

**TELECOMMUNICATIONS RIGHT OF WAY USE AGREEMENT BETWEEN
BOARD OF COOPERATIVE EDUCATIONAL SERVICES, AND THE CITY OF
GILLETTE, CAMPBELL COUNTY, WYOMING**

1. **Parties.** The parties to this Agreement are Board of Cooperative Educational Services, a Wyoming Board of Cooperative Educational Services (“Company”);, and the City of Gillette, Campbell County, Wyoming, (“City”) whose address is 201 East 5th Street, Gillette, WY 82716.
2. **Purpose of Contract.** To permit Company limited use of the public right-of-way for the installation of conduit to maintain a fiber optic communications system. For the purposes of this Agreement only, the terms below are defined as follows:
 - A. The term “City” means the City of Gillette, Wyoming, a municipal corporation organized under the laws of the State of Wyoming.
 - B. The term “Company” means the entity described above which is authorized to do business in the State of Wyoming.
 - C. The term “Facilities” means the construction and installation of conduits or raceways for fiber optic communication systems as locations specifically described in Exhibit A, which is attached and made a part of this Agreement.
 - D. The term “Sidewalk” means that portion of a street, other than the roadway, set apart by: curbs, barriers, markings or other delineation for pedestrian travel, including parkways not on private property.
 - E. The term “Street” means the entire width between the boundary lines of every way dedicated to the public use, and publicly maintained for the purposes of vehicular travel, including alleys.

The specific area where the fiber optic communication systems Facilities will be installed is described in the Facility Location Map, Exhibit A, which is attached and made a part of this Agreement.

City Electrical Engineering, may be contacted in the Utilities Division of City West, located at 611 N. Exchange Ave., Gillette WY 82717 Phone (307) 686-5277, Fax (307) 686-6564.

3. **Term of Contract and Required Approvals.** This Agreement is effective when all parties have executed it and all required approvals have been granted. The term of the Agreement is five (5) years from the date of execution. At the expiration of the initial term, this Agreement will automatically renew for successive five (5) year terms unless either party provides written notice of its intent to terminate this

Agreement at least thirty (30) days prior to the expiration of the current term.

4. **Payment.** The Company agrees to pay an annual twelve cents (\$.12) per foot fee for each foot of City right of way encumbered by the Company beginning on the first day of January following the Effective Date, per Attachment 1.
5. **Responsibilities of Company.**
 - A. The Company's facilities shall be located, constructed and maintained so that none of its facilities shall endanger the lives or property of the City or its citizens; or interfere with any improvements of the City; or hinder or obstruct the free use of streets by the public. In the event the Company determines it is necessary to dig, or in any manner disturb or interfere with any City street(s), the Company shall immediately upon completion, at its own expense, replace and restore the street(s) in accordance with standards for such work set by City Code and by the City Engineer. In the event any street(s) become uneven, unsettled or otherwise require repair due of disturbance by the Company, as determined solely by the City, the Company shall immediately repair or restore the street(s) in compliance with the ordinances and standards of the City.
 - B. The Company agrees and understands in the event the City determines it is necessary to make public improvements in or upon any City street(s) or City land, including but not limited to altering the grade of any street(s), the Company shall, at its own expense, abandon in place, or remove and relocate its facilities and restore the street(s) in accordance with standards for such work set by City Code and by the City Engineer. The Company shall not place fixtures that interfere with any other utility. The Company agrees that the City Engineer may, solely in his discretion, limit the time period during which the Company may construct, locate, repair or maintain its Facilities in arterial streets. Nothing in the section is intended nor should be construed to prevent the Company from performing necessary repairs in the event of an emergency. In the event of street(s) closure, notice shall be given to the City Engineer immediately.
 - C. The Company shall notify the City Engineer of all substantial repairs or replacement of existing Facilities including repairs or replacement within or under unimproved or future City streets. In addition, the Company shall, at its expense, provide the City with a plan for significant repairs or replacement of existing facilities including repairs within or under unimproved or future City street(s) at least thirty (30) days prior to commencement of the repair or replacement. Facilities being installed under improved City street(s) shall be pushed or bored under the street(s) unless previously approved by the City Engineer's Office.
 - D. The Company shall, when working in any City street(s), use the

appropriate warning signs, in accordance with the current edition of the Manual on Uniform Traffic Control Devices, Section 7-1 and 7-2 of the Gillette City Code, and any other applicable local, state or federal law. In the event a City street(s) is not completely repaired at the conclusion of a working day, the Company shall perform all cleanup work and erect and monitor signage, approval by the City Engineer's Office, adequate to provide notice to the public of the condition of the street(s).

