without limitation, any regulation or order of an official entity or body. A reference to "Laws" shall include, without limitation, any lawful provision of the South San Francisco Municipal Code or any other City ordinance, policy, regulation, or standard specifications.
- 1.10. "Public Right-of-Way" means the surface, the air space above the surface, and the area below the surface of the public streets, roads, sidewalks, lanes, courts, ways, alleys, boulevards, and places including, without limitation, all public utility easements and public service easements as the same now or may hereafter exist that are under the jurisdiction of the City. This term shall not include any property owned by any person or agency other than the City, except as provided by Laws or pursuant to an agreement between the City and any person.
- 1.11. "Telecommunications" shall mean the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.
- 1.12. "Telecommunications Network Facilities" or "Facilities", means cables, conduits, converters,

splice boxes, cabinets, handholes, manholes, vaults, equipment, drains, surface location markers, appurtenances, and related facilities located by COMPANY or to be located by COMPANY in the Public Right-of-Way of City and used by COMPANY solely for the provision of Telecommunications Services. No portion of "Facilities" shall constitute all or any portion of a cable system (as such term is defined in 47 U.S.C. § 522) or community antenna television system operated by COMPANY. "Facilities" shall not include radios, antennas, vaults, pedestals or other enclosures located in the rights-of-way that contain generators, batteries or other back-up power equipment, or that are larger than a standard manhole or handhole, unless permitted consistent with applicable Law (as such terms is defined in this Agreement) and the City's generally applicable standards and required authorizations.

1.13. "Telecommunications Services" shall mean the offering of telecommunications, including, without limitation, the leasing, grant of indefeasible rights of use in, or other provision of dark fiber and other network elements to affiliates and third parties, for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

2. LIMITATIONS AND RESTRICTIONS.

- 2.1. Subject to the provisions of this Agreement and all Laws, the City hereby licenses and permits COMPANY to construct, install, maintain, locate, move, operate, place, protect, reconstruct, reinstall, relocate, remove, and replace (hereinafter collectively referred to as "Construct" or "Construction") the Facilities in, under, over, across and along the Public Right-of-Way in the Authorized Routes for the purposes of providing Telecommunications Services. Any work performed pursuant to the rights granted to COMPANY under this Agreement shall be subject to the prior review and prior approval of the City Engineer, which approval shall be given or denied consistent with applicable Laws and standards.
- 2.2. Prior to any construction by COMPANY in any section of the Authorized Routes as described more particularly in the maps under Exhibit A, COMPANY shall obtain the City Engineer's approval, consistent with all applicable Laws and standards, including a City Encroachment Permit as provided by section 11 of this Agreement, and all other necessary authorizations.
- 2.3. Except as permitted by Laws or this Agreement, in the performance and exercise of its rights and obligations under this Agreement, COMPANY shall not interfere in any manner with the existence and operation of any and all public and private rights-of-way, easements, sanitary sewers, water mains, storm drains, gas mains, poles, overhead and underground electric and telephone wires, electroliers, cable television, and other telecommunications, utility and municipal property without the approval of the owner(s) of the affected property or properties.
- 2.4. Both the City and COMPANY shall expressly comply with all Laws in the exercise and performance of their rights and obligations under this Agreement. Each party preserves all of its rights under all Laws. This Agreement is not a grant by City of any property interest but is made subject and subordinate to the prior and continuing right of City and its assigns to use all the Public Right-of-Way in the performance of its duty, including but not limited to, public use as a street and for the purpose of laying, installing, maintaining, repairing, protecting, replacing, and removing sanitary sewers, water main, storm drains, gas mains, poles, overhead and

underground electric and telephone wires, electroliers, cable television and other utility and municipal uses together with appurtenances thereof and with right of ingress and egress, along, over, across, and in said Public Right-of-Way.

