

CONSTRUCTION SERVICES AGREEMENT

This Construction Services Agreement (this "Agreement") is dated October ____ 2019, but made effective for all purposes as of October 01, 2019 (the "Effective Date"), between City of John Day ("City"), an Oregon municipal corporation, whose address is 450 E Main Street, John Day, Oregon 97845, and Quanta Telecommunications Services, LLC ("Contractor"), a Delaware limited liability company, whose address is 7908 N Sam Houston Parkway West, Suite 500, Houston, Texas 77064.

RECITALS:

A. Contractor is a licensed Oregon construction contractor (CCB License No.: 212104) engaged in the business of providing labor, materials, equipment, supplies, and related construction services on a contract basis. City issued a certain Request for Competitive Quotes – Fiber Optic Network Infrastructure Construction – Fiber to City Hall (the "RFQ") inviting contractors to provide competitive quotes for the Work (as defined below). Contractor submitted a quote dated March 22, 2019 attached hereto as Exhibit A (the "Quote"). City determined that the Quote will best serve the interests of City.

B. City and Contractor desire to enter into this Agreement pursuant to which Contractor will undertake and perform the Work on or under the Property (as defined below), subject to the terms and conditions contained in this Agreement. For purposes of this Agreement, the term "Property" means the right-of-way and property more particularly described as the "project route" in the RFQ, which project route is generally located between the John Day Fire Station located at 316 S Canyon Boulevard, John Day, Oregon 97845 and John Day City Hall located at 450 E Main Street, John Day, Oregon 97845.

AGREEMENT:

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

1. CONSTRUCTION WORK

1.1 Description of Work. Contractor will furnish and perform, or arrange for and direct, all labor, services, equipment, and related activities necessary for the construction and installation of a new fiber optic network connection (the "Project") in, on, about, and/or under the Property (the "Work") in accordance with the following (individually and collectively, the "Contract Document(s)"): (a) this Agreement; (b) the Quote; (c) the plans and specifications prepared by Commstructure Consulting, LLC attached hereto as Exhibit B (the "Plans"); (d) the Construction Schedule attached hereto as Exhibit C (the "Schedule"); (e) the RFQ, including, without limitation, the work described in the "Scope of Work" and "General Construction Guidelines for Communications Infrastructure" sections contained therein attached hereto as Exhibit E; and (f) all Change Orders (as defined below) including Change Order 01. Contractor will complete the Work in strict compliance with the Contract Documents. City may enter the Property to inspect the Work at any time and from time to time. Subject to the terms and conditions contained in this Agreement, Contractor will, at Contractor's cost and expense, furnish all materials, tools, methods, labor, equipment, services, transportation, power, fuel, water, supplies, and other items, utilities, and facilities of every kind, and will perform (or arrange for and direct) all labor and related construction services, necessary to complete the Work in accordance with this Agreement. The Work will include all cleaning, finishing, and/or preparation of all portions of the Property necessary for completion of the Work.

1.2 Schedule of Work. Contractor will commence completion of the Work immediately after the Effective Date. Contractor will prosecute completion of the Work diligently, continuously, and in accordance with the Schedule; provided, however, the Work will be Completed (as defined below) no later than November 22, 2019 (the "Completion Date"). For purposes of this Agreement, the term "Completed" means that stage in the Work

when City determines that the Work has been completed in accordance with the Contract Documents so that City may use the Work for its intended use and purpose.

1.3 Change Orders. City may, at any time after the Effective Date and without invalidating this Agreement, require additions, reductions, and/or changes to the Work (individually and collectively, "Modification(s)"). Modifications will be authorized by written change order (the "Change Order(s)") issued by City and accepted by Contractor, which Change Orders will describe, with reasonable particularity, the following: (a) the Modifications; (b) any changes to the Completion Date as a result of the Modifications; and (c) any adjustments to the Contract Price (as defined below) due to the Modifications. Contractor will assist City with all Change Orders (and underlying Modifications). A Change Order will be attached to this Agreement and become part of this Agreement.

2. CONTRACT PRICE

2.1. Contract Price. Subject to the terms and conditions contained in this Agreement, City will pay Contractor for completion of the Work in accordance with this Agreement the total, fixed sum of \$64,427.00 (the "Contract Price"). The Contract Price includes, without limitation, all services provided by Contractor under this Agreement, including, without limitation, all preconstruction and clean-up services. Subject to the terms and conditions contained in this Agreement, City will pay Contractor the Contract Price in accordance with this Section 2. City will not withhold any taxes from payments made to Contractor, and Contractor will be solely responsible for paying all taxes arising out of or resulting from completion of the Work, including, without limitation, income, social security, workers' compensation, and employment insurance taxes.

