



Linu Parappilly  
CIO / Director

**Technology Services**

1021 Courthouse Road Oregon City, OR 97045

August 17, 2023

BCC Agenda Date/Item: \_\_\_\_\_

Board of County Commissioners  
Clackamas County

**Approval for a Service Level Agreement with Link Oregon for dark fiber services to the Oregon State University research facility on Miley Rd. Total value is \$285,700.00. Funding is through the Clackamas Broadband eXchange fund and then reimbursed by Link Oregon. No County General Funds are involved.**

<b>Previous Board Action/Review</b>	The Board has previously approved Service Level Agreements with Link Oregon for dark fiber services.		
<b>Performance Clackamas</b>	1. Which indicator of success does this item affect? a. Build strong infrastructure b. Grow a vibrant economy		
<b>Counsel Review</b>	Yes	<b>Procurement Review</b>	Yes
<b>Contact Person</b>	Duke Dexter	<b>Contact Phone</b>	503-722-6663

**EXECUTIVE SUMMARY:** Technology Services, through the Clackamas Broadband eXchange (CBX) program, is seeking approval for a new Service Level Agreement (SLA) with Link Oregon to provide dark fiber services to Oregon State University to the North Willamette Research and Extension Center (NWRE) on Miley Rd by Charbonneau.

**RECOMMENDATION:** Staff recommends approval to sign the Service level Agreement with Link Oregon for dark fiber services to the North Willamette Research and Extension Center on Miley Rd.

Respectfully submitted,

Linu Parappilly  
CIO Director

For Filing Use Only

# Clackamas County

## FIBER OPTIC SERVICE LEVEL AGREEMENT

Oregon Fiber Partnership, dba Link Oregon

(Customer Name)

### 1. Recitals

**WHEREAS**, Clackamas County (County) desires to provide to Oregon Fiber Partnership, dba Link Oregon (Customer) the services set forth in this Agreement (the "Services"), between the specified Customer sites listed in Appendix A, and at the price contained in Appendix A; and

**WHEREAS**, Customer provides network services to OSU and its CCES, through its Division of Extension and Engagement; and

**WHEREAS**, Customer desires to provision the Services; and

**WHEREAS**, the Parties desire to set forth herein their respective rights and obligations with respect to the provision of Services,

**NOW, THEREFORE**, in consideration of the foregoing, and the mutual covenants and promises set forth herein, intending to be legally bound, the Parties agree as follows.

### 2. Fiber Optic Network Description

County will provide Customer with point-to-point single mode fiber optic network connectivity, including a termination panel for the fiber optic cables, at each Customer site on a path designated by the County.

### 3. Service Description

Services provided to Customer by County are physical connectivity of one (or more) strands of optical fiber ("Fiber"), between sites specifically identified in Appendix A for the use of the Customer's internal communication needs and the needs of the parties to whom the Customer directly and indirectly provides services. Each site listed in Appendix A will have a single mode fiber termination. The Fiber is and shall remain property of the County.

### 4. Construction and Installation Requirements

a. County, when installing Fiber on the property of Customer, shall do so in a neat and professional manner. Routing and location of these cables shall be mutually agreed upon between the parties.

b. County shall secure any easements, leases, permits or other agreements necessary to allow County to use existing pathways to, into and within each site to the demarcation point for service, and any fees, costs, or expenses with respect

thereto have been included in the nonrecurring charges set forth on Appendix A. Customer shall provide a path for the Fiber from the point of entry into the site to the termination panel that complies with all applicable building, electrical, fire and related codes.