- E. The Company shall comply with the Chapter 18 of the City Code, Streets and Sidewalks, in its entirety.
- F. The Company understands and agrees that the Company may provide a Representative to observe work by the City or others in the vicinity of the Company's facilities; however, the inability of the Company to provide an inspector shall not preclude the City, its contractors, agents, permittees, or employees from working in the vicinity of the Company's facilities.
- G. The Company shall comply with the Wyoming Underground Facilities Notification Act, Wyo. Stat. §§ 37-12-301-306 (2017) in its entirety.
- H. The Company shall provide at no cost to the City as-built maps to City Electrical Engineering within ninety (90) days of the completion of any conduit installation and shall perform the work required to locate its System. All maps shall be presented digitally either in an AutoCAD or ArcView format. All data shall be layered to allow for identification of disparate systems, for example fiber vaults from conduit raceways. All data shall be attributed; recommended attributes could include raceway number, fiber vault identification numbers, installation year. All data presented shall be in a projection system and datum recognized by AutoCAD or ArcView or be presented in Wyoming NAD 83, State Plane, Ease Zone, Feet units.
- I. The Company agrees and understands that this Agreement is not a franchise agreement. Its terms are limited to the installation and operation of Facilities described in Exhibit A and any amendments authorized by the City.
- J. All Company Facilities shall comply with the City Code in effect at the time of the commencement of construction, including but not limited to all construction Codes in Chapter 5 of the City Code, the City of Gillette Standard Construction Specifications, and Design Standards of Chapter 7 of the City Code.
- K. The Company agrees and understands that when working in any public right-of-way, the Company shall comply with the current City Code including but not limited to Chapters 7 and 18 of the City Code.

- L. The Company shall submit new construction designs to City Electrical Engineering for approval. Designs shall meet current City Fiber Construction Standards (Section 16010), unless an alternate design is approved in writing by City Electrical Engineering. The Company may not direct bury fiber optic cables, unless prior written approval is received from the City Electrical Engineering Division (**City West Building, 611 N. Exchange Ave., Gillette, WY 82717, Phone (307) 686-5277, Fax (307) 686-6564**). Once the Company has installed raceways, then the Company may pull/install unlimited fiber pairs within one or more of the raceways.
- M. The Company shall lease available inner ducts to other entities for a reasonable annual fee, not to exceed ten percent (10%) of the Company's construction cost of the raceway. The City shall have an option to lease an inner duct for municipal and governmental purposes, at any time that there are inner ducts available. During the term of the Agreement, the City shall have a continuing Right of First Refusal for the final inner duct/raceway. Company shall provide the City with written notice prior to entering into a lease with a third party for the final inner duct/raceway. Within ten (10) business days after receipt of Company's written notice, the City shall either elect to lease the final inner duct/raceway upon the terms presented or decline.
- N. The Company shall pay the appropriate compensation for any installation in accordance with Section 4 of this Agreement and receive design approval from City Electrical Engineering before commencing work.
- O. Company may install additional fiber optic communication systems Facilities, with the approval of City Electrical Engineering, under and along additional public rights-of-way with the City, by submitting a written amendment to this Agreement, a revised Facility Location Map, and the appropriate compensation.

6. **Responsibilities of City.**

- A. The City shall grant the Company limited permission to install fiber optic communication systems Facilities along and within the public right-of-way in the City of Gillette, Wyoming. The area where the fiber optic communication systems Facilities will be installed is more fully described in Exhibit A.
- B. The City shall comply with its obligations under Wyoming Underground Facilities Notification Act, Wyo. Stat. §§ 37-12-301-306 (2017).
- C. The City shall be responsible for all costs related to the installation of its fiber into the Company inner duct available for City use and shall pay the

Company the same lease rate the City charges for lease of City-owned inner ducts in its raceways.

