

RIVERSIDE COUNTY TRANSPORTATION COMMISSION

DATE:	September 14, 2011
TO:	Riverside County Transportation Commission
FROM:	Western Riverside County Programs and Projects Committee Sheldon Peterson, Rail Manager
THROUGH:	Anne Mayer, Executive Director
SUBJECT:	Agreement with Sunesys, LLC to Provide Fiber Optic Connections and/or Infrastructure to Link the Pedley Station to the Downtown Riverside Station

WESTERN RIVERSIDE COUNTY PROGRAMS AND PROJECTS COMMITTEE AND STAFF RECOMMENDATION:

This item is for the Commission to:

- 1) Award Agreement No. 11-25-132-00 to Sunesys, LLC for fiber optic connections to link the Pedley Station to the Downtown Riverside Station for a five-year term in an amount not to exceed \$72,000; and
- 2) Authorize the Chair, pursuant to legal counsel review, to execute the agreement on behalf of the Commission.

BACKGROUND INFORMATION:

The Commission has invested in a network of security cameras at all of the Riverside County commuter rail stations. These cameras supplement the security guards at the site and are useful as both a deterrent to prevent crimes and as a forensics tool to investigate events and activities. All 95 cameras in the network are connected to a central operations center at the Downtown Riverside Station and observed 24 hours a day. The cameras are connected to Downtown Riverside Station via fiber optic lines (primarily through Caltrans), except the Pedley Station cameras. This agreement would establish a new fiber optic connection with Sunesys to improve reliability and capacity for the Pedley station. The current connection is a T1 line that has limited capacity and cannot be expanded beyond the current four cameras at the station. Based on efforts to improve security at the stations, it is important that an expanded communications network be developed.

The proposed dark fiber installation and license agreement, Agreement No. 11-25-132-00, with Sunesys is for a license to the Commission for use of Sunesys' fiber optic connections and/or infrastructure (dark fiber) to link the Pedley Station to the Downtown Riverside Station. The agreement will allow the

Commission to transfer information between the stations including, but not limited to, security camera and video feed, voice lines and data. A number of alternatives were evaluated and it was determined that the Sunesys option provide the best service at the best price. While there is some installation work to be completed by Sunesys under the agreement, per section 3.1 of the agreement, this work will be completed at Sunesys' sole cost and expense.

The current Commission Procurement Manual, adopted in 2007, provides that a competitive procurement should be used for contracts over \$50,000 as a matter of policy, unless non-competitive procurement is in the best interests of the Commission. In this case, staff believes that it is in the Commission's best interest to enter into the agreement with Sunesys without competitive procurement. The Commission has an existing dark fiber license agreement with Sunesys for the Perris Station. That agreement is at no cost to the Commission, as the license was provided in exchange for granting Sunesys a license over certain other Commission property. It would be in the Commission's best interest to utilize the same dark fiber provider for its commuter rail stations in order to achieve optimal connectivity, interoperability, and ease of use and maintenance. Further, Sunesys is a well-qualified provider of dark fiber, and the Commission has had success in working with Sunesys at its Perris Station. Finally, Commission staff has determined that Sunesys' license fee is at a commercially reasonable rate.

Government Code section 4525 et seq. establishes procurement procedures for architectural, landscape architectural, engineering, environmental, land surveying, and construction project management selection. These provisions are sometimes referred to as the Mini-Brooks Act. Procurement under the Mini-Brooks Act is to be made based on demonstrated competence and professional qualifications. The Mini-Brooks Act is generally regarded as requiring a two-step request for proposal (RFP) process for services that fall under this Act. Federal funding rules also require a similar competitive procurement for these types of services. The proposed agreement with Sunesys does not fall under the Mini-Brooks Act and is not federally funded. Therefore an RFP process is not required, and the Commission may enter into the proposed agreement with Sunesys based on the findings above.

The competitive bid requirements applicable to the Commission are set forth in Public Utilities Code section 130232. This section requires contracts to be awarded on a low-bid basis for "purchase of all supplies, equipment, and materials, and the construction of all facilities and works" when the cost exceeds \$25,000. Since the proposed agreement with Sunesys does not involve the purchase of supplies, equipment, materials, or construction in excess of \$25,000, it is not a low-bid contract under the Public Utilities Code, and the Commission may award the agreement based on the findings required under the procurement manual as stated above.

