

**AGREEMENT FOR LICENSE OF SHARED DUCT AND INSTALLATION OF FIBER CABLE  
BETWEEN CITY OF HAWTHORNE AND AMERICAN DARK FIBER, LLC**

THIS AGREEMENT FOR LICENSE OF SHARED DUCT AND INSTALLATION OF FIBER CABLE (“Agreement”) and other Fiber-Optic Cable Placement activities dated as of \_\_\_\_\_, 2025 (“Effective Date”), is made by and between the City of Hawthorne, a municipal corporation (“Licensor” or “City”), and American Dark Fiber, LLC, a Delaware limited liability company (“Licensee”). Licensor and Licensee are sometimes, hereinafter, individually referred to as “Party” and collectively referred to as the “Parties.”

**RECITALS**

**WHEREAS**, in June of 2019, Licensee, a telecommunications services provider, was selected and awarded a contract by the South Bay Cities Council of Governments (“SBCCOG”) to undertake the planning, permitting, construction, and servicing of the South Bay Fiber Network project, to build, own, and operate a high-speed fiber network for South Bay municipal facilities, with future opportunities to connect area anchor institutions, businesses, and potentially residents as well; and

**WHEREAS**, as part of the project the City owned and/or controlled the rights to property and conduit in and along City property and Rights of Way upon which the Licensee has used and plans to use for future fiber-optic connectivity. The areas of the current system are generally described herein and attached as an Exhibit A (“Existing Fiber Route”). The current footage of the existing fiber cable placed by the Licensee is approximately 847’. The route currently interconnects the SBFN Fiber Network to City properties, inclusive of the building-serving lateral conduits at the Hawthorne PD and the Hawthorne RCC Building. The Existing Fiber Route is situated primarily underground within public rights of way and other real property owned or controlled by the Licensor (the “Land”) which Licensor is authorized to grant and execute a license for its continued use of the space the Licensee will occupy; and

**WHEREAS**, after Licensor installed the Existing City Conduit, Licensor had allowed the Licensee to occupy the existing routes as shown in Exhibit A; and

**WHEREAS**, the Licensor has undertaken redevelopment work on its property(s) that require the Licensee to temporarily reroute its fiber to maintain the active nature of the circuits that traverse the Existing Fiber Route. The Licensee shall migrate from the existing conduits it currently occupies to new temporary facilities (e.g., city poles and/or conduit) as part of this License agreement. Once the permanent facilities are available, the Licensee shall relocate its fiber-optic-related network components from the temporary path to suitable conduits that are part of the anticipated, yet to be constructed permanent path(s). The new route is planned to be a temporary solution (“Temporary Fiber Route”) until such a time as the redevelopment work is completed and is shown and referenced herein as Exhibit B. The Temporary Fiber Route will include in part, some of the existing fiber routed through Hawthorne PD and extending over to the RCC building. The new segments to be deployed under this temporary condition incorporate the use of attaching aerial fiber to poles that exist on the Licensor’s land. The Licensee will pay the costs of installing its fiber along this new Temporary Fiber Route in the manner shown in Exhibit B, which may include installing a splice case in a city vault that sits in or near the City Hall parking lot. The Licensee has agreed to install any new conduit, vaults, or cables in accordance with the City’s Public Works Standards at its expense for the sake of maintaining the existing and active circuits in Hawthorne as delivered by the SBFN network; and

**WHEREAS**, the Existing City Conduit is or will be used, is approximately two inches (2) inches in diameter; and

**WHEREAS**, Licensee is interested in licensing from Licensor, and Licensor is interested in licensing to Licensee, approximately a one inch (1”) diameter portion of City conduit the purpose of installing fiber optics cables within the Fiber Use Area and on the City’s poles (for the Temporary Fiber Route), as part of its efforts to maintain existing fiber-based circuits that terminate in City owned or controlled locations, and to create new fiber-based connections in Hawthorne as the need may arise. Licensee anticipates deploying a single-mode fiber optic cable of no greater than one inch in outside diameter in any conduit or attached to any temporary or permanent poles conducive of supporting a fiber optic cable; and

**WHEREAS**, while the Parties intend for Licensee to license the entirety of the Fiber Use Area as of the Effective Date, Licensee will take immediate possession only of the portion of the Fiber Use Area depicted in Exhibit “A” attached hereto and incorporated herein by this reference. The Licensee will then develop a Temporary Fiber Route as shown in Exhibit B that is required to maintain the continuity of circuits that are currently active in City properties (Hawthorne PD and the RCC). Upon approval of the City, the Licensee will then deploy the Temporary Use Route at its cost and will take possession of the remainder of the Fiber Use Area, which collectively includes segments from the Existing Fiber Route and the Temporary Fiber Route and, which is approximately 861’ in length as illustrated in Exhibit “B”; and

**WHEREAS**, once the City completes its redevelopment work in or near the License Area, to the extent the City has a path available, the Licensee will extend a fiber connecting into City Hall to the anticipated demarcation point in the basement level of the building. This new path will become part of the Permanent Fiber Route that includes building connections to City Hall, Hawthorne PD, and the RCC as shown in Exhibit C herein.

