CO$T Coalition Of Sensible Taxpayers

THE TAXPAYERS' VOICE

SMART – Sonic

2015 Fiber Agreement

and 2019 First Amendment

Contract Analysis

For the Marin General Public

March 1, 2019

Coalition of Sensible Taxpayers
SMART / Sonic Fiber Agreement Analysis
March 1, 2020 Update

Summary:

Since September 2019, CO$T has been researching an 80-year "fiber-optic" agreement signed in April 2015 between SMART and Sonoma based internet service provider Sonic Communications. The project involved a thorough evaluation of public records on SMART's website (sonomamarin.org) as well as documents obtained from SMART through public records requests.

Our efforts have been focused in two areas: 1) The contents of the 80-year agreement and its public benefits. 2) The process by which the SMART Board of Directors and General Manager conducted the negotiations.

Regarding Focus Area 1: We attempted to determine whether SMART, using a no-bid, sole-source, no-cash contract with Sonic for fiber and IT services:

1. Violated standard competitive bidding requirements or legal alternatives in its award to Sonic of an 80-year contract for access into its fiber optic conduit system; and,
2. Lost hundreds of millions of dollars in potential revenues (over the 80-year term) from Sonic; and,
3. Jeopardized additional, future revenue streams from other carriers, i.e., competitors of Sonic.

Based on what little information we were provided, we reached the following conclusion:

> We do not believe either SMART or the taxpayers of Marin and Sonoma counties received FMV from the Sonic Agreement. By (apparently) treating this exchange as a one-off land use transaction, the agency has failed to develop fully a potential long-term revenue stream valued at over $1/2 Billion. The 80-year term is a clear indicator that SMART simply does not understand the standards of the telecommunications industry or the norms of mass transit agencies in their dealings with that industry. And now SMART is bound to Sonic's contract services – to the collective financial detriment of riders and taxpayers -- for almost a century. Minimal due diligence, e.g., issuing an RFP (as SMART did with its wireless services in its stations), would have fairly determined market interest as well as FMV. Seeking expert consulting assistance would have also been beneficial.

Regarding Focus Area 2: We attempted to apply both the provisions and spirit of the Brown Act along with the Marin County Civil Grand Jury's recommendations for transparency. We started with the assumption that the SMART board and General Manager would make every attempt to keep the public appraised of their negotiations with Sonic. What we found was the opposite.

- SMART and Sonic met four times in closed session (54956.8) between September 2014 and March 2015. SMART violated the Brown Act each time by not identifying Sonic as the negotiating party on the meeting agenda nor the reason for the session: Price, Terms, or Both.
- The SMART board never discussed the negotiations in any real sense during that time at a public meeting.
- At the May 6, 2015 board meeting, SMART's General Manager verbally announced he had signed a 20-year agreement with Sonic and construction had already begun. The board did not take a vote to approve the contract, although records indicate board approval of contracts was standard.
- SMART AND Sonic met again in closed session in March 2019.
- The SMART-Sonic agreement was amended on May 29, 2019, extending the contract term an additional 60 years, producing an 80-year contract. The General Manager did not discuss the amendment at a public meeting, and the board did not vote to approve the amendment. Nothing in the public record would indicate why this amendment was necessary. The standard term for similar contracts across the nation is 20-25 years, including renewals. CO$T discovered the document through a public records request.

Coalition of Sensible Taxpayers
SMART / Sonic Fiber Agreement Analysis
March 1, 2020 Update

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CO$T Coalition Of Sensible Taxpayers

THE TAXPAYERS' VOICE

Mr. Eric Lucan
Chairman of the Board
Sonoma Marin Area Rapid Transit
By email February 13, 2020
Cc: Dan Hillmer, SMART Director
Originals by USPS

Dear Eric:

In April 2015, SMART executed an agreement (Agreement) with Sonic Communications granting the latter the right to place and operate fiber optic cable in SMART's longitudinal rights-of-way (ROW) for an astounding 80 years—a term that is four times the accepted-industry-standard for all major transit agencies in the country. The transaction involved no money changing hands, which is also unusual, and was instead cast as a fair market value (FMV) exchange in which SMART received communications services in consideration for allowing Sonic's occupancy in SMART's ROW.

As far as we can tell, there was no competitive bid process as would normally be required for the transfer of a valuable public asset to a telecommunications carrier or Internet Service Provider. In contrast, there was an open, competitive bidding process that resulted in four proposals, an objective evaluation process, etc., for WiFi services in the stations and on SMART trains.

Absent a competitive bid process, all government procurement rules and regulations normally require a valuation or appraisal of the ROW by an independent expert to determine FMV before any asset transfer. SMART did not take this requisite step, per our public records requests (PRA's). As far as we can tell, the transaction was not approved in a public meeting of the board.

As a result of the significant procedural shortcomings, SMART may have forsaken hundreds of millions of dollars in potential revenues over the bloated 80-year term of the contract with Sonic. CO$T asked the nationally-recognized-consultant to every major transit agency in the country, Kingston Cole, to analyze this issue and the other aspects of the contract. Mr. Cole's expert assessment underpins our conclusion that SMART's Sonic contract and process do not comply with transit industry best practices and likely left a very substantial amount of money on the table.

CO$T submitted multiple public record act requests to SMART seeking details of this transaction. After much delay, all that we received were:

- A copy of the SMART/Sonic agreement with an addendum that grants the company an extension, at their option, of 60 years (on top of the 20 in the original agreement)
- A brochure describing the arrangement as a successful public private partnership arrangement
- The RFP, four proposals and other documents that were issued by SMART for its WiFi service
- A heavily redacted series of documents that purport to support FMV received ($390,000 in unspecified internet services, [possible] equipment, etc.) by SMART from Sonic for the latter's occupancy in SMART's ROW
- A standard-issue biography and link for Farhad Mansourian; described in SMART minutes and therefore presumed to be the Real Estate Negotiator for SMART for the Agreement.

None of the information received remotely supports an 80-year, no-bid agreement of questionable legality that denies SMART a massive, now forsaken, revenue stream. CO$T believes it has a duty to sunlight this information. However, before so doing, we would be pleased to receive before the end of business on February 18 any information that SMART may have in its possession that provide a better or more complete understanding of what transpired that was not provided in response to our PRAs.

Sincerely,

Doug Kelly
CO$T Director and Officer

Kingston Cole,
CO$T Director

Mimi Willard
CO$T President

CO$T Coalition Of Sensible Taxpayers

THE TAXPAYERS' VOICE

February 19, 2020 -- FOR IMMEDIATE RELEASE

CO$T Raises Concerns re SMART's Fiber Optic Contract

Kentfield, CA: The Coalition of Sensible Taxpayers' research uncovered an unusual contract under which SMART awarded Sonic rights to place fiber-optic cable in the railroad's right of way. The contract was concluded without a competitive bid, for an exceptionally long 80 year period, and with SMART receiving no cash for the multi-decade use of its valuable ROW.

On February 13, 2019, the Coalition of Sensible Taxpayers sent a letter (copy attached) to SMART Board Chairman Eric Lucan and Director Dan Hillmer detailing information about SMART's contract with Sonic that CO$T gleaned through public records act (PRA) requests, board minutes and agenda packets, and analysis by telecommunications experts. CO$T's letter detailed a chain of events that did not comply with established transit industry contracting procedures and that may have resulted in hundreds of millions of dollars left on the table over the unusually long 80 year contract period.

Before going public with this information, CO$T offered SMART the opportunity to supply any further information in its possession that would provide a better or more complete understanding of what transpired and that was not provided in response to CO$T's prior series of PRAs. Having received no reply, CO$T believes no further information is forthcoming from SMART and as such, it is appropriate to sunlight the matter for the press and members of the public to follow up.

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This article appeared in the Marin Independent Journal on February 28, 2020

NEWS LOCAL NEWS

SMART, COST spar over fiber-optic deal

By WILL HOUSTON | whouston@marinij.com |

PUBLISHED: February 28, 2020 at 4:20 p.m. | UPDATED: February 28, 2020 at 6:07 p.m.

SMART and the Coalition of Sensible Taxpayers are clashing over whether the transit district missed out on a potentially lucrative revenue generator by approving an up to 80-year fiber-optic agreement.

The debate comes as SMART seeks voter approval in Marin and Sonoma counties next week on a 30-year sales tax extension, Measure I. SMART officials say the quarter-cent sales tax extension is necessary to avoid service cuts and would assure long-term financial security given its limited revenue sources.

SMART dismissed COST's assertions in a letter on Friday, describing them as politically motivated, baseless and incorrect. COST has been an outspoken opponent of Measure I, and said it raised concerns about the agreement as part of its opposition platform.

"The truth is that the partnership has significant financial benefits for SMART and we have not given up any ability to generate revenue for the district," SMART's chief financial officer Erin McGrath wrote in a letter to COST on Friday.

Kingston Cole, COST board member and a retired longtime telecommunications consultant, said in his 30 years of determining fair market value for fiber-optic cable installations he has never seen an agreement like the one struck in 2015 between SMART and Sonic, the largest independent internet service provider in Northern California. Cole, who owns the Kingston Cole & Associates firm, said records show SMART essentially cut a "sweetheart deal" by approving an 80-year contract with Sonic without issuing a request for proposals as well as for accepting only in-kind contributions but no cash payments.

###

The balance of this article can be found at https://www.marinij.com/2020/02/28/smart-cost-spar-over-fiber-optic-deal/

A copy of SMART's letter can be viewed at bit.ly/399Z8BI. COST's summary can be viewed at bit.ly/2TauKkw.

SMART– Sonic Public-Private Partnership timeline of events

Source: SMART board meeting agenda documents
Updated 2/16/20

Executive Summary

On September 18, 2013, SMART General Manager, Farhad Mansourian, "provided his written report to the Board. He stated that on page 6 of the report there are pictures that show the systems and fiber-optic conduits being installed on SMART's right-of-way. Once construction is complete a **Request for Proposal (RFP) will be issued for all interested businesses wanting to utilize SMART's conduit.**

The SMART General Manager and a representative from **Sonic Telecom LLC** met in closed session on:

September 14, 2014
December 17, 2014
January 21, 2015.

The SMART Board made no attempt to discuss the nature of the real estate transaction under negotiation at a public meeting prior to entering into closed session.

SMART violated the Brown Act in all cases by not properly disclosing the negotiating parties or the purpose of the session: price, terms, or both. See ***Institute for Local Government** below.

After leaving each closed-session, the SMART Board reported: "Reported Out: Direction given to staff.

On May 6, 2015, SMART General Manager announced (during his General Manager's Report) to the SMART Board of Directors he had entered into a **20-year** license agreement with Sonic Telecom LLC. The Board did not vote to approve the contract and there was little discussion regarding the topic.

On March 6, 2019, SMART General Manager entered into closed session with Sonic Telecom LLC. Exiting the closed-session the board reported: "Report Out: Direction given to staff. No action taken."

Negotiations in this closed session and or sometime thereafter produced a First Amendment to the license agreement extending the terms by an additional **60-years** for a total agreement term of **80-years**. The board and staff did not discuss this contract extension at a public meeting and the board did not vote to approve the amendment. The agreement is not part of SMART's public records. It surfaced from a public records request.

FIRST AMENDMENT TO LICENSE AGREEMENT BY AND
BETWEEN SONOMA-MARIN AREA RAIL TRANSIT AND SONIC TELECOM LLC
This FIRST AMENDMENT TO LICENSE AGREEMENT ("First Amendment") is made this 29th day of MAY, 2019, by and between SONOMA-MARIN AREA RAIL TRANSIT DISTRICT, a California public agency ("SMART"), and Sonic Telecom LLC, a California limited liability company ("Licensee").

…this Agreement shall automatically renew for additional periods of ten (10) years each (the "Renewal Te1ms"), unless Licensee notifies SMART in writing of its election not to extend this Agreement not less than six (6) months prior to the expiration date of the Initial Term or then current Renewal Term, if any. The Renewal Terms shall be upon all the terms covenants, and conditions of this Agreement. Licensee shall have the option to renew this Agreement for up to six (6) consecutive Renewal Terms.

In April 2018, SMART released a report titled: *Sonoma Marin Area Rail Transit (SMART) – Sonic Public-Private*, which the SMART General Manager provided to the SMART Board of Directors in paper form at the April 28, 2018 meeting, and again in paper form on April 25, 2018, to the MARIN COUNTY COUNCIL OF MAYORS AND COUNCILMEMBERS. The report makes several claims:

- SMART saved the cost of network deployment, while maintaining the ability to lease the remaining conduits. Sonic's partnership provided an CapEx savings of nearly $1 million as well as an OpEx in-kind exchange, saving SMART an additional $390,000 per year.

SMART– Sonic Public-Private Partnership timeline of events

Source: SMART board meeting agenda documents
Updated 2/16/20

- The Sonoma-Marin Area Rail Transit (SMART) and Sonic Public Private Partnership have resulted in a vast economic win for SMART, Sonoma County municipalities, businesses and schools.
- As a direct result of the SMART/Sonic public-private partnership Sonic is connecting 70 Sonoma County schools with dark fiber.

TIMELINE

SMART Board meeting date	Agenda Language	Minutes Language	Report Out
9/18/13 Regular Board Meeting	General Manager's Report Farhad Mansourian tells the board he will issue and RFP will be issued for use of the conduit in SMART's rights-of-way.	General Manager Farhad Mansourian provided his **written report** to the Board. He stated that on page 6 of the report there are pictures that show the systems and fiberoptic conduits being installed on SMART's right-of-way. **Once construction is complete a Request for Proposal (RFP) will be issued for all interested businesses wanting to utilize SMART's conduit.** Mr. Mansourian met with Supervisor Carrillo, Supervisor McGuire and Ben Stone, Director of Economic Development Board to discuss the fiber-optic conduits being installed on SMART's right-of-way and the process once construction is complete. This is important to the County of Sonoma since they have a fiber-optic program for the entire County.	
9/17/14 Closed Session **The Brown Act requires agencies to declare the purpose of the closed session. Under 54956.8, only price and terms, or both can be discussed. SMART failed to identify Sonic as the negotiating party or the purpose in all closed sessions.**	9. Closed Session a. Conference with Real Estate Negotiator Farhad Mansourian, pursuant to Government Code Section 54956.8	9. Closed Session a. Conference with Real Estate Negotiator Farhad Mansourian, pursuant to Government Code Section 54956.8 Property: Sonoma Marin Area Rail Transit District Right-of-Way Mile Post (MP): MP 14.9 – 68.2 and MP B25.8 and B49.8 Negotiating Parties: Farhad Mansourian – Sonic	Report Out: Direction given to staff.
12/17/14 Closed Session	10.Closed Session b. Conference with General Manager, Farhad Mansourian, pursuant to Government Code Section 54956.8 regarding real estate property Negotiations	10. Closed Session b. Conference with General Manager, Farhad Mansourian, pursuant to Government Code Section 54956.8 regarding real estate property negotiations. Property: Sonoma-Marin Area Rail Transit Property Address: Right-of-Way MP 14.9 – 68.9 and MP B25.8 – B49.8 Negotiating Parties: Farhad Mansourian - Sonic	*Report Out:* Continued to next Board meeting.
1/21/15 Closed Session	8. Closed Session b. Conference with General Manager, Farhad Mansourian, pursuant to Government Code Section 54956.8 regarding real estate property negotiations.	8. Closed Session b. Conference with General Manager, Farhad Mansourian, pursuant to California Government Code Section 54956.8 regarding real estate property negotiations. Property: Sonoma-Marin Area Rail Transit	Report Out: Direction given to staff.

SMART– Sonic Public-Private Partnership timeline of events

Source: SMART board meeting agenda documents
Updated 2/16/20

		Property Address: Right-of-Way MP 14.9 – 68.9 and MP B25.8 – B49.8 Negotiating Parties: Farhad Mansourian - Sonic	
5/6/15 Regular Board Meeting	5. General Manager's Report	Lastly, SMART has negotiated and finalized an agreement with Sonic Telecom, LLC that will provide Fiber Optic along the SMART Right-of-Way. Sonic Telecom will provide SMART with the following: • Non-Exclusive License • Dedicated Fiber Optic Stands • Complete telecommunication services (telephone and internet) • Disaster Recovery Data Center • Emergency Network Restorations • Communications Systems • Public Wi-Fi Access at SMART Stations SMART is working together with Sonic Telecom to inform municipalities and counties of this service.	5/6/15 Regular Board Meeting
3/6/19 Closed Session	**9. Closed Session** a. Conference with General Manager, Farhad Mansourian, pursuant to Government Code Section 54956.8 regarding real estate property negotiations. Property: Sonoma-Marin Area Rail Transit District Property Address: Right-of-Way (MP 14.9-68 and MP B25.8-B49.8) Negotiating Parties: Farhad Mansourian – Sonic	9. Closed Session a. Conference with General Manager, Farhad Mansourian, pursuant to Government Code Section 54956.8 regarding real estate property negotiations. Property: Sonoma-Marin Area Rail Transit District Property Address: Right-of-Way (MP 14.9-68 and MP B25.8-B49.8} Negotiating Parties: Farhad Mansourian - Sonic	Report Out: Direction given to staff. No action taken.

1/17/18 Regular Board Meeting	***5. General Managers Report: Minutes*** Mr. Mansourian said that SMART entered into partnership with Sonic in 2015 for the fiber optic system in Sonoma and Marin Counties. He reported that Sonic has provided fiber optic services to over 2,200 business, thousand more business locations will be connected over the next two years. Additionally, over 60 North Bay schools are expected to be connected by end of 2018 at no cost.

4/18/18 Regular Board Meeting	***5. General Manager's Report: Minutes*** He distributed to the Board and members of the public the **Sonic Optic Deployment report**. He said that since SMART has entered into partnership with Sonic for fiber optic system in Sonoma and Marin Counties, Sonic has provided fiber optic services to over 2,200 business, and in the next two-years thousand more business will be connected. Additionally, over 70 North Bay schools will be connected at no cost. Note: This report is titled, ***Sonoma Marin Area Rail Transit (SMART) – Sonic Public-Private.*** There was no board discussion about the report. The report can be found on SMART's website as part of the April 18, 2018 Board of Directors Meeting agenda packet and additional documents.

