

MEMORANDUM

TAB 62

To: CHAIR AND COMMISSIONERS
CALIFORNIA TRANSPORTATION COMMISSION

CTC Meeting: June 27-28, 2024

From: STEVEN KECK, Chief Financial Officer

Reference Number: 4.29, Action Item – **YELLOW REPLACEMENT ITEM**

Prepared By: Jeff Wiley, Assistant Deputy Director
Middle-Mile Broadband Initiative

Subject: **APPROVAL OF TERMS AND CONDITIONS FOR MIDDLE-MILE BROADBAND NETWORK MASTER LICENSE AND SITE LICENSE RESOLUTION G-24-56**

ACTION UPDATE: *Minor edits for clarity.*

ISSUE:

Should the California Transportation Commission (Commission) authorize the California Department of Transportation (Department) to directly negotiate and execute license agreements with private entities working in partnership with the California Department of Technology (CDT) to install open access middle mile broadband network (MMBN) infrastructure and non-MMBN broadband infrastructure within the State Highway right-of-way subject to terms and conditions outlined in the master license agreements and site license agreements?

RECOMMENDATION:

The Department recommends the Commission authorize the Department to directly negotiate and execute license agreements with private entities working in partnership with the CDT to install MMBN infrastructure and non-MMBN broadband infrastructure within the State Highway right-of-way subject to terms and conditions outlined in the master license agreements and site license agreements.

BACKGROUND:

As directed by Executive Order N-73-20 and in accordance with Senate Bill (SB) 156 (Chapter 112, Statutes of 2021) broadband infrastructure will be installed within State Highway right-of-way to create a statewide MMBN. The intent of the MMBN is to provide a reliable and resilient network across the state for local service providers to draw from to improve local connectivity for unserved and underserved communities, regardless of technology used, on

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equal economic and service terms. The MMBN will serve as the backbone infrastructure to support the last-mile effort to bring broadband access at a minimum download speed of 100 megabits per second and at a minimum upload speed of 20 megabits per second to as many Californians as possible.

MMBN Infrastructure

SB 156 defines a statewide open-access middle-mile broadband network as the broadband infrastructure funded pursuant to the Budget Act of 2021, Budget Act Item 7502-062-8506 (Government Code (GC) 11549.50 (f)). SB 156 specifies CDT as the project owner. CDT is collaborating with the Department to install MMBN infrastructure within the State Highway right-of-way, per GC 11549.54 (e). SB 156 declares that the statewide open-access MMBN, as defined, serves a public purpose (GC 11549.56 (d)) and that any lease of public property for the statewide open-access MMBN may be at less than fair market value (GC 11549.56 (d)).

Non-MMBN Broadband Infrastructure

In addition to using the State funds authorized in SB 156 and the Budget Act of 2021, CDT is also partnering with private entities, third-party joint builders, to engage in agreements where the private entity installs and constructs MMBN infrastructure in partnership with CDT to create the statewide open-access network. Utilizing these partnerships does not negate the public purpose of the MMBN but rather expands the network's reach while reducing the State's expenses through cost-sharing of the construction costs with the private entity. These partnerships are also reflective of the Department's Dig Smart policy, which encourages the co-location of infrastructure in an effort to incentivize and expedite new investment. As a result, the people of California benefit from the efficient delivery of the MMBN while also lowering the State's capital costs by leveraging a cost-sharing model and minimizing disruptions from ongoing or duplicative construction.

State and federal law allow the Department to issue permits to private entities to participate in these joint builds and to govern how the Department shall recover associated costs. California Streets and Highways Code (SHC) section 117 provides, "Unless otherwise specifically provided in the instrument conveying title, the acquisition, ownership, or control by the department of any right-of-way over any real property for State Highway purposes includes the right of the department to issue, under Chapter 3 (commencing with Section 660), permits for the location in the right-of-way of any structures or fixtures necessary to telegraph, telephone, advanced communication or information services, or electrical lines or of any ditches, pipes, drains, sewers, or underground structures." The California Code of Regulations, 21 CCR §1412.4 provides, "Broadband providers installing broadband facilities within the State Highway right-of-way shall be responsible for reimbursing the Department for the actual costs incurred by the State to issue an encroachment permit."

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The private entities participating in the joint builds will be installing their own broadband infrastructure within the State Highway right-of-way. They may qualify to license usage of the right-of-way for less than fair market value under federal law. Specifically, under federal law the Department permits on the State Highway right-of-way are subject to 23 CFR 710. Within that law it states, "Current fair market value must be charged for the use or disposal of all real property interests if those real property interests were obtained with Title 23, U.S. Code, funding except as provided in paragraphs (e)(1) through (6) of this section. The term fair market value as used for acquisition and disposal purposes is as defined by State statute and/or State court decisions. Exceptions to the requirement for charging fair market value must be submitted to the Federal Highway Administration (FHWA) in writing and may be approved by FHWA in the following situations: (1) When the grantee shows that an exception is in the overall public interest based on social, environmental, or economic benefits, or is for a nonproprietary governmental use. The grantee's right of way manual or RAMP must include criteria for evaluating disposals at less than fair market value, and a method for ensuring the public will receive the benefit used to justify the less than fair market value disposal." (23 CFR 710.403(e))

23 U.S. Code § 156(b) allows for exceptions to the federal requirement that States shall charge, at a minimum, fair market value for the sale, use, lease, or lease renewal of real property acquired with Federal assistance, to serve a social, environmental, or economic purpose. To obtain an exception, the Department must seek a public interest finding by the FHWA for an exception from fair market value.

FHWA supports broadband as an acceptable public interest. In their 2021 memo "*State DOTs Leveraging Alternative Uses of the Highway Right-of-Way Guidance*" they provide:

"There are two methods for addressing renewable energy, alternative fueling, electrical transmission and distribution, and broadband projects (hereinafter known as "Clean Energy and Connectivity" (CEC) projects) in the ROW of a Federal-aid highway:

1. Accommodation as a utility under 23 CFR Part 645; or
2. Approval as an alternative use of the highway ROW under 23 CFR Part 710.

Based on the environmental benefits that would result from these installations, FHWA has determined that CEC projects located on Interstate or non-Interstate highway ROW qualify for an exception to the fair market value requirement under 23 U. S.C. 156(b)."

In instances where fair market value is required by the FHWA, Caltrans is seeking a public interest finding by the FHWA for an exception from fair market value.

License Agreements

This request of the Commission is for approval of the Master License Agreement for the non-MMBN broadband infrastructure being jointly constructed with state-funded statewide

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open-access MMBN. There will be a master license agreement for each joint builder constructing non-MMBN broadband infrastructure with a site license agreement to correspond with each encroachment permit.

The Department will develop a master license agreement, for approval at a future Commission meeting, for use when installations do not serve a public purpose because the installations do not meet the conditions outlined in SB 156, 21 CCR §1412.4, SHC section 117, or a public interest finding from the FHWA.

CDT is using funds from the American Rescue Plan Act (ARPA), which requires funds to be obligated for construction by December 31, 2024, and for construction to be complete by December 2026. To meet that date, the Department is identifying opportunities to streamline and reduce process durations. The intent of formulating a master license agreement and the criteria for their application for approval by the Commission is to reduce the volume of MMBN joint build lease agreements that come before the Commission. The Department faces tight timelines to meet the ARPA funding schedule and is taking every step to meet the deadlines.

