



TELECOMMUNICATIONS & CO-LOCATION SERVICES AND LEASE AGREEMENT

THIS AGREEMENT made this 1 day of December, 2021 (the "Effective Date") by and between the **CITY OF OCALA**, a Florida municipal corporation, by and through its Ocala Fiber Network ("City" or "OFN") and **BLUE STREAM COMMUNICATIONS, LLC** ("Customer").

WHEREAS:

- A. Ocala Fiber Network ("OFN") owns certain office and storage space (the "Co-location Space") within its municipal buildings in Ocala, Florida suitable for the placement and operation of telecommunications equipment; and
- B. Customer desires to lease the use of the Co-location Space for the purpose of placing therein its own telecommunications equipment (hereinafter, the "Equipment"); and
- C. Customer is responsible for adhering to OFN's security procedures, and informing affected vendors of their related responsibilities and OFN of any security incidents; and
- D. OFN is willing to grant Customer the right to occupy and use portions of the Co-location Space upon the terms and conditions hereinafter set forth.

NOW THEREFORE, in consideration of the matters set forth above (which are incorporated herein by reference), the exchange of the mutual promises set forth herein, and other good and valuable consideration, the parties hereto agree as follows:

1. Lease to Co-locate:

- A. OFN hereby leases to Customer the Rack and/or Slot numbers set forth in **Exhibit A** to this Agreement. The Customer is leased to use this Rack and/or Slot space and the secured space for accessing the assigned Rack and/or Slot number only.
- B. Customers in violation of the Network Operations Center ("NOC") Security policies and procedure will be subject to penalties. The Customer's key card will be revoked on the first offense for 90 days. If an after-business-hours visit is requested, it will only be with an OFN on-call escort. A Call-Out fee will be charged per visit. Additional violations will result in 120-day key card revocation for the second offense, and a one-



year revocation for a third offense. Multiple violations can result in permanent revocation of the Customer's key card access.

- C. The Co-location Space will be accessed by Customer with an OFN access card. Customer shall receive an access card upon execution of this Agreement. Justification for additional cards will be issued on a case by case basis. Customer shall notify OFN immediately if an assigned access card is lost or stolen and of terminated employees who were issued or provided a badge. Customer shall be charged a fee of \$50 for each new replacement access card. Customer agrees to be responsible for all access cards in its possession and shall return all access cards in its possession, including those in the possession of Customer's employees, contractors or agents upon termination of this Agreement.
- D. If the Customer's lease is in a shared area with other OFN customers or OFN, a key will be issued for Customer's use and access to the space. If the Customer does not return the key to OFN upon termination of this Agreement, a penalty of \$50 shall be charged to the Customer. OFN shall be notified by the Customer immediately if an assigned key is lost or stolen and of terminated employees who were issued or provided a key.
- E. Customer is responsible for the ensuring their own equipment and resident data is secured, including physical precautions.
- F. Customer shall utilize the Co-location Space only for interconnection of their Equipment through the network services of OFN.
- G. This Agreement is a lease to use specific Rack and/or Slot numbers and access space as identified in **Exhibit A**. The Customer shall be required to enter into a separate Agreement to Lease any other services with OFN.
- H. In connection with the Co-location Space leased hereunder, OFN shall perform at no additional charge janitorial services, environmental systems maintenance, and power plant maintenance of the Network Operation Center. However, Customer shall be required to maintain their Co-location Space in an orderly manner and shall be responsible for the removal of any trash. Customer shall maintain the Co-location Space in a safe condition, including but not limited to the preclusion of storing combustible materials in the Co-location Space.



- I. All visitors will be escorted by card access authorized personnel at all times in the Network Operations Center.
- J. Customer acknowledges they have been granted only a lease to occupy a Co-location Space and have not been granted any other real property interests in the Co-location Space.
- K. Customer shall provide to OFN written notice of any equipment removal or replacement within twenty-four (24) hours of said removal or replacement.

