

INTERGOVERNMENTAL AGREEMENT FOR JOINT MANAGEMENT OF BROADBAND NETWORK

This Intergovernmental Agreement for Joint Management of Broadband Network (this "Agreement") is made and entered into effective for all purposes as of April ___, 2018 (the "Effective Date") between the City of John Day ("John Day"), an Oregon municipal corporation, City of Seneca ("Seneca"), an Oregon municipal corporation, and Grant County ("County"), a political subdivision of the State of Oregon.

RECITALS:

A. Parties desire to promote economic development within Grant County, surrounding communities, and their respective jurisdictions through development of a publicly-owned digital broadband network. Parties desire that the digital broadband network be reliable and provide affordable broadband services.

B. Parties find that development of a reliable and affordable broadband network necessitates the establishment of an intergovernmental entity under ORS chapter 190, which intergovernmental entity will provide centralized ownership, management, and control of the network.

C. This Agreement is made by the Parties pursuant to ORS 190.010, which statute provides that units of local government may enter into agreements for the performance of any functions and activities that any party to the agreement, or its officers or agents, has the authority to perform.

AGREEMENT:

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Definitions. Unless defined elsewhere in this Agreement, capitalized terms contained in this Agreement have the meanings assigned to them in the attached Appendix A.

2. Grant County Digital Network Coalition.

2.1 Formation; General Purpose. There is hereby created the Grant County Digital Network Coalition ("Agency"), an intergovernmental entity created pursuant to ORS chapter 190. Agency's initial members are the Parties. Agency's purposes include, without limitation, the following: (a) plan for and study the best method(s) to design, construct, own, operate, and/or maintain the Network and future telecommunications infrastructure for the benefit of the Parties and their respective citizens, other governmental entities, and public and private health and safety organizations; (b) own, manage, control, and operate the Network (and any digital system obtained by Agency) and all associated Network traffic, software management, maintenance costs, and connections to public buildings; (c) provide a forum for communication and consultation among the Parties and provide an opportunity for a cooperative and equitable sharing of expenses, data, expertise, experience, and plans between the Parties; (d) modernize telecommunications infrastructure within the jurisdictions of each Party to ensure sufficient and efficient capacity, speed, resilience, scalability, and access to Agency's residents; (e) receive funds necessary to manage and operate the Network and Agency; (f) acquire such additional tangible and intangible assets as are deemed necessary or appropriate to fulfill the other purposes of Agency; and (g) carry out such other necessary and/or appropriate responsibilities and functions as provided by the Parties.

2.2 General Authority. Except as otherwise provided in this Agreement and/or ORS chapter 190, Agency will have the authority to act in the interest of the Parties to oversee and direct operation of the Network and such other responsibilities as may be assigned by the Parties from time to time. Without otherwise limiting the generality of the immediately preceding sentence, and subject to the Laws, Agency will have the following general powers: (a) adopt, through action of the Board, such bylaws, rules, regulations, and/or policies necessary to carry out the purposes of Agency and/or this Agreement; (b) perform and exercise all powers

pursuant to the Laws, including, without limitation, the principal acts of the Parties and ORS chapter 190, which are necessary and/or appropriate to design, construct, own, operate, and/or maintain the Network for the benefit of the Parties and their respective citizens; (c) purchase, own, hold, appropriate, and/or condemn land, property, facilities, and/or right-of-way either in Agency's name or in the name of individual Parties in furtherance of the construction, ownership, operation, and/or maintenance of the Network; (d) enter into agreements with other public and/or private entities for the purpose of design, construction, ownership, operation, and/or maintenance of the Network; (e) issue, sell, and/or otherwise dispose of bonds, securities, and/or other forms of indebtedness, including, without limitation, the power to raise revenue bonds under ORS chapter 287A; and (f) exercise all powers pursuant to the Laws, including, without limitation, the principal acts of the Parties and ORS chapter 190, which are necessary and/or appropriate to carry out the purposes of Agency and/or this Agreement. Notwithstanding anything contained in this Agreement to the contrary, Agency will not have the authority to bind and/or encumber a Party in any manner except as the Party agrees through both the policy and administrative authority granted to the Party's appointed Board member.