Attachments:

- Attachment A – Terms and Conditions for Middle-Mile Broadband Network Master License Agreements at less than Fair Market Value
- Attachment B – Site License Agreement
- Attachment C – Resolution G-24-56

JOINT BUILD MIDDLE MILE BROADBAND NETWORK MASTER LICENSE AGREEMENT

Licensee: _____

PREAMBLE

This MASTER LICENSE AGREEMENT, hereinafter referred to as "license," dated _____, 20____, is by and between the California Department of Transportation, hereinafter referred to as "LICENSOR," and the above-named Master Licensee, hereinafter called "LICENSEE." Hereinafter collectively referred to as "PARTIES."

For and in consideration of the rental and of the covenants and agreements hereinafter set forth to be kept and performed by the LICENSEE, LICENSOR hereby licenses to LICENSEE and LICENSEE hereby licenses from LICENSOR the Premises herein described for the term, at the rental and subject to and upon all the terms, covenants and agreements hereinafter set forth.

This license is not transferable without LICENSOR approval and with Federal Highway Administration (FHWA) concurrence on Interstates and highways whose real property interest were obtained with Title 23, United States Code, funding.

This license shall be considered the master license terms and conditions for the installation, operation, and maintenance of non-Middle Mile Broadband Network (MMBN) broadband infrastructure that is co-installed with MMBN infrastructure as part of a joint build.

The LICENSOR has determined through due diligence that the State Highway System (SHS) contains segments that are operated under undetermined or unrecorded rights. The LICENSEE may need to acquire permission from the fee owner to install its infrastructure where the LICENSOR may not have sufficient rights. The LICENSOR makes no warranties or representations of rights in these locations.

The PARTIES agree that the LICENSOR cannot legally acquire any property deemed necessary for the project outside the currently owned SHS Right of Way. Any acquisitions outside of the SHS Right of Way will be performed by the LICENSEE and the LICENSEE will own and maintain property the LICENSEE acquires for this project. The PARTIES agree the LICENSOR and LICENSEE, will, at times, need to receive approval of the FHWA prior to the installation of the MMBN and non-MMBN broadband infrastructure wherever real property interests were obtained with Title 23, United States Code, funding. The LICENSEE agrees that it will comply with the requirements and guidelines of the FHWA when required or requested by the FHWA.

The PARTIES further agree that highway safety and environmental equity will be priorities where and how the MMBN and non-MMBN broadband infrastructure is installed, operated, and maintained. Every effort will be made by LICENSEE to design, operate and maintain their infrastructure in such a manner that it does not compromise highway safety for the users of the transportation system or the operations of the system.

The LICENSOR agrees to provide oversight of MMBN and non-MMBN broadband infrastructure installation to maintain safety standards and the operational integrity of the SHS.

The LICENSEE will administer the construction contract for the installation of the MMBN and non-MMBN broadband infrastructure as designed and specified by the LICENSEE and reflected in the plans and specifications for the project identified above and summarized in the Use section of this agreement.

DEFINITIONS

The footprint of the MMBN and non-MMBN broadband infrastructure within the State Highway Right of Way as depicted in the approved plans is hereinafter referred to as "Premises."

Non-MMBN broadband infrastructure that is co-installed with MMBN infrastructure as part of a joint build including, but not limited to, fiber-optic cable and conduit, vaults, and network hub shelters, owned and operated by LICENSEE and its authorized agents during installation, operation, and maintenance within the State Highway Right of Way are hereinafter referred to as "IMPROVEMENTS."

LICENSEE's employees, officers, legal representatives, granted access to the MMBN and non-MMBN broadband infrastructure are hereinafter referred to as "authorized agents."

The term "sale or sales" is defined as a change of ownership from LICENSEE to another party of the physical IMPROVEMENTS as defined.

The term "sublicense" is defined as the transfer of the responsibility to operate and maintain the IMPROVEMENTS.

The term "fully executed" is the date when LICENSOR signs the license.

ARTICLE 1. SUMMARY OF LICENSE PROVISIONS AND TERM

LICENSOR: California Department of Transportation (Caltrans)
LICENSEE:
Premises: See Site License Agreement(s)
License Term: 30 years, commencing when the document is fully executed (per 23 Code of Federal Regulations (CFR) 710.405(b)(2)) with one (1) 10-year option to extend.

Rent: Annual: XXXX (Article 3)
Use: INFRASTRUCTURE (Article 4)
Liability Insurance: \$20 Million (Article 9)
Address for Notices:

LICENSOR:
Department of Transportation Right of Way, Airspace
1120 N Street
Sacramento, CA 95814

LICENSEE:
X X X (Name)
X (Address)
XX, CA XXXXX (City, State, Zip)
(XXX) XXX-XXXX (Phone Number)

ARTICLE 2. PREMISES

LICENSOR hereby licenses to LICENSEE, and LICENSEE hereby licenses from LICENSOR, for the term, at the rent, and upon the covenants and conditions hereinafter set forth, those certain Premises located in the right of way as indicated in Article 1 (per 23 CFR 710.405(b)(3)). The Premises shall be used for the installation of the IMPROVEMENTS, as defined by this agreement, within the SHS Right of Way.

LICENSEE will be responsible for securing all permits from third parties that are determined to be necessary for the installation, operation and maintenance of the IMPROVEMENTS. As mutually agreed to by the PARTIES, LICENSOR will secure permits required for construction of the IMPROVEMENTS needed within the SHS Right of Way, and on state and federal lands. Any permit from any other party or source outside the SHS Right of Way is the responsibility of the LICENSEE.

ARTICLE 3. RENT AND TERM

LICENSEE shall be responsible for rental payment of XXXXX annually.
Term of the rental agreement will be 30 years with one 10-year option to extend.

At the end of the 10-year option, the PARTIES will need to execute a new license if the LICENSEE would like to maintain ownership of the IMPROVEMENTS. The parties agree to evaluate the need for a new license before the end of the 10-year option, or the end of the license if the option is not exercised depending on existing needs of the public and technological developments. The rental rate shall be adjusted based on current statutory requirements for every extension agreed to by the Parties.

ARTICLE 4. USE

The Premises shall be used and occupied by LICENSEE, and its agents, including contractors, subcontractors and support services only and exclusively for the purpose of installation, operation and maintenance of the IMPROVEMENTS as noted in a corresponding Site License Agreement (SLA) and for no other purpose whatsoever without obtaining prior written consent of LICENSOR and the concurrence of the FHWA in accordance with 23 CFR 710.405(b)(7). Revisions in design and installation of a proposed facility shall require prior approval from the LICENSOR and FHWA, if applicable.

This license is non-exclusive. LICENSEE shall allow use of the Premises with other LICENSOR approved third parties if reasonably feasible and does not interfere with LICENSEE's current use of the Premises.

4.1 Compliance with Law

LICENSEE shall not use the Premises or permit anything to be done in or about the Premises which will in any way conflict with any law, statute, zoning restriction, ordinance or governmental rule or regulation or requirements of duly constituted public authorities now in force or which may hereafter be in force, or with the requirements of the State Fire Marshal or other similar body now or hereafter constituted, relating to or affecting the condition, use or occupancy of the Premises. The judgment of any court of competent jurisdiction or the admission of LICENSEE in any action against LICENSOR, whether LICENSOR be a party thereto or not, that LICENSEE has violated any law, statute, ordinance or governmental rule, regulation, or requirement, shall be conclusive of that fact as between LICENSOR and LICENSEE. LICENSEE shall not allow the Premises to be used for any unlawful purpose, nor shall LICENSEE cause, maintain or permit any nuisance in, on or about the Premises. LICENSEE shall not commit or suffer to be committed any waste in or upon the Premises.