Financial Information				
In Fiscal Year Budget:	Yes N/A	Year:	FY 2011/12 FY 2012/13 +	Amount: \$10,800 \$61,200
Source of Funds:	Local Transportation Fund (LTF) funds		Budget Adjustment:	No N/A
GL/Project Accounting No.:	244002-73201-00000-0000 103-24-73003			
Fiscal Procedures Approved:	<i>Theresa Iuvone</i>		Date:	08/16/11

Attachment: Dark Fiber Installation and License Agreement

DARK FIBER INSTALLATION AND LICENSE AGREEMENT

THIS DARK FIBER INSTALLATION AND LICENSE AGREEMENT (“Agreement”) is made as of _____, 2011 between Sunesys, LLC, having a place of business at 185 Titus Avenue, Warrington, PA 18976 (“SUNESYS”) and RIVERSIDE COUNTY TRANSPORTATION COMMISSION, having a place of business at 4080 Lemon Road, 3rd Floor P.O. Box 12008, Riverside, CA 92502-2208 (“Licensee”), who are sometimes hereinafter collectively referred to as the “Parties” or individually as a “Party.”

RECITALS

A. **WHEREAS**, Licensee has existing underground conduit (the “RCTC Conduit”) located on, under and through certain real property owned by Licensee in the unincorporated area of Pedley, County of Riverside, State of California, also known as the “Pedley Metrolink Station”, and in the City of Riverside downtown area, County of Riverside, State of California, also known as the “Downtown Riverside Metrolink Station”, both Stations are referenced in Exhibit “A” as the “hub site” and further described therein (the “Property”).

B. **WHEREAS**, the Pedley Metrolink Station and the Downtown Riverside Metrolink Station are sometimes referred to herein collectively, as the “Metrolink Stations” or “Stations” and individually, as the “Metrolink Station” or “Station”.

C. **WHEREAS**, SUNESYS is a telecommunications services and dark fiber provider and proposes to use its fiber optic connections and/or infrastructure to link the Metrolink Stations in order to allow transfer by Licensee of information including, but not limited to, camera and video feed, voice lines and data.

D. **WHEREAS**, SUNESYS shall install or run two (2) fiber optic strands from the adjacent telephone pole through the RCTC Conduit to Licensee’s communications room at each Station, and shall run the two (2) fiber optic strands from the RCTC Conduit at each Station through SUNESYS’ fiber optic connections and/or infrastructure in order to connect the Pedley Metrolink Station to the Downtown Riverside Metrolink Station, as further described and depicted in Exhibit “B”. The two (2) fiber optic strands as described in this paragraph are referred to in this Agreement as the “Licensed Fiber Optic Strands” and shall be provided and maintained by SUNESYS for Licensee’s exclusive use.

E. **WHEREAS**, SUNESYS agrees to install and grant Licensee an exclusive license to use the Licensed Fiber Optic Strands subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, the Parties agree as follows:

TERMS

1. DEFINITIONS

As used in this Agreement:

1.1 “Authorized Use” means the intended business use of Licensed Fiber Optic Strands by Licensee or its employees, officers or agents for telecommunication traffic purposes.

1.2 “Dark Fiber” means one or more fiber optic strands subject to this Agreement through which an associated light, signal or light communication transmission must be provided to furnish service.

1.3 “Licensed Fiber Optic Strands” means the two (2) Strands of Dark Fiber to be installed and used to connect the Pedley Metrolink Station to the Downtown Riverside Metrolink Station, as further described in Recitals C and D above, and as described and depicted in Exhibit “B”, attached hereto and incorporated herein by reference.

1.4 “Services” means the provision, installation and maintenance of the Licensed Fiber Optic Strands by SUNESYS including, but not limited to, the “Work” as described in Section 3 of this Agreement and the “Maintenance and Operation” as described in Sections 7.1-7.3 and 7.8 of this Agreement.

1.5 “Strands” means individual fiber optic strands.

1.6 “Taxes” means all sales, use, gross receipts, excise, access, bypass and other local, state and federal taxes, charges, fees and surcharges (including, without limitation, telecommunications taxes, universal service fees and other similar charges), however designated, imposed on or based upon the provision, lease, license, sale or use of the Licensed Fiber Optic Strands, but excluding any taxes assessed upon the net income or imposed upon the capital of SUNESYS.