2.2 Payment to Contractor. On or before the fifth day of each month during the term of this Agreement, Contractor will submit an invoice to City concerning the Work performed by Contractor during the immediately preceding month (each an "Invoice"). Each Invoice will contain the following information: (a) the value of Work (subject to City's approval) during the subject calendar month; (b) for lump-sum bid items (if any), a lump-sum breakdown; (c) remaining bid and/or Change Order quantities and amount(s) to be billed; (d) certified payroll reports; and (e) all other information requested by City. City will pay Contractor an amount equal to ninety-five percent (95%) of the value of Work identified in the Invoice which has been approved by City. The Work value determination will be made by City. Five percent (5%) of the Work value approved by City will be withheld by City from payment to Contractor (the "Retainage"). No compensation will be paid to Contractor for any portion of the Work not approved by City. City's payment will be accepted by Contractor as full compensation for completing the Work to which the Invoice relates. Notwithstanding anything contained in this Agreement to the contrary, as a condition precedent to City's partial and final payments to Contractor, and before payment of the Retainage, Contractor will furnish City a partial or final release and discharge, as appropriate, from all claims, liens, and demands arising out of or relating to this Agreement and the Work. City reserves the right to make payments by separate check to any subcontractor and/or material provider of Contractor.

2.3 Final Payment. Prior to applying for final payment, Contractor will remove all equipment, waste, garbage, and debris from the Property, restore the Property in accordance with Section 3.5, and complete all closeout procedures required under the Contract Documents. Subject to the terms and conditions contained in this Agreement, final payment, including Retainage, will be made no later than thirty (30) days after the Work is deemed Completed; provided, however, Contractor will first provide City a certified written affidavit, supported by documentation, that there are no unsatisfied liens and/or outstanding bills for labor or materials against the Property. City's partial payments and final payment does not constitute and/or operate as approval or acceptance of the Work performed by Contractor. All partial payments will be subject to correction in the final payment.

2.4 Right to Withhold Payment. Notwithstanding anything contained in this Agreement to the contrary, City reserves the right to withhold all or part of a payment, or may nullify in whole or part any payment previously made, to such extent City determines necessary to protect City from loss arising out of or resulting from the following: (a) Contractor's negligence and/or Work that is defective and not remedied and/or that has been

demonstrated or identified as failing to conform with the Contract Documents; (b) third party claims filed or evidence indicating that such claims will likely be filed; (c) Contractor's failure to perform its obligations under this Agreement; (d) reasonable evidence that the Work cannot be properly completed for the unpaid balance of the Contract Price; (e) reasonable evidence that the Work will not be Completed on or before the Completion Date and that the unpaid balance of the Contract Price is inadequate to cover City's damages for the anticipated delay; (f) failure to carry out the Work in accordance with the Contract Documents; (g) assessment of liquidated damages, when withholding is made for offset purposes; and/or (h) any other reason provided under this Agreement. In addition, City may withhold payments to Contractor for any damage caused by Contractor and/or any Contractor Representative (as defined below) for which no adjustment is made and where evidence, as determined by City, indicates a claim will be filed against City and/or the Property. If Contractor fails to timely complete the Work in accordance with the Schedule, correct deficiencies in the Work, and/or perform any other Contractor obligation under this Agreement, City may perform the Work, correct deficiencies in the Work, and/or cure any Contractor default as City determines necessary with all costs reimbursed by Contractor immediately upon City's demand.

3. CONTRACTOR DUTIES; RESPONSIBILITIES; REPRESENTATIONS; WARRANTIES

In addition to all other Contractor representations, warranties, and/or covenants contained in this Agreement, Contractor represents, warrants, and covenants the following to City:

3.1 Independent Contractor. Contractor is an independent contractor of City. Contractor is not an employee of City. Contractor will be free from direction and control over the means and manner of performing the Work, subject only to the right of City to specify the desired results. Contractor will pay all taxes arising out of or resulting from performance of the Work, including, without limitation, income, social security, workers' compensation, and employment insurance taxes. Contractor is licensed under ORS Chapter 701. In the performance of the Work, Contractor is customarily engaged in, and will continue to customarily engage in, an independently established business as described under ORS 670.600(3).

3.2 Authority; Binding Obligation; Conflicts. Contractor has full power and authority to sign and deliver this Agreement and to perform all Contractor's obligations under this Agreement. Contractor has entered into this Agreement on the basis of its own investigation, examination, and personal knowledge of the Property and Work. Contractor has not relied on any representations or warranties other than those expressly provided in this Agreement. This Agreement is the legal, valid, and binding obligation of Contractor, enforceable against Contractor in accordance with its terms. The signing and delivery of this Agreement by Contractor and the performance by Contractor of Contractor's obligations under this Agreement will not (a) breach any agreement to which Contractor is a party, or give any person the right to accelerate any obligation of Contractor, (b) violate any law, judgment, or order to which Contractor is subject, and/or (c) require the consent, authorization, or approval of any person, including, without limitation, any governmental body.

3.3 Compliance With Laws. Contractor will perform the Work in strict accordance with this Agreement and subject to and in accordance with the Laws (as defined below). Prior to the Effective Date, Contractor obtained all licenses, approvals, permits, and/or certificates necessary or appropriate to perform the Work. For purposes of this Agreement, the term "Law(s)" means all applicable federal, state, and local laws, regulations, restrictions, orders, codes, rules, and/or ordinances related to or concerning Contractor, this Agreement, the Property, and/or the Work, including, without limitation, all Environmental Laws (as defined below), ORS 279B.220, 279B.225, 279B.230, and 279B.235 (which statutes are incorporated herein by reference), public improvement standards, building and safety codes and zoning ordinances, all applicable public contracting provisions set forth on the attached Exhibit D, ORS Chapters 279A, 279B, and 279C, and the administrative rules related thereto, and all applicable City ordinances, resolutions, policies, regulations, orders, restrictions, and guidelines, all as now in force and/or which may hereafter be amended, modified, enacted, and/or promulgated.

