

INTERGOVERNMENTAL AGREEMENT # IT-3172-19

Between MARION COUNTY and THE CITY OF SALEM

This Agreement is between Marion County and the City of Salem (City), an Oregon municipal corporation. Marion County and City are the Parties to this Agreement, all referred individually without distinction as “Party” and collectively as the “Parties.”

SECTION 1: BACKGROUND/RECITALS

- 1.1 Marion County currently utilizes fiber optic cables provided by a third-party private entity, Comcast. Marion County’s right to utilize any cables at no cost ends at the end of the agreement with Comcast, with incremental decreases in no-cost cable utilization during the term of the agreement. Marion County desires a more cost effective alternative.
- 1.2 Marion County does not own a fiber infrastructure within City limits that meets Marion County’s needs, and therefore purchases fiber network services from other parties. Marion County will be obtaining fiber optic infrastructure between “Courthouse Square” and the Marion County Courthouse and has been granted authority to use the City’s Rights-of-way for that infrastructure under a separate agreement. Marion County will be adding fiber infrastructure along Silverton Road and Cordon road which will be governed under the terms of the Traffic Signal Interconnect Intergovernmental Agreement previously entered into between the Parties.
- 1.3 This Agreement with the City will expand the availability and capabilities of the Marion County network, in supporting its operations in the Salem area. Marion County’s network is private and operates primarily within the borders of the State, with the exception of core Internet circuits not associated with this Agreement.
- 1.4 Pursuant to federal law, state statutes, the Salem City Charter, and Salem Revised Code (SRC) section 35.020, the City is authorized to grant the non-exclusive right to occupy the City’s Rights-of-Way and other public property in order to construct, operate, use and maintain telecommunications service, gas service, electricity and other public utilities, within the municipal boundaries of the City of Salem.

DEFINITIONS; RULES OF CONSTRUCTION

- 1.5 Throughout this Agreement, captions are intended solely to facilitate reading and reference and shall not affect the meaning and interpretation of this Agreement.
- 1.6 When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The word “shall” is always mandatory and not merely directory.
- 1.7 Definitions:
- 1.7.1 “Agreement” means this Agreement, as fully executed by the City and the Marion County, Oregon.
- 1.7.2 “City” means the City of Salem, Oregon, a municipal corporation, and all of the territory within its corporate boundaries, as such may change from time to time.
- 1.7.3 “City Council” or “Council” means the governing body of the City of Salem.
- 1.7.4 “City Engineer” means the City Engineer of the City of Salem, or any designee thereof.
- 1.7.5 “Facility” means any tangible component of the Telecommunications System including, but not limited to, optical fiber, wires, cables, pipes, mains, ducts, conduits, vaults, pedestals, poles, antennas, power boxes, cabinets and electronic equipment.
- 1.7.6 “Gross Revenues” means any and all amounts collected by or owing to Marion County, its successors or assigns, derived from the provision of Telecommunications Services provided, in whole or in part, via the Telecommunications System.
- 1.7.7 “Person” means any individual, governmental entity, sole proprietorship, partnership, association, joint stock company, trust, limited liability company, or other form of organization authorized to do business in the State of Oregon, and includes any natural person.
- 1.7.8 “Rights-of-Way” means the surface of, and the space above and below, any street, road, alley, highway, sidewalk, utility easement, public square, public park, or other public place owned or otherwise held by the City.
- 1.7.9 “Telecommunications Service” means any service provided for the purpose of voice, video or data transmission, including, but not limited to, local exchange service, access service, extended area service, call origination, interconnection, switching, transport, call termination and/or any other telecommunications service identified and authorized by the Federal Communications Commission (“FCC”) or the Oregon Public Utilities Commission. Telecommunications Service does not

include any of the following: cable service as defined by 47 U.S.C. § 522; open video system service as defined in 47 C.F.R. § 76; private communications system services provided without using the public rights-of-way; over-the-air radio or television broadcasting to the public-at-large from Facilities licensed by the FCC or any successor thereto; direct-to-home satellite service within the meaning of Section 602 of the Telecommunications Act of 1996; or commercial mobile radio service as defined by 47 C.F.R. § 20.3.

- 1.7.10** “Telecommunications System” means all Facilities owned, leased, rented, maintained or used by either Party for the purpose of providing Telecommunications Service pursuant to this Agreement.

SECTION 2: PURPOSE

- 2.1 Purchase of Service from City.** This Agreement allows Marion County to utilize optical fiber network Facilities from the City for the purpose of connecting Marion County business offices to the Marion County network.

As set forth in this Agreement, the City will provide Marion County with point-to-point single mode fiber optic network connectivity using a telecommunications vault as designated by the City at specified locations, pursuant to the terms of this Agreement and a Service Order from Marion County. The Service provided to Marion County by the City is physical connectivity using one (or more) strands of optical fiber (“Fiber”) between designated sites (“service”) based on a Service Order from Marion County. Each site will have a single mode fiber termination.

- 2.2 Use of City’s Rights-of-Way.** As set forth in this Agreement, Marion County will be provided the non-exclusive right to occupy the City’s Rights-of-Way for the purpose of connecting to the City owned optical fiber in accordance with the terms of this Agreement

SECTION 3: GRANT OF AUTHORITY

- 3.1** The City hereby grants to Marion County the non-exclusive right to occupy the City’s Rights-of-Way for the purpose of construction, use, operation and maintenance of a Telecommunications System in accordance with the terms of this Agreement. Marion County shall use the Telecommunications System solely to provide Telecommunications Service.
- 3.2** Prior to providing any Telecommunications Services via all or part of the Telecommunications System, Marion County shall apply for and obtain such authority from the Oregon Public Utility Commission and/or the Federal Communications Commission, if required under State or Federal law. Marion County shall provide the City with documentation of such authority upon written request.
- 3.3** This Agreement and the grant of authority conferred herein are not exclusive. The City reserves the right to grant the authority to others to use the City’s Rights-of-Way or other

public property during the term of this Agreement. Marion County shall respect the rights and property of the City and other authorized users of the Rights-of-Way. This Agreement does not confer on Marion County any right, title or interest in any Right-of-Way beyond that expressly conferred herein. This Agreement does not confer any right or privilege to use or occupy any other property of the City or any other entity.