SMART– Sonic Public-Private Partnership timeline of events

Source: SMART board meeting agenda documents
Updated 2/16/20

4/25/18 Regular Board Meeting	MARIN COUNTY COUNCIL OF MAYORS AND COUNCILMEMBERS AGENDA, Wednesday, April 25, 2018 AGENDA: 5.f. Sonoma/Marin Area Rail Transit (SMART) Commission – Verbal report from Dan Hillmer, Larkspur (Click here to view the SMART General Manager's Report for April, 2018) MINUTES: 5.f. Sonoma/Marin Area Rail Transit (SMART) Commission – Dan Hillmer, Larkspur Visit http://www.sonomamarintrain.org for the general manager's report. For the last two months, SMART has run with 100% on-time arrivals. Copies are at each table are copies of background information on a telecommunications project between SONIC and SMART.

Institute for Local Government: *Brown Act Agenda Safe Harbor Listings for Closed Sessions*. Conference with Real Property Negotiations (§ 54956.8)

- **Property:** (Specify street address, or if no street address, the parcel number or other unique reference, of the real property)
- **Agency Negotiation:** (Names of negotiators attending the closed session) (if specified negotiator can't attend – announce who will attend at the open session)
- **Negotiating Parties:** (Specify name of Party (not agent))
- **Under Negotiation**: (Specify whether instruction to negotiator will concern **price, terms of payment, or both)**

end

	BRUCE VOGEN: SMART - PUBLIC RECORDS REQUESTS		STAUS AS OF >>>>>	2/21/2020			*CPRA LEGAL RESPONSE WINDOW							
	PRA REQUEST #	General Subject and Comments.	Records Request Document Reference	PRIMARY SUBJECT	Date PRA submitted to SMART	Date Email Read by SMART	Earliest 10-day window	LATEST 24 day window	Date of SMART's Initial Response (10 day limit)	Date SMART said files would be ready	**Final Response Date**	Total Processing Days	Days over 24-day window	Completed
	A	**B**	**C**	**D**	**E**	**F**	**G**	**H**	**I**	**J**	**K**	**L**	**M**	**N**
1	**PRA001**	Seeking SMART-Sonic original fiber agreement and any amendments with more detail. Not in public records on sonomamarin.org	Public Records Request 001 – Smart-Sonic agreement	SMART/SONIC	9/11/2019	9/11/2019	9/21/2019	10/5/2019	9/23/2019	10/7/2019	10/15/2019	34	10	Yes. No reason for delays
2	**PRA02**	GBS Group WiFi Agreement; onboard wi-fi service. Station service provided by Sonic. Did SMART issue an RFP for thi contract? Yes.	PRA02 GBS Group WiFi Agreement	SMART/WIFI	9/16/2019	9/16/2019	9/26/2019	10/10/2019	9/26/2019	10/9/2019	10/18/2019	32	8	Yes. No reason for delays
3	**PRA05**	Did SMART issue an RFP for the fiber contract? No.	PRA05 Procurement Documents for Sonic Fiber Optic Agreement	SMART/SONIC	10/16/2019	10/16/2019	10/26/2019	11/9/2019	10/28/2019	No documents met criteria	10/28/2019	12	-	Yes
4	**PRA07**	Seeking any written land use appraisal reports, opinions or relevant memoranda of meetings. Did SMART solicit the services of a qualified consultant to appraise their ROW. No.	PRA07 SMART-Sonic Agreement Version 2	SMART/SONIC	11/4/2019	11/4/2019	11/14/2019	11/28/2019	11/15/2019	Multiple extensions for no cause	12/13/2019	39	15	Yes. No reason for delays
5	**PRA10**	What are Farhad Mansourian real estate qualifications particularly as they apply to telecommunications infrastructrure? SMART provided a 1/2 page bio from their website.	PRA10 - FM Qualifications	SMART/SONIC	12/17/2019	12/19/2019	12/27/2019	1/10/2020	12/30/2019	1/13/2020	1/13/2020	27	3	Yes

Issues: Whether SMART, using a no-bid contract with Sonic for fiber and IT services:

1. **Violated standard competitive bidding requirements or legal alternatives in its award to Sonic of an 80-year contract for access into its fiber optic conduit system; and,**
2. **Lost hundreds of millions of dollars in potential revenues (over the 80-year term) from Sonic; and,**
3. **Jeopardized additional, future revenue streams from other carriers, i.e., competitors of Sonic.**

A. Executive Summary

I am Kingston Cole. My firm, Kingston Cole & Associates has performed specialized evaluations of public agencies rights-of-way (ROW), assisted clients in negotiations and provided other consulting functions to transit agencies (five of the six largest urban agencies in the U.S.) and 30+ other governmental agencies for almost 30 years. My area of specialization is determining fair market value (FMV) for placement of fiber optic systems (and cell towers) in the dedicated ROW of these agencies.

I have generated hundreds of millions in revenues for these clients based on one guiding principle: Their ROW are significant financial assets that can be developed as revenue streams by using comparative data from other, similar agencies. To my knowledge, and based on comments from several of my clients, I have no competition for offering these niche market consulting services. A partial client list is provided in Attachment 1.

As detailed below, I believe the Sonoma Marin Area Rapid Transit (SMART) violated public procurement statutes, rules, regulations, etc., when that public agency awarded a sole-source contract (Agreement: Attachment 2) to Sonic Communications in an agreement (the Sonic Communications Public-Private Partnership executed in April of 2015). Specifically, SMART committed to an extraordinary long-term (80 years: See Attachment 3, "First Amendment") contractual agreement (20 years is the norm) for provision of fiber optic equipment and services with Sonic Communications without either:

- Using a competitive bid process, e.g., issuance of a request for proposals (RFP); or,
- Seeking independent expert advice from a consulting firm, e.g., specialized land appraisal, to determine fair market value (FMV) of use of SMART's dedicated rights-of-way (ROW); and therefore justify a sole-source award.

Based on responses from SMART to four California Public Records Act (PRA), it appears that all negotiations were conducted between Sonic personnel and General Manager Farhad Monsourian; listed as "Real Estate Negotiator" in minutes from SMART Board of Directors meetings leading up to execution of the Agreement.

My concerns regarding the Agreement are:

- I have provided consulting services to more than 30 government agencies in my career. Every one of them was axiomatic in its insistence that a competitive bid process must be

used to determine FMV for occupancies by private companies its fiber optic systems (or other ROW). SMART did not.

- Longitudinal encroachments in ROW are not ordinary, one-off land use transactions. They have much greater value and require specialized expertise to determine FMV. SMART made no attempt to seek expert outside assistance of any kind before negotiating the Agreement.
- The term of the Agreement, 80 years (including renewals at Sonic's sole option), is unheard of in the telecommunications industry. 20 to 25 years is the norm.
- My estimate of SMART's lost (in sole-source negotiations with Sonic) revenue stream (described in detail below) is calculated as follows:
    - $2.50 per-linear-foot-per-year (nominal amount) x 5280 feet = $13,200 per-mile-per-year
    - 70 miles[1] x $13,200 per-linear-foot-per-year = $924,000 annual (year 1) revenue
    - **$924,000 x 80 years w/ a 4% annual COLA (compounded) = $530,648,372.85**
- Instead, SMART contracted to receive NO money whatsoever, assigning exactly equal value to services (aka "operational savings") provided by Sonic to SMART.
- SMART's alleged annual operational "savings", $390,000 for IT, video and telephone services provided by Sonic, is not supported by any independent cost/benefit analysis. SMART has no idea if this annual "savings" is in fact a good deal—or could have been matched or exceeded by another telecommunications carrier, such as AT&T.
- The U.S. Telecommunications Act of 1996 requires transit and other government agencies to charge reasonable, non-discriminatory rates for access into their fiber optic systems. SMART's exchanging of $390,000 in opaque "service savings" and other in-kind considerations from Sonic make it almost impossible for future carriers to be treated fairly in negotiations to occupy SMART's conduit system; thus leading to potential, costly litigation.

B. Background

In the spring of 2017, I was contacted by a person who does not wish to be identified. He was at the time working as a participating consultant with SMART and other agencies to develop fiber optic policies and strategies for Sonoma and Marin Counties. He asked my opinion regarding the SMART-Sonic fiber optic contract that had been executed in April of 2015. He stated that he did not believe that any type of competitive procurement process had been used by SMART prior to the award in May of 2015. He asked me if this was appropriate behavior, given the highly specialized nature of fiber optic occupancies. My advice to him was two-fold:

- Absent a competitive bid process, a public agency's only recourse is a due diligence search for specialized, fiber optic-specific consulting services.
    - I stated that I believe that KC&A is the only such firm in the country.
    - He stated that his research indicated that statement was true.

[1] SMART has 45 miles of existing, operational ROW in 2020. The agency has promised to build ultimately 70 miles. Given the 80-year term of the Agreement, we have used the higher mileage number.

- Standard appraisal methodologies (if one was used by SMART) severely understate the FMV of fiber optic occupancies.

My contact decided to drop the matter after our discussions. He has moved on.

In October of 2019, I was asked by the Coalition of Sensible Taxpayers (CO$T) to review the same issue in more depth. We began our coordinated investigation by a review of SMART meeting minutes, Internet information literature regarding the Agreement, etc. CO$T then submitted a series of California public record act requests (PRA's) to test the no-bid status of the Agreement.

The first PRA (Attachment 4) was for all documents, including proposals, RFP's, evaluation criteria, etc., in SMART's possession regarding the fiber optic Agreement. In response, we received copies of the executed Agreement, including a follow-up First Amendment that extended the term of the Agreement for an additional 60 years (beyond the original 20-year term). No underlying documents, dealing with negotiations, land use appraisals, RFP's or justifications for a sole source award were provided.

We submitted a second request (Attachment 5) for a similar, telecommunications-related matter to determine if the Sonic Agreement was part of a pattern: Any information, including an RFP, submitted proposals, etc., to provide WiFi service to passengers at stations and in train cars. In response, we received a detailed RFP issued by SMART and four different proposals in response to the RFP. SMART, at least for WiFi services, seemed to have determined that competition existed. Ergo, value for WiFi could be determined through a bona fide RFP process and an award could be (publicly) based on that value. None of these procedures were followed in the Sonic negotiations and award.

We then submitted another PRA (Attachment 6) requesting information from SMART regarding any approach (other than a formal RFP process) that the agency might have used to evaluate the Sonic proposal for FMV. Specifically, we wanted to determine if SMART had used some type of standardized land use appraisal firm to assist staff in determining FMV. The response was a heavily redacted set of numbers that total $390,000. That number apparently (redactions prevented any in-depth analysis) is the annual contract amount that parties agreed is the "annual cost savings" that SMART receives/benefits from Sonic to operate and maintain the fiber optic system, safety features, telephone services, cameras, etc. along the entire ROW. No information was provided that would correlate that number with a determination of FMV by an independent third party. The response provided none of the information requested regarding any assistance in expert assistance that would have obviated the need for a competitive bid process.

The only mention of any alleged expertise used in developing the Sonic/SMART contract was several mentions in the minutes of SMART board meetings: specifically referencing Mr. Farhad Monsourian as a Real Estate Negotiator. We then submitted a fourth PRA (Attachment 7) asking for his credentials, experience and expertise in determining and negotiating FMV for real estate transactions of any kind. Per a Google search, Mr. Monsourian has never worked in the transit industry until his current assignment in SMART. His previous work experience was in the Marin County Public Works Department, where he rose to be its Director after 20+ years of service. He

has no formal training as either a land appraiser or contract negotiator**. We are awaiting SMART's reply; their response to our other PRAs have almost always extended past the statutory deadline.**

C. Analysis

I believe Mr. Monsourian lacked the experience and expertise in determining FMV for SMART in his negotiations with Sonic. No evidence of outside expertise that might have assisted him is evident in the responses to our PRA's. Given my long-term experience in these types of appraisals, I further believe that he has deprived SMART of millions in revenues with the finalized Agreement. The reasons for that judgment are as follows:

1. Term: 80 years Renewals all at Sonic's option

The initial term in the executed April 2015 Agreement was for 20 years with two 10-year extensions (at Sonic's sole option). A May 2019 First Amendment increased the term by 60 years (from two to six renewable terms of 10 years each; again solely at Sonic's option.).

Standard terms, including renewals, for fiber optic agreements are between 20 and 25 years. Other terms and conditions stated by the parties for commencement of re-negotiations, failure to reach mutual agreement and removal of fiber or related licensee-owned equipment in case of default or final termination of the contract are missing from the Agreement. These are important, standard clauses that protect a transit agency. None of them, or similar language, is in the Agreement.

The 80-year term essentially binds SMART for almost a century; unheard of in the transit industry world for any type of telecommunications longitudinal occupancy.

2. SMART's Potential Revenue Stream

KC&A developed fiber optic occupancy rates for clients based on a comprehensive data base that comprised comparable rates for more than 30 other public agencies; many of these agencies were KC&A clients. We reviewed the data to match a client's rates with other agencies based on several comparables, including:

- Similar size metropolitan statistical areas
- Special characteristics of a client's ROW
    - Congested, high-value areas that fiber optic carriers were essentially forced to use
        - All fiber optic carriers must use either the Lincoln or Holland Tunnels, owned and operated by the Port Authority of New York and New Jersey to access Wall Street from all points west of the city.

The four-innerduct, 45-mile conduit system that was paid for and installed by SMART is a typical arrangement for a transit agency. It includes four separate innerducts that can be used by the agency or leased for commercial services.

For example, BART developed a four-innerduct conduit system along its ROW in 1994. It then allowed four competitive local exchange carriers (CLEC's) to place fiber at their expense in the

system. **The CLEC's initially paid BART $3 million per-year (now more than $10 million annually) for the use of the ROW. BART also received in kind contributions of 48 strands and a trunked radio system.**

This is a typical public/private partnership arrangement for a transit agency: a substantive, FMV revenue stream paid by all interested CLEC's—plus in-kind contributions. BART realized that its ROW was an asset—and has capitalized on that fact for more than 20+ years. Other clients of mine, e.g., Port Authority of New York and New Jersey, New York Metropolitan Transit Authority, have had similar, even-larger-scale successes in creating revenue stream. SMART completely missed the revenue opportunity—and settled for "annual cost savings"—a number determined (but ill-defined) by Sonic.

For a CLEC such as Sonic, occupancy in the SMART system, particularly when it only involved the minimal expense of installing fiber (and exit points), is a "home run." It allows Sonic to interconnect high-growth Santa Rosa with all cities and townships south to San Rafael (and now Larkspur)—all filled with excellent business prospects. Sonic can then reach San Francisco and other southern (and easterly) points via licensing of fiber in Zayo system that crosses the Golden Gate Bridge.

I believe that, due to a lack of due diligence by SMART, a major revenue opportunity has been wasted for the next 80 years. The best comparable (and closest) ROW for comparison purposes is an appraisal (Attachment 8) I performed for the National Park Service involving access points to the Golden Gate Bridge; including ROW in Marin County. That report also provides details on how I develop my revenue estimates—which again have informed more than 30 government agencies' real estate development programs.

The following were the recommended 2013 rates for the GGNRA ROW:

Carrier[2]	Cable Size	Per-Linear-Foot-Per-Year Rate	Total Linear Feet	Total Annual Fee*
AT&T (Occupied Conduit)	432 Strands	$17.70	18,047.43	$319,439.51
AT&T Empty Conduit (1/4 Rate)		$ 4.43	18,047.43	$ 79,950.11
AT&T Total	N/A	N/A		$399,389.62
Zayo	432 Strands	$17.70	17,845.30	$315,861.81
Annual Grand Total:				$715,251.43

(* Assume an annual 4% Cost of Living Adjustment)

Using these rates, as well as other comparables from transit districts with similar demographics and business opportunities, I have developed an estimate of the revenue stream that SMART should have received for it valuable ROW.

a. Estimated Annual Revenue Stream

- $2.50 per-linear-foot-per-year (nominal amount) x 5280 feet = $13,200 per-mile-per-year
- 70 miles[3] x $13,200 per-linear-foot-per-year = $924,000 annual (year 1) revenue
- **$924,000 x 80 years w/ a 4% annual COLA (compounded) = $530,648,372.85**

I have used a nominal $2.50 per-linear-foot-per-year (the standard measurement for longitudinal fiber optic valuations) estimate. Depending upon interest elicited in a competitive bid process, it could be even higher.

The bottom line is that SMART is receiving no revenues from the Agreement with Sonic. Instead, it is receiving only in-kind "cost savings," and 60 strands of fiber dedicated to SMART use (and 12 more dark fiber strands for the two counties that are unused)

[2] A standard appraisal firm performed a side-by-side evaluation with KC&A, at the behest of the NPS. That firm recommended rates approximately ½ of those in my KC&A table above. AT&T and Zayo readily accepted my rates without negotiation or argument. A specialized appraisal produced twice the revenue of a standard appraisal.

[3] SMART has 45 miles of existing, operational ROW in 2020. The agency has promised to build ultimately 70 miles. Given the 80-year term of the Agreement, we have used the higher mileage number.

The annual revenue estimate is for occupancy of one of four innerducts in the SMART system with a 432-strand cable (the industry standard). If more than one CLEC had put a fiber cable in the system, SMART's annual revenue stream would be double or triple what Sonic alone should have paid. I assume that SMART, as all of my transit agency clients, would retain at least one innerduct for its own use.

A standard negotiating ploy, always accepted, is to demand an in-kind contribution of a 12 to 48 strands of dark fiber in a CLEC's cable. (in SMART's case, Sonic provided the agency with 60 strands plus 12 strands [six for each county] limited for use only by government agencies)

3. Other Deal Points in the SMART/Sonic Agreement

a. Mutual Considerations of the Agreement

In 2018, SMART and Sonic issued a handout piece (Attachment 9) entitled, Fiber Optic deployment in SMART Infrastructure" that described (accurately) the in-kind physical fiber optic contributions that the latter had offered to the former. It also described myriad economic benefits the system would offer to the citizens, schools, businesses, etc., through this public/private partnership. I will limit my analysis to the deal points in the contract and the hand6out piece—and leave the cost/benefit analysis to be determined by the alleged beneficiaries.

Consideration for the Agreement is an alleged $390,000 in "savings" (for SMART) in IT, video and telephone services provided by Sonic as well as in return for Sonic's 80-year use of a SMART innerduct. No attempt was made by SMART to determine if these services represent FMV by asking for equivalent services from another CLEC or AT&T.

