

## CONDUIT LEASE AGREEMENT

THIS CONDUIT LEASE AGREEMENT ("Agreement" or "Lease"), made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2018 ("Commencement Date"), by and between Beaver Creek Cooperative Telephone Company, an Oregon cooperative, having an office at 15223 S. Henrici Road, Oregon City, OR 97045 ("Lessor"), and The City of Oregon City, an Oregon municipal corporation, having an office at 122 South Center Street, Oregon City, Oregon 97045 ("Lessee").

### WITNESSETH:

**WHEREAS**, Lessor furnishes telecommunications services in and around Oregon City, Oregon and has developed a system of conduits which are available for lease; and

**WHEREAS**, Lessee desires to place and maintain underground communications facilities within the area described above and desires to place such communications facilities in the conduit systems of Lessor; and

**WHEREAS**, Lessor is willing to permit, under the terms of this Agreement, on a non-exclusive basis, the placement of said communications facilities on or within Lessor's facilities as described in Appendix I;

**NOW THEREFORE**, in consideration of the mutual covenants, terms and conditions herein contained, the parties do hereby mutually covenant and agree as follows:

### ARTICLE I: DEFINITIONS

As used in this Agreement:

- 1.1 **Conduit** shall mean a structure, usually underground, containing one or more ducts.
- 1.2 **Duct** shall mean a single enclosed raceway for wire conductors or cables.
- 1.3 **Lessee's Communications Facilities** shall mean all facilities, including, but not limited to, cables, equipment and associated hardware, owned and utilized by Lessee which occupy one or more Conduits.
- 1.4 **Make-Ready Work** shall mean all work, including, but not limited to, rearrangement and/or transfer of existing facilities, or changes required to accommodate Lessee's Communications Facilities in the Conduit.
- 1.5 **Survey** shall mean all work, including field inspection and administrative processing, required to determine the make-ready work necessary to accommodate Lessee's Communications Facilities in the Conduit or a Duct.

## **ARTICLE II: SCOPE OF AGREEMENT**

- 2.1. Subject to the provisions of this Agreement, Lessor covenants and agrees to lease to Lessee and Lessee covenants and agrees to lease from Lessor space in the Conduit for placement of Lessee's Communications Facilities, as the Conduit and Lessee's Communications Facilities are specified in Appendix I attached hereto and by this reference made a part hereof.
- 2.2. Lessor's rights to locate and maintain its Conduit and to operate its facilities in conjunction therewith in such a manner as will best enable it to fulfill its own service requirements are in no manner limited by this Agreement except to the extent provided herein.
- 2.3. Nothing contained in this Agreement shall be construed to compel Lessor to construct, reconstruct, retain, extend, place or maintain any duct or other facility for use by Lessee not already constructed by Lessor.
- 2.4. Unless sooner terminated as herein provided, this Agreement shall continue in effect for a term of twenty (20) years from the Commencement Date (the "Term"). Lessee shall have the right to extend the Term of this Lease for five (5) additional Terms ("Renewal Term") of five (5) years each. Each Renewal Term shall be on the same terms and conditions as set forth herein. This Lease shall automatically be extended for each successive five (5) year Renewal Term unless either party hereto terminates this Agreement by giving the other party at least one hundred eighty (180) days prior written notice thereof. Such one hundred eighty (180) days notice of termination may be given to take effect at the end of the original twenty (20) year term or any time thereafter.

## **ARTICLE III: FEES AND CHARGES**

- 3.1 Lessee covenants and agrees to pay to Lessor as "Rent" all applicable fees and charges as specified in Appendix I hereto in connection with the lease of the Conduit by Lessee.
- 3.2 Non-payment of any amount due under this Agreement shall constitute a default by Lessee of this Agreement subject to the provisions of ARTICLE XIV (Termination), below.
- 3.3
  - a) Non-payment of any amount due under this Agreement shall constitute a default by Lessee of this Agreement subject to the provisions of ARTICLE XIV (Termination), below.