2. GRANT OF LICENSE

SUNESYS grants to Licensee and Licensee accepts from SUNESYS an exclusive and indefeasible license solely for Authorized Use of the Licensed Fiber Optic Strands (the “License”), as provided in this Agreement. Licensee shall have no further right, title or other interest in the Licensed Fiber Optic Strands or any other property of SUNESYS. During the term of this Agreement, SUNESYS shall have no right to grant or renew any rights to use the Licensed Fiber Optic Strands other than to Licensee.

3. WORK

3.1 SUNESYS shall, at its sole cost and expense, install the Licensed Fiber Optic Strands as described herein on or before One Hundred Twenty (120) days following the execution of this Agreement (the “Completion Date”). SUNESYS covenants that the Licensed Fiber Optic Strands shall be installed in a good and workmanlike manner, and substantially and in all material respects in accordance with standard fiber optic specifications. SUNESYS shall conduct all activities on the Property so as not to damage or harm the RCTC Conduit, or any other person or property located on the Property. SUNESYS shall be responsible for any repair, maintenance or cleanup required as a result of SUNESYS’ entry onto or use of the Property under this Agreement.

3.2 SUNESYS shall, at its sole cost and expense, test the Licensed Fiber Optic Strands to verify that the Licensed Fiber Optic Strands are installed and operational in accordance with standard fiber optic specifications. When SUNESYS has determined that the results of the testing with respect to the entire span show that the Licensed Fiber Optic Strands so tested are installed and operating in accordance with such specifications, SUNESYS shall promptly notify Licensee in writing.

3.3 If and when SUNESYS gives written notice to Licensee that the Licensed Fiber Optic Strands are installed and operational, Licensee shall provide SUNESYS with written notice accepting (or rejecting by specifying the defect or failure in the testing that is the basis for such rejection) the Licensed Fiber Optic Strands. If Licensee fails to notify SUNESYS of its acceptance or rejection of the final test results with respect to the Licensed Fiber Optic Strands within thirty (30) days after Licensee’s receipt of notice from SUNESYS of such test results, Licensee shall be deemed to have accepted the Licensed Fiber Optic Strands. If, during the course of such installation and testing, any material deviation from standard specifications is discovered, the installation of the affected portion of the Licensed Fiber Optic Strands shall be repaired to such specification by SUNESYS. The date of such notice of acceptance (or deemed acceptance) of all the Licensed Fiber Optic Strands on the Property shall be the “Acceptance Date.”

4. CONSIDERATION

4.1 Licensee shall pay to SUNESYS a monthly license fee of One Thousand Two Hundred Dollars (\$1,200.00) per month beginning on the Acceptance Date and continuing on the monthly anniversary of the Acceptance Date.

4.2 Except as otherwise specifically provided, Licensee shall pay all applicable fees and charges associated with the Licensed Fiber Optic Strands provided for in this Agreement within thirty (30) days after receipt of invoice.

5. TAXES AND FEES

Licensee shall pay all Taxes, if any, associated with the Licensed Fiber Optic Strands. Such Taxes may be separately stated on an applicable invoice.

6. LICENSE TERM

The term of this Agreement shall commence on the date first specified above and shall continue in effect for an initial term of five (5) years ("Term"), unless earlier terminated as set forth herein.

7. MAINTENANCE AND OPERATION

7.1 SUNESYS shall, at its sole cost and expense, maintain the Licensed Fiber Optic Strands at all times in good working condition and repair, consistent with Licensee's performance needs and with the standards for similar systems located in the State of California. Licensee shall cooperate with, as may be reasonably required, SUNESYS in performing said maintenance. In the event of service outages or other maintenance request, SUNESYS agrees to use best efforts to respond within two (2) hours of time of notice.

7.2 SUNESYS shall, at its sole cost and expense, be responsible for all necessary splicing, including any splicing required to connect the Licensed Fiber Optic Strands to the RCTC Conduit and/or to any other fiber serving Licensee. SUNESYS shall, at its sole cost and expense, install, maintain and repair any laterals required to connect the Licensed Fiber Optic Strands provided under this Agreement to any termination point outside the portion of the Property shown on Exhibit "B", attached hereto.

7.3 SUNESYS shall, at its sole cost and expense, be responsible for obtaining and maintaining from the appropriate public or private authority any pole attachment agreements, franchises, licenses, state, local or right-of-way permits or other authorizations required to enter upon the Property to install the Licensed Fiber Optic Strands, and to operate and maintain the Licensed Fiber Optic Strands as required under this Agreement.