2. Term of Agreement and Renewal:

- A. Customer's lease to occupy the Co-location Space shall begin on the Service Date and end on the Termination Date set forth in **Exhibit A**.
- B. After the Termination Date, Customer's lease shall continue in effect on a month-to-month basis upon the same terms and conditions specified herein, excluding price changes as set forth in paragraph 3E herein, until terminated by OFN or Customer as set forth herein.
- C. Upon termination of this Agreement for any reason Customer agrees to remove the Equipment and other property that has been installed by Customer or Customer's agent. In the event such Equipment or property has not been removed within 90 days of the effective termination date, the Equipment shall be deemed abandoned and Customer shall lose all rights and title thereto and OFN has the right to remove or relocate Customer's equipment.
- D. Customer is responsible to promptly notify OFN of changes made to technical or administrative contact information.
- E. Customer is responsible for maintaining and providing OFN a list of authorized personnel, Cities and contractors.
- F. Customer is responsible for developing their own disaster recovery and business continuity plans that address their inability to access or utilize OFN's services.
- G. Customer is responsible for ensuring that adequate mechanisms are in place to monitor and protect content of any information transmitted through their network.



3. **Prices, Payment Terms and Security Deposit:**

- A. Beginning on the Service Date and continuing throughout the initial term of this Agreement, the Customer shall pay to the Utility those fees as set forth in the monthly rate schedule attached hereto as **Exhibit A – Service Pricing**. The total initial service rate under this Agreement shall be **ONE THOUSAND FOUR HUNDRED TWENTY-FIVE AND NO/100 DOLLARS PER MONTH (\$1425.00/Per Month)**, plus a **onetime pre-payment of \$38,000.00** for construction incurred by the Utility, excluding any applicable fees or taxes excluding any applicable fees or taxes. Customer shall pay OFN monthly recurring fees and invoiced to the Customer as part of the monthly City of Ocala Utility Services bill. The first month's fee will be prorated from the service date as identified in **Exhibit A** and each whole month will be billed thereafter. If Customer terminates this Agreement prior to the expiration of the initial term of this Agreement, the Customer will be liable for the payments remaining in the Service Agreement period.
- B. This Agreement will be invoiced as part of the City utility billing procedures set forth in Chapter 70, Article VII, of the City of Ocala Code of Ordinances and therefore subject to all related commitments of the utility bill. This includes, but is not limited to, late charges if payment is not received within the payment term period.
- C. Prices do not include taxes, except as specifically stated herein. Customer agrees to pay or reimburse OFN for any applicable taxes that are levied based on the transactions hereunder. Any such charges shall be invoiced and payable within the payment terms of this Agreement. OFN agrees to provide Customer with reasonable documentation to support invoiced amounts applied to taxes within 30 calendar days of receipt of a Customer's written request.
- D. Customer agrees to reimburse OFN for all reasonable repair or restoration costs associated with damage or destruction caused by Customer's personnel, Customer's agents, Customer's suppliers/contractors or Customer's visitors or as a consequence of Customer's removal of the Equipment or property installed in the Co-location Space.
- E. **Price changes.** After the initial term, OFN has the right to change the recurring fee rate set forth herein by providing a thirty (30) day written notice to Customer. Thereafter, Customer has the right to continue this Agreement at the new rate or reject the new rate and terminate this Agreement.



4. Additional Terms:

- A. Customer shall not make any construction changes or material alterations to the interior or exterior portions of the Co-location Space, including any cabling or power supplies for the Equipment, without obtaining OFN's written approval for Customer to have the work performed or have OFN perform the work. OFN reserves the right to perform and manage any construction or material alterations within the Co-location Space and Co-location Space areas at rates to be negotiated between the Parties hereto.
- B. Customer's use of the Co-location Space, installation of Equipment and access to the Co-location Space shall at all times be subject to Customer's adherence to the generally accepted industry standards, security rules and rules of conduct established by OFN for the Co-location Space.
- C. Customer may not provide, or make available to any third party, Co-location space within the Co-location Space without OFN's prior written consent. If Customer should provide, or make available to any third party, Co-location space within the Co-location Space without obtaining the written consent of OFN, Customer shall be in breach of this Agreement and OFN may pursue any legal or equitable remedy, including but not limited to the immediate termination of this Agreement.
- D. OFN reserves the right to require Customer to relocate Customer's equipment within the building that houses its equipment or to change the location of the Co-location Space to a site which shall afford comparable environmental conditions for the Equipment and comparable accessibility to the Equipment. Except in the case of an emergency, OFN shall provide thirty (30) days prior written notice of any such relocation. OFN and Customer will work together in good faith to minimize any disruption of Customer's services as a result of such relocation. OFN shall be responsible for the cost of improving the Co-location Space to which the Equipment may be relocated, and for relocation of Equipment interconnected to OFN services. Customer shall have no claim against OFN for any other relocation expenses.
- E. Customer shall not be entitled to any part of any award that may be made for any eminent domain proceeding or condemnation taking or the value of any un-expired term or renewed periods that result from a termination by OFN under this provision, or any loss of business from full or partial interruption or interference due to any such



eminent domain proceeding or condemnation action. However, nothing contained in this Agreement shall prohibit Customer from seeking any relief or remedy against the condemning authority in the event of an eminent domain proceeding or condemnation that affects the Co-location Space.