3.4 General Duties; Subcontractors.

3.4.1 Contractor will perform (or cause to be performed) the following at Contractor's cost and expense: (a) furnish all labor, materials, equipment, tools, supplies, and/or services necessary or appropriate to complete the Work; (b) complete the Work in a good workmanlike manner, free of all defects and deficiencies; (c) obtain and maintain all licenses, inspections, and permits required by any private and/or public authority in connection with the Work; (d) comply with and give all notices required under the Laws; (e) properly manage and dispose of all waste, garbage, and debris, including, without limitation, sediment, paint, cement wash, asphalt, motor oil, and grease, in accordance with the Laws; (f) be responsible to City for the acts and omissions of Contractor, each Contractor Representative, and all other persons performing Work; and (h) timely and properly pay Contractor's employees for their services subject to and in accordance with the Laws, including, without limitation, Oregon's prevailing wage rate laws. Contractor will maintain proper licensure with the Oregon Construction Contractors Board and maintain proper insurance and bonding as required under this Agreement and the Laws. Notwithstanding anything contained in this Agreement to the contrary, Contractor will use only licensed and bonded subcontractors familiar with the Laws and of good reputation to complete the Work. Contractor will cause each subcontract and/or agreement with its subcontractors and material suppliers to include all terms and conditions applicable to Contractor under this Agreement. Contractor will cause its subcontractors to comply with this Agreement. Contractor will only use new and good quality materials and equipment for the Work. For purposes of this Agreement, the term "Contractor Representative(s)" means, individually and collectively, each present and future Contractor employee, representative, contractor, subcontractor, and/or agent.

3.4.2 Contractor will conduct its operations and will perform all Work, including, without limitation, all excavation and/or restoration related Work, in accordance with the following: (a) all Work will take into account all applicable traffic control laws, regulations, rules, and procedures; (b) the Work will be conducted in a manner intended to minimize any obstruction and/or disruption to traffic circulation (Contractor will provide adequate traffic control); and (c) Contractor will ensure that the Work does not obstruct and/or prevent necessary police and fire emergency routes.

3.5 Maintenance; Restoration.

3.5.1 Contractor will daily and remove all waste, garbage, and debris from the Property. Contractor will maintain the Property in a safe, clean, and orderly condition, free from accumulation of waste, garbage, and debris. Upon completion of the Work, Contractor will remove from the Property all waste, garbage, debris, tools, equipment, and surplus materials. If City determines that Contractor has failed to perform its obligations under this Section 3.5.1, City will have the option, but not the obligation, to perform Contractor's obligations under this Section 3.5.1 at Contractor's cost and expense. Contractor will reimburse City for all costs and expenses incurred by City to perform Contractor's obligations under this Section 3.5.1 immediately upon City's demand. Notwithstanding anything contained in this Agreement to the contrary, the Property will be left in a condition satisfactory to City. All Contractor clean-up obligations under this Agreement are part of the Work.

3.5.2 Contractor will, at Contractor's cost and expense, restore the Property to the same condition to which the Property existed as of the Effective Date, excepting the Work performed in accordance with this Agreement. If Contractor fails to timely restore the Property to the same condition to which the Property existed as of the Effective Date, City may cause the restoration to be made at Contractor's cost and expense. Contractor will reimburse City for all costs and expenses incurred by City to restore the Property immediately on City's demand.

3.6 Contractor's Payment Obligations. Contractor will pay all applicable federal, state, and local taxes, including, without limitation, excise, sales, and/or use taxes. Contractor will pay when due all charges for labor and materials incurred by Contractor in connection with the Work and will be responsible for keeping the Property free from all liens, encumbrances, and/or other claims. Without otherwise limiting the generality of the immediately preceding sentence, Contractor will keep the Property, including, without limitation, any structure and/or equipment located on, in, and/or under the Property, free and clear of all liens, claims, security interests, and/or encumbrances.

3.7 Contractor Investigation. Prior to the Effective Date, Contractor visited, reviewed, and evaluated the Property (and all surrounding areas) and is satisfied with the nature and condition of the Property (and all surrounding areas) and all general and local conditions, including, without limitation, those bearing upon building materials, disposal, transportation, availability of labor, storage of materials, water, electric power, roads, uncertainties of weather, and all other conditions concerning the Property (and all surrounding areas) and/or the Work, and assumes all risk thereof. If the Work involves any excavating or driving any material or equipment into the ground, whether or not located on the Property, Contractor will determine the existence and exact location of all utility services and/or structures to protect the integrity thereof and will pay all costs and expenses related thereto. Contractor has reviewed and confirmed the correctness and adequacy of the Contract Documents relative to the Work and has or will ensure the accuracy of all lines, levels, and measurements and their relation to benchmarks, property lines, reference lines, and the Work. No variations from specified lines, grades, and/or dimensions will be made except with the prior written consent of City's city manager.