- c. Subject to the terms of this Agreement, and at no cost to County, Customer shall provide adequate environmentally controlled space and electricity required for installation, operation, and maintenance of the Fiber used to provision the service within each site.
- d. Customer shall provide a clean, secure, relatively dry and cool location (consistent with environmental requirements for fiber optic network connectivity equipment) at each of its sites for necessary equipment, as determined by the County in its sole discretion.
- e. Customer will provide or arrange for County and its employees, agents, lessees, officers and its authorized vendors, upon reasonable notice, to have ingress and egress into and out of Customer properties and buildings in connection with the provision of Service.
- f. If the presence of asbestos or other hazardous materials exists or is detected, Customer must have such hazardous materials removed immediately at Customer's expense or notify County to install the applicable portion of the Fiber in areas of the site that do not contain hazardous material. Any additional expense incurred as a result of encountering hazardous materials, including but not limited to any additional equipment that may be required, shall be paid by Customer.
- g. County has no obligation to install, operate, or maintain Customer-provided facilities or equipment.
- h. County shall construct Fiber into each Customer building enumerated herein; splice fiber into existing County fiber optic resources; terminate County's optical fiber in each Customer building; test and certify appropriate Fiber performance at each Customer location; and provide the appropriate fiber patch panel ("hand-off's") at each location for Customer utilization. County shall notify Customer when the fiber has been installed and is ready for testing and use; *provided*, that Customer may, at Customer's option, participate in County's final testing of the fiber and related service. Test results for physical connection will be made available to Customer upon request.
- i. County shall construct and install the fiber within a commercially reasonable time period.. County shall keep Customer regularly informed regarding installation progress. Installation shall be considered complete upon the date that the fiber has been installed, has passed testing to the reasonable satisfaction of Customer, and is active and available for use by Customer.

## **5. Term of Agreement**

This Agreement is effective upon execution by both parties. At such time as County

completes installation and connection of the necessary facilities and equipment to provide service herein, County shall then certify and notify Customer in writing that the service is available for use. Unless terminated as herein provided, this Agreement shall continue for a period of ten (10) years and shall automatically renew for successive one-year renewal terms, at the County's then-current rate schedule, unless either party terminates the Agreement pursuant to the terms herein. Provided, however, that the total Agreement term length, including any renewal, shall not exceed twenty (20) years.

## **6. Rates**

In return for County providing the Services described in Appendix A for the term indicated herein, Customer shall pay County both nonrecurring construction/installation charges and recurring charges for Services described in Appendix A, as may be amended by mutual agreement from time to time.

## **7. Payment**

### **a. Payments for Nonrecurring Charges**

For payment of nonrecurring charges described in Appendix A, County shall provide an invoice, which for the sake of clarity shall not include any CPI adjustment, after completion of the construction and installation of the Fiber and at such time as the Fiber has passed testing, in accordance with Appendix C, and is available for use pursuant to the terms of Section 4(i); *provided*, that Customer shall use reasonable efforts to test the Fiber within two weeks of notification by County that the Fiber is available for use, and the County shall reasonably cooperate with Customer with respect to such testing. Customer shall pay the invoice for the nonrecurring charges within thirty (30) days of receipt of the invoice. Interest charges shall be assessed for late payments in accordance with Appendix A. Failure of Customer to pay within thirty (30) days of receipt of an invoice shall constitute an event of default and County may pursue any remedies provided in this Agreement including, but not limited to, terminating the Agreement upon appropriate advance written notice to Customer.

### **b. Annual Payments for Recurring Charges**

County shall provide an invoice for twelve months of service (July 1 through June 30), or prorated weekly for any portion thereof, to Customer at the beginning of the service period. The annual charge shall be payable within thirty (30) days of receipt of invoice. Interest charges shall be assessed for late payments in accordance with Appendix A. If the Customer fails to pay within sixty (60) days of receipt of an invoice it shall constitute grounds for County to disconnect the affected Service upon thirty (30) days written notice to Customer.

Recurring charges may be subject to annual increase, as set forth in Appendix A.

## **8. Fiber Maintenance**

County shall maintain the structural aspects of the Fiber in good operating condition,

utilizing commercially reasonable practices in accordance with Appendix B, throughout the Agreement Term. In the event the Fiber fails at any time to meet the specifications outlined in Appendix C, County shall restore the Fiber to meet the specification standards in as timely and expedited a manner as reasonably possible.

