

DARK FIBER IRU AGREEMENT

ACT00891

**By and Between Advanced Communications Technology, Inc.
and
The City of Gillette**

THIS DARK FIBER IRU AND COLLOCATION AGREEMENT (“Agreement”) is made and entered into effective on the ____ day of _____, 2017 (the “Effective Date”) by and between Advanced Communications Technology Inc., (hereinafter “Grantor”) a Montana corporation with principal offices in Sheridan Wyoming, and City of Gillette, (hereinafter “Grantee”), a first class city located at 201 East 5th Street, Gillette, WY 82716 each referred to herein as a “Party” and are collectively referred to herein as the “Parties.”

RECITALS

- A. Advanced Communications Technology, a communications provider, through ownership, lease, permit, license and other applicable Underlying Rights, owns, controls, or otherwise possesses the right to use and operate a telecommunications network in Wyoming.
- B. Grantee desires to be granted, or continue to be granted as the case may be, the right to use, and Grantor is willing to grant, to Grantee an Indefeasible Right of Use in certain Dark Fibers on certain route segments of the Grantor’s Fiber Cable System, under the terms and conditions set forth below, and said certain fibers (“Grantee Fibers”) are identified in the respective Exhibit A1 to this Agreement.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants, promises and agreements contained herein set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

ARTICLE 1 DEFINITIONS

Each defined term shall have the meaning set forth where such term is first used in this Agreement or in the definitions set forth in this Article 1 below.

- 1.1 “Affiliate” shall mean, with respect to a particular Party, any other entity which directly or indirectly controls, is controlled by, or is under common control with, such particular Party, or a successor to the Party by merger, consolidation, or non-bankruptcy reorganization. For the purposes of this definition, “control” means the direct or indirect power to direct or cause the direction of the management and policies of a Party through voting power, or by contract or otherwise.
- 1.2 “Commercially Reasonable Efforts”, whether or not expressly stated, is the standard of effort level understood and acknowledged by the Parties as required of a Party in performing under this Agreement, and shall mean the timing, manner, scope, and cost of efforts, and actions taken as commercially and reasonably designed to achieve the desired results, but shall not obligate such Party, unless otherwise specifically and expressly required by the operative covenant, to make unreimbursed expenditures (other than costs or expenditures that would have been required of such Party in the absence of the requirements of such covenants) that are material and substantial in amount, or adverse to said Party’s own interests when reasonably applying such efforts consistent with applicable industry standards and practices under similar circumstances to which the

requirement to use such efforts applies, but in any case shall NOT mean a “best efforts” level requiring “all resources at all costs”.

- 1.3 “Confidential Information” shall have the meaning set forth in Article 13.1 to this Agreement.
- 1.4 “Connection Point(s)” shall mean one or more plant, apparatus, equipment, system, or location points, such as splice points, fiber cross-connect, distribution and termination panels, or other optical or electrical signal interface, interconnection, or physical attachment or connection point(s). A Connection Point defines the demarcation, and associated separation of responsibilities, between the Grantor’s Fiber Cable System and Grantee’s Interconnection Facilities, where Grantee can access and connect to Grantee Fibers. Connection Point(s) will be mutually agreed upon by the Parties and identified in the respective Exhibit A1 to this Agreement.
- 1.5 “Costs” shall mean the actual, direct costs paid or payable by a Party in accordance with the established accounting procedures generally used by the Party in billing third parties for reimbursable projects, which costs shall include, but are not limited to, the following: (a) labor costs, including wages and salaries, and benefits, and overhead or administrative costs allocable to such labor costs typically allocated to the Party’s internal projects, and (b) other direct costs and out-of-pocket expenses on a pass-through basis (including, but not limited to, purchased equipment, materials, supplies, contracted services, rent, permit fees, etc.).
- 1.6 “Dark Fiber(s)” shall mean fiber optic strands provided without electronics or optronics, and therefore are not “lit” or activated with optical wavelengths.
- 1.7 “Economically Useful Life” shall mean the lifetime acknowledged and agreed by the Parties accepted as industry standard for optical fibers applied to the Grantor’s Fiber Cable System, including the Grantee Fibers, as an anticipated period of twenty (20) years from the date of manufacture, with reduction in efficiency of such fiber due to normal wear and tear and deterioration of the materials comprising said fiber; provided, that Grantor shall not be responsible for an economic useful life shorter or longer than the anticipated useful life of 20 years.
- 1.8 “Fiber Acceptance Date” shall, for the Grantee Fibers on each particular route segment of the Fiber Cable System, have the meaning set forth in Article 4.1 to this Agreement.
- 1.9 “Fiber Cable System” shall mean the above-ground or underground fiber optic cable and related plant, materials, devices, and apparatus comprising conduits, ducts, splice closures, handholes, pullboxes, vaults, grounding apparatus, signage, locate markers, containment, and attachment devices, but excludes Grantor’s electronic, electrical, or optronic equipment or systems.
- 1.10 “Fiber Delivery Date” with respect to particular Grantee Fibers, shall mean the date said Dark Fibers are available for access, use, and connection by the Grantee at the applicable designated Connection Point(s).
- 1.11 “Fiber Delivery Notice” shall have the meaning set forth in Article 4.1 to this Agreement.
- 1.12 “Governmental Authority” shall mean any branch of foreign or domestic federal, state, regional, county, city, municipal, local, territorial, or tribal government, or any department, agency, bureau,

district, or other administrative or regulatory body obtaining authority from any of the foregoing, including, without limitation, courts, legislatures, executive offices, and special districts.

- 1.13 “Grant of IRU” shall mean the executed grant substantially in the form of Exhibit D.
- 1.14 “Grantee” shall mean the Party that is granted the right to use or continue to use an IRU in certain Dark Fibers on certain routes of the Grantor’s Fiber Cable System and/or Licensed Premises.
- 1.15 “Grantee Equipment” shall mean apparatus and equipment owned or controlled, and installed, operated, and maintained by or on behalf of Grantee.
- 1.16 “Grantor” shall mean the Party that is granting the right to use or continue to use an IRU in certain Dark Fibers on certain routes of such Party’s Fiber Cable System and/or Licensed Premises.
- 1.17 “Grantee Fibers” shall mean the certain Dark Fibers contained in a route segment of the Grantor’s Fiber Cable System that are the subject of an IRU granted to Grantee hereunder, as identified in the respective Exhibit A1 to this Agreement.
- 1.18 “Impositions” shall mean all taxes, fees, levies, imposts, duties, assessments, contributions, charges, or withholdings of any nature (including, but not limited to, franchise, access, license and permit fees, and sales, use, transfer, receipts and property taxes), together with any penalties, late fees, fines or interest thereon, arising out of the transactions contemplated, or the interests created by this Agreement, that are imposed upon a Party by Governmental Authority, but shall not include taxes on the income, payroll, or net worth of a Party.
- 1.19 “Indefeasible Right of Use” or “IRU” shall mean an exclusive indefeasible right of use of Dark Fiber(s); provided that an IRU does not grant or convey any ownership interest in or other rights to physical access to, control of, modification to, or encumbrance in any manner, or the use of the Grantor’s Fiber Cable System containing the Dark Fibers, except as expressly set forth herein.
- 1.20 “Interconnection Facilities” shall mean telecommunications transmission facilities that interconnect with Connection Point(s) for carrying communications traffic to or from another telecommunications transmission facility.
- 1.21 “IRU Fee” shall mean the fee, in U.S. dollars, as payment consideration for the right to use Dark Fibers, calculated on the basis of the actual aggregate optical route mileage (determined by bidirectional OTDR measurement) multiplied by the number of Dark Fibers in the route segment of the Grantor’s Fiber Cable System for which an IRU has been granted, but excludes Scheduled or Unscheduled Maintenance Fees, Costs, and Impositions, which are in addition to the IRU Fee.
- 1.22 “IRU Term” shall have the meaning set forth in Article 5.1 to this Agreement.
- 1.23 “Licensed Premises” shall have the meaning set forth in Article 2.1 to this Agreement.
- 1.24 “Maintenance Window” or “Planned System Work Period” (“PSWP”) shall mean a pre-arranged period of time reserved for performing certain work that potentially or definitely affects traffic. Generally, to the extent practicable, this will be scheduled for periods of reduced traffic impact, as mutually agreed upon by the Parties and further defined in Exhibit C to this Agreement.

- 1.25 “Optical Time Domain Reflectometry” (“OTDR”) shall mean a test that monitors the light reflections on a pulse of light in an optical fiber.
- 1.26 “Permitted Use” shall have the meaning set forth in Article 2.1 to this Agreement.
- 1.27 “Person” shall mean any individual, corporation, partnership, limited liability company, limited liability partnership, practice, association, joint stock company, trust, unincorporated organization, association, joint venture, other business entity or vehicle, or Governmental Authority.
- 1.28 “POP” shall mean a “point-of-presence” communications equipment facility at a location along the Fiber Cable System where Connection Point(s) may be located.
- 1.29 “Premises” shall mean land, the structures upon it, and space within or upon said structures.
- 1.30 “Proportionate Share” shall mean, with respect to a particular user of Dark Fibers in the Fiber Cable System, a fraction having a numerator which is the number of fiber optic strands for which an IRU is granted to said particular user (number of Grantee Fibers), and a denominator which is the total number of fiber optic strands used or contracted for use in the affected fiber optic cable containing the Grantee Fibers.
- 1.31 “Regulation(s)” shall mean code(s), statute(s), ordinance(s), law(s), rule(s), regulation(s), order(s), approval(s), restriction(s), or order(s) or decree(s) issued or promulgated by a Governmental Authority.
- 1.32 “Representative(s)” shall mean employees, officers, directors, contractors, and technical, financial, legal and other consultants, advisors, and agents of a Person.
- 1.33 “Scheduled Maintenance” and “Scheduled Maintenance Fees” shall have the meanings set forth in Exhibit C to this Agreement.
- 1.34 “Service Affecting Condition” shall mean a condition on a segment of the Fiber Cable System or with respect to Grantor’s Facilities that materially adversely affects Grantee’s ability to utilize the Grantee Fibers or utilize the Licensed Premises for the Permitted Use.
- 1.35 “Underlying Rights” shall mean, without limitation, all deeds, leases, easements, rights of way, licenses, franchises, permits, authorizations, consents, approvals, reversionary interests, bonds, mortgages, indentures, and other rights, titles, interests, and matters, whether or not of record, and the rights of tenants and licensees in possession, as are required or necessary for the authorized and rightful placement, construction, installation, operation, use (including Permitted Use of the Grantee Fibers or Licensed Premises by Grantee hereunder), maintenance, repair, and removal of Grantor’s Fiber Cable System or Grantor’s Facilities.
- 1.36 “Underlying Rights Requirements” shall mean the terms, conditions, covenants, requirements, restrictions, and limitations imposed upon the Underlying Rights, including, but not limited to, any associated safety, operational, and Regulation(s) compliance requirements.

- 1.37 “Unscheduled Maintenance” consists of “Emergency Unscheduled Maintenance” and “Non-Emergency Unscheduled Maintenance”, which, along with “Unscheduled Maintenance Fees” shall have the meanings set forth in Exhibit C to this Agreement.

