



GREAT REDWOOD TRAIL AGENCY

MEETING DATE: December 5, 2024

AGENDA ITEM: 10. Non-Exclusive License Agreement with California Department of Technology

FROM: Louisa Morris

RE: Non-Exclusive License Agreement with California Department of Technology

EXECUTIVE SUMMARY:

GRTA and California Department of Technology seek to enter into a license agreement for use of 512 feet of the GRTA right-of-way near the intersection of Highways 101 and 162 (Longvale), in Mendocino County, as part of the California Department of Technology's "Broadband for All" initiative. This item seeks Board authority for the Executive Director to execute such a license agreement in a form approved by counsel.

BACKGROUND:

The California Department of Technology is teaming with Caltrans to install broadband conduits throughout California. These conduits will primarily be installed in the Caltrans right-of-way, with the California Department of Technology being the owner and operator of the fiberoptic utility once installation is complete.

GRTA and California Department of Technology seek to enter into a license agreement for use of 512 feet of the GRTA right-of-way near the intersection of Highways 101 and 162 (Longvale), in Mendocino County, for a period of thirty years as part of the California Department of Technology's "Broadband for All" initiative. This area will connect future broadband infrastructure from Highway 101 to Highway 162 (Covelo Road). Upon completion, all improvements will be underground, and will not interfere with trail construction or usage upon the surface of the property. CDT and its successors or partners will take responsibility for installation and maintenance costs associated with the project. GRTA will charge an annual license rate based on the GRTA Schedule of Rates & Charges for fiberoptic.

CEQA ANALYSIS:

The project is exempt from CEQA under Public Resources Code section 21080.51 because it is a broadband project on an existing highway facility with no potential adverse effect on the environment.

RECOMMENDATION:

Staff recommends the Board authorize the Executive Director to execute a Non-Exclusive License Agreement with California Department of Technology for the use of real property located between mileposts 152.1 and 152.3, for installation, operation, and maintenance of 512 feet of fiberoptic cable in the GRTA right-of-way, for a period of thirty years, in a form approved by Counsel.

FISCAL IMPACT:

Annual revenue from this license agreement will start at approximately \$3,900, with the greater of either (1) 3% annual increase or (2) adjustments to coincide with the current GRTA Schedule of Rates & Charges approved by the Board.

ATTACHMENTS:

- A. CA DEPT TECHNOLOGY HWY 162 BROADBAND LICENSE DRAFT 11 14 24 (1)

UTILITY LICENSE AGREEMENT

THIS UTILITY LICENSE AGREEMENT ("Agreement" or "License") is executed this _____ day of _____, 2024 by and between Great Redwood Trail Agency, a California public entity formed pursuant to Government Code Section 93000 et seq., ("GRTA" or the "Grantor"), whose mailing address is Great Redwood Trail Agency, c/o Blue Lake City Hall, PO Box 458, Blue Lake, CA 95525, and California Department of Technology, a State agency (the "Licensee" or "Grantee").

RECITALS

- A. GRTA is the property owner or easement holder of the railroad right-of-way located in Mendocino County, known as the Northwestern Pacific Railroad rail corridor ("NWP Rail Corridor").
- B. Pursuant to the GRTA Encroachment permit, GRTA has agreed to provide Licensee with a license to use and occupy the NWP Corridor for fiberoptic cable installation, operations, and maintenance, upon certain conditions set forth hereinbelow.

NOW THEREFORE, in consideration of the mutual covenants, conditions, and agreements recited herein and made a material part hereof, the GRTA and Licensee agree as follows:

1. **GRANT and CONVEYANCE.** For and in consideration of the mutual promises and covenants set forth herein, and subject to all the terms and conditions set forth herein, and other good and valuable consideration, the receipt and sufficiency of which by the Grantor is hereby acknowledged, Grantor hereby grants and conveys unto the Grantee, successors, and assigns (collectively, the "**Grantee**"), a license for right-of-way for the Term of this License under, across, and through that certain real property located in Mendocino County, California (the "**Property**"), identified as that portion of the GRTA right- of-way near MP 152 (approximately 152.1-152.3) on either side of its intersection with Highway 162 (the "Covelo Road"), near Helms Road in Mendocino County, as more particularly described in Exhibit A attached hereto and incorporated herein, for the installation, ownership, and operation of certain utility facilities (the "**Facilities**") as further described herein, effective as the Effective Date.

