

**Santa Paula Branch Line
Right of Way License Agreement
between
Ventura County Transportation Commission
and
The County of Ventura**

Agreement Number:

Mile Post: Approximately 27.54 miles from rail Crossing @ South Saticoy Avenue in the City of Ventura to Termination of rail line approximately 1.5 miles east of Piru at Lat 34.4070892328769, Long -118.7560223978569.

Location: Ventura County, California

Licensee: The County of Ventura

This Right of Way License Agreement (the "Agreement" or "License"), dated as of the latter of two signatures below ("Effective Date"), is between Ventura County Transportation Commission ("VCTC") as licensor and the County of Ventura ("Licensee") as collectively referred to herein as the "Parties".

WHEREAS, VCTC is the owner of that certain real property containing a right of way currently utilized for railway and related purposes as more specifically described and depicted in **Exhibit B** ("Right of Way").

WHEREAS, VCTC has entered into a lease agreement with Sierra Northern Railway for the maintenance and operation of the Right of Way.

WHEREAS, VCTC desires to grant and Licensee desires to obtain a License to construct, install, and maintain underground conduits, fiber optic cables, handholes, pull boxes, splice boxes, junction boxes and cabinets, and other related appurtenances and structures, as may be updated from time to time ("Utilities"), within a portion of VCTC's Right of Way, as more specifically described and depicted in **Exhibit B** ("License Area"). The term "Utilities" as used in this License shall include all facilities, structures, foundations, pads, cables, conduits and equipment and related appurtenances that Licensee erects, installs and/or uses on or under the License Area, as authorized and depicted in **Exhibit B**, as may be modified from time to time in accordance with this License.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Parties agree to the following:

1. LICENSE

- (a) Grant. Subject to the terms and conditions herein, VCTC hereby grants to Licensee, insofar as it has the legal right and its present title hereby permits and subject to the limitations contained in this Agreement, a license to construct, install, remove and maintain Utilities within the License Area in strict accordance with the drawings and specifications developed by a qualified and licensed civil engineer and reviewed by VCTC, subject to limited exceptions outlined herein.

- (b) VCTC Approval. Prior to any installation or construction activities, Licensee will submit the drawings, specifications, and construction details for the Utilities to VCTC for its review and written approval, which may not unreasonably be withheld, conditioned or delayed. After completion of construction, Licensee shall provide VCTC with as-built plans for the Utilities. Licensee shall be permitted to complete routine maintenance and make minor modifications to the Utilities which do not: (i) increase the overall size of the Utilities; (ii) do not require the addition of new improvements; or (iii) involve changes in location of any portion of the Utilities, without the need to submit plans/specifications to VCTC in advance for approval. Any entry upon the License Area for construction, maintenance, or work related to the Utilities shall be memorialized by a Notice to Proceed/Right of Entry Agreement issued by VCTC's Executive Director or his or her designee, prior to commencing such work. If Licensee desires to make any modification to the Utilities that deviates from the approved design after completion of construction (except for routine maintenance and minor modifications outlined above), Licensee shall submit revised drawings, specifications, and construction details to VCTC for prior approval.
- (c) No Warranty. Licensee agrees that it is accepting the License without any warranty or representation by VCTC whatsoever and subject to any and all valid and existing licenses, leases, grants, exceptions, encumbrances, title defects, matters of record, reservations and conditions.
- (d) Private Rights/No Transfer. The License shall be used solely for the purposes stated in this Agreement and Licensee shall not permit it to be used for any other purpose. No lease, assignment of any type or transfer or conveyance of a real property interest is intended by this License.
- (e) Assignment; Sublicensing.
- i. It is understood and agreed that Licensee intends to grant to third parties the right to use capacity, fiber, conduit and appurtenances which comprise all or a portion of its Utilities. The parties acknowledge and agree that third party use of capacity, fiber, or conduit necessarily includes access to and the use of the License Area in which the Utilities are located. The granting of the right to use capacity, fiber, conduit and appurtenances, and the related access to and use of the License Area by such third parties, will not constitute an assignment, license or sublicense under this License.
 - ii. Authorized Sublicenses. VCTC furthermore acknowledges that not all Utilities constructed and installed within the License Area may be owned by Licensee, but may be financed, constructed, owned, and maintained by authorized sublicensees, subject to all of the same terms, conditions, VCTC review and approvals, and specifications contained herein. As of the Effective Date of this Agreement, Licensee intends to sublicense and VCTC authorizes sublicenses to: (a) Astound Broadband LLC, a Washington limited liability company, or affiliate, and (b) State of California Department of Technology.
 - iii. Licensee may grant additional sublicenses for portions of its rights, benefits and privileges under this Agreement, and delegate any of its duties, obligations or burdens, to third parties in connection with the conveyance or transfer of

