

## **RIGHT OF WAY USE AGREEMENT (Ventura County – City of Fillmore)**

This Right of Way Use Agreement (“Agreement”) is made effective as of the latter of the two signatures below, by and between the City of Fillmore, a municipal corporation of the State of California (hereinafter called the “City”), and the County of Ventura (hereinafter “County”). City and County are collectively known as the “Parties.”

**WHEREAS**, the County has undertaken a countywide broadband strategic planning process to upgrade County communications and services and expand connectivity, competition, and access to all residents, businesses, and stakeholders of the County;

**WHEREAS**, in pursuit of the County’s broadband goals, the County intends to construct and operate a fiber optic network consisting of fiber, conduit, cabinets, handholes, and other appurtenances (“County Fiber Network”);

**WHEREAS**, the whole of the action related to constructing and operating a portion of the County Fiber Network constitutes the Ventura County Fiber Network project (“Project”);

**WHEREAS**, a portion of the County Fiber Network will encroach upon, under and across the public rights-of-way of City following an approximate route along Central Avenue and the Fillmore Bike Path, and will require trenching and other construction within said public rights-of-way along the routes depicted in Exhibit A attached hereto and incorporated herein;

**WHEREAS**, under City’s Municipal Code, Chapter 11.12 no encroachment or excavation is permitted within the City’s public rights-of-way without an encroachment permit or other authorization from the City;

**WHEREAS**, County has requested authorization from City to install the County Fiber Network within the City’s public rights-of-way;

**WHEREAS**, in lieu of any other compensation for such rights, County is willing to allow City to use specified fibers in the County Fiber Network for City’s non-commercial governmental purposes;

**WHEREAS**, the County is the lead agency under the California Environmental Quality Act (“CEQA”) with respect to the Project;

**WHEREAS**, the County, as lead agency, has determined that the Project, including this Agreement, is statutorily exempt from CEQA pursuant to Senate Bill 156 (2021) (“SB 156”). (Pub. Res. Code § 21080.51.) Pursuant to SB 156, CEQA does not apply to a project funded by Item 7502-062-8506 of the Budget Act of 2021 or any entity, including a public entity or private or nonprofit corporation, that consists of linear

broadband deployment in a right-of-way and meets all necessary conditions;

**WHEREAS**, the City is a responsible agency under CEQA with respect to the Project;

**WHEREAS**, the City, in its role as responsible agency, has determined that the Project, including this Agreement, is statutorily exempt from CEQA pursuant to SB 156 and Public Resources Code section 21080.51 and all necessary conditions have been or will be satisfied by the County.

**NOW THEREFORE**, in consideration of the mutual promises and agreements hereinafter contained, the parties hereto agree as follows:

**A. COUNTY AUTHORIZATION TO ENCROACH UPON CITY PUBLIC RIGHTS-OF-WAY**

1. **Authorization**. The City hereby grants County permission to encroach under, on and along its public rights-of-way, including conduit occupancy within a portion of the City's communications network, for the purpose of the installation, maintenance and operation of the County Fiber Network upon various portions of City public rights-of-way, as more specifically depicted on Exhibit A attached hereto and incorporated herein. Both Parties acknowledge that there will no above ground installations in the City pursuant to this Agreement.

2. **Term**. This grant shall be in perpetuity.

3. **Compensation to City**.

- a. The County shall not be required to pay to the City any fees for the authorization to use the public rights-of-way given hereunder other than those specified in this Agreement which shall include the County's obligation to obtain all City required permits and approvals in accordance with Section (B)(9) below.
- b. In lieu of monetary compensation, City shall have the right to utilize two (2) strands of dark fiber along the entire path preliminarily identified in Exhibit B, as may be modified or changed in the final design ("City Strands"). No rent or license fee shall be payable to County from City for City's non-commercial use of the two (2) strands of dark fiber. County, at no cost to City, shall maintain the City Strands for the useful life of the asset, and City shall provide at City's cost, all electronics, connections, and other improvements and equipment utilized to utilize the City Strands.

