

CONTRACT, LEASE, AGREEMENT CONTROL FORM

Date: 12/07/2022

Contract/Lease Control #: C23-3283-IT

Procurement#: N/A

Contract/Lease Type: CONTRACT – AGREEMENT

Award To/Lessee: LIVEOAK FIBER, LLC

Owner/Lessor: OKALOOSA COUNTY

Effective Date: 12/06/2022

Expiration Date: 12/05/2042

Description of: 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



BOARD OF COUNTY COMMISSIONERS AGENDA REQUEST

DATE: December 6, 2022
TO: Honorable Chairman and Distinguished Members of the Board
FROM: Dan Sambenedetto
SUBJECT: Okaloosa County - LiveOak Fiber, LLC Fiber Optic IRU
DEPARTMENT: Information Technology
BCC DISTRICT: All

STATEMENT OF ISSUE: Okaloosa County has constructed and is currently expanding our County fiber optic network, which currently extends over 300 miles. This system is a county asset and provides service to the Board of County Commissioners, constitutional offices, various cities, colleges, schools, and the military. This system is designed to meet the ever-growing demand for secure, reliable, and robust fiber optic communications throughout the county, particularly as the demand for fiber increases. To offset operations and maintenance and general sustainability related costs, the IT department currently has Indefeasible Right to Use (IRU) agreements for the exclusive use of optical fibers with the military, school board, and the University of West Florida. These provide up front non-recurring fiber use and yearly maintenance revenues that are used to operate, maintain and sustain the county fiber optic network. Presented for your consideration is a new IRU agreement for dark fiber, only this time it is with a private end user provider - LiveOak Fiber, LLC.

BACKGROUND: High-speed data and communication networks power today and tomorrow's business, communities, and students. These high-speed networks use fiber optics as the backbone for broadband Internet and Wide/Metropolitan Area Networks and is now considered a critical infrastructure. Many economic, health, and quality of life opportunities are directly related to robust, high speed telecommunication infrastructure. This Agreement will create a public-private synergy to provide these opportunities and the ability to help reach the unserved and underserved homes in Okaloosa County with reliable and affordable broadband. Under this model, the County will effectively serve as the middle mile provider, with the private provider LiveOak Fiber, LLC serving as the "last mile" or "end-user" service provider that lights the fiber and provides the actual service.

LiveOak Fiber, LLC is an emerging regional broadband service provider building a world-class network to deliver world-class services, is planning to invest up to \$100 million to construct and operate a next-generation high-speed fiber optic network in Okaloosa County. The new network will bring alternative options to underserved regions of the county, ensuring access to affordable and reliable digital infrastructure for businesses and residents in the area. This Agreement will enable the County to act as a middle mile dark fiber provider by allowing LiveOak Fiber, LLC to use a portion of the County Fiber Optic Network to connect geographically separated areas. This will significantly reduce their construction costs and reduce their overall time to market; while providing much needed revenue to the County Fiber Fund which supports the operations, maintenance and sustainability of the fiber network. Therefore, this Agreement creates a win-win-win scenario. A "win" for our residents because it spurs high speed broadband expansion, a "win" for LiveOak Fiber, LLC because it reduces their up-front costs and time to market, and a

"win" for the County because it monetizes currently unused dark fiber capacity on our network.

LiveOak Fiber, LLC intends to begin construction in the south end of the county with plans to move to the north end of the county in the next few years. Further use of county fiber with additional revenue potential will be contemplated. The big winners are the people that live and work in Okaloosa County, as this agreement will help LiveOak Fiber, LLC and perhaps others with similar efforts to expand and improve broadband access and services and choices countywide.

The main agreement is for twenty years and provides for individual fiber orders to be added as necessary. The first fiber order included with this agreement as Fiber Order #1 provides for a 10-year term with a one-time payment to the county of \$1,119,480.00 and annual maintenance payments of \$141,948.00. This revenue is necessary to fund continued operations and maintenance of the county fiber optic network.

This agreement is our first IRU with a commercial entity. These types of agreements will be beneficial in our ability to use ARPA and other federal and state funding sources for general fiber network expansion in the county and further our goal of reaching the unserved/underserved in the county, particularly as we expand to the north end. We currently have additional dark fiber capacity for growth and to serve additional private IRU's as necessary in the South end of the County and will be building in extra capacity with our expansions in the north end of the County.

This Agreement has been through the Purchasing and Legal review process.

FUNDING SOURCE, N/A:

Department # 1125

Account #

Amount \$

OPTIONS: Approve/Deny/Postpone

RECOMMENDATIONS: Approve the Agreement for Exclusive Use of Optical Fiber between Okaloosa County and LiveOak Fiber, LLC.



Dan Sambenedetto, Information Technology Director

11/30/2022

RECOMMENDED BY:



Craig Coffey, Deputy County Administrator

APPROVED BY:

AGREEMENT FOR EXCLUSIVE USE OF OPTICAL FIBER
OKALOOSA COUNTY - LIVEOAK FIBER, LLC

This Agreement for exclusive use of a portion of optical fiber of the Provider's Fiber Network ("Agreement") is made and entered into by and between Okaloosa County, Florida, ("Provider"), a political subdivision of the State of Florida, and LiveOak Fiber, LLC, a Delaware LLC with its principal place of business at 1501 Merchants Way, Niceville, FL 32578 ("Customer"), (each, a "Party"; collectively, the "Parties"), effective as of December 6th, 2022 ("Effective Date").

1. Background. Provider owns or has rights to run, maintain and use certain fiber optic cables and equipment ("Provider Fiber Network") over, under, on and through public and private easements and rights-of-way of third parties. The Customer seeks to use part of the Provider Fiber Network and Provider is willing to grant Customer an exclusive right to use a portion of the Provider Fiber Network subject to the terms and conditions herein in exchange for the payments and fees set forth in this Agreement.
2. IRU of Fibers. Subject to the terms and conditions set forth in this Agreement, Provider grants to Customer, and Customer accepts, an Indefeasible Right to Use ("IRU") in certain dark fibers ("Customer Fibers") in the quantity and in the length of fiber route miles to be identified in fiber task order form(s) ("Fiber Order"), which when executed, will become an attachment to this Agreement.
3. Limitation and Reservation of Rights. Neither this Agreement nor the grant of the IRU conveys any form of ownership or type of title in any real or personal property to the Customer. Provider and Customer intend that this Agreement constitute an IRU of the optical fibers and not a sale of the optical fibers or any portion of the Provider Fiber Network. No use of the Customer Fibers by Customer or payment of any Charges (as defined below) required under this Agreement shall create or vest in Customer any easement or other ownership or property right of any nature.
4. Permitted Use.
 - a) Customer may not resell, lease, sublease, sub-divide or exchange the Customer Fibers with any entity without the advance written consent of Provider. This provision does not limit Customer's ability to use the Customer Fibers to provide telecommunications and information services directly to its own end user customers.
 - b) Customer has no greater right to use the Customer Fibers than Provider can legally provide. Customer represents and warrants that Customer shall obtain any permit, franchise, or authorization required by the appropriate entity for its use of the Customers Fibers. Customer further represents and warrants that it shall not use the Customer Fibers in violation of this Agreement, any law, rule, regulation or order of any governmental authority having jurisdiction, or any franchise, license, agreement or certificate relating to the Provider Fiber Network and will discontinue any such violation immediately upon notice from Provider or such other authority having jurisdiction over the use.