**WHEREAS**, when all the Licensee work is completed, which includes activities related to the Existing Fiber Route, Temporary Fiber Route, and Permanent Fiber Route (singly or collectively, the “Fiber Use Area(s)”, the Licensee will remove any temporary cables and reinstall the cables into the new City provided conduits that will allow the necessary continuity for the Licensee.

**WHEREFORE, in consideration of the covenants and agreements contained herein, and incorporating the recitals and all exhibits hereto, the Parties, intending to be legally bound, agree as follows:**

**1. Grant of License.** Subject to the Licensee obtaining approval from the Licensor before utilizing city-own conduit for Licensee’s fiber-optic use, the Licensor hereby licenses to Licensee the Fiber Use Area for Licensee’s proposed use described in Section 2 and as generally shown in the maps in Exhibits A, B, and C attached herein. Licensee will take immediate possession of the Existing Fiber Route areas, and will take possession of the Temporary Fiber Route area after installing the missing pathways needed to complete the circuits.

**2. Permitted Uses.** The Fiber Use Area may be used by Licensee for the purpose of installing fiber optics cables (“Licensee’s Facilities”) within the Fiber Use Area, as part of its efforts to expand a fiber communication system into or through the City and throughout the South Bay. Subject to City approvals, Licensee anticipates it will complete its fiber communication installation contemplated under this Agreement for the Temporary Fiber Route before June 30, 2025. Further, Licensee may perform construction, maintenance, repairs, and replacement of Licensee’s Facilities as necessary and appropriate for its ongoing

business and has the right to do all work necessary to prepare, modify and maintain the Fiber Use Area to accommodate Licensee's Facilities and as required for Licensee's operations within the Fiber Use Areas. All the activities shall be subject to the Licensor's prior approval to be given by Licensor in its regulatory capacity, and/or Licensor's permit process, which approval shall not be unreasonably conditioned, withheld or delayed.

**3. Conditions Precedent: Prior Approvals.** This Agreement is conditioned upon Licensee obtaining all governmental licenses, permits and approvals enabling Licensee to construct and operate Licensee's Facilities within the Fiber Use Area. Licensor agrees to cooperate with Licensee's reasonable requests for Licensor's signatures on permit applications, for allowing site inspections by governmental agencies required in connection with reviewing permit applications, and to cooperate in obtaining such necessary approvals, provided that such cooperation shall be at no expense to Licensor.

**4. Term.** The term of this Agreement shall be three (3) years ("Initial Term") commencing on the Effective Date, with ongoing automatic renewal terms of three (3) years each (each a "Renewal Term") unless Licensor or Licensee notifies the other in writing of its intention not to extend the Agreement at least thirty (30) days prior to the expiration of the Initial Term or any Renewal Term. The terms and conditions for each Renewal Term shall be pursuant to the same terms and conditions operable during the Initial Term, except that the rent shall be increased as set forth herein below. Notwithstanding anything else to the contrary, this Agreement shall expire when Licensee is no longer able to use Licensee's Facilities for their intended purpose (due to natural deterioration or otherwise).

**5. Rent.**

**(a) Payment.** Licensee shall pay Licensor, as rent, the sum of 0.42 cents per linear foot of the Fiber Use Area licensed to Licensee; provided, however, that Licensee will only pay rent for the Fiber Use Area portions over which Licensee takes possession or is permitted to take possession under this Agreement. Therefore, Licensee will initially pay rent for the area shown in Exhibit B as of the Effective Date. Upon the redevelopment being completed and the Licensee finalizing all the fiber placement and service activations on City property, it will recalculate and notify the City of the total footage of space used to house its fiber and will commence paying annual rent for the occupancy of the fiber placed along the Permanent Fiber Route area. The annual rent for the Temporary Fiber Route Area is approximately \$361.62 per annum (for the use of 861' of fiber placement). Rent for the Permanent Fiber Route will be calculated upon completion of the route into City Hall. Given the additional footage that will be greater than that of the Temporary Fiber Route, the expected annual rent of the Permanent Fiber Route will be somewhat higher than the rent for the Temporary Fiber Route. Rent will be calculated at 0.42 cents per linear foot (which is pegged to the local AT&T annual tariff rates for leasing underground conduits to CLEC's. Rent shall be payable to the "City of Hawthorne" mailed to the attention of the "City Treasurer" to the address indicated in this Agreement.

**(b) Escalation.** On each anniversary of the date rent is first paid with respect to the Permanent Fiber Route, the respective rent amounts shall be adjusted and calculated as follows: Licensee anticipates potential market rate adjustments that could increase its per foot use rate. Accordingly, the rent shall be the higher of either (i) the rent for the 12-month period immediately preceding the period in which the escalator is to take effect plus two percent (2%) or (ii) the federally mandated access rates of the incumbent local exchange carrier ("ILEC") duct as published through publicly available ILEC tariff filings.

