

CONTINGENT TELECOMMUNICATIONS AGREEMENT

This CONTINGENT TELECOMMUNICATIONS AGREEMENT (the "Agreement"), dated as of November 29, 2021 (the "Effective Date"), is between Lewis County, having its principal place of business at 351 NW North St, Chehalis, WA 98532 ("County"), and ToledoTel, a Washington corporation, having its principal place of business at 183 Plomondon Rd, Toledo, WA 98591 ("ToledoTel").

RECITALS

WHEREAS, contingent upon County obtaining funding through the Washington State Broadband Office ("WSBO") Grant Program ("Program"), County will engage ToledoTel to install, supply, and maintain electronic data processing and telecommunications equipment, software, and services to build a fiber-to-the-home fiber optic communications system in Winlock, WA and its surrounding areas as identified in Exhibit A, including but not limited to the fiber, conduit, handholes, manholes, cabinets, huts, pole attachments, regeneration sites, and other appurtenances and components (the "Fiber System"). ToledoTel shall have sole responsibility to seek, hire, and supervise any and all contractors that may be required for the project, and shall do so through a competitive process.

WHEREAS, County will own the Fiber System as outlined in Exhibits B and C.

WHEREAS, if the County is able to obtain the full requested award of \$21.15 million in Program funding, ToledoTel will contribute cash equal to ten percent (10%) of the \$23.5 million total project cost (cash contribution equal to \$2.35 million) and in-kind investments of up to \$4.65 million throughout the Agreement Term to maintain, expand, and monitor the Fiber System, and provide Voice Over Internet Protocol ("VoIP"), ISP, and data services to the Fiber System.

WHEREAS, ToledoTel desires to be granted the right to use, and County is willing to grant to ToledoTel an indefeasible right to use, the full fiber capacity in the Fiber System, for the duration and on the terms and conditions set forth below, which does not convey legal title to any part of the Fiber System unless ToledoTel purchases the Fiber System at the end of the right to use term.

WHEREAS, the intent of this Agreement is for the County to provide funding for the Fiber System alongside ToledoTel's investment so that ToledoTel can provide this electronic data processing and telecommunications equipment, software, and services in the Fiber System area, and ToledoTel can recover its capital and in-kind investments in the Fiber System and obtain a reasonable profit margin.

WHEREAS, ToledoTel will provide open access wholesale services on a nondiscriminatory basis as provided for herein.

NOW, THEREFORE, for good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), and intending to be legally bound hereby, County and ToledoTel hereby agree as follows:

DEFINITIONS

In addition to the terms identified for ease of reference in the above recitals, the following definitions apply:

"Affiliate" means any person, which directly or indirectly controls or is controlled by, or is under common control with a party to this Agreement.

"Associated Property" means tangible and intangible property needed for the use of the Fiber System, including but not limited to: (i) any associated conduit; (ii) the County's rights in all Underlying Rights; and (iii) access to Connecting Points.

"Connecting Points" means the mutually agreed upon splice points in County manholes, handholes, or fiber distribution panels which can be used to access the Fiber.

"Indefeasible Right of Use" or "IRU" is an exclusive and irrevocable right to use the Fibers; provided, however, that granting of such IRU does not convey legal title to the Fibers until after the lease term ends and ToledoTel purchases the Fiber System.

"Permits" means any and all rights, licenses, franchises, agreements, authorizations, permits and approvals (including without limitation, any necessary local, state, tribal or federal authorizations and environmental permits) necessary for the installation of the Fiber.

"Person" means any individual, corporation, limited liability company, joint venture, general, limited or limited liability partnership, association or other entity.

"Third Party" means a Person that is not: (i) a party to this Agreement; (ii) an Affiliate of either party to this Agreement; or (iii) an officer or director of any of the foregoing.

"Underlying Rights" means any agreement, conveyance, license, franchise or permit obtained by County from a government entity or other Person governing the terms under which County may access and use public rights-of-way, private property, and other property in order for ToledoTel to construct, install, use and maintain a Fiber System, including the Fiber.

ARTICLE I **CONTINGENCY**

Section 1.1 This is a contingent agreement. County has applied to obtain funding in the amount of twenty-one million, one hundred and fifty thousand dollars (\$21,150,000) through the Program. All other terms and conditions in this Contingent Telecommunications Agreement, in full, are contingent upon receipt of the full award requested. Failure to obtain the full award for any reason, whether through the acts of either party or any third party or any other circumstances, shall result in a good faith renegotiation between the Parties, and if no new agreement is reached, rescission of this agreement with no remedy to either party. The parties may, but need not, attempt to seek other grant funding for the Fiber System.

ARTICLE II **CONSTRUCTION OF FIBER**

Section 2.1 Subject to the terms and conditions of the Program grant and contract, County will use all Program grant funds to further the designing, constructing, maintaining, and supplying of the Fiber System project. Furthering the project may consist of reimbursing eligible expenses to either party and such other uses of funds as are permitted by the Program. The County will own the Fiber System.

Section 2.2 County will engage ToledoTel to install, supply, and maintain the Fiber System, as described above and further described in Exhibit A herein. ToledoTel shall use a competitive process to hire contractors, as needed, for such work. County will reimburse ToledoTel's eligible expenses in doing so from the Program grant funds, through a process meeting Program requirements. The Fiber System shall have the capacity suitable for ToledoTel's ISP, data, and VoIP services within the area described in Exhibit A, plus reasonable additional capacity for Winlock's rapid growth. The Fiber System shall be constructed in Phases as set forth in Exhibit D, using specifications set forth in Exhibit E. Exhibit F describes the capacity suitable for ToledoTel's services and the excess capacity for growth. County shall have the right to test the Fiber System, itself or through an agent, for conformity with the specifications and may demand a prompt cure for fiber failing such a test.