Charges. Customer agrees to pay all fees and charges applicable to the use of the Customer Fibers as set forth in the Fiber Order(s) ("Charges") attached herein and any future Fiber Orders between the Parties. Such Charges may include non-recurring charges ("NRC") for the IRU of the Customer Fibers, yearly recurring charges ("YRC") for maintenance of the Customer Fibers, and taxes, fees and other similar charges that arise out of Customer's use of the Customer Fibers, or are legally required to be collected by Provider as a result of Provider's IRU of Customer Fibers and other facilities. Upon the execution of this Agreement, Provider may invoice Customer for all NRCs then payable pursuant to the Fiber Order. Upon "Acceptance" (as defined below) of each fiber segment ("Segment") (as identified on the applicable Fiber Order), the Provider will invoice Customer for any remaining NRC's and the first year's YRC for that Segment. Thereafter, Provider shall invoice the Customer yearly and

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Customer shall pay all undisputed YRC's and other valid Charges then due according to the Fiber Order. Any additional facilities ordered by Customer (including, but not limited to, regenerator, amplifier and rack space, collocation facilities) may be provided as set forth in a Fiber Order. Charges for maintenance of Customer Fibers shall be billed yearly by Provider and may increase by the greater of: three percent (3%) or the aggregate change of the Bureau of Labor Statistics non-seasonally adjusted Consumer Price Index for All Urban Consumers (CPI-U, All Items Index) for the 12 months immediately preceding each yearly anniversary of the Acceptance Date of the applicable Fiber Order. Subsequent Fiber Orders occurring mid-year shall be prorated to help align to a single annual renewal date for reoccurring annual costs and the maintenance adjustment of those costs, etc. The Acceptance date for Fiber Order #1 shall be the annual date all future Fiber Orders shall align with.

6. Payment Terms. Customer shall pay invoices within thirty (30) days of any invoice date ("Due Date"). Customer shall send payment to the address specified on the invoice. Provider may impose a late payment charge of the lesser of three percent (3%) per month and increasing an additional one percent per month or the maximum rate allowed by law ("Interest") on the undisputed amounts due under any invoice not paid by the Due Date. Invoices unpaid after ninety (90) days shall be considered in default of this Agreement.
7. Invoice Disputes. Customer has the right to dispute paid amounts within ninety (90) days of the invoice date under which payment was made. Customer may also withhold payment on any amount disputed in good faith prior to the Due Date. In all cases, Customer must pay undisputed amounts, provide a written explanation setting forth the basis for Customer's dispute and cooperate with Provider in the investigation and resolution of Customer's dispute. If Provider determines that an amount was billed in error as a result of the dispute, Provider shall (i) credit Customer the disputed amount within sixty (60) days or (ii) deduct such disputed, unpaid amount from Customer's outstanding balance if Customer did not previously pay such disputed amount to Provider. If Provider determines that the disputed amount was properly invoiced to Customer, Customer shall pay the disputed amount together with Interest accrued thereon from the Due Date until paid. Customer's payment shall be due within ten (10) days of Provider's written notice that the dispute is denied. All disputes not paid shall be resolved between the Parties within ninety (90) days. Invoices or portions thereof not resolved beyond ninety (90) days shall be considered to have been properly invoiced to Customer and Customer shall be considered in default of the Agreement if unpaid.
8. Term and Renewal.
 - a. Agreement Term. This Agreement shall be in effect for Twenty (20) years from the Effective Date. Any Fiber Orders in effect shall expire at the termination date of this Agreement. After the initial twenty (20) year term, the Agreement may be extended upon mutual consent of the Parties. At the expiration or termination of this Agreement, all rights of Customer to use the Customer Fibers will cease and Provider shall continue to retain its ownership of the Customer Fibers.
 - b. Fiber Order Term. The terms and conditions for a particular Fiber Order will be specified on each Fiber Order, along with the scope of work, Charges, the length of time the Customer shall have an IRU in the Customer Fibers ("Fiber Order Term") and other related information necessary to clarify the Fiber Order. However, no Fiber Order Term shall be beyond the Agreement Term unless by mutual consent of the Parties. The Customer shall have the right to use the Customer Fibers beginning on the Completion Date (as defined below or as otherwise set forth in the applicable Fiber Order) of each Segment.

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OKALOOSA COUNTY - LIVEOAK FIBER, LLC

9. Fiber Orders. Work on behalf of the Customer related to use and operation of the IRU on the Provider Network shall be defined in the Fiber Order. The Fiber Order shall spell out the scope of work, pricing for NRC's and annual YRC's as applicable, payment requirements and similar details for the specific work proposed and shall be executed by both Parties. The Parties shall work together to develop the Fiber Order ensuring it is as accurate and comprehensive as possible. Fiber Orders shall be executed and approved by the Provider in accordance with the County's purchasing manual and corresponding authority limits.
10. Fiber Order Completion Schedule. A delivery date of the Customer Fibers or Other Work ("Due Date") will be on each Fiber Order. Completion of the Fiber Order shall be deemed to have occurred ("Completion Date") when the Fiber Order is in conformance in all material respects with the technical specifications ("Specifications") set forth in Attachment 2, the Fiber Order, and upon Acceptance by Customer pursuant to Sections 13-15 of this Agreement.
11. Installation and Maintenance. Provider shall provide the fiber to the points of demarcation ("Demarcation Points") as specified in an approved Fiber Order. The Demarcation Points, between Provider and the Customer shall be made at the Customer's side of the fiber optic patch panel ("FOPP") or at an existing splice enclosure or as specifically detailed by Provider, whichever is applicable. Provider shall install the Customer Fibers up to Provider's side of the Demarcation Point. Provider shall perform maintenance and repair services as provided below in this Agreement and Attachment 4. Provider shall have no equipment, service or maintenance responsibility with respect to any portion of the Customer's network on the Customer's side of the Demarcation Point. All work in conjunction with accessing Provider's fiber including splicing, maintenance, restoration, relocation, locates, testing, is Provider's sole responsibility. The Customer shall have no right to access Provider's splice enclosures, manholes, hand holes, utility vaults, Points of Presence (PoP's), facilities, conduits, pole attachments or accoutrements associated with Provider's fiber.
12. Removal of Customer Property. Within thirty (30) days after the termination of this Agreement or a Fiber Order for any reason, the Customer shall remove all of the Customer's property from Provider property and cease all use of the Provider Fiber Network. The Customer shall complete such removal at its own cost and expense in a manner that does not interfere with or damage the Provider Fiber Network. In the event that the Customer fails to remove its property within such thirty (30) day period, Provider may, upon ten (10) days written notice and using reasonable care, remove and store all of the Customer's property at the Customer's expense for a period not to exceed thirty (30) days, at the expiration of which Provider may dispose of the unclaimed Customer property without liability to Provider. If the Customer's removal of the Customer's property results in damage to the Provider Fiber Network, Provider shall have the right to charge the Customer for any and all costs to restore the Provider Fiber Network to its original state.
13. Acceptance Test Plan. Following the installation of the Customer Fibers, Provider shall conduct acceptance testing ("Acceptance Testing") in accordance with the Acceptance Test Plan ("ATP") included herein as Attachment 3 to verify that the Customer Fibers are installed and operational in accordance with the Specifications. At the conclusion of Acceptance Testing, Provider shall deliver the acceptance testing results ("Acceptance Testing Results") to the Customer in accordance with the ATP.
14. Evaluation of Acceptance Testing Results. In the event the Acceptance Testing Results show that any of the Customer Fibers are not installed and operational in accordance with the Specifications, the Provider shall take any necessary corrective action and retest as necessary according to the Specifications. However, if after two (2) cycles of re-testing the Customer Fibers

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still do not meet the Specifications, then Customer or Provider, in their sole discretion may terminate the IRU of the affected Customer Fibers with no further liability.