- b) The Rent shall be payable to Lessor at the address specified Section 15.1, below, or such other address specified by Lessor in writing. The Rent shall be due and payable in advance on the first day of each month following the Commencement Date. If the first month is a partial month, Rent shall be due for the partial month five (5) days after the Commencement Date
  - c) Any amount not paid when due and not the subject of a good faith dispute (See Section 3.5, below) shall be deemed late and a late fee of five percent (5%) shall be added to the amount due. In addition, the late Rent shall bear interest at the rate of one and one-half percent (1½%) per month from the due date to date of payment, prorated to date of payment for any partial month.
- 3.4 Amendments to fees and charges shall be established by the separate execution of a substitute Appendix I which shall become a part of and be governed by the terms and conditions of this Agreement
- 3.5 Good Faith Rent Disputes. If Lessee disputes the assessment of the Survey cost or the Make-Ready Work cost in good faith, it shall do so in writing delivered to Lessor within thirty (30) days of the date of the invoice setting forth in detail the basis for the dispute. Lessor shall review the dispute as submitted by Lessee and shall provide a determination of the dispute to Lessee within sixty (60) days of the date it receives notice of the dispute. If Lessor resolves the dispute against Lessee, any amounts withheld by Lessee shall be promptly paid to Lessor with the appropriate late charges and interest. If Lessor determines that the dispute should be resolved in Lessee's favor, Lessee shall retain the amounts withheld as its sole remedy for the dispute. Resolution of the dispute against Lessee does not prejudice Lessee's ability to proceed to court, so long as Lessee promptly complies with its payment obligations.

#### **ARTICLE IV: ADVANCE PAYMENT**

- 4.1. Lessee shall make an advance payment to Lessor prior to:
- a) any undertaking by Lessor of a Survey or the administrative processing portion of such a Survey in an amount specified in writing by Lessor sufficient to cover the estimated charges for completing the work specified in such Survey as further described in Article VI below, and
  - b) performance by Lessor of any Make-Ready Work required in an amount specified in writing by Lessor sufficient to cover the estimated charges for completing the required Make-Ready Work as further described in Article VI below.

- 4.2. The amount of the advance payment required will be credited against the payment due Lessor from Lessee for performing the Survey or portion thereof and the Make-Ready Work, if any, or for having the same performed by others on behalf of Lessor.
- 4.3. When the advance payment is less than the charge by Lessor for such work, Lessee agrees to pay Lessor, within thirty (30) days of receipt of an invoice therefor, all sums due in excess of the amount of the advance payment.
- 4.4. When the advance payment exceeds the charge by Lessor for such work, Lessor shall apply the difference to invoices for Rent payments due from Lessee.

#### **ARTICLE V: SPECIFICATIONS**

- 5.1. Lessee's Communications Facilities shall be placed and maintained on or in the Conduit in accordance with the requirements and specifications of the current editions of the National Electrical Code (NEC), the National Electrical Safety Code (NESC), and the rules and regulations of the Occupational Safety and Health Act (OSHA) and any governing authority having jurisdiction over the subject matter. Where a difference in specifications may exist, the more stringent shall apply.
- 5.2. If any part of Lessee's Communications Facilities is not placed and maintained in accordance with the provisions of Section 5.1, herein, and Lessee has not corrected the violation within sixty (60) days after receipt of written notice thereof from Lessor, Lessor may, at its option, correct said violation; provided, however, that if Lessee provides Lessor with written notice at least ten (10) days prior to the expiration of the sixty (60) day time period detailing the reasons for its inability to cure the violation within said sixty (60) day period, then, upon the consent of Lessor, which consent shall not be unreasonably withheld or delayed, the time for curing such violation shall be extended for such period of time as may be reasonably necessary to complete such curing. If, upon the expiration of the sixty (60) day time period, Lessor elects to correct the violation on behalf of Lessee, Lessor will attempt to notify Lessee in writing prior to performing such work whenever practicable. Notwithstanding the provisions of this Section 5.2, when, in the reasonable opinion of Lessor, such violation poses an immediate threat to the safety of Lessor's employees or the public, interferes with the performance of Lessor's then existing and current service requirements, or poses an immediate threat to the physical integrity of Lessor's facilities, Lessor may perform such work and/or take such action as it deems necessary to correct the violation without first giving written notice to Lessee and without subjecting itself to any liability. As soon as practicable thereafter, Lessor will advise Lessee in writing of the work performed or the action taken and will endeavor to arrange for re-accommodation of Lessee's Communications Facilities so affected. Lessee shall be responsible for paying Lessor for any costs incurred by Lessor for all work, action and/or re-