- 2.5. This Agreement is made subject to all easements, restrictions, conditions, covenants, encumbrances, and claims of title which may affect the Public Right-of-Way, and it is understood that COMPANY, at its own cost and expense, shall obtain such permission as may be necessary and consistent with any other existing rights.
- 2.6. The Construction, installation, operation, maintenance, and removal of said Facilities shall be accomplished without cost or expense to City, and shall be performed subject to the reasonable approval of the City Engineer in such a manner as not to endanger personnel or property, or unreasonably obstruct travel on any road, walk, or other access thereof within said Public Right-of-Way and consistent with Laws and all applicable City permits, authorizations, and approval standards.
- 2.7. In the event of an emergency repair of City facilities in proximity to COMPANY facilities, which repair may conflict with or threaten COMPANY facilities, COMPANY shall immediately, upon notice by City, provide a representative to the repair site. Protective measures, as determined by the COMPANY representative, at the election of the City, may be undertaken by the City at COMPANY's expense. Should City not elect to perform such protective action, COMPANY shall provide the resources to conduct the protective measures upon City's demand under the direction of the City and in a manner consistent, in the City's sole discretion, with the execution of the City's responsibilities in the emergency. Priority shall be given to activities necessary to restore City services and for public safety.

3. TERMINATION.

- 3.1. **Duration.** This Agreement shall remain in force and effect for ten (10) years from the Effective Date ("Initial Term"). Upon expiration of the Initial Term, this Agreement shall be automatically renewed for four (4) successive five (5) year terms (each, a "Renewal Term," and, together with the Initial Term, the "Term") upon the same terms and conditions set forth in this Agreement unless either Party issues a written notice of nonrenewal at least one hundred eighty (180) days prior to the expiration of the then-current Term. In the event City issues notice of nonrenewal, the Parties shall diligently and in good faith seek to negotiate a replacement agreement consistent with COMPANY's continuing right under Public Utilities Code § 7901 to use the Public Right-of-Way subject to the City's authority to regulate the terms and conditions of such use.
- 3.2. **Termination.** The City may terminate this Agreement by giving sixty (60) days' notice:
 - 3.2.1. As a result of a determination by City that the provisions herein interfere with the use or disposal of the Public Right-of-Way or any part thereof by City. Where only a portion of COMPANY's Facilities interfere with the use or disposal of the public Rights- of-Way, the City, at its sole discretion, may elect to require COMPANY to relocate the said portion in accordance with Section 10 "Removal and Relocation" of this Agreement.
 - 3.2.2. For failure, neglect, or refusal by COMPANY to fully and promptly comply with any and

all of the conditions of this Agreement, for failure to fully and promptly cure any default of its obligations hereunder of which the City has notified COMPANY in writing, or for nonuse/abandonment in accordance with Section 10 "Removal and Relocation" herein, unless COMPANY confirms within sixty (60) days of receipt of the notice that the cited condition or default has ceased, been corrected or, subject to the City's approval, which shall not be unreasonably withheld, is diligently being pursued or being cured by COMPANY. If such cited condition cannot be cured within sixty (60) days, such cure period will be extended for a reasonable period at the sole reasonable discretion of City provided that COMPANY has commenced and is continuing efforts to cure the default. For the purposes of this section, a failure on the part of any Party to perform any material obligation imposed upon such Party shall constitute a default and a material breach of this Agreement. Notwithstanding anything to the contrary herein, COMPANY shall not be found in default, liable for damages, or otherwise penalized in the event that any failure to comply with any term or condition of this Agreement is a result of COMPANY suffering a Force Majeure beyond its control.

3.2.3. An order entered by a court of competent jurisdiction approving a petition in bankruptcy or ordering the dissolution, winding up, or liquidation of COMPANY or appointing a custodian, receiver, trustee, or other officer to administer a substantial part of COMPANY's property.

3.2.4. The revocation, expiration, or other loss of applicable permits or authorizations required by City, state, or federal law for the use, maintenance, or operation of the Facilities, unless COMPANY establishes to the reasonable satisfaction of the City that it is diligently pursuing renewal or resurrection of such authorization and there is a reasonable likelihood that it will succeed in doing so.

