

CONTRACT, LEASE, AGREEMENT CONTROL FORM

Date: 09/07/2021

Contract/Lease Control #: C21-3105-IT

Procurement#: NA

Contract/Lease Type: AGREEMENT

Award To/Lessee: THE SCHOOL BOARD OF OKALOOSA COUNTY, FLORIDA

Owner/Lessor: OKALOOSA COUNTY

Effective Date: 08/23/2021

Expiration Date: 08/22/2041

Description of: AGREEMENT FOR EXCLUSIVE USE OF OPTICAL FIBER

Department: IT

Department Monitor: SAMBENEDETTO

Monitor's Telephone #: 850-651-7570

Monitor's FAX # or E-mail: DSAMBENEDETTO@MYOKALOOSA.COM

Closed:

Cc: BCC RECORDS

AGREEMENT FOR EXCLUSIVE USE OF OPTICAL FIBER

This Agreement for exclusive use of optical fiber (the "Agreement") is made and entered into as of 23rd day of August, 2021 by and between Okaloosa County, Florida ("County" or "Grantor"), a political subdivision of the State of Florida, and The School Board of Okaloosa County, Florida, a public body ("OCSB" or "Grantee").

RECITALS

- A. Grantor has constructed and/or is currently constructing a fiber optic communications system (the "Grantor's System") as generally depicted on Exhibit A attached hereto. This system provides service to the Board of County Commissioners, Sheriff, Tax Collector, Property Appraiser, Clerk of Court and Supervisor of Elections. It also provides service to various cities, colleges, and the military. The Grantor's System is a proven fiber optic telecommunication utility with over 15 years of operational excellence.
- B. Grantee desires to obtain the exclusive right to use the optical fibers in the Grantor's System as denoted as fiber optic rings on Exhibit A, attached hereto, upon the terms and conditions set forth herein.
- C. Grantor desires to grant to Grantee the exclusive right to use optical fibers within the Grantor's System, as denoted on Exhibit A, all upon and subject to the terms and conditions set forth herein.
- D. This Agreement shall become effective upon the execution hereof by the duly authorized representative of each party.

ARTICLE 1 Definitions

- 1.1. "Assigned Fibers" shall mean the optical fibers for which Grantee is given the exclusive right to use, as denoted on Exhibit A, subject to the terms and conditions set forth herein.
- 1.2. "Dark Fiber" means fiber provided without electronics or optoelectronics, and which is not "lit" or activated, provided that such fiber may be used in any manner and for any purpose.
- 1.3. "Grantee Fibers" shall mean the fibers installed to the Grantee side of the Points of Demarcation.
- 1.4. "Grantor's System" means all conduit and fibers on the Grantor's side of the Points of Demarcation and as generally depicted on Exhibit "A" and defined in section 1.7.
- 1.5. "Exclusive Right to Use" means the sole use of Assigned Fibers subject to the terms and conditions set forth herein.
- 1.6. "Term of Use" shall mean the duration of this Agreement, beginning on the Effective Date and ending twenty (20) years thereafter or at the life of the Assigned Fibers, whichever is less, but not less than twelve (12) years.

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- 1.7 "Points of Demarcation" means the points at which operational control, ownership, maintenance, or responsibility of communications facilities changes from that of Okaloosa County to that of the OCSB and are defined as the Single Mode (SM) fiber termination panels at each primary location below. The Grantor will install, terminate, label and test all assigned SM fibers to the appropriate communications room/rack. The Grantee is responsible for all jumpers, patch cables and other equipment or devices necessary to "light" the fiber. The Grantor will perform utility locates on the Grantors system up to the building entry for each primary school location:

1.7.1 Ownership:

1.7.1.1 Single Mode (SM) Fiber: The Grantor owns all Single Mode (SM) fiber, termination panels and connectors installed to reach each primary location. Grantee owns all equipment, patch or jumper cables past the primary location (premise) SM fiber panel connectors.

