

**DEPARTMENT OF PUBLIC WORKS
BUREAU OF STREET LIGHTING
REPORT NO. 1**

DATE DECEMBER 18, 2024

C.D. 8

Honorable Board of Public Works
of the City of Los Angeles

**JOINT BUILD AGREEMENT - CALIFORNIA DEPARTMENT OF TECHNOLOGY
BUREAU OF STREET LIGHTING 110 CORRIDOR FIBER OPTICS INFRASTRUCTURE
PROJECT (MIDDLE MILE BROADBAND INITIATIVE)**

RECOMMENDATIONS:

Recommending the Board of Public Works (Board):

1. AUTHORIZE the Executive Director of the Bureau of Street Lighting (BSL) to negotiate and execute agreements and amendments, subject to the approval of the City Attorney as to form, which may be necessary to enter into the Joint Build Agreement for a joint-use fiber optics infrastructure project adjacent to the 110 Corridor with the California Department of Technology (CDT); and
2. AUTHORIZE the Bureau of Street Lighting to receive, budget and program funds from the California Department of Technology into the General Fund 100, Department 84, Bureau of Street Lighting for the engineering and construction of this project; and
3. AUTHORIZE the use of up to \$900,000 from the Digital Inclusion Fund (65Q/50/50VUBS) to front-fund the Bureau of Street Lighting for the final 10% of the project which will not be pre-paid from CDT to BSL; and
4. AUTHORIZE the Bureau of Street Lighting, to transfer up to \$900,000 from available funds within the Digital Inclusion Fund (65Q/50/50VUBS) to the General Fund 100, Department 84, Bureau of Street Lighting; and
5. AUTHORIZE funds received from the CDT to be deposited into the Digital Inclusion Fund cash balance (65Q/50) until full repayment is made by no later than June 30, 2027; and
6. AUTHORIZE the Bureau of Street Lighting, Executive Director, or designee, to make any technical or accounting updates to the recommendations above to effectuate the intent of the Board of Public Works.

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TRANSMITTALS

1. Joint Build agreement, dated December 10, 2024.

DISCUSSION

Background

For the past year BSL has been working with the State of California's Middle Mile Broadband Initiative (MMBI) on developing a contract wherein the State will pay the Bureau to construct a 13 mile middle-mile fiber conduit line roughly along the 110 freeway from downtown to the 91 freeway. As the funding for the MMBI initiative comes from the American Rescue Plan Act, the contract must be entered into by both parties by December 31, 2024.

The planned route is a key part of the 10,000 mile MMBI middle-mile fiber optics network, which ties together Internet Exchange Points (IXPs) throughout the State and provides the backbone for a "public option" for middle-mile internet traffic (the traffic between a given community and an IXP, where all internet communications take place). Lack of access to affordable and readily-available middle-mile fiber connections to internet exchange points is a primary barrier of entry for new internet service providers and also a barrier to expanded Smart services and public facilities connectivity.

The 110 corridor route was heavily advocated for inclusion in the State MMBI by Mayor Bass, multiple Council Offices, Supervisor Holly Mitchell's Office, as well as digital equity advocates in LA, as the route passes through the highest concentration of disconnected and underconnected households in the State. The State had previously announced that it was unable to build the 110 corridor route due to rising construction costs. However, they were able to reconsider the route after Supervisor Holly Mitchell's Office convened meetings between the State and BSL to pursue a plan using BSL's much lower per-mile costs for conduit construction which are due to the Bureau's almost 100 years of underground conduit construction experience. Based on the approximately 3.5 miles of fiber-specific conduit the Bureau has built as part of recent pilot projects, BSL has determined it can deliver underground fiber conduit at roughly 50-60% the per-mile cost of standard private sector methods.

The City will also end up with a substantial asset in the form of new conduit capacity along this corridor for current or future City purposes. The project plan, detailed below, involves the City retaining ownership of the outside conduit, with the seven inner conduits split in ownership between the City and State (four for the State, three for the City). One of the most significant opportunities for the Bureau is to use this new capacity for the installation of fiber-optic cable for streetlight monitoring and high-resolution cameras for copper wire theft deterrence. The 110 corridor is a long-standing "hot spot" for copper wire theft, and mobile-connected cameras do not provide high-enough resolution to capture license plates and other identifiable characteristics of thieves which are needed for perpetrator identification and prosecution.

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Post-construction, the City/Bureau will not be responsible for any maintenance of the infrastructure. If/when the Bureau or another agency within the City installs fiber within the City-owned conduits (each conduit is capable of holding 288+ strands of fiber), then the City can enter into a new agreement with the State to share costs for joint maintenance and emergency restoration in the case of severe damage to the infrastructure (for fiber-optic conduit, this is most commonly due to the conduit being hit by construction crews digging in the public right-of-way).

As with any ARPA-funded project, the construction of the route must be completed by the end of 2026. Based on the Bureau's experience with fiber pilot projects to date, this timeline will be feasible with our current regular staff, overtime, and hiring hall resources, though we have the option to bring on additional contractors if needed. The route will cross Metro light rail tracks in downtown Los Angeles and a freeway off-ramp in South LA, both of which will require coordination with outside entities, though these crossings have already been discussed with these entities and we are confident that they are feasible within the two-year construction period.

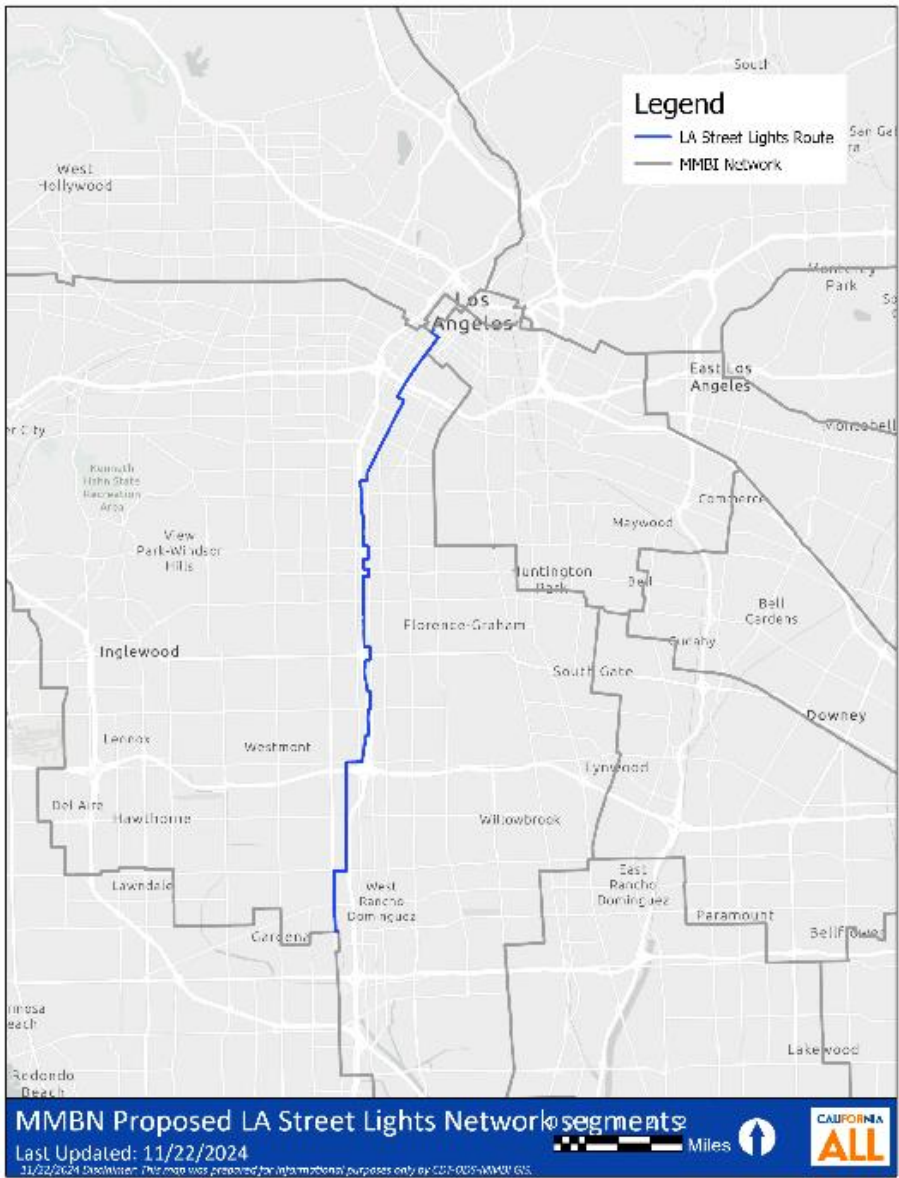
Scope of Work Detail

The Project Scope of Work consists of a subterranean fiber optics infrastructure line of approximately 13.31 miles located entirely within the boundaries of the City of Los Angeles, starting at roughly the intersection of 7th St. and Grand Ave in Downtown Los Angeles and terminating at roughly the intersection of Ainsworth St. and Alondra Blvd. in Harbor Gateway. Pull boxes (referred to in the agreement as "vaults") intended for the installation, operation, and maintenance of fiber optics cables will be installed at regular intervals along the route for State operations. All infrastructure will be installed within the sidewalk limits except for at intersections to cross roadways. To as great an extent as possible, infrastructure will be installed within the 4 feet rearward from the curb face reserved for use by the Department of Public Works per LAMC SEC. 62.03.a.

The core infrastructure consists of an outer High Density Polyethylene (HDPE) conduit with an estimated outer diameter (OD) of 3.25 inches and an oversheath thickness of 0.05 inches. The HDPE conduit houses 7 separate "inner-duct" conduits, each with a different color, measuring 27 millimeters (mm) in OD and 20 mm in inner diameter (ID). Four of these inner-ducts will be transferred to the ownership of the State of California. In support of State operations, BSL will install one 288-count fiber line within one of these conduits. The three remaining inner-ducts will remain in the ownership of BSL for future use. Nominally, the outer conduit will remain in the ownership of BSL, though no maintenance will be required of the Bureau. The State will be authorized to make repairs to the infrastructure through a separate, future agreement.

Smaller CDT vaults (30" x 48" x 36") will be installed at roughly 2,500 ft intervals and larger CDT (48" x 48" x 48") vaults will be installed at roughly 12,000 ft intervals.

A map of the planned route for the project is below, within the context of other MMBI routes in the City and region. This route is subject to change in response to field conditions and underground utility discovery.



Payment and Payment Schedule

BSL and CDT have agreed on a per-mile payment from CDT of \$648,316.30. This number was developed by BSL to cover all engineering and construction costs based on the roughly 3.5 miles of fiber infrastructure that the Bureau has constructed as part of ARPA-funded Community Connectivity Pilot Projects. With a total project build of 13.31 miles, the total payment from CDT to BSL will equal \$8,629,089.95. The below tables from the agreement provide a breakdown of the payment and per-mile costs.

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Total Project Miles: 13.31

Per Mile CDT Payment:	\$648,316.30
Total CDT Payment:	\$8,629,089.95

Breakdown: Conduit and Vaults

	Per Mile	Project Total	Notes
Materials	\$101,374.55	\$1,349,295.26	Assumes CDT Provision of CDT Vaults
Equipment	\$154,683.65	\$2,058,839.38	
Labor	\$255,748.66	\$3,404,014.66	
TOTAL	\$511,806.86	\$6,812,149.30	

Breakdown: Fiber Cable

	<u>Per Mile</u>	<u>Project Total</u>	<u>Notes</u>
Materials	\$13,379.74	\$178,084.34	Assumes BSL Purchase from CDT
Equipment	\$46,405.10	\$617,651.88	
Labor	\$76,724.60	\$1,021,204.43	
TOTAL	\$136,509.44	\$1,816,940.65	

Ninety percent (90%) of the project costs will be paid for by CDT in advance according to the following schedule. The final 10% will be held until final acceptance and completion by the State of all segments. To cover this final 10% of costs, the Bureau is requesting authority to front-fund using digital inclusion fee revenue received as part of co-location leases. These funds will be reimbursed once the City receives the final payment.

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Invoice Event	Amount Owning*
Effective Date (Date this Agreement is signed). This is an upfront payment before work commences.	50% (\$4,314,544.98)
Completion of 50% (based on Route Miles completed and accepted by CDT) of CDT's portion of the "Project" set forth in Exhibit A – Statement of Work	25% (\$2,157,272.49)
Completion of 75% (based on Route Miles completed and accepted by CDT) of CDT's portion of the "Project" set forth in Exhibit A – Statement of Work	15% (\$1,294,363.49)
Acceptance of the Completion Notice with respect to each and every Segment of the Joint Build	10% (\$862,909.00)
Total	\$8,629,089.95

STATUS OF FINANCING

There is no impact to the General Fund. 90% of the project will be pre-paid as per the terms of the Joint Build Agreement. Front-funding for the last 10% for the project will come from the BSL Digital Inclusion Fund 65Q/50/50VUBS via funds from the digital inclusion component of co-location lease fees. These funds will be reimbursed when the project is fully completed and the final payments from CDT are made to BSL.

Report prepared by:

Dan Caroselli, Sr. Management Analyst
DIGITAL INCLUSION AND PERFORMANCE
MANAGEMENT DIVISION
310-920-2712

Respectfully submitted,



Miguel Sangalang, Director
Bureau of Street Lighting

EXHIBIT 0

JOINT BUILD AGREEMENT

THIS JOINT BUILD AGREEMENT (“**Agreement**” or “**Contract**”), effective as of _____, 2024 (the “**Effective Date**”), is made by and between **City of Los Angeles**, acting by and through its **Bureau of Street Lighting** (“**BSL**” or “**City**”), and California Department of Technology – Office of Broadband & Digital Literacy (“**CDT**” or “**State**”).

RECITALS

WHEREAS, in connection with the California Middle-Mile Broadband Network Initiative specified in California Government Code section 11549.53, which was enacted as part of Senate Bill 156 (Stats. 2021, Ch. 112, Sec. 3, effective July 20, 2021), the State of California is implementing a statewide open-access middle-mile broadband network (the “**California Middle-Mile Broadband Network**”);

WHEREAS, CDT must use the Federal and State funding allocated for the planning, design and construction of the California Middle-Mile Broadband Network no later than December 31, 2026;

WHEREAS, each Party intends to install, construct, own and operate underground conduit facilities in connection with each Party’s respective operations; and

WHEREAS, to minimize the costs of constructing separate trenches and Facilities, the Parties are willing to construct such trenches and Facilities jointly and to share the costs of such construction in accordance with the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the foregoing premises and mutual promises hereinafter contained, the Parties hereby agree as follows:

AGREEMENT

1. Certain Definitions. Unless otherwise defined in this Agreement, the Statement of Work, Exhibits, and Schedules capitalized terms used in this Agreement shall have the meanings set forth below:
 - a. “**Acceptance Testing**” means testing of the Joint Build to ensure that the Joint Build complies with the Specifications.
 - b. “**Access Point**” means a manhole, handhole or other opening, in the Joint Build that is owned by a particular Party, and by which such Party may enter the Joint Build for the purpose of installing and maintaining Facilities.
 - c. “**Affiliate**” means any Person controlling, controlled by, or under common control with another Person.
 - d. “**Agreement**” means this Agreement as defined in the introductory paragraph and includes all Exhibits, Statements of Work, Schedules and any other materials attached hereto (and the respective exhibits, annexes or other attachments of each of them).
 - e. “**Authorizations**” means all rights, easements, licenses, permits, approvals, agreements and other authorizations required by any Governmental Authority and any other third-party agreements necessary to complete the Work contemplated by this Agreement and to enable each Party to access, occupy and use the right-of-way to be occupied by the Facilities to be constructed pursuant to the full extent contemplated herein.
 - f. “**BSL**” is defined in the introductory paragraph of this Agreement.

- g. **"Business Day"** means any day other than Saturday or Sunday or a public holiday in the State of California.
- h. **"California Middle-Mile Broadband Network"** is defined in the Recitals.
- i. **"CDT"** is defined in the introductory paragraph of this Agreement.
- j. **"CDT Project Cost Share"** is defined in Exhibit E.
- k. **"CDT Facilities"** is defined in Section 6.
- l. **"Completion Notice"** means a written notice provided by BSL to CDT that the Joint Build or a specified Segment of the Joint Build is installed and operating in all material respects in conformity with the Specifications in the form of Exhibit H.
- m. **"Conduit"** means a structure containing one or more Innerducts.
- n. **"Construction Schedule"** is defined in Section 2.1 of the Statement of Work.
- o. **"Contract"** means this as defined in the introductory paragraph and includes all Exhibits, Statements of Work, Schedules and any other materials attached hereto (and the respective exhibits, annexes or other attachments of each of them).
- p. **"Drawings"** means a copy of the engineering drawings to be provided by BSL to CDT prior to BSL's commencement of the Work.
- q. **"Effective Date"** is the date specified in the introductory paragraph of this Agreement and is the date this Agreement first becomes effective.
- r. **"Escalation Process"** is defined in Section 19.
- s. **"Facilities"** means Innerducts, Conduits, Access Points, Vaults and associated equipment, devices and hardware that are supplied by, or installed or designed for, a particular Party.
- t. **"Force Majeure Event"** is defined in Section 24 of Exhibit C.
- u. **"Governmental Authorities"** means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.
- v. **"Initial Term"** is defined in Section 10.
- w. **"Innerduct"** means a single enclosed raceway acceptable for communications cables.
- x. **"Joint Build"** means a trench and any combination of poles, ducts, Conduits, Access Points, Vaults and other Facilities to be constructed under the terms of this Agreement and the Statement of Work.
- y. **"Lead Entity"** means the Party who is responsible for managing the Work for the Joint Build. .
- z. **"Materials"** is defined in Section 5.e.
- aa. **"Materials Reimbursement Amount"** is defined in Exhibit B.