3.3. COMPANY may terminate this Agreement at any time upon thirty (30) days prior written notice to City.

3.4. Upon termination, COMPANY shall abandon or remove the Facilities as set forth in section 10 entitled "Removal and Relocation," unless COMPANY otherwise obtains City approval or authorization required for accessing or locating facilities in the Public Right-of-Way pursuant to applicable Laws, which may include but is not limited to a City Encroachment Permit.

4. COMPLIANCE WITH STANDARDS.

4.1. Prior to any Construction in Public Right-of-Way, COMPANY shall obtain an Encroachment Permit from City. COMPANY shall Construct Facilities in accordance with Laws.

4.2. COMPANY agrees to keep said Facilities in good and safe condition and free from any nuisance, to the reasonable satisfaction of the City Engineer.

4.3. COMPANY agrees to comply with the City's Open Trench Notification and Telecommunication Infrastructure Improvements ordinance most currently adopted by the City Council and Open Trench Notification and Telecommunication Infrastructure Improvements policy(ies) most currently in effect, cooperate in the planning, locating, and constructing of its Facilities in utility joint trenches or common duct banks with other similar

utilities and to participate in cost-sharing for the joint trench and ducts, when such joint utility installations are being planned for or exist in an area, provided however, that participation in such joint utility installments shall be on terms and conditions satisfactory to COMPANY and City.

4.4. The City requires the Facilities to be underground, provided that City shall not require COMPANY to construct new Facilities underground where the facilities of the incumbent local exchange carrier, the electric company, the cable company, or any other wireline telecommunications provider are aerial. The design of all improvements shall be in accordance with Laws and all generally applicable City authorization, permit, and approval requirements.

5. **SERVICES.** COMPANY shall provide Telecommunications Services through the Facilities in the Public Right-of-Way along the Authorized Routes in accordance with the requirements herein.

6. **SERVICE CHANGE.**

6.1. If the nature or character of COMPANY's telecommunications services changes to include cable (television) service (as such term is defined in 47 U.S.C. § 522), open video system (as such term is described in 47 U.S.C. § 573), or broadcast television or community antenna, by COMPANY, COMPANY shall notify City in writing, as soon as practicable, but in any event COMPANY shall notify City in writing at least three (3) months in advance of COMPANY's intent to change the service provided through Facilities. In the event of such a change, COMPANY shall comply with any lawful fee or franchise requirement of City. Should COMPANY become aware that its customers are providing such additional or alternative services, COMPANY shall promptly notify the City of the type/category of these services.

6.2. COMPANY acknowledges that any expansion or change in the character and nature of Telecommunications Services may increase City's regulatory authority over such service and/or product, and this may, at City's election, require COMPANY to enter into a new Agreement consistent with the requirements of a hereinafter-enacted City ordinance regulating such services or the expansion or change in service, if all or any part of such service change falls under the regulation, jurisdiction, and authority of City.

7. **RESERVATION OF RIGHTS.**

7.1. City reserves any and all rights it may have now or in the future to legally regulate or otherwise condition the use of Facilities and related activities and services to be provided pursuant to this Agreement.

7.2. City's approval of this Agreement is not a waiver of and is without prejudice to any right City may have under Laws to regulate, tax, or impose fees or charges on COMPANY or any right COMPANY may have under Laws to provide services through the Facilities pursuant to Laws. COMPANY shall be subject to any future taxes, fees, or charges that City lawfully imposes on the Facilities or services provided through the Facilities in the future.

8. **NO FRANCHISE OR PROPERTY RIGHTS CREATED.** Nothing in this Agreement shall be construed as granting or creating any franchise rights or property interests, or construed as creating a vested right of any nature in COMPANY to use the Public Right-of-Way. This Agreement does

not require City to approve any particular encroachment permit applications, nor does it provide COMPANY with any interest in any particular location within the Public Rights-of-Way.

9. **TAXES.**

9.1. COMPANY shall be solely responsible for the payment of any and all lawful taxes, fees, and assessments relating to its use and maintenance of the Facilities, including but not limited to any property taxes levied on any possessory interest that may be created by COMPANY's use of the Public Rights-of-Way.