Additional consideration is 60 strands of dark fiber for SMART's sole use and an additional 12 strands (six strands each for Sonoma and Marin Counties) which can only be used for governmental or educational purposes. All of these fiber strands are in the Sonic 432-strand cable which is in one innerduct (in a four-innerduct conduit system).

12 to 48 strands are typical in-kind contributions required by transit agencies in negotiations with carriers seeking occupancy in their ROW. The demand is based on the immediate needs of the agency and varies widely. 60 strands for SMART's use represents a good deal particularly for a new agency.

The 12 additional strands for the counties add to that value. The problem is that these dark fibers are rarely used by the government and educational entities. Political wrangling as well as existing contractual arrangements with CLEC's, AT&T, etc., generally preclude usage.

Sonic also provides maintenance and repair of the entire fiber optic system at its expense. Fiber optic systems, particularly when they are in underground conduit facilities are extremely low maintenance. Other than a major disaster such as an earthquake or an errant backhoe, they essentially are maintenance-free.

a. Operational cost savings for SMART

Sonic claims that it is saving SMART $390,000 on an annual basis by providing network and interconnection (telephone and internet services, video surveillance, etc.) functions, i.e., IT operational costs. These "savings" for the agency are consideration for use of SMART's conduit system for 80 years. These are operational costs that could be assumed by another CLEC. Another option would be the State contract with AT&T that provides discounts for Gigabit networks such as Marin County.

Based on the response to our third PRA request (Attachment 6), we were unable to determine whether SMART had made any attempt to ask for bids to provide IT services comparable to those offered by Sonic. It appears that the agency and Sonic considered the $390,000 annual payment to be sufficient consideration without any regard for determining FMV for those services. The wholesale redactions in the PRA response prevent any item-by-item analysis.

My analysis of the revenue stream to SMART of FMV for licensing of one innerduct in the its system to a CLEC through a competitive bid process is: $924,000 per-year. Two CLEC's would produce twice that amount. In-kind contributions of 12 to 48 strands of dark fiber are standard, acceptable terms acceptable to those same CLEC's. The $924,000 in licensing fees would also include a COLA of 4% annually. The potential (all renewals are only at Sonic's option) 80-year term of the Agreement makes SMART's lost revenue opportunity (as noted above, $531 million per-carrier) even more egregious:

b. $600,000 in one-time capital costs (installation of fiber in SMART-owned conduit)

Sonic asserts that its installation of fiber in SMART's conduit system saved the agency $600,000. This claim is based on the statement that SMART would have paid for and installed two cables (one 12-strand; one 48-strand) at its own expense of it had not availed itself of Sonic's offer of 60 strands in the CLEC's 432-strand cable. (Sonic included another 12 strands, six for each county of dark fiber for government or educational use only.)

90% of all construction costs for fiber optic systems are for "digging the hole." That is, engineering costs to design the system, construction costs and equipment costs, e.g., ducts, entry and exit points, etc. The cost of the SMART fiber, 60 strands in a 432-strand cable is negligible for the following reasons:

- All the permitting, engineering, trenching and/or boring costs to install the conduit system were already paid for by SMART as part of its overall design and build-out of its rail system.
    - These costs may also be viewed as cost savings for Sonic
- Fiber costs for an installed 432-strand cable are approximately $2.50 to $3.00 per-linear-foot. Smaller strand count cables are less
    - One-time fiber costs on the 45-mile SMART ROW would be: $594,000 to $712,800.

The SMART/Sonic claims in this area appear to be, at least in this case, accurate.

c. Sonic Service Guarantees

Sonic provides 24/7/365-day emergency restoration break/fix service for the fiber system, with a maximum four-hour response on-site anywhere along the ROW. This is a standard, minimal offer made by CLEC's to business customers. Large clients with time constraints, e.g., data centers and other high activity IT requirements will often require much faster response times.

This offer by Sonic appears to be sufficient, however, for SMART's IT needs. Train service can be shut down for four hours without massive disruption of SMART's service, if an outage occurs.

4. Other Concerns:

a. Rates versus in kind services

The US. Telecommunications Act of 1996, subsection 253 (e), permits local governments, regional agencies, transit agencies, etc., to manage their public ROW. They are thereby allowed to require fair and reasonable compensation from telecommunications providers on a competitively neutral and non-discriminatory basis for the use of their public ROW. For all of my clients, this subsection has plainly required establishing rate structures and programs that ensure fairness to all carriers seeking access in their systems.

By exchanging access to its ROW in exchange for in-kind operational expense "savings", SMART appears to have violated this provision. SMART has no need of another set of the same services from another CLEC because Sonic is providing them all. If another carrier requests access in SMART's conduit system, it will be almost impossible to determine what rate, price or other consideration will be as competitively neutral and non-discriminatory as that between SMART and Sonic. This problem is exacerbated by SMART's insistence that much of the contract is confidential.

The Agreement effectively locks out future competitors and may lead to future litigation if and when a future CLEC seeks entry into the conduit system. The Agreement is a *prima facie* violation of the 1996 U.S. Telecommunications Act of 1996.

D. Conclusion

For all of the reasons cited above, I do not believe either SMART or the taxpayers of Marin and Sonoma counties received FMV from the Sonic Agreement. By (apparently) treating this exchange as a one-off land use transaction, the agency has failed to develop fully a potential long-term revenue stream valued at over $1/2 Billion. The 80-year term is a clear indicator that SMART simply does not understand the standards of the telecommunications industry or the norms of mass transit agencies in their dealings with that industry. And now SMART is bound to Sonic's contract services – to the collective financial detriment of riders and taxpayers -- for almost a century. Minimal due diligence, e.g., issuing an RFP (as SMART did with its wireless services in its stations) would have fairly determined market interest as well as FMV. Seeking expert consulting assistance would have also been beneficial.

Using IT services provided and arbitrarily priced ($390,000) by Sonic in exchange for a real property right (a license in this case) without apparent comparative cost/benefit analysis is also

problematic. And it may be violative of the US Telecommunications Act, if and when another CLEC expresses interest in the SMART conduit system.

The citizens of our counties deserve better.

Kingston Cole, Principal
Kingston Cole & Associates

Attachments:

1. Partial list of KC&A clients
2. SMART/Sonic License Agreement
3. SMART/Sonic First Amendment to License Agreement
4. PRA for information regarding any RFP, etc., issued by SMART for its conduit system
5. PRA for an RFP for WiFi services in SMART stations
6. PRA for any information regarding sole sourcing/consulting expertise of Agreement
7. PRA for credentials, experience, etc., of F. Monsourian as Chief Real Estate Negotiator
8. National Park Service report prepared by KC&A
9. SMART/Sonic Public Private Partnership hand out material

SMART LICENSE AGREEMENT No. 2015-LIC-001

This Right-of-Way and License Agreement ("Agreement") is entered by and between the SONOMA-MARIN AREA RAIL TRANSIT DISTRICT, a California public agency ("SMART") and Sonic Telecom, LLC, a California limited liability company ("Licensee"). SMART and Licensee are sometimes collectively referred to herein as the "Parties".

RECITALS

WHEREAS, SMART hold and maintains a railroad right-of-way for a passenger rail and bicycle-pedestrian pathway along a seventy mile corridor in Marin and Sonoma counties in the State of California ("ROW");

WHEREAS, SMART plans to construct, operate and maintain passenger rail service ("Rail Service") within the ROW, which plans also included the installation of Fiber optic cable necessary for its operations;

WHEREAS, SMART has installed or will install conduit along the East side of the rail line in the ROW from San Rafael, California to Airport Blvd, Santa Rosa California along the 43 mile route shown in Exhibit A, attached hereto and incorporated herein;

WHEREAS, Licensee, a licensed California public utility providing internet and telecommunications services to its residential and business customers in Marin and Sonoma counties, desires to place Fiber optic cable within the ROW;

WHEREAS, the Parties have determined, and the SMART Board of Directors has approved, a plan for Licensee, at its sole cost and expense, to construct, install, maintain and repair Fiber optic cable in SMART's conduit and vaults within the ROW for the Parties mutual benefit, subject to terms and conditions herein below.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt, adequacy and sufficiency of all of which are hereby acknowledged, the Parties hereto hereby agree as follows:

1. Non-Exclusive License For Fiber System. Subject to the terms and conditions herein, SMART hereby grants to Licensee a non-exclusive license in and to the ROW for the purposes of constructing, installing, operating, connecting, maintaining, repairing, upgrading, removing and replacing Fiber optic cable in SMART's Red colored conduit, measuring 1.5" in diameter and SMART owned vaults ("Fiber System"), as depicted in Exhibit A, attached hereto and incorporated herein by this reference. SMART will continue to maintain and control the ROW, including, without limitation, leasing, subleasing and granting of additional licenses.

1.1 Prior Rights. This license granted herein is made subject and subordinate to the prior and continuing right and obligation of SMART, its successors and assigns, to use the ROW in the performance of its transportation operations.

a. There is reserved unto SMART, its successors and assigns, the right to construct, reconstruct, maintain, and use existing and future facilities and appurtenances, including, without limitation, existing and future transportation, communication, railroad track, and pipeline facilities and appurtenances in, upon, over, under, across, and along the ROW.

b. This license granted to Licensee herein is made subject to all licenses, leases, easements, restrictions, conditions, covenants, encumbrances, liens, and claims of title which may affect the ROW as of the Effective Date. The word "grant" shall not be construed as a covenant against the existence of any of these interests or as a grant of interest in real property.

1.2 Underlying Rights. SMART holds and maintains a railroad right-of-way for the construction, maintenance and operation of rail service ("Underlying Rights"). The license granted hereunder is subject to the terms of the Underlying Rights, and subject to the terms which the right of way and other property interest are owned or held by the grantors of the Underlying Rights, including, but not limited to, covenants, conditions, restrictions, easements, reversionary interest, bonds, mortgages and other matters, whether or not of record, and to the rights of grantors, easements and licensees in possession. Licensee agrees to use the ROW only in a manner consistent with the Underlying Rights, and that its rights shall in all respect be subject to the terms and conditions of the Underlying Rights. Licensee shall, at its sole cost and expense, acquire or purchase any additional property rights or interests needed or necessary or appropriate for the Licensee's Permitted Use. Licensee shall release, defend (with counsel reasonably satisfactory to SMART) and indemnify SMART from and against all third party claims, liability, cost and expense or loss challenging SMART's issuance of the license granted herein and the Permitted Use allowed thereunder. In the event a third party challenge to this Agreement, or the license granted herein, results in a partial or whole restriction on or prohibition of Licensee's Permitted Use hereunder, Licensee shall be permitted to terminate this Agreement upon delivering at least sixty (60) days prior written notice to SMART. SMART MAKES NO WARRANTY, EXPRESS OR IMPLIED WITH RESPECT TO THE ROW INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ALL SUCH WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED.

1.3 Initial Term. The initial term of this Agreement shall commence on the Effective Date and shall expire on the twentieth (20th) anniversary thereof ("Initial Term").

1.4 Renewal Terms. Provided Licensee is not in default under this Agreement beyond applicable cure periods and has the necessary governmental permits, licenses, easements, property rights, franchises and approvals that may lawfully be required by federal, state or local law, statute, regulation or ordinance, this Agreement shall automatically renew for additional periods of ten (10) years each (the "Renewal Terms"), unless Licensee notifies SMART in writing of its election not to extend this Agreement not less than six (6) months prior to the expiration date of the Initial Term or then current Renewal Term, if any. The Renewal Terms shall be upon all the terms covenants, and conditions of this Agreement. Licensee shall have the option to renew this Agreement for up to two (2) consecutive Renewal Terms.

2. Permitted Use.

(a) Licensee shall have the right, at its sole cost and expense, to construct, install, maintain, replace, repair and operate the Fiber System as well as interconnect conduit and fiber in SMART vaults in the ROW ("Permitted Use"). Upon installation of the Fiber System, Licensee shall grant to SMART an exclusive and indefeasible right to use sixty (60) strands of the Fiber System ("SMART Fiber"), which may be used exclusively by SMART for any purpose, including programming and signaling. Licensee shall additionally grant a total of twelve (12) strands of Fiber for use by the cities and counties through which the SMART rail line passes. Such cities and counties shall each receive six (6) strands of Fiber within their city or county limits, respectively ("Municipal and County Fiber"). Requests by the cities and counties for use of the allocated fibers shall be made to SMART, which will review and upon approval, direct Licensee to interconnect. The remaining strands in the Fiber System ("Licensee Fiber") will be used by Licensee in the provision of its Internet and telecommunications businesses and related business activities. Licensee represents and warrants to SMART that the service provided over the Fiber System will comply with the performance levels and service standards set forth in this Agreement, including the Service Level Agreement set forth in Exhibit B, attached hereto and incorporated herein by this reference. Licensee further warrants that all services performed under this Agreement will be performed in accordance with industry standards and in a workmanlike manner.

(b) Licensee shall, at its sole expense, obtain and maintain all governmental licenses, permits, approvals or other relief required of or deemed necessary or appropriate by Licensee for the Permitted Use, including without limitation applications for zoning variances, zoning ordinances, amendments, special use permits, entry and construction permits (collectively, "Governmental Approvals"). SMART authorizes Licensee to prepare, execute and file all required applications to obtain Governmental Approvals for the Permitted Use under this Agreement and agrees to reasonably assist Licensee with such applications, but SMART shall not be responsible for incurring any out-of-pocket expenses in such regard. SMART agrees to reasonably cooperate with Licensee as necessary to obtain the Governmental Approvals.

(c) Prior to constructing and installing the Fiber System, Licensee shall submit to SMART work plans, proposed schedule and specifications. SMART shall have fifteen (15) business days to approve Licensee's plans or require revisions. Licensee shall construct and install the Fiber System in accordance with the approved plans, beginning immediately. SMART will, at its sole cost and expense, be permitted to have staff and other personnel present during the construction and installation. Licensee shall construct such signs and warnings in the ROW as may be required by SMART or local jurisdictions. During the installation and construction, Licensee shall not interfere with or obstruct SMART's right of way, or the movement of trains, SMART's construction project and other related operations. Licensee shall not permit any mechanic's or material man's lien of any kind to be attached or enforced against the ROW for any work performed by, or on behalf of, Licensee, or materials furnished to Licensee for the Fiber System.

(d) Before beginning any work in the ROW, Licensee shall obtain and maintain insurance coverage as required in Section 8 of this Agreement.

(e) With respect to the construction of the SMART Fiber, any employee performing services for Licensee shall be paid not less than the highest prevailing rate of wages, shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in the county in which the Premises are located. Licensee shall require any contractor to provide, and shall deliver to SMART upon request, certified payroll reports with respect to all persons performing labor in the construction of the SMART Fiber in the ROW.

3. Consideration in Lieu of Rent. In consideration of the license and rights granted to Licensee hereunder, during the Initial Term, and any Renewal Term(s), Licensee will, at its sole cost and expense, grant to SMART the exclusive and indefeasible right to use the SMART Fiber and provide SMART with the recurring services and benefits as described in this Agreement and Exhibits, attached hereto and incorporated herein by this reference.

4. Access. Subject to the terms and conditions of this Agreement, Licensee and its employees, agents, and contractors will have the right to ingress and egress along the ROW, together with a right to install, construct, maintain, replace, upgrade, repair and remove equipment composing and connecting to the Fiber System, including the right without additional fees to bore and trench within the ROW to establish interconnection with the Fiber System. Licensee shall follow all SMART requirements for obtaining necessary right-of-way access and comply with employee in-charge requirements at its own expense.

5. Maintenance and Repair. Licensee will, at its sole cost and expense, keep and maintain the Fiber System in good condition and repair at all times. Licensee, shall bear all costs associated with its use of the ROW, including without limitation the cost of installation, connection, and maintenance of fiber optic cable facilities and equipment. Such installation, maintenance and repairs shall be performed in a good and workmanlike manner, in conformity with the specifications of this Agreement and with such requirements and specifications as SMART may from time to time reasonably prescribe, in accordance with the applicable Telecommunication Industry Association (TIA), National Electric Code (NEC), and Building Industry Consulting Service International (BICSI) National Electrical Safety Code, and/or any statewide electric codes adopted by the State of California or any department or agency thereof. Licensee shall be responsible for the proper design and maintenance of Licensee's Fiber and any other equipment it installs in the ROW. Licensee will notify SMART at least ten (10) calendar days prior to the date of any routine maintenance, service, interconnect work or upgrades, including any trenching and boring, in and along the ROW. Licensee shall notify SMART as soon as reasonably possible after becoming aware of the need for any emergency repairs and promptly coordinate its response with SMART. Licensee shall perform all maintenance and repairs in a manner that will not interfere with or obstruct SMART's right of way, or the movement of SMART's trains and other related operations.

7. Compliance with Laws. Licensee shall install, operate and maintain the Fiber System in compliance with all applicable laws, ordinances, rules and regulations, whether now or hereafter

enacted or as amended, of all applicable local, county, state, and federal governmental authorities, including Federal Railroad Administration ("FRA") and the California Public Utilities Commission ("CPUC") and rules regarding placement, operation and installation of the Fiber System ("Applicable Laws"), and shall furnish proof of such compliance to SMART upon written request.

8. Insurance. Licensee shall, at its sole cost and expense, procure and maintain during the term of this Agreement, insurance of the type, nature, and with the limits, all as described in Exhibit D, attached hereto and incorporated herein by this reference.

9. Indemnity. Licensee shall release, defend (with counsel reasonably satisfactory to SMART) and indemnify SMART from and against all liability, cost and expense for loss of or damage to property and for injuries to or death of any person (including, but not limited to, the property and employees of each party) when arising or resulting from the use of the ROW by Licensee, its agents, employees, contractors, subcontractors or invitees, or Licensee's breach of these provisions. The duty of Licensee to indemnify and save harmless includes the duties to defend as set forth in Section 2778 of the California Civil Code. It is the express intent of the Parties that Licensee will indemnify and hold harmless SMART, its directors, officers, employees and agents from any and all claims, suits or actions arising from any cause whatsoever as set forth above, regardless of the existence or degree of fault or negligence on the part of SMART, Licensee, or any subcontractor or employee of any of these, other than the sole gross negligence, willful misconduct or criminal acts of the SMART, its directors, officers, employees and agents. Licensee waives any and all rights to any type of express or implied indemnity against SMART, its directors, officer or employees. The term "SMART" as used here and in Section 7, above, includes, in addition to SMART, any railroad company operating upon SMART's tracks. This indemnity shall survive the termination of this Agreement. Neither SMART nor Licensee shall be liable to the other, or any of their respective agents, representatives, or employees for any incidental, punitive, indirect, special or consequential damages.