**7. Licensee's Tests and Construction, Maintenance and Repairs.**

(a) **Tests and Construction.** Licensee shall have the right at any time following the full execution of this Agreement and obtaining all permits and regulatory approvals to enter upon the Land for the purpose of making appropriate engineering and boundary surveys, inspections, and other reasonably necessary tests in connection with construction of Licensee's Facilities. During construction, Licensee shall be responsible for the overall condition of the City Conduit used and shall be liable for all damage to it including for any direct and indirect damages caused by the existence of its cable or Licensee personnel working on its cable. Licensee shall be liable for any and all damage to the Land, City Conduit or other conduits that may be later installed by Licensor, and any existing City's Fiber Cable caused by any pre-construction or construction activities of the Licensee. Said liability provision shall survive the expiration or sooner termination of this Agreement. During construction and while performing maintenance or repairs, Licensee and its contractors shall follow all Licensor's construction requirements. Before the start of construction, Licensee and its contractors, if any, will submit for any Licensor's permits required. Upon the completion of construction Licensee shall submit to Licensor a complete set of as-built drawings in electronic format detailing the precise placement of Licensee's Facilities and conduit segments along the licensed paths of the City utilized by the Licensee. Licensee shall also file with the Southern California Underground Service Alert ("USA") the placement of all Licensee's Facilities and City's Fiber Cable so that all installed cables are monitored in a manner that meets industry-accepted standards. Licensee shall be responsible for maintenance and repairs not caused by others along the City path(s) while the Licensee occupies space in city-owned conduit with its fiber-optic cable.

(b) **Schedule and Notice.** Licensee will notify Licensor and obtain prior approval of any proposed tests, measurements or construction work and will coordinate the scheduling of such activities with Licensor. Licensor shall submit to Licensor an accurate construction schedule for work, construction or pre-construction. In the event that Licensee seeks to deviate from said schedule, Licensee shall notify City at least forty-eight (48) hours in advance and coordinate activities with Licensor's staff if necessary.

(c) **Cost.** All of Licensee's construction work in connection with installation of Licensee's Facilities and City's Fiber Cable shall be performed at Licensee's sole cost and expense. Licensee shall also reimburse Licensor for the reasonable cost associated with any necessary Licensor's construction inspections; Licensee shall reimburse Licensor for all reasonable costs, including overtime wages, related to staff and similar resources expended by Licensor to facilitate Licensee's construction or pre-construction activities.

(d) **Planned Maintenance and Repairs.** Licensee shall be responsible for the maintenance and repair of Licensee's facilities along the Temporary and Permanent Fiber Routes. And will keep any of the construction or use areas in a neat and safe condition in compliance with all applicable codes and governmental regulations. Access to the City Conduit shall be granted to Licensee for the planned repair and planned maintenance of Licensee's Facilities. Licensee will notify City 72 hours in advance and must pull the necessary encroachment permits to work within City right-of-way, unless otherwise determined to be an emergency repair whereby Section 7.e below will address. In the event that Licensee's Facilities fall into disrepair, Licensee shall repair or take other required actions within thirty (30) days of written notice from Licensor. Other than the repairs required herein, Licensee shall not be required to make any repairs except for damages to the Land, City Conduit, City Vaults, or other conduits that may be later installed by Licensor, and City's Fiber Cable caused by Licensee, its employees, agents, contractors, or subcontractors. Upon the expiration, cancellation or termination of this Agreement, Licensee shall surrender the Fiber Use Area in good condition, less ordinary wear and tear, and remove Licensee's Facilities pursuant to a duly issued encroachment permit issued by City unless Licensor otherwise agrees in writing.

(e) **Emergency Repairs and Restoration.** Notwithstanding the notice requirement described in Section 7(d), Licensee shall be permitted to pursue remedies to repair and restore a system outage that impacts the functionality of any cable deployed within the City conduit and vaults. Licensee shall provide best efforts to notify Licensor in advance of making the repairs necessitated by a system-impacting event along the conduit path utilized that requires immediate resolution. However, if advanced notice is not practicable, then Licensee shall notify Licensor as soon as possible after addressing the emergency. Any necessary permits may be issued after the emergency has been addressed. Additionally, in the event repairs or restoration is needed to both Licensor and Licensee cables, Licensee shall repair Licensor's cables at the direction of Licensor's authorized Contract Officer (as defined in Section 20), at Licensor's cost.

(f) **Relocation.** Should local, State, Federal or private projects require the relocation of the City Conduit or Licensee's Facilities, Licensee shall be responsible for the relocation of Licensee's Facilities at no cost to Licensor.

(g) **Acceptance.** Licensor may inspect and accept or reject any of Licensee's work under this Agreement, either during performance or when completed. Licensor shall reject or finally accept Licensee's work within forty-five (45) days after submitted to Licensor. Licensor shall accept work by a timely written acceptance, otherwise work shall be deemed to have been rejected. Licensor's acceptance shall be conclusive as to such work except with respect to latent defects, fraud and such gross mistakes as to amount to fraud. Acceptance of any work by Licensor shall not constitute a waiver of any of the provisions of this Agreement including, but not limited to, those pertaining to indemnification and insurance.

**8. Interference with Communications.** Licensee's Facilities and operations shall not interfere with the communications configurations, frequencies or operating equipment which exist on or within the Land, including the Fiber Use Area, on the Effective Date of this Agreement ("Pre-Existing Facilities"), and Licensee's Facilities and operations shall comply with all non-interference rules of the Federal Communications Commission ("FCC"). Upon written notice from Licensor of apparent interference by Licensee with Pre-Existing Facilities, Licensee shall have the responsibility to promptly terminate such interference or demonstrate to Licensor with competent information that the apparent interference in fact is not caused by Licensee's Facilities or operations. Licensor shall not, nor shall Licensor permit any other tenant or occupant of any portion of the Land, including the City Conduit, to engage in any activities or operations which interfere with the communications operations of Licensee described in Section 2, above. Upon written notice from Licensee of apparent interference by Licensor or its agents with Licensee's Facilities, Licensor shall have the responsibility to promptly notify the offending party and request termination of such interference or demonstrate to Licensee with competent information that the apparent interference in fact is not caused by Licensor's or its agents' facilities or operations. In the event any such interference does not cease promptly, the Parties acknowledge that continuing interference will cause irreparable injury, and therefore shall have the right to bring a court action to enjoin such interference or to terminate this Agreement upon notice.