9.2. **Telephone Users Tax.** Although the City does not have a telephone users tax and does not anticipate enacting such a tax in the foreseeable future, the City reserves the right to impose a telephone users or comparable tax on COMPANY's service users, and to require COMPANY to collect and distribute such tax to the City, to the full extent permitted by Laws.

10. **REMOVAL AND RELOCATION.**

10.1. Upon receipt of a written demand from the City, COMPANY shall remove or relocate, without cost or expense to City, any Facilities installed, used, and maintained under this Agreement to such other location or locations in accordance with conditions and standards as may be designated by City, if and when made necessary (a) due to any work proposed to be done by or on behalf of the City or other governmental agency, including by any lawful change of grade, alignment, or width of any street, sidewalk or other public facility, installation of curbs, gutters, or landscaping, and installation, construction, maintenance, or operation of any underground subway or viaduct by City and/or the construction, maintenance, or operation of any other City underground or aboveground facilities; or (b) due to a determination by the City that the Facilities are detrimental to governmental activities, including but not limited to, interference with City construction projects, or is in conflict vertically and/or horizontally with any proposed City installation.

10.2. COMPANY shall complete such removal or relocation within ninety (90) days of notification by City, or according to an agreed upon schedule with the City of no less than ninety (90) days, except in the event COMPANY suffers a Force Majeure. If circumstances exist that require a shorter period of time in order to protect the public health, safety, or welfare, the City shall notify COMPANY of the shorter time period required and the reason therefore, and COMPANY shall exercise commercially reasonable best efforts to meet such shorter timeline. The City Engineer, at his or her sole discretion, may grant to COMPANY a longer period of time in which to remove or relocate the Facilities, upon request of COMPANY.

10.3. In the event said Telecommunications Network Facilities are not removed or relocated within ninety (90) days (or other time period if applicable) after said notification and COMPANY has not suffered a Force Majeure, City may cause the same to be done at the sole expense of COMPANY, which COMPANY shall promptly reimburse to the City within thirty (30) days after receiving an invoice for such expenses, including all administrative, legal, and consultant costs. Any removal or relocation work by COMPANY shall only be done pursuant to a City Encroachment Permit for the work.

10.4. If any portions of the Facilities covered under this Agreement are no longer used or useful by

COMPANY, or are abandoned for a period in excess of six (6) months, COMPANY shall notify City and shall either promptly vacate and remove the facilities at its own expense or, at City's discretion, may abandon some or all of the facilities in place. Following such removal or abandonment as approved by the City, Licensee shall have no further obligations to the City under this Agreement with respect to the removed or abandoned portions of the Facilities.

10.5. When removal or relocation are required under this Agreement, COMPANY shall, after the removal or relocation of the Facilities, at its own cost, repair and return the Public Right-of-Way or public utility or service easements on which the facilities were located to a safe and satisfactory condition in accordance with the construction-related conditions and specifications as established by City according to its standard practice. Should COMPANY remove the Facilities from the Public Right-of-Way, COMPANY shall, within ten (10) days after such removal, give notice thereof to City specifying the Right-of-Way affected and the location thereof as well as the date of removal. Before proceeding with removal or relocation work, COMPANY shall obtain an Encroachment Permit from the City. If COMPANY fails to perform said repair work, the City shall have the option to perform such work at COMPANY's sole expense, which COMPANY shall promptly reimburse to the City within thirty (30) days after receiving an invoice for such expenses, including all administrative, legal, and consultant costs.

11. ENCROACHMENT PERMIT AND FEES.

11.1. COMPANY shall apply for an Encroachment Permit for all work and each job within the Public Right-of-Way. COMPANY shall furnish detailed plans of the work, including proposed underground and overhead routes, and other such information as required by the City Engineer necessary for the City's permit review and shall pay all processing, field marking, engineering, and inspection fees, and any other fees that the City may be authorized to impose now or in the future prior to issuance of the permit in accordance with the rates in effect at the time of payment. Said improvements shall be constructed in accordance with Laws, and as further provided for in the provisions of this Agreement. The City may, at its option, require COMPANY to deposit an amount equal to the reasonable estimate of the City's actual costs of issuing an encroachment permit. COMPANY shall pay such deposit in the amount specified by the City prior to the issuance of an encroachment permit. City shall be entitled to draw on this deposit on a time and materials basis as reimbursement for the City's actual costs incurred in issuing the encroachment permit. The City shall refund any unused portion of the deposit to COMPANY upon completion of the work described in the encroachment permit. If, in the event that City reasonably determines that the amount of the deposit remaining will not be sufficient to reimburse the City for its estimated actual costs through completion of the work, City may require COMPANY to deposit an additional reasonable amount within five (5) days of written notice thereof.