7.4 Licensee's use of the Licensed Fiber Optic Strands shall be at Licensee's sole cost and expense. Any work conducted by Licensee in or around the Licensed Fiber Optic Strands shall be conducted in a safe manner so as not to physically, electronically or inductively conflict or interfere or otherwise adversely affect the Licensed Fiber Optic Strands.

7.5 In the event Licensee receives information that the Licensed Fiber Optic Strands are damaged, it shall notify SUNESYS of said damage by phone at (800) 286-6664. In the event SUNESYS receives information that the Licensed Fiber Optic Strands are damaged, SUNESYS will notify Licensee of said damage by phone at: (951) 453-5037. In each case, the caller shall provide the following information:

- (a) Name of entity making report.
- (b) Location reporting problem.
- (c) Name of contact person reporting problem.

- (d) Description of the problem in as much detail as possible.
- (e) Time and date the problem occurred or began.
- (f) State whether or not the problem presents a jeopardy situation to the Licensed Fiber Optic Strands.

7.6 Should Licensee require any additional services of SUNESYS not covered under this Agreement related to the Licensed Fiber Optic Strands, such work shall be pursuant to an amendment to this Agreement, or to a separate written agreement between the Parties, and shall be conducted at SUNESYS' then current rates for such work.

7.7 Except to respond to a service outage or a maintenance request as set forth in Section 7.1, or in the case of an emergency, SUNESYS shall provide no less than twenty-four (24) hours advance written notice to the following Licensee contact person: _____ prior to entering onto the Property, and shall only enter the Property during normal business hours. In all cases, SUNESYS shall provide written notice of any entry onto the Property to the foregoing referenced contact person, which notice shall include, if known to SUNESYS, the identity of the entity and/or individuals who will enter the Property. Licensee shall have the right, but not the obligation, to accompany, at all times, any person entering onto the Property on behalf of SUNESYS, and to reasonably delay the entry of any such person(s) in order to protect Licensee's confidential information. Further, SUNESYS shall exercise its entry rights under this License in a manner that will not unreasonably interfere with or unreasonably interrupt Licensee's ordinary business activities on the Property.

8. OWNERSHIP

The Licensed Fiber Optic Strands shall at all times remain the sole and exclusive property of SUNESYS and legal title shall be held by SUNESYS. Neither the grant of this License nor Licensee's use of the Licensed Fiber Optic Strands as contemplated herein, shall create or vest in Licensee any easement, interest, or any other ownership or property right of any nature in the Licensed Fiber Optic Strands or Strands, except that SUNESYS agrees to Licensee's right to use the Licensed Fiber Optic Strands for Authorized Use during the term of this Agreement. Licensee shall not grant any security interest in the Licensed Fiber Optic Strands or any part or component thereof.

9. INDEMNIFICATION

9.1 To the fullest extent permitted by law, SUNESYS shall indemnify, defend and hold harmless Licensee, its officials, officers, directors, agents, volunteers and employees from and against any claims, damages, costs, expenses, or liabilities (collectively, "Claims") arising out of or in any way connected with any negligent act, omission or willful misconduct of SUNESYS, its officials, officers, directors, agents, contractors and employees in any way related to or arising out of this Agreement and/or the installation and maintenance of the Licensed Fiber Optic Strands. Such obligation shall include, without limitation, Claims for loss or damage to any property or for death or injury to any person or persons, mechanics' or other liens of any character, taxes or assessments of any kind, or interference with the use of the Licensed Fiber Optic Strands except that SUNESYS shall not be obligated to indemnify, defend or hold harmless Licensee, its officials, officers, directors, agents, volunteers and employees for Claims caused by the sole negligence of Licensee.

9.2 To the fullest extent permitted by law, Licensee shall indemnify, defend and hold harmless SUNESYS, its officials, officers, directors and employees from and against any claims, damages, costs, expenses, or liabilities (collectively, "Claims") arising out of or in any way connected with any negligent act, omission or willful misconduct of Licensee, its officials, officers, directors, agents and employees in any way arising out of Licensee's use of the Licensed Fiber Optic Strands under this Agreement. Such obligation shall include, without limitation, Claims for loss or damage to any property or for death or injury to any person or persons, mechanics' or other liens of any character, taxes or assessments of any kind, except that Licensee shall not be obligated to indemnify, defend or hold harmless SUNESYS, its officials, officers, directors, agents and employees for Claims caused by the sole negligence of SUNESYS.