County may subcontract for testing, maintenance, repair, restoration, relocation, or other operational and technical services it is obligated to provide hereunder.

Customer shall promptly notify County of any matters pertaining to any damage or impending damage to or loss of the use of the Fiber that are known to it and that could reasonably be expected to adversely affect the Fiber. County shall promptly notify Customer of any matters pertaining to any damage or impending damage to or loss of the Fiber that are known to it and that could reasonably be expected to adversely affect the Fiber and/or Customer's use thereof.

**9. Confidentiality**

All Customer data, voice, or video transmission using County Fiber shall be treated by County as confidential information, to the extent allowable by law. Customer expressly acknowledges and agrees that County's confidentiality obligations under this Agreement are subject to, and only enforceable to the extent permitted by, the Oregon Public Records Law, Oregon Revised Statutes ("ORS") Chapter 192 *et. seq.*, and any other applicable state or federal law

**10. Content Control and Privacy**

Customer 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 Fiber.

**11. Assignment and Successors**

Either party may assign this Agreement upon prior written consent of the other party. Such consent shall not be unreasonably withheld. Upon such assignment, all rights and obligations of County and Customer under this Agreement shall pass in total without modification to any successor(s) regardless of the manner in which the succession may occur. Notwithstanding the foregoing, Customer may assign this Agreement, without prior written consent, to (a) any founding member of Customer, namely Oregon State University, OHSU, Portland State University, the University of Oregon, or the State of Oregon's Enterprise Information Services or (b) any successor organization, whether a non-profit or a public entity, that assumes the operations of Customer.

**12. Damage**

County shall be responsible for restoring, or otherwise repairing to its prior condition, any portion of the Customer's premises or facilities, which are damaged by the negligent acts or omissions of County. Customer shall be responsible for restoring, or otherwise repairing to its prior condition, any portion of County's connectivity

equipment or other facilities, located at Customer premises, which are damaged by Customer or its agents.

Customer will reimburse all related Costs associated with damage to the Fiber caused by the negligent acts or omissions of Customer, its affiliates, employees, agents, contractors or customers. As used herein, "Costs" includes the following: (a) labor costs, including wages, salaries, and benefits together with overhead allocable to such labor costs; and (b) other direct costs and out-of-pocket expenses on a pass-through basis (such as equipment, materials, supplies, contract services, sales, use or similar taxes, etc.).

**13. Force Majeure**

Neither party hereto shall be deemed to be in default of any provision of this Agreement, for any failure in performance resulting from acts or events beyond the reasonable control of such party. For purposes of this Agreement, such acts shall include, but shall not be limited to, acts of nature, civil or military authority, civil disturbance, war, strikes, fires, power failure, other catastrophes or other force majeure events beyond the parties' reasonable control, provided however that the provisions of this paragraph and article shall not preclude Customer from cancelling or terminating this Agreement as otherwise permitted hereunder, regardless of any force majeure event occurring to County. If a force majeure event precludes County from providing services under this Agreement, Customer will not be liable for payment of the fees otherwise due under this Agreement. The parties shall use commercially reasonable efforts to minimize the delay caused by any force majeure event and to resume services as soon as possible.

**14. Consequential Damages**

NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES, WHETHER FORSEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH, TRANSMISSION INTERRUPTIONS OR DEGRADATION, INCLUDING BUT NOT LIMITED TO DAMAGE OR LOSS OF PROFITS OR EQUIPMENT, LOSS OF PROFITS OR REVENUE, COST OF CAPITAL, COST OF REPLACEMENT SERVICES OR CLAIMS OF CUSTOMERS, WHETHER OCCASIONED BY ANY REPAIR OR MAINTENANCE PERFORMED BY OR FAILED TO BE PERFORMED BY A PARTY, OR ANY OTHER CAUSE WHATSOEVER, INCLUDING WITHOUT LIMITATION BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE OR STRICT LIABILITY.