11.2. Failure to comply with the terms and conditions of this Agreement may, at City's sole discretion, result in withholding issuance of any new Encroachment Permits, provided, however, that the City must give COMPANY notice and an opportunity to cure.

12. DAMAGE TO FACILITIES IN PUBLIC RIGHT-OF-WAY.

12.1. COMPANY shall be responsible for any damage to Public Right-of-Way due to the Construction performed by COMPANY in Public Right-of-Way, and COMPANY shall repair,

replace, and restore in kind the said damaged facilities in accordance with City standards at COMPANY's sole expense.

12.2.If Public Right-of-Way to be used by COMPANY has preexisting installation(s) placed in the Right-of-Way, COMPANY shall assume the responsibility to verify the location of the preexisting installation and notify City and any third party of COMPANY's proposed installation. The cost of any work required of City to provide adequate space or required clearance to accommodate COMPANY's installation shall be borne solely by COMPANY.

13. RECORDS AND FIELD LOCATIONS.

13.1.COMPANY shall maintain accurate maps and improvement plans of said Facilities located with the City. COMPANY shall, within thirty (30) days after completion of an installation in the Public Right-of-Way, and otherwise upon demand of the City Engineer, deliver to the office of the Public Works Department free of charge, and to other third parties who have submitted permit applications to the City to perform work within Public Right-of-Way for a reasonable charge and subject to reasonable confidentiality restrictions upon request, within thirty (30) days after such demand, such maps and plans as may be required to show in detail the exact location of all Facilities installed within said Public Right-of-Way that will be affected by such work. In addition, the City Engineer requires COMPANY to provide the City with maps and plans on electronic media suitable for a Computer Aided Design and Drafting application. City shall use such information only as needed to manage the Public Rights-of-Way, including, but not limited to, coordination of construction schedules, prevention of interference among the various utilities and systems in the public right-of-way, and enforcement of building and zoning regulations. The parties acknowledge that the City is subject to the requirements of the California Public Records Act, Government Code section 6250 et seq., and may be required to disclose information provided by COMPANY to the City upon request of a third party. For information designated by COMPANY as confidential or proprietary, City shall endeavor to notify COMPANY of such request prior to disclosure of information designated as confidential or proprietary.

13.2. COMPANY shall, at its sole cost and expense, expose by potholing to a depth of one (1) foot below the bottom of its subsurface Facilities, within thirty (30) days of receipt of a written request from City to do so.

13.3. COMPANY shall be a member of the regional notification center for subsurface installations (Underground Services Alert) and shall field mark, at its sole expense, the locations of its underground Facilities upon notification in accordance with the requirements of Section 4216 of the State of California Government Code, as it now reads or may hereinafter be amended.

14. HOLD HARMLESS, RELEASE AND INDEMNIFICATION.

14.1.COMPANY, jointly and severally, for itself, its successors, agents, contractors, and employees, agrees to indemnify, defend (with counsel acceptable to City) and hold harmless City, its officers, employees, and agents and any successors to City's interest from and against any and all claims, injuries, property damages, demands, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and cleanup actions of any kind, all costs and expenses incurred in connection

therewith, including, without limitation, reasonable attorney's fees and costs of defense (collectively, the "Losses") arising directly or indirectly, in whole or in part, out of the activities of COMPANY described in this Agreement, and/or the installation, operation, removal and/or repair of the improvement and Facilities hereunder, except to the extent such Losses are caused by acts of sole or active negligence, gross negligence, or willful misconduct of the City, its officers, employees, agents or representatives. For purposes of this section 14 only, the term "cleanup actions" shall refer to such actions as are necessary to remediate damage caused directly or indirectly by COMPANY, its employees, agents, contractors, or subcontractors. For the purposes of the indemnity obligation under this Section 14, "activities of COMPANY" includes acts or omissions of COMPANY or its employees, sub-grantees, invitees, contractors, subcontractors, or agents relating to the COMPANY's performance of this Agreement.

