

AGREEMENT FOR LEASE OF FIBER OPTIC TELECOMMUNICATIONS SERVICES

THIS AGREEMENT FOR LEASE OF FIBER OPTIC TELECOMMUNICATIONS SERVICES ("Agreement") is entered into by and between the CITY OF OCALA, a Florida municipal corporation (the "Utility" or "City"), by and through its fiber utility, Ocala Fiber Network ("OFN"), and COUNTS CONSTRUCTION COMPANY, INC., a for-profit company organized and duly authorized to conduct business in the State of Florida (EIN#: 59-0977104) ("Customer").

WHEREAS, the City owns and operates a telecommunications fiber optic network as part of its utility services offered in and around the City of Ocala; and

WHEREAS, the Customer desires to lease various fiber optic telecommunication services as noted in **Exhibit A-Service Pricing** from the Utility.

NOW THEREFORE, in consideration of the foregoing recitals, the following mutual covenants and conditions, and other good and valuable consideration, City and Customer agree as follows:

1. **RECITALS.** City and Customer hereby represent, warrant, and agree that the Recitals set forth above are true and correct and are incorporated herein by reference.
2. **DEFINITIONS.** As used in this Agreement, the following terms shall have the meanings specified below:
 - A. **Customer:** the end user of the supplied fiber optic service.
 - B. **Authorized Users:** users authorized by the Customer to utilize the fiber optic connection.
 - C. **Reseller:** a company who purchases fiber optic service to re-sell to a customer, other than the Customer referenced in this Agreement.
 - D. **Effective Date:** the date that this Agreement has been fully executed by all parties.
 - E. **Service Date:** the date on which fiber optic telecommunication services are installed and ready for Customer use; also the date on which Customer billing begins.
 - F. **Access Cost:** the cost to build new networked lines to Customer's service location.
 - G. **Live and Ready for Use:** assigned fiber lines ready for transmitting and receiving electronic data flow.
 - H. **Initial Term:** shall mean the minimum time period required for lease of fiber optic telecommunication services by the Customer.

3. SCOPE OF SERVICES.

- A. Customer agrees to lease from the Utility those services set forth in **Exhibit A – Service Pricing** (the “Services”) at the following location(s): **1840 SW 42ND ST, OCALA FL.**
- B. **Internet Services.** Flexible Bandwidth purchased for Internet usage will coincide with Internet Services commitment. Customer understands that Customer and Customer’s Authorized Users may access the Internet through the Service. Customer agrees neither the Utility nor any of its affiliates operates or controls the Internet. City does not warrant in any manner the merchandise, information or services purchased or accessed by Customer from Third Parties. Customer assumes total responsibility and risk for use of the Service and the Internet by Customer and/or Customer’s Authorized Users. Neither the City, its’ agents, nor affiliates make any express or implied warranties, representations or endorsements whatsoever with regard to said use.
- C. Customer acknowledges that any access to the Service(s) under this Agreement is intended for the use of the Customer and its Authorized Users only. Customer and its Authorized Users shall not resell or share the Service(s) to any other party without having executed a separate Reseller Agreement with the Utility.
- D. Customer will follow the rules set forth in the Fair Use Policy attached hereto as **Exhibit B – Ocala Fiber Network Fair Use Policy.**

- 4. **EFFECTIVE DATE AND SERVICE DATE.** This Agreement is effective on the date executed by all parties as set forth below (the “Effective Date”). Customer’s payment obligations shall not begin until the date that the fiber optic telecommunication services have been installed and the connection is live and ready for use by Customer (the “Service Date”).
- 5. **INITIAL TERM/RENEWAL.** The Initial Term of this Agreement shall commence on the Effective Date and continue for a term of **TWENTY-FOUR MONTHS (24 Months)** after the Service Date. Thereafter, this Agreement shall automatically renew on a month-to-month basis until services are terminated by either the Customer or the Utility pursuant to this Agreement. At the conclusion of the initial term, the Utility has the right to modify rates by providing a **THIRTY DAY (30-Day)** written notice to Customer. At that time, Customer has the right to reject the new rate and cancel services by providing notice to Utility.
- 6. **COMPENSATION.** 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 HUNDRED THIRTY-NINE AND NO/100 DOLLARS PER MONTH (\$139.00/Per Month)**, excluding any applicable fees or taxes.

7. DEFAULT AND TERMINATION.

- A. Either party may terminate this Agreement immediately upon default or breach by the other party, if said party remains in default or breach after receiving written notice and fails to cure such default or breach within **THIRTY (30) DAYS** of such notice. Termination of this Agreement shall have no effect upon the rights of the parties that accrued prior to termination.
- B. If Customer defaults or terminates this Agreement without cause prior to the expiration of the original term, the Customer will be required to pay all payments remaining under the original Agreement term.
- C. This Agreement will be invoiced monthly as part of Customer's City of Ocala utility bill and therefore subject to all related commitments of the utility bill and billing requirements of the City of Ocala Code of Ordinances. The Utility may suspend or terminate service in the event of nonpayment by the Customer.
- D. Either Party may terminate this agreement for convenience at any time after the Initial Term indicated in Paragraph 5 by providing a **THIRTY DAY (30-Day)** written notice to the other Party.