4.2 Hazardous Materials

Hazardous materials are those substances listed in Health and Safety Code Section 25260(d), as well as any other substance or materials which may be flammable or pose a hazard to health or environment. Except as otherwise expressly permitted in this license or by the FHWA, LICENSEE shall not use, create, store, or allow any hazardous materials on the Premises. Fuel may be kept on the Premises exclusively for the purpose of powering a backup power generator(s) located at the network hub shelter location(s) if shown in the Site License Agreement. FHWA approval is also required for the fuel storage facility. Fuel in a motor vehicle for the exclusive use in such vehicle is excepted.

LICENSEE shall further defend and hold LICENSOR, and its officers and employees, and FHWA, harmless from all responsibility, liability and claim for damages resulting from the presence or use of hazardous materials on the Premises during LICENSEE's period of use of the Premises (CFR 710.403 (b)(1),(d)).

ARTICLE 5. IMPROVEMENTS

No IMPROVEMENTS of any kind shall be placed in, on, or, upon the Premises, and no alterations shall be made in, on, or, upon the Premises without the prior written consent of LICENSOR through an encroachment permit. Within the right of way of the Interstate Highway System, IMPROVEMENTS must be placed as required in state and federal standards for such IMPROVEMENTS and be approved by FHWA.

Any deviation from the FHWA approved standards and plans must be approved by FHWA. Traffic control devices required during the placement of these IMPROVEMENTS must conform to the California Manual on Uniform Traffic Control Devices and the Caltrans plans and specifications.

LICENSEE will notify LICENSOR in the event LICENSEE receives permits from third parties that impact the Premises in any way and will be responsible for all activities associated with the third-party permit. The LICENSEE shall provide a copy of all third party permits to the LICENSOR.

5.1 Signage

LICENSEE shall not construct, erect, maintain or permit any sign, banner, flag, or advertising media upon the Premises without the prior written approval of LICENSOR. The term "sign" means any card, cloth, paper, metal, painted or wooden sign of any character placed for any purpose on or to the ground or any tree, wall, bush, rock, fence, building, structure, trailer, or thing. Approved signs, banners, flags, or

advertising media shall conform to the state guidelines and standards. LICENSOR may remove any unapproved sign, banner, or flag existing on the Premises, and LICENSEE shall be liable to and shall reimburse LICENSOR for the cost of such removal plus interest from the date of completion of such removal.

ARTICLE 6. OWNERSHIP OF IMPROVEMENTS

All IMPROVEMENTS installed on the Premises pursuant to Article 5 shall, at the expiration or termination of this license, be removed by the LICENSEE with the approval of the LICENSOR and the property upon which the improvements sit will be returned to its original condition at the sole costs and expense of the LICENSEE; since no third party can own or encumber State Highway property, any abandoned IMPROVEMENTS would become property of Caltrans.

Unless mutually agreed to, LICENSOR shall not remove any of these IMPROVEMENTS from the Premises, nor waste, destroy or modify them in any way unless modification is necessary to maintain or upgrade the operation of the State Highway. LICENSEE shall not remove any of the IMPROVEMENTS or modify the IMPROVEMENTS without appropriate notice and application for an encroachment permit. Removal of IMPROVEMENTS by LICENSEE or LICENSOR shall be conducted under 23 CFR 710.405(b)(4), and such removal of IMPROVEMENTS shall be at no cost to the FHWA or LICENSOR.

6.1 Relocation

In the event relocation of the IMPROVEMENTS is necessary due to work on the SHS, the LICENSOR will notify the LICENSEE, and the LICENSEE will provide the LICENSOR a relocation plan within one hundred eighty (180) days. LICENSEE is not entitled to relocation benefits. Any necessary relocation is at the sole expense of the LICENSEE.

6.2 Removal

In the event removal of the IMPROVEMENTS is necessary due to upgrades on the SHS performed by the LICENSOR as part of its responsibility to operate the SHS, or at the termination of the license, the LICENSEE shall be responsible for the removal of the IMPROVEMENTS, and the costs associated with the removal and to return the property to the condition before the IMPROVEMENTS were installed. In the event removal of the IMPROVEMENTS is necessary, the LICENSOR will notify the LICENSEE, and the LICENSEE will provide the LICENSOR a removal plan within one hundred eighty (180) days.

ARTICLE 7. MAINTENANCE OF IMPROVEMENTS

LICENSEE is responsible for the maintenance of the IMPROVEMENTS. LICENSEE, at its

own cost and expense, shall maintain the Premises above ground and IMPROVEMENTS in such a manner that the IMPROVEMENTS and the maintenance of the IMPROVEMENTS will not cause interference with highway safety, operation, maintenance, and efficiency. Maintenance activities must comply with state and federal standards including applicable Caltrans manuals, policies and permits.

Hazardous Conditions

The LICENSEE shall always maintain the IMPROVEMENTS and the Premises immediately surrounding the IMPROVEMENTS in the best possible condition; however, in the event any IMPROVEMENTS pose a hazard to highway safety, LICENSEE shall take all necessary steps to remedy the hazard as quickly as possible. If LICENSEE cannot take timely action to eliminate the hazard the LICENSOR will remedy the condition, and then charge the LICENSEE for the costs of time, labor and material to remedy the hazardous condition.

ARTICLE 8. MAINTENANCE, OPERATIONS AND REPAIRS

Maintenance of the IMPROVEMENTS requires an encroachment permit. LICENSEE must apply for and obtain a permit as applicable to perform maintenance or repair on its installations within the State Highway Right of Way.

8.1 LICENSEE 's Obligations

LICENSEE, at its own cost and expense, shall maintain all Premises above ground, and keep it free of all grass, weeds, debris, and flammable materials of every description. LICENSEE shall ensure that the Premises above ground is at all times in an orderly, clean, safe, and sanitary condition. LICENSOR requires a high standard of cleanliness, consistent with location of the Premises as an adjunct of the California SHS.

LICENSOR and LICENSEE recognize that because of the length of the term of this license it may be necessary for LICENSEE to perform certain substantial maintenance, repair, rehabilitation or reconstruction (hereinafter collectively referred to as "repair" or "repairs") of the improvements in order to ensure that the Premises are kept in first-class order, repair, and condition.

LICENSEE hereby expressly waives the right to make repairs at the expense of LICENSOR and the benefit of the provisions of Sections 1941 and 1942 of the California Civil Code or any successor thereto.

LICENSEE shall take all steps necessary to effectively protect the fences, guardrails, and the piers and columns, if any, of the structure from damage resulting from LICENSEE 's use of said Premises and IMPROVEMENTS, all without expense to LICENSOR.

LICENSEE shall, at its own cost and expense, repair in accordance with LICENSOR 's standards any damage to any property owned by LICENSOR, including, but not limited to, all fences, guardrails, piers, and columns, caused by LICENSEE, sublicensees, invitees or other third parties. At LICENSEE 's request, LICENSOR will repair the damage to its property and LICENSEE agrees to reimburse LICENSOR promptly after demand for the amount LICENSOR has reasonably expended to complete the repair work.