15. Acceptance and Billing. Upon acceptance or Deemed Acceptance by the Customer of the Customer Fibers following the processes in Sections 13 and 14 ("Acceptance"), billing will commence. Acceptance by the Customer shall not be unreasonably withheld.
16. Customer Delay. In the event there is a delay caused by Customer, and such delay continues for ten (10) days after the estimated Completion Date for the Customer Fibers, Provider may commence billing customer for such Customer Fibers that are commercially available on the Completion Date. If Acceptance Testing Results are not acceptable due to Customer's acts or omissions, or defective Customer-provided equipment or configurations, then Provider must notify Customer in writing of the specific circumstances it believes to be causing the failure of Acceptance Testing Results, and thereafter Customer shall have sole responsibility to correct those deficiencies at Customer's expense. In the event Customer's continued failure to correct deficiencies under its control prevents Acceptance or the successful operation of the network, this failure shall be deemed a Customer Default.
17. Documentation. Upon Customer request (no sooner than 90 days after Completion Date), Provider shall deliver to the Customer the following documentation (the "Deliverables") regarding the as-built condition of the Customer Fibers:
 1. Technical specifications of the optical fiber cable and other equipment used in installing and providing the Customer Fibers.
 2. Documentation of the route and demarcation locations in ESRI, KML or other agreeable format.
18. Fiber Relocation, Replacement, or Substitution. If Provider is forced to relocate, replace, or substitute all or any portion of the Customer Fibers (or any of the facilities used or required in providing Customer with access to the Customers Fibers) as required by a third party acting pursuant to condemnation, right of way agreements or similar authority or by a governmental entity, or a catastrophic event Provider shall, to the extent practicable, provide Customer one hundred and twenty (120) days' prior notice or such shorter prior notice permitted by the circumstances of any such relocation, replacement, or substitution and shall proceed with such necessary action. In cases of third party actions, Customer shall reimburse Provider for costs associated with such action on a prorated basis applying the ratio that the number of Customer Fibers bears to the total number of fibers in the cable ("Customer's Proportionate Share") being relocated or replaced, or substituted of the direct out-of-pocket costs of such relocation, replacement, or substitution to the extent such costs cannot be recovered from such third party. Provider shall have the right to direct such necessary action, including the right to determine the extent of, the timing of, and methods to be used for such necessary action. Provider shall provide a total cost estimate of the Customer's proportional share of the costs prior to start of the project and shall bill Customer 50% of such estimated costs upon the start of the project. The remaining balance of the Customer's total proportionate costs shall be billed, based on actual costs, upon completion and satisfactory testing of the project meeting performance standards. Customer payments shall be in accordance with this Agreement.
19. Provider Warranties. Provider represents and warrants to Customer that (a) it has full corporate authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby; (b) the execution and delivery of this Agreement and the consummation of the transactions contemplated Provider in this Agreement have been duly and validly authorized by all necessary action on the part of Provider; (c) it has obtained and will maintain all Required

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Rights; (d) neither the execution nor performance of this Agreement nor the delivery of the Customer Fibers contemplated hereby conflict with or result in a breach or violation of any provision of Provider's operating authority or applicable law; (e) as of the date of the execution of this Agreement, there is no action, suit, investigation, claim, arbitration, or litigation pending or, to Provider's knowledge, threatened against, affecting, or involving Provider or the operation of the Provider Fiber Network at law or in equity or before any court, arbitrator or governmental authority that is reasonably likely to result in a material adverse effect on Provider's ability to perform its obligations under this Agreement; and (f) Provider is not in a contract with a third party that is reasonably likely to result in a material adverse effect on Provider's ability to perform its obligations under this Agreement.

20. Customer Warranties. Customer represents and warrants to Provider that (a) it has full corporate authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby; (b) the execution and delivery of this Agreement and the consummation of the transactions contemplated by Customer in this Agreement have been duly and validly authorized by all necessary corporate action on the part of Customer; (c) it has obtained all necessary licenses, permits and authorizations from governmental authorities and third parties to conduct the activities authorized and contemplated under this Agreement; (d) as of the date of the execution of this Agreement, there is no action, suit, investigation, claim, arbitration, or litigation pending or, to Customer's knowledge, threatened against, affecting, or involving Customer at law or in equity or before any court, arbitrator or governmental authority that is reasonably likely to result in a material adverse effect on Customer's ability to perform its obligations under this Agreement; and (f) it is not and execution and performance of this Agreement will not cause it to be in default in any material respect of any contract with a third party that is reasonably likely to result in a material adverse effect on Customer's ability to perform its obligations under this Agreement.
21. Disclaimer of Further Warranties. THERE ARE NO AGREEMENTS, WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR USE, EXCEPT THOSE EXPRESSLY SET FORTH HEREIN.
22. Taxes and Fees. Customer shall pay any and all franchise fees, gross receipts, income, sales, use, real property, personal property, excise and all other related taxes and governmental fees directly applicable to the use of the Customer Fibers. Each party shall be responsible for property taxes imposed on each respective party's personal property. Upon request, Customer will provide Provider a certificate and/or statement that the IRU in the Customer Fibers has been granted for the purpose of resale of services to third parties. Each Party shall use commercially reasonable efforts, such as sharing applicable information, to cooperatively minimize taxes imposed on either Party as a result of this transaction or the ownership or use of the Customer Fibers.
23. Required Rights. Provider agrees to use commercially reasonable efforts to keep in place all Required Rights (as defined below) and other rights, licenses, permits and authorizations as required to maintain the Customer Fibers during the Term of this Agreement. "Required Rights" means any and all rights, licenses, authorizations, rights of way, and other agreements necessary for the use of fibers or other physical plant facilities, as well as any other such rights, licenses, authorizations (including any necessary municipal, state, tribal or federal authorizations such as environmental permits), rights of way and other agreements necessary for the installation, use of and access to the Provider Fiber Network and Customer Fibers.