1.7.1.2 Conduit System: The Grantor owns all conduit, handhelds, pull-boxes, building entries and other related appurtenances that the Grantor is required to construct or install to reach each primary location and these become part of the Grantor System. No other utility may collocate any other cable within the Grantor System contained within OCSB property unless expressly approved in writing by the Grantor and the Grantee. The Grantee may provide suitable conduit for Grantee to use to reach primary locations. This conduit remains under the sole control of the Grantee for the purposes of this agreement.

1.7.2 Repair and Maintenance:

1.7.2.1 Grantor Responsibilities: The Grantor shall repair and maintain all Grantor owned items, both on and off OCSB property. The Grantor shall provide a good faith effort to locate and protect all SM fiber and the related conduit systems on OCSB property up to the premise primary location building entry and interior building runs.

1.7.2.2 Grantee Responsibilities: The Grantee will provide a good faith effort to protect the Grantors fiber optic utility contained on OCSB property including buildings and structures. The Grantee shall reimburse the Grantor for scheduled or unscheduled maintenance or repair work performed on behalf of the Grantee or as a result of damage caused by the Grantee or one of its contractors. The Grantee shall notify the Grantor via Sunshine 811 of any construction efforts including but not limited to irrigation work or building construction or remodeling or any work on OCSB property that may be in the general vicinity of and impact the fiber optic utility.

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1.7.3 Required School Locations:

| # | Primary Location | Secondary Location |
|----|----------------------------------|----------------------------|
| 1 | Crestview High School | |
| 2 | | Davidson Middle School |
| 3 | Bob Sikes Elementary School | |
| 4 | Northwood Elementary School | |
| 5 | Walker Elementary School | |
| 6 | Carver Hill Administration | |
| 7 | Southside Center | |
| 8 | Riverside Elementary School | |
| 9 | | Shoal River Middle School |
| 10 | Antioch Elementary School | |
| 11 | Okaloosa Youth Academy - DJJ | |
| 12 | Edge Elementary School | |
| 13 | Central Administration | |
| 14 | Niceville High School | |
| 15 | | Ruckel Middle School |
| 16 | Plew Elementary School | |
| 17 | Okaloosa STEMM Academy | |
| 18 | Lewis Middle School | |
| 19 | Bluewater Elementary School | |
| 20 | Destin Middle School | |
| 21 | Destin Elementary School | |
| 22 | Northwest Florida Ballet Academy | |
| 23 | Bay Area Offices | |
| 24 | Elliot Point Elementary School | |
| 25 | Fort Walton Beach High School | |
| 26 | | Edwins Elementary School |
| 27 | Bruner Middle School | |
| 28 | Silver Sands School | |
| 29 | Mary Esther Elementary School | |
| 30 | Florosa Elementary School | |
| 31 | Wright Elementary School | |
| 32 | Pryor Middle School | |
| 33 | | Choctawhatchee High School |
| 34 | Shalimar Elementary School | |
| 35 | Meigs Middle School | |
| 36 | Eglin Elementary School | |
| 37 | Longwood Elementary School | |
| 38 | Kenwood Elementary School | |
| 39 | Choice HS and Technology Center | |

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1.7.4 Optional (Future) School Locations that may or may not be reached due to funding and feasibility. If the Grantor builds out and connects the county fiber optic network to Laurel Hill and Baker schools, the OCSB shall pay an additional \$2,500 of yearly IRU/Maintenance per site (prorated by date of notice of completion) with the same conditions per this agreement.

| # | Potential Future Locations | |
|----|----------------------------|--|
| 40 | Baker School | |
| 41 | Laurel Hill School | |

- 1.8 "Required Rights" shall have the meaning set forth in Section 7.1.
- 1.9 "Segment" is defined as a length of completely installed optical fiber that would be deemed usable if electronics were placed on each end of the length of fiber.
- 1.10 "Scheduled Maintenance" is defined as routine work required to maintain the operation and integrity of the Grantor's System.
- 1.11 "Unscheduled Maintenance" is defined as non-routine maintenance and repair of the Grantor's System which is not included as scheduled maintenance, such as cuts, outages and other emergency related operations.
- 1.12 "Configuration control" shall be the physical attributes associated with augmentation, maintenance or repair. Attributes include pull box type and procedure and techniques used for splicing and weather-proofing splice enclosures.
- 1.13 "Effective Date" shall mean the date this Agreement becomes effective.

