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**ENCROACHMENT AGREEMENT
BETWEEN THE CITY OF CAMPBELL
AND BANDWIDTH INFRASTRUCTURE GROUP CA, LLC
FOR THE INSTALLATION OF NETWORK FACILITIES
WITHIN PUBLIC RIGHT-OF-WAY**

This Agreement ("Agreement") is dated for identification on April 20, 2021 by and between the CITY OF CAMPBELL (herein termed "CITY") and Bandwidth Infrastructure Group CA, LLC, a Delaware Limited Liability Company (herein termed "ENCROACHER").

RECITALS

WHEREAS, CITY owns, operates and maintains the Public Right-of-Way within CITY for the purpose of providing public services to its clients; and,

WHEREAS, ENCROACHER desires to construct Network Facilities within the Public Right-of-Way and/or public utility or service easements within CITY to provide Telecommunications Services; and

WHEREAS, CITY has the authority to regulate the terms and conditions for the use of Public Right-of-Way for the construction, installation and maintenance of Network Facilities by private telecommunications services providers.

AGREEMENT PROVISIONS

NOW, THEREFORE, in consideration of the recitals and the mutual promises contained herein, CITY AND ENCROACHER agree as follows:

DEFINITIONS

ENCROACHER--Means Bandwidth Infrastructure Group CA, LLC, a Delaware Limited Liability Company, and its lawful successors or assigns.

CITY—Means the City of Campbell, a general law city and municipal corporation of the State of California, and includes the duly elected or appointed officers, agents, employees and volunteers of the City of Campbell, individually or collectively.

Public Right-of-Way or Public Rights-of-Way-Means the surface, the air space above the surface and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, parkway, dedicated public utility easement or similar property in which CITY now or hereafter holds any property interest which, consistent with the purposes for which it was dedicated, may be used for the purpose of installing and maintaining Network Facilities. No reference herein to a "Public Right-of-Way" shall be deemed to be representation or guarantee by CITY that its interest or other rights to control the use of such property is sufficient to permit its use for such purposes, and ENCROACHER shall be deemed to gain only those rights to use the property as the CITY may have the undisputed right and power to give, and which do not interfere with CITY's needs for government uses and/or public duties within the public right of way. In the event of any conflict, the use of the subject rights of way areas of ENCROACHER are secondary to the rights and needs of the CITY.

Telecommunications - Means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

Telecommunications Services-Means the offering of telecommunications, regardless of the facilities used, including the transmission of voice, video, data or other information along wires, optical fibers or other transmission media, or using radio waves or other wireless media, including but not limited to cable television services, telephone services, cellular telephone services, personal communications services, internet services, open video system services and other similar services.

Network Facilities-Means any and all telecommunications cables, lines, conduits, access manholes/handholes, pedestals, boxes, and other similar equipment and devices owned or used by ENCROACHER in providing Telecommunications Services.

SCOPE OF USE OF PUBLIC RIGHT-OF-WAY

1. ENCROACHER will provide the CITY with copies of all diagrams, depicting the location of the facilities which are the subject of this Agreement, which diagrams must be attached to the CITY permit application(s) (including, but not limited to, the encroachment permit application(s)) for the subject facilities.
2. CITY hereby enters into this encroachment agreement with ENCROACHER, subject to reservations, covenants and conditions herein contained, to construct, install, maintain and operate, and remove Network Facilities within Public Right-of-Way that are located within the corporate limits of the CITY to provide Telecommunications Services, subject to obtaining all required permits and approvals.
3. ENCROACHER is not authorized to place any facilities other than Network Facilities in the Public Right-of-Way, without first obtaining written authorizations (including any franchises, licenses, and/or other authorizations required pursuant to the City of Campbell Municipal Code or the CITY's Standard Specifications, as such may be amended from time to time) and required permits from the CITY, nor may ENCROACHER provide service using any facilities it places in the public Right-of-Way without first obtaining written authorizations and required permits from the CITY, except that the foregoing does not apply to services where State or Federal law preempts any requirement for local authorization.
4. ENCROACHER shall comply with any lawful provision that the CITY may adopt in the future requiring it to obtain a franchise, license, or other authorization, and may be required to do so as a condition of the continued effectiveness of this Agreement. The City Engineer shall be solely responsible for determining what written authorizations (including any franchises, licenses, and/or other authorizations required pursuant to the City of Campbell Municipal Code or the CITY's Standard Specifications, as such may be amended from time to time) and/or permits are required. ENCROACHER agrees that once a written authorization and/or permit is determined to be required, ENCROACHER shall first apply for same and complete whatever process is required before challenging the requirement.
5. The construction, installation, operation, maintenance and/or removal of Network Facilities shall be accomplished without cost or expense to CITY subject to the written approval of CITY's City Engineer in such a manner as not to endanger personnel or property, or unreasonably obstruct travel on any road, walk or other access thereon within said Public Right-of-Way.
6. This Agreement does not authorize use of any property other than the Public Rights of Way. Any use of any other CITY property, including but not limited to poles and conduits shall require a separate agreement.

