

## PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (this “Agreement”) is made as of August 10, 2020 (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 Commstructure Consulting, LLC (“Commstructure”), an Oregon limited liability company, whose address is 811 Railroad Avenue, Oregon City, Oregon 97045.

### RECITAL:

Commstructure will perform the Services (as defined below) for and on behalf of City in accordance with, and subject to, the terms and conditions contained in this Agreement.

### AGREEMENT:

NOW, THEREFORE, in consideration of the parties’ mutual 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. Commstructure Services.

1.1 Services; Standards. Subject to the terms and conditions contained in this Agreement, Commstructure will perform the following services for and on behalf of City (collectively, the “Services”): (a) those services set forth on the attached Schedule 1.1; (b) any other necessary or appropriate services customarily provided by Commstructure in connection with its performance of those services set forth on the attached Schedule 1.1; and (c) such other assistance services requested by the city manager (or his or her designee) from time to time. Commstructure will (w) consult with and advise City on all matters concerning the Services reasonably requested by City, (x) communicate all matters and information concerning the Services to the city manager (or his or her designee) and report directly to the city manager, (y) devote such time and attention to the performance of the Services as City and Commstructure deem necessary or appropriate, and (z) perform the Services to the best of Commstructure’s ability. Commstructure acknowledges and agrees that City may cause or direct other persons or contractors to provide services for and on behalf of City that are the same or similar to the Services provided by Commstructure under this Agreement.

1.2 Schedule of Services. The Services will be completed expeditiously and in a timely manner. Notwithstanding anything contained in this Agreement to the contrary, all Services will be completed in accordance with the schedule of services provided on the attached Schedule 1.2.

1.3 Conditions Precedent. Notwithstanding anything contained in this Agreement to the contrary, City’s performance of its obligations under this Agreement is conditioned on Commstructure’s performance of its obligations under this Agreement, including, without limitation, Commstructure’s obligations described under Section 4.5.

1.4 Subcontractors. Subject to the terms and conditions contained in this Agreement, Commstructure is not permitted to subcontract and/or assign all or any part of the Services without City’s prior written consent. City’s consent to Commstructure’s subcontract with Subcontractor and all other proposed subcontracts and/or assignment of Services by Commstructure is conditioned on (in addition to any other condition that the City may reasonably impose) the following: (a) Commstructure demonstrating

to City that Subcontractor and any other subcontractor/assignees (if any) is capable of successfully performing the identified Services in accordance with this Agreement; and (b) Subcontractor and/or the subcontractor/assignee agreeing in writing to comply with and be bound by all the terms and conditions contained in this Agreement, except that Subcontractor's automobile liability insurance under Section 4.3 will have limits of no less than \$1,000,000.00 per occurrence and in the aggregate, and Subcontractor's errors and omissions insurance under Section 4.3 will have limits of no less than \$500,000.00 per occurrence, \$1,000,000.00 in the aggregate. Commstructure will deliver to City, promptly after execution, an original executed copy of all documentation pertaining to the subcontract or assignment in form reasonably acceptable to City. Commstructure's subcontract with Subcontractor and any other subcontract or assignment concerning the Services is subject to the following: (w) the terms and conditions of this Agreement will in no way be deemed to have been waived or modified; (x) consent will not be deemed consent to any further subcontract or assignment by City; (y) the subcontract or assignment, whether with or without City's consent, will not modify, relieve, and/or eliminate any Commstructure liability or obligation under this Agreement (Commstructure remains liable for the timely and proper performance of the Services in accordance with this Agreement); and (z) City will pay Commstructure for the performance of the subcontracted/assigned Services subject to and in accordance with the terms and conditions contained in this Agreement.

## 2. Compensation.

2.1 Compensation. Subject to the terms and conditions contained in this Agreement, Commstructure will perform the Services at the hourly rates identified in the attached Schedule 2.1. Within thirty (30) days after completing any requested Services, Commstructure will submit an invoice to City concerning the completed Services (the "Invoice"). Each Invoice will contain the following information: (a) a summary of the Services performed by Commstructure (and by whom); (b) the number of hours (or fraction thereof) each person spent to perform the Services; (c) the applicable fee(s) for performing the Services; and (d) any other information reasonably requested by City. City will pay the amount due under each Invoice within thirty (30) from the date of City's receipt of the Invoice, subject to City's review and approval of the Invoice. No compensation will be paid by City for any portion of the Services not performed. City's payment will be accepted by Commstructure as full compensation for performing the Services to which the Invoice relates. Notwithstanding anything contained in this Agreement to the contrary, total compensation payable by City under this Agreement for the performance of the Services will not exceed \$72,600.00.