2.3 Office. Agency's principal office is located at John Day City Hall, 450 East Main Street, John Day, Oregon 97845.

2.4 Bylaws. Within ninety (90) days after the Effective Date, the Parties will adopt certain Bylaws of Grant County Digital Network Coalition substantially in the form attached hereto as Exhibit A (the "Bylaws").

3 State Grant; Formation and Organization Expenses; Network Routing.

3.1 Oregon Department of Administrative Services – Grant. John Day will cause Grant funds to be used for the Network, including, without limitation, extending fiber optic cables along US 395 from US 20 (Burns) to John Day. Agency and each Party will exercise their best efforts to assist John Day with performing its obligations under the Grant Agreement, including, without limitation, assisting John Day with the preparation and submission of the financial reports required under the Grant Agreement. Grant funds will be used subject to and in accordance with the Grant Agreement.

3.2 Formation and Organization Expenses. Within thirty (30) days after the Effective Date, Grant funds will be used to reimburse John Day for all costs and expenses John Day has incurred in connection with the preparation of this Agreement and/or formation of Agency, including, without limitation, legal and other professional services. Without otherwise limiting the immediately preceding sentence, Grant funds will be used to reimburse John Day for all costs and expenses John Day has or will incur related to or concerning the Fiber Channels Agreement and/or Commstructure Agreement. Each Party and Agency approve and ratify the Fiber Channels Agreement and Commstructure Agreement.

3.3 Network Routing. The Network's fiber optic cables will be placed and located along US 395, commencing from US 20 in Burns, Oregon to US 26 in John Day, Oregon. The route's southern terminus will be located at or near one of two network signal regeneration facilities owned and operated by CenturyLink Communications in Burns, Oregon. The northern terminus will be located at or near John Day at a to-be determined location at the conclusion of the Network's feasibility analysis. A signal regeneration site and/or point of presence to house servers, routers, Network switches, multiplexers, and other Network interface equipment is anticipated to be located at or near Seneca, Oregon. As necessary or appropriate, and subject to applicable Laws, Network aerial and underground communications infrastructure will be located and placed along existing federal, state, and municipal public right-of-way and, as necessary, private lands.

4. Finances.

4.1 Budgeting. In accordance with and subject to the Laws, including, without limitation, Oregon Local Budget Law, Agency may make expenditures for the purchase of materials, services, supplies,

facilities, and/or equipment as may be necessary or appropriate to carry out the purposes of Agency and/or this Agreement. Expenditures will not exceed funds appropriated for the specific purposes.

4.2 Apportionment of Funds. Subject to the Laws, revenues received in excess of the budgeted cost of operation will be reinvested in the provision of additional services by Agency, held in a reserve account for future needs, and/or otherwise used as determined by Agency. Revenues in excess of operational costs may also be returned to the Parties when such action is made a part of Agency's adopted budget. Agency recognizes that some Parties have made greater contributions to the establishment of Agency than other Parties, when measured in terms of goods and services donated, forbearance in the collection of right-of-way fees, and/or other financial contributions. This difference in contributions will have no effect on membership rights, except that it may be reflected in return payments to Parties, which will be roughly proportional to the value of each Party's contributions.

4.3 Member Obligations. Each party will timely pay the Party's share of the Operating Expenses based on the cost-sharing formula described in the attached Exhibit B, which formula may be modified from time to time by the Board. Each Party may provide in-kind services to further the purposes of this Agreement and/or Agency as each Party deems necessary or appropriate. Such in-kind services will not be reimbursed from Agency and/or other Parties unless first agreed to otherwise in writing.

4.4 Party (individual) Expenses. Notwithstanding anything contained in this Agreement to the contrary, each Party will be solely responsible for timely payment of all costs and expenses concerning or related to the Network infrastructure and/or facilities (and their operation) that are intended for the primary benefit of the Party (as opposed to the Agency and Network) that the Party causes to be located, placed, and/or constructed inside or outside the Party's incorporated limits, including, without limitation, Network poles, wires, optical fiber cable, conduits, apparatus, anchors, vaults, fixtures, equipment, and other appliances and conductors (including all maintenance, route surveillance, minor repairs, restoration, and relocation costs and expenses concerning the same) necessary to extend, operate, and maintain the Network within and through the Party's incorporated limits. Individual Party expenses described in this Section 4.4, include, without limitation, costs and expenses incurred by a Party that are specific and primarily intended to extend and/or provide Internet services to the Party (and/or users) inside the Party's incorporated limits that are not necessary for the Network's operation for all Parties and/or infrastructure common to all Parties (and their respective users). Without otherwise limiting the preceding and by way of illustration, if a Party's Network expansion causes additional costs and expenses to operate and maintain the Network that would not have occurred but for the Party's Network expansion, the costs and expenses incurred to expand the Network will not be Operating Expenses and will be paid by the Party requesting the Network expansion.