ARTICLE 2
GRANT OF IRU AND LICENSED PREMISES

- 2.1 Upon receipt from Grantee of payment in full of the IRU Fee in accordance with Exhibit A1 Grantor will execute Exhibit D and grant, to Grantee, and Grantee will accept from Grantor one or more IRU(s) for certain Dark Fibers on the particular route segment(s) of the Grantor’s Fiber Cable System as more particularly described in the respective Exhibit A1 to this Agreement for Grantee’s use; but not for resale, transfer, assignment, partitioning, or subleasing of Dark Fibers to others, in whole or in part (unless otherwise set forth in the respective Exhibit A1 to this Agreement). The Grantee shall limit its use of the IRU for purposes of communicating with and monitoring Grantee’s own facilities. (All of the foregoing language in this Article 2.1, collectively the “Permitted Use”).
- 2.2 The IRU is granted on the terms and subject to the covenants and conditions set forth in this Agreement and the Exhibits attached thereto. The IRU shall be exclusive to the Grantee Fibers and Grantee shall have a vested interest in the use of the Grantee Fibers for the IRU Term identified applicable to said particular fibers. The IRU does not include the right of Grantee to own, maintain, or modify the Grantee Fibers, or the right of physical access to, the right to encumber in any manner, or other use of the Grantor’s Fiber Cable System or Underlying Rights except as expressly set forth herein.
- 2.3 Grantee acknowledges and agrees that Grantor is not supplying nor is it obligated to supply to Grantee any optronics or electronics or optical or other electrical equipment or facilities, including without limitation, generators, batteries, air conditioners, fire protection and monitoring and testing equipment, all of which are the sole responsibility of Grantee, nor is Grantor responsible for performing any work other than as specified in the Agreement.
- 2.4 Fiber Delivery Date for each particular route segment and associated Grantee Fibers shall be mutually agreed to by both Parties, unless otherwise set forth in the respective Exhibit A1 to this Agreement.
- 2.5 To the extent, if any, that the specific route of any fiber route segment of the Grantor’s Fiber Cable System described in the respective Exhibits A1 and A2 to this Agreement has not been finally designed or constructed, or with respect to which any necessary Underlying Rights have not been obtained, such shall be subject to the determination of Grantor, based on specific engineering, right-of-way, local zoning, permit, authorization, and other requirements.
- 2.6 Nothing herein is intended nor shall be construed to transfer, sell, or otherwise convey any ownership, legal title, or any other rights or interests in the Grantee Fibers or the Grantor’s Fiber Cable System or the facilities, property, rights or interests of Grantor or others, in whole or in part, to Grantee, except to the extent of and subject to the IRU(s) expressly granted herein.
- 2.7 Nothing in this Agreement is intended, nor shall be construed, to grant Grantee any right, title, ownership, license, lease, or other interest in or to any portion of the Grantor’s Facilities or other Premises, property, plant equipment or facilities of Grantor or others.

- 2.8 To the extent the Grantee Fibers or any portion thereof are located in the right of way of an interstate highway in Wyoming, Grantee will secure in advance, any permits and execute any agreement deemed necessary by the Wyoming Department of Transportation as a condition of the grant of an IRU pursuant to this Agreement. Further, Grantee shall at all times remain in compliance with the terms of any such permit or agreement with Wyoming Department of Transportation.

ARTICLE 3
CONSIDERATION FOR GRANT AND PAYMENT

- 3.1 In consideration of the grant of the IRU(s) hereunder by Grantor to Grantee, Grantee agrees to pay to Grantor, or has previously paid, as the case may be, an IRU Fee in the amount(s) set forth for each particular route segment and applicable Grantee Fibers on the Grantor's Fiber Cable System described in the respective Exhibits A1 and A2 to this Agreement, which are attached and made a part of this Agreement. Upon the Fiber Acceptance Date for each particular route segment and applicable Grantee Fibers, Grantor shall render an invoice to Grantee for the IRU Fee applicable to the particular route segment and applicable Grantee Fibers accepted. Grantee shall pay such amount in accordance with Exhibit A1, to the extent not in conflict with WYO. STAT 16-6-602.
- 3.2 In addition to the amounts payable under Article 3.1 above, Grantee shall pay directly or reimburse Grantor for the Costs and expenses described in Articles 4, 6, 7, and 11. Grantee shall pay such amount within forty-five (45) calendar days of the date of each invoice, in accordance with WYO. STAT. § 16-6-602.
- 3.3 If applicable, Grantee shall pay the Space Use Fee, the Energy Use Fee, the Unscheduled Collocation Maintenance Fees, and other amounts for collocation space as further set forth in this Agreement. Grantee shall pay such amount within forty-five (45) calendar days of the date of each invoice, in accordance with WYO. STAT. § 16-6-602.
- 3.4 If Grantee fails to make any payment under this Agreement when due, such amount shall accrue interest from the date such payment is due until paid, at the rate of one and one-half percent (1 1/2%) per month on the unpaid balance until the account is paid in full, unless a good faith dispute exists as to the agency's obligation to pay all or a portion of the account, in accordance with WYO. STAT. § 16-6-602. If a dispute arises concerning the amount due by Grantee, and it is later determined that the amount is due and owing to Grantor, such amount shall bear interest from the date when due until paid, at the foregoing rate.
- 3.5 Either Party may dispute in good faith any amounts invoiced pursuant to this Agreement by providing written notice to the other Party (Good Faith Billing Dispute). In order to constitute a Good Faith Billing Dispute the Party billed must provide written notice to the Billing Party within forty-five (45) days of receipt of the invoice, of the item and amount in the bill in dispute, the basis for the dispute in accordance with and by reference to the terms of this Agreement, and the amount that the billed Party asserts should have been invoiced in accordance with this Agreement. In the event of a Good Faith Billing Dispute, the billed Party may withhold payment of only, the disputed portion of an invoice and shall pay all amounts associated with undisputed items in the invoice. Furthermore, a billed Party may not offset amounts due against the invoice which have been previously paid and not the subject of a timely Good Faith Billing Dispute. Any amounts disputed shall be submitted to the dispute resolution process set forth in Article 17. Failure to raise a timely Good Faith Billing Dispute

in accordance with this subsection, waives any claim relating to that invoice, including the amount billed.

- 3.6 Each payment obligation of the Grantee is conditioned upon the availability of government funds which are appropriated or allocated for the payment of this obligation. If funds are not allocated and available for the continuance of the services performed by the Grantor, the Agreement may be terminated by the Grantee at the end of the period for which the funds are available. The Grantee shall notify the Grantor at the earliest possible time of the services which will or may be affected by a shortage of funds. No penalty shall accrue to the Grantee in the event this provision is exercised, and the Grantee shall not be obligated or liable for any future payments due or for any damages as a result of termination under this section. This provision shall not be construed to permit the Grantee to terminate this Agreement to acquire similar services from another party.

ARTICLE 4 TESTING; WARRANTY; MAINTENANCE AND REPAIR

- 4.1 Testing. Grantor shall test the Grantee Fibers to verify that the Grantee Fibers have been installed and are operating properly ("Fiber Testing"). Grantor shall promptly provide Grantee with a copy of the test results. OTDR results will be provided in a mutually agreed upon electronic and hard copy format.
- (a) Grantor will test each Grantee Fiber segment to verify that it is operating in accordance with the specifications set forth in Exhibit B to this Agreement (the "Specifications"). Grantor will provide Grantee reasonable advance notice of the date and time of each Fiber Testing so that Grantee shall have an opportunity to have a representative present to observe the Fiber Testing. Upon the successful completion of the Fiber Testing respecting the Grantee Fibers, Grantor shall provide written notice to Grantee confirming that the Grantee Fiber segments are operating in accordance with the Specifications, along with a copy of the Fiber Testing results (the "Fiber Delivery Notice") and deliver to Grantee an executed Grant of IRU. Grantee shall provide Grantor with written notice of its acceptance or rejection of the Grantee Fiber within fifteen (15) business days and shall countersign the Grant of IRU, if accepted. If Grantee fails to notify Grantor of its acceptance or rejection of the Fiber Testing results with respect to the Grantee Fibers within fifteen (15) business days after Grantee's receipt of the Fiber Delivery Notice, or if Grantee uses the Grantee Fibers for other than testing, Grantee shall be deemed to have accepted the Grantee Fibers. The date of such notice of acceptance (or deemed acceptance) of the Grantee Fibers shall be the "Fiber Acceptance Date".
- (b) In the event Grantee determines that certain of the Grantee Fibers (the "Unacceptable Grantee Fibers") are not acceptable as set forth herein, Grantee shall notify Grantor in writing specifying the cause for its refusal to accept the Unacceptable Grantee Fibers. Grantor shall have thirty (30) days to remedy the problem and shall promptly use Commercially Reasonable Efforts to bring the Unacceptable Grantee Fibers into compliance with Grantee's request. The Parties shall continue to follow the acceptance procedure set forth herein within the thirty (30) day remedy period. If, at the expiration of the thirty (30) day period, the Unacceptable Grantee Fibers do not comply with Grantee's request, either Party may terminate the IRU, and respective Grant of IRU, pertaining to the Unacceptable Grantee Fibers upon written notice and without penalty or liability or any further obligation. Termination of an IRU pursuant to this paragraph will not impact any other IRU under this Agreement.

- (a) Grantee Fibers will originate and terminate at Connection Point(s) on the Grantor's Fiber Cable System as set forth in the respective Exhibits A1 and A2 to this Agreement.

- 4.2 Manufacturer's Warranty. The Parties acknowledge and agree that after the relevant Fiber Acceptance Date, Grantee's sole rights and remedies with respect to any defect in or failure of Grantee Fibers and related facilities to perform in accordance with the applicable vendor's or manufacturer's specifications for the Grantee Fibers and related equipment or facilities shall be limited to the particular vendor's or manufacturer's warranty with respect thereto, which warranty, to the extent permitted by the terms thereof shall be assigned to Grantee upon its request. In the event any maintenance or repairs to the Grantor's Fiber Cable System are required as a result of a breach of any warranty made by any manufacturer, contractor, or vendor, Grantor shall pursue all remedies against such manufacturer, contractor or vendor on behalf of Grantor and Grantee. If Grantor fails to pursue such remedies, Grantee may elect to pursue such remedies on its own behalf. Grantee shall notify Grantor in writing of its intent to seek such remedies itself prior to pursuing such action.
- 4.3 Maintenance and Repair of Grantee Fibers. The IRU is subject to the maintenance and repair procedures and the Scheduled and Unscheduled Maintenance Fees identified in Exhibit A1 and Exhibit C to this Agreement. Grantor's responsibility to Grantee for resolving a Service Affecting Condition shall be only to the extent set forth in Exhibit C to this Agreement. Grantee shall not be entitled to any credits for IRU Fees, Scheduled or Unscheduled Maintenance Fees, or any other amounts paid or to be paid pursuant to this Agreement by reason of a Service Affecting Condition.