3.8 Hazardous Substances. To City's actual knowledge, City is not aware of any Hazardous Substances located on or about the Property. Contractor will not cause and/or permit any Hazardous Substances (as defined below) to be spilled, leaked, disposed of, and/or otherwise released in, on, under, and/or about the Property and/or any surrounding areas. For purposes of this Agreement, the term "Environmental Law(s)" means any federal, state, or local statute, regulation, or ordinance, or any judicial or other governmental order pertaining to the protection of health, safety, or the environment; the term "Hazardous Substance(s)" means any hazardous, toxic, infectious, or radioactive substance, waste, or material as defined or listed by any Environmental Law, and will include petroleum oil and its fractions. For purposes of this Section 3.8, the term "actual knowledge" means the actual knowledge of City's city manager, Nicholas Green, as of the Effective Date without Mr. Green having conducted a review and/or investigation of any kind into the relevant matter.

3.9 Warranty.

3.9.1 Contractor guarantees and warrants the Work against all deficiencies and defects in materials, equipment, and workmanship for a period of one year, commencing from the date of the Acceptance Notice (as defined below). If City discovers a deficiency or defect in the Work, Contractor will commence repair or correction of the deficient or defect Work within forty-eight (48) hours after City's written notice. Contractor will complete all warranty work diligently and expeditiously until completion (and without cost and/or interruption to City). If Contractor fails to promptly complete the warranty work, City may employ a third party to complete the warranty work. All costs and expenses incurred by City to service the warranty work will be reimbursed by Contractor immediately upon City's written demand. Contractor warrants and guarantees all repair work for two years, commencing upon completion of the warranty work. Contractor's warranty provided under this Section 3.9 is in addition to, and not in limitation of, all other representations, warranties, guarantees, and remedies provided under the Contract Documents. For purposes of this Agreement, the term "Acceptance Notice" means written notice from City to Contractor informing Contractor that City has accepted the Work subject to the terms and conditions contained in this Agreement (including, without limitation, Contractor's warranty provided under this Section 3.9).

3.9.2 Upon request of City, and as a condition precedent to City making final payment to Contractor, Contractor will execute and return to City a warranty form in form and substance acceptable to City. Contractor's warranty obligations are not an exclusive remedy and in no way limit Contractor's obligations and/or liabilities under this Agreement. Contractor will supply City with all warranty and guarantee documents relative to equipment and materials incorporated into the Work and guaranteed by their suppliers and/or manufacturers. Contractor will assign (or cause to be assigned) to City all manufacturer warranties for equipment and/or products incorporated into the Work as a condition of final payment.

4. INSURANCE; INDEMNIFICATION

4.1 Insurance. Contractor will obtain and maintain, in addition to any other insurance required under this Agreement, the following insurance: (a) employer's liability insurance with limits of \$1,000,000 per

accident; (b) commercial general liability insurance for all losses or claims arising out of or related to Contractor's performance of its obligations under this Agreement (including, without limitation, damages as a result of death or injury to any person or destruction or damage to any property, which insurance will include "products-completed operations" coverage that will apply for a period of two years from the date the Work is determined Completed) with limits of \$1,000,000 per occurrence, \$2,000,000 in the aggregate; and (c) automobile liability insurance for all owned, non-owned, and hired vehicles that are or may be used by Contractor in connection with Contractor's performance of the Work with limits of \$500,000 combined single limit or split limits of \$250,000 per person, \$500,000 per occurrence, and \$250,000 property damage. Contractor will have workers' compensation insurance in form and amount sufficient to satisfy the requirements of applicable Oregon law. Each liability insurance policy required under this Agreement will be in form and content satisfactory to City, will list City and each City officer and employee as additional insureds, and will contain a severability of interest clause; the workers' compensation insurance will contain a waiver of subrogation in favor of City. The insurance Contractor is required to obtain and maintain under this Agreement may not be cancelled without ten (10) days' prior written notice to City. Contractor's insurance will be primary and any insurance carried by City will be excess and noncontributing. Contractor will maintain the above insurance at all times until the Work is Completed; provided, however, the "products-completed operations" coverage under the commercial general liability insurance must be maintained for a period of two years after the Work is Completed). If Contractor fails to obtain and maintain the insurance required under this Agreement, City will have the option, but not the obligation, to obtain such coverage with costs to be reimbursed by Contractor immediately upon City's demand. Contractor will require all subcontractors (unless otherwise approved by City) to carry insurance at least equal to that required under this Section 4.1.

4.2 Surety Bonds. Prior to Contractor's commencement of the Work, Contractor will, at Contractor's cost and expense, obtain, execute, and deliver to City separate performance and payment bonds each in a sum equal to the Contract Price in forms acceptable to City, executed by a corporate surety holding a certificate of authority to transact surety business in Oregon and otherwise acceptable to City (individually and collectively, the "Bond(s)"). If any increase in the Contract Price occurs, Contractor will increase each Bond to an amount equal to the increased Contract Price. Contractor will pay the costs of all Bonds.