2. **LICENSE AREA.** The area of the Property hereby licensed (the "**License Area**") is a tract of land traversing the Property, uniform in width, **measuring approximately four (4) feet wide by approximately 512 feet in length**, as more particularly described in Exhibit B attached hereto and incorporated herein, to be utilized for the purposes set forth in Section 5 below (the "**Authorized Uses**").

3. **TERM.** The term of this License shall commence on the Effective Date and shall remain in effect for thirty (30) years thereafter. Grantee may terminate this License at any time by providing Grantor with at least one hundred eighty (180) days written notice. Upon any termination all of the rights herein granted to the Grantee shall cease and all obligations and liabilities of the Grantee shall cease.

4. **CONSIDERATION.** As consideration for this Agreement, Licensee shall pay, in advance, an Annual "License Fee" due and payable July 1 of each year correlating with GRTA's Fiscal Year (July 1 through June 30) in accordance with the terms and amounts set forth by GRTA in its most currently approved "Fee Schedule," with the first year's payment being a pro-rata portion of the days remaining in that Fiscal Year calculated from the Effective Date of this Agreement through June 30 of that same Fiscal Year. The Annual License Fee shall be at the then-current GRTA-approved rate for that Fiscal Year and shall be subject to change per GRTA Board approval of Fees and/or Rates on an annual basis. Accordingly, the current annual License fee for the first year of this License, calculated pro-rata as applicable, as of the Effective Date of this Agreement through the upcoming date of June 30, is based on an **annual rate of**

\$3,904.44, with the full annual rate, per the terms herein, due thereafter for the new License Year running from July 1 through June 30 of each subsequent License Year. Each year upon the anniversary of the Commencement Date hereof, the License Fee shall be adjusted by the greater of (1) the amount necessary to bring the License Fee up to the currently adopted applicable Rate, or (2) Three Percent (3%) of the prior year's consideration. If any amount due on any invoice is not received by Grantor within thirty (30) days of the receipt of invoice by Grantee, then Grantor may charge interest at the rate of the lesser of one and one-half percent (1.5%) per month or the maximum rate allowable under law, commencing as of the Payment Date through the date of Grantor's receipt of payment.

5. **AUTHORIZED USES and RESTRICTIONS.** The License Area and the rights herein granted shall be used by the Grantee to construct, install, inspect, patrol, own, operate, maintain, repair, replace, and remove (all collectively, the "**Authorized Uses**") facilities pertaining to Grantee's telecommunications, conduit, equipment, and appurtenances, (all collectively the "**Facilities**"), subject to the restrictions and covenants set forth in this Section.