ARTICLE 5

TERM

- 5.1 This Agreement is effective when all parties have executed it and all required approvals have been granted. The term of the grant of the IRU with respect to each particular fiber route segment and applicable Grantee Fibers on the Grantor's Fiber Cable System under this Agreement shall be set forth in the respective Exhibit A1 to this Agreement (the "IRU Term"). Unless otherwise terminated or renewed as provided herein, the term of this Agreement commences on the Effective Date and terminates on the date of the latest expiring IRU granted hereunder (the "Term of this Agreement"). All services shall be completed during the IRU Term. This Agreement may be renewed once by separate written agreement signed by both parties and subject to the required approvals, prior to the conclusion of the original IRU Term.
- 5.2 At the expiration or other termination of an IRU Term, of a Collocation Term, or of the Term of this Agreement, all rights of Grantee to use the applicable (or all) of the Grantee Fibers or the Licensed Premises as the case may be, or any other part thereof, shall cease, pursuant to the terms and provisions of Article 15 to this Agreement (unless otherwise set forth in the respective Exhibit A1 to this Agreement).
- 5.3 If at any time after the Fiber Acceptance Date with respect to a particular route segment and applicable Grantee Fibers on the Grantor's Fiber Cable System, Grantee determines that the Grantee Fibers have reached an end to their Economically Useful Life, or Grantee otherwise desires not to

retain the IRU, Grantee shall have the right to abandon the IRU with respect to said particular route segment and applicable Grantee Fibers by written notice to Grantor; or (i) by non-use of said Grantee Fibers continuing for a period of ninety (90) consecutive days, excluding any periods of non-use due to Force Majeure Events or Grantor acts or omissions, and (ii) Grantee's failure to respond with a written notice of intent to continue use or abandon said fibers, within said ninety (90) days, to Grantor's written request for same. In the case of such abandonment, the IRU with respect to said abandoned Grantee Fibers shall terminate, the Grantee shall not be entitled to a refund of any consideration paid in connection with said abandoned fibers.

ARTICLE 6 FACILITIES

- 6.1 Grantor shall provide Grantee reasonable access to the Connection Point(s) so that Grantee may connect Grantee Fibers with other Interconnection Facilities, subject to Grantor's safety and security procedures.
- 6.2 All connections to Grantor's Fiber Cable System, including splicing and placement of fiber jumpers at Grantor's fiber distribution panels shall be performed by Grantor, in accordance with applicable standards, specifications and operating procedures. The Costs of such connections shall be borne by Grantee.
- 6.3 Grantee shall request and coordinate such connection work not less than thirty (30) calendar days in advance of the date the connection is requested to be completed. Such work will be restricted to a Planned System Work Period, unless otherwise agreed to in writing by the Parties for specific connections. Subject to any express limitations in this Agreement, Grantee shall not have any limitations on the types of electronics or technologies employed to utilize its fibers, subject to Grantor's safety and technical procedures and requirements and so long as such electronics or technologies do not interfere with Grantor's electric utility operations (if applicable) or other uses or users of the Grantor's Fiber Cable System or present a risk of damage or interference to any portion of Grantor's or another party's system or equipment.
- 6.4 Grantor may route, re-align, or reroute the Grantee Fibers through applicable facilities, or re-assign which Dark Fibers in the Grantor's Fiber Cable System are designated as the Grantee Fibers, as Grantor deems reasonably necessary to accommodate changes in operating requirements. Grantor may also require that Grantee relocate the Grantee Equipment within the Licensed Premises as Grantor deems reasonably necessary to accommodate changes in operating requirements. If the changes are required to accommodate Grantor, Grantor will bear its own costs attributed to such change, and Grantee will bear its own costs attributed to such change. If the changes are requested by or required to accommodate the Grantee, Grantee will bear its own costs and the Costs Grantor incurs attributed to such change. In the case of Unscheduled Maintenance, relocation, or reconstruction of the Grantor's Fiber Cable System containing the Grantee Fibers or Unscheduled Collocation Maintenance, relocation, or reconstruction of the Licensed Premises, Grantee shall pay its Proportionate Share of Costs. Any re-alignment, re-assignment, routing or rerouting of the Grantee Fibers will be done in accordance with the Specifications and by prior agreement of the Parties.

ARTICLE 7
PERMITS; UNDERLYING RIGHTS; RELOCATION; RECONSTRUCTION

- 7.1 Subordinated Rights. Grantor will use Commercially Reasonable Efforts to obtain and maintain the required Underlying Rights to the extent necessary to allow, or otherwise not prohibit, the rights granted to Grantee hereunder. The Parties acknowledge that the IRU and the Licensed Premises are subject to the terms of the Underlying Rights allowing the cable containing the fibers to be in place and allowing the Licensed Premises to be in place, and further subject to the terms under which the Underlying Rights are owned or held by Grantor pursuant to the Underlying Rights Requirements. Any rights granted to Grantee hereunder are further subject and subordinate to the prior rights of the grantor of the Underlying Rights including use of the right-of-way or other subject property for other business activities, including, but not limited to telecommunications uses, or any other purposes. Except to the extent otherwise provided, nothing herein is intended, nor shall be construed, to be a representation, warranty or covenant of Grantor's rights, title, or interests with respect to the applicable Underlying Rights.
- 7.2 Grantee shall be responsible for obtaining and maintaining other additional Underlying Rights (other than to the extent provided by Grantor as expressly set forth in this Agreement), if any, necessary to Grantee's use of the Grantee Fibers or the Licensed Premises, and Grantee's interconnect facilities at the Connection Point(s).
- 7.3 In executing and performing under this Agreement, neither Party implicitly or expressly waives any claims or rights it may have with respect to Underlying Rights or the third party grantors thereof.
- 7.4 If, during the Term of the Agreement, Grantor, in its reasonable sole discretion determines, or is required, to reconstruct due to damage or destruction or, by the grantor of any Underlying Right or other party having condemnation or other legal authority to do so, relocate any part of the Grantor's Fiber Cable System or Grantor's Facilities, including any equipment or facilities used or required in providing the IRU for the Grantee Fibers or the use of the Licensed Premises, then Grantor shall proceed, using Commercially Reasonable Efforts, with such relocation or reconstruction and shall have the right, in good faith, to reasonably determine the effect, timing and method of such relocation or reconstruction; provided that (i) any such relocation or reconstruction shall be constructed and tested to meet or exceed the Specifications and any applicable Regulations; (ii) the relocation or reconstruction shall be coordinated with Grantee to minimize any effect on or disruption of use of the Grantor's Fiber Cable System or the Licensed Premises; (iii) Grantee shall be responsible for its Proportionate Share of all Costs attributed to the relocation or reconstruction of the Grantor's Fiber Cable System, and (iv) Grantee shall be responsible for its proportionate share of the total Costs of all Costs attributed to the relocation or reconstruction of the Licensed Premises, which shall be allocated to the Grantee based on (a) the ratio of the floor, wall and other space comprising the Licensed Premises to the total applicable space of the Grantor's Facilities containing the Licensed Premises relocated or restored, or (b) the ratio of the power used by Grantee Equipment to the total power used at the Grantor's Facilities containing the Grantee Equipment, for relocation or restoration of power or climate control systems, or (c) both, as applicable. Relocation or reconstruction hereunder shall not affect the Term of this Agreement. However, if Grantor is unable to relocate or reconstruct the Grantor's Fiber Cable System or the Licensed Premises using Commercially Reasonable Efforts or, arising from said requirement to relocate or reconstruct, ceases using said system or location for its own electric utility operations (if applicable) or business operations purposes, Grantor shall not be deemed in default of this Agreement and Grantee's sole and exclusive remedy shall be a refund

(without interest) of the unused portion of any prepaid maintenance or collocation fees, but not the IRU Fees, prorated based on the proportion of the Grantor's Fiber Cable System or Licensed Premises materially adversely affected by the relocation or reconstruction, and from the date Grantor ceases providing the Grantee Fibers or use of the Licensed Premises at said location, and this Agreement as it pertains to that location shall terminate without liability to the Grantor or further obligation of the Grantor or Grantee, except to the extent set forth in Article 15 below.

- 7.5 Grantor shall use Commercially Reasonable Efforts to either require that the stated term of Underlying Rights applicable to a route segment of the Grantor's Fiber Cable System containing Grantee Fibers or to a Licensed Premises shall be for a period that does not expire, in accordance with its ordinary terms, prior to the term of an IRU or a Collocation Term granted hereunder for said route segment or Licensed Premises. Grantor shall exercise any renewal rights thereunder, or otherwise use Commercially Reasonable Efforts to acquire such extensions, additions or replacements as may be necessary in order to cause the stated term thereof to be continued until a date that is not earlier than the last day of the subject IRU Term or Collocation Term; provided, however, that Grantor shall not be required to use more than Commercially Reasonable Efforts or expend as consideration for such renewals, extensions or replacements, more than the fair market rate payable at such time for similar rights and terms, unless Grantee agrees, at Grantee's option, to pay directly any amounts required to be paid in excess of such fair market rate to renew, extend or replace such Underlying Rights. Notwithstanding anything herein to the contrary, upon the expiration or termination of any Underlying Right that is necessary in order to grant, continue or maintain an IRU or Licensed Premises granted hereunder, and so long as Grantor shall have performed its obligations herein, the IRU Term of the Grantee Fibers or the Collocation Term of the Licensed Premises affected thereby shall automatically terminate upon such expiration or termination of the applicable Underlying Rights. In such event, Grantor shall not be deemed in default of this Agreement and Grantee's sole and exclusive remedy shall be a refund (without interest) of the unused portion of any prepaid collocation fees or maintenance fees, but not the IRU Fees, prorated based on the proportion of the Grantor's Fiber Cable System or Licensed Premises materially adversely affected by the failed Underlying Rights, and from the date Grantor ceases providing the Grantee Fibers or use of the Licensed Premises at said location, and this Agreement as it pertains to that location shall terminate without liability to the Grantor or further obligation of the Grantor or Grantee, except to the extent set forth in Article 15 below.

ARTICLE 8

USE OF GRANTOR'S FIBER CABLE SYSTEM AND GRANTOR FACILITIES

- 8.1 The Parties shall cooperate and support each other using Commercially Reasonable Efforts in complying with any requirements applicable to their respective rights and obligations under this Agreement. Grantee will use the Grantee Fibers and the Licensed Premises in compliance with and subject to the Underlying Rights Requirements, all applicable Regulations, and Grantor-approved specifications and requirements. Said designs and activities shall be reviewed and approved in advance by Grantor, and shall not interfere with the Grantor's Fiber Cable System or Grantor's Facilities, other users thereof, or other property, systems, premises, or facilities of Grantor or others. Review and approval by Grantor of specifications, drawings, or other Grantee submitted documents, shall not modify, alleviate, or waive Grantee's responsibilities, or obligations, under this Agreement.
- 8.2 Grantee may not resell, assign, partition, transfer, or sublease Grantee Fibers or the Licensed Premises, in whole or in part unless otherwise set forth in the respective Exhibit A1 to this Agreement.

Grantee agrees and acknowledges that it has no right to use any fibers that are part of the Grantor's Fiber Cable System, other than Grantee Fibers subject to an effective IRU under this Agreement.

