

Attachment 1

ATTACHMENT 1

**Original and two Duplicate Originals of the
License Agreement with the City of Santa
Barbara**

Project: ICT License Agreement for SB
City Fiber Conduit on Anacapa St.
APN: Multiple APNs as shown on
Exhibit "A"
Folio: 003923
Agent: SF

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (hereinafter "Agreement") is made by and between the CITY OF SANTA BARBARA, a municipal corporation of the State of California (hereinafter "LICENSOR"), and the COUNTY OF SANTA BARBARA, a political subdivision of the State of California (hereinafter "COUNTY"), with reference to the following:

WHEREAS, LICENSOR owns certain fiber optic conduit facilities and junction box(es) located in the City of Santa Barbara public right-of-way between that certain COUNTY-owned real property known as 105 East Anapamu Street in the City of Santa Barbara, and more particularly described as Santa Barbara County Assessor's Parcel Number 029-121-022 (hereinafter "County Administrative Building"), and a LICENSOR-owned junction box located near the corner of Anacapa and Carrillo Streets in the City of Santa Barbara (hereinafter "City Junction Box"), shown as the cross-hatched area on Exhibit "A", attached hereto and incorporated herein by this reference (hereinafter "City Conduit Facilities"); and

WHEREAS, COUNTY owns certain fiber optic conduit facilities and junction box(es) throughout the County of Santa Barbara designed to enhance communication by and between COUNTY-owned and/or -operated buildings (hereinafter "County Network"); and

WHEREAS, as a part of its continuing efforts to improve and enhance its County Network, COUNTY desires to install, operate and maintain a single 48 strand fiber optic cable and associated material(s) and equipment (hereinafter "County Fiber") within City Conduit Facilities for the purpose of connecting certain COUNTY-owned real property located at 117 East Carrillo Street in the City of Santa Barbara, more particularly described as Santa Barbara County Assessor's Parcel Number 029-211-025 (hereinafter "County Probation Building"), and the County Administration Building, as identified on Exhibit A; and

WHEREAS, COUNTY has submitted, and LICENSOR has approved, a City of Santa Barbara Master Application to "pull a single 48 strand fiber cable through the existing City owned conduit on Anacapa St.," as shown on Exhibit "B", attached hereto and incorporated herein by this reference; and

WHEREAS, it is in the best interests of the citizens of the County of Santa Barbara for public agencies within the County of Santa Barbara to work cooperatively in sharing resources and promoting the cost-effective delivery of services; and

NOW, THEREFORE, in consideration of the provisions, covenants, and conditions, contained herein, LICENSOR and COUNTY agree as follows:

1. **ADMINISTRATION AND ENFORCEMENT**: The provisions of this Agreement shall be administered and enforced for COUNTY by the Director of the General Services Department or Director's designee (hereinafter "Director"), and for LICENSOR by the Director of the Public Works Department or Director's designee (hereinafter "Public Works Director").
2. **RIGHTS GRANTED**: LICENSOR hereby grants to COUNTY a personal, revocable, and non-assignable right to install, use and maintain County Fiber within City Conduit Facilities, as identified on Exhibit A.
3. **PURPOSE AND USE**: COUNTY shall use City Conduit Facilities solely for the purpose of installing County Fiber and improving fiber connectivity in the County Network during the term of this Agreement. COUNTY shall not use City Conduit Facilities for any other purposes without the express written consent of LICENSOR. There shall be no restrictions on the COUNTY's installation, use and maintenance of County Fiber except as set forth in this Agreement.
4. **TERM**: The term of this Agreement shall be for a period of fifteen (15) years, commencing upon final execution of this Agreement by COUNTY ("Commencement Date"), subject to such provisions for termination as described herein.
5. **OPTION TO EXTEND**: In the event this Agreement has not otherwise been terminated, COUNTY may extend the term of this Agreement for two (2) additional terms of five (5) years each. COUNTY shall provide LICENSOR with written notice of its intent to exercise its option to extend at least ninety (90) days prior to expiration of the initial term.
6. **LICENSE FEE AND ASSOCIATED COSTS**: Parties hereby agree that COUNTY operations under this Agreement are for the benefit of the community, including LICENSOR, and, in consideration thereof, no License Fee will be charged during the term of this Agreement. COUNTY shall install, use and maintain County Fiber at COUNTY's sole cost and expense.
7. **SITE SUITABILITY**: COUNTY has investigated the City Conduit Facilities and has determined that they are suitable for COUNTY's intended operations and therefore, COUNTY hereby accepts, by way of executing this Agreement, the City Conduit Facilities in their existing condition.
COUNTY ACKNOWLEDGES THAT, EXCEPT AS STATED HEREIN, LICENSOR HAS MADE NO REPRESENTATIONS OR WARRANTIES ABOUT THE CONDITION OF THE CITY CONDUIT FACILITIES, OR THE SUITABILITY OF SAME FOR THE INTENDED USE BY COUNTY.
8. **PERMITS, CONSTRUCTION AND FUTURE ALTERATIONS**: COUNTY shall install, construct and maintain County Fiber in accordance with all procedures and requirements that LICENSOR may from time to time prescribe, in accordance with applicable National, State, County, City and/or industry regulations, laws and/or standards. COUNTY shall obtain all necessary permits for such work prior to construction. Any and all permits required shall be granted by LICENSOR only on the merits of the application thereof, and nothing in this Agreement shall

be construed to require LICENSOR to grant such permits or clearances.

COUNTY shall provide written notice to LICENSOR prior to the commencement of any construction or installation work in, on or about the City Conduit Facilities.

9. **DOCUMENTATION OF CITY CONDUIT FACILITIES:** Prior to installing County Fiber under this Agreement, COUNTY shall document the condition of City Conduit Facilities in a format agreeable to both parties and provide such documentation to LICENSOR. Such documentation shall include:

- A. The type, number and diameter of all fiber strands located in City Conduit Facilities;
- B. The owner of all cables present, based on available labels and markings; and
- C. GIS coordinates of all access points.

If COUNTY discovers any damage to the City Conduit Facilities, it shall immediately notify LICENSOR of such damage and if requested by COUNTY, LICENSOR will undertake repairing and/or replacing the conduit as necessary to perform under this Agreement at COUNTY'S expense.

10. **IDENTIFICATION OF COUNTY FIBER:** COUNTY, at its sole cost and expense, shall identify, by tags or other suitable means, all cables and equipment that COUNTY places in the City Conduit Facilities.

11. **UTILITY LOCATION REPORTING:** LICENSOR and COUNTY each agree to report and coordinate, as the case may be, their respective activities with USA South 811 and any successor organization coordinating location of utility lines. The parties agree to respond appropriately and expeditiously to all line location requests from the public and/or from other utilities.

Subject to Exhibit C, the parties hereby agree to hold each other harmless from any claim, expense, cost or damage that arises from the other party's mistake in marking or identifying the cable, conduit or equipment, as the case may be, or in the event of a service interruption caused by utility location misidentification by either party.

12. **MAINTENANCE AND REPAIR:** LICENSOR shall be responsible for the operation, maintenance and repair of City Conduit Facilities at its sole cost and expense, and agrees to keep said City Conduit Facilities in a safe and workable condition. COUNTY shall be responsible for the operation, maintenance and repair of County Fiber at its sole cost and expense, and agrees to keep said County Fiber in a safe and workable condition. COUNTY is not responsible for the maintenance and/or repair of the City Conduit Facilities, except to the extent that the facilities are damaged by work performed by the COUNTY pursuant to this license.

Each party agrees to take all necessary precautions to avoid damaging the other party's fiber optic cable, equipment and/or facilities and to protect such cable, equipment and facilities in the same manner as such party protects its own equipment.

13. **INSPECTION:** LICENSOR reserves the right to inspect County Fiber at all reasonable times, and COUNTY agrees that it will facilitate such inspection. COUNTY shall have the right to inspect County Fiber and City Conduit Facilities at all reasonable times, and LICENSOR agrees

that it will facilitate such inspection.

14. **RELOCATION**: In the event LICENSOR decides to relocate all or a portion of City Conduit Facilities, LICENSOR shall provide to COUNTY a minimum of three (3) years' written notice, unless failure to relocate or abandon said City Conduit Facilities poses a threat to the health, safety or welfare of the public or individuals, as determined by LICENSOR, in which case LICENSOR shall have the right to move City Conduit Facilities with a lesser notice that is reasonable under the circumstances. LICENSOR shall bear the costs of relocating City Conduit Facilities and COUNTY shall bear the costs of removing and/or relocating its County Fiber.

15. **ASSIGNMENT/SUBLICENSE**: COUNTY shall not assign, license, or sublicense City Conduit Facilities or any part thereof or any right or privilege appurtenant thereto without LICENSOR's written consent, which consent shall not be unreasonably withheld. Any attempt to assign, license, or sublicense COUNTY's rights under this Agreement without LICENSOR's prior written consent shall be void and without legal effect.

16. **ABANDONMENT**: COUNTY shall not abandon, vacate or surrender its use of City Conduit Facilities at any time during the term of this Agreement. If COUNTY does abandon, vacate or surrender use of City Conduit Facilities, this Agreement and all of COUNTY's rights thereto shall, at the option of LICENSOR, terminate after notice and the right to cure as provided in Section 19, **REMEDIES**. LICENSOR shall memorialize such termination via letter to COUNTY.

17. **REMOVAL OF PROPERTY**: COUNTY shall remove all County Fiber and associated equipment prior to the expiration of this Agreement or within ninety (90) days of earlier termination, abandonment, vacation, surrender, relocation and/or reconfiguration under other provisions of this Agreement. Any property belonging to COUNTY, including County Fiber and associated equipment, left in City Conduit Facilities after such time shall be deemed abandoned at the option of the LICENSOR, and title to such shall pass to LICENSOR. As an alternative, COUNTY may, with LICENSOR's written approval, abandon the County Fiber in place.

Upon removal of the equipment, COUNTY shall repair any damage caused thereby to City Conduit Facilities, including but not limited to capping and properly deactivating all affected electrical connections, panels, etc.

18. **DEFAULT**: Except as otherwise required herein, should either party at any time be in default hereunder with respect to any material term, covenant, condition or reservation contained herein, the non-defaulting party shall give notice to the defaulting party specifying the particulars of the default and the defaulting party shall promptly commence remedial action to cure the default. Should such default continue uncured for a period of forty-five (45) calendar days from such notice, this Agreement shall terminate at the option of the non-defaulting party; unless the cure of such default shall reasonably take more than forty-five (45) calendar days in which case the defaulting party shall proceed with all due speed to cure the default and shall have a reasonable time to effectuate its cure.