- 14.2. In the event that COMPANY, its employees, agents, contractors, or subcontractors shall discover contamination or hazardous materials while performing any work in the public right-of-way, regardless of the source, COMPANY shall cause all work to be stopped and shall immediately notify City of the discovery. COMPANY agrees that the provisions of this section shall fully apply in the event of a failure by COMPANY to stop work and immediately notify the City.
- 14.3. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants, and experts, and related costs, and City's costs of investigating any claims against the City.
- 14.4. **Assumption of Risk and Release.** COMPANY assumes all risk of damage to any and all other property of COMPANY, or any property under the control or custody of COMPANY while upon or near the Public Rights-of-Way incident to the use of the Public Rights-of-Way, except to the extent such Losses arise from the sole or active negligence, gross negligence, or willful misconduct of the City, its officers, employees, representatives or agents. COMPANY releases City from any liability, including claims for damages or extra compensation, arising from construction delays due to any activities by City, except to the extent such Losses arises from the City's sole intentional or negligent acts. Under no circumstances shall City be liable to COMPANY for any loss of service downtime, lost revenue or profits or third-party damages.
- 14.5. **Survival.** The provisions of this section 14 shall survive termination of this Agreement.

15. INSURANCE.

- 15.1. Prior to the issuance of an encroachment permit, COMPANY shall obtain and maintain comprehensive general and automotive liability insurance protecting COMPANY in an amount of not less than One Million Dollars (\$1,000,000) per occurrence, including bodily injury and property damage, as a combined single limit or equivalent. Such insurance shall name City, as defined above, as additional insured parties. Coverage shall be in accordance with the limits specified and the provisions indicated herein. Claims-made policies are not acceptable. When an umbrella or excess coverage is in effect, it must follow the form of the underlying coverage. Such insurance shall not be canceled or materially altered to reduce coverage without giving City at least thirty (30) days advance written notice of such cancellation or change, and it shall be the responsibility of COMPANY to notify City of such change or cancellation. This insurance shall apply to all encroachment permits issued under this Agreement.
- 15.2. COMPANY shall file the required original Certificate of Insurance with endorsements with

City, subject to City's approval, and shall clearly state:

- a. Policy number; name of insurance company; name, address and telephone number of agent or authorized representative; name, address and telephone number of insured; project name and address; policy expiration date; and specific coverage amounts.
 - b. That COMPANY's insurance is primary.
- 15.3. **Workers Compensation Insurance:** Prior to the issuance of an encroachment permit, COMPANY shall obtain and maintain statutory Workers Compensation and employer's liability insurance as required by law and furnish City with a certificate showing proof of such coverage. The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, employees, and volunteers for losses arising from COMPANY's performance of this Agreement.
- 15.4. **Insurance Companies:** Insurance companies must be admitted in California and rated at least A- in Best's Insurance Guide.

16. PERFORMANCE BOND.

- 16.1. Prior to the issuance of an Encroachment Permit, COMPANY shall provide City with a performance bond naming City as obligee in the amount equal to one hundred percent (100%) of the cost of the Construction within and affecting the Public Right-of-Way, or two hundred fifty thousand dollars (\$250,000), whichever is less, to guarantee and assure the faithful performance of COMPANY's obligations under this Agreement, unless the City has specifically waived this requirement in writing.
- 16.2. City shall have the right to draw against the bond in the event of a default by COMPANY or in the event that COMPANY fails to meet and fully perform any of its obligations, only after providing COMPANY with notice and an opportunity to cure. The form of the bond shall be subject to the prior approval of the City Engineer.
- 16.3. The bond shall remain in full force until one (1) year after the Construction is completed, inspected, and accepted by the City Engineer.
- 16.4. This Section shall not be construed to eliminate or reduce COMPANY's continuing obligation to repair any damage to the public right-of-way resulting from the installation, relocation, or removal of the Facilities.