ownership interests in the conduits or fibers that are part of the Utilities. Licensee shall give VCTC prior notice of any additional sublicense. No VCTC authorization of sublicenses shall be required provided that following the execution of any additional sublicense agreement, Licensee shall provide sufficient documentation to VCTC demonstrating that the sublicensee has procured insurance with coverage amounts consistent with this Agreement and that such sublicensee agreement includes required indemnification clause(s) at least as broad as the indemnification provisions in this Agreement. VCTC shall not require any authorized sublicensee to acquire any additional authorizations to utilize, maintain, operate, repair and remove portions of the Utilities except that sublicensees shall be required to obtain Right of Entry Agreements from VCTC prior to entering upon the License Area.

- (f) No Modification in Location or Design. The Utilities shall be located in the License Area in accordance with **Exhibit B** and/or any future design, specifications, drawings, or plans as submitted by Licensee and reviewed and approved by VCTC, and such approval may not be unreasonably withheld, conditioned or delayed, and no material deviation shall at any time be made therefrom except upon the prior written approval of VCTC. After completion of construction, Licensee shall provide VCTC with as-built plans for the Utilities.
- (g) Right of Entry for Access. Upon approval and execution of a Right of Entry Agreement by VCTC or Sierra Northern Railway, as applicable, Licensee and its employees, agents, contractors, subcontractors, and sublicensees may have access to and over the Right of Way, from any open and improved public road to the License Area, for the installation, maintenance, repair, upgrade, removal and operation of the Utilities as specified in the Right of Entry Agreement. Pursuant to the Right of Entry Agreement, VCTC agrees to provide to Licensee such codes, keys and other instruments necessary for such Access at no additional cost to Licensee.
- (h) Emergency Access. Any Right of Entry Agreement executed by VCTC or Sierra Northern Railway, as applicable, to facilitate access contemplated by this License shall permit emergency access upon four (4) hours' notice by Licensee and Licensee's sublicensees to correct emergency outages, and repair damage to Utilities that creates a hazardous condition. Any costs associated with such emergency access will be paid for by Licensee in accordance with the applicable fee schedule outlined in the Right of Entry Agreement.

2. IN-KIND COMPENSATION

- (a) In lieu of monetary compensation, VCTC shall have the right to utilize twelve (12) strands of dark fiber along the path preliminarily identified in **Exhibit C**, as may be modified or changed in the final design submitted by Licensee and approved by VCTC ("VCTC Strands"). No rent or license fee shall be payable to Licensee from VCTC for VCTC's use of the twelve (12) strands of dark fiber. Licensee at no cost to VCTC, shall maintain the VCTC Strands in accordance with the Service Level Agreement for dark fiber strands, substantially in the form attached hereto as **Exhibit D**, or successor agreement as may be updated from time to time and agreed to by VCTC. VCTC shall provide at VCTC's cost, all electronics, connections, and other improvements and

equipment necessary to utilize the VCTC Strands. VCTC's use of the VCTC Strands shall be for non-commercial purposes. For purposes of this Section, the term "non-commercial purposes" means VCTC's or Sierra Northern Railway's, or successor railroad operator's own use and for their customers'/riders' use of the Santa Paula Branch Line, including but not limited to operation and maintenance of railroad transportation assets, of related or supporting publicly-owned or operated infrastructure such as signals, crossings, street lights and CCTV, and of public Wi-Fi for users of VCTC's trains, trails, and bike paths. VCTC may not sublease or sublicense the VCTC Strands to any third party for any other purposes without the prior written consent of Licensee.