9.3 Except as otherwise set forth in this Agreement, nothing contained herein will operate as a limitation on the right of either Party to bring action for damages against any third party based on any act or omission of such third party as such act or omission may affect the installation, operation, or use of the Licensed Fiber Optic Strands. Each Party agrees to execute such documents and provide such commercially reasonable assistance, at the claiming Party's sole expense, as may be reasonably necessary to enable the claiming Party to pursue any such action against such third party.

10. STANDARD OF CARE; PERFORMANCE OF EMPLOYEES

SUNESYS shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. SUNESYS represents and maintains that it is skilled in the professional calling necessary to perform the Services. SUNESYS warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, SUNESYS represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, SUNESYS shall perform, at its own cost and expense and without reimbursement from Licensee, any Services necessary to correct errors or omissions which are caused by SUNESYS' failure to comply with the standard of care provided for herein. Any employee of SUNESYS or its subcontractors who is determined by Licensee to be uncooperative, incompetent, a threat to the adequate or timely completion of the project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner consistent with the standard of care set forth herein, shall be promptly removed from the project by SUNESYS and shall not be re-employed to perform any of the Services or to work on the project.

11. LAWS AND REGULATIONS

SUNESYS shall keep itself fully informed of and in compliance with all applicable local, state and federal laws, rules and regulations in force at the time the Services are performed by SUNESYS and in any manner affecting the performance of the work or the Services, including all applicable Cal/OSHA requirements, and shall give all notices required by law. SUNESYS shall be liable for all violations of such laws and regulations in connection with the Services. If SUNESYS performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to Licensee, SUNESYS shall be solely responsible for all costs arising therefrom. SUNESYS shall defend, indemnify and hold Licensee, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations. SUNESYS' violation of such laws, rules and regulations shall also constitute a material breach of this Agreement.

12. INSURANCE

12.1 Time for Compliance. SUNESYS shall not commence the Services under this Agreement until it has provided evidence satisfactory to Licensee that it has secured all insurance required under this section. In addition, SUNESYS shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to Licensee that the subcontractor has secured all insurance required under this section.

12.2 Minimum Requirements. SUNESYS shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by SUNESYS, its agents, representatives, employees or subcontractors. SUNESYS shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

12.2.1 Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability*: Insurance Services Office Commercial General Liability

coverage (occurrence form CG 0001); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

12.2.2 Minimum Limits of Insurance. SUNESYS shall maintain limits no less than: (1) *General Liability*: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) *Automobile Liability*: \$1,000,000 per accident for bodily injury and property damage; and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of \$1,000,000 per accident for bodily injury or disease.

12.2.3 Insurance Endorsements. The insurance policies shall contain the following provisions, or SUNESYS shall provide endorsements on forms supplied or approved by Licensee to add the following provisions to the insurance policies:

(a) General Liability. The general liability policy shall be endorsed to state that: (1) Licensee, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the Services or operations performed by or on behalf of SUNESYS, including materials, parts or equipment furnished in connection with such work; and (2) the insurance coverage shall be primary insurance as respects Licensee, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of SUNESYS' scheduled underlying coverage. Any insurance or self-insurance maintained by Licensee, its directors, officials, officers, employees, agents and volunteers shall be excess of SUNESYS' insurance and shall not be called upon to contribute with it in any way.

(b) Automobile Liability. The automobile liability policy shall be endorsed to state that: (1) Licensee, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by SUNESYS or for which SUNESYS is responsible; and (2) the insurance coverage shall be primary insurance as respects Licensee, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of SUNESYS' scheduled underlying coverage. Any insurance or self-insurance maintained by Licensee, its directors, officials, officers, employees, agents and volunteers shall be excess of SUNESYS' insurance and shall not be called upon to contribute with it in any way.

(c) Workers' Compensation and Employers Liability Coverage. The insurer shall agree to waive all rights of subrogation against Licensee, its directors, officials, officers, employees, agents and volunteers for losses paid under the terms of the insurance policy which arise from work performed by SUNESYS.

(d) All Coverages. Each insurance policy required by this Agreement shall be endorsed to state that: (A) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to Licensee; and (B) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to Licensee, its directors, officials, officers, employees, agents and volunteers.

12.2.4 Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to Licensee, its directors, officials, officers, employees, agents and volunteers.