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24. Expiration of Required Rights. In the event that one or more Required Rights expires during the Term and cannot be maintained upon commercially reasonable terms due to no fault of Provider, then the right of use granted hereunder shall terminate with respect to the affected portion of the Customer Fibers, and the YRCs and other applicable charges shall be reduced in proportion to the reduction in the total number of fiber miles constituting the Customer Fibers. If Provider or the Customer determines that the expiration of the Required Rights results in the loss of all or part of the fibers defined in the Fiber Order, either party may terminate the remainder of the affected Fiber Order without liability to either party. Provider and the Customer shall promptly thereafter execute an appropriate amendment to this Agreement to document such termination of rights and adjustment in the YRCs and other applicable charges.
25. Access to Fibers. Subject to the availability of adequate and sufficient space and subject to the limitations and restrictions of any Required Rights, Provider shall provide the Customer with access to the Customer Fibers only at those designated splice points or meet me locations as listed and or described in the Fiber Order. The Customer shall have no limitations on the types of electronics, optronics or technologies employed to utilize the Customer Fibers, subject to mutually agreeable safety procedures and so long as such electronics, optronics or technologies do not interfere with the use of or present a risk of damage to any portion of the Provider Fiber Network.
26. Limitation of Usage. Customer may use the Customer Fibers only for lawful telecommunications or information services purposes between the A-Location and Z-Location as indicated on the Fiber Order.
27. Indemnification.
- a). To the extent permitted by law, Provider shall indemnify and hold harmless Customer, its employees, officers, directors, contractors, subcontractors, agents, parent, affiliates (and the employees, officers, and directors of its affiliates) and subsidiaries from and against:
 - i. Any injury, loss or damage to any person (including death), and any damage to property (including claims by any party, person or entity that is not a signatory to this Agreement and any party, person, or entity that is not a successor or permitted assignee of the signatories hereto ("Third Party") of infringement of patent or trade secret) or facilities of any person or entity, including reasonable attorneys' fees and costs, to the extent arising out of or resulting from the negligent acts or omissions or intentional misconduct of Provider, its officers, employees, servants, affiliates, agents, or invitees arising out of or in connection with this Agreement; and
 - ii. Any claims, liabilities or damages, including reasonable attorneys' fees and costs, arising out of any violation by Provider of any regulation, rule, statute or court order of any local, state or federal governmental agency, court or body in connection with the performance of its obligations under this Agreement.
 - iii. Nothing herein shall be construed as a waiver of Provider's sovereign immunity under section 768.28, Florida Statutes.
 - b). Customer shall indemnify and hold harmless Provider, its employees, officers, directors, contractors, subcontractors, agents, parent, affiliates and subsidiaries from and against:
 - i. Any injury, loss or damage to any person (including death), and any damage to property (including Third Party claims of infringement of patent or trade secret) or facilities of any person or entity, including reasonable attorneys' fees and costs, to the extent arising out of or resulting from the negligent acts or omissions or intentional misconduct of Customer, its

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officers, employees, servants, affiliates, agents, or invitees arising out of or in connection with this Agreement or Customer's use of the Customer Fibers;

- ii. Any claims by customers or sub-lessees of Customer or customers of such sub-lessees or Customer's customers; and
- iii. Any claims, liabilities or damages, including reasonable attorneys' fees and costs, arising out of any violation by Customer of any regulation, rule, statute or court order of any local, state or federal governmental agency, court or body in connection with the performance of its obligations under this Agreement.

28. Indemnification Procedures. Indemnitee shall give prompt notice of any claim for which indemnification is or will be sought and shall assist Indemnitor in the defense of the claim. Indemnitor shall have the right to control the defense and select the counsel after consulting with Indemnitee. Indemnitor shall bear the sole cost of defense, except Indemnitee may, at its sole cost and expense, through counsel of its own choosing participate in the defense and settlement of such claim. Indemnitee shall not contribute to or be subject to any liability or obligation for a settlement agreement entered by Indemnitor unless Indemnitee has approved such settlement in writing, which approval shall not be unreasonably withheld or delayed. This indemnification provisions in Sections 27 and 28 shall survive any termination or expiration of this Agreement.

29. Insurance. Each Party shall, at its own expense, secure and maintain in force throughout the term of this Agreement, General Liability Insurance with competent qualified issuing insurance companies, including the following coverages: Blanket Contractual Liability (covering the liability assumed in this Agreement); Personal Injury (including death); and Broad Form Property Damage in policy or policies of insurance such that the total available limits to all insured will not be less than \$2,000,000 Combined Single Limit for each occurrence and \$4,000,000 aggregated for each annual period. Such insurance may be provided in policy or policies, primary and excess, including so-called umbrella or catastrophe forms. Customer agrees to add Provider as an additional insured on the foregoing insurance. Each party shall obtain from the insurance companies providing the coverages required by this Agreement a waiver of all rights of subrogation or recovery in favor of the other party and, as applicable, its members, managers, shareholders, affiliates, assignees, officers, directors, and employees. Each Party shall also carry such insurance as will protect it from all claims under any workers compensation laws in effect that may be applicable to it. Nothing in this Agreement shall be construed to prevent Provider or Customer from satisfying its insurance obligations pursuant to this Agreement under a blanket policy or policies of insurance that meet or exceed the requirements of this Section.

30. Consequential Damages Exclusion. WITH THE EXCEPTION OF THE PARTIES' INDEMNIFICATION OBLIGATIONS AND BREACH OF REQUIREMENTS WITH RESPECT TO CONFIDENTIAL INFORMATION, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, PPROVIDERVE, OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, ANY CLAIM FROM ANY CUSTOMER OR END USER FOR LOSS OF USE OF THE PROVIDER FIBER NETWORK) ARISING UNDER THIS AGREEMENT OR FROM ANY BREACH OR PARTIAL BREACH OF THE PROVISIONS OF THIS AGREEMENT OR ARISING OUT OF ANY ACT OR OMISSION OF EITHER PARTY, ITS EMPLOYEES, SERVANTS, CONTRACTORS AND/OR AGENTS.

31. Assignment. The Customer shall have the right to assign this Agreement, to any parent, or subsidiary of Customer which shall control, be under the control of or be under common control with Customer upon thirty (30) days' advance written notice to Provider. The proposed Customer assignee must sign an agreement specifically assuming all obligations pursuant to this

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Agreement. Customer shall not assign or otherwise transfer this Agreement, in whole or in part, to any other party without the prior written consent of Provider. Subject to the provisions of this Agreement, 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 and each of their respective permitted successors.

32. Force Majeure. Neither Party shall be liable for any delay, failure of performance or equipment, damage, or any consequence caused by, or due to acts of God, fire, flood, explosion, or other catastrophes; acts, delays, or omissions of third parties unrelated to either Party hereof, any law, order, regulation, action or request of the United States Government, or of any other government, including state and local governments, or of any department, agency, commission, bureau, corporation, or other instrumentality of any one or more of these federal, state, or local governments, or of any civil or military authority; national emergencies; insurrections; riots; wars; acts of terrorism, or any other cause beyond its reasonable control. Any requirement for performance contained in this Agreement shall be extended until such force majeure event can be resolved.
33. Confidentiality. The Customer and Provider hereby agree that if either Party ("Disclosing Party") provides (or prior to the execution of this Agreement, has provided) confidential or proprietary information as defined under Florida law ("Proprietary Information") to the other Party ("Receiving Party"), such Proprietary Information shall be held in confidence, and the Receiving Party shall afford such Proprietary Information the same care and protection as it affords generally to its own confidential and proprietary information (which in any case shall be not less than reasonable care) to avoid disclosure to or unauthorized use by any third party.
34. Customer Default. In the event Customer breaches any material term or obligation of this Agreement, Customer shall be in default under this Agreement. Provider shall give Customer written notice of such breach and the Customer shall have fifteen (15) days after receipt of such notice to cure the breach (except in the case where the Customer's breach causes interference with or an interruption of the Provider Fiber Network, in which case the cure period shall be twenty-four (24) hours, or Customers' failure to pay an undisputed amount when due, in which case the cure period shall be ten (10) days) after receipt of such notice. If, however, such breach cannot reasonably be cured within the thirty (30) day period, the time of curing such breach shall be extended for a period of time as may be necessary to complete such cure as agreed to by the parties. Upon the failure by the Customer to timely cure any such breach, Provider may act as it may reasonably determine to be necessary to cure the breach at the Customer's cost and expense or to terminate one or more Fiber Orders or this Agreement upon written notice to the Customer.
35. Provider Default. In the event Provider breaches any material term or obligation of this Agreement, Provider shall be in default under this Agreement. Customer shall give Provider written notice of such breach and Provider shall have fifteen (15) days after receipt of such notice to cure the breach (the "Cure Period"). If, however, such breach cannot reasonably be cured within the Cure Period, and Provider proceeds promptly to cure the breach and diligently and continuously prosecute such cure, the time for curing such breach shall be extended for a period of time as may be agreed to by the parties. Upon the failure by Provider to timely cure any such breach after notice thereof from the Customer, the Customer may terminate the Fiber Order for the affected Customer Fibers upon written notice to Provider without further liability for any Charges beyond the date of termination.