**B. COUNTY'S RESPONSIBILITIES**

1. **Repairs**. Any and all damage to any property or public right-of-way

resulting from the installation, maintenance, and operation of the County Fiber Network by County shall be repaired by County at no expense to the City and to the satisfaction of the City or the reasonable satisfaction of the affected property owner. In addition, County agrees to restore all property or public right-of-way affected by construction of the County Fiber Network to the condition it was in prior to commencement of construction of the County Fiber Network, at no expense to the City or the affected property owner and to the satisfaction of the City or the reasonable satisfaction of the affected property owner.

2. **Damages to Property.** County shall assume all responsibility for all damages to property (including the County Fiber Network) or injuries to persons (including accidental death) which may arise from or be caused by County' performance under this Agreement or by the performance of any other party which County directly or indirectly employs to perform under this Agreement. The obligations of this paragraph apply regardless of whether such damage or injury accrues or is discovered before or after termination of this Agreement.

3. **City Remedial Work.** In the event County fails to perform any of its obligations under this Agreement within the period after delivery of written notice of such failure specified below and the City performs any such work, County shall reimburse the City its full actual, documented and reasonable costs.

4. **Notices of Failure to Perform.** If County fails to perform any of its obligations under this Agreement, the City may notify County of such failure and County shall remedy such failure within the following period after delivery of written notice by City: (i) within 48 hours for Emergency Repairs as defined below; (ii) within 10 business days for non-emergency repairs or maintenance or failure to pay amounts due to City. "Emergency Repairs" means work to correct a hazardous condition whose condition would risk injury, loss of life, property damage, or where immediate correction is required to maintain or restore essential public utility service or public resource including the City's bike path.

5. **Relocation.** County shall remove or relocate, without cost and/or expense to City, the County Fiber Network, or any part of it, if and when made necessary by either the installation, abandonment, change of grade, alignment or width of any street, sidewalk or other public facility or the construction, maintenance or operation of any other City or other public agency underground or aboveground facilities (including, by way of example and not limitation, any sewer, storm drain, conduits, gas, water, electric or other utility systems or pipes), provided that City or other public agency is acting in its governmental capacity. In the event all or any portion of any public rights-of-way occupied by County Fiber Network is needed by City or other public agency for a governmental purpose or in the event the existence of County Fiber Network or any part of it shall be considered detrimental to the public health, safety, welfare, or convenience or to governmental activities including, but not limited to, interference with City or other public agency construction projects, or is in conflict vertically and/or horizontally with any proposed City or other public agency installation,

County shall remove and relocate County Fiber Network or the involved part of it, without cost or expense to City or other public agency, to such other location or locations on the public rights-of-way as may be designated by City or other public agency. Said removal or relocation shall be completed, without cost or expense to City, within one hundred eighty (180) days of notification by City or other public agency. In the event County Fiber Network or the involved part of it is not removed or relocated within said period of time, City or other public agency may cause the same to be done at the sole cost and expense of County. To the extent relocation of County Fiber Network or the involved part of it is required solely to accommodate (i) a non-public agency third party for non-governmental reasons, (ii) City acting in a proprietary capacity for non-governmental reasons, or (iii) City acting on behalf of a non-public agency third party for non-governmental reasons, the relocation shall be paid for in advance by City or the non-public agency third party.

6. **Dig Alerts.** County shall become a member of "Underground Service Alert of Southern California" and agrees to maintain and keep current its membership in said organization throughout the term of this Agreement, and to comply with "Underground Service Alert of Southern California" noticing and other requirements.