Section 2.3 If the County is able to obtain the full requested award of \$21.15 million in Program funding, ToledoTel will contribute cash equal to ten percent (10%) of the \$23.5 million total project cost (cash contribution equal to \$2.35 million) and in-kind investments of up to \$4.65 million throughout the Agreement term, for a total investment amount of seven million dollars (\$7,000,000). All components and equipment making up the Fiber System shall be owned by the County, once installed, except that ToledoTel-supplied equipment used to light the Fiber System or to supply ISP, data, or VoIP services along the Fiber System, including but not limited to the Customer Premises Equipment (which is all equipment after a demarcation structure on the Customer's house), shall remain property of ToledoTel. Exhibits B and C herein further describe the demarcation of ownership.

(a) If actual construction costs are higher than projected and exceed both the \$21,150,000 investment made by the County and ToledoTel's \$2.35 million cash investment, ToledoTel may cease construction while the procedure in paragraph 1.3(b) occurs. The Parties shall continue to carry out the remaining portions of this Agreement outside of the Fiber System construction and negotiate in good faith over any modifications to this Agreement as needed, including consideration of the Program administrators' decision after the procedure in 1.3(b). If the Program administrators still require additional build-out and/or completion of the project after the procedure in paragraph 1.3(b) below, the parties shall equally bear the cost overruns with a 50/50 split.

(b) In the event either Party suspects on specific evidence that the costs will be excessive as described in subsection 1.3(a), it shall inform the other party as soon as possible. If such excessive costs threaten to reduce the Fiber System's scope, the parties agree to approach the Program's administrators to seek guidance on how to proceed so as to avoid any clawback or forfeiture of the Program grant funds, and further agree to negotiate in good faith over any modifications to this agreement that may be advisable to avoid such clawback or forfeiture.

ARTICLE III **LICENSE**

ARTICLE I

ARTICLE II

Section 3.1 County hereby grants to ToledoTel, and ToledoTel hereby accepts from County, an indefeasible right to use ("IRU") the Fiber System as described in Exhibit A, which shall consist of all fiber

strands in the Fiber System and the Associated Property as identified as under County ownership in Exhibits B and C herein.

Section 3.2 The IRU is granted on the terms and subject to the covenants and conditions set forth in this Agreement. The IRU shall be exclusive to ToledoTel. Except as described herein, the IRU does not include the right of ToledoTel to own, modify, or revise the IRU or Associated Property, the right to encumber in any manner, or other use of the County Fiber System, in each case except as expressly set forth herein or approved by County.

Section 3.3 Subject to reasonable restrictions imposed by County to prevent harm to or degradation of the Fiber System or other users thereof, ToledoTel shall have full and complete control and responsibility for determining network and service configuration or designs, routing configurations, regrooming, rearrangement or consolidation of channels or circuits and all related functions with regard to the use of the Fiber System.

Section 3.4 It is understood and agreed that County maintains legal title to the entire Fiber System, subject to the IRU; however, that ToledoTel shall have personal-property-like title to the capacity within its IRU and full entitlement to the revenues it makes providing services thereon. Likewise, the network system and equipment supplied by ToledoTel after the demarcation point(s), and any ToledoTel-supplied equipment used to light the Fiber System or to supply ISP, data, or VoIP services along the Fiber System, will remain the sole and exclusive property of ToledoTel and nothing contained herein shall be interpreted to give or convey to the County any property right, title, or interest in such network system, notwithstanding that it may be or become attached to or embedded in realty.

Section 3.5 ToledoTel shall provide ISP, VoIP, and data services to customers on the Fiber System who elect to obtain such services from ToledoTel. ToledoTel shall provide such services to its customers on terms and at rates determined by ToledoTel. ToledoTel shall inform potential customers of the soon-to-be-available services at the time it seeks permission to install fiber on each property, and shall inform potential customers a second time upon completion of installation.

Section 3.6 Open Access. Beginning three years after the date of the first subscriber's date of service, on any portion of the Fiber System on which ToledoTel provides retail services, ToledoTel shall offer wholesale services to all qualified providers that are authorized to provide service by the Washington State Regulatory Commission or the FCC, on a nondiscriminatory basis, at rates negotiated in good faith. The wholesale rates must be no more expensive than NECA prescribes for rate-of-return companies. ToledoTel must in all respects treat such wholesale customers equally to its own retail services on the Fiber System.

Section 3.7 Excess Capacity. In the event that the Fiber System has excess capacity based on commercially reasonable standards beyond what is required for ToledoTel's services in the area plus a reasonable room for growth, County may at its option lease such excess-capacity fibers to third parties at market rates, the revenue from which will inure to the County. County shall promptly inform ToledoTel of any such lease, and any such lease shall not constitute a violation of ToledoTel's IRU. The fiber-capacity leased to third parties under this paragraph shall be outside of ToledoTel's IRU. To determine whether the Fiber System has excess capacity, the parties shall confer every three (3) years throughout this Agreement term to assess current industry standards and update Exhibit F with a determination as to whether the Fiber System has excess capacity available for third-party leasing. Each such third-party lease shall not extend for a term beyond three (3) years, and such third-party leases shall not hinder, limit, or in any way interfere

with ToledoTel's ability to continue providing quality services to the same standard as prior to the third-party lease.