- (a) Grantee shall have the right to construct, install, inspect, patrol, own, operate, maintain, repair, replace, and remove utility and telecommunication facilities, equipment, and appurtenances below the License Area, consisting primarily of underground conduit (2" duct) with 288-strand fiber optic cable inside. Grantor shall not grant any other license, right-of-way or other right within the License Area that conflicts with or in any way limits the ability of Grantee to exercise its rights under this Agreement.
- (b) Grantor has the right to use the surface of the License Area for any purpose not inconsistent with this License, and Grantor's use of the License Area shall not unreasonably interfere with the rights and privileges conveyed herein to Grantee. Grantor agrees not to permanently block ingress or egress to the License Area or conduct any activity on the License Area or the Property that prevents the exercise of the rights conveyed to Grantee or which would impair or adversely affect the proper operation of the Facilities. Parties expressly acknowledge that Grantor intends to construct and operate a recreational trail on or near the License Area, the construction of which may cause a temporary reduction in access to the License Area. Grantor agrees to provide reasonable notice to Grantee of any activities that may impair such access. Grantee expressly acknowledges that to the extent the construction and/or operation of the trail allow the continued operational use and maintenance of Grantee's installed equipment, such activities are deemed to be consistent with the grant of License, pursuant to this section.
- (c) Grantee has the right to license, permit and otherwise authorize and agree to allow the use of the Facilities by any of its customers, clients, affiliates, partners, and joint ventures, employees, and agents, and to facilitate such rights, to authorize same to utilize the License Area in strict accordance with the terms of this License.
- (d) Grantee has and shall have all other rights and benefits necessary to the full and complete enjoyment and use of the License and License Area for the purposes stated herein, as authorized by applicable law.
- (e) Upon written permission of Grantor, which shall not be unreasonably withheld, Grantee has the right to make alterations within the License Area, and to relocate the Facilities within the License Area, and shall return the License Area to its original condition upon completion. If Grantee exercised its right to make such alterations, Grantee shall be responsible for ensuring that any changes in location of any equipment do not or will not impair Grantee's ability to use or access such equipment, in light of any improvements planned or installed by Grantor within the License Area. Grantee shall have no right to impair or demand modification of Grantor uses of the Licensed Area on the basis of conflicting uses of the Licensed Area to the extent such conflicts are or would be created by Grantee's relocation of equipment.
- (f) Grantee has the right of ingress and egress to and from the nearest dedicated public street, highway, or other public right of way for the purposes of accessing the License Area; and

- (g) Grantee has the right to a thirty (30)-foot wide temporary construction easement for eighteen (18) months for the purposes of initial construction and installation of the Facilities.

6. **FACILITIES.** Grantee's utility Facilities shall consist of, but not be limited to, conduits, cables, wires, surface location and warning markers, handholes, and other appurtenances for similar uses. Any above-ground Facilities other than surface location and warning markers and handholes shall be allowed only upon prior written approval of Grantor, which permission shall not be unreasonably withheld so long as such proposed Facilities are reasonably necessary to the operation of the intended use of the License Area by Grantee.

- (a) The Facilities shall, at all times, be and remain the personal property of the Grantee, and shall not become or be considered as improvements to the Property or fixtures to the Property. In the event that Grantee conveys title to the Facilities, to either an affiliate company or to an unrelated third party buyer, such conveyance shall cause this License to run with the Facilities and all right, title and interest to the License Area and the rights herein granted shall automatically convey title to, and title shall vest in, such other affiliate company or buyer, for said buyer's immediate use and enjoyment without the need to file or record a new instrument.
- (b) Grantee shall be liable for any and all personal property taxes assessed exclusively against the Facilities.

7. **REPRESENTATIONS and WARRANTIES.**

- (a) To the extent allowed by law, each Party represents, warrants, and covenants to each other that:
 - (i) It has the full power, right and authority to enter into, execute, deliver, and perform its obligations under this License and that the individuals signing this License on behalf of Grantor and Grantee are empowered and duly authorized to bind Grantor or Grantee, as the case may be, to this License;
 - (ii) It has taken all requisite action to approve the execution, delivery, and performance of this License; all necessary governmental and corporate approvals, if any, have been obtained to authorize the execution, delivery, and performance of this License;
 - (iii) This License constitutes its legal, valid, and binding obligation enforceable against such Party in accordance with its terms;
 - (iv) Its execution of and performance under this License shall not violate any applicable existing regulations, rules, statutes, grants, or court orders of any local, state, or federal government agency, court, or body;
 - (v) This License, in no way, creates the relationship of landlord and tenant between the Parties, nor shall it be construed to create any employer-employee relationship, partnership, joint venture or other business relationship between the Parties.
- (b) To the extent allowed by law, Grantor represents, warrants, and covenants to Grantee that:
 - (i) Grantor will indemnify and defend Grantee for any claims, damages, remediation costs, or penalties to the extent caused by existing environmental contamination of the Property, and
 - (ii) Grantee shall have quiet and peaceable possession, use, and enjoyment of the License Area;
- (c) To the extent allowed by law, Grantee represents, warrants, and covenants to Grantor that:
 - (i) Grantee has and will maintain all approvals, certifications, licenses, credentials, permits,

authorizations, notifications, and other approvals that may be required by regulatory, supervisory, or governmental institutions for Grantee to perform as the License requires; and

