

RIVERSIDE COUNTY TRANSPORTATION COMMISSION

DATE:	April 14, 2010
TO:	Riverside County Transportation Commission
FROM:	Western Riverside County Programs and Projects Committee Robert Yates, Multimodal Services Director
THROUGH:	Anne Mayer, Executive Director
SUBJECT:	Agreement with Sunesys LLC for the No Cost Provision of Fiber Optic Services in Exchange For a No Cost License Agreement

WESTERN RIVERSIDE COUNTY PROGRAMS AND PROJECTS COMMITTEE AND STAFF RECOMMENDATION:

This item is for the Commission to:

- 1) Approve Agreement No. 10-25-086-00 with Sunesys LLC for the provision of no cost fiber optic services in exchange for a no cost license agreement; and
- 2) Authorize the Chair, pursuant to legal counsel review, to execute the agreement on behalf of the Commission.

BACKGROUND INFORMATION:

Consistent with security installations at the Commission's commuter rail stations, nine closed circuit televisions (CCTV) cameras were installed at the Perris Multimodal (PMM) facility as part of the construction contract. Each camera is intended to transmit a signal to a digital video recorder (DVR) machine located on site in a refrigerated cabinet at the PMM facility. The recorded data is then intended to be transmitted to the Riverside Downtown Metrolink station where all CCTV installations are monitored by security personnel.

DISCUSSION:

In researching available options to transmit the recorded data to the Riverside Downtown Metrolink station, staff investigated three options:

1. Utilization of existing DSL services;
2. Utilization of high bandwidth internet services; and
3. Entering into a mutual agreement with Sunesys LLC for use of dark fiber.

In researching the three options, it was determined that DSL service would not provide the bandwidth necessary for optimum viewing of the camera data resulting in a degraded security installation. It was also determined that high bandwidth internet service, while of sufficient capacity for proper camera operation, was prohibitively expensive at over \$2,700 per month.

The third option was a mutual agreement with Sunesys where, in exchange for a no cost license agreement for the installation of a dark fiber conduit crossing Commission-owned property at the PMM facility, fiber optic bandwidth would be made available by Sunesys at no cost to the Commission.

Sunesys is a company that provides 'dark fiber' or fiber optic services to customers in the Perris area. Sunesys network is also located along Vine Street in Riverside, which means that the connection to the Riverside Downtown Metrolink station should be relatively simple. Accordingly, it was determined by staff that a connection to the Sunesys fiber optic system could be made that would provide sufficient bandwidth necessary for viewing the real-time video images at the Riverside Downtown Metrolink station.

In reviewing this option, staff also noted that no other fiber optic company is in the area, therefore, the only competition to Sunesys would be the previously mentioned high bandwidth internet connection.

Staff recommends that the Commission approve the mutual agreements with Sunesys for the no cost license agreement and no cost provision of fiber optic services. Approval of this recommendation will allow staff to complete the security installation at the PMM facility and provide security services in a most cost efficient manner.

Financial Information					
In Fiscal Year Budget:	N/A	Year:	FY 2009/10 +	Amount:	\$0
Source of Funds:	N/A			Budget Adjustment:	No
GL/Project Accounting No.:					
Fiscal Procedures Approved:	<i>Theresa Trevino</i>			Date:	03/15/10

Attachments:

- 1) License Agreement Between the Commission and Sunesys, LLC.
- 2) Sunesys Dark Fiber License Agreement

**LICENSE AGREEMENT
BETWEEN
RIVERSIDE COUNTY TRANSPORTATION COMMISSION
AND
SUNESYS, LLC**

This License Agreement ("Agreement") dated March ____, 2010, ("Effective Date"), is made by and between RIVERSIDE COUNTY TRANSPORTATION COMMISSION ("RCTC") and SUNESYS, LLC, a Delaware limited liability company ("SUNESYS"), as described below with respect to the following facts:

RECITALS

WHEREAS, RCTC is the owner of certain real property located in the City of Perris, County of Riverside, State of California, including a multimodal facility located at 201 C Street, Perris, California (the "RCTC Facility"); and

WHEREAS, SUNESYS is a competitive telecommunications carrier licensed by the California Public Utilities Commission; and

WHEREAS, SUNESYS has requested a license to allow it to construct, use, maintain, operate, alter, add to, repair, replace, reconstruct, inspect and remove at any time and from time to time an underground fiber optic communications system (hereinafter referred to as "System"), consisting of wires, underground conduits, cables, vaults, maintenance holes, handholes, and including enclosures, markers and concrete pads and other appurtenant fixtures and equipment necessary or useful for transmitting data, in, on, over, under, across and along that certain real property in the City of Perris, County of Riverside, State of California, described in Exhibit "A," and in the location shown on the drawing attached hereto as Exhibit "B". RCTC wishes to grant the requested license, subject to the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth in this Agreement and other valuable consideration, receipt of which is hereby acknowledged, and intending to be legally bound, RCTC and SUNESYS agree as set forth below.