- bb. **"Materials Purchase"** is defined in Exhibit K.
- cc. **"Materials Transfer"** is defined in Exhibit K.
- dd. **"Middle-Mile Legislation"** means California Government Code section 11549.53, which was enacted as part of Senate Bill 156 (Stats. 2021, Ch. 112, Sec. 3, effective July 20, 2021).
- ee. **"Participant"** means a Party other than BSL who is responsible for paying its share of the Project Costs in consideration for its participation in the Joint Build and ownership rights in a certain defined portion of said Joint Build.
- ff. **"Party"** means a party to this Agreement.
- gg. **"Person"** means an individual, association, partnership, corporation, or other legally recognized entity.
- hh. **"Project"** is defined in Section 1.1 of the Statement of Work.
- ii. **"Project Costs"** means all labor, transportation, supervision, materials and other direct costs associated with the Work, other than the costs which are to be borne entirely by one Party pursuant to this Agreement or the Statement of Work.
- jj. **"Purchase Order"** is defined in Exhibit K.
- kk. **"Purchase Order Credit Invoice"** means a Purchase Order Invoice issued by BSL to CDT with respect to Materials for credit (rather than payment) in the form of Exhibit N.
- ll. **"Purchase Order Invoice"** means an invoice issued by BSL to CDT with respect to Materials.
- mm. **"Relocation Management Fee"** is defined in Section 8.
- nn. **"Renewal Term"** is defined in Section 10.
- oo. **"Route Description & Route Map"** is defined in Section 1.1 of the Statement of Work.
- pp. **"Segments"** is defined in Section 1.1 of the Statement of Work.
- qq. **"Shadow Vault"** means a Vault owned by CDT that is located next to or near BSL's Vault, as more particularly specified in the Specifications.
- rr. **"Specifications"** means technical specifications as set forth in the Statement of Work.
- ss. **"Statement of Work"** means the written description of the Work and the respective responsibilities of BSL and CDT with respect thereto, all as set forth on Exhibit A.
- tt. **"Stop Work Order"** means a written demand specifically identified as a "Stop Work Order" made by CDT to BSL requesting the cessation of all or any portion of the Work pursuant to the terms Section 45 of Exhibit C.
- uu. **"Supplemental Specifications"** is defined in Section 4.1 of the Statement of Work.
- vv. **"Term"** is defined in Section 10.
- ww. **"Vault"** means a utility vault giving access to various other components of the Facilities.

xx. **"Work"** means all work required for the completion of the construction of the Joint Build in full conformity with the Drawings and Specifications, including all preparatory work, placement, construction, installation and make-ready work, and all management, and engineering services required in connection therewith.

yy. **"Work Authorization"** is defined in Exhibit K.

2. Terms and Conditions. General terms and conditions of this Agreement are set forth in Exhibit C of this Agreement.
3. Roles of Parties. BSL will serve as the Lead Entity under this Agreement, and CDT will serve as the Participant. To avoid confusion and provide clarity, CDT is the only Participant for purposes of this Agreement.
4. Governmental Authorities. Each Party agrees to comply with all applicable laws, rules, and regulations relating to the installation, construction, maintenance and use of the Joint Build, including its Facilities. Each Party will file all necessary applications and take all further actions as may be required in order to obtain, prior to the commencement of construction under the Statement of Work, all Authorizations required for such Party's performance of its obligations hereunder. It shall be BSL's obligation hereunder to obtain such Authorizations as may be necessary to ensure each Party's ability to exercise its respective rights to access, occupy, use, and maintain the Facilities and the right-of-way to be occupied by the Facilities to the full extent contemplated herein. Each Party shall provide written evidence of such Authorizations to the other Party upon request. To the extent that any necessary Authorization requires issuance in the name of CDT, CDT may appoint BSL as its agent for purposes of obtaining such Authorization by delivering an appointment letter substantially in the form of Exhibit F (an **"Appointment Letter"**) to the Governmental Authority or other Person issuing such Authorization. With respect to any appointment of BSL as agent of CDT pursuant to an Appointment Letter, BSL (i) accepts such appointment and agrees to act as CDT's agent as contemplated therein, (ii) acknowledges and agrees that any documents to be executed by it on behalf of CDT pursuant to such appointment shall be executed as specified in the Appointment Letter, and (iii) agrees that it shall be responsible to completely review all application materials prior to their submission on CDT's behalf, to adhere to all regulatory requirements in connection with the same, and to schedule and participate in such meetings with the issuing Governmental Authority or other Person as may be necessary or appropriate for the issuance of the applicable Authorization.
5. Prosecution of Work.
 - a. Approval of Drawings and Costs. Prior to the commencement of Work, BSL shall provide CDT with a copy of the Drawings and the cost breakdown of the Project Costs. CDT shall have twenty (20) Business Days after its receipt of the Drawings and the cost breakdown to either accept or reject the Drawings or the cost breakdown by delivery of a written notice (reasonably detailed, in the case of a rejection) to BSL. If CDT neither accepts nor rejects the Drawings and the cost breakdown within such twenty (20) day period, the Drawings and the cost breakdown shall be deemed rejected by CDT as of the last day of such twenty (20) day period. In the event of CDT's rejection or deemed rejection of the Drawings or the cost breakdown, the Parties shall coordinate promptly and in good faith to attempt to reach full agreement on the Drawings and cost breakdown. If the Parties cannot reach full agreement within thirty (30) days of CDT's rejection or deemed rejection of the Drawings or the cost breakdown (or within such longer period as may be agreed by the Parties in writing), CDT may terminate this Agreement as provided in Section 13, whereupon CDT shall reimburse BSL for the reasonable costs it incurred by reason of CDT's agreement to participate in the Joint Build.
 - b. Management of the Work. Upon acceptance of the Drawings and cost breakdown, BSL shall be responsible for all Work, including the hiring and management of any contractor

and subcontractors and the acquisition of all required construction permits and other Authorizations. BSL shall provide CDT with a copy of all construction permits and other Authorizations it obtains. BSL shall perform the Work in a good and workmanlike manner and in accordance with the specifications of this Agreement, the Drawings, the Statement of Work (including the Specifications set forth therein), the Occupational Safety and Health Act, the National Electrical Safety Code, the National Electrical Code, applicable industry standards, and laws and regulations of applicable Governmental Authorities. BSL shall timely pay each invoice it receives from BSL's contractor, subcontractors and material suppliers who supplied labor or materials for the Work, and upon CDT's receipt of evidence of payment from BSL, CDT shall reimburse BSL for a portion of each applicable invoice amount based upon the CDT Project Cost Share. BSL shall be solely responsible for removing any liens on the Joint Build; provided that CDT shall reimburse BSL for all costs of removing any liens placed on the Joint Build (including reasonable attorneys' fees and costs) which arise from non-payment or late payment to subcontractors or suppliers due to failure of CDT to make timely payments hereunder. Upon the commencement of the Work, BSL shall designate in writing an authorized representative in connection with the Work to whom CDT may direct all communications to BSL concerning the progress and status of the Work and shall prepare and provide to CDT a construction schedule and progress report from time-to-time, but not less than once every thirty (30) days. CDT shall have the right, but not the obligation, to inspect the Work from time-to-time prior to its completion, subject to the restrictions and consent of any Governmental Authority or other third party owning or controlling all or any portion of the real property rights-of-way upon which the relevant portion of the Joint Build is constructed.

- c. Materials. Except as may be otherwise set forth in this Agreement, BSL shall arrange for the purchase and delivery of its materials required for the construction of the Joint Build as set forth in the Statement of Work. All materials supplied shall comply with the Specifications set forth in the Statement of Work. CDT agrees to enable BSL to purchase from CDT or CDT approved vendors certain materials for BSL's use that: (i) meet the Specifications or any Supplemental Specifications and will be used in the Facilities to be installed into or connected to the Joint Build, or (ii) will be used in the construction or improvement of BSL's last-mile network to be connected to the Joint Build (collectively, "Materials"). CDT agrees, upon a written request from BSL made no later than ninety (90) days before the scheduled conclusion of the Term of this Agreement, to coordinate with BSL for CDT's direct purchase of Materials from applicable State-approved vendors; provided, however, CDT shall have no obligation to affirmatively seek or approve a vendor of such Materials. Any purchase of Materials by CDT for incorporation into or connection to the Joint Build shall be documented in the manner set forth in Exhibit K and shall be subject to all disclaimers and other terms and conditions set forth in Exhibit K. The purchase price paid by CDT and other out of pocket costs and expenses of CDT in connection with each direct purchase of Materials by CDT pursuant to this Section 5.e. shall be paid or credited as in the manner set forth in Exhibit B and Exhibit K.
- d. Acceptance Testing. The Joint Build shall meet the Specifications set forth in the Statement of Work. Upon completion of the Joint Build, BSL shall perform Acceptance Testing on the Joint Build to determine whether it complies with the Specifications. BSL shall provide CDT with five (5) Business Days' prior written notice of the date and time of the Acceptance Testing and CDT shall have the right, but not the obligation, to be present for observation of the Acceptance Testing. When BSL reasonably determines that the Joint Build is completed, installed, and operating substantially in conformity with the Specifications set forth in the Statement of Work, BSL shall provide the Completion Notice to CDT. Upon receipt of the Completion Notice, CDT may inspect the Joint Build and shall have thirty (30) days to either accept or reject the Completion Notice by delivery of written notice to BSL, specifying, if rejected, its grounds for such rejection. If CDT fails to accept the Completion Notice within the thirty (30) day period, the Work shall be deemed rejected by CDT. In the event CDT affirmatively rejects the Completion Notice, BSL shall, as soon

as practicable, correct any deficiencies in the Joint Build, as identified by CDT in its rejection of the Completion Notice, whereupon a retest shall be performed. If CDT is deemed to have rejected the Completion Notice, BSL shall give written notice to CDT of such deemed rejection and shall provide CDT with not less than ten (10) Business Days within which either to change its rejection to an acceptance of the Completion Notice or to specify deficiencies in the Joint Build requiring corrective measures, whereupon BSL shall promptly correct such deficiencies and perform a retest in the manner set forth above. Upon completion of any retest pursuant to this sub-section, BSL shall provide another Completion Notice to CDT in the manner set forth above, and the foregoing procedure shall apply again and successively thereafter until BSL has remedied all deficiencies in the Work and CDT has accepted the Completion Notice in writing.

- e. Location of Joint Build. The specific location of the Joint Build shall be as designated in the Statement of Work. BSL shall provide CDT with "as-built" Drawings in a mutually acceptable electronic format that depicts the construction and location of the Joint Build, within ninety (90) days after acceptance of the Completion Notice.
- f. Changes. In the event that a Party seeks changes in, additions to, or deletions from the Statement of Work, the Party seeking changes, additions or deletions shall promptly notify the other Party in writing of (i) the proposed changes, additions or deletions; (ii) the estimated cost of the proposed changes, additions or deletions; (iii) the effect of the proposed changes, additions or deletions upon the scheduled completion of the Work; (iv) whether additional Authorizations are required as a result of the proposed changes, additions or deletions; and (v) the effect of the proposed changes, additions or deletions upon the Project Costs. If both Parties agree in writing to the proposed changes, additions or deletions, BSL shall promptly proceed with the performance of the Work as so modified. The Project Costs and time for performance of the Work shall be equitably adjusted as necessary to reflect the impact of the agreed upon changes, additions or deletions on the Work and/or the Statement of Work.
- g. Segment Completion. CDT may agree to accept the Joint Build on a Segment by Segment basis. In all cases where Work is performed, tested and accepted on a Segment-by-Segment basis, references to "Joint Build" in this Section 5, and Section 7, shall mean and be a reference to the specified Segment or Segments.

6. Ownership.

- a. CDT shall own all fiber and Facilities provided by CDT to BSL.
- b. Except as set forth in Section 6.a., all fiber and Facilities installed and designated for CDT as set forth in the Statement of Work ("**CDT Facilities**") consisting of the four (4) 16 mm microduct conduits and any 288 count fiber installed therein as more particularly described in the Statement of Work shall be and remain the property of BSL; provided that, upon CDT's acceptance of a Completion Notice and payment in full by CDT of the CDT Project Cost Share, said CDT Facilities shall become the property of CDT. The Parties shall execute a bill of sale in form and substance satisfactory to CDT memorializing the transfer of such property to CDT. After acceptance of a Completion Notice for a Segment or Segments, each Party shall take all necessary precautions to protect the other Party's Facilities within the applicable Segments from any physical damage and to keep such Facilities in the same manner as such Party protects its own Facilities. Except as otherwise expressly provided in this section, all other fiber and Facilities shall be the sole property of BSL.

7. Maintenance and Restoration.

- a. General. After completion and acceptance of the Completion Notice for the Joint Build in its entirety or for the last Segment comprising the Joint Build, each Party shall be responsible for performing any maintenance and repairs of its Facilities within the Joint Build in order to maintain that Party's respective fiber operations. Such maintenance and repairs shall be performed in a good and workmanlike manner, in accordance with the Specifications, the Drawings, the Statement of Work, the National Electrical Safety Code, the National Electrical Code, applicable industry standards, and regulations of applicable Governmental Authorities.
- b. Access. Each Party shall have access to its Facilities on a 24-hours per day, 7-days per week basis as necessary for the proper maintenance or restoration thereof; provided, however, such access shall be coordinated with the other Party except as provided below in this subsection (b) or in subsection (c) of this Section. Before beginning any non-emergency inspections or scheduled maintenance, each Party shall give the other at least twenty-four (24) hours advance notice. Notwithstanding the foregoing, following acceptance of the Completion Notice, each Party shall have unlimited access to its individually owned Access Points as designated in the Statement of Work, without the requirement of prior notice to and coordination with the other Party. If both Parties require simultaneous access to the Joint Build, then the Parties shall reasonably and equitably coordinate such access in a manner that will accommodate the needs of both Parties.
- c. Emergency Maintenance. In the event of an emergency, each Party shall have the right to access its Facilities and to perform maintenance or restoration of its Facilities without prior notice to or coordination with the other Party, provided that in any such case, the Party exercising such right shall use its best efforts to notify the other Party as soon as practicable of its having accessed its Facilities on an emergency basis and of the reasons therefor. If both Parties require simultaneous access to the Joint Build, then the Parties shall reasonably and equitably coordinate such access in a manner that will accommodate the needs of both Parties. Parties may choose at a future date to share costs for joint repairs, with terms to be mutually agreed upon in writing.

8. Relocation. In the event that a Governmental Authority requires the transfer, rearrangement or relocation of any portion of the Joint Build, each Party shall pay its respective pro rata share (proportionate to its percentage of ownership of the Joint Build or portion thereof to be relocated) for all reasonable costs of the transfer, rearrangement or relocation. In any such case, the Parties shall use their best efforts to identify an alternate location for the Joint Build. In the event the Parties are unable to agree on a suitable alternate location for the Joint Build, then either Party may terminate this Agreement with respect to such Joint Build (or portion thereof) and shall promptly remove its Facilities located therein. CDT shall pay to BSL a relocation management fee in the amount of 20% of the CDT Project Cost Share to cover BSL's costs for managing and supervising the relocation and the Work involved therewith. CDT shall make payments after it receives an invoice from BSL in accordance with the provisions of Section 11 and Exhibit B.

9. Representations and Warranties.

- a. General Warranties. Each Party represents and warrants that, with respect to this Agreement, such Party has: (i) taken all corporate or governmental action, as appropriate, that is necessary for the authorization, execution, and delivery of such agreements and to make such agreements legal, valid, and binding; and (ii) has no agreement or understanding with any third party that interferes with or will interfere with its performance of the Party's obligations under such agreements.

- b. Third Party Consents. BSL has obtained and shall maintain all rights, approvals, and consents necessary to perform its obligations under this Agreement and grant to CDT all rights and licenses under such agreements as provided therein.
- c. No Default. Each Party represents and warrants that it is not in default of any order of any court, arbitrator, administrative agency, or other governmental authority that would or could reasonably be expected to affect such Party's performance of its obligations under this Agreement, and that there are no proceedings threatened or pending before any court, arbitrator, administrative agency, or other governmental authority the pendency of which proceedings, or an adverse outcome from which proceedings, would or could reasonably be expected to affect such Party's performance of its obligations under this Agreement.
- d. Construction, Operations and Maintenance Warranty. BSL represents and warrants that it will construct the Joint Build, including the Facilities, in compliance with the Statement of Work, the Specifications, any Supplemental Specifications and all applicable laws and regulations, and in accordance with industry standards, and the warranties set forth in this Section 9. In the event the Joint Build, including the Facilities, fails at any time to meet the Specifications, BSL will promptly restore any component of the Facilities to meet the Specification standards in as timely and expedited manner as reasonably possible. BSL further represents and warrants that it will maintain its Facilities in good operating condition for normal use throughout the Term as contemplated by the manufacturers of the components of the Facilities utilizing sound engineering practices, and in accordance with the provisions of this Agreement, including Section 7.a., the Statement of Work, and the Specifications and any Supplemental Specifications.
- e. Facilities Warranty. BSL represents and warrants that the Joint Build, including the Facilities, will have been designed, engineered, installed, generated, operated, and constructed in accordance with all applicable building, construction, and safety codes for such construction and installation, as well as any and all other applicable industry standards, governmental laws, codes, ordinances, statutes, and regulations and the respective specifications of the fiber manufacturer and the manufacturer of the components of the Facilities.
- f. Deliverables Warranty. BSL represents and warrants the completeness and correctness of the information and documents necessary for the operation and completion of any Work required to be delivered under this Agreement, including the Drawings.
- g. Pass-Through of Third-Party Warranties. In addition to its other representations and warranties given in this Agreement, BSL will use its best efforts to provide CDT the full benefit of all covenants, manufacturer, contractor, or vendor warranties, representations, and indemnities granted to BSL by third parties in connection with the Joint Build, CDT's Facilities, and the Work. In the event any maintenance or repairs to the Joint Build or CDT's Facilities are required as a result of a breach of any warranty made, or obligations assumed, by any manufacturers, contractors or vendors, BSL shall, at its sole cost and expense, diligently pursue all remedies against such manufacturers, contractors or vendors on behalf of CDT, and BSL shall reimburse CDT for any maintenance costs CDT incurs as a result of any such breach of warranty to the extent the manufacturer, contractor or vendor pays such costs.