4.3 Indemnification. Contractor releases and will defend, indemnify, and hold City and each City Representative (as defined below) harmless for, from, and against all claims, actions, proceedings, damages, liabilities, judgments, penalties, fines, costs, and expenses of every kind, whether known or unknown, including, without limitation, attorney fees and costs, resulting from or arising out of, whether directly or indirectly, the following: (a) any damage to the Work and/or Property arising out of the negligence and/or wrongful acts or omissions of Contractor and/or any Contractor Representative; (b) any injury, death, and/or damage to person or property arising out of the negligence and/or wrongful acts or omissions of Contractor and/or any Contractor Representative; (c) the exercise of any remedy available to City under this Agreement, without regard to cause or the negligence of City or any other person; (d) performance of the Work by Contractor and each Contractor Representative; (e) all clean-up, removal, and remediation work arising out of or resulting from Contractor's failure to comply with Section 3.8; and/or (f) Contractor's breach and/or failure to perform any Contractor representation, warranty, covenant, and/or obligation contained in this Agreement. Contractor's indemnification obligations provided in this Section 4.3 will survive the earlier termination or expiration of this Agreement. For purposes of this Agreement, the term "City Representative(s)" means, individually and collectively, each present and future City officer, employee, representative, contractor (excluding Contractor), and/or agent.

5. TERMINATION; DAMAGES

5.1 Contractor Default. The occurrence of one or more of the following events constitutes a Contractor default under this Agreement (each an "Event of Default"): (a) Contractor fails to prosecute the Work continuously with sufficient laborers and equipment to ensure satisfactory completion of the Work by the Completion Date; (b) Contractor fails to complete the Work in accordance with the Contract Documents; (c) Contractor fails to pay its obligations as and when they become due; (d) Contractor breaches and/or otherwise fails to perform any Contractor representation, warranty, covenant, and/or obligation contained in this Agreement; and/or (e) Contractor gives City reasonable cause to doubt Contractor's ability to timely, fully, and

properly complete the Work (or any other obligation hereunder). City will make the determination as to whether an Event of Default has occurred.

5.2 Termination; Damages.

5.2.1 If City determines that an Event of Default has occurred, City may terminate this Agreement after providing Contractor ten (10) days' prior written notice of the Event of Default and Contractor fails to remedy the Event of Default to City's satisfaction within the ten-day period. If City terminates this Agreement under this Section 5.2.1, City may take over prosecution of the Work and may complete it with its own forces or otherwise, or use such other measures City determines necessary to prevent delay and/or damages. City's performance of any Work will not constitute a forfeiture of City's right to recover damages from Contractor for Contractor's delay and/or failure to complete the Work, including, without limitation, City's right to liquidated damages under Section 5.2.2. Upon City's termination of this Agreement, City will reimburse Contractor for any unpaid labor and materials incorporated into the Work (and accepted by City) and for Contractor's reasonable overhead and profit earned through the date of termination, subject to retainage to allow City to correct any deficiencies in Contractor's performance of the Work and/or damages City has sustained or may sustain. City's decision to terminate this Agreement will not constitute City's sole remedy. City has all remedies available to City under this Agreement and at law or in equity. If the cost to City of performing the balance of the Work is more than the balance of the Contract Price that has not been paid to Contractor, Contractor will be liable, and will immediately reimburse City upon demand, for such excess.

5.2.2 Contractor acknowledges and agrees that City will sustain damages as a result of Contractor's failure to timely and properly complete the Work in accordance with the Contract Documents. Contractor further acknowledges and agrees that upon occurrence of an Event of Default it will be impractical and extremely difficult to determine the amount of actual damages City will sustain due to delays arising from the Event of Default. Contractor will pay City \$500.00 per day as liquidated damages for any delay, not as a penalty, but as a reasonable forecast of just compensation for City's losses and expenses for each calendar day or fraction thereof, including, without limitation, during the correction of deficiencies and final clean-up, elapsing between the Completion Date and the date the Work is Completed.

5.3 Remedies. Notwithstanding anything contained in this Agreement to the contrary, City's termination of this Agreement will not constitute a waiver of any rights, claims, and/or causes of action City may have against Contractor. If a party breaches and/or otherwise fails to perform any of its representations, warranties, covenants, and/or obligations under this Agreement, the non-defaulting party may, in addition to any other remedies provided to the non-defaulting party under this Agreement, pursue all remedies available to the non-defaulting party at law or in equity. All available remedies are cumulative and may be exercised singularly or concurrently. In addition to and not in lieu of any remedy available to City, if Contractor fails to prosecute the Work properly, or fails to perform any provision of the Agreement, or does (or omits) anything whereby safety or proper construction may be compromised or whereby damage or injury may result to persons or property, after three days' written notice to Contractor, City will have the right to correct all omissions or deficiencies and may deduct the cost therefore from the Contract Price. No action taken by City hereunder will affect any other rights or remedies of City or relieve Contractor from any consequences or liabilities arising from such acts or omissions.

6. MISCELLANEOUS

6.1 Non-Discrimination. Contractor agrees that no person will, on the grounds of race, color, creed, national origin, sex, marital status, or age, suffer discrimination in the performance of this Agreement when employed by Contractor. Contractor agrees to comply with Title VI of the Civil Rights Act of 1964, with Section V of the Rehabilitation Act of 1973, and with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor will comply with the Americans with Disabilities Act of 1990, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws.

6.2 Attachments; Further Assurances; Notices. Any exhibits, schedules, instruments, documents, and other attachments referenced in this Agreement are part of this Agreement. The parties will sign other documents and take other actions reasonably necessary to further effect and evidence this Agreement. Time is of the essence with respect to Contractor's performance of its obligations under this Agreement. All notices or other communications required or permitted by this Agreement must be in writing, must be delivered to the parties at the addresses set forth above, or any other address that a party may designate by notice to the other party, and are considered delivered upon actual receipt if delivered personally, by fax or email transmission (with electronic confirmation of delivery), or by a nationally recognized overnight delivery service, or at the end of the third business day after the date of deposit if deposited in the United States mail, postage pre-paid, certified, return receipt requested.