- 3.4 Nothing in this Agreement shall in any way be construed or interpreted, or in any way limit, the City from modifying or performing any work in its Rights-of-Way, or granting Agreements for use of its Rights-of-Way, or of otherwise abrogating or limiting any rights, privileges or property interest the City now has in its Rights-of-Way, whether now owned or hereinafter acquired.
- 3.5 Nothing in this Agreement shall be construed to prevent the City from constructing sewers; from grading, paving, repairing or altering any Right-of-Way or from constructing, installing, repairing or removing water mains or any other public work or improvement. If any of Marion County's Facilities which is part of the Telecommunications System interferes with the work described in this subsection, Marion County's Facilities shall be removed or replaced according to Section 8 of this Agreement.
- 3.6 This Agreement is subject to the Charter of the City of Salem and general ordinance provisions passed pursuant thereto, now in effect or hereafter made effective.

SECTION 4: EFFECTIVE DATE AND DURATION

This Agreement is effective as of July 1, 2020 ("Effective Date"). Unless terminated in accordance with Section 18, this Agreement shall remain in effect until June 30, 2029. Thereafter the parties may renew this Agreement for 2 additional 5-year terms at the City's then-current rate schedule. However, the entire term of the Agreement, including all renewals, will not be more than twenty (20) years from the Effective Date. Marion County shall send the City written notice of its intent to request renewal the Agreement at least one hundred eighty (180) days prior to the end of the then current term. Any renewal of this Agreement must be by written mutual agreement of the parties in accordance with Section 28 of this Agreement.

SECTION 5: AUTHORIZED REPRESENTATIVES

5.1 CITY OF SALEM AUTHORIZED REPRESENTATIVE IS:

Title	Name	Phone	e-mail address
IT Operations and Networks Manager	Chuck Fauser	503-588-6350	CFauser@cityofsalem.net

5.2 THE MARION COUNTY AUTHORIZED REPRESENTATIVE IS:

Title	Name	Phone	e-mail address
IT Operations Manager	Ken Pearson	503-588-5045	kpearson@co.marion.or.us

5.3 A Party may designate a new authorized representative by written notice to the other Party.

SECTION 6: RESPONSIBILITIES OF EACH PARTY

- 6.1** The City shall own, operate, and maintain all Facilities that provide the network connections and components between the “hand-off” points. The City shall have no obligation to install, operate, or maintain Marion County provided or owned Facilities.
- 6.2** The City, at its cost, shall maintain the structural aspects of City owned Facilities in good operating condition, utilizing sound engineering practices and in accordance with the specifications outlined in Appendix A-Optical Fiber Splicing and Testing Standards, throughout the Agreement term.
- 6.3** The City may subcontract for testing, maintenance, repair, restoration, relocation, or other operational and technical services.
- 6.4** A Service Order from Marion County will designate the location address, services and rates, and be substantially similar to Exhibit A attached hereto. Submission of a Service Order by Marion County requesting fiber optic network connectivity to a location does not obligate the City to provide connectivity to the requested location. The City reserves the right to deny providing connectivity to any requested location.
- 6.5** For each location that the City agrees to provide fiber optic connectivity to, the City shall provide a splice point as a “hand-off” location. The “hand-off” location will be a fiber optic cable splice vault which shall be within the City’s Rights-of-Way, unless otherwise designated by the City, and placed at a location mutually agreed upon by the Parties. The Parties shall make reasonable efforts to locate the “hand-off” site as close as possible to the entry point of the building at which Marion County is requesting service.
- 6.6** The City shall be responsible for securing any easements, leases, permits or other agreements necessary to allow the City to deliver fiber optic cable to a “hand-off” location. The City shall ensure that the City owned Facilities are installed in a neat and professional manner, and that their routing and location remains within property owned by the City or to which the City has the right or permission to place the Facilities.
- 6.7** Marion County shall be responsible for all costs incurred by the City in installing Facilities at the designated “hand-off” site, bringing the City’s Facilities to the site, and all

other costs associated with splicing Marion County's optical fiber with the City's optical fiber and testing the system.

- 6.8** Marion County may request a quote prior to submitting a Service Order for service at a new location.
- 6.9** Marion County shall be responsible for securing any easements, leases, permits or other agreements necessary to allow for the delivery of fiber optic cable from the "hand-off" location into and within the building designated in the Service Order. Marion County shall provide a path for the fiber optic cable from the point of entry into the site to the "hand-off" site in the City's Right-of-Way.
- 6.10** Marion County shall construct Facilities from the "hand-off" site to the termination location within Marion County location. Marion County shall ensure that those Facilities are installed in a neat and professional manner.
- 6.11** The Parties shall work in partnership to identify installation sites at Marion County location(s) desired by Marion County for optimal serviceability, as well as to assure that the quality of the installation is able to meet the specifications outlined in Appendix A - Optical Fiber Splicing and Testing Standards.
- 6.12** The City will notify Marion County when the installation of City owned Facilities to the "hand-off" location is complete. Marion County shall then install Facilities from the "hand-off" location into Marion County location and terminate the optical fiber within the City's splice vault and notify the City when complete. The City will then splice the optical fiber at the "hand-off" location and conduct end-to-end testing of the optical fiber. Marion County shall not access a City splice vault without prior approval of the City. All splicing and disconnection of Marion County optical fiber to/from the City optical fiber, under any provision of this Agreement, shall be performed by the City unless otherwise mutually agreed to by the Parties. Marion County shall obtain all authorizations required by any third-parties for the City to conduct end-to-end testing of the optical fiber at any time during this Agreement.
- 6.13** When the City completes installation and testing of City owned Facilities necessary to provide the Services requested by Marion County in a Service Order, per Section 6.4, the City shall notify Marion County in writing that the Services are available for use. Marion County shall have fourteen (14) calendar days to notify the City that it accepts the service and the date of such acceptance ("Service Start Date") is deemed the beginning of the service period. If Marion County does not notify the City that Marion County accepts the service within fourteen (14) calendar days of the City notifying the City that Services are available for use, Marion County shall be deemed to have accepted service on the fourteenth (14th) calendar day which will also be the Service Start Date. Marion County shall submit a Service Order requesting termination or disconnection of Services no less than thirty (30) days prior to the requested Service Termination Date.
- 6.14** If, after being notified by the City that the Services are available for use, Marion County notifies the City that the Services are not working in accordance with the standards set

forth in this Agreement, the parties shall work together to resolve the issue. If it is determined that the Services were not working due to a problem with the City owned Facilities, Marion County shall have another fourteen (14) calendar days to accept the service from the time it receives notice from the City that the issue has been resolved.