1. Grant of License. Subject to the terms and conditions set forth herein, RCTC hereby grants to SUNESYS a non-exclusive, revocable License to enter upon the RCTC's property in order to construct, use, maintain, operate, alter, add to, repair, replace, reconstruct, inspect and remove at any time and from time to time, the System in, on, over, under, across and along that certain real property in the City of Perris, County of Riverside, State of California, described in Exhibit "A," and in the location shown on the drawing attached hereto as Exhibit "B". The License granted to SUNESYS is (i) subject to all existing covenants, conditions, reservations, contracts, leases, licenses, easements, encumbrances, restrictions of rights of way with respect to the RCTC Facility, whether or not of record; and (ii) conditioned upon SUNESYS' complying with all of the terms and conditions of this Agreement and RCTC's terms and conditions regarding the performance of work upon the RCTC Facility.

2. Term and Termination.

2.1. Term. The term of this Agreement shall begin upon the Effective Date and shall expire twenty (20) years thereafter (“Term”). Upon the expiration of the initial term, this Agreement shall be renewed for up to five (5) additional terms of five (5) years each upon the terms and conditions set forth herein, unless either RCTC or SUNESYS shall have given the other party at least one hundred eighty (180) days written notice of its intent not to renew this Agreement prior to the expiration of the initial term or the then current renewal term.

2.2. Termination.

2.2.1. Termination for Material Breach. 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.

3. Conditions Precedent – As conditions precedent to this Agreement, SUNESYS shall have fulfilled the following requirements:

3.1. Approval of Plans. – SUNESYS shall have prepared plans and specifications for the portions of the Work to be performed on RCTC’s Facility, and shall have obtained written approval of plans and specifications pertaining to the portions of the Work to be performed on RCTC’s Facility from RCTC.

4. Improvements.

4.1. SUNESYS’ Installation of Improvements. SUNESYS shall construct and install the Improvements as specified in Article 1 of this Agreement.

4.2. RCTC’s Use of and Access to Improvements. During the Term, SUNESYS shall provide to RCTC, under the terms of a separate dark fiber license agreement (the “Dark Fiber License Agreement”) which the parties are entering into contemporaneously herewith, use of two (2) strands of fiber being installed in that portion of the System shown on the drawing attached hereto as Exhibit B.

4.3. Ownership of Improvements. SUNESYS shall be the owner of its own personal property and equipment installed and used in the conduct of its business (“Equipment”), with all rights associated therewith, unless such Equipment shall have been abandoned by SUNESYS and ownership assumed by RCTC.

5. Consideration. In consideration of the License granted herein, SUNESYS shall enter into and perform its obligations under the terms of the separate Dark Fiber License Agreement between SUNESYS and RCTC, and adhere to all other applicable provisions of this Agreement.

6. Operational Provisions

6.1. Permitted Use. SUNESYS shall use the RCTC Facility solely for the purpose of completing the Work, and providing telecommunications services to its customers (“Permitted Use”). Neither the RCTC Facility nor the portions of the System located on RCTC’s Facility shall be used by SUNESYS for any other purpose. Nothing herein shall be deemed to limit SUNESYS’ use of any portion of the System not located upon RCTC’s Facility for any purpose, as long as such use does not interfere with RCTC’s use and enjoyment of the portion of the System used to provide services to RCTC under the Dark Fiber License Agreement.

6.2. SUNESYS’ Access to RCTC Facility. SUNESYS’ access to the RCTC Facility shall be subject to all procedures reasonably adopted from time to time by the RCTC (“Access Procedures”). Only SUNESYS’ employees, agents, and/or contractors retained by SUNESYS and who are identified in writing to RCTC by SUNESYS from time to time shall be permitted access to the RCTC Facility. SUNESYS shall be permitted to access the RCTC Facility twenty-four (24) hours a day, seven (7) days a week for emergency purposes as reasonably determined by SUNESYS.

6.3. Maintenance and Repairs.

6.3.1. During the Term, SUNESYS shall maintain and repair the System in good order, condition and repair.

6.3.2. Maintenance, Repair and Restoration – System.

6.3.2.1. Maintenance - RCTC Facility. If SUNESYS fails to maintain the System in good order, condition and repair, RCTC shall give SUNESYS notice to do such acts as are reasonably required to maintain the System. If, within three (3) days thereafter, SUNESYS fails to promptly commence such work and diligently prosecute it to completion, then, in addition to its other remedies under this Agreement, RCTC shall have the right to do such work and expend such funds at the expense of SUNESYS as are reasonably required to perform such work. Any amount so expended by RCTC shall be paid by SUNESYS promptly upon demand and interest shall accrue on any unpaid portion of such amount at the prime rate then established by Bank Of America N.E.S.& A plus two percent (2%) per annum, from the date of such work, but not to exceed the maximum rate then allowed by law.