6.3 Severability; Assignment; Binding Effect; Survival. 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. Contractor will not assign this Agreement (and/or any portion of the Work) to any person without City's prior written consent. Subject to the immediately preceding sentence, this Agreement will be binding on the parties and their respective heirs, personal representatives, successors, and permitted assigns, and will inure to their benefit. This Agreement may be amended only by a written agreement signed by each party. Termination of this Agreement, regardless of how it occurs, will not relieve a party of obligations that have accrued before termination. All Contractor representations, warranties, covenants, and obligations contained in this Agreement (including, without limitation, Contractor's indemnity obligations) will survive the termination of this Agreement.

6.4 Governing Law; Venue. This Agreement is governed by the laws of the State of Oregon, without giving effect to any conflict-of-law principle that would result in the laws of any other jurisdiction governing this Agreement. 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.

6.5 Attorney Fees; Dispute Resolution. If any arbitration or litigation is instituted to interpret, enforce, and/rescind this Agreement, including, without limitation, any proceeding brought under the United States Bankruptcy Code, the prevailing party on a claim will be entitled to recover with respect to the claim, in addition to any other relief awarded, the prevailing party's reasonable attorney fees and other fees, costs, and expenses of every kind, including, without limitation, costs and disbursements specified in ORCP 68 A(2), incurred in connection with the arbitration, the litigation, any appeal or petition for review, the collection of any award, or the enforcement of any order, as determined by the arbitrator or court. If any claim, dispute, or controversy arising out of or related to this Agreement occurs (a "Dispute"), City and Contractor will exert their best efforts to seek a fair and prompt negotiated resolution of the Dispute and will meet at least once to discuss and seek a resolution of the Dispute. If the Dispute is not resolved by negotiated resolution, either party may initiate a suit, action, arbitration, or other proceeding to interpret, enforce, and/or rescind this Agreement.

6.6 Waiver; Entire Agreement. No provision of this Agreement may be modified, waived, or discharged unless such waiver, modification, or discharge is agreed to in writing by City and Contractor. No waiver of either 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 the 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, or agreements.

6.7 Person; Interpretation; Execution. 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. The titles, captions, or headings of the sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement. The parties may execute this Agreement in separate counterparts, each of which when executed and delivered will be an original, but all of which together will constitute one and the same instrument. Facsimile or email transmission of any signed original document will be the same as delivery of an original. At the request of either party, the parties will confirm facsimile or email transmitted signatures by signing and delivering an original document. When City is exercising any consent, approval, determination, and/or similar discretionary action under this Agreement, the standard will be City's sole and unfettered discretion. If a conflict should arise between the terms and conditions of this Agreement and any other Contract Document, the terms of this Agreement will control.

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

CITY:
City of John Day,
an Oregon municipal corporation

CONTRACTOR:
Quanta Telecommunications Services, LLC,
a Delaware limited liability company

By: _____
Its: _____

By: _____
Its: _____

Exhibit A
Contractor's Quote

[attached]

Exhibit B
Plans

[attached]

Exhibit C
Construction Schedule

[attached]

Exhibit D
Public Contracting Provisions

- (1) Contractor will make payment promptly, as due, to all persons supplying to Contractor labor or materials for the performance of the Work provided for in this Agreement. [ORS 279C.505(a)]
- (2) Contractor will pay all contributions or amounts due the Industrial Accident Fund from Contractor incurred in the performance of the Agreement. [ORS 279C.505(b)]
- (3) Contractor will not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or materials. [ORS 279C.505(c)]
- (4) Contractor will pay to the Department of Revenue all sums withheld from employees under ORS 316.167. [ORS 279C.505(d)]
- (5) Contractor will demonstrate that an employee drug testing program is in place. [ORS 279C.505(2)]
- (6) For demolition work under this Agreement, Contractor will salvage or recycle construction and demolition debris, if feasible and cost-effective. [ORS 279C.510(1)]
- (7) For lawn and landscape maintenance, Contractor is required to compost or mulch yard waste material at an approved site, if feasible and cost-effective. [ORS 279C.510(2)]
- (8) If Contractor or any Contractor subcontractor fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to Contractor by any person in connection with this Agreement as the claim becomes due, the proper office or officers representing the state or county, school district, municipality, municipal corporation or subdivision thereof, as the case may be, may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due to Contractor by reason of this Agreement. [ORS 279C.515(1)]
- (9) If Contractor or any Contractor subcontractor fails, neglects, or refuses to make payment to a person furnishing labor materials in connection with the public improvement agreement within 30 days after receipt of payment from City or a contractor, Contractor will owe the person the amount due plus interest charges commencing at the end of the 10-day period that payment is due under ORS 279C.580 (4) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest charged to Contractor on the amount due will equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that is 30 days after the date when payment was received from City or from Contractor, but the rate of interest may not exceed 30 percent. The amount of interest may not be waived. [ORS 279C.515(2)]
- (10) If Contractor or any Contractor subcontractor fails, neglects, and/or refuses to make payment to a person furnishing labor or materials in connection with this Agreement, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The payment of a claim does not relieve Contractor or Contractor's surety from obligation with respect to any unpaid claims. [ORS 279C.515(3, 4)]
- (11) A person may not be employed by Contractor or any Contractor subcontractor for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or when the public policy absolutely requires it, and in such cases, except in cases of agreements for personal services as defined in ORS 279C.100, the employee will be paid at least time and a half pay:

(a) for all overtime in excess of eight hours in any one day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or

(b) for all overtime in excess of 10 hours in any one day or 40 hours in one week when the work week is for consecutive days, Monday through Friday; and

(c) for all work performed on Saturday and on any legal holiday specified in ORS 279C.540. [ORS 279C.520 (1)]

The provisions of ORS 279C.545 will apply to all claims for overtime under this Agreement.