17. MISCELLANEOUS.

- 17.1. **Business License.** COMPANY shall obtain a Business License from the City prior to the issuance of an Encroachment Permit under this Encroachment Agreement.
- 17.2. **Assignment.** This Agreement shall not be assignable by COMPANY without the prior written approval of City, which approval shall not be unreasonably withheld, conditioned, or delayed; provided, however, that COMPANY may assign the rights granted hereunder to a parent, successor, or other affiliate of COMPANY (defined for this purpose as any person or entity that, directly or indirectly, controls, is controlled by, or is under common control with

COMPANY; or (ii) a purchaser of all or substantially all of the assets or the equity interests of COMPANY; or (iii) any entity into which COMPANY is merged or consolidated), now or hereinafter existing, by only providing notice to City of such assignment.

17.3. **Entire Agreement.** This Agreement contains the entire understanding between the Parties with respect to the subject matter herein. There are no representations, agreements, or understandings (whether oral or written) between or among the Parties relating to the subject matter of this Agreement which are not fully expressed herein. This Agreement may not be amended except pursuant to a written instrument signed by all Parties.

17.4. **Governing Law.** This Agreement must be construed and enforced in accordance with the laws of the State of California without regard to the principles of conflicts of law. Any action concerning this Agreement must be brought and heard in the state or federal courts encompassing the City of South San Francisco, California.

17.5. **Severability.** If any one or more of the covenants or agreement or portions thereof provided in this Agreement shall be held by a court of competent jurisdiction in a final judicial action to be void, voidable, or unenforceable, such covenant or covenants, such agreement or agreements, or such portions thereof shall be null and void and shall be deemed separable from the remaining covenants or agreements or portions thereof and shall in no way affect the validity or enforceability of the remaining portions of this Agreement.

17.6. **Third Party Notifications.** This Agreement shall be subject to such changes or modifications as may be required or authorized by any regulatory commission in the exercise of its lawful jurisdiction.

17.7. **No Waiver.** The failure of either Party on one or more occasions to exercise a right or to require compliance or performance under this Agreement or any other applicable state or federal law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance by such Party or excuse the other Party from complying or performing, unless such right or such compliance or performance has been waived in writing.

17.8. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which taken together will be one and the same instrument.

17.9. **Successors.** This Agreement is binding upon the successors, assigns, and transferees of the Parties hereto.

18. **NOTICE.** COMPANY's Network Operations Control Center shall be available to City staff 24 hours a day, 7 days a week, regarding problems or complaints resulting from the Facilities installed pursuant to this Agreement and may be contacted by telephone at 1-877-353-1695 regarding such problems or complaints. COMPANY shall designate a person in California who is authorized to accept service of process on behalf of COMPANY. All notices given or which may be given pursuant to this Agreement shall be in writing and transmitted by United States mail or by private delivery systems or by facsimile if followed by United States mail or by private delivery systems as follows:

To COMPANY at:

To City at:

Bandwidth IG, LLC
530 Lakeside Drive, Suite 190
Sunnyvale, CA 94085

City of South San Francisco
Director of Public Works
550 N. Canal St.
South San Francisco, CA 94080
(650) 877-8550

ATTN: Operations

With copies (except for invoices) to:

[Signatures on the Following Page]

DRAFT

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed induplicate on the date and year first written herein.