2.2 No Benefits; Reimbursement. City will not provide any benefits to Commstructure. Commstructure will be responsible for obtaining Commstructure's own benefits, including, without limitation, insurance, medical reimbursement, and retirement plans. If Commstructure travels to John Day, Oregon in connection with Commstructure's performance of the Services, City will reimburse Commstructure for Commstructure's reasonable transportation (automobile), lodging, and/or meal expenses incurred by Commstructure (mileage will be reimbursed at the then-current IRS standard mileage rate, lodging reimbursement will be the lesser of actual cost or the then-current GSA standard per diem rate for Oregon, and meal reimbursement will be the lesser of actual cost or the then-current GSA standard M&IE rate for Oregon) upon Commstructure's compliance with City's expense reimbursement instructions and procedures (e.g., Commstructure providing City with actual receipts and verification of Commstructure's reasonable expenses).

3. Relationship.

3.1 Independent Contractor; Taxes; Licenses. Commstructure is an independent contractor of City. Commstructure is not an employee of City. Commstructure will be free from direction and control over the means and manner of performing the Services, subject only to the right of City to specify the desired results. City will not withhold any taxes from any payments made to Commstructure, and Commstructure will be solely responsible for paying all taxes arising out of or resulting from Commstructure's performance of the Services, including, without limitation, income, social security, workers' compensation, and employment insurance taxes. Commstructure will be solely responsible for obtaining all licenses, approvals, and certificates necessary or appropriate to perform the Services.

3.2 No Agency Relationship. This Agreement does not create an agency relationship between City and Commstructure and does not establish a joint venture or partnership between City and Commstructure. Commstructure does not have the authority to bind City or represent to any person that Commstructure is an agent of City.

4. Representations; Warranties; Covenants.

In addition to any other Commstructure representation, warranty, and/or covenant made in this Agreement, Commstructure represents, warrants, and covenants to City as follows:

4.1 Authority; Binding Obligation; Conflicts. Commstructure is duly organized, validly existing, and in good standing under applicable Oregon law. Commstructure has full power and authority to sign and deliver this Agreement and to perform all of Commstructure's obligations under this Agreement. This Agreement is the legal, valid, and binding obligation of Commstructure, enforceable against Commstructure in accordance with its terms. The signing and delivery of this Agreement by Commstructure and the performance by Commstructure of all of Commstructure's obligations under this Agreement will not (a) breach any agreement to which Commstructure is a party, or give any person the right to accelerate any obligation of Commstructure, (b) violate any law, judgment, or order to which Commstructure is subject, and/or (c) require the consent, authorization, or approval of any person, including, without limitation, any governmental body.

4.2 Licenses; Quality of Services. Prior to Commstructure's execution of this Agreement, Commstructure obtained all licenses, approvals, and/or certificates necessary or appropriate to perform the Services. Commstructure will perform the Services to the best of Commstructure's ability, diligently, in good faith, in a professional manner, and consistent with the terms and conditions contained in this Agreement. The Services will be performed in accordance with the Regulations (as defined below). Commstructure will be solely responsible for the Services. Commstructure will make all decisions called for promptly and without unreasonable delay. All materials and documents prepared by Commstructure will be accurate, complete, unambiguous, prepared properly, and in compliance with the Regulations.