ARTICLE 2 Grant of Exclusive Right to Use

- 2.1 Grantor hereby grants, effective as of the Effective Date of this Agreement, and Grantee acquires from Grantor the exclusive right to use, under the terms described herein, the Assigned Fibers within the Grantor's System as they become available and pass acceptance testing. All such Assigned Fibers shall be "Dark Fibers." Each fiber optic ring as described on Exhibit "A" will be a minimum of two (2) SM fiber optic strands. Each primary school location will be supplied with sufficient SM fiber capacity to provide for 2 strands to ring in and 2 strands to ring out, for a total of 4 strands minimum.
- 2.2 Grantee shall be allowed to develop and augment any and all conduit and fibers on Grantee's side of the Points of Demarcation.
- 2.3 Only the Grantor shall be allowed to develop and augment any and all conduit and fibers on the Grantor's side of the Points of Demarcation.
- 2.4 The location of the Grantor's System, the Assigned Fibers and Points of Demarcation are

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generally set forth on Exhibit "A" herein.

- 2.5 Grantor may, at its option, acquire for use any portion of another fiber optic system from third parties that hold a right to use such portion of the other fiber optic system (whether under a lease, sublease, indefeasible right of use, or otherwise) and may include any dark fibers so acquired as part of the Assigned Fibers; provided, any such acquired use of such portion shall have been constructed substantially in accordance with the specifications and procedures required by this Agreement except for such deviations which do not, in the reasonable discretion of Grantor, materially diminish the value, utility, reliability or expected useful life of the Grantor's System; and provided further, that Grantee shall have no lesser rights with respect to the acquired portion of the other system as it has with respect to the portion of the Grantor's System owned by the Grantor.

ARTICLE 3

Connection, Operation and Maintenance

- 3.1 Grantor and Grantee will mutually consult with each other from time to time upon request to attempt to coordinate construction of the Grantor's System with other network construction planned by either party.
- 3.2 Grantor and Grantee shall provide written notice to each other for any planned maintenance or augmentation that may affect the other party, at least two weeks prior to the planned event. Consideration will be given to operational requirements of both parties.
- 3.3 Grantor may perform scheduled or unscheduled maintenance or augmentation on Grantor's System at any time.
- 3.4 Due to the public safety and critical infrastructure nature and extent of the County Fiber Optic Network, of which the Grantee's fiber network will reside, emergency repairs will be commenced and completed as quickly as possible to limit service outages for all county fiber stakeholders. For all unscheduled maintenance, Grantor agrees to provide a response time of no more than three hours after notification and an elapsed time for completion of any emergency repairs necessary to restore service no greater than an additional 24 hours after notification. When restoring a cut fiber optic cable or conduit system on Grantee's property, the parties agree to assist and work together to restore service as quickly as possible.

ARTICLE 4

Terms

Terms of the Right to Use

- 4.1 The Grantee's exclusive right to use the Assigned Fibers shall begin on the Effective Date of this Agreement or when the site is complete and acceptance testing is approved.
- 4.2 The duration of the exclusive right to use the Assigned Fibers shall be for twenty (20)

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years from the Effective Date, or for the life of the fibers, whichever is less, **but** not less than twelve (12) years.

- 4.3 Upon the expiration of this Agreement, all rights to the use of the Assigned Fibers shall revert to Grantor without reimbursement of any of the exclusive right to use fee or other sums, costs, fees or expenses previously made with respect thereto, and from and after such time Grantee shall have no further rights or obligations hereunder with respect thereto unless such rights or obligations are specifically provided herein to survive the term of this Agreement.