5. Lead Entity; General Management.

5.1 Lead Entity – Qualifications. Agency will be managed by Lead Entity. Lead Entity must be a Party. The initial Lead Entity is John Day.

5.2 Resignation; Removal. Lead Entity may resign at any time by giving written notice to the Parties. Unless otherwise specified in the notice, Lead Entity's resignation will be effective upon receipt. Notwithstanding anything contained in this Agreement and/or the Bylaws to the contrary, John Day may only be removed as Lead Entity if John Day resigns, substantially and materially fails to perform its obligations as Lead Entity under this Agreement (as determined by the Board), and/or is otherwise incapable of performing its Lead Entity duties and responsibilities (as determined by John Day). If John Day is removed as Lead Entity in accordance with this Section 5.2 or resigns as Lead Entity, the Parties will elect another Party to serve as the replacement Lead Entity. The replacement Lead Entity (and any Lead Entity thereafter) will be appointed and removed by the Board at a meeting called for the purpose of appointing or removing a Lead Entity. Except in the case of John Day as provided under this Section 5.2, each Lead Entity will serve for a term of two years or until Lead Entity's earlier resignation or removal.

5.3 Responsibilities. Lead Entity will be responsible for, and is hereby empowered to take, all actions necessary and/or appropriate to support the operation of Agency and its affairs in accordance with this Agreement, the Laws, Bylaws, and/or policies adopted by the Board. Lead Entity will perform financial and administrative functions of Agency, including, without limitation, the following: (a) contracting, employing, and supervising all contractors and personnel assigned to Agency in accordance with Lead Entity's policies and procedures, including, without limitation, surveyors, architects, attorneys, accountants, auditors, and other professional service providers; (b) managing and supervising all contractors assigned Agency duties in accordance with the policies and procedures of Lead Entity; (c) incurring and paying, on the behalf of Parties and in accordance with this Agreement and Agency's approved budget, all Agency expenses; (d) in accordance with this Agreement, the approved budget, and the policies and procedures of Lead Entity, entering into all contracts, leases, and procurement agreements, including, without limitation, acquisition of interests in real property, as necessary to design, construct, operate, and maintain the Network; (e) expending funds in accordance with Agency's approved budget and purchasing policies and procedures of Lead Entity; (f) providing all personnel administration, financial support staff, insurance, legal advice, management support, and services in accordance with this Agreement and the approved Agency budget and policies and procedures of Lead Entity; (g) billing and collecting from each Party its share of the cost of Agency's operations as provided in this Agreement and the approved annual budget and work plan of Agency; (h) developing a proposed annual budget and work plan and administering the approved budget and work plan; (i) providing staff support, including the recording and distribution of minutes, for the Board; (j) providing necessary office space, furnishings, equipment, hardware, software, and technical support for Agency operations; and (k) providing generally for the audit, accounting for, receipt, and custody of Agency funds. Lead Entity will be promptly reimbursed for all costs and expenses incurred in performing its duties and responsibilities under this Agreement, including, without limitation, the costs and expenses incurred by Lead Entity under Section 5.5.

5.4 Records; Invoices; Payments. Lead Entity will maintain financial records concerning Agency operations in accordance with the Laws, which records will be available at Lead Entity's finance offices for inspection by the Parties during regular business hours. Lead Entity will invoice each Party for its share of estimated Operating Expenses for the next quarter's service based on the approved cost sharing formula and approved budget. Lead Entity will submit invoices to each Party on or about the first day of each quarter for the next quarter's service. Each Party will pay the amount due under each invoice within thirty (30) days after the Party's receipt of invoice.