ARTICLE IV **CONSIDERATION FOR LICENSE**

Section 4.1 In consideration for the IRU, ToledoTel agrees to install, supply, and maintain the Fiber System for the County, including the cash and in-kind investments enumerated in section 2.3. ToledoTel's "in-kind" investment may include, but is not limited to, fiber drops, access gear, customer premise equipment, maintenance or monitoring of the Fiber System, or normal operating expenses, but shall not include services to customers.

- (a) Within thirty (30) days after the end of each year, ToledoTel shall provide County annual reports ("Contribution Report") detailing the total investment made by ToledoTel, including in-kind investment, for the month then-ended and otherwise in such form as is agreeable to County.
- (b) Upon request from County, ToledoTel will provide such reasonable information as necessary to allow County to audit and verify ToledoTel's reporting of any cash and in-kind investment.
- (c) County shall submit any bona fide dispute no later than ninety (90) days from the date of the Contribution Report and waives the right to dispute any Contribution Report beyond such time period, unless the alleged defect could not reasonably have been discovered within such time, in which case the deadline shall be ninety (90) days from discovery. Any disputes regarding the Contribution Reports shall be subject to the provisions of Article XIII and Article XIII. The Parties shall cooperate in good faith to resolve any such dispute within a ninety (90) day period after the submission of the dispute.

ARTICLE V **TERM**

Section 5.1 The term of the License granted hereunder shall begin as of the first day retail services are offered on the Fiber System and shall continue for a period of twenty-five (25) years. Construction of all phases of the Fiber System must be obligated under contract no later than Dec. 31, 2024, and completed in all respects no later than Dec. 31, 2026. There shall be no reimbursement for any costs for work performed after Dec. 31, 2026.

Section 5.2 The Parties may by mutual written agreement terminate or modify this Agreement prior to its expiration with any notice as agreed upon. At such time the Parties shall negotiate to buy out the other's interest or otherwise agree how to wind down the operations as required by any laws or rules that apply. In all circumstances the parties agree to structure any termination, modification, buy-out, or wind-down so as to avoid any clawback or forfeiture of Program grant funds to the greatest extent feasible.

Section 5.3 If the Term expires without prior termination of this Agreement and ToledoTel is not otherwise then in default hereunder, ToledoTel shall have an option to purchase the Fiber System at a price fixed by an independent appraisal of its market value at that time. The parties shall agree upon an appraiser; if they cannot do so, each party shall pick one appraiser, and the selected appraisers shall pick a third appraiser who shall perform the independent appraisal. The appraisal costs shall be split evenly but may be allocated to one party or the other by agreement at the time of sale. Such purchase shall be consistent with

all Program rules and applicable state or regulatory laws and rules in effect at the time, and shall properly consider any State/Program lien against the assets as relevant to the transaction and pricing. After such purchase, all right, title, and interest in the Fiber System and its Associated Property will become the property of ToledoTel.

ARTICLE VI

TAXES, FEES, SURCHARGES, AND OTHER GOVERNMENTAL IMPOSITIONS

Section 6.1 Any and all applicable national, federal, state, county and local taxes, fees, surcharges and all other related charges that may be imposed or levied on ToledoTel by any appropriate statute or regulation which provides the authority for the imposition of taxes, fees, surcharges and all other charges (collectively, "Taxes") with respect to the provision of services to ToledoTel's end users served by the Fiber System will be paid by ToledoTel in addition to all other fees and charges as set forth elsewhere in this Agreement. For avoidance of doubt, one such fee or charge set forth elsewhere in this agreement is applicable leasehold excise tax: ToledoTel will be responsible for any applicable leasehold excise tax related to the license (IRU) provided herein, and may be required to remit such tax either directly or through the County as a pass-through. Notwithstanding the foregoing, ToledoTel is not responsible for the payment of any type of tax levied on the County based upon County's ownership of the Fiber System nor the County's leasing, if any, of fiber to entities other than ToledoTel.

Section 6.2 When applicable, ToledoTel shall furnish County a valid and properly executed tax exemption/resale certificate(s). Any exemption/resale certificate shall be effective only for fees invoiced after the receipt of the exemption/resale certificate or statement of indemnification by ToledoTel. County shall not bill ToledoTel for any Taxes covered by a County-approved exemption/resale certificate or a County-approved statement of indemnification.

Section 6.3 If any exemption claimed is disallowed, ToledoTel agrees to indemnify County for all Taxes, interest and penalties, including all legal and collection fees or any other costs that may be assessed against County by any authority or jurisdiction for which this exemption has been claimed by ToledoTel for taxes related to the provision of end user services.

Section 6.4 ToledoTel and County agree to cooperate with each other and coordinate their mutual efforts concerning audits, or other such inquiries, filings, reports, etc., as may relate solely to the provision, sale or use of purchases, activities or transactions arising from or under this Agreement, which may be required or initiated from or by ToledoTel, County, or any duly authorized governmental authority relating to taxes, public records, or public funds.

