

BROADBAND CONTRACT (CONSTRUCTION PHASE)

This CONTRACT, effective on _____, is between
the State of California, acting through its Department of Transportation (CALTRANS),
referred to hereinafter as **IMPLEMENTING AGENCY** and:
<Broadband Company Name> _____, referred to as **PERMITTEE**

RECITALS

1. IMPLEMENTING AGENCY intends to design transportation project <provide project description> on State Route <Number> referred to herein as PROJECT. The PROJECT scope of work is defined in the project initiation and approval documents (e.g. Project Study Report, Permit Engineering Evaluation)
2. As per Assembly Bill 1549 that amended Government Code section 14051, the PROJECT was identified as involving construction method that is suitable for installing broadband conduits to accommodate longitudinal access of telecommunications facilities within interstate rights-of-way. PERMITTEE was notified of the PROJECT to encourage collaborative broadband projects that will bring the costs of deploying broadband infrastructure for PERMITTEE and encourage the expansion of broadband services throughout the State of California. PERMITTEE applied to have their conduit hereinafter referred to as CONDUIT and more fully described in Exhibit A installed as a part of PROJECT.
3. This document, citing commitments between IMPLEMENTING AGENCY and PERMITTEE will be referred to hereinafter as CONTRACT.
4. PERMITTEE agrees to reimburse IMPLEMENTING AGENCY under this CONTRACT for the costs of constructing CONDUIT within PROJECT.
5. During the Design phase of the PROJECT, PERMITTEE entered into a contract No. XXXx to reimburse the agency implementing the Design phase of PROJECT.

6. IMPLEMENTING AGENCY and PERMITTEE intend this CONTRACT to be their final expression that supersedes any oral understanding or writings pertaining to the scope of work of this CONTRACT.
7. If any provisions in this CONTRACT are found by a court of competent jurisdiction to be, or are in fact, illegal, inoperative, or unenforceable, those provisions do not render any or all other CONTRACT provisions invalid, inoperative, or unenforceable, and those provisions will be automatically severed from this CONTRACT.
8. IMPLEMENTING AGENCY and PERMITTEE will execute a written amendment if there are any changes to the terms of this CONTRACT.

ROLES AND RESPONSIBILITIES

9. IMPLEMENTING AGENCY will construct CONDUIT within PROJECT.
10. Upon construction of CONDUIT, PERMITTEE shall apply for an encroachment permit from CALTRANS for its occupation and maintenance of CONDUIT within Caltrans Right of way.
11. PERMITTEE will make payments to IMPLEMENTING AGENCY in accordance with the amounts displayed on the FUNDING SUMMARY and according to the billing articles.

GENERAL CONDITIONS

12. All obligations of IMPLEMENTING AGENCY under the terms of this CONTRACT are subject to the appropriation of resources by the Legislature, the State Budget Act authority, and the allocation of funds by the California Transportation Commission.
13. The cost of any Construction support performed by IMPLEMENTING AGENCY includes all direct and applicable indirect costs. IMPLEMENTING AGENCY calculates indirect costs based solely on the type of funds used to pay support costs. State and federal funds administered by IMPLEMENTING AGENCY are subject to the current Program Functional Rate. All other funds are subject to the current Program Functional Rate and the current Administration Rate. The Program Functional Rate and Administration Rate are adjusted periodically.
14. PERMITTEE agrees to indemnify and save harmless CALTRANS, and its officers, employees, agents and/or contractors, from any and all claims, demands, damages, costs, liability, suits, or actions of every name, kind and description brought for due to

any damages to the CONDUIT or fiber optic cables caused due to the acts or negligence 3rd parties who are not the agents and/or contractors of CALTRANS. PERMITTEE's recourse should be against the concerned 3rd parties and not CALTRANS.

15. PERMITTEE agrees to indemnify and save harmless CALTRANS its officers, employees, agents and/or contractors, from any and all claims, demands, damages, costs, liability, suits, or actions of every name, kind and description brought for under, but not limited to, tortious, contractual, inverse condemnation, or other theories and or on account of property damage or injury to or death of any person, including but not limited to members of the public, the PERMITTEE, persons employed by the PERMITTEE, and persons acting on behalf of the PERMITTEE, arising out of or in connection with the installation, placement, subsequent operation, and/or maintenance of CONDUIT or fiber optic cables. The duty of the PERMITTEE to indemnify and save harmless includes the duties to defend as set forth in Section 2778 of the Civil Code. Neither CALTRANS nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by PERMITTEE its contractors, sub-contractors, and/or its agents under or in connection with CONDUIT or fiber optic cables.
16. The PERMETTEE herein agrees to allow access to the CONDUIT controlled by it to other interested telecommunications stakeholders on rates, terms and conditions that are consistent with Public Utility Code and Public Utility Commission regulations.
17. IMPLEMENTING AGENCY and PERMITTEE agree that this contract will terminate on <Month, Day, Year>. However, allowing access, indemnification and maintenance commitments will remain in force until terminated by mutual consent.