10. Intentionally Omitted.

11. Environmental. SMART and Licensee agree that with respect to their actions in the ROW, or the actions of their respective agents or contractors, each will be responsible for compliance with Applicable Laws or principles of common law regulating or imposing standards of liability or standards of conduct with regard to protection of the environment or worker health and safety, as may now or at any time hereafter be in effect, to the extent such apply to that party's activity conducted in or on the ROW.

12. Assignment. Licensee may, upon written notice to SMART, assign or transfer this Agreement and its rights and responsibilities arising hereunder to any corporation, partnership or other entity, which has net assets in excess of Twenty Million Dollars ($20,000,000.00) and: (i) is controlled by, controlling, or under common control with Licensee; (ii) shall merge or consolidate with or into Licensee; (iii) shall succeed to all or substantially all the assets, property and business of Licensee; (iv) acquires all or substantially all of Licensee's assets in the market, defined by the CPUC, in which the ROW is located by reason of a merger, acquisition or other business reorganization; or (v) any affiliate or subsidiary or other party as may be required in

connection with any offering, merger, acquisition, recognized security exchange or financing. Under all other circumstances, any assignment or transfer shall require SMART's written consent, which consent shall not be unreasonably withheld, conditioned or delayed, provided that it shall not be unreasonable to withhold consent if assignee does not have net assets in excess of Twenty Million Dollars ($20,000,000.00).

13. Force Majeure. If a party is delayed or hindered in, or prevented from performance by reason of earthquakes, landslides, riots, insurrection, war, acts of God or other reason of like nature not the fault of the party delayed in performing, then that party is excused from performance for the period of delay that may not exceed ninety (90) days.

14. Default; Remedies.

14.1 Default by Licensee. The occurrence of any one or more of the following events constitutes an "Event of Default" by Licensee:

14.1.1 Threat To Public Safety or Disruption to Rail Services. Licensee's failure to report to the site of a critical SMART Fiber Outage within four (4) hours of an outage and/or Licensee's failure to diligently pursue a fix in an expedient and reasonable manner with top priority at all times given to restoring the SMART Fiber to full functionality. A "SMART Fiber Outage" shall mean an interruption or break in the SMART Fiber that presents an immediate hazard or impediment to the public or disruption of Rail Services.

14.1.2 No Threat To Public Safety or Disruption to Rail Services. Licensee's breach of any representation, warranty or covenant set forth in this Agreement, which breach is not cured within seven (7) days of Licensee's receipt of written notice. Such seven (7) day cure period will be extended as reasonably necessary to permit Licensee to complete the cure, provided that Licensee shall commence any cure within the seven (7) day period and thereafter continuously and diligently pursue and complete such cure.

14.2 SMART's Remedies. Upon an uncured Event of Default by Licensee after the expiration of all applicable notice, grace and cure periods, SMART, at SMART's option and upon written notice to Licensee, shall be entitled to the following remedies at SMART's sole discretion; provided, however, that Licensee shall not be responsible for any damages to the extent that they were caused by the acts or omissions of any third party who is not an employee, contractor, agent or other authorized representative of Licensee:

14.2.1 Threat To Public Safety or Disruption to Rail Services. In the event that Licensee fails to remedy a SMART Fiber Outage as proscribed herein and in Exhibit B, SMART may, at Licensee's sole cost and expense, perform or cause a third party contractor to perform, any and all repairs necessary to the SMART Fiber to eliminate the threat to public safety or disruption to Rail Services.

14.2.2 No Threat To Public Safety or Disruption to Rail Services. Upon thirty (30) days' prior written notice to Licensee, perform the obligation of Licensee specified in such notice and not yet performed, and invoice Licensee for the actual and reasonable

expenses incurred; provided that any such actions taken by SMART do not require access to or interaction with Licensee's infrastructure. Any invoice shall be accompanied by documentation reasonably detailing such actual and reasonable expenses incurred by SMART, and Licensee shall pay such invoice within thirty (30) days of presentation by SMART.

14.2.3 Recurring Events of Default. In the event that Licensee fails to timely cure three (3) or more Events of Default, in any consecutive twelve (12) month period, SMART shall, at Licensee's sole cost and expense, have the right to hire an independent third party contractor to deliver the recurring services and benefits at customary and reasonable rates for such services in the geographic area where the ROW is located. Licensee shall reimburse SMART for such services within thirty (30) days of receiving an invoice from SMART. Any invoice shall be accompanied by documentation reasonably detailing such actual and reasonable expenses incurred by SMART, and Licensee shall pay such invoice within thirty (30) days of presentation by SMART. In such event, Licensee shall be permitted to operate, maintain and repair the Licensee Fiber for so long as it continues to reimburse SMART for the costs of the third party rendering the recurring benefits and services as shown on Exhibit C.

14.2.4 Termination for Cause. In the event Licensee fails to pay for the services rendered by a third party pursuant to Section 14.2.3 above, SMART shall have the right to terminate this Agreement upon delivering to Licensee written notice and SMART may pursue all remedies provided for in this Agreement and/or any legal remedies it may have under applicable law or principles of equity relating to such Event of Default.

14.3 Expiration; Removal. Upon the expiration or earlier termination of this Agreement, all rights of Licensee to use the ROW or any part thereof, shall cease. All rights to the use the ROW shall revert to SMART without reimbursement to Licensee of any fee or other sums, costs, or expenses previously made with respect to the ROW and Fiber System. If Licensee fails to surrender the ROW, Fiber System, or any part thereof upon the expiration or earlier termination of this Agreement, Licensee shall indemnify, defend, protect and hold SMART harmless from all claims, losses, costs, expenses, damages and liabilities, including attorney's fees, SMART incurs as a result of Licensee's failure to surrender the ROW and/or Fiber System.

15. Governing Law/Venue. This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California, and any proceedings arising out of this Agreement shall be brought solely in Sonoma County, California.

16. Bind and Benefit. This Agreement shall be binding on SMART and Licensee and inure to the benefit of their respective successors and assigns.

17. Entire Agreement/Amendment. This Agreement constitutes the complete and exclusive statement of the Agreement between SMART and Licensee with regard to the subject matter hereof, and supersedes all proposals, oral or written, and all other communications between SMART and Licensee related to the subject matter hereof. No subsequent change or

modification of this Agreement shall be effective unless made in writing and signed by both SMART and Licensee.

18. Severability. If any provision of this Agreement or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and to each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

19. Authority. The persons who have executed this Agreement represent and warrant that they are duly authorized to execute this Agreement in their individual or representative capacity as indicated.

20. Relocation. SMART may relocate all or any portion of the conduit in the ROW as follows: (1) if a party with legal authority to do so orders or threatens to order such relocation; (2) in order to comply with applicable laws; (3) to prevent or abate interference with or interruption of rail operations, or an unreasonable risk thereof, due to the existence of physical conditions (e.g. rock slides, seismic conditions); or (4) if SMART determines to do so in its reasonable judgment. SMART shall provide Licensee with as much advance notice as possible, but shall use reasonable efforts to provide at least sixty (60) calendar days' prior written notice of any such relocation. Licensee shall bear its own costs of relocating its facilities.

21. Damages to Facilities. Each party agrees to take all necessary precautions to avoid damaging the other Party's facilities, and those of third parties, and to protect such facilities in the same manner as such Party protects its own facilities.

(a) If Licensee damages SMART's facilities or facilities owned by third parties, Licensee shall immediately notify SMART and, if the damaged facility is owned by a third party, take reasonable efforts to notify the owner of the damaged facility. If required by SMART, Licensee shall effect repairs to the damaged facilities within a reasonable time period, based on the nature of the damage conditions at the site.

(b) In the event that Licensee fails to repair any damage caused by Licensee to SMART's facilities or facilities owned by third parties within SMART may elect to hire a third party contractor to effect repairs to any SMART or third parties' damaged facility and present an invoice to Licensee for all Costs incurred in connection with the damaged facilities, including, but not limited to, staff time costs, traffic control, police services, dispatch, notification of third parties, and consultant and contractor costs.

22. Taxes. Licensee agrees that it will be solely responsible for the payment of any and all applicable taxes, fees and assessments levied on its ownership, use and maintenance of the Fiber System and this Agreement. Pursuant to Section 107.6 of the California Revenue and Taxation Code, SMART hereby advises, and Licensee recognizes and understands, that Licensee's use of the SMART's rights-of-way, the Licensed Conduit, and/or other non-rights-of-way SMART property and facilities may create a possessory interest subject to real property taxation and that

Licensee may be subject to, and responsible for, the payment of real property taxes levied on such interest. Licensee reserves the right to challenge any such assessment.

23. Relationship of the Parties. The relationship between Licensee and SMART shall not be that of agents and nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between the Parties, including, but not limited to, federal income tax purposes. In performing any obligations hereunder, the Parties shall be independent and each Party shall discharge their contractual obligations at their own risk subject, however, to the terms and conditions hereof.

24. Rules of Construction.

(a) The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement or as amplifying or limiting any of its content. Words in this Agreement which import the singular connotation shall be interpreted as plural, and words which import the plural connotation shall be interpreted as singular, as the identity of the parties or objects referred to may require.

(b) Unless expressly defined herein, words having well known technical or trade meanings shall be so construed. All listing of items shall not be taken to be exclusive, but shall include other items, whether similar or dissimilar to those listed, as the context reasonably requires.

(c) Except as set forth to the contrary herein, any right or remedy of Licensee or SMART shall be cumulative and without prejudice to any other right or remedy, whether contained herein or not.

(d) Nothing in this Agreement is intended to provide any legal rights to anyone not an executing party of this Agreement.

(e) This Agreement has been fully negotiated between and jointly drafted by the Parties.

(f) All actions, activities, consents, approvals and other undertakings of the Parties in this Agreement shall be performed in a reasonable and timely manner, it being expressly acknowledged and understood that time is of the essence in the performance of obligations required to be performed by a date expressly specified herein. Except as specifically set forth herein, for the purpose of this Agreement the standards and practices of performance within the telecommunications industry in the relevant market shall be the measure of a party's performance.

IN WITNESS HEREOF, SMART and Licensee have executed this Agreement by their undersigned officials and officers lawfully authorized to do so as of the date last signed below ("Effective Date").

SMART:	Licensee:
Sonoma-Marin Area Rail Transit District	SONIC TELECOM LLC
By: _____	By: _____
Print Name: FARHAD MANSOURPD	Print Name: Dane Jasper
Its: General Manager	Its: CEO
Date: 4/6/15	Date: 4/3/15

EXHIBIT A

DEPICTION OF FIBER SYSTEM

EXHIBIT B

SERVICE LEVEL AGREEMENT

This Service Level Agreement ("SLA") defines the service level standards and requirements between Licensee and SMART for SMART's Fiber (collectively, the "Service Level"). This document defines the requirements of Licensee for incident management and response times. Capitalized terms not otherwise defined herein have the meaning set forth in the Agreement.

Licensee's network operations center (NOC) will actively monitor end-to-end connectivity in the Fiber System, as well as the connection of all redundant links supplied. In the case of an interruption or outage identified by the NOC, Licensee will promptly notify SMART. Licensee will provide a four (4) hour on-site response to any fiber outages when detected or when Licensee is notified by SMART at 1-877-706-5662 (24-Hour Network Operations Center hotline.)

Problem Severity Definitions and Expectations
The priority schedule set forth below shall govern the obligations of the parties with respect to resolving issues arising from the operation of the Fiber System. All calls will be classified by Licensee into the following severity levels:

Priority 1: The ability to send and receive signals over the Fiber System has stopped. Priority 1 Problems will be worked on a 24 X 7 basis until resolved. A Licensee contact will be assigned and available on a 24 X 7 basis to assess alternative solutions and finalize problem resolution verification. *Examples:* complete Fiber System outage, power failures, break/fix service. *Example:* Failure of System is 100% and affecting all signaling thereby causing an immediate material interruption of rail service or is a public safety concern.

Priority 2: Service is seriously degraded but continues its operation via a workaround or incremental resource for a short period of time before transmission stops. Priority 2 and higher problems will be worked during regular local business hours by production support groups. *Examples:* Partial Fiber System outage caused by Force Majeure event, multiple strand failures, partial power outage. *Example:* Failure of System is greater than 50%.

Priority 3: Service is degraded in a small critical area of the SMART Fiber, but where a workaround exists (e.g. redundancy) or can be developed with a small amount of incremental resources. *Example:* SMART Signaling strands fails in critical areas (as previously identified by SMART to Licensee).

Priority 4: Service is degraded in a small non-critical area of the SMART Fiber where a workaround exists or can be developed with a small amount of incremental resources. *Examples:* SMART Fiber fails in non-critical areas or Wi-Fi access at one or more stations is inoperable.

Requests: Any call from SMART requesting information or clarification. *Examples:* Requesting operational or testing information of SMART Fiber, etc.

Problem Response Control Table
Licensee will use commercially reasonable efforts to adhere to the following response times and status update schedules in order to resolve emergencies and issues arising from some failure of the Fiber System in a commercially reasonable manner:

Severity	**Call Back by NOC**	**Sonic Support Team Response**	**Target Resolution**	**Status Update**
Priority 1	15 min	4 hours	8 hours after notice of an emergency	Every 2 hrs or as requested
Priority 2 and 3	15 min	8 hours	1 business days after notice of an emergency	Every 8 hrs if requested
Priority 4	1 day	2 days	3 business days after notice of an issue	Upon closure
Service Request	2 days	4 days	5 business days after notice of request	Upon closure

EXHIBIT C

ADDITIONAL SERVICES TO BE PROVIDED TO SMART

Wi-Fi Internet access for use by the public at SMART stations. Telephone technical support for the public and lawful intercept (CALEA) compliance and subpoena response. If in future SMART wishes to limit public access or charge for access to Wi-Fi provided by Licensee, Licensee will cooperate with SMART in performing system upgrades necessary to enable SMART to limit or charge for such access. Licensee will not or charge a fee for or limit public access to Wi-Fi.

Internet and telecom access and services commercially offered by Licensee to its customers. Maximum commercially offered bandwidth by Licensee for Internet Access for use by SMART in its office(s) operations and facilities.

Private Secure Cabinets at Disaster Recovery Data Center. Two full-size cabinets, 2x20Amp power in each cabinet. Includes fiber connection from data center to the SMART fiber optic network for interconnection to SMART operations and maintenance facility (OMF).

Emergency Fiber Network Repair, with four (4) hour assured response.

Dark Fiber Spur to interconnect SMART office(s) and facilities to the SMART fiber optic network.

Telephone system and service. Choice of PRI, SIP trunks or Hosted PBX service for use by SMART operations. Includes of all domestic usage.

Redundant network connections. Interconnected midband Ethernet private line service for signals and other mission-critical system redundancy, such as SCADA indications, tunnel intrusion detection, bridge controls and channel view cameras.

Licensee will splice SMART fiber to SMART patch panels in signal buildings (CILs), in stations, and to SMART facilities as directed by SMART. Splice map, as-built records and fiber optic test results will be provided to SMART by Licensee.

Licensee will perform any fiber optic splicing or maintenance required for future SMART operations, as directed by SMART.

Licensee agrees to provide the most up to date technological enhancements to the above services and/or new services offered by Licensee to its customers, including but not limited to any new services that Licensee adopts over the course of its business and are made available or offered to the public or local businesses. These enhanced and/or additional services will be provided to SMART as additional consideration for the license granted to Licensee at no additional cost to SMART.

EXHIBIT D
INSURANCE REQUIREMENTS

A. Licensee shall, at its sole cost and expense, procure and maintain during the life of this Agreement, liability insurance covering claims of bodily injury, personal injury and property damage arising out of the conduct of permitted hereunder in the ROW by Licensee, its employees, agents and contractors, in the ROW, covering the insuring provisions of this Agreement and the requirement of Licensee to indemnify SMART, for the limits of liability not less than:

Commercial/Industrial Private Crossings:

General Public and Railroad Liability	$ 2,000,000 each occurrence $ 4,000,000 annual aggregate
Automobile Public Liability:	$ 2,000,000 each occurrence

The minimum limits of policies of insurance required of Licensee shall in no event limit the liability of Licensee under this Agreement.

Licensee's insurance shall:

(1) Name SMART as an additional insured;
(2) Be issued by a company having an A.M. Best Company rating of A+ or better;
(3) Be primary insurance to all claims thereunder and provide that any insurance carried by SMART is excess and non-contributing;
(4) Provide that said insurance shall not be cancelled unless 30 days prior written is given to all insureds;
(5) Because Licensee's scope of work requires Licensee to be within fifty (50) feet of railroad track, the General Liability policy shall be accompanied by an endorsement removing the exclusion of coverage on or near railroad tracks.

SMART shall have the right to annually conduct a review of the adequacy of the insurance requirements provided for in this section. In the event that SMART, in its sole discretion, should determine that these requirements no longer provide adequate protection to SMART, it may require Licensee to obtain such additional insurance as SMART deems reasonably adequate. A certificate of insurance naming SMART as an additional insured, in effect as of the Effective Date, shall be provided to SMART within thirty (30) days of written request.

B. Any person, firm or corporation authorized by Licensee to work in the ROW shall be deemed to be Licensee's agent and shall be subject to all application terms of this Agreement. Prior to entry in the ROW, Licensee shall provide SMART with satisfactory evidence, in the form of a Certificate of Insurance, that all of Licensee's contractors having access to the ROW pursuant to this Agreement, maintain the insurance coverage set forth herein.

C. All required Certificates of Insurance shall be filed with SMART prior to the start of any work by the insured party in the ROW.

FIRST AMENDMENT TO LICENSE AGREEMENT BY AND BETWEEN SONOMA-MARIN AREA RAIL TRANSIT AND SONIC TELECOM LLC

This FIRST AMENDMENT TO LICENSE AGREEMENT ("First Amendment") is made this 29th day of MAY, 2019, by and between **SONOMA-MARIN AREA RAIL TRANSIT DISTRICT**, a California public agency ("SMART"), and **Sonic Telecom LLC,** a California limited liability company ("Licensee").