- 6.3.2.2. Repair and Restoration. If SUNESYS, its agents or contractors cause any damage to RCTC's roads, infrastructure or other property and improvements (collectively "Property") in connection with the exercise of this License, SUNESYS shall repair and restore the Property to its original condition prior to SUNESYS' use of the RCTC Facility pursuant to this License. SUNESYS shall perform the repair and restoration required hereunder prior to the expiration of this license, or within three (3) days of the earlier termination of SUNESYS' rights hereunder.

Relocation Right. Notwithstanding any provision of the Agreement to the contrary, RCTC shall have the right to require that SUNESYS permanently relocate the System from the initial location upon the RCTC Facility to another available location on the RCTC Facility at any time during the Term if deemed necessary by RCTC pursuant to the provisions of this Article 7. In order to exercise this right of relocation, RCTC shall deliver to SUNESYS at least six (6) months prior written notice (the "Relocation Notice") setting forth RCTC's exercise of such right and a description of the proposed relocation site (the "Proposed Site"). The Proposed Site shall be subject to SUNESYS' reasonable approval as a site feasible for the operation of System. SUNESYS shall have the right to disapprove of the new site if in SUNESYS' good faith judgment the new site will not be suitable for SUNESYS' use and operations as contemplated on the Effective Date. RCTC shall reimburse SUNESYS for the reasonable costs incurred by SUNESYS in relocating the System at RCTC's request.

7. Permits and Regulations. SUNESYS shall comply with all applicable laws, ordinances and regulations, including but not limited to all applicable environmental and safety requirements, and shall be responsible for securing any required approvals, permits and authorizations from any federal, state, or local agencies, at SUNESYS' sole cost and expense.
8. No Transfer or Assignment. This License is personal to the SUNESYS. Any attempt to transfer or assign this License without prior written consent from RCTC, except to a person controlling, controlled by or under common control with SUNESYS or acquiring substantially all of the assets of Sunesys used to provide services in the market in which the System is located shall terminate it.
9. Lien Free Condition. SUNESYS shall not cause or permit any liens to be placed against the RCTC Facility or against RCTC's other property as a result of construction, installation, or maintenance by or behalf of SUNESYS. In the event of the filing of any such liens, SUNESYS shall promptly (but in no event more than thirty (30) days) cause such liens to be removed or bonded off the RCTC Facility.
10. Indemnification.

To the fullest extent permitted by law, SUNESYS shall indemnify, defend and hold harmless RCTC, its officers, agents, and employees from and against any claims, damages, costs, expenses, or liabilities (collectively, "Claims") arising out of or in any way connected with this License, including without limitation, Claims for loss or damage to any property or for

death or injury to any person or persons, except that SUNESYS shall not be obligated to indemnify, defend or hold harmless the RCTC, its officers, agents and employees for Claims caused by the sole negligence of the RCTC.

11. Insurance.

11.1. SUNESYS' Insurance. SUNESYS, at its sole cost and expense, shall insure its activities in connection with this Agreement and obtain, keep in force and maintain insurance as follows:

11.1.1. Commercial Form General Liability Insurance (contractual liability included) with minimum limits as follows:

(i) Each Occurrence	\$5,000,000
(ii) Products/Completed Operations Aggregate	\$5,000,000
(iii) Personal and Advertising Injury	\$2,000,000
(iv) General Aggregate	\$5,000,000

If such insurance is written on a claims-made form, it shall continue for three (3) years following termination of this Agreement. The insurance shall have a retroactive date of placement prior to or coinciding with the commencement date of this Agreement.

11.1.2. Business Automobile Liability Insurance for owned, scheduled, non-owned, or hired automobiles with a combined single limit no less than Five Million Dollars (\$5,000,000.) per occurrence.

11.1.3. Worker's compensation and employer's liability insurance in a form and amount covering SUNESYS' full liability under the Worker's Compensation Insurance and Safety Act of the State of California, as amended from time to time.

11.1.4. Property insurance, Special Form (All Risk, including earthquake and flood), in an amount sufficient to reimburse SUNESYS for all of its Equipment, fixtures and personal property located on or in the RCTC Facility including improvements hereinafter constructed or installed. This insurance shall also include business income/interruption and extra expense coverages, with coverage amounts that shall reimburse SUNESYS for all direct or indirect loss of income and charges and costs incurred arising out of perils commonly insured against including prevention of, or denial of use of or access to the RCTC Facility as a result of those perils. The business income and extra expense coverage shall provide coverage for no less than twelve (12) months of the loss of income, charges and costs contemplated under this Agreement and shall be carried in amounts necessary to avoid any co-insurance penalty that could apply.