5.5 Lead Entity Personnel and Administrative Costs. Agency will reimburse Lead Entity for all personnel and administrative costs and expenses Lead Entity incurs to perform its obligations under this Agreement, including, without limitation, costs of medical insurance, social security, employment insurance, and overtime, if applicable. Lead Entity will invoice Agency for its personnel and administrative costs on or about the first day of each quarter for personnel and administrative costs incurred during the immediately preceding quarter. Agency will pay the amount due under each Lead Entity invoice within thirty (30) days after receipt of invoice.

5.6 Lead Entity – Direct Employment and Contracting. In connection with Lead Entity's performance of its duties and responsibilities under this Agreement, Lead Entity may procure and/or purchase goods and services (including, without limitation, construction services) directly from any person for and on behalf of Agency in accordance with Lead Entity's then applicable laws, regulations, procedures, and policies, including, without limitation, Lead Entity's public contracting code. Without otherwise limiting the generality of the immediately preceding sentence, Lead Entity may contract with, employ, and/or supervise contractors and/or personnel to provide and/or perform necessary or appropriate services for and on behalf of Agency, including, without limitation, surveyors, architects, attorneys, accountants, auditors, and other professional service providers. Agency will promptly reimburse Lead Entity for all reasonable costs and expenses Lead Entity may incur in connection with Lead Entity's procurement and/or purchase of goods and services for and on behalf of Agency.

6. Governance; Membership.

6.1 Membership.

6.1.1 Board Membership. Agency will be governed by the Board. The Board will consist of five Board members. The governing body of each Party will appoint one Board member. The appointed member will represent his or her appointing Party. Each member will serve a minimum term of two years. If a vacancy occurs on the Board, the vacancy will be filled by the governing body of the Party that appointed the departed member.

6.1.2 Until Agency consists of five members, the Party appointed Board members will fill the vacancy(ies) through appoint of not more than two at-large members. At large members will be appointed and may be removed by the unanimous vote of the Party appointed Board members. An at-large member must at all times be a citizen residing in Grant County, Oregon. A vacancy concerning an at-large member position will be filled by the unanimous vote of the Party appointed Board members.

6.2 Authority. Subject to any limitations set forth in this Agreement, ORS chapter 190, Section 6.3, and those powers and authority specifically delegated to Lead Entity under this Agreement and/or the Bylaws, the Board will have those powers and authority set forth in this Section 6.2.

6.2.1 Powers. The Board will have the authority to perform the following: (a) establish and/or amend bylaws for Agency from time to time; (b) establish Agency's mission and goals; (c) oversee and have full responsibility for all matters pertaining to Agency's development and operations; (d) review and approve Agency's budget pursuant to Oregon Local Budget Law; (e) determine the projected costs to be allocated to each Party in accordance with this Agreement; (f) approve capital purchase requests, if not previously approved in the budget; (g) review performance relative to the implementation of Agency's policies and its budget; and/or (h) carry out such other activities as are necessary, required, and/or implied to accomplish the purposes of Agency, this Agreement, and/or as provided in ORS chapter 190.

6.2.2 Limitation on Powers. The Board will not have the authority to perform the following: (a) commit the taxing authority or general funds of the governing body of any Party; and/or (b) expend funds in excess of the amount of funds received from the Parties for a fiscal year.

6.3 Delegation of Powers. The Board may authorize a person or persons (including, without limitation, Lead Entity), or the manner of designating a person or persons, to exercise some or all the powers which would otherwise be exercised by the Board. To the extent so authorized, any such person or persons will have the duties and responsibilities of the Board, and the Board will be relieved to that extent from such duties and responsibilities.

6.4 Meetings. Regular meetings of the Board will be held at least quarterly at such day, time, and place as determined by the Board. Subject to applicable law, special meetings may be called by the chairperson as needed and within seventy-two (72) hours after receiving a request from two or more members of the Board.

6.5 Voting. Each member of the Board will be entitled to one vote. Except as otherwise expressly provided in this Agreement, the Board will exercise voting rights in accordance with this Section 6.5.

6.5.1 Quorum; Manner of Acting. A majority of the then-appointed Board members will constitute a quorum for the purpose of conducting its business and exercising its powers and for all other purposes. Except as this Agreement, the Bylaws, and/or applicable Law requires otherwise, the express concurrence of a quorum is necessary to decide any question before Agency.