7. This Agreement is not a grant by the CITY of any property interest but is made subject and subordinate to the prior and continuing right of CITY and its assigns to use all the Public Right-of-Way in the performance of its duty, including but not limited to, public use as a street and for the purpose of laying, installing, maintaining, repairing, protecting, replacing and removing sanitary sewers, water mains, storm drains, gas mains, poles, overhead and underground electrics, and telephone lines, electric lines, cable television and other utility and municipal uses together with appurtenances thereof and with right of ingress and egress, along, over, across and in said Public Right-of-Way; and ENCROACHER shall have a duty to remove, relocate and rearrange its facilities within the time frame set forth by CITY, and at its own expense, in order to accommodate such uses, as further provided in Sections 27, 28 and 29.
8. The grant of rights in this Agreement is made subject to all easements, restrictions, conditions, covenants, encumbrances and claims of title which may affect the Public Right-of-Way, and it is understood that ENCROACHER, at its own costs and expense, shall obtain such permission as may be necessary consistent with any other existing rights.
9. If the CITY is not prohibited from charging for use of the Public Rights of Way by ENCROACHER by State or Federal statute, it may do so, and the payment of any lawful compensation established by the CITY shall be a condition of the continued effectiveness of this Agreement. Nothing in this Agreement is intended to expand the taxes and fees beyond that which may lawfully be assessed on ENCROACHER's business activities under applicable law.
10. The construction, operation or repair and maintenance of Network Facilities shall be in accordance with all applicable Federal, State and local laws, including, without limitation, zoning laws, construction codes and CITY's Standard Specifications and Details, as the same may exist now, or be hereafter amended or revised; and any supplements thereto or revisions of this Agreement, and any Franchise or other authorization now or in the future. Nothing in this Agreement prevents the CITY from establishing additional or stricter conditions (even with respect to the matters specified in those sections), and requiring ENCROACHER to comply with the same. In the event of a conflict among codes and standards, the most stringent code or standard, as determined in the sole judgment of the City Engineer, shall apply.

CONSTRUCTION AND MAINTENANCE STANDARDS

11. ENCROACHER shall at all times employ reasonable care, within the meaning of applicable law, and shall install, maintain and use commonly

accepted methods and devices for preventing failures and accidents that are likely to cause damage, injury or nuisance to the public, and shall take all reasonable steps to safeguard work sites areas, including, without limitation, existing facilities and property.

12. ENCROACHER agrees to perform all work under this Agreement in accordance with the City of Campbell Municipal Code, the CITY'S Standard Specifications, as such may be amended from time to time (which currently includes, without limitation, the 1994 City of Campbell Standard Specifications and Details for Public Works Construction, the City of San Jose 1992 Standard Specifications for Public Works Construction, and the 1992 CALTRANS Standard Specifications) and the Conditions of Approval for the project(s) covered by this Agreement and the Network Facilities (terms of which shall be determined prior to ENCROACHER's submittal of applicable encroachment permit applications). To the fullest extent possible this Agreement and the documents referenced in this section shall be harmonized and interpreted as a consistent whole. However, in the event of conflict that cannot be reasonably harmonized, the following priorities shall govern: (a) the terms set forth in the body of this Agreement shall have precedence over any of the other documents; (b) the Conditions of Approval shall have precedence over the City of Campbell Standard Specifications and Details for Public Works Construction, the City of Campbell Standard Specifications and Details for Public Works Construction, the City of San Jose Standard Specifications for Public Works Construction, and the CALTRANS Standard Specification; (c) the City of Campbell Standard Specifications and Details for Public Works Construction shall have precedence over the City of San Jose Standard Specifications for Public Works Construction, and the CALTRANS Standard Specification; and (d) the City of San Jose Standard Specifications for Public Works Construction shall have precedence over the CALTRANS Standard Specification.
13. ENCROACHER shall construct, operate and maintain its Network Facilities so as not to endanger or interfere with improvements CITY shall deem appropriate to make or to interfere in any manner with the Public Right-of-Way or legal rights of any property owner or to unnecessarily hinder or obstruct pedestrian or vehicular traffic. ENCROACHER shall place facilities in strict conformance with the plans and drawings approved in writing by CITY and shall not place facilities, equipment or fixtures where they will interfere with any gas, electric, telephone, telecommunications, water, sewer or other utility facilities or obstruct or hinder in any manner such entity's use of any Public Right-of-Way. Any and all Public Rights-of-Way, public property or private property that is disturbed or damaged by ENCROACHER during the construction, repair, replacement, relocation, operation, maintenance or construction of a Network Facility shall be promptly repaired by ENCROACHER, to a condition equal to or better than that which existed prior to the damage.

14. Within ten (10) days after its receipt of a written request from CITY, ENCROACHER shall, at its sole cost and expense, expose its subsurface Network Facility by potholing (digging a test hole) to a depth of one foot (1') below the bottom of such facility. If ENCROACHER fails to perform the potholing, CITY may proceed on ENCROACHER's account and ENCROACHER shall promptly reimburse CITY for the cost of same, plus a fifteen percent (15%) administrative overhead charge. CITY is hereby held harmless and indemnified by ENCROACHER for any loss and/or damages resulting from the CITY's performance of the required work.
15. ENCROACHER shall not install or erect any facilities or apparatus in or on other public property, places or Public Rights-of-Way, or within any privately owned area within CITY which has not yet become a public street but is designated or delineated as a proposed public street on any tentative subdivision or parcel map approved by CITY, except those installed or erected upon public utility facilities now existing without obtaining the prior written approval of the City Engineer.
16. Any contractor or subcontractor used for the construction, installation, operation, maintenance or repair of the Network Facility equipment shall be properly licensed under the laws of the State and all applicable local ordinances and each contractor or subcontractor shall have the same obligations with respect to its work as ENCROACHER would have under this Agreement and applicable law as if the work were performed by ENCROACHER. ENCROACHER shall be responsible for ensuring that the work of contractors and subcontractors is performed consistent with this Agreement and applicable law, shall be responsible for all acts or omissions of contractors or subcontractor and shall implement a quality control program to ensure that the work is properly performed. This section is not meant to alter any tort liability of ENCROACHER to third parties.
17. If, during the course of the project, the Director of Public Works determines that the public health, safety and welfare requires a modification of or a departure from the plans and specifications submitted by the ENCROACHER for the proposed project, the Director of Public Works shall have the authority to identify, specify, and delineate the modification or departure required, and ENCROACHER shall perform the work allowed under this agreement in accordance with CITY specified departure or modification. The Director shall provide the ENCROACHER with a written description of the required modification or departure, the public health, safety or welfare issue necessitating the modification or departure, and the time within which the ENCROACHER shall make, complete or maintain the modification or departure required.