accommodation performed by Lessor under this Section 5.2. Failure to promptly pay such amounts shall be a material breach of this Agreement and may, at Lessor's sole option, result in termination of this Agreement subject to the provisions of ARTICLE XIV (Termination), below.

#### **ARTICLE VI: MAKE-READY WORK**

- 6.1. Lessee acknowledges that a Survey by Lessor will be required to determine the availability of the Conduit to accommodate Lessee's Communications Facilities. Lessor will advise Lessee in writing of the estimated charges that will apply for such Survey and receive written authorization and advance payment from Lessee, as provided for in ARTICLE IV, herein, before undertaking such a Survey. A representative of Lessee may accompany Lessor's representative on the field inspection portion of such Survey, at Lessee's sole expense. Lessee shall have ninety (90) days from receipt of the written notice of the estimated charges to make the required payment and indicate its written authorization for completion of the required Survey and acceptance of the resulting charges. Failure to respond within such ninety (90) day period will result in cancellation of the application and the termination of this Lease.
- 6.2. Lessor retains the right, in its sole judgment, to determine the availability of space in its Conduit. In the event Lessor determines that rearrangement of existing facilities in the Conduit is required before Lessee's Communications Facilities can be accommodated, Lessor will advise Lessee in writing of the estimated make-ready charges for such rearrangement work. Lessee shall have ninety (90) days from receipt of the written notice of the estimated make-ready charges to make the required payment and indicate its written authorization for completion of the required make-ready work and acceptance of the resulting charges. Failure to respond within such ninety (90) day period will result in cancellation of the application and the termination of this Lease.
- 6.3. In the event Lessee is required to rearrange its Communications Facilities occupying the Conduit in order to accommodate the facilities of a third party, Lessor shall provide Lessee with at least one hundred twenty (120) days' advance written notice of the need for such rearrangement. Lessee agrees that Lessee shall be required to undertake such rearrangement only at the sole cost and expense of the third party.
- 6.4. In the event Lessee is required to rearrange its Communications Facilities occupying the Conduit in order to accommodate the facilities of Lessor, Lessor shall provide Lessee with at least one hundred twenty (120) days' advance written notice of the need for such rearrangement. Lessee agrees that Lessee shall be required to undertake such rearrangement at its sole cost and expense.

- 6.5. In performing all Survey and Make-Ready Work to accommodate Lessee's Communications Facilities, Lessor will endeavor to include such performance in its normal work load schedule. Lessee agrees that such condition may delay the performance of the Survey and/or Make-Ready Work and agrees that such delay is acceptable to Lessee.

#### **ARTICLE VII: LEGAL REQUIREMENTS**

- 7.1. Lessee shall be responsible for obtaining all required governmental authorizations to construct, operate and/or maintain its Communications Facilities in Lessor's Conduit.
- 7.2. The parties shall at all times observe and comply with the provisions of this Agreement and all laws, ordinances and regulations in effect which in any manner affect the rights and obligations of the parties hereto under the provisions of this Agreement.
- 7.3. Lessor shall maintain the Conduit and the Ducts in good condition and repair at Lessor's cost.