5. **Default:**

- A. The failure or delay of any party at any time to require performance by another party of any provision of this Agreement, even if known, shall not affect the right of such party to require performance of that provision, or to exercise any right, power, or remedy hereunder. Any waiver by any party of any breach of any provision of this Agreement should not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right, power or remedy under this Agreement. No notice to or demand on any party in any circumstance shall, of itself, entitle such party to any other or further notice or demand in similar or other circumstances.
- B. City reserves the right to immediately cancel or annul the whole or any part of this Agreement due to failure of the Customer to carry out any obligation, terms, or conditions of the Agreement. If Customer defaults, City may seek all legal and equitable remedies available to it. Upon default, the Customer shall remain liable for all the recurring fees owed pursuant to this Agreement. City may also suspend or terminate service to Customer pursuant to any Agreement for leased services with City in the event of nonpayment by the Customer.

6. **Termination:** Customer may terminate this Agreement after the initial term, by providing City thirty (30) days written notice. Accounts must be current at the time notice is submitted to City. Any termination shall not relieve the Customer of its obligation to pay any charges for the remaining term or incurred hereunder for services rendered prior to the date requested in Customer's written termination request. Moreover, City may terminate this Agreement, or suspend the provision of Service to the Customer without notice at any time in the event of the occurrence of any of the following:

- A. Failure by the Customer to pay all required rates and charges under this Agreement to City on the payment date specified in the Utility billing statement.
- B. Breach of any covenant, terms or conditions of the Agreement.



- C. The Customer makes an assignment for the benefit of creditors or becomes bankrupt or insolvent or takes benefit of or becomes subject to any legislation in force relating to bankruptcy or insolvency, it being understood that the appointment of a Receiver or Trustee of the property and assets of the Customer is conclusive evidence thereof.
- D. Ocala Fiber Network is unable to provide the service by reason of any law, rule, regulation, or municipal, state or federal authority, including but not limited to, any regulatory authority having jurisdiction over Ocala Fiber Network.
- E. If for any reason, Ocala Fiber Network deems it necessary, and in the best interest of City, that the Customer be removed from Co-location building immediately.

7. Warranties, Remedies and Disclaimers:

- A. Customer agrees to maintain at Customer's sole expense a general liability insurance policy issued by a Florida licensed insurance company of Customer's selection which provides limits of liability of at least \$200,000. A certificate of insurance must be mailed to the attention of the City's Procurement Department, 110 SE Watula Ave, Ocala, FL 34471 evidencing coverage and naming the City of Ocala as an additional insured. Ocala Fiber Network is indemnified for any and all Customer equipment, software and data loss.
- B. City shall not be liable for any harm to business, including lost revenues, lost savings or lost profits suffered by Customer in any action for breach of contract, warranty, strict liability, or tort, including without limitation, negligence of any kind, whether active or passive.
- C. THE CO-LOCATION SPACE IS ACCEPTED "AS IS" BY CUSTOMER. CUSTOMER ACKNOWLEDGES THAT NO REPRESENTATIONS HAVE BEEN MADE BY CITY AS TO THE FITNESS OF THE CO-LOCATION SPACE FOR CUSTOMER'S INTENDED PURPOSE. EXCEPT FOR THE WARRANTIES SET FORTH IN THIS ARTICLE, THERE ARE NO WARRANTIES, WHETHER EXPRESS, IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE CO-LOCATION SPACE OR SERVICES COVERED OR FURNISHED PURSUANT TO THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. MOREOVER, THE REMEDIES PROVIDED IN THIS ARTICLE ARE EXCLUSIVE AND IN LIEU OF ALL OTHER REMEDIES.