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36. Provider Service Level Covenants. In the event the Provider does not provide access to the Customer Fibers during the Term of this Agreement for any reason, or if the Customer Fibers do not operate in accordance with Customer's specifications required in this Agreement (each an "Outage"), then the Customer shall receive a refund of amounts paid or abatement of amounts to be paid, if applicable (the "Service Credit"). The Service Credit amount shall equal the prorated maintenance fees paid by the Customer (or to be paid by Customer) during the Outage period. The foregoing Service Credit shall not be applicable in the event the Outage is due to: a Force Majeure event, or during times of maintenance (as described in this Agreement), or a physical fiber related "ring wrap" that does not result in loss of service on the Provider side of the demarcation. Furthermore, if Customer experiences one (1) or more Outage in each of two (2) consecutive calendar months or two (2) or more Outages in any period of thirty (30) consecutive days, Customer may terminate the applicable Fiber Order upon thirty (30) days prior written notice.
37. Publicity; Advertising Materials; Logos. Neither Party shall publish or use any advertising, sales promotions, or other publicity materials that use the other Party's logo, trademarks, or service marks without the prior written approval of the other Party. The Parties agree not to issue any such publicity materials, press releases, or public statements without the prior written approval of the other Party. Either Party shall have the right to review and approve any publicity material, press releases, or other public statements made by the other that refer to such Party or that describe any aspect of this Agreement.
38. Notices. Unless otherwise provided herein, all notices and communications concerning this Agreement shall be in writing and addressed as follows:

If to Provider:

Provider Contact: Dan Sambenedetto, IT Director
1250 N Eglin Parkway
Suite 303
Shalimar, FL 32579
850-651-7570
dsambenedetto@myokaloosa.com

With copies to: County Administrator
1250 N. Eglin Pkwy, Suite 102
Shalimar, FL 32579
(850) 651-7150

County Attorney Office
1250 N. Eglin Pkwy, Suite 102
Shalimar, FL 32579
(850) 224-4070

**AGREEMENT FOR EXCLUSIVE USE OF OPTICAL FIBER
OKALOOSA COUNTY - LIVEOAK FIBER, LLC**

If to Customer: LiveOak Fiber, LLC
1501 Merchants Way
Niceville, FL 32578

With a copy to: LiveOak Fiber, LLC
399 Park Avenue
18th Floor
New York, NY 10022

or at such other address as may be designated in writing to the other Party.

39. Method of Delivery. Unless otherwise provided herein, notices shall be sent by certified U.S. mail, return receipt requested, or by commercial overnight delivery, and shall be deemed delivered upon receipt (or upon rejection or inability to deliver to address, as applicable).
40. Governing Law and Venue. This Agreement shall be interpreted and construed in accordance with the laws of the State of Florida without giving effect to its principles of conflicts of laws and venue shall lie in Okaloosa County.
41. Compliance with Law. Each party shall perform its respective rights and obligations hereunder in accordance with the authorizations obtained by it and all applicable laws, rules and regulations imposed by any governmental authority.
42. Severability. In the event any term of this Agreement shall be held invalid, illegal or unenforceable in whole or in part, neither the validity of the remaining part of such term nor the validity of the remaining terms of this Agreement shall in any way be affected thereby.
43. Amendments. This Agreement may be amended only by a written instrument executed by the Parties.
44. No Imputed Waiver. No failure to exercise and no delay in exercising, on the part of either Party, any right, power or privilege set forth in this Agreement shall operate as a waiver of such right, power or privilege, except as expressly provided herein.
45. Counterparts. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.
46. Relationship of Parties. Nothing contained herein shall be construed to constitute the parties as partners with or agents for one another for any purpose, action, or transaction, including those related to the performance of the Agreement. Nothing herein shall be construed to constitute the parties as joint employers.
47. Third Party Beneficiaries. It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of any part of the Agreement to create in the public or any member thereof, a third-party beneficiary under this Agreement, or to authorize anyone not a party to this Agreement to maintain a suit against either party pursuant to the terms or provisions of this Agreement.
48. Entire Agreement. This Agreement, and any exhibits or attachments attached or to be attached to this Agreement, constitute the entire agreement between the Parties with respect to the subject matter contained in this Agreement and supersede any and all prior negotiations, understandings and agreements between the Parties, whether oral or written.

**AGREEMENT FOR EXCLUSIVE USE OF OPTICAL FIBER
OKALOOSA COUNTY - LIVEOAK FIBER, LLC**

IN WITNESS WHEREOF, the following signatures of the Parties by their duly authorized agents.

Customer: LiveOak Fiber, LLC

Jody W. Craft
Jody W. Craft | Nov 30, 2022 12:56 EST

Name: Jody Craft

Title: President

Date: 11/30/2022

Provider: Okaloosa County, Florida

Mel Ponder

Mel Ponder
Chairman, Board of County Commissioners

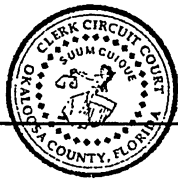


Date: December 6, 2022

Attest:

J.D. Peacock II

J.D. Peacock II
Clerk of Circuit Court




Live Oak Master IRU - Draft Okaloosa 111522 - CLEAN

Final Audit Report

2022-11-30

Created:	2022-11-30
By:	Gabrielle Jensen (gabrielle.jensen@liveoakfiber.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAdL84-KOfR_eAJCzgTXdeWwLoKldGohA


"Live Oak Master IRU - Draft Okaloosa 111522 - CLEAN" History

 Document created by Gabrielle Jensen (gabrielle.jensen@liveoakfiber.com)

2022-11-30 - 5:51:36 PM GMT

 Document emailed to jody@liveoakfiber.com for signature

2022-11-30 - 5:52:03 PM GMT

 Email viewed by jody@liveoakfiber.com

2022-11-30 - 5:55:05 PM GMT

 Signer jody@liveoakfiber.com entered name at signing as Jody W. Craft

2022-11-30 - 5:56:28 PM GMT

 Document e-signed by Jody W. Craft (jody@liveoakfiber.com)

Signature Date: 2022-11-30 - 5:56:30 PM GMT - Time Source: server

 Agreement completed.

2022-11-30 - 5:56:30 PM GMT

AGREEMENT FOR EXCLUSIVE USE OF OPTICAL FIBER

OKALOOSA COUNTY - LIVEOAK FIBER, LLC

ATTACHMENT 1

Fiber Order #1

Purpose: To define the base cost model for this Agreement and scope of the initial fiber task order. The cost model will remain in effect unless modified in future Fiber Orders. It includes IRU related NRC and YRC cost models as well as head end costs per year.