#### **ARTICLE VIII: CONSTRUCTION, MAINTENANCE AND REMOVAL OF COMMUNICATIONS FACILITIES**

- 8.1 Lessee shall, at its own expense, construct and maintain its Communications Facilities in the Conduit covered by this Agreement in a safe condition and in a manner reasonably acceptable to Lessor, so as not to physically conflict or electrically interfere with the facilities attached thereon or placed therein by Lessor. Lessor shall perform such work as reasonably requested by Lessee for Lessee to comply with or have the benefits of this Lease subject to reimbursement to Lessor of the NRC referenced in Appendix I.
- 8.2 Lessee must obtain prior written authorization, which authorization shall not be unreasonably withheld or delayed, from Lessor before Lessee may install, remove or provide maintenance of its Communication Facilities in Lessor's Conduit. Notwithstanding the provisions of the foregoing sentence, the parties hereto acknowledge that the requirement placed on Lessee to receive written authorization from Lessor prior to entering Lessor's Conduit will cause undue hardship for Lessee in the event of an emergency affecting Lessee's Communications Facilities. In the event of an emergency, Lessee shall be permitted immediate access to its Communications Facilities in Lessor's Conduit; provided, that after such emergency, Lessee provides Lessor with written notice of the nature of the emergency and such access does not physically conflict or electronically interfere with the facilities attached thereon or placed therein by Lessor.

- 8.3 Lessor shall designate the particular Conduit to be leased, the location and manner in which Lessee's Communications Facilities will enter and exit Lessor's Conduit and the specific location and manner of installation for any associated equipment which is permitted by Lessor to occupy the Conduit.
- 8.4 Lessor's manholes shall be opened only as permitted by Lessor's authorized employees or agents. Lessee shall be responsible for obtaining any necessary authorization from appropriate authorities to open manholes and conduct work operations therein. Lessee's employees, agents or contractors will be permitted to enter or work in Lessor's manholes and/or handholes only when an authorized employee or agent of Lessor is present or Lessor's authorized employee or agent has determined Lessee's work will not affect Lessor's facilities in any way. Lessee may request access to Lessor's manholes and/or handholes twenty-four (24) hours per day, seven (7) days per week by calling Lessor's surveillance center at (503) 632-4114. Lessor's authorized employee or agent shall have the authority to suspend Lessee's work operations in and around Lessor's manholes and/or handholes if, in the sole discretion of said employee or agent, any hazardous conditions arise, any unsafe practices are being followed, or the work may adversely affect Lessor's facilities.
- 8.5 Lessee, at its expense, will remove its Communications Facilities from portions of the Conduit within sixty (60) days after termination of the lease covering such attachment or conduit occupancy. Lessee shall remain liable for and pay to Lessor all fees and charges pursuant to provisions of this Agreement until all of Lessee's Communications Facilities are physically removed from such portions of the Conduit. If Lessee fails to remove its Communications Facilities within such sixty (60) day period, Lessor shall have the right to remove such facilities at Lessee's expense and without any liability on the part of Lessor for damage to such facilities and/or without any liability for any interruption of Lessee's services. Election of this remedy shall not be exclusive and shall not foreclose Lessor from exercising other remedies in addition to this remedy.
- 8.6 When Lessee's Communications Facilities are removed from the Conduit, no replacement in the same portion of the Conduit shall be made until:
- a) Lessee has first complied with all of the provisions of this Agreement as though no such Conduit occupancy had previously been made, and
  - b) All outstanding charges due Lessor for such previous occupancy and any other fees or charges due Lessor have been paid in full.
- 8.7 Lessee shall advise Lessor in writing of the date on which the removal of its Communications Facilities from each portion of Conduit has been completed.

**ARTICLE IX:       TERMINATION OF LEASE**

- 9.1     Lessee may, at any time, terminate this Lease and remove its Communications Facilities by giving Lessor prior written notice of at least ninety (90) days in advance of the date of termination, by which date the Communications Facilities must be removed. Any such removal shall comply with Section 8.5.
- 9.2     Lessor may, at any time, terminate any license granted to Lessee by giving Lessee prior written notice at least two-hundred seventy (270) days in advance of the date of termination. Lessee must remove its Communications Facilities by the date of termination. Failure to remove the Communications Facilities by date of termination shall vest title in such Communications Facilities in Lessor, at Lessor's sole option. In the alternative, Lessor shall have the right to remove Lessee's Communications Facilities at the expense of Lessee and without any liability on the part of Lessor to Lessee therefor. The exercise of either option is not a limitation on the exercise of other remedies available to Lessor.