7. **General Provisions**

- A. **Amendments.** Any changes, modifications, revisions, or amendments to this Agreement which are mutually agreed upon by the parties to this Agreement shall be incorporated by written instrument, executed and signed by all parties to this Agreement.
- B. **Applicable Law/Venue.** 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 City does not waive governmental immunity by entering into this Agreement and specifically retains governmental immunity and all defenses available to them pursuant to Wyo. Stat. §§ 1-39-101-121 and all other applicable law.
- C. **Assignment/Agreement Not Used as Collateral.** Neither party shall assign or otherwise transfer any of the rights or delegate any of the duties set out in this Agreement without the prior written consent of the other party. The Company shall not use this Agreement, or any portion thereof for collateral for any financial obligation without the prior written permission of the City.
- D. **Audit/Access to Records.** The City and any of its representatives shall have access to any books, documents, papers, and records of the Company which are pertinent to this Agreement.
- E. **Certificate of Good Standing.** The Company shall provide a Certificate of Good Standing verifying compliance with the unemployment insurance and workers' compensation programs before performing work under this Agreement.
- F. **Compliance with Laws.** The Company shall keep informed of and comply with all applicable federal, state, and local laws and regulations in the performance of this Agreement.
- G. **Entirety of Agreement.** This Agreement, consisting of ten (10) pages, and Exhibit A, Facility Location Map, provided by the Company, represent the entire and integrated Agreement between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.
- H. **Force Majeure.** Neither party shall be liable for failure to perform under this Agreement if such failure to perform arises out of causes beyond the

control and without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays. This provision shall not be effective unless the failure to perform is beyond the control and without the fault or negligence of the nonperforming party. The parties intend and agree that the City does not waive governmental immunity by entering into this Agreement and specifically retain immunity and all defenses available to them pursuant to Wyo. Stat. §§ 1-39-101-121 and all other applicable law.

- I. **Indemnification.** The Company shall indemnify, defend, and hold harmless the City, and their officers, agents, employees, successors, and assignees from any and all claims, lawsuits, losses, and liability arising out of Company's failure to perform any of Company's duties and obligations hereunder or in connection with the negligent performance of Company's duties or obligations, including but not limited to any claims, lawsuits, losses, or liability arising out of Company's actions.
- J. **Independent Contractor.** The Company shall function as an independent contractor for the purposes of this Agreement and shall not be considered an employee of the City for any purpose. The Company shall assume sole responsibility for any debts or liabilities that may be incurred by the Company in fulfilling the terms of this Agreement and shall be solely responsible for the payment of all federal, state, and local taxes which may accrue because of this Agreement. Nothing in this Agreement shall be interpreted as authorizing the Company or its agents and/or employees to act as an agent or representative for or on behalf of the City or to incur any obligation of any kind on the behalf of the City. The Company agrees that no health/hospitalization benefits, workers' compensation, and/or similar benefits available to City employees will inure to the benefit of the Company or the Company's agents and/or employees as a result of this Agreement.
- K. **Notices.** All notices arising out of, or from, the provisions of this Agreement shall be in writing and given to the parties at the address provided under this Agreement, either by regular mail, facsimile, e-mail, or delivery in person.
- L. **Notice and Approval of Proposed Sale or Transfer of the Company.** The Company shall provide the City with the earliest possible advance notice of any proposed sale or transfer or any proposed merger or consolidation of the assets of the Company. Such notice shall be provided in accordance with the notices provision of this Agreement. If the City determines that the proposed merger, consolidation, sale, or transfer of assets is not consistent with the

continued satisfactory performance of the Company's obligations under this Agreement, then the City may, at its option, terminate or renegotiate the Agreement.

- M. **Ownership of Documents/Work Product.** All documents, reports, records, field notes, materials, and data of any kind resulting from performance of this Agreement are at all times the property of the City.
- N. **Patent or Copyright Protection.** The Company recognizes that certain proprietary matters or techniques may be subject to patent, trademark, copyright, license, or other similar restrictions, and warrants that no work performed by the Company or its subcontractors will violate any such restriction. The Company shall defend and indemnify the City for any violation or alleged violation of such patent, trademark, copyright, license, or other restrictions.
- O. **Proof of Insurance.**
- (i) **Workers' Compensation and Company's Liability Insurance.** The Company shall provide to the City proof of workers' compensation coverage for all its employees who are to work on the project described in this Agreement. The Company's coverage shall be under the Wyoming Worker's Safety and Compensation program, if statutorily required, or such workers' compensation insurance as appropriate. The Company's insurance shall include Company's Liability coverage, in an amount not less than one million dollars (\$1,000,000.00) per employee for each accident and disease. The Company shall also supply to the City proof of workers' compensation and employer's liability insurance on any subcontractor before allowing that subcontractor on the job site.
 - (ii) **Commercial General Liability Insurance.** The Company shall provide coverage, during the entire term of this Agreement, against claims arising out of bodily injury, death, damage to or destruction of the property of others, including loss of use thereof, and including underground collapse and explosion, and products and completed operations, in an amount not less than two million dollars (\$2,000,000.00) per occurrence and four million dollars (\$4,000,000.00) general aggregate.
 - (iii) **Business Automobile Liability.** The Company shall maintain, during the entire term of this Agreement, automobile liability insurance in an amount not less than one million dollars (\$1,000,000.00) per occurrence.