8. USE OF CUSTOMER'S PREMISES. If necessary, the Customer shall provide the Utility with adequate space within its buildings or facilities for the Utility equipment required to furnish the Services and will provide the necessary electrical power to operate the onsite equipment. In addition, Customer will provide the Utility with ingress and egress to the properties, access to the buildings and access to conduit entering the building for telecommunications services from the public right of way, if necessary, to the applicable equipment room for the Utility installation of its cable or wire.

- A. All costs associated with any building modifications or conduit installation on the premises will be borne by the Customer, unless there has been a prior agreement between the parties covering said costs. The Utility will install its wire or cable once the Customer has provided for access.
- B. Where the premises are not owned by the Customer, Customer shall obtain all necessary approvals, including easements, license and/or permits where applicable from the owner which will allow the Utility to locate, install and maintain its equipment, cable and wire on the premises and to remove its equipment, cable and wire in the

event of Customer's default of any of the provisions of this Agreement or at the termination of this Agreement.

- C. The Utility will have the right to perform inspections and audits of its equipment and fibers for its own internal contract accounting purposes upon reasonable advance notice.
 - D. All equipment, cable, wire and fiber optic lines provided or installed by the Utility shall remain the property of the Utility. The Customer will provide and allow the Utility access to the premises for normal and emergency maintenance, and if it is necessary, to remove or replace any of the equipment, cable, wire and/or fiber optic lines.
9. **PUBLIC RECORDS.** The City of Ocala 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 services set forth herein.
 - 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 Agreement term and following completion of the Agreement if the City does not transfer the records to the public agency.
 - D. Upon completion of the Agreement, 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 services set forth herein. If the City transfers all public records to the public agency upon completion of the Agreement, 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 Agreement, 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 OF OCALA'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.

10. MISCELLANEOUS PROVISIONS.

- A. **Assignment.** This Agreement shall not be assigned by Customer without the prior written consent of the Utility. However, either party may assign this Agreement to any entity that acquires all, or substantially all, of that party's assets, or in the case of Utility, Utility's business that is the subject hereof.
- B. **Reference to Parties.** Each reference herein to the parties shall be deemed to include their successors, assigns, administrators, and legal representatives, all of whom shall be bound by the provisions hereof.
- C. **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.
- D. **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.
- E. **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 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.

- F. **Section Headings.** The section headings herein are included for convenience only and shall not be deemed to be a part of this Agreement.
- G. **Rights of Third Parties.** Unless expressly stated herein to the contrary, 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.
- H. **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.
- I. **Entire Agreement.** This Agreement, including exhibits, (if any) contains all agreements between the Parties. 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.
- J. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be an original and all of which will constitute the same instrument.
- K. **Electronic Signatures.** 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 containing a duplicated or non-original signature will be treated the same as an original, signed copy of this original Agreement for all purposes.
- L. **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 mailed by registered or certified mail, postage prepaid, return receipt requested, addressed to the respective parties as follows:

Ocala Fiber Network, Attn: Director
3001 NE 21st St
Ocala, FL 34470
Tele: 352-401-6900 | E-Mail: telecom@ocalafl.org

Counts Construction Company, INC
1840 SW 42nd St
Ocala, FL 34471 Attn: Brandon Delk
Tele: 352-438-4261
E-Mail: brandon@counts.cc

- M. **Attorney Fees.** If any civil action, 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 or parties shall be entitled to recover reasonable attorneys' fees and court costs.
- N. **Indemnity.** Customer shall indemnify, up to the limits set forth in Florida Statute, s.768.28 in force at the time the contract was entered into by the parties, City of Ocala and its elected officials, employees and volunteers against, and hold City of Ocala and its elected officials, employees and volunteers harmless from, all damages, claims, losses, costs, and expenses, including attorneys' fees, which City of Ocala 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. Nothing in this contract is intended to waive the sovereign immunity protections provided to the parties pursuant to Florida law.
- O. **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 procedure or local rules.
- P. The City of Ocala Utility Services has adopted an Identity Theft Prevention Program as required under 16 C.F.R. Part 681 for certain covered accounts that may be accessed



CONTRACT#: OFN/

in accordance with this agreement. Accordingly, The City of Ocala Utility Services will conduct its activities in accordance with reasonable policies and procedures to detect, prevent, and mitigate the risk of identity theft.

11. **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.
12. **CONTRACT DOCUMENTS.** The Contract Documents which comprise the entire Agreement between the Utility and the Customer shall only include those documents listed in this section as Exhibits to this Agreement, as follows:

Exhibit A- Service Pricing

Exhibit B- Ocala Fiber Network Fair Use Policy

IN WITNESS WHEREOF, the parties have executed this Agreement on 03 / 12 / 2022.