BANDWIDTH IG, LLC

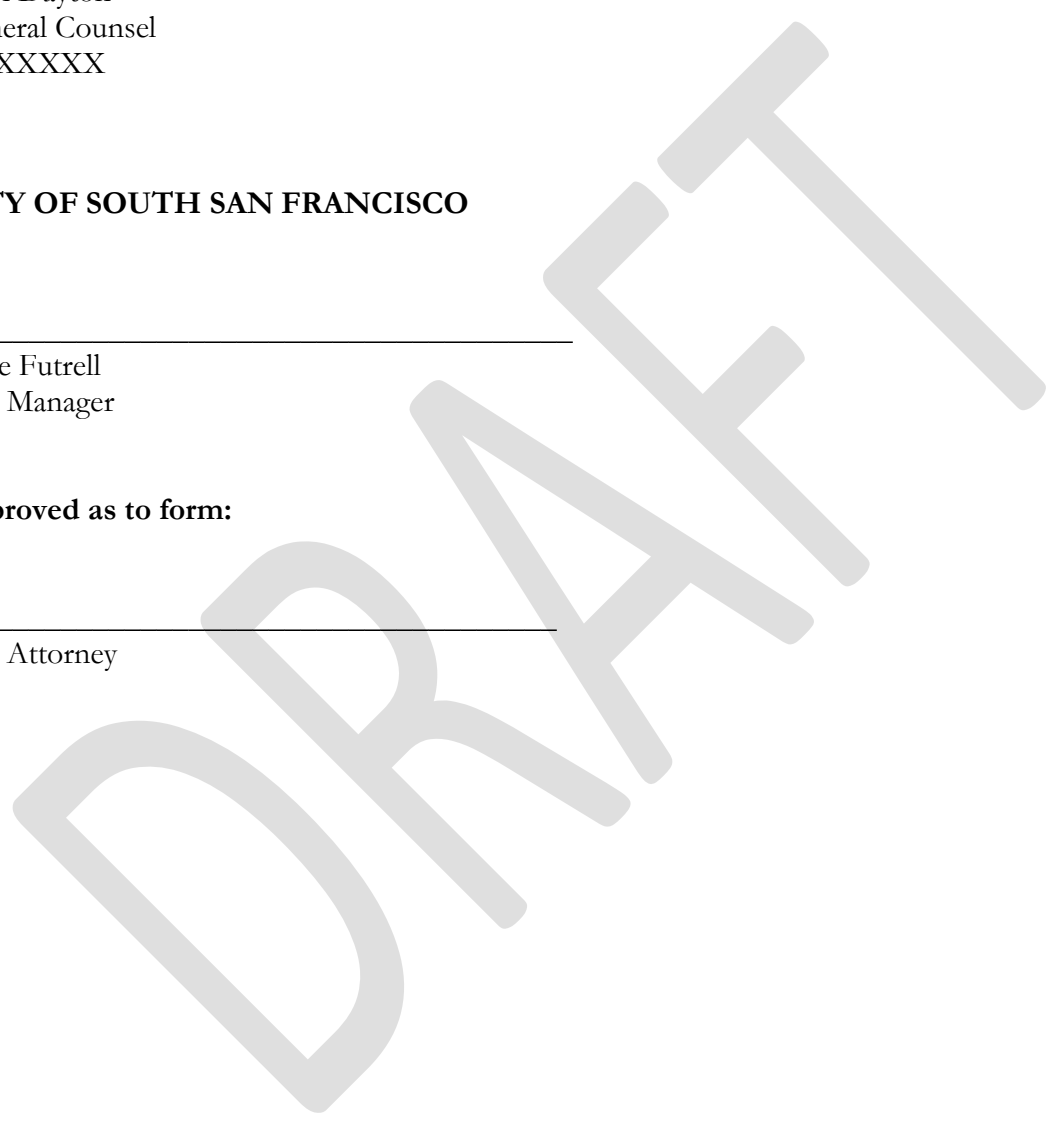
Abbi Dayton
General Counsel
XXXXXXX

CITY OF SOUTH SAN FRANCISCO

Mike Futrell
City Manager

Approved as to form:

City Attorney



ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that Document

State of California
County of _____)

On _____ before me,
_____,'

(insert name and title of the officer)

personally appeared

_____, who
proved to me on the basis of satisfactory evidence to be the person(s) whose name(s)
is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the
same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the
instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the
instrument.

I certify under PENALTY OF PERJURY under the laws of the State of _____ California that
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

**EXHIBIT A [AUTHORIZED
ROUTES]**