- (b) Licensee shall reimburse VCTC for reasonable and necessary costs associated with review of plans and specifications and administrative oversight of this License, not to exceed \$75,000 (seventy-five thousand dollars). Licensee shall reimburse VCTC for reasonable and necessary costs associated with review of any subsequent plans and specifications and administrative oversight after completion of the Utilities where review of such new County improvements necessitates that VCTC hire outside expert consultants pursuant to the requirements of applicable Right of Entry Agreements. Licensor will invoice Licensee for actual, reasonable, documented costs associated with review of plans, specifications, inspections, and administration of this Agreement.

3. CONSTRUCTION

- (a) All materials and work associated with use of this License shall be furnished and performed by Licensee as specifically set forth in the drawings, specifications and plans approved by VCTC and shall be at the sole cost and expense of Licensee. Licensee is responsible for any reasonable costs associated with and incurred by VCTC and/or its agent/representative in conducting plan review.
- (b) During construction of the Utilities, VCTC agrees to allow Licensee the reasonable use, at no charge, of available portions of the Right of Way adjacent to or within the License Area for temporary staging areas and to erect temporary structures and fences to protect Licensee's equipment, provided that such structures and fences: (1) do not interfere with or disrupt the VCTC or railway operations; (2) such locations and structures are approved by VCTC prior to commencement of construction; and (3) the use of VCTC-owned property for temporary staging shall not exceed one (1) year from the commencement of such VCTC-approved work, unless otherwise extended in writing by VCTC. When construction is complete, Licensee shall remove all structures, fences, equipment and material placed thereon such temporary staging areas by Licensee, and restore any land used for such structures and fences substantially to its previous condition, reasonable wear and tear excepted.

4. MAINTENANCE

- (a) Licensee shall at all times repair and maintain the Utilities in good condition, reasonable wear and tear and damage from the elements excepted. If Licensee fails to perform maintenance work when needed after fourteen (14) calendar days prior notice from VCTC (except in an emergency where no prior notice is required), VCTC or its agent/representative, for the purpose of protecting and safeguarding its property, traffic, employees or patrons, may perform such maintenance activities, and

thereafter, bill Licensee in accordance with the terms of Section 7 for all reasonable costs and expenses incurred by VCTC or its agent/representative.

- (b) When performing any work on the Utilities, Licensee shall provide notice to VCTC and Sierra Northern Railway (or the successor operating railroad) and be responsible to ensure that people, equipment and materials are kept a safe distance away from the tracks all in accordance with the requirements outlined in the applicable Right of Entry Agreement.

5. MAINTENANCE OF RIGHT-OF-WAY

- (a) In the event VCTC shall, during the term of this Agreement, be required, or desire at any time, or from time to time, to change the grade or location of any of its tracks or facilities, or to remove, construct or add to any of its tracks or facilities upon the Right of Way ("VCTC Modification"), then VCTC may require Licensee, after a minimum of two hundred forty (240) calendar days prior written notice to Licensee, at the sole cost and expense of Licensee, to make such adjustments or relocations in the Utilities, as may be necessary to facilitate the VCTC Modification.
- (b) In connection with any change in grade, alignment or width of any streets, or the construction of any track, track support structures or viaduct, or any other improvement of any kind by VCTC, Licensee's rights to occupy the License Area do not supersede VCTC's rights. Accordingly, Licensee must, at the VCTC's direction and at Licensee's sole cost and expense, comply with all of the following provisions, as applicable:
 - (i) VCTC shall have the right to require relocation and/or repairs of the Utilities for any VCTC Modification including but not limited to the construction, repair, relocation or new installation of any aboveground or underground facility, utility, storm drain, sewer, waterline, track, track support structures, or roadway improvement (such as any lawful change of grade, alignment or width of any street). Licensee shall relocate/repair its Utilities, or portion thereof, to the reasonably nearest alternative location or other location mutually reasonably agreeable to VCTC and Licensee, either permanently or temporarily, as is determined by VCTC and within the reasonable timeline proposed by the VCTC, provided such timeline is not less than two hundred forty (240) calendar days. Said relocation/repair shall be accomplished at the Licensee's sole expense.
 - (ii) If Licensee fails to relocate its Utilities within the reasonable timeline proposed in the VCTC's notice of relocation or repair, or to complete construction and/or site restoration, VCTC may, provided that it complies with applicable law, cause the work to be done and Licensee shall reimburse VCTC for any such actual, reasonable costs within sixty (60) days after presentation to Licensee of an itemized accounting of such costs, accurately detailing such expenses and costs.
 - (iii) In the decision process necessary to determine if Utilities are required to be relocated, VCTC shall consider all known future public projects that, if done separately, may cause multiple relocations of the Utilities. If such known future public projects can be identified, full consideration of concurrent projects will be given by VCTC and such relocation requests shall be limited as practicable.