- 6.15 The City shall maintain all City owned Facilities in good and operable condition and perform appropriate routine maintenance on City owned Facilities in accordance with the City's preventive maintenance procedures. The City's maintenance procedures shall not substantially deviate from industry practice. The City is not responsible for maintaining or repairing any County provided or owned Facilities.
- 6.16 The City shall use reasonable efforts to notify Marion County seven (7) days prior to the date of any scheduled maintenance activity. In the event that such an activity is canceled or rescheduled after the notification to Marion County, the City shall notify Marion County as soon as reasonably possible and comply with the same advance notification provision when the maintenance activity is rescheduled.
- 6.17 The Parties shall report to one another any known environmental hazards which would restrict or jeopardize any maintenance or repair activities in shelters or right of way areas of operation.
- 6.18 The content of Marion County transmissions of data, voice, or video using City owned fiber network are confidential and shall be treated by City as "Confidential Information" subject to the provisions of law. The City shall not disclose Confidential Information, and Confidential Information shall not be made available, in any form, to any party other than City or its agents or contractors and only then as may be necessary to support the Services described in this Agreement without written permission of Marion County, except as may be required by law or by court order.

Nothing in this provision shall be interpreted as preventing the City from running reports regarding usage of its network or accessing other non-content specific information about its network for any purpose.

- 6.19 Marion County shall have full and complete control of, and responsibility and liability for, the content of any and all communications transmissions sent or received using the City owned Facilities or City provided services.

SECTION 7: CONSTRUCTION AND RELOCATION

- 7.1 Marion County shall maintain maps and data pertaining to all of its Facilities located in the City that are a part of the Telecommunications System, located at an office in Marion County. With no less than twenty-four (24) hours prior notice, the City may inspect the maps and data at any time during business hours. Upon request of the City and without charge, Marion County shall furnish current maps and data to the City, either in printed form or, if the City maintains compatible data base capabilities, then by electronic data in read-only format, showing the location of all Marion County's Facilities within the City. Upon completion of any and all of its Facilities in the City's Rights-of-Way, Marion

County shall provide a map consistent with this Section to the City, showing the location as-built of its installed Facilities in the City's Rights-of-Way. Such as-built maps shall be in a form acceptable to the City Engineer and shall define specific locations of Facilities. Unless permitted or required by law or by court order, the City will not sell or transmit Marion County's maps or data to third parties unless permitted by Marion County. The City will make available to Marion County at no cost any relevant City prepared maps or data.

- 7.2 Within thirty (30) days of any change in location of Marion County's Facilities located in the City that are a part of the Telecommunications System Marion County shall provide a map to the City Engineer, showing Marion County's Facilities on whatever standard scale the City adopts for general use. Marion County shall also provide such maps in an electronic format acceptable to both Parties.
- 7.3 Upon Marion County's acquisition of any Facilities located in the City's Rights-of-Way, or upon any addition or annexation to the City of any area in which Marion County owns or controls any Facilities in the Rights-of-Way, Marion County shall submit to the City a written statement describing all Facilities involved, along with any documentation evidencing such acquisition and specifying the location of all such Facilities.
- 7.4 Subject to applicable rules and regulations of the City, Marion County may perform all excavations and other work necessary to construct, operate and maintain Marion County owned Facilities which are subject to this agreement, in accordance with the terms of this Agreement. All construction and maintenance of any and all Marion County owned Facilities within City's Rights-of-Way, regardless of who performs the excavation, installation and/or construction, are and shall remain the responsibility of Marion County. Marion County shall apply for and obtain all permits necessary for excavation, installation, construction, and/or maintenance of all Marion County Facilities located in the City's Rights-of-Way and shall pay all applicable fees due for City permits. Marion County must also give such notice as required by law to other franchisees, licensees or permittees of the City, and/or other units of government owning or maintaining Facilities which may be affected by the proposed work.
- 7.5 Marion County shall comply with ORS 757.542 through ORS 757.562 and the rules and regulations promulgated thereunder in making excavations.
- 7.6 All work by Marion County in the City's Rights-of-Way shall be properly safeguarded for the prevention of accidents. All of Marion County's work regarding the construction, installation and maintenance of Marion County's Facilities that are part of this Agreement shall be done in strict compliance with all applicable laws, ordinances, rules and regulations of the City and Marion County.
- 7.7 The City shall have the right to require Marion County to change the location of any of its Facilities located within the City's Rights-of-Way when public convenience and necessity requires such change, and the expense thereof shall be paid solely by Marion County. Should Marion County fail to remove or relocate any such Facilities by the date established by the City, which, except in the event of a public emergency, shall not be

sooner than ninety (90) days after City's written notice to remove/relocate, the City may cause or effect such removal or relocation, and the expense thereof shall be paid by Marion County, including all direct, indirect or consequential costs and expenses incurred by the City due to Marion County's delay. If the City requires Marion County to relocate any of its Facilities located within the City's Rights-of-Way, the City shall make a reasonable effort to provide Marion County with an alternate location for such Facilities.

- 7.8 As permitted by, and in accordance with SRC 35.430 through SRC 35.497, and any other applicable law, administrative rule, or regulation, the City may require Marion County to remove and replace any overhead Facilities with underground Facilities at the same or different locations. The expense of such a conversion shall be paid by Marion County. Nothing in this Subsection prevents the Parties from agreeing to a different form of cost recovery consistent with applicable statutes and administrative rules or regulations on a case-by-case basis.
- 7.9 Marion County's Facilities shall be constructed and maintained in such manner as not to interfere with sewers, water pipes, or any other property of the City, or with any other pipes, wires, conduits or other facilities that may have been laid in the City's Rights-of-Way by the City or pursuant to the City's authority.
- 7.10 The City may require Marion County, at Marion County's expense, to temporarily remove and/or relocate its Facilities that are part of this Agreement which are located in any City Right-of-Way by giving not less than thirty (30) days advance written notice to Marion County. Prior to such removal and/or relocation, the City agrees to work with Marion County to identify a suitable substitute location for such relocated Facilities to maintain service.
- 7.11 Nothing in this Agreement shall be construed in any way to prevent the City from excavating, grading, paving, planking, repairing, widening, altering, or doing any work in any of the City's Rights-of-Way. The City will make reasonable efforts to coordinate any such work with Marion County to avoid, to the extent reasonably foreseeable, any obstruction, injury or restriction on the use of any of Marion County's Facilities.

SECTION 8: RESTORATION OF RIGHTS-OF-WAY

- 8.1 Whenever Marion County disturbs the surface of any City Rights-of-Way for any purpose, Marion County shall promptly restore the Rights-of-Way to as good or better condition than it had been prior to such disturbance.
- 8.2 All restoration of the City's Rights-of-Way surfaces shall be subject to the approval of the City, which may issue an order requiring correction of the restoration work. If the correction order is not complied with within thirty (30) days or any other such time as may be specified in the order, the City may restore the surface of the Rights-of-Way, in which case Marion County shall pay all costs of the restoration work to the City, including the resurfacing, inspection, supervision, and administrative costs of the resurfacing. If the City restores the surface of any Rights-of-Way under this Subsection, Marion County shall also pay for the cost of issuing the correction order. If the work by

Marion County creates a public safety hazard as determined by the City, Marion County may be required to repair or restore such Rights-of-Way within twenty-four (24) hours of such determination or within such time as otherwise agreed upon by the Parties.