- D. If any Event of Default occurs, City shall have the right, at the option of City, to pursue all remedies available at law or equity, including the termination of this Agreement and all rights of Customer hereunder. Notwithstanding City's termination of the Agreement, Customer shall remain liable to City for all claims for damages, costs or attorneys' fees arising prior to such termination.
8. **Excused Performance:** Neither Party shall be liable to the other Party under this Agreement for any failure or delay in performance that is due to causes beyond its reasonable control, including but not limited to, acts of nature, governmental actions, fires, civil disturbances, interruptions of power, or transportation problems.
9. **Publicity:** Customer shall not use City's name in public or press releases without Ocala Fiber Network's prior written consent.
10. **Limitation of Liability:** In no event shall City, Customer, or any of their respective officers, directors, agents, contractors or employees, be liable, one to the other, for any loss of profit or revenue or for indirect, incidental, special, punitive or exemplary damages incurred or suffered by each other, arising from or pertaining to Customer's use or occupancy of the Co-location Space including, without limitation damages arising from interruption of electrical power or HVAC services.
11. **Relationship of parties:** Neither this Agreement, nor any term, provision, payment or right hereunder shall in any way or for any purpose constitute or cause City to become or be deemed a partner of Customer in the conduct of its business, or otherwise, or to cause City to become or be deemed a joint adventurer or a member of a joint enterprise with Customer, as City is and shall remain an independent contractor by reason of this Agreement.
12. **Notices:** All notices, certifications or communications required by this Agreement shall be given in writing and shall be deemed delivered when personally served, or when received if by facsimile transmission with a confirming copy mailed by registered or certified mail, postage prepaid, return receipt requested, addressed to the respective parties as follows:



If to City:

City of Ocala
Tiffany Kimball, Contracting Officer
110 SE Watula Avenue, 3rd Floor
Ocala, FL 34471
Tel: 352-629-8366
E-Mail: tkimball@ocalafl.org

If to Customer

Blue Stream Communications, LLC
Christopher Watson / Joe Canavan
4001 SW 53rd Ave
Ocala, FL 34474
Tel: 347-236-2870 A
E-mail: cwatson@bluestreamfiber.com
jcanavan@bluestreamfiber.com

13. **Attorneys' Fees:** If any civil action, arbitration or other legal proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provision of this Agreement, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees, sales and use taxes, court costs and all expenses even if not taxable as court costs (including, without limitation, all such fees, taxes, costs and expenses incident to arbitration, appellate, bankruptcy and post judgment proceedings), incurred in that civil action, arbitration or legal proceeding, in addition to any other relief to which such party or parties may be entitled. Attorneys' fees shall include, without limitation, paralegal fees, investigative fees, administrative costs, sales and use taxes and all other charges billed by the attorney to the prevailing party.
14. **PUBLIC RECORDS.** The City shall comply with all applicable provisions of the Florida Public Records Act, Chapter 119, Florida Statutes. Specifically, the City shall:
- A. Keep and maintain public records required by the public agency to perform the service.
 - B. Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or



copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.

- C. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the City does not transfer the records to the public agency.
- D. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the City or keep and maintain public records required by the public agency to perform the service. If the City transfers all public records to the public agency upon completion of the contract, the City shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the City keeps and maintains public records upon completion of the contract, the City shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

IF THE CUSTOMER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CITY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: CITY OF OCALA, OFFICE OF THE CITY CLERK; 352-629-8266; E-mail: clerk@ocalafl.org; City Hall, 110 SE Watula Avenue, Ocala, FL 34471.

15. **Jury Waiver:** IN ANY CIVIL ACTION, COUNTERCLAIM, OR PROCEEDING, WHETHER AT LAW OR IN EQUITY, WHICH ARISES OUT OF, CONCERNS, OR RELATES TO THIS AGREEMENT, ANY AND ALL TRANSACTIONS CONTEMPLATED HEREUNDER, THE PERFORMANCE HEREOF, OR THE RELATIONSHIP CREATED HEREBY, WHETHER SOUNDING IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, TRIAL SHALL BE TO A COURT OF COMPETENT JURISDICTION AND NOT TO A JURY. EACH PARTY HEREBY



IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY. NEITHER PARTY HAS MADE OR RELIED UPON ANY ORAL REPRESENTATIONS TO OR BY ANY OTHER PARTY REGARDING THE ENFORCEABILITY OF THIS PROVISION. EACH PARTY HAS READ AND UNDERSTANDS THE EFFECT OF THIS JURY WAIVER PROVISION.