**15. Public Contracting Provisions**

The provisions of Oregon public contracting law, ORS 279B.020 through 279B.235, to the extent applicable, are incorporated herein by this reference.

**16. Non-Appropriation or Change in Law**

Notwithstanding any other provisions of this Agreement, the parties hereby agree and understand that if County fails to receive expenditure authority sufficient to allow the County, in the exercise of its reasonable administrative discretion, to perform under this Agreement, or if federal or state laws, regulations or guidelines are modified or interpreted in such a way that County is prohibited from performing under this Agreement, the Agreement shall terminate and Customer shall pay County any remaining pro rata fees for services due to the date of such termination payable pursuant to Section 7 of this Agreement. Notwithstanding the foregoing, in the case of any such termination, County shall pay Customer a pro rata refund of all nonrecurring charges already paid by Customer with respect to the remainder of the term of this Agreement.

**17. Compliance with Laws**

Customer and County shall comply with all applicable federal, state, county and city laws, ordinances and regulations, including regulations of any administrative agency thereof, heretofore or hereafter adopted or established, during the entire term of this Agreement.

**18. Taxes and Assessments**

- a. Customer agrees to pay any and all applicable national, federal, state, county and local taxes, fees, assessments or surcharges, and all other similar or related charges, which are imposed or levied on the Fiber, or because of Customers use of the Services under this Agreement (collectively, "Taxes), whether or not the Taxes are imposed or levied directly on the Customer, or imposed or levied on the County because of or arising out of the use of the Services either by the Customer, or its affiliates, or anyone to whom Customer has sold or otherwise granted access to the Services. Customer agrees to pay these Taxes in addition to all other fees and charges as set forth elsewhere in this Agreement. Notwithstanding the foregoing, for the sake of clarity, Customer shall not be liable for additional fees, costs, or expenses with respect to easements, leases, permits, or other agreements obtained in connection with fiber installation as set forth in Section 4(b) beyond the amounts included in non-recurring charges in Appendix A.
- b. "Taxes" include, but are not limited to, business and occupation, commercial, district, excise, franchise fee, gross receipts, license, occupational, privilege, property, Public Utility Commission, right-of-ways, utility user, or other similar taxes, fees surcharges and assessments as may be levied against Customer, or against County and passed through to Customer.
- c. As of the date of this Agreement, the parties do not believe there are any Taxes that apply to the Services. In the event County determines Taxes apply, it will provide Customer thirty (30) days' written notice of that determination. Customer may either agree to pay the Taxes or immediately terminate the Agreement.

**19. Termination**

- a. Either party may terminate this Agreement for convenience following 90 days'

written notice to the other party.

- b. Pursuant to Section 20 of this Agreement, either party may terminate this Agreement in the event of default of the Agreement by the other party and a failure to cure such default as set forth in Section 20. Neither the County nor the Customer shall be deemed to have waived any breach of this Agreement by the other party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach is of the same nature as that waived.
- c. If Customer terminates this Agreement for any reason other than County's default or failure to perform, County shall be entitled to 5% of the remaining contract amount for the unexpired term of this Agreement.

## **20. Default**

1. Either of the following events shall constitute a default:
  - a. Failure to perform or comply with any material obligation or condition of this Agreement; or
  - b. Failure to pay any sums due under this Agreement.
2. Any defaulting party shall have thirty (30) days in which to cure following written notice of default by the non-defaulting party.

## **21. Remedies; Effect of Termination**

If this Agreement is terminated by the County due to a breach by the Customer, then the County shall have any remedy available to it in law or equity. If this Agreement is terminated by the Customer due to a breach by the County, then the Customer shall have any remedy available to it in law or equity.