EXCEPT AS EXPRESSLY SET FORTH HEREIN, BSL MAKES NO WARRANTIES, EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE, AS TO THE CONDITION, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR ANY OTHER MATTER CONCERNING MATERIALS SUPPLIED BY THIRD PARTIES AND INCORPORATED INTO THE JOINT BUILD, AND CDT ACCEPTS ALL SUCH MATERIALS AS IS. BSL DOES NOT ADOPT OR AFFIRM ANY OF THE

WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, MADE BY ANY OF THE MANUFACTURERS OF ANY OF SUCH MATERIALS.

10. Term. The Parties agree that the term of this Agreement shall commence on the Effective Date and continue for an initial term of twenty (20) years thereafter ("**Initial Term**"), subject to earlier termination of this Agreement pursuant to the terms and conditions of this Agreement. Upon expiration of the Initial Term, provided that the Parties agree in writing, this Agreement will renew on an annual basis for a one (1) year term (each a "**Renewal Term**"), up to a maximum cumulative total of five (5) years from expiration of the Initial Term, subject to earlier termination of this Agreement pursuant to the terms and conditions of this Agreement. The Initial Term and the Renewal Term are each referred to herein, as applicable, as the "**Term**."
11. Billing and Payment. BSL shall invoice CDT as required pursuant to Exhibit B. The invoice schedule in Exhibit B sets forth when BSL may send invoices. Payments will be made in accordance with the provisions of the California Prompt Payment Act, Government Code section 927 et seq. All properly submitted, undisputed invoices due to BSL or its contractor under this Agreement shall be paid by CDT within forty-five (45) days following receipt thereof along with a detailed accounting of such amounts. Disputes regarding payment amounts shall be governed by the terms of Exhibit C. In no event shall either Party be entitled to bill the other Party more frequently than once each month for any amounts due under this Agreement. Concurrently with the final payment of the CDT Project Cost Share, BSL shall provide CDT with final lien waivers from all contractors and suppliers performing work or providing materials to the Joint Build. If the lien law applicable to the Joint Build or portion thereof provides for delivery of lien releases following payment, then BSL shall deliver same to CDT within two (2) Business Days after the time period for delivery required by such law.
12. Termination. CDT may, in addition to any and all other remedies allowed by law, terminate this Agreement in its entirety in the event BSL fails to observe or perform any of the material terms and provisions of this Agreement and such failure continues for a period of thirty (30) days after written notice from CDT (provided, however, if any such failure cannot reasonably be cured within such 30 day period, CDT may not terminate this Agreement pursuant to this Section if BSL, during such 30 day period, promptly and diligently undertakes efforts to bring about such cure and thereafter proceeds, in good faith, to complete its cure of such failure not later than sixty (60) days from CDT's written notice). Upon termination of this Agreement for the reasons set forth in this Section, BSL shall continue to complete the Work to a reasonable stopping point, and each Party shall pay for its share of the Project Costs through such completion of such Work.
13. Condemnation. Each Party shall notify the other Party immediately upon its receipt of a formal notice of condemnation or other taking by eminent domain of all or any portion of the Joint Build or the real property rights-of-way upon which the Joint Build is constructed, or upon its obtaining knowledge of any proceeding for condemnation or other taking that is threatened or filed against any portion of the Joint Build or the real property rights-of-way upon which the Joint Build is constructed. In the event and to the extent of any condemnation or other taking by eminent domain of all or any part of the Joint Build, or any property or rights relating thereto, then the proceeds thereof shall be apportioned on a pro rata share (proportionate to the ratio of the number of the fiber optic strands comprising the applicable fiber allocated to such Party in the affected portion of the Joint Build or portion thereof to be relocated), except that any proceeds designated by the court or other adjudicating body administering the condemnation or other taking proceeding as relating exclusively to the Facilities of a Party shall be allocated in full to such Party. If the fraction of the pro rata share varies over portions of the affected fiber, then the pro rata share shall be equal to the weighted average of such relevant portions.
14. Leasing, Licensing and other Transfers. Except as set forth in this Agreement, nothing shall in any way restrict, modify, or alter either Party's right to lease, license, sell, or otherwise transfer or utilize, in its sole discretion, all or any portion of its Facilities which are subject to this Agreement. The

Party leasing, licensing, selling or otherwise transferring all or a portion of its Facilities shall either (i) incorporate the maintenance and restoration provisions of Section 7 into the applicable agreement to lease, license, sell or otherwise transfer the Facilities or (ii) make such lease, license, sale or other transfer specifically subject to the provisions of Section 7. Notwithstanding the foregoing, the rights of the Parties to lease, license or otherwise transfer all or any portion of their interests in the Facilities shall be subject to all restrictions, contractual or otherwise, imposed by any Governmental Authority or other third party which owns or controls the real property rights of way upon which the relevant portion of the Joint Build is constructed.

15. Actions and Omissions of Lessees, Licensees and other Transferees. All lessees, licensees and other transferees of any portion of a Party's Facilities shall use such Party's Facilities in a manner consistent with this Agreement. All acts and omissions of any sublessee, licensee, or other transferee of a Party shall be deemed acts and omissions of such Party.
16. Subcontracting. The engagement of a subcontractor by a Party will not relieve such Party of its responsibilities and obligations under this Agreement. Each Party will be liable for all acts and omissions of any subcontractor or facility owner engaged by such Party as though they were the acts or omissions of such Party.
17. Joint Work Product. This Agreement is the joint work product of the Parties hereto; accordingly, in the event of ambiguity no presumption shall be imposed against any Party by reason of document preparation.
18. No Grant of Trademarks; No Partnership. This Agreement shall not be construed as granting to either Party the right to use any trademarks, service marks or trade names of the other Party, or otherwise to refer to the other Party in any marketing, promotional or advertising materials or activities. The Parties acknowledge and agree that this Agreement does not create a partnership between, or a joint venture of, the Parties.
19. Escalation Process. All disputes, differences of opinion or controversies arising in connection with this Agreement will first be resolved through the escalation process set forth on Exhibit G ("**Escalation Process**"). If, after negotiating in good faith pursuant to the Escalation Process, or any agreed further period, the Parties are unable to resolve the dispute, then the Parties may seek resolution by exercising any rights or remedies available to either Party under applicable law. Pending resolution of the issues, both Parties shall continue to perform their obligations under this Agreement, including without limitation that CDT will continue to pay the applicable and undisputed charges and BSL will not suspend services or delay its installation, repair, maintenance or other obligations under this Agreement.
20. American Rescue Plan Act and Security and Data Protection. To the extent applicable to the Joint Build and any maintenance services that may be provided by BSL under this Agreement, BSL shall comply with the terms set forth in (i) Exhibit I (U.S. Department of Treasury American Rescue Plan Act); and (ii) Exhibit J (Security and Data Protection).
21. News Releases; Non-Disparagement. Unless otherwise exempted, including under the California Public Records Acts, news releases, endorsements, social media and advertising pertaining to the California Middle-Mile Broadband Network, the Joint Build, the Project, the route, Segments or any components thereof shall not be made by BSL without prior written approval of CDT. Such approval shall be made by the Communications Director of CDT or any other designated employees of CDT, as applicable, on a reasonable timeline. In furtherance of the foregoing, neither Party shall make, publish, or communicate to any person or entity, or in any public forum, any comments or statements (written or oral) that denigrate or disparage, or are detrimental to the California Middle-Mile Broadband Network, this Agreement, the Joint Build, the Project, the route, Segments, any components thereof, the other Party's businesses, actions or omissions, products, services, or any of its employees, directors, officers, managers, advisors or agents, or that in any manner damage the business operations, reputation or stature of the other Party. BSL shall ensure

that its employees, advisors, agents, and subcontractors adhere to the terms and conditions of this provision. CDT shall ensure that CDT's officers, employees, advisors, agents and subcontractors adhere to the terms and conditions of this provision. The Parties acknowledge that CDT and BSL may fill out certain post contract evaluations and responses that may be communicated to other State entities. These evaluations and responses will not be considered disparagement. For purposes of this section 21, BSL shall refer to and mean the Bureau of Street Lighting, only.

22. Environmental Permitting and Exemptions. If BSL requests, CDT will assist BSL with obtaining environmental permitting or an exemption under the California Environmental Quality Act, if available and appropriate, at BSL's cost and expense.

EXHIBIT A
STATEMENT OF WORK

THIS **STATEMENT OF WORK** is an addendum to and a part of this Agreement. Capitalized terms used in this Statement of Work are used as defined in this Agreement, unless otherwise specified.

1. Project Description: BSL will engineer and construct seven (7) 16 mm microduct conduits from the intersection of Highway 91 and Vermont Avenue to the intersection of Olive Street and Olympic Boulevard, as more particularly described in this Statement of Work.
 - 1.1. The “**Project**” is defined as the engineering and construction of a Joint Build of approximately 13 miles, in the proposed route and (if applicable) consisting of the various components thereof (such components being referred to herein as “**Segments**”), all as described in Schedule 1 hereto (“**Route Description & Route Map**”). Unless otherwise agreed between the Parties, all underground Segments of the Project shall be constructed in accordance with the trench detail set forth in the engineering/construction Drawings that (a) already have been completed and referenced in Schedule A hereto and copies of which have been provided to each Party and each Party acknowledges receipt thereof, or (b) when completed and agreed to by the Parties, shall be provided to each Party. BSL shall install Shadow Vaults for CDT. CDT will provide the Shadow Vaults to BSL at no cost to BSL. The exact locations of CDT’s Shadow Vaults will be determined by BSL in consultation with CDT’s engineering teams, and will be placed every half mile along the route. BSL’s and CDT’s manholes/handholes and huts will be placed along all underground Segments of the Project in locations to be agreed upon between the Parties, which locations shall be noted in the agreed upon engineering/construction drawings. Manholes/handholes and huts will be placed for each Party as needed. Placement of fiber optic cable is not included in this Statement of Work and each Party is individually responsible for the placement of fiber optic cables. Prior to installation, BSL and CDT will agree to material specifications in writing.
 - 1.2. In the event that any investigation, site monitoring, containment, cleanup, removal, restoration or other remedial work of any kind or nature is reasonably necessary or desirable under any applicable local, State or governmental or non-governmental entity or person because of, or in connection with the discovery of historical artifacts within the Project; or the current or future presence, suspected presence, release or suspected release of a hazardous substance in or into the air, soil, groundwater, surface water, soil, at, on, about, under or within the Project (or any portion thereof), BSL shall immediately stop the Work and promptly inform CDT of the findings. Work will not continue until a remedial plan has been agreed to in writing by BSL and CDT.
 - 1.3. BSL will provide field engineers to inspect the entire Project while under construction. CDT will be entitled to conduct field inspections where applicable. If CDT chooses to conduct field surveys, CDT must follow all safety regulations set by any Governmental Authority and all safety regulations set by the sub-contracting company on site.
2. Construction Schedule:
 - 2.1. BSL will complete construction of the Project with all work required to be performed under this Statement of Work by the dates to be set forth in Schedule 2 (“**Construction Schedule**”). The Parties shall agree, in writing, upon such dates in the Construction

Schedule no later than _____, 2025. The Construction Schedule may be amended from time to time. However, the Construction Schedule shall be suspended and extended to the extent necessary by reason of a Force Majeure Event.

2.2. At the start of the Project, BSL will notify CDT within seven (7) days of the project kick-off meeting so that CDT can arrange for an inspector to attend.

2.3. BSL shall provide CDT with an overall project schedule identifying critical path items (i.e., engineering, permitting and construction) every two weeks.

3. Project Costs:

3.1. If at any time during the construction, circumstances arise that are beyond the control of either of the Parties that result in a cost increase of more than ten percent (10%) of the estimated Project Costs, the Parties shall confer and attempt in good faith to determine by mutual agreement whether to terminate construction or modify the construction plans. If no agreement can be reached, CDT may terminate this Agreement at a reasonable and mutually agreed upon point. In the case of any such termination by CDT, CDT shall pay to the City the CDT Project Cost Share already incurred as of the date of such termination (net of amounts previously paid by CDT), plus CDT's share of reasonable demobilization and reasonable restoration costs incurred as a result of such termination. Such amount paid by CDT shall be decreased by any amounts BSL owes to CDT relating to shadow vaults, Material Purchases and Materials Transfers.

4. Specifications:

4.1. BSL's current (as of the date of this Statement of Work) Specifications, a copy of which has previously been provided to CDT, are incorporated herein by this reference and the Work performed hereunder shall be in compliance therewith, except to the extent such Specifications are modified by this Statement of Work as set forth in Exhibit D ("**Supplemental Specifications**").

4.2. Upon completion, CDT will own:

(a) Microducts: a total of four (4) 16 mm microduct conduits which will include the following:

- i. one (1) 16mm microduct conduit with one bundle of 288 count fiber; and
- ii. three (3) 16 mm microduct conduits, each with the capacity to hold one bundle of 288 count fiber.

(b) Access Vaults: a total of 27 interconnection vaults along the project route where the microducts described in 4.2(a) can be accessed. These vaults shall be built to the following specifications:

1. 30"x48"x36" vaults spaced every 2,500'
2. 48"x48"x48" vaults spaced every 12,000'

SCHEDULE 1 TO STATEMENT OF WORK

City of Los Angeles 110 Joint Build Fiber Middle Mile Route

City of Los Angeles 110 Joint Build Fiber Middle Mile Route

ROUTE DESCRIPTION & ROUTE MAP

The Project Scope consists of a route located within the boundaries of the City of Los Angeles, starting at east side of S. Grand Ave., approximately 330 feet north of centerline (C/L) of 7th St., and terminating on the west side of S Ainsworth St., approximately 100 feet south of the centerline of Alondra Blvd.

The route has a total length of approximately 13.31 miles, consisting of one (1) High Density Polyethylene (HDPE) conduit with an orange-colored silicone outer lining. The conduit has an outer diameter (OD) of 3.6 inches and a Standard Dimensional Ratio (SDR) of 11. The HDPE conduit houses 10 separate conduits, each with a different color, measuring 22 millimeter(mm) in OD and 18 mm in inner diameter(ID).

At the first 2,500 feet or less, depending on field conditions, from the start of the route, BSL shall install one (1) 30" x 48" x 36" CDT shadow vault (hereafter referred to as "CDT Shadow Vault 1"). Following this first installation of the CDT Shadow Vault 1, BSL shall install another CDT Shadow Vault 1 located 2,500 feet from the first CDT Shadow Vault 1. Subsequent installations of CDT Shadow Vault 1 at the aforementioned interval shall be installed for the entirety of the route unless otherwise specified by CDT or deemed necessary by the BSL design engineer.

At the first 12,000 feet or less, depending on field conditions, from the start of the route, BSL shall install one (1) 48" x 48" x 48" CDT shadow vault (hereafter referred to as "CDT Shadow Vault 2") in lieu of a CDT Shadow Vault 1. Following this first installation of CDT Shadow Vault 2, BSL shall install another CDT Shadow Vault 2 located 12,000 feet from the first installation of the CDT Shadow Vault 2. Subsequent installations of CDT Shadow Vault 2 in the aforementioned interval shall be installed for the entirety of the route unless otherwise specified by CDT or deemed necessary by the BSL design engineer.