LICENSEE shall designate in writing to LICENSOR a representative who shall be responsible for the day-to-day operation and level of maintenance, cleanliness, and general order.

LICENSEE is responsible for the operation of the IMPROVEMENTS. The IMPROVEMENTS are to be operated at LICENSEE's sole expense. LICENSEE must have executed Site License Agreements for each segment of their IMPROVEMENTS.

LICENSEE is responsible, at LICENSEE's sole expense, for the inspection, operation, maintenance, repair, and condition of the IMPROVEMENTS, so that it does not negatively impact the SHS (including other Caltrans facilities) or its, operations, maintenance, repairs, or other encroachments. Additional permits or approval documents may be required authorizing additional work related to inspection, repair, and/or maintenance activities.

LICENSEE is responsible for IMPROVEMENTS location mark outs (i.e., identification of underground outside physical plant locations) when requested by LICENSOR. LICENSEE shall mark out facilities within 5 business days of receipt of request from LICENSOR unless otherwise agreed to between the parties on a per instance basis.

LICENSEE is responsible for maintaining and updating IMPROVEMENTS "as-built" maps of their completed IMPROVEMENT routes that have been accepted as complete by LICENSEE or its agent for these purposes. The as-builts include any modifications to the facility and general demarcation points where future connections from Last Mile providers will connect into the IMPROVEMENTS. Electronic copies of as-builts must be provided to LICENSOR within 30 days following any modifications to the IMPROVEMENTS.

8.2 LICENSOR 's Rights

In the event LICENSEE fails to perform LICENSEE 's obligations under this Article, LICENSOR shall give LICENSEE notice to do such acts as are reasonably required to so maintain the Premises. If within thirty (30) days after LICENSOR sends written notice to repair, LICENSEE fails to do the work and diligently proceed in good faith to prosecute it to completion, LICENSOR shall have the right, but not the obligation, to do such acts

and expend such funds at the expense of LICENSEE as are reasonably required to perform such work. Any amount so expended by LICENSOR shall be paid by LICENSEE promptly after demand plus interest from the date of completion of such work to date of payment. LICENSOR shall have no liability to LICENSEE for any damage, inconvenience or interference with the use of the Premises by LICENSEE as a result of performing any such work.

ARTICLE 9. HIGHWAY SAFETY

Installation, operation, and maintenance activities within the SHS Right of Way boundaries must comply with state and federal safety standards for maintenance and safety to ensure safety of workers and all users of the facility. Traffic control devices used for installation, operation, and maintenance of the IMPROVEMENTS must conform to the California Manual on Uniform Traffic Control Devices, Caltrans standards, Caltrans Highway Design Manual, and Caltrans Traffic Operations policies, procedures, and guidelines.

ARTICLE 10. INDEMNIFICATION

LICENSEE agrees to defend, indemnify and hold harmless the FHWA and the LICENSOR, its officers, agents, and employees for all claims arising out of any allegedly dangerous condition of public property based upon the installation and existence of the IMPROVEMENTS on the Premises, including but not limited to the existence of the pull boxes and existence of the network hub shelters.

Neither LICENSOR nor any of LICENSOR's officers or employees is responsible for any injury, damage, or liability occurring by reason of the presence of the IMPROVEMENTS on the SHS, LICENSEE is responsible for anything done or not done by LICENSEE under or in connection with any work, operation of the IMPROVEMENTS, authority, or jurisdiction conferred upon LICENSEE or arising under this license.

It is understood and agreed LICENSEE will fully defend, indemnify, and hold harmless LICENSOR and all its officers and employees and FHWA from all claims, suits, or actions of every kind brought forth under any theory of liability occurring by reason of anything done or omitted to be done by LICENSEE under this license. LICENSEE's obligations to defend, indemnify, and hold harmless LICENSOR extends to all claims, suits, or actions of every kind brought forth under any theory of liability occurring due to the existence of the Premises and LICENSEE's operations under this license, any accompanying agreement with LICENSOR, and any encroachment permit issued by LICENSOR.

10.1 Third Party Insurance

LICENSEE shall include in any contract it enters with any third party to conduct work in association with this license, including any contractors who design, construct, or maintain equipment, structures, fixtures or other property, a requirement that the contractor will fully defend, indemnify, and hold harmless FHWA, and LICENSOR and its officers and employees from any and all claims, suits or actions of every kind brought forth under any theory of liability occurring due to the work conducted in association with this license. If LICENSEE has any additional insured endorsements executed by any third parties conducting work in association with this license naming LICENSOR to comply with this provision, LICENSEE shall provide copies of the additional insured endorsements and a Certificate of Insurance to LICENSOR within thirty (30) days of executing this license.

10.2 Obligation to Defend

LICENSEE's obligations to defend and indemnify LICENSOR is not excused because of LICENSEE's inability to evaluate liability or because LICENSEE evaluates liability and determines LICENSEE is not liable. LICENSEE must respond within thirty (30) days to the tender of any defense and indemnity by LICENSOR, unless this time has been extended by LICENSOR.

10.3 Premature License Termination by the PARTIES

If the license is prematurely terminated by the LICENSEE for any reason, the LICENSEE agrees to indemnify, defend, and hold harmless LICENSOR from any third-party claims for damages arising out of the premature termination of the license due to LICENSOR's failure to comply with the requirements of the license. Such third-party claims include any claims from any contractors retained by LICENSEE or its successors. If the license is prematurely terminated without good cause by the LICENSOR, the LICENSOR agrees to indemnify, defend, and hold harmless LICENSEE from any third-party claims for damages arising out of the premature termination of the license due to LICENSOR's failure to comply with the requirements of the license. Such third-party claims include any claims from any contractors retained by LICENSEE or its successors.

10.4 Active Negligence

LICENSEE agrees to defend, indemnify, and save harmless LICENSOR and FHWA, its officers, employees, and agents from all claims, suits or actions of every kind brought forth under any theory of liability with respect to the Premises or the activities of LICENSEE and its agents on the Premises, excluding those arising by reason of the sole or active negligence of LICENSOR, its officers, employees, and agents.

10.5 Liability Insurance

Nothing in this License is intended to establish a standard of care owed to any

member of the public or to extend to the public the status of a third-party beneficiary for any of these insurance specifications.

Workers' Compensation and Employer's Liability Insurance

LICENSEE shall provide workers' compensation and employer's liability insurance as required under the Labor Code and provide LICENSOR the following certification before performing any work (Labor Code § 1861) in connection with this license: "I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

LICENSEE shall provide Employer's Liability Insurance in amounts not less than:

1. \$20,000,000 for each accident for bodily injury by accident
2. \$20,000,000 policy limit for bodily injury by disease
3. \$20,000,000 for each employee for bodily injury by disease

Commercial General Liability Insurance

LICENSEE shall procure Commercial General Liability Insurance with \$20 million per occurrence and aggregate limits covering all operations by or on behalf of LICENSEE, providing insurance for bodily injury liability and property damage liability, and including coverage for:

1. Premises, operations, and mobile equipment
2. Products and completed operations
3. Broad form property damage (including completed operations)
4. Explosion, collapse, and underground hazards
5. Personal injury
6. Contractual liability

LICENSEE shall provide proof of the Commercial General insurance policy with all endorsements, riders, and amendments to LICENSOR on or before the commencement of this license by a Certificate of Additional Insured.