(12) Contractor must give notice in writing to employees either at the time of hire or before commencement of work on this Agreement, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work. [ORS 279C.520 (2)]

(13) Contractor will give notice in writing to employees who work on this Agreement, either at the time of hire or before commencement of Work on this Agreement, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work. [ORS 279C.520 (5)(b)].

(14) Contractor will promptly, as due, make payment to any person, co-partnership, association, or corporation furnishing medical, surgical, and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of Contractor, of all sums that Contractor agrees to pay for the services and all moneys and sums that Contractor collected or deducted from the wages of employees under any law, contractor, or agreement for the purpose of providing or paying for the services. [ORS 279C.530 (1)]

(15) Contractor will comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor will ensure that each subcontractor complies with these requirements. [ORS 279C.530(2)]

(16) Contractor and each Contractor subcontractor will comply with the existing state prevailing rate of wage and, if applicable, the federal prevailing rate of wage required under the Davis-Bacon Act (40 U.S.C. 276a) that may be paid to workers in each trade or occupation required for the public works employed in the performance of the agreement either by Contractor or other person doing or contracting to do the whole or any part of the Work contemplated by this Agreement. [ORS 279C.830 (1)(a)]

(17) Workers will be paid not less than the specified minimum hourly rate of wage in accordance with ORS 279C.838 and ORS 279C.840. [ORS 279C.830(1)(c)]. If the Project is subject both to ORS 279C.800 to 279C.870 and to the Davis-Bacon Act, all workers must be paid not less than the higher of the applicable state or federal prevailing rate of wage. Contractor will include this provision in each subcontract awarded under this Agreement.

(18) Contractor represents and agrees that the Contract Documents contain a sufficient provision stating that Contractor and every Subcontractor must have a public works bond filed with the Construction Contractors Board before starting work on the Project, unless exempt under ORS 279C.836(4), (7), (8) or (9).

(a) Contractor must have a public works bond filed with the Construction Contractors Board before commencing the Work, unless exempt under ORS 279C.836 (4), (7), (8), or (9).

(b) Contractor must require every subcontractor to have a public works bond filed with the Construction Contractors Board before commencing any Work, unless exempt under ORS 279C.836 (7) or (8). [ORS 279C.830 (3)]

(19) The hourly rate of wage to be paid by Contractor or every subcontractor subject to prevailing wage rates to workers will be not less than the prevailing rate of wage for an hour's work in the same trade or occupation in the locality where such labor is performed.

(20) Contractor and every subcontractor subject to prevailing wage rates to workers will keep the prevailing wage rates for that project posted in a conspicuous and accessible place in or about the Project.

(21) To the extent Contractor and/or any subcontractor subject to prevailing wage rates will also provide for or contribute to a health and welfare plan or a pension plan, or both, for its employees on the project, Contractor or subcontractor, as applicable, will post notice describing such plans in a conspicuous and accessible place in or about the project. The notice preferably will be posted in the same place as the notice required under Section 20, above. In addition to the description of the plans, the notice will contain information on how and where to make claims and where to obtain further information.

(21) Contractor or Contractor's surety, and every Contractor subcontractor or Contractor subcontractor's surety, will file certified statements with City in writing on the form prescribed by the Commissioner of the Bureau of Labor and Industries, certifying the hourly rate of wage paid each worker whom Contractor or the subcontractor has employed upon such public work, and that no worker employed upon such public work has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage specified in this Agreement, which certificate and statement will be verified by the oath of Contractor or Contractor's surety, or subcontractor or the subcontractor's surety that Contractor or subcontractor has read such statement and certificate and knows the contents thereof and that the same is true to Contractor's or subcontractor's knowledge. The certified statements will set out accurately and completely the payroll records for the prior week, including the name and address of each worker, the worker's correct classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid. Each certified statement required will be delivered or mailed by Contractor or subcontractor to City. Certified statements will be submitted for each week during which Contractor or subcontractor employs a worker upon the public work will be submitted once a month by the fifth business day of the following month. If Contractor fails to file the required certified statements, City will retain twenty-five percent (25%) of any amount earned by Contractor until Contractor has filed with the public agency certified statements as required by this Section 22, below. Information submitted on certified statements may be used only to ensure compliance with the provisions of ORS 279C.800 to 279C.870.

(22) Contractor or Contractor subcontractor will preserve the certified statements for a period of three years from the date of completion of this Agreement.

(23) Contractor represents and agrees that City has fully and timely included a provision that Contractor and any subcontractor will comply with ORS 279C.840 in the advertisement for bids, the RFQ, the contract specifications, the accepted quote or elsewhere in the Contract Documents and that City has no liability for unpaid minimum wages.