19. **REMEDIES**: In the event of a default or breach, either party may exercise any right or remedy at law or in equity which such party may have by reason of such default or breach

including but not limited to the following:

- A. The non-defaulting party may waive the default or breach in accordance with Section 20, WAIVER, herein below.
- B. The non-defaulting party may maintain this Agreement in full force and effect, and recover whatever monetary loss(es) may have resulted from such default or breach.
- C. Where LICENSOR is the non-defaulting party, LICENSOR may terminate this Agreement and COUNTY shall vacate within forty-five (45) calendar days of written notice from LICENSOR.
- D. Where COUNTY is the non-defaulting party, COUNTY may terminate this Agreement and surrender use of the City Conduit Facilities.

20. **WAIVER**: It is understood and agreed that any waiver, express or implied, of any term of this Agreement or any default or breach of this Agreement shall not be deemed to be a waiver of any continuing or subsequent default or breach of any other provision of this Agreement. Waivers of provisions of this Agreement must be in writing and signed by that party's respective designee under Section 1, ADMINISTRATION AND ENFORCEMENT, of this Agreement.

21. **DESTRUCTION**: If City Conduit Facilities are partially or totally destroyed by fire or other casualty, this Agreement, at the option of COUNTY, shall terminate.

22. **TERMINATION**: This Agreement shall terminate and all rights of COUNTY hereunder shall cease and COUNTY shall quietly and peacefully vacate the City Conduit Facilities pursuant to the following conditions:

- A. Upon expiration or earlier termination of the Agreement as provided in Section 4, TERM; or
- B. As provided in Section 14, RELOCATION; or
- C. Upon abandonment as provided in Section 16, ABANDONMENT; or
- D. Upon the failure of either party to satisfy, observe or perform any of the covenants or conditions set forth in this Agreement and the expiration of the cure period as provided in Section 18, DEFAULT; or
- E. As provided in Section 21, DESTRUCTION.

23. **SURRENDER OF FACILITIES**: Upon expiration or termination of this Agreement, COUNTY shall vacate and surrender possession of, and any claim to the City Conduit Facilities, leaving such facilities in good condition, except for ordinary wear and tear. COUNTY shall dispose of County Fiber as provided in Section 17, REMOVAL OF PROPERTY

24. **INDEMNIFICATION AND INSURANCE**: The parties shall comply with the indemnification and insurance provisions as set forth in Exhibit "C" attached hereto and incorporated by reference.

25. **NOTICES**: Any notice to be given to either party, by the other, shall be in writing and shall be served, either personally or by registered or certified mail, to the following:

LICENSOR: City of Santa Barbara
Public Works Department

Streets Operation & Infrastructure Division
 630 Garden Street, PO Box 1990
 Santa Barbara CA 93102
 (805) 564-5544

COUNTY: County of Santa Barbara
 General Services Dept./ICT Division
 105 E Anapamu, Room 304
 Santa Barbara, CA 93101
 805-568-2650

All notices hereunder shall be in writing and shall be deemed to have been given on the date delivered, if personally delivered, or if mailed, then on the first business day following the date on which it is mailed, by certified or registered mail, postage prepaid, addressed to the address specified above, or to such other address designated by the party as provided for herein.

26. **NON-INTERFERENCE**: COUNTY shall not interfere, nor permit those under its control, including, but not limited to, its employees, invitees, volunteers, agents and/or independent contractors, to interfere with LICENSOR's operations within City Conduit Facilities, nor use City Conduit Facilities in any manner that will constitute waste, nuisance, or unreasonable annoyance to LICENSOR or the general public. COUNTY shall terminate said interference immediately upon notice from LICENSOR.

27. **SUCCESSORS IN INTEREST**: This Agreement and the covenants contained herein shall be binding upon and inure to the benefit of the respective parties and to any government or private organization into which LICENSOR or COUNTY may be merged.

28. **NOTIFICATION OF ACCIDENTS AND SURVIVAL OF INDEMNIFICATION PROVISIONS**: COUNTY shall notify LICENSOR immediately in the event of any accident or injury arising out of or in connection with this Agreement. The indemnification provisions in this Agreement shall survive any expiration or termination of this Agreement.

29. **ENVIRONMENTAL IMPAIRMENT**: The parties shall comply in all material respects with all applicable laws, regulations, ordinances, guidelines, policies, directives, standards, rules and orders regardless of when they become or became effective, including without limitation those relating to construction, grading, signing, health, safety, noise, environmental protection, waste disposal, water and air quality, and shall furnish satisfactory evidence of compliance upon request by COUNTY.

Should any discharge, leakage, spillage, emission, or pollution of any type occur upon or from the City Conduit Facilities due to COUNTY'S use and occupancy, COUNTY shall clean all property affected to the satisfaction of LICENSOR and any governmental body having jurisdiction therefor. Likewise, should any discharge, leakage, spillage, emission or pollution of any type occur upon or from the City Conduit Facilities due to LICENSOR's use or activity, LICENSOR shall clean all property affected to the satisfaction of COUNTY and any governmental body having jurisdiction therefor.

30. **TOXICS**: The parties shall not manufacture or generate hazardous wastes on, in or around City Conduit Facilities unless authorized by this Agreement. Each party shall be fully responsible for any hazardous wastes, substances or materials as defined under state or local law, regulation, or ordinance that are manufactured, generated, used, placed, disposed, stored, or transported by either party, its officers, agents, representatives, employees, volunteers, independent contractors or designees on, in or around the City Conduit Facilities during the term of this Agreement, and shall comply with and be bound by all applicable provisions of such state or local law, regulation, or ordinance dealing with such wastes, substances, or materials. In the event of any release or threatened release of any such wastes, substances or materials, the responsible party, as the case may be, shall immediately notify the other party and the appropriate governmental response agency(ies).
31. **COMPLIANCE WITH THE LAW**: The parties shall comply with all applicable laws, rules, regulations and ordinances as amended, affecting the Property and Premises now or hereafter in effect.
32. **NONDISCRIMINATION**: The parties shall comply with COUNTY laws, rules and regulations regarding nondiscrimination as such are found in the Santa Barbara County Code and as such may from time to time be amended. These provisions are incorporated herein as if they were fully set forth.
- Noncompliance with provisions of this section shall constitute a material breach of this Agreement and in addition to any other remedies provided by law, COUNTY shall have the right to terminate this Agreement and the interest hereby created without liability therefor.
33. **AMENDMENTS**: This Agreement may only be amended by written consent of the parties and such changes shall be binding upon the heirs or successors of the parties.
34. **AGENCY DISCLOSURE**: LICENSOR acknowledges that the General Services Department of the COUNTY is the agent for the COUNTY exclusively, and is neither the agent for the LICENSOR nor a dual agent in this transaction.
35. **CAPTIONS**: The title or headings to the sections of this Agreement are not a part of this Agreement, and shall have no effect upon the construction or interpretation of any part hereof.
36. **SEVERABILITY**: If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal, or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
37. **CERTIFICATION OF SIGNATORY**: The signatories of this Agreement and each of them represent and warrant that they are authorized to execute this Agreement and that no additional signatures are required to bind LICENSOR and COUNTY to its terms and conditions or to carry out duties contemplated herein.

38. **EXECUTION IN COUNTERPARTS:** This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.

39. **FACSIMILE/ELECTRONICALLY TRANSMITTED SIGNATURES:** In the event that the parties hereto utilize facsimile transmitted documents or electronically transmitted documents which include signatures, such documents shall be accepted as if they bore original signatures provided that documents bearing ORIGINAL SIGNATURES are provided within seventy-two (72) hours of transmission; however, documents shall not be accepted for recordation by the Clerk Recorder of the County until such documents bearing original signatures are received by COUNTY.

40. **AMENDING AGREEMENT:** This Agreement may only be amended by written consent of the parties.

41. **ENTIRE AGREEMENT:** The parties to this Agreement intend that their negotiations, conversations and statements made prior to execution of this Agreement are fully integrated and expressed herein, and no such negotiations, conversations, and statements shall be deemed to create rights or obligations other than those stated herein.

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Project: ICT License Agreement for SB
City Fiber Conduit on Anacapa St.
APN: Multiple APNs as shown on
Exhibit "A"
Folio: 003923
Agent: SF

IN WITNESS WHEREOF, LICENSOR and COUNTY have executed this Agreement
by the respective authorized representatives as set forth below to be effective as of the date
executed by COUNTY.

"LICENSOR"
CITY OF SANTA BARBARA

By: Derrick Bailey

Date: 9.3.19

Name: Derrick Bailey

Title: Principal Transportation Engineer

By: Rebecca J. Bjork

Date: 9/4/19

Name: Rebecca J. Bjork

Title: Public Works Director

Project: ICT License Agreement for SB
City Fiber Conduit on Anacapa St.
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Exhibit "A"
Folio: 003923
Agent: SF

IN WITNESS WHEREOF, LICENSOR and COUNTY have executed this Agreement by the respective authorized representatives as set forth below to be effective as of the date executed by COUNTY.

"COUNTY"
COUNTY OF SANTA BARBARA


ATTESTED:
MONA MIYASATO
CLERK OF THE BOARD OF SUPERVISORS

By: _____
Steve Lavagnino, Chair
Board of Supervisors

By: _____
Deputy Clerk


Date: _____

RECOMMENDED FOR APPROVAL:

By: 
Thomas Gresham, Assistant Director
Information & Communications Technology

APPROVED AS TO FORM:
MICHAEL C. GHIZZONI
COUNTY COUNSEL


APPROVED AS TO ACCOUNTING FORM:
BETSY M. SCHAFFER, CPA, CPFO
AUDITOR-CONTROLLER

By: 
Scott Greenwood
Deputy County Counsel

By: 
Deputy Auditor-Controller

APPROVED:

APPROVED:

By: 
Ray Aromatorio, ARM, AIC
Risk Manager


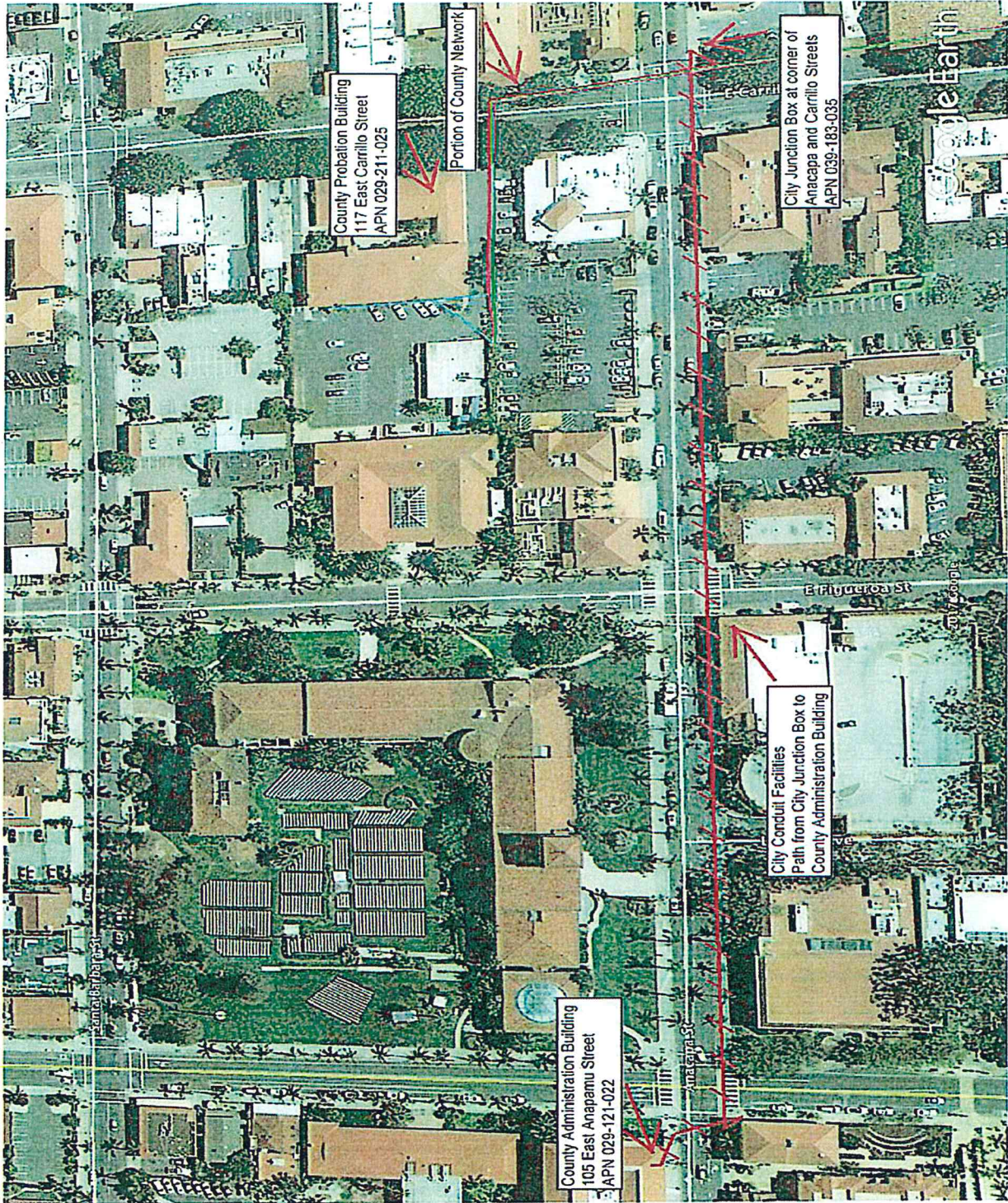
By: 
Carlo Achdjian, Real Property Manager
General Services Department

EXHIBIT A Map of City Conduit Facilities



Google Earth

EXHIBIT B
City of Santa Barbara Master Application



City of Santa Barbara
MASTER APPLICATION

*** STAFF USE ONLY ***	
MST 20	_____
BLD 20	_____
PBW 20	_____
SGN 20	_____
Other	_____

LDT Fee _____ Initials: _____

Project Address: Anacapa Street between Carrillo & Victoria

A.P.N./Street Segment ID: 1510,1440,1406 Land Use Zone: _____

Existing Condition/Current Use City owned fiber conduit on Anacapa St.

- New Addition Remodel Repair Demo Change of Use Grading Other
 Residential: # of Bldgs. _____ # of Stories _____ # of Units _____ Commercial: # of Bldgs. _____ # of Stories _____ Const. Type _____

BLD/MST/SGN Project Description:

Proposed Use/Occupancy: _____ Construction Valuation \$: _____

- Constr. D&C Encroachment Haul Route O.D.L.A. Parking Waiver Water Course Wells Other

PBW Project Description: County of Santa Barbara would like to pull a single 48 strand fiber cable through the existing City owned conduit on Anacapa St. This cable will enable the County to maintain communication with facilities on Carrillo St when the State renovates the Superior Courts Buildings. Valuation \$: 25,000.00

IMPORTANT: Please check box next to name of person listed below whom we should contact regarding this application.

- Owner of Property: City of Santa Barbara
(Name) (Mailing Address) (City, State, Zip)
 E-mail Address: _____ Phone: _____
- Applicant: County of Santa Barbara General Services, 105 E. Anapamu St. Santa Barbara, CA 93101
(Name) (Mailing Address) (City, State, Zip)
 E-mail Address: ictoperationscenter@co.santa-barbara.ca.us Phone: (805) 692-1700
- Architect/Designer: _____
(Name) (Mailing Address) (City, State, Zip)
 E-mail Address: _____ Phone: _____
- Engineer: _____
(Name) (Mailing Address) (City, State, Zip)
 E-mail Address: _____ Phone: _____
- Contractor: Jack T Williams 1951 Viborg Rd Solvang, Ca 93463
(Name) (Mailing Address) (City, State, Zip)
 E-mail Address: jabiru@silcom.com Phone: (805) 453-2475
- Tenant/Other (specify): _____
(Name) (Mailing Address) (City, State, Zip)
 E-mail Address: _____ Phone: _____

Proposed Size

New Commercial Building: _____ sq. ft.
 New Residential Building: _____ sq. ft.
 Addition: _____ sq. ft.
 Remodel/Tenant Improvement: _____ sq. ft.
 Carport/Patio Cover: _____ sq. ft.
 New Deck: _____ sq. ft.
 New Fencing: _____ sq. ft.
 New Paving: _____ sq. ft.
 Grading: _____ cu. yd.
 Other (specify): ~1500 ft of fiber cable

Existing Size

Lot: _____ x _____ = _____ sq. ft.
 Main Building: _____ sq. ft.
 Other (specify): _____ sq. ft.

I, the undersigned, understand approval of this project does not waive any requirements, laws, or ordinances of the City of Santa Barbara. All statements contained herein, including all documents and plans submitted in connection with this application, are true and accurate to the best of my knowledge.

Signature: [Signature] Date: 7/20/14

- PLANNING STAFF USE ONLY**
- ARCHITECTURAL BOARD OF REVIEW (ABR)
 - COASTAL REVIEW: EXCLUSION, EXEMPTION OR REC. TO CCC
 - ENVIRONMENTAL REVIEW
 - HISTORIC LANDMARKS COMMISSION REVIEW (HLC)
 - GENERAL PLAN SQUARE FOOTAGE ALLOCATION (GPU)
 - PLANNING COMMISSION REVIEW (PC)
 - PRE-APP. REVIEW TEAM (PRT)
 - PROPERTY PROFILE (FOR COMMERCIAL PROPERTIES)
 - SIGN COMMITTEE REVIEW
 - SINGLE FAMILY DESIGN BOARD (SFDB)
 - STAFF HEARING OFFICER (SHO)
 - ZONING LETTER (TYPICALLY FOR FINANCIAL INSTITUTIONS)
 - OTHER _____

I hereby authorize the above named contact person to act as my agent in all matters pertaining to this application.

Signature: _____ Date: _____

EXHIBIT C
Indemnification and Insurance Requirements
Between the City of Santa Barbara and the County of Santa Barbara

A. INDEMNIFICATION

In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between the parties pursuant to California Government Code Section 895.6, the parties agree that all losses or liabilities incurred by either party shall not be shared pro rata, but instead both parties agree that pursuant to California Government Code Section 895.4, each of the parties hereto shall fully indemnify and hold the other party, its officers, board members, employees and agents, harmless from any claim, expense or cost, damage or liability imposed for injury (as defined by California Government Code Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying party, its officers, board members, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such party under this Agreement. No party, nor any officer, board member, employee or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of other parties hereto, their officers, board members, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to the other party under this Agreement.

To the extent that each party agrees to indemnify, defend, and hold harmless the other party, its officers, agents and employees under this Agreement, said obligations shall continue to exist during the term of this Agreement and subsequent to this Agreement for those acts or omissions giving rise to liability which occurred during this Agreement.

B. INSURANCE

Each party shall maintain its own insurance coverage, through commercial insurance, self-insurance or a combination thereof, against any claim, expense, cost, damage or liability arising out of the performance of its responsibilities pursuant to this Agreement.

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6. **LICENSE FEE AND ASSOCIATED COSTS:** Parties hereby agree that COUNTY operations under this Agreement are for the benefit of the community, including LICENSOR, and, in consideration thereof, no License Fee will be charged during the term of this Agreement. COUNTY shall install, use and maintain County Fiber at COUNTY's sole cost and expense.
7. **SITE SUITABILITY:** COUNTY has investigated the City Conduit Facilities and has determined that they are suitable for COUNTY's intended operations and therefore, COUNTY hereby accepts, by way of executing this Agreement, the City Conduit Facilities in their existing condition.
COUNTY ACKNOWLEDGES THAT, EXCEPT AS STATED HEREIN, LICENSOR HAS MADE NO REPRESENTATIONS OR WARRANTIES ABOUT THE CONDITION OF THE CITY CONDUIT FACILITIES, OR THE SUITABILITY OF SAME FOR THE INTENDED USE BY COUNTY.
8. **PERMITS, CONSTRUCTION AND FUTURE ALTERATIONS:** COUNTY shall install, construct and maintain County Fiber in accordance with all procedures and requirements that LICENSOR may from time to time prescribe, in accordance with applicable National, State, County, City and/or industry regulations, laws and/or standards. COUNTY shall obtain all necessary permits for such work prior to construction. Any and all permits required shall be granted by LICENSOR only on the merits of the application thereof, and nothing in this Agreement shall

be construed to require LICENSOR to grant such permits or clearances.

COUNTY shall provide written notice to LICENSOR prior to the commencement of any construction or installation work in, on or about the City Conduit Facilities.

9. **DOCUMENTATION OF CITY CONDUIT FACILITIES:** Prior to installing County Fiber under this Agreement, COUNTY shall document the condition of City Conduit Facilities in a format agreeable to both parties and provide such documentation to LICENSOR. Such documentation shall include:

- A. The type, number and diameter of all fiber strands located in City Conduit Facilities;
- B. The owner of all cables present, based on available labels and markings; and
- C. GIS coordinates of all access points.

