

COOPERATIVE AGREEMENT

between

COUNTY OF SUMMIT, OHIO

and

CITY OF FAIRLAWN, OHIO

Dated as of

_____, 2022

COOPERATIVE AGREEMENT

THIS COOPERATIVE AGREEMENT (“Agreement” or “Cooperative Agreement”) is made and entered into as of _____, 2022 (“Effective Date”) by and among the COUNTY OF SUMMIT, OHIO, an Ohio county duly organized and validly existing under the laws of the State and its Charter (the “County”) and the CITY OF FAIRLAWN, OHIO, an Ohio municipality organized and validly existing under the laws of the State and its Charter (the “City”), under the circumstances summarized in the following recitals (the capitalized terms not defined in the recitals being used therein as defined in Article I hereof):

Recitals:

- A. WHEREAS, the City currently owns and operates a successful high-speed broadband utility service provided to its residents and businesses, as well as a limited number of customers outside of the City, known as the FairlawnGig; and
- B. WHEREAS, the City currently operates a data center in the City whereby it hosts the FairlawnGig, and houses the services and other necessary equipment to operate the FairlawnGig; and
- C. WHEREAS, during its operation of the FairlawnGig, the City has developed certain technological expertise concerning the design and operation of broadband utilities, high-speed broadband networks, fiber cabling, and data centers; and
- D. WHEREAS, the City is also the owner of 5.48 acres of vacant real property, which is further depicted in Exhibit A, attached hereto and incorporated herein by reference, and which is located in the Fairlawn Corporate Park (“Data Center Site”); and
- E. WHEREAS, the County is the recipient of \$105 million in State and Local Fiscal Recovery Funds from the American Rescue Plan Act, which amended Title VI of the Social Security Act, 42 U.S.C. 801, et seq. to create Section 603 (“ARPA” and the funds received by the County being the “ARPA Funds”) to be used pursuant to the ARPA and the Final Rule adopted by the Department of Treasury, which authorizes the use of such ARPA Funds for broadband infrastructure investments to address challenges with broadband access, affordability, and reliability; and
- F. WHEREAS, the County and City desire to utilize the ARPA Funds, the Data Center Site, and the technological expertise of the City, together with such other resources as further set forth in this Agreement, to undertake, construct and operate an approximately 125-130 mile high-speed fiber optic ring within the County (“Fiber Ring”) and a secure, 20,000+/-square feet data center for public-use and private-use, together with associated improvements (“Data Center Improvements”) on the Data Center Site, as the same are more fully described in this Agreement; and
- G. WHEREAS, to effectuate the development of the Fiber Ring and Data Center Improvements, the County and City desire to enter into this Agreement, which further provides for the following:

- i. The County and the City will enter into an intergovernmental agreement and such other documents necessary to create the Summit-Fairlawn Broadband Council of Governments (“COG”).
- ii. The County will design and construct the Fiber Ring utilizing ARPA Funds, including any necessary equipment.
- iii. The County will design and construct the Data Center Improvements utilizing funds available to the County suitable for such purpose, which the County primarily anticipates will be from its General Fund. The County will further equip the Data Center Improvements with necessary and appropriate furniture, fixtures and equipment, including all necessary cabling, switching, routing, racking, security and other information technology equipment, as further set forth herein (the “Data Center Equipment”) utilizing the same funds utilized to construct the Data Center Improvements.
- iv. The City will lease the Data Center Site to the COG for an initial term of thirty (30) years, plus the period of time necessary to construct the Data Center Improvements, pursuant to the terms set forth herein.
- v. The County will lease the Data Center Improvements to the COG for an initial term of thirty (30) years, commencing upon the completion of construction of the Data Center Improvements, and will lease the Data Center Equipment purchased by the County and located within the Data Center Improvements for a term of ten (10) years, which is the estimated useful life of the Data Center Equipment, each such lease pursuant to the terms set forth herein.
- vi. The County will lease the Fiber Ring to the COG for a term of ninety-nine (99) years pursuant to the terms set forth herein, including any necessary equipment.
- vii. The COG and City will enter into an operating, management and maintenance agreement whereby the City will operate, manage and maintain the Data Center Improvements and the Data Center Equipment on behalf of the COG.
- viii. The COG and City will enter into an operating, management and maintenance agreement whereby the City will operate, manage and maintain the Fiber Ring on behalf of the COG.
- ix. The County and City will further set forth in this Agreement the general order of priority of payment of the lease, operating and capital costs of the Data Center Improvements, Data Center Equipment and Fiber Ring by the COG.
- x. The County and City will set forth in this Agreement the terms upon which each will contribute to the COG additional funds towards the lease, operating and capital costs of the Data Center Improvements, Data Center Equipment and Fiber Ring, and the repayment of the same by the COG to the County and City.

- xii. The County and City will set forth in this Agreement the terms upon which the County will extend to the COG a credit line in the amount of \$2 million to be used by the COG for lease, operating and capital costs of the Data Center Improvements, Data Center Equipment and Fiber Ring.
 - xiii. The County will serve as the Fiscal Agent to the COG, the City will primarily procure goods and services on behalf of the COG, and the County will manage the payment of invoices for such goods and services.
 - xiiii. The COG will enter into agreements with the City and County for the lease, use and storage of data in the Data Center Improvements and Data Center Equipment and the lease, use and transportation of data on the Fiber Ring.
 - xv. The County and City will undertake such other agreements as are set forth in this Agreement.
- H. The County and City believe that the undertakings of each contemplated by this Agreement will support governmental functions and enhance and promote the public health, safety and welfare of the residents of the County and City, and each of the County and City have full right and lawful authority to enter into this Cooperative Agreement and to perform and observe the provisions hereof on its respective part to be performed and observed.

NOW THEREFORE, in consideration of the promises and the mutual representations and agreements hereinafter contained, and subject to the terms and limitations of this Cooperative Agreement, the Cooperative Parties agree as follows:

[Balance of page intentionally left blank.]

ARTICLE I

Definitions

Section 1.1 Use of Defined Terms. In addition to the words and terms defined elsewhere in this Agreement or by reference to another document, the words and terms set forth in Section 1.2 hereof shall have the meanings set forth therein unless the context or use clearly indicates another meaning or intent. Such definitions shall be equally applicable to both the singular and plural forms of any of the words and terms defined therein.

Section 1.2 Definitions. As used herein:

“Agreement” or “Cooperative Agreement” means this Cooperative Agreement as amended and supplemented from time to time.

“Cooperative Parties” means, collectively, the County and the City.

“Legislative Authority” means, (i) as to the County, the Council of the County and (ii) as to the City, the Council of the City of Fairlawn.

“Notice Address” means:

as to the County: County of Summit, Ohio
Ohio Building, 8th Floor
175 South Main Street
Akron, Ohio 44308
Attn: Ilene Shapiro, County Executive

with a copy to: County of Summit, Ohio
Ohio Building, 8th Floor
175 South Main Street
Akron, Ohio 44308
Attn: Deborah S. Matz, Director of Law and Risk Management

as to Fairlawn: City of Fairlawn
3487 South Smith Road
Fairlawn, OH 44333
Attn: William J. Roth, Mayor

with a copy to: City of Fairlawn
3487 South Smith Road
Fairlawn, OH 44333
Attn: R. Bryan Nace, Director of Law

or such additional or different address, notice of which is given under Section 4.1 of this Agreement.