Fiber Order/IRU Term: 10 years

Due Date: February 1st, 2023

Cost Model:

1. Non-recurring IRU costs (NRC):
 - 1.1. \$1,000 per strand mile. Example, 12 strands for 25 miles would be $\$1,000 \times 12 \times 25 = \$300,000$ one-time NRC.
 - 1.2. 50% at execution of Fiber Order and remainder due upon Acceptance.
2. Yearly Recurring Costs (YRC):
 - 2.1. Yearly Fiber Maintenance:
 - 2.1.1. \$1200 per route mile. Example, $\$1200 \times 25$ miles = \$30,000 per year.
 - 2.1.2. 1st year due at Acceptance and yearly thereafter.
 - 2.2. Yearly Head End Use Costs: Includes electrical access, generator, HVAC, access control, security and other related. The demarcation between Provider and Customer will be the Customer cabinet or rack, unless otherwise approved by Provider in writing. Customer integration, modification or installation at the Head End on the Provider side of the demarcation will be coordinated and approved in advance by Provider. Access to Customer side of the demarcation, equipment, or other approved appurtenances will not be unduly restricted.
 - 2.2.1. North Head End in Crestview: \$15,000.
 - 2.2.2. South Head End in Shalimar: \$15,000.
3. Splicing / Meet-me Demarcation Costs: Provider will construct and provision to Customer up to a 48 count SM fiber optic cable (FOC) in a 2" HDPE or other suitable conduit to Customer provided and installed handhole, pull box or other suitable endpoint. This Customer handhole will be the demarcation between the Provider Network and the Customer Network. The specific demarcation will be the entry point of the FOC/conduit at the Customer handhole.
 - 3.1. Fixed (NRC) Cost: \$10,000 for each Meet-me Provider network tie-in location. This includes necessary actions to connect the Meet-me to the Customer network.
 - 3.2. Variable (NRC) Cost: \$25 per Linear Foot (LF) to construct Meet-me tie in between Provider splice enclosure to Customer handhole. Meet-me fiber will be tested, coiled with a minimum of 50 LF of storage, and capped in Customer handhole.
 - 3.3. Additional costs for special conditions if necessary upon agreement by both Parties.
 - 3.4. 50% at execution of Fiber Order and remainder due upon Acceptance.
 - 3.5. Additional Maintenance (YRC) based on linear footage to install Meet-me will be prorated and added to yearly fiber maintenance IAW with the Yearly Recurring Cost provisions.

AGREEMENT FOR EXCLUSIVE USE OF OPTICAL FIBER
OKALOOSA COUNTY - LIVEOAK FIBER, LLC

Scope of Services: Provider will provide 3 segments of 12 strands each of dark fiber along the County Backbone, the Fort Walton Beach Ring, and the Mid Bay Bridge Ring, between each county head end as illustrated on Attachment 1, Okaloosa County Live Oak Dark Fiber Order One Map. Each fiber segment will terminate in an OWNER provided cabinet or rack. Fiber will be terminated using SC/LC connectors at the appropriate head end. The Customer will be granted access to and allowed installation of equipment at each Head End as stipulated in this agreement.

Compensation Provisions:

1. Non-recurring costs (NRC):
 - 1.1 Backbone 12 strands @ 25.69 miles: = \$308,280.00
 - 1.2 Fort Walton Beach Ring 12 strands @ 23.91 miles: = \$286,920.00
 - 1.3 Mid Bay Bridge Ring 12 strands @ 43.69 miles: = \$524,280.00
 - 1.4 **Total NRC: = \$1,119,480.00**

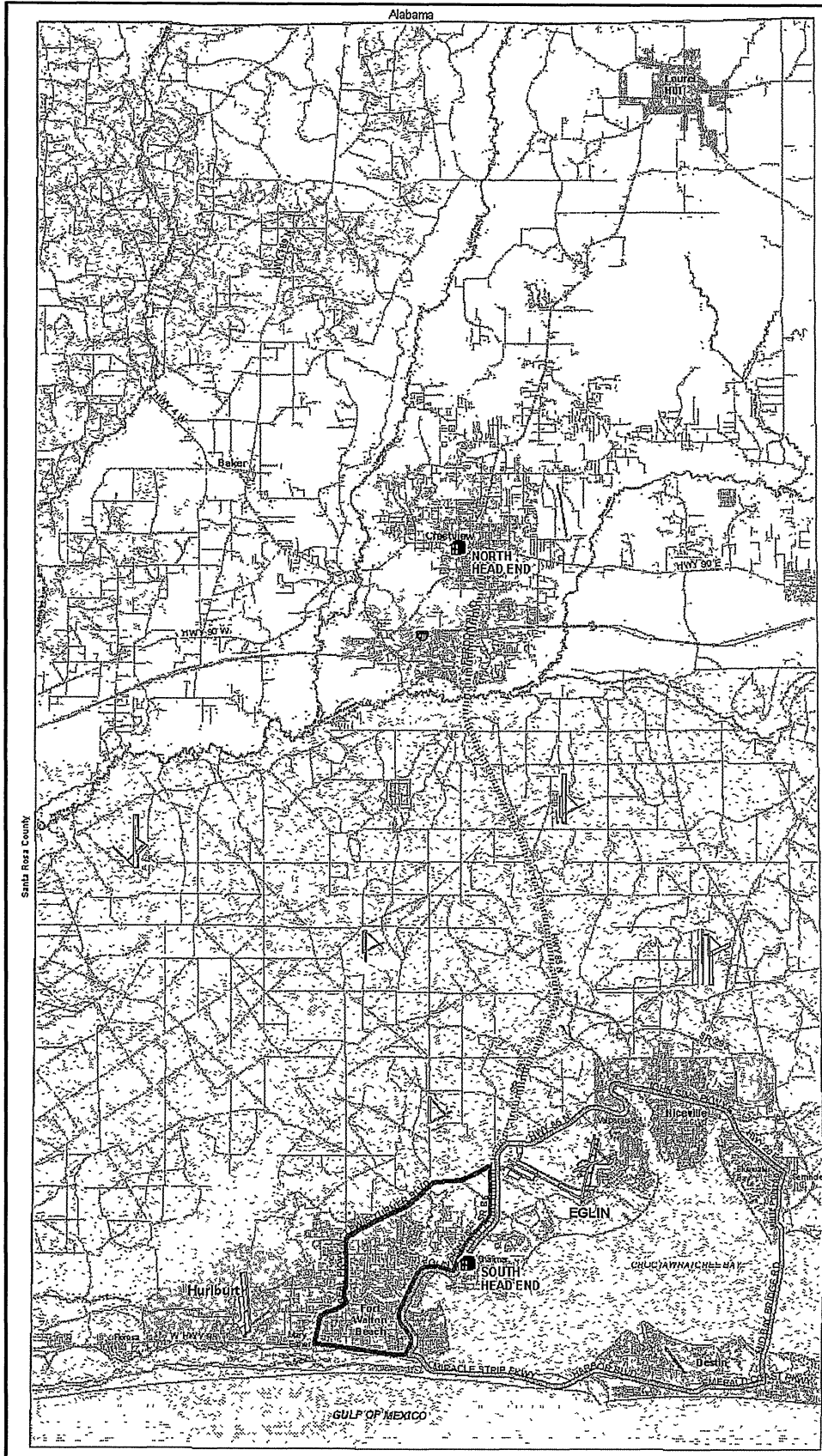
2. Yearly-recurring costs (YRC):
 - 2.1 Backbone @ 25.69 miles: = \$30,828.00
 - 2.2 Fort Walton Beach Ring @ 23.91 miles: = \$28,692.00
 - 2.3 Mid Bay Bridge Ring @ 43.69 miles: = \$52,428.00
 - 2.4 North Head End Use Cost: = \$15,000.00
 - 2.5 Crestview Head End Use Cost: = \$15,000.00
 - 2.6 **Total YRC: = \$141,948.00**

3. Meet-Me costs: These costs will be included in a future fiber order.






Future Fiber Orders will adhere to Fiber Task Order Approval Format provided by Okaloosa County.