- (iv) In the event that VCTC changes the planned rearrangement of Utilities previously noticed to Licensee, or the content and terms of the notice given to Licensee pursuant to this Section 5, Licensee will be given an additional period of not less than ninety (90) days to accomplish such work.
- (v) Except as otherwise provided above, when VCTC requires a rearrangement of Utilities and such rearrangement is done for the accommodation of any private person, firm, or corporation, the cost of such rearrangement will be borne by the accommodated party. Such accommodated party, in advance of such rearrangement, must: (a) deposit with Licensee either cash or a corporate surety bond in an amount reasonably determined by Licensee, to pay the costs of such rearrangement; and (b) execute an instrument agreeing to indemnify, defend and hold harmless Licensee and its Utilities from any and all damages or claims caused by such rearrangement. This provision will not be construed to require Licensee to rearrange its Utilities. Any accommodation for rearrangement of Utilities for an accommodated party will be made at the Licensee's sole discretion. The foregoing shall not apply to rearrangement or relocation required by VCTC for a VCTC Modification.

6. VCTC'S PARAMOUNT USE

- (a) VCTC and Sierra Northern Railway (or a successor railroad operator) shall have the paramount right at all times to use its tracks, right-of-way and property in the License Area. In the event that Licensee's activities in the License Area materially interfere or conflict with VCTC's use and/or enjoyment of its property to prevent such use, VCTC may require Licensee to relocate or alter its facilities to remedy such interference or conflict and Licensee may make adjustments or relocations reasonably necessary to remedy such interference or conflict in accordance with the procedure outlined in Section 5 above. Licensee shall exercise the greatest care in the use of the License Area and shall require all others permitted hereunder to use the License Area to also exercise the greatest care in the use of the License Area.
- (b) Licensee understands that there are active train operations on the Santa Paula Branch Line and acknowledges that any construction, operation, removal, repair, upgrade, and maintenance activities occurring on or near the Santa Paula Branch Line must be (1) coordinated with Sierra Northern Railway (or a successor railroad operator) to avoid interruption of rail service, and (2) undertaken in compliance with all applicable regulations governing rail lines, including regulations promulgated by the California Public Utilities Commission (CPUC) and the Federal Railroad Administration. Licensee shall provide Sierra Northern Railway (or any successor the railroad operator) a minimum of seven (7) days advance notice of any Licensee or Licensee's contractor's activities within the rail right of way and shall take reasonable actions to prevent any disruption to normal train operations.

7. BILLING

Licensee shall pay all bills rendered pursuant to this License within sixty (60) calendar days of presentation by VCTC. In the event of a dispute regarding any such bill, Licensee shall identify in writing those portions of a bill it disputes, and provide such dispute notice to VCTC within sixty (60) calendar days. Licensee's obligation to pay such disputed amounts on an invoice shall be tolled until the dispute is resolved and Licensee shall pay such resolved bill as soon as reasonably practicable thereafter.

8. TAXES

Licensee shall assume and pay any and all taxes and assessments which may be levied upon the License Area to the extent such taxes and assessments are imposed directly as a result of the Utilities constructed, used and maintained by Licensee (or a sublicensee) on the Licensed Area only for so long as this License has not expired of its own terms or is not terminated by either party, and Licensee shall indemnify, defend and hold VCTC harmless therefrom.