6.5.2 New Members. Subject to the Laws, including, without limitation, ORS chapter 190, the Board may authorize a new party to join Agency only if approved by a unanimous vote of the Board. The addition of an additional member may be accomplished by the new member taking the actions necessary under ORS chapter 190 and signing a copy of this Agreement, as amended, after approval of the additional membership by the Board.

6.5.3 Matters Requiring Unanimous Approval. The following will require unanimous approval of the Board members: (a) the addition of new members to this Agreement pursuant to Section 6.5.2; (b) approval of the annual budget; (c) amendments to this Agreement and/or the Bylaws; (d) expulsion of any party to this Agreement pursuant to Section 7.5; and/or (e) dissolution of Agency.

6.6 Committees. Unless ORS chapter 190 or this Agreement provide otherwise, the Board may (a) create one or more committees of the Board which exercise the authority of the Board, (b) appoint members of the Board to serve on such committees, and (c) designate the method of selecting committee members. Each committee must consist of two or more Board members, who serve at the pleasure of the Board.

6.7 Chairperson; Officers. The Board may appoint a chairperson of the Board at any time and such officers as it deems advisable. The chairperson will preside at all meetings of the Board and will perform other duties prescribed by the Board from time to time.

7. Term; Termination; Indemnification.

7.1 Term. Subject to the terms and conditions contained in this Agreement, the term of this Agreement will commence on the Effective Date and will continue thereafter until terminated in accordance with this Agreement. The Parties may terminate this Agreement and dissolve Agency by the Parties' unanimous written consent. Commencing on or about January 15, 2019, and continuing on or about the same day of each year thereafter during the term of this Agreement, the Parties will review this Agreement to determine whether any changes and/or modifications to this Agreement are necessary or appropriate. Any changes and/or modifications to this Agreement require the Parties' mutual written agreement.

7.2 Dissolution. Upon dissolution, each Party on the date of dissolution will be responsible for its share of the Operating Expenses through the date of dissolution. Upon dissolution, Agency's cash, if any, will be distributed in proportion to the Party's percentage of the Operating Expenses and all remaining Agency assets will be distributed in the manner agreed upon by the Parties, which may include, without limitation, the sale of Agency's facilities to a telecommunications provider or other utility. If the Parties are unable to agree on the manner and method in which Agency's physical assets will be distributed upon dissolution, each Party will receive those physical assets located in the Party's jurisdictional limits; provided, however, Grant County will receive only those physical assets located outside a Party's jurisdictional limits.

7.3 Voluntary Withdrawal by a Party. Any Party may elect to terminate participation in this Agreement and withdraw from Agency by providing ninety (90) days' prior written notice to the chairperson, each member of the Board, and the governing body of each Party. Withdrawal will be effective ninety (90) days from the date of such notice. The withdrawing Party will continue to pay its apportioned share of, and/or be responsible for, its Operating Expenses incurred prior to the Party's written notice of withdraw, and will defend, indemnify, and hold the remaining Parties and Agency harmless for, from, and against those financial responsibilities and obligations attributable solely to the withdrawing Party. Expenditures contracted for by Agency after the date of notice of intent to withdraw will not constitute an obligation on the part of the Party providing notice of withdrawal.

7.4 Default. If a Party to this Agreement is in default of its obligations under this Agreement, the Board may so declare and terminate Network services to that Party thirty (30) days after the date of mailing a notice of default (the "Default Notice"), unless the defaulting Party cures the default in full prior to the expiration of the thirty (30) days set forth in the notice (the "Cure Period"). The Default Notice will be issued by

Lead Entity. Failure to timely cure the default during the Cure Period will be grounds for expulsion under Section 7.5. The defaulting Party will continue to be responsible to pay its assigned share of the cost of Agency as determined in accordance with this Agreement following the termination of Network services.

7.5 Expulsion.

7.5.1 Expulsion of a Party must be (a) approved by unanimous vote of the Board; provided, however, the Board member representing the Party proposed to be expelled will not be entitled to a vote, and (b) evidenced by resolution of the governing body of each Party (except the Party proposed to be expelled). Such expulsion will take effect in the manner set out in this Section 7.5 whenever a Party fails to perform any of its obligations under this Agreement.