- 8.3** Marion County may prune or cause to be pruned, using proper arboricultural practices, any tree located in the City's Rights-of-Way which substantially interferes with Marion County's Facilities if Marion County gives no less than fourteen (14) days advance written notice to the City's Urban Forester, the City's Franchise Administrator and any adjoining property owners. Such pruning work shall be the minimum amount required to alleviate the substantial interference with the operation of Marion County's Facilities. Any contractor engaged by Marion County to perform work under this Subsection must be approved by the City in advance of the performance of any work. Any wood, debris or other matter resulting from the pruning of trees shall be removed from the City's Rights-of-Way on the same day pruning occurs.

SECTION 9: TEMPORARY RELOCATION AT THIRD PARTY REQUEST

- 9.1** Whenever it is necessary to temporarily relocate or rearrange any Facility of Marion County to permit the passage of any building, machinery or other object, Marion County shall perform the work upon thirty (30) business days' written notice from the Persons desiring to move the building, machinery or other object. The notice shall: (1) demonstrate that the third party has acquired any necessary permit from the City; (2) detail the route of movement of the building, machinery or other object; (3) provide that the Person requesting the temporary relocation shall be responsible for Marion County's costs; (4) provide that the requestor shall indemnify and hold harmless the City and Marion County from any and all damages or claims resulting either from the moving of the building, machinery or other object or from the temporary relocation of Marion County's Facilities; and (5) be accompanied by a cash deposit or other security acceptable to Marion County for the costs of relocation. The cash deposit or other acceptable security shall be in an amount reasonably calculated by Marion County to cover Marion County's costs of temporary relocation and restoration. Marion County may, in its sole discretion, waive the cash deposit or other acceptable security requirement.

SECTION 10: RIGHT-OF-WAY VACATION

- 10.1** If any City Rights-of-Way or portion thereof used by Marion County is vacated by the City during the term of this Agreement, Marion County shall, without expense to the City, remove its Facilities therefrom and restore, repair or reconstruct the Rights-of-Way or portion thereof in as good or better condition as before the removal. In the event of failure, neglect or refusal of Marion County, after ninety (90) days' notice by the City, to restore, repair, reconstruct, improve or maintain such vacated Right-of-Way, the City may perform such work or cause such work to be performed, in which case Marion County shall pay all costs of the work to the City. In the event of vacation under this Section, the

City shall cooperate with Marion County to identify alternative locations within the City's Rights-of-Way for placement of Marion County's Facilities.

SECTION 11: MAINTENANCE OF FACILITIES

- 11.1** Marion County shall be solely responsible for performing all required maintenance and improvements to its Facilities and for installing all safeguards reasonably necessary to prevent injury to any Person, or to any publicly or privately own property, and Marion County shall be solely responsible for all costs thereof. Marion County shall be responsible, at its own expense, for repairing any trench settlement or other paving defect resulting from the installation of Marion County's Facilities in the Rights-of-Way.

SECTION 12: DISCONTINUED USE OF FACILITIES

- 12.1** Whenever Marion County intends to permanently discontinue use of part or all its Facilities in the City's Rights-of Way, Marion County shall submit a completed application to the City for approval, describing the Facility or Facilities involved and the date on which Marion County intends to discontinue its use. Marion County must remove the Facility or request that the City permit the Facility to remain in place, which permission shall be in the sole discretion of the City. If Marion County is permitted to abandon its Facilities in place as evidenced by written consent from the City, Marion County shall submit to the City a deed or other form of documentation acceptable to the City Attorney transferring ownership of such Facilities in the Rights-of-Way to the City. After the transfer of ownership is complete, Marion County shall have no further obligation for the Facilities except as otherwise provided for in this Agreement, including but not limited to, indemnifying the City for any claims, damages, or harm caused by Hazardous Substances. Notwithstanding Marion County's request that any such Facility remain in place, the City may require Marion County to remove the Facility from the Rights-of-Way, or modify the Facility, or a combination of both, in order to protect the public health and safety, or otherwise serve the public interest. Marion County shall complete such removal or modification in accordance with a schedule set by the City. Until the City consents to Marion County's abandonment, or Marion County removes or modifies the Facility as directed by the City, Marion County shall be responsible for all necessary repairs and relocations of the Facilities, as well as restoration of the Rights-of-Way, in the same manner and degree as if the Facilities were in active use. Marion County shall also retain all liability for such Facilities.

SECTION 13: HAZARDOUS SUBSTANCES

- 13.1** Marion County shall comply with all applicable state and federal laws, statutes, regulations and orders concerning hazardous substances relating to Marion County's Facilities in the City's Rights-of-Way. "Hazardous Substance" shall have the meaning given by ORS 465.200(16).

- 13.2 Upon reasonable notice to Marion County, the City may inspect Marion County' Facilities in the City's Right-of-Way to determine if any release of Hazardous Substances has occurred, or may occur, from or related to Marion County' Facilities.
- 13.3 In removing or modifying any of its Facilities which are subject to this agreement, Marion County shall also remove all residue of Hazardous Substances in compliance with applicable environmental clean-up standards related thereto.
- 13.4 The City and Marion County expressly acknowledge that the City shall have no liability whatsoever for any claims, damages or harm caused by or related to the existence or release of Hazardous Substances in or by Marion County' Facilities, or for Marion County' failure to adequately address or clean up such Hazardous Substances. Marion County shall forever indemnify City for any claims, damages or harm according to the requirements of Subsection 23.10 of this Agreement.

SECTION 14: REMOVAL OF FACILITIES UPON EXPIRATION

- 14.1 Upon expiration of this Agreement, Marion County shall either remove its Facilities in accordance with ORS 221.470 or seek City's written consent to leave its Facilities in place pursuant to Section 12 of this Agreement.