7. **Indemnification.** County shall indemnify, protect, defend, and hold harmless the City, its City Council, officers, officials, employees, servants and agents against any and all claims, demands, losses, costs, expenses, fees, penalties, damages, or liability of any kind or nature resulting from, or arising with respect to, the grant of this Agreement including the City's determination that the grant of this Agreement and the County Fiber Network is covered by one or more categorical exemptions pursuant to the California Environmental Quality Act and is not subject to any exceptions. As indemnitees, the City, City Council as well as the City's boards, commissions, officers, agents, volunteers and employees shall have the right to approve the attorneys selected by County to represent them. In the event County does not provide attorneys acceptable to the indemnified parties, the indemnified parties may select attorneys of their choice, so long as the attorney's rates do not exceed the greater of the rates the indemnified parties pay for other legal services, or the amount the County pays for their legal services in the matter.

8. **As Built Maps.** County shall provide City with as built maps within thirty (30) days of completion of construction and final inspections.

9. **City Permits.** County will apply for and obtain all required permits and pay all City permit fees.

## **C. CITY RESPONSIBILITIES**

1. **City Cooperation.** To facilitate County's buildout of the County Fiber Network with minimal disruption to the general public from County's activities, the City agrees, to the best of its ability during the initial construction period, to do the following:

- a. Provide streamlined processes and expedited response times for permits during the initial construction period. The City will use reasonable efforts to ensure that County's permit application for will be reviewed and acted upon within approximately thirty (30) days from receipt of a complete application. County understands that the City may contract with outside consultants to assist in expediting the review, inspection, and monitoring process, and these costs will be passed on to County in its permit fees, and must be paid to City as a condition of permit issuance; and
- b. Cooperate with County to educate residents and businesses on potential disruptions from construction, and public right-of-way access.

**D. OTHER TERMS**

1. **Responsibility for Costs.** Except as specified otherwise herein, each Party will be responsible for and bear all of its own costs and expenses incurred at any time in connection with the performance of its responsibilities under this Agreement.

2. **Applicable Law and Venue.** This Agreement shall be governed by the laws of the State of California. Any dispute or controversy arising under or related in any way to this Agreement shall be adjudicated by a state court of competent jurisdiction located in Ventura County, California.

3. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

4. **Notices.** All notices required or provided for under this Agreement shall be in writing, delivered in person or by certified mail, return receipt requested, addressed to the parties as indicated, below. Any notice so delivered shall be effective on the date of its delivery. Any party may change its address for notice by giving ten (10) days' notice of such change in the manner provided for in this paragraph. Notices may be served as follows:

- a. Upon City, attention to City Manager of the City of Fillmore at 250 Central Ave., Fillmore CA 93015, or at such address as City may subsequently provide to County, and depositing such notice in the United States mail, postage prepaid or,
- b. Upon County to Ventura County Information Technology Services, Attn: Chief Information Officer, 800 S. Victoria Avenue, Ventura, CA 93003, or at such address as County may subsequently provide to City, and depositing such notice in the United States mail, postage prepaid.

- c. All notices served on the City, shall include a courtesy copy to the Fillmore City Attorney's Office at:  
Tiffany J. Israel  
City of Fillmore, City Attorney  
1 Park Plaza, Suite 1000  
Irvine CA, 92614

5. **Dispute Resolution.**

- a. If a dispute arises between the parties relating to this Agreement, the parties agree to use the following procedure prior to resorting to judicial relief by a court of competent jurisdiction. A meeting shall be held promptly between the parties, attended by individuals with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they agree to submit the dispute to mediation in accordance with the pursuant to the rules of Judicial Arbitration and Mediation Services ("JAMS"), as amended or as augmented in this Agreement. Each party shall pay their own costs of mediation. The parties shall jointly appoint a mutually acceptable mediator, seeking assistance in such regard from the JAMS if they have been unable to agree upon such appointment within twenty (20) days from the conclusion of the negotiation period. The parties agree to participate in good faith in the mediation and negotiations related thereto for a period of thirty (30) days.
- b. If the parties are not successful in resolving the dispute through mediation as described above, the parties may pursue any remedy at law or in equity by a court of competent jurisdiction.
- c. Notwithstanding the provisions of this para. 5, either party shall be entitled to seek declaratory and injunctive relief in any court of competent jurisdiction to enforce the terms of this Agreement or to enjoin the other party from an asserted breach thereof, pending the selection of a referee, on a showing that the moving party would otherwise suffer irreparable harm.