18. ENCROACHER agrees to keep said Network Facilities in good and safe condition and free from any nuisance.
19. ENCROACHER shall notify all property owners within 300 feet of a work site in writing at least twenty four (24) hours prior to the commencement of any anticipated work under this Agreement.

IDENTIFICATION OF COMMUNICATIONS EQUIPMENT

20. ENCROACHER shall identify the Network Facilities installed in each Right(s) of Way by means of an identification method mutually agreed upon by the Parties, or as directed by the City Engineer if the parties cannot mutually agree on an identification method. Such identification shall be detectable from ground level without opening the street. To prevent conflicts between ENCROACHER'S private facilities and public facilities in the same location, ENCROACHER shall notify Underground Service Alert ("USA") of the location of the Network Facilities for the benefit of future construction projects which may need to be aware of the presence of the facilities within the Public Right of Way. The failure of any party to identify ENCROACHERS's facilities in the Public Right of Way shall not create any claim or right against the CITY.

SERVICE CHANGE

21. ENCROACHER provides intrastate and interstate Telecommunications Services in California pursuant to its Certificates of Public Convenience and Necessity received from the California Public Utilities Commission. ENCROACHER hereby warrants that the type of service offered to its customers through the Network Facilities in Public Right-of-Way consists solely of Telecommunication Services.
22. The terms of this Agreement are based on the type of equipment, and service and/or product which ENCROACHER carries over the Network Facilities installed in the Public Right-of-Way. ENCROACHER acknowledges that any change in service or change in the law may increase the CITY's regulatory authority over such services, product, and ENCROACHER's use of Public Right-of-Way, and may require modification of this Agreement, and require ENCROACHER to obtain additional authorizations.

NO FRANCHISE RIGHTS CREATED

23. Nothing in the Agreement shall be construed as granting or creating any franchise or license rights.

NO OWNERSHIP OR VESTED INTEREST CREATED

24. No use of any Public Right-of-Way or other interest or property under this Agreement shall create or vest in ENCROACHER any ownership or other interest in the Public Right-of-Way, streets or any other property or interest of the CITY.

REMOVAL AND RELOCATION

25. In the event of an emergency, or where Network Facilities create or are contributing to an imminent danger to health, safety or property, CITY may remove, relay or relocate any or all parts of those Network Facilities without prior notice; however, CITY shall make reasonable efforts to provide prior notice.
26. ENCROACHER shall promptly relocate its facilities to accommodate projects or needs of CITY, or other government agencies and third parties who are authorized to use the Public Rights-of-Way. Should ENCROACHER be required to relocate its Network Facilities for any non-CITY (or CITY-related) third party and for reasons other than as set forth in Paragraph 25 above, ENCROACHER may condition rearrangement of its facilities on an agreement by the third party to pay the reasonable cost of relocation, except where (i) the Network Facilities must be relocated because it was not properly installed by ENCROACHER, or was installed without obtaining necessary authorizations; or (ii) state or federal law requires otherwise; or (iii) relocation is necessary to protect and preserve the public health safety or welfare.
27. ENCROACHER shall remove or relocate, without cost or expense to CITY, any Network Facilities installed, used and maintained under this Agreement if and when made necessary by any lawful change of grade, alignment or width of any street, including the construction, maintenance or operation of any underground subway or viaduct by CITY and/or the construction, maintenance or operation of any other CITY underground or aboveground facilities.
28. In the event all or any portion of said Public Right-of-Way occupied by said Network Facilities shall be needed by CITY for governmental purposes or in the event of the existence of said Network Facilities shall be considered detrimental to governmental activities, including but not limited to, interference with CITY construction projects, or is in conflict vertically and/or horizontally with any proposed CITY installation, ENCROACHER shall, by written direction of CITY's Public Works Director, remove and relocate said Network Facilities to such other location or locations on said Public Right-of-Way as may be designated by CITY. Said removal or relocation shall be completed within ninety (90) days of notification by CITY. In the event said Network Facilities are not removed or relocated

within ninety (90) days after said notification, CITY may cause the same to be done at the sole expense of ENCROACHER.