4.3 Insurance. During the term of this Agreement, Commstructure will obtain and maintain, in addition to any other insurance required under this Agreement, the following minimum levels of insurance: (a) general liability insurance for all losses or claims arising out of or related to Commstructure'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) with

limits of no less than \$1,000,000.00 per occurrence, \$2,000,000.00 in the aggregate; (b) comprehensive automobile liability insurance for all owned, non-owned, and hired vehicles that are or may be used by Commstructure in connection with Commstructure's performance of the Services with limits of no less than \$1,000,000.00 per occurrence, \$2,000,000.00 in the aggregate; (c) errors and omissions insurance with limits of no less than \$1,000,000.00; and (d) employer liability insurance with limits of no less than \$500,000.00 per occurrence and in the aggregate. Each liability insurance policy required under this Agreement will be in form and content satisfactory to City, will list City (and City's Representatives (as defined below)) as an additional insured(s), and will contain a severability of interest clause. The insurance Commstructure is required to obtain under this Agreement may not be cancelled without ten (10) days' prior written notice to City. Commstructure's insurance will be primary and any insurance carried by City will be excess and noncontributing. Commstructure will furnish City with appropriate documentation evidencing the insurance coverage (and provisions) Commstructure is required to obtain under this Agreement upon Commstructure's execution of this Agreement and at any other time requested by City. If Commstructure fails to maintain insurance as required under this Agreement, City will have the option, but not the obligation, to obtain such coverage with costs to be reimbursed by Commstructure immediately upon City's demand.

4.4 Workers' Compensation Insurance. If required under applicable law, Commstructure will obtain and maintain workers' compensation insurance in form and amount sufficient to satisfy the requirements of applicable Oregon law. Workers' compensation insurance will contain a waiver of subrogation in favor of City.

4.5 Compliance With Laws. Commstructure will comply and perform the Services in accordance with the Regulations. Without otherwise limiting the generality of the immediately preceding sentence, Commstructure will comply with each and every obligation applicable to Commstructure and/or this Agreement under ORS 279B.220, 279B.225, 279B.230, and 279B.235, which statutes are incorporated herein by reference. For purposes of this Agreement, the term "Regulation(s)" means all applicable federal, state, and local laws, regulations, restrictions, orders, codes, rules, and/or ordinances related to or concerning, whether directly or indirectly, Commstructure, this Agreement, and/or the Services, including, without limitation, 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, or promulgated.

4.6 Indemnification.

(a) Non-Professional Errors or Omissions. Commstructure will defend, indemnify, and hold City, and each present and future City employee, officer, agent, and representative (individually and collectively, "City's Representative(s)"), harmless for, from, and against all claims, actions, proceedings, damages, liabilities, injuries, losses, and expenses of every kind, whether known or unknown, including, without limitation, attorney fees and costs, resulting from or arising out of the following: (a) damage, injury, and/or death to person or property to the extent caused by Commstructure's acts and/or omissions (and/or the acts and/or omissions of Commstructure's members, managers, agents, employees, officers, representatives, and/or contractors); (b) Commstructure's failure to pay any tax arising out of or resulting from the performance of the Services; and/or (c) Commstructure's breach and/or failure to perform any Commstructure representation, warranty, covenant, and/or obligation contained in this Agreement. Commstructure's indemnification obligations provided in this Section 4.6(a) will survive the termination of this Agreement.

(b) Professional Errors and Omissions. Commstructure will indemnify and hold City and City's Representatives harmless for, from, and against all claims, actions, proceedings, damages, liabilities, injuries, losses, and expenses of every kind, whether known or unknown, including, without limitation, attorney fees and costs, to the extent resulting from Commstructure's (and/or Commstructure's members, managers, agents, employees, officers, representatives, and/or contractors) negligent acts, errors, and/or omissions in connection with the performance of the Services. Commstructure's indemnification obligations provided in this Section 4.6(b) will survive the termination of this Agreement.

4.7 Assignment of Studies and Reports. Commstructure will assign all studies, reports, data, documents, and/or materials of any kind produced under this Agreement to City upon the earlier of City's request or the termination of this Agreement. All copies of the materials provided to City will become the property of City who may use them without Commstructure's permission for any proper purpose relating to the Services, including, without limitation, additions to or completion of the Services. Commstructure will defend all suits or claims for infringement of patent, trademark, and/or copyright for which Commstructure is responsible (including, without limitation, any claims which may be brought against City), and Commstructure will be liable to City for all losses arising therefrom, including costs, expenses, and attorney fees.

4.8 Records. Commstructure will maintain complete and accurate records concerning all Services performed, the number of hours each person spent to perform the Services, and all documents produced under this Agreement for a period of five years after the termination of this Agreement. Commstructure's records will be maintained in accordance with sound accounting practices. Commstructure's records concerning the Services, including, without limitation, Commstructure's time and billing records, will be made available to City for inspection, copying, and/or audit immediately upon City's request.