- (ii) All work performed by Grantee under this Agreement shall be performed in good workmanlike manner consistent with industry standard technical requirements and specifications and consistent with standards of care and skills typical for the telecommunications industry. Grantee will use only appropriately skilled and experienced employees and subcontractors, properly qualified and supervised to perform the maintenance services. The construction and maintenance materials used by Grantee in the performance of this License will be good quality, and the maintenance services will be free from defects in design, materials, and workmanship.
- (iii) Within 60 days after the expiration of the Term hereof or upon termination, if such termination occurs prior to the expiration of the Term, Grantee shall, upon the written request of Grantor given not more than 30 days after the expiration or termination hereof, remove all equipment and improvements to the License Area installed by Grantee, and return the Licensed Area to substantially the condition of the License Area upon the commencement hereof.

8. GENERAL TERMS and CONDITIONS. Grantor and Grantee further agree to all the foregoing terms and conditions:

- (a) Grantee shall, after any activity upon the License Area:
 - (i) Restore, or caused to be restored, all areas removed or damaged in the License Area during any activity conducted by or on behalf of Grantee;
 - (ii) Cause all debris and materials incident to such activity to be removed;
 - (iii) Fill any excavations; and
 - (iv) To the extent reasonably possible, substantially restore the property to as near its pre-existing state, reasonable wear and tear and damage by casualty or condemnation, excepted.
- (b) Grantee will use reasonable efforts to avoid damage to Grantor's Property, and shall compensate Grantor for (or, at Grantee's election, shall have repaired) damages caused to fences, gates or other real property improvements or other personal property of Grantor, as a result of such activities undertaken by Grantee or on Grantee's behalf, in accordance with this License.
- (c) This License and the rights and privileges herein granted, are each divisible and apportionable, and are each assignable, in whole or in part, and shall be binding upon and inure to the benefit of the successors, apportionees, assigns, heirs, personal representatives, executors, administrators, of the respective Parties hereto.
- (d) The covenants, terms, conditions, provisions, and the granted rights contained herein constitute covenants that shall be binding upon Grantor and all subsequent owners of the Property and shall inure to the benefit of and be binding upon Grantee and its successors and assigns for the Term of this License.
- (e) The covenants, terms, conditions provisions, and the granted rights contained herein are appurtenant to, and run with, Grantee's Facilities and its network and shall be binding upon Grantee and all subsequent owners of the Facilities and network, if any, and shall inure to the benefit of and be binding upon Grantor and its successors and assigns.

9. **COMPLIANCE WITH LAW.** Licensee shall allow no nuisances to exist or be maintained upon the License Property and shall comply with and abide by all applicable federal, state, and local laws and regulations affecting the License Property and any actions of Licensee thereupon.

10. **INDEMNIFICATION.** To the maximum extent allowed by law, Grantee agrees to indemnify, defend and hold harmless Grantor, including its officers, employees, agents, contractors, successors, and assigns, from and against all loss, liability (including liability with respect to death, injury and personal and property damage), claims, demands, suits, liens, claims of lien, damages, costs and expenses, arising out of or connected in any manner with the use or misuse of the License Property by Licensee, its agents, licensees, or contractors, or any act or omission by Grantee therewith. Such indemnity shall not apply to the extent such loss, liability (including liability with respect to death, injury and personal and property damage), claims, demands, suits, liens, claims of lien, damages, costs and expenses are solely caused by GRTA's or any of its official's, employee's, consultant's, agent's, contractor's or successors and assigns' active negligence or intentional conduct. This provision shall survive any termination revocation of the License for actions or inactions that may arise during the time this License is in effect.

11. **AMENDMENTS.** If circumstances arise under which an amendment or modification of this Agreement would be appropriate, the Licensee and GRTA shall be free to jointly amend this Agreement. This License may be modified only in writing and only if signed by the parties at the time of the modification.