6. **Prevailing Party.** If any legal action is necessary to enforce any provision hereof or for damages by reason of an alleged breach of any provisions of this Agreement, the prevailing party shall be entitled to receive from the losing party reasonable costs and expenses in such amount as the court or arbitrator may adjudge to be reasonable attorney's fees and costs incurred by the prevailing party in such action or proceeding.

7. **Captions.** The captions herein are for convenience and references only

and are not a part of this Agreement and do not in any way limit, define or amplify the terms and provisions hereof.

8. **Assignment.** County may sell, assign, transfer or lease any interest in those portions of the County Fiber Network within the City or assign or transfer any of its rights or obligations in this Agreement with the prior written notice to City.

9. **Sub-Contracting.** County may delegate or subcontract with any third party for the performance of any of its responsibilities or duties under this Agreement; provided that (i) County shall ensure the subcontractor is licensed and qualified to perform the work and the third party contract contains at least the same level of restrictions on the subcontractor as those contained in this Agreement; and (ii) any delegation or subcontracting by County will not operate to relieve County of its responsibilities and obligations under this Agreement. Rather, County remains responsible and liable for any work performed by a subcontractor as if County had performed the work itself and County accepts complete responsibility for the acts or omissions of its agents, subcontractors and all others it hires, engages, or contracts with to perform or assist in the performance of the Agreement.

10. **No Waivers.** A waiver by the City of any breach of any term, covenant or condition contained in this Agreement shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained in this agreement, whether of the same or different character.

11. **Severability.** If any part of this agreement is held invalid, the remaining terms and conditions shall not be affected unless their enforcement under the circumstances would be unreasonable, inequitable, or otherwise frustrate the purposes of this agreement.

12. **Independent Contractors.** The parties are independent entities and are not to be, and shall not be, construed as joint venturers, partners, employer/employee, or agents one of the other, and neither shall have the power to bind or obligate the other except as set forth in this Agreement.

13. **Entire Agreement.** This Agreement, including the exhibits attached hereto, and any updated exhibits agreeable to both parties, constitutes the entire agreement between the parties and supersedes any previous oral or written agreements with respect to the subject of this Agreement. No amendment or modification to the Agreement shall be valid and binding unless in writing and signed by authorized representatives of both parties.

14. **Representations.** Each party represents, with respect to this Agreement: (a) has taken all corporate and/or governmental action necessary for the authorization, execution and delivery of such agreement and to make such agreement legal, valid and binding; (b) has no agreement or understanding with any third party that interferes with or will interfere with its performance of the Party's obligations under this Agreement; and

(c) is not interfering with any other party's rights or contracts, or violating the terms of any agreements with other parties, by entering into and/or performing under the terms of this Agreement.

IN WITNESS WHEREOF, the authorized representatives of the parties hereby sign below:

[SIGNATURE PAGE FOLLOWS]