- 8.3 Grantee shall keep any and all of the Grantor's Fiber Cable System, Grantee Fibers, the Licensed Premises, the Underlying Rights, and other property, plant, and equipment of Grantor or other users of said Fiber Cable System and the Licensed Premises free from any liens, encumbrances, rights, or claims of any third Person. If any such lien, encumbrance, right, or claim arises or is threatened due to Grantee's act or omission, Grantee, at Grantee's sole cost and expense, shall promptly arrange or cause the discharge or release of the lien, encumbrance, right, or claim (by payment, posting of bond, court deposit, or other means necessary) without cost or expense to Grantor. Grantee may contest or otherwise challenge such lien, encumbrance, right, or claim if, during the pendency of such contest or challenge, there is no risk of forfeiture, damage, loss, or other adverse effect to Grantor as determined in Grantor's sole discretion. Any assistance provided to Grantee by Grantor in any such contest or challenge will be at Grantee's cost and expense.
- 8.4 Grantor acknowledges and agrees that it has no right to use the fibers it designates as Grantee Fibers under an effective IRU under this Agreement.
- 8.5 Grantee and Grantor shall promptly notify each other of any matters pertaining to, or occurrence (or impending occurrence) of, any event which would be reasonably likely to give rise to any damage or impending damage to or loss of the Grantor's Fiber Cable System or the Licensed Premises that are known to such Party.
- 8.6 Grantee shall not use its systems in a way that interferes in any way with or adversely affects Grantor's communications operations (if applicable) or the use of the fibers, cable, equipment, or property of any others using the Grantor's Fiber Cable System or the Licensed Premises. Grantee's use of the Grantor's Fiber Cable System or Grantor's Facilities other than the Grantee Fibers or the Licensed Premises is not exclusive, and there may be other users, including, but not limited to Grantor.
- 8.7 Grantee and Grantor each agree to cooperate with and support the other in complying with any requirements applicable to their respective rights and obligations hereunder.
- 8.8 Subject to applicable Underlying Rights Requirements and Grantor's security and safety requirements, Grantor will provide Grantee with reasonable access to the Connection Point(s) to the Grantee Fibers and the Licensed Premises as depicted in Exhibits A1 and A2, which may require accompaniment by Grantor or Grantor's third party representative(s). Grantee shall pay Grantor's reasonable Costs for providing such representative(s) if necessary.
- 8.9 Grantee understands, acknowledges, and accepts that interruptions, outages, degradations, or failures in the Grantee Fibers, the Licensed Premises, or the Grantor's Facilities containing same, may occur from time to time.

ARTICLE 9 LIABILITY

- 9.1 Except as otherwise expressly provided herein or in specific attachments, exhibits, or appendices hereto, each Party shall be responsible only for the interconnection, functions, products and services which are provided by that Party, its authorized agents, subcontractors, or others retained by such parties, and neither Party shall bear any responsibility for the interconnection, functions, products and services provided by the other Party, its agents, subcontractors, or others retained by such parties.
- 9.2 Grantor's liability to Grantee for any loss relating to or arising out of Grantor performance under this Agreement, including but not limited to any negligent act or omission, whether in contract, tort or otherwise, including but not limited to alleged breaches of this Agreement and causes of action alleged to arise from allegations that breach of this Agreement also constitute a violation of a statute, (i) shall not exceed in total the amount that Grantor has charged or would have charged Grantee for the affected Grantee Fibers, service(s) or function(s) which were not provisioned or performed or were improperly provisioned or performed for claims regarding the Grantee Fibers, and (ii) shall be limited to a maximum amount equal to the Space Use Fees received or receivable by Grantor from Grantee, pro-rated for the period (in hours or fractions thereof rounded to the nearest one-tenth hour) of the interruption, outage, failure or degradation for claims regarding the Licensed Premises.
- 9.3 Neither Party assumes any liability for any act or omission of the other Party.
- 9.4 Grantor shall not be liable for any act or omission of third Persons which provide facilities, connections, equipment or services used in connecting to points not reached by the Grantee Fibers.
- 9.5 LIMITATION OF LIABILITY.

(b) NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY CLAIM OR CAUSE OF ACTION REQUESTING OR CLAIMING INDIRECT, INCIDENTAL, CONSEQUENTIAL, STATUTORY, PUNITIVE, RELIANCE, COVER, OR SPECIAL DAMAGES ARISING DIRECTLY OR INDIRECTLY FROM, OR IN CONNECTION WITH, A PARTY'S PERFORMANCE OR NON-PERFORMANCE HEREUNDER (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR HARM TO BUSINESS OPERATIONS, LOST REVENUES, LOST SAVINGS, LOST PROFITS, CLAIMS OF CUSTOMERS OF A PARTY, OR OTHER ECONOMIC LOSS SUFFERED BY SUCH OTHER PARTY), WHETHER ARISING FROM TRANSMISSION OR SERVICE DEGRADATION, INTERRUPTION, OUTAGE, DESIGN, CONSTRUCTION, OPERATION, MAINTENANCE, REPAIR ACTS OR OMISSIONS, OR ANY OTHER CAUSE OR NATURE WHATSOEVER, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, WARRANTY, STRICT LIABILITY, TORT, OR ANY OTHER THEORY, INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE, WHETHER ACTIVE OR PASSIVE, AND REGARDLESS OF WHETHER FORESEEABLE OR THE PARTIES KNEW OF THE POSSIBILITY THAT SUCH DAMAGES COULD RESULT. EACH PARTY HEREBY RELEASES THE OTHER PARTY (AND SUCH OTHER PARTY'S SUBSIDIARIES AND AFFILIATES AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS) FROM AND SPECIFICALLY WAIVES ALL, SUCH FOREGOING CLAIMS. NEITHER OF THE PARTIES ASSUMES ANY

LIABILITY FOR ANY ACT OR OMISSION OF THE OTHER PARTY IN THE
FURNISHING OF A FACILITY OR SERVICE TO A THIRD PERSON.

- (c) Nothing contained herein shall operate as a limitation on either Party's (as the complainant Party) right to bring an action against any third Person for damages including, but not limited to, direct, indirect, statutory, special, cover, incidental, reliance, consequential, exemplary, or punitive damages, arising from the acts or omissions of said third Person, to the extent complainant Party otherwise has the right to bring such action. To the extent the other Party (as the joinder Party) also has rights to join the complainant Party in such action, the complainant Party agrees to cooperate with and promptly assign any such rights, actions, or claims to the joinder Party, and to execute documents and take all other actions reasonably necessary, at the joinder Party's expense, to enable the joinder Party to pursue applicable rights, actions or claims it may have against said third Person.
- 9.6 Both Parties acknowledge and agree that the limitation of liability provisions herein contained equitably allocate the risk between the Parties and are intended to limit each Party's liability.

ARTICLE 10
INSURANCE

- 10.1 Coverage Requirements. Grantee shall at all times during the Term of this Agreement, at its own cost and expense, maintain the insurance coverage described below.
- (a) Comprehensive General Commercial Liability insurance covering claims for bodily injury, death, or property damage (including loss of use) occurring, arising out of, or resulting from the use or occupancy or other performance by the Grantee in connection with this Agreement, including coverage for facility operation, products/completed operations and contractual liability coverage. The limits of insurance coverage shall be in the amount of \$2,000,000 per occurrence.
 - (b) Workers' Compensation insurance with statutory limits as required for operation and performance under this Agreement, and providing coverage for any employee entering any facility or premises in connection with this Agreement, even if not required by statute.
 - (c) Comprehensive Automobile Liability insurance covering all owned, non-owned and hired motor vehicle, trailers or semi-trailers, designed for travel on public roads used in connection with this Agreement, with limits of \$2,000,000 per occurrence for bodily injury and property damage.
- 10.2 Certificates of Insurance and upon request, copies of all policies evidencing that the insurance required by this Article 10, shall be provided to the Grantor upon execution and for the duration of this Agreement. Certificates of Insurance shall provide that (a) the Grantor be named as additional insured (except for Workers' Compensation); (b) all insurance shall include waivers of subrogation in favor of Grantor, and (c) thirty (30) days prior written notice of cancellation and ten (10) days prior written notice of non-payment of premiums.
- 10.3 To the extent allowed by law, at its option, Grantee may self-insure all or part of the Workers' Compensation insurance required in this Article 10; provided that all other provisions of this Article shall remain enforceable. Grantee's election to self-insure shall not in any manner result in a

reduction of rights and/or benefits otherwise available to the Grantor through formal insurance policies and endorsements as specified in this Article. Grantee shall be responsible for its amounts of self-insurance retentions and/or deductibles.

ARTICLE 11
TAXES, FEES AND OTHER GOVERNMENTAL IMPOSITIONS

- 11.1 Exempt Status. As a Governmental entity, Grantee claims it is exempt from all taxes, fees and other Governmental impositions which may otherwise be imposed on the City as a result of this Agreement or the IRU granted in Grantee fibers. In the event a Party hereto claims exemption from one or more Impositions, said exemption claiming Party shall provide appropriate certification, citation, or documentation in evidence of such status to the other Party. Grantor does not assume any liability for any taxes or impositions on the Grantee fibers.

ARTICLE 12
NOTICES

- 12.1 Notices. Except as otherwise expressly provided herein, any notice, order, instruction, request or other communication required or permitted to be given under this Agreement shall be in writing and deemed to have been effectively given when (i) delivered in person, (ii) sent by facsimile and confirmation of error-free receipt is received and followed up by telephone call between sender and recipient, (iii) upon request of notice sent by certified or registered United States mail, postage prepaid, return receipt requested, addressed to the Party at the address and to the individual Person(s) set forth next to such Party's name below, or (iv) upon receipt signed by the recipient when sent by nationally recognized overnight courier. Any Party may change its designated recipient person(s) and address for notices in the manner set forth above.

All notices and other communications shall be given to ACT at:

Advanced Communications Technology Inc.
290 North Brooks Street
Sheridan, WY 82801
Attn: General Manager
Tel: 307-673-0910

With a copy to:

Range Telephone Cooperative
PO Box 127
Forsyth, MT 59327
Attn: Chief Executive Officer
Tel: 406-347-2226
Fax: 406-347-2401

All invoices delivered by ACT to City of Gillette hereunder shall be sent to the following address:

City of Gillette
City Clerk
Karlene Abelseth
201 East 5th Street
Gillette, WY 82716

and

City of Gillette
City Attorney
201 East 5th Street
Gillette, WY 82716

Any such notice or other communications shall be deemed to be effective when actually received or refused. Either Party may, by similar notice given, change the address to which future notices or other communications shall be sent.

ARTICLE 13

CONFIDENTIALITY; PUBLICITY; USE OF NAME AND MARKS

- 13.1 In the performance of this Agreement, the Parties may exchange written, verbal, visual, and observed information, including, but not limited to, information in electronic or other tangible form, such as documents, plans, drawings, photographs, images, maps, diagrams, visitation to physical facilities, products, lists, and directions. The Parties agree that if either Party (the “Discloser” including its Representative(s)) provides confidential or proprietary information to the other Party (the “Recipient” including its Representative(s)) in the performance of this Agreement, said information must be clearly marked in a conspicuous place as “confidential” or “proprietary”, and verbal, visual or observed information must be indicated as confidential or proprietary when disclosed or provided, or promptly confirmed as such within ten (10) business days thereafter (said information so disclosed, marked, indicated or confirmed shall be deemed “Confidential Information”).
- 13.2 The obligations of confidentiality and use herein shall not apply to such information, which are excluded from being or will cease to be Confidential Information, to the extent such information: (a) is on the Effective Date hereof, or hereafter becomes, publicly available other than through unauthorized disclosure by Recipient; or (b) at the time of its receipt from Discloser, was rightfully already known by Recipient as demonstrated by tangible evidence; or (c) rightfully comes into Recipient’s possession from a third Person having the right to disclose to Recipient; or (d) has been or becomes disclosed by Discloser to a third Person on a non-confidential basis; or (e) is independently developed or discovered by, or on behalf of, Recipient, without use of Discloser’s Confidential Information; or (f) is disclosed by Recipient with Discloser’s prior written approval. In the event Recipient is required to disclose Confidential Information by Regulation, Recipient shall promptly notify Discloser of such and use Commercially Reasonable Efforts, at the expense of Discloser, or allow Discloser reasonable time to prevent, obtain relief from or obtain protective orders with respect

to such disclosure requirement so as to afford Discloser adequate opportunity to do likewise, and if disclosing in compliance therewith, to do so only to the extent required by such Regulation.