If COUNTY discovers any damage to the City Conduit Facilities, it shall immediately notify LICENSOR of such damage and if requested by COUNTY, LICENSOR will undertake repairing and/or replacing the conduit as necessary to perform under this Agreement at COUNTY'S expense.

10. **IDENTIFICATION OF COUNTY FIBER:** COUNTY, at its sole cost and expense, shall identify, by tags or other suitable means, all cables and equipment that COUNTY places in the City Conduit Facilities.

11. **UTILITY LOCATION REPORTING:** LICENSOR and COUNTY each agree to report and coordinate, as the case may be, their respective activities with USA South 811 and any successor organization coordinating location of utility lines. The parties agree to respond appropriately and expeditiously to all line location requests from the public and/or from other utilities.

Subject to Exhibit C, the parties hereby agree to hold each other harmless from any claim, expense, cost or damage that arises from the other party's mistake in marking or identifying the cable, conduit or equipment, as the case may be, or in the event of a service interruption caused by utility location misidentification by either party.

12. **MAINTENANCE AND REPAIR:** LICENSOR shall be responsible for the operation, maintenance and repair of City Conduit Facilities at its sole cost and expense, and agrees to keep said City Conduit Facilities in a safe and workable condition. COUNTY shall be responsible for the operation, maintenance and repair of County Fiber at its sole cost and expense, and agrees to keep said County Fiber in a safe and workable condition. COUNTY is not responsible for the maintenance and/or repair of the City Conduit Facilities, except to the extent that the facilities are damaged by work performed by the COUNTY pursuant to this license.

Each party agrees to take all necessary precautions to avoid damaging the other party's fiber optic cable, equipment and/or facilities and to protect such cable, equipment and facilities in the same manner as such party protects its own equipment.

13. **INSPECTION:** LICENSOR reserves the right to inspect County Fiber at all reasonable times, and COUNTY agrees that it will facilitate such inspection. COUNTY shall have the right to inspect County Fiber and City Conduit Facilities at all reasonable times, and LICENSOR agrees

that it will facilitate such inspection.

14. **RELOCATION**: In the event LICENSOR decides to relocate all or a portion of City Conduit Facilities, LICENSOR shall provide to COUNTY a minimum of three (3) years' written notice, unless failure to relocate or abandon said City Conduit Facilities poses a threat to the health, safety or welfare of the public or individuals, as determined by LICENSOR, in which case LICENSOR shall have the right to move City Conduit Facilities with a lesser notice that is reasonable under the circumstances. LICENSOR shall bear the costs of relocating City Conduit Facilities and COUNTY shall bear the costs of removing and/or relocating its County Fiber.

15. **ASSIGNMENT/SUBLICENSE**: COUNTY shall not assign, license, or sublicense City Conduit Facilities or any part thereof or any right or privilege appurtenant thereto without LICENSOR's written consent, which consent shall not be unreasonably withheld. Any attempt to assign, license, or sublicense COUNTY's rights under this Agreement without LICENSOR's prior written consent shall be void and without legal effect.

16. **ABANDONMENT**: COUNTY shall not abandon, vacate or surrender its use of City Conduit Facilities at any time during the term of this Agreement. If COUNTY does abandon, vacate or surrender use of City Conduit Facilities, this Agreement and all of COUNTY's rights thereto shall, at the option of LICENSOR, terminate after notice and the right to cure as provided in Section 19, **REMEDIES**. LICENSOR shall memorialize such termination via letter to COUNTY.

17. **REMOVAL OF PROPERTY**: COUNTY shall remove all County Fiber and associated equipment prior to the expiration of this Agreement or within ninety (90) days of earlier termination, abandonment, vacation, surrender, relocation and/or reconfiguration under other provisions of this Agreement. Any property belonging to COUNTY, including County Fiber and associated equipment, left in City Conduit Facilities after such time shall be deemed abandoned at the option of the LICENSOR, and title to such shall pass to LICENSOR. As an alternative, COUNTY may, with LICENSOR's written approval, abandon the County Fiber in place.

Upon removal of the equipment, COUNTY shall repair any damage caused thereby to City Conduit Facilities, including but not limited to capping and properly deactivating all affected electrical connections, panels, etc.

18. **DEFAULT**: Except as otherwise required herein, should either party at any time be in default hereunder with respect to any material term, covenant, condition or reservation contained herein, the non-defaulting party shall give notice to the defaulting party specifying the particulars of the default and the defaulting party shall promptly commence remedial action to cure the default. Should such default continue uncured for a period of forty-five (45) calendar days from such notice, this Agreement shall terminate at the option of the non-defaulting party; unless the cure of such default shall reasonably take more than forty-five (45) calendar days in which case the defaulting party shall proceed with all due speed to cure the default and shall have a reasonable time to effectuate its cure.

19. **REMEDIES**: In the event of a default or breach, either party may exercise any right or remedy at law or in equity which such party may have by reason of such default or breach

including but not limited to the following:

- A. The non-defaulting party may waive the default or breach in accordance with Section 20, WAIVER, herein below.
- B. The non-defaulting party may maintain this Agreement in full force and effect, and recover whatever monetary loss(es) may have resulted from such default or breach.
- C. Where LICENSOR is the non-defaulting party, LICENSOR may terminate this Agreement and COUNTY shall vacate within forty-five (45) calendar days of written notice from LICENSOR.
- D. Where COUNTY is the non-defaulting party, COUNTY may terminate this Agreement and surrender use of the City Conduit Facilities.

20. **WAIVER**: It is understood and agreed that any waiver, express or implied, of any term of this Agreement or any default or breach of this Agreement shall not be deemed to be a waiver of any continuing or subsequent default or breach of any other provision of this Agreement. Waivers of provisions of this Agreement must be in writing and signed by that party's respective designee under Section 1, ADMINISTRATION AND ENFORCEMENT, of this Agreement.

21. **DESTRUCTION**: If City Conduit Facilities are partially or totally destroyed by fire or other casualty, this Agreement, at the option of COUNTY, shall terminate.

22. **TERMINATION**: This Agreement shall terminate and all rights of COUNTY hereunder shall cease and COUNTY shall quietly and peacefully vacate the City Conduit Facilities pursuant to the following conditions:

- A. Upon expiration or earlier termination of the Agreement as provided in Section 4, TERM; or
- B. As provided in Section 14, RELOCATION; or
- C. Upon abandonment as provided in Section 16, ABANDONMENT; or
- D. Upon the failure of either party to satisfy, observe or perform any of the covenants or conditions set forth in this Agreement and the expiration of the cure period as provided in Section 18, DEFAULT; or
- E. As provided in Section 21, DESTRUCTION.

23. **SURRENDER OF FACILITIES**: Upon expiration or termination of this Agreement, COUNTY shall vacate and surrender possession of, and any claim to the City Conduit Facilities, leaving such facilities in good condition, except for ordinary wear and tear. COUNTY shall dispose of County Fiber as provided in Section 17, REMOVAL OF PROPERTY

24. **INDEMNIFICATION AND INSURANCE**: The parties shall comply with the indemnification and insurance provisions as set forth in Exhibit "C" attached hereto and incorporated by reference.

25. **NOTICES**: Any notice to be given to either party, by the other, shall be in writing and shall be served, either personally or by registered or certified mail, to the following:

LICENSOR: City of Santa Barbara
Public Works Department

Streets Operation & Infrastructure Division
 630 Garden Street, PO Box 1990
 Santa Barbara CA 93102
 (805) 564-5544

COUNTY: County of Santa Barbara
 General Services Dept./ICT Division
 105 E Anapamu, Room 304
 Santa Barbara, CA 93101
 805-568-2650

All notices hereunder shall be in writing and shall be deemed to have been given on the date delivered, if personally delivered, or if mailed, then on the first business day following the date on which it is mailed, by certified or registered mail, postage prepaid, addressed to the address specified above, or to such other address designated by the party as provided for herein.

26. **NON-INTERFERENCE**: COUNTY shall not interfere, nor permit those under its control, including, but not limited to, its employees, invitees, volunteers, agents and/or independent contractors, to interfere with LICENSOR's operations within City Conduit Facilities, nor use City Conduit Facilities in any manner that will constitute waste, nuisance, or unreasonable annoyance to LICENSOR or the general public. COUNTY shall terminate said interference immediately upon notice from LICENSOR.

27. **SUCCESSORS IN INTEREST**: This Agreement and the covenants contained herein shall be binding upon and inure to the benefit of the respective parties and to any government or private organization into which LICENSOR or COUNTY may be merged.

28. **NOTIFICATION OF ACCIDENTS AND SURVIVAL OF INDEMNIFICATION PROVISIONS**: COUNTY shall notify LICENSOR immediately in the event of any accident or injury arising out of or in connection with this Agreement. The indemnification provisions in this Agreement shall survive any expiration or termination of this Agreement.

29. **ENVIRONMENTAL IMPAIRMENT**: The parties shall comply in all material respects with all applicable laws, regulations, ordinances, guidelines, policies, directives, standards, rules and orders regardless of when they become or became effective, including without limitation those relating to construction, grading, signing, health, safety, noise, environmental protection, waste disposal, water and air quality, and shall furnish satisfactory evidence of compliance upon request by COUNTY.

Should any discharge, leakage, spillage, emission, or pollution of any type occur upon or from the City Conduit Facilities due to COUNTY'S use and occupancy, COUNTY shall clean all property affected to the satisfaction of LICENSOR and any governmental body having jurisdiction therefor. Likewise, should any discharge, leakage, spillage, emission or pollution of any type occur upon or from the City Conduit Facilities due to LICENSOR's use or activity, LICENSOR shall clean all property affected to the satisfaction of COUNTY and any governmental body having jurisdiction therefor.

30. **TOXICS:** The parties shall not manufacture or generate hazardous wastes on, in or around City Conduit Facilities unless authorized by this Agreement. Each party shall be fully responsible for any hazardous wastes, substances or materials as defined under state or local law, regulation, or ordinance that are manufactured, generated, used, placed, disposed, stored, or transported by either party, its officers, agents, representatives, employees, volunteers, independent contractors or designees on, in or around the City Conduit Facilities during the term of this Agreement, and shall comply with and be bound by all applicable provisions of such state or local law, regulation, or ordinance dealing with such wastes, substances, or materials. In the event of any release or threatened release of any such wastes, substances or materials, the responsible party, as the case may be, shall immediately notify the other party and the appropriate governmental response agency(ies).

31. **COMPLIANCE WITH THE LAW:** The parties shall comply with all applicable laws, rules, regulations and ordinances as amended, affecting the Property and Premises now or hereafter in effect.