**CITY:**

**CITY OF FILLMORE**

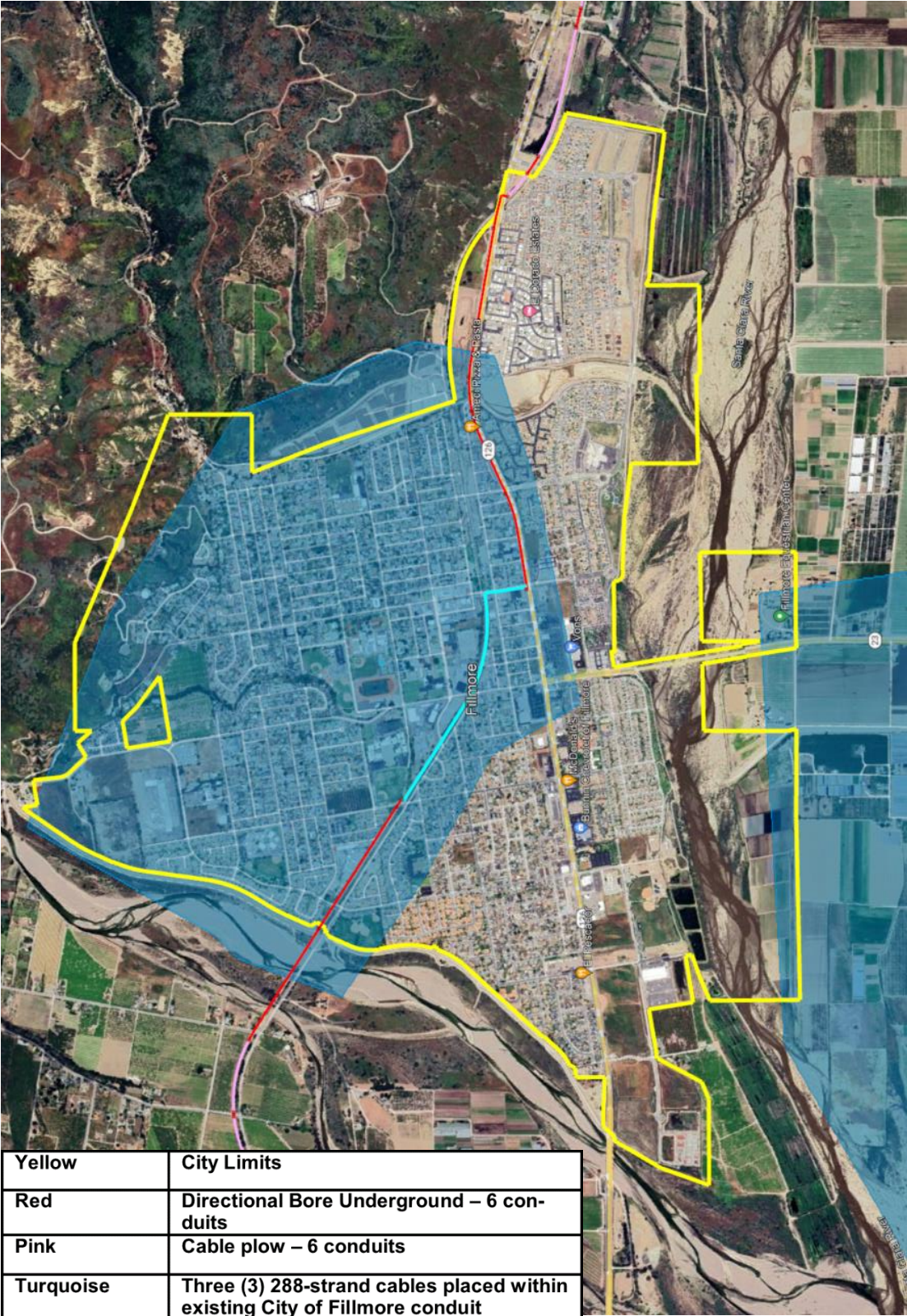
By: \_\_\_\_\_  
Name: Carrie Broggie  
Title: Mayor  
Date: \_\_\_\_\_