SECTION 15: RESPONSIBILITIES IN RESOLVING SERVICE DISRUPTION

- 15.1 The City shall operate and maintain its Public Works Dispatch Center (PWDC) to serve as the Network Control and Management Center ("NCAM"), staffed twenty-four (24) hours a day, seven (7) days a week, by trained and qualified personnel. City shall maintain (503) 588-6333 as the telephone number to contact PWDC personnel. City's PWDC personnel shall dispatch maintenance and repair personnel to resolve problems reported by Marion County.
- 15.2 The City shall promptly notify Marion County, via the Marion County Information Technology Service Desk at 503-373-4357, or via Email to ServiceDesk@co.marion.or.us, of any matters pertaining to any damage, impending damage or loss of the use of the fiber network covered by this Agreement.
- 15.3 When Marion County identifies a circumstance which requires restoration of service, it shall provide NCAM personnel the name and address of the facility with the problem, the identification number of the Fiber circuits in question, and the name and telephone numbers of Marion County's personnel to contact for site access and status updates. NCAM personnel shall then contact a City technician immediately and provide Marion County issue and contact information. A City technician shall contact Marion County within two (2) hours of initial call.
- 15.4 If the City's technician cannot resolve the service disruption remotely, City shall use commercially reasonable efforts to have a maintenance technician at the site requiring

repair within four (4) hours of Marion County's initial call to the NCAM. The City will then use commercially reasonable efforts to have service restored in a timely manner. "Commercially reasonable efforts" means activities and performances consistent with prudent utility practice, existing contract provisions for City technicians and/or employees, the need to utilize non-City technicians and/or employees, practices required for preserving the integrity of the fiber optic network, and response times that do not jeopardize the health and safety of the employees, contractors and agents of the City and Marion County.

- 15.5 In case of a service disruption, the Parties agree to work together to restore all traffic as quickly as reasonably possible. The City, as quickly as reasonably possible after arriving on the site of the reported service disruption, shall determine the best course of action to be taken to restore the fiber network service. It is Marion County's sole responsibility to resolve service disruptions occurring on Marion County's provided or owned Facilities.
- 15.6 In the event that emergency repairs to the portion of the Telecommunications System owned by the City are necessary, the City shall immediately notify Marion County of the need for such repairs. The City may immediately initiate such emergency repairs.

SECTION 16: COMPENSATION FOR SERVICES AND PAYMENT TERMS

- 16.1 For recurring charges associated with optical fiber network services covered by this Agreement established prior to the beginning of the fiscal year, the City shall provide an invoice for twelve (12) months of service (July 1 through June 30). The annual charge shall be paid by Marion County within thirty (30) days of invoice receipt.
- 16.2 For recurring charges associated with optical fiber network services covered by this Agreement which are established during the fiscal year, the recurring charges shall begin as of the Service Start Date as set forth in Section 6.13. The City shall provide an invoice for a daily prorated amount of the recurring charges from the Service Start Date through June 30th. The invoice shall be paid by Marion County within thirty (30) days of invoice receipt.
- 16.3 The City shall charge Marion County nonrecurring charge(s) based on the Service Order from Marion County. Nonrecurring charges includes, but is not limited to, charges for design, construction, installation, activation, testing, and disconnection work, and the provision of fiber optic network components. Marion County may request a quote for the nonrecurring charges prior to Service Order submission. The quote is for estimation purposes only. Actual nonrecurring charges shall be sent to Marion County in an invoice. The nonrecurring charges shall be paid by Marion County within thirty (30) days of invoice receipt.
- 16.4 The annual charge for each service location for the optical fiber Services as described in this Agreement shall be determined by multiplying the length of the fiber used for the service connection times the monthly rate. The length of each service connection shall be

determined from the City's Geographic Information System (GIS) Fiber Manager Application rounded up to the nearest one half mile length. The Fiscal Year 2020-21 (July 1, 2020 – June 30, 2021) monthly rate for a pair of fiber strands will be \$26.00 per fiber-pair mile plus an operations and maintenance rate of \$6.00 per fiber-pair mile for a total monthly rate of \$32.00 per fiber-pair mile.

Recurring charges for the Services shall terminate within thirty (30) days of a Service Order requesting termination or disconnection of Services submitted to City by Marion County and be substantially similar to Exhibit B.

- 16.5 Marion County shall be responsible for paying the City all costs incurred by the City for any calls to the City for service issues related to the fiber network that City later confirms as resulting from other than functionality of City owned Facilities. Such costs shall be included in an invoice and shall be paid by Marion County within thirty (30) days of invoice receipt.
- 16.6 Any Facilities and work product that are installed and paid for as non-recurring charges through a Service Order from Marion County shall be under the ownership of the City, unless otherwise agreed to by the Parties in writing.
- 16.7 All fees and charges are subject to CPI adjustments, to be applied annually. The amount of the fees and charges specified herein shall increase at the beginning of each Fiscal Year, on July 1st, at the rate of adjustment in the CPI for the Urban Wage Earners and Clerical Workers for the West Region, Size A (over 1.5 million) for the prior calendar year, unadjusted for seasonal variations, as determined by the US Bureau of Labor and Statistics of the US Department of Labor and as published in such US Bureau of Labor Statistics Detailed Report.
- 16.8 All fees, costs, and charges are due upon receipt and shall be paid within thirty (30) days of invoice date. Payments not received within thirty (30) days of invoice date or that are underpaid shall be assessed interest from the due date at a rate equal to nine percent (9.0%) per annum, compounded monthly, until paid in full. Failure by Marion County to make full payment of all fees, costs, and charges within thirty (30) days of invoice date shall constitute a material breach of this Agreement.

SECTION 17: COMPENSATION FOR USE OF CITY'S RIGHT-OF-WAY

- 17.1 In addition to the compensation for services as set forth in Section 16 of this Agreement, as compensation for the benefits and privileges under Section 3 of this Agreement, Marion County has agreed to allow the City the right to the use of 12 strands of Marion County owned fiber between the Marion County Courthouse and Marion Courthouse Square.

- 17.2 The Parties agree that Marion County will not derive any Gross Revenue from the Telecommunications Service provided on the Telecommunications System occupying the City's Rights-of-Way pursuant to this agreement. If Marion County begins deriving Gross Revenues during the term of this Agreement, Marion County shall immediately notify the City in writing and agree to negotiate amendments to this Agreement to comply with SRC 35.220, to provide for payment terms for auditing procedures, and to designate the provision of the amendments as material to this Agreement.

SECTION 18: TERMINATION

- 18.1 This Agreement may be terminated at any time by mutual written agreement of the Parties.
- 18.2 A Party may terminate this Agreement for any or no cause upon not less than ninety (90) days written notice to the other Party.
- 18.3 A Party may terminate this Agreement, and all rights and privileges pertaining thereto, immediately upon written notice to the other Party, or at such later date as the terminating Party may specify in such notice, upon the occurrence of any of the following events:
- 18.3.1 The terminating Party fails to receive funding, appropriations, limitations, allotments, or other expenditure authority at levels sufficient in the terminating Party's reasonable administrative discretion, to perform its duties under this Agreement.
- 18.3.2 Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the terminating Party's performance under this Agreement is prohibited or the terminating Party is prohibited from paying for such performance from the planned funding source.
- 18.3.3 The other Party materially breaches a covenant, warranty or obligation under this Agreement, or fails to perform its duties within the time specified in this Agreement or any extension of that time, or so fails to pursue its duties as to endanger that Party's performance under this Agreement in accordance with its terms, and such breach or failure is not cured within thirty (30) days after delivery of the terminating Party's notice to the other Party of such breach or failure, or within such longer period of cure as the terminating Party may specify in such notice.
- 18.3.4 A Party is found by a court of competent jurisdiction to have engaged in fraud or deceit upon the other Party or any other persons.
- 18.3.5 Marion County fails to obtain and maintain any permit required by any federal, state, or local, regulatory body for the construction, maintenance, and operation of the Telecommunication System; provided, however, that Marion County shall be allowed a reasonable time to cure failure to obtain any permit, and that such

permit is material to the operation of the Telecommunication System, or the City's management of its Rights-of-Way.

18.3.6 If a Party fails to maintain the full amount of its insurance/self-insurance coverage as required under the terms of this Agreement.

18.4 If Marion County terminates this Agreement based upon the City's default or failure to perform, the City shall reimburse to Marion County any pro rata amounts paid on the unexpired term of the Agreement.

18.5 If the City terminates this Agreement based upon Marion County's default or failure to perform, Marion County shall remain obligated for all recurring and non-recurring fees and charges incurred as of the termination date, as well as any costs incurred by City in enforcing the terms of this Agreement, including but not limited to, disconnecting Facilities, removing Marion County's Facilities from the City's Rights-of-Way, removing any hazardous materials associated with Marion County's Facility's and restoring the City's Rights-of-Way.

18.6 If Marion County cancels a Service Order after submission to City but prior to acceptance of the Services, it shall reimburse City for any and all non-recurring costs incurred by City for fulfilling the Service Order request, within thirty (30) days of receipt of the invoice.

SECTION 19: NOTICE

19.1 Except as otherwise expressly provided in this Agreement, any notices to be given relating to this Agreement shall be given in writing by email, personal delivery, facsimile, or mailing the same, postage prepaid, to a Party's Authorized Representative at the address, number or email address set forth in this Agreement, or to such other addresses or numbers as a Party may indicate pursuant to this Section.

19.2 Except as otherwise expressly provided for in this Agreement, any such notice or communication delivered by personal delivery shall be deemed delivered and effective upon actual receipt. Any notice or communication sent by United States mail, postage prepaid, shall be deemed delivered and effective five (5) days after mailing. Any notice or communication sent by overnight or commercial courier shall be deemed delivered and effective five (5) days after dispatch. Any notice or communication sent by facsimile transmission shall be deemed delivered when receipt of the transmission is generated by the transmitting machine. To be effective against either Party, such facsimile transmission shall be confirmed by telephone notice to the other Party.

SECTION 20: SURVIVAL

All rights and obligations shall cease upon termination of this Agreement, except for those rights and obligations that by their nature or express terms survive termination of this Agreement. Termination shall not prejudice any rights or obligations accrued to the Parties prior to termination.

SECTION 21: SEVERABILITY

- 21.1** The Parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
- 21.2** If any provision of this Agreement becomes invalid or unenforceable and the City or Marion County expressly finds that such provision constituted a consideration material to entering into this Agreement, the City and Marion County may mutually agree to renegotiate the terms of this Agreement. The Party seeking renegotiation shall serve on the other Party written notice of an offer to renegotiate. In the event the Party receiving the notification request accepts the offer to renegotiate, the Parties shall have ninety (90) days to conduct and complete the renegotiation.

SECTION 22: COUNTERPARTS

This Agreement may be executed in several counterparts, all of which when taken together shall constitute one agreement, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the Agreement so executed shall constitute an original.

SECTION 23: LIABILITY AND INSURANCE

- 23.1** Each Party shall obtain and maintain in effect during the term of this Agreement a policy or policies of commercial general liability insurance with combined single limits, or the equivalent, of not less than \$2,000,000 (two million dollars) per occurrence/ \$4,000,000 (four million dollars) in the aggregate for Bodily Injury, Death Property Damage, Contractual Liability, and Completed Operations. The Parties shall each obtain and maintain in effect during the term of this Agreement Professional Liability coverage with combined single limits of not less than \$2,000,000 (two million dollars). The insurance shall be without prejudice to otherwise existing coverage and shall name and cover as additional insureds the other Party, its officers, agents, and employees. Each Party shall be financially responsible for all pertinent deductibles, self-insured retention and/or self-insurance. The certificate of insurance as specified in this Section shall provide that this insurance shall not be canceled or materially altered without thirty (30) days written notice first being given to the other Party. If the insurance is canceled or materially altered within the term of this Agreement, the Party shall provide a replacement policy with the same terms.
- 23.2** Each Party, as a government body, may fulfill the insurance obligations listed in this Section through a program of self-insurance; provided that the self-insurance program complies with applicable laws and provides insurance coverage equivalent to both type and level of coverage to that listed in this Section.

- 23.3** Each Party is either an employer that will comply with ORS 656.017 or an employer that is exempt under ORS 656.126. Each Party agrees that it is solely responsible for obtaining and maintaining insured or self-insured coverage for its own employees as required by that law.
- 23.4** Subject to the limitations set forth in the Oregon Tort Claims Act, the Oregon Constitution, and the Charter of the City of Salem, each Party shall forever indemnify, defend and hold harmless the other, and the other's officials, agents and employees, against any and all claims, demands, causes of action, suits, proceedings, damages, costs, reasonable attorney's fees or liabilities ("Claims") arising out of, pertaining to, or occurring through the exercise of, the rights and privileges retained by, granted to, or exercised by that Party pursuant to this Agreement.
- 23.5** If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against a Party (the "Notified Party") with respect to which the other Party ("Other Party") may have liability, the Notified Party must promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Either Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this paragraph and meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's liability with respect to the Third Party Claim.
- 23.6** Subject to the limitations of Article XI, Section 10 of the Oregon Constitution, the City, at its sole cost, shall be responsible for restoring, or otherwise repairing to its prior condition, reasonable wear and tear excepted, any portion of Marion County's premises or Facilities, which are damaged by the City or its agents. Subject to the same provisions of the Oregon Constitution, Marion County, at its sole cost, shall be responsible for restoring, or otherwise repairing to its prior condition, reasonable wear and tear excepted, any portion of the City's Facilities and Rights-of-Way, which are damaged by Marion County, its affiliates, employees, agents, contractors, or agents.
- 23.7** With respect to a Third Party Claim for which Marion County is jointly liable with the City (or would be, if joined in the Third Party Claim), Marion County shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the City in such proportion as is appropriate to reflect the relative fault of each Party in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of each Party shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Marion County's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if Marion County had sole liability in the proceeding.

- 23.8** With respect to a Third Party Claim for which the City is jointly liable with Marion County (or would be if joined in the Third Party Claim), the City shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Marion County in such proportion as is appropriate to reflect the relative fault of each Party in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of each Party shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The City's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if it had sole liability in the proceeding.
- 23.9** Marion County agrees to forever indemnify the City against any claims, suits, actions, costs, and expenses, of any kind, whether direct or indirect, incurred by the City arising out of the release or threat of release of any hazardous substance as defined in ORS 465.200(16) caused by Marion County's ownership, operation or maintenance of Facilities in the City's Rights-of-Way.

SECTION 24: RECORDS

- 24.1** The Parties, and their duly authorized representatives, shall have access to the books, documents, papers, and records of a Party that are directly related to this Agreement for the purposes of making audit, examination, excerpts, and transcripts for a period of three (3) years, or such longer period as may be required by applicable law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy, or litigation arising out of or related to this Agreement, whichever date is later.
- 24.2** In order to manage the City's Rights-of-way, and to the extent permitted or required by applicable law, Marion County shall provide, upon request, the following information in such form as may be reasonably required by the City: Maps of Marion County's Facilities that are part of this Agreement.
- 24.3** Marion County shall make available to the City, upon not less than fourteen (14) days prior written notice, such additional information or reports pertinent to enforcing the terms of this Agreement, in such form and at such time as the City may request.
- 24.4** Marion County acknowledges that information submitted to the City may be open to public inspection under the Oregon Public Records Law, ORS 192.311 through 192.478. Marion County acknowledges it is responsible for becoming familiar with, and understanding the provisions of the Oregon Public Records Law.
- 24.5** Marion County may identify information, submitted to the City as confidential, such as trade secrets, financial records, customer information or technical information (as defined in ORS 192.345 or 192.355). Marion County shall prominently mark any information for which it claims confidentiality with the word "Confidential" on each page of such

information, prior to submitting such information to the City. Marion County shall also provide a written explanation as to why such information is confidential under state or federal law. The City shall treat any information so marked as confidential until the City receives a request for disclosure of such information. The City shall make reasonable efforts to provide Marion County notice of a request for information marked as confidential, including a copy of the request, within ten (10) business days of receiving any such request. Marion County shall have five (5) business days within which to provide a written response to the City before the City will disclose any of the requested confidential information, unless a shorter period of time is required by law or court order. The City shall retain the sole discretion to determine whether to release the requested confidential information, in accordance with applicable laws or court order.

- 24.6** The Parties shall maintain all fiscal records relating to this Agreement in accordance with generally accepted accounting principles. In addition, the City shall maintain any other records pertinent to this Agreement in such manner as to clearly document the City's receipt of payments hereunder. The Parties acknowledge and agree that the Parties, and their duly authorized representatives shall have access to such fiscal records and other books, documents, papers, plans, and writings of the other Party that are pertinent to this Agreement to perform examinations and audits and make excerpts and transcripts, as required by applicable law. The Parties shall retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of three (3) years, or such longer period as may be required by applicable law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy, or litigation arising out of or related to this Agreement, whichever date is later.

SECTION 25: COMPLIANCE WITH LAW

- 25.1** In connection with their activities under this Agreement, the Parties shall comply with all applicable federal, state and local laws and regulations.
- 25.2** The following laws of the State of Oregon are hereby incorporated by reference into this Agreement: ORS 279B.220, 279B.230, and 279B.235.

SECTION 26: NO THIRD PARTY BENEFICIARIES

The City and Marion County are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

SECTION 27: FORCE MAJEURE

Neither Party is responsible for any failure to perform or any delay in performance of any obligation under this Agreement caused by fire, riot, acts of God, terrorism, war, or any other cause which is beyond that Party's reasonable control.

SECTION 28: AMENDMENT, MERGER, RENEWAL, WAIVER AND MODIFICATION

- 28.1** This Agreement and all exhibits and attachments, if any, constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. The terms of this Agreement may not be waived, altered, modified, renewed, supplemented or otherwise amended, in any manner whatsoever, except by written mutual agreement of the Parties.
- 28.2** The City is vested with the power and authority to reasonably regulate, and manage, its Rights-of-Way in a competitively neutral and non-discriminatory manner, and in the public interest. Marion County shall not be relieved of its obligations to comply with any provision of this Agreement by reason of the failure of the City to enforce prompt compliance, nor does the City waive or limit any of its rights under this Agreement by reason of such failure or neglect.

SECTION 29: WAIVER OF BREACH.

One or more waivers or failures to object by either Party to the other's breach of any provision, term, condition, or covenant contained in this Agreement shall not be construed as a waiver of any subsequent breach, whether or not of the same nature.

SECTION 30: SUBCONTRACTS AND ASSIGNMENT

- 30.1** Neither Party may assign, delegate or transfer any of its rights or obligations under this Agreement, without the prior written consent of the other Party.
- 30.2** None of Marion County's Facilities located in the City's Rights-of-Way may be sold, mortgaged, assigned or otherwise transferred, without the prior written consent of the City, except to entities that control, are controlled by, or are under common control with, Marion County. Marion County shall notify the City of any proposed transfers to such entities no less than ninety (90) days in advance of such assignment or transfer. The City's granting of consent in one instance shall not render unnecessary any subsequent consent in any other instance.
- 30.3** Any transfer of Marion County's Facilities without the written consent of the City shall render this Agreement subject to revocation. Upon receipt of the written notice regarding the proposed transfer, the City shall have ninety (90) days to act upon any request for

approval of a transfer, or to request additional information for purposes of determining consent. If the City fails to render a final decision on, or request additional information concerning, the request within ninety (90) days, the request shall be deemed granted unless the Parties agree to an extension of time.

- 30.4** Nothing contained herein shall be deemed to prohibit the mortgage, pledge, or assignment of tangible assets of Marion County for the purpose of financing the acquisition of equipment for, or the construction and operation of, the Telecommunications System without the City's consent, but any such mortgage, pledge or assignment shall be subject to the City's other rights under this Agreement.
- 30.5** In determining whether the City will consent to any sale, lease, mortgage, assignment, merger or transfer of Marion County's Facilities, the City may inquire into the technical, legal, and financial qualifications of the prospective party with respect to its ability to perform under this Agreement, and the City may condition its consent upon satisfactory results of such inquiry. Marion County shall assist the City with any such inquiry. The City shall not unreasonably delay or withhold its consent to any such sale, lease, mortgage, assignment, transfer or merger.
- 30.6** No sale, lease, mortgage, assignment, transfer or merger for which the City's consent is required may occur until Marion County's successor, assignee or lessee has complied with the requirements of this Agreement, including, but not limited to, providing certificates of insurance, unless the City Council waives such compliance by official act.
- 30.7** Within ten (10) days after execution and delivery of any instrument so consented to by the City, Marion County shall file with the City Recorder an executed counterpart or certified copy thereof.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates set forth below.

CITY OF SALEM

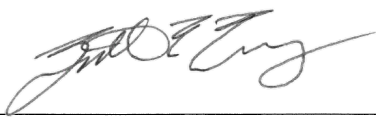
By: _____

(Signature of Printed Name Below)

Printed Name

Title: _____

Date: _____

By: 

(Signature of Printed Name Below)

Scott E. Emry

Printed Name

Title: Marion County Director of Information Technology

Date: June 1, 2020

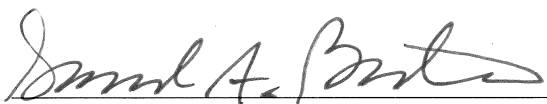
MARION COUNTY SIGNATURE

BOARD OF COMMISSIONERS:

 6/17/2020

Chair

Date

 6-17-20

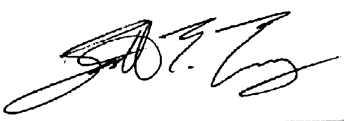
Commissioner

Date

 6.17.2020

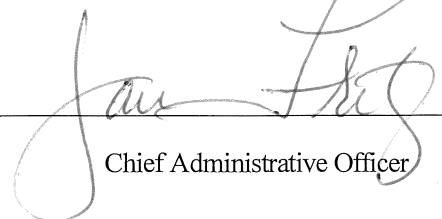
Commissioner

Date

Authorized Signature:  6/1/20

Department Director or designee

Date

Authorized Signature:  6/12/20

Chief Administrative Officer

Date

Reviewed by Signature: Jane E. Vetter 6/3/20
Marion County Legal Counsel Date

Reviewed by Signature: Camille Schlegel June 1, 2020
Marion County Contracts & Procurement Date

APPENDIX A
OPTICAL FIBER SPLICING AND TESTING STANDARDS

1. Fiber and Connector Standards

a. Connector Standards

The loss value of any pigtail connector and any associated optical fiber jumper or pigtail with matching mode field diameters will not exceed 0.5dB at 1550 nm. The loss value of a connector and its associated jumper with mismatched mode field diameters should not exceed 0.8dB.

b. Field Splice Standards

The objective for each splice is an averaged loss value of 0.1 dB or less when measured bi-directionally with an OTDR at 1550 nm. In the event of damage and subsequent restoration of the optical fibers, commercially reasonable efforts will be made to restore the optical fibers to this standard. If after 3 restoration splicing attempts, the City is not able to produce a loss value of 0.1dB or less bi-directionally at 1550 nm, then 0.5dB or less bi-directionally at 1550 nm will be acceptable. Optical fibers not meeting the 0.1dB or less specification will be identified as Out Of Specification (OOS). Documentation of the three attempts (re-burns) to bring the OOS optical fiber within specification will be provided to MARION COUNTY.

c. Span Loss

It is the City's responsibility to insure proper continuity of all optical fibers at the fiber level, not just the pigtail level. Any optical fibers that cross in the route will be remedied by City. The following span loss calculation will be used:

$(A * L) + (0.1 * N) + C = \text{Acceptable Span Loss, where}$

- A = Attenuation per KM at 1550 nm
- L = Optical length of cable measured in kilometers (from OTDR Trace)
- N = Number of splices in a span
- C = Connector loss.

The connector loss will not exceed 0.5dB. The section test will have (2) pigtail connectors/splices under test, so 1.0dB will be allowed for this loss.

Exhibit A
Template
SERVICE ORDER
(Request For Service)

1. **Specified Services and Rates**

The following is a request for service to be provided by the City for the County in accordance with all terms and conditions as stated in the Agreement. It is understood by both parties that service to these sites shall be provided for the rates below, subject to any rate increases otherwise applicable in accordance with the terms of the Agreement. The submission of the service order does not guarantee the City will provide service to the requested location.

2. **Construction, Installation and Activation**

For construction, installation, activation, testing work, and provision of fiber optic network components, the City shall charge County nonrecurring charge(s) as specified in Section 16.3 of the Agreement. All facilities constructed within the City's right-of-way under this Agreement and Attachment A shall be owned, operated, and maintained by the City, except for those Facilities which are the responsibility of Marion County pursuant to Sections 6.1, 6.10, and 6.15 of the Agreement.

3. **Annual Recurring Charges**

From Connecting Point A (Site Name & Address)		To Connecting Point B (Site Name & Address)	Service	Distance (Miles)	Rate per Mile	Monthly Rate (\$)	Yearly Rate (\$)
1							
2							
3							
4							

4. Nonrecurring Charges for the establishment of service

From (Connecting Point A:Site Name & Address)		To (Connecting Point B:Site Name & Address)	Service	Amount (\$)
1			Construction	
2				
3				

Notice to City to proceed with requested service

By: _____
(signature of Printed Name below)

Printed Name: _____

Title: _____

Date: _____

Exhibit B
Template
SERVICE ORDER
(Request For Termination Of Service)

1. **Specified Services and Rates**

The following is a request for termination and disconnection of service provided by the City for the County in accordance with all terms and conditions as stated in the Agreement. It is understood by both parties that service to these sites shall be terminated and the facilities of the City and the County will be disconnected as of the date requested herein.

2. **Disconnection**

For disconnection work the City shall charge County nonrecurring charge(s) as specified in Section 16.3 of the Agreement. All facilities constructed within the City's right-of-way under this Agreement and Attachment A shall be owned, operated, and maintained by the City, except for those Facilities which are the responsibility of Marion County pursuant to Sections 6.1, 6.10, and 6.15 of the Agreement.

3. **Nonrecurring Charges for the Disconnection of service**

Site Name & Address	Disconnection Date	Service	Amount (\$)
		Disconnection	

NOTICE TO CITY TO PROCEED WITH REQUESTED SERVICE
TERMINATION AND DISCONNECTION

By: _____

(signature of Printed Name below)

Printed Name: _____

Title: _____ Date: _____