RECITALS:

Whereas, the parties previously entered into SMART License Agreement 2015-LIC-001, dated April 6, 2015 (the "License Agreement"), whereby Sonic was permitted to construct, install, operate, connect, maintain, repair, upgrade, remove and replace, fiber optic cable in and on property owned by SMART, as described in the License Agreement; and

Whereas, the parties have agreed to amend said License Agreement as shown herein.

NOW, THEREFORE, SMART and Licensee, in consideration of the forgoing Recitals, the mutual promises and conditions herein contained, and other good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged by the parties, agree to amend the 2015 License Agreement (2015-LIC-001) as set forth below:

Depiction of Fiber System.
Exhibit A to the 2015 License Agreement is hereby replaced in its entirety with **Exhibit A1** – Depiction of Fiber System and License coverage expanded. Licensee agrees to extend the Fiber system and services as follows:

> The portion of SMART right of way on which Licensee will install fiber under the 2015 License Agreement, as shown on Exhibit "A" to the License Agreement, is hereby amended and expanded to extend from SMART station in Windsor, California, at railroad milepost 64 (Windsor Extension), to Larkspur Station in Larkspur, California, at railroad milepost 14.9 (Larkspur Extension).

Paragraph 1.4 ("Permitted Use") is hereby replaced in its entirety to read as follows:

> 1.4 Renewal Terms. Provided Licensee is not in default under this Agreement beyond applicable cure periods and has the necessary governmental permits, licenses, easements, property rights, franchises and approvals that may lawfully be required by federal, state or local law, statute, regulation or ordinance, this Agreement shall automatically renew for additional periods of ten (10) years each (the "Renewal Terms"), unless Licensee notifies SMART in writing of its election not to extend this Agreement not less than six (6) months prior to the expiration date of the Initial Term or then current Renewal Term, if any. The Renewal Terms shall be upon all the terms covenants, and conditions of this Agreement. Licensee shall have the option to renew this Agreement for up to six (6) consecutive Renewal Terms.

This First Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed but one and the same agreement. All other terms of the License Agreement remain in full force and effect except as specifically amended by this First Amendment. If there is any conflict between the terms of this First Amendment and the terms of the License Agreement, the terms of this First Amendment will control.

IN WITNESS WHEREOF, the parties have duly executed this First Amendment as of the date first herein written.

SONOMA-MARIN AREA RAIL TRANSIT DISTRICT,
a California public agency

By: _____
Farhad Mansourian
General Manager

SONIC TELECOM LLC
a California limited liability company

By: _____
Name
Title

SONIC.

Fiber Optic Deployment in SMART Infrastructure

Date: August, 2014

The "Fiber Optice Deployment in SMART Infrastructure" document represents SMART's complete response to CO$T's public records request: PRA07.

PRA SUBMITTED TO SMART: November 4, 2019
Records Request Reference: PRA07 SMART-Sonic Agreement Version 2
Pursuant to California Public Records Act (Government Code Section 6250 et seq.; hereinafter the "Act"), please provide me with the following documents regarding the contractual arrangement (hereinafter, "Agreement") between the Sonic Telecom, LLC ("Sonic") and the Sonoma Marin Area Rail Transit District ("SMART"):
1. Any written land use appraisal reports, opinions or relevant memoranda of meetings that were developed by and subsequently used by SMART management and/or SMART's Board of Directors to inform their decision to award SMART License Agreement No. 2015-LIC-2015 to Sonic; and,
2. Any written reports, opinions or other information developed by consultants, subject matter experts or other telecommunications companies or persons claiming to have expertise if rights-of-way evaluations for fiber optic occupancies in dedicated (limited access) rights-of-way who provided information and expert opinion(s) to SMART management and/or SMART's Board of Directors that informed their decision to award SMART License Agreement No. 2015-LIC-2015 to Sonic."

www.sonic.net

Sonic – Fiber

1 Sonic Overview

Sonic has twenty years of experience as an Internet and Telecommunications Service Provider. Sonic is the largest independent carrier in Northern California, and can offer unique capabilities to SMART.

With an extensive facilities based network in place today, Sonic has deep engineering and operational expertise. This is combined with a world class customer service, installation and repair capability.

As a Competitive Local Exchange Carrier (CLEC), Sonic's subsidiary Sonic Telecom is a California Public Utility. Sonic Telecom has utility pole attachment agreements in place with PG&E, and pole and duct structure agreements with AT&T. As a California utility, Sonic Telecom can also place new duct, vaults, manholes and cabinets in the public utility right of way.

Our goal is to leverage our copper access footprint and embedded base of customers to deliver Fiber-to-the-Home & Business to select locations in California. Currently we are delivering Fiber-to-the-Home to customers in Sebastopol CA, Fiber-to-the-Business in Santa Rosa business parks and have recently announced our public/private partnership with the City of Brentwood to provide Gigabit Internet + plus phone services to 9000 residents and businesses.

But the key to Sonic's success is not our network, it is our amazing local people. We win customer loyalty using a simple formula: Nice people providing good customer service. We do not see customer service as a cost, but as an opportunity. In a largely commoditized business, we believe that this focus on service has spared us the fate of the vast majority of ISPs in the US.

2 Detailed Company Information

2.1 Official Registered Name, Address, Phone

Sonic.net, Inc.
Sonic Telecom, LLC
2260 Apollo Way
Santa Rosa, CA 95407
707-522-1000

2.2 State of Incorporation

California

2.3 Key Contact

Dane Jasper
CEO/Co-founder
2260 Apollo Way
Santa Rosa, CA 95407
dane@corp.sonic.net
707-237-6205 (Direct)
707-481-1780 (Mobile)

2.4 Brief History

Sonic was founded in 1994 with the initial goal of funding a 56kbps Internet connection to one of the founders' homes, while having 100 customers help pay for it.

The business plan was drafted on a yellow pad, and called for a setup fee from every customer in order to avoid debt, and a monthly fee that was 1/100th of the cost of the dialup lines, the 56k uplink, power and a PO Box.

Within three months, the company achieved this goal, and it has continued to grow at a moderate pace and without debt to its current size, with revenues of over $60M and tens of thousands of customers.

Sonic has been operating access networks and providing customer support for twenty years. We have been doing installation and repair with our own personnel and vehicle fleet for seven years.

Sonic also does its own Fiber optic outside plant construction, with in-sourced processes including excavation, horizontal directional drilling (HDD), and fiber optic conduit and cable placement and splicing.

3 Utilization of SMART Sonoma-Marin Infrastructure

3.1 Executive Summary

The projected annual savings for SMART based upon the fair market value of the services Sonic will offer is $390,000 per year.

Finally, SMART's choice to work with Sonic is good for the community SMART serves. This choice will help bring competitive broadband, furthering economic development. Sonic's Gigabit service will help businesses and residents along the SMART line, furthering rail-transit-oriented development goals.

Sonic will reimburse SMART for any additional cost for staff time required to manage Sonic and prime contractor coordination, to the degree that it exceeds expected coordination overhead with existing contractor. When this occurs, SMART will provide an accounting of time and labor costs for this additional overhead.

Sonic – Fiber

Value of Fiber Build-out: up to $600,000

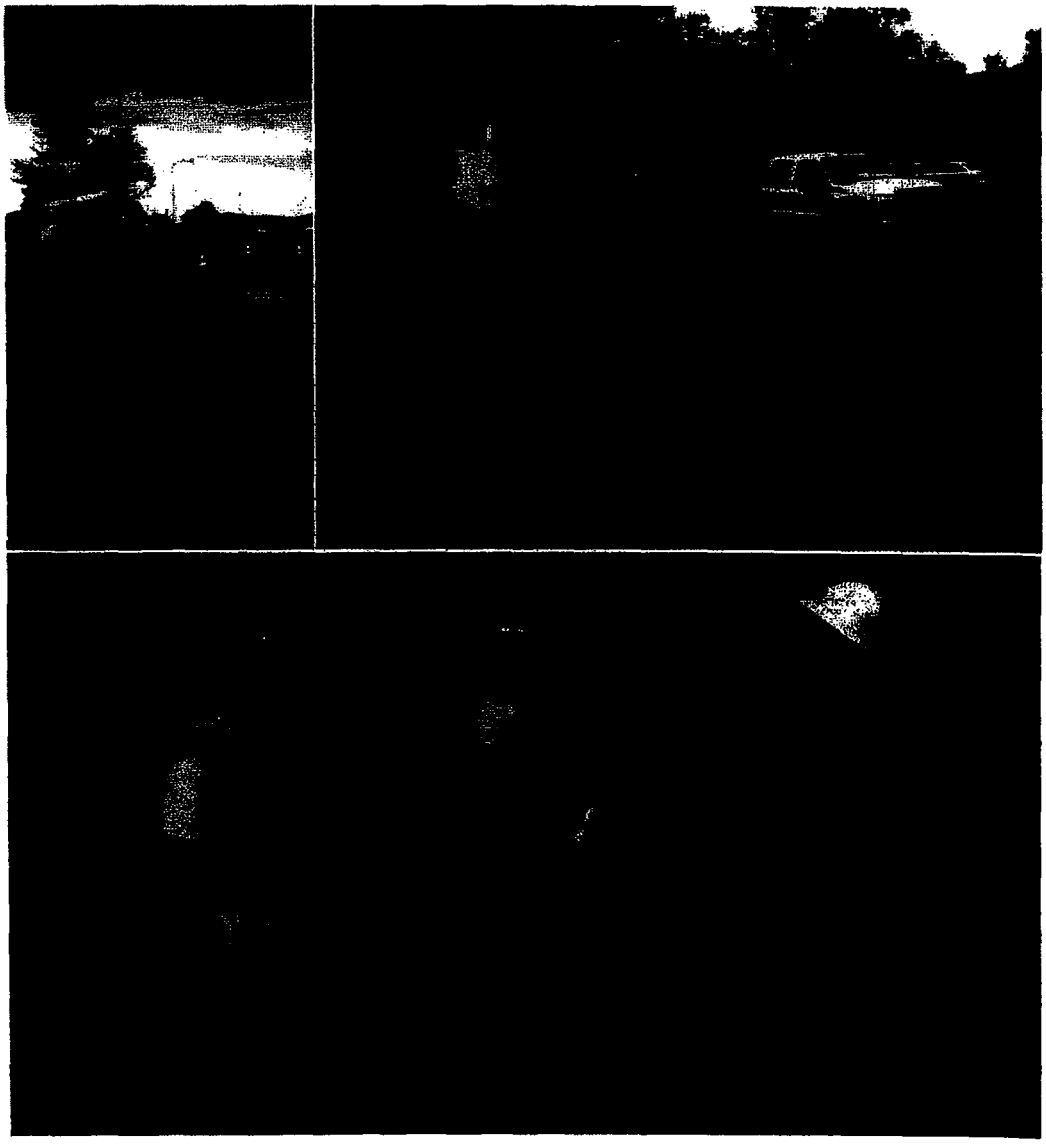
Fiber Optic Cable at Sonic

Sonic - Fiber

Value: $53,135/yr

Sonic – Fiber

Value: $12,000/yr



Sonic crews working – and horsing around.

Sonic – Fiber

Value: $35,976/yr

Sonic – Fiber

Value: $30,000/yr

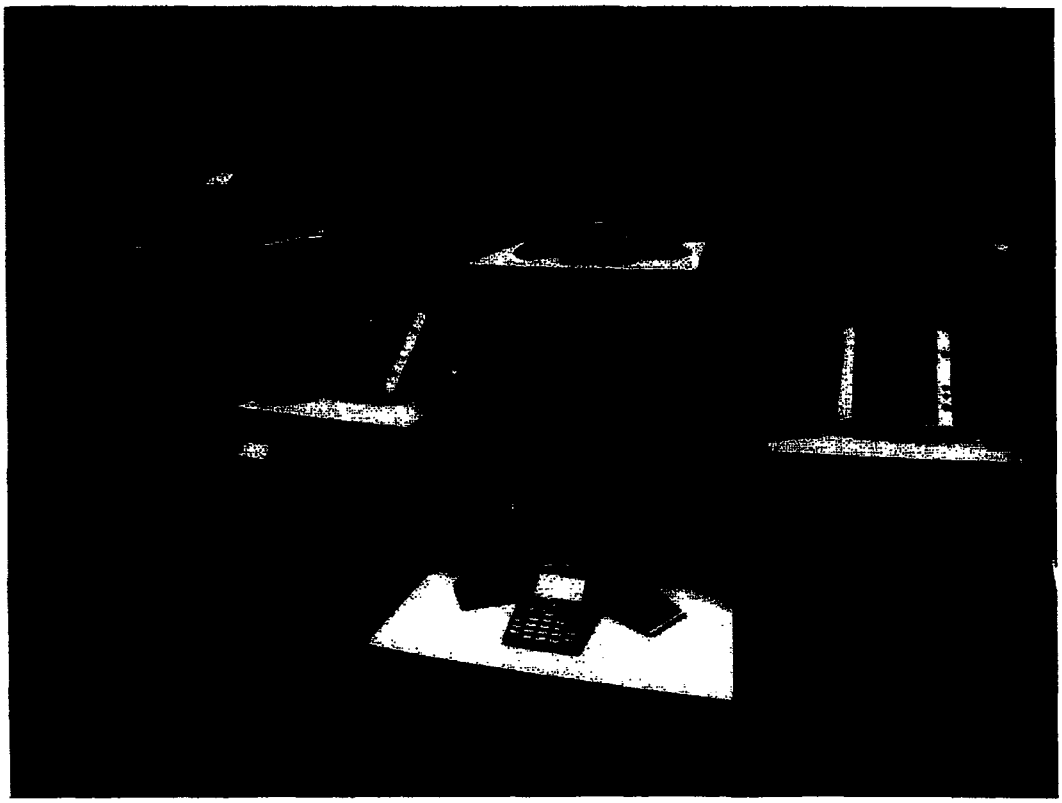
Sonic – Fiber

Value: $90,000/yr

Value: $45,000/yr

Sonic – Fiber

Phone Service plus Gigabit Dedicated Internet Access Value: $124,000/yr



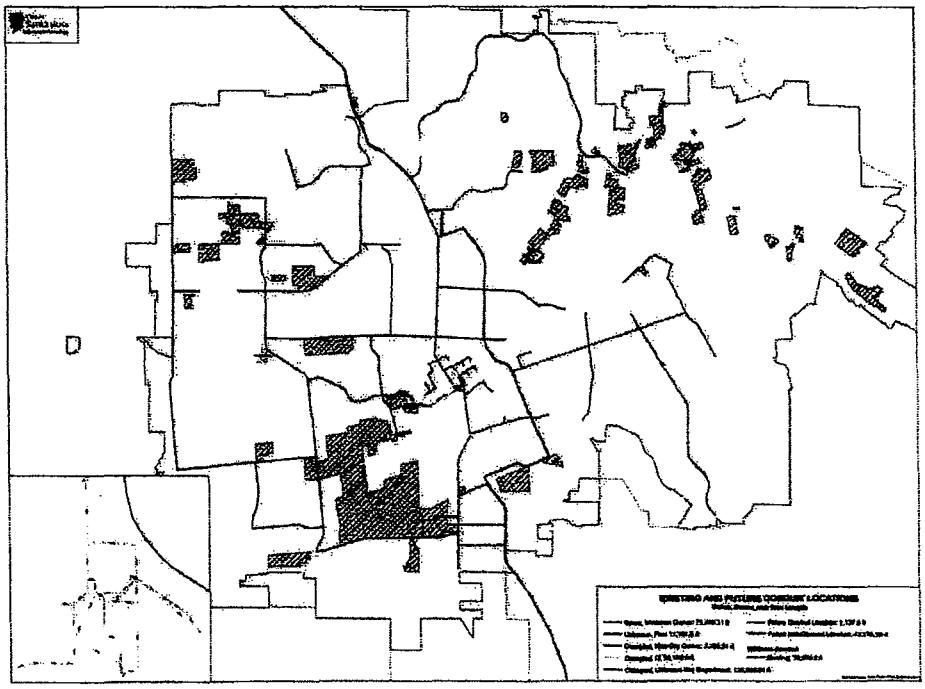
Sonic Hosted PBX demo room in Santa Rosa

Sonic – Fiber

Sonic partners with municipalities to utilize infrastructure such as duct space and right of way, and provides fiber strands to the municipalities for their use.

One example of our municipal partnerships is Sonic's relationship with Santa Rosa, where we are working on access to their extensive conduit system. Leveraging Sonic-managed dark fiber allocations along the rail route could help cities interconnect their own far-flung resources.

Value: Goodwill for SMART

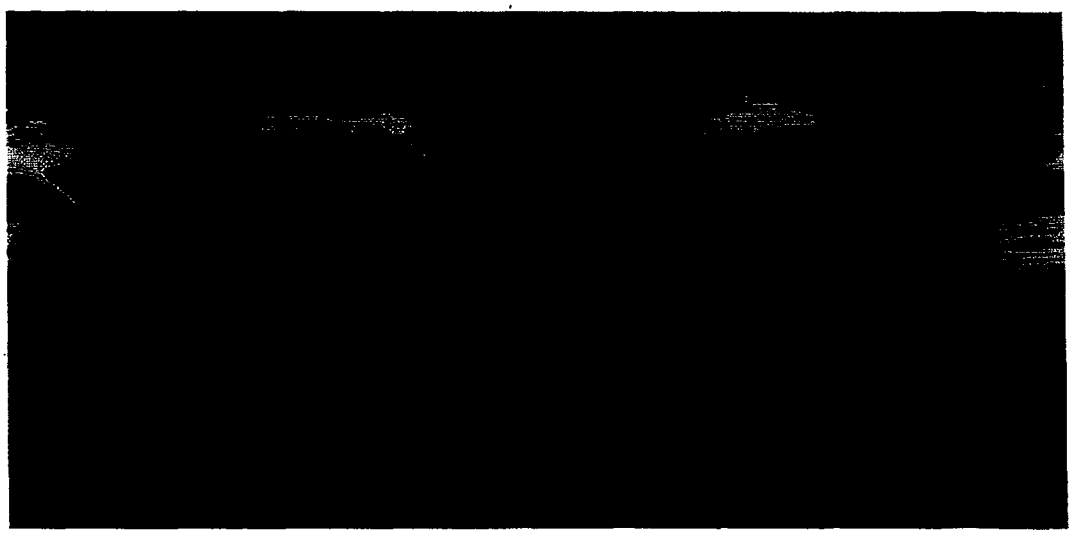


City of Santa Rosa

5 Appendix

5.3 Sonic.net Team

Group Photo (Dec 2013)



For a brief Sonic photo tour, visit: http://j.mp/sonic-slideshow

Sonoma Marin Area Rail Transit (SMART) – Sonic Public-Private

This document is available on SMART's website as part of the April 8, 2018 board meeting packet.