16. **Reference to Parties:** Each reference herein to the parties shall be deemed to include their successors, assigns, heirs, administrators, and legal representatives, all whom shall be bound by the provisions hereof.
17. **Indemnity:** Customer shall indemnify City and its elected officials, employees and volunteers against, and hold City and its elected officials, employees and volunteers harmless from, all damages, claims, losses, costs, and expenses, including attorneys' fees, which City or its elected officials, employees or volunteers may sustain, or which may be asserted against City or its elected officials, employees or volunteers, arising out of the activities contemplated by this Agreement including, without limitation, harm or personal injury to third persons during the term of this Agreement.
18. **Assignment:** This Agreement shall not be assigned by Customer without the prior written consent of City.
19. **Waiver:** The failure or delay of any party at any time to require performance by another party of any provision of this Agreement, even if known, shall not affect the right of such party to require performance of that provision or to exercise any right, power or remedy hereunder. Any waiver by any party of any breach of any provision of this Agreement should not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right, power or remedy under this Agreement. No notice to or demand on any party in any circumstance shall, of itself, entitle such party to any other or further notice or demand in similar or other circumstances.
20. **Governing Law:** This Agreement is and shall be deemed to be a contract entered into and made pursuant to the laws of the State of Florida and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the State of Florida.



21. **Jurisdiction and Venue:** The parties acknowledge that a majority of the negotiations, anticipated performance and execution of this Agreement occurred or shall occur in Marion County, Florida. Any civil action or legal proceeding arising out of or relating to this Agreement shall be brought only in the courts of record of the State of Florida in Marion County or the United States District Court, Middle District of Florida, Ocala Division. Each party consents to the exclusive jurisdiction of such court in any such civil action or legal proceeding and waives any objection to the laying of venue of any such civil action or legal proceeding in such court or the right to bring an action or proceeding in any other court. Service of any court paper may be affected on such party by mail, as provided in this Agreement, or in such other manner as may be provided under applicable laws, rules of procedures or local rules.
22. **Rights of Third Parties:** Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the parties hereto and their respective legal representatives, successors and permitted assigns. Nothing in this Agreement is intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor shall any provision give any third persons any right of subrogation or action over or against any party to this Agreement.
23. **Amendment:** No amendment to this Agreement shall be effective except those agreed to in writing and signed by both of the parties to this Agreement.
24. **Severability of Illegal Provisions:** Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under the applicable law. Should any portion of this Agreement be declared invalid for any reason, such declaration shall have no effect upon the remaining portions of this Agreement.
25. **Section Headings:** The section headings herein are included for convenience only and shall not be deemed to be a part of this Agreement.
26. **Electronic Signature(s).** Customer, if and by offering an electronic signature in any form whatsoever, will accept and agree to be bound by said electronic signature to all terms and conditions of this agreement. Further, a duplicate or copy of the agreement that contains a duplicated or non-original signature will be treated the same as an original, signed copy of this original agreement for all purposes.



27. **Legal Authority.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.
28. **Entire Agreement:** This Agreement, including exhibits, (if any) constitutes the entire Agreement between the parties hereto with respect to the subject matter hereof. There are no other representations, warranties, promises, agreements or understandings, oral, written or implied, among the Parties, except to the extent reference is made thereto in this Agreement. No course of prior dealings between the parties and no usage of trade shall be relevant or admissible to supplement, explain, or vary any of the terms of this agreement. Acceptance of, or acquiescence in, a course of performance rendered under this or any prior agreement shall not be relevant or admissible to determine the meaning of this Agreement even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity to make objection. No representations, understandings, or agreements have been made or relied upon in the making of this Agreement other than those specifically set forth herein.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth below.

BLUE STREAM COMMUNICATIONS, LLC

CITY OF OCALA

A handwritten signature in black ink, appearing to read "Joe Canavan".

Customer Name Joseph Canavan
Title CEO

Bill Kauffman
Assistant City Manager

Approved as to form and legality:

Robert W. Batsel, Jr.
City Attorney



Exhibit A-Service Pricing

Details of Co-location Space Telecommunications Services

Address of Co-Location Space:	206 SE 3 RD ST, OCALA FL
Rack/Slot Number:	TBD
Monthly Dark Fiber Rate:	\$1300.00 – FROM 206 SE 3 RD ST TO 4001 SW 53 RD AVE, OCALA FL
Monthly Co-Location Rate:	\$125.00 - CO-LOCATION SPACE SHELF
Total Recurring Monthly Rate and Term:	\$1425.00
Service Date:	11/24/2021
Termination Date:	11/24/2024
Emergency Contact Number:	347-236-2870