Compensation for Right to use and Maintenance and Operation

- 4.4 The Grantor will fund the capital build out costs to connect each primary school location. The Grantor will build out the back bone and various fiber optic rings and then begin to insert schools into the appropriate ring with the goal of adding all 34 primary school locations within eighteen (18) months from the full execution of this agreement. The Grantor will provide the Grantee with a notice of completion as each school is able to be connected to the network and operational through the corresponding ring. Each school location and corresponding ring is depicted on Exhibit "A".
- 4.5 As compensation for the right to use, and to provide maintenance of the initial 34 primary school locations as depicted on Exhibit "A" and described in 1.7.3, the Grantee agrees to pay to the Grantor an annual payment of \$75,000 beginning on the first anniversary date of this agreement. If all 34 schools are not completed by the first anniversary date of this agreement, the IRU/Maintenance payment will be prorated as follows: (# of schools complete / 34) * \$75,000 until all 34 schools are complete.
- 4.6 Additional school locations may be added or removed should both parties agree. Future school locations which are located greater than 2 construction miles from the existing Grantor's System, such as Baker or Laurel Hill School's may be added to the network for an additional IRU/Maintenance fee of \$2,500 per school. Future school locations which are located less than 2 construction miles from the existing grantors system may be added at a yearly IRU/Maintenance fee equal to the current rate for the initial 34 primary schools. Additional schools and fess will automatically be added to this Agreement prorated by the number of days until the next anniversary date payment and detailed on the subsequent invoice.
- 4.7 Other modifications, school relocations, or similar at the request of the Grantee and approved by the Grantor that may affect the Grantor's System will be performed by the Grantor and funded by the Grantee. The Grantor shall send Grantee an invoice in the amount of the approved work. Grantee shall pay such invoiced amount (unless such amount is the subject of a good faith dispute) within 45 days after receipt of such invoice by Grantee.
- 4.8 At the beginning of each subsequent year of this Agreement, the Grantor shall send Grantee an invoice for the yearly IRU/Maintenance in the amount described in 4.5 and

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4.6 of this Agreement, plus an annual adjustment based upon the increase in cost over the previous year as reflected in the consumer price index (CPI-U) for the services provided herein, but not to exceed 4% annually. Grantee shall pay such invoiced amounts (unless such amount is the subject of a good faith dispute) within 45 days after receipt of such invoice by Grantee.

Miscellaneous

- 4.9 All payments made by Grantee hereunder shall be made without any deduction or withholding for or on account of any tax, duty or other charges of whatever nature imposed by any taxing or government authority (collectively, "Taxes"). If either Grantee or Grantor are or were required by law to make any deduction or withholding from any payment due hereunder to Grantor, solely due to action or inaction by Grantee, then, notwithstanding anything to the contrary contained in this Agreement, the gross amount payable by Grantee shall be increased so that, after any such deduction or withholding for Taxes, the net amount received by Grantor will not be less than Grantor would have received had no such deduction or withholding been required. If it is determined by any taxing or government authority that Grantee should have made a deduction or withholding for or on account of any Taxes with respect to all or a portion of the payments made hereunder, or that Grantor should have collected certain Taxes from Grantee which Grantor did not collect, Grantee hereby agrees to assume liability directly related to any Taxes, interest or penalties levied in connection therewith, but only to the extent that such taxes, interest or penalties are lawfully imposed solely as a result of action or inaction of Grantee.
- 4.10 Invoices for payment under this Agreement shall be submitted in detail sufficient for pre-audit and/or post audit. Invoices returned to Grantor due to preparation errors may result in a payment delay.