**COUNTY:**

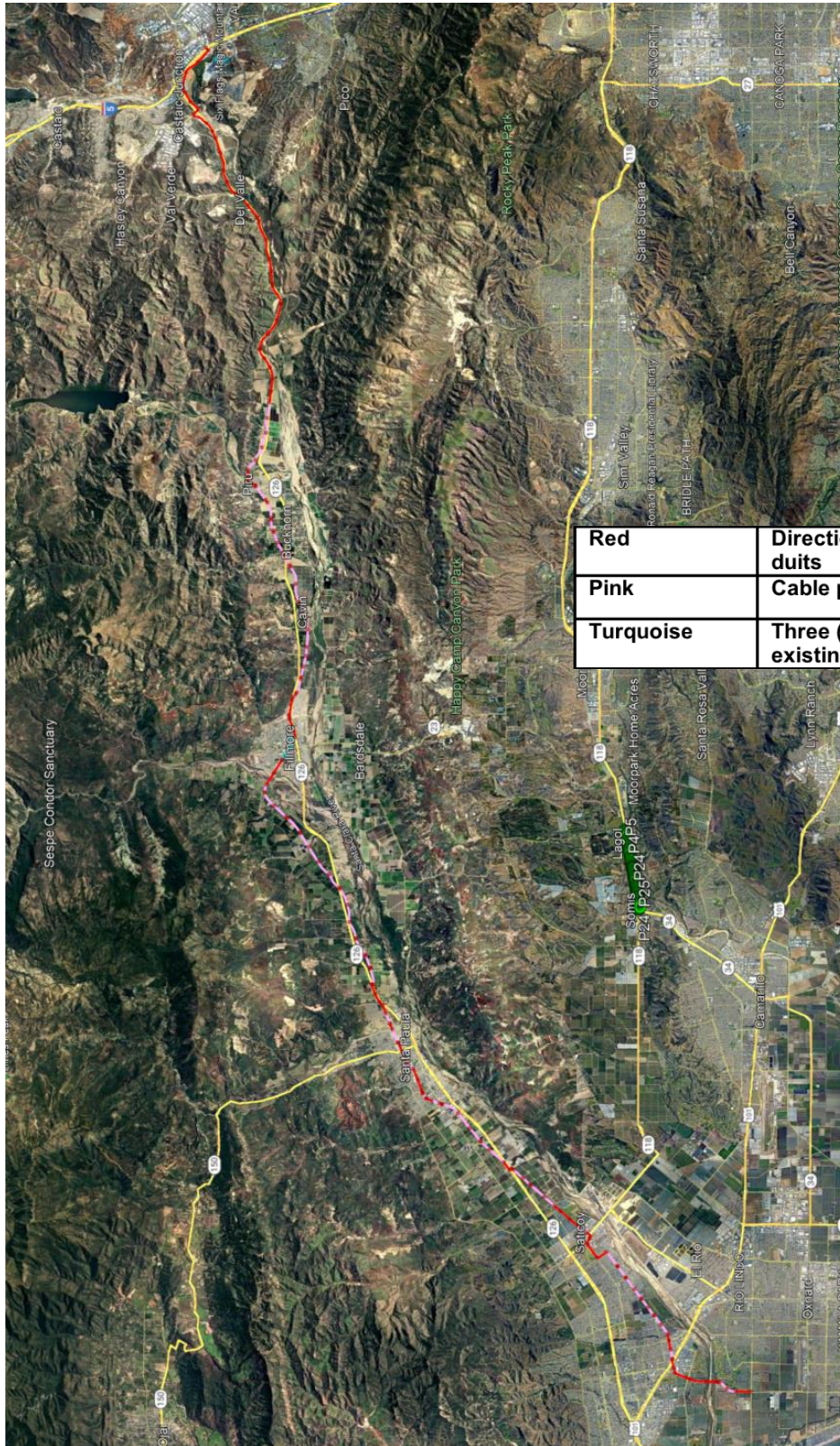
**COUNTY OF VENTURA**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Exhibit A: County Fiber Network**  
**Initial County Fiber Network Route within City of Fillmore**



# **EXHIBIT B: County Fiber Network** **County Network Route providing Dark Fiber strands**



Red	Directional Bore Underground – 6 conduits
Pink	Cable plow – 6 conduits
Turquoise	Three (3) 288-strand cables placed within existing City of Fillmore conduit