AGREEMENT FOR EXCLUSIVE USE OF OPTICAL FIBER

OKALOOSA COUNTY - LIVEOAK FIBER, LLC



OKALOOSA COUNTY
LIVE OAK DARK FIBER ORDER ONE
ATTACHMENT 1

-  FIBER HEAD END
-  BACKBONE
12 STRANDS ~25.69 MILES
-  FORT WALTON BEACH RING.
12 STRANDS ~23.91 MILES
-  MID BAY BRIDGE RING:
12 STRANDS ~43.69 MILES
-  TRANSPORTATION

-  BLACKWATER RIVER STATE FOREST
-  CINCO BAYOU
-  CRESTVIEW
-  DESTIN
-  EGLIN AFB
-  FORT WALTON BEACH
-  HURLBURT FIELD
-  LAUREL HILL
-  MARY ESTHER
-  NICEVILLE
-  SHALIMAR
-  UNINCORPORATED
-  VALPARAISO


MAP PROJECTION:
 Lambert Conformal Conic Projection Stateplane:
 Florida North (0903) NAD 1983(90), NAD 1988.

PUBLIC RECORD:
 This map was created by Okaloosa County GIS and is in the public domain pursuant to Chapter 119, Florida Statutes.


DISCLAIMER:
 Okaloosa County hereby expressly disclaims any liability for errors or omissions in these maps, indexes or legends. Okaloosa County makes no warranties, expressed or implied, concerning the accuracy, completeness or suitability of this data.

SOURCE DATA:
 City limits are current.

Okaloosa County, FL



Map Produced By:
 Okaloosa County GIS
 10/13/2022



AGREEMENT FOR EXCLUSIVE USE OF OPTICAL FIBER
OKALOOSA COUNTY - LIVEOAK FIBER, LLC

ATTACHMENT 2
Fiber Specifications

SPECIFICATIONS

The following are specifications on fiber installed by Provider, and are target specifications in all other instances, subject to applicable specifications in any applicable underlying IRU agreement. The fiber optic cable shall generally be Corning SMF-28e unless otherwise designated by Provider in its sole discretion.

Fiber Optic Cable with Single Mode Fiber (SMF-28e or Equivalent)

- ♦ Attenuation at 1310 nm ≤ 0.40 dB/km
- ♦ Attenuation at 1550 nm ≤ 0.30 dB/km

Splice Loss

- ♦ Splice Loss at 1310 nm ≤ 0.20 dB Single Fiber Bi-Directional Average using OTDR
 - ♦ Splice Loss at 1550 nm ≤ 0.20 dB Single Fiber Bi-Directional Average using OTDR
- *Spans Longer than 60 Km require only 1550 Bi-Directional OTDR test

Connector Loss

- ♦ Connector Loss at 1310 nm ≤ 0.75 dB/Mated Pair SC/UPC
- ♦ Connector Loss at 1550 nm ≤ 0.50 dB/Mated Pair SC/UPC

Calculating Fiber Span Loss

The “system route” maximum allowable loss per kilometer shall be calculated by the following equation:

$$\frac{A \text{ km} * a \text{ dB/km} + B \text{ km} * b \text{ dB/km} + \dots + Z \text{ km} * z \text{ dB/km}}{A \text{ km} + B \text{ km} + \dots + Z \text{ km}} + (\text{num of conn} * 0.5\text{dB}) + (0.3 \text{ dB} * \text{num of splices})$$

Where **A, B, ..., Z** equals fiber type distance and **a, b, ..., z** equals maximum allowable loss per kilometer by fiber type.

Calculating Fiber Splice Loss

The “Splice Loss” maximum allowable loss per splice shall be calculated by the following equation:

$$\frac{AZ \text{ Splice Loss} + ZA \text{ Splice Loss}}{2}$$

Where **AZ** equals the OTDR splice loss in the A to Z direction and where **ZA** equals the OTDR splice loss in the opposite direction.

AGREEMENT FOR EXCLUSIVE USE OF OPTICAL FIBER

OKALOOSA COUNTY - LIVEOAK FIBER, LLC

ATTACHMENT 3 Acceptance Test Plan

3.1 FIBER OPTIC OTDR NAMING CONVENTION

OTDR results will be named using the standard Provider OTDR naming convention:

- ALOC "Provider Site ID" or "Splice Point" name
- ZLOC "Provider Site ID" or "Splice Point" name
- Frequency OTDR frequency 1310 or 1550
- Fiber Number .3 digit number of fiber

Example: ALOCZLOC1310.001 or Point1Point21550.002. Results shall be recorded and delivered as part of the Acceptance Testing Results.

3.2 FIBER OPTIC TESTS

All splicing and testing shall be performed with commercially available and industry-accepted equipment. Provider shall perform the following tests:

End-to-End Optical Power Tests

Total optical attenuation of the span from demarcation to demarcation shall be measured using a light source and power meter at both 1310 nm and 1550 nm wavelengths. These tests shall be conducted twice per fiber per wavelength; once with the power source at location "A" and the power meter at location "Z" for each wavelength and a second time with the power source at location "Z" and the power meter at location "A" for each wavelength.

End-to-End OTDR Tests

Each span shall be measured bi-directionally at 1310nm and 1550nm wavelengths with an Optical Time Domain Reflectometer (OTDR) capable of adequate long range and high resolution testing. These tests shall be conducted twice per fiber per wavelength; once with the OTDR at location "A" and then with the OTDR at location "Z". Adequate launch fiber shall be used to insure the entire span is captured and readable on the OTDR trace. Both beginning and ending demarcation connectors must be visible in the trace.

Individual Splice Tests

All splices shall be tested to ensure compliance with Attachment 2. Splice testing shall be accomplished bi-directionally at 1310nm and 1550nm wavelengths using an Optical Time Domain Reflectometer (OTDR) capable of adequate long range and high-resolution testing. These tests shall be conducted twice per wavelength from either side of the splice. Adequate launch fiber shall be used when measuring splices close to the OTDR launch end of the fiber.

The maximum allowable individual splice loss is 0.20 dB bi-directionally averaged. In an attempt to achieve this goal, a fiber may be re-spliced up to 3 times after the initial splicing attempt. If after three additional attempts the splice still exceeds 0.20 dB, the higher individual splice loss will be acceptable if the average bi-directional splice loss of all splices across the entire tested span is .20 dB or less.