**9. Taxes.** Licensee shall pay when due personal property taxes assessed against Licensee's Facilities and Fiber Use Area.

**10. Default; Termination.** This Agreement may be terminated without further liability on thirty (30) days prior written notice as follows: (i) by either Party upon a default of any covenant or term hereof by the other Party which default is not cured within sixty (60) days of receipt of written notice of default, provided that the grace period for any monetary default is ten (10) days from receipt of notice; or (ii) by Licensee if it does not obtain or maintain any license, permit or other approval necessary for the

construction and operation of Licensee’s Facilities; or (iii) at any time during the third (3<sup>rd</sup>) or fourth (4<sup>th</sup>) Renewal Terms, Licensor may terminate this Agreement for any reason or no reason upon providing Licensee no less than twelve (12) months prior written notice. Examples of defaults include but are not limited to, Licensee’s insolvency or bankruptcy, Licensee’s failure to maintain Licensee’s Facilities or cause USA to monitor Licensee’s Facilities, Licensee’s failure to properly construct Licensee’s Facilities in accordance with plans submitted to Licensor and failure to adequately complete construction of Licensee’s Facilities. Licensee must remove Licensee’s Facilities from the Fiber Use Area within thirty (30) days of the expiration or earlier termination of this Agreement. Failing this, Licensor may remove and store Licensee’s Facilities at Licensee’s sole cost and expense. If Licensee does not claim Licensee’s Facilities within thirty (30) days of the expiration or earlier termination of this Agreement, Licensee’s Facilities will be deemed abandoned and Licensor can thereafter dispose of Licensee’s Facilities as it sees fit at Licensee’s sole cost and expense.

Notwithstanding the foregoing, if a non-monetary default cannot be cured within a sixty (60) day period, the defaulting Party shall not be in default as long as it does each of the following:

- (i) Notifies the non-defaulting Party in writing with a reasonable explanation as to the reasons the asserted default is not curable within the sixty (60) day period, including for any force majeure event;
- (ii) Notifies the non-defaulting Party of the defaulting Party’s proposed course of action to cure the default;
- (iii) Promptly commences to cure the default within the sixty (60) day period;
- (iv) Makes periodic reports to the non-defaulting Party as to the progress of the program of cure; and
- (v) Diligently prosecutes such cure to completion.

**11. Condemnation.** If a condemning authority takes all of Licensor’s interest in the Land, or a portion which in Licensee’s reasonable opinion is sufficient to render the Fiber Use Area unsuitable for Licensee’s ongoing operation as contemplated in Section 2, then this Agreement shall terminate without further liability of Licensee as of the date when possession is delivered to the condemning authority. In any condemnation proceeding each Party shall be entitled to make a claim against the condemning authority for just compensation recoverable under applicable condemnation law.

**12. Insurance.**

(a) **Coverages.** Licensee shall provide and maintain and agrees to require all contractors and subcontractors to provide and maintain the following insurance coverages at the expense of Licensee and its contractors and subcontractors for the term of this Agreement.

	<b>LIMITS</b>	
<b><u>Coverage</u></b>	<b><u>Per Occurrence</u></b>	<b><u>Aggregate</u></b>
General Liability	\$2,000,000	\$5,000,000
Fire Legal	\$300,000 Minimum Limits	

Medical Expense	\$10,000 Minimum Limits	
Commercial Automobile Liability	\$5,000,000	None
Combined Single Limit per Accident for bodily injury and property damage	\$5,000,000	
Workers Compensation	Statutory Limits	
Employer's Liability		
each accident/employee	\$1,000,000	
bodily injury by disease	\$1,000,000	
Professional Liability	\$5,000,000	\$5,000,000

**(b) Additional Coverages; Certificates of Insurance and Endorsements.** All of the above policies of insurance shall be primary insurance and shall name Licensor, its elected and appointed officers, employees and agents as additional insureds and any insurance maintained by Licensor or its officers, employees or agents may apply in excess of, and not contribute with Licensee's or its contractor's or subcontractor's insurance. The insurer is deemed hereof to waive all rights of subrogation and contribution it may have against Licensor, its officers, employees and agents and their respective insurers. The insurance policy must specify that where the primary insured does not satisfy the self-insured retention, any additional insured may satisfy the self-insured retention. All of said policies of insurance shall provide that said insurance may not be amended or cancelled by the insurer or any party hereto without providing thirty (30) days prior written notice by certified mail return receipt requested to Licensor. In the event any of said policies of insurance are cancelled, Licensee shall, prior to the cancellation date, submit new evidence of insurance in conformance with this Section 12 to Licensor. No work under this Agreement shall commence until Licensee has provided Licensor with Certificates of Insurance and original endorsements evidencing the above insurance coverages and said Certificates of Insurance and original endorsements have been approved by Licensor. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Licensor reserves the right to inspect complete, certified copies of and endorsements to all required insurance policies at any time. Any failure to comply with the reporting or other provisions of the policies including breaches or warranties shall not affect coverage provided to Licensor.