Such 90-day period may be extended by CITY in the event ENCROACHER is delayed in the performance of its obligations under this Section 28 due to events beyond ENCROACHER's control and not caused by the negligence or conduct of ENCROACHER ("Force Majeure"). A "Force Majeure" event includes an act of God, fire, earthquake, natural disaster, or accident, in each case only to the extent that such event is not due to, nor arises out of, the negligence or conduct of ENCROACHER; however, Force Majeure shall not include: (a) labor disputes or strikes involving employees of ENCROACHER, its contractors or subcontractors (of any tier), or anyone performing work for or on behalf of ENCROACHER or under ENCROACHER's authority or control, and/or (b) economic hardship. If ENCROACHER's performance is delayed or stopped as a result of a Force Majeure event, ENCROACHER shall, within five (5) days from the beginning of such delay or stoppage, notify CITY in writing of the Force Majeure event causing the delay and will receive an extension of time in which to perform its obligations under this Section 28 that is equivalent to the period of time ENCROACHER can demonstrate its performance was delayed or stopped as a result of Force Majeure. ENCROACHER shall so far as possible avoid and/or remedy the effects of any event of force majeure on its performance with all reasonable dispatch and shall use its best efforts to eliminate and mitigate the consequences thereof.

29. ENCROACHER shall, by a time specified by CITY, protect, support, temporarily disconnect, relocate or remove any of its property when required by CITY or any other governmental entity by reason of traffic conditions; public safety; Public Rights-of-Way construction; Public Rights-of-Way maintenance or repair (including resurfacing or widening); change of Public Rights-of-Way grade; construction, installation or repair of sewers, drains, water pipes, power lines, signal lines, tracks or any other type of government-owned communication system, public work or improvement or any government-owned utility; Public Rights-of-Way vacation; or for any other purpose where the work involved would be aided by the removal or relocation of the Network Facility.
30. In those areas and portions of the CITY where the transmission or distribution facilities of either a public utility providing telephone service or those of the utility providing electric service are underground or hereafter may be placed underground, then ENCROACHER shall likewise construct, operate and maintain all of its Network Facilities underground. For the purposes of this subsection, "underground" shall include a partial underground system. The CITY shall not in any manner be responsible for any costs incurred by ENCROACHER in placing ENCROACHER's facilities underground.

31. If any portions of the Network Facilities covered under this Agreement other than redundant facilities or facilities for emergency use are no longer used by ENCROACHER, or are abandoned for a period in excess of one (1) year, ENCROACHER shall notify CITY and shall either promptly vacate and remove the facilities at its own expense or, at the discretion of the City Engineer, may abandon some or all of the facilities in place. Notwithstanding the foregoing, this section shall not apply to Network Facilities installed to meet future demand or needs for capacity.
32. When removal or relocation is required under this Agreement, ENCROACHER shall, after the removal or relocation of the Network Facilities, at its own cost, repair and return the Public Right-of-Way in which the facilities were located to a safe and satisfactory condition in accordance with the construction-related conditions and specifications as established by CITY. Before proceeding with removal or relocation work, ENCROACHER shall obtain a street encroachment permit from the CITY under Chapter 11.04 of the Campbell Municipal Code. Should ENCROACHER remove the Network Facilities from the Public Right-of-Way, ENCROACHER shall, within ten (10) days after such removal, give notice thereof to CITY specifying the right-of-way affected and the location thereof as well as the date of removal.

CONSTRUCTION PERMIT AND FEES

33. ENCROACHER shall apply for an encroachment permit (and such other permits as may be required) for all work and each job within the Public Right-of-Way or public utility or service easements. ENCROACHER shall furnish detailed plans of the work and other such information as required by the City Engineer of CITY and shall pay all processing, field marking, administrative, engineering and inspection fees prior to issuance of permit in accordance with the rates in effect at the time of payment. Said improvements shall be constructed and installed in accordance with the Campbell Municipal Code, CITY's Standard Specifications, and as further provided for in the provisions of this Agreement.
34. Any encroachment permit shall set forth the description of the Network Facilities to be installed and the Public Right-of-Way in which such facilities are to be located. CITY may establish construction-related conditions and specifications in the encroachment permit. ENCROACHER shall provide to CITY plat maps and location information for the Network Facilities, including, without limitation, the identification and location of any future facilities. Following completion of construction, ENCROACHER shall provide to the CITY "as-builts" of the Network Facilities and shall further notify USA of the location of the facilities as provided in Section 42.

PERFORMANCE BOND

35. Prior to the issuance of an encroachment permit, ENCROACHER shall provide CITY with a performance bond naming CITY as obligee in the amount equal to one hundred percent (100%) of the value of the work to be performed by or on behalf of ENCROACHER within and affecting the Public Right-of-Way to guarantee and assure the faithful performance of ENCROACHER's obligations under this Agreement. CITY shall have the right to draw against the performance bond in the event of a default by ENCROACHER or in the event that ENCROACHER fails to meet and fully perform any of its obligations. The form of the performance bond shall be approved by the CITY. The performance bond shall remain in full force until the work to be performed is complete, inspected and accepted by the City Engineer and is released by CITY. Before providing the CITY with the above-referenced performance bond for any project covered by this Agreement, ENCROACHER must provide to the CITY (for the City's review and approval and the ENCROACHER's concurrence) the proposed amount of the bond with supporting bond estimate sheet (detailing the work and costs to be covered by the bond) and related construction cost estimates.