3.3 TEST RESULT FORMATS

- OTDR Results will be provided to the Customer in PDF format. Results in SOR format is available on request.

AGREEMENT FOR EXCLUSIVE USE OF OPTICAL FIBER

OKALOOSA COUNTY - LIVEOAK FIBER, LLC

ATTACHMENT 4

Maintenance Procedures

During any time after the Acceptance of any Segment, Provider shall provide Proactive Maintenance and Unscheduled or Emergency Maintenance.

Proactive Route Maintenance. Routine maintenance described in this section ("Proactive Route Maintenance") shall be performed by or under the direction of Provider. Proactive Route Maintenance shall include the following activities:

- a). Patrol of both Provider's underground conduit system and Provider's aerial fiber routes on a regularly scheduled basis;
- b). Maintenance of a "Call-Before-You-Dig" program and all required and related cable locates;
- c). Maintenance of signposts and route markers along Provider's right-of-way with the number of the local "Call-Before-You-Dig" organization and the number for Provider's Network Operations Center ("NOC").

Non-Routine and Unscheduled Route Maintenance. Non-routine and unscheduled route maintenance and repair which is not defined as Proactive Route Maintenance shall be performed by or under the direction of Provider. Customer shall be responsible for Customer's Proportionate Share of the costs incurred by Provider related to any Non-Routine and Unscheduled Route Maintenance. Non-Routine and Unscheduled Route Maintenance related to the Customer Fibers shall consist of:

- a). "Emergency Unscheduled Maintenance" in response to an alarm identification by Provider's Network Operations Center, notification by any third party of any failure, interruption or impairment in the operation of Provider's System, or any event imminently likely to cause the failure, interruption or impairment in the operation of Provider's System.
- b). "Non-Emergency Unscheduled Maintenance" in response to any potentially service-affecting situation to prevent any failure, interruption or impairment in the operation of Provider's System.

Network Operations Center. Provider shall operate and maintain a Network Operations Center ("NOC") staffed twenty-four (24) hours a day, seven (7) days a week by trained and qualified personnel. Provider's employees or representatives shall be available for dispatch twenty-four (24) hours a day, seven (7) days a week. Provider will take commercially reasonable steps to have its first maintenance employee or company representative at the site requiring Emergency Unscheduled Maintenance activity within two (2) hours after the time Provider becomes aware of an event requiring Emergency Unscheduled Maintenance, unless delayed by circumstances beyond the reasonable control of Provider. Provider shall maintain a toll-free telephone number to contact personnel at the Network Operations Center. Provider's NOC personnel shall dispatch maintenance and repair personnel along the system to handle and repair problems detected on Provider's network, (i) through the Customer's surveillance equipment and upon receipt of OTDR traces provided by the Customer to Provider's NOC detailing the location of the damage to the cable or (ii) upon notification by a third party of damage to the cable.

Cooperation and Coordination. Customers shall utilize an operations escalation list, as updated from time to time, to report and seek immediate initial redress of exceptions noted in the performance of Provider in meeting maintenance service objectives.

- a). In performing any services hereunder, Provider shall take workmanlike care to prevent impairment to the continuity and performance of Provider's System. The precautions to be taken by Provider shall include notifications to the Customer. In addition, Provider shall reasonably cooperate with the Customer in sharing information and analyzing the disturbances regarding the cable and/or fibers. In the event that any Scheduled or Unscheduled Maintenance hereunder requires a traffic

AGREEMENT FOR EXCLUSIVE USE OF OPTICAL FIBER

OKALOOSA COUNTY - LIVEOAK FIBER, LLC

roll or reconfiguration involving cable or fibers, then the Customer shall, at Provider's reasonable request, make such personnel available as may be necessary to accomplish such maintenance, which personnel shall coordinate and cooperate with Provider in performing such maintenance as required of Provider hereunder.

- b). Provider shall notify Customer at least seven (7) days prior to the date in connection with any Scheduled Maintenance, and as soon as possible after becoming aware of the need for Unscheduled Maintenance. Customer shall have the right to be present during the performance of any Scheduled Maintenance so long as this requirement does not interfere with Provider's ability to perform its obligations under this Agreement, nor delay the completion of the Scheduled or Unscheduled Maintenance. If Scheduled Maintenance is canceled or delayed for whatever reason as previously notified, Provider shall notify Customer at Provider's earliest opportunity, and will comply with the provisions of the previous sentence to reschedule any delayed activity.
- c). Customer shall provide to Provider's Network Operations Center ("NOC") with a current list, and provide an updated list as necessary, of Customer's personnel to receive notices of Scheduled Maintenance and Unscheduled Maintenance.

Cable/Fibers. Provider shall perform appropriate Scheduled Maintenance on its fiber optic system in accordance with Provider's then current maintenance procedures, which shall not substantially deviate from standard industry practice.

- a). Provider shall maintain sufficient capability to communicate with the Customer during an Emergency Unscheduled Maintenance in order to provide regular communications during the repair process. When correcting or repairing Cable discontinuity or damage, including but not limited to in the event of Emergency Unscheduled Maintenance, Provider shall use reasonable efforts to repair traffic-affecting discontinuity within eight (8) hours after Provider first became aware of the problem. In order to accomplish such objective, it is acknowledged that the repairs so affected may be temporary in nature. In such event, and if not already permanently repaired and within twenty-four (24) hours after completion of any such Emergency Unscheduled Maintenance, Provider shall commence its planning for permanent repair, and thereafter promptly shall notify Customer of such plans, and shall implement such permanent repair within an appropriate time thereafter. Restoration of open fibers on fiber strands not immediately required for service shall be completed on a mutually agreed-upon schedule. If the fiber is required for immediate service, the repair shall be scheduled for the next available Planned Service Work Period.
- b). Provider shall maintain and supply an inventory of spare Cable in storage facilities supplied and maintained by Provider or its Vendors at strategic locations to facilitate timely restoration.

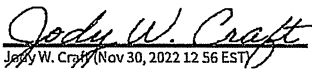
Planned Maintenance Events. Scheduled Maintenance that is reasonably expected to produce any signal discontinuity must be coordinated between the parties. Generally, this work should be scheduled after midnight and before 6:00 a.m. local time.

Restoration. Provider shall respond to any interruption of service or a failure of the Customer Fibers to operate in accordance with the specifications set forth in Attachment 2 of the Agreement (in any event, an "Outage") as quickly as possible in accordance with the procedures set forth herein.

- a). When restoring a cut Cable in Provider's System, the parties agree to work together to restore all traffic as quickly as possible. Provider, promptly upon arriving on the site of the cut, shall determine the course of action to be taken to restore the Cable and shall begin restoration efforts.
- b). Provider shall maintain commercially reasonable systems of personnel and processes so that most maintenance is treated within (2) hours time-to-site, and eight (8) hours time-to-repair for service affecting outages.

**AGREEMENT FOR EXCLUSIVE USE OF OPTICAL FIBER
OKALOOSA COUNTY - LIVEOAK FIBER, LLC**

Subcontracting. Provider may subcontract any of the maintenance services hereunder; provided that Provider shall require the subcontractor(s) to perform in accordance with the requirement and procedures set forth herein. The use of any such subcontractor shall not relieve Provider of any of its obligations hereunder.

Signature: 
Jody W. Craft (Nov 30, 2022 12:56 EST)

Email: jody@liveoakfiber.com

Title: President