4.9 Confidential Information. During the term of this Agreement, and at all times thereafter, Commstructure will maintain all Confidential Information (as defined below) in the strictest confidence and will not directly or indirectly use, communicate, and/or disclose any Confidential Information to any person without the city manager's prior written consent, except that Commstructure may (a) use Confidential Information to perform the Services to the extent necessary, and (b) communicate or disclose Confidential Information in accordance with a judicial or other governmental order or as required by applicable law, but only if Commstructure promptly notifies the city manager of the order and complies with any applicable protective or similar order. Commstructure will promptly notify the city manager of any unauthorized use, communication, and/or disclosure of any Confidential Information and make every possible effort to retrieve any such Confidential Information disclosed by Commstructure, and mitigate the disclosure. Upon the earlier of City's request or the termination of this Agreement, Commstructure will immediately return to City all documents, instruments, and/or materials containing any Confidential Information accessed or received by Commstructure, together with all copies and summaries of such Confidential Information. Notwithstanding anything contained in this Agreement to the contrary, this Agreement does not operate to transfer any ownership or other rights in or to the Confidential Information to Commstructure or any other person. For purposes of this Agreement, the term "Confidential Information" means any documentation, information, and/or materials identified by City as confidential and/or any documentation, information, and/or materials relating to or concerning City's future plans, business affairs, employment, legal, and litigation matters that need to be protected from improper disclosure, in whatever form (e.g., hard and electronic copies, etc.), that is received or assessed by Commstructure; provided, however, the term "Confidential Information" does not include City's public records which are non-exempt public records

under applicable federal, state, and/or local laws.

4.10 Commstructure Confidential Information. During the term of this Agreement, City will attempt to maintain the confidentiality of Commstructure's billing rates identified in Schedule 2.1 subject to Oregon's Public Records Law (ORS 192.410 – 192.505). Notwithstanding the immediately preceding sentence, (a) City does not represent, warrant, covenant, and/or guaranty that City will be permitted to maintain the confidentiality of Commstructure's billing rates, and (b) City will not be liable for the release and/or disclosure of Commstructure's billing rates.

5. Term; Termination.

5.1 Term of Agreement. Subject to the terms and conditions contained in this Agreement, the term of this Agreement commenced on the Effective Date and will remain in full force and effect until June 30, 2021, unless sooner terminated as provided in this Agreement. This Agreement may be extended by the parties' mutual written agreement.

5.2 Termination by Mutual Agreement or City's Prior Notice. Notwithstanding anything contained in this Agreement to the contrary, this Agreement may be terminated (a) at any time by the mutual written agreement of City and Commstructure, and/or (b) by City for convenience and without cause by giving thirty (30) days' prior written notice of such termination to Commstructure.

5.3 Immediate Termination. Notwithstanding anything contained in this Agreement to the contrary, City may terminate this Agreement immediately upon notice to Commstructure upon the happening of any of the following events: (a) Commstructure engages in any form of dishonesty or conduct involving moral turpitude related to Commstructure's independent consultant relationship with City or that otherwise reflects adversely on the reputation or operations of City; (b) Commstructure fails to comply with any applicable law related to Commstructure's independent consultant relationship with City; (c) continuous and repeated problems occur in connection with the performance of the Services; and/or (d) Commstructure breaches and/or otherwise fails to perform any Commstructure representation, warranty, covenant, and/or obligation contained in this Agreement. The determination as to whether any of the aforementioned events have occurred will be made by City in City's sole discretion.

5.4 Consequences of Termination. Upon termination of this Agreement, City will not be obligated to reimburse or pay Commstructure for any continuing contractual commitments to others or for penalties or damages arising from the cancellation of such contractual commitments. Within a reasonable period of time after termination of this Agreement (but in no event later than five days after termination), Commstructure will deliver to City all materials and documentation, including raw or tabulated data and work in progress, related to or concerning the Services. Termination of this Agreement by City will not constitute a waiver or termination of any rights, claims, and/or causes of action City may have against Commstructure.

5.5 Remedies. If a party breaches 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 remedy 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.