COUNTS CONSTRUCTION COMPANY, CITY OF OCALA
INC

 Bill Kauffman
Bill Kauffman
Assistant City Manager

By: CHENYI S. COUNTS
(Printed Name)

President
(Title)

Approved as to form and legality:

Robert W. Batsel, Jr.

Robert W. Batsel, Jr.
City Attorney



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EXHIBIT A- SERVICE PRICING

DETAILS OF FIBER OPTIC TELECOM SERVICES

Service Location:

24 MONTH TERM

1840 SW 42nd ST, OCALA

(Commercial Shared Internet - Gold)

Total Recurring Monthly Rate:

\$ 139.00 (Taxes not included in cost. Taxes will be applied where applicable)

Equipment provided by the City of Ocala:

Fiber Termination Box; Fiber Jumper; SFP Optic; Media Converter

Equipment to be Returned to the City of Ocala Customer Service Office Upon

Termination:

Fiber Jumper; SFP Optic; Media Converter (Items must be returned within 30 days of account termination)

EXHIBIT B - OCALA FIBER NETWORK (OFN) FAIR USE POLICY**What is a Fair Use Policy (FUP)?**

A Fair Usage Policy - FUP, is intended to assure that all broadband customers enjoy the same experience and have access to a quick and reliable service at all times. OFN - Fair Use Policy is designed to make sure that your broadband service is a great value and is a dependable, reliable service whenever you use it.

Why a FUP is needed?

As an example, a small number of customers use Peer to Peer or file sharing software. This practice constantly sends and receives video and other very large files throughout the day consuming excessive bandwidth. This type of activity can significantly reduce the speed at which other customers can access the internet during peak hours. OFN will automatically identify the extremely heavy users and manage their bandwidth to protect the service for all our customers.

What happens if a FUP breach happens?

OFN will throttle back on their available internet bandwidth for a period of time.

Legal considerations:

OFN may only be used for lawful purposes in accordance with all laws, statutes and regulations in force within the United States. You may not use OFN to send, receive, store, distribute, transmit, post, upload or download any materials or data which:

- i. violates any Law;
- ii. constitutes harassment;
- iii. promotes or encourages illegal or socially unacceptable or irresponsible behavior;
- iv. is in breach of any third-party rights (including any third-party intellectual property rights);
- v. has any fraudulent purpose or effect or involves you impersonating another person or otherwise misrepresenting yourself as the source of any communication; or
- vi. damages or may damage our name and/or reputation

Do not violate anyone's systems or network security:

You must not use the OFN's network to violate OFN security or any third party's system or network security by any method including:

- vii. unauthorized access to or use of data, systems or networks, including any attempt to probe, scan or test the vulnerability of a system or network;
- viii. unauthorized monitoring of data or traffic on any network or system without the express written authorization of the owner of the system or network; or
- ix. unauthorized interference with any user, host, system or network without the express written authorization of the owner of the system or network.

You must not send, receive, store, distribute, transmit, post, upload or download any materials that are designed to violate the OFN network security or any third party's system or network security. Examples of such prohibited material may include (but are not limited to):

- x. programs containing viruses, worms, corrupted files, hoaxes, Trojan horses or any other items of a destructive or deceptive nature;
- xi. tools designed to compromise the security of other sites;
- xii. programs or services designed to send or facilitate the sending of unsolicited advertisements; or
- xiii. programs or services designed to encourage or facilitate a breach of this FUP or any acceptable use policy of another internet services provider.

You must not connect the OFN service to unsecured machines or services able to be exploited by others to carry out actions which constitute a breach of this FUP.

You must not adapt, modify, decompile or reverse engineer any part of OFN's network. You are responsible for all materials and/or data originating from the machines and/or networks that you have connected to the OFN's network. You must immediately disconnect (and subsequently secure prior to reconnection) machines generating materials and/or data which violate this FUP once notified of such activity by OFN.

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STATUS	◁ Signed

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SENT

03 / 04 / 2022

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Sent for signature to Robert W. Batsel, Jr. (rbatsel@lawyersocala.com) and William Kauffman (wkauffman@ocalafl.org) from biverson@ocalafl.org
IP: 216.255.240.104



VIEWED

03 / 11 / 2022

08:39:27 UTC-5

Viewed by Robert W. Batsel, Jr. (rbatsel@lawyersocala.com)
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SIGNED

03 / 11 / 2022

08:39:35 UTC-5

Signed by Robert W. Batsel, Jr. (rbatsel@lawyersocala.com)
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VIEWED

03 / 12 / 2022

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Viewed by William Kauffman (wkauffman@ocalafl.org)
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SIGNED

03 / 12 / 2022

09:47:39 UTC-5

Signed by William Kauffman (wkauffman@ocalafl.org)
IP: 174.196.132.123



COMPLETED

03 / 12 / 2022

09:47:39 UTC-5

The document has been completed.