- 13.3 Recipient shall hold Confidential Information of Discloser in strict confidence, and shall not disclose, copy, reproduce, distribute, or use the Confidential Information, except for the purposes related to the approval, administration, performance or enforcement of this Agreement or as otherwise permitted in writing by Discloser (the “Authorized Purpose”), affording the same care and protection as generally applied to its own confidential and proprietary information of like nature, but in any case not less than reasonable care, to prevent its disclosure and unauthorized use. Recipient shall legibly maintain or provide confidential or proprietary markings on Confidential Information received. Recipient may disclose Confidential Information only to those Representatives with a need-to-know for the Authorized Purpose, who have been informed of and who are bound by written confidentiality terms, policies, or procedures no less restrictive than those contained herein. Recipient shall be responsible and liable for the acts and omissions of its Representative(s) in the performance of confidentiality and use obligations hereunder. The confidentiality and restricted use obligations hereunder shall commence on the Effective Date, and shall survive expiration or termination, of this Agreement until such time that, by effect of any exclusion provided in Article 14.2 above, said information is excluded or ceases to be Confidential Information (the “Survival Period”), and are in addition to, and not in limitation of, any other applicable legal restriction upon the use and disclosure of the Confidential Information. All information exchanges pursuant to this Agreement shall at all times be subject to export control and other applicable Regulations. Recipient shall not trans-ship, re-export, divert, or otherwise dispose of information exchanged pursuant to this Agreement, except as said Regulations may expressly permit. All Confidential Information, including all copies thereof, shall be promptly returned to Discloser, or destroyed and certified to be destroyed by Recipient, upon Discloser’s request, or after Recipient’s need for said Confidential Information has ceased to exist, as directed by Discloser, except as necessary for backup or archival purposes.
- 13.4 THERE SHALL BE NO EXPRESS OR IMPLIED WARRANTIES AS TO THE CORRECTNESS, COMPLETENESS, OR OTHERWISE WITH RESPECT TO INFORMATION DISCLOSED BY, OR THROUGH, ANY PARTY, AND SUCH INFORMATION IS DISCLOSED “AS IS”. Information is subject to change at any time without notice, and Discloser shall not have any liability to Recipient as a result of any change in, or Recipient’s reliance on, any information disclosed.
- 13.5 Confidential Information is and shall remain the property of Discloser along with all associated intellectual property rights thereto. Neither the disclosure of Confidential Information of a Party, nor any other use rights granted herein are intended nor shall be construed as directly or indirectly granting, transferring, assigning, or conferring any intellectual, tangible, or intangible property of any Party providing Confidential Information. Recipient shall not reverse engineer, disassemble or decompile any prototypes, software or other tangible objects which constitute or embody another Party’s Confidential Information.
- 13.6 The Parties expressly acknowledge and agree that due to the unique nature of Confidential Information, monetary damages would be inadequate to compensate a Party providing Confidential Information for any breach of the confidentiality provisions of this Agreement by a Recipient. Accordingly, the Parties further acknowledge and agree that any such breach or threatened breach may cause immediate, substantial, and irreparable injury to the party providing Confidential Information hereunder, and that, in addition to and not to the exclusion of any other rights and remedies that may be available at law, in equity, or otherwise under this Agreement, Discloser

hereunder, itself or on behalf of others who have provided Confidential Information relating to this Agreement, which disclosure is not required by Regulation(s), shall be entitled to obtain injunctive relief against threatened or continuing breach of this Agreement, and enforce Recipient's obligations under this Agreement without the necessity of proving actual damages and without the requirement of a bond.

- 13.7 No Party shall make any public statements or announcements, press releases, white papers, trade show or technical conference presentations, or otherwise engage in any publicity concerning the use of capacity by another Party or this Agreement, or use or display the names, slogans, logos, emblems, or other marks of any other Party hereto without the prior written consent of said affected other Party. If such consent is given, the Parties will work together to prepare and issue mutually acceptable publicity. Statements, announcements, press releases or other publicity compelled by Regulation(s) shall be treated pursuant to the above requirements of this Article 13.

ARTICLE 14 DEFAULT

- 14.1 A default shall be deemed to have occurred under this Agreement if:

- (d) in the case of a failure to pay any amount not subject to a Good Faith Billing Dispute when due under this Agreement, a Party fails to pay such amount within ten (10) calendar days after written notice specifying such breach, or
- (e) in the case of any other breach of this Agreement, a Party fails to cure such breach within thirty (30) calendar days after notice specifying such breach, provided that if the breach is of a nature that cannot be cured within such thirty (30) days, a default shall not have occurred so long as the breaching Party has commenced to cure within said time period and thereafter diligently pursues such cure to completion using Commercially Reasonable Efforts.

- 14.2 Upon a default by Grantee, Grantor may do any one or more, or all of the following: (i) take such action as it determines, in its sole discretion, to be necessary to correct or cure the default and recover from Grantee reasonable Costs Grantor incurs in correcting or curing such default; (ii) terminate any and all of its obligations hereunder (including this Agreement), and apply any and all amounts previously paid by Grantee hereunder toward the payment of any other amounts then or thereafter payable by Grantee hereunder; (iii) immediately suspend Grantee's access to and right to use Grantee Fibers, the Licensed Premises, Connection Point(s) or other facilities until such time as all amounts then due and owing have been paid; (iv) terminate the IRUs in default following ninety (90) days written notice from Grantor to Grantee, re-possess the fibers then designated as the Grantee Fibers and dispose of them at Grantor's sole discretion; (v) terminate the use of the Licensed Premises in default following ninety (90) days written notice from Grantor to Grantee, take possession of the Licensed Premises and dispose of Grantee Equipment as set forth in Article 15 below; (vi) accelerate the Space Use Fee due under this Agreement to recover from Grantee in one lump sum, all outstanding sums Grantee owes Grantor, including all fees, costs, and security deposit obligations for the remaining portion of the applicable Collocation Term, as liquidated damages and not a penalty; and/or (vii) pursue any and all other remedies it may have at law, in equity and under this Agreement, including specific performance, except to the extent otherwise set forth herein.

- 14.3 Upon a default by Grantor, Grantee may pursue any and all remedies it may have at law, in equity

and under this Agreement, including specific performance, except to the extent otherwise set forth herein.

ARTICLE 15 TERMINATION

- 15.1 After payment of the IRU fee, this Agreement may be terminated, without cause, by the Grantee upon thirty (30) days written notice. If Grantee terminates without cause, Grantor will be under no obligation to repay any of the compensation paid by Grantee pursuant to this Agreement. This Agreement shall terminate with respect to a particular route segment on the expiration of the applicable IRU Term therefor or earlier as provided in this Agreement, or upon termination as specified in Article 14. Upon expiration of the IRU Term or termination of this Agreement, the IRU shall immediately terminate and all rights of Grantee to use the affected Grantee Fibers on the particular route segment of the Grantor's Fiber Cable System shall cease, all rights to use the affected particular route segment of the Grantor's Fiber Cable System or facilities shall revert to Grantor, and Grantor shall owe Grantee no further duties, obligation, liability, or consideration therefor. Grantee shall promptly remove all of its Grantee Equipment and other Grantee owned or controlled property from the affected particular route segment of the Grantor's Fiber Cable System and at any Grantor's Facilities at Grantee's sole cost and under the supervision of Grantor. Termination of this Agreement shall not affect the rights or obligations of either Party that have arisen before the date of termination or expiration or the provisions of this Agreement which survive pursuant to Article 20.11 below.
- 15.2 At the expiration or earlier termination of this Agreement, or the expiration or earlier termination of the Collocation Term for any Licensed Premises, all rights of Grantee to use the Licensed Premises or the Grantor's Facilities containing said Licensed Premises is located, or any part thereof, shall terminate. The respective rights, duties and obligations of the Parties shall cease, except to the extent same are otherwise implicitly or expressly required to survive expiration or termination. Prior to the expiration or termination date, Grantee shall cease using the Licensed Premises, and at Grantee's sole cost and expense, remove all Grantee Equipment and other Grantee facilities, connections, and property from the Licensed Premises. Grantee will accomplish such removal under the Grantor's supervision and in a manner that does not damage the Grantor's Fiber Cable System, and if Grantee causes damage to Grantor's Fiber Cable system, Grantee shall reimburse Grantor for the repair costs. If a Grantee fails to remove the Grantee Equipment within thirty (30) days after the termination of this Agreement or a Collocation Term, and such failure is not due in whole or in part to Grantor's failure to (i) grant reasonable access to Grantee to remove its Grantee Equipment, or (ii) provide personnel in a timely manner to supervise the removal of the Grantee Equipment, then the Grantee Equipment will be deemed abandoned and Grantor may either (i) remove the abandoned Grantee Equipment and issue an invoice to Grantee for the Cost of removal and storage; and/or (ii) notify Grantee that Grantor elects to take ownership of such abandoned Grantee Equipment, in which case Grantee will execute a bill of sale or other document evidencing Grantor's title to such Grantee Equipment.

ARTICLE 16 FORCE MAJEURE

- 16.1 A Party shall not be in default or liable to another Party, and each Party's performance under this Agreement shall be excused, if and to the extent that any failure or delay in such Party's performance of one or more of its obligations (other than the payment of money) hereunder is caused by any

condition, circumstance or event beyond the reasonable control of the affected Party, including the following, whereby such Party's performance of such obligations (except for the payment of money owing, due, and payable) shall be excused and extended for and during the period of any such delay: (a) act of God; (b) fire; (c) flood; (d) natural disasters; (e) earthquake; (f) lightning; (g) tornado; (h) severe weather; (i) epidemic or pandemic; (j) acts of vandalism or terrorism; (k) fiber, cable, conduit, or other material or facilities failures, shortages or unavailability or other delay in delivery not resulting from the responsible Party's failure to timely place orders therefor (excluding cuts or materials or facilities failures caused by the negligence of the Party seeking to be excused from performance); (l) lack of or delay in transportation; (m) inaction or action by a Governmental Authority or other third party Person; (n) delays resulting from Regulations; (o) war or civil disorder; (p) strikes or other labor disputes; (q) inability of Grantor to obtain access to the Grantor's Fiber Cable System or the Grantor Facilities; (r) inability, using Commercially Reasonable Efforts, to de-energize or otherwise take any electric utility operations out of service; or (s) failure of a third party Person to obtain an Underlying Right or comply with an Underlying Right Requirement; (each a "Force Majeure Event"). The Party claiming relief under this Article shall notify the other Party(ies) in writing of the existence, duration, and cessation of the Force Majeure Event, and shall exercise Commercially Reasonable Efforts to minimize the time and effect of any such event. Nothing contained in this Article 16 shall be construed to require a Party to settle any labor strike or dispute in which it may be involved, or to require its personnel to work under unsafe conditions.

ARTICLE 17 NOTICE OF DISPUTE INFORMAL RESOLUTION

- 17.1 Should any claim, controversy or dispute arise between the Parties, related directly or indirectly to this Agreement, the Party asserting the claim controversy or dispute shall notify the other Party in writing of the claim, controversy or dispute, and the Parties shall confer and attempt to resolve the dispute informally. In the event, the matter has not been resolved to the satisfaction of the parties, through informal discussions either Party may initiate a legal action to obtain such relief as the Party may be entitled to in law or equity. Nothing in this Agreement shall be construed as prohibiting the Parties from agreeing in writing to an alternative form of dispute resolution.

ARTICLE 18 ASSIGNMENT AND TRANSFERS

- 18.1 Assignment. Except for Grantor's right to subcontract maintenance service as provided hereunder, neither Party shall transfer or assign all or any part of its interest in this Agreement, or delegate any duties, burdens, or obligations arising hereunder, without the prior written consent of the other Party, not to be unreasonably withheld.
- (a) A transfer or assignment in violation of this Article shall constitute a material breach of this Agreement.
 - (b) If any such consent is given, unless otherwise mutually agreed and provided in an assigning document, the assigning Party nevertheless shall remain fully and primarily liable for all obligations under this Agreement.