12.2.5 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by Licensee. SUNESYS shall guarantee that, at the option of Licensee, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects

Licensee, its directors, officials, officers, employees, agents and volunteers; or (2) SUNESYS shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

12.2.6 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VII, licensed to do business in California, and satisfactory to Licensee.

12.2.7 Verification of Coverage. SUNESYS shall furnish Licensee with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to Licensee. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by Licensee if requested. All certificates and endorsements must be received and approved by Licensee before work commences. Licensee reserves the right to require complete, certified copies of all required insurance policies, at any time.

12.2.8 SUNESYS shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, SUNESYS shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life saving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

13. SUNESYS' SALES OR DISPOSITIONS

In the event of a sale or other disposition, SUNESYS shall condition such sale or other disposition subject to the rights of Licensee under this Agreement. SUNESYS shall promptly notify Licensee of the proposed disposition of the Licensed Fiber Optic Strands.

14. LIENS

Licensee shall keep the Licensed Fiber Optic Strands free from all mechanic's, artisans, materialman's, architect's, or similar services' liens which arise in any way from or as a result of Licensee's activities and cause any such liens which may arise to be discharged or released immediately upon notification that any such lien has attached to the Licensed Fiber Optic Strands.

15. TERMINATION

15.1 Upon the termination, revocation or cessation of this Agreement in any manner provided in this Agreement, SUNESYS shall restore the Property including, but not limited to the RCTC Conduit, to the same condition prior to the installation of the Licensed Fiber Optic Strands, reasonable wear and tear excepted.

16. DEFAULT PROVISIONS AND REMEDIES

16.1 Each of the following shall be deemed a material breach by Licensee under this Agreement:

(a) Failure by Licensee to perform or observe any term, covenant, agreement or condition of this Agreement on the part of Licensee to be performed and such default continues for a period of thirty (30) days after written notice thereof from SUNESYS (provided that if such default cannot be cured within such thirty (30) day period, this period will be extended if Licensee commences to cure such default within such thirty (30) day period and proceeds diligently thereafter to effect such cure);

(b) The filing of a tax or mechanic's lien against the Licensed Fiber Optic Strands which is not bonded or discharged within thirty (30) days of the date Licensee receives notice that such lien is filed;

(c) An event of Licensee's bankruptcy (whether voluntary or involuntary) or the finding that Licensee is insolvent or unable to pay its debts as they come due or the appointment of a receiver for Licensee's properties, if such bankruptcy, finding or appointment is not dismissed or resolved within sixty (60) days of any official filing of bankruptcy, insolvency or appointment in a court of competent jurisdiction;

(d) If Licensee knowingly uses the Licensed Fiber Optic Strands in violation of any law or in aid of any unlawful act or undertaking;

16.2 The following events or occurrences shall constitute a material breach by SUNESYS under this Agreement:

(a) Any material noncompliance by SUNESYS with the terms of this Agreement;

(b) Any material breach by SUNESYS of a representation or warranty under this Agreement.

(c) In the event of a material breach of this Agreement, the aggrieved Party must give written notice to the breaching Party which shall specify the nature of such breach, and shall further state that the breaching Party shall have ten (10) days from the effective date of such notice to cure such breach, or if such cure cannot be completed within such period, such additional time as is reasonably determined by the aggrieved Party to be necessary for the breaching Party to complete such cure, at which time, if the breach is not cured, this Agreement shall be terminated immediately. The aggrieved party may also exercise any other legal or equitable right to remedy that it may have. All rights and remedies of the aggrieved party shall be cumulative and none shall exclude any other right or remedy, now or hereafter allowed by or available under any statute, ordinance, rule of court, or the common law, either at law or in equity, or both.

16.3 The prevailing Party in any lawsuit or action based upon this Agreement shall, in addition to any other relief granted therein, be entitled to its reasonable attorneys' fees and costs.

17. FORCE MAJEURE

Neither Party shall have any liability for its delays or its failure to perform due to: fire, explosion, pest damage, power failures, strikes or labor disputes, acts of God, the elements, war, civil disturbances, acts of civil or military authorities or the public enemy, inability to secure raw materials, transportation facilities, fuel or energy shortages, or other causes beyond its control, whether or not similar to the foregoing.