Solely in the event this Agreement is terminated by County for its convenience, County shall pay Customer the cost of the nonrecurring charges, which sum will be reduced by \$ 22,450.00 each year this Agreement is in effect. For example, if County terminates this Agreement after five years for County's convenience, County will repay Customer the sum of \$112,250.00.

## **22. Amendment**

Any amendments to this Agreement shall be in writing and shall be signed by all parties.

## **23. Indemnification**

The Customer shall indemnify, defend and hold the County and its members, managers, officers, agents and employees (collectively, the "County Indemnified



Parties”) harmless from and against any and all claims, lawsuits or damages asserted against the County Indemnified Parties by any third-party to the extent the same arise out of or are due to the negligent acts or omissions or willful misconduct of Customer or Customer’s agents or contractors in performing under this Agreement.

Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act, County shall indemnify, defend and hold the Customer and its members, managers, officers, agents and employees (collectively, the “Customer Indemnified Parties”) harmless from and against any and all claims, lawsuits or damages asserted against the Customer Indemnified Parties by any third-party to the extent the same arise out of or are due to the negligent acts or omissions or willful misconduct of County or County’s agents or contractors in performing under this Agreement.

## **24. Notice**

Any notice hereunder shall be in writing and shall be delivered by personal service or by United States certified or registered mail, with postage prepaid, or by electronic mail as follows:

### **Notice to the County**

Manager, Clackamas Broadband eXchange  
Clackamas County Technology Services  
121 Library Court  
Oregon City, Oregon 97045  
[ddexter@clackamas.us](mailto:ddexter@clackamas.us)  
Fax Number (503) 655-8255

with a copy to

Chief Information Officer  
Clackamas County Technology Services  
121 Library Court  
Oregon City, Oregon 97045  
[cbxinfo@co.clackamas.or.us](mailto:cbxinfo@co.clackamas.or.us)  
Fax Number: (503) 655-8255

### **Notice to the Customer**

Steve Corbató  
Executive Director  
630 SW Mill St, Room 114  
Portland, OR 97201  
(503) 998-3957  
[corbato@linkoregon.org](mailto:corbato@linkoregon.org)

with a copy to

Black Helterline, LLP  
805 SW Broadway, Suite 1900  
Portland, OR 97205  
Attn: Tim Crippen  
[Tim.Crippen@bhlaw.com](mailto:Tim.Crippen@bhlaw.com)

Either Party, by similar written notice, may change the address to which notices shall be sent.

**25. Debt Limitations**

This Agreement is expressly subject to the debt limitations set forth in Article XI of the Oregon Constitution, and each party's performance is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.

**26. No Attorney Fees**

No attorney fees shall be paid for or awarded to either party in the course of any dispute or other recovery under this Agreement. It is the intent of the parties that each shall bear the costs of its own legal counsel.

**27. Governing Law**

This Agreement shall be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, or suit between County and Customer that arises out of or relates to the performance of this Agreement shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit must be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

**28. Survival**

All rights and obligations shall cease upon termination or expiration of this Agreement, except for the rights and obligations set forth in Sections 9, 12, 14, 21, 23, 25, 26, 27, 28, and 30, and all other rights and obligations which by their context are intended to survive.

**29. Severability**

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.

**30. Whole Contract**

THIS CONTRACT CONSTITUTES THE COMPLETE AND EXCLUSIVE STATEMENT OF THE CONTRACT BETWEEN THE PARTIES RELEVANT TO THE PURPOSE DESCRIBED HEREIN AND SUPERSEDES ALL PRIOR AGREEMENTS OF PROPOSALS, ORAL OR WRITTEN, AND ALL OTHER COMMUNICATION BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF THIS CONTRACT. NO WAIVER, CONSENT, MODIFICATION, OR CHANGE OF TERMS OF THIS CONTRACT WILL BE BINDING ON EITHER PARTY EXCEPT AS A WRITTEN ADDENDUM SIGNED BY AUTHORIZED AGENTS OF BOTH PARTIES.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement the date and year first above written.