32. **NONDISCRIMINATION:** The parties shall comply with COUNTY laws, rules and regulations regarding nondiscrimination as such are found in the Santa Barbara County Code and as such may from time to time be amended. These provisions are incorporated herein as if they were fully set forth.

Noncompliance with provisions of this section shall constitute a material breach of this Agreement and in addition to any other remedies provided by law, COUNTY shall have the right to terminate this Agreement and the interest hereby created without liability therefor.

33. **AMENDMENTS:** This Agreement may only be amended by written consent of the parties and such changes shall be binding upon the heirs or successors of the parties.

34. **AGENCY DISCLOSURE:** LICENSOR acknowledges that the General Services Department of the COUNTY is the agent for the COUNTY exclusively, and is neither the agent for the LICENSOR nor a dual agent in this transaction.

35. **CAPTIONS:** The title or headings to the sections of this Agreement are not a part of this Agreement, and shall have no effect upon the construction or interpretation of any part hereof.

36. **SEVERABILITY:** If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal, or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

37. **CERTIFICATION OF SIGNATORY:** The signatories of this Agreement and each of them represent and warrant that they are authorized to execute this Agreement and that no additional signatures are required to bind LICENSOR and COUNTY to its terms and conditions or to carry out duties contemplated herein.

Project: ICT License Agreement for SB
City Fiber Conduit on Anacapa St.
APN: Multiple APNs as shown on
Exhibit "A"
Folio: 003923
Agent: SF

IN WITNESS WHEREOF, LICENSOR and COUNTY have executed this Agreement by the respective authorized representatives as set forth below to be effective as of the date executed by COUNTY.

"LICENSOR"
CITY OF SANTA BARBARA

By: Derrick Bailey

Date: 9.3.19

Name: Der Bault

Title: Principal Transportation Engineer

By: Rebecca Bjork

Date: 9/4/19

Name: Rebecca J. Bjork

Title: Public Works Director

Project: ICT License Agreement for SB
City Fiber Conduit on Anacapa St.
APN: Multiple APNs as shown on
Exhibit "A"
Folio: 003923
Agent: SF

IN WITNESS WHEREOF, LICENSOR and COUNTY have executed this Agreement by the respective authorized representatives as set forth below to be effective as of the date executed by COUNTY.

"COUNTY"
COUNTY OF SANTA BARBARA


ATTESTED:
MONA MIYASATO
CLERK OF THE BOARD OF SUPERVISORS

By: _____
Steve Lavagnino, Chair
Board of Supervisors

By: _____
Deputy Clerk

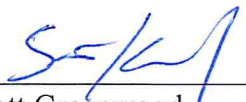
Date: _____

RECOMMENDED FOR APPROVAL:

By: 
Thomas Gresham, Assistant Director
Information & Communications Technology

APPROVED AS TO FORM:
MICHAEL C. GHIZZONI
COUNTY COUNSEL


APPROVED AS TO ACCOUNTING FORM:
BETSY M. SCHAFFER, CPA, CPFO
AUDITOR-CONTROLLER

By: 
Scott Greenwood
Deputy County Counsel

By: 
Deputy Auditor-Controller

APPROVED:

APPROVED:

By: 
Ray Aromatorio, ARM, AIC
Risk Manager


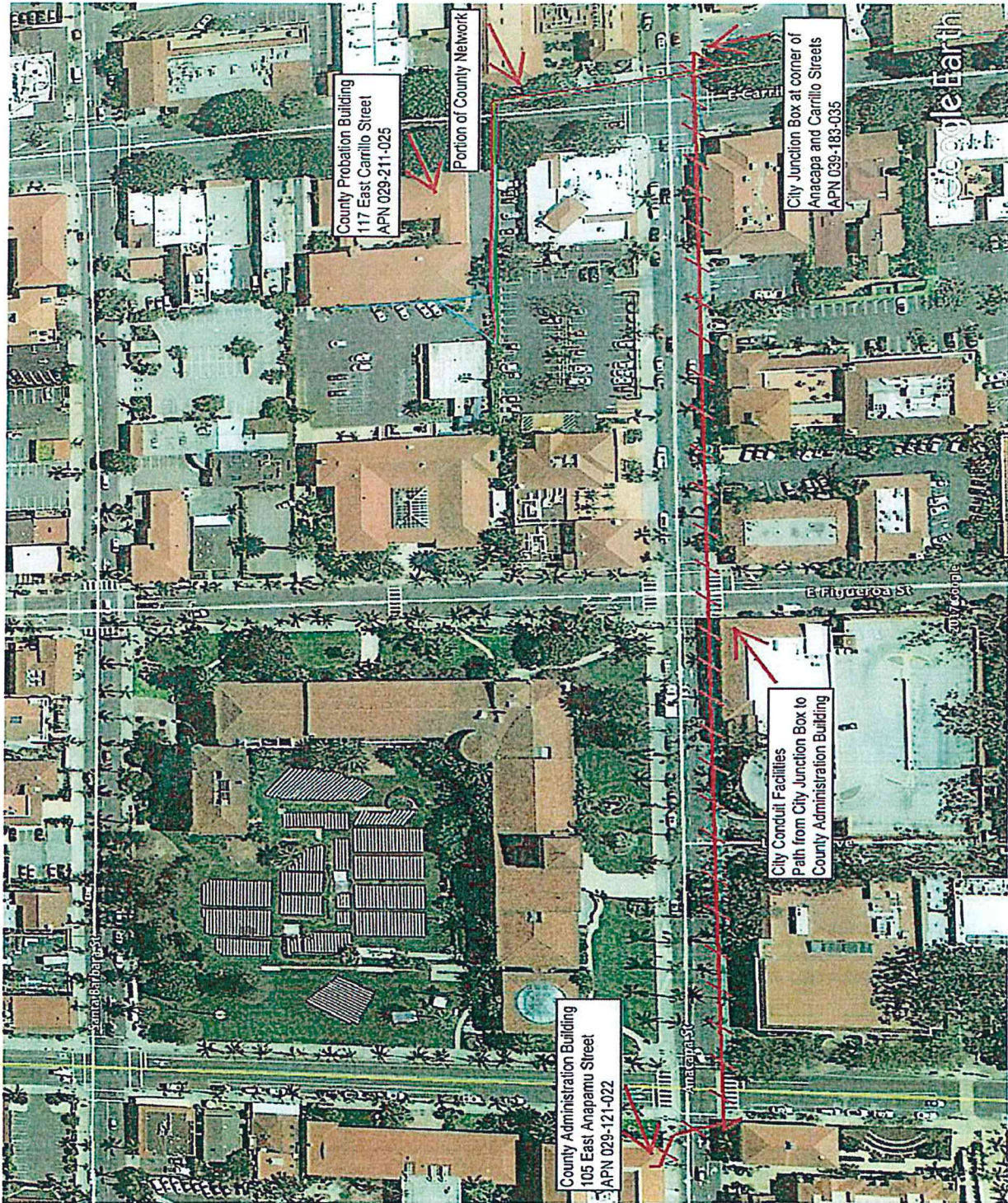
By: 
Carlo Achdjian, Real Property Manager
General Services Department

EXHIBIT A Map of City Conduit Facilities



Google Earth

EXHIBIT B
City of Santa Barbara Master Application



City of Santa Barbara
MASTER APPLICATION

*** STAFF USE ONLY ***	
MST 20	_____
BLD 20	_____
PBW 20	_____
SGN 20	_____
Other	_____

LDT Fee _____ Initials: _____

Project Address: Anacapa Street between Carrillo & Victoria

A.P.N./Street Segment ID: 1510,1440,1406 Land Use Zone: _____

Existing Condition/Current Use City owned fiber conduit on Anacapa St.

- New Addition Remodel Repair Demo Change of Use Grading Other
 Residential: # of Bldgs. _____ # of Stories _____ # of Units _____ Commercial: # of Bldgs. _____ # of Stories _____ Const. Type _____

BLD/MST/SGN Project Description:

Proposed Use/Occupancy: _____ Construction Valuation \$: _____

- Constr. D&C Encroachment Haul Route O.D.L.A. Parking Waiver Water Course Wells Other

PBW Project Description: County of Santa Barbara would like to pull a single 48 strand fiber cable through the existing City owned conduit on Anacapa St. This cable will enable the County to maintain communication with facilities on Carrillo St when the State renovates the Superior Courts Buildings. Valuation \$: 25,000.00

IMPORTANT: Please check box next to name of person listed below whom we should contact regarding this application.

- Owner of Property: City of Santa Barbara
(Name) (Mailing Address) (City, State, Zip)
 E-mail Address: _____ Phone: _____
- Applicant: County of Santa Barbara General Services, 105 E. Anapamu St. Santa Barbara, CA 93101
(Name) (Mailing Address) (City, State, Zip)
 E-mail Address: ictoperationscenter@co.santa-barbara.ca.us Phone: (805) 692-1700
- Architect/Designer: _____
(Name) (Mailing Address) (City, State, Zip)
 E-mail Address: _____ Phone: _____
- Engineer: _____
(Name) (Mailing Address) (City, State, Zip)
 E-mail Address: _____ Phone: _____
- Contractor: Jack T Williams 1951 Viborg Rd Solvang, Ca 93463
(Name) (Mailing Address) (City, State, Zip)
 E-mail Address: jabiru@silcom.com Phone: (805) 453-2475
- Tenant/Other (specify): _____
(Name) (Mailing Address) (City, State, Zip)
 E-mail Address: _____ Phone: _____

Proposed Size

- New Commercial Building: _____ sq. ft.
 New Residential Building: _____ sq. ft.
 Addition: _____ sq. ft.
 Remodel/Tenant Improvement: _____ sq. ft.
 Carport/Patio Cover: _____ sq. ft.
 New Deck: _____ sq. ft.
 New Fencing: _____ sq. ft.
 New Paving: _____ sq. ft.
 Grading: _____ cu. yd.
 Other (specify): ~1500 ft of fiber cable

Existing Size

- Lot: _____ x _____ = _____ sq. ft.
 Main Building: _____ sq. ft.
 Other (specify): _____ sq. ft.

I, the undersigned, understand approval of this project does not waive any requirements, laws, or ordinances of the City of Santa Barbara. All statements contained herein, including all documents and plans submitted in connection with this application, are true and accurate to the best of my knowledge.