18. SUCCESSION, ASSIGNABILITY

18.1 This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective permitted successors or assigns.

18.2 Neither SUNESYS nor Licensee shall assign, transfer, or dispose of this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party which consent shall not be unreasonably withheld; provided, however, that either Party may assign or transfer this Agreement to a controlling or controlled affiliate or to a successor in the event of reorganization, including a merger or sale of substantially all its assets (an "Affiliate"), without the consent of the other Party. An assignment, transfer or disposition of this Agreement by either Party shall not relieve that Party of any of its obligations under this Agreement. Notwithstanding the foregoing, Licensee shall not have the right to sub-license to any third party the right to use or the use of the Licensed Fiber Optic Strands.

18.3 Neither this Agreement, nor any term or provision hereof, nor any inclusion by reference shall be construed as being for the benefit of any person or entity not a signatory hereto.

19. NOTICES

Any demand, notice or other communication to be given to a Party in connection with this Agreement shall be given in writing and shall be given by personal delivery by registered or certified mail, return receipt requested, by telecopy or commercial overnight delivery service addressed to the recipient as set forth as follows or to such other address, individual or telecopy number as may be designated by notice given by the Party to the other:

SUNESYS:

Sunesys, LLC
185 Titus Avenue
Warrington, PA 18976
Attention: Senior Counsel
Telecopier Number: (267) 927-2099

LICENSEE:

Riverside County Transportation Commission
4080 Lemon Road, 3rd Floor
P.O. Box 12008
Riverside, CA 92502-2208
Attn: Executive Director
Telecopier Number: (951) 787-7920

Any demand, notice or other communication given by personal delivery shall be conclusively deemed to have been given on the day of actual delivery thereof and, if given by registered or certified mail return receipt requested on the date of receipt thereof and, if given by telecopy, the day of transmittal thereof if given during the normal business hours of the recipient and on the next business day if not given during normal business hours.

20. NON-WAIVER

No course of dealing, course of performance or failure of either Party strictly to enforce any term, right or condition of this Agreement shall be construed as a waiver of any term, right or condition.

21. CHOICE OF LAW

The construction, interpretation and performance of this Agreement shall be governed by the law of the State of California without regard to its conflicts of laws provisions. Venue shall be in Riverside County. SUNESYS stipulates to continually maintain an agent for service of process whose information will be made known to the California Secretary of State throughout the term of this Agreement.

22. HEADINGS

All headings contained in this Agreement are inserted for convenience only and are not intended to affect the meaning or interpretation of this Agreement or any clause.

23. CONFIDENTIALITY AND PROPRIETARY INFORMATION

23.1 In connection with this Agreement, either Party may furnish to the other certain information that is marked or otherwise specifically identified as proprietary or confidential (“Confidential Information”). This Confidential Information may include, among other things, private easements, licenses, utility agreements, permits, other right-of-way granting documents, specifications, designs, plans, drawings, data, prototypes, and other technical and/or business information. For purposes of this Section 23, the Party that discloses confidential Information is referred to as the “Disclosing Party,” and the Party that receives Information is referred to as the “Receiving Party”.

23.2 When Confidential Information is furnished in tangible form, the Disclosing Party shall mark it as proprietary or confidential. When Confidential Information is provided orally, the disclosing Party shall, at the time of disclosure or promptly thereafter, identify the Confidential Information as being proprietary or confidential.

23.3 With respect to Confidential Information disclosed under this Agreement, the Receiving Party and its employees shall:

(a) to the extent that disclosure is not required by state or federal law or compelled by a court of competent jurisdiction, hold the Confidential Information in confidence, exercising a degree of care not less than the care used by the Receiving Party to protect its own proprietary or confidential information that it does not wish to disclose;

(b) restrict disclosure of the Confidential Information solely to those of its employees and such Receiving Party's counsel and outside auditors who (i) have a need to know in connection with the performance of this Agreement, and (ii) agree to be bound by the confidentiality obligations set forth herein; and not disclose the Confidential Information to any other person or entity without the prior written consent of the Disclosing Party;

(c) advise those employees of their obligations with respect to the Confidential Information;

(d) use the Confidential Information only in connection with the performance of this Agreement, except as the Disclosing Party may otherwise agree in writing.

23.4 Confidential Information shall be deemed the property of the Disclosing Party. Upon written request of the Disclosing Party, the Receiving Party shall return all Confidential Information received in tangible form, except that each Party's legal counsel may retain one copy in its files solely to provide a record of such Confidential Information for archival purposes. If the Receiving Party loses or makes an unauthorized disclosure of Confidential Information it shall notify the Disclosing Party and use reasonable efforts to retrieve the Confidential Information.