**ARTICLE X:        LIABILITY AND DAMAGES**

- 10.1    Lessee shall exercise caution to avoid damaging the facilities of Lessor and of others occupying the Conduit also attached to or occupied by Lessee and shall make an immediate report to the owner of such facilities of the occurrence of any such damage caused by Lessee's employees, agents or contractors. Lessee agrees to reimburse Lessor for all reasonable costs incurred by Lessor for the physical repair of such facilities damaged by the negligence of Lessee, its employees, agents, contractors, subcontractors or invitees; provided, however, that Lessee shall not be liable to Lessor or to any other party occupying the Conduit (a "Third Party") for any interruption of Lessee's or Third Party's service or for interference with the operation of Lessor's or Third Party's communications facilities, or for any special, indirect or consequential damages arising in any manner out of the use of Lessor's Conduit or Lessee's actions or omissions with respect thereto.
- 10.2    Lessor shall exercise caution to avoid damaging Lessee's Communications Facilities and shall make an immediate report to Lessee of the occurrence of any such damage caused by its employees, agents or contractors. Lessor agrees to reimburse Lessee for all reasonable costs incurred by Lessee for the physical repair of such facilities damaged by the negligence of Lessor, its employees, agents, contractors, subcontractors or invitees; provided, however, that Lessor shall not be liable to Lessee for any interruption of Lessee's service or for interference with the operation of Lessee's Communications Facilities, or for any special, indirect or consequential damages arising in any manner out of the use of Lessor's Conduit or Lessor's actions or omissions with respect thereto.
- 10.3    Lessee shall indemnify, protect and save harmless Lessor, its directors, officers,



employees, contractors and agents, Lessor's other Lessees and conduit users from and against any and all claims, demands, causes of actions and costs, including reasonable attorneys' fees through appeals, for damages to property and injury or death to persons, including, but not limited to, payments under any Worker's Compensation Law or under any plan for employee's disability and death benefits, and any third party claims of any nature whatsoever caused by, arising from, incident to, connected with or growing out of the installation, rearrangement, maintenance, use or removal of Lessee's Communications Facilities occupying a Conduit except to the extent caused by Lessor's or its agents negligence or intentional misconduct.

- 10.4 Lessor shall indemnify, protect and save harmless Lessee, its mayor, commissioners, officers, employees, contractors and agents from and against any and all claims, demands, causes of actions and costs, including reasonable attorneys' fees through appeals, for damages to property and injury or death to persons, including, but not limited to, payments under any Worker's Compensation Law or under any plan for employee's disability and death benefits, and any third party claims of any nature whatsoever caused by, arising from, incident to, connected with or growing out of the installation, rearrangement, maintenance, use or removal of Lessor's Conduit except to the extent caused by Lessee's or its agents negligence or intentional misconduct.
- 10.5 Either party shall have a right to defend the other regarding any claims indemnified against. Each party shall give the other prompt notice of any claims or actions against that party (indemnitee) for which the other (indemnitor) may be required to indemnify the indemnitee under this Agreement. Each party shall cooperate fully with the other in the defense of any such claim or action and shall not settle any such claim or action without the prior written consent of the indemnitor, which cannot be unreasonably withheld. In the event the indemnitee settles any such claim or action (either purposefully or inadvertently) without the prior written consent of the indemnitor, the indemnitor shall have an obligation to indemnify the indemnitee with respect to such claim or action only to the extent that such settlement does not exceed the indemnitor's reasonable calculated settlement value thereof.
- 10.6 Disclaimer of Warranties. The Conduit is provided by Lessor on an "AS IS," "WHERE IS" basis with NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PURPOSES WHICH ARE EXPRESSLY DISCLAIMED. This Disclaimer shall not, however, diminish Lessor's obligations under Section 7.3 above.
- 10.7 No Damages for Conduit. Lessor shall not be responsible for any damages to Lessee's Communications Facilities or for the interruption of services over Lessee's

Communications Facilities due to any flaw, inherent, latent or otherwise, in the Conduit or any damage to the Conduit not caused by Lessor's negligence or intentional misconduct.