The Commercial General Liability insurance procured by LICENSEE shall also comply with the following:

1. Shall extend to all of LICENSEE's operations and remain in full force and effect during the term of this license.
2. Must be with an insurance company with a rating from A.M. Best Financial Strength Rating of A- or better and a Financial Size Category of VII or better.

3. Shall be on Commercial General Liability policy form no. CG0001 as published by the Insurance Services Office (ISO) or under a policy form at least as broad as policy form no. CG0001.
4. Shall contain completed operations coverage with a carrier acceptable to LICENSOR through the expiration of the latent and patent deficiency in construction statutes of repose set forth in Code of Civil Procedure Section 337.15.
5. Shall name LICENSOR, including its officers, directors, agents (excluding agents who are design professionals), and employees, as additional insureds under the General Liability Policy with respect to liability arising out of or connected with work or operations performed in connection with this License. Coverage for such additional insureds does not extend to liability to the extent prohibited by Insurance Code Section 11580.04.
6. Shall provide additional insured coverage by a policy provision or by an endorsement providing coverage at least as broad as Additional Insured (Form B) endorsement form CG 2010, as published by the ISO, or other form designated by LICENSOR.
7. Shall state the insurance afforded the additional insureds applies as primary insurance. Any other insurance or self-insurance maintained by LICENSOR is excess only and must not be called upon to contribute with this insurance.

LICENSEE shall carry automobile liability insurance, including coverage for all owned, hired, and non-owned automobiles. The primary limits of liability must be not less than \$1,000,000 combined single limit for each accident for bodily injury and property damage.

LICENSOR allows reasonable deductible clauses not overly broad, exceeding \$250,000, or harmful to LICENSOR. LICENSEE agrees by executing this license it shall defend, indemnify, and hold harmless LICENSOR until such deductible is paid or applied to any claim arising out of this license, regardless of LICENSEE's evaluation of liability, as discussed in Section 9.1.

LICENSOR may assure LICENSEE's compliance with LICENSEE's insurance obligations. Ten days before an insurance policy lapses or is canceled during the term of this license, LICENSEE must submit evidence of renewal or replacement of the policy. LICENSEE is not relieved of its duties and responsibilities to indemnify, defend, and hold harmless LICENSOR, its officers, agents, and employees by LICENSOR's acceptance of insurance policies and certificates. The minimum insurance coverage amounts do not relieve LICENSEE from liability in excess of such coverage.

10.6 Self-Insurance

LICENSOR acknowledges that LICENSEE may be self-insured. Reasonable self-insurance programs and self-insured retentions in insurance policies are permitted by LICENSOR. If LICENSEE uses a self-insurance program or self-insured retention, LICENSEE must provide LICENSOR with the same protection from liability and defense of suits as would be afforded by first-dollar insurance (23 CFR 710.405(b)(5)). Further, execution of this license is LICENSEE's acknowledgment that LICENSEE will be bound by all laws as if LICENSEE were an insurer as defined under Insurance Code Section 23 and LICENSEE's self-insurance program or self-insured retention shall operate as insurance as defined under Insurance Code Section 22. LICENSEE shall notify LICENSOR in writing not less than thirty (30) days prior to the effective date of the termination of self-insurance coverage and shall obtain the insurance coverage required by this section effective on that termination date.

1. \$20,000,000 for each individual for bodily injury by accident
2. \$20,000,000 policy limit for bodily injury by disease
3. \$20,000,000 for each employee for bodily injury by disease

10.7 Failure to Procure and Maintain Insurance

If LICENSEE fails to procure or maintain the insurance required by this Article in full force and effect, this license may be terminated immediately by LICENSOR. In addition, if LICENSEE fails to procure or maintain the insurance required by this Article, LICENSEE shall cease and desist from operating any business on the premises and the improvements erected thereon and shall prevent members of the public from gaining access to the premises during any period in which such insurance policies are not in full force and effect.

10.8 Waiver of Subrogation

LICENSEE hereby waives any and all rights of recovery against LICENSOR, or against the officers, employees, agents and representatives of LICENSOR, for loss of or damage to LICENSEE or its property or the property of others under its control to the extent that such loss or damage is insured against under any insurance policy in force at the time of such loss or damages. LICENSEE shall give notice to its insurance carrier or carriers that the foregoing waiver of subrogation is contained in the License.

ARTICLE 11. RIGHT OF ENTRY

11.1 Inspection, Maintenance, Construction, and Operation of Freeway Structures

LICENSOR, through its agents or representatives, and other city, county, state, FHWA and other federal agencies, through their agents or representatives, shall have full right and authority to enter in and upon the Premises and any IMPROVEMENTS situated thereon during the term of this license for the purpose of inspecting the same without interference or hindrance by LICENSEE, its agents or representatives (CFR 710.403).

LICENSOR further reserves the right of entry for the purpose of inspecting the Premises, or the doing of any and all acts necessary or proper on said Premises in connection with the protection, maintenance, reconstruction, and operation of the freeway structures and its appurtenances; provided, further, that LICENSOR reserves the further right, at its discretion, to immediate possession of the same in case of any national or other emergency, or for the purpose of preventing sabotage, and for the protection of said freeway structures, in which event the term of this license shall be extended for a period equal to the emergency occupancy by LICENSOR, and during said period LICENSEE shall be relieved, to the degree of interference, from the performance of conditions or covenants specified herein. LICENSOR further reserves the right of entry by any authorized officer, engineer, employee, contractor, or agent of the LICENSOR for the purpose of performing any maintenance activities upon the property which LICENSEE has failed to perform. Except in the event of a national or other emergency, LICENSOR will provide reasonable notice of the entry. In the event of a national or other emergency, LICENSOR will make best efforts to provide notice to LICENSEE of the entry, even if that entry is after the fact.

11.2 LICENSOR Use of the Premises

LICENSEE understands and agrees that LICENSOR may be required to perform retrofit work on all or a part of the Premises, which are situated on or above the IMPROVEMENTS. LICENSOR shall have the right to impose restrictions on LICENSEE's right to enter, occupy, and use the Premises and to construct transportation improvements thereon to enable it to complete construction of all SHS work without interference from LICENSEE.

In the event LICENSOR determines that it needs to place restrictions on LICENSEE's use of the Premises, LICENSOR shall, at least thirty (30) days prior to the effective date of the commencement of such restrictions, notify LICENSEE in writing describing the extent of the restrictions and the effective date of their commencement and estimated dates of the termination of the restriction. If LICENSOR's work does not restrict LICENSEE's use, then no notification is necessary.

If notice is necessary LICENSOR will provide notices of a change in the termination date at least thirty (30) days prior to the termination date as necessary. Upon the effective date of said notice, LICENSEE shall peaceably surrender possession of the Premises and comply with the restrictions as stated therein. LICENSOR will provide at least thirty (30) days' notice prior to termination of the restriction. In that event, LICENSEE will have no claim upon LICENSOR and waives any and all claims for compensation, damages, or relocation assistance (CFR 710.403).