7.5.2 No Party may be expelled except after written notice from the Board of the alleged reasons for expulsion and after a reasonable opportunity of no less than thirty (30) days to correct the reasons for the expulsion. If the alleged reasons for expulsion cannot be corrected within thirty (30) days, and if the offending Party has taken, and is actively pursuing all reasonable efforts to correct the alleged reasons for expulsion, then the time such Party has to correct the alleged defaults may be extended an additional thirty (30) days.

7.5.3 Within the initial thirty (30) day period, the offending Party may request a hearing before the Board. The request must be in writing and addressed to the chairperson. The determination of the Board will be final and binding. The Board member representing the Party proposed to be expelled may participate in the hearing.

7.5.4 Upon expulsion, the former Party will continue to be fully liable for (a) any payment found to be due with respect to the period prior to the date of expulsion, (b) any other unfulfilled obligation arising at any time attributable to the period prior to the date of expulsion, and (c) any other unfulfilled obligation as if it was still a Party of Agency. The Party will not be entitled to any asset of Agency, including, without limitation, any personal or real property owned by Agency as of the date of any expulsion or any funds held by Agency. An expelled Party will continue to maintain any hardware and software of the Network located on its property and will grant free access to said hardware and software to Agency (and/or Agency's Representatives) for maintenance, repair, and/or replacement.

7.6 Indemnification; Insurance. To the fullest extent permitted under applicable Law, each Party will defend, indemnify, and hold the other Parties and their Representatives harmless for, from, and against all claims, demands, actions, suits, damages, liabilities, costs, and expenses, including, without limitation, attorney fees and costs, arising out of or related to the Party's breach and/or failure to perform the Party's obligations under this Agreement. Agency will provide for adequate insurance to cover the directors, officers, employees, staff, contractors, agents, and activities undertaken by Agency. In providing the services specified in this Agreement (and any associated services), each Party is a public body and maintains its public body status as specified in ORS 30.260. The Parties understand and acknowledge that each Party retains all immunities and privileges granted by the Oregon Tort Claims Act (ORS 30.260 through 30.295) and all other statutory rights granted as a result of their status as local public bodies.

8. Miscellaneous.

8.1 Coordination. The Parties will maintain adequate levels of communication to ensure maximum cooperation between the Parties.

8.2 Expenses; Notices. Subject to the terms and conditions contained in this Agreement, each Party will pay all wages and benefits due the Party's personnel, including, without limitation, overtime, workers' compensation, and death benefits. Any notice will be deemed given when personally delivered or delivered by facsimile or email transmission (with electronic confirmation of delivery), or will be deemed given

three days following delivery of the notice by U.S. mail, certified, return receipt requested, postage prepaid, by the applicable party to the address of the other party shown in Appendix A (or any other address that a party may designate by notice to the other party), unless that day is a Saturday, Sunday, or legal holiday, in which event it will be deemed delivered on the next following business day.

8.3 Severability; Remedies. Each provision contained in this Agreement will be treated as a separate and independent provision. The unenforceability of any one provision will in no way impair the enforceability of any other provision contained herein. Any reading of a provision causing unenforceability will yield to a construction permitting enforcement to the maximum extent permitted by applicable law. If a Party breaches or otherwise fails to perform any of its representations, warranties, covenants, and/or obligations under this Agreement, Agency and/or the non-defaulting Parties may, in addition to any other remedy provided to Agency and/or the non-defaulting Parties under this Agreement, pursue all remedies available to Agency and/or the non-defaulting Parties at law or in equity. All available remedies are cumulative and may be exercised singularly or concurrently.

8.4 Waiver; Entire Agreement. No provision of this Agreement may be modified, waived, and/or discharged unless such waiver, modification, and/or discharge is agreed to in writing by the parties. No waiver by a Party at any time of the breach of, or lack of compliance with, any conditions or provisions of this Agreement will be deemed a waiver of other provisions or conditions hereof. This Agreement contains the entire agreement and understanding between Parties with respect to the subject matter of this Agreement and contains all the terms and conditions of the Parties' agreement and supersedes any other oral or written negotiations, discussions, representations, and/or agreements.