6. Miscellaneous.

6.1 Severability; Assignment; Binding Effect. 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. Subject to Section 1.4 and this Section 7.3, Commstructure will not subcontract or assign any of Commstructure's rights and/or obligations under this Agreement to any person. 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.

6.2 Attorney Fees; Dispute Resolution. If any arbitration or litigation is instituted to interpret, enforce, and/or 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 Commstructure 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.

6.3 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.

6.4 Attachments; Further Assurances. Any exhibits, schedules, instruments, documents, and other attachments referenced in this Agreement are part of this Agreement. If any provisions contained in an attached exhibit, schedule, instrument, document, and/or other attachment conflicts with this Agreement, the provisions of this Agreement will control. 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 Commstructure's performance of its obligations under this Agreement.

6.5 Notices. All notices or other communications required or permitted by this Agreement must be in writing, must be delivered to the parties at the addresses first 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 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.

6.6 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 Commstructure. 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. Commstructure has not relied on any promises, statements, representations, or warranties except as set forth expressly in this Agreement.

6.7 Person; Interpretation. 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.

6.8 Execution; Counterparts. 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.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be duly executed on the date first written above but made effective for all purposes as of the Effective Date.

CITY:  
City of John Day,  
an Oregon municipal corporation

COMMSTRUCTURE:  
Commstructure Consulting, LLC,  
an Oregon limited liability company

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By: Nick Green  
Its: City Manager

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By: Erik Orton  
Its: Owner/CEO



Schedule 1.1  
Description of Services

City desires to expand its existing fiber optic network infrastructure for broadband connectivity of strategic City, County, and other Public facilities in and around the City of John Day with an extension into Canyon City. Commstructure will provide fielding, design, permitting and other related technical consulting services for new aerial and underground communications cable infrastructure backbones in two (2) locations in the City of John Day and one (1) location in Canyon City. Total combined route footage is approximately 13,500 feet of new aerial infrastructure; 1,400 feet of new underground infrastructure; 1,700 feet of existing and/or joint-trench underground infrastructure; and connections to four (4) buildings / facilities. The total route distances and quantities in this scope of work are estimated from the feasibility and opinion of probable cost (OPC) phase and the final as designed footages will be reconciled upon completion of the design.

The following is a description and summary for each of the three (3) backbone extensions and connections.

**Grant County Regional Airport** - Grant County will utilize an existing slack near the fire station at 316 S Canyon Blvd and follow an existing aerial path on SW 3<sup>rd</sup> towards the airport. This aerial path passes residential developments and a City Water Reservoir at SW 4<sup>th</sup> St & Airport Rd. Aerial cable slack and access points will be built at strategic locations to service these locations in the future. The route will also leverage existing conduit to extend fiber to the industrial park west of the airport on Industrial Park Rd. The existing conduit crosses underneath the N/S runway and will be utilized with new fiber and vaults set for future access. Continuing south towards the airport, the pole line ends and there would be a transition to underground construction to enter the ESD and Airport communications structure. The fiber termination will be within the shelter.

**Humbolt Elementary** - The backbone will be extended from this location south up to Inland Dr. At that intersection, there will be an aerial lateral built to the west and then south towards the elementary school. There is an existing aerial communications drop coming from Brent Ln to the building and this project includes a new fiber optic service drop to mirror the existing at a different point of attachment on the pole. The termination will be within the school at the telephone/communications room.

**Grant County Circuit Court and Sheriff** – This route will tie into and further extend the backbone build contained within the Humbolt Elementary extension. The new backbone will continue south along John Day Burns Hwy / US 395 up to Washington St. The County courthouse, Corrections and sheriff will be fed underground from the utility pole line on S Humbolt St to the west side of the buildings.