- 11.1.5. Such other insurance in such amount which from time to time may be reasonably required by the mutual consent of RCTC and SUNESYS against other insurable risks relating to performance.

The insurance and the coverage referred to under this Section shall be endorsed to include the "The Regents of the RCTC of California" as an additional insured.

SUNESYS, prior to execution of this Agreement, shall furnish the RCTC with Certificates of Insurance and additional insured endorsements evidencing compliance with the requirements of this Section. Certificates shall provide for thirty (30) days advance written notice to RCTC of any modification, change or cancellation of any of the above insurance coverages.

The coverage required herein shall not in any way limit the liability of SUNESYS, its officers, agents, partners, or employees; provided, however, that neither party shall be liable for consequential damages, lost profits, or punitive damages for claims arising under this agreement.

12. Order of Precedence. In the event a conflict arises between these terms of this Agreement and the provisions of the Dark Fiber License Agreement, this Agreement will govern unless this Agreement expressly provides otherwise. No term or provision set forth or cross-referenced in any work order, purchase order or payment documentation will be construed to amend, add to, or supersede any provision of this Agreement.

13. Miscellaneous.

- 13.1. Applicable Law. This Agreement and the performance thereof shall be governed, interpreted, construed, and regulated by the laws of the State of California.

- 13.2. No Interference. SUNESYS shall not interfere with the normal operation and activities of RCTC and SUNESYS shall conduct its activities on the RCTC Facility to minimize damage to the RCTC Facility and inconvenience to RCTC, its agents, employees and invitees.

- 13.3. Alteration in Writing. This Agreement supersedes any and all prior understandings and agreements, whether written or oral, between the parties with respect to the subject matter of this Agreement. No alteration or variation of this Agreement shall be valid unless made in writing and signed by RCTC and SUNESYS.

- 13.4. Notices. Unless otherwise expressly set forth elsewhere in this Agreement, all notices and other communications required or permitted under this Agreement shall be in writing and shall be given by United States first class mail, postage prepaid, registered or certified, return receipt requested, by recognized national overnight service or by hand delivery (including by means of a professional messenger service) addressed to the party for whom it is intended at its address set forth below and any such notice or other communication shall be deemed to be effective on the date given if given by

hand delivery, on the day after the date sent if sent by overnight service, or on the date stated on the certified or registered mail receipt. Either party may by similar notice given change the address to which future notices or other communications shall be sent.

To RCTC:

Riverside County Transportation Commission
4080 Lemon Road, 3rd Floor
P.O. Box 12008
Riverside, CA 92502-2208
Attn: _____

And a copy to:

[Insert Name and Address]

To SUNESYS:

SUNESYS, LLC
185 Titus Avenue
Warrington, PA 18976
Attn: Senior Vice President – Operations

And a copy to:

SUNESYS, LLC
185 Titus Avenue
Warrington, PA 18976
Attn: Senior Counsel

- 13.5. Authority. Each of the individuals executing this Agreement on behalf of the SUNESYS and the RCTC represents to the other party that such individual is authorized to do so by requisite action of the party to this Agreement.
- 13.6. Attorneys' Fees. SUNESYS shall reimburse RCTC upon demand for any attorneys' fees and costs incurred by RCTC in connection with the License granted SUNESYS under this Agreement, including, without limitation, the enforcement of any of its rights hereunder. Additionally, 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.
- 13.7. Severability. If any term or provision of this Agreement shall be held invalid or unenforceable to any extent under applicable law by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby, and each term and provision shall be valid and enforceable to the fullest extent permitted by law.

- 13.8. No Recordation. SUNESYS shall not record this Agreement nor any memorandum or short-form hereof.
- 13.9. Time is of the Essence. Time is of the essence with respect to performance of every provision of this Agreement.
- 13.10. Nondiscrimination. SUNESYS shall not maintain or provide racially segregated facilities for employees at any establishment under its control. SUNESYS agrees to adhere to the requirements set forth in Executive Orders 11246 and 11375, and with respect to activities occurring in the State of California, to the California Fair Employment and Housing Act (Government Code section 12900 et seq.) Expressly, SUNESYS shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry, medical condition (as defined by California Code section 12925f), marital status, age, physical and mental handicap in regard to any position for which the employee or applicant for employment is qualified, or because he or she is a disabled veteran or veteran of the Vietnam era.

IN WITNESS WHEREOF,

we have hereunto set our hands this _ day of _____, 2010.