Route street breakdown with mileage:

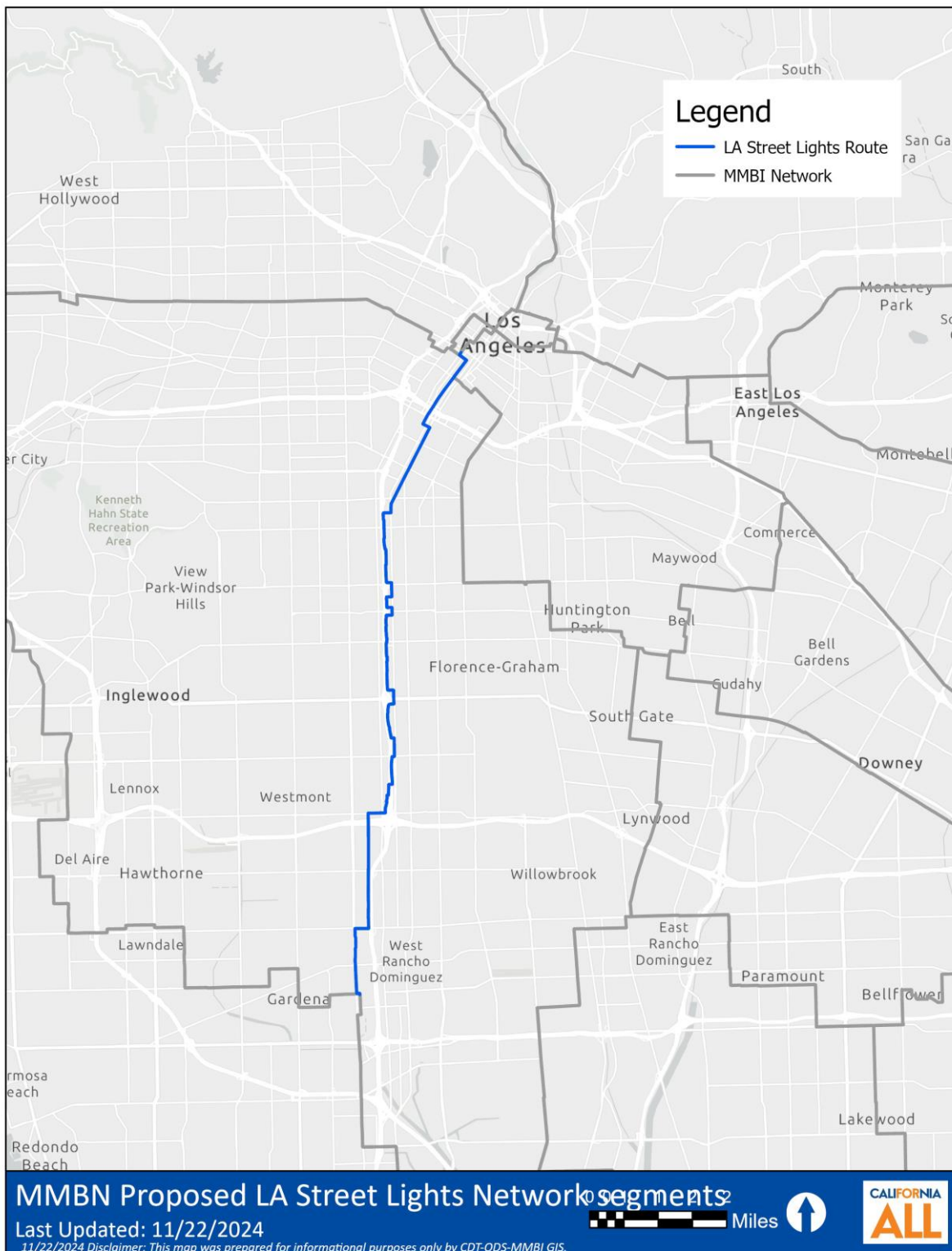
Reference No.	Segment	Street (end to end)	Mileage (approx.)
1	E/S of S Grand Ave	E/S of S Grand Ave ~330' N of C/L of 7th St to N/E Cor. of 7th St and S Grand Ave.	0.05mi
2	N/S of 7th St	N/E Cor. of 7th St and S Grand Ave. to N/E Cor. of S Hill St and 7th St	0.16mi
3	E/S of S Hill St	N/E Cor. of S Hill St and 7th St to N/E Cor. of W 21st St and S Hill St	1.36mi
4	N/S of W 21st St	N/E Cor. of W 21st St and S Hill St to	0.14mi

		N/E Cor. of W 21st St and Main St	
5	E/S of Main St	N/E Cor. of W 21st St and Main St to N/E Cor. of Broadway PI and Main St	1mi
6	E/S of Broadway PI	N/E Cor. of Broadway PI and Main St to S/E Cor. of Broadway PI and Broadway	0.5mi
7	E/S of Broadway	S/E Cor. of Broadway PI and Broadway to N/E Cor. of W41st St and Broadway	0.03mi
8	E/S of Broadway	N/E Cor. of W41st St and Broadway to Approx. 50ft N of the N/E Cor. of Broadway and W 42nd St	0.12mi
9	N/S W42nd St	Approx. 50ft N of the N/E Cor. of Broadway and W 42nd St to N/E Cor. of S Grand Ave and W 42nd St	0.13mi
10	S Grand Ave	N/E Cor. of S Grand Ave and W 42nd St to Int. of S Grand ave and W 58th St	1.22mi
11	W 58th St	Int. of S Grand ave and W 58th St to Int. of W 58th St and Broadway	0.09mi
12	Broadway	Int. of W 58th St and Broadway to Int. of Broadway and W 59th PI	0.25mi
13	W 59th PI	Int. of Broadway and W 59th PI to Int. of W 59th PI and S Grand Ave	0.09mi
14	S Grand Ave	Int. of W 59th PI and S Grand Ave to Int. of W 62nd St and S Grand Ave	0.18mi
15	W 62nd St	Int. of W 62nd St and S Grand Ave to Int. of W 62nd St and Broadway	0.09mi
16	Broadway	Int. of W 62nd St and Broadway to Int. of W 64th St and Broadway	0.13mi
17	W 64th St	Int. of W 64th St and Broadway to	0.10mi

		Int. of W 64th St and S Grand Ave	
18	S Grand Ave	Int. of W 64th St and S Grand Ave to Int. of W 84th Pl and S Grand Ave	1.31mi
19	W 84th Pl	Int. of W 84th Pl and S Grand Ave to Int. of W 84th Pl and Broadway	0.11mi
20	Broadway	Int. of W 84th Pl and Broadway to Int. of W 87th St and Broadway	0.25mi
21	W 87th St	Int. of W 87th St and Broadway to Int. of W 87th St and S Grand Ave	0.11mi
22	S Grand Ave	Int. of W 87th St and S Grand Ave to Int. of W 95th St and S Grand Ave	0.6mi
23	W 95th St	Int. of W 95th St and S Grand Ave to Int. of W 95th St and Broadway	0.05mi
24	Broadway	Int. of W 95th St and Broadway to Int. of W Century Blvd and Broadway	0.32mi
25	W Century Blvd	Int. of W Century Blvd and Broadway to Int. of W Century Blvd and S Olive St	0.04mi
26	S Olive St	Int. of W Century Blvd and S Olive St to Int. of W 108th St and S Olive St	0.5mi
27	W 108th St	Int. of W 108th St and S Olive St to Int. of W 108th St and S Grand Ave	0.07mi
28	S Grand Ave	Int. of W 108th St and S Grand Ave to Int. of Imperial Hwy and S Grand Ave	0.51mi
29	Imperial Hwy	Int. of Imperial Hwy and S Grand Ave to Int. of Imperial Hwy and S Hoover St	0.3mi
30	S Hoover St	Int. of Imperial Hwy and S Hoover St to Int. of Imperial Hwy and W Rosecrans Ave	2.03mi

31	W Rosecrans Ave	Int. of Imperial Hwy and W Rosecrans Ave to Int. of S Vermont Ave and W Rosecrans Ave	0.25mi
32	S Vermont Ave	Int. of S Vermont Ave and W Rosecrans Ave to Int. of S Vermont Ave and W Redondo Beach Blvd	0.66mi
33	W Redondo Beach Blvd	Int. of S Vermont Ave and W Redondo Beach Blvd to Int. of S Ainsworth St and W Redondo Beach Blvd	0.05mi
34	S Ainsworth St	Int. of S Ainsworth St and W Redondo Beach Blvd to W/S of S Ainsworth St 100ft S/O the C/L of Alondra Blvd	0.51mi

MAP ATTACHED ON NEXT PAGE.



SCHEDULE 2 TO STATEMENT OF WORK

City of Los Angeles 110 Joint Build Fiber Middle Mile Route

CONSTRUCTION SCHEDULE

<u>Reference No.</u>	<u>Segment</u>	<u>Length (Miles)</u>	<u>Begin Construction*</u>	<u>End Construction*</u>
<u>1</u>	E/S of S Grand Ave	0.05mi	[Construction Plan in Development]	[Construction Plan in Development]
<u>2</u>	N/S of 7th St	0.16mi		
<u>3</u>	E/S of S Hill St	1.36mi		
<u>4</u>	N/S of W 21st St	0.14mi		
<u>5</u>	E/S of Main St	1mi		
<u>6</u>	E/S of Broadway Pl	0.5mi		
<u>7</u>	E/S of Broadway	0.03mi		
<u>8</u>	E/S of Broadway	0.12mi		
<u>9</u>	N/S W42nd St	0.13mi		
<u>10</u>	S Grand Ave	1.22mi		
<u>11</u>	W 58th St	0.09mi		
*Construction dates shall be determined upon written agreement by the Parties pursuant to Section 2.1 of Exhibit A.				

<u>Reference No.</u>	<u>Segment</u>	<u>Length (Miles)</u>	<u>Begin Construction*</u>	<u>End Construction*</u>
<u>12</u>	Broadway	0.25mi		
<u>13</u>	W 59th Pl	0.09mi		
<u>14</u>	S Grand Ave	0.18mi		
<u>15</u>	W 62nd St	0.09mi		
<u>16</u>	Broadway	0.13mi		
<u>17</u>	W 64th St	0.10mi		
<u>18</u>	S Grand Ave	1.31mi		
<u>19</u>	W 84th Pl	0.11mi		
<u>20</u>	Broadway	0.25mi		
<u>21</u>	W 87th St	0.11mi		
<u>22</u>	S Grand Ave	0.6mi		
<u>23</u>	W 95th St	0.05mi		
<u>24</u>	Broadway	0.32mi		
<u>25</u>	W Century Blvd	0.04mi		
<u>26</u>	S Olive St	0.5mi		
<u>27</u>	W 108th St	0.07mi		
*Construction dates shall be determined upon written agreement by the Parties pursuant to Section 2.1 of Exhibit A.				

<u>Reference No.</u>	<u>Segment</u>	<u>Length (Miles)</u>	<u>Begin Construction*</u>	<u>End Construction*</u>
<u>28</u>	S Grand Ave	0.51mi		
<u>29</u>	Imperial Hwy	0.3mi		
<u>30</u>	S Hoover St	2.03mi		
<u>31</u>	W Rosecrans Ave	0.25mi		
<u>32</u>	S Vermont Ave	0.66mi		
<u>33</u>	W Redondo Beach Blvd	0.05mi		
<u>34</u>	S Ainsworth St	0.51mi		
*Construction dates shall be determined upon written agreement by the Parties pursuant to Section 2.1 of Exhibit A.				

EXHIBIT B
BUDGET DETAIL AND PAYMENT PROVISIONS

1. The Parties have agreed to the following payment schedule. Upon the occurrence of an invoice event, BSL will send an invoice based on the invoice schedule below.

Invoice Event	Amount Owing*
Effective Date (Date this Agreement is signed). This is an upfront payment before work commences.	50% (\$4,314,544.98)
Completion of 50% (based on Route Miles completed and accepted by CDT) of CDT's portion of the "Project" set forth in Exhibit A – Statement of Work	25% (\$2,157,272.49)
Completion of 75% (based on Route Miles completed and accepted by CDT) of CDT's portion of the "Project" set forth in Exhibit A – Statement of Work	15% (\$1,294,363.49)
Acceptance of the Completion Notice with respect to each and every Segment of the Joint Build	10% (\$862,909.00)
Total	\$8,629,089.95

* The dollar amounts set forth above are based upon the costs that CDT has agreed to pay pursuant to the CDT Project Cost Share set forth in Exhibit E.

2. BSL Procurement of Materials. If BSL purchases Materials from CDT, BSL shall reimburse CDT for the purchase price paid by CDT for each purchase of such Materials, plus any other direct, out of pocket costs and expenses of CDT in connection with each such purchase (collectively, "**Materials Reimbursement Amount**") either (i) by way of deduction of the Materials Reimbursement Amount from the CDT Project Cost Share or, (ii) by payment to CDT in the amount of the Materials Reimbursement Amount within forty-five (45) days of such termination. If the Materials Reimbursement Amount will be deducted from the CDT Project Cost Share, BSL will attach the Purchase Order Credit Invoice to any invoice that it issues in connection with an Invoice Event listed in Section 1.a. of this Exhibit B.
3. Properly submitted, undisputed invoices will be paid by CDT within forty-five (45) days of receipt in accordance with Section 11 of this Agreement.
4. Invoices shall be submitted in triplicate or electronically.
5. BSL shall submit its invoice using ONE of the following options referencing the Contract Number or Agency Order Number:
- Send via U.S. Mail in **TRIPLICATE** to:
California Department of Technology
Administration Division – Accounting Office
P.O. Box 1810
Rancho Cordova, CA 94741
- OR**
- Send electronically to: APInvoices@state.ca.gov
6. These provisions are subject to Section 21 of Exhibit C related to the Budget Act.

EXHIBIT C

GENERAL TERMS AND CONDITIONS

These General Terms and Conditions are an addendum to and made a part of this Agreement.

1. **Definitions:** Capitalized terms used herein shall have the meanings specified in this Agreement, unless otherwise specified herein. The following terms shall be given the meaning shown, unless the context requires otherwise.

- a) **"Application Program"** means a computer program which is intended to be executed for the purpose of performing useful work for the user of the information being processed. Application programs are developed or otherwise acquired by the user of the Hardware/Software system, but they may be supplied by BSL.
- b) **"Attachment"** means a mechanical, electrical, or electronic interconnection to BSL-supplied Machine or System of Equipment, manufactured by other than the original Equipment manufacturer that is not connected by BSL.
- c) **"BSL Amount"** is defined in Section 24 of this Exhibit C.
- d) **"BSL Segment Amount"** is defined in Section 24 of this Exhibit C.
- e) **"California Public Records Act"** means California Government Code sections 7920.000-7931.000.
- f) **"CDT Amount"** is defined in Section 24 of this Exhibit C.
- g) **"CDT Segment Amount"** is defined in Section 24 of this Exhibit C.
- h) **"Commercial Hardware"** means Hardware developed or regularly used that: (i) has been sold, leased, or licensed to the general public; (ii) has been offered for sale, lease, or license to the general public; (iii) has not been offered, sold, leased, or licensed to the public but will be available for commercial sale, lease, or license in time to satisfy the delivery requirements of this Contract; or (iv) satisfies a criterion expressed in (i), (ii), or (iii) above and would require only minor modifications to meet the requirements of this Contract.
- i) **"Commercial Software"** means Software developed or regularly used that: (i) has been sold, leased, or licensed to the general public; (ii) has been offered for sale, lease, or license to the general public; (iii) has not been offered, sold, leased, or licensed to the public but will be available for commercial sale, lease, or license in time to satisfy the delivery requirements of this Contract; or (iv) satisfies a criterion expressed in (i), (ii), or (iii) above and would require only minor modifications to meet the requirements of this Contract.
- j) **"Contract Price"** means the aggregate amount owed by CDT to BSL under the terms of this Agreement, including: (i) CDT Project Cost Share of the Project Costs; plus, (ii) all other amounts owing by CDT to BSL under any work orders, Statements of Work or other Exhibits and Schedules to this Agreement.
- k) **"Custom Software"** means Software that does not meet the definition of Commercial Software.

- l) **“Data Processing Subsystem”** means a complement of BSL furnished individual Machines, including the necessary controlling elements (or the functional equivalent), Operating Software and Software, if any, which are acquired to operate as an integrated group, and which are interconnected entirely by BSL supplied power and/or signal cables, e.g., direct access controller and drives, a cluster of terminals with their controller, etc.
- m) **“Data Processing System”** means the total complement of BSL- furnished Machines, including one or more central processors (or instruction processors), and Operating Software which are acquired to operate as an integrated group.
- n) **“Deliverables”** means Goods, Software, Information Technology, telecommunications technology, Hardware, and other items (e.g., reports) to be delivered pursuant to this Contract, including any such items furnished incident to the provision of services.
- o) **“Designated CPU(s)”** means for each product, if applicable, the central processing unit of the computers or the server unit, including any associated peripheral units. If no specific “Designated CPU(s)” are specified on this Agreement, the term shall mean any and all CPUs located at the site specified therein.
- p) **“DIR”** means the California Department of Industrial Relations.
- q) **“EO”** is defined in Section 72 of this Exhibit C.
- r) **“Equipment”** is an all-inclusive term which refers either to individual Machines or to a complete Data Processing System or Subsystem, including its Hardware and Operating Software (if any).
- s) **“Force Majeure Agreement Termination Amount”** is defined in Section 24 of this Exhibit C.
- t) **“Force Majeure Event”** is defined in Section 24 of this Exhibit C.
- u) **“Force Majeure Segment Termination Amount”** is defined in Section 24 of this Exhibit C.
- v) **“General Terms and Conditions”** means the terms and conditions of this Exhibit C.
- w) **“Goods”** means all types of tangible personal property, including but not limited to materials, supplies, and Equipment (including computer and telecommunications Equipment).
- x) **“Hardware”** usually refers to computer Equipment and is contrasted with Software. See also Equipment.
- y) **“Information Technology”** includes, but is not limited to, all electronic technology systems and services, automated information handling, System design and analysis, conversion of data, computer programming, information storage and retrieval, telecommunications which include voice, video, and data communications, requisite System controls, simulation, electronic commerce, and all related interactions between people and Machines.
- z) **“Machine”** means an individual unit of Data Processing System or Subsystem, separately identified by a type and/or model number, comprised of but not limited to mechanical, electro-mechanical, and electronic parts, microcode, and special features installed thereon and including any necessary Software, e.g., central processing unit, memory module, tape unit, card reader, etc.

- aa) **"Manufacturing Materials"** means parts, tools, dies, jigs, fixtures, plans, drawings, and information produced or acquired, or rights acquired, specifically to fulfill obligations set forth herein.
- bb) **"Operating Software"** means those routines, whether or not identified as Program Products, that reside in the Equipment and are required for the Equipment to perform its intended function(s), and which interface the operator, other BSL-supplied programs, and user programs to the Equipment.
- cc) **"Prevailing Wage Requirements"** means California Labor Code Sections 1720-1815.
- dd) **"Programming Aids"** means BSL-supplied programs and routines executable on BSL's Equipment which assists a programmer in the development of applications including language processors, sorts, communications modules, data base management systems, and utility routines (tape-to-disk routines, disk-to-print routines, etc.).
- ee) **"Program Product"** means programs, routines, subroutines, and related items which are proprietary to BSL and which are licensed to the State for its use, usually on the basis of separately stated charges and appropriate contractual provisions.
- ff) **"Software"** means an all-inclusive term which refers to any computer programs, routines, or subroutines supplied by BSL, including Operating Software, Programming Aids, Application Programs, and Program Products.
- gg) **"State"** means CDT, the government of the State of California, its employees, and authorized representatives, including any department, agency, or other unit of the government of the State of California.
- hh) **"System"** means the complete collection of Hardware, Software, and services as described in this Contract, integrated and functioning together, and performing in accordance with this Contract.
- ii) **"Third-Party Obligation"** is defined in Section 43 of this Exhibit C.
- jj) **"U.S. Intellectual Property Rights"** means intellectual property rights enforceable in the United States of America, including rights in trade secrets, copyrights, and U.S. patents.