Section 6.5 As pertains to the performance of this Agreement, ToledoTel shall assist County in fulfilling all obligations of County under the Washington Public Records Act (chapter 42.56 of the Revised Code of Washington). In the event that ToledoTel fails to fulfill its obligations pursuant to this section and due in whole or in part to such failure a court of competent jurisdiction imposes a penalty upon County for violation of the Public Records Act, ToledoTel shall indemnify County for that penalty to the extent ToledoTel was responsible, as well as for all costs and attorney fees directly resulting from ToledoTel's failure and incurred by County in the litigation giving rise to such a penalty. Further confidentiality and third-party notice provisions are set forth in Section 15.1.

Section 6.6 This Agreement is subject to review by any federal or state auditor. County or its designee shall have the right to review and monitor the performance of this Agreement upon reasonable notice, which may include, but is not limited to, inspection of all records or other materials that the County deems pertinent to the contract and its performance. ToledoTel shall maintain all books, records, documents, data and other evidence relating to this contract and performance of the services described herein, including but not limited to, accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement. ToledoTel shall retain such records for a period of seven (7) years following the date of final payment. If any litigation, claim or audit is started before the expiration of the seven- (7) year period, the records shall be retained for a period of seven (7) years after all litigation, claims, or audit findings involving the records have been finally resolved.

ARTICLE VII

MAINTENANCE, MONITORING, AND REPAIR

Section 7.1 ToledoTel agrees that for the Term of this Agreement, it shall maintain the Fiber System in good operating condition for normal use as contemplated by the manufacturers, using sound engineering practices and in accordance with the provisions of Exhibit D. Maintenance shall be at ToledoTel's cost as a part of its in-kind contribution. ToledoTel may subcontract for the testing, fiber services, repair, restoration, relocation, or other operational or technical services it is obligated to provide.

Section 7.2 ToledoTel further agrees to monitor the Fiber System to ensure that only authorized users connect to it or make use of the Fiber System. ToledoTel shall promptly inform County of any unauthorized use or activities that interfere with the Fiber System. County shall take such action as owner of the system, or using its police power, as is necessary to prevent waste, damage, misuse, or misappropriation of the Fiber System or its capacity. Such monitoring shall be at ToledoTel's cost as a part of its in-kind contribution, and ToledoTel may subcontract for such services in a manner similar to Section 7.1.

Section 7.3 The maintenance and monitoring obligations herein shall apply to the entire Fiber System, including any portion of it that may be leased to an entity other than ToledoTel. ToledoTel shall provide an equal level of service to portions of the Fiber System not within its IRU, if any, compared to portions of the Fiber System within its IRU. Provided, for any portion of the Fiber System leased to an entity other than ToledoTel, maintenance and monitoring shall be at County cost instead of ToledoTel's cost; ToledoTel may charge the County a rate comparable to the one it charges Lewis County PUD No. 1 for fiber splicing and maintenance.

Section 7.4 ToledoTel shall not be responsible or liable for delays in performance or inability to perform if caused by (a) an inability to access or gain right of entry to the Fiber or the Fiber System as a result of County's action or inaction, provided that it diligently seeks to obtain such access from the County; or (b) an event of Force Majeure, provided that it diligently seeks to carry out its obligations herein as soon as practicable consistent with the constraints of the Force Majeure.

ARTICLE VIII

PERMITS; UNDERLYING RIGHTS; RELOCATION

Section 8.1 In general, ToledoTel shall be responsible for obtaining rights to provide the Fiber System. To the extent that County has obtained or obtains easements, land, or rights of way used in the construction

and operation of the Fiber System (the "Underlying Rights"), the IRU granted hereunder is subject to the terms of the Underlying Rights, and subject to the terms under which the same are owned or held by County, including, but not limited to, covenants, conditions, restrictions, easements, reversionary interests, bonds, mortgages and indentures, and other matters, whether or not of record, and to the rights of tenants and licensees in possession. The IRU granted hereunder is further subject and subordinate to the prior right of grantors of the Underlying Rights to use the right of way for other business activities, including railroad operations, telecommunications uses, pipeline operations or any other purposes. The rights granted herein are expressly made subject to each and every limitation, restriction or reservation affecting the Underlying Rights. Nothing herein shall be construed as to be a representation, warranty or covenant of County's right, title or interests with respect to any Underlying Rights.

Section 8.2 Upon the expiration or other termination of an Underlying Right that is necessary in order to grant, continue or maintain the IRU granted hereunder, County shall use all reasonable efforts to obtain a renewed or alternate right of way.

Section 8.3 Upon specific request, County will provide any available Geographic Information System (GIS) information on the existing County infrastructure, including conduit, water, sewer, existing Rights of Way, and easements, to assist in constructing or maintaining the Fiber System.

Section 8.4 County will allow huts and cabinets on County-owned property at mutually agreed upon locations.

Section 8.5 The Parties will agree upon a timely, efficient, and predictable County permitting process. As a part of this process, County may issue ToledoTel a master construction permit to cover building permits for the entire Fiber System (unless ToledoTel requests a narrower permit).

Section 8.6 ToledoTel shall be responsible, at its own cost, for obtaining all applicable non-County permits to supply, maintain, or monitor the Fiber System. ToledoTel warrants that it will carry out these activities in compliance with such permits and applicable law.

ARTICLE IX **USE OF FIBER**

Section 9.1 The requirements, restrictions, and/or limitations on ToledoTel's right to use the capacity generated from the Fiber and Associated Property with respect to, any safety, operational or other rules and regulations imposed in connection with, the Underlying Rights are referred to collectively as the "Underlying Rights Requirements."

Section 9.2 ToledoTel represents, warrants and covenants that it will use the Fiber and Associated Property in compliance with and subject to the Underlying Rights Requirements and all applicable government codes, ordinances, laws, rules and regulations.