ARTICLE 12. TERMINATION OF LICENSE

12.1 Termination by Mutual Consent

Notwithstanding any provision herein to the contrary, this license may be terminated, and the provisions of this license may be altered, changed or amended by mutual consent of LICENSOR and LICENSEE per 23 CFR 710.405(b)(4).

12.2 Termination by One Party

Notwithstanding any provision herein to the contrary, this license may be terminated at any time by LICENSEE upon providing LICENSOR with one hundred eighty (180) days prior notice in writing, or by LICENSOR upon providing LICENSEE with one hundred eighty (180) days prior notice in writing. Notices of termination under this section shall be delivered in accordance with the provisions of Section 15.8 to the addresses set forth in Article 1. If the LICENSOR exercises its right to terminate the license under this section, LICENSEE will have no claim upon LICENSOR and waives any and all claims for compensation, damages or relocation assistance (CFR 710.403). If LICENSEE exercises its right to terminate the license under this Section, it immediately forfeits any rights to the Premises. In addition, at the time LICENSEE terminates this license, the IMPROVEMENTS shall be removed at the expense of the LICENSEE. If LICENSOR removes the IMPROVEMENTS, it will invoice the costs associated with the removal of the IMPROVEMENTS and to return the property to the condition before the IMPROVEMENTS were installed, and LICENSOR shall not refund or otherwise reimburse LICENSEE for the remaining unamortized cost of the IMPROVEMENTS.

12.3 Termination of sublicensees and Third-Party Users

All sublicensees or Third-Party users will co-terminate at the termination of this license.

ARTICLE 13. DEFAULT

13.1 Default

The occurrence of any of the following shall constitute a material breach and default of this license by LICENSEE.

- A. The abandonment or vacation of the Premises by LICENSEE. Failure to occupy and operate the Premises for thirty (30) consecutive days following the mailing of written notice from LICENSOR to LICENSEE calling attention to the abandonment shall be deemed an abandonment or vacation.
- B. A failure by LICENSEE to observe and perform any other provision of this license to be observed or performed by LICENSEE, where such failure continues for thirty (30) days after written notice thereof by LICENSOR to LICENSEE; provided, however, that if the nature of such default is such that it cannot be reasonably cured within such thirty (30) day period, LICENSEE shall not be deemed to be in default if LICENSEE shall within such period commence such cure and thereafter diligently prosecute the same to completion.

13.2 LICENSOR's Remedies

In the event of any material default or breach by LICENSEE, LICENSOR may at any time thereafter, without limiting LICENSOR in the exercise of any right of remedy at law or in equity which LICENSOR may have by reason of such default or breach, terminate LICENSEE's right to possession by any lawful means, in which case this license shall immediately terminate, and LICENSEE shall immediately cease use of the Premises and surrender possession of the IMPROVEMENTS to LICENSOR. In such event LICENSOR shall be entitled to recover from LICENSEE all damages incurred by LICENSOR by reason of LICENSEE's default including, but not limited to, the following:

1. Any amount necessary to compensate LICENSOR for all the detriment proximately caused by LICENSEE's failure to perform its obligations under this license or which in the ordinary course of events would be likely to result therefrom; plus
2. At LICENSOR's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable State law. Upon any such re-entry LICENSOR shall have the right to make any reasonable repairs, alterations or modifications to the Premises, or removal of the IMPROVEMENTS which LICENSOR in its sole discretion deems reasonable and necessary, and such costs for repair, alteration, modification or removal shall be the responsibility of the LICENSEE.

ARTICLE 14. SALES, ASSIGNMENTS, SUBLICENSES AND ENCUMBRANCES

The LICENSOR must approve any sale of the IMPROVEMENTS. Any party that purchases the IMPROVEMENTS is obligated to enter into a new use agreement with the LICENSOR, and the FHWA when required.

The LICENSOR must approve any assignments or sublicenses of the IMPROVEMENTS that occupy the Premises. Any assignment or sublicense must be in compliance with all applicable state and federal laws. No assigned or sublicensed LICENSEE shall enter the SHS Right of Way without first receiving permission from the LICENSOR, and if they do so, the LICENSEE will hold LICENSOR harmless and defend LICENSOR for any and all claims that arise out of a non-authorized use of the Premises.

Notwithstanding the foregoing, this agreement only relates to the physical improvements installed on the SHS. As such the electronic information passing through the system is not covered by this agreement and specifically Article 13.

ARTICLE 15. NONDISCRIMINATION

Per 23 CFR 710.405(b)(6), LICENSEE, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

1. no person, on the ground of race, color, or national origin shall be excluded from participation in, be denied the benefits of, or otherwise subjected to discrimination in the use of said facilities,
2. in connection with the construction of any improvements on said land and the furnishing of services thereon, no discrimination shall be practiced in the selection of employees and contractors, by contractors in the selection and retention of first-tier subcontractors, and by first-tier subcontractors in the selection and retention of second-tier subcontractors,
3. such discrimination shall not be practiced against the public in its access to and use of the facilities and services provided for public accommodations (such as eating, sleeping, rest, recreation, and vehicle servicing) constructed or operated on, over, or under the Premises, and
4. LICENSEE shall use the land in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Part 21 (49 C.F.R., Part 21) and as said regulations may be amended. In the event of breach of any of the above nondiscrimination covenants, the LICENSOR shall have the right to terminate this license, and to re-enter and repossess said land and the facilities thereon and hold the same as if said license had never been made or issued.

ARTICLE 16. ADDITIONAL PROVISIONS

16.1 Captions, Attachments, Defined Terms

The captions of the Articles of this license are for convenience only and shall not be deemed to be relevant in resolving any question of interpretation or construction of any section of this license. Exhibits attached hereto, and addendums and schedules initiated by the PARTIES, are deemed by attachment to constitute part of this license and are incorporated herein. The terms of the Master License Agreement shall govern over any attachment. The words "LICENSOR" and "LICENSEE," as used herein, shall include the plural as well as the singular. Words used in neuter gender include the masculine and feminine, and words in the masculine or feminine gender include the neuter. If there be more than one LICENSOR or LICENSEE, the obligations hereunder imposed upon LICENSOR or LICENSEE shall be joint and several.

16.2 Costs of Suit

If LICENSEE or LICENSOR shall bring any action for any relief against the other, declaratory or otherwise, arising out of this license, including any suit by LICENSOR for the recovery of rent or possession of the Premises, the losing party shall pay the successful party a reasonable sum for attorney's fees which shall be deemed to have accrued on the commencement of such action and shall be paid whether or not such action is prosecuted to judgment. Should LICENSOR, without fault on LICENSOR's part, be made a party to any litigation instituted by LICENSEE or by any third party against LICENSEE, or by or against any person holding under or using the Premises by license of LICENSEE, or for the foreclosure of any lien for labor or materials furnished to or for LICENSEE or any such other person or otherwise arising out of or resulting from any act or transaction of LICENSEE or of any such other person, LICENSEE shall save and hold LICENSOR harmless from any judgment rendered against LICENSOR or the Premises or any part thereof, and all costs and expenses, including reasonable attorney's fees, incurred by LICENSOR in connection with such litigation.

16.3 Time, Joint and Several Liability

Time is of the essence of this license and each provision hereof. All the terms, covenants and conditions contained in this license to be performed by either party if such party shall consist of more than one person or organization, shall be deemed to be joint and several, and all rights and remedies of the PARTIES shall be cumulative and non-exclusive of any other remedy at law or in equity.