DAMAGE TO FACILITIES IN PUBLIC RIGHT-OF-WAY

36. ENCROACHER shall be responsible for any damage to CITY street pavements, existing utilities, curbs, gutters, sidewalks and all other public or private facilities due to its construction, operation, installation, maintenance, repair or removal of its Network Facilities in Public Right-of-Way, and shall repair, replace and restore in kind the said damaged facilities at ENCROACHER's sole expense.
37. Any premature deterioration of surface and subsurface improvements, such as pavement or concrete over the facility or trench or adjacent area, or reduction in the life of the Right-of-Way as determined by the City Engineer applying reasonable criteria, which results from ENCROACHER's acts or omissions shall be the responsibility of ENCROACHER. ENCROACHER shall complete all necessary repairs within thirty (30) days of notification by City Engineer. If ENCROACHER fails to make repairs within thirty (30) days of notice, CITY may have repairs made with the cost being billed to ENCROACHER. If the repair cannot fully reverse the deterioration or loss of life, the CITY may require ENCROACHER to pay for the damage suffered as a result. This obligation shall extend for a period not to exceed fifteen (15) years from the date of completion of work by ENCROACHER under CITY's encroachment permit.

PREEXISTING INSTALLATIONS

38. If Public Right-of-Way to be used by ENCROACHER has preexisting installation(s) placed in the said Right-of-Way, ENCROACHER shall assume the responsibility to verify the location of the preexisting installation and notify CITY and any third party owner of ENCROACHER's proposed installation. The cost of any work required of such third party owner or CITY to provide adequate space or required clearance to accommodate ENCROACHER's installation shall be borne solely by ENCROACHER. CITY is under no obligation to move its existing utilities out of the way to accommodate or make room for ENCROACHER's Network Facilities.

PARTICIPATION WITH OTHER UTILITIES; PAVEMENT LIFESPAN PRESERVATION

39. ENCROACHER agrees to cooperate in the planning, locating and constructing of its Network Facilities in utility joint trenches or common duct banks with other similar utilities providers and to participate in cost-sharing for the joint trench and ducts, when two or more telecommunications service providers are proposing Network Facilities in the same Public Right-of-Way or when an underground project is being planned by CITY.

In order to facilitate coordination, ENCROACHER shall mail notice of its application to other potential permit applicants (as identified by CITY) at least 30 days before approval of the Encroachment Agreement between the ENCROACHER and the CITY. At a minimum, the notice shall set forth: (a) that ENCROACHER has submitted a permit to CITY for work in CITY'S rights-of-way; (b) the nature and location of the proposed work; (c) the time frame in which the work is to occur; (d) and that if the potential permit applicant does not submit an application to CITY within 30 days from the date of the notice, the CITY (or other government agency) may potentially bar the permit applicant from working in the areas identified in the notice for a period of three (3) years.

40. In recognition of the need to provide CITY residents and businesses with the infrastructure required to meet their telecommunications needs in a nondiscriminatory manner regardless of socioeconomic status, and in further recognition of the need to minimize public inconvenience and the need, to the maximum extent possible, to preserve and extend the life span of CITY streets, the construction, installation and reconstruction of the Network Facilities in the Public Right-of-Way will include provisions for the installation of public telecommunications cable, conduit and other related facilities wherever practical and feasible, and to the extent legally permissible. CITY staff will work with ENCROACHER's contractors to

identify the most cost-effective construction/installation approach consistent with CITY requirements. If a project includes excavation in or adjacent to a Public Right-of-Way, installation of or upgrades to public telecommunications cable, conduit, or other infrastructure may be required as a condition of approval (as and to the fullest extent allowed by applicable law), depending on the impacts of the subject project. Nothing in this Agreement is intended to require ENCROACHER to perform work for the CITY or any third party pursuant to this Section 40 or incur costs for such work beyond that which may lawfully be required under applicable law.

RECORDS AND FIELD LOCATIONS

41. ENCROACHER shall maintain accurate maps and improvement plans of said Network Facilities located within the City of Campbell. ENCROACHER shall, upon demand of the City Engineer, deliver to the office of the Public Works Department free of charge, and to other third parties interested in performing work within Public Right-of-Way for a reasonable charge upon request, within thirty (30) days after such demand, such maps and plans as may be required to show in detail the exact location, size, depth, and description of all Network Facilities installed within said Public Right-of-Way. ENCROACHER shall also submit the plan in digital electronic format as specified by CITY. ENCROACHER shall at its sole cost and expense, expose by potholing to a depth of one foot (1') below the bottom of its subsurface Network Facilities, within thirty (30) days of receipt of a written request from CITY to do so.
42. ENCROACHER shall be a member of the regional notification center for subsurface installations (Underground Service Alert) and shall field mark, at its sole expense, the locations of its underground Network Facilities upon notification in accordance with the requirements of Section 4216 of the State of California Government Code, as it now reads or may herein after be amended.
43. ENCROACHER shall provide books and records for copying and inspection, and ENCROACHER's facilities shall be subject to such inspection by the CITY, as the CITY finds appropriate to request in the exercise of its rights under this Agreement and its jurisdiction over ENCROACHER.

HOLD HARMLESS AND INDEMNIFICATION

44. ENCROACHER, jointly and severally, for itself, its successors, agents, and ENCROACHER's employees, agrees to indemnify, defend (with reasonable notice to ENCROACHER and with counsel reasonably acceptable to CITY) and hold harmless CITY, its officers, employees and agents and any successors to CITY's interest from and against any and all

claims, demands, losses, damages, liquidated or delay damages (subject to the force majeure provision contained in Section 28, above), liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and cleanup actions of any kind, all costs and expenses incurred in connections therewith, including, without limitation, reasonable attorney's fees and costs of defense (collectively, the "Losses") arising directly or indirectly out of the activities or Facilities described in this Agreement and/or the installation, construction, operation, maintenance, removal and/or repair of the improvement and facilities thereto. However, ENCROACHER shall not indemnify the CITY, its officers, employees and agents and any successors to CITY's interest for Losses arising directly or indirectly, from the CITY's sole negligence or willful misconduct. CITY shall not be responsible for any damages, losses, or liability of any kind occurring by reason of anything done or omitted to be done by CITY, except for acts which constitute the CITY's sole negligence or willful misconduct, or by any third party, including, without limitation, damages, losses or liability arising from the issuance by the CITY of a permit or approval to any third party or any interruption in service.