**Clackamas County**

By (signature): \_\_\_\_\_

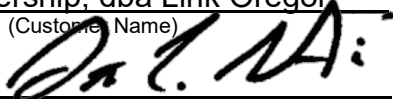
Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Customer**

Oregon Fiber Partnership, dba Link Oregon  
(Customer Name)

By (signature):  \_\_\_\_\_

Name (print): Steven C. Corbato

Title: Executive Director

Date: August 2, 2023

**APPENDIX A**

**SERVICE AND RATE SCHEDULE**

**1. Specified Services and Rates**

The following are the sites, services, and rates agreed to by County and Customer at which Customer shall be provided services on the fiber optic network during the term of 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 terms herein. It is further understood that, during the term of the Agreement, Customer may add services to existing or new locations, or change services and/or locations, but that such changes are subject to the rates for such additional services.

**2. Construction, Installation and Activation**

For construction, installation and activation work and provision of fiber optic network components, the County shall charge Customer nonrecurring charge(s) as specified in Section 5 of Appendix A. All facilities constructed under this Agreement and Appendix A shall be owned, operated, and maintained by the County.

**3. Service Changes and Conversions**

Both parties agree that Customer may add or change services during the term of the Agreement, but that such changes are subject to applicable rates, and upgrade and downgrade charges.

**4. Annual Recurring Charges**

	<b>From</b> (Connecting Point A:Site Name & Address)	<b>To</b> (Connecting Point B:Site Name & Address)	<b>Service</b>	<b>Monthly Rate (\$)</b>
1	Oregon Fiber Partnership 15210 NE Miley Rd Aurora, OR 97002	Clackamas Educational Services District 13455 SE 97thAve Clackamas, OR 97015	One Pair (two) dark fibers	\$255.00

**5. Nonrecurring Charges**

	<b>From</b> (Connecting Point A:Site Name & Address)	<b>To</b> (Connecting Point B:Site Name & Address)	<b>Service</b>	<b>Amount (\$)</b>
1	Oregon Fiber Partnership 15210 NE Miley Rd Aurora, OR 97002	Clackamas Educational Services District 13455 SE 97thAve Clackamas, OR 97015	Construction	\$224,500.00

**6. Late Payment Interest**

Customer will be charged interest for any payment made after its due date (thirty (30) days after receipt of invoice). Interest is charged at a rate of one and a half percent (1.5%) per month, or eighteen percent (18%) annually, on any installment not paid when due.

**7. Annual Consumer Price Index (CPI) Adjustments**

All fees and minimum charges are subject to Consumer Price Index (CPI) adjustments, to be applied annually. The amount of the fees and charges specified herein may increase annually by a percentage up to the change in the West Region (West City Size B/C 2.5 Million or less) Consumer Price Index of the US Dept. of Labor, Bureau of Labor Statistics (<https://www.bls.gov/regions/west/data/xg-tables/ro9xg01.htm>), based upon the rate of change as stated from the last month reported to the same month of the preceding year. In the event such Consumer Price Index (or a successor or substitute index) is not available, a reliable governmental or other nonpartisan publication evaluating the information theretofore used in determining the Consumer Price Index shall be used in lieu of such Consumer Price Index.

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## **APPENDIX B**

### **MAINTENANCE AND OPERATIONS SPECIFICATIONS AND PROCEDURES**

#### **1. Defined Terms**

- a. “Routine Maintenance” is all preventive maintenance activities and repairs.
- b. “Non-Routine Maintenance” is all efforts and activities in response to an emergency circumstance which requires restoration of service.