- (iv) All policies required under this Agreement shall be in effect for the duration of this Agreement and project. All policies shall be primary and not contributory. Company shall pay the premiums on all insurance policies, and all insurance certificates must include a clause stating that the insurance may not be revoked, canceled, amended, or allowed to lapse until the expiration of at least thirty (30) days advance written notice to the City.
 - (v) City as Additional Insured. All insurance policies required by this Agreement, except workers' compensation, shall name the City as an additional insured, and shall contain a waiver of subrogation against the City, its agents and employees. Company shall provide, upon request, a copy of an endorsement providing this coverage.
 - (vi) City's Right to Reject. The City reserves the right to reject a certificate of insurance if the Company's insurance company is widely regarded in the insurance industry as financially unstable.
 - (vii) Subcontractors. The insurance requirements set out above apply to all subcontractors. It is the Company's responsibility to ensure that its subcontractors meet these insurance requirements. The City has the right to review the Certificates of any and all subcontractors used by the Company.
- P. **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 either party may renegotiate the terms affected by the severance.
- Q. **Governmental Immunity.** The City does not waive governmental immunity by entering into this Agreement and specifically retain all immunities and defenses available to them pursuant to Wyo. Stat. §§ 1-39-101-121 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.
- R. **Taxes.** The Company shall pay all taxes and other such amounts required by federal, state, and local law, including but not limited to, federal and social security taxes, workers' compensation, unemployment insurance, and sales taxes.
- S. **Termination of Agreement.** This Agreement may be terminated, without

cause, by either party upon one hundred eighty (180) days written notice. This Agreement may be terminated immediately for cause if the Company fails to perform in accordance with the terms of this Agreement. The parties agree that upon termination of the Agreement all facilities in the City-owned right-of-ways become property of the City.

- T. **Third Party Beneficiary Rights.** 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 Agreement are intended only to assist the parties in determining and performing their obligations under this Agreement.
- U. **Titles Not Controlling.** Titles of paragraphs are for reference only and shall not be used to construe the language in this Agreement.
- V. **Waiver.** The waiver of any breach of any term or condition in this Agreement shall not be deemed a waiver of any prior or subsequent breach. Failure to object to a breach shall not constitute a waiver.

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8. **Signatures.** 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

COMPANY

David W. Fournier
Board of Cooperative Educational Services

10/29/19
Date



(S E A L)
ATTEST:

Cindy Staskiewicz, City Clerk

CITY ATTORNEY'S OFFICE APPROVAL AS TO FORM

Anthony M. Reyes

Date

ROW Billing Estimate

School Name	ROW Distance	Annual Fee per LF of Fiber
Buffalo Ridge Elementary	2,152 LF	\$ 258.24
Hillcrest Elementary	0 LF	\$ -
Meadowlark Elementary	0 LF	\$ -
Paintbrush Elementary	182 LF	\$ 21.84
Pronghorn Elementary	1,567 LF	\$ 188.04
Sunflower Elementary	545 LF	\$ 65.40
Wagonwheel Elementary	1,503 LF	\$ 180.36
Sage Valley Junior High	120 LF	\$ 14.40
Twin Spruce Junior High	0 LF	\$ -
Campbell County High School	94 LF	\$ 11.28
Thunder Basin High School	188 LF	\$ 22.56
CCSD Central Services	1,207 LF	\$ 144.84
CCSD Maintenance Building	0 LF	\$ -
Total ROW distance/Cost	7,558 LF	\$ 906.96