**(c) Ratings.** The insurance required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the Licensor's Risk Manager or other designee of Licensor due to unique circumstances.

**13. Assignments, Transfers or Sublicenses.** After written notice to Licensee, Licensor may assign or transfer this Agreement to any person or entity without any requirement for prior approval by Licensee, provided that such assignee or transferee agrees in writing to fulfill the duties and obligations of Licensor in this Agreement, including the obligation with respect to Licensee's rights to nondisturbance and quiet enjoyment of the Fiber Use Area during the Initial Term and any Renewal Term hereof. After written notice to Licensor, Licensee may assign or transfer this Agreement without prior approval by Licensor to any entity in which Licensee holds a majority ownership interest, or to a person or entity acquiring by purchase, merger or operation of law a majority of the value of the assets of Licensee. Licensee shall not assign, transfer or sublicense this Agreement or all or a portion of the Fiber Use Area or Licensee's Facilities to any other person or entity without the prior written approval of Licensor, which approval will

not be unreasonably withheld. Any assignment of this Agreement by Licensee shall require any assignee to expressly assume Licensee's obligations under this Agreement pursuant to an Assignment and Assumption Agreement, approved in a form acceptable to the City Attorney and City Manager. Notwithstanding anything to the contrary contained in this Agreement, Licensee may assign, mortgage, pledge, hypothecate or otherwise transfer without consent its interest in this Agreement to any financing entity, or agent on behalf of any financing entity to whom Licensee (i) has obligations for borrowed money or in respect of guaranties thereof, (ii) has obligations evidenced by loans, bonds, debentures, notes or similar instruments, or (iii) has obligations under or with respect to letters of credit, bankers acceptances and similar facilities or in respect of guaranties thereof.

**14. Nondisturbance and Quiet Enjoyment; Subordination; Estoppel Certificates.**

(a) **Quiet Enjoyment.** So long as Licensee or Licensor is not in default under this Agreement, Licensee shall be entitled to quiet enjoyment of the Fiber Use Area during the Initial Term or any Renewal Term, and Licensee shall not be disturbed in its occupancy and use of the Fiber Use Area.

(b) **Subordination.** This Agreement shall be subordinate to each and every deed of trust, mortgage or other security instrument which may now or hereafter affect the Land and to any renewals, extensions, supplements, amendments, modifications or replacements thereof. In confirmation of such subordination, Licensee shall execute and deliver promptly any certificate of subordination that Licensor may reasonably request, provided that such certificate acknowledges that this Agreement remains in full force and effect, recognizes Licensee's right to nondisturbance and quiet enjoyment of the Fiber Use Area so long as Licensee is not in default under this Agreement, only contains true and accurate statements and Licensee's liability shall be capped at the remaining rent under this Agreement. If any mortgagee or lender succeeds to Licensor's interest in the Land through a foreclosure proceeding or by a deed in lieu of foreclosure, Licensee shall attorn to and recognize such successor as Licensor under this Agreement.

(c) **Estoppel Certificates.** At any time upon not less than ten (10) days' prior written notice by Licensor, Licensee shall execute, acknowledge and deliver to Licensor or any other party specified by Licensor a statement in writing certifying that this Agreement is in full force and effect, if true, and the status of any continuing defaults under this Agreement.

**15. Indemnification.**

(a) **Indemnity.** Licensee hereby agrees to indemnify and hold Licensor and Licensor's officers, directors, partners, shareholders, employees, agents, contractors or subcontractors harmless from and against any and all losses, claims, liabilities, damages, costs and expenses (including reasonable attorney's fees and costs) and injuries (including personal injuries or death) arising from or in connection with Licensee's construction, use, operation, maintenance or repair of Licensee's Facilities within the Fiber Use Area or access over the Fiber Use Area, due diligence activities, pre-construction activities, except those resulting from the negligence or willful misconduct of Licensor or Licensor's officers, directors, partners, shareholders, employees, agents, contractors or subcontractors.

(b) **Survival.** The indemnity provision of this section shall survive the termination, cancellation or expiration of this Agreement.

(c) **Limitation of Liability.** In the event Licensor, its employees, agents, contractors or subcontractors, should damage Licensee's Facilities in the process of pulling cables, whether based on a theory or contract or tort, including negligence and strict liability, Licensor's liability shall be limited to Licensee's actual direct damages, not to exceed the amount of rent paid during the twelve (12) months preceding the date of damage.

**16. Hazardous Materials.** Licensee agrees that it will not use, generate, store or dispose of any Hazardous Material on, under, about or within the Fiber Use Area or within the real property in which the Fiber Use Area is located. Licensor represents, warrants and agrees (1) that neither Licensor nor, to Licensor's knowledge, any third party has used, generated, stored or disposed of, or permitted the use, generation, storage or disposal of, any Hazardous Material (defined below) on, under, about or within the Fiber Use Area, and (2) that Licensor will not, and will not permit any third party to use, generate, store or dispose of any Hazardous Material on, under, about or within the Fiber Use Area. Licensor and Licensee each agree to defend, indemnify and hold harmless the other and the other's partners, affiliates, agents and employees against any and all losses, liabilities, claims and/or costs (including reasonable attorneys' fees and costs) arising from any breach of any representation, warranty or agreement contained in this paragraph. As used in this paragraph, "Hazardous Material" shall mean any petroleum, petroleum product, asbestos, or any substance known by the state in which the Fiber Use Area is located to cause cancer and/or reproductive toxicity, and/or any substance, chemical or waste that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation.