Section 9.3 Subject to the limitations set forth in this Agreement, ToledoTel may use the Fiber within its IRU and the Associated Property for any lawful communications purpose. Both Parties shall keep any and all of the Fiber System free from any liens, rights or claims of any Third Party attributable to each Party, except that ToledoTel may encumber the IRU granted to ToledoTel on the condition that ToledoTel shall provide to County an agreement from any such lien holder that the interest of the lien holder is subordinate to the interest of County and other interests and rights in and to the Fibers and Associated Property.

ToledoTel's IRU and any equipment associated therewith shall not interfere with or impair service over any of the facilities comprising the Fiber System, any other circuits or capacity of the Fiber System or any circuits or capacity of any other user of the Fiber System, impair privacy of any communications over such facilities or circuits, cause damage of any nature to the assets of the Fiber System or create hazards to the employees of any of the aforementioned users or owner of the Fiber System. County agrees and acknowledges that it has no right to use the Fibers or Associated Property within ToledoTel's IRU during the Term unless this Agreement is earlier terminated pursuant to the terms hereunder, or unless it purchases wholesale services from ToledoTel.

Section 9.4 County hereby grants ToledoTel and its employees, agents, contractors, officers, and authorized vendors access to, entry upon, and exit from the premises and locations on the Fiber System that are required to install, provision, monitor, and maintain the Fiber System and network system and serve end users, on a 24-hour per day basis, seven (7) days per week. Provided, ToledoTel shall bear its own costs for such access.

Section 9.5 ToledoTel and County shall promptly notify each other of any matters pertaining to, or the occurrence (or impending occurrence) of, any event which would be reasonably likely to give rise to any damage or impending damage to or loss of the Fiber System that are known to such party.

(a) To the extent of its comparative liability, either party shall defend, hold harmless, and indemnify the other for any damage to the other's Fiber or network system, as applicable, caused by the negligence, gross negligence, or willful misconduct of the party or its agents. Damage shall include the cost of the equipment, materials, or supplies and labor costs to repair the damage, but shall not include consequential or special damages (including but not limited to those related to lost service or lost ability to provide services or lost profits). "Costs," as used herein, means all costs incurred and computed in accordance with the established accounting procedures used by the party in ownership of the damaged property to bill third parties for reimbursable projects and generally accepted accounting principles. Such costs include the following: (a) labor costs, including wages, salaries, and benefits together with overhead allocable to such labor costs (the overhead allocation shall not exceed thirty-five percent (35%) of the labor costs computed without such overhead); and (b) other direct costs and out-of-pocket expenses on a pass-through basis (such as equipment, materials, supplies, contract services, sales, use or similar taxes, etc.).

(b) To the extent of its comparative liability, each party agrees to defend, hold harmless, and indemnify the other for any personal injury, bodily injury, sickness, disease or death arising out of or connected with the party's or its agents' performance of this Agreement.

(c) The parties agree to maintain a consolidated defense to claims made against them and to reserve all indemnity claims against each other until after liability to the claimant and damages, if any, are adjudicated. If any claim is resolved by voluntary settlement and the Parties cannot agree upon apportionment of damages and defense costs, they shall apportion them using the dispute resolution mechanisms provided in this Agreement.

(d) The indemnification obligations of the parties shall not be limited in any way by the Washington State Industrial Insurance Act, RCW Title 51, or by application of any other workmen's compensation act, disability benefit act or other employee benefit act. Each party hereby expressly waives any immunity afforded by such acts to the extent required by a party's obligations to defend,

hold harmless, and indemnify the other party. A party's waiver of immunity does not extend to claims made by its employees directly against the party as employer. The foregoing indemnification obligations of the parties are a material inducement to enter into this Agreement and have been mutually negotiated.

Section 9.6 ToledoTel and County each agree to take commercially reasonable steps to cooperate with and support the other in complying with any requirements applicable to their respective rights and obligations hereunder.

ARTICLE X **SPLICING**

Section 10.1 ToledoTel shall have the right to perform the physical splicing of any fiber owned by ToledoTel into the portion of the Fiber System within its IRU and to require that all physical splicing of fiber into the associated cable be performed as provided herein. Splicing can be performed at either designed end point(s) using a pigtail to bypass the cable ("End-Point Splicing") or at a splice point that requires access to the cable ("Splice-Point Splicing"). In order to maintain the integrity of the Fiber System, ToledoTel or its contractors acting under ToledoTel's direction must perform all End-Point Splicing and all Splice-Point Splicing anywhere on the Fiber System. For any portion of the Fiber System that is leased to an entity other than ToledoTel, ToledoTel may charge the entity requesting the splicing a comparable rate to the one it charges when splicing into fiber owned by the Lewis County PUD District No. 1.

Section 10.2 ToledoTel shall have the right to perform End-Point Splicing, and Splice-Point Splicing on the Fibers within its IRU at any time. Such request shall be given (with sufficient detail and specifications to enable performance of the splicing) not less than ten days prior to the date on which the Splicing be performed.

Section 10.3 ToledoTel or its contractor performing any splicing shall obtain any and all permits necessary for the splicing. All splicing shall be performed by the splicing methods herein or by any other method that is mutually agreed by the parties in writing.