RCTC:

RIVERSIDE COUNTY TRANSPORTATION COMMISSION

By: _____

Its: _____

Date: _____

SUNESYS:

SUNESYS, LLC

By: _____

[NAME]

[TITLE]

Date: _____

EXHIBIT A

DESCRIPTION OF THE PROPERTY OF THE LICENSED RCTC FACILITY

EXHIBIT B

DRAWING SHOWING THE LOCATION OF THE SYSTEM



DARK FIBER LICENSE AGREEMENT

This DARK FIBER LICENSE AGREEMENT (the "Agreement") is made as of _____, 200_ 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 Street, 3rd Floor P.O. Box 12008, Riverside, CA 92502-2208 ("Licensee").

WHEREAS, SUNESYS has or intends to acquire easements, conduit rights, pole attachment and license agreements to construct, install, operate, maintain, modify, replace or remove a point to point communications transmission system between _____, and _____ (the "Route"); and

WHEREAS, SUNESYS has or intends to install, construct, operate and maintain a (redundant) optical fiber communication transmission system on utility poles or within conduit systems located on the Route (collectively, "SUNESYS' Conduit System") consisting of at least _____ (___) strands of optical fiber; and

WHEREAS, Licensee desires a license to use two (2) strands of such optical fiber along the portion of the Route shown in the drawing attached hereto as Exhibit A; and

WHEREAS, SUNESYS agrees to grant such license subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, the parties agree as follows:

1. **DEFINITIONS**

As used in this Agreement:

1.1 "Authorized Use" means a business purpose of Licensee's optical fiber telecommunications network for telecommunication traffic of Licensee or its employees, officers or agents.

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 "Fiber Optic Facilities" means a certain fiber optic cable composed of at least _____ (___) strands of single mode optical fiber, which cable is owned by SUNESYS and installed along the Route.

1.4 "Hazardous Substances" include any substance the presence of which requires investigation or remediation under any federal, state or local statute, regulation, ordinance, order, action, policy or common law or any substance which is or becomes defined as "Hazardous Waste," "Hazardous Substance," pollutants, toxic substances, compounds, elements, or chemicals pursuant to the Comprehensive Environmental Response Act (42 U.S.C. § 651 et seq.), as amended, or any other federal, state or local environmental cleanup laws. Hazardous Substances also include asbestos, lead paint, Polychlorinated Biphenyls ("PCBs") and radon gas.

1.5 "Hazardous Discharge" means any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping of Hazardous Substances from, in, or onto SUNESYS' Conduit System.

1.6 "Licensee's Fiber Optic Facilities" means two (2) Strands, as designated by SUNESYS, of Dark Fiber within the Fiber Optic Facilities along the portion of the Route shown in the drawing attached hereto as Exhibit A.



1.7 "Strands" means individual fiber optic strands within the Fiber Optic Facilities.

1.8 "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 Licensee's Fiber Optic Facilities, 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 Licensee's Fiber Optic Facilities in SUNESYS' Conduit System (the "License"), as provided in this Agreement. Licensee shall have no further right, title or other interest in SUNESYS' Conduit System, the Fiber Optic Facilities or in Licensee's Fiber Optic Facilities. SUNESYS shall have the right to grant and renew rights to any entity to use SUNESYS' Conduit System, the Fiber Optic Facilities or any other property of SUNESYS; provided, however, that during the term of this Agreement, SUNESYS shall have no right to grant and renew any rights to any entity with respect to Licensee's Fiber Optic Facilities.

3. WORK

3.1 SUNESYS shall use best efforts to provide, construct and install the Fiber Optic Facilities within SUNESYS' Conduit System along the Route on or before _____, 200_ (the "Completion Date"). SUNESYS covenants that the segments of the Fiber Optic Facilities along the Route that it constructs pursuant hereto shall be constructed substantially and in all material respects in accordance with standard outside plant specifications. Work shall include the labor and materials. There are no additional costs associated with this section of the Agreement and the full license fee detailed in Section 4 below includes the labor and material described herein.

3.2 SUNESYS shall test all of Licensee's Fiber Optic Facilities to verify that Licensee's Fiber Optic Facilities 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 Licensee's Fiber Optic Facilities 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 Fiber Optic Facilities are complete, 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) Licensee's Fiber Optic Facilities. If Licensee fails to notify SUNESYS of its acceptance or rejection of the final test results with respect to Licensee's Fiber Optic Facilities within fifteen (15) days after Licensee's receipt of notice from SUNESYS of such test results, Licensee shall be deemed to have accepted Licensee's Fiber Optic Facilities. If, during the course of such construction, installation and testing, any material deviation from standard specifications is discovered, the construction or installation of the affected portion of the segment shall be repaired to such specification by SUNESYS. The date of such notice of acceptance (or deemed acceptance) of all Licensee's Fiber Optic Facilities for the Route shall be the "Acceptance Date" for the Route.