**17. Notices and Deliveries.** Any notice or demand required to be given herein shall be made by certified or registered mail, return receipt requested, or reliable overnight delivery service to the address of the respective Parties set forth below:

Licensor: City of Hawthorne  
[INSERT ADDRESS]  
Attn: [Director of Public Works]  
Telephone:

Licensee: American Dark Fiber, LLC  
11110 Ohio Avenue, Suite #111  
Los Angeles, CA 90025  
Attn: David Daigle  
Telephone: (310) 312-1818  
Email: ddaigle@americandarkfiber.com

Licensor or Licensee may from time to time designate any other address for notices or deliveries by written notice to the other party.

**18. Independent Contractor.** Licensee, and all of Licensee's contractors and subcontractors, shall have no power or authority to incur any debt, obligation or liability on behalf of Licensor. It is expressly understood between the Parties that no employee/employer relationship is intended, and that Licensee is an independent contractor.

**19. Possessory Interest Taxes.** Pursuant to Section 107.6 of the Revenue and Taxation Code, Licensee is advised that the property interest vested in Licensee by virtue of this Agreement may be subject to payment of possessory interest taxes levied on such interest.

**20. Contract Officer.** The Contract Officer shall be the City's Director of Public Works, or such other person as may be designated by the City Manager. It shall be Licensee's responsibility to assure that the Contract Officer is kept informed of all relevant issues and Licensee shall refer any decisions which must be made by Licensor to the Contract Officer. Unless otherwise specified herein, any approval of Licensor required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority, if specified in writing by the City Manager, to sign all documents on behalf of Licensor required hereunder to carry out the terms of this Agreement.

**21. Miscellaneous.**

**(a) Non-Discrimination and Equal Employment Opportunity.** In the performance of this Agreement, Licensee shall not discriminate against any employee, subcontractor, or applicant for employment because of race, color, religion, ancestry, sex, national origin, physical or mental disability or age. Licensee will take affirmative action to ensure that contractors, subcontractors and applicants are employed, and that employees are treated during employment without regard to their race, color, religion, ancestry, sex, national origin, physical or mental disability or age. Affirmative action relating to employment shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The provisions detailed above shall be included in all solicitations or advertisements placed by or on behalf of Licensee for personnel to perform any services under this Agreement. Licensor shall have access to all documents, data and records of Licensee and its contractors and subcontractors for purposes of determining compliance with the equal employment opportunity and non-discrimination provisions of this Section.

**(b) Severability.** If any provision of the Agreement is held to be invalid or unenforceable by a court of competent jurisdiction with respect to any Party, the remainder of this Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable shall not be affected, each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law, and the Parties shall negotiate in good faith to amend this Agreement to retain the economic effect of the invalid or unenforceable provisions.

**(c) Binding Effect.** Each Party represents and warrants that said Party has full power and authority, and the person(s) executing this Agreement have full power and authority, to execute and deliver this Agreement, and that this Agreement constitutes a valid and binding obligation of each Party, enforceable in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditor's rights generally and by general equitable principles (whether enforcement is sought in proceedings in equity or at law). This Agreement shall be binding on and inure to the benefit of the successors and permitted assignees of the respective Parties.

**(d) Waivers.** No provision of this Agreement shall be deemed to have been waived by a Party unless the waiver is in writing and signed by the Party against whom enforcement of the waiver is attempted. No custom or practice which may develop between the Parties in the implementation or administration of the terms of this Agreement shall be construed to waive or lessen any right to insist upon strict performance of the terms of this Agreement.

(e) **Governing Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Los Angeles, State of California. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in the County of Los Angeles, State of California.

(f) **Mediation, Litigation, Attorneys' Fees and Costs.** Should any good faith dispute arise with respect to a default notice issued pursuant to Section 10 of this Agreement, either Party may initiate dispute resolution procedures by sending a notice of dispute ("Notice of Dispute") to the other Party within five (5) days of receipt of the default notice. Upon receipt of a timely Notice of Dispute, the cure period in the default notice is tolled to allow for the dispute resolution procedure in this section. The Parties will attempt to resolve the dispute promptly through good faith negotiations initially by the Parties' respective project managers. If the dispute has not been resolved within fifteen (15) days from the Notice of Dispute, either Party may escalate the dispute to executive officers of the Parties. If the dispute has not been resolved within thirty (30) days from the Notice of Dispute, then either Party may give written notice to commence mediation ("Notice of Mediation"). Within thirty (30) days of receiving a Notice of Mediation, the Parties will choose an independent mediator through Judicial Arbitration and Mediation Services ("JAMS"). Neither Party may unreasonably withhold consent to the selection of a mediator. If the Parties are unable to agree upon a mediator, either Party may request that JAMS select the mediator. Each Party will bear its own costs of mediation, but the Parties will share the cost of the mediator equally. Each Party will participate in the non-binding mediation in good faith and will be represented at the mediation by an executive with authority to settle the dispute. If a dispute remains unresolved for sixty (60) days after receipt of the Notice of Mediation, either Party may then submit the dispute to a court of competent jurisdiction in the State of California. In the event litigation occurs, the prevailing party in any legal action arising hereunder shall be entitled to its reasonable attorneys' fees and court costs.