45. ENCROACHER, for itself and its successors and assigns, hereby waives all claims and causes of action, whether now existing or hereafter arising, against CITY or its officers, agents or employees, for damages, physical or otherwise, to any of the facilities covered by this Agreement from any cause whatsoever excluding those arising as a result of the CITY's gross negligence or willful misconduct. Under no circumstances shall either party be liable to the other party or otherwise be responsible for any loss of service downtime, lost revenue or profits or third-party damages.

INSURANCE

46. ENCROACHER shall maintain adequate insurance during the entire term of this Agreement against claims for injuries to persons or damages to property which in any way relate to, arise from, or are connected with the installation or use of communication equipment and Network Facilities in the Public Right(s)-of-Way by the ENCROACHER, or its employees, agents, and/or contractors and shall keep insurance in effect in accordance with the minimum insurance scope the CITY may set from time to time. ENCROACHER initially shall maintain in full force and effect insurance policies set for in these insurance provisions (Sections 46-53). The limits of insurance described herein are not intended as a limitation of liability under this Agreement. ENCROACHER may obtain higher limits in its discretion. It is a requirement of this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits set forth in this Agreement shall be available to the CITY when the CITY is named as an additional

insured pursuant to this Agreement. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage limits specified in this Agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured, whichever affords greater coverage.

47. Worker's Compensation Insurance: ENCROACHER shall obtain statutory Workers' Compensation insurance and Employer's Liability insurance with limits in the amount of at least One Million Dollars (\$1,000,000) each accident, One Million Dollars (\$1,000,000) disease-policy limit, One Million Dollars (\$1,000,000) each employee. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of CITY and the other Additional Insureds (as defined below) arising from work performed by ENCROACHER.
48. Commercial General Liability Insurance (Occurrence Form Only): ENCROACHER shall obtain Commercial General Liability insurance on an "occurrence" basis only, including operations, products and completed operations, contractual liability, broad form property damage, and coverage for explosion, collapse and underground damages, and limited pollution liability endorsement, with limits in the amount of at least Two Million Dollars (\$2,000,000) per occurrence and Four Million Dollars (\$4,000,000) general aggregate .
49. Commercial Automobile Liability (on an "Any Auto" Basis). ENCROACHER shall obtain Commercial Automobile Liability insurance with limits in the amount of at least \$2,000,000 combined single limit each occurrence for bodily injury and property damage, covering all owned, non-owned and hired vehicles.
50. ENCROACHER's insurance coverage shall be written on an occurrence basis. Completed Operations and Products Liability coverage shall be maintained for two (2) years- after completion of the work.
51. Acceptability of Insurers: Insurance is to be placed with insurers admitted and duly authorized to transact business under the laws of the State of California and with a current Best Rating of A:VII unless otherwise acceptable to CITY.
52. Verification of Coverage: Insurance, deductibles or self-insurance retentions shall be subject to CITY's reasonable approval. Original Certificates of Insurance with blanket additional insured endorsements shall be received and reasonably approved by CITY before work commences, and insurance must be in effect for the duration of this Agreement.
53. Other Insurance Provisions:

- a. The City of Campbell, its officers, officials, employees, and agents (collectively "Additional Insureds") shall be named as additional insureds as their interest may appear under this Agreement on the commercial general liability insurance and automobile liability insurance. General liability coverage can be provided in the form of an endorsement to ENCROACHER's insurance (at least as broad as ISO Form CG 20 10, 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used).
- b. For any claims related to a project covered by this Agreement, ENCROACHER's insurance coverage shall be primary. Any insurance or self-insurance maintained by CITY or the other Additional Insureds shall be excess of ENCROACHER'S insurance and shall not contribute with it.
- c. ENCROACHER shall notify (and shall use all commercially reasonable efforts to have its insurers notify) CITY not less than thirty (30) days prior to cancellation (for any reason) of any of the insurance policies required to be maintained by ENCROACHER under this Agreement.
- d. ENCROACHER shall require all contractors and subcontractors comply with substantially the same insurance requirements as required of ENCROACHER. Insurance requirements for contractors and subcontractors may be modified with written agreement from the City of Campbell's Risk Manager, depending on the scope of work.
- e. In the event ENCROACHER fails to maintain the required insurance coverage and a claim is made or any Losses are suffered, ENCROACHER shall indemnify, defend, protect and hold harmless the CITY and the other Additional Insureds from any and all claims and Losses for which the required insurance would have provided coverage.
- f. ENCROACHER shall obtain a waiver of any subrogation right that its insurers may acquire against any of the Additional Insureds by virtue of payment of any Loss covered by any insurance policy required by this Agreement.