- 18.2 Exceptions. The foregoing notwithstanding, Grantee may, without prior consent of, but on notice to Grantor, assign this Agreement, or assign or lease all or part of the Grantee Fibers for the Permitted Use, to an Affiliate of Grantee or to any company into which Grantee may be merged or consolidated, or that acquires substantially all of the assets of Grantee. Grantor may encumber this Agreement or its rights hereunder, the Underlying Rights, the Grantor's Fiber Cable System, or the Licensed Premises, or use the Agreement as collateral without approval of or notice to Grantee. Each Party shall have the right at any time to mortgage, create or provide for a security interest in, or convey in trust all or part of its interest in this Agreement, under deeds of trust, mortgages, indentures or security agreements, as security for its present or future bonds or other obligations or securities, without the need for consent of or notice to the other Party, provided however, the assigning Party shall remain liable for all of its obligations hereunder.

ARTICLE 19

REPRESENTATIONS, WARRANTIES AND ACKNOWLEDGEMENTS

- 19.1 Each Party represents and warrants that, during the Term of this Agreement, and as required to survive the Term of this Agreement:
- (a) it has the full right and authority, and all corporate actions necessary have been taken, to enter into, execute, exercise, deliver and perform its obligations under this Agreement, and this Agreement does not violate, conflict with, or otherwise constitute a breach of any agreement or arrangement to which it is a party or by which it is bound;
 - (b) it has taken all requisite corporate or governmental action to approve the execution, delivery and performance of this Agreement and has duly authorized the signatories hereof to execute and deliver this Agreement with binding effect;
 - (c) this Agreement constitutes a legal, valid, and binding obligation enforceable against such Party in accordance with its terms, subject to bankruptcy, insolvency, creditor's rights and general equitable principles;
 - (d) its execution of and performance under this Agreement does not violate any applicable Regulation(s);
 - (e) there is no pending actual or threatened litigation, proceedings, or administrative action that would materially interfere with its performance under this Agreement;
 - (f) it will perform its respective obligations in good faith in a reasonable and timely manner and using Commercially Reasonable Efforts that will achieve the purposes and intent of this Agreement;
 - (g) it will perform its respective obligations prudently and consistent with applicable industry standards and practices including telecommunications in and around high voltage electric utility operations, as applicable;
 - (h) it has obtained or will obtain and maintain all material permits and other Governmental Authority and third-party Person approvals required for the installation, operation, and maintenance of the

Grantor's Fiber Cable System and the Licensed Premises, and the performance of its obligations under this Agreement; and

- (i) it has obtained or will obtain and maintains all material Underlying Rights necessary for Grantee's use of the Grantee Fibers and the Licensed Premises during the applicable Term, subject to the provisions of Article 7 to this Agreement.

19.2 **DISCLAIMER OF WARRANTIES.** GRANTEE ACKNOWLEDGES THAT, EXCEPT TO THE EXTENT OTHERWISE SPECIFICALLY SET FORTH IN THIS AGREEMENT, GRANTOR MAKES NO WARRANTY, REPRESENTATION OR INDEMNITY, EXPRESS OR IMPLIED WHATSOEVER, WITH RESPECT TO THE GRANTEE FIBERS, THE GRANTOR'S FIBER CABLE SYSTEM, THE LICENSED PREMISES, GRANTOR'S FACILITIES, AND ASSOCIATED PROPERTY, FACILITIES OR SERVICES, OR ANY WORK PERFORMED UNDER THIS AGREEMENT, INCLUDING WARRANTIES OF TITLE, DESIGN, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, CORRECTNESS, COMPLETENESS, OR ACCURACY, OR ARISING FROM A COURSE OF DEALING, USAGE OR TRADE, AND GRANTEE HEREBY EXPRESSLY WAIVES AND GRANTOR DISCLAIMS ALL SUCH WARRANTIES, REPRESENTATIONS AND INDEMNITIES. IN ADDITION, GRANTOR MAKES NO WARRANTIES OR REPRESENTATIONS OF ANY TYPE CONCERNING THE INTEGRITY OR PERFORMANCE OF THE MATERIALS FURNISHED OR DESIGNATED BY GRANTEE. THE WARRANTIES SET FORTH IN THIS AGREEMENT, IF ANY, CONSTITUTE THE ONLY WARRANTIES MADE BY GRANTOR TO GRANTEE WITH RESPECT TO THE SUBJECT MATTER, TERMS AND CONDITIONS OF THIS AGREEMENT AND ARE MADE IN LIEU OF ALL OTHER WARRANTIES, WRITTEN, ORAL, STATUTORY, EXPRESS, OR IMPLIED.

ARTICLE 20 GENERAL

- 20.1 **Binding Effect.** This Agreement, and each of the Parties' respective rights and obligations under this Agreement, shall be binding on and shall inure to the benefit of the Parties hereto and each of their respective permitted successors and assigns.
- 20.2 **Waiver.** A provision or right under this Agreement may only be waived, modified, amended, discharged, or terminated by written instrument signed by the Party against which the enforcement of such waiver, modification, amendment, discharge, or termination is sought and then only to the extent specifically, expressly and unequivocally set forth in such instrument. The failure or delay of any Party hereto to enforce any provisions of or exercise an right under this Agreement, or a course of conduct between the Parties with respect to said provision or right, or the waiver thereof in any instance, shall not be construed or operate as a general or specific waiver or relinquishment by such Party of any such provision or right, or any other provisions or rights, but the same shall nevertheless be and remain in full force and effect, unless waived by express written waiver as provided above.
- 20.3 **Governing Law.** The construction, interpretation, and enforcement of this Agreement shall be governed by the laws of the State of Wyoming. The Courts of the State of Wyoming shall have jurisdiction over this Agreement and the parties, and the venue shall be the Sixth Judicial District, Campbell County, Wyoming. The parties intend and agree that the Grantee does not waive governmental immunity by entering into this Agreement and specifically retains

immunity and all defenses available to it pursuant to WYO. STAT. § 1-39-101 *et. seq.* and all other applicable law.

20.4 Rules of Construction.

- (a) The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement or as amplifying or limiting any of its content. Words in this Agreement which import the singular connotation shall be interpreted as plural, and words which import the plural connotation shall be interpreted as singular, as the identity of the Parties or objects referred to may require.
- (b) Unless expressly defined herein, words having well known technical or trade meanings shall so be construed. All listing of items shall not be taken to be exclusive, but shall include other items, whether similar or dissimilar to those listed, as the context reasonably requires.
- (c) This Agreement has been fully negotiated between the Parties, each represented by and having the opportunity to review with legal counsel, and each Party has the requisite experience and sophistication to understand, interpret, and agree to the particular language of the provisions hereof. A provision of this Agreement shall not be interpreted or construed either for or against the Party drafting it.
- (d) All actions, activities, consents, approvals and other undertakings of the Parties in this Agreement shall be performed in a reasonable and timely manner, using Commercially Reasonable Efforts, it being expressly acknowledged and understood that time is of the essence in the performance of obligations required to be performed by a date expressly specified herein. Except as specifically set forth herein, for the purpose of this Agreement the standards and practices of performance within the most stringent of the commercial and utility telecommunications industry sector in the relevant market area shall be the measure of a Party's performance in determining commercial reasonableness.

20.5 Entire Agreement; Amendment. This Agreement, including its integrated exhibits, schedules and attachments, constitutes the entire and final agreement and understanding between the Parties with respect to the subject matter set forth herein, and supersedes, integrates, and replaces all prior agreements and understandings with respect to the subject matter hereof. The exhibits, attachments, schedules and appendices (collectively "integrated attachments") referred to herein are integral parts hereof and are hereby made a part of this Agreement. This Agreement may only be modified, amended or supplemented by an instrument in writing executed by each Party.

20.6 No Personal Liability. Each action or claim against any Party arising under or relating to this Agreement shall be enforceable only against such Party and any liability relating thereto shall be enforceable only against the assets of such Party.

20.7 No Third-Party Beneficiary. The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Agreement shall not be construed so as to create such status. The rights, duties, and obligations contained in this Agreement shall operate only between the parties to this Agreement and shall inure solely to the benefit of the parties to this Agreement. The provisions of this Contract are intended only to assist the parties in determining and performing their obligations under this Agreement.

- 20.8 Relationship of the Parties. Grantee and Grantor are independent contractors, and are not intended or construed to be partners, agents, or joint venturers for one another, and nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between them for any purpose. Grantee and Grantor, in performing any of their respective obligations hereunder, shall be independent contractors or independent parties and shall discharge their contractual obligations respectively each at their own risk.
- 20.9 Severability. Should any portion of this Agreement be judicially determined to be illegal or unenforceable, the remainder of the Agreement shall continue in full force and effect, and both parties may agree to renegotiate the terms affected by the severance.
- 20.10 Counterparts. This Agreement, including its integrated exhibits, schedules and attachments, may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.
- 20.11 Survival. Any provision of this Agreement which is expressly stated, or by its nature, extends beyond the Term of this Agreement or which is required to ensure that the Parties to fully exercise their rights and perform their obligations hereunder shall survive the expiration or termination of the Term of this Agreement for any cause whatsoever.
- 20.12 List of Integrated Exhibits. The Grantee Fibers and Licensed Premises are further described in exhibits to this Agreement. Inasmuch as a Party's needs for Dark Fibers and collocation space may change over time, future instances of IRU grants shall be described in additional or amended exhibits to this Agreement. Any such additional or amended exhibits shall be in writing and executed by the Parties. If there is a conflict between the provisions of this Agreement and those of any exhibit, the provisions of the exhibit prevail with respect to the conflicting exhibit only. The exhibits, attachments, schedules, and appendices referred to and incorporated herein are integral parts of this Agreement and are summarized as follows:
- (a) Exhibit A1 – Description of Fiber Cable System, Grantee Fibers, additional terms and Fees
 - (b) Exhibit A-2- Map
 - (c) Exhibit B – Technical Specifications
 - (d) Exhibit C – Maintenance and Repair Specifications
 - (e) Exhibit D – Grant of IRU
- 20.13 Governmental Immunity. The Grantee does not waive governmental immunity by entering into this agreement and specifically retains all immunities and defenses available to it pursuant to WYO. STAT. § 1-39-101 *et. seq.* and all other applicable law. Designations of venue, choice of law, enforcement actions, and similar provisions should not be construed as a waiver of governmental immunity. The parties agree that any ambiguity in this Agreement shall not be strictly construed, either against or for either party, except that any ambiguity as to governmental immunity shall be construed in favor of governmental immunity.
- 20.14 Titles Not Controlling. Titles of paragraphs are for reference only and shall not be used to construe the language in this Agreement.

IN WITNESS WHEREOF, in confirmation of their consent and agreement to the terms and conditions contained herein, the Parties, through their duly authorized representative signatories below, have executed this Dark Fiber IRU and Collocation Agreement, effective as of the Effective Date first written above, although actually signed on the dates set forth by their respective signatures below.

The parties to this Agreement, either personally or through their duly authorized representatives, have executed this Agreement on the dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Agreement.

The effective date of this Agreement is the date of the signature last affixed to this page.

CITY OF GILLETTE

Louise Carter-King, Mayor

Date

ADVANCED COMMUNICATIONS TECHNOLOGY, INC.