4. LICENSE FEE

4.1 In lieu of payment of a license fee for the Licensee's Fiber Optic Facilities, Licensee and SUNESYS have entered into a separate License Agreement dated of even date herewith pursuant to which Licensee, as grantor, has granted to SUNESYS, as grantee, a license to install the System (as such term is described in the License Agreement) upon the RCTC Facility (as such term is described in the License Agreement).



4.2 In addition to the License fee, Licensee shall pay to SUNESYS all Taxes. Such Taxes may be separately stated on the applicable invoice.

4.3 Except as otherwise specifically provided, Licensee shall pay all applicable fees and charges provided for in this Agreement, within thirty (30) days after receipt of invoice.

4.4 In the event that an invoice remains unpaid by Licensee for a period of forty five (45) days after Licensee's receipt of invoice, then Licensee shall be subject to a late payment charge of one and one-half (1 ½%) percent per month of the unpaid balance or the highest lawful rate, whichever is less.

5. LICENSE TERM

The term of the License shall commence on the Acceptance Date and shall continue for twenty (20) years from the Acceptance Date. Upon the expiration of the initial term of this Agreement, this Agreement shall renew for up to five (5) additional terms of five (5) years each upon the terms and conditions set forth herein unless either party shall give to the other party at least one hundred eighty (180) days prior written notice of its intent to terminate this Agreement upon the expiration of the then current term or renewal term.

6. MAINTENANCE AND OPERATION

6.1 SUNESYS shall maintain Licensee's Fiber Optic Facilities. Licensee shall cooperate with and assist, 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.

6.2 Notwithstanding anything to the contrary contained herein, Licensee shall solely be responsible, at its own expense, for the construction, installation, operation, maintenance, repair and any other activity engaged by or on behalf of Licensee relating to all light communications transmission equipment and other terminal equipment and facilities required in connection with the use, electronics or signals of Licensee's Fiber Optic Facilities.

6.3 SUNESYS shall be responsible for all necessary splicing, including any splicing required to connect Licensee's Fiber Optic Facilities provided under this Agreement to any other fiber serving Licensee. Licensee shall pay SUNESYS the cost of SUNESYS' performing such splicing at SUNESYS' then current rates for such work. Licensee shall be responsible for the construction, installation, maintenance and repair of any laterals required to connect Licensee's Fiber Optic Facilities provided under this Agreement to any termination point outside the portion of the Route shown on Exhibit A, attached hereto.

6.4 Should any splices or other work not be placed and maintained in accordance with the provisions of this Agreement by Licensee or at Licensee's direction, SUNESYS, at its option, may correct said condition. SUNESYS shall notify Licensee in writing prior to performing such work whenever practicable. However, when such conditions pose an immediate threat to the physical integrity of SUNESYS' facilities, SUNESYS may perform such work and take such action that it deems necessary without first giving notice to Licensee. As soon as practicable thereafter, SUNESYS shall advise Licensee of the work performed and the action taken and shall endeavor to arrange for re-accommodation of Licensee's Fiber Optic Facilities so affected. Licensee shall promptly reimburse SUNESYS for all reasonable costs incurred by SUNESYS for all such work, action and re-accommodation performed by SUNESYS.

6.5 Licensee shall, at its sole cost and expense, promptly respond to and remediate any Hazardous Discharge to and from SUNESYS' Conduit System resulting from Licensee's operations.

6.6 SUNESYS shall 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 where SUNESYS' Conduit System is located and to



operate and maintain Licensee's Fiber Optic Facilities in SUNESYS' Conduit System. Licensee will not engage in any activity that affects SUNESYS' right-of-way interests without the written permission of SUNESYS.

6.7 Licensee, at its sole cost and expense, shall (i) use Licensee's Fiber Optic Facilities and (ii) conduct all work in or around SUNESYS' Conduit System in a safe condition and in a manner reasonably acceptable to SUNESYS, so as not to physically, electronically or inductively conflict or interfere or otherwise adversely affect SUNESYS' Conduit System or the facilities placed therein by SUNESYS, or other authorized licensees of the Fiber Optic Facilities.

6.8 Prior to Licensee's performing any work in or around SUNESYS' Conduit System, Licensee shall obtain prior written authorization from SUNESYS approving (a) any further work Licensee is directing to be performed and (b) the party performing such work.

6.9 In the event Licensee receives information that the Fiber Optic Facilities are damaged, it shall notify SUNESYS of said damage by phone at 800.286.6664. In the event SUNESYS receives information that Licensee's Fiber Optic Facilities are damaged, SUNESYS will notify Licensee of said damage by phone at: (____) ____-____. In each case, the caller shall provide the following information:

1. Name of entity making report.
2. Location reporting problem.
3. Name of contact person reporting problem.
4. Description of the problem in as much detail as possible.
5. Time and date the problem occurred or began.
6. State whether or not the problem presents a jeopardy situation to SUNESYS' Conduit System or Licensee's Fiber Optic Facilities.