ARTICLE XI **INSURANCE**

Section 11.1 ToledoTel shall, itself or through its contractors, maintain the insurance listed in subparagraphs (a) through (d) below, and County shall, itself or through its contractors, maintain the insurance listed in subparagraphs (b) and (d) below:

(a) Workers' Compensation Insurance complying with the law of Washington state and Employers Liability Insurance with the limits of \$500,000 each accident, including occupational disease coverage with limits of \$500,000 each employee, \$500,000 policy limit.

(b) Commercial General Liability Insurance, including premises, operations, products and completed operations, contractual, broad form property damage, independent contractors and personal injury with a minimum limit of \$2,000,000 combined single limit per occurrence.

(c) Comprehensive Automobile Liability Insurance for owned, hired and non-owned autos: \$1,000,000 combined single limit bodily injury/property damage.

(d) "All risk" property insurance in an amount equal to the replacement cost of the Fiber System not to exceed \$5,000,000.

Each party may use an umbrella or excess liability policy to meet the coverage requirements specified in this Section, and the County may use coverage through the Washington Counties' Risk Pool to meet the coverage requirements in this Section. All coverage shall be on an occurrence basis during the covered period, not on a claims-made-during-period basis.

Section 11.2 Failure of either party to enforce the minimum insurance requirements listed above shall not relieve the other party of the responsibility for maintaining these coverages. The parties shall upon request furnish to each other certificates of insurance, or other acceptable proof of insurance, reflecting policies carried and limits of coverage as required above, which shall state that thirty (30) days' notice shall be given prior to cancellation, non-renewal or any material change in any such insurance coverage. The insurance for both parties shall name the other as an additional insured, with regard to this Agreement, and be primary and non-contributory.

Section 11.3 ToledoTel shall require that each contractor employed by ToledoTel to work on the Fiber System provide and maintain at all times during the provision of such services to ToledoTel the same types of and amounts of insurance (with the exception of the amount of Commercial General Liability Insurance), which insurance shall be issued by companies approved by the parties.

For Commercial General Liability Insurance, each contractor shall carry:

- (1) Combined Single Limit: \$1,000,000 each occurrence; and
- (2) Bodily Injury and Property Damage: \$2,000,000 general aggregate, \$1,000,000 products and completed operations aggregate.

Each contractor's insurance shall be evidenced by certificates of insurance which shall be delivered to the contracting party prior to commencement of the provision of such services. The certificates of insurance shall show that the insurance is prepaid and in full force and effect and that such insurance shall not be canceled, non-renewed or changed during the Term of this Agreement or during any extension thereof, without at least thirty (30) days written notice to ToledoTel and County. The maintenance of insurance by the contractor shall in no way limit or affect the extent of the contractor's liability.

ARTICLE XII

REPRESENTATIONS, WARRANTIES AND ACKNOWLEDGMENTS

Section 12.1 Each party represents and warrants that:

- (a) it has the full right and authority to enter into, execute, deliver and perform its obligations under this Agreement;
- (b) this Agreement constitutes a legal, valid and binding obligation enforceable against such party in accordance with its terms, subject to bankruptcy, insolvency, creditors' rights and general equitable principles; and

- (c) its execution of and performance under this Agreement shall not violate any applicable existing regulations, rules, statutes or court orders of any local, state or federal government agency, court or body.

Section 12.2 EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH IN THIS AGREEMENT, NEITHER PARTY MAKES ANY WARRANTY TO THE OTHER PARTY OR ANY OTHER PERSON OR ENTITY, WHETHER EXPRESS, IMPLIED OR STATUTORY, AS TO THE DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS OR FITNESS FOR ANY PURPOSE OF ANY FIBERS OR ANY SERVICE PROVIDED HEREUNDER OR DESCRIBED HEREIN, OR AS TO ANY OTHER MATTER, ALL OF WHICH WARRANTIES ARE HEREBY EXCLUDED AND DISCLAIMED.

Section 12.3 County represents and warrants to ToledoTel that County has granted, or will grant, all permits, licenses, authorizations and other governmental approvals required for the installation of the Fiber System permissible within the confines of the law. ToledoTel represents and warrants that it will seek to obtain such permits, licenses, authorizations, and approvals.

Section 12.4 ToledoTel represents and warrants to County that the Fiber System shall have been designed, engineered, installed constructed, and maintained in accordance with all applicable building, construction and safety codes for such construction and installation, as well as all other applicable governmental laws, codes, ordinances, statutes and regulations; and the fiber manufacturers' specifications.

Section 12.5 IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, RELIANCE, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE WHATSOEVER, INCLUDING BUT NOT LIMITED TO ANY LOST PROFITS, LOST REVENUES, LOST SAVINGS, OR HARM TO ITS BUSINESS. EACH PARTY HEREBY RELEASES THE OTHER PARTY, THEIR SUBSIDIARIES AND AFFILIATES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, AND AGENTS, FROM ANY SUCH CLAIMS. NOTWITHSTANDING THIS PARAGRAPH, IF ONE PARTY'S OR BOTH PARTIES' ACTIONS RESULT IN CLAWBACK OR FORFEITURE OF PROGRAM GRANT FUNDS, EACH PARTY SHALL INDEMNIFY THE OTHER FOR SUCH CLAWBACK OR FORFEITURE OBLIGATIONS TO THE EXTENT ITS ACTIONS COMPARATIVELY CONTRIBUTED TO THE CLAWBACK OR FORFEITURE.