(24) If requested in writing by a first-tier subcontractor, Contractor will, within ten (10) calendar days after receiving the request, send to the first-tier subcontractor a copy of that portion of any invoice, request for payment submitted to City or pay document provided by City, to Contractor specifically related to any labor or materials supplied by the first-tier Subcontractor.

(25) Payment of interest may be postponed when payment on the principal is delayed because of disagreement between City and Contractor.

(26) Contractor will not request payment from City of any amount withheld or retained in accordance herewith until such time as Contractor has determined and certified to City that the subcontractor is entitled to the payment of such amount. A dispute between Contractor and a first-tier subcontractor relating to the amount or entitlement of a first-tier subcontractor to a payment or a late payment interest penalty under a clause included in the subcontract pursuant to the terms hereof does not constitute a dispute to which City is a party. City will not

be included as a party in any administrative or judicial proceeding involving such a dispute. Contractor will include in each subcontract for property or services entered into by Contractor and a first-tier subcontractor, including material supplier, for the purpose of performing a construction contract:

(a) A payment clause that obligates Contractor to pay the first-tier subcontractor for satisfactory performance under its subcontract within ten (10) days out of such amounts as are paid to Contractor by City under such contract; and,

(b) An interest penalty clause that obligates Contractor, if payment is not made within thirty (30) days after receipt of payment from City, to pay the first-tier subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause included in the subcontract pursuant to subparagraph (a) of this Section 26. Contractor or first-tier subcontractor will not be obligated to pay an interest penalty if the only reason that Contractor or first-tier subcontractor did not make payment when payment was due is that Contractor or first-tier subcontractor did not receive payment from City or Contractor when payment was due. The interest penalty will be:

(1) For the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and,

(2) Computed at the rate specified in ORS 279C.515(2).

(27) Contractor will include in each of its subcontracts, for the purpose of performance of such contract condition, a provision requiring the first-tier subcontractor to include payment clause and an interest penalty clause conforming to the standards of Section 26, above, in each of its subcontracts and to require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.

(28) Contractor certifies, under penalty of perjury, that Contractor is, to the best of the person's knowledge, not in violation of any tax laws described in ORS 305.380(4).

(29) Contractor certifies that all subcontractors performing Work described in ORS 701.005(2) (i.e., construction work) will be registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board in accordance with ORS 701.035 to 701.055, as applicable, before the subcontractors commence Work under this Agreement.

(30) The provisions of ORS 279C.605 will apply to any claims against Contractor's payment bond.

(31) The provisions of ORS 279C.525 will apply to this Agreement.

(32) Contractor will comply and require all Subcontractors to comply with applicable requirements of all laws, codes, ordinances, regulations, and statutes, including, without limitation, those in ORS Chapter 279C and City of John day Ordinance No. 16-169-02. To the extent that ORS Chapter 279C, or any other law, code, ordinance or regulations, requires any term or condition to be included in this Agreement, such term or condition are hereby incorporated by this reference. Nothing contained herein will be construed so as to require the commission of any act contrary to law, code, rule, statute, ordinance or regulation and whenever there is any conflict between any provisions contained herein and any statute, law, code, ordinance, rule, or regulation, the provision of this Agreement which is affected will be curtailed and limited only to the extent necessary to bring it within the requirements of the law, code, rule, statute, ordinance or regulation.

Suspension and Debarment. Contractor will comply with Subpart C of 2 C.F.R. 180 and Subpart C of 2 C.F.R. 1532 regarding debarment and suspension and agrees to include or cause to be included in any subcontract expected to equal or exceed \$25,000.00 at any tier the requirement that the subcontractor comply with Subpart C of 2 C.F.R. 180 and Subpart C of 2 C.F.R. 1532. Contractor represents, warrants, and certifies that it is not suspended, debarred, proposed for debarment, declared ineligible or otherwise excluded from contracting with the federal

government, or from receiving contracts paid for with federal funds. If Contractor becomes unable to certify to the statements contained in this Paragraph, Contractor will immediately notify City of the inability and the reason(s) thereof. Contractor will provide immediate written notice to City if at any time Contractor learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances. For purposes of this Paragraph, the terms “covered transaction,” “debarred,” “suspended,” “ineligible,” “lower tier covered transaction,” “participant,” “person,” “primary covered transaction,” “principal,” “proposal,” and “voluntarily excluded,” as used in this section, have the meaning set out in the definitions and coverage sections of rules implementing Executive Order 12549. Contractor acknowledges and agrees it will not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under the applicable Code of Federal Regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction. Contractor further agrees by signing this Agreement, that it will include this section titled “Suspension and Debarment” without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions. Pursuant to 2 CFR 180.330, Contractor is responsible for ensuring that any lower tier covered transaction complies with certification of suspension and debarment requirements. Contractor acknowledges that failing to disclose the information required in the Code of Federal Regulations may result in the delay or negation of this funding agreement, or pursuance of legal remedies, including suspension and debarment. Contractor agrees to keep proof in its agreement file, that it, and all lower tier recipients or contractors, are not suspended or debarred, and will make this proof available upon request. Contractor must run a search in www.epls.gov and print a copy of completed searches to document proof of compliance.