16.4 Binding Effect; Choice of Law

This license shall be governed by the laws of the State of California.

16.5 Waiver

No covenant, term, or condition, or the breach thereof, shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver or the breach of any covenant, term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition. Acceptance by either party of any performance after the time the same shall have become due shall not constitute a waiver by either party of the breach or default of any covenant, term or condition, unless otherwise expressly agreed to in writing.

16.6 Surrender of License

The voluntary or other surrender of this license by LICENSEE, or a mutual cancellation thereof, shall not work a merger and shall, at the option of the LICENSOR, terminate all or any existing sublicenses or subtenancies, or may, at the option of LICENSOR and upon reasonable notice by LICENSOR to LICENSEE and or SUBLICENSEES, operate as an assignment LICENSOR it of any or all such sublicenses or subtenancies.

16.7 Recording

LICENSEE shall not record this license without LICENSOR's prior written consent, and such recordation shall, at the option of LICENSOR, constitute a noncurable default of LICENSEE hereunder. Either party shall, upon request of the other, execute, acknowledge, and deliver to the other a short form memorandum of this license for recording purposes.

16.8 Notices

All notices or demands of any kind required or desired to be given by LICENSOR or LICENSEE hereunder shall be in writing and shall be deemed delivered forty-eight- (48) hours after depositing the notice or demand in the United States mail, certified or registered, postage prepaid, addressed to the LICENSOR or LICENSEE respectively at the addresses set forth in Article 1.

No Reservation

Submission of this instrument for examination or signature by LICENSEE does not constitute a reservation of or option for license; it is not effective as a license or otherwise until execution and delivery by both LICENSOR and LICENSEE.

16.9 Force Majeure

If either LICENSOR or LICENSEE shall be delayed or prevented from the performance of any act required hereunder by reason of acts of God, governmental restrictions, regulations or controls (except those reasonably foreseeable in connection with the uses contemplated by this license) or other cause without fault and beyond the control of the party obligated (except financial inability), performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. Nothing in this clause shall excuse LICENSEE from prompt payment of any rent, taxes, insurance or any other charge required of LICENSEE, except as may be expressly provided in this license or agreed to by LICENSOR in writing.

In Witness Whereof the LICENSOR and the LICENSEE have executed this license as of the date first written above.

LICENSOR: STATE OF CALIFORNIA
DEPARTMENT OF
TRANSPORTATION

LICENSEE: XXX

By: _____
HQ Office Chief of Date
Real Property Services

By: _____
XX Date
XXXX

JOINT BUILD MIDDLE MILE BROADBAND NETWORK SITE LICENSE AGREEMENT (SLA)

SLA No. _____

Dist.- Co.- Rte.- Parcel – Tenancy

*Previous SLA No. _____ (if
applicable)

Licensee ID: _____

[*A New SLA requires a completed DARC and an EP, whereas a Renewal is an existing site, with no modifications and no EP, having a previous SLA No.]

Subject to the terms and conditions of the Joint Build Middle Mile Broadband Network Master License Agreement (MLA) California Transportation Commission Approved "2024 MLA" between the undersigned Licensee and Licensor, also known as California Department of Transportation, the following described Licensee and location is licensed for unmanned broadband purposes:

1. Licensee: _____
2. Site Address/Description: District, County, Route, Post Mile: _____

3. The Execution Date is the date that the Licensor signs this Agreement.

The Commencement Date is the sooner of either (the date following the expiration of the previous SLA or the issue date of the Encroachment Permit for construction, but not later than six months after the Execution Date). The Renewal Date would be the beginning of the Licensor's fiscal year.

4. Local Licensor contacts for access or 24-hour emergencies (contact number, name(s), titles, phone, etc.):

(Licensee will be responsible for after hour or overtime charges)

5. Local Licensee contacts for access or 24-hour emergencies (contact number, name(s), titles, phone, etc.):

-
6. SLA term is thirty (30) years from the Commencement Date with one separate ten (10) year optional term, unless a shorter term or less number of option years is specified in the special clauses or under MLA terms and conditions. The option to

renew the term must be provided by the Licensee to the Licensor in writing no later than ninety (90) days before expiration of the term.

7. Pursuant to MLA Section 6.2, to the extent reasonably practicable, Licensor shall advise Licensee in writing prior to entering into a Site License of Licensor's plan to retain Licensee's broadband improvements pursuant to this Section.
8. Unless defined in this SLA, the defined terms in this SLA will have the same meaning as the defined terms in the MLA.
9. Special terms, conditions or other notes are attached and initialed by the parties.
(Some examples could include Licensor use, known hazardous substances, special access, maintenance responsibilities, permit requirements.)

Check here if there are special terms or conditions to this agreement.

SITE LICENSE AGREEMENT – SPECIAL CLAUSES

[Insert special clauses – otherwise The remainder of this page is intentionally blank.]

ATTACHMENTS

For Preliminary Approval of this Site License Agreement, the following documents must be attached:

A. For sites not yet constructed:

- 1) Preliminary description and/or map(s) of premises and site licensed, including location of equipment, access and utility routes.
- 2) Estimated Equipment Technical Specifications.

B. For constructed sites:

- 1) Current engineering plans of the premises and site that depict accurate construction as of the Commencement Date of this SLA.

If issuance of an Encroachment Permit for construction is required or on a previously constructed site, the following documents will be needed in addition to approval of the final copies of Section A or B, as applicable:

C. Copy of local building permit and/or local governmental approvals.

D. If on an Interstate, full Federal Highway Administration (FHWA) Approval (including environmental approval).

E. Any legal description of the site developed by Licensee or submitted to the Public Utilities Commission.

F. If Licensee requires recorded notice, Licensee should submit a complete form, a copy of which will be included as an exhibit to this Site License. Licensee is responsible for obtaining any necessary legal description.

G. Planned regular maintenance schedule.

H. All Primaries must have executed MLA's.

LICENSEE: _____

BY: _____

ITS: _____

DATE: _____

LICENSOR: CALIFORNIA, DEPARTMENT OF TRANSPORTATION

BY: _____

ITS: DISTRICT AIRSPACE MANAGER

DATE: _____
("Execution Date")

Exhibit 4: Site License Agreement - Special Clauses

LICENSOR'S USE:

1. Licensor's equipment installed at this site will be a (repeater hub).

ACCESS:

2. As access to the (equipment) is from within access control, Licensee must receive permission from the District Permits Office prior to installing, maintaining, inspecting, modifying any of the equipment. Such request will be in compliance with the Permits Manual. Licensee further acknowledges that no person, employee, vehicle, or equipment will be allowed at the facility that is located within the access control without complying with all the terms of the permit, including appropriate safety measures such as traffic controls. If this provision is violated at any time, Licensor may immediately cancel this Site License.

MAINTENANCE:

3. In addition to the requirements in the Master License Agreement to keep the area around the equipment and repeater hubs free of dirt, litter, debris and graffiti, Licensee will maintain (describe (e.g. landscaping, slopes, fencing, sprinklers, removing graffiti within 24 hours)).
4. Licensee will comply with the (fill in local agency's name) siting requirements (describe, e.g. aesthetic issues) for similar type facilities, and will submit these plans to Licensor for review and approval.
5. Licensee will coordinate construction of their facility with the Caltrans consultant who will be responsible for the construction of a Caltrans project (e.g. an adjoining paving project, widening the park and ride lot, replacing signs, seismic retrofit).