As a direct result of the SMART/Sonic public-private partnership Sonic is connecting 70 Sonoma County schools with dark fiber.

What happened in Marin? We're waiting to hear from the Marin County Office of Education and Marin County Information Services and Technology IST as of 3/1/2020

2018

Fiber Optic Deployment in SMART Infrastructure

SMART/Sonic – Public Private Partnership

Executive Summary:

Broadband networks are recognized as essential infrastructure assets for communities, businesses, and local governments across the country. The Sonoma-Marin Area Rail Transit (SMART) and Sonic Public Private Partnership have resulted in a vast economic win for SMART, Sonoma County municipalities, businesses and schools.

The SMART/Sonic fiber optic system utilizes SMART's conduit infrastructure providing SMART additional Fiber optic capacity while significantly reducing both construction and operational expenses. Leveraging existing conduit assets, Sonic substantially lowered SMART's capital investment through a shared cost Public-private partnership.

The SMART non-exclusive conduit access provides Sonic a middle mile backbone. Sonic has dedicated Fiber strands to be used by SMART, as well as Counties and Municipalities through which the SMART Right-of-Way runs.

North Bay Business parks, K-12 schools, municipalities and Sonoma County residents now have access to competitive Gigabit and faster fiber optic services. Now five North Bay Business parks containing over 2,200 businesses now have access to affordable 1Gpbs to up to 100Gpbs services. And in the next two-years thousands more business locations will be connected. Additionally, due to the SMART-Sonic partnership over 70 North Bay K-12 schools will be connected with dark fiber services.

Sonic also provides middle-mile services to other telecommunications companies producing additional competitive services in rural pockets of Sonoma County.

Economic development, new competitive options, and expansion of Fiber Optic services are all direct results from the Sonoma-Marin Area Rail Transit and Sonic Partnership.

"Due to the SMART-Sonic partnership over 70 North Bay schools are expected to be connected with dark fiber services"

Utilization of SMART Sonoma-Marin Infrastructure:

SMART's rail system is the first new commuter heavy rail built since the Federal Rail Authority instituted positive train control requirements. As a result, an optical network for a fully integrated signals system was required. The fiber network also serves the Clipper fare system, and video surveillance cameras at platform, bridge and tunnel locations. Sonic provides free and separate Internet connections at each of SMART's 15 stations for services such as vendor/kiosk interconnections, SMART operations and Public access. Sonic provides SMART free WiFi at each station location.

SMART placed four 1.5" conduits for Fiber optic cable along the rail line and planned to use two for operations, with two Fiber optic cables: a 12 strand cable for signal operations in conduit #1, and a 48 strand backbone operations cable in conduit #2. By partnering with Sonic and at Sonic's expense a 432 count Fiber optic cable was placed in a single conduit with Sonic granting 60 strands to SMART plus a bonus 12 strands dedicated to the Cities and Counties the rail way passes. Sonic installed, maintains the Fiber optic infrastructure, including all splicing and repair service.

SMART 1.5" Conduit with 144 Strand Fiber Optic Cable Sample

Sonic's single cable upgrade meets SMART's backbone requirements while achieving a significant cost savings for SMART both in the initial upfront construction cost but also in ongoing operational expenses. SMART saved the cost of network deployment, while maintaining the ability to lease the remaining conduits. Sonic's partnership provided an CapEx savings of nearly $1 million as well as an OpEx in-kind exchange, saving SMART an additional $390,000 per year.

Sonic's partnership includes 24/7/365 days emergency restoration break/fix service for the fiber, with a maximum four hour response on-site anywhere along the line. Sonic's services splicing, directional boring, cable removal and replacement.

SMART/Sonic Partnership and Municipalities:

As part of the SMART/Sonic Public Private Partnership Sonic dedicated 12 strands of fiber to Counites and Cities along the 43 mile SMART line. Local government agencies have access to dark fiber optic cable to connect and light their own equipment. A single fiber can be divided into many optical wavelengths, and each wavelength can carry tens of Gigabits of data. The dark fiber on the SMART route can provide local government agencies with useful North/South high-capacity backbone, which can interconnect to their own existing or future fiber resources.

Sonic provides technical assistance to Cities and Counties for fiber usage and interconnection planning. The dedicated fiber strands provide municipalities with a significant reduction in their telecommunications budget spends.

SMART/Sonic Partnership and Schools:

As a direct result of the SMART/Sonic public-private partnership Sonic is connecting 70 Sonoma County schools with dark fiber. Dark fiber has virtually unlimited capacity and it provides schools long-term control. That empowers school districts as they are now buying a long-term asset and can scale their own bandwidth needs.

Dark fiber provides schools and school districts bandwidth scalability, flexibility, security and significant cost savings over the dark fiber lease term. Sonic is delivering WAN service and dedicated dark fiber to a consortiums of schools. Displacing legacy incumbent services, Sonic is providing the schools with massive capacity at the lowest total bid cost. Supported by the Schools and Libraries E-rate program.

Economic Development:

The SMART-Sonic Public/Private partnership has provided North Bay Business parks and businesses access to competitive Gigabit and faster fiber optic services. Access to low cost ultra-fast connectivity is vital to small, medium and large businesses. Businesses with access to inexpensive high-speed spur economic development and innovation.

Five North Bay Business parks containing over 2,200 business now have access with thousands more business locations that will be connected over the next two-years.

Bringing In Broadband Competition:

Utilizing the Sonic-SMART backbone, Sonic provides last mile opportunities for other telecommunications companies. A Sonic ISP partner connected 458 households in Occidental, California bringing fiber-to-the-premise symmetric Gigabit Internet speeds to an area considered under serviced.

Why Public-Private Partnerships Work:

SMART's choice to work with Sonic resulted in a vast savings to SMART, provided competitive broadband services to Sonoma County, furthered economic development and will continue to help businesses and residents along the SMART line, furthering the rail-transit-oriented development goals.

CO$T used competitive bids like this to determine the Fair Market Value for SMART's assets in the rail right's of way.

REPORT

To

INTEGRA REALTY RESOURCES

An

APPRAISAL and RECOMMENDATIONS

Regarding

FAIR MARKET VALUE RATES

For

FIBER OPTIC FACILITIES

Located in

LONGITUDINAL RIGHTS-OF-WAY

Owned and Operated

By the

National Park Service

In the

Golden Gate National Recreation Area

Prepared by

KINGSTON COLE & ASSOCIATES

August 21, 2013

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Commercial Fiber Pricing Chart

I. INTRODUCTION

Kingston Cole & Associates ("KC&A") was tasked as a sub-consultant by Integra Realty Resources ("IRR") to develop a report and appraisal regarding the fair market value ("FMV") of two commercial fiber optic occupancies in the specified National Park Service's ("NPS") Golden Gate National Recreation Area ("GGNRA") longitudinal rights-of-way ("ROW"). The current and proposed legal documents are permits. AT&T and AboveNet are the permittees ("Permittees"). To develop our FMV rate recommendations and others findings required a scope of work ("SOW"), discussed in more detail below.

A. Scope of Work

For this project we employed the following approach:

a. A review of the current permits and all related documents, e.g., correspondence, past appraisals, etc., involved in either granting or managing AT&T and AboveNet's permits to occupy the specified ROW. This included a kick-off meeting as well as periodic reports and various discussions with key GGNRA personnel.

b. A physical inspection of the dedicated ROW

c. Research regarding comparable other permit/license fees that includes a three-step process to determine FMV. The steps are:

- Analysis of various methodologies used to determine FMV
- Analysis of different pricing considerations that effect FMV
- Market survey of agencies that have rate programs to determine comparable rates for GGNRA ROW

d. Development of rate matrix chart (Table 1) with recommended rates for the Permittees

B. Background Information

1. NPS/GGNRA ROW

The ROW subject to this appraisal comprises two sections. One is north of the Golden Gate Bridge; the other south.

Northern Segment: The northern Fort Baker Segment includes three conduits. One is occupied by AT&T, another by AboveNet. A third conduit is owned by AT&T and empty. It is, however, subject to use restrictions by the NPS. There is also "dark" or inert, "unlit" fiber for use by the NPS) in or along the system. Per past appraisals, AT&T maintains 8,405.02 of linear feet in its section of the conduit; AboveNet maintains 8, 202.89 linear feet. (The difference in footage is in all probability due to the different exit/entry points for each carrier into the conduit.)

Southern Segment: The southern, Presidio Segment consists of one conduit jointly occupied by AT&T and AboveNet. The configuration of the conduit, i.e., the number of innerducts therein, is not known. Per past appraisals, AT&T maintains 9,642.41 of linear feet in its section of the conduit; AboveNet maintains 9,642.41 linear feet.

For purposes of this valuation, we have assumed that the carriers' linear footage estimates are not in dispute. We also did not make any distinction between the two segments for valuation purposes; treating them as of equal value to the Permittees needs for network connectivity from the North Bay into San Francisco.

II. RECOMMENDATIONS

A. Recommended Rates

The following are our recommended rates for the GGNRA ROW:

Table 1

Carrier	Cable Size	Per-Linear-Foot-Per-Year Rate	Total Linear Feet	Total Annual Fee*
AT&T (Occupied Conduit)	432 Strands	$17.70	18,047.43	$319,439.51
AT&T Empty Conduit (1/4 Rate)		$ 4.43	18,047.43	$ 79,950.11
AT&T Total	N/A	N/A		$399,389.62
AboveNet	432 Strands	$17.70	17,845.30	$315,861.81

* Does not include administrative fee(s)

B. Rationale for Recommended Rates

1. GGNRA ROW is a Choke Point

Our analysis began with the assumption that the GGNRA ROW is a classic "Choke Point." That is, the two segments on either side of the Golden Gate Bridge present a problem to any commercial carrier seeking to provide either connectivity or redundancy (back up) for their existing network as it enters San Francisco from the North Bay.

We reviewed previous work that KC&A had performed for the Golden Gate Bridge District in the period from 1996 to 2000. Several carriers were seeking access to a submarine cable that was terminating at Point Arena. Others were seeking connectivity from Ignacio and points west to the Golden Gate Bridge. The attorneys for the Bridge District recommended, and the Directors chose (for various reasons) to consider the

Bridge itself to be a public thoroughfare. Per the California Public Utilities Code (section 7901), the Bridge District could therefore not charge for ROW access. That did not preclude the NPS and GGNRA from charging for access to their properties that are at the end points of the Bridge itself, i.e., the GGNRA ROW comprising approximately 18,047.43 linear feet for AT&T and 17,845.30 for AboveNet.

Our background review, as well as the high compensation rates paid by the carriers more than ten years ago, substantiate the fact that the GGNRA ROW should command premium choke point rates (also known as congestion pricing) for the San Francisco Bay Area.

2. Choke Point Comparables

KC&A conducted a survey of 12 agencies for the SOW. The agencies surveyed included:

- Bay Area Rapid Transit District ("BART")
- California Department of Transportation ("Caltrans")
- Los Angeles County Metropolitan Transportation Authority ("LACMTA")
- Metropolitan Atlanta Transportation Authority ("MARTA")
- Massachusetts Department of Transportation ("MassDOT")
- New York Metropolitan Transportation Authority ("NYMTA")
- Port Authority of New York & New Jersey ("PANYNJ")
- Sacramento Regional Transit Authority ("SacRT")
- Southeastern Pennsylvania Transportation Authority ("SEPTA")
- Tri-County Metropolitan Transportation Authority ("TriMet") for Portland, OR
- Burbank Water & Power ("BWP") [dark fiber rates only]
- Los Angeles Department of Water & Power ("LADWP") [dark fiber rates only]

Caltrans, SacRT and LACMATA were included in the original SOW. They did not have "Choke Point" rates and were therefore dropped from the survey. KC&A substituted SEPTA, PANYNY and SEPTA to ensure a realistic set of comparisons. Detailed discussion of the survey may be found in section V, below.

The following chart (Table 2) highlights the major findings from our survey of government agencies that was used to determine comparable "choke point" pricing for the GGNRA ROW.

Table 2

2013 River Crossing/Congestion Rates

Agency	**288 strands or Less**	**289-432 strands**	**433-576 strands**	**577-884 strands**
BART (Trans Bay Tube)	$21.23	$26.54	TBN	TBN
MARTA	$16.03	$22.45	TBN	TBN
Mass DOT	$46.33	$46.33	$46.33	$46.33

NYMTA	$39.95	$48.80	$58.57	$79.99
PANYNJ/PATH	$41.02	$51.69	$57.68	$70.54
SEPTA	$25.21	$31.51	TBN	TBN
TriMet	$14.06	$16.07	TBN	TBN

TBN = To Be Negotiated

As described in more detail below, we determined that the BART Trans Bay Tube ("TBT") is the major comparable for the GGNRA ROW. They are both located in the same Tier 2 Metropolitan Statistical Area (MSA, explained in greater detail in section II.C. below). They both are classic choke points.

The Survey section of this report contains more details. Briefly, however, the results of the survey were as follows:

The New York agencies are Tier 1 agencies with a much more dense population and different geography. SEPTA is also a Tier 1 MSA with a larger population but with access into downtown Philadelphia via other means; thereby obviating the price premium for a true choke point. MassDOT's sole choke point was the Ted Williams Tunnel in Boston (Tier 2 MSA); pricing for which was exorbitant. TriMet is in a Tier 3 MSA, but provided useful, albeit lesser-value comparisons due to political pressures (Discussed in detail in the TriMet section.)

3. Discount Factor in Determination of Rates for GGNRA ROW

We have however, discounted the GGNRA ROW because of its lesser significance for both Permittees in their overall network connectivity. This ROW is a critical pathway for the Permittees. They really have no other alternatives to provide redundancy for their networks as well as service to the North Bay.

Nevertheless, the route suffers by comparison to BART's Trans Bay Tube. The TBT has eight occupants, each with large-capacity fiber cables (216 strands or greater). AT&T has three 864-strand cables (with options for two more) in the facility. This is the major choke point for the Bay Area that justifiably commands the top rate for access.

The GGNRA ROW is therefore primarily a backup route for the Permittees and any other carriers that are using fiber from them. AboveNet has a 432-strand cable in the conduit system. We do not know what size the AT&T cable is. For valuation purposes, we are assuming a 432-strand cable. Furthermore, AT&T retains an empty innerduct, albeit subject to NPS restrictions. If this were the equivalent of the TBT, this would be filled.

AT&T does not allow other carriers' usage of its fiber; AboveNet does. In any case, the limited conduit capacity and single cable of fiber (Each Permittee has one cable, with a possible use of a third innerduct by AT&T on the Northern Segment only.) deployed by each Permittee clearly indicate that this route is a secondary, backup support for their overall network configurations.

Given this lesser importance for the Permittees, we have therefore discounted the GGNRA rates by one third from their nearest comparable, the TBT. BART's 2013 rate for a 432-strand cable is now $26.54. With the recommended discount, the GGNRA ROW rate for AboveNet is $17.70 per-linear-foot-per-year.

If AT&T has the same strand size cable in their sections of the ROW, the recommended rate is the same. If they have a 288-strand cable (or less), the recommended rate is $14.23 per-linear-foot-per-year. If the AT&T cable exceeds 432 strands, we will re-survey our agencies with comparable rates to determine another recommendation, i.e., BART negotiates higher (than 432) strand count cables on a case-by-case basis.

C. Other Recommendations

1. Spare Innerduct Space

AT&T has one spare innerduct in its owned conduit in the Northern Segment. Our standard recommendation for spare innerduct space is ¼ of the existing rate for the occupied conduit space, i.e., ¼ of AT&T's fiber cable rate. If AT&T has a 432-strand cable, the charge would be ¼ of that rate.

2. Cost of Living Adjustment ("COLA")

The current annual GGNRA COLA is based solely on Consumer Price Index ("CPI") for the San Francisco-Oakland-San Jose Consolidated Metropolitan Statistical Area, as defined by the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index, All Urban Consumers. This has resulted in an overall fee increase of 34.2% for both AT&T and AboveNet.

Our survey of other government agencies, as well as evaluations performed for other clients indicate that this COLA does not reflect FMV. Carriers will accept COLAs of as much as 5% a year. Almost all agencies surveyed use a COLA of 3% to 4% or the CPI for their metropolitan area, **whichever is greater** (emphasis mine).

This COLA approach is an industry-acceptable standard. It also provides uniformity for all ROW occupants. It also will protect the GGNRA in case there is an outbreak of inflation, as we endured during the 1970's and early 1980's. Given the current economic uncertainties, as well as the long-term nature of these contracts, we believe this is a prudent change to the standard permit contract.

3. Dark Fiber

Dark, unlit fiber is essentially inert, inoperative glass fiber; it must be "lighted" or lit with computers and routers that transmit data. The NPS has received unspecified dark fiber as part of the initial contractual arrangement with AT&T (or its predecessor in interest). The NPS has never availed itself, i.e., "lit" the fiber.

Our analysis indicated that the dark fiber is only in the Fort Baker section of the ROW. We have no information as to limitations on the use of this fiber. Most carriers, if they offer dark fiber, contractually require the government agencies to operate the fiber for their own use only, i.e., not offer it to a competitor for commercial purposes.

Since the dark fiber is only in the Fort Baker section, it is effectively "stranded." Essentially because it does not connect to any other NPS facility, it has no practical use or value. Per our scope of work, we have nevertheless provided an analysis of the value of dark fiber in the commercial marketplace. Please see section IV.C.2.below, for more details.