9. INDEMNIFICATION / LIABILITY

(a) To the fullest extent permitted by law, Licensee, shall indemnify, defend and hold harmless VCTC, its officers, officials, employees and agents, and Sierra Northern Railway its officers, agents, and employees (collectively, with VCTC, the "VCTC Parties") from and against all liability, loss, cost, claim, demand, action, suit, legal or administrative proceeding, penalty, deficiency, fine, damage and expense, (collectively "Liabilities) to the extent resulting from or arising directly from the installation, use, maintenance, repair or removal of the Utilities by Licensee or its authorized sublicensees or Licensee's or its authorized sublicensees' breach of any provision of this Agreement, except to the extent attributable to the negligent or intentional act or omission of VCTC Parties. Licensee obligations under this Section shall survive termination of this Agreement.

(b) In the event of a claim, VCTC: (i) shall promptly provide the Licensee with written notice of any claim, demand, lawsuit, or the like for which it seeks indemnification pursuant to this Section 9 and provide Licensee with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like; (ii) shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of the Licensee; and (iii) shall fully cooperate with the Licensee in the defense of the claim, demand, lawsuit, or the like. A delay in notice shall not relieve Licensee of its indemnity obligation, except (1) to the extent the Licensee can show it was prejudiced by the delay; and (2) the Licensee shall not be liable for any settlement or litigation expenses incurred before the time when notice is given.

10. CONTAMINATION INDEMNIFICATION

(a) For the purposes of this Section 10: "Contamination" means the presence of any chemical, compound, material, substance, or other matter that (i) is a flammable, corrosive, explosive, hazardous, toxic or regulated material, substance, or waste, or other injurious or potentially injurious material, whether injurious itself or in combination with other materials, (ii) is controlled, designated in or governed by any Environmental Law, or (iii) gives rise to any reporting, notice, or publication requirements or remediation obligation under any applicable Environmental Law; "Environmental Law" means any applicable federal, state, local or tribal statute, law, rule, regulation, ordinance, or any governmental, administrative, or judicial order, decree, directive, or decision, or any other requirement of any governmental authority, pertaining to the protection of the environmental or health and safety that may now be in effect or which may be enacted,

adopted, or made effective at a future date; "Losses" means any claims, obligation, payment, fines, demands, causes of action, suits, judgments, damages, settlement, compensation, loss contingency, lien, debts, costs, expenses, losses, penalties, stipulated penalties, and liability of any kind, alleged by any person or entity or any governmental authority, including bodily injury and property damage and consequential damages awarded to a third party against VCTC Parties.

(b) To the fullest extent permitted by law, Licensee, each for itself and on behalf of its successors and assigns, shall and hereby agrees to defend, hold harmless, and indemnify the VCTC Parties from and against any and all Losses arising out of, or related to, the discovery, presence, release, use, exacerbation, discharge, storage, generation, manufacture or disposal of any Contamination related to Licensee's use of the License Area or construction, installation, use, maintenance and removal of the Utilities, including all Losses arising out of, or related to, any violation on, upon or within the area covered by this License of any applicable Environmental Law and Losses that would not have arisen, but for, Licensee's use of the License Area or construction, installation, use, maintenance and removal of the Utilities. Licensee obligations under this Section shall survive termination of this Agreement.

11. MINIMUM SCOPE AND LIMIT OF INSURANCE

Licensee, before beginning any activities under this Agreement, shall procure the types and amounts of insurance listed below and shall maintain the types and amounts of insurance listed below for as long as the License granted herein remains in existence covering Licensee's and its authorized sublicensee's actions and omissions. A program of self-insurance may be used to satisfy the coverage amounts and requirements of this section, upon the provision of evidence satisfactory to VCTC that such self-insurance program meets the following coverage amounts and requirements:

11.1 Workers' Compensation. Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Licensee with limits of not less than one million dollars (\$1,000,000.00) per accident as required under applicable law.