ARTICLE XIII **DEFAULT AND TERMINATION**

Section 13.1 Unless otherwise provided herein, a Party shall be in default if (i) except as otherwise provided in this Agreement, if it discontinues or abandons the construction, ownership, or operation of the Fiber System prior to the end of the Agreement Term; or (ii) a Party breaches any term or provision of this Agreement.

Section 13.2 In the event of a default, the non-defaulting Party must provide written notice of such default including reasonable detail, and an opportunity to cure the default within thirty (30) days after receipt of such notice. Notwithstanding the foregoing, when a default cannot reasonably be cured within such thirty (30) day period, the time for curing such default shall be extended for a period no longer than sixty (60) days from the date of the receipt of the default notice if the Party proceeds promptly to cure the default with due diligence.

Section 13.3 Upon the failure by the defaulting Party to cure any default in accordance with the preceding Section, the non-defaulting Party may (i) take such action as they determine, in their sole discretion, to be necessary to correct the default, and (ii) pursue any legal remedies they may have under this Agreement, applicable law or principles of equity relating to such breach. When pursuing the dispute resolution remedies under Section 14 of this Agreement, the timelines therein may run concurrently with timelines in this section 13 if a party notifies the other party in writing that it intends to run the timelines concurrently.

Section 13.4 Notwithstanding the provisions of this Section, the expiration or termination of this Agreement shall not affect the rights or obligations of either Party hereto with respect to any payment for rights, shared Costs, or services incurred prior to the date of termination, or pursuant to the Sections of this Agreement entitled Indemnification, Limitation of Liability, Insurance, Taxes, and Confidentiality with respect to matters or claims arising or accruing prior to expiration or termination hereof, or pursuant to any other provisions of this Agreement that, by their sense and context, are intended to survive termination of this Agreement.

Section 13.5 If a factfinder later determines that a default proceeding under this Section 13 was technically ineffective, but reflected a material failure of performance by either party, the arbitrator or court may nevertheless conclude that the contract was terminated and assign rights, obligations, and responsibilities accordingly. Provided, that any such ruling must to the greatest extent feasible be structured to prevent clawback or forfeiture of any Program grants funds, and each party may be required to take such actions as is most likely to prevent such clawback or forfeiture.

ARTICLE XIV **DISPUTE RESOLUTION**

Section 14.1 It is the intent of County and ToledoTel that any disputes which may arise between them be resolved as quickly as possible. Except as otherwise specifically provided in or permitted by this Agreement, all disputes or controversies arising in connection with this Agreement shall first be resolved through good faith negotiation to arrive at an agreeable resolution. If, after negotiating in good faith for a period of thirty (30) calendar days, or any agreed further period, the Parties are still unable to resolve the dispute, then the Parties shall endeavor to settle the dispute by mediation. Once a Party files a request for mediation with the other, the Parties agree to conclude the same within sixty (60) days of the filing of the request unless the Parties stipulate to a written extension of time.

Section 14.2 If the Parties cannot resolve any dispute by mediation, either Party may demand that any dispute be resolved by arbitration in accordance with the rules of the American Arbitration Association then in effect. There shall be a single arbitrator appointed in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, and any award by the arbitrator shall be a final judgment which may be confirmed in the Superior Court of the State of Washington in Thurston, Lewis, or Cowlitz counties or in the U.S. District Court for the Western District of Washington, Tacoma Division. Any action touching in any respect upon this contract, even one alleging that this contract is not in force or not or no longer enforceable, shall occur in one of these venues or, if brought elsewhere, be transferred to one of these venues upon motion by either party.

Section 14.3 During the continuance of any arbitration proceeding, each party shall continue to perform their respective obligations under this Agreement. If at any time it appears that the Program requirements

will not be met and clawback or forfeiture is therefore possible, the parties shall confer with the State and endeavor to prevent such clawback or forfeiture to the greatest extent feasible.

ARTICLE XV **MISCELLANEOUS**

Section 15.1 The Parties understand and agree that the terms and conditions of this Agreement and all documents referenced herein, communications between the Parties regarding this Agreement or the subject of this Agreement, as well as any financial or business information of either Party may be confidential ("Confidential Information"), to the extent allowed by Washington law. Such Confidential Information shall not be disclosed by any Party to any individual other than the directors, officers and employees of such Party or agents of such Party who have a need to know, or as required by the Washington State Public Records Act. However, no Party shall be required to keep confidential any information that (i) becomes publicly available other than through the receiving Party; (ii) is required to be disclosed pursuant to a governmental or judicial rule, order or regulation, or the Public Records Act; (iii) the recipient of the Confidential Information independently develops; (iv) becomes available to the disclosing Party without restriction from the third Party; or (v) is required by its lender and is given to such lender on a confidential basis. In the event of a Public Records Act Request for information pertaining to this Agreement, the party receiving the request shall give notice to the other party and afford that party a reasonable chance to safeguard confidential information. The responsibility of preventing disclosure shall be on the party seeking confidentiality.

Section 15.2 The relationship between the Parties shall not be that of partners, agents or joint venturers and nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including, but not limited to federal income tax purposes. In performing any of their obligations hereunder, the Parties shall be independent contractors or independent Parties and shall discharge their contractual obligations at their own risk.

Section 15.3 Neither party to this Agreement shall have the right to assign or otherwise transfer this Agreement and the rights and obligations hereunder without the express written consent of the other party, which consent shall not be unreasonably withheld. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors, transferees and assigns, the assignment to which is expressly permitted.

Section 15.4 This Agreement represents the entire understanding and agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of the parties with respect to the subject matter hereof.