2. [RESERVED]

- 3. **COMPLETE INTEGRATION:** This Contract, including any documents incorporated herein by express reference, is intended to be a complete integration and supersedes any and all previous and contemporaneous understandings or agreements pertaining to the subject matter of this Contract, whether written or verbal.
- 4. **SEVERABILITY:** BSL and the State agree that if any provision of this Contract is found to be illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of this Agreement shall remain in full force and effect. Either party having knowledge of such term or provision shall promptly inform the other of the presumed non-applicability of such provision.
- 5. **INDEPENDENT CONTRACTOR:** BSL and the agents and employees of BSL, in the performance of this Contract, shall act in an independent capacity and not as officers or employees or agents of the State.

6. **APPLICABLE LAW:** This Contract shall be governed by and shall be interpreted in accordance with the laws of the State of California; venue of any action brought with regard to this Contract shall be in Sacramento County, California. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Contract.
7. **COMPLIANCE WITH STATUTES AND REGULATIONS:**
- a) Each of the State and BSL warrants and certifies that in the performance of this Contract, it will comply with all applicable statutes, rules, regulations and orders of the United States and the State of California.
 - b) If the amounts payable by the State under this Contract exceed \$554,000, this Contract is subject to the requirements of the World Trade Organization (WTO) Government Procurement Agreement (GPA).
 - c) To the extent that this Contract falls within the scope of Government Code Section 11135, BSL hereby agrees to respond to and resolve any complaint brought to its attention, regarding accessibility of its products or services.
8. **POWER AND AUTHORITY:** Each Party warrants that it has full power and authority to grant the rights herein granted. Further, each Party warrants that it will not enter into any arrangement with any third party which might abridge any rights of either Party under this Contract.
9. **ASSIGNMENT:** This Contract shall not be assignable by BSL in whole or in part without the written consent of the State. The State's consent shall not be unreasonably withheld or delayed. For the purpose of this paragraph, the State will not unreasonably prohibit BSL from freely assigning its right to payment, provided that BSL remains responsible for its obligations hereunder.
10. **WAIVER OF RIGHTS:** Any action or inaction by either Party or the failure of either Party on any occasion, to enforce any right or provision of this Agreement, shall not be construed to be a waiver by such Party of its rights hereunder and shall not prevent such Party from enforcing such provision or right on any future occasion. The rights and remedies of the Parties herein are cumulative and are in addition to any other rights or remedies that the Parties may have at law or in equity.
11. **ORDER OF PRECEDENCE:** In the event of any inconsistency between the articles, attachments, specifications, or provisions which constitute this Contract, the following order of precedence shall apply:
- a) These General Terms and Conditions;
 - b) Contract form, i.e., Purchase Order STD 65, Standard Agreement STD 213, etc., and any amendments thereto;
 - c) Exhibit 0-Joint Build Agreement;
 - d) Other Special Provisions, if any;
 - e) Statement of Work, including any Specifications and Supplemental Specifications incorporated by reference herein; Cost worksheets; and
 - f) All other attachments attached hereto or incorporated in this Agreement by reference.

12. **PACKING AND SHIPMENT:**

- a) All Goods are to be packed in suitable containers for protection in shipment and storage, and in accordance with applicable specifications. Each container of a multiple container shipment shall be identified to:
 - i. show the number of the container and the total number of containers in the shipment; and
 - ii. the number of the container in which the packing sheet has been enclosed.
- b) All shipments by BSL or its subcontractors must include packing sheets identifying: the State's contract number; item number; quantity and unit of measure; part number and description of the Goods shipped; and appropriate evidence of inspection, if required. Goods for different contracts shall be listed on separate packing sheets.
- c) Shipments must be made as specified in this Contract, as it may be amended, or otherwise directed in writing by CDT.

13. TRANSPORTATION COSTS AND OTHER FEES OR EXPENSES: No charge for delivery, drayage, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or for any other purpose will be paid by the State unless expressly included and itemized in this Contract.

- a) BSL must strictly follow contract requirements regarding Free on Board (F.O.B.), freight terms and routing instructions. The State may permit use of an alternate carrier at no additional cost to the State with advance written authorization of CDT.
- b) If "prepay and add" is selected, supporting freight bills are required when over \$50, unless an exact freight charge is approved by CDT and a waiver is granted.
- c) On "F.O.B. Shipping Point" transactions, should any shipments under this Agreement be received by the State in a damaged condition and any related freight loss and damage claims filed against the carrier or carriers be wholly or partially declined by the carrier or carriers with the inference that damage was the result of the act of the shipper such as inadequate packaging or loading or some inherent defect in the Equipment and/or material, BSL, on request of the State, shall at BSL's own expense assist the State in establishing carrier liability by supplying evidence that the Equipment and/or material was properly constructed, manufactured, packaged, and secured to withstand normal transportation conditions.

14. DELIVERY: BSL shall strictly adhere to the delivery and completion schedules specified in this Contract. Time, if stated as a number of days, shall mean calendar days unless otherwise specified. The quantities specified herein are the only quantities required. If BSL delivers in excess of the quantities specified herein, the State shall not be required to make any payment for the excess Deliverables and may return them to BSL at BSL's expense or utilize any other rights available to the State at law or in equity.

15. SUBSTITUTIONS: Substitution of Deliverables may not be tendered without advance written consent of CDT. BSL shall not use any specification in lieu of those contained in this Agreement without written consent of CDT.

16. [RESERVED]

17. [RESERVED]

18. [RESERVED]

19. SAFETY AND ACCIDENT PREVENTION: In performing work under this Contract on State premises, BSL shall conform to any specific safety requirements contained in this Agreement or as required by law or regulation. BSL shall take any additional precautions as the State may reasonably require for safety and accident prevention purposes. Any violation of such rules and requirements, unless promptly corrected, shall be grounds for termination of this Contract in accordance with the default provisions hereof.

20. INSURANCE: In lieu of commercial insurance, the City self-administers, defends, settles, and pays third-party claims for bodily injury, personal injury, death, and/or property damage. Protection under this program is warranted to meet or exceed \$5,000,000, combined single limit, per occurrence.

21. TERMINATION FOR NON-APPROPRIATION OF FUNDS:

- a) If the term of this Contract extends into fiscal years subsequent to that in which it is approved, such continuation of this Agreement is contingent on the appropriation of funds for such purpose by the State legislature. If funds to affect such continued payment are not appropriated, BSL agrees to take back any affected Deliverables furnished under this Contract, terminate any services supplied to the State under this Contract, and relieve the State of any further obligation with respect thereto.
- b) The State agrees that if it appears likely that subsection (a) above will be invoked, the State and BSL shall agree to take all reasonable steps to prioritize work and Deliverables and minimize the incurrence of costs prior to the expiration of funding for this Contract.

22. TERMINATION FOR THE CONVENIENCE OF THE STATE:

- a) The State may terminate performance of work under this Contract for its convenience in whole or, from time to time, in part, if CDT determines that a termination is in the State's interest. CDT shall terminate by delivering to BSL a notice of termination specifying the extent of termination and the effective date thereof.
- b) After receipt of a notice of termination, and except as directed by the State, BSL shall immediately proceed with the following obligations, as applicable, regardless of any delay in determining or adjusting any amounts due under this Section. BSL shall:
 - i. Stop work as specified in the notice of termination.
 - ii. Place no further subcontracts for materials, services, or facilities, except as necessary to complete the continuing portion of this Agreement.
 - iii. Terminate all subcontracts to the extent they relate to the work terminated.
 - iv. Settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts.
- c) After termination, BSL shall submit a final termination settlement proposal to the State in the form and with the information prescribed by the State. BSL shall submit the proposal promptly, but no later than ninety (90) days after the effective date of termination, unless a different time is provided in the Statement of Work or in the notice of termination.
- d) BSL and the State may agree upon the whole or any part of the amount to be paid as requested under subsection (c) above.

- e) Unless otherwise set forth in the Statement of Work, if BSL and the State fail to agree on the amount to be paid because of the termination for convenience, the State will pay BSL the following amounts; provided that in no event will total payments exceed the amount payable to BSL if this Agreement had been fully performed:
 - i. The Contract price for Deliverables or services accepted or retained by the State and not previously paid for, adjusted for any savings on freight and other charges; and
 - ii. The total of:
 - A. The reasonable costs incurred in the performance of the work terminated, including initial costs and preparatory expenses allocable thereto, but excluding any cost attributable to Deliverables or services paid or to be paid;
 - B. The reasonable cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of this Agreement; and
 - C. Reasonable storage, transportation, demobilization, unamortized overhead and capital costs, and other costs reasonably incurred by BSL in winding down and terminating its work.
- f) BSL will use generally accepted accounting principles, or accounting principles otherwise agreed to in writing by the Parties, and sound business practices in determining all costs claimed, agreed to, or determined under this Section.

23. [RESERVED]

24. FORCE MAJEURE: Except for defaults of subcontractors at any tier, BSL shall not be liable for any excess costs if the failure to perform this Agreement arises from causes beyond the control and without the fault or negligence of BSL (a “**Force Majeure Event**”). Examples of Force Majeure Events include, but are not limited to:

- a) Acts of God or of the public enemy, and
- b) Acts of the Federal or State government in either its sovereign or contractual capacity.

If the failure to perform is caused by the default of a subcontractor of BSL at any tier, and if the cause of the default is beyond the control of both BSL and a subcontractor of BSL, and without the fault or negligence of either, BSL shall not be liable for any excess costs for failure to perform. Each Party acknowledges and agrees that the proposed route as set forth in the Statement of Work may be subject to a change due to a Force Majeure Event. When any Party discovers that such a change is required, such Party will immediately notify the other Party. Notwithstanding anything to the contrary contained in the Agreement, to the extent any such change is required to a particular Segment, immediately after becoming aware thereof, the Parties shall negotiate in good faith to reach agreement as to a mutually acceptable change to the affected Segment. If no agreement can be reached within thirty (30) days after the commencement of such negotiations, then at any time thereafter, unless and until the Parties reach agreement on such change, either Party may terminate its participation in the affected Segment at a reasonable and mutually agreed upon physical point adjacent to such Segment or within such Segment. If a Segment is terminated pursuant to this Section 24, CDT or BSL shall pay an amount to the other Party calculated as the difference between (i) and (ii) below (the “**Force Majeure Segment Termination Amount**”).

(i) The sum of: (1) the portion of the CDT Project Cost Share relating to the terminated Segment paid to BSL as of the date of such termination; and (2) any amounts BSL owes to CDT relating to shadow vaults, Material Purchases and Materials Transfers for the terminated Segment (the “**CDT Segment Amount**”).

(ii) The sum of: (1) the amount of the CDT Project Cost Share incurred (including any such amounts incurred and unbilled) as of the date of such termination with respect to the terminated Segment; and (2) CDT’s share of reasonable demobilization and reasonable restoration costs incurred as a result of such termination (the “**BSL Segment Amount**”).

If the BSL Segment Amount exceeds the CDT Segment Amount, CDT shall pay the Force Majeure Segment Termination Amount to BSL. If the CDT Segment Amount exceeds the BSL Segment Amount, BSL shall pay the Force Majeure Segment Termination Amount to CDT.

If by reason of a Force Majeure Event, the date of completion set forth in the Construction Schedule will be delayed, or is reasonably likely to be delayed for more than thirty (30) days after such completion date, the Parties shall immediately after becoming aware thereof negotiate in good faith to reach agreement as to a mutually acceptable course of action to mitigate the impact of such delay on the Project. If no agreement can be reached within thirty (30) days after the commencement of such negotiations, then at any time thereafter, unless and until the Parties reach agreement on such course of action, either Party may terminate this Agreement at a reasonable and mutually agreed upon point in time and location within the affected Segment. If the Agreement is terminated pursuant to this Section 24, CDT or BSL shall pay an amount to the other Party calculated as the difference between (i) and (ii) below (the “**Force Majeure Agreement Termination Amount**”).

(i) The sum of: (1) the amount of CDT Project Cost Share paid to BSL as of the date of such termination; and (2) any amounts BSL owes to CDT relating to shadow vaults, Material Purchases and Materials Transfers (the “**CDT Amount**”).

(ii) The sum of: (1) the amount of the CDT Project Cost Share incurred (including any such amounts incurred and unbilled) as of the date of such termination; and (2) CDT’s share of reasonable demobilization and reasonable restoration costs incurred as a result of such termination (the “**BSL Amount**”).

If the BSL Amount exceeds the CDT Amount, CDT shall pay the Force Majeure Agreement Termination Amount to BSL. If the CDT Amount exceeds the BSL Amount, BSL shall pay the Force Majeure Agreement Termination Amount to CDT.

All calculations in this Section 24 shall be subject to approval by both Parties. Any disagreement between CDT and BSL regarding the Force Majeure Segment Termination Amount or the Force Majeure Agreement Termination Amount shall be resolved through the Escalation Process and the dispute process described in Section 44 of Exhibit C.

25. RIGHTS AND REMEDIES OF STATE FOR DEFAULT:

- a) In the event any Deliverables furnished, or services provided by BSL in the performance of this Agreement should fail to conform to the requirements herein, or to the sample submitted by BSL, the State may reject the same, and it shall become the duty of BSL to reclaim and remove the item promptly or to correct the performance of services, without expense to the State, and immediately replace all such rejected items with others conforming to this Agreement.
- b) In addition to any other rights and remedies the State may have, the State may require BSL, at BSL’s expense, to ship Deliverables via air freight or expedited routing to avoid or minimize actual or potential delay if the delay is the fault of BSL.

- c) In the event of the termination of this Agreement, either in whole or in part, by reason of default or breach by BSL, any loss or damage sustained by the State in procuring any items which BSL agreed to supply shall be borne and paid for by BSL (but subject to Section 26 of this Exhibit C- Limitation of Liability).
- d) The State reserves the right to offset the reasonable cost of all damages caused to the State against any outstanding invoices or amounts owed to BSL or to make a claim against BSL.

26. LIMITATION OF LIABILITY:

- a) Except as may be otherwise approved by CDT, BSL's liability for damages to the State for any cause whatsoever, and regardless of the form of action, whether in contract or in tort, shall not exceed the Contract Price.
- b) The foregoing limitation of liability shall not apply (i) to any liability under Section 7 of this Exhibit C-Compliance with Statutes and Regulations; (ii) to liability under Section 43 of this Exhibit C- Patent, Copyright, and Trade Secret Indemnity or to any other liability (including without limitation indemnification obligations) for infringement of third-party intellectual property rights; (iii) to claims arising under provisions herein calling for indemnification for third-party claims against the State for death, bodily injury to persons or damage to real or tangible personal property caused by BSL's negligence or willful misconduct; or (iv) to costs or attorney's fees that the State becomes entitled to recover as a prevailing party in any action.
- c) The State's liability for damages for any cause whatsoever, and regardless of the form of action, whether in contract or in tort, shall not exceed the Contract Price, as that term is defined in subsection a) above. Nothing herein shall be construed to waive or limit the State's sovereign immunity or any other immunity from suit provided by law.
- d) In no event will either BSL or the State be liable for consequential, incidental, indirect, special, or punitive damages, even if notification has been given as to the possibility of such damages, except (i) to the extent that BSL's liability for such damages is specifically set forth in the Statement of Work or (ii) to the extent that BSL's liability for such damages arises out of matters within the scope of subsection (b)(i), (b)(ii), or (b)(iv) above.

27. [RESERVED].

28. INDEMNIFICATION: Pursuant to the provisions of Sections 895.4 et seq. of the California Government Code, each Party agrees to indemnify, defend and hold the other harmless from all loss or liability for injury or damage, actual or alleged, to person or property arising out of or resulting from the indemnifying party's acts or omissions in the performance of this Agreement. In the event of third-party loss caused by the negligence, wrongful act or omission of more than one party, each Party hereto shall bear financial responsibility in proportion to its percentage of fault as may be mutually agreed between them or judicially determined. Such defense and payment will be conditional upon the following:

- a) The indemnified Party will notify the indemnifying Party of any such claim in writing and tender the defense thereof within a reasonable time; and
- b) Consistent with applicable law, including but not limited to the City of Los Angeles Charter, the indemnifying Party will have control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the

State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); and (ii) where a settlement would impose liability on the State, affect principles of California government or public law, or impact the authority of the State, CDT will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed. Each indemnified Party will reasonably cooperate in the defense of a claim and in any related settlement negotiations.