ASSIGNMENT

54. ENCROACHER shall not assign, sublet or transfer any interest in this Agreement nor the performance of any ENCROACHER's obligations hereunder, without the prior written consent of CITY, which shall not be unreasonably withheld, and any attempt by ENCROACHER to so assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect. The transfer of the rights and obligations of

ENCROACHER to a parent, successor, subsidiary, or other affiliate of ENCROACHER shall not be deemed an assignment for the purposes of this section. For the purposes of this section, the leasing or granting in the ordinary course of business of indefeasible rights of use or similar rights in dark fiber, fiber optic capacity, conduit and other network elements shall not require the express consent of the CITY, so long as ENCROACHER remains solely responsible for locating, placing, installing, maintaining, relocating and removing the facilities.

THIRD-PARTY MODIFICATIONS

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

ENFORCEMENT

56. Failure to comply with the terms and conditions of this Agreement may, at CITY's sole discretion, result in withholding issuance of any new encroachment permits and/or enforcement pursuant to Campbell Municipal Code.
57. (a) The Director of Public Works shall have the authority to enforce this agreement against violations thereof. Upon the Director's determination that the ENCROACHER has violated any provision of this Agreement, the Standard Plans and Specifications, notices, orders, or regulations of the City; any term, condition, or limitation of this Agreement or the Encroachment Permit, or is subject to any outstanding fees or other charges, the Director may serve notice on the ENCROACHER to abate the violation. In addition to any rights that the CITY may have in law or equity, any ENCROACHER whom the Director determines to be responsible for violating the terms of this Agreement shall be subject to any and all of the enforcement mechanisms set forth herein.
- (b) Deleted. See Section 35 (Performance Bond) for bond provisions.
- (c) NOTICE OF IMMINENT DANGER – For violations that create an imminent danger to public health, safety, or welfare, the Director shall immediately notify the ENCROACHER to immediately remedy the violation. Failure for the ENCROACHER to respond and address the violation within (72 hours) shall deem the ENCROACHER in default of a material provision of this Agreement. The Director's notice may be a written, electronic, or facsimile communication and shall specify the nature of the violation and the manner in which the violation must be remedied.

(d) In the event ENCROACHER has been declared by the CITY to be in default of a material provision of this Agreement relating to removal and if ENCROACHER fails, within 45 days of mailing of the CITY'S default notice, to perform any of the conditions of this Agreement with respect to removal, or fails to begin to perform any such condition that may take more than 45 days to complete, CITY may thereafter obtain from the letter of credit or bond, after proper claim is made to the surety, an amount sufficient to compensate the CITY for its damages. Upon such withdrawal from the letter of credit or bond, the CITY shall notify Company in writing, by First Class Mail, postage prepaid, of the amount withdrawn and the date thereof.

(e) Recovery. So long as the letter of credit or bond is in place, it may be utilized by the CITY as provided herein for reimbursement of the CITY by reason of COMPANY'S failure to pay the CITY for actual costs and expenses incurred by the CITY with respect to removal under this Agreement.

(f) In the event ENCROACHER has been declared by the CITY to be in default of a material provision of this Agreement relating to removal and if ENCROACHER fails, within 90 days of mailing of the CITY'S default notice, to perform any of the conditions of this Agreement with respect to removal, or fails to begin to perform any such condition that may take more than 90 days to complete, CITY may thereafter obtain from the letter of credit or bond, after proper claim is made to the surety, an amount sufficient to compensate the CITY for its damages. Upon such withdrawal from the letter of credit or bond, the CITY shall notify Company in writing, by First Class Mail, postage prepaid, of the amount withdrawn and the date thereof.

(g) The rights reserved to the CITY with respect to any letter of credit or bond are in addition to all other rights of the CITY whether reserved by this Agreement or authorized by law, and no action, proceeding, or exercise of a right with respect to any letter of credit or bond shall constitute an election or waiver of any rights or other remedies the CITY may have.

TERMINATION

58. This Agreement shall terminate ten (10) years from the effective date unless renewed in writing prior to said termination date, except that this Agreement may be terminated sooner under the following circumstances:
- a. This Agreement may be terminated by CITY upon approval of the City Engineer and at least thirty (30) days written notice to ENCROACHER if CITY reasonably determines that the provisions herein interfere with the use or disposal of said Public Right-of-Way or any part thereof by CITY. Where only a portion of ENCROACHER's Network Facilities interferes with the use or disposal of said Public Right-of-Way, CITY

shall allow ENCROACHER to relocate the said portion in accordance with Sections 27, 28, and 29 of this Agreement.

- b. This Agreement may be terminated by CITY for failure, neglect or refusal by ENCROACHER to fully and promptly comply with any and all of the conditions of this Agreement, or for nonuse in accordance with Section 31 herein, upon thirty (30) days written notice, unless ENCROACHER confirms within thirty (30) days of receipt of the notice that the cited condition has ceased, been corrected or, subject to CITY's agreement is diligently being pursued by ENCROACHER, which agreement shall not be unreasonably withheld.
- c. The Agreement may be terminated if the CITY determines that any material term hereof is unenforceable.
- d. ENCROACHER and CITY agree to renegotiate this Agreement in good faith if required for CITY to comply with 47 U.S.C. 253, or any similar provision of state law.
- e. This Agreement may be terminated if any Certificate of Public Convenience and Necessity under which ENCROACHER operates is terminated, is revoked, or is abandoned.

CITY and ENCROACHER shall be entitled to the protection, and to avail themselves, of any and all applicable federal, state and local laws relating to the term and termination of this Agreement.