In addition to any other Services provided under this Agreement, Commstructure will perform the following services concerning the project described above for and on behalf of City:

A. Field Data Collection, Design and Permitting

1. Perform route field data collection (as required) of the proposed aerial and underground alignments utilizing sub-foot accuracy GPS Data Collection equipment. Data collection to include existing power pole line for aerial joint use; topographic features for underground

routes; existing utilities and sub-surface structures; canals; bridges; and specialty installation areas

2. Research and compile geo-referenced electronic Right of Way (ROW) and Assessor records and map data from City, County and State Agencies to develop AutoCAD Base Maps for use in development of design and construction drawings
3. Research and compile existing underground utility maps; pole maps; sub-surface structure maps; structure designs and site plans for translation and insertion into construction drawings for design reference
4. Compile and process electronic GPS Field Data and export to geo-referenced AutoCAD format for insertion into base maps for construction drawing development
5. Design and overlay underground infrastructure design elements along alignment including conduit and cable pathway, vaults, splice locations, special construction methods or areas and general route identification
6. Design and overlay aerial infrastructure design elements along alignment including existing pole data, span data, height of attachment, anchoring, guying, sag & tension, existing utility make-ready, risers, slack storage, splice locations and any special construction methods or areas and general route identification
7. Develop technical specification documentation supporting construction requirements, material take off schedules and methods of procedure for the installation of aerial and underground infrastructure
8. Develop Outside Plant Design project drawings in 11x17 AutoCAD and PDF electronic format for use in permit submittal, competitive bid and installation
9. Prepare and submit Permit Application forms and applicable design drawings to governing agencies for public and private right of way. Such entities may include, but are not limited to City of John Day; Grant County; Oregon Department of Transportation; and other State and Federal Agencies that may be identified during route development or route re-alignments
10. Prepare and submit Aerial Joint Use Pole Attachment Application forms and applicable design drawings to Joint Use Pole Owners. Such entities may include, but are not limited to: Oregon Trail Electric Cooperative, CenturyLink and any other joint-use pole owners encountered throughout the project
11. Prepare, Submit and Manage Aerial Joint Use make-ready tickets via National Joint Utility Notification System (NJUNS) or other methods for adjustment of existing electrical and communications equipment on the poles as required to accommodate new installation requirements
12. Preparation of construction drawings with submittals at Preliminary, Bid, and Construction phases for review and comment by City of John Day and Permit Agencies (as applicable, or required)
13. If applicable, Environmental Consultant will perform pedestrian surveys or further research as needed. The items that may be included in these tasks are Archeological pedestrian surveys; Historic pedestrian surveys; Wetland surveys; Plant surveys; Wildlife surveys; and Hazardous materials research and surveys. This information combined with the information gathered in Phase I will be compiled in a Final Report and used to avoid impacts to any protected resource; design mitigation where impacts are not able to be eliminated; and to supplement or obtain permits as required. Environmental Consultant Fees are not included in this scope of work and shall be negotiated if determined to be required for this project

**B. Bid / RFP Support Services**

1. Assistance with Competitive Bid Document & Specification Preparation
2. Assistance to Host and/or Attend Bid Meetings
3. Assistance to Receive, Summarize and Compare Contractor Bid Pricing and Submittals
4. Assistance with Contractual Negotiation & Documentation

C. Construction Observation & Technical Support During Construction

1. Provide Technical Support to construction crews during construction for interpretation, clarification and implementation of intended design elements and overall network structure
2. Construction Oversight; Reporting; Punch List; and Final Acceptance of all infrastructure installed according to project design, specifications and permit agency requirements
3. Provide Technical Support in cooperation with Construction to Permitting Agencies and Property Owners during construction for adherence and compliance with specifications, standards and restoration
4. Owner Project Lifecycle Management & Support with weekly reporting, progress meetings scheduling and milestone deliverables

D. As-Builts

1. Receive as-built red line data from contractor upon project completion; update construction CAD drawings with as-built data
2. Prepare, submit and close out all joint-use pole permitting applications and make-ready NJUNS tickets for post-construction inspection
3. Prepare a final workbook for submittal in 11x17 Hard Copy, AutoCAD and PDF electronic format
4. GIS Data Exporting and Updates as required