- 29. INVOICES:** Unless otherwise specified, invoices shall be sent to the address set forth herein. Invoices shall be submitted in triplicate and shall include the contract number; release order number (if applicable); item number; unit price, extended item price and invoice total amount. State sales tax and/or use tax shall be itemized separately and added to each invoice as applicable.
- 30. REQUIRED PAYMENT DATE:** Payment will be made in accordance with the provisions of the California Prompt Payment Act, Government Code Section 927 et seq. Unless expressly exempted by statute, the Act requires State agencies to pay properly submitted, undisputed invoices not more than forty-five (45) days after (i) the date of acceptance of Deliverables or performance of services; or (ii) receipt of an undisputed invoice, whichever is later.
- 31. TAXES:** Unless otherwise required by law, the State of California is exempt from Federal excise taxes. The State will only pay for its pro rata share of any State or local sales or use taxes or assessments by reason of the construction or ownership of the Joint Build or the installation or operation or maintenance of the Facilities. After acceptance of the Completion Notice, each Party shall be responsible for any taxes, charges, and assessments, as applicable to such Party's respective Facilities.
- 32. NEWLY MANUFACTURED GOODS:** All Goods furnished under this Contract shall be newly manufactured Goods or certified as new and warranted as new by the manufacturer; used or reconditioned Goods are prohibited, unless otherwise specified.
- 33. CONTRACT MODIFICATION:** No amendment or variation of the terms of this Contract shall be valid unless made in writing, signed by the Parties, and approved as required. No oral understanding or agreement not incorporated in this Agreement is binding on any of the Parties.
- 34. CONFIDENTIALITY OF DATA:** Unless otherwise exempt under the California Public Records Act, all financial, statistical, personal, technical and other data and information relating to the State's operation which are designated confidential by the State and made available to BSL in order to carry out this Contract, or which become available to BSL in carrying out this Contract, shall be protected by BSL from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the State. The identification of all such confidential data and information as well as the State's procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the State in writing to BSL. If the methods and procedures employed by BSL for the protection of BSL's data and information are deemed by the State to be adequate for the protection of the State's confidential information, such methods and procedures may be used, with the written consent of the State, to carry out the intent of this paragraph. BSL shall not be required under the provisions of this paragraph to keep confidential any data or information which is or becomes publicly available (unless such public availability is a result of a wrongful action or omission by BSL or its employees or agents), is already rightfully in BSL's possession without obligation of confidentiality, is independently developed by BSL outside the scope of this Contract or is rightfully obtained from third parties, or is required to be disclosed pursuant to Annex 1 of this Exhibit C.
- 35. [RESERVED].**

36. [RESERVED].

37. RIGHTS IN WORK PRODUCT:

- a) Software and other materials developed or otherwise obtained by or for BSL or its Affiliates independently of this Contract or applicable purchase order ("**Pre-Existing Materials**") do not constitute work product. If BSL creates derivative works of Pre-Existing Materials, the elements of such derivative works created pursuant to this Contract constitute work product, but other elements do not. Nothing in this Section 37 will be construed to interfere with BSL's or its Affiliates' ownership of Pre- Existing Materials.
- b) The Federal government will have Government Purpose Rights to the work product as Deliverable or delivered to the State hereunder. "Government Purpose Rights" are the unlimited, irrevocable, worldwide, perpetual, royalty-free, non-exclusive rights, and licenses to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the work product. "Government Purpose Rights" also include the right to release or disclose the work product outside the State for any State government purpose and to authorize recipients to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the work product for any State government purpose. Such recipients of the work product may include, without limitation, State contractors, California local governments, the U.S. federal government, and the State and local governments of other states. "Government Purpose Rights" do not include any rights to use, modify, reproduce, perform, release, display, create derivative works from, or disclose the work product for any commercial purpose.
- c) The ideas, concepts, know-how, or techniques relating to data processing, developed during the course of this Contract by BSL or jointly by BSL and the State may be used by either Party without obligation of notice or accounting.
- d) This Contract shall not preclude BSL from developing materials outside this Contract that are competitive, irrespective of their similarity to materials which might be delivered to the State pursuant to this Contract.

38. [RESERVED]

39. PROTECTION OF PROPRIETARY SOFTWARE AND OTHER PROPRIETARY DATA:

- a) The State agrees that all material appropriately marked or identified in writing as proprietary and furnished hereunder are provided for the State's exclusive use for the purposes of this Contract only. All such proprietary data shall remain the property of BSL. The State agrees to take all reasonable steps to ensure that such proprietary data are not disclosed to others, without prior written consent of BSL, subject to the California Public Records Act.
- b) The State will ensure, prior to disposing of any media, that any licensed materials contained thereon have been erased or otherwise destroyed.
- c) The State agrees that it will take appropriate action by instruction, agreement or otherwise with its employees or other persons permitted access to licensed software and other proprietary data to satisfy its obligations in this Contract with respect to use, copying, modification, protection and security of proprietary software and other proprietary data.

40. [RESERVED]

41. [RESERVED]

42. [RESERVED]

43. [RESERVED]

44. DISPUTES: The Parties shall deal in good faith and attempt to resolve potential disputes informally and through the Escalation Process. If the dispute persists, BSL shall submit to CDT a written demand for a final decision regarding the disposition of any dispute between the Parties arising under, related to or involving this Agreement. BSL's written demand shall be fully supported, with factual information as available, and if such demand involves a cost adjustment to this Contract, BSL shall include with the demand a written statement signed by an authorized person indicating that the demand is made in good faith, that the supporting data are accurate and complete to the best of BSL's knowledge and that the amount requested accurately reflects the Agreement adjustment for which BSL believes CDT is obligated. CDT shall have thirty (30) days after receipt of BSL's written demand invoking this Section "Disputes" to render a written decision.

- a. Pending the final resolution of any dispute arising under, related to or involving this Agreement, BSL agrees to diligently proceed with the performance of this Agreement, other than the terms and conditions which are the subject of the dispute, including the delivery of work product or providing of services in accordance with CDT's instructions regarding this Agreement. BSL's failure to diligently proceed in accordance with CDT's instructions regarding the undisputed portions of this Agreement shall be considered a material breach of this Agreement.
- b. Any final decision of CDT shall be expressly identified as such, shall be in writing, and shall be signed by the Director of CDT, and shall be a final administrative decision. If BSL does not agree with CDT's final decision, it may commence an action in a court of competent jurisdiction to contest such decision within ninety (90) days following the date of the final decision or one (1) year following the accrual of the cause of action, whichever is later.
- c. The dates of decision and appeal in this Section may be modified by mutual written consent, as applicable, excepting the time to commence an action in a court of competent jurisdiction.

45. STOP WORK:

- a) The State may, at any time, by written Stop Work Order to BSL, require BSL to stop all, or any part, of the Work called for by this Contract for a period up to forty-five (45) days after the Stop Work Order is delivered to BSL, and for any further period to which the Parties may agree in writing. The Stop Work Order shall be specifically identified as such and shall indicate it is issued under this Section. Upon receipt of the Stop Work Order, BSL shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the Work covered by the Stop Work Order during the period of work stoppage. Within a period of forty-five (45) days after a Stop Work Order is delivered to BSL, or within any extension of that period to which the Parties shall have agreed in writing, the State shall either:
 - i. Cancel the Stop Work Order; or
 - ii. Terminate the Work covered by the Stop Work Order.
- b) If a Stop Work Order issued under this Section is canceled, or the period of a Stop Work Order or any extension thereof expires, BSL shall promptly resume its performance of the Work. The State shall make an equitable adjustment to the delivery schedule, the CDT Project Cost Share, as applicable, and this Agreement shall be modified, in writing, accordingly, if:
 - i. The Stop Work Order results in a material increase in the time required for, or in BSL's cost properly allocable to the performance of any part of this Contract; and
 - ii. BSL asserts its right to an equitable adjustment to the delivery schedule, the CDT Project Cost Share, as applicable, within sixty (60) days after the end of the period of work stoppage; provided, that if the State decides the facts justify the action, the State may

receive and act upon a proposal submitted at any time before final payment under this Contract.

- c) If a Stop Work Order is not canceled and the Work covered by the Stop Work Order is terminated, the provisions of Section 22 hereof titled "Termination for the Convenience of the State" shall apply and the State shall allow reasonable costs resulting from the Stop Work Order in arriving at the termination settlement.
- d) The State shall not be liable to BSL for loss of profits because of a Stop Work Order issued under this Section.

46. EXAMINATION AND AUDIT: BSL agrees that the State or its designated representative shall have the right to review, copy and audit any records and supporting documentation directly pertaining to performance of this Contract. BSL agrees to maintain such records for possible audit for a minimum of five (5) years after final payment (or for such longer period as the Parties may agree in writing). BSL agrees to allow the State's auditor(s) access to such records during normal business hours and in such a manner so as to not interfere unreasonably with CDT's normal business activities and to allow interviews of any employees or others who might reasonably have information related to such records. Further, BSL agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Contract. The State shall provide to reasonable advance written notice of any such audit to BSL.

47. [RESERVED]

48. [RESERVED]

49. COVENANT AGAINST GRATUITIES: BSL warrants that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by BSL, or any agent or representative of BSL, to any officer or employee of the State with a view toward securing this Agreement or securing favorable treatment with respect to any determinations concerning the performance of this Agreement. For breach or violation of this warranty, the State shall have the right to terminate this Agreement, either in whole or in part, and any loss or damage sustained by the State in procuring on the open market any items which BSL agreed to supply shall be borne and paid for by BSL. The rights and remedies of the State provided in this Section shall not be exclusive and are in addition to any other rights and remedies provided by law or in equity.

50. NONDISCRIMINATION CLAUSE:

- a) During the performance of this Contract, BSL and its subcontractors shall not unlawfully discriminate, harass, or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, and denial of family care leave. BSL and subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. BSL and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Contract by reference and made a part hereof as if set forth in full. BSL and its subcontractors shall give written notice of their obligations under this Section to labor organizations with which they have a collective bargaining or other agreement.

- b) BSL shall include the nondiscrimination and compliance provisions of this Section in all subcontracts to perform work under this Agreement.

51. NATIONAL LABOR RELATIONS BOARD CERTIFICATION: BSL swears under penalty of perjury that no more than one final, unappealable finding of contempt of court by a federal court has been issued against BSL within the immediately preceding two-year period because of BSL's failure to comply with an order of the National Labor Relations Board. This provision is required by, and shall be construed in accordance with, PCC Section 10296.

52. ASSIGNMENT OF ANTITRUST ACTIONS: Pursuant to Government Code Sections 4552, 4553, and 4554, the following provisions are incorporated herein:

- a) In submitting a bid to the State, the supplier offers and agrees that if the bid is accepted, it will assign to the State all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of Goods, material or other items, or services by the supplier for sale to the State pursuant to the solicitation. Such assignment shall be made and become effective at the time the State tenders final payment to the supplier.
- b) If the State receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the State any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the State as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.
- c) Upon demand in writing by the assignor, the assignee shall, within one (1) year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and
 - i. the assignee has not been injured thereby, or
 - ii. the assignee declines to file a court action for the cause of action.

53. DRUG-FREE WORKPLACE CERTIFICATION: BSL certifies under penalty of perjury under the laws of the State of California that BSL will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:

- a) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a) (the "**Employer Statement**").
- b) Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:
 - i. the dangers of drug abuse in the workplace;
 - ii. BSL's policy of maintaining a drug-free workplace;
 - iii. any available counseling, rehabilitation, and employee assistance programs; and,

- iv. penalties that may be imposed upon employees for drug abuse violations.
- c) Require, as required by Government Code Section 8355(c), that every employee engaged in the performance of this Agreement on behalf of BSL:
 - i. will receive a copy of the company's drug-free policy statement; and,
 - ii. will agree to abide by the terms of the Employer Statement set forth above as a condition of employment on this Agreement.

54. FOUR-DIGIT DATE COMPLIANCE: BSL warrants that it will provide only Four-Digit Date Compliant (as defined below) Deliverables and/or services to the State. "Four Digit Date Compliant" Deliverables and services can accurately process, calculate, compare, and sequence date data, including without limitation date data arising out of or relating to leap years and changes in centuries. This warranty and representation is subject to the warranty terms and conditions of this Contract and does not limit the generality of warranty obligations set forth elsewhere herein.

55. SWEATFREE CODE OF CONDUCT:

- a) BSL declares under penalty of perjury that no equipment, materials, or supplies furnished to the State pursuant to this Agreement have been produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. BSL further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the DIR website located at www.dir.ca.gov, and Public Contract Code Section 6108.
- b) BSL agrees to cooperate fully in providing reasonable access to its records, documents, agents or employees, or premises if reasonably required by authorized officials of the State, the DIR, or the Department of Justice to determine BSL's compliance with the requirements under paragraph (a).

56. RECYCLED CONTENT REQUIREMENTS: BSL shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post-consumer material (as defined in the Public Contract Code (PCC) Section 12200-12209), in products, materials, goods, or supplies offered or sold to the State that fall under any of the statutory categories regardless of whether the product meets the requirements of Section 12209. The certification shall be provided by BSL, even if the product or good contains no post-consumer recycled material, and even if the post-consumer content is unknown. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (PCC 12205 (b)(2)). A state agency contracting officer may waive the certification requirements if the percentage of post-consumer material in the products, materials, goods, or supplies can be verified in a written advertisement, including, but not limited to, a product label, a catalog, or a manufacturer or vendor Internet web site. BSL is to use, to the maximum extent economically feasible in the performance of the contract work, recycled content products (PCC 12203(d)).

57. CHILD SUPPORT COMPLIANCE ACT: For any contract in excess of \$100,000, BSL acknowledges in accordance with PCC Section 7110, that:

- a) BSL recognizes the importance of child and family support obligations and shall fully comply with all applicable State and federal laws relating to child and family support enforcement,

including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and

- b) BSL, to the best of its knowledge, is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

58. AMERICANS WITH DISABILITIES ACT: BSL assures the State that BSL complies with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).

59. ELECTRONIC WASTE RECYCLING ACT OF 2003: BSL certifies that it complies with the applicable requirements of the Electronic Waste Recycling Act of 2003, Chapter 8.5, Part 3 of Division 30, commencing with Section 42460 of the Public Resources Code. BSL shall maintain documentation and provide reasonable access to its records and documents that evidence compliance.

60. USE TAX COLLECTION: In accordance with PCC Section 10295.1, BSL certifies that it complies with the requirements of Section 7101 of the Revenue and Taxation Code. BSL further certifies that it will immediately advise the State of any change in its retailer's seller's permit or certification of registration or applicable Affiliate's seller's permit or certificate of registration as described in subdivision (a) of PCC Section 10295.1.

61. EXPATRIATE CORPORATIONS: BSL hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of PCC Sections 10286 and 10286.1 and is eligible to contract with the State.

62. DOMESTIC PARTNERS: For contracts over \$100,000 executed or amended after January 1, 2007, BSL certifies that BSL is in compliance with Public Contract Code Section 10295.3.

63. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:

- a) If for this Contract, BSL made a commitment to achieve small business participation, then the awarding department requires BSL upon completion of this Contract (or within such other time period as may be specified elsewhere in this Contract) to report the actual percentage of small business participation that was achieved. (Govt. Code § 14841).
- b) If for this Contract, BSL made a commitment to achieve the disabled veteran business enterprise (DVBE) participation goal, then, pursuant to Mil. & Vets. Code § 999.5(d), upon completion of this Contract, the awarding department requires BSL to certify using the Prime Contractor's Certification – DVBE Subcontracting Report (STD 817), all of the following:
 - i. the total amount the prime contractor received under this Agreement;
 - ii. the name, address, contract number and certification ID number of the DVBE(s) that participated in the performance of this Contract;
 - iii. the amount and percentage of work the prime contractor committed to provide to one or more DVBE(s) under the requirements of this Agreement and the total payment each DVBE received from the prime contractor;
 - iv. that all payments under this Agreement have been made to the DVBE(s); and

- v. the actual percentage of DVBE participation that was achieved. Upon request, the prime contractor shall provide proof of payment for the work.

If for this Contract, BSL made a commitment to achieve the DVBE participation goal, the awarding department will withhold \$10,000 from the final payment, or the full final payment if less than \$10,000, until BSL complies with the certification requirements above. If BSL fails to comply with the certification requirement, it shall, after written notice, be allowed to cure the defect. Notwithstanding any other law, if, after at least 15 calendar days but not more than 30 calendar days from the date of written notice, the prime contractor refuses to comply with the certification requirements, the awarding department is authorized to permanently deduct \$10,000 from the final payment, or the full payment if less than \$10,000. (Mil. & Vets. Code § 999.7). A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code § 14841).

BSL agrees to comply with the rules, regulations, ordinances, and statutes that apply to the DVBE program as defined in Section 999 of the Mil. & Vets. Code, including, but not limited to, the requirements of Section 999.5(d). (PCC Code § 10230).

- 64. LOSS LEADER:** It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code. (PCC 12104.5(b).).
- 65. NO THIRD-PARTY BENEFICIARIES:** There shall be no third-party beneficiaries of this Agreement. No provision of this Agreement is intended to, nor shall be interpreted to, provide or create any rights, benefits or any other interest of any kind in any third party or create any obligations of BSL or CDT to any third party, including any employee or independent BSL.
- 66. COUNTERPARTS:** This Agreement may be executed in one or more counterparts and using electronic counterparts, each of which when so executed shall be deemed to be an original, but all of which when taken together shall constitute one and the same agreement.
- 67. RULES OF CONSTRUCTION:** Each reference herein to this "Agreement" or this "Contract" includes all Exhibits, Statements of Work, Schedules, and other attachments hereto, and their respective exhibits, annexes or other attachments, all of which are incorporated into this Agreement by reference and made a part hereof. The words "hereof," "herein," and "hereunder," and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. References to Sections, subsections, Exhibits, Schedules and the like, are to Sections and subsections of, or Exhibits or Schedules attached to, this Agreement unless otherwise expressly provided. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." Unless the context in which used herein otherwise clearly requires, "or" has the inclusive meaning represented by the phrase "and/or." Defined terms include in the singular number the plural and in the plural number the singular. All pronouns and any variations thereof shall be deemed to refer to masculine, feminine, or neuter, singular or plural, as the identity of the entity, person or persons may require. Reference to any agreement, document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof (and, if applicable, in accordance with the terms hereof), except where otherwise explicitly provided. Reference to any law, rule, regulation, order, decree, requirement, policy, guideline, directive, or interpretation means as amended, modified, codified, replaced or reenacted, in whole or in part, and in effect on the determination date, including rules and regulations promulgated thereunder.
- 68. COMPUTATION OF TIME:** Except where expressly provided to the contrary, as used in this Agreement, the word "day" shall mean "calendar day," and the computation of time shall include all Saturdays, Sundays and holidays for purposes of determining time periods specified in this Agreement. If the final date of any period of time set out in any provision of this Agreement falls

upon a day that is not a Business Day, then in such event, the time of such period shall be extended to the next Business Day.