11.2 Commercial General and Automobile Liability Insurance; Professional Liability

11.2.1 Commercial General Insurance. Commercial general liability insurance, including products liability, covering any loss or liability, including the cost of defense of any action, for bodily injury, death, personal injury and broad form property damage which may arise out of the operations or activities of Licensee. The policy shall provide a minimum limit of \$5,000,000 per occurrence/\$10,000,000 aggregate. Commercial general coverage shall be at least as broad as ISO Commercial General Liability form CG 0001 (current edition) on "an occurrence" basis covering comprehensive General Liability, with a self-insured retention or deductible of no more than \$100,000. No endorsement shall be attached limiting the coverage. Said policy shall include a Railroads CG 24 17 endorsement removing the exclusion of coverage, if applicable, for bodily injury or property damage arising out of operations within 50 feet of any railroad property and affecting any railroad bridge, trestle, tracks, roadbeds, tunnel, underpass or crossing.

11.2.2 Automobile Liability. Automobile liability insurance form CA 0001 (current edition) covering any loss or liability, including the cost of defense of any action, arising from

the operation, maintenance or use of any vehicle pursuant to this Agreement, whether or not owned by the Licensee, on or off VCTC License Area. The policy shall provide a minimum limit of \$1,000,000 per each accident, with a self-insured retention or deductible of no more than \$100,000. This insurance shall provide contractual liability covering all motor vehicles and mobile equipment to the extent coverage may be excluded from general liability insurance.

11.2.3 General Liability/Umbrella Insurance. The coverage amounts set forth above may be met by a combination of underlying and umbrella policies as long as in combination the limits equal or exceed those stated.

11.2.4 Professional Liability (Errors and Omissions) Insurance by the professional consultants of Licensee, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000.

11.3 All Policies Requirements.

11.3.1 Verification of coverage. Licensee, prior to beginning any activities under this License, shall provide VCTC with (1) a Certificate of Insurance that demonstrates compliance with all applicable insurance provisions contained herein and (2) policy endorsements to the policies referenced in Section 11.2 adding the VCTC, its officers, agents, and employees, and Sierra Northern Railroad, its officers, agents, and employees, as additional insureds and declaring such insurance primary in regard to work performed pursuant to this Agreement.

11.3.2 Notice of Reduction in or Cancellation of Coverage. Licensee shall provide at least thirty (30) days prior written notice to VCTC of any reduction in scope or amount, cancellation, or modification adverse to VCTC of the policies referenced in Section 11.

11.3.3 Higher Limits. If Licensee maintains higher limits than the minimums specified herein, then VCTC shall be entitled to coverage for the higher limits maintained by Licensee.

11.4 Waiver of Subrogation. Licensee agrees to waive subrogation which any insurer of Licensee may acquire from Licensee by virtue of the payment of any loss. Licensee agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of VCTC for all work performed by Licensee and its employees, agents and contractors.

11.5 Additional Insurance Obligation. Licensee shall be solely responsible for ensuring that all equipment, vehicles and other items utilized or operated in the performance of their activities pursuant to this Agreement are and remain covered by the policies referenced in Section 11. Licensee shall also ensure that all workers involved in the performance of the activities under this License are properly classified as employees, agents or independent contractors and are and remain covered by any and all workers' compensation insurance required by applicable law.

11.6 Self-Insured Retention. If any of the insurance policies required under this Agreement includes a self-insured retention that must be paid by a named insured as a precondition of the insurer's liability, or which has the effect of providing that payments

of the self-insured retention by others, including additional insureds or insurers, do not serve to satisfy the self-insured retention, such provisions must be modified by special endorsement so as to not apply to the additional insured coverage required by this Agreement so as to not prevent any of the parties to this Agreement from satisfying or paying the self-insured retention required to be paid as a precondition to the insurer's liability.

12. EFFECTIVE DATE AND TERM

- (a) This License shall become and be effective as of the Effective Date set forth above.
- (b) This Agreement shall remain in force for a duration of fifty (50) years from the Effective Date with two (2) five-year extensions that may be exercised by mutual agreement of the parties in writing.