E. Industry Standard Assumptions, Limitations and Exclusions.

1. Owner will be responsible for all Permit Fees
2. Owner will be responsible for all Franchises, Joint Use Pole Agreements, Business Licenses and State Certifications as required to construct and maintain communications infrastructure in the public and private ROW
3. Owner will be responsible for the negotiation and acquisition and all private easements if applicable unless otherwise requested by owner and negotiated with Commstructure
4. Owner will be responsible for all Existing Aerial Joint Use Communication Provider or Pole Owner Make Ready reimbursement. Commstructure will attempt to identify, list and coordinate all Make Ready work required on the Pole Attachment Applications and Construction Drawings
5. Pole loading is not included in this scope of work. If pole loading is required sub-contractor will be retained for pole loading and rates will be negotiated as required.
6. Alternate Route Designs or Contingency Route Designs shall be reimbursed according to the Hourly Time and Expense (T&E) Billing Rates
7. Weekly or Bi-Weekly Conference Calls to provide project schedule updates and discuss project progress, milestones and action items
8. Travel Expenses incurred by Design Staff shall be reimbursed according to the Commstructure Travel Reimbursement Policy
9. City will be responsible for the negotiation and acquisition and all private easements if applicable unless otherwise requested by City and negotiated with Commstructure

10. Commstructure shall not be responsible for delays in schedule, milestone deliverable dates or monetary penalties resulting from Environmental Conditions discovered or presented during the course of the design of the project that result in work stoppage or design of re-routes
11. Commstructure shall not be responsible for the selected Owner's Contractors failure to comply and construct the project according to the Owner's Construction Specifications; Governing Agency Standard Specifications; and Environmental Mitigation or Avoidance Requirements
12. Project schedules are developed and based on the assumption that environmental conditions (i.e. cultural, biological, historical, archaeological and hazardous materials) along the proposed alignment(s) are considered disturbed corridors and will not prohibit the successful fielding and design of projects. Unforeseen or unanticipated conditions that result in an alignment re-route will be considered a change in scope and schedule. Subject to the terms and conditions contained in the Agreement, additional fielding, design, and permitting may be negotiated according to Hourly Time and Expense (T&E) Billing Rates and the schedule may be revised based on a mutually acceptable and reasonable amount of time to complete the additional design and permitting
13. Additional environmental services and issues that are available are as follows: (a) archeological probes (digging for specific clearance or discovery); (b) archeological monitoring during construction; and (c) USACE and ODSL fill and removal permits for wetland or waters of the state impacts.
14. Construction Cost Estimates are an opinion of probable construction costs that may be provided as part of a project. In providing opinions of probable construction cost, neither City nor Commstructure has control over the cost of labor, equipment or materials, or over the contractor's methods of determining prices or bidding. Subject to the terms and conditions of the Agreement, the opinion of probable construction cost is based on Commstructure's professional judgment and experience and does not constitute a warranty, express or implied, that the contractors' bids or the negotiated price of the work described in the estimate will not vary from the City's budget or from any opinion of probable cost prepared by Commstructure.

Schedule 1.2  
Schedule of Services

The anticipated schedule of Services includes, without limitation, the following:

1. Kick-Off meeting to be held via phone conference in August 2020.
2. Field and Design schedule to be agreed to during kick-off meeting with City.
3. All services under this scope of work to be completed by June 30, 2021.

Schedule 2.1  
Fee Schedule

**CONFIDENTIAL**

Hourly Time and Expense (T&E) Billing Rates

<u>Unit #</u>	<u>Unit Description</u>	<u>Basis</u>	<u>* Rate</u>
CC109	Principal	Per Hour	\$ 135.00
CC110	Project Manager	Per Hour	\$ 120.00
CC111	Senior OSP Designer	Per Hour	\$ 110.00
CC112	OSP Designer	Per Hour	\$ 95.00
CC113	OSP Design Technician	Per Hour	\$ 80.00
CC114	Senior CAD Technician	Per Hour	\$ 90.00
CC115	CAD Technician	Per Hour	\$ 85.00
CC116	Office / Project Coordinator	Per Hour	\$ 85.00
CC117	Permit Coordinator	Per Hour	\$ 85.00
CC118	Owner Representative / Construction Oversight	Per Hour	\$ 95.00

The following is a breakdown of the estimated engineering fees for each individual segment of the project scope identified in Schedule 1.1 - Description of Services:

<u>Project / Segment</u>	<u>Fees</u>
Grant County Regional Airport	\$ 27,000.00
Humbolt Elementary	\$ 15,000.00
Grant County Circuit Court and Sheriff	\$ 24,000.00
	<hr/>
<b>Sub-Total:</b>	<b>\$ 66,000.00</b>
<b>10% Contingency:</b>	<b>\$ 6,600.00</b>
<b>Estimated Project Total:</b>	<b>\$ 72,600.00</b>