69. CONFIDENTIALITY: The Parties agree to the confidentiality provisions set forth on Annex 1 to this Exhibit C.

70. SURVIVAL OF CERTAIN PROVISIONS: The following Sections of this Agreement will survive the expiration or earlier termination of this Agreement: with respect to the following sections of Exhibit C General Terms and Conditions: Sections 6 (Applicable Law), 11 (Order of Precedence), 26 (Limitation of Liability), 28 (Indemnification), 31 (Taxes), 34 (Confidentiality of Data), 39 (Protection of Proprietary Software and Other Proprietary Data), 43 (Patent, Copyright and Trade Secret Indemnity), 46 (Examination and Audit) and 69 (Confidentiality); or (ii) pursuant to any other provisions of this Agreement that by reasonable interpretation are intended to survive the expiration or termination of this Agreement

71. PREVAILING WAGE: BSL shall be solely responsible for determining whether the Prevailing Wage Requirements apply to work performed by or on behalf of the State under this Agreement.

72. EXECUTIVE ORDER N-6-22-RUSSIA SANCTIONS: BSL shall comply with Executive Order N-6-22 (the "EO") regarding Economic Sanctions against Russia and Russian entities and individuals. "Economic Sanctions" refers to sanctions imposed by the U.S. government in response to Russia's actions in Ukraine, as well as any sanctions imposed under state law. The EO directs state agencies to terminate contracts with, and to refrain from entering into any new contracts with, individuals or entities that are determined to be a target of Economic Sanctions. Accordingly, should CDT determine that BSL is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for termination of this Agreement. CDT shall provide BSL advance written notice of such termination, allowing BSL at least thirty (30) calendar days to provide a written response.

73. NOTICES: All notices or other communications which are required or permitted herein (other than remittance of payment) shall be in writing and sufficient if delivered personally, delivered by electronic mail, sent by prepaid overnight air courier, or sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to BSL:	Los Angeles Bureau of Street Lighting 1149 S Broadway #200, Los Angeles, CA 90015 Attn: Fabian Cheng, Assistant Director Email: fabian.cheng@lacity.org
with a copy to:	Los Angeles City Attorney 200 N Main St, Los Angeles, CA 90012 Attn: Ted Jordan, Assistant City Attorney Email: tanea.ysaguirre@lacity.org
If to CDT:	California Department of Technology P.O. BOX 1810, Rancho Cordova, CA 95741 MMBI Contract Administrator Email: mmbicontracts@state.ca.gov; mmbi.pmo@state.ca.gov
with a copy to:	California Department of Technology P.O. BOX 1810, Rancho Cordova, CA 95741 Attn: Chief Counsel, Office of Legal Services Email: legalnotices@state.ca.gov

or at such other address as the party to whom notice is to be given may have furnished to the other party in writing in accordance herewith. Any such communication shall be deemed to have been given when delivered if delivered: (i) personally on the same day; (ii) by electronic mail with no bounce back; (iii) on the Business Day after dispatch if sent by overnight air courier; or (iv) on the third Business Day after posting if sent by mail.

ANNEX 1 to EXHIBIT C
CONFIDENTIALITY

In addition to the terms defined under the Agreement, the Parties have agreed to the following terms related to confidentiality:

1. Definitions. The following definitions are used in this Annex 1 to this Exhibit C.

- a) **"Confidential Information"** shall mean and refer to any and all confidential or proprietary information, documents, or materials, whether hand written, printed or in machine-readable form or otherwise, including information, non-public contracts, drawings, reports, records, prototypes, samples, models, designs, formulae, specifications, processes, machines, materials, maps, hardware, software, inventions, trade secrets, ideas, research, know-how, business methods, production plans, marketing and branding plans, merger plans, human resource policies, programs, and procedures relating to and including but not limited to organizational structure, management, marketing and branding strategies, products or services, customer services, merger integration provisions, human resource and employee benefit policies, programs, and services, internal communication processes, technology tools, and any Confidential Information that may be found in analyses, compilations, studies or other documents prepared by or for the Receiving Party. Confidential Information shall include all information that may have been or may be supplied or made available by the Disclosing Party, or that the Receiving Party may discover while assessing the Disclosing Party's property or procedures, or which the Receiving Party may hear or view while on the Disclosing Party's premises, attending a meeting or participating in any electronic communication and that should reasonably have been understood by the Receiving Party, because of legends or other markings, the circumstances of disclosure, or the nature of the information itself, to be proprietary and confidential to the Disclosing Party, regardless of whether such information is marked "Confidential." Any shapefiles provided by either Party may only be aggregated anonymously so that aggregated data or resulting map would not identify any particular broadband provider, unless the Parties agree otherwise in writing. This Agreement is not Confidential Information.
- b) **"Disclosing Party"** shall refer to either Party in connection with its disclosure of any such written or oral information to the other Party.
- c) **"Receiving Party"** shall refer to either Party in connection with its receipt of any such written or oral information from the other Party.
- d) **"Representatives"** shall mean the employees, subcontractors, agents, advisors, consultants, State Agencies or Affiliates, as applicable, of the Receiving Party.
- e) **"State Agencies"** means the California Public Utilities Commission, CDT, Department of Transportation, Department of Finance, and other entities and state agencies who are determining the scope of the California Middle-Mile Broadband Network, as well as supporting, augmenting and streamlining existing project related workstreams to inform the development of the subsequent phases of the California Middle-Mile Broadband Network.

2. Confidentiality. The Parties agree that with respect to the Disclosing Party's Confidential Information the Receiving Party will:

- a) reveal the Confidential Information only to its Representatives that (i) need to know the Confidential Information with respect to such Representative's role in connection with the California Middle-Mile Broadband Network, (ii) are informed by the Receiving Party of the confidential nature of the Confidential Information, (iii) agree to act in accordance with the terms and conditions of this Agreement, including that the Confidential Information shall not

be used for any use other than in connection with the California Middle-Mile Broadband Network, and (iv) agree not to use any of the Confidential Information for its own benefit or the benefit of a third party beyond the scope of the California Middle-Mile Broadband Network, or to compete against the Disclosing Party or otherwise to obtain any competitive advantage;

- b) at the Disclosing Party's request, return promptly to such Party or destroy (and confirm such destruction in writing to the Disclosing Party) any and all portions of the Confidential Information disclosed under this Agreement (including copies forwarded to Representatives), together with all copies thereof, provided that the Receiving Party may retain one copy thereof in its confidential, restricted access files for archival purposes, which copy shall be maintained in accordance with the provisions of this Agreement; and
- c) the Receiving Party shall be responsible for any breach of this Agreement by its Representatives.

3. Exceptions. The restrictions set forth in this Agreement shall not apply to Confidential Information if, such Confidential Information:

- a) was previously known to and in the lawful possession of the Receiving Party without obligation of confidentiality;
- b) is obtained by the Receiving Party after the date thereof from a third party that is lawfully in possession of such information and is not in violation of any contractual or legal obligation to a Disclosing Party or other third party with respect to such information;
- c) is or becomes part of the public domain through no fault of the Receiving Party or its Representatives;
- d) is independently ascertained or developed by the Receiving Party or its Representatives;
- e) is required to be disclosed by Receiving Party pursuant to a California Public Records Act request provided (i) the Receiving Party will give the Disclosing Party prompt written notice thereof to allow the Disclosing Party to seek a protective order or other appropriate remedy; (ii) such notice must include identification of the information to be so disclosed and a copy of the California Public Records Act request or other document giving rise to or evidencing Receiving Party's legal obligation; (iii) the Receiving Party will disclose only such information as is legally required; and
- f) is legally required to be disclosed by Receiving Party by law, policy, administrative, or judicial action, provided that: (i) the Receiving Party will give the Disclosing Party prompt written notice thereof to allow the Disclosing Party to seek a protective order or other appropriate remedy; (ii) such notice must include identification of the information to be so disclosed and a copy of the order, subpoena, or other document giving rise to or evidencing Receiving Party's legal obligation; (iii) the Receiving Party will disclose only such information as is legally required and will use commercially reasonable efforts to obtain confidential treatment for any Confidential Information that is so disclosed (iv) to the fullest extent permitted by law, Receiving Party will continue to protect as confidential and proprietary all Confidential Information disclosed in response to a written court order, subpoena, regulation or process of law; and (v) any such required disclosure shall not, in and of itself, change the status of the disclosed information as Confidential Information under the terms of this Agreement.

4. Degree of Care.

- a) each Party agrees to use the same degree of care and scrutiny as the Receiving Party would use with respect to its own Confidential Information or proprietary information, but in any case, using no less than a reasonable degree of care, to avoid disclosure, publication, dissemination, or improper use of any or all of the Confidential Information obtained hereunder;
- b) each Party shall treat Confidential Information as confidential and privileged pursuant to the following statutes, as and to the extent applicable: Government Code sections 7921.505 (including subdivision (c)(5)) thereof and 8592.45, Evidence Code sections 1040 and 1041, and the exemptions found in the California Public Records Act, specifically in Government Code sections 7922.585, 7927.410, 7927.705, 7929.210, 7930.110, and 7921.505; and
- c) each Party agrees that the Disclosing Party's provision of Confidential Information to the Receiving Party shall not, in any way, constitute a public disclosure pursuant to Government Code section 7921.505.

EXHIBIT D

City of Los Angeles 110 Joint Build Fiber Middle Mile Route

SUPPLEMENTAL SPECIFICATIONS

1. BSL shall, and shall ensure that any subcontractor will, obtain all necessary permits before proceeding with construction.
2. BSL shall ensure that all manholes/handholes will be free of debris, adequately sealed, and covers shall be secured as specified by their manufacturer.
3. BSL shall ensure that all huts meet the hut specifications that CDT has set forth for them.
4. BSL shall provide an electronic copy of "as-built" Drawings in the current format utilized by BSL for such Drawings.
5. BSL shall ensure that any subcontractor warrants that all Work to be furnished under this Agreement by such subcontractor shall conform in all respects to the requirements of the Agreement and this Statement of Work; are free from any defects in workmanship; and are free of defects causing caving or sinking of the trench or the paving for a period of two (2) years following acceptance of the Work.

EXHIBIT E
CDT PROJECT COST SHARE

City of Los Angeles 110 Joint Build Fiber Middle Mile Route

This exhibit sets forth CDT's share of the Project Costs (the "**CDT Project Cost Share**"), both on a per-mile basis and the total for the entire Project, broken out between materials, equipment, and labor. This is the amount that will be allocated to CDT and paid to BSL, per the payment schedule set forth in Exhibit B. If adjustments to the CDT Project Cost Share are deemed necessary by BSL to complete the Joint Build, the Parties shall address such adjustment in the manner set forth in the Statement of Work, and the Parties' agreement with respect to any such adjustment shall be incorporated into this Agreement by a written amendment properly executed by both Parties.

Total Project Miles: 13.31

Per Mile CDT Project Cost Share:	\$648,316.30
Total CDT Project Cost Share:	\$8,629,089.95

Breakdown: Conduit and Vaults

	Per Mile	Project Total	Notes
Materials	\$101,374.55	\$1,349,295.26	Assumes CDT Provision of CDT Vaults
Equipment	\$154,683.65	\$2,058,839.38	
Labor	\$255,748.66	\$3,404,014.66	
TOTAL	\$511,806.86	\$6,812,149.31	

Breakdown: Fiber Cable

	Per Mile	Project Total	Notes
Materials	\$13,379.74	\$178,084.34	Assumes BSL Purchase from CDT
Equipment	\$46,405.10	\$617,651.88	
Labor	\$76,724.60	\$1,021,204.43	
TOTAL	\$136,509.44	\$1,816,940.65	

**EXHIBIT F
APPOINTMENT LETTER**

FORM OF APPOINTMENT LETTER

[CDT LETTERHEAD]

Date

[BUREAU NAME HERE]
[BUREAU ADDRESS HERE]

Subject: Authorized Agent for Middle Mile Broadband Network ("MMBN") Regarding Permits

Dear [ENTER BUREAU NAME],

The California Department of Technology ("CDT") hereby confirms that the City of Los Angeles, acting by and through its Bureau of Street Lighting ("Authorized Agent") is an authorized agent of CDT on the MMBN project located in Los Angeles County as more fully described in the Project Details section below (the "Project"), for the limited purpose of applying for and obtaining required easements, rights of way, leases, licenses or permits ("Rights of Way") in connection with the Project.

Authorized Agent

Pursuant to SB 156, CDT has assigned the construction of the fiber network comprising the MMBN, or a portion thereof, to Authorized Agent, in respect of the executed agreement between CDT and Authorized Agent and the mutual intention of CDT and Authorized Agent for Authorized Agent to provide fiber or build a new infrastructure for CDT. CDT, thereby, authorizes Authorized Agent and its Engineering/Environmental agent, [ENTER NAME OF ENGINEERING/ENVIRONMENTAL AGENT], to apply for any required authorization with respect to Rights of Way on behalf of CDT, understanding that CDT will remain the stated applicant and in turn the legal rightful holder of any Right of Way. Authorized Agent understands that in order to conform to the authorized agency, Authorized Agent must sign all documents on behalf of CDT in the following manner: "California Department of Technology, by the City of Los Angeles, acting by and through its Bureau of Street Lighting, as Authorized Agent." Authorized Agent shall be responsible to completely review the application package, adhere to all regulatory requirements, and shall schedule a pre-application meeting with representatives of [BUREAU NAME] responsible for processing the application. CDT understands, as CDT is a state agency, that under 43 CFR 2804.14- 2806.16, CDT is exempt from cost recovery, rent, and bonding.

Project Details

Provide a description of the project that aligns with the description on the draft 299

Joint Build Agreement Summary

CDT and Authorized Agent have entered into a Joint Build Agreement with an effective date of ____ (Date in Contract) _____. ____ (Summary of Project) _____. CDT and Authorized Agent have identified routes where the deployment of fiber facilities would benefit the MMBN in connection with the California Middle-Mile Broadband Network Initiative specified in California Government Code Section 11549.50 et. seq., which was enacted as part of Senate Bill 156 (Stats. 2021, Ch. 112, Sec. 3, effective July 20, 2021).

The State of California is implementing a statewide open-access middle-mile broadband network in order to meet certain strategic goals.

Should there be any questions or clarifications, please do not hesitate to reach out to Shannon Martin-Guzman at (916) 579-1862, or by email: Shannon.MartinGuzman@state.ca.gov.

Attachments:

Authorized Agent Contact List

Sincerely,

Shannon Martin-Guzman
Project Delivery Manager
Middle Mile Broadband Initiative (MMBI)
California Department of Technology (CDT)

EXHIBIT G ESCALATION PROCESS

Prior to the exercise of remedies under this Agreement, BSL and CDT shall complete the following Escalation Process.

1. PROBLEM RESOLUTION. BSL and CDT will develop and maintain an escalation and resolution process. BSL and CDT will work to resolve product and process problems expeditiously, and at the lowest possible level within the respective organizations.

2. ESCALATION. Escalations in connection with the resolution of any issues or problems shall be in accordance with the following schedule. The documentation provided in connection with such escalation must provide sufficient supporting information to substantiate the issue or problem. The Party requesting escalation should send to the other Party all applicable documentation and history to date, and schedule a video conference or conference call 1-2 Business Days later to review details, then the following shall apply:

PARTY	1 st level	1 st level response time	2 nd level	2 nd level response time
CITY	BSL Senior Engineer for the Project or the BSL Senior Engineer for the Project's Designee	< 3 Business Days to acknowledge and provide initial timeline and plan	BSL Chief Engineer or the BSL Chief Engineer	< 3 Business Days to acknowledge and provide initial timeline and plan
CDT	MMBI Deputy Director or the MMBI Deputy Director's Designee	< 5 Business Days for acceptable resolution or acceptable progress based on weekly reporting	Deputy State CIO & Chief Deputy Director or the Deputy State CIO & Chief Deputy Director's Designee	< 5 Business Days for acceptable resolution or acceptable progress based on weekly reporting

**EXHIBIT H
FORM OF COMPLETION NOTICE**

Date _____

California Department of Technology
P.O. BOX 1810, Rancho Cordova, CA 95741
Attn: Deputy Director for MMBI

Re: Joint Build Agreement dated as of _____, 2023 between the California Department of Technology and _____ (the "Agreement")

Dear Sir or Madam:

Pursuant to the above-referenced Agreement, the undersigned hereby notifies you that the **[Joint Build]** **[Segment of the Joint Build identified below]** is completed, installed, and operating substantially in conformity with the Specifications set forth in the Statement of Work referenced in the Agreement.

[This notice pertains to the following Segment of the Joint Build: _____]

[This notice is the "Completion Notice"] [With respect to the Segment of the Joint Build identified above, this notice is a "Completion Notice"] as referenced in the Agreement that the construction and installation has been completed **[with respect to such Segment]**. Capitalized terms are used as defined in the Agreement unless otherwise defined.

Please contact us if you wish to perform a physical inspection and acceptance testing.

Please sign this Completion Notice and return it to us.

Should you have any questions regarding this notice, please contact the undersigned at _____.