ARTICLE 5 Operations

- 5.1 Subject to the provisions of the Agreement, Grantee shall have full and complete control and responsibility for determining any network and service configuration or designs, routing configurations, rearrangement or consolidation of channels or circuits and all related functions with regard to the use of Grantee's Fibers.
- 5.2 Grantor shall supply to the Grantee at each of the Grantors Head Ends (if necessary) the power and environmental control equipment that would normally be supplied and utilized as part of Grantor's regeneration facilities and which shall be provided and maintained in good order and in accordance with industry standards. Such power and environmental control equipment does not include optoelectronics or any other equipment needed to transmit a signal.
- 5.3 Upon not less than sixty (60) days written notice to Grantee, Grantor may, subject to Grantee's prior written approval (which approval shall not be unreasonably delayed or

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withheld) substitute for the Assigned Fibers, an equal number of alternative fibers along the same or an alternative route (which may also improve geo-diversity); provided that in any such event, such substitution (a) shall be without unreasonable interruption of service and use by Grantee, and, (b) shall be effected at the sole cost of the Grantor, including, without limitation, all disconnect and reconnect costs, fees and expenses.

ARTICLE 6

Use of Fibers

- 6.1 Grantee represents and warrants that its use of the Assigned Fibers shall be in compliance with all applicable government codes, ordinances, laws, rules and regulations.
- 6.2 Subject to the provisions of this Agreement, Grantee may use the Assigned Fibers for any lawful purpose. Grantee acknowledges and agrees that it has no right to use any Fibers, other than the Assigned Fibers, included or incorporated in the Grantor's System, and that Grantee shall keep any and all of the Grantor's System, free from any liens, rights or claims of any third party attributable to Grantee.
- 6.3 Grantee shall not use the Assigned Fibers in a way which physically interferes in any way with or otherwise adversely affects the use of the fibers, cable or conduit of any other Person using the Grantor's System, provided that all other Persons using the Grantor's System shall be similarly bound and shall not interfere with the use by Grantee of the Assigned Fibers.
- 6.4 Grantee and Grantor shall promptly notify each other of any matters pertaining to, or the occurrence (or impending occurrence) of, any event of which it is aware that could give rise to any damage or impending damage to or loss of the Grantor's System.
- 6.5 Grantee and Grantor agree to cooperate with and support each other in complying with any requirements applicable to their respective rights and obligations hereunder by any Governmental Authority.

ARTICLE 7

Required Rights

- 7.1 Grantor agrees to obtain and maintain in full force and effect for and during the Term of this agreement all rights, licenses, permits, authorizations, rights-of-way, easements and other agreements which are necessary in order to permit Grantor to construct, install and keep installed, and maintain the Assigned Fibers in accordance with this Agreement and to provide Grantee with the right to use the Assigned Fibers and all other rights under this Agreement (collectively, the "Required Rights").
- 7.2 If, after the Effective Date, Grantor is required, for whatever reason, to relocate the Assigned Fibers, Grantor shall have the right to either proceed with such relocation, including, but not limited to, the right, in good faith, to reasonably determine the extent and timing of, and methods to be used for, such relocation, or to pay such amounts to the

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Relocating Authority as are necessary to avoid the need for such relocation. Grantee shall be kept fully informed of all determinations made by Grantor in connection with such relocation, and any such relocation shall be constructed substantially in accordance with the construction specifications set forth in the configuration control specifications.

ARTICLE 8 Assumption of Risk

- 8.1 Subject to the provisions of Article 9, each party agrees to assume liability for any injury, loss or damage to any Person, tangible property or facilities of any Person resulting from the negligence of its officers, employees and agents thereof, while acting within the course and scope of employment and in connection with the exercise of its rights under this Agreement.
- 8.2 Grantor and Grantee agree to promptly provide each other with notice of any claim which may result in an obligation hereunder.
- 8.3 The Grantor and Grantee further agree that nothing contained herein shall be construed or interpreted as (1) denying to either party any remedy or defense available to such party under the laws of the State of Florida; (2) the consent of the State of Florida, its agencies or political subdivisions to be sued or any of their rights, privileges, immunities or limits of liability existing under ; (3) a waiver by Grantor or Grantee of sovereign immunity or any of their rights, privileges, immunities or limits of liability existing under §768.28, *Florida Statutes*.