“Person” or words importing persons means firms, associations, partnerships (including without limitation general and limited partnerships), limited liability companies, joint ventures, societies, estates, trusts, corporations, public or other governmental bodies, other legal entities and natural persons.

“State” means State of Ohio.

Section 1.3 Interpretation. Any reference herein to the County or the City, or to a Legislative Authority or to any member or officer of the same includes entities or officials succeeding to their respective functions, duties or responsibilities pursuant to or by operation of law or lawfully performing their functions.

Any reference to a section or provision of the Constitution of the State, or to a section, provision or chapter of the Ohio Revised Code or any other legislation or to any statute of the United States of America, includes that section, provision or chapter as amended, modified, revised, supplemented or superseded from time to time; provided, that no amendment, modification, revision, supplement or superseding section, provision or chapter shall be applicable solely by reason of this provision, if it constitutes in any way an impairment of the rights or obligations of the Cooperative Parties under this Agreement.

Unless the context indicates otherwise, words importing the singular number include the plural number and vice versa; the terms “hereof,” “hereby,” “herein,” “hereto,” “hereunder” and similar terms refer to this Agreement; and the term “hereafter” means after, and the term “heretofore” means before, the date of this Agreement. Words of any gender include the correlative words of the other genders, unless the sense indicates otherwise.

Section 1.4 Captions and Headings. The captions and headings in this Agreement are solely for convenience of reference and in no way define, limit or describe the scope or intent of any Articles, Sections, subsections, paragraphs, subparagraphs or clauses hereof.

[End of Article I - Balance of page intentionally left blank.]

ARTICLE II

Representations and Covenants

Section 2.1 Representations of the County. The County represents that: (a) it is a county duly organized and validly existing under the laws of the State and its Charter; (b) it is legally empowered to enter into and perform the transactions contemplated by this Agreement; (c) the execution, delivery and performance of this Agreement does not and will not violate or conflict with any provision of law applicable to the County, and does not, and will not, conflict with or result in a default under any agreement or instrument to which the County is a party or by which it is bound which would have an adverse effect on the County's ability to perform its obligations under this Agreement (other than such adverse effect which is not material); (d) its Legislative Authority has duly authorized the execution, delivery and performance of this Agreement; and (e) this Agreement, when executed and delivered by the County, will constitute the legal, valid and binding obligations of the County, enforceable against it in accordance with the respective terms thereof.

Section 2.2 Representations of the City. The City represents that: (a) it is a municipal corporation duly organized and validly existing under the laws of the State and its Charter; (b) it is legally empowered to enter into and perform the transactions contemplated by this Agreement; (c) the execution, delivery and performance of this Agreement does not and will not violate or conflict with any provision of law applicable to the City, and does not, and will not, conflict with or result in a default under any agreement or instrument to which the City is a party or by which it is bound which would have an adverse effect on the City's ability to perform its obligations under this Agreement (other than such adverse effect which is not material); (d) its Legislative Authority has duly authorized the execution, delivery and performance of this Agreement; and (e) this Agreement, when executed and delivered by the City, will constitute the legal, valid and binding obligations of the City, enforceable against it in accordance with the respective terms thereof.

[End of Article II - Balance of page intentionally left blank.]

ARTICLE III

Cooperative Arrangements Regarding Establishment of COG

Section 3.1 Cooperative Arrangements. For the reasons set forth in the Recitals to this Agreement, the Cooperative Parties have determined to cooperate with one another in accordance with the terms of this Agreement.

Section 3.2 Establishment and Organization of the COG. Concurrently upon the execution of this Cooperative Agreement, the Cooperative Parties shall enter into an Intergovernmental Agreement, attached hereto as Exhibit B and incorporated herein by reference (the “COG Intergovernmental Agreement”), to create the COG, which shall be called the *Summit-Fairlawn Broadband Council of Governments*, and which shall be responsible for the ongoing operation of the Data Center Improvements, Data Center Equipment and Fiber Ring as set forth herein. In addition to the COG Intergovernmental Agreement, the terms of this Cooperative Agreement shall govern the ongoing operation of the COG as the same is appropriate and as the same may be amended from time to time.

The Cooperative Parties shall take all steps necessary to create the COG as set forth under Chapter 167 of the Ohio Revised Code, and upon formation, each of those Cooperative Parties shall ensure that their respective members on the Board of Trustees of the COG vote in the affirmative to adopt initial Bylaws for the COG in materially the same form as set forth on Exhibit C, attached hereto and incorporated by reference (the “COG Bylaws”). Otherwise, the Cooperative Parties agree to generally cooperate with one another and take all other necessary and reasonable actions in commencing the COG operations and continuing the same pursuant to the COG Intergovernmental Agreement and COG Bylaws.

The COG Intergovernmental Agreement and COG Bylaws shall provide that the City and the County are the sole members of the COG and that additional members may only be permitted to join the COG upon a unanimous vote of the City and County. The Mayor of the City and the Executive of the County shall be the two, and only, Trustees representing their respective entities on the COG Board of Trustees, and each shall have the right to appoint a designee in the event of absence. Furthermore, the COG Intergovernmental Agreement and COG Bylaws shall prohibit any member of the COG from voting against the payment of any rent or other sums due under the Data Center Site Lease and Data Center Site Sublease, Data Center Improvements Lease or Data Center Equipment Lease, Fiber Ring Lease, Data Center OMM Agreement and Fiber Ring OMM Agreement, or this Cooperative Agreement or any other agreement entered into by or on behalf of the COG as set forth herein, or, in lieu of payment, executing the appropriate loan documents to the City or County for any payments due under the same, as the same are set forth and defined herein, and shall provide the COG and the other member(s) the right to specifically enjoin such member from voting against such payment or loan.

[End of Article III - Balance of page intentionally left blank.]

ARTICLE IV

Cooperative Arrangements Regarding Data Center

Section 4.1 Lease of the Data Center Site to the County; Sublease of Data Center Site to COG. Immediately upon execution of this Agreement, the City shall take all steps necessary, at its own cost, to split and/or subdivide the Data Center Site from the remainder of the parcel of real property to which the Data Center Site is attached. Following the creation of the COG and the split/subdivision of the Data Center Site into a separate parcel, the City and the County shall enter into a lease agreement in substantially the form set forth on Exhibit D, attached hereto and incorporated herein by reference (“Data Center Site Lease”), whereby the City shall lease to the County the Data Center Site for an initial term of thirty (30) years, plus the number of months necessary to design and construct the Data Center Improvements, as defined below, and install the Data Center Equipment, as defined below, not to exceed a total of thirty-two (32) years and six (6) months.

The Data Center Site Lease shall provide for base rent payments to be paid from the County to the City commencing in the sixty-first (61st) month of the initial term following completion of the Data Center Improvements and installation of the Data Center Equipment, with such monthly base rent payments being \$2,636.67 (\$175,000.00 per acre x 4.52 acres divided by 300 month). Additionally, as additional rent, the County shall be responsible for paying, or reimbursing the City for, all costs associated with its lease of the Data Center Site, including, but not limited to, maintenance, utilities, insurance, and taxes and assessments, if any. The County shall also be responsible under the Data Center Site Lease for undertaking and paying for all capital repairs and replacement to the Data Center Site.