4. Commercial Fiber Pricing

KC&A is providing recent rates for commercial, carrier-owned "lit fiber" not because we recommend that the NPS become a telecommunications carrier. On the contrary, we expressly recommend to almost all of our clients that they avoid this highly competitive industry. The pricing information is provided so that NPS/GGNRA management may have a full understanding of all levels of pricing in the industry. These different pricing levels are significant: As dark fiber pricing is an order of magnitude more than fiber in a conduit or aerial facility, so lit fiber pricing is an order of magnitude more than dark fiber pricing. The Attachment provides recent pricing details for two carriers.

III. METHODOLOGY FOR DETERMINNG FAIR MARKET VALUE

A. National Demand

The telecommunications industry is now more concentrated than ever. Companies such as the Permittees are heavily invested in both their wireline (landline phones, fiber optic and copper networks, etc.) and their wireless (cell phones, towers, etc.) market segments. These two components are also increasingly interdependent. Fiber optic technology provides the "backbone" for all of these services.

The massive fiber optic network build outs of the 1990's are a thing of the past. Now, with the advent of smart phones and requirements for high-speed connections to the Internet, fiber optic networks are being built out to support wireless systems. Specifically, all of the major carriers are expending billions of capital investment to provide fiber optic connections to their cell towers and other wireless network equipment.

The only other major fiber optic network construction demand is for very high speed, low latency (no degradation of data speeds signaling strength) networks that interconnect large investments firms, particularly hedge funds, with the various markets. These are the so-called "High Frequency Traders." Since these firms make almost instantaneous transactions and demand complete security, they are now paying for their own fiber optic networks—building out to all the major investment centers, including New York City, Boston, Chicago, San Francisco, etc.

B. Fiber Optic Demand and Demographics

1. Urban, Suburban and Exurban Rates

The highest fiber optic rates are paid for ROW in urban areas. That is because of the demand for interconnection is highest in these areas because of the sheer demand from companies, educational, medical and other facilities that demand access. Congested areas, including tunnels (e.g., all river crossings into New York City, BART's TBT) and downtown areas demand a premium above and beyond these urban rates. Other rates, for suburban and exurban areas, are proportionally much less. And they are generally derived from the top end, "Urban Rate" on a pro rated basis, i.e., Suburban is generally half the Urban rate; Exurban is usually half the Suburban rate, or less, depending upon demographics.

2. Choke Point Rates: Choke point pricing is unique. Agencies such as the Metropolitan Boston Transportation Authority ("MBTA"), one of the first public agencies to develop fiber optic pricing, doubled their highest urban rate for congested areas. These areas included bridges, tunnels and street with limited access for fiber (generally because all but one innerduct in a system were full).

More often, agencies develop rates in collaboration with each other. That is the primary reason that the river crossing rates for the PANYNY/PATH and those of the NYMTA being almost equal. KC&A has developed rates for both agencies using our survey approach.

C. MSA as the Industry Pricing Standard

The first criterion used for determining FMV for the GGNRA ROW is the demographics of the Metropolitan Statistical Area ("MSA") in which the agency's ROW is located, i.e., the Greater Metropolitan San Francisco Bay Area MSA. MSA is a term of art used by the U.S. Census Bureau to define and explain the various metropolitan areas around the country. MSA is also the identical criterion used by major telecommunications companies to determine what they are willing to pay for dedicated ROW.

In telecommunications industry parlance, New York, Philadelphia and Los Angeles are Tier One metropolitan areas; Boston and the San Francisco Bay Area are Tier Two metropolitan areas; Portland and Sacramento are marginal Tier Two/Tier Three metropolitan areas. These MSA comparisons form the starting point for our recommended rates.

Based on our research and agencies' survey, we initially selected Mass DOT (for Boston MSA rates) and BART as the best "comparables" for development of GGNRA ROW rates. The following is our reasoning for this approach:

a. MassDOT: The Greater Boston Area MSA comprises approximately 4.6 million residents. This agency recently increased its governance at the State's direction to include the Metropolitan Boston Transportation Authority "MBTA"). The two agencies have in last year developed complimentary rates for fiber optic occupancies (longitudinal and transverse crossings), cell towers, etc.

The major "choke point" rate for the MBTA is the Ted Williams Tunnel. This major public works project was completed in 2003; MassDOT negotiated the highest choke point rate (now $46.33 per-foot) in the country for this ROW. (Other agencies, e.g., NYMDOT have higher rates, but for higher strand counts cables.) It subsequently applied the same rates to the other tunnels into downtown Boston. Given the demographics and the rate, MassDOT is an excellent, if very high comparable, that we considered.

b. BART: The San Francisco Bay Area MSA comprises 4.2 million citizens. BART longitudinal rates are therefore also comparable. This agency has had a successful program for almost 20 years. BART's TBT rates are described in Table 1. They represent the key comparable for the GGNRA ROW because the TBT is truly a choke point that the carriers cannot afford to bypass. The following are the reasons for that status:

Geographical Necessity: For the major carriers' fiber optic network build out in the 1990's, speed was of the essence. Attempts to negotiate ROW passage through individual municipalities and counties was a time consuming effort. BART's 105 miles of ROW offered a single point of contact to get them from San Francisco to the East and South Bay. Similar efforts were developed with the CalTrain and Valley Transportation Authority ("VTA") in the South Bay at that time. The TBT was the one point that all had to pass through, however, to connect all these efforts.

TBT Rate Acceptance: The rates have been accepted by all carriers. There was a large push back when BART initially offered its TBT rate. That rate, $7 per-foot in 1994, was based on comparable metropolitan rates for SEPTA and MBTA, as developed by KC&A. We also reviewed NYMTA rates for that survey. The carriers initially objected, but were forced to accept the rate because other efforts (A submarine cable, anchored to the TBT was one tactic that failed for them.) proved unsuccessful.

In multiple discussions after the rate was accepted, the carriers indicated they found it to be reasonable, i.e., they were generally posturing and negotiating, rather than adamant in their opposition. Subsequent revisions have been accepted with some of the same posturing—and the same final acceptance.

c. Additional Comparables: SEPTA is in a Tier 1 MSA, albeit suffering a significant loss of population over the last twenty years. It nevertheless offers useful comparables ($25.21per-foot for a 288 strand cable; $$31.51 per-foot for a 432-strand cable) for our survey purposes. In discussions with staff, we learned that the rates have been applied in four transactions for river crossings into downtown Philadelphia. Staff indicated that higher rates would be charged, if there were not alternatives for carriers, e.g., roadways into the city. Nevertheless, the SEPTA choke point rates added an important comparable extra for our analysis.

We also recognized TriMet's rates as a lower-end (albeit a Tier 3 MSA) comparable for our rate recommendation. Given the recent political problems encountered by the agency for a river crossing (See details in section V.C. below), we were reluctant to extrapolate too much significance from the comparable, however.

IV. ANALYSIS OF APPRAISAL FACTORS AND METHODOLOGIES

A. Telecommunications Industry Factors Affecting Fair Market Value

The following section deals exclusively with factors related to development of longitudinal fiber optic rates for access into any type of conduit system in dedicated or severely use-restricted ROW, by AT&T, AboveNet, or any other members of the telecommunications and cable television industries.

1. Traditional Valuation: The "Club"

Although easements, leases, licenses, indefeasible rights of use ("IRU"s) and other contractual arrangements that convey interests in land are sometimes recorded, their true, fair market value are generally not available to the public. Simply put, the various carriers of the fiber optic/carrier industry consider them highly proprietary. If there were an organized market (or trustworthy Internet database) that published rates for all commercially available ROW, the valuation process would be vastly facilitated. Unfortunately, no such market or database exists.

Custom and practice between carriers therefore often determine industry valuations of ROW. Swaps and barters of ROW are common. Knowledgeable "old hands" in the ROW game change employment, and are now lured to new companies by rapacious "headhunters." This close-knit club, as well as their arcane practices, therefore often operates to the detriment of pubic agencies that have marketable ROW.

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2. Valuation Factors: The Tangibles

In the telecommunications business, the competitive value of a ROW-owner's various assets depends on:

- The direct costs to the carrier(s) of leasing or licensing alternative approaches and properties, and;
- Other factors, e.g., terrain problems, "choke points", etc. that cause variations in the costs and benefits of installing infrastructure on the ROW-owner's properties.

Tangible factors that determine fair market for value, and variations in value, for a ROW-owner's properties include the following:

a. Location: Whether a ROW-owner's properties are in urban, suburban, exurban and rural areas—or some mix of all—have significance in determining fair market value. The cost of alternatives to these assets, i. e., a carrier assembling and leasing individual parcels of land, or leasing access along an adjacent railroad longitudinal ROW, is the major cost factor in industry determination of whether to negotiate with an ROW-owner or not.

b. Allocation of financial responsibility for unplanned events and the risk of damage and relocation: The chance that an unplanned event may actually occur figures significantly in financial calculations of all types of telecommunications carriers. The greater the risk assumed by a carrier—particularly if a ROW-owner demands unilateral terms and conditions (e g., unilateral rights to force a relocation of fiber optic conduit without consideration)—the less the value of the contractual relationship to the carrier.

c. Term of the contract: The longer the contract, the greater the guaranteed use by the telecommunications carrier. Although shorter contracts may be renewed and extended into longer-term contracts, the risk of non-renewal does increase financial risk.

Industry demands have changed, however, over the past few years. Fiber optics companies were accustomed to in perpetuity easements fifteen years ago. Now, a twenty- year lease/license term with the option to re-negotiate fair market value before granting an extension, has become standard for longitudinal ROW arrangements.

d. Proximity to population centers: The closer a ROW-owner's properties are to a major metropolitan area, or to other population centers or destinations, the more value it has for the carrier. Sites or ROW in rural, untravelled areas, because of the sparse population are commensurately less valuable.

e. Proximity to major thoroughfares: Major thoroughfares are of major interest to wireline carriers because they invariable connect (some albeit over greater distances) large population hubs. Most state transportation agencies have either statutory preclusions, or agency rules, that prevent carriers from entering their ROW, except on a lateral, incidental basis. Other, private owners of large tracts of longitudinal ROW (e.g., railroads), particularly if these tracts traverse distances between large metropolitan areas, will command a higher market value.

f. Creating an effective, error-free network: For the wireline telecommunications industry, an effective network is one that has redundancy. Carriers have a great concern, often substantiated by excavation projects that break their cables, that service will be interrupted. Carriers' clients will then either terminate their contracts or sue for damages (assuming something more than third party negligence). Neither of these options is acceptable to a telecommunications company in a very competitive marketplace.

Fiber optic networks are therefore designed in ring patterns. If a signal is cut at one point, it can be re-routed (e. g., an original signal moving clockwise can be re-routed in a counterclockwise fashion.) using the sophisticated, "self healing" ability of current fiber networks. Fiber networks have the capacity to monitor themselves—and re-route signals—on an almost instantaneous basis. Redundancy, or diversity as it is also known, is a key component of every fiber optic network's development.

g. Timing: This is an implicit, yet extremely important factor because the demand for ROW of any kind strengthens or weakens as market situations shift, competition changes and new technology emerges. We have observed several, lucrative deals that simply

"went away" because a public agency was not able to reach a decision within a timeframe that was required by marketplace conditions.

B. Valuation Methods for Telecommunications Occupancies

1. Traditional Appraisal Methodologies

In the development of all types of telecommunications/public agency relationships involving ROW, the parties are almost always negotiating terms and conditions for a possessory interest in the properties of the large ROW-owner. The value of such interest can be ascertained by the use of one of several, standard approaches. The basic approaches are:

a. Traditional Real Estate Appraisals

Traditional real estate appraisals employ three approaches to valuation: the cost, market and income approaches. We believe these traditional approaches have limited utility in evaluating longitudinal properties for telecommunications ventures. They are more often than not too static in their approach to dynamic, highly competitive market conditions. They are also based on traditional land valuations that do not reflect the true value to a carrier with a highly specialized use for the proposed occupancy/license/lease of ROW. These methodologies must, however, be understood before any reasonable alternatives or approaches can be developed by a ROW-owner. Briefly, the traditional appraisal approaches are as follows:

i. Cost Approach: The cost approach rests upon the principle of substitution, which acknowledges that the value of an item is limited by the cost of reproducing or replacing it. By measuring the costs associated with procuring acceptable substitutes for a particular asset, it is possible to draw inferences regarding the price a rational buyer is willing to pay for a particular asset. Its counterpart, discussed below, is the valuation of adjacent land.

ii. Market Approach: The market approach is frequently used to determine the value of assets that are routinely traded between buyers and sellers. The value of an asset is reflected in the prices paid by buyers and accepted by sellers for similar items in contemporary arm's length transactions. The value of the possessory interest is necessarily based upon the land actually occupied and the uses to which the property is subjected.

The market approach rests upon the willingness of buyers and sellers to evaluate prices in view of the determinations and actions of other, willing and informed buyers and sellers of comparable property. This valuation methodology is quite useful in instances where assets are traded in a broad, undifferentiated and active market. The market approach has some, limited utility for large ROW-owners, if understood and employed correctly.

iii. Income Approach: A third valuation methodology is the income approach. The income approach employs the principles of investment theory to measure the value of an asset using the income it is expected to generate.

The relationship between the amount of income attributable to a particular asset and its market value is affected by such considerations as growth expectations, the time value of money, inflation, risk, potential for appreciation or depreciation, and the period during which income is anticipated. The income approach typically quantifies these elements through a mathematical analysis of an income stream, incorporating appropriate capitalization rates, horizon periods, terminal values, and the like. The quantitative process is often referred to as "capitalization."

This approach is commonly used to determine the value of business enterprises, as well as individual assets to which it is possible to ascribe specific income streams. This methodology, for example, is useful in establishing the values of such assets as annuities, commercial rental properties and restaurants. It has only marginal utility for transactions between carriers and ROW-owners.

b. Other Valuation Techniques

Large-scale owners of longitudinal ROW have generally been frustrated when they have employed traditional real estate appraisers. These experts' techniques simply do not provide the proper context for more dynamic resource sharing arrangements and concomitant negotiations. The following is an analysis of the more specialized approaches employed by ROW-owners to date. They are:

i. Competitive Auction: In theory, if the number of buyers/lessees/licensees (licensees, hereinafter) exceeds the number of contracts to be awarded, bidding in a competitive auction can be used to make a selection and to establish compensation levels. This is the approach used by the FCC in its auctions for available bandwidth to the wireless industry that has created the demand for the public agencies' lands and ROW. This is a pubic agency approach, however, generally mandated by statute that does not work particularly well with private landowners and their assets.

ii. Valuation of Adjacent Land (also Known as Across the Fence, or ATF) and the Next Best Alternative: This methodology is a variation on the market approach traditionally employed by real estate appraisers. Proximate or adjacent property values are useful as a guide to a ROW-owner's property values. It is misleading, however, to simply correlate the real estate costs of easements or other property rights on adjacent land and assume fair market value has been achieved.

This methodology ignores cost differentials in constructing fiber optic conduit systems over various terrains (Boring through mountains is more expensive, by an order of magnitude, than trenching through flat land.). This methodology also fails to illustrate the economies of scale that can be achieved by negotiating a single longitudinal access agreement with one large ROW-owner, as opposed to negotiating a number of individual,

one-time transactions. Thus the argument that carriers can always "go next door" is only partially true. Their true costs of "going next door" to construct a comparable fiber optic/wireline network can be significantly higher—if a carrier must negotiate a series of one-time agreements with a variety of private and or public property owners.

iii. Historical Experience

Historical precedents, where sufficient data are available, have provided a sound valuation approach in the private sector. This technique serves the fiber optics carriers well. A carrier will often construct a system with more ducts than is needed; expressly intending to fill the empty ducts with competitors' fiber and defray its costs. Over time, this industry has therefore developed—at least for the non-Bell companies—a series of relationships, trade offs and reciprocity arrangements that are mutually beneficial. They do not, however, extend these same courtesies, and information, to large, ROW owners.

For these owners, historical precedent has proved to be problematic at best. First, data from previous, completed transactions may understate the licensee's willingness to pay. That is, the terms and conditions of completed agreements indicated only that private licensees were willing to pay a given level at a particular point in time. But the compensation paid may be less (or more) than they are actually prepared to pay the particular large ROW-owner now.

Second, the telecommunications marketplace has changed significantly in the last few years. There was a major "boom" in the industry, at all levels, from the late 1980's to the "Dot Com Bust" that occurred in early 2001. One might assume that ROW rates have been depressed since then. That is not be the case, according to our findings, discussed below. ROW rates have been either stable or risen in the last three years for major government agency ROW owners—completely repudiating the conventional wisdom that they should adjust to the marketplace.

Third, several large ROW-owners, primarily public government agencies and investor-owned public utilities, have entered into long term, fixed agreements without conducting market surveys or even minimal investigations as to what rates for comparable sites or ROW really are. Other ROW-owners that subsequently rely upon these historical data re-commit the same sin by undervaluing their assets.

Nonetheless, historical precedent, particularly if it is investigated and queried fully, is a better guide than none at all—and provides a useful starting point for ROW transactions.

iv. Market Research

The value of a ROW-owner's properties is ultimately determined by the willingness of telecommunications carriers to pay fair market value. One method of determining that willingness is to interview all potentially interested carriers. Their estimates of the needed ROW may be indicative of industry demand. The problem with this technique is the conflicting motives of the carriers. Although they may wish to develop some or the

entire ROW in question, it is certainly not in their best economic interests to give any indication of the fair market value of the ROW or other terms and conditions they are willing to offer in negotiations.

Carriers' best interests are served by overstating their objectives and insisting on the lowest rates and most favorable terms and conditions, e. g., demanding a 50 year contract term in stead of a 10 - 20 year term with a number of option years

v. Empirical Evidence and Studies

This type of research—speaking candidly to a ROW-owner's counterpart(s)—has been used as a successful appraisal technique primarily in the last ten to fifteen years. Dedicated ROW owners have been able to obtain empirical evidence simply because more and more terms and conditions are being negotiated with private communications carriers all the time—the result of increased competition and demand for ROW and specific routes property from the telecommunications industry.

KC&A maintains an ongoing database of market rates and other activities, primarily updated through client-specific surveys. A typical survey for a client will involve interviews of from eight to twenty comparable companies or government agencies. The results and concomitant recommendations are forwarded to the client.