By: _____
Name: _____
Title: _____

Please note acceptance or rejection below:

___ Acceptance ___ Rejection (to be accompanied by additional documentation as provided in the Agreement)

California Department of Technology

By: _____
Name: _____
Title: _____

EXHIBIT I
U.S. DEPARTMENT OF THE TREASURY
AMERICAN RESCUE PLAN ACT (ARPA)

The Agreement to which this Exhibit is attached is made using federal assistance provided to the State of California (the "State") by the US Department of Treasury ("Treasury") under the American Rescue Plan Act ("ARPA"), Pub. L. No. 117-2 (March 11, 2021), as described in Sections 801-806 of the Social Security Act, (42 U.S.C. § 801, et seq.) (the "Act"). ARPA established the Coronavirus State Fiscal Recovery Fund and Coronavirus Local Fiscal Recovery Funds, which together make up the Coronavirus State and Local Fiscal Recovery Funds ("SLFRF") program. In using SLFRF, the State must comply with the terms of ARPA, regulations issued by Treasury governing the expenditure of monies distributed from SLFRF (including, without limitation, the Interim Final Rule (86 Fed. Reg. 26786 (May 17, 2021) and Final Rule (87 Fed. Reg. 4338 (Jan. 27, 2022)) (collectively, "ARPA Funds"), the Award Terms and Conditions applicable to the ARPA Funds, and such other guidance as Treasury has issued or may issue governing the expenditure of monies distributed from the ARPA Funds (collectively, the "Regulatory Requirements"). Additionally, pursuant to the Regulatory Requirements, the State must comply with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200 other than such provisions as Treasury has determined or may determine are inapplicable to the ARPA Funds and pursuant to 2 C.F.R. §200.327 the State must include within any contract applicable provisions described in Appendix II to 2 C.F.R. Part 200.

The following terms and conditions shall apply to City under the Agreement.

1. Reporting. City agrees to comply with any reporting obligations established by Treasury as they relate to this Agreement to the extent required by Appendix II to 2 C.F.R. Part 200.
2. False Statements. City understands that making false statements or claims in connection with this Agreement is a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal contracts, and/or any other remedy available by law.
3. Disclaimer.
 - a. The United States expressly disclaims any and all responsibility or liability to City or third persons for the actions of City or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this contract or any other losses resulting in any way from the performance of this contract or any contract, or subcontract under this Agreement.
 - b. The acceptance of this Agreement by City does not in any way establish an agency relationship between the United States and City.
4. Protections for Whistleblowers. City shall comply with the provisions of 41 U.S.C. § 4712 regarding the prohibition against discharging, demoting, or otherwise discriminating against an employee in reprisal for disclosing to any of the list of persons or entities, as provided in 41 U.S.C. § 4712(a)(2), information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant.
5. Certification Regarding Wages. City may provide a certification that, for the relevant project, all laborers and mechanics employed by contractors and subcontractors in the performance of such project are paid wages at rates not less than those prevailing, as determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the "Davis-Bacon Act"), for the corresponding classes of laborers and mechanics

employed on projects of a character similar to the contract work in the civil subdivision of the State in which the work is to be performed, or by the appropriate State entity pursuant to a corollary State prevailing-wage-in-construction law (commonly known as "baby Davis-Bacon Acts"). If such certification is not provided, City must provide a project employment and local impact report detailing:

- a. The number of employees of contractors and sub-contractors working on the project;
- b. The number of employees on the project hired directly and hired through a third party;
- c. The wages and benefits of workers on the project by classification; and
- d. Whether those wages are at rates less than those prevailing.

City must maintain sufficient records to substantiate this information upon request.

6. Equal Employment Opportunity. If this Agreement is a Federally Assisted Construction Contract (as defined in 41 C.F.R. § 60-1.3) exceeding \$10,000, during the performance of this Agreement, City agrees as follows:

- a. City will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. City will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. City agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- b. City will, in all solicitations or advertisements for employees placed by or on behalf of City, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- c. City will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with City's legal duty to furnish information.
- d. City will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- e. City will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor ("Executive Order 11246").

- f. City will furnish to the Administering Agency (as specified in 41 C.F.R. §60-1.3) and the Secretary of Labor all information and reports required by Executive Order 11246, or pursuant thereto, and will permit access to its books, records, and accounts by the Administering Agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- g. In the event of City's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be cancelled, terminated, or suspended, in whole or in part, and City may be declared ineligible for further government contracts or Federally Assisted Construction Contracts in accordance with procedures authorized in Executive Order 11246. Such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246, or as otherwise provided by law.
- h. City will include the portion of the sentence immediately preceding paragraph a. of this section, and the provisions of paragraphs a. through g. in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246, so that such provisions will be binding upon each subcontractor or vendor. City will take such action with respect to any subcontract or purchase order as the Administering Agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.

Provided, however, that in the event City becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Administering Agency, City may request the United States to enter into such litigation to protect the interests of the United States.

The State further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work. Provided, that if the State so participating is a state or local government, the above equal opportunity clause is not applicable to any agency, instrumentality, or subdivision of such government which does not participate in work on or under the Agreement.

- i. The State agrees that it will assist and cooperate actively with the Administering Agency and the Secretary of Labor in obtaining the compliance of City and any subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor; that it will furnish the Administering Agency and the Secretary of Labor such information as they may require for the supervision of such compliance; and that it will otherwise assist the Administering Agency in the discharge of the agency's primary responsibility for securing compliance.
- j. The State further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and Federally Assisted Construction Contracts pursuant to Executive Order 11246 and that it will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon City and any subcontractors by the Administering Agency or the Secretary of Labor pursuant to Part II, Subpart D of Executive Order 11246. In addition, the State agrees that if it fails or refuses to comply with these undertakings, the Administering Agency may take any or all of the following actions: cancel, terminate, or suspend, in whole or in part, this contract (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

7. Suspension and Debarment.

- a. This Agreement is subject to the Federal Office of Management and Budget (OMB) Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement), 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (contracts and subcontracts described in 2 C.F.R. Part 180, subpart B) that the contract is subject to 2 C.F.R. Part 180 and Treasury's implementing regulation at 31 C.F.R. Part 19.
- b. City certifies that it is not listed on the governmentwide exclusions in the System for Award Management, in accordance with the OMB guidelines at 2 C.F.R. Part 180 that implement Executive Orders 12549 (3 C.F.R. Part 1986 Comp., p. 189) and 12689 (3 C.F.R. Part 1989 Comp., p. 235), "Debarment and Suspension." System for Award Management Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

8. Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352, as amended, and New Restrictions on Lobbying, 31 C.F.R. Part 21.

- a. City certifies that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. City shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier, up to the State who in turn will forward the certification(s) to the Treasury. This certification is a material representation of fact upon which State has relied when entering into this Agreement, and all liability arising from an erroneous representation shall be borne solely by City.
- b. Purchases Over \$100,000 - City must sign the certification on the last page of this Exhibit and shall cause any subcontractors with a subcontract (at any tier) exceeding \$100,000 to file with the tier above it the same certification.

9. Rights To Inventions Made Under Agreement. If City is a small business firm or nonprofit organization (as defined in 37 C.F.R. § 401.2), and the agreement to which this Exhibit is attached concerns the substitution of parties, assignment, or performance of experimental, developmental, or research work, (as defined in 37 C.F.R. § 401.2), then the agreement shall be subject to the requirements of 37 C.F.R. Part 401, "Rights To Inventions Made By Nonprofit Organizations And Small Business Firms Under Government Grants, Contracts And Cooperative Agreements," and any applicable implementing regulations issued by Treasury.

10. Contract Work Hours and Safety Standards Act ("CWHSSA"; 40 U.S.C. §§ 3701-3708) (applies only to purchases over \$100,000, when Laborers or Mechanics are used).

- a. Where applicable, contracts in excess of \$100,000 that involve the employment of Mechanics or Laborers (as defined in 29 C.F.R. § 5.2(m)) shall include a provision for compliance with 40 U.S.C. §3702 and § 3704 of the CWHSSA, as supplemented by Department of Labor regulations (29 C.F.R. Part 5).
- b. *Overtime Requirements.* Under § 3702 of the CWHSSA, City and any subcontractor shall be required to compute the wages of every Mechanic and Laborer on the basis of a standard workweek of 40 hours. Work in excess of the standard workweek is permissible provided that the worker is compensated at a rate of not less than one and one half (1 1/2) times the basic rate of pay for all hours worked in excess of forty (40) hours in the workweek. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provides that no Laborer or

Mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous.

- c. These requirements do not apply to contracts for: (i) the purchases of supplies or materials or articles ordinarily available on the open market; (ii) transportation by land, air, or water; or (c) transmission of intelligence.

11. Clean Air Act & Federal Water Pollution Control Act (Applies to Purchases of More Than \$150,000).

- a. The City agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq.
- b. The City agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et seq. (commonly referred to as the "Clean Water Act").
- c. The City agrees to report each violation of the Clean Air Act and the Clean Water Act to the State and understands and agrees that the State will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- d. City agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance.

12. Prohibition on Contracting for Covered Telecommunications Equipment or Services. City shall comply with the provisions of section 889 of the John S. McCain National Defense Authorization Act for fiscal year 2019 ("National Defense Authorization Act"), Pub. L. No. 115-232 (Aug. 13, 2018), 2 C.F.R 200.216, and 2 C.F.R 471. City shall not procure, obtain, extend, renew, or enter into any contract for the following:

- a. Equipment, services, or systems, including telecommunications or video surveillance services, that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. Covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
- b. Video surveillance and telecommunications equipment for the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- c. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country, as defined in the National Defense Authorization Act.

13. Domestic Preference for Procurements. When applicable, City should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subcontracts and purchase orders for work or products under this Agreement. For purposes of this section:

- a. "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
 - b. "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminium; plastics and polymer- based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.
14. Procurement of Recovered Materials. City shall comply with section 6002 of the Solid Waste Disposal Act, Pub. L. No. 89-272 (Oct. 20, 1965), as amended by the Resource Conservation And Recovery Act, including procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000.
15. Other Non-Discrimination Statutes. City acknowledges that State is bound by the provisions contained in the federal statutes enumerated below. Contactor agrees to the extent applicable to City, to abide by the provisions contained in the federal statutes below, and any other federal statutes and regulations that may be applicable to the expenditure of ARPA Funds:
 - a. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 *et seq.*), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;
 - b. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;
 - c. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 *et seq.*), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and
 - d. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 *et seq.*), which prohibits discrimination on the basis of disability in programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.

- This form is required only for purchases of more than \$100,000 –

31 C.F.R. Part 21 – New Restrictions on Lobbying – CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of their knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all contractors shall certify and disclose accordingly.
4. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The City certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the City understands and agrees that the provisions of 31 U.S.C. Ch. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Signature of City's authorized official

Date: _____

(Print name and title of person signing above)

EXHIBIT J

SECURITY AND DATA PROTECTION

To the extent applicable to the City, the City shall certify to the State compliance with applicable industry standards and guidelines, including but not limited to relevant security provisions of the California State Administrative Manual (SAM), California Statewide Information Management Manual (SIMM), The National Institute of Standards and Technology (NIST) Publication SP 800-53 Rev. 5 (09/23/2020) and Federal Information Processing Standard (FIPS) Publication 199 which protect and minimize risk to the State. At a minimum, provision shall cover the following:

1. City assumes responsibility of the confidentiality, integrity, and availability of the data under its control. City shall implement and maintain all appropriate administrative, physical, technical, and procedural safeguards at all times during the term of the Agreement to secure such data from data breach or loss, protect the data and information assets from breaches, introduction of viruses, disabling of devices, malware and other forms of malicious or inadvertent acts that can disrupt the State's access to its data or affects the integrity of that data.
2. Confidential, sensitive, or personal information shall be encrypted in accordance with SAM 5350.1 and SIMM 5305-A.
3. City shall comply with statewide policies and laws regarding the use and protection of information assets and data. Unauthorized use of data by City or third parties is prohibited.
4. Signed Security and Confidentiality Statement for all personnel assigned during the term of the Agreement.
5. Apply security patches and upgrades and keep virus protection software up to date on all information asset on which data may be stored, processed, or transmitted.
6. City shall notify the State data owner immediately if a security incident involving the information asset occurs.
7. The State data owner shall have the right to participate in the investigation of a security incident involving its data or conduct its own independent investigation. City shall allow the State reasonable access to security logs, latency statistics, and other related security data that affects this Agreement and the State's data, at no cost to the State.
8. City shall be responsible for all costs incurred by the State due to security incident resulting from City's failure to perform or negligent acts of its personnel, and resulting in an unauthorized disclosure, release, access, review, destruction, loss, theft, or misuse of an information asset. If City experiences a loss or breach of data, City shall immediately report the loss or breach to the State. If the State data owner determines that notice to the individuals whose data has been lost or breached is appropriate, City will bear any and all costs associated with the notice or any mitigation selected by the data owner. These costs include, but are not limited to, staff time, material costs, postage, media announcements, and other identifiable costs associated with the breach or loss of data.
9. City shall immediately notify and work cooperatively with the State data owner to respond timely and correctly to public records act requests.
10. City will dispose of records of State data as instructed by the State during the term of this Agreement. No data shall be copied, modified, destroyed, or deleted by City other than for normal operation or maintenance during the Agreement period without prior written notice to and written approval by the State.
11. Remote access to data from outside the continental United States, including remote access to data by authorized support staff in identified support centers, is prohibited unless approved in advance by the State.
12. The physical location of City's data center where the Data is stored shall be within the continental United States.

EXHIBIT K

PURCHASES OF MATERIALS BY BSL

The terms and conditions set forth in this Exhibit K shall apply to each and every purchase by CDT of Materials pursuant to Section 5.e. of this Agreement (each, a “**Materials Purchase**”), and to each and every transfer of such Materials to BSL by or on behalf of CDT for incorporation into BSL’s Facilities or for the connection of BSL’s last-mile network to the Joint Build (each, a “**Materials Transfer**”).

1) Invoicing and Documentation. CDT and BSL will enter into a Work Authorization in the form of Exhibit L regarding the purchase of Materials from CDT (“**Work Authorization**”). The Work Authorization will contain a form purchase order in the form of Exhibit M that BSL will use to order Materials (a “**Purchase Order**”). If BSL wants to purchase Materials, BSL will submit a Purchase Order to CDT. CDT will review the Purchase Order and provide pricing of the materials listed in the Purchase Order. BSL will review the pricing and provide the final list of Materials BSL will be purchasing from CDT, and upon final acceptance of such Purchase Order, CDT will send BSL Purchase Order Invoice, and such Purchase Order Invoice may be submitted as a Purchase Order Credit Invoice if BSL is issuing CDT a credit for the payment. Payments and credits will be made and applied in accordance with Exhibit B.

2) Accommodation Transactions. Each Materials Purchase by CDT, and each Materials Transfer from CDT to BSL, is intended as an accommodation to BSL to enable BSL to benefit from pricing of Materials made available to CDT. Materials Purchases and Materials Transfers are not intended to establish a seller/buyer, vendor/vendee or similar relationship between CDT and BSL, or to impose any duties or obligations on BSL or CDT hereunder or at law with respect to Materials Purchases and Materials Transfers except as expressly provided in this Agreement.

a) DISCLAIMER OF WARRANTIES.

CDT MAKES NO WARRANTIES, EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE, AS TO THE CONDITION, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR ANY OTHER MATTER CONCERNING THE MATERIALS AND BSL ACCEPTS THE MATERIALS AS IS. CDT DOES NOT ADOPT OR AFFIRM ANY OF THE WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, MADE BY ANY OF THE MANUFACTURERS OF ANY OF THE GOODS.

CDT HEREBY EXTENDS TO BSL, ON A "PASS THROUGH" NON-RECOURSE BASIS, ANY WARRANTY PROVIDED BY THE THIRD-PARTY VENDOR OR MANUFACTURER OF THE PURCHASED MATERIALS TO THE EXTENT PERMISSIBLE.

MATERIALS WILL BE PROVIDED TO BSL ON AN "AS IS" BASIS AND CDT DISCLAIMS ANY AND ALL REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED (INCLUDING WARRANTIES OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT) WITH RESPECT TO THE GOODS AND SERVICES.

b) Delivery; Shipment. CDT shall provide no delivery or shipment services to BSL and has no role in the selection of Materials (except as may be expressly provided in this Agreement and the Specifications) BSL shall take possession of Materials directly from each applicable third-party vendor of Materials, at each such vendor’s point of origin (or at such other location, or by such other means, as BSL and the applicable vendor shall agree). CDT assumes no liability in connection with shipment or delivery of Materials.

EXHIBIT L

WORK AUTHORIZATION FORM

The task/deliverable(s) will be performed in accordance with this Work Authorization and the provision of Contract Number: 23-xxxxx

WORK AUTHORIZATION NUMBER

PAGE(S)

of

TITLE OF TASK/DELIVERABLE

TASK/DELIVERABLE SUMMARY *(Brief description of task/deliverable to be performed under work authorization)*

START DATE

COMPLETION DATE

TOTAL ESTIMATED LABOR HOURS

TOTAL ESTIMATED COST

APPROVALS:

CITY CONTRACT ADMINISTRATOR NAME

TITLE

SIGNATURE

DATE

CDT CONTRACT ADMINISTRATOR NAME

TITLE

SIGNATURE

DATE

RECEIVED BY:

CDT BUSINESS CONTRACT MANAGER NAME

TITLE

SIGNATURE

DATE

PURCHASE ORDER FORM**EXHIBIT M**

#	Estimated Quantity	P/N	Description

EXHIBIT N
PURCHASE ORDER CREDIT INVOICE



California
DEPARTMENT OF TECHNOLOGY CREDIT INVOICE

Credit Invoice Number:

xxxxxx

Invoice Date:

xx/xx/xxxx

Page:

1 of 1

Please Remit To:

DO NOT PAY

Amount Due to be credited to California Department of Technology with the Invoice number
dated xx/xx/xxxx

Credit To:

<add invoice information here