HAZARDOUS MATERIALS:

6. There are (known or unknown- select one) hazardous substances at this location.

PERMITS:

7. In addition to the Encroachment Permit to construct, the Licensee will be required to obtain and keep on file an active maintenance utility permit to maintain equipment within access control.

8. No additional permits from the District Permits Office will be required for this facility once the Notice of Completion of the Encroachment Permit is issued.

SITE:

9. Licensee will provide Licensor with as-built plans to include photographs of the site and location of the utilities within thirty (30) days of construction.

GENERATOR:

INSTALLATION OF GENERATOR: Licensor acknowledges and agrees that Licensee intends to construct and install certain improvements on the Site, which include, but are not limited to, a generator pad, generator connections and a permanent generator (collectively, the "improvements") as shown in Exhibit "A," attached hereto and made a part hereof. Licensor hereby consents to the construction, installation, operation, and maintenance of the Improvements as the same may be modified, added to and/or substituted from time to time during the term of the License, as the same may be extended.

GOVERNMENT APPROVALS: Any required permits for the Improvements shall be obtained by Licensee at Licensee's sole expense. Furthermore, it is understood and agreed that Licensee's ability to install the Improvements is contingent upon its obtaining, after the execution date of this SLA, all the applicable certificates, permits, and other approvals (collectively the "Government Approvals") that may be required by any Federal, State or Local authorities as well as satisfactory soil boring tests which will permit Licensee to install and operate the Improvements as set forth in this SLA. Licensor shall cooperate with Licensee in its effort to obtain such approvals and shall take no action that would adversely affect the status of Licensor's Property with respect to the installation of the Improvements. In the event that any such applications for such Governmental Approvals should be finally rejected or any Governmental Approval issued to Licensee is canceled, expires, lapses, or is otherwise withdrawn or terminated by a governmental authority or soil boring tests are found to be unsatisfactory so that Licensee in its sole discretion will be unable to install, operate, or maintain the Improvements or the Licensee determines that the Improvements are no longer compatible for its intended use, Licensee shall have the right to terminate this portion of the SLA. However, the License shall remain in full force and effect. Notice of the Licensee's exercise of its right to terminate shall be given to Licensor in writing by certified mail, return receipt requested, and shall be effective upon the mailing of such notice by the Licensee. Upon such termination, Licensee shall remain responsible for any spill caused by Licensee or from Licensee's equipment pursuant to overseeing Master License Agreement.

MAINTENANCE: Licensee will be responsible for the maintenance of any and all generator and/or vehicles placed within the Site by Licensee. Any leaks or spills from said generator and/or vehicles will be the sole responsibility of Licensee to mitigate, clean up, and restore as soon as possible after discovery by Licensee or receipt of notice of any such leaks or spills by Licensor or any other party, pursuant to the overseeing Master License Agreement in accordance with and as may be required by applicable law. Licensee is required to comply with all Federal, State, and local water pollution control regulations regarding the routine maintenance and fueling of its emergency generator.

If generator added as an Amendment...

CONTINUED EFFECT: Except as specifically modified by this SLA, all the terms and conditions of the License and the overseeing Master License Agreement shall remain in full force and effect. In the event of a conflict between any term and provision of the License and this Amendment, the terms and provision of this Amendment shall control. In addition, except as otherwise stated in this Amendment, all initially capitalized terms will have the same respective defined meaning stated in the License. All captions are for reference purposes only and shall not be used in the construction or interpretation of this Amendment.

CALIFORNIA TRANSPORTATION COMMISSION
Procedure for Licensing to Private Middle Mile Broadband Entities

RESOLUTION G-24-56

- 1.1 WHEREAS Executive Order N-73-20 directs the California State Transportation Agency and the California Department of Transportation to work with the California Transportation Commission to identify and incorporate the installation of conduit and/or fiber into all appropriate and feasible transportation projects along strategic corridors; and
- 1.2 WHEREAS Senate Bill 156 (Chapter 112, Statutes of 2021) finds and declares that the statewide open-access Middle-Mile Broadband Network (MMBN) serves a public purpose. Notwithstanding Section 104.12 of the Streets and Highways Code and any other applicable law, any lease of public property for purposes of the statewide open-access middle-mile broadband network may be made for less than fair market value; and
- 1.3 WHEREAS Senate Bill 156 (Chapter 112, Statutes of 2021) defines statewide open-access broadband network as the broadband infrastructure that is funded pursuant to item 7502-062-8506 of the Budget Act of 2021; and
- 1.4 WHEREAS private broadband entities working in partnership with the California Department of Technology (CDT) to construct statewide open access middle mile broadband network (MMBN) and non-MMBN infrastructure are referred to as “joint builders”; and
- 1.5 WHEREAS the Streets and Highways Code Section 117 authorizes the Department to issue, under Chapter 3 (commencing with Section 660), permits for the location in the right-of-way of any structures or fixtures necessary to telegraph, telephone, advanced communication or information services, or electrical lines or of any ditches, pipes, drains, sewers, or underground structures; and
- 1.6 WHEREAS Section 671.5 of the Streets and Highways Code provides the department shall either approve or deny an application from an applicant for an encroachment permit within 60 days of receiving a completed application, as determined by the department; and

- 1.7 WHEREAS California Code of Regulations Title 21 §1412.4 states that Broadband providers installing broadband facilities within the State highway right-of-way shall be responsible for reimbursing the Department for the actual costs incurred by the State to issue an encroachment permit; and
- 1.8 WHEREAS in accordance with Title 23, Section 710.405 of the Code of Federal Regulation, non-highway alternative use of real property interest require approval by the Federal Highway Administration (FHWA), including a determination that such occupancy, use, or reservation is in the public interest; and
- 1.9 WHEREAS in accordance with Title 23, Section 710.403 of the Code of Federal Regulation, exception to the requirement for charging fair market value must be submitted to FHWA in writing and may be approved by FHWA when the Department shows that an exception is in the overall public interest based on social, environmental, or economic benefits, or is for a nonproprietary governmental use; and
- 1.10 WHEREAS the Commission approved resolution G-19-43 on October 9, 2019 in which the Commission authorized the Department to enter into leases with public agencies without specific Commission approval for each airspace lease as outlined in the resolution.
- 2.1 NOW THEREFORE BE IT RESOLVED that the Commission authorizes the California Department of Transportation to directly negotiate with joint builders' selected by the CDT and execute license agreements for joint builders' broadband infrastructure within the State Highway right of way subject to terms and conditions outlined in the master license agreement; and
- 2.2 BE IT FURTHER RESOLVED that the Director of Transportation shall, when necessary, seek and obtain approval from FHWA for an exception to Title 23, Section 710.403 of the Code of Federal Regulation; and
- 2.3 BE IT FURTHER RESOLVED that the Director of Transportation is authorized to establish policies and procedures setting forth the specific terms and guidelines within which to administer the development of the non-MMBN broadband infrastructure as prescribed in this resolution and the law; and

- 2.4 BE IT FURTHER RESOLVED that the Commission has reviewed the Master License Agreement terms and conditions on June 27, 2024, and the Department shall submit the Master License Agreement for the Commission's review and approval within every five-years thereafter.