(g) **Survival.** Terms and conditions of this Agreement which by their sense and context survive the termination, cancellation or expiration of this Agreement will so survive.

(h) **Force Majeure.** Neither Party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by earthquakes, other acts of God, fires, wars, terrorism, riots or similar hostilities, strikes, and other labor difficulties beyond the Party's control, government regulations, pandemics, court actions (such as restraining orders or injunctions), or other causes beyond the Party's reasonable control.

(i) **Entire Agreement; Amendments.** This Agreement constitutes the entire agreement and understanding between the Parties regarding Licensee's license of the Fiber Use Area and supersedes all prior and contemporaneous offers, negotiations and other agreements concerning the subject matter contained herein. There are no representations or understandings of any kind not set forth herein. Any amendments to this Agreement must be in writing and executed by duly authorized representatives of both Parties.

(j) **No Presumptions Regarding Preparation of Agreement.** The Parties acknowledge and agree that each of the Parties has been represented by counsel or has had full opportunity to consult with counsel and that each of the Parties has participated in the negotiation and drafting of this Agreement. Accordingly it is the intention and agreement of the Parties that the language, terms and conditions of this Agreement are not to be construed in any way against or in favor of any Party hereto by

reason of the roles and responsibilities of the Parties or their counsel in connection with the preparation of this Agreement.

**[SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives on the dates set forth below and acknowledge that this Agreement is effective as of full execution.

**LICENSOR:**

CITY OF HAWTHORNE , a municipal corporation

\_\_\_\_\_

Name: Vontray Norris  
Title: City Manager

\_\_\_\_\_

**APPROVED AS TO FORM:**

\_\_\_\_\_

Name: Robert Kim  
Title: City Attorney

**LICENSEE:**

AMERICAN DARK FIBER, LLC, a Delaware limited liability company

By: \_\_\_\_\_

Name:  
Title:

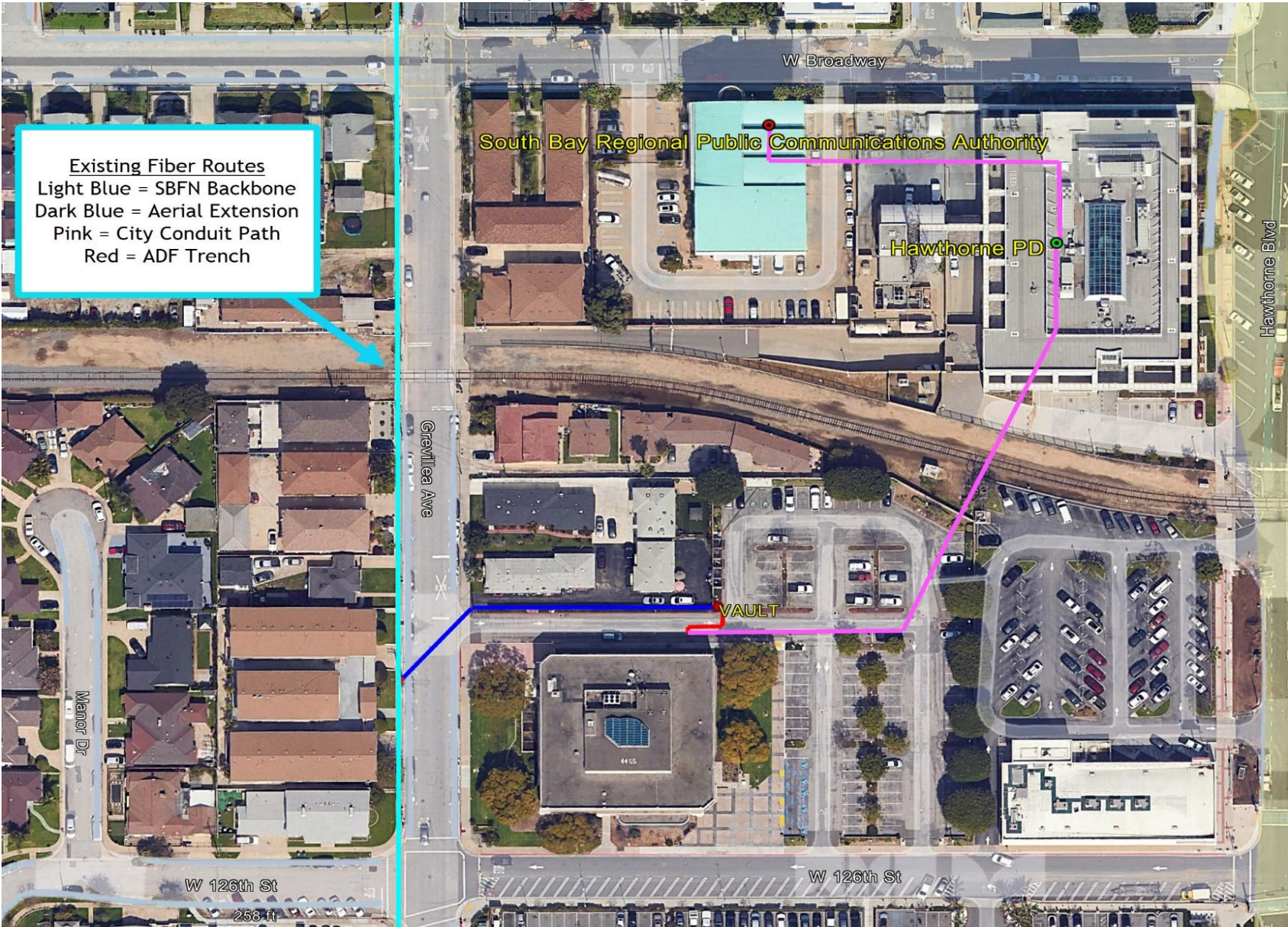
By: \_\_\_\_\_

Name:  
Title:

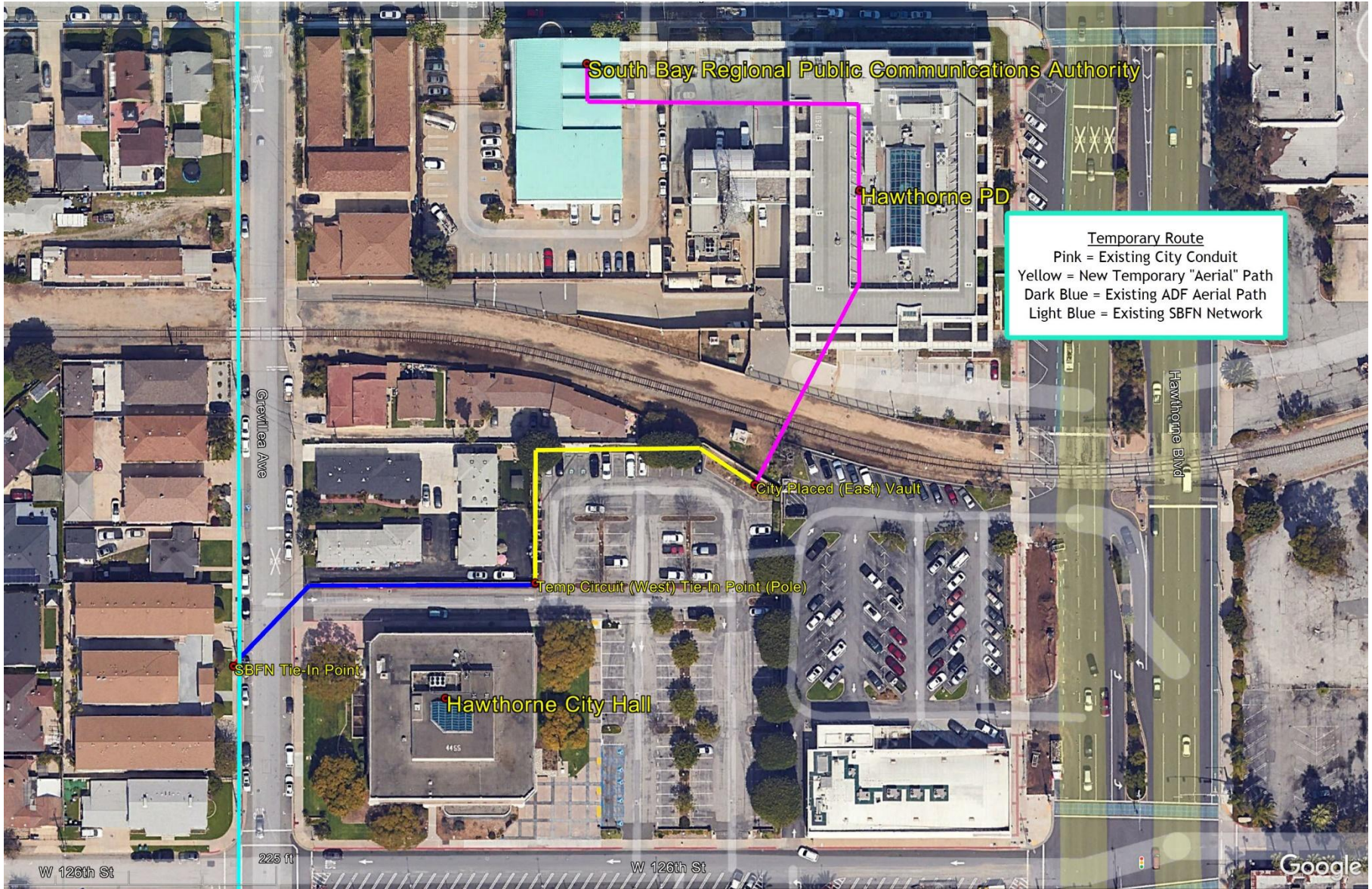
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.



**EXHIBIT A**  
**“EXISTING FIBER ROUTE” AREA**



**EXHIBIT B**  
**"TEMPORARY FIBER ROUTE"**



**EXHIBIT C**  
**“PERMANENT FIBER ROUTE” USING CITY INFRASTRUCTURE (PINK + WHITE LINES)**