59. Upon termination of the Agreement, and upon written request by CITY, ENCROACHER, at its own cost and expense, agrees to remove, or at CITY's discretion, abandon in place some or all of its Network Facilities from the Public Right-of-Way and restore the Public Right-of-Way as set forth in the Removal and Relocation provisions of this Agreement. Should ENCROACHER in such event fail, neglect or refuse to make such removals or restoration with one hundred eight (180) days of CITY's written request, at the sole option of CITY, such removal and restoration may be performed by CITY at the expense of ENCROACHER, which actual expense including administrative and legal costs ENCROACHER agrees to pay CITY upon demand. If CITY allows ENCROACHER to abandon its Network Facilities in place, title to those Network Facilities shall pass to CITY and ENCROACHER shall, upon demand, promptly execute and deliver to CITY all documentation necessary to effectuate such transfer of ownership of the Network Facilities. Upon such transfer of ownership after abandonment and acceptance by CITY, ENCROACHER shall have no further obligations or liabilities under this Permit, with the exception of the repair obligations delineated in Sections 36 and 37 (Damage to Facilities in Public Right-of-Way) above.

NOTICE

60. ENCROACHER's staff shall be available to CITY staff 24 hours a day, 7 days a week, regarding problems or complaints resulting from the facilities installed pursuant to this Agreement and may be contacted by telephone at ENCROACHER'S 24/7 Network Control Center toll free 877-578-4447 regarding such problems or complaints. ENCROACHER shall promptly respond to such call(s) and perform the required repair or correct any adverse impact to CITY's use or operations or the use or operations of a third party caused by ENCROACHER's Network Facilities in the Public Right(s)-of-Way at no cost to CITY.

ENCROACHER shall designate a person in California or a nationally recognized service who is authorized to accept service of process on behalf of ENCROACHER.

61. All notices given or which may be given pursuant to this Agreement shall be in writing and transmitted by United States mail or by private delivery systems or by facsimile if followed by United States mail or by private delivery systems as follows:

To CITY at:

City of Campbell
70 N. First Street
Campbell, CA 95008
Attn: City Engineer
FAX Number: (408) 376-0958

To ENCROACHER at:

Bandwidth Infrastructure Group CA, LLC
530 Lakeside Drive, Suite 190
Sunnyvale, CA 94085

ENTIRE UNDERSTANDING OF THE PARTIES

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

LITIGATION

63. In the event that either party initiates litigation to enforce or construe any right, duty or obligation arising out of this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs.

The Remainder of This Page is Intentionally Blank

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate.

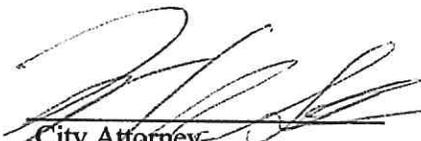
APPROVED AS TO CONTENT:


Public Works Director

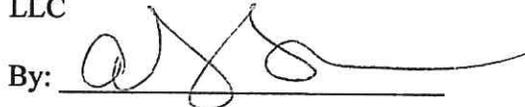
“CITY”
CITY OF CAMPBELL
A California general law city and
municipal

By: 
Public Works Director

APPROVED AS TO FORM:


City Attorney

“ENCROACHER”
Bandwidth Infrastructure Group CA,
LLC

By: 

Name: Abigail Dauter

Its: General Counsel

NOTE: All signatures **must** be notarized.

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

State of Colorado)
) ss.
County of Boulder)

On April 16th, 2021 before me, Matthew M. Williams, a Notary Public, personally appeared Abigail Dayton, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

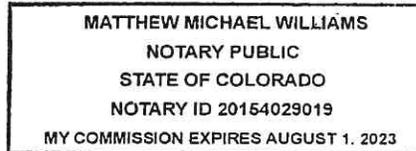
I certify under PENALTY OF PERJURY under the laws of the State of Colorado that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Matthew M. Williams
Signature of Notary Public

SEAL

08/01/2023
My Commission Expires



CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

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

State of California }

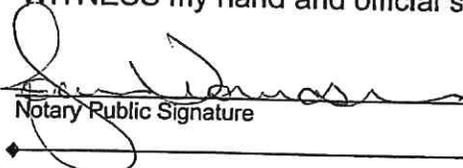
County of Santa Clara }

On April 20, 2021 before me, JoAnn Thomason, Notary Public
(Here insert name and title of the officer)

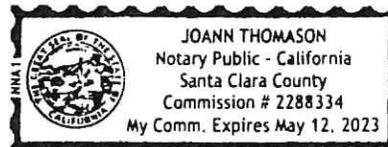
personally appeared Todd Capurso,
 who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s)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

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

WITNESS my hand and official seal.


 Notary Public Signature

(Notary Public Seal)



ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

Encroachment Agreement
(Title or description of attached document)

Bandwidth GRP
(Title or description of attached document continued)

Number of Pages _____ Document Date _____

INSTRUCTIONS FOR COMPLETING THIS FORM

This form complies with current California statutes regarding notary wording and, if needed, should be completed and attached to the document. Acknowledgments from other states may be completed for documents being sent to that state so long as the wording does not require the California notary to violate California notary law.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he/she/they~~, ~~is /are~~) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e., CEO, CFO, Secretary).
- Securely attach this document to the signed document with a staple.

CAPACITY CLAIMED BY THE SIGNER

- Individual (s)
- Corporate Officer

(Title)

- Partner(s)
- Attorney-in-Fact
- Trustee(s)
- Other _____