Signature: [Signature] Date: 7/20/14

PLANNING STAFF USE ONLY

- ARCHITECTURAL BOARD OF REVIEW (ABR)
 COASTAL REVIEW: EXCLUSION, EXEMPTION OR REC. TO CCC
 ENVIRONMENTAL REVIEW
 HISTORIC LANDMARKS COMMISSION REVIEW (HLC)
 GENERAL PLAN SQUARE FOOTAGE ALLOCATION (GPU)
 PLANNING COMMISSION REVIEW (PC)
 PRE-APP. REVIEW TEAM (PRT)
 PROPERTY PROFILE (FOR COMMERCIAL PROPERTIES)
 SIGN COMMITTEE REVIEW
 SINGLE FAMILY DESIGN BOARD (SFDB)
 STAFF HEARING OFFICER (SHO)
 ZONING LETTER (TYPICALLY FOR FINANCIAL INSTITUTIONS)
 OTHER _____

I hereby authorize the above named contact person to act as my agent in all matters pertaining to this application.

Signature: _____ Date: _____
(Property Owner)

EXHIBIT C
Indemnification and Insurance Requirements
Between the City of Santa Barbara and the County of Santa Barbara

A. INDEMNIFICATION

In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between the parties pursuant to California Government Code Section 895.6, the parties agree that all losses or liabilities incurred by either party shall not be shared pro rata, but instead both parties agree that pursuant to California Government Code Section 895.4, each of the parties hereto shall fully indemnify and hold the other party, its officers, board members, employees and agents, harmless from any claim, expense or cost, damage or liability imposed for injury (as defined by California Government Code Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying party, its officers, board members, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such party under this Agreement. No party, nor any officer, board member, employee or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of other parties hereto, their officers, board members, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to the other party under this Agreement.

To the extent that each party agrees to indemnify, defend, and hold harmless the other party, its officers, agents and employees under this Agreement, said obligations shall continue to exist during the term of this Agreement and subsequent to this Agreement for those acts or omissions giving rise to liability which occurred during this Agreement.

B. INSURANCE

Each party shall maintain its own insurance coverage, through commercial insurance, self-insurance or a combination thereof, against any claim, expense, cost, damage or liability arising out of the performance of its responsibilities pursuant to this Agreement.

Project: ICT License Agreement for SB
City Fiber Conduit on Anacapa St.
APN: Multiple APNs as shown on
Exhibit "A"
Folio: 003923
Agent: SF

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (hereinafter "Agreement") is made by and between the CITY OF SANTA BARBARA, a municipal corporation of the State of California (hereinafter "LICENSOR"), and the COUNTY OF SANTA BARBARA, a political subdivision of the State of California (hereinafter "COUNTY"), with reference to the following:

WHEREAS, LICENSOR owns certain fiber optic conduit facilities and junction box(es) located in the City of Santa Barbara public right-of-way between that certain COUNTY-owned real property known as 105 East Anapamu Street in the City of Santa Barbara, and more particularly described as Santa Barbara County Assessor's Parcel Number 029-121-022 (hereinafter "County Administrative Building"), and a LICENSOR-owned junction box located near the corner of Anacapa and Carrillo Streets in the City of Santa Barbara (hereinafter "City Junction Box"), shown as the cross-hatched area on Exhibit "A", attached hereto and incorporated herein by this reference (hereinafter "City Conduit Facilities"); and

WHEREAS, COUNTY owns certain fiber optic conduit facilities and junction box(es) throughout the County of Santa Barbara designed to enhance communication by and between COUNTY-owned and/or -operated buildings (hereinafter "County Network"); and

WHEREAS, as a part of its continuing efforts to improve and enhance its County Network, COUNTY desires to install, operate and maintain a single 48 strand fiber optic cable and associated material(s) and equipment (hereinafter "County Fiber") within City Conduit Facilities for the purpose of connecting certain COUNTY-owned real property located at 117 East Carrillo Street in the City of Santa Barbara, more particularly described as Santa Barbara County Assessor's Parcel Number 029-211-025 (hereinafter "County Probation Building"), and the County Administration Building, as identified on Exhibit A; and

WHEREAS, COUNTY has submitted, and LICENSOR has approved, a City of Santa Barbara Master Application to "pull a single 48 strand fiber cable through the existing City owned conduit on Anacapa St.," as shown on Exhibit "B", attached hereto and incorporated herein by this reference; and

WHEREAS, it is in the best interests of the citizens of the County of Santa Barbara for public agencies within the County of Santa Barbara to work cooperatively in sharing resources and promoting the cost-effective delivery of services; and

NOW, THEREFORE, in consideration of the provisions, covenants, and conditions, contained herein, LICENSOR and COUNTY agree as follows:

1. **ADMINISTRATION AND ENFORCEMENT:** The provisions of this Agreement shall be administered and enforced for COUNTY by the Director of the General Services Department or Director's designee (hereinafter "Director"), and for LICENSOR by the Director of the Public Works Department or Director's designee (hereinafter "Public Works Director").
2. **RIGHTS GRANTED:** LICENSOR hereby grants to COUNTY a personal, revocable, and non-assignable right to install, use and maintain County Fiber within City Conduit Facilities, as identified on Exhibit A.
3. **PURPOSE AND USE:** COUNTY shall use City Conduit Facilities solely for the purpose of installing County Fiber and improving fiber connectivity in the County Network during the term of this Agreement. COUNTY shall not use City Conduit Facilities for any other purposes without the express written consent of LICENSOR. There shall be no restrictions on the COUNTY's installation, use and maintenance of County Fiber except as set forth in this Agreement.
4. **TERM:** The term of this Agreement shall be for a period of fifteen (15) years, commencing upon final execution of this Agreement by COUNTY ("Commencement Date"), subject to such provisions for termination as described herein.
5. **OPTION TO EXTEND:** In the event this Agreement has not otherwise been terminated, COUNTY may extend the term of this Agreement for two (2) additional terms of five (5) years each. COUNTY shall provide LICENSOR with written notice of its intent to exercise its option to extend at least ninety (90) days prior to expiration of the initial term.
6. **LICENSE FEE AND ASSOCIATED COSTS:** Parties hereby agree that COUNTY operations under this Agreement are for the benefit of the community, including LICENSOR, and, in consideration thereof, no License Fee will be charged during the term of this Agreement. COUNTY shall install, use and maintain County Fiber at COUNTY's sole cost and expense.
7. **SITE SUITABILITY:** COUNTY has investigated the City Conduit Facilities and has determined that they are suitable for COUNTY's intended operations and therefore, COUNTY hereby accepts, by way of executing this Agreement, the City Conduit Facilities in their existing condition.
COUNTY ACKNOWLEDGES THAT, EXCEPT AS STATED HEREIN, LICENSOR HAS MADE NO REPRESENTATIONS OR WARRANTIES ABOUT THE CONDITION OF THE CITY CONDUIT FACILITIES, OR THE SUITABILITY OF SAME FOR THE INTENDED USE BY COUNTY.
8. **PERMITS, CONSTRUCTION AND FUTURE ALTERATIONS:** COUNTY shall install, construct and maintain County Fiber in accordance with all procedures and requirements that LICENSOR may from time to time prescribe, in accordance with applicable National, State, County, City and/or industry regulations, laws and/or standards. COUNTY shall obtain all necessary permits for such work prior to construction. Any and all permits required shall be granted by LICENSOR only on the merits of the application thereof, and nothing in this Agreement shall

be construed to require LICENSOR to grant such permits or clearances.

COUNTY shall provide written notice to LICENSOR prior to the commencement of any construction or installation work in, on or about the City Conduit Facilities.

9. **DOCUMENTATION OF CITY CONDUIT FACILITIES:** Prior to installing County Fiber under this Agreement, COUNTY shall document the condition of City Conduit Facilities in a format agreeable to both parties and provide such documentation to LICENSOR. Such documentation shall include:

- A. The type, number and diameter of all fiber strands located in City Conduit Facilities;
- B. The owner of all cables present, based on available labels and markings; and
- C. GIS coordinates of all access points.

If COUNTY discovers any damage to the City Conduit Facilities, it shall immediately notify LICENSOR of such damage and if requested by COUNTY, LICENSOR will undertake repairing and/or replacing the conduit as necessary to perform under this Agreement at COUNTY'S expense.

10. **IDENTIFICATION OF COUNTY FIBER:** COUNTY, at its sole cost and expense, shall identify, by tags or other suitable means, all cables and equipment that COUNTY places in the City Conduit Facilities.

11. **UTILITY LOCATION REPORTING:** LICENSOR and COUNTY each agree to report and coordinate, as the case may be, their respective activities with USA South 811 and any successor organization coordinating location of utility lines. The parties agree to respond appropriately and expeditiously to all line location requests from the public and/or from other utilities.

Subject to Exhibit C, the parties hereby agree to hold each other harmless from any claim, expense, cost or damage that arises from the other party's mistake in marking or identifying the cable, conduit or equipment, as the case may be, or in the event of a service interruption caused by utility location misidentification by either party.

12. **MAINTENANCE AND REPAIR:** LICENSOR shall be responsible for the operation, maintenance and repair of City Conduit Facilities at its sole cost and expense, and agrees to keep said City Conduit Facilities in a safe and workable condition. COUNTY shall be responsible for the operation, maintenance and repair of County Fiber at its sole cost and expense, and agrees to keep said County Fiber in a safe and workable condition. COUNTY is not responsible for the maintenance and/or repair of the City Conduit Facilities, except to the extent that the facilities are damaged by work performed by the COUNTY pursuant to this license.

Each party agrees to take all necessary precautions to avoid damaging the other party's fiber optic cable, equipment and/or facilities and to protect such cable, equipment and facilities in the same manner as such party protects its own equipment.

13. **INSPECTION:** LICENSOR reserves the right to inspect County Fiber at all reasonable times, and COUNTY agrees that it will facilitate such inspection. COUNTY shall have the right to inspect County Fiber and City Conduit Facilities at all reasonable times, and LICENSOR agrees

that it will facilitate such inspection.

14. **RELOCATION**: In the event LICENSOR decides to relocate all or a portion of City Conduit Facilities, LICENSOR shall provide to COUNTY a minimum of three (3) years' written notice, unless failure to relocate or abandon said City Conduit Facilities poses a threat to the health, safety or welfare of the public or individuals, as determined by LICENSOR, in which case LICENSOR shall have the right to move City Conduit Facilities with a lesser notice that is reasonable under the circumstances. LICENSOR shall bear the costs of relocating City Conduit Facilities and COUNTY shall bear the costs of removing and/or relocating its County Fiber.

15. **ASSIGNMENT/SUBLICICENSE**: COUNTY shall not assign, license, or sublicense City Conduit Facilities or any part thereof or any right or privilege appurtenant thereto without LICENSOR's written consent, which consent shall not be unreasonably withheld. Any attempt to assign, license, or sublicense COUNTY's rights under this Agreement without LICENSOR's prior written consent shall be void and without legal effect.