ARTICLE 9 Limitation of Liability

- 9.1 Notwithstanding any provision of this Agreement to the contrary, neither party shall be liable to the other party for any special, incidental, indirect, punitive or consequential damages, whether foreseeable or not, arising out of, or in connection with such party's failure to perform its respective obligations hereunder, including, but not limited to, loss of profits or revenue (whether arising out of transmission interruptions or problems, any interruption or degradation of service or otherwise), or claims of customers, whether occasioned by any construction, reconstruction, relocation, repair or maintenance performed by, or failed to be performed by, the other party or any other cause whatsoever, including breach of contract, breach of warranty, negligence, or strict liability, all claims for which damages are hereby specifically waived. Nothing contained herein shall operate as a limitation on the right of either party hereto to bring an action for damages against any third party, including claims for indirect, special or consequential damages, based on any acts or omissions of such third party. In no event shall either party be liable for any direct injury, loss or damages arising out of or resulting from any cause whatsoever to the extent such damages are in excess of the waiver limits of sovereign immunity under §768.28, *Florida Statutes*.

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ARTICLE 10 Force Majeure

- 10.1 Except as may be otherwise specifically provided in this Agreement, neither party shall be in default under this Agreement if and to the extent that any failure or delay in such party's performance of one or more of its obligations hereunder is caused by any of the following conditions, and such party's performance of such obligation or obligations shall be excused and extended for and during the period of any such delay: act of God; Pandemic; fire; flood; lack of or delay in transportation; government codes, ordinances, laws, rules, regulations or restrictions; war or civil disorder; failure of a third party to recognize a Required Right; any other cause beyond the reasonable control of such party (each a "Force Majeure Event"). The party claiming relief under this Article shall notify the other in writing of the existence of the event relied on and the cessation or termination of said event.

ARTICLE 11 Default

- 11.1 If Grantor or the Grantee fails to observe and perform any of the material terms and provisions of this Agreement and such failure continues for a period of thirty (30) days after written notice from the other (or if such failure is not susceptible of a cure within such thirty (30) day period, cure has not been commenced and diligently pursued thereafter to completion), then the non-defaulting party may terminate this Agreement, in whole or in part, and pursue any legal remedies it may have under applicable law or principles of equity relating to such default, including an action for damages, specific performance and/or injunctive relief.

ARTICLE 12 Assignment

- 12.1 Neither Grantee or Grantor may assign, encumber or otherwise transfer this Agreement to any other person or entity without the prior written consent of the other party to this Agreement, which consent shall not be unreasonably withheld; provided, either party shall have the right, without the other party's consent, but with prior written notice to the other party, to assign or otherwise transfer this Agreement as collateral to any institutional lender of the assigning party subject to the prior rights and obligations of the parties hereunder. Any assignee or transferee shall continue to be subject to all of the provisions of this Agreement, (except that any lender referred to above shall not incur any obligations under this Agreement nor shall it be restricted from exercising any right of enforcement or foreclosure with respect to any related security interest or lien, so long as the purchaser in foreclosure is subject to the provisions of this Agreement).
- 12.2 This Agreement and each of the parties' respective rights and obligations under this Agreement, shall be binding upon and shall inure to the benefit of the parties hereto and each of their respective permitted successors and assignees.

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- 12.3 Nothing contained herein shall be deemed or construed to prohibit Grantor from selling, transferring, leasing, licensing, granting rights to use or entering into similar agreements or arrangements with other Persons respecting any fibers and conduit constituting a part of the Grantor's System, except the Assigned Fibers, as long as such action does not unreasonably interfere with Grantee's use or quiet enjoyment of the Assigned Fibers.

ARTICLE 13

Representations and Warranties

- 13.1 Each party represents and warrants that: (i) it has the full right and authority to enter into, execute and deliver this Agreement; (ii) it has taken any requisite corporate or county action necessary to approve the execution, delivery and performance of this Agreement; (iii) this Agreement constitutes a legal, valid and binding obligation enforceable against such party in accordance with its terms, subject to bankruptcy, insolvency, creditors' rights and general equitable principles; and (iv) its execution of and performance under this Agreement shall not violate any applicable existing regulations, rules, statutes or court orders of any local, state or federal government agency, court or body.
- 13.2 EXCEPT AS SET FORTH IN THE FOREGOING SECTIONS, GRANTOR MAKES NO WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE ASSIGNED FIBERS OR THE GRANTOR SYSTEM, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE, AND ALL SUCH WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED.