13. TERMINATION

- (a) This Agreement shall be terminated at the expiration of its term in accordance with Section 12(b). Upon expiration, Utilities *in situ* shall be deemed abandoned in place and Licensee shall have no obligation to remove the Utilities or restore the License Area; provided, however, if any governmental or regulatory body orders the removal of the Utilities within twenty-five (25) years following the expiration or earlier termination of this Agreement, Licensee shall remove the Utilities and restore the License Area at Licensee's cost.
- (b) This Agreement may be terminated upon written, mutual agreement by both parties. Ownership of Utilities upon mutual termination shall be determined and negotiated by both parties as part of the termination agreement.
- (c) If Licensee shall fail to perform any of the material terms or conditions of this License and, if such failure continues for a period of ninety (90) days after receipt of written notice of such failure is received by Licensee from VCTC, then such failure shall be an "Event of Default" under this License, and VCTC may terminate this License upon ninety (90) calendar days advance notice; provided, however, that it shall not be deemed an "Event of Default" under this License if the Licensee commences to cure such failure within said ninety (90) day period and thereafter diligently prosecutes such cure to completion.

14. PERMITS AND APPROVALS

Licensee, at its sole risk, cost and expense, shall obtain all permits and approvals which may be necessary or appropriate for the activities contemplated under this Agreement and shall comply with all federal, state and local laws, and assume all cost and expense and responsibility in connection therewith, without any liability whatsoever on the part of VCTC. Licensee agrees to forward copies of any permits or approvals to the VCTC, upon request. Licensee agrees to indemnify, defend and hold harmless VCTC therefrom.

15. SALE OR ABANDONMENT BY VCTC

If VCTC plans to abandon, convey, transfer or sell any part of its Right of Way which is subject to this Agreement, VCTC shall give reasonable prior notice to Licensee of such proposed abandonment, conveyance, transfer, or sale. In each case VCTC shall preserve the rights of Licensee under this Agreement. Any transfer deed or other instrument of conveyance shall reference this Agreement, and such transferee shall take the Right of Way subject to, and assume and agree to be bound by, the terms of this Agreement.

16. SUCCESSORS

This License shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, administrators, successors and assigns. The permission and License hereby afforded shall be the personal privilege of Licensee, and no assignment or transfer thereof by operation of law or voluntary act of Licensee shall be made, or other use of License Area permitted as herein provided, except as authorized herein, without the prior written consent of VCTC, which may not be unreasonably withheld, conditioned or delayed.

17. WAIVER

The waiver by any party of any breach of any term, covenant, obligation or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or a waiver of any other term, covenant, obligation or condition herein contained.

18. NOTICES

- (a) Every notice, approval, consent, or other communication desired or required under this License shall be effective only upon receipt and only if the same shall be in writing and sent postage prepaid by overnight mail or United States registered or certified mail (or a similar mail service available at the time), directed to the other party at its address as follows (or such other address as either party may designate by notice given from time to time in accordance with this Section):

If to VCTC:

Ventura County Transportation Commission
Attn: Martin Erickson, Executive Director
751 E. Daily Drive, Suite 420
Camarillo, CA 93010

If to Licensee:

Ventura County Information Technology Services
Attn: Chief Information Officer
800 S. Victoria Avenue Ventura, CA 93003

19. ENTIRE AGREEMENT

The entire agreement between VCTC and Licensee pertaining to the License Area is set forth in this License and there are no understandings, agreements, or representations of any kind between the parties, verbal or otherwise other than as set forth in this License. No change or modification of any of the terms, obligations or provisions hereof shall be valid unless in writing and signed by the parties hereto.

20. PARTIAL INVALIDITY

If any term, obligation or condition of this License or the application thereof to any person or circumstance shall be held invalid or unenforceable to any extent by a final judgment or award which shall not be subject to change by appeal, then the remainder of this License or the application of such term or condition to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each term, covenant and condition of this License shall be valid and be enforced to the fullest extent permitted by law. Furthermore, each agreement, obligation and other provision of this License is and shall be deemed and construed as a separate and independent obligation of the party bound by, undertaking or making the same, and not dependent on any other provision of this License unless expressly so provided.

21. THIRD PARTY BENEFICIARY

Except for any authorized sublicensees, nothing contained in this License shall be construed as to confer upon any other party the rights of a third-party beneficiary.

22. GOVERNING LAW

This License and the rights and obligations of the parties hereunder shall be construed in accordance with the laws of the State of California with venue in the County of Ventura.