In summary, we have found that comprehensive market research provides the most reliable, empirical information needed to truly develop a successful ROW licensing program. Properly employed, market research comprises the most convincing and persuasive methodology and approach to the industry.

C. Fiber Optic Pricing Considerations

1. Basic Rates for "Bare Land", Pole Attachments and Conduit Capacity

All clients, whether they are government agencies, public utilities, private companies or individuals, want to know what their rights-of-way are worth. The answers are often not simple, linear responses.

Bare, unimproved land is often of little value, particularly in states that allow carriers to claim "public utility" status. This means a competitive local exchange carrier ("CLEC") such as AboveNet, an incumbent local exchange carrier ("ILEC" such as AT&T or Verizon), a cable television company or other California Public Utilities Commission-designated public utility can trench city streets, place conduit in them and pay the local agency little more than a permit fee. Bare land, however, that is "dedicated" to a specific use (e. g., adjoining a transit rail line) may have separate and distinct value; particularly if the land in question is the only way for a carrier to go from point A to point B. As noted in previous sections of this report, a major "choke point" will have a very high value for carriers desiring to offer service to specific customers; based solely on its unique geographic considerations.

Transactions involving fiber optics and dedicated ROW are now occurring in myriad ways. While "annual per linear foot dollars" remains the industry standard measurement, private parties are offering investor-owned public utilities and government agencies different types of "in kind" compensation as well; including dark and lit fiber at various speeds and rates. All types of ROW-owners, including small municipal electrics, are also adding surplus duct space to existing construction projects for leasing purposes. Private landowners developing or refurbishing business parks and other facilities are putting "dark" fiber (inert, unlit fiber reserved for future lighting) in existing or planned conduit space. All these factors affect the eventual value of the underlying ROW—and the benefits of any bargain to both parties.

The first measurement of value is as basic to fiber optics as it is to any construction project: What is the total cost of construction? The total cost of constructing fiber optic systems varies extensively, based on terrain conditions. For example, burying cable in rural farmland is less expensive than digging through rock or crossing rivers and streams. Construction expenses also increase as more populated areas are encountered. Aerial transmission facilities (poles or attachments to existing structures such as bridges) are considerably less expensive to construct, albeit much less secure in inclement weather, than underground conduit facilities.

The comparative cost to a fiber optic network builder/carrier of competing ROW offered by railroads, other government agencies and miscellaneous (generally large) landowners must also be included in the final analysis. The “next best economic alternative” will always be a factor.

Carriers’ costs are in turn ROW-owners’ revenues. The data below were developed on a generic, national basis, without reference to any ROW-owner’s specific routes and dedicated right of way. They are revenues (carriers’ costs) that a typical lessor could expect to receive for use of its “dedicated” and improved (with poles or duct space) rights-of-way, on an annualized basis:

Generic, National Rates:

- Category 1: Aerial Transmission on Existing Poles (per-cable):
  - Rural Areas: $2,500 to $3,750 per mile
  - Exurban/Suburban Areas: $4,000 to $4,750 per mile
  - Urban Areas: $5,000 to $12,500 per mile

- Category 2: Existing Conduit Space (per inner duct space)
  - Rural Areas: $1,500 to $2,500 per mile
  - Exurban/Suburban Areas: $3,000 to $6,000 per mile
  - Major Metropolitan Areas: $25,000 to $40,000 per mile

- Category 3: Dark Fiber in Existing Conduit (per fiber strand):
  - $420 to $1500 (See discussion in next section)

These estimates provide an admittedly broad-gauge perspective. They do not include any evaluation of the undeveloped land because of the wide fluctuations in the costs of construction, i. e., a minimal street cut in a small town can cost $10,000 per mile; directional boring through solid rock can cost as much as $1 million per mile

These data do establish a foundation for a client to evaluate the relative values of all possible construction scenarios, and future offers (whether actual cash value or "in kind" values) *vis-`a- vis* the client's available ROW. No analysis is complete, however, without a determination of the value of two other markets that are just now opening up opportunities for joint development with the private sector: 1.) Dark fiber strand licenses/IRUs; and, 2.) Actual sale of operational, or lit fiber.

2. Dark Fiber Leasing/Licensing

KC&A understands that the NPS has dark fiber located in the conduit system in the Northern Segment. As stated in section II.C.3 above, we believe the dark fiber is stranded, i.e., of no useful purpose unless connected to more fiber that terminates at facilities with computers, routers, etc., capable of "lighting up" the dark fiber. This segment of the telecommunications industry is one of the fastest growing. We nevertheless believe it is important to understand how the dark fiber market works—particularly for public agencies.
Carriers offer dark fiber to customers (as a "sweetener" to general service offerings) that will allow these customers to develop their own wide area or local area networks ("WAN"s or "LAN"s).

After more than six years of a so-called "dark fiber glut" that followed the "Dot Com Bust" of the early 2000's, the sheer demand for bandwidth is once again creating a "fiber hungry" environment. Carriers are ordering more fibers in larger-capacity cables in order to provide more connectivity and bandwidth into each building or office complex that may have potential customers. Proof positive of this phenomenon is the increasing backlog of orders for fiber optic cables at the major manufacturing plants.

The following are general commercial rates charged by carriers to either companies or other carriers for use of their dark fiber, on a FMY (per-fiber strand-per mile-per year) basis:

- **Long Haul (50 + miles)**
  - US average price is $420-$480 FMY
  - Price rises to around $840 FMY, if the provider is using premium fiber and the route is unique

- **Short Haul (1 to 50 miles)**
  - U.S. average is $960-$2,100 FMY

Dark fiber rates dropped during the early years of the new century. They have since climbed (Burbank Water & Power and Los Angeles Department of Water & Power, discussed herein, have both raised rates substantially in the last two years.). Not to belabor the point, but these are commercial rates, charged by carriers and a limited number of government agencies that have taken a substantial economic risk, developed a business plan and raised the capital to enter a very chaotic market.

3. The Value of "Lit" Fiber

Selling a telecommunications service such as video service (to the entertainment industry), or moving high-speed data through fully operational lit fiber networks (e.g., Internet service), is the ultimate commercial valuation. The potential fair market value of lit fiber is therefore always of significance—whether a company decides to enter the telecommunications business or parlay its ROW in some other type of relationship with a carrier.

We know of only two public agencies (Burbank Water & Power and Los Angeles Department of Water & Power) that are actively marketing lit fiber networks. They have unique circumstances, described in the next section. Several transit agencies, including Amtrak, lease live circuits from telecommunications carriers.

We do not recommend that public agencies, particularly transit systems, develop active, lit fiber networks as a business strategy. The telecommunications marketplace is simply too dynamic and competitive. Nevertheless, as the chart in the Attachment indicates, carriers can generate maximum revenues from their lit fiber networks.

This section is included to provide a full understanding of the full gamut of fiber optic options is important to out clients—no matter what type of arrangement or business plan they may choose to adopt or create.

V. RATE SURVEY

A. Agencies Surveyed

As part of the analysis, KC&A analyzed fee structures for telecommunications and other types of occupancies imposed by eight different government agencies. They were:

1. Transit Agencies and Departments of Transportation

KC&A conducted a survey of 12 agencies for the SOW. The agencies surveyed included:

- BART
- Caltrans
- LACMTA
- MARTA
- MassDOT
- NYMTA
- PANYNJ
- SacRT
- SEPTA
- TriMet

2. Other Government Agencies (primarily for dark fiber rates)

- BWP
- LADWP

B. General Findings

All of the government agencies participating in the survey employ permanent easements as their primary contract document for dealings with other public agencies. Government agencies of all types generally require greater permanence than newer telecommunications or CATV providers. In general (but not in all cases), public utilities were granted easements; some, however, were granted lesser property interests, e.g., leases. It should be noted that the surveyed municipal power companies (LADWP and BWP) were providing services in adjoining geographic areas, i.e., within the Greater Los Angeles Area. Thus, long standing relationships and comity dictated more favorable treatment between these neighboring agencies.

Per the scope of work, we focused our inquiries on specialized treatment, i.e., congestion or choke point pricing, their approach to cost of living adjustments, standard permit fees, special one-time fees (e.g., for inspections of occupancies to validate fiber counts), etc.

The following section details our findings on an agency-by-agency basis:

C. Survey Results

1. Transit and Transportation Agencies

a. BART

BART has recently raised its rates for its most expensive route, through the Trans Bay Tube land. Table 1 describes those rates. BART considers the TBT to be a classic "choke point." There is almost no way for a telecommunications carrier to get around this passageway from Oakland to San Francisco without incurring large construction costs, time delays, multiple permit and licensing fees and other costs. Eleven carriers are in the TBT (AT&T has three 864-strand cables with an option to install two more.), paying premium rates.

Those rates were established at the beginning of the fiber optic licensing program in 1995, when a base rate of $7 PLPFPY was set for a standard 216-strand cable. Volume discounts were offered for larger strand cables. The premium was based on a survey of other agencies and their standard rates that KC&A conducted in 1994. MBTA and SEPTA provided the most compelling comparables.

BART applies a 4% COLA to its agreements.

b. Caltrans

This agency has encountered the same problems as the Golden Gate Bridge District. AT&T has asserted that, per CPUC section 7901 and the U.S. Telecommunications Act of 1996, Caltrans was not permitted to charge fees. The company filed suit in Federal District Court (Northern California). In 2006, that court ruled in favor of Caltrans. AT&T then appealed the case to the 9th Circuit Court of Appeals (San Francisco). Before the appeal could be heard, Governor Schwarznegger issued an executive order to Caltrans, directing the agency to allow AT&T to deploy it fiber system without paying any recurring fees.

In our discussion with the Caltrans attorney who handled the case, he was of the opinion that the only binding opinion is that of the federal district court. In his opinion, the Governor's executive order is merely a limited policy decision that sets no legal precedent. The next Governor may, at his or her discretion, simply rescind the ruling.

We have therefore removed Caltrans from the survey; albeit they have a tremendous amount of valuable ROW.

c. LACMTA

This agency uses a three-tier zone rate structure for fiber optic occupancies. Their high-end or premium rates for the downtown Los Angeles urban area rates do not cover any real choke point locations.

LACMTA's heavy rail line system is a recent phenomenon; built in the 1990's and after the millennium. Much of the telecommunications build out of that same period was accomplished before the system was built. There has been little new interest in the ROW. Furthermore, companies in California can easily receive "public utility" status from the California Public Utilities Commission ("CPUC"). They can then construct

their facilities in any public street without paying more than a one-time administrative charge. Municipal attempts to charge FMV have been overturned in court; the issue is now moot. LACMTA therefore has no choke points or premium pricing for any of its ROW. Lastly, other entities, including Southern California Edison have not installed any new facilities in decades.

d. MARTA

This agency has relatively low congestion rates for an MSA 1 (marginally a 2). They have executed only two deals with carriers for river crossings and indicated that they are not completely satisfied with their entire program, i.e., they may want to review future dealings, exchange information, etc. We have included their rates for comparison purposes, but essentially discounted them as a relevant factor for this survey.

e. MassDOT

As mentioned in section II.C, above, the Greater Boston Area MSA comprises approximately 4.6 million residents. This agency recently increased its governance at the State's direction to include the Metropolitan Boston Transportation Authority "MBTA"). The two agencies have in last year developed complimentary rates for fiber optic occupancies (longitudinal and transverse crossings), cell towers, etc.

The major "choke point" rate for the MBTA is the Ted Williams Tunnel. This major public works project was completed in 2003; MassDOT negotiated the highest choke point rate (now $46.33 per-foot) in the country for this ROW. (Other agencies, e.g., NYMDOT have higher rates, but for higher strand counts cables.) It subsequently applied the same rates to the other tunnels into downtown Boston. Given the demographics and the rate, MassDOT is an excellent, if very high comparable, that we considered.

f. New York MTA

This agency established new rates for all types of occupancies (fiber, copper, cable TV, pipelines, electrical cabling, etc.) last year. We believe their MSA Tier 1 rates are the most comprehensive in the United States for a transit agency. NYMTA's longitudinal rates for its tunnels across the East River are almost identical to those of the PANYNJ. Both agencies began exchanging information in the late 1990's when the carriers were seeking access into Manhattan and the other boroughs over the Hudson and East Rivers. The agencies essentially agreed not to compete for business.

Neither agency was able to negotiate agreements with the carriers in Manhattan itself because the telecommunications companies were collectively placing cabling in an abandoned subway system (Empire Subway) that exists under much of the City. Only recently, after the Empire Subway system was filled have the carriers been willing to negotiate, primarily with the NYMTA.

The New York MTA (11 million people) is so much bigger than the San Francisco Bay Area that comparables were useful in only one regard: What a government agency can obtain for choke point pricing at the top end of the market.

g. PANYNJ

The previous section describes the reasons for the complimentary rates for river crossings that PANYNJ and NYMTA enjoy. Again, the comparables for this agency illustrate the values at the top end of the market.

h. SacRT

This agency has a comprehensive, three-tiered program. It is similar to the programs developed by MBTA and TriMet, albeit for a much smaller population area (Sacramento Metropolitan Area is approximately 1 million people.). Sacramento RT has congestion pricing. They do not have any relevant choke points that are useful comparables. The agency assumes a 216-strand cable as the minimum standard for its rates.

We determined that SacRT does not have any useful comparables and therefore excluded the agency from our final analysis.

i. SEPTA

SEPTA is in a Tier 1 MSA, albeit suffering a significant loss of population over the last twenty years. It nevertheless offers useful comparables ($25.21per-foot for a 288 strand cable; $$31.51 per-foot for a 432-strand cable) for our survey purposes. In discussions with staff, we learned that the rates have been applied in four transactions for river crossings into downtown Philadelphia. Staff indicated that higher rates would be charged, if there were not alternatives for carriers, e.g., roadways into the city. Nevertheless, the SEPTA choke point rates were important comparables for our analysis.

j. TriMet

The agency uses a congestion pricing approach that was pioneered by MBTA in the 1990's: They essentially double their Urban rate. This occurs in two circumstances:

- In street conduits that have only limited (generally one innerduct) space remaining. The premium pricing is based on the public policy decision not to allow any further degradation of streets with future fiber build outs.
- On bridges over waterways

The agency has been successful in charging the premium rate in its streets. A recently constructed bridge did cause negotiating problems, however. The major utilities and carriers objected to the TriMet rates. Final resolution was only achieved after upper management decisions with the affected parties. Lower than stated rates were presumably charged in the compromise result.

The published TriMet rates were a comparable, albeit a diminished one because of the bridge negotiations, in our final determination of the GGNRA rates.

2. Other Government Agencies (Dark Fiber Rates only)

a. Burbank Water & Power (BWP)

BWP maintains a highly successful dark fiber program. In existence for ten years, this program was initially justified as a more efficient means of monitoring electrical cables, sub stations and other parts of the BWP power grid. When fiber cabling was placed in the system, surplus conduit and fibers were also put in.

BWP has been licensing dark fiber at a rate of $2,100 per-fiber-per-per-mile-per year (FPFMY). Revenues have exceeded $1 million per year for the last three years. With the major headquarters and studios for Disney, Fox and NBC located in Burbank, the business case for the dark fiber rentals was not a difficult one to make with the City. BWP personnel are now taking the next step: Working with separate vendors to develop their own network (dubbed Burbank One) within the City of Burbank, allowing various television production companies to send their shows on a real-time basis over the network to the major studios. Pricing for these video transport services have not been determined; the Burbank One network is not expected to become operational until mid 2006. BWP does have an interconnection agreement with LADWP to allow video transport between the two service areas.

b. LADWP

LADWP manages and markets a very successful ($3million + in annual revenues) dark fiber leasing program over its fiber optic network. As with BWP, their fiber network was initially installed to monitor their power grid; additional dark fiber was installed at the same time with the intent of leasing it to Los Angeles businesses.

LADWP's PFPMPY rates are almost identical to those of BWP. LADWP charges a large (as much as $1,000 per month) additional fee to carriers for short, e.g., 100 feet, runs in the center of Los Angeles. These extra fees are in essence zone charges for being in an exclusive area.

VI. CONCLUSIONS

This report, including its findings and recommendations, comprises unique information that we believe will enable the NPS to continue to obtain fair market value from its GGNRA ROW. We believe these rates can be achieved with AT&T and AboveNet through aggressive but reasonable negotiations.

We have provided some additional findings and recommendations, e.g., COLA, dark fiber, etc. In making these recommendations, however, we defer to the NPS Legal Department and their expertise in interpretation or application of federal statutes as well as NPS customs and practices.

If you have any questions regarding any portion of this report, please do not hesitate to contact us.

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Kingston Cole for

Kingston Cole & Associates

Attachment

Kingston Cole & Associates Client List (1989 to 2018)

Transit Agencies

- BART: 4 contracts (fiber and cell towers)
- Chicago Transit authority (CTA): Cell towers only
- Los Angeles MTA: 2 contracts (fiber)
- MBTA (Boston): 1 contract (fiber)
- New York MTA: 4 contracts (fiber, pipelines, etc.)
- Sacramento RT: 1 contract (fiber)
- Samtrans (Cal Train): 3 contracts (fiber)
- Santa Clara VTA (Silicon Valley): 1 contract (fiber)
- SEPTA (Philadelphia): 2 contracts (fiber)
- TriMet (Portland, OR): 3 contracts

Departments of Transportation/States

- State of California: 2 contracts (fiber)
- CALTRANS: 1 contract (cell towers)
- Massachusetts DOT: 1 contract (fiber and cell towers)
- State of Michigan: 1 contract (cell towers)
- Montana DOT: 1 contract (fiber)
- Oklahoma DOT: 1 contract (fiber)
- New Jersey DOT: 3 contracts (fiber, cell towers, Fast Track)
- New York DOT: 1 contract (fiber, pipelines, etc.)
- North Carolina DOT: 1 contract (fiber)
- Vermont DOT: 1 contract (fiber)

Other Major Agencies

- Golden Gate Bridge (National Park Service): 1 contract (fiber)
- Internet 2 with Lawrence Livermore National Laboratory (fiber)
- Marin County: 1 contract (fiber)
- Port Authority of New York and New Jersey: 2 contracts (fiber)
- Metropolitan Water District of Southern California: 1 contract (fiber)
- Burbank Water and Power: 4 contracts (fiber)

Miscellaneous cities and counties