8.5 Assignment; Binding Effect. No Party may assign any of the Party's rights and/or obligations under this Agreement to any person without the prior written consent of the other Parties. Subject to the immediately preceding sentence, this Agreement will be binding on the Parties and their respective heirs, executors, administrators, successors, and permitted assigns and will inure to their benefit. This Agreement may be amended only by a written agreement signed by each Party. Parties will execute all documents or instruments and will perform all lawful acts necessary or appropriate to secure their rights hereunder and to carry out the intent of this Agreement. All exhibits, schedules, instruments, and other documents referenced in this Agreement are part of this Agreement.

8.6 Applicable Law; Attorney Fees. This Agreement will be construed, applied, and enforced in accordance with the laws of the State of Oregon. Any action or proceeding arising out of this Agreement will be litigated in courts located in Grant County, Oregon. Each party consents and submits to the jurisdiction of any local, state, or federal court located in Grant County, Oregon. With respect to any dispute relating to this Agreement, or if a suit, action, arbitration, or other proceeding of any nature whatsoever is instituted to interpret or enforce the provisions of this Agreement, including, without limitation, any proceeding under the U.S. Bankruptcy Code and involving issues peculiar to federal bankruptcy law or any action, suit, arbitration, or proceeding seeking a declaration of rights or rescission, the prevailing party will be entitled to recover from the losing party its reasonable attorney fees, paralegal fees, expert fees, and all other fees, costs, and expenses incurred in connection therewith, as determined by the judge or arbitrator at trial, arbitration, or other proceeding, or on any appeal or review, in addition to all other amounts provided by law.

8.7 Person; Interpretation; Signatures. For purposes of this Agreement, the term "person" means any natural person, corporation, limited liability company, partnership, joint venture, firm, association, trust, unincorporated organization, government or governmental agency or political subdivision, or any other entity. All pronouns contained herein and any variations thereof will be deemed to refer to the masculine, feminine, or neutral, singular or plural, as the identity of the parties may require. The singular includes the plural and the plural includes the singular. The word "or" is not exclusive. The words "include," "includes," and "including" are not limiting. This Agreement may be signed in counterparts. A fax or email transmission of a signature page will be considered an original signature page. At the request of a Party, the other Party or Parties will confirm a fax or email transmitted signature page by delivering an original signature page to the requesting

Party. The law firm of Bryant, Lovlien & Jarvis, P.C. has been employed by John Day to prepare this Agreement and such attorneys represent only John Day in this matter. Each Party has employed its own independent legal counsel to assist in the Party's review and negotiation of this Agreement (and any document referenced herein).

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and effective for all purposes as of the Effective Date.

John Day:
City of John Day,
an Oregon municipal corporation

Seneca:
City of Seneca,
an Oregon municipal corporation

By: _____
Its: _____

By: _____
Its: _____

Dated: _____

Dated: _____

Grant County:
Grant County,
a political subdivision of the State of Oregon

By: _____
Its: _____

Dated: _____

Appendix A
Definitions

“Agency” has the meaning assigned to such term under Section 2.1.

“Agreement” has the meaning assigned to such term in the preamble.

“Board” means Agency’s then appointed board of directors.

“Bylaws” have the meaning assigned to such term under Section 2.4.

“Commstructure Agreement” means that certain Professional Services Agreement dated effective January 9, 2018 between Commstructure Consulting, LLC and John Day, pursuant to which Commstructure Consulting, LLC is providing certain fiber optic route planning and feasibility analysis concerning the Network.

“Cure Period” has the meaning assigned to such term under Section 7.4.

“Default Notice” has the meaning assigned to such term under Section 7.4.

“Effective Date” has the meaning assigned to such term in the preamble.

“Fiber Channels Agreement” means that certain Professional Services Agreement dated effective January 10, 2018 between Fiber Channels, Inc. and John Day, pursuant to which Fiber Channels, Inc. will, among other things, review, validate, and update Network requirements.

“Grant” means that certain State of Oregon, Department of Administrative Services grant in the amount of \$1,836,000.00 approved by 2017 House Bill 5006 and issued to John Day for the purpose of extending a fiber optic line along US 395 from US 20 to John Day.

“Grant Agreement” means that certain letter agreement dated November 8, 2017 from Deputy Kate Nass, Chief Financial Officer, Oregon Department of Administrative Services, concerning the Grant.

“Grant County” means Grant County, a political subdivision of the State of Oregon, whose address is 201 S. Humbolt, Suite 290, Canyon City, Oregon 97820.