- 10.8 Relationship of Disclaimers. The charges in this Agreement are set at a level that reflects the enforceability and viability of the disclaimer of warranties and limitation on damages. Lessor would not enter into this Agreement but for the enforceability and viability of the disclaimer of warranties and limitation on damages.

#### **ARTICLE XI: INSURANCE**

- 11.1 Lessee shall obtain and maintain liability insurance consistent with Lessee's practices. Lessor shall be named an additional insured on such policy with respect to this Lease.
- 11.2 The amounts of such insurance \$2,000,000 per occurrence for bodily injury and property damage and \$5,000,000 general aggregate.
- 11.3 Lessee shall submit to Lessor certificates of insurance from each company insuring Lessee with respect to any insurance required hereunder.
- 11.4 Lessee shall also carry Worker's Compensation in compliance with the statutory requirements of the state(s) of operation and employer's liability with a limit of not less than \$1,000,000 each accident/disease/policy limit Law applicable to it as a result of any activities performed pursuant to this Agreement.
- 11.5 All insurance must be effective before Lessor will authorize occupancy or a Conduit and shall remain in force until Lessee's Communications Facilities have been removed from all such Conduit.

#### **ARTICLE XII: ASSIGNMENT OF RIGHTS**

- 12.1 Lessee shall not assign or transfer this Agreement or any lease or any authorization granted under this Agreement, without the prior written consent of Lessor, which consent may be withheld in the sole discretion of Lessor; provided, however, that Lessee shall have the right, without Lessor's consent, to assign or transfer this Agreement, in whole or in part, or any license or any authorization granted under this Agreement, in whole or in part, to any parent, subsidiary or affiliate of Lessee, or to any person, firm or corporation which shall control, be under the control of, or be under common control with Lessee, or to any corporation into which Lessee may be merged or consolidated or which purchases all or substantially all of the assets or stock of Lessee. Control is not less than fifty percent (50%) direct or

indirect ownership.

- 12.2 This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective permitted successors and assigns.

#### **ARTICLE XIII: FAILURE TO ENFORCE**

- 13.1 Failure of Lessor to enforce or insist upon compliance with any of the terms or conditions of this Agreement or to give notice or declare this Agreement or any authorization granted hereunder terminated shall not constitute a general waiver or relinquishment of any term or condition of this Agreement, but the same shall be and remain at all times in full force and effect.

#### **ARTICLE XIV: TERMINATION OF AGREEMENT; DEFAULT**

- 14.1 Lessee shall not be in default under this Agreement, or in breach of any material provision hereof unless and until Lessor shall have given Lessee written notice of such breach and Lessee shall have failed to cure the same within thirty (30) days (or such other time period as may be specified elsewhere in this Agreement) after receipt of such notice; provided, however, that where such breach cannot reasonably be cured within such thirty (30) day period (or such other time period as may be specified elsewhere in this Agreement), if Lessee shall proceed promptly to cure the same and prosecute such curing with due diligence, the time for curing such breach shall be extended for such period of time as may be necessary to complete such curing. Lessor shall have the right to terminate this entire Agreement or any license issued hereunder in the event Lessee does not cure any such breach of a material provision as described above.
- 14.2 In the event of termination of this Agreement or any of Lessee's rights, privileges or authorizations hereunder, Lessee shall remove its Communications Facilities from Lessor's Conduit within two (2) months from the date of termination; provided, however, that Lessee shall be liable for and pay to Lessor all fees and charges pursuant to the terms of this Agreement until Lessee's Communications Facilities are actually removed from Lessor's Conduit.
- 14.3 If Lessee does not remove its Communications Facilities from Lessor's Conduit within the applicable time periods specified in this Agreement, Lessor shall have the right to remove them at the expense of Lessee and without any liability on the part of Lessor to Lessee therefor. In the alternative, at Lessee's sole option, such failure to remove the Communications Facilities by the agreed date shall vest title in such Communications Facilities in Lessor. The exercise of either option is not a limitation on the remedies available to Lessor.
- 14.4 Termination of this Agreement or any licenses issued hereunder shall not affect

Lessee's liabilities and obligations incurred hereunder prior to the effective date of such termination.