23.5 The Receiving Party shall have no obligation to preserve the proprietary nature of Confidential Information which:

(a) was previously known to the Receiving Party free of any obligation to keep it confidential; or

(b) is or becomes publicly available by means other than unauthorized disclosure; or

(c) is developed by or on behalf of the Receiving Party independently of any Confidential Information furnished under this Agreement; or

(d) is received from a third party whose disclosure does not violate any confidentiality obligation to the knowledge of the Receiving Party.

23.6 If the Receiving Party is required to disclose the Disclosing Party's Confidential Information by an order or a lawful process of a court or governmental body, the Receiving Party shall promptly notify the disclosing Party, and shall cooperate with the Disclosing Party in seeking reasonable protective arrangements before the Confidential Information is produced.

23.7 Each Party agrees that the Disclosing Party would be irreparably injured by a breach of this Section 23 by the Receiving Party or its representatives and that the Disclosing Party may be entitled to equitable relief, including injunctive relief and specified performance, in the event of any breach of the provisions of this

Section 23. Such remedies shall not be deemed to be the exclusive remedies for a breach of this Section 23, but shall be in addition to all other remedies available at law or in equity.

24. REQUIRED RIGHTS

SUNESYS covenants that it will, to the best of its knowledge, have obtained by the time the Licensed Fiber Optic Strands are made available to Licensee (and will use commercially reasonable efforts to cause to remain in effect during the term of this Agreement) easement, leases, licenses, fee interests, rights of-way, permits, authorizations and other rights necessary and requisite to enable SUNESYS to grant the License to Licensee (“Required Rights”). Subject to the foregoing obligations of SUNESYS, Licensee is receiving its interests in Licensed Fiber Optic Strands only to the extent such interests are held by SUNESYS.

25. REPRESENTATIONS AND WARRANTIES

Each Party represents and warrants that: (i) it has full right and authority to enter into, execute, deliver and perform its obligations under this Agreement; (ii) this Agreement constitutes a legal, valid and binding obligation enforceable against such Party in accordance with its terms, subject to bankruptcy, insolvency, creditors’ rights and general equitable principles; and (iii) its execution of and performance under this Agreement shall not violate any applicable existing regulations, rules, statutes or court orders of any local, state or federal government agency, court, or body.

26. ENTIRE AGREEMENT

The terms and conditions contained in this Agreement supersede all prior oral or written understandings between the Parties and constitute the entire agreement between them concerning the subject matter of this Agreement. There are no understandings or representations, express or implied, not expressly set forth in this Agreement. This Agreement shall not be modified or amended except by a writing signed by both Parties.

27. CALIFORNIA PUBLIC UTILITY COMMISSION REVIEW

This Agreement shall not become finally effective until it has been submitted to the California Public Utility Commission for review and the time for such review has expired. Should the California Public Utility Commission fail to timely grant any approval that may be required for this Agreement, either SUNESYS or Licensee shall have the right to terminate this Agreement.

28. INCORPORATION OF RECITALS

The Recitals set forth above are true and correct and are incorporated into this Agreement by reference as though fully set forth herein.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their duly authorized representatives.

[Signatures on following page]

**SIGNATURE PAGE
TO
DARK FIBER INSTALLATION AND LICENSE AGREEMENT
(Agreement No. 11-25-132-00)**

SUNESYS, LLC

By: _____

Name: _____

Title: _____

Date: _____

**RIVERSIDE COUNTY TRANSPORTATION
COMMISSION**

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A

DESCRIPTION OF THE SERVICE

Description of Service

PTP Dark Fiber between the following locations:

Hub Site

Site Name:	Riverside Metrolink Station
Street:	4066 Vine Street
City:	Riverside
State:	CA
Zip:	92507

Site 2

Site Name:	Pedley Metrolink Station
Street:	6001 Pedley Road
City:	Riverside
State:	CA
Zip:	92509

****Sunesys shall utilize Licensee provided conduit (from riser pole at the street) to enter the facility.**

EXHIBIT B
DEPICTION OF LOCATION OF LICENSED FIBER OPTIC STRANDS
TO BE PROVIDED BY SUNESYS TO
CONNECT THE METROLINK STATIONS

* Red line shows the location of SUNESYS' fiber optic connections/infrastructure through which SUNESYS shall provide the Licensed Fiber Optic Strands to connect the Pedley Metrolink Station to the Downtown Riverside Metrolink Station.