Concurrently with the execution of the Data Center Site Lease, the County and the COG shall enter into a sublease agreement in substantially the form set forth on Exhibit E, attached hereto and incorporated herein by reference (“Data Center Site Sublease”), whereby the County shall sublease to the COG the Data Center Site for an initial term commensurate with the Data Center Site Lease. The Data Center Site Sublease shall assign all obligations under the Data Center Site Lease to the COG, and said assignment shall be acknowledged and accepted by the City. The Data Center Site Sublease shall provide for sublease base rent payments commensurate with the base rent payments set forth in the Data Center Site Lease, and shall further provide that the COG shall be responsible for paying or reimbursing the City directly for all costs associated with the lease and sublease of the Data Center Site, including, but not limited to, maintenance, utilities, insurance, and taxes and assessments, if any. The COG shall also assume and be responsible under the Data Center Site Sublease for undertaking and paying for all capital repairs and replacement to the Data Center Site that is otherwise the obligation of the County under the Data Center Site Lease.

The Data Center Site Lease and Data Center Site Sublease shall further provide that, in the event the COG has insufficient funds in any given calendar year to pay the full base rent required by the Data Center Site Lease and Data Center Site Sublease in that calendar year, given the order and priority of obligations set forth below and in the Data Center Site Lease and Data Center Site Sublease, then the same shall not constitute an event of default, and any unpaid base rent, or portion

thereof, still remaining due as of December 15th of that calendar year shall, at the end of that calendar year, be deferred and carried forward, and divided equally among the then-remaining months in the initial term, in addition to the rent already due in those then-remaining months. No later than December 31st of each calendar year, the City shall provide the County and COG an updated rent schedule reflecting any deferrals as set forth in this paragraph.

The Data Center Site Lease and Data Center Site Sublease shall further provide that, prior to the commencement of the final twelve (12) months of the initial term, the COG shall elect to either (i) pay all base rent due and owing in the twelve (12) months of the initial term (including all deferred payments), plus a nominal sum of \$100.00 to purchase the Data Center Site, (ii) renew the Data Center Site Lease and Data Center Site Sublease for a renewal term of five (5) years, and to defer all base rent amounts not paid in full during the final twelve (12) months of the initial term to be paid during such renewal term in sixty (60) equal monthly installments, each equal to 1/60th of the outstanding amount of base rent at the conclusion of the initial term, or (iii) require the City and County to sell both the Data Center Site and the Data Center Improvements to the same purchaser and to remit any sums paid as consideration by said purchaser to the COG, less any unpaid base rent owed to the City under the Data Center Site Lease and the County under the Data Center Improvements Lease, and further less any sums owed to the County and City to repay Operating Cost Advances and the County-COG Credit Line Note, as defined below. Prior to the commencement of the final year of the renewal term, the COG shall make the same election as required to be made prior to the commencement of the final year of the initial term, as set forth above. The COG shall not make an election for the Data Center Site Lease and Data Center Site Sublease that is contrary to the election made for in the Data Center Improvements Lease, as set forth below.

At any time during the initial or any renewal term of the Data Center Site Lease and Data Center Site Sublease, the COG may purchase the Data Center Site from the City by paying any unpaid rental sums due for the balance of the term. Such Data Center Site Lease and Data Center Site Sublease shall operate upon such other terms and conditions as set forth in the attached Exhibits D1 and D2. As further set forth herein, all base rent and other sums due under the Data Center Site Lease and Data Center Site Sublease shall be included in the COG's operating expenses and paid by the COG as set forth herein.

Section 4.2 Undertaking the Data Center Project. Upon execution of this Cooperative Agreement, the County shall undertake the development of the Data Center Project, which includes, but shall not be limited to:

a. Designing and constructing certain improvements to the Data Center Site, including the construction of a secure, 20,000+/- square feet data center for public-use and private-use,, parking lot improvements, substation, redundant utility connections, redundant fiber connections, security fencing and other security-related improvements ("Data Center Improvements"). The Cooperative Parties understand and agree that the Data Center Improvements are subject to design and input from the Cooperative Parties. In undertaking the design and construction of the Data Center Improvements, the County shall procure and contract with an engineering/architectural firm for the design of the Data Center Improvements, and, after the same have been fully designed, a construction firm or firms to construct the Data Center

Improvements. The County may, in its discretion, hire a construction manager to manage the construction of the Data Center Improvements. The County shall procure each contract necessary for the design, construction and management of the Data Center Improvements in accordance with all applicable laws governing the County's procurement of the same, and shall be assisted in the review of proposals and bids obtained through its procurement process by the City.

b. Identifying, acquiring and installing all necessary and appropriate furniture, fixtures and equipment, including all necessary cabling, switching, routing, racking, security and other information technology equipment, as further described on Exhibit F, necessary for the operation of the Data Center Improvements ("Data Center Equipment" and collectively with the Data Center Improvements, the "Data Center Project"). The Cooperative Parties understand and agree that the Data Center Equipment described and set forth on Exhibit F are preliminary in nature and are subject to further identification, design and input from the Cooperative Parties. In undertaking the identification, acquisition and installation of the Data Center Equipment, the County shall procure and contract with any necessary engineering firms for the design and/or identification of the same, and, after the same have been fully designed and/or identified, with vendors that can supply the Data Center Equipment. The County shall procure each contract necessary for the identification, acquisition and installation of the Data Center Equipment in accordance with all applicable laws governing the County's procurement of the same, and shall be assisted in the review of proposals and bids obtained through its procurement process by the City.

c. All costs incurred and paid by the County in such design and construction contracts for the Data Center Improvements and the design and vendor contracts for the identification, acquisition and installation of the Data Center Equipment shall be considered costs of the Data Center Project and shall be recovered by the County as set forth below. The Cooperative Parties anticipate that the Data Center Project will be completed within twenty-four (24) months after the execution of this Cooperative Agreement. The Cooperative Parties will use reasonable efforts to complete and deliver the Data Center Project upon this schedule, but shall not have liability to the other Cooperative Parties for any delay in the same.

Section 4.3 Joint Management of the Data Center Project by the Cooperative Parties; MCM Consulting Group, Inc. as Contractor. The County and the City shall cooperate to jointly manage the Data Center Project, including all aforementioned aspects of the same. The County will further contract with MCM Consulting, Inc. ("MCM") to provide project management services to the Cooperative Parties, which include, but are not limited to, general project management and owner's representative services, participation in the procurement of all design, construction, and purchase contracts, oversight of the design and construction of the Data Center Improvements, and oversight of the design/identification, procurement and installation of the Data Center Equipment. MCM's services shall be procured by the County pursuant to all applicable laws governing the County's procurement of such services. All costs paid to MCM in the performance of such services shall be considered costs of the Data Center Project, allocated specifically as costs of the Data Center Improvements, and shall be recovered by the County as set forth below. The County and City shall not recover their in-kind staff costs contributed to the management of the Data Center Project, which is separate and apart from the City's ability to recover costs for the operation, management and maintenance of the Data Center Improvements and Fiber Ring after the same are constructed. The Cooperative Parties shall collectively retain

ultimate decision-making authority for the Data Center Project, and MCM's role shall be advisory in nature. Nothing contained herein shall prohibit the Cooperative Parties from contracting with any other party to perform the services set forth herein to be performed by MCM, whether in addition to MCM or as a replacement to MCM.

Section 4.4 County to Pay all Data Center Project Costs. The County shall initially pay all costs associated with the undertaking of the Data Center Project, which are estimated to be \$20 million at the time of execution of this Agreement. The Cooperative Parties will use all reasonable efforts to complete the Data Center Improvements and identify, acquire and install the Data Center Equipment for a cost that is generally equal to or less than said \$20 million, provided, however, that the Cooperative Parties understand and agree that any reasonable and necessary increases in said costs may be incurred by the County and that the actual cost of the Data Center Project will be recovered by the County as set forth herein.

The County intends to pay for the Data Center Project initially out of its General Capital Improvements Fund, provided that the County may, in its discretion, utilize whatever funds it determines are suitable for the same, provided that the County has authority to expend said funds for the Data Center Project costs.

Section 4.5 County Recovery of Data Center Project Costs. As more fully set forth below, the County shall recover its costs for the Data Center Improvements through a lease with the COG, for an initial term of thirty (30) years (the "Data Center Improvements Lease"). The County shall further recover its costs for the Data Center Equipment through a lease with the COG for an initial term of ten (10) years ("Data Center Equipment Lease"). The County's right to recovery of its costs for the Data Center Project shall be limited to the revenue it derives from the Data Center Improvements Lease and the Data Center Equipment Lease, as set forth below, and the County shall not have any recourse to recover any costs of the Data Center Project directly from the City, except as provided herein and in said leases. The County's costs that it is entitled to recover through the Data Center Improvements Lease and Data Center Equipment Lease, include, but are not limited to:

- a. The County's costs to design and construct the Data Center Improvements.
- b. The County's costs to identify, acquire and install the Data Center Equipment.
- c. The County's costs to MCM to assist in the management of the Data Center Project, which shall be entirely recoverable as costs of the Data Center Improvements.
- d. Any other costs specifically identified in this Cooperative Agreement as being borne initially by the County and then subject to recovery by the County for the Data Center Project, which shall be entirely recoverable as costs of the Data Center Improvements.
- e. The County's out-of-pocket costs related to the preparation of this Cooperative Agreement, and establishing the transactions that are necessary to complete the Data Center Project and Fiber Ring Project, including, but not limited to, County's outside legal fees and costs, which shall be entirely recoverable as costs of the Data Center Improvements.

As indicated above, \$20 million is the current estimate of the costs set forth in Section 4.5(a) to (e), above. The total amount recovered through the Data Center Improvements Lease and the Data Center Equipment Lease will be the actual amount expended by the County for Section 4.5(a) to (e), above. Upon all actual amounts being ascertained by the County and finalized, the County shall provide to the COG and the City a final statement setting forth such actual costs and the same shall become a schedule to this Cooperative Agreement.

Section 4.6 Lease of Data Center Improvements to COG. Following the creation of the COG, the County and the COG shall enter into a lease agreement in substantially the form set forth on Exhibit G, attached hereto and incorporated herein by reference (“Data Center Improvements Lease”), whereby the County shall lease to the COG the Data Center Improvements for an initial term of thirty (30) years, commencing upon the substantial completion of the Data Center Improvements and installation of the Data Center Equipment. The Data Center Improvements Lease shall require the County to design and construct the Data Center Improvements as set forth above and to deliver possession of the same to within thirty (30) months of execution of the Data Center Improvements Lease. The COG shall be responsible pursuant to the Data Center Improvements Lease for the operation, management and maintenance of the Data Center Improvements.

The Data Center Improvements Lease shall provide for base rent to be paid from the COG to the County commencing in the sixty-first (61st) month of the initial term, with such monthly base rent payments being an equal share of 1/300th of the cost of the Data Center Improvements, as provided for and set forth in Section 4.5, above. Additionally, as additional rent, the COG shall be responsible for paying, or reimbursing the County for, all costs associated with its lease of the Data Center Improvements, including, but not limited to, maintenance, utilities, insurance, and taxes and assessments, if any. The COG shall also be responsible for undertaking and paying for all capital repairs and replacement of the Data Center Improvements.

The Data Center Improvements Lease shall further provide that, in the event the COG has insufficient funds in any given calendar year to pay the full base rent required by the Data Center Improvements Lease in that calendar year, given the order and priority of obligations set forth below and in the Data Center Improvements Lease, then the same shall not constitute an event of default, and any unpaid base rent, or portion thereof, still remaining due as of December 15th of that calendar year shall, at the end of that calendar year, be deferred and carried forward, and divided equally among the then-remaining months in the initial term, in addition to the rent already due in those then-remaining months. No later than December 31st of each calendar year, the County shall provide the COG an updated rent schedule reflecting any deferrals as set forth in this paragraph.

The Data Center Improvements Lease shall further provide that, prior to the commencement of the final twelve (12) months of the initial term, the COG shall elect to either (i) pay all base rent due and owing in the twelve (12) months of the initial term (including all deferred payments), plus a nominal sum of \$100.00 to purchase the Data Center Improvements, (ii) renew the Data Center Improvements Lease for a renewal term of five (5) years, and to defer all base rent amounts not paid in full during the final twelve (12) months of the initial term to be paid during

such renewal term in sixty (60) equal monthly installments, each equal to 1/60th of the outstanding amount of base rent at the conclusion of the initial term, or (iii) require the City and County to sell both the Data Center Site and the Data Center Improvements to the same purchaser and to remit any sums paid as consideration by said purchaser to the COG, less any unpaid base rent owed to the City under the Data Center Site Lease and Data Center Site Sublease and the County under the Data Center Improvements Lease, and further less any sums owed to the County and City to repay Operating Cost Advances and the County-COG Credit Line Note, as defined below. Prior to the commencement of the final year of the renewal term, the COG shall make the same election as required to be made prior to the commencement of the final year of the initial term, as set forth above. The COG shall not make an election for the Data Center Improvements Lease that is contrary to the election made for in the Data Center Site Lease and Data Center Site Sublease, as set forth above.

At any time during the initial or any renewal term of the Data Center Improvements Lease, the COG may purchase the Data Center Improvements from the County by paying any unpaid rental sums due for the balance of the term. Such Data Center Improvements Lease shall operate upon such other terms and conditions as set forth in the attached Exhibit G. As further set forth herein, all base rent and other sums due under the Data Center Improvements Lease shall be included in the COG's operating expenses and paid by the COG as set forth herein.

Section 4.7 Lease of Data Center Equipment to COG. Following the creation of the COG, the County and the COG shall enter into a lease agreement in substantially the form set forth on Exhibit H, attached hereto and incorporated herein by reference agreement ("Data Center Equipment Lease"), whereby the County shall lease to the COG the Data Center Equipment for an initial term of ten (10) years, commencing upon the substantial completion of the Data Center Improvements and installation of the Data Center Equipment. The Data Center Equipment Lease shall require the County to identify/design, procure and install the Data Center Equipment as set forth above and to deliver possession of the same to within thirty (30) months of execution of the Data Center Equipment Lease. The COG shall be responsible pursuant to the Data Center Equipment Lease for the operation, management and maintenance of the Data Center Equipment.

The Data Center Equipment Lease shall provide for rental payments to be paid from the COG to the County commencing in the first (1st) month of the initial term, with such monthly lease payments being an equal share of 1/120th of the cost of the Data Center Equipment, as provided for and set forth in Section 4.5, above. Additionally, as additional rent, the COG shall be responsible for paying, or reimbursing the County for, all costs associated with its lease of the Data Center Equipment, including, but not limited to, maintenance, utilities, and insurance. The COG shall also be responsible for undertaking and paying for all capital repairs and replacement of the Data Center Equipment.

The Data Center Equipment Lease shall further provide that, in the event the COG has insufficient funds in any given calendar year to pay the full base rent required by the Data Center Equipment Lease in that calendar year, given the order and priority of obligations set forth below and in the Data Center Equipment Lease, then the same shall not constitute an event of default, and any unpaid base rent, or portion thereof, still remaining due as of December 15th of that calendar year shall, at the end of that calendar year, be deferred and carried forward, and divided

equally among the then-remaining months in the initial term, in addition to the rent already due in those then-remaining months. No later than December 31st of each calendar year, the County shall provide the COG an updated rent schedule reflecting any deferrals as set forth in this paragraph.

The Data Center Equipment Lease shall further provide that, prior to the commencement of the final twelve (12) months of the initial term, the COG shall elect to either (i) pay all base rent due and owing in the twelve (12) months of the initial term (including all deferred payments), plus a nominal sum of \$100.00 to purchase the Data Center Equipment, or (ii) renew the Data Center Equipment Lease for a renewal term of three (3) years, and to defer all base rent amounts not paid in full during the final twelve (12) months of the initial term to be paid during such renewal term in thirty-six (36) equal monthly installments, each equal to 1/36th of the outstanding amount of base rent at the conclusion of the initial term. Prior to the commencement of the final year of the renewal term, the COG shall make the same election as required to be made prior to the commencement of the final year of the initial term, as set forth above.

At any time during the initial or any renewal term of the Data Center Equipment Lease, the COG may purchase the Data Center Equipment from the County by paying any unpaid rental sums due for the balance of the term. Such Data Center Equipment Lease shall operate upon such other terms and conditions as set forth in the attached Exhibit H. As further set forth herein, all base rent and other sums due under the Data Center Equipment Lease shall be included in the COG's operating expenses and paid by the COG as set forth herein.

[End of Article IV - Balance of page intentionally left blank.]

ARTICLE V

Cooperative Arrangements Regarding Fiber Ring

Section 5.1 Undertaking of the Development of the Fiber Ring. Upon execution of this Cooperative Agreement, the County shall undertake the development of the Fiber Ring (“the Fiber Ring Project”), which includes, but shall not be limited to:

a. Designing and constructing certain improvements to install throughout Summit County an approximately 125-130 mile redundant high-speed fiber optic cable ring and associated equipment, including any equipment necessary for the operability of the ring but is located within the Data Center Improvements, which shall be separate and apart from the Data Center Equipment. (the “Fiber Ring”). In designing and constructing the Fiber Ring, the County shall include therein any such equipment necessary for the operation of the same, and such equipment shall be part and parcel of the Fiber Ring, rather than considered separate equipment as is the case for the Data Center Improvements and Data Center Equipment.

The Fiber Ring Project shall include the installation of the Fiber Ring upon a route to connect the locations set forth in Exhibit I, subject to appropriate revisions and adjustments necessary to complete the Fiber Ring. The parties understand and agree that the Fiber Ring and the locations set forth in Exhibit I, and the route to connect the locations set forth on Exhibit I are subject to design and input from the Cooperative Parties. In undertaking the Fiber Ring Project, the County shall procure and contract with an engineering firm or firms for the design of the Fiber Ring and, after completion of the design, a construction firm or firms to construct the Fiber Ring. The County may, in its discretion, hire a construction manager to manage the construction of the Fiber Ring. The County shall procure each contract necessary for the design and construction of the Fiber Ring in accordance with all applicable laws governing the County’s procurement of the same, and shall be assisted in the review of proposals and bids obtained through its procurement process by the City.

b. In undertaking the Fiber Ring Project, the County shall install the necessary conduit, fiber and other equipment necessary to operate the same generally upon and within public rights of way and other government owned lands (“Public Lands”). In so doing, the County shall be responsible for (i) applying for and obtaining any necessary permits to construct or install part of the Fiber Ring from any political subdivision within or upon such Public Lands, (ii) entering into any agreements with any political subdivision necessary to construct or install part of the Fiber Ring within or upon such Public Lands, (iii) entering into any agreements with any utility provider for the use of such utility provider’s assets for the construction or installation of part of the Fiber Ring, (iv) entering into any easements, licenses, purchase agreements or other agreements to obtain any interest in land, whether it be Public Lands or otherwise, necessary for the construction or installation of part of the Fiber Ring, (v) undertaking and prosecuting any eminent domain proceedings necessary to obtain an interest in real property necessary for the construction or installation of part of the Fiber Ring, and (vi) generally taking all other actions necessary to obtain the legal right to construct and install the Fiber Ring throughout Summit County (collectively, the “Fiber Ring Access Rights,” which, for the purposes of this Agreement shall be included in the definition of “Fiber Ring.” The County may, to the extent possible, contract out to an appropriate

third party, which may include the firm or firms hired to design or construct the Fiber Ring, for the undertaking of the County's obligations set forth in this subparagraph (b).

c. All costs incurred and paid by the County in such design and construction contracts for the Fiber Ring, including the costs of the Fiber Ring Access Rights shall be considered costs of the Fiber Ring Project and shall be borne by the County as set forth in this Article. The Cooperative Parties anticipate that the Fiber Ring Project will be completed within thirty (30) months after the execution of this Cooperative Agreement. The Cooperative Parties will use reasonable efforts to complete and deliver the Fiber Ring Project upon this schedule, but shall not have liability to the other Cooperative Parties for any delay in the same.

Section 5.2 Joint Management of the Fiber Ring Project by the Cooperative Parties; MCM Consulting Group, Inc. as Contractor. The County and the City shall cooperate to jointly manage the Fiber Ring Project, including all aforementioned aspects of the same. The County will further contract with MCM to provide project management services to the Cooperative Parties following the commencement of this Cooperative Agreement, which include, but are not limited to, general project management and owner's representative services, participation in the procurement of all design and construction contracts, and oversight of the design and construction of the Fiber Ring Project. MCM's services shall be procured by the County pursuant to all applicable laws governing the County's procurement of such services. All costs paid to MCM in the performance of such services shall be considered costs of the Fiber Ring Project, and shall be paid by the County as set forth below. The County and City shall not recover their in-kind staff costs contributed to the management of the Fiber Ring Project, which is separate and apart from the City's ability to recover costs for the operation, management and maintenance of the Data Center Improvements and Fiber Ring after the same are constructed. The Cooperative Parties shall collectively retain ultimate decision-making authority for the Data Center Project, and MCM's role shall be advisory in nature. Nothing contained herein shall prohibit the Cooperative Parties from contracting with any other party to perform the services set forth herein to be performed by MCM, whether in addition to MCM or as a replacement to MCM.

Section 5.3 County to Pay Fiber Ring Project Costs. The County shall pay all costs associated with the undertaking of the Fiber Ring Project, which are estimated to be \$35 million at the time of execution of this Agreement. The Cooperative Parties will use all reasonable efforts to complete the Fiber Ring Project for costs that are generally equal to or less than said \$35 million, provided, however, that the Cooperative Parties understand and agree that any reasonable and necessary increases in said costs may be incurred by the County at the County's discretion.

The County intends to pay for the Fiber Ring Project entirely out of ARPA Funds in accordance with ARPA. As such, the Cooperative Parties understand and agree that the County will not finance any portion of the Fiber Ring Project and the County shall not be entitled to recovery of its costs incurred in paying for the Fiber Ring Project. The County will use ARPA Funds for the hard and soft construction costs related to the Fiber Ring Project, including payment of MCM for services it renders to the Fiber Ring Project, but neither the County nor the City shall be entitled to reimbursement from the ARPA Funds, or otherwise, for any in-kind services provided by each to the Fiber Ring Project.

Section 5.4 Lease of Fiber Ring to COG. Following the creation of the COG, the County and the COG shall enter into a lease agreement in substantially the form set forth on Exhibit J, attached hereto and incorporated herein by reference (“Fiber Ring Lease”), whereby the County shall lease to the COG the Fiber Ring for a term of ninety-nine years (99), commencing upon the substantial completion of the Fiber Ring. The Fiber Ring Lease shall require the County to undertake the Fiber Ring Project as set forth above and to deliver possession of the Fiber Ring to the COG upon substantial completion of construction of the Fiber Ring. The COG shall be responsible pursuant to the Fiber Ring Lease for the operation, management and maintenance of the Fiber Ring. The COG shall also be responsible for undertaking and paying for all capital repairs and replacement of the Fiber Ring.

The Fiber Ring Lease shall provide for base rent payments to be paid from the COG to the County commencing in the (1st) month of the term, with such monthly base rent payments being the amount of \$1.00 per month, for a total base rent amount of \$1,188.00, which may be pre-paid by the COG at any time. Additionally, as additional rent, the COG shall be responsible for paying, or reimbursing the County for, all costs associated with its lease of the Fiber Ring and the operation management and maintenance of the Fiber Ring, including, but not limited to, maintenance, utilities, insurance, and taxes and assessments, if any.

The Fiber Ring Lease shall further provide that, in the event the COG has insufficient funds in any given year to pay the full rent required by the Fiber Ring Lease, given the order and priority of obligations set forth below and in the Fiber Ring Lease, then then the same shall not constitute an event of default, and any unpaid base rent, or portion thereof, still remaining due as of December 15th of that calendar year shall, at the end of that calendar year, be deferred and carried forward, and divided equally among the then-remaining months in the initial term, in addition to the rent already due in those then-remaining months. No later than December 31st of each calendar year, the County shall provide the COG an updated rent schedule reflecting any deferrals as set forth in this paragraph.

The Fiber Ring Lease shall further provide that the COG shall pay all base rent due and owing, including all deferred amounts, in the final twelve (12) months of the initial term of said lease.

Such Fiber Ring Lease shall operate upon such other terms and conditions as set forth in the attached Exhibit J. As further set forth herein, all rent and other sums due under the Fiber Ring Lease shall be included in the COG’s operating expenses and paid by the COG as set forth herein.

[End of Article V - Balance of page intentionally left blank.]

ARTICLE VI

COG Operation of Data Center Improvements, Data Center Equipment and Fiber Ring;
Cooperative Arrangements Regarding Payment of COG Obligations

6.1 Operation, Management and Maintenance Agreements Between COG and City

- (a) Operation, Management and Maintenance of the Data Center Improvements and Data Center Equipment. While the COG shall remain liable to the County under the terms of the Data Center Improvements Lease and Data Center Equipment Lease for the operation, management and maintenance of the Data Center Improvements and the Data Center Equipment, the COG shall enter into an Operation, Management and Maintenance Agreement (“Data Center OMM Agreement”) with the City whereby the City will undertake the ongoing operation, management and maintenance of the Data Center Improvements and Data Center Equipment in the form attached hereto as Exhibit K and incorporated herein. The Data Center OMM Agreement shall provide for the type and nature of services to be provided by the City to the COG for the operation, management and maintenance of the Data Center Improvements and Data Center Equipment, which shall be provided by either City personnel or through contracting with third-party vendors for the provision of services. In addition to the services rendered by the City to the COG, the Data Center OMM Agreement shall anticipate that the City may, from time to time, obtain materials, supplies, equipment or other goods necessary and ancillary to the services it provides, and the OMM Agreement shall allow the reimbursement of the same from the COG to the City.

As consideration for the services provided by the City to the COG under the Data Center OMM Agreement, the COG shall pay to the City the following:

- (i) the City’s actual staffing costs per month (including salary and all benefits, either for the entirety of an employee or a portion of that employee’s employment costs) for all new employee positions hired by the City to fulfill its obligations to the COG under the Data Center OMM Agreement at any time after the execution of this Cooperative Agreement, plus an additional payment up to 10% of the actual staffing costs per month as reimbursement for the indirect costs associated with the management, supervision, oversight and support staff necessary for such employees (“City’s Data Center New Employee Staffing Costs”); and (ii) the actual staffing costs per month (including salary and all benefits, either for the entirety of an employee or a portion of that employee’s employment costs) for any other City employees existing on City’s payroll at the time of the execution of the Cooperative Agreement who perform any services for the Data Center Improvements and Data Center Equipment under the Data Center OMM Agreement (except for any elected officials) plus an additional payment up to 10% of the actual staffing costs per month as

reimbursement for the indirect costs associated with the management, supervision, oversight, and support staff necessary for such employees (“City’s Data Center Existing Employee Staffing Costs”). This second category of compensation for City’s Data Center Existing Employee Staffing Costs shall be approved by the COG Board and shall be paid only if there are sufficient revenues to pay such costs under the priority schedule set forth in Section 6.3 of this Agreement in the year for which the payment will be made.

The COG also shall agree to pay and/or to reimburse the City for the City’s actual costs paid to third-party vendors to provide services to the COG on behalf of the City pursuant to the Data Center OMM Agreement, and pay or reimburse the City for the City’s actual costs paid to third-party vendors to provide materials, supplies, equipment or other goods purchased by the City under the Data Center OMM Agreement (“Data Center OMM Third-Party Goods and Services Costs”).

Nothing contained herein shall limit or prohibit the COG from entering into a separate agreement for the operation, maintenance and management of the Data Center Improvements and Data Center Equipment if the COG, in its sole discretion, determines it necessary and appropriate to do so.

- (b) Operation, Management and Maintenance of the Fiber Ring. While the COG shall remain liable to the County under the terms of the Fiber Ring Lease for the operation, management and maintenance of the Fiber Ring, the COG shall enter into an Operation, Management and Maintenance Agreement (“Fiber Ring OMM Agreement”) with the City whereby the City will undertake the ongoing operation, management and maintenance of the Fiber Ring in the form attached hereto as Exhibit L and incorporated herein. The Fiber Ring OMM Agreement shall provide for the type and nature of services to be provided by the City to the COG for the operation, management and maintenance of the Fiber Ring, which shall be provided by either City personnel or through contracting with third-party vendors for the provision of services. In addition to the services rendered by the City to the COG, the Data Center OMM Agreement shall anticipate that the City may, from time to time, obtain materials, supplies, equipment or other goods necessary and ancillary to the services it provides, and the OMM Agreement shall allow the reimbursement of the same from the COG to the City.

As consideration for the services provided by the City to the COG under the Fiber Ring OMM Agreement, the COG shall pay to the City the following: (i) the City’s actual staffing costs per month (including salary and all benefits, either for the entirety of an employee or a portion of that employee’s employment costs) for all new employee positions hired by the City to fulfill its obligations to the COG under the Fiber Ring OMM

Agreement at any time after the execution of this Cooperative Agreement, plus an additional payment up to 10% of the actual staffing costs per month as reimbursement for the indirect costs associated with the management, supervision, oversight, and support staff necessary for such employees (“City’s Fiber Ring New Employee Staffing Costs”); and (ii) the City’s actual staffing costs for per month (including salary and all benefits, either for the entirety of an employee or a portion of that employee’s employment costs) for any other City employees existing on City’s payroll at the time of the execution of the Cooperative Agreement who perform any OMM Services (except for any elected officials) plus an additional payment up to 10% of the actual staffing costs per month as reimbursement for the indirect costs associated with the management, supervision, oversight, and support staff necessary for such employees (“City’s Fiber Ring Existing Employee Staffing Costs”). This second category of compensation for City’s Fiber Ring Existing Employee Staffing Costs shall be approved by the COG Board and shall be paid only if there are sufficient revenues to pay such costs under the priority schedule set forth in Section 6.3 of this Agreement in the year for which the payment will be made.

The COG also shall be responsible to pay, or reimburse the City, for the City’s actual costs paid to third-party vendors to provide services to the COG on behalf of the City pursuant to the Fiber Ring OMM Agreement, and to pay or reimburse the City for the City’s actual costs paid to third-party vendors to provide materials, supplies, equipment or other goods purchased by the City under the Fiber Ring OMM Agreement (“Fiber Ring OMM Third-Party Goods and Services Costs”).

Nothing contained herein shall limit or prohibit the COG from entering into a separate agreement for the operation, maintenance and management of the Fiber Ring if the COG, in its sole discretion, determines it necessary and appropriate to do so.

6.2 County Services Agreements. The COG may, from time to time, elect to enter into separate agreements with the County to provide additional services relating to the operation, maintenance, and management of the COG (the “County Service Agreements”). The County Service Agreements described in this Section shall be approved by the COG Board and are intended to cover services by the County that may be performed on behalf of the COG and are described more fully in a separate written service agreement.

As consideration for the services provided by the County to the COG under any County Services Agreements that may be entered into in the future under this Section, the COG shall pay to the County the following compensation: (i) the County’s actual staffing costs per month (including salary and all benefits, either for the entirety of an employee or a portion of that employee’s employment costs) for all new employee positions hired by the County to fulfill its obligations to the COG under the County Services Agreements at any time after the execution of this Cooperative Agreement, plus an additional payment up to 10% of the actual staffing costs per month as reimbursement for the indirect costs associated with the management, supervision,

oversight, and support staff necessary for such employees (“County’s New Employee Staffing Costs”); and (ii) the County’s actual staffing costs per month (including salary and all benefits, either for the entirety of an employee or a portion of that employee’s employment costs) for any other County employees existing on the County’s payroll at the time of the execution of the Cooperative Agreement (except any elected officials) who perform any services to the COG under the County Services Agreements, plus an additional payment up to 10% of the actual staffing costs per month as reimbursement for the indirect costs associated with the management, supervision, oversight, and support staff necessary for such employees (“County’s Existing Employee Staffing Costs”). This second category for compensation for County’s Existing Employee Staffing Costs shall be approved by the COG Board and shall be paid only if there are sufficient revenues to pay such costs under the priority schedule set forth in Section 6.3 of this Agreement in the year for which the payment will be made.

The COG also shall be responsible to pay, or reimburse the County, for the County’s actual costs paid to third-party vendors to provide services to the COG on behalf of the County pursuant to the County Services Agreements, and to pay or reimburse the County for the County’s actual costs paid to third-party vendors to provide materials, supplies, equipment or other goods purchased by the County under the County Services Agreements (“County’s Third-Party Goods and Services Costs”).

6.3 Payment of COG Obligations.

(a) Identification of costs. Annually, the Cooperative Parties anticipate that the COG will incur the following costs in regard to the operation of (i) the Data Center Site, Data Center Improvements and Data Center Equipment, and (ii) the Fiber Ring:

- (i) Data Center Site, Data Center Improvements and Data Center Equipment
 - (a) The base rent owed to the City pursuant to the Data Center Site Lease and Data Center Site Sublease.
 - (b) The base rent owed to the County pursuant to the Data Center Improvements Lease.
 - (c) The base rent owed to the County pursuant to the Data Center Equipment Lease.
 - (d) The charges incurred by the COG and payable to the City for the operation, management and maintenance of the Data Center Improvements and Data Center Equipment per the Data Center OMM Agreement, which include:
 - (1) the Data Center OMM Third-Party Goods and Services Costs
 - (2) the City’s Data Center New Employee Staffing Costs
 - (3) the City’s Data Center Existing Employee Staffing Costs

- (e) The costs incurred by the COG pursuant to the County Services Agreements related to the Data Center Improvements and Data Center Equipment, including:
 - (1) the County's Third-Party Services and Goods Costs
 - (2) the County's New Employee Staffing Costs
 - (3) the County's Existing Employee Staffing Costs
 - (f) Other than the costs set forth in Sections 6.3(a)(i)(d)(1) and 6.3(a)(i)(e)(1), the costs to external parties to operate the Data Center Improvements and Data Center Equipment, which include, but are not limited to, costs paid directly by the COG to third-parties for goods and services, the additional rent under the Data Center Site Lease and Data Center Site Sublease, Data Center Improvements Lease and Data Center Equipment Lease (utilities, maintenance, repair, insurance, taxes and assessments, if any). For the avoidance of doubt, these costs include the reimbursement to the County of any costs paid by the County towards items included as additional rent.
 - (g) Capital replacement costs, in excess of the levels provided for in the Data Center OMM Agreement, for the components that comprise the Data Center Improvements and Data Center Equipment that must be replaced, repaired or renovated due to breakage, damage, age and obsolescence from time to time, including, but not limited, any capital repair and replacement costs required pursuant to the Data Center Site Lease, Data Center Site Lease, Data Center Improvements Lease and Data Center Equipment Lease.
- (ii) Fiber Ring
- (a) The base rent owed to the County pursuant to the Fiber Ring Lease.
 - (b) The charges incurred by the COG and payable to the City for the operation, management and maintenance of the Fiber Ring per the Fiber Ring OMM Agreement, which include:
 - (1) the Fiber Ring OMM Third-Party Goods and Services Costs
 - (2) the City's Fiber Ring New Employee Staffing Costs
 - (3) the City's Fiber Ring Existing Employee Staffing Costs
 - (c) The costs incurred by the COG pursuant to the County Services Agreements related to the Fiber Ring, including:
 - (1) the County's Third-Party Goods and Services Costs
 - (2) the County's New Employee Staffing Costs