12. **WAIVER.** No waiver of any default under this Agreement shall constitute or operate as a waiver of any subsequent default hereunder, and no delay, failure or omission in exercising or enforcing any right, privilege, or option under this Agreement shall constitute a waiver, abandonment or relinquishment thereof or prohibit or prevent any election under or enforcement or exercise of any right, privilege, or option hereunder.

13. **NOTICES.** Except as otherwise provided hereunder; any notice or communication to GRTA, its successors and assigns, or Licensee shall be in writing and be mailed by postage prepaid. Notices or communications shall be addressed to the parties at the following addresses, which may be changed at any time by notice to the other party:

If to the Grantee:
Great Redwood Trail Agency
c/o City of Blue Lake
PO Box 458
Blue Lake, CA 95525

If to the Grantor/Licensee:
California Department of Technology

14. MISCELLANEOUS.

- (a) Assignment. This License and the rights herein granted are freely assignable in whole or in part, in accordance with state law.
- (b) Reversion. Any cessation of use of the Facilities and the License Area for a minimum period of two (2) years shall be considered an abandonment by the Grantee, and the rights herein granted shall all revert to, and vest in, the Grantor, its successors or assigns.
- (c) Release. Upon any termination or abandonment of use of the Facilities and the License Area by the Grantee, Grantee shall prepare a written, acknowledged, and signed release or other such instrument evidencing Grantee's relinquishment of all its rights and interest in the License Area.
- (d) Counterparts. This License may be executed in two or more counterparts, all of which shall be considered one and the same instrument and shall become effective as of the Effective Date first set forth above.
- (e) Severability. In case any one or more of the provisions contained in this License shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this License, but this License shall be construed as if such invalid, illegal, or unenforceable provisions had not been contained herein.
- (f) Time of the Essence. Time is of the essence of each and all of the agreements, covenants, and conditions of this Lease.
- (g) Consents. Whenever in this License the consent or approval of either GRTA, or its successors and assigns, or Licensee is required or permitted, the party requested to give such consent or approval will act promptly and will not unreasonably withhold its consent or approval, unless such consent is in the sole discretion of the non-requesting party.
- (h) Attorneys' Fees. In the event of any action or proceeding at law or in equity between GRTA, or its successors and assigns, and Licensee to enforce any provision of this License or to protect or establish any right or remedy of either party hereunder, the unsuccessful party to such litigation shall pay to the prevailing party all costs and expenses, including reasonable attorney's fees, incurred therein by such prevailing party, and if such prevailing party shall recover judgment in any such action or proceeding, such costs, expenses and attorney's fees shall be included in and as a part of such judgment.
- (i) Integration. This License constitutes the entire agreement between the Parties with respect to the subject matter hereof, and supersedes any other agreement, whether written or oral. This License may not be amended or modified in any respect whatsoever except by an instrument in writing signed by GRTA, or its successors and assigns, and Licensee.
- (j) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Nothing in this Agreement is intended to alter, limit, or otherwise affect the immunities and liability limitations provided to public entities under the laws of the State of California, including without limitation the Government Claims Act set forth in the California Government Code.

IN WITNESS WHEREOF, this License is executed and effective as of the date first written above.

GRANTOR

Great Redwood Trail Agency

Signature

Name, Title

Date

Approved as to Form:

General Counsel

Date: _____

GRANTEE

California Department of Technology

Signature

Name, Title

Date

Exhibit A
Property Description

Near MP 152 (approximately 152.1-152.3) of the GRTA Right of Way on either side of its intersection with Highway 162 (the "Covelo Road") near Helms Road in Mendocino County.