16. **ABANDONMENT**: COUNTY shall not abandon, vacate or surrender its use of City Conduit Facilities at any time during the term of this Agreement. If COUNTY does abandon, vacate or surrender use of City Conduit Facilities, this Agreement and all of COUNTY's rights thereto shall, at the option of LICENSOR, terminate after notice and the right to cure as provided in Section 19, **REMEDIES**. LICENSOR shall memorialize such termination via letter to COUNTY.

17. **REMOVAL OF PROPERTY**: COUNTY shall remove all County Fiber and associated equipment prior to the expiration of this Agreement or within ninety (90) days of earlier termination, abandonment, vacation, surrender, relocation and/or reconfiguration under other provisions of this Agreement. Any property belonging to COUNTY, including County Fiber and associated equipment, left in City Conduit Facilities after such time shall be deemed abandoned at the option of the LICENSOR, and title to such shall pass to LICENSOR. As an alternative, COUNTY may, with LICENSOR's written approval, abandon the County Fiber in place.

Upon removal of the equipment, COUNTY shall repair any damage caused thereby to City Conduit Facilities, including but not limited to capping and properly deactivating all affected electrical connections, panels, etc.

18. **DEFAULT**: Except as otherwise required herein, should either party at any time be in default hereunder with respect to any material term, covenant, condition or reservation contained herein, the non-defaulting party shall give notice to the defaulting party specifying the particulars of the default and the defaulting party shall promptly commence remedial action to cure the default. Should such default continue uncured for a period of forty-five (45) calendar days from such notice, this Agreement shall terminate at the option of the non-defaulting party; unless the cure of such default shall reasonably take more than forty-five (45) calendar days in which case the defaulting party shall proceed with all due speed to cure the default and shall have a reasonable time to effectuate its cure.

19. **REMEDIES**: In the event of a default or breach, either party may exercise any right or remedy at law or in equity which such party may have by reason of such default or breach

including but not limited to the following:

- A. The non-defaulting party may waive the default or breach in accordance with Section 20, WAIVER, herein below.
- B. The non-defaulting party may maintain this Agreement in full force and effect, and recover whatever monetary loss(es) may have resulted from such default or breach.
- C. Where LICENSOR is the non-defaulting party, LICENSOR may terminate this Agreement and COUNTY shall vacate within forty-five (45) calendar days of written notice from LICENSOR.
- D. Where COUNTY is the non-defaulting party, COUNTY may terminate this Agreement and surrender use of the City Conduit Facilities.

20. **WAIVER**: It is understood and agreed that any waiver, express or implied, of any term of this Agreement or any default or breach of this Agreement shall not be deemed to be a waiver of any continuing or subsequent default or breach of any other provision of this Agreement. Waivers of provisions of this Agreement must be in writing and signed by that party's respective designee under Section 1, ADMINISTRATION AND ENFORCEMENT, of this Agreement.

21. **DESTRUCTION**: If City Conduit Facilities are partially or totally destroyed by fire or other casualty, this Agreement, at the option of COUNTY, shall terminate.

22. **TERMINATION**: This Agreement shall terminate and all rights of COUNTY hereunder shall cease and COUNTY shall quietly and peacefully vacate the City Conduit Facilities pursuant to the following conditions:

- A. Upon expiration or earlier termination of the Agreement as provided in Section 4, TERM; or
- B. As provided in Section 14, RELOCATION; or
- C. Upon abandonment as provided in Section 16, ABANDONMENT; or
- D. Upon the failure of either party to satisfy, observe or perform any of the covenants or conditions set forth in this Agreement and the expiration of the cure period as provided in Section 18, DEFAULT; or
- E. As provided in Section 21, DESTRUCTION.

23. **SURRENDER OF FACILITIES**: Upon expiration or termination of this Agreement, COUNTY shall vacate and surrender possession of, and any claim to the City Conduit Facilities, leaving such facilities in good condition, except for ordinary wear and tear. COUNTY shall dispose of County Fiber as provided in Section 17, REMOVAL OF PROPERTY

24. **INDEMNIFICATION AND INSURANCE**: The parties shall comply with the indemnification and insurance provisions as set forth in Exhibit "C" attached hereto and incorporated by reference.

25. **NOTICES**: Any notice to be given to either party, by the other, shall be in writing and shall be served, either personally or by registered or certified mail, to the following:

LICENSOR: City of Santa Barbara
Public Works Department

Streets Operation & Infrastructure Division
630 Garden Street, PO Box 1990
Santa Barbara CA 93102
(805) 564-5544

COUNTY: County of Santa Barbara
General Services Dept./ICT Division
105 E Anapamu, Room 304
Santa Barbara, CA 93101
805-568-2650

All notices hereunder shall be in writing and shall be deemed to have been given on the date delivered, if personally delivered, or if mailed, then on the first business day following the date on which it is mailed, by certified or registered mail, postage prepaid, addressed to the address specified above, or to such other address designated by the party as provided for herein.

26. **NON-INTERFERENCE:** COUNTY shall not interfere, nor permit those under its control, including, but not limited to, its employees, invitees, volunteers, agents and/or independent contractors, to interfere with LICENSOR’s operations within City Conduit Facilities, nor use City Conduit Facilities in any manner that will constitute waste, nuisance, or unreasonable annoyance to LICENSOR or the general public. COUNTY shall terminate said interference immediately upon notice from LICENSOR.

27. **SUCCESSORS IN INTEREST:** This Agreement and the covenants contained herein shall be binding upon and inure to the benefit of the respective parties and to any government or private organization into which LICENSOR or COUNTY may be merged.

28. **NOTIFICATION OF ACCIDENTS AND SURVIVAL OF INDEMNIFICATION PROVISIONS:** COUNTY shall notify LICENSOR immediately in the event of any accident or injury arising out of or in connection with this Agreement. The indemnification provisions in this Agreement shall survive any expiration or termination of this Agreement.

29. **ENVIRONMENTAL IMPAIRMENT:** The parties shall comply in all material respects with all applicable laws, regulations, ordinances, guidelines, policies, directives, standards, rules and orders regardless of when they become or became effective, including without limitation those relating to construction, grading, signing, health, safety, noise, environmental protection, waste disposal, water and air quality, and shall furnish satisfactory evidence of compliance upon request by COUNTY.

Should any discharge, leakage, spillage, emission, or pollution of any type occur upon or from the City Conduit Facilities due to COUNTY'S use and occupancy, COUNTY shall clean all property affected to the satisfaction of LICENSOR and any governmental body having jurisdiction therefor. Likewise, should any discharge, leakage, spillage, emission or pollution of any type occur upon or from the City Conduit Facilities due to LICENSOR’s use or activity, LICENSOR shall clean all property affected to the satisfaction of COUNTY and any governmental body having jurisdiction therefor.

30. **TOXICS**: The parties shall not manufacture or generate hazardous wastes on, in or around City Conduit Facilities unless authorized by this Agreement. Each party shall be fully responsible for any hazardous wastes, substances or materials as defined under state or local law, regulation, or ordinance that are manufactured, generated, used, placed, disposed, stored, or transported by either party, its officers, agents, representatives, employees, volunteers, independent contractors or designees on, in or around the City Conduit Facilities during the term of this Agreement, and shall comply with and be bound by all applicable provisions of such state or local law, regulation, or ordinance dealing with such wastes, substances, or materials. In the event of any release or threatened release of any such wastes, substances or materials, the responsible party, as the case may be, shall immediately notify the other party and the appropriate governmental response agency(ies).

31. **COMPLIANCE WITH THE LAW**: The parties shall comply with all applicable laws, rules, regulations and ordinances as amended, affecting the Property and Premises now or hereafter in effect.

32. **NONDISCRIMINATION**: The parties shall comply with COUNTY laws, rules and regulations regarding nondiscrimination as such are found in the Santa Barbara County Code and as such may from time to time be amended. These provisions are incorporated herein as if they were fully set forth.

Noncompliance with provisions of this section shall constitute a material breach of this Agreement and in addition to any other remedies provided by law, COUNTY shall have the right to terminate this Agreement and the interest hereby created without liability therefor.

33. **AMENDMENTS**: This Agreement may only be amended by written consent of the parties and such changes shall be binding upon the heirs or successors of the parties.

34. **AGENCY DISCLOSURE**: LICENSOR acknowledges that the General Services Department of the COUNTY is the agent for the COUNTY exclusively, and is neither the agent for the LICENSOR nor a dual agent in this transaction.

35. **CAPTIONS**: The title or headings to the sections of this Agreement are not a part of this Agreement, and shall have no effect upon the construction or interpretation of any part hereof.

36. **SEVERABILITY**: If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal, or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

37. **CERTIFICATION OF SIGNATORY**: The signatories of this Agreement and each of them represent and warrant that they are authorized to execute this Agreement and that no additional signatures are required to bind LICENSOR and COUNTY to its terms and conditions or to carry out duties contemplated herein.

38. **EXECUTION IN COUNTERPARTS:** This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.

39. **FACSIMILE/ELECTRONICALLY TRANSMITTED SIGNATURES:** In the event that the parties hereto utilize facsimile transmitted documents or electronically transmitted documents which include signatures, such documents shall be accepted as if they bore original signatures provided that documents bearing ORIGINAL SIGNATURES are provided within seventy-two (72) hours of transmission; however, documents shall not be accepted for recordation by the Clerk Recorder of the County until such documents bearing original signatures are received by COUNTY.

40. **AMENDING AGREEMENT:** This Agreement may only be amended by written consent of the parties.

41. **ENTIRE AGREEMENT:** The parties to this Agreement intend that their negotiations, conversations and statements made prior to execution of this Agreement are fully integrated and expressed herein, and no such negotiations, conversations, and statements shall be deemed to create rights or obligations other than those stated herein.

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Project: ICT License Agreement for SB
City Fiber Conduit on Anacapa St.
APN: Multiple APNs as shown on
Exhibit "A"
Folio: 003923
Agent: SF

IN WITNESS WHEREOF, LICENSOR and COUNTY have executed this Agreement by the respective authorized representatives as set forth below to be effective as of the date executed by COUNTY.

"LICENSOR"
CITY OF SANTA BARBARA

By: Derrick Bailey

Date: 9.3.19

Name: Derrick Bailey

Title: Principal Transportation Engineer

By: Rebecca Bjork

Date: 9/4/19

Name: Rebecca J. Bjork

Title: Public Works Director

Project: ICT License Agreement for SB
City Fiber Conduit on Anacapa St.
APN: Multiple APNs as shown on
Exhibit "A"
Folio: 003923
Agent: SF

IN WITNESS WHEREOF, LICENSOR and COUNTY have executed this Agreement by the respective authorized representatives as set forth below to be effective as of the date executed by COUNTY.