Section 15.5 This Agreement may be amended only by a written amendment executed and delivered by each party hereto. Any amendment shall become effective upon such execution and delivery, unless otherwise provided.

Section 15.6 No waiver of any breach of any of the terms of this Agreement will be effective unless such waiver is in writing and signed by the party against whom such waiver is claimed. No course of dealing will be deemed to amend or discharge any provision of this Agreement. No delay in the exercise of any right will operate as a waiver of such right. No single or partial exercise of any right will preclude its further exercise.

A waiver of any right on any one occasion will not be construed as a bar to, or waiver of, any such right on any other occasion. Any consent of a party hereto required under this Agreement must be in writing and signed by such party to be effective. No consent given by a party hereto in any one instance will be deemed to waive the requirement for such party's consent in any other or future instance

Section 15.7 Governance: this Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Washington, without regard to conflicts of laws principles thereunder.

Section 15.8 All notices, consents, approvals, waivers or other communications hereunder will be in writing and will be delivered or sent addressed as follows:

If to County:

Lewis County
Attn: Erik Martin, County Manager
351 NW North St
Chehalis, WA 98532
Email: erik.martin@lewiscounywa.gov

If to ToledoTel:

ToledoTel
Attn: Dale Merten
183 Plomondon Rd
Toledo, WA 98591
Email: dale@toledotel.com

Any Person entitled to notice under this Section 15.8 may change the above address by giving notice as required by this Section 15.8. Any notices given to any person in accordance with this Agreement will be deemed to have been duly given and received: (i) on the date of receipt if personally delivered, (ii) five (5) business days after being sent by U.S. first class mail, postage prepaid, (iii) the date of receipt, if sent by registered or certified U.S. mail, postage prepaid, or (iv) two (2) business days after having been sent by a nationally recognized overnight courier service with confirmation of delivery.

Section 15.9 Wherever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law. However, if for any reason any one or more of the provisions of this Agreement are held to be invalid, illegal or unenforceable in any respect, such action will not affect any other provision of this Agreement, and the parties shall negotiate in good faith for an amendment to this Agreement that would place them as close as possible to the position that they would have been in had the invalid, illegal or unenforceable provision had been valid, legal, and enforceable.

Section 15.10 This Agreement may be signed in multiple counterparts. Each counterpart will be considered an original instrument, but all of them in the aggregate will constitute one agreement. Scans, telecopies or facsimiles of signatures will be given effect for purposes of the signature page of this Agreement and any amendments to this Agreement.

Section 15.11 Article and section titles have been inserted for convenience of reference only. They are not intended to affect the meaning or interpretation of this Agreement.

Section 15.12 Force Majeure. The parties shall not be liable for any delay or failure in performance of any part of this Agreement where such failure or delay is caused by the following events to the extent such delay or failure is beyond their reasonable control: acts of nature; acts of civil, governmental, or military authority; embargoes; epidemics; terrorist acts; war; riots; insurrections; fires; explosions; earthquakes; nuclear accidents; floods; work stoppages; cable cuts; power blackouts; volcanic action; other major environmental disturbances; or unusually severe weather conditions. In such event, the party impacted shall, upon giving prompt notice to the other, be excused from such performance on a day-to-day basis during such event to the extent of such interference. The parties shall use commercially reasonable efforts to avoid or remove the cause of nonperformance and both parties shall proceed to perform with dispatch once the causes of the failure or the delay are removed or cease.

Section 15.13 The terms and provisions of this Agreement are intended solely for the benefit of each party hereto and their respective successors and permitted assigns, and it is not the intention of the parties hereto to confer third-party beneficiary rights upon any other person.

ARTICLE XVI MISCELLANEOUS EXIT AND SURVIVORSHIP

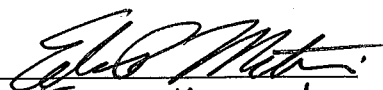
Section 16.1 In the event that ToledoTel is poised to cease to exist or file for Bankruptcy, immediately before such cessation of existence or filing, ToledoTel's rights in this Agreement and any IRU herein are extinguished automatically and shall revert to County. County shall endeavor to find substitute performance for any obligations ToledoTel had hereunder to prevent or mitigate damages, and shall consult with the Program administrators about how to proceed to avoid or minimize any clawback or forfeiture of Program grant funds from either party.

Section 16.2 Sales of a controlling interest in ToledoTel, or ToledoTel's conversion or transition into some other corporate form or entity other than its cessation of existence or Bankruptcy, shall be treated as an assignment pursuant to Section 15.3. The same shall be true of subsequent sales of a controlling interest in the entity that hold rights or obligations under this Agreement.

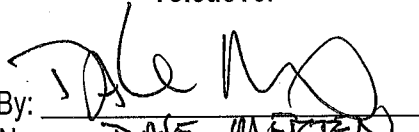
Section 16.3 In the unlikely event that County ceases to exist, its successor municipal, state, or other political subdivision entity shall inherit all of the rights and obligations herein. In the event the County files for Bankruptcy, if ToledoTel is not in default of this Agreement, it shall have the right to continue to use its IRU and perform under this contract unless and until the Bankruptcy court directs otherwise.

IN WITNESS WHEREOF, each of the parties hereto has duly executed this Agreement as of the date first written above.

Lewis County

By: 
Name: ERIK MARTIN
Title: COUNTY MANAGER

ToledoTel

By: 
Name: DALE MERTEN
Title: VP/COO