ARTICLE 14

Notices

- 14.1 All notices or other communications which are required shall be in writing to the following addresses:

IF TO GRANTOR:

Okaloosa County Information Technology
Attn: Information Technology Director
1250 Eglin Pkwy N Suite 303
Shalimar, Florida 32579
(850) 651-7570

With a copy to:

County Attorney
1250 Eglin Pkwy N, Suite 100
Shalimar, Florida 32579
(850) 224-4070

IF TO GRANTEE:

The School Board of Okaloosa County, Florida

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Attn:
120 Lowery Place SE
Fort Walton Beach, Florida 32548

With a copy to:
C. Jeffrey McInnis, Esq.
Anchors Smith Grimsley, PLC
909 Mar Walt Drive, Suite 1014
Fort Walton Beach, Florida 32547
(850) 863-4064

ARTICLE 15 Entire Agreement, Amendment

- 15.1 This Agreement constitutes the entire and final agreement and understanding between the parties with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits referred to herein are integral parts hereof and are hereby made a part of this Agreement. This Agreement may only be modified or supplemented by an instrument in writing executed by a duly authorized representative of each party.

ARTICLE 16 Counterparts

- 16.1 This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.

ARTICLE 17 Construction and Interpretation of Agreement

- 17.1 The language in all parts of this Agreement shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against any party. The parties hereto acknowledge and agree that this Agreement has been negotiated by the parties and has been the subject of arm's length and careful negotiation over a considerable period of time, that each party has been given the opportunity to independently review this Agreement with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this Agreement, this Agreement shall not be interpreted or construed against the party preparing it.

ARTICLE 18 Severability

- 18.1 If any term or provision of this Agreement, the deletion of which would not adversely affect the receipt of any material benefit by either party hereunder, shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this

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Agreement shall not be affected thereby and each other term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. It is the intention of the parties to this Agreement, and the parties hereto agree, that in lieu of each clause or provision of this Agreement that is illegal, invalid or unenforceable, the court shall supply as a part of this Agreement an enforceable clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible.

ARTICLE 19 Background Check

- 19.1 In accordance with the requirements of §§1012.465, 1012.32, and 1012.467, *Florida Statutes*, Grantor agrees that each of its employees, representatives, agents, subcontractors or suppliers who are permitted access on school grounds when students are present, who has direct contact with students or who has access to or control of school funds must meet level 2 screening requirements as described in the above-referenced statutes and School Board policies. As such, background and criminal history checks must be completed and results must be cleared by Grantee prior to any employee or agent beginning work pursuant to this Agreement. Further upon clearance, Grantee will issue a photo identification badge which shall be worn by the individual at all times while on Grantee's property when students are present. Grantor agrees to bear any and all costs associated with acquiring the required background screening and in obtaining the required photo identification badge.

ARTICLE 20 Public Records

- 20.1 To the extent that Grantor meets the definition of "contractor" under §119.0701, *Florida Statutes*, in addition to other contract requirements provided by law, Grantor must comply with public record laws, including the following provisions of §119.0701, *Florida Statutes*:
- 20.1.1. Keep and maintain public records required by the Grantee to perform service.
 - 20.1.2. Upon request from the Grantee's custodian of public records, provide the Grantee with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, *Florida Statutes*, or as otherwise provided by law.
 - 20.1.3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
 - 20.1.4. Upon completion of the contract, transfer, at no cost, to the Grantee all public records in possession of the Grantor or keep and maintain public records required by the Grantee to perform the service. If the Grantor transfers all public records to the Grantee upon completion of the contract, the Grantor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the

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Grantor keeps and maintains public records upon completion of the contract, the Grantor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the School Board upon request from the Grantee's custodian of public records, in a format that is compatible with the information technology systems of the Grantee.