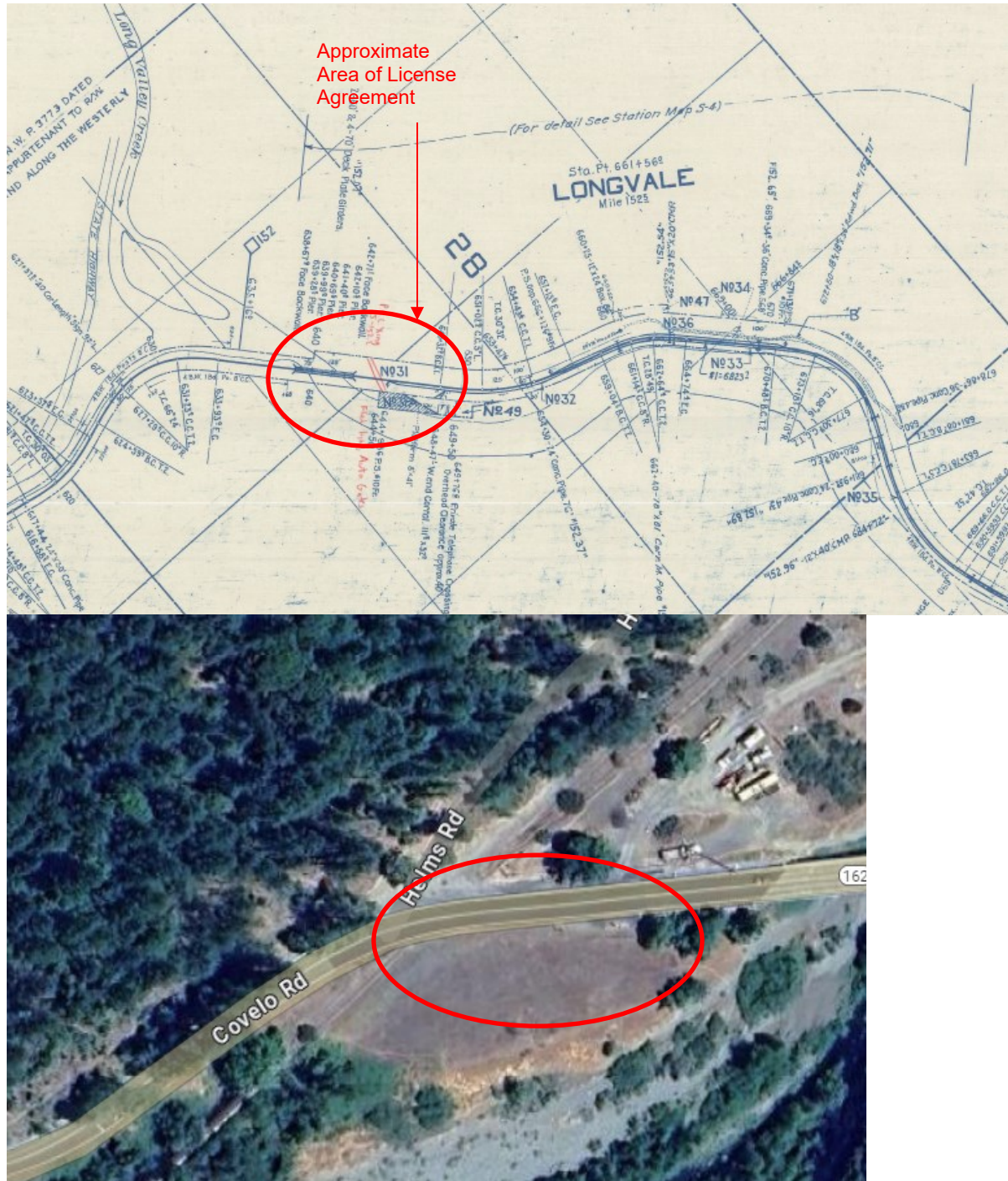


Exhibit B

License Area Description

A linear route measuring approximately four (4) feet wide by approximately 512 feet in length running within the GRTA right-of-way on either side of its intersection with Highway 162 (the “Covelo Road”) near Helms Road in Mendocino County.

Underground conduit consisting of one (1) 2-inch duct will be constructed along this route via horizontal directional drilling.

The Facilities shall be the underground conduits and cables together with support facilities including, but not limited to, handholes and markers.