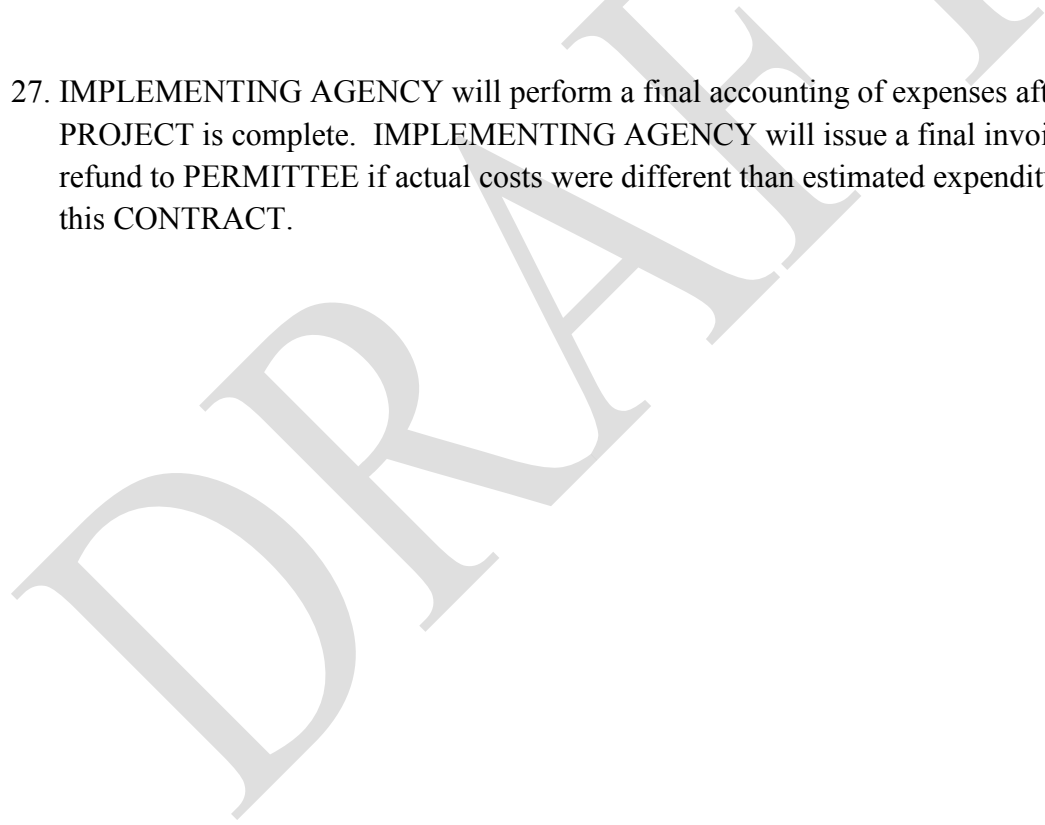
INVOICE AND PAYMENT

18. PERMITTEE understands and acknowledges the amount stated in the Funding Summary is only an estimate and may be revised based on actual costs incurred by IMPLEMENTING AGENCY during the construction of CONDUIT.
19. PERMITTEE will contribute the following dollar amounts to the various project components as described below:

FUNDING SUMMARY		
	Project Component	Amount

		<i>Construction Support</i>	\$ X,XXX
		<i>Construction Capital</i>	\$ XX,XXX
Total Funds			\$ XX,XXX

25. IMPLEMENTING AGENCY will invoice PERMITTEE for an initial deposit of <\$ XXXX.xx> after execution of this CONTRACT. PERMITTEE will pay the invoiced amount within thirty (30) calendar days of receipt of invoice. PERMITTEE understands that if payment is not received by CALTRANS within the stated time, CONDUIT will be removed from the PROJECT and will not be constructed.
26. IMPLEMENTING AGENCY will submit to PERMITTEE monthly invoices for the prior month's actual expenditures. PERMITTEE will pay IMPLEMENTING AGENCY within thirty (30) calendar days of receipt of invoices.
27. IMPLEMENTING AGENCY will perform a final accounting of expenses after PROJECT is complete. IMPLEMENTING AGENCY will issue a final invoice or refund to PERMITTEE if actual costs were different than estimated expenditures in this CONTRACT.



CONTACT INFORMATION

24. The information provided below indicates the primary contact information for IMPLEMENTING AGENCY and PERMITTEE to this CONTRACT. IMPLEMENTING AGENCY and PERMITTEE will notify each other in writing of any personnel or location changes. Contact information changes do not require an amendment to this CONTRACT.

The primary contact person for CALTRANS is:

Name:
Phone:
Email:
Address:

The primary contact person for PERMITTEE is:

Name:
Phone:
Email:
Address:

DRAFT

SIGNATURES

IMPLEMENTING AGENCY and PERMITTEE declare that:
They are legally empowered to enter into this CONTRACT and have delegated to the undersigned the authority to execute this CONTRACT on behalf of the respective agencies and covenants to have followed all the necessary legal requirements to validly execute this CONTRACT.

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

By: _____
District Director

APPROVED AS TO FORM AND
PROCEDURE:

By: _____
Attorney
Department of Transportation

By: _____
District Budget Manager

CERTIFIED AS TO FINANCIAL TERMS
AND POLICIES:

By: _____
Accounting Administrator

<Broadband Company Name>

By: _____
Chief Executive Officer

ATTEST:

By: _____
Fiscal Manager