"COUNTY"
COUNTY OF SANTA BARBARA


ATTESTED:
MONA MIYASATO
CLERK OF THE BOARD OF SUPERVISORS

By: _____
Steve Lavagnino, Chair
Board of Supervisors

By: _____
Deputy Clerk


Date: _____

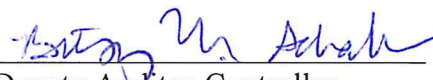
RECOMMENDED FOR APPROVAL:

By: 
Thomas Gresham, Assistant Director
Information & Communications Technology

APPROVED AS TO FORM:
MICHAEL C. GHIZZONI
COUNTY COUNSEL


APPROVED AS TO ACCOUNTING FORM:
BETSY M. SCHAFFER, CPA, CPFO
AUDITOR-CONTROLLER

By: 
Scott Greenwood
Deputy County Counsel

By: 
Deputy Auditor-Controller

APPROVED:

APPROVED:

By: 
Ray Aromatorio, ARM, AIC
Risk Manager

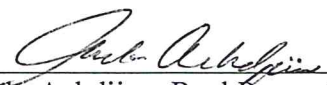
By: 
Carlo Achdjian, Real Property Manager
General Services Department

EXHIBIT A Map of City Conduit Facilities

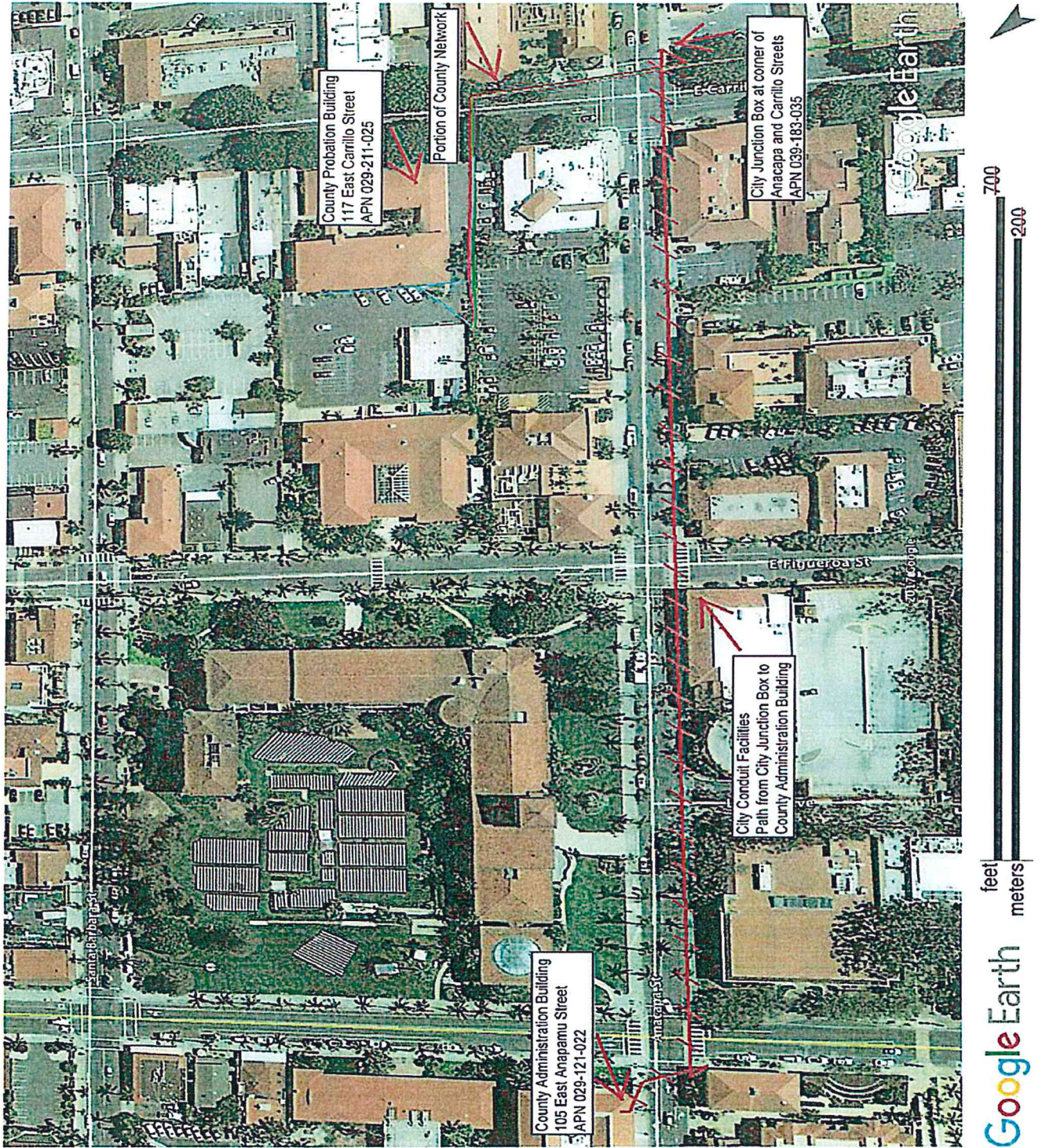


EXHIBIT B
City of Santa Barbara Master Application



City of Santa Barbara
MASTER APPLICATION

*** STAFF USE ONLY ***	
MST 20	_____
BLD 20	_____
PBW 20	_____
SGN 20	_____
Other	_____

LDT Fee _____ Initials: _____

Project Address: Anacapa Street between Carrillo & Victoria

A.P.N./Street Segment ID: 1510,1440,1406 Land Use Zone: _____

Existing Condition/Current Use City owned fiber conduit on Anacapa St.

- New Addition Remodel Repair Demo Change of Use Grading Other
 Residential: # of Bldgs. _____ # of Stories _____ # of Units _____ Commercial: # of Bldgs. _____ # of Stories _____ Const. Type _____

BLD/MST/SGN Project Description: _____

Proposed Use/Occupancy: _____ Construction Valuation \$: _____

- Constr. D&C Enoachment Haul Route O.D.L.A. Parking Waiver Water Course Wells Other

PBW Project Description: County of Santa Barbara would like to pull a single 48 strand fiber cable through the existing City owned conduit on Anacapa St. This cable will enable the County to maintain communication with facilities on Carrillo St when the State renovates the Superior Courts Buildings. Valuation \$: 25,000.00

IMPORTANT: Please check box next to name of person listed below whom we should contact regarding this application.

- Owner of Property: City of Santa Barbara
(Name) (Mailing Address) (City, State, Zip)
 E-mail Address: _____ Phone: _____
- Applicant: County of Santa Barbara General Services, 105 E. Anapamu St. Santa Barbara, CA 93101
(Name) (Mailing Address) (City, State, Zip)
 E-mail Address: ictoperationscenter@co.santa-barbara.ca.us Phone: (805) 692-1700
- Architect/Designer: _____
(Name) (Mailing Address) (City, State, Zip)
 E-mail Address: _____ Phone: _____
- Engineer: _____
(Name) (Mailing Address) (City, State, Zip)
 E-mail Address: _____ Phone: _____
- Contractor: Jack T Williams 1951 Viborg Rd Solvang, Ca 93463
(Name) (Mailing Address) (City, State, Zip)
 E-mail Address: jabiru@silcom.com Phone: (805) 453-2475
- Tenant/Other (specify): _____
(Name) (Mailing Address) (City, State, Zip)
 E-mail Address: _____ Phone: _____

Proposed Size

- New Commercial Building: _____ sq. ft.
 New Residential Building: _____ sq. ft.
 Addition: _____ sq. ft.
 Remodel/Tenant Improvement: _____ sq. ft.
 Carport/Patio Cover: _____ sq. ft.
 New Deck: _____ sq. ft.
 New Fencing: _____ sq. ft.
 New Paving: _____ sq. ft.
 Grading: _____ cu. yd.
 Other (specify): -1500 ft of fiber cable

Existing Size

- Lot: _____ x _____ = _____ sq. ft.
 Main Building: _____ sq. ft.
 Other (specify): _____ sq. ft.

I, the undersigned, understand approval of this project does not waive any requirements, laws, or ordinances of the City of Santa Barbara. All statements contained herein, including all documents and plans submitted in connection with this application, are true and accurate to the best of my knowledge.

Signature: [Signature] Date: 7/20/14

PLANNING STAFF USE ONLY

- ARCHITECTURAL BOARD OF REVIEW (ABR)
 COASTAL REVIEW: EXCLUSION, EXEMPTION OR REC. TO CCC
 ENVIRONMENTAL REVIEW
 HISTORIC LANDMARKS COMMISSION REVIEW (HLC)
 GENERAL PLAN SQUARE FOOTAGE ALLOCATION (GPU)
 PLANNING COMMISSION REVIEW (PC)
 PRE-APP. REVIEW TEAM (PRT)
 PROPERTY PROFILE (FOR COMMERCIAL PROPERTIES)
 SIGN COMMITTEE REVIEW
 SINGLE FAMILY DESIGN BOARD (SFDB)
 STAFF HEARING OFFICER (SHO)
 ZONING LETTER (TYPICALLY FOR FINANCIAL INSTITUTIONS)
 OTHER _____

I hereby authorize the above named contact person to act as my agent in all matters pertaining to this application.

Signature: _____ Date: _____
(Property Owner)

EXHIBIT C
Indemnification and Insurance Requirements
Between the City of Santa Barbara and the County of Santa Barbara

A. INDEMNIFICATION

In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between the parties pursuant to California Government Code Section 895.6, the parties agree that all losses or liabilities incurred by either party shall not be shared pro rata, but instead both parties agree that pursuant to California Government Code Section 895.4, each of the parties hereto shall fully indemnify and hold the other party, its officers, board members, employees and agents, harmless from any claim, expense or cost, damage or liability imposed for injury (as defined by California Government Code Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying party, its officers, board members, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such party under this Agreement. No party, nor any officer, board member, employee or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of other parties hereto, their officers, board members, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to the other party under this Agreement.

To the extent that each party agrees to indemnify, defend, and hold harmless the other party, its officers, agents and employees under this Agreement, said obligations shall continue to exist during the term of this Agreement and subsequent to this Agreement for those acts or omissions giving rise to liability which occurred during this Agreement.

B. INSURANCE

Each party shall maintain its own insurance coverage, through commercial insurance, self-insurance or a combination thereof, against any claim, expense, cost, damage or liability arising out of the performance of its responsibilities pursuant to this Agreement.