20.1.5. **IF THE GRANTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE GRANTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE SCHOOL BOARD'S CUSTODIAN OF PUBLIC RECORDS, ERIC MITCHELL, OKALOOSA COUNTY SCHOOL DISTRICT, 461 WEST SCHOOL AVENUE, CRESTVIEW, FLORIDA 32536; (850) 689-7184, OR ERIC.MITCHELL@OKALOOSASCHOOLS.COM.**

20.1.6. The Grantor acknowledges that the Grantee cannot and will not provide legal advice or business advice to Grantor with respect to its obligations pursuant to this section related to public records. The Grantor further acknowledges that it will not rely on the Grantee or its counsel to provide such business or legal advice, and that he has been advised to seek professional advice with regard to public records matters addressed by this agreement. The Grantor acknowledges that its failure to comply with Florida law and this agreement with respect to public records shall constitute a material breach of this Agreement.

ARTICLE 21 Termination

21.1 Non-Appropriation of Funds.

21.1.1 Notwithstanding anything to the contrary herein the Grantee's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by Grantee and the availability of funds sufficient to make such payment. In the event that funds are not appropriated or available, the Grantee shall give notice to the Grantor. The Grantee shall be the final authority as to what constitutes an annual appropriation and the availability of funds necessary to continue funding this Agreement. If such funds are not appropriated or available for this Agreement and this Agreement is terminated, such action will not constitute a default by the Grantee. The Grantor is entitled to payment for only those services performed or costs incurred prior to the date notice is received and shall have no obligation under this Agreement to perform services thereafter unless the Grantee assures the Grantor it will be paid for those services.

21.1.2 The Grantee reserves the right to terminate this Agreement should the Grantee cease to occupy the facilities served by the Assigned Fibers. Prior to the exercise of such right, Grantee will provide Grantor 120 day's written notice in accordance with the notification terms of this Agreement. Upon any such termination the Grantee shall have no further financial obligations hereunder to the Grantor except for the payment of any amounts that were due and payable prior to the date of termination.

AGREEMENT FOR EXCLUSIVE USE OF OPTICAL FIBER

21.1.3 In the event of termination by Grantee, pursuant to the provisions of Article 19.1 or 19.2, the Grantor shall not be obligated to refund any portion of the compensation paid under Article 4, or any portion of the previously paid maintenance fee and the Grantee shall have no further financial obligations to Grantor after the date of termination except for the payment of any amounts that were due and payable prior to the date of termination.

21.1.4 If either the Grantor or the Grantee to this Agreement fails to perform any material term, obligation or provision of this Agreement and such failure continues for a period of sixty (60) days following written notice of the default by the other party to this Agreement (or if the failure is not susceptible of a cure with such sixty (60) day period and the cure has not been commenced and diligently pursued thereafter to completion), then the party that is not in default may terminate this Agreement in whole or in part and pursue any remedies it may have under applicable law or equity.

[SIGNATURE PAGE FOLLOWS]

AGREEMENT FOR EXCLUSIVE USE OF OPTICAL FIBER


IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written.

Grantee:

THE SCHOOL BOARD OF
OKALOOSA COUNTY, FLORIDA

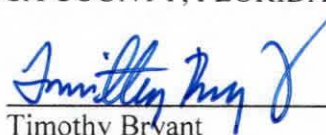
ATTEST:

By:



Marcus Chambers
Superintendent of Schools

By:



Timothy Bryant
Chairman

Date signed: August 23, 2021

Date signed: August 23, 2021

Grantor:

OKALOOSA COUNTY, FLORIDA




Carolyn N. Ketchel

Chairman, Board of County Commissioners



Date: JUL 20 2021

ATTEST:



J.D. Peacock II
Clerk of Circuit Court



AGREEMENT FOR EXCLUSIVE USE OF OPTICAL FIBER

Exhibit A