23. EXHIBITS AND ADDENDA

The Recitals set forth above and the following Exhibits are incorporated as a term of this Lease:

- Exhibit A Utilities – Conceptual Design for Fiber Optic Route
- Exhibit B License Area—Depiction and Description of License Area
- Exhibit C Dark Fiber Path
- Exhibit D Service Level Agreement for VCTC Fibers

24. HEADINGS

Section headings are inserted for convenience only and shall not affect the construction or interpretation of this License.

25. FORCE MAJEURE

The time for performance by Licensee or VCTC of any term, provision, or covenant of this Agreement shall be deemed extended by time lost due to delays resulting from strikes, civil riots, floods, labor or supply shortages, material or labor restrictions by governmental authority, litigation, injunctions, and any other cause not within the control of Licensee or VCTC, as the case may be.

Signatures on the following page

IN WITNESS THEREOF, the said parties hereto have caused this License to be duly executed and delivered as of the day and year first above written.

VCTC:

LICENSEE:

By: Martin R. Erickson

By:

Its: Executive Director

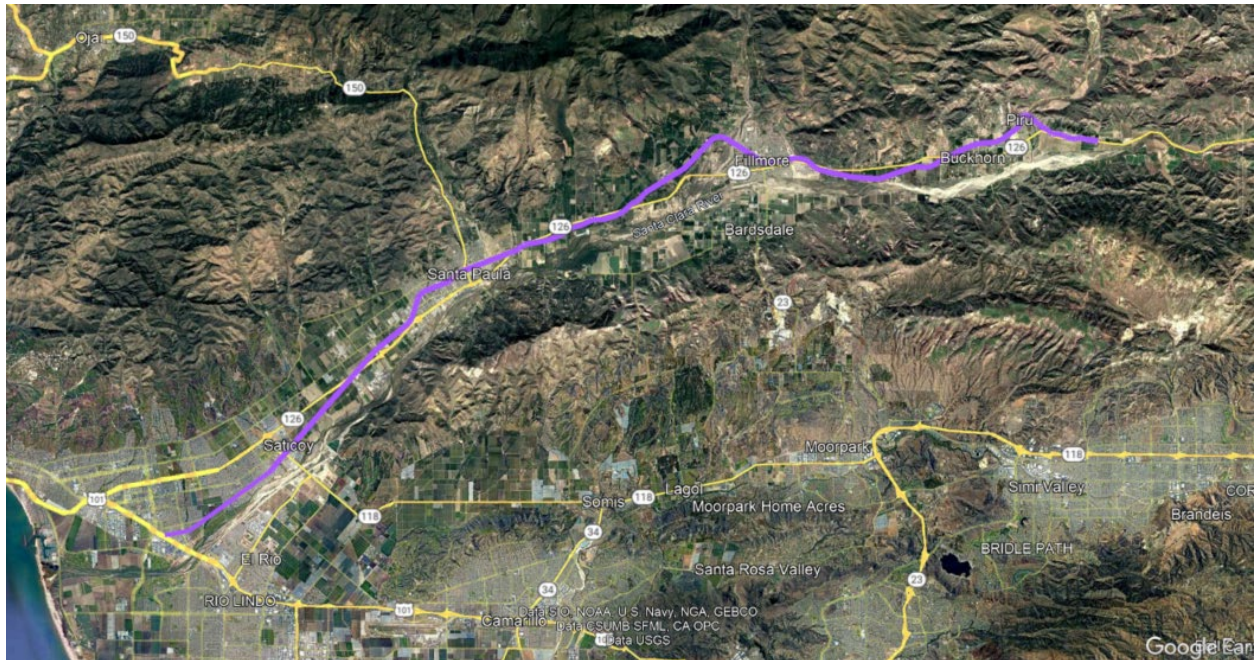
Its:

Date:

Date:

EXHIBIT A

Utilities – Conceptual Design for Fiber Optic Route



Approximately 31 miles from Highway 101 in the City of Ventura to Termination of rail line approximately 1.5 miles east of Piru at Lat - 34.4070892328769, Long -118.7560223978569.

EXHIBIT B License Area

EXHIBIT C Dark Fiber Path

EXHIBIT D

Service Level Agreement Template for VCTC Strands