Aaron Sopko, General Manager

Date

GILLETTE CITY ATTORNEY APPROVAL AS TO FORM

Patrick Davidson

Date

GILLETTE CITY CLERK ATTEST:

Karlene Abelseth

Date

EXHIBIT A-1 to Dark Fiber IRU
By and Between
Advanced Communication Technology, Inc. (as “Grantor”)
and The City of Gillette (as “Grantee”)

_____, 2017

1.0 Description of the Fiber Cable System

1.1 The portion of Grantor’s Fiber Cable System containing the Grantee Fibers comprises the following route segments:

- (a) ACT Wyodak Segment: Beginning at Grantor’s HH 12846 Gillette, then running east to HH 13215 Wyodak. The total route miles for the ACT Wyodak Segment is 3.84 miles.
- (b) ACT Gillette to HH 50.59 Segment: Beginning at Grantor’s HH 12846 Gillette, then running east to HH 50.59. The total route miles for the ACT Gillette to HH 50.59 Segment is 16.82 miles.

2.0 Description of the Grantee Fibers

2.1 The Dark Fibers for which IRUs as the “Grantee Fibers” are granted are described below. The total route miles traversed by the Grantee Fibers, for assessment of the annual Scheduled Maintenance Fee or other purposes, is 16.82 miles.

2.2 The Grantee Fibers are described as follows:

Two (2) Grantee Fibers along the ACT Wyodak segment and two (2) Grantee Fibers along the ACT Gillette to HH 50.59 segment described in Section 1.1 above, and summarized in the table below, being two (2) fibers x 3.84 route miles + two (2) fibers x 16.82 miles = 41.32 fiber miles, for the IRU Term for these fibers.

Description of Grantee Fibers				
# of fibers	Location A	Location B	Route Distance	Fiber Miles
2	HH 12846 Gillette	HH 13215 Wyodak	3.84	7.68
2	HH 12846 Gillette	HH 50.59	16.82	33.64
Totals			20.66	41.32

- 2.3 Connection Points: The following is a list of the approved Connection Points for the Grantee Fibers:
- Grantor’s handhole at the west endpoint of the ACT Wyodak Segment defined as HH 12846, which is interconnect point for the City of Gillette fibers
 - Grantor’s handhole on the east side of American Road at Hwy 51, defined as HH 13215
 - Grantor’s handhole on the east side of Avalina Road at Hwy 51, defined as HH 13899

Grantee will be responsible for the Costs of constructing any Interconnection Facilities from the public right-of-way or public space to the Grantor’s FTP in order to interconnect to the Grantee

Fibers. Grantee will submit engineering diagrams for each Interconnection Facility to Grantor for approval prior to completing the interconnection work.

- 2.4 In addition to the Connection Points listed above, Grantee will be allowed to interconnect to the Grantee Fibers at Grantor's splice points, and any other technically feasible location, as set forth in a future revision to this Exhibit A-1, provided that any such interconnection does not have an adverse impact on Grantor's Fiber Cable System.

3.0 Payment Terms

- 3.1 In consideration of the grant of an IRU hereunder by Grantor to Grantee, Grantee agrees to pay to Grantor an IRU Fee in the amount of One Hundred Twenty Three Thousand Nine Hundred Sixty and 00/100 U.S. dollars (\$123,960.00) in accordance with Article 3 to this Agreement, to be invoiced on the Fiber Acceptance Date. Grantee also agrees to pay to Grantor an annual Scheduled Maintenance Fee in the amount of Four Thousand One Hundred Thirty Two U.S. dollars (\$4,132.00) per year for the IRU Term in accordance with Article 3 to this Agreement, and subject to any annual increases in accordance with Exhibit C to this Agreement. See chart below for additional detail. Grantee further agrees to pay all other fees and usage charges set forth in Article 3 to this Agreement as they become due.

# of fibers	Segment	Route Distance	Scheduled Maintenance Fee
4	ACT Wyodak Segment	3.84	\$768.00
2	Wyodak to HH 50.59 Segment	16.82	\$3,364.00

\$4,132.00

- 3.2 Concurrent with execution of this Agreement, Grantor will invoice Grantee for an initial ten percent (10%) of the IRU Fee in the amount of \$12,396.00 plus a nonrecurring installation charge of \$7,500.00 for a total initial amount of \$19,896.00. Grantee will pay Grantor the initial deposit amount of the IRU Fee and installation charge via wire transfer or check within thirty (30) days of receipt of an invoice from Grantor. Issuance of an invoice will not be considered a Fiber Delivery Notice nor will payment of the invoice be considered acceptance of the Grantee fibers by Grantor. Within thirty (30) days after the Fiber Acceptance Date for all of the Grantee Fibers, Grantor will invoice Grantee for the remaining ninety percent (90%) balance due of the IRU Fee in the amount of \$111,564.00. Grantee will pay the final balance of the IRU Fee via wire transfer or check within thirty (30) days of receipt of an invoice from Grantor.

4.0 Description of IRU Term

- 4.1 The IRU Term for the Grantee Fibers described in this Exhibit A-1 shall expire on _____, 2037.

5.0 Acceptance Date for the Grantee Fibers

- 5.1 The Fiber Acceptance Date shall be determined pursuant to Article 4 of this Agreement.

6.0 Map(s) of the Grantee Fibers

6.1 Maps of the Grantee Fibers are attached hereto as Schedule A-2.

Schedule A-2 – HH 12846 to HH 50.59

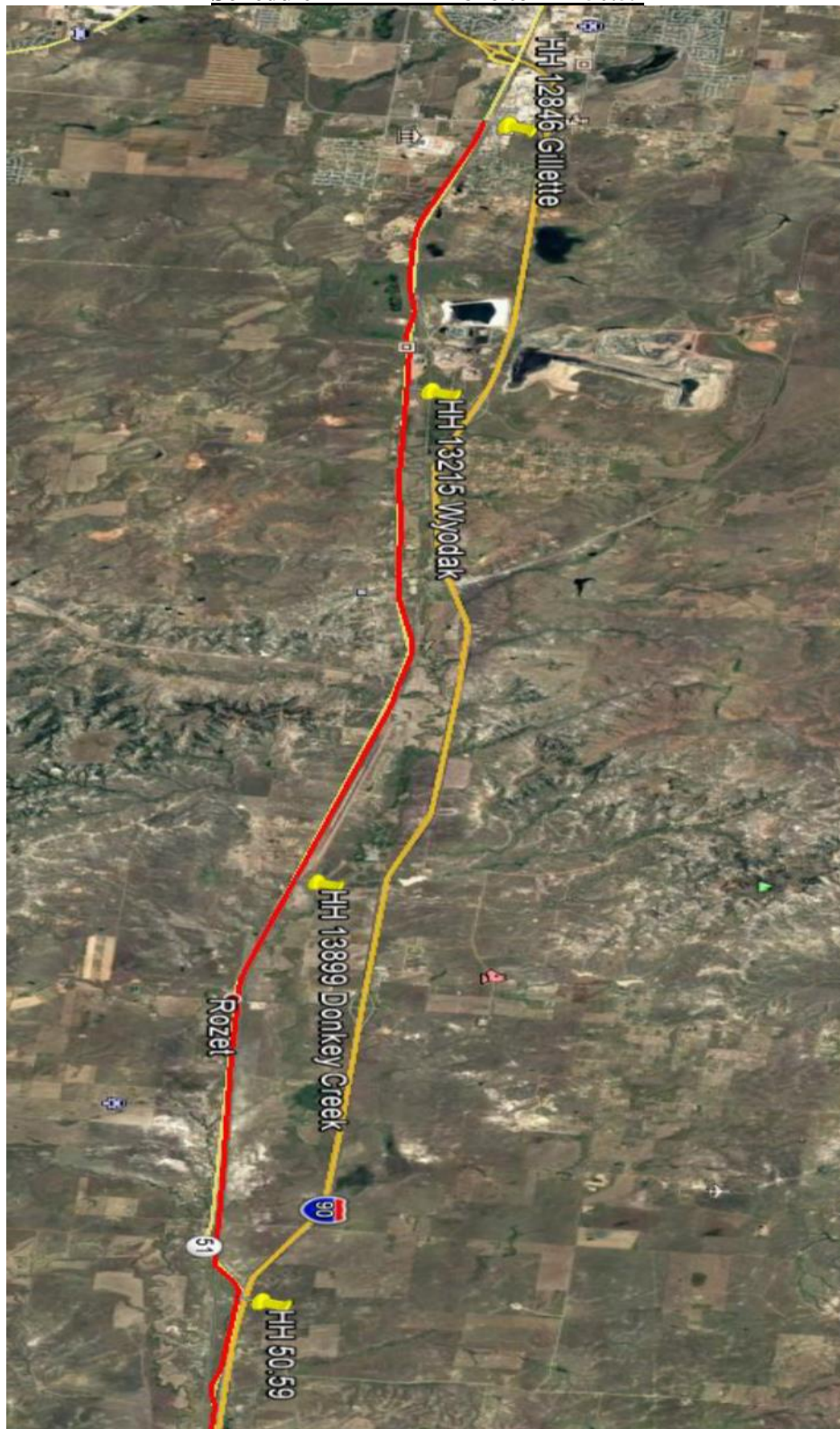


EXHIBIT B To Dark Fiber IRU
By and Between Advanced Communications Technology, Inc and
The City of Gillette

Technical Specifications

- 1.0 General:** This Exhibit B sets forth the technical specifications and performance requirements pertaining to the Grantee Fibers.
- 2.0 Definitions:** All other terms not otherwise defined herein shall have their respective meanings as set forth in the Agreement:
- 2.1 “ORL” means “optical return loss”, the amount of optical power loss in dB that a reflected light pulse incurs relative to its associated incident pulse.
- 3.0 Dark Fiber Optical Transmission Specifications and Optical Link Budget Design Requirements:**
- 3.1 The Grantee Fibers comprise Lucent TrueWave fibers for the aerial OPGW, with the following published specs:
- (a) Cladding Diameter 125 +/-1.0 um
 - (b) Buffer Coating Diameter 245 +/-10 um
 - (c) Core-Clad Concentricity <0.8 um
 - (d) Mode Field diameter 8.4 +/- 0.50 um (at 1550 nm wavelength) Cutoff Wavelength <1260 nm Refractive Index Profile Segmented Total dispersion 0.8 - 4.6 ps/(nm-km) 1540 to 1560 nm
 - (e) Attenuation: 0.25 dB/km at 1550 nm wavelength
- 3.2 The Grantee Fibers comprise single-mode duct cable for the underground segment, specs, other than below, are not available.
- (a) Attenuation: 0.25 dB/km at 1550 nm wavelength.
- 3.3 In selecting optical transmission equipment and designing a system, Grantee’s optical loss budget design for each optical span shall provide for up to a 3.0 dB future increase in the end-to-end Dark Fiber loss per optical span.
- 4.0 Fiber Splicing, Testing and Acceptance Procedures:**
- 4.1 All splices will be performed with an industry standard fusion-splicer and industry-accepted splicing techniques and practices, except during Emergency Unscheduled Maintenance situations requiring restoration of the Dark Fiber signal continuity as soon as possible.