6.10 SUNESYS shall designate the particular Strands of Dark Fiber that will constitute Licensee's Fiber Optic Facilities and the location and manner in which they will enter and exit SUNESYS' Conduit System.

7. OWNERSHIP

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

8. EMINENT DOMAIN

If there is a taking of Licensee's Fiber Optic Facilities by right or threat of eminent domain (a "Taking") which, as agreed by the parties, or in the absence of such agreement as determined pursuant to the provisions of Section 16 of this Agreement, results in the remainder of Licensee's Fiber Optic Facilities being unable to be restored to a condition suitable for Licensee's business need within thirty (30) days from the date of the Taking ("Substantial Taking"), this Agreement shall terminate. In such event any periodic licensee fee and/or maintenance fee shall abate from the date of Taking. If there shall be a Taking which does not constitute a Substantial Taking, this Agreement shall not terminate but SUNESYS, with due diligence and its best efforts, shall restore Licensee's Fiber Optic Facilities as speedily as practical to its condition before the Taking.



9. INDEMNIFICATION

9.1 Except for the gross negligence or willful misconduct of a Party hereto and except where a specific remedy is provided in this Agreement, the liability of each Party to the other Party for damages will be limited to the Monthly Lease Payments paid or payable by Licensee for the Lease Term during which the damages were incurred. In no event will either Party be liable to the other Party for any incidental, indirect, special, consequential, exemplary, or punitive damages arising out of or relating to this Agreement, the lease granted hereunder, the leased fiber provided hereunder, including damages based on loss of revenues, profits or lost business opportunities, regardless of whether the respective Party has been advised of or could have foreseen the possibility of such damages.

9.2 Each Party agrees to indemnify, defend and hold the other, its officers, directors, employees, agents, contractors and its successors and assigns from and against any claims, liabilities, losses, damages, fines, penalties, and costs (including reasonable attorneys' fees), by reason of any claims or actions by third parties for (I) bodily injury, including death, (II) damage, loss or destruction of any tangible personal property (including without limitation the Fiber Optic Conduit System) which third party claims arise out of or relate to (a) any product or services provided by or on behalf of SUNESYS hereunder, (b) a Party's performance of or failure to perform any material term, condition or obligation under this Agreement, (c) any act or omission of a Party's directors, agents, employees, contractors, representatives or invitees, or (d) Licensee's or its employees', officers', agents' or Affiliates' use of the Fiber Optic Facilities and conduct of their respective businesses including without limitation the content of any video, voice or data carried by Licensee or its customers on the Fiber Optic Facilities.

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 construction, operation, or use of the Fiber Optic Facilities. 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. INSURANCE

The Parties shall both obtain and maintain insurance issued by one or more reputable insurance carriers which protects the Parties from and against all claims, demands, causes of action, judgments, costs, including attorneys' fees, expenses and liabilities of insurable kind and nature which may arise or result directly or indirectly from or by reason of such loss, injury or damage that in any way arises from or is related to this Agreement or activities undertaken pursuant to this Agreement.

11. COMPLIANCE WITH LAWS

Notwithstanding anything to the contrary in this Agreement, the Parties shall ensure that any and all activities they perform pursuant to this Agreement shall comply with all applicable laws. Without limiting the generality of the foregoing, the Parties shall comply with all applicable provisions of i) workmen's compensation laws, ii) unemployment compensation laws, iii) the Federal Social Security Law, iv) the Fair Labor Standards Act, and v) all laws, regulations, rules, guidelines, policies, orders, permits, and approvals of any governmental authority relating to environmental matters and/or occupational safety.

12. DISCLAIMER OF WARRANTIES

EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, SUNESYS MAKES NO WARRANTIES REGARDING THE SERVICES OR DELIVERABLES PROVIDED UNDER THIS AGREEMENT AND MAKES NO WARRANTIES EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

13. SUNESYS' SALES OR DISPOSITIONS



Nothing in this Agreement shall prevent or be construed to prevent SUNESYS from selling or otherwise disposing of any portion of SUNESYS' Conduit System, the Fiber Optic Facilities or other property of SUNESYS used for Licensee's Fiber Optic Facilities, provided, however, that 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 SUNESYS' Conduit System, Fiber Optic Facilities or other property used by Licensee.

14. LIENS

Licensee shall keep SUNESYS' Conduit System, Fiber Optic Facilities (including Licensee's Fiber Optic Facilities) and other property of SUNESYS 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 SUNESYS' property.