**ARTICLE XV: NOTICES**

- 15.1 All written notices required under this Agreement shall be given by posting the same certified mail, return receipt requested or via a nationally recognized overnight delivery service,

to Lessee other than invoices as follows:

City of Oregon City  
122 South Center Street  
Oregon City, Oregon 97045  
Attn: ROW and Construction Manager

with a copy to:

City of Oregon City  
122 South Center Street  
Oregon City, Oregon 97045  
Attn: Public Works Director

and to Lessor as follows:

Beaver Creek Cooperative Telephone Company  
15223 S. Henrici Road  
Oregon City, OR 97045  
Attn: Paul Hauer

or to such address as either party hereto may from time to time specify in writing to the other by like notice.

**ARTICLE XVI: [INTENTIONALLY DELETED]**

**ARTICLE XVII: SCOPE OF AGREEMENT**


- 17.1 Third Party Obligations. This Agreement does not create any relationship or obligation to any person or entity other than Lessor's obligations to Lessee and Lessee's obligations to Lessor. The only relationship created between Lessor and Lessee are the obligations of Lessor and Lessee expressly set forth herein.

- 17.2 No Agency.

- a) The parties agree that any agents or employees of Lessee shall act independently of Lessor and shall not be deemed as officers, employees or agents of Lessor.
  - b) The parties agree that any agents or employees of Lessor shall act independently of Lessee and shall not be deemed as officers, employees or agents of Lessee.
- 17.3 Character of Agreement. This Agreement is not to be considered an Agreement falling under Section 251 of the Communications Act of 1934 as amended by the Telecommunications Act of 1996. Lessee shall use the Conduit to provide local service in Beaver Creek Cooperative Telephone Company's service area.
- 17.4 Warranties. Each party warrants and represents to the other Party that it is in good standing and authorized to do business in the state of Oregon; that execution of this Agreement has been duly authorized; that execution and delivery of this Agreement shall not place it in violation of any other agreement binding on such Party; and, that the person signing below is duly authorized to do and such signature is binding upon the party.
- 17.5 Section Headings. The headings in this Agreement are for convenience only and are not part of this Agreement nor should they be construed as such.
- 17.6 Fair Interpretation. This Agreement has been reviewed and approved by each of the parties. In the event it should be determined that any provision of this Agreement is uncertain or ambiguous, the language in all parts of this Agreement shall be in all cases construed as a whole according to its fair meaning and not strictly construed for or against either party.
- 17.7 Waiver. Neither party's failure, at any time, to enforce any right or remedy available to it under this Agreement will be construed to be a waiver of such party's right to enforce each and every provision of this Agreement in the future.
- 17.8 Unenforceability of Language. Any provision of this Agreement that is unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.
- 17.9 Binding Agreement/Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matters thereof and no prior writings or oral statements of any kind whatsoever are binding on the parties.
- 17.10 Time is of the Essence. **Time is of the essence with respect to this Agreement.**

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

**LESSOR**

By: \_\_\_\_\_

Name: Paul Hauer

Title: President/CEO

Date: 9/11/2018

**LESSEE**

By: \_\_\_\_\_

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

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

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

## **APPENDIX I**

### **ARTICLE II: LESSEE'S COMMUNICATIONS FACILITIES**

- 2.1 The Lessee shall lease from the lessor a single existing inner-duct of between 1.25 and 1.375 inch inside diameter from their manhole vault at 1300 Molalla Avenue south along Molalla Ave to Beavercreek Way, then southeasterly along Beavercreek Way to Beavercreek Rd, then southeasterly along Beavercreek Road to Fir Street, and then along Fir street to a sidewalk vault identified in the lessor's records as 13921 Fir Street. The total distance according to lessor's records is 6,673 feet.

### **ARTICLE III: FEES AND CHARGES**

- 3.1 Rent: \$0.0925 per duct-foot per month

Non-recurring charge (NRC): \$80.00 per man-hour for services authorized to be provided by Lessor(including Survey and Make-Ready Work) and to be paid by Lessee pursuant to the terms of this Agreement.