4.2 Splice loss testing shall be performed only at 1550 nm wavelength as follows:

- (a) A bi-directional splice loss test for each individual splice in a span of Dark Fiber(s) between Connection Points or from Connection Point to bare fiber end, whichever applies, will be performed. A splice loss test report will provide the actual splice loss (calculated by averaging the uni-directional readings from each direction) for each individual splice, on each individual Dark Fiber, in the given fiber optic cable span. There is no maximum attenuation specified for an individual splice; provided, however, that the bi-directional splice loss span average for all splices in each individual Dark Fiber within a fiber optic cable span, as specified in paragraph (b) below shall not be exceeded.
- (b) A fiber acceptance report, containing the bi-directional splice loss span average for all splices in each individual Dark Fiber, in a given fiber optic cable span, will be prepared. The actual splice loss span average for each Dark Fiber in the span shall not exceed 0.15 dB.

4.3 Power Loss Span Testing will be performed only at 1550 nm wavelength as follows:

- (a) All power loss readings will be bi-directional and measured in dB.
- (b) End-to-end power loss test readings for each Dark Fiber, in a given fiber optic cable span, between Connection Points or from Connection Point to bare fiber end, whichever applies, will be performed.
- (c) Actual power loss readings will be compared to the calculated, maximum expected loss, in dB, of the fiber optic cable span. The power loss test readings shall not exceed the calculated maximum expected loss of the fiber optic cable span under test. The maximum expected loss will be calculated by the following formula:

$$(\text{span length in kilometers} \times 0.25 \text{ dB/km}) + (\text{number of splices} \times 0.15 \text{ dB per splice}) + (0.50 \text{ dB} \times \text{number of mated pair of connectors}) = \text{maximum expected span loss in dB.}$$

4.4 ORL, as calculated by an OTDR, will be provided.

4.5 The fiber optic cable containing the Grantee Fibers shall be properly protected from foreign voltage and grounded using industry-accepted practices.

4.6 Type SC connectors will be used on Grantee Fibers terminated on a fiber distribution or termination panel as a Connection Point, unless another type of connector is specified by Grantor.

**Exhibit C To Dark Fiber IRU
By and Between Advanced Communications Technology, Inc.
and The City of Gillette**

MAINTENANCE AND REPAIR OF THE GRANTOR'S FIBER CABLE SYSTEM

1. Upon the Fiber Acceptance Date for the applicable Grantee Fibers, the maintenance of the Grantor's Fiber Cable System shall be provided in accordance with the maintenance requirements and procedures set forth herein. Grantee agrees to pay maintenance fees in accordance with the provisions of Sections 10 and 11 of this Exhibit C to the Agreement.

2. Scheduled Maintenance. Routine maintenance and repair of the Grantee Fibers shall be performed by or under the direction of Grantor and at its reasonable discretion. Scheduled Maintenance with respect to particular fibers shall commence upon the Fiber Acceptance Date applicable to said fibers.
 - (a) Patrol of the route on a regularly scheduled basis, which will not be less than one (1) time per year;
 - (b) Maintenance of a "Call Before You Dig" program for all required and related cable locates;
 - (c) Maintenance of sign posts along the route with the number of the local "Call Before You Dig" organization and the "800" number of the "Call Before You Dig" program; Provide Grantee with the emergency contact telephone numbers at Grantor and of maintenance technicians for the Grantor's Fiber Cable System; and
 - (d) If requested by Grantee, Grantor shall perform one OTDR test annually and provide the results to Grantee. The OTDR tests shall be performed at 1310 nm and 1550 nm and the results will be provided to Grantee in a format mutually agreed upon.

3. Unscheduled Maintenance. Non-routine maintenance and repair of the Grantee Fibers shall be performed by or under the direction of Grantor. Unscheduled Maintenance with respect to particular fibers shall commence upon the Fiber Acceptance Date applicable to said fibers.
 - (a) "Emergency Unscheduled Maintenance" in response to an alarm identified by the dispatch center or notification by any third Person of any failure or interruption or impairment in the operations of the fibers within the Grantor's Fiber Cable System defined in the respective Exhibit A1 to this Agreement or any event imminently likely to cause failure, interruption or impairment in the fibers. "Non-Emergency Unscheduled Maintenance" in response to any potential service-affecting situation to prevent failure, service interruption or impairment in the operation of the Grantor's Fiber Cable System defined in the respective Exhibit A1 to this Agreement, not covered by Scheduled Maintenance, Grantee shall immediately report the need for Unscheduled Maintenance to Grantor. Grantor will log the time of the Grantee notification, verify the problem and dispatch personnel immediately to take corrective action.
 - (b) In performing Scheduled or Unscheduled Maintenance, Grantor shall comply with industry standards and the Specifications set forth in Exhibit B to this Agreement. Grantor shall provide to Grantee any modifications to these Specifications as may be necessary or appropriate in any particular instance.

4. Dispatch Center. Grantor shall operate a dispatch center that is staffed on a 24-hour per day basis. Maintenance personnel shall be available for dispatch twenty-four hours per day, seven days a week. Grantor shall have its first maintenance personnel at the site requiring Emergency Unscheduled Maintenance activity within four (4) hours after the time that Grantor becomes aware of an event requiring Emergency Unscheduled Maintenance, unless delayed by Force Majeure Events. Grantor shall maintain a toll-free telephone number to contact personnel at the dispatch center. The dispatch center personnel shall dispatch maintenance and repair personnel along the Grantor's Fiber Cable System described in the respective Exhibit A1 to this Agreement to handle and repair problems detected in the Grantee Fibers: (a) through the Grantee's remote surveillance equipment and/or upon notification by Grantee or Grantor, or (b) upon notification by a third Person.

Grantor shall not be responsible for monitoring the performance or operation of the Grantee Fibers. In the event that Grantee detects a failure in the operation of the Grantee Fibers which may indicate the need for Unscheduled Maintenance, Grantee shall report the same to the dispatch center.

5. Planned Service Work Period. Scheduled Maintenance which is reasonably expected to produce any signal discontinuity must be coordinated between the Parties. Generally, this work should be scheduled after 6:00 a.m. and before 12:00 p.m. noon local time. Major system work, such as hot cuts and pole realignments, will be scheduled for Planned Service Work Periods (PSWP) weekends. A calendar showing approved PSWP will be agreed upon in the last quarter of every year for the year to follow. The intent is to avoid jeopardy of work on the first and last weekends of the month and high-traffic holidays.
6. Facilities. Grantor shall maintain the Grantor's Fiber Cable System in such a manner which will permit Grantee's use of the Grantee Fibers in accordance with the terms and conditions of this Agreement. Grantee shall be solely responsible for providing and paying for any and all maintenance of the electronic, optronic and other equipment, materials and facilities used by Grantee for the operation, interconnection with, and use of the Grantee Fibers, none of which is included in the maintenance or other services to be provided hereunder.
7. Cable/Fibers:
 - (a) Grantor shall perform Scheduled Maintenance on the cables in accordance with the current preventative maintenance procedures, which shall not substantially deviate from standard industry practice.
 - (b) Grantor shall have qualified representatives on site any time they are aware or have reasonable advance knowledge that another person or entity is engaging in construction activities or otherwise digging within five (5) feet of any cable.
 - (c) Grantor shall maintain sufficient capability to teleconference with Grantee 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 an event of Emergency Unscheduled Maintenance, Grantor shall use reasonable efforts to repair traffic-affecting discontinuity within eight (8) hours after Grantor representatives arrive at the problem site. In order to accomplish such objective, it is understood that the repairs so affected may be temporary in nature. In such event, within twenty-four (24) hours after completion of such

Emergency Unscheduled Maintenance, Grantor shall commence its planning for permanent repair within an appropriate time thereafter. Restoration of non-provisioned fibers or 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 PSWP.

- (d) Grantor representatives that are responsible for the initial restoration of a cut cable shall carry on their vehicles the typically appropriate equipment that would enable a temporary splice, with the objective of restoring operating capability in as little time as possible. Grantee acknowledges and agrees that in the event of damage to the Grantor's Fiber Cable System that adversely affects the electric utility operations, first priority shall be given to the restoration of the electric utility operations (if applicable). Each Party will cooperate with each other to permit the repair of the Grantor's Fiber Cable System as promptly as possible.

8. Restoration

- (a) Grantor shall respond to any event giving rise to the need for Unscheduled Maintenance (in any event, an outage) as quickly as possible (allowing for delays caused by Force Majeure Events) in accordance with the procedures set forth herein. When restoring a cut cable on the Grantor's Fiber Cable System, the Parties agree to work together to restore all service as soon as possible. The maintenance representatives, 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) The maintenance representatives shall give first priority to repairing and restoring the fiber strands that are carrying traffic.

- 9. Subcontracting. Grantor may subcontract any of the maintenance services hereunder, provided that Grantor shall require the subcontractor(s) to perform in accordance with the requirements set forth herein. The use of any such subcontractor shall not relieve Grantor of any obligations hereunder.

- 10. Scheduled Maintenance Fees. The fees payable for Scheduled Maintenance hereunder shall be determined in accordance with the following provisions. During any time after the Fiber Acceptance Date of the applicable Grantee Fibers, Grantor shall be the maintenance provider and provide Scheduled Maintenance in consideration for Grantee's payment of an annual Scheduled Maintenance Fee assessed at \$200.00 per route mile subject to an annual inflation factor of the greater of the Consumer Price Index (CPI) at the time said fee is due or four percent (4%), effective on the first and subsequent annual anniversary of the applicable route segment Fiber Acceptance Date.

- 11. Unscheduled Maintenance Fees. In addition to annual Scheduled Maintenance Fees, Grantee shall pay an Unscheduled Maintenance Fee equal to Grantee's Proportionate Share of Costs incurred by Grantor in performing Unscheduled Maintenance.

- 12. Contact Telephone Numbers:

For The City of Gillette:

24 X 7 Dispatch Center: 307-682-5155

or by e-mailing fiberconstruction@gillettewy.gov

For Advanced Communications Technology (ACT):

Routine and Emergency Contacts:

Business Hours	307.673.0910
After Hours:	307.673.0900
FAX:	307.673.0911
Escalation:	307.675.0998

EXHIBIT D
GRANT OF IRU

KNOW ALL PERSONS BY THESE PRESENTS that, subject to the terms and conditions of the Dark Fiber IRU, dated _____, 2017, (the "Agreement") the undersigned, Advanced Communications Technology, Inc. ("Grantor"), hereby grants to _____ ("Grantee") an indefeasible right of use ("IRU") in and to the individual strands of optical Fiber (the "Grantee Fibers") identified on Exhibit A-1 of the Agreement attached hereto.

Grantor represents and warrants that immediately prior to the delivery of this Grant of IRU it owned sufficient title to the Grantee Fibers, adequate to enable Grantor to grant this IRU to Grantee. This Grant of IRU is subject to the terms of the Underlying Rights Requirements.

Grantee executes this Grant of IRU to acknowledge the existence of the foregoing conditions and restrictions imposed by the Agreement, including the obligation for Grantee to impose such conditions and restrictions on any third party obtaining an interest in the Grantee Fibers from Grantee.

The parties to this Grant of IRU, either personally or through their duly authorized representatives, have executed this Agreement on the dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Grant of IRU.

The effective date of this Grant of IRU is the date of the signature last affixed to this page.

IN WITNESS WHEREOF, Grantee and Grantor have caused this Grant of IRU to be executed by their duly authorized representatives effective as of the date last set forth below.

CITY OF GILLETTE - GRANTEE

Louise Carter-King, Mayor

Date

ADVANCED COMMUNICATIONS TECHNOLOGY, INC. - GRANTOR

Aaron Sopko, General Manager

Date

GILLETTE CITY ATTORNEY APPROVAL AS TO FORM

Patrick Davidson

Date

GILLETTE CITY CLERK ATTEST:

Karlene Abelseth

Date