“John Day” means the City of John Day, an Oregon municipal corporation, whose address is 450 East Main Street, John Day, Oregon 97845.

“Law(s)” mean all federal, state, and local laws, statutes, ordinances, and/or regulations directly or indirectly affecting the Network, Agency, and/or this Agreement, including, without limitation, the Americans with Disabilities Act of 1990 (and the rules and regulations promulgated thereunder) and ORS chapter 190, all as now in force and/or which may hereafter be amended, modified, enacted, or promulgated.

“Lead Entity” means the Party designated by the Parties pursuant to this Agreement as the Party having overall responsibility for Agency operations on an ongoing basis in accordance with the policies established by the Board and this Agreement. The Parties acknowledge that the “Lead Entity” may be different for different parts of the overall undertaking.

“Network” means the broadband infrastructure necessary to establish and operate a digital network capable of providing public Internet connection inside and through Grant County, Oregon, including, without limitation, extending a fiber optic line along US 395 from US 20 to John Day, wireless infrastructure, fiber optic infrastructure, and all fiber connections to the premises constructed, operated by, and/or controlled by Agency.

“Operating Expense(s)” means, subject to Section 4.4, all costs and expenses necessary or appropriate for operation of Agency and/or the Network which are common to all Parties, including, without limitation, the following: (a) costs and expenses concerning the construction, installation, repair, maintenance, operation, improvement, and expansion of the Network, which costs and expenses may include, without limitation, costs and expenses attributable to right-of-way, hub locations, permitting, pole attachments, purchase and installation of poles, wires, optical fiber cable, conduits, apparatus, anchors, vaults, fixtures, equipment, and other appliances, conductors, and infrastructure (including, without limitation, costs and expenses incurred for the construction and installation of Network infrastructure more particularly described under Section 3.3); (b) costs and expenses necessary or appropriate to construct, purchase, develop, install, repair, and maintain facilities related to or concerning the Network; (c) costs and expenses incurred for necessary or appropriate professional services, including, without limitation, surveying, accounting, audits, legal, planning, design, construction, operations, maintenance, certification, testing, and otherwise; (d) costs and expenses for comprehensive liability, casualty, and other necessary or appropriate insurance policies; (e) costs and expenses related to physical and/or environmental requirements (e.g., cable routes, hardware locations, optoelectronics locations, outdoor plant, inside plant, and shared equipment locations), infrastructure protection (e.g., switching protection, route protection, back-up power options and equipment standby), shared components (e.g., transmitters, receivers, amplifiers, passive optical devices, cable design costs, and shared fiber optic lines); and (f) all other costs and expenses necessary or appropriate for the construction, installation, repair, maintenance, and/or operation of the Network and/or Agency. The term “Operating Expenses” does not include those individual Party expenses described in Section 4.4.

“Party(ies)” means, individually and collectively, John Day, Seneca, and Grant County.

“Representative(s)” mean the officers, employees, contractors, agents, volunteers, and authorized representatives of the identified person.

“Seneca” means the City of Seneca, an Oregon municipal corporation, whose address is 106 A Avenue, Seneca, Oregon 97873.

Exhibit A

Bylaws of Grant County Digital Network Coalition

(attached)

Exhibit B
Cost-Sharing Formula

Each Party will pay its percentage share of all Operating Expenses attributable to the Network and/or Agency. Unless and until adjusted as provided in this Agreement, and except for Grant County, the percentage used to determine a Party's proportionate share of the Operating Expenses is based on a fraction, whereby the Party's certified population estimate is the numerator and the total certified population estimate for all Parties is the denominator; provided, however, Grant County's certified population is based upon the certified population for all unincorporated areas in Grant County). As of the Effective Date, and until adjusted in accordance with this Agreement, each Party's percentage share of the Operating Expenses is as follows:

<u>Party</u>	<u>Certified Population Estimate (December 2017)</u>	<u>Percentage of Operating Expenses</u>
John Day	1,735	37%
Seneca	160	3%
Grant County	<u>2,855</u>	<u>60%</u>
	4,750	100%

Certified population estimates will be based upon Portland State University's most recent annual certified population estimate (which is posted on or about December 15 each year). The percentage share of the Operating Expenses will be adjusted upon admission of any new party to Agency or withdrawal of a Party.