15. DEFAULT PROVISIONS AND REMEDIES

15.1 Each of the following shall be deemed an Event of Default by Licensee under this Agreement:

15.1.1 Failure of Licensee to pay the license fee or any other sum required to be paid under the terms of this Agreement and such default continues for a period of fourteen (14) days after written notice thereof to Licensee;

15.1.2 Failure by Licensee to perform or observe any other terms, 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);

15.1.3 The filing of a tax or mechanic's lien against SUNESYS' Conduit System, Fiber Optic Facilities or other property of SUNESYS which is not bonded or discharged within thirty (30) days of the date Licensee receives notice that such lien is filed;

15.1.4 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;

15.1.5 If Licensee knowingly uses Licensee's Fiber Optic Facilities in violation of any law or in aid of any unlawful act or undertaking;

15.1.6 If Licensee occupies any portion of SUNESYS' Conduit System without having first been issued a license therefore; or

15.2 Upon the occurrence of an Event of Default, SUNESYS, without further notice to Licensee in any instance (except where expressly provided for below or by applicable law) may do any one or more of the following:

15.2.1 Perform, on behalf and at the expense of Licensee, any obligation of Licensee under this Agreement which Licensee has failed to perform and of which SUNESYS shall have given Licensee notice, the cost of which performance by SUNESYS shall be payable by Licensee to SUNESYS upon demand;

15.2.2 Elect to terminate Agreement by giving notice of such election to Licensee, in which event all of the remaining recurring license fees payable for the Term of this Agreement shall become immediately due and payable by Licensee;



15.2.3 Exercise any other legal or equitable right to remedy that it may have.

15.3 All rights and remedies of SUNESYS set forth in this Agreement 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.

15.4 The following events or occurrences shall constitute a default by SUNESYS under this Agreement:

15.4.1 Any material noncompliance by SUNESYS with the terms of this agreement;

15.4.2 Any material breach by SUNESYS of a representation or warranty under this Agreement.

Licensee shall give prompt written notice to SUNESYS of the occurrence of any default under this Agreement. If such default continues for seven (7) days after receipt of such notice (provided that if such default cannot be cured within such seven (7) day period, this period will be extended if SUNESYS continues to cure such default within such seven (7) day period and proceeds diligently thereafter to effect such cure), Licensee may at its option, terminate this Agreement and pursue any legal remedies it may have at law or equity.

15.5 Any reasonable costs and expenses incurred by a party (including, without limitation, reasonable attorneys' fees) in enforcing any of its rights or remedies under this Agreement shall be repaid to the party by the breaching Party upon demand.

16. DISPUTES RESOLUTION

If a dispute arises out of or relates to this Agreement or its breach and the dispute cannot be settled through direct negotiation between the parties, the parties agree to submit the dispute to a sole mediator selected by the parties, or, at any time at the option of a party, to mediation by the AAA. If such dispute is not resolved as a result of such mediation, it will be referred to a sole arbitrator selected by the parties within thirty (30) days after the mediation or in the absence of such selection to AAA arbitration which shall be governed by the United States Arbitration Act and judgment on the award may be entered in any court having jurisdiction. The arbitration shall determine issues of arbitrability, but may not limit, expand or otherwise modify the terms of this Agreement. The parties, their representatives and other participants and the mediator and arbitrator shall hold the existence, content and results of mediation and arbitration in confidence. Each party will bear its own attorneys' fees associated with the mediation and arbitration and will pay all other costs and expenses of the mediation and arbitration as the rules of the AAA provide.

17. FORCE MAJEURE

Except for payment of the license fee and any other amounts agreed to by the parties, 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 Licensee shall not assign, transfer, or dispose this Agreement or any of its rights or obligations hereunder without prior written consent of SUNESYS, which consent shall not be unreasonably withheld; provided, however, that Licensee 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 of all its assets (an "Affiliate"), without the consent of the other party. An assignment, transfer or disposition of this Agreement by Licensee shall not relieve Licensee 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 Licensee's Fiber Optic Facilities.

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
Fax Number: 267.927.2099

LICENSEE:

Riverside County Transportation Commission
4080 Lemon Road, 3rd Floor
P.O. Box 12008
Riverside, CA 92502-2208
Attn: _____
Fax Number: (____) ____ - ____

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.

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) 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; and
- (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 Licensee's Fiber Optic Facilities 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 accepting the License on an "AS IS, WHERE IS" basis and receiving its interests in Licensee's Fiber Optic Facilities 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. 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.

27. 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 the party to be charged.

[Signatures appear on the following page.]



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

SUNESYS, LLC

By:
Name:
Title:
Date:

RIVERSIDE COUNTY TRANSPORTATION
COMMISSION

By:
Name:
Title:
Date:
