

FIBER LEASE AGREEMENT

THIS FIBER LEASE AGREEMENT (“*Agreement*”) and its attached Exhibits, which are incorporated in full by this reference (Agreement and Exhibits are collectively referred to herein as the “*Agreement*”), is effective as of _____, 2024 (“*Effective Date*”), and entered into between the County of _____, an Idaho municipal Corporation (“*County*”), and _____, with the business address of _____, _____ (hereinafter referred to as “_____”). The County and _____ are referred to herein individually as a “*Party*,” and collectively as the “*Parties*.”

Recitals

- A. The County has determined that fast, affordable internet services within the incorporated contiguous area known as _____ County, Idaho promote the general welfare of the County and the County’s residents. To provide better municipal services to County residents and businesses, and to facilitate economic benefit throughout the County, the County desires to construct and deploy a new “fiber to the premise” (FTTP) NETWORK within the County, known as the _____ (____). The County desires to structure the NETWORK in a manner that effectively enables the provision of high-capacity broadband and other services and capabilities in a competitive, open environment. (“Purpose”).
- B. The County intends that pursuing the Purpose will result in enjoyment of Internet/Data Services by its residents, including low-income residents and the general public in public spaces, offices, residences, and businesses.
- C. The County has or will deploy, provide for the construction of and own the NETWORK (also referred to herein as “Improvements”) described in attached Exhibit A, and as modified thereafter, located within the County. _____ shall not own any of the Improvements and shall sign all documents reasonably required to convey all Improvements and all assets of the NETWORK to County upon request by County.
- D. Pursuant to an agreement signed _____, 2024, between County and _____ (“Design and Construction Agreement”), _____ has agreed and contracted to design, construct and install the NETWORK, for the County, as described in the Design and Construction Agreement and as further shown on attached Exhibit A. To the extent there are any inconsistencies or conflicts between this Agreement and the Design and Construction Exhibit A, this Agreement shall control.
- E. The County has conducted a public procurement process to identify and enter into an agreement with a qualified private-sector entity to construct, activate and operate the NETWORK on a nondiscriminatory basis and to offer gigabit broadband Internet access service and other services to County residents and businesses. The County has identified and selected _____ as the best candidate to provide such services, and to that end the County has negotiated this Agreement with _____.
- F. Pursuant to the terms of this Agreement, County desires to outsource to _____ the operation of the NETWORK in furtherance of the Purpose, and _____ desires to operate the NETWORK. To affect the Purpose described herein, the County desires to

lease to _____ certain NETWORK related assets, including dark fiber and access to associated outside plant equipment.

G. _____ desires to accept such lease, to construct, activate and operate the NETWORK on a nondiscriminatory and “open access” basis, and to provide advanced communication services and capabilities to County residents and businesses, as further set forth in, and subject to the provisions of, this Agreement.

H. The term NETWORK shall include all fiber, cables, components, equipment, and other assets used or installed to operate the fiber NETWORK described in Exhibit A, and as modified and/or expanded thereafter.

Agreement

NOW THEREFORE, in consideration of the foregoing preamble and recitals, which are incorporated in full in this Agreement, and the covenants, promises, representations, and warranties in this Agreement, and other good and valuable consideration, the sufficiency and receipt of which the Parties acknowledge, the Parties hereby agree as follows:

1. Lease. County hereby leases to _____ the NETWORK assets described in Exhibit “A” and as expanded or modified thereafter. The Parties agree that _____ and _____ are hereinafter jointly and severally liable for the obligations of _____.

The County hereby grants to _____ (and its employees and contractors, and persons and entities under direct supervision thereof (collectively, the “Authorized Personnel”) a revocable license to access the NETWORK assets on 24 hours per day, 7 days per week, 365 days per year basis, for the Services (as defined below), for the Term of this Agreement (the foregoing collectively referred to herein as the “License”); provided, however, that the License is subject to any closure of portions of the NETWORK assets due to maintenance, repair, emergencies, damage, and destruction. The primary use and purpose of the County rights-of-way is to provide for maintaining utilities, streets, street improvements, drainage, and street lighting, (each, a “*Primary Use*”). County’s Primary Use operations take priority over _____ approved use. Subject to Primary Uses, County shall not authorize any third party to attach any equipment to the NETWORK that will substantially interfere with the Services to be provided by _____ described below. The County shall have unlimited use of, and access to, all County owned property. However, the County shall cooperate in good faith with _____ so that the County’s use and access does not substantially interfere with the Purpose and services described below. The County will not be liable in any manner whatsoever for (and _____ expressly waives any claims for) inconvenience, disturbance, lost business, nuisance or other damages that may arise from the County’s or its Agents’ access to the NETWORK and County owned property, which includes, for example, any equipment removed in an emergency or other exigent circumstances, except to the extent that the damage arises directly and exclusively and solely from the gross negligence or willful misconduct of the County or its Agents and is not contributed to by the acts, omissions or negligence of _____, its agents or invitees. The County will not be liable in any manner whatsoever for (and _____ expressly waives any claims for) inconvenience, disturbance, lost business, nuisance or other damages that may arise from the County’s concurrent negligence. _____’s use of the NETWORK and related County owned property shall not interfere with County’s Primary Use and use of County property and assets. County’s Primary Use and other uses shall take priority over _____ use in

the event that issues arise concerning the use of the NETWORK or related property by both parties that may interfere with network systems or other property being used or operated by the parties.

2. Construction of Network. The NETWORK shall be constructed in phases. The scope of this Agreement covers Phase 1 or the “Initial Phase”. This Agreement may be amended to include additional phase(s) in the future upon a written agreement signed by the parties. The scope and timing of each phase of NETWORK construction shall be determined by the County in its sole and absolute discretion. The Initial Phase is described on Exhibit “A.” The Parties will share market data and financial performance metrics on a regular basis, no less frequently than quarterly. In all circumstances, the County will have final decision making authority as to construction of fiber, including whether to construct and the timeframe for construction.

The County makes no representation or warranty as to whether any additional consents, approvals or governmental permits are necessary or required from any other governmental entity or any third party in order for _____ to construct, install and operate the NETWORK or to perform _____’s obligations under this Agreement. _____ will be responsible at its cost and expense for securing all additional consents, approvals and governmental permits necessary for the construction, installation and operation of the NETWORK from any other governmental entity or any third party.

Upon the execution of an access agreement with a landowner to the NETWORK, _____’s responsibility for construction at business locations extends to the telecommunications room or similar demarcation point within the business premises, terminating on a connection panel affixed to an interior wall. At residential premises, _____’s construction responsibility extends to the outside of the home’s closest corner or side location that is the shortest distance from the public road. _____ shall be responsible for all cabling and procurement, installation, and configuration of equipment on the premises side of such point. _____ shall be responsible for connecting and/or splicing of NETWORK fiber to premises fiber / cabling. _____ shall, at its sole cost, be responsible for paying for any installation and construction of any drops giving access to the premises of property owners. Recovery of such costs may be recovered by _____ through fees established by _____ that are approved by the County.

3. Services and Open Access. During the Term, _____ shall be the Network Operator of the open access NETWORK and shall use the assets of the NETWORK to configure and activate a community fiber NETWORK. As Network Operator of the NETWORK, _____ shall, at its expense:

- A. Procure, install, configure, operate, monitor, maintain, and upgrade as needed all equipment necessary to activate or “light” the NETWORK and to operate an open access community broadband NETWORK; and procure, install, configure, operate, monitor, maintain, and upgrade as needed all equipment necessary to provide data transport services, enabling delivery of services to customers by _____ and unaffiliated service providers.
- B. Offer and provide data transport services to qualified service providers on a competitively neutral and non-discriminatory basis following the conclusion of the initial deployment phase (“IDP”) which is the time period between the Effective Date and the activation of the first customer connected to the NETWORK;

- C. Maintain, repair and upgrade as needed all of _____'s equipment, including cabling to and between such equipment inside enclosures;
- D. For business and residential connections to the NETWORK, be responsible for and maintain cabling _____ installs to provide service to potential subscribers;
- E. Execute any and all necessary splicing tasks between equipment and cabling, and the NETWORK;
- F. Provide technical support to service providers relating to data transport services provided by _____;
- G. Acquire and maintain, at its expense, all applicable Authorizations relating to the installation and use of assets;
- H. Operate the NETWORK Facilities in accordance with generally accepted industry standards;
- I. Be solely responsible for payment of all costs associated with the services including, but not limited to, the purchase of all licenses, access rights, bandwidth, and all other charges.
- J. During the Month of July of each year, present to the County a report that _____ has prepared that provides County with all information needed for County to determine the annual revenue, expenses, reinvestment, and profitability of and for _____ as they pertain to the provisions of this Agreement and the Purpose. The report shall also contain a detailed list of the services being provided, and the cost to _____'s clients for different types of services being provided to the residents of the County. The report shall also contain progress being made on _____'s 5-year plan and 10-year plan for providing Services.
- K. The County shall have the right to inspect _____'s books showing income and expenditures related to the NETWORK, financial statements of account, and other records and documents related to this Agreement, at a mutually convenient location at any time during regular business hours upon thirty (30) days' prior written notice, and may audit the books from time to time at the County's sole expense, but in each case only to the extent necessary to confirm the accuracy of information required to be included in the annual or other reports.
- L. Network facilities must be provided through reasonable and competitively neutral and non-discriminatory access arrangements that: a) Ensure equivalence of price and non-price terms and conditions for all retail services providers; and b) Permit such providers to differentiate their product offerings. In addition, the System Manger must not limit the ability of retail service providers or their customers to run applications, use services and connect devices of their choice to the Network.
- M. System Manager shall throughout the term of this Agreement operate and maintain the NETWORK in conformance with the standards for quality of service, NETWORK performance, maintenance requirements and response times as set forth in Exhibit B, with respect to both routine preventative and emergency service restoration work. These requirements shall address response, dispatch and service restoration times. _____, at its cost and expense, shall at all times be responsible for maintenance of the NETWORK, the electronics and customer premise

equipment and for NETWORK upgrades and periodic electronic refreshes throughout the term of this Agreement. Both _____ and the County recognize that these standards attached as Exhibit B are the initial standards with respect to the NETWORK. If during the operation of the NETWORK, either Party wishes to make modifications to or strengthen the standards, the County and _____ will work in good faith to do so and to implement them in a reasonable period of time.

Additionally, _____, at its cost and expense, shall be responsible for Federal, State and Local regulatory compliance, applicable licensing and registration and ongoing regulatory compliance and reporting, including but not limited to the collection and remittance of fees imposed by government agencies on customers. Further, since _____ will be a contractor under applicable Federal and State guidelines, _____, at its cost and expense, shall be subject to Federal Broadband Funding rules including but not limited to 2 CFR Part 200 known as the "Uniform Guidance" or "Part 200".

N. _____ represents, warrants, covenants and agrees that the NETWORK will be a state-of-the art NETWORK and scalable.

To facilitate the County's objectives as stated in the Recitals to this Agreement, following the conclusion of the Initial Deployment Phase, _____ shall offer and provide data transport services using the assets, based upon a software platform operated by _____, to any qualified unaffiliated Service Provider for the provision of retail services. _____ shall negotiate with each such service provider on a good faith basis, and shall not discriminate among similarly situated service providers, or in favor of a _____ affiliated service provider. One service provider shall not be given a competitive advantage over another. However, _____ shall not be required to execute substantively identical agreements with all service providers. _____ may negotiate agreements with service providers on an individual basis, with varying terms and conditions based upon bona fide distinctions among such service providers as to scale and volume, the nature of services to be provided, and other similar factors so long as such agreements are materially similar in total, competitively neutral, and non-discriminatory.

As Network Operator, _____ shall procure, install, configure, monitor, maintain, and upgrade as needed any and all terminals, wiring and other equipment located at the customers premises (such as cabling and an ONT) as necessary to connect the premises to the NETWORK and deliver data transport services, enabling the provision of retail services by _____ or an unaffiliated service provider. _____ may pass on such cost to the customer or to a service provider. _____ at its cost and expense will be responsible for any and all wiring and construction necessary to connect units from the connection panel in the telecommunications room or demarcation point within the business premises, and will be responsible for any and all wiring necessary to install an outdoor optical NETWORK terminal (ONT) from the County's demarcation point to other customer premises equipment and will assume any cost as part of this process. _____ may pass on such cost to the customer or to a service provider. If a customer chooses to receive fiber optic service after phased construction completion, then the individual customer will be personally responsible for installation charges associated with connecting the home or business to the system. Installation charges will be transparent and reviewed by the County and may change due to procurement and pricing circumstances. During the term of this Agreement, installation from the back haul to the home, including those provided by third-party providers, will be performed exclusively by the System Manager to ensure universal compliance to agreed upon standards of equipment and installation as hereinafter developed and set forth by _____. Installation(s) charges paid by third-party providers will be remitted

directly to the System Manager, to be fully retained by the System Manager for installation reimbursement. The County retains ownership of all equipment associated with the fiber optic NETWORK, including all connections up to the home or business, and to the extent permitted by law equipment inside the home or business. This includes connections only and is not associated to hardware or software owned by the individual business or homeowner.

_____ shall acquire from the property owner all necessary licenses, permits, permission to enter, occupy and perform work on a customer’s premises. _____, and not the County, accepts all risks associated with such activity, including but not limited to the risks of unanticipated costs or delays. In addition, _____ shall also obtain and maintain at its expense throughout the Term, and make copies available to the County upon request, all necessary Authorizations relating to its activities under this Agreement.

As the FTTP service provider _____ shall offer and provide residential and business broadband Internet access Service via the NETWORK, including a speed tier of at least 1 gigabit per second (“Gbps”), to all businesses and residences passed by the NETWORK.

_____ shall comply with all applicable laws and regulations relating to the provision of services.

_____ will enact appropriate business practices and processes to create structural and operational separation between the Network Operator and Service Provider functions. At a minimum:

- A. _____ shall establish separate operating entities for Network Operator and Service Provider functions, respectively;
- B. As Network Operator, _____ shall provide data transport services on an open access, competitively neutral and nondiscriminatory basis;
- C. As Network Operator, _____ shall not share confidential or proprietary Service Provider information with any other Service Provider, including a separate _____ Service Provider business unit.

As previously referred to, _____ shall meet the performance metrics and standards set forth in Exhibit B.

As a Service Provider, _____, or a contracted service provider, and not the County, shall be responsible for all aspects of the customer relationship involving subscribers to retail Services provided by _____ or a contracted service provider. _____, or a contracted service provider and not the County, shall be responsible for receiving, servicing, and resolving directly all requests for support from _____ ‘s or a contracted service provider’s subscribers, including but not limited to technical, billing, and sales and marketing inquiries. Under no circumstances shall _____ or a contracted service provider direct any subscriber to contact the County for customer support.

_____ or a contracted service provider shall be responsible for all invoicing, billing and collection activities relating to its subscribers.

_____ or a contracted service provider shall be responsible for any and all sales and marketing activities relating to _____ or a contracted service provider ‘s Services,

including but not limited to pricing of services, description of services, and promotional activities. _____ or a contracted service provider shall be responsible for any and all bad debts associated with its Subscribers.

As Network Operator, _____, and not the County, shall be responsible for all aspects of the customer relationship involving the provision of services by _____ to subscribers or service providers, as set forth in this subsection.

As previously stated herein, _____ at its cost and expense, and not the County, shall be responsible for (i) receiving, servicing, and resolving directly all requests for support from service providers, including but not limited to technical, billing and sales and marketing inquiries; and(ii) under no circumstances shall _____ direct any service provider to contact the County for customer support, unless _____ has first notified and obtained the County’s consent for such contact; and(iii) _____ shall be responsible for all invoicing, billing and collection activities relating to service providers; and (iv) _____ shall be responsible for any and all sales and marketing activities relating to _____ services for service providers, including but not limited to pricing of services, description of services, and promotional activities and (v) _____ shall be responsible for any and all bad debts associated with service providers.

The Initial Phase of construction shall have an Initial Deployment Phase (“IDP”) wherein _____ will have discretion as to the timing and terms of additional service providers operating on the _____ Fiber Network, and _____ will operate as the provider of retail broadband internet access service. During this testing period of 2-3 months, _____ will test the NETWORK by having volunteers who are not charged provision for _____’s service. Following the conclusion of the IDP, _____ will use its best efforts to have the NETWORK operate as an open access NETWORK and begin the addition of other service providers, offering data transport service using leased assets and based upon its software platform, as described in this Agreement. _____ acknowledges and agrees that it is not being granted an exclusive right by the County; rather this testing period is necessary to ensure that the NETWORK is operating to performance standards as described in Exhibit B. At the end of the testing period, those volunteers can independently determine whether they want to pay for and procure broadband service from _____ or the service providers. Further, _____ covenants and agrees that it will not market its broadband services as the County Internet Service Provider. The IDP shall apply to the Initial Phase of construction only as described above, beginning upon the Effective Date and ending upon the mutual agreement of the Parties, when _____ or service providers have paying customers. The duration of any IDP may be reassessed and extended or shortened by mutual agreement in writing of both the County and _____. The intent of the IDP is to provide a time period for _____ to establish the operation of the NETWORK in an efficient, reliable, tested, and proven manner before offering the general retail broadband internet access service through other providers.

4. Maintenance/Changes. _____ accepts the use of the NETWORK and Improvements in their “AS-IS, “WHERE IS” condition. _____ at its sole cost and expense shall maintain, update, and replace all NETWORK assets so that they are always fully functional and up to date. When any piece or part of the NETWORK reaches its reasonable end of life service, _____ shall at its sole cost and expense replace it, together with any needed support or related equipment, with updated, latest versions of equipment that are being used in the industry to provide top quality state-of-the art internet services. Upon termination or expiration of this Agreement, _____ shall, at its sole cost and expense, take all action required to leave the County

with an up-to-date and latest state-of-the art fiber NETWORK capable of delivering top quality state-of-the art internet services. The provisions of this paragraph related to _____'s responsibilities upon termination or expiration of this Agreement shall survive the expiration or termination of this Agreement. _____, on _____'s own behalf and on behalf of any successor or assign(s), hereby assumes all responsibility, financial or otherwise, for the services provided by _____ to the County, third parties, and to the public, that are in any way related to the Internet/Data Services, property, premises or provisions of this Agreement, and to the planning, design, installation, construction, maintenance, repair, operation and complete and proper removal or replacement of NETWORK components. The rights and uses granted to _____ herein shall be undertaken without risk or liability whatsoever on the part of the County. All construction, installation, removal, repair, replacement and maintenance work shall be performed by _____ and at _____'s sole cost and expense in accordance with applicable law, using generally accepted standards and the County makes no representation, warranty or covenant or assurance that the NETWORK will be profitable to _____ or whether _____ may lose money with respect to the NETWORK. _____ shall ensure that the Improvements are maintained in a clean and safe condition, in good repair and free of any defects. _____ shall employ reasonable care at all times in the installation, replacement and maintenance of the Improvements and _____ shall use commonly accepted methods and/or devices to reduce the likelihood of damage, injury or nuisance to the public. The construction, operation, replacement and maintenance of NETWORK shall be performed by experienced and properly trained, licensed maintenance and construction personnel.

_____ shall perform its obligations hereunder in a good and workmanlike manner, using generally then-accepted industry standards.

5. Damage. _____ shall, at its sole cost and expense, repair any damage to all property and to the premises of all customers caused by _____ or its Authorized Personnel in the performance of services and other provisions of this Agreement. If _____ fails to repair any such damage within 30 days after delivery of written notice by the County to _____, the County may, in its sole discretion, repair such damage and _____ shall reimburse the County for all reasonable costs and expenses actually incurred in such repair within 30 days after receipt of an invoice from the County for such damage itemized in reasonable sufficient detail and supported by supporting documentation.

6. Right of Inspection. County shall have the right to inspect the NETWORK whenever the County deems necessary to verify _____'s compliance with applicable law and _____'s compliance with this Agreement. Subject to Primary Uses by the County, the County will use commercially reasonable efforts to avoid any interference or disturbance of the NETWORK. The County shall promptly notify _____ in writing of any perceived breaches of this Agreement as a result of such inspections, and _____ shall remedy any such perceived breaches within 30 days of receipt of such notice from the County.

7. Maintenance. Except as expressly stated herein, _____, at its sole cost and expense, shall at all times be responsible for the maintenance, repair, service, upgrades, and replacement (collectively, "*Maintain*" or "*Maintenance*") of the NETWORK, as applicable. Subject to Primary Uses by the County, the County will use commercially reasonable efforts to avoid any interference or disturbance of the NETWORK and _____'s operation of the NETWORK.

8. Utilities. The County will connect, at its sole cost, the NETWORK to the electrical facilities owned and operated by the County. The County, at its sole cost, will operate and maintain the electrical facilities and will use commercially reason efforts to provide uninterrupted electrical service to the NETWORK. Subject to Primary Uses by the County, the County will use commercially reasonable efforts to avoid any interference or disturbance of the NETWORK. _____ will not be charged for any electrical service or consumption related to the services so long as the NETWORK is in its current state of development and configuration. In the event that the amount of electricity consumed by the NETWORK substantially increases after the first two years of this Agreement, or the nature of the NETWORK changes or facilities are updated, _____ shall pay to the County fees, on an annual basis, at the then applicable rate, for the amount of electricity consumed that is above and beyond the amount consumed during the second year of this Agreement.

Except in the case of an emergency, the County agrees to give _____ reasonable prior notice regarding any planned interruption in electrical service to the NETWORK.

Except as specifically provided in this Agreement, _____ shall pay all costs and expenses associated with the services and the operation and Maintenance of the NETWORK. _____ shall pay all of the costs and expenses of operating the NETWORK including any applicable internet and other charges from third party sources and other Service Providers.

9. Consideration.

a. As compensation for _____'s rights to use the NETWORK as described herein, _____ shall, at its sole cost and expense, continually operate, manage, Maintain, update, and replace all NETWORK components so that they are always fully functional and up to date and state-of-the art. When any piece or part of the NETWORK reaches its reasonable end of life service, _____ at its sole cost and expense shall replace it, together with any needed support or related equipment, with state-of-the art, updated, latest versions of equipment that are being used in the industry to provide top quality and state-of-the art internet services. Upon termination or expiration of this Agreement, _____ shall, at its sole cost and expense, take all action required to leave the County with an up-to-date, and state-of-the art latest version of facilities capable of delivering top quality state-of-the art internet services. As an additional condition and covenant of this Agreement, _____ shall pay to the County the following amounts to be used for the prerogative of Maintaining, updating and replacing of the NETWORK, and, only to the extent allowed by law, for expanding the NETWORK:

1. 80% of the monthly connection fee charged to each customer by _____ from each customer using the NETWORK. This includes all customers of _____ and all other service providers using the NETWORK. The initial amount to be paid to the County by _____ is estimated to be \$20 per month per customer.

2. 80% of the Network to Network Interface fees charged by _____, or \$400 per month, whichever is greater, from each service provider (including but not limited to _____) using the NETWORK.

3. _____ covenants and agrees that the monthly fees and any other charges to customers and internet service providers will be less than market value in order to

promote access to the NETWORK by service providers and unserved or underserved residents or businesses.

_____ shall show how it has complied with this provision in detail in each annual report. Any funds set aside by _____ for this Purpose shall be kept and accounted for separately by _____ and shall not be used or expended for any other purpose. All funds set aside by _____ shall be paid to the County for the Maintenance, update and/or replacement of the NETWORK. The funds set aside by _____ and paid to the County shall be held and accounted for separately by the County. _____ may request portions of these funds from the County upon a showing of need for the intended Purpose. The County shall have the absolute discretion on when, how and if such funds will be spent. Nothing in this paragraph shall be interpreted in any way that would relieve _____ from its duty to continually Maintain, repair and replace the NETWORK so that the NETWORK is continually updated with the latest state-of-the art versions of equipment and technology to provide top quality state-of-the art internet services, regardless of whether the estimated amounts described above cover the cost.

_____ represents that it has researched the market and estimates that the cost of continually Maintaining, updating, and replacing the NETWORK, as described herein, will be approximately the amount of fees paid to the County for those Purposes. These amounts may be changed by agreement of the parties in writing. _____ agrees to show how such fees and amounts are calculated to meet, but not exceed, the estimated cost of such Maintenance, repair and replacement.

b. The recitals and other covenants, promises, representations, and warranties of _____ are also additional consideration for this Agreement, as stated above.

c. _____ is authorized to charge those fees and assessments described on Exhibit C, and to retain those portions of said fees and assessments as set forth on Exhibit C. Said fees may be reviewed and modified by written agreement between the parties.

10. Term. The term of this Agreement shall commence as of the Effective Date and expire on the last day of the month that is 10 years following the Effective Date (“**Term**”). The County and _____ may mutually agree in writing to extend the Term of this Agreement. The County and _____ hereby acknowledge and agree that the County is under no obligation to spend any CPF funds beyond the _____ in connection with the construction of the NETWORK.

11. Termination by _____. Following the Effective Date, _____ may, but shall have no obligation to, terminate this Agreement without penalty or further liability in any of the following circumstances:

- a. upon 30 days’ prior written notice if _____ does not have the permits or appropriate authority or approvals to use the NETWORK for the services;
- b. upon 30 days’ prior written notice if _____ is unable to operate the NETWORK for the services as a result of material interference (other than on a temporary, non-recurring basis) resulting from the act of the County or any third party;

- c. The County fails to observe or perform any other terms and conditions of this Agreement to be observed or performed by the County, and the County fails to remedy such failure within 30 days after the County's receipt of written notice of such failure or, if such failure is not reasonably capable of being remedied within such period, if the County does not within such 30 day period commence to remedy such failure and thereafter exercise commercially reasonable efforts to prosecute such remedy to completion;

Upon _____ terminating this Agreement in accordance with this Section and as otherwise expressly permitted or provided for under this Agreement, (i) _____ shall surrender and vacate the NETWORK and deliver possession thereof to the County on or before the termination date stated in such termination notice in the condition required under this Agreement as described in this Agreement; and (ii) _____ shall not have any rights, estates, or ownership in the NETWORK but shall have liabilities and obligations under this Agreement with respect to the NETWORK surrendered by _____ for the period accruing both before and after the effective date of termination of the Agreement, including by way of illustration and not limitation the provisions and terms of this Agreement, which expressly or otherwise survive the expiration or termination of the Term.

12. Termination by the County. Each of the following events shall be an “*Event of Default*”:

- a. If _____ fail to continuously operate the NETWORK for a period of three (3) consecutive days, except for periods of cessation associated with Maintenance, damage, destruction, condemnation, change in control, force majeure events (as defined below), or in response to a requirement of any governmental or regulatory body, and thereafter fails to commence or continue operations of the NETWORK within three (3) days after receipt of written notice from the County;
- b. _____ fails to maintain and keep in force the insurance required under this Agreement and thereafter fails to provide evidence of such insurance to the County within 10 business days after _____'s receipt of written notice from the County;
- c. _____ fails to observe or perform any other terms and conditions of this Agreement to be observed or performed by _____ other than those specified above in this Section, and _____ fails to remedy such failure within 30 days after the County's receipt of written notice of such failure or, if such failure is not reasonably capable of being remedied within such period, if _____ does not within such 30 day period commence to remedy such failure and thereafter exercise commercially reasonable efforts to prosecute such remedy to completion;
- d. _____ makes an assignment of all or substantially all of the property of _____ for the benefit of creditors, or it files a voluntary petition under any bankruptcy or insolvency law, or an involuntary petition alleging an act of bankruptcy or insolvency is filed against _____ under any bankruptcy or insolvency law, or whenever a petition is filed against _____ under the reorganization provisions of the United States Bankruptcy Act or under the provisions of any law of like import, or whenever a permanent receiver of _____ or for the property of _____ is appointed, and if such foregoing event occurs, continues or remains pending for 90 days after the occurrence of such event.

Upon the County terminating this Agreement in accordance with this Section and as otherwise expressly permitted or provided for under this Agreement, (i) _____ shall surrender and vacate the NETWORK and deliver possession thereof to the County on or before the termination date stated in such termination notice in the condition required under this Agreement; and (ii) _____ shall have no rights, estates, leasehold interest or ownership under this Agreement with respect to the NETWORK surrendered by _____ but shall have liabilities and obligations under this Agreement with respect to the NETWORK surrendered by _____ for the period accruing both before and after the effective date of termination of the Agreement, including by way of illustration and not limitation the provisions and terms of this Agreement which expressly or otherwise survive the expiration or termination of the Term.

13. Remedies for an Event of Default. After the occurrence of an Event of Default, the County shall be entitled to pursue any and all legal and equitable rights and remedies permitted by Applicable Law including the termination of this Agreement; provided, however, notwithstanding the foregoing, the County shall not be entitled to commence proceedings to terminate this Agreement without providing at least 30 days' (unless another timeframe is set forth in this Agreement) prior written notice to _____ of the County's intention thereof, during which time _____ shall have the right and be entitled to cure such Event of Default. Upon a valid termination of this Agreement, all rights of _____ under this Agreement shall expire and terminate, except those which, by the provisions of this Agreement, expressly survive the expiration or termination of the Term. The County and _____ shall each have the obligation to mitigate its respective damages arising out of or resulting from an Event of Default and subsequent events.

14. Force Majeure. The period of time during which either Party is prevented or delayed in the performance of any non-monetary obligation required to be performed under this Agreement due to delays outside of a Party's reasonable control, such as fire, catastrophe, casualty, strikes, labor trouble, civil commotion, acts of God, war, acts of terrorism, infectious disease, pandemics, epidemics, (each, a "*force majeure*" event) shall be added to such Party's time for performance thereof, and such Party shall not be deemed in default hereunder as a result of such delay.

15. Day of Performance. If the day for performance of any act required under this Agreement falls on a Saturday, Sunday, or federal or state holiday for which banking institutions in the State of Idaho are generally closed, then the day for such performance, as the case may be, shall be the next following regular business day.

16. Compliance with Laws. Each Party shall comply with any applicable statutes, ordinances, laws, regulations, and directives of any governmental unit, authority, or agency having jurisdiction thereof (collectively, "*Applicable Law*"), including but not limited to, the Communications Act of 1934, as amended from time to time, and the rules, regulations, and written policies and decisions of the Federal Communications Commission ("*FCC*"). _____ agrees and recognizes that County is not in any way required to monitor _____'s compliance with Applicable Laws and regulations related to Services provided by _____. _____ shall be solely responsible for compliance with all Applicable Law related to any Services it provides, and shall indemnify, save, defend and hold harmless the County against any and all claims, damages and expenses (including costs and attorneys' fees) related to _____'s failure to comply with said Applicable Law.

17. Liens. _____ shall not suffer or permit any mechanic's, laborer's, or materialman's lien to be filed against the NETWORK or any part thereof by reason of or arising out of

construction or the services; and if such lien shall at any time be so filed, _____ shall cause it to be canceled and discharged of record (by bonding or otherwise), within 30 days after receipt of notice of the filing thereof, and _____ shall indemnify and hold harmless the County from loss incurred in connection therewith. If _____ fails to cause any lien to be canceled or discharged as required herein after 30 days of the County's written demand, the County shall have the right to cause such lien to be canceled or discharged, and _____ shall reimburse the County for any reasonable costs and attorneys' fees incurred by the County associated therewith within thirty (30) days of receipt of an invoice from the County.

18. Representations and Warranties by the County. The County hereby represents and warrants that (a) it is a validly formed entity in good standing in its state of formation; (ii) it is qualified to do business in the state in which the Premises are located; (iii) it has obtained all internal the County consents required to enter into this Agreement; (iv) it has full right and authority to execute and enter into this Agreement and to perform the obligations imposed upon it without the consent of any other party; (v) the execution and performance of this Agreement will not violate any Applicable Law or the provisions of any agreement to which it is bound; (vi) there do not exist any liens, security interests, or other liabilities pertaining to the NETWORK; (vii) it has good and marketable title and ownership to the NETWORK free and clear of all encumbrances; and (viii) there are no agreements with any party (other than _____) for the operation of the NETWORK. Further, each of the persons executing this Agreement on behalf of the County does hereby warrant that such person signing on behalf of the County is authorized to do so.

19. Representations and Warranties by _____. _____ hereby represents and warrants that (a) it is a validly formed entity in good standing in its state of formation; (ii) it is qualified to do business in the state in which the NETWORK is located; (iii) it has obtained all consents required to enter into this Agreement; (iv) it has full right and authority to execute and enter into this Agreement and to perform the obligations imposed upon it without the consent of any other party; (v) it has full right and authority to execute and enter into this Agreement and to perform the obligations imposed upon it without the consent of any other party; (iv) the execution and performance of this Agreement will not violate any Applicable Law or the provisions of any agreement to which it is bound; and (v) there are no agreements with any party (other than the County) for the operation of the NETWORK. Further, each of the persons executing this Agreement on behalf of _____ does hereby warrant that such person signing on behalf of _____ is authorized to do so.

20. Quiet Enjoyment. So long as an Event of Default by _____ does not exist (with allowance for applicable cure periods), _____ shall have quiet enjoyment of the NETWORK free and clear of any interference by any party, including the County, except as otherwise provided herein. However it is the responsibility and liability of _____ to independently evaluate and determine whether the terms and conditions of this Agreement including but not limited to the IDP are permitted by Applicable Law and whether the IDP or other matters in connection with this Agreement or the NETWORK could result in a lawsuit or other legal action against the County by any third party and _____ expressly waives any claims it may have or could have against the County in this regard and _____ expressly acknowledges that the indemnification in Section 21 by _____ applies to the foregoing as well.

21. Indemnification. By _____. _____ hereby agrees to indemnify, defend, and hold harmless the County from and against any claims or damages arising out of _____'s breach of any provision, representation and warranties in this Agreement. To the fullest extent permitted by law, _____ shall indemnify and defend the County, its

officers, agents, employees, and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any acts or alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of _____, its officers, employees, servants, agents, or subcontractors in any way related to _____'s use of the NETWORK in performance of this Agreement except to the extent that the claims or losses solely arise from the gross negligence or willful misconduct of the County or its Agents. Such costs and expenses shall include, but are not limited to, reasonable attorneys' fees incurred by counsel of the County's choice and consultants' fees regardless of whether resolution proceeds to judgment or not. Accordingly, the provisions of this indemnity provision are intended by the Parties to be interpreted and construed to provide the fullest protection possible to the County under the law. _____ acknowledges that the County would not enter into this Agreement in the absence of _____'s commitment to indemnify and protect the County as set forth herein.

22. Insurance. _____ shall, at its sole cost and expense, purchase, provide, maintain and keep in force for the entire term of this Agreement and thereafter as required, the insurance coverages identified below. Insurance coverage shall be maintained with insurance underwriters authorized and licensed to do business in the State of Idaho, and that are satisfactory to the County. The insurance shall be maintained with companies with a current A. M. Best Rating of A VIII or better.

At the time of execution of this Agreement, and annually thereafter, _____ shall furnish a Certificate of Insurance along with all associated and required policy endorsements showing that required insurance is current and in force. _____ shall furnish the County with certificates of insurance and an endorsement reflecting additional insured status. The certificates for each insurance policy shall be signed by a signature of a person authorized by the insurer to bind coverage on its behalf. The certificates for each insurance policy are to be on standard forms or such forms as are consistent with standard industry practices, and are to be received and approved by the County at the time of acceptance of this Agreement by _____ with existing insurance coverage to be maintained by _____ until _____ provides new certificates evidencing coverage. _____ hereby warrants that its insurance policies satisfy the requirements of this Agreement.

Required evidence of insurance shall be submitted for any renewal or replacement of a policy that already exists, at least ten (10) days prior to expiration or termination of the existing policy. _____ shall provide notice to the County of any changes to insurance or cancellation of any or all insurance at least thirty (30) calendar days in advance of such change or cancellation. If the insurance is cancelled or terminated or materially diminished so as to be out of compliance with the requirements of this Agreement, _____ shall provide a replacement policy so as to maintain continuous uninterrupted insurance coverage, in at least the amounts required. The insurance policies required under this Agreement shall be written on a claims made or claims occurrence basis as required by the County and shall be kept in place for at least one year beyond the date of expiration or termination of this Agreement.

The Certificates of Insurance must include the following reference: County of _____ with the County's address. If, in the County's opinion, the minimum limits of the insurance coverage herein required become inadequate during the term of this Agreement, _____ agrees that it will increase such minimum limits by reasonable amounts upon request of the County.

The amounts listed below are the minimum deemed necessary by County to protect the County's interests in this matter. The County has made no recommendation to _____ as to the insurance necessary to protect _____'s interests and any decision by the _____ to carry or not carry insurance amounts in excess of the above is solely that of _____. _____ shall be responsible for judgments, settlements, damages, costs, attorneys' fees and expenses that exceed limits of _____'s insurance coverage.

1. Material Breach of Agreement. The continuous maintenance by _____ of all types of required insurance under this Agreement is mandatory. Failure of _____ to maintain such insurance is a material breach of this Agreement, and does not amend this Agreement, nor release _____ from any other obligations in this Agreement.
2. Commercial General Liability Insurance. Commercial General Liability Insurance on a standard occurrence form, providing coverage for personal injury, bodily injury and death and property damage in amounts not less than \$2,000,000 per occurrence; \$2,000,000 General Aggregate; the General Aggregate shall apply separately to each occurrence. The required limits may be provided by a combination of Commercial General Liability Insurance and Excess or Commercial Umbrella Liability Insurance and shall include Commercial property insurance (cause of loss-special form) (formerly "all-risk") providing coverage for 100 % of the full replacement cost of the NETWORK. After construction of the NETWORK is completed and the NETWORK is accepted by the County, the County shall carry the property damage insurance _____. _____ may carry insurance under a blanket policy, provided that such policy provides equivalent coverage to a separate policy. The commercial general liability policy shall be endorsed to name the County, the Board of County Commissioners and the County's officers, directors, employees, agents, and representatives as a PRIMARY ADDITIONAL INSURED.
3. Commercial Automobile Liability Insurance. Commercial Automobile Liability Insurance with minimum combined single limits of at least two million dollars (\$2,000,000) each occurrence and two million dollars (\$2,000,000) aggregate with respect to each of _____'s owned, hired and non-owned vehicles, or any other vehicles assigned to or used in any activities authorized under or used in conjunction with this Agreement.
4. Employer's Liability Insurance. Employer's Liability insurance with limits of at least one million dollars (\$1,000,000).
5. Workers' Compensation Insurance. Workers' Compensation insurance shall be maintained during the life of this Agreement to comply with State law.
6. Umbrella or Excess Liability Insurance. Umbrella or excess liability insurance in the amount of three million dollars (\$3,000,000).

Except for the property damage insurance of the County with respect to the NETWORK which shall be carried by the County once the NETWORK is constructed and the County accepts the NETWORK, the County's general liability policy will be excess and noncontributory.

The policies shall also be endorsed to include a waiver of the insurer's right to subrogate against the County. Specifically, all insurance policies, except Workers Compensation, shall contain a waiver of transfer rights of recovery (subrogation) against the County, its Boards, Commissioners, representatives, officers, officials, agents, and employees for any claims arising out of _____'s work or service.

_____ shall solely be responsible for deductibles and/or any self-insured retention.

23. Security

A. _____ shall provide a construction bond in the amount of two million two hundred thousand dollars (\$2,200,000) to ensure the faithful performance of its responsibilities under this Agreement including, by way of example and not limitation, its obligation to restore County Rights-of-Way and other property. The construction bond shall be in a standard industry form. _____ shall pay all premiums or costs associated with maintaining the bond and shall keep the same in full force and effect at all times, until construction is completed to the satisfaction of the County.

B. The bond shall not be cancelled or materially altered so as to be out of compliance with the requirements of this Section without forty-five (45) days written notice first being given to the County. If the bond is cancelled or materially altered so as to be out of compliance with the requirements of this Section within the term of this Agreement, or for one (1) year after the termination or expiration of this Agreement, _____ shall provide a replacement bond.

C. If there is an uncured breach by _____ of a material provision of this Agreement or pattern of repeated violations of any provision(s) of this Agreement, then the County may request and _____ shall also establish and provide within thirty (30) days from receiving notice from the County, as security for the faithful performance by _____ of all of the provisions of this Agreement, a letter of credit from a financial institution satisfactory to the County in the amount of fifty thousand dollars (\$50,000).

D. After the giving of notice by the County to _____, and expiration of any applicable cure period, the letter of credit and bond may be drawn upon by the County for purposes that include, but are not limited to the following:

1. Failure of _____ to pay the County sums due under the terms of this Agreement;
2. Reimbursement of costs borne by the County to correct Agreement violations not corrected by _____; and
3. Liquidated damages assessed against _____ as provided in this Agreement.

E. The County shall give _____ written notice of any withdrawal under this subsection upon such withdrawal. Within ten (10) days following receipt of such notice, _____ shall restore the letter of credit and bond to the amount required under this

Agreement. _____'s maintenance of the letter of credit and bond shall not be construed to excuse unfaithful performance by _____ or limit the liability of _____ to the amount of the letter of credit and bond or otherwise limit the County's recourse to any other remedy available at law or in equity.

F. _____ agrees to maintain a continuous uninterrupted letter of credit and bond in the amounts required for the duration of this Agreement and as otherwise specified in this Agreement.

G. _____ shall have the right to appeal to the Board of County Commissioners for reimbursement in the event _____ believes that the letter of credit or bond was drawn upon improperly. After a determination by the Board, _____ shall also have the right of judicial appeal if _____ believes the letter of credit or bond have not been properly drawn upon in accordance with this Agreement. Any funds the County erroneously or wrongfully withdraws from the letter of credit and bond shall be returned to _____ with interest, from the date of withdrawal at a rate equal to the prime rate of interest as quoted in the Wall Street Journal on the date the County withdrew funds from the letter of credit or bond until the date the County returns the money to _____.

24. Assessment of Liquidated Damages

A. In addition to the recovery of any monies owed by _____ to the County or damages to the County, the County may, after notice and opportunity to cure as provided in this Agreement, assess and collect from _____ the following liquidated damages.

1. For failure to provide data, documents, reports or information or to cooperate with the County during a NETWORK review or as otherwise provided herein, \$250.00 per day for each day, or part thereof, such failure occurs or continues.
2. For failure of _____ to comply with construction, operation or Maintenance standards of the NETWORK, \$500.00 per day for each day, or part thereof, such failure occurs or continues.
3. For failure to comply with any of the material provisions of this Agreement for which liquidated damages is not otherwise specifically provided, the liquidated damages shall be \$350.00 per day for each day, or part thereof, such failure occurs or continues.

B. Each violation of any material provision of this Agreement shall be considered a separate violation for which separate liquidated damages can be imposed.

C. The County and _____ recognize the delays, expense and unique difficulties involved in proving in a legal proceeding the actual loss suffered by the County as a result of _____'s breach of this Agreement. Accordingly, instead of requiring such proof of loss or damages, the County and _____ agree that _____ shall pay to the County the sums set forth above for each day that _____ shall be in breach of the specific provisions of this Agreement. Such amounts are agreed by both parties to be a reasonable estimate of the actual damages the County would suffer in the event of _____'s breach of such provisions of this Agreement.

D. The assessment of liquidated damages does not constitute a waiver by the County of any other right or remedy it may have under the Agreement or Applicable Law, including its right to recover from _____ any additional damages, losses, costs, attorneys' fees and expenses that are incurred by County by reason of the breach of this Agreement.

25. Casualty. If _____ or any of its Authorized Personnel damage any portion of the NETWORK, _____ will repair such damage and otherwise restore the NETWORK to its prior state at the time of such damage; provided, however, if the insurance proceeds for the repair of the NETWORK are not made available to _____, _____ may terminate this Agreement by written notice to the County upon 60 days' notice after the occurrence of the casualty but _____ shall remain liable and responsible for the damage to the NETWORK and shall fully compensate the County within such 60 days. For all damage to the NETWORK caused exclusively by the County, the County shall be responsible for its repair, but if the County does not repair such damage, the portion of the Agreement pertaining to the damaged NETWORK component shall automatically terminate; provided, however, if such damaged NETWORK component is critical for _____'s performance of services, the County will cause the damaged NETWORK component to be repaired with reasonable diligence, but if the County does not repair such critical, damaged NETWORK component, then _____ may terminate this Agreement.

26. Condemnation. The County hereby covenants that it will not condemn _____'s rights under this Agreement, including rights in and to the NETWORK. If during the Term, all or "*substantially all*" (meaning a reasonably sufficient portion) of the NETWORK is taken in the exercise of the power of condemnation or eminent domain, or other taking by any governmental or other authority, or by deed in lieu of condemnation, (the foregoing, each a "*taking*") such that _____ cannot perform the services as required by this Agreement, then _____ may terminate this Agreement by providing written notice to the County within 30 days of such taking, which termination shall be effective as of the date of the vesting of title as a result of such taking. In such an event, _____ shall be entitled to pursue its own separate awards with respect to such taking, including the value, if any of its leasehold estate but not including the value of the County's ownership interest in the NETWORK. In the event of any taking of less than all or substantially all of the NETWORK, this Agreement shall continue and each Party shall be entitled to pursue their own separate awards with respect to such taking, and _____ shall use such award to restore the NETWORK. The County agrees to make any awards available to the County for the repair of the NETWORK to _____.

27. Surrender. Following the expiration or termination of this Agreement, _____ will peacefully surrender possession of the NETWORK. Upon termination or expiration of this Agreement, _____ shall, at its sole cost, take all action required to leave the County with an up to date state-of-the art, latest version of facilities capable of delivering top quality state-of-the art internet services. _____ shall not have the right to remove any portion of the NETWORK, including any additions, upgrades or modifications thereto, without the prior written consent of the County. _____ at its cost and expense shall repair any damage caused by its removal of any equipment or items from the NETWORK. The provisions of this paragraph shall survive the termination or expiration of this Agreement.

28. Disclaimers and Limitations of Liability. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW:

- a. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT, EXEMPLARY, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING DAMAGES FOR LOSS OF BUSINESS, LOST PROFITS, OR BUSINESS INTERRUPTION), WHETHER ARISING IN TORT (INCLUDING NEGLIGENCE), CONTRACT, OR ANY OTHER LEGAL THEORY, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- b. COUNTY MAKES NO WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO THE RIGHTS-OF-WAY AND IMPROVEMENTS AND FACILITIES OF THE COUNTY OR THIRD PARTIES IN, UNDER, ABOVE AND ON THE RIGHTS-OF-WAY OR AS TO THE NETWORK AND THE RELIABILITY OF UTILITIES, AND COUNTY SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

29. **Notices.** All notices, demands, requests, and other communications hereunder shall be in writing and mailed, via United States certified mail, return receipt requested or transmitted by overnight courier for next business day delivery, with proof of delivery requested, to the addressees of the County and _____ set forth below or to such other addresses as the Parties may, from time to time, designate consistent with this Section, with such new notice address being effective five days after receipt by the other Party. Notices will be deemed to have been given upon either receipt or rejection. Notwithstanding the foregoing, (a) emergency repair notices may be sent via e-mail, (b) any written notice that is given by a Party may be given by the attorneys for that Party and shall be deemed effective for all purposes herein, and (iii) notices pertaining to operational issues (as opposed to defaults), such as access, service interruption, or repairs may be provided to _____ or the County via e-mail or telephone.

If to County:

County of _____
 Attn.: County Commissioners

with a copy to:

County of _____
 Attn.: County Attorney

If to _____:

 Attn: _____

30. **Assignment.** Except as provided herein, _____ may not assign its interest in this Agreement without the prior written consent of the County, which consent may be granted or withheld

in the County's sole discretion. Notwithstanding the foregoing, _____ may assign this Agreement and its rights and obligations hereunder to any person or entity which is an Affiliate (as defined below) of _____ or to any lender or provider of financing to _____ without the prior consent of the County, provided such lender or provider of financing shall make arrangements to continue to operate the NETWORK to perform the Services required by this Agreement. For purposes of this Section, an "*Affiliate*" means any _____ or other entity which (i) directly or indirectly (through one or more subsidiaries) controls _____, (ii) is controlled directly or indirectly (through one or more subsidiaries) by _____, (iii) is under the common control directly or indirectly (through one or more subsidiaries) with _____ by the same parent or other entity, (iv) is the successor or surviving entity by a merger or consolidation of any such entity pursuant to Applicable Law, or (v) purchases substantially all of the assets of _____. Notwithstanding anything contained in this Agreement to the contrary, if _____ or an Affiliate which directly or indirectly (through one or more subsidiaries) controls _____ is an entity whose equity interests are listed and traded on a nationally recognized securities exchange or over-the-counter market, the transfer, sale or other disposition (including issuance) of stock or other equity interests in such entity shall not be deemed an assignment of this Agreement so long as there is no change in control. _____ shall have the right to sublease or grant any other party the right to use all or any part of the NETWORK in accordance with the terms of this Agreement without the consent of County. In the event an assignment or transfer is consented to by the County, the County may require additional security including a performance bond and letter of credit and additional, modified or more stringent performance and operating standards (regarding those set forth in Exhibit B) from the assignee, transferee or successor. Subject to this Agreement, this Agreement shall be binding upon and inure to the benefit of the Parties, and their permitted respective successors, and permitted assigns.

31. Governing Law. This Agreement shall be governed by and construed in accordance with federal law and the laws of the State of Idaho, without reference to its conflicts of law principles. The obligations of the Parties under this Agreement are subject to the rules, regulations, venue, and policies of Applicable Law.

32. Enforceability. If any of the provisions of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such provision or provisions to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby and every provision of this Agreement shall be valid and enforceable to the fullest extent permitted by Applicable Law except as provided below. Without limiting the generality of the foregoing, if the Applicable Law should (a) change in a manner that would adversely affect the enforceability of this Agreement, (b) or someone directly or indirectly rejects or takes action to challenge the enforceability of this Agreement, or (c) take any other steps whatsoever on its own initiative or by petition from another person to challenge or deny the terms and conditions of this Agreement or the operation of the NETWORK, then the Parties hereto shall promptly negotiate in good faith to reform and amend this Agreement so as to eliminate or amend any portion that is the subject of any valid action or petition. No Party shall take any action that contributes to the occurrence of such action or petition. All the terms and conditions of this Agreement represent contractual covenants and obligations. If a court or agency (such as the FCC) of competent jurisdiction should determine that any provision of this Agreement violates any rules, regulations or policies, and the Parties hereto are unable to mutually agree on terms and conditions to reform and amend such provision to remove or cure such violation, then such provision shall be null and void and the remainder of this Agreement shall continue in force and effect. If any such court or agency action or determination renders

the overall performance of the terms and conditions of this Agreement impossible or impracticable or materially impairs the original Purpose, intent, or consideration of this Agreement, and the Parties are unable to reform and amend this Agreement to retain the original Purpose, intent and consideration in compliance with such court or agency action or determination, either Party may terminate this Agreement upon 60 days' prior written notice to the other Party and the terms and requirements that survive the expiration or termination of this Agreement shall continue in full force and effect.

Notwithstanding any other provision of this Agreement, the County shall not be obligated for any debt or liability set forth or described in this Agreement during any of the County's future fiscal years unless and until the County appropriates funds for such debt or liability in the County's budget for each such future fiscal year. In the event that funds are not appropriated for such debts or liabilities, then the County shall not be obligated in any way for such debt or liability. The County shall notify _____ in writing of any such non-allocation of funds at the earliest possible date. The County shall not be liable to _____ for damages of any kind, including incidental or consequential damages, resulting from any non-appropriation of funds.

33. No Joint Venture. The County and _____ acknowledge and agree that the relationship between them is solely that of landlord/licensor and tenant/licensee, and nothing shall be construed to constitute the Parties as employer and employee, partners, joint venturers, co-owners or otherwise as participants in a joint or common undertaking. Neither Party, nor its employees, agents, or representatives shall have any right, power or authority to act or create any obligation, express or implied, on behalf of the other.

34. Recording. Upon request by either Party, the Parties agree to execute a recordable, short-form or memorandum of this Agreement documenting the existence of this Agreement.

35. Advertising. The Parties will work together in good faith regarding press releases, such as brief statements with words to the effect that the Parties entered into a public-private agreement for the lease of the NETWORK, with _____ representing that it will use the NETWORK for the benefit of the residents of the County. Additionally, _____ shall be permitted to display on its marketing materials, including website and sales brochures, that the County is a client of _____ so long as _____ is providing management services to the County, together with a brief statement with words to the effect that the Parties are in a public-private agreement for the lease of a fiber NETWORK with _____ representing that it will use the NETWORK to provide fiber internet services for the benefit of the residents of the County. All promotional material and advertising material permitted in this Section shall be subject to the prior written consent of the County, which consent shall not be unreasonably delayed or withheld. Notwithstanding the foregoing, any advertising by _____ shall not include any reference to the County that would risk an interpretation that _____ and the County are operating in a manner contrary to this Agreement or that would be in violation of any Applicable Law or federal, state or local law or regulation.

36. Entire Agreement. This Agreement together with the Exhibits constitute the entire agreement of the Parties concerning the subject matter hereof. This Agreement supersedes any and all agreements, arrangements, dealings, and understandings, whether oral or written, heretofore made by the Parties with reference to the subject matter of this Agreement. This Agreement may not be modified without the written agreement of the Parties. In the event of a conflict between this Agreement and any Exhibit, this Agreement shall prevail. The provisions of this Agreement shall not be construed for or against a Party on the basis that a Party is deemed the drafter of this Agreement. The headings of this Agreement are for

ease of reference and shall not be deemed to define or limit the scope of any provisions. As used herein, all words in any gender shall be deemed to include the masculine, feminine, or neuter gender, all singular words shall include the plural, and all plural words shall include the singular, “including” shall be deemed to mean “including, without limitation.” Any failure by either party to exercise any of its rights hereunder shall not be deemed a waiver of any rights or remedies that such party may have and shall not be deemed a waiver of any subsequent breach or default. Previous custom, practice, or course of dealing shall not be deemed a waiver of any rights or remedies that the parties may have hereunder.

37. Counsel. Each Party has had the opportunity to review this Agreement with legal counsel of its choosing and at its sole expense.

38. Counterparts. This Agreement may be executed in multiple counterparts, including by electronic signature, each of which shall, for all purposes, be deemed an original, but which together shall constitute one and the same instrument. The Parties agree that a scanned or electronically reproduced copy or image of this fully-executed Agreement shall be deemed an original and may be introduced or submitted in any action or proceeding as competent evidence of the execution, terms and existence hereof notwithstanding the failure or inability to produce or tender an original, fully-executed Agreement and without the requirement that the unavailability of such original, fully-executed Agreement first be proven.

[signature page follows]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first above written.

County: _____:

County of _____
an Idaho municipal County _____

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A

NETWORK (Improvements) and Design and Construction Agreement and RFP Response

EXHIBIT B
Performance Requirements, Response Times, Quality of Service and Standards of
_____ and Service Providers

EXHIBIT C

**Fees and Assessments Authorized to be charged to Service Providers,
including _____, by _____**

The County will require from _____ and/or all third-party providers a fee of \$25.00 per month per individual connection, whether business or private. A portion of this assessment will be retained by _____ for managing the system as described in this Agreement. The remaining assessed fees will constitute funding needed for repairs, upgrades, expansion, and/or Maintenance of the NETWORK. The County will allow _____ to retain 20% (\$5.00) of each such monthly fee as compensation for management of the system. All remaining funds of this assessment will be remitted quarterly by _____ to be placed in an escrow account for system updates, repairs, expansion, and Maintenance as described above and in the Agreement. Yearly auditing will be provided by _____.

All installation charges through each phase of construction will be included in construction costs and the scope of work (SOW) and will not be charged to individual customers, provided each customer commits to the service and installation before available funds described in the Design and Construction Agreement are exhausted within each phase. If a client chooses to receive fiber optic service after phase completion, then the individual client will be personally responsible for installations charges associated to connecting the home or business to the NETWORK. Installation charges will be transparent and reviewed by the County and may change due to procurement and pricing circumstances. Installation drops from the back haul to the home or businesses, including those provided by third-party providers, will be performed exclusively by _____ to ensure universal compliance to agreed upon standards of equipment and installation as set forth by _____. Installation(s) charges paid by third-party providers will be remitted directly to _____, to be fully retained by _____ for installation reimbursement.

The County retains ownership of all equipment associated with the NETWORK, including all connections up to the home or business, and equipment inside the home or business to the extent permitted by Applicable Law. This includes connections only and is not associated with hardware or software owned by the individual business or home.

Open Access. By open access, the County and _____ mean that the NETWORK, NETWORK, facilities and services must be provided and made available through reasonable and competitively neutral and non-discriminatory access arrangements that: a) Ensure equivalence of price and non-price terms and conditions for all retail services providers; and b) Permit such providers to differentiate their product offerings. _____ shall ensure that the NETWORK is operated and managed in compliance with all open access requirements. In addition, _____ must not limit the ability of retail service providers or their customers to run applications, use services and connect devices of their choice to the NETWORK.

The County allows _____ as System Manager to charge a one-time NETWORK onboarding fee of \$5000 to third parties. This fee will be fully retained by the System Manager as reimbursement for third-party contract negotiation, ensuring all standards are met throughout the term of specific agreements, especially and including the Affordable Connectivity Program (ACP), business licensing, permits, setting the third-party provider up in systems for payment (generally, and per/client),

programming the system for access for the third-party provider, and other technological requirements associated with access to the system.

Additionally, the County will allow _____ to charge a monthly 10G Network-to-Network Interface (NNI) fee of \$500.00 (including _____) to all third-party providers. These fees will scale up equally among all providers to the system should their open access agreement push pass 10G. The County will allow _____ to retain 20% (\$100.00) of each monthly NNI fee for management purposes. All remaining funds of this NNI fee will be remitted quarterly by _____ to be placed in a County escrow account for system updates, repairs, expansion, and Maintenance. Yearly auditing will be provided by _____ at its cost and expense.