#### **2. General**

- a. County shall operate and maintain a Network Control and Management Center (NCAM) staffed twenty-four (24) hours a day, seven (7) days a week, by trained and qualified personnel. County shall maintain (503) 742-4219 telephone number to contact personnel and NCAM. County’s NCAM personnel shall dispatch maintenance and repair personnel along the fiber optic network to repair problems detected through the NCAM’s remote surveillance equipment, by the Customer, or otherwise.
- b. In the event Customer identifies a circumstance which requires restoration of service, Customer 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 Customer’s personnel to contact for site access and status updates. NCAM personnel shall immediately contact a County technician and provide the Customer contact information. County technician shall contact Customer within one (1) hour of initial call.
- c. If the County’s technician cannot repair the service interruption by telephone, County shall use commercially reasonable efforts to have its first maintenance employee or contractor at the site requiring repair within five (5) hours of the initial call to the NCAM. County will then work continuously until service has been restored.
- d. County shall use commercially reasonable efforts to notify Customer seven (7) days prior to the date of any planned non-emergency maintenance activity. In the event that a County planned activity is canceled or delayed for any reason as previously notified, County shall notify Customer as soon as reasonably possible and will comply with the provisions of the previous sentence to reschedule any delayed activity.

#### **3. Fiber Optic Network**

- a. County shall maintain the fiber optic network in good and operable condition and shall repair the fiber in a manner consistent with industry standards and using commercially reasonable efforts.
- b. County shall perform appropriate routine maintenance on the fiber optic network in accordance with County's then current preventive maintenance procedures. County's maintenance procedures shall not substantially deviate from industry practice.

**4. Restoration**

- a. When restoring damaged fiber, the Parties agree to work together to restore all traffic as quickly as possible. County, immediately upon arriving on the site of the damage, shall determine the best course of action to be taken to restore the fiber and shall begin restoration efforts.
- b. It will be the responsibility of County and Customer to report to one another respectively any known environmental hazards which would restrict or jeopardize any maintenance work activities in shelters or right of way areas of operation.
- c. Upon notification of interruption of fiber optic network service, disrepair, impairment or other need for repair or restoration of the fiber and the location of the damaged fiber, County shall pursue commercially reasonable efforts to mobilize technicians to achieve necessary repair or restoration, including, but without limitation, having maintenance personnel at the affected site within five (5) hours after receipt of such notice with the required restoration material and equipment.
- d. In the event that Customer's use of the fiber optic network is interrupted due to an occurrence of a force majeure event, repairs and restoration shall be made as expeditiously as reasonably possible. Customer recognizes that five (5) hour response time represents optimal conditions, and may be impossible to achieve when emergency restoration of fiber optic network integrity is required or when responding to certain remote locations. Actual response times will be influenced by such factors as terrain, weather conditions present at the time the request is made and actual mileage to the fault site.
- e. For purposes of this section, "commercially reasonable efforts" means activities and performances consistent with prudent utility practice, existing contract provisions for County 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 County and Customer.

- 5.** Customer shall be responsible for paying County standard maintenance fees for

any calls to County for maintenance issues related to the Fiber that County later confirms as resulting from another source other than functionality of the Fibers.

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## APPENDIX C

### FIBER SPLICING AND TESTING STANDARDS AND PROCEDURES

#### 1. Fiber and Connector Standards

##### a. **Connector Standards**

The loss value of any pigtail connector and any associated fiber jumper or pigtail with matching mode field diameters will not exceed .5dB at 1550 nm. The loss value of a connector and its associated jumper with mismatched mode field diameters should not exceed .8 dB.

##### 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 Fibers, commercially reasonable efforts will be made to restore the Fibers to this standard. If after 3 restoration splicing attempts, County is not able to produce a loss value of 0.1 dB or less bi-directionally at 1550 nm, then 0.5 dB or less bi-directionally at 1550 nm will be acceptable. Fibers not meeting the 0.1 dB or less specification will be identified as Out Of Specification (OOS). Documentation of the three attempts (re-burns) to bring the OOS fiber within specification will be provided.

##### c. **Span Loss**

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

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

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 .5dB. The section test will have (2) pigtail connectors/splices under test, so 1.0dB will be allowed for this loss.

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