(3) the County's Existing Employee Staffing Costs

- (d) Other than the costs set forth in Sections 6.3(a)(ii)(b)(1) and 6.3(a)(ii)(c)(1), the costs to external parties to operate the Fiber Ring, which include, but are not limited to, costs paid directly by the COG to third-parties for goods and services, and the additional rent under the Fiber Ring Lease (utilities, maintenance, repair, insurance, taxes and assessments, if any). For the avoidance of doubt, these costs include the reimbursement to the County of any costs paid by the County towards items included as additional rent.
 - (e) Capital replacement costs, in excess of the levels provided for in the Data Center OMM Agreement, for the components that comprise the Fiber that must be replaced, repaired or renovated due to breakage, damage, age and obsolescence from time to time, including, but not limited to, any capital repair and replacement costs required pursuant to the Fiber Ring Lease.
- (iii) Other
- (a) Other administrative and ancillary operational costs incurred by the COG, including, but not limited to, the costs of audits, legal expenses and directors and officers insurance.
 - (b) Repayment of any outstanding Operating Cost Advance Notes for Operating Cost Advances, as the same are defined and set forth below, previously contributed to the COG by the City and County.
 - (c) Repayment of any outstanding Credit Line Advances advanced under the County-COG Credit Line Loan, as the same are defined and set forth below, previously loaned to the COG by the County.

(b) Order of Priority and Payment. As the COG produces an annual operating and capital budget, generates revenue, incurs the aforementioned costs in Section 6.3(a), and reconciles its annual revenues against its annual costs, the COG shall budget for and pay such costs in the following order of priority:

- (i) First, the other administrative and ancillary operational costs incurred by the COG as set forth in Section 6.3(a)(iii)(a).
- (ii) Second, the following costs to external parties, which includes:
 - (a) the costs to external parties to operate the Data Center Improvements and Data Center Equipment, as set forth in Section 6.3(a)(i)(f)

- (b) the costs to external parties to operate the Fiber Ring, as set forth in Section 6.3(a)(ii)(d)
- (c) reimbursement to the City of the Data Center OMM Third-Party Goods and Services Costs, as set forth in Section 6.3(a)(i)(d)(1).
- (d) reimbursement to the City of the Fiber Ring OMM Third-Party Goods and Services Costs, as set forth in Section 6.3(a)(ii)(b)(1).
- (e) reimbursement to the County of the County's Third-Party Goods and Services Costs related to the Data Center Improvements and Data Center Equipment, as set forth in Section 6.3(a)(i)(e)(1)
- (f) reimbursement to the County of the County's Third-Party Goods and Services Costs related to the Fiber Ring, as set forth in Section 6.3(a)(ii)(c)(1)

*** If there are not enough available funds to cover all of the costs set forth in subsections (c) to (f), above, then the COG shall pay any available funds to the City and County in proportion to what is owed to the City and County.

(iii) Third, the capital repair and replacement costs for the Data Center Improvements and Data Center Equipment as set forth in Section 6.3(a)(i)(g), and the costs for capital repair and replacement for the Fiber Ring as set forth in Section 6.3(a)(ii)(e).

(iv) Fourth, the following compensation owed to the City under the Data Center OMM Agreement and Fiber Ring OMM Agreement, and to the County under the County Services Agreements:

- (a) The City's Data Center New Employee Staffing Costs, as set forth in Section 6.3(a)(i)(d)(2), and City's Fiber Ring New Employee Staffing Costs, as set forth in Section 6.1(a)(ii)(b)(2).
- (b) The County's New Employee Staffing Costs for the performance of any County Services Agreements related to the Data Center and Fiber Ring, as set forth in Section 6.3(a)(i)(e)(2) and 6.3(a)(ii)(c)(2), respectively.

*** If there are not enough available funds to cover all of the costs set forth in subsections (a) and (b), above, then the COG shall pay any available funds to the City and County in proportion to what is owed to the City and County.

(v) Fifth, repayment of any outstanding Operating Cost Advance Notes for Operating Cost Advances, as set forth in Section 6.3(a)(iii)(b) previously contributed to the COG by the City and County in proportionate share to the amount outstanding and owed to the City and the County.

- (vi) Sixth, repayment of any outstanding Credit Line Advances previously loaned to the COG by the County under the County-COG Credit Line Loan as set forth in Section 6.3(a)(iii)(c).
- (vii) Seventh, in shares proportionate to the costs actually incurred in that calendar year by the COG for the following (note that not all years will require payments under all four agreements to the City and County):
 - (a) The base rent to the City under the Data Center Site Lease and Data Center Site Sublease, as set forth in Section 6.3(a)(i)(a).
 - (b) The base rent to the County under the Data Center Improvements Lease, as set forth in Section 6.3(a)(i)(b).
 - (c) The base rent to the County under the Data Center Equipment Lease, as set forth in Section 6.3(a)(i)(c).
 - (d) The base rent to the County per the Fiber Ring Lease, as set forth in Section 6.3(ii)(a), provided, however, that the COG may, in its sole discretion, in any given year when all costs in Sections 6.3(b)(i) to (vii) are paid and operating revenue remains available, elect to pay any future base rent due on the Fiber Ring Lease in priority to the lease payments made under Section 6.3(b)(vii)(a)-(c).
- (viii) Eighth, and subject to the approval of the COG Board as set forth below, the following compensation owed to the City under the Data Center OMM Agreement and Fiber Ring OMM Agreement, and to the County under the County Services Agreements
 - (a) The City's Data Center Existing Employee Staffing Costs, as set forth in Section 6.3(a)(ii)(b)(3), and the City's Fiber Ring Existing Staffing Costs, as set forth in Section 6.3(a)(ii)(b)(3).
 - (b) The County's Existing Employee Costs for the performance of any County's Service Agreements related to the Data Center and Fiber Ring, as set forth in Section 6.3(a)(i)(e)(3) and Section 6.3(a)(ii)(c)(3).

***The costs set forth in subsections (a) and (b) shall be paid only if there are sufficient revenues to cover such costs in the calendar year in which they are incurred after all other costs of higher priority have been paid. If there are not enough available funds to cover all of the costs set forth in subsections (a) to (b), above, then the COG shall pay any available funds to the City and County in proportion to what is owed to the City and County. Additionally, any payment to the City and the County under this Section is subject to the approval of the COG, who may, in its discretion, determine

that any remaining funds should be used by the COG for future operating expenses or otherwise, rather than to pay the costs set forth in this section.

(c) Shortfall in Revenue to Pay Obligations. In the event insufficient funds exist to pay any costs set forth in Section 6.3(b)(i) to (iii), then the COG shall first draw upon any funds available under the County-COG Credit Line Loan, as defined and set forth in Section 6.3(f). In the event that funds are no longer available to be borrowed by the COG pursuant to the County-COG Credit Line Loan in any calendar year, for any reason whatsoever, to pay costs set forth in Section 6.3(b)(i) to (iii), then the City and County shall each contribute and pay to the COG one-half of the funds necessary to pay such costs within thirty (30) days of notice from the COG of the same (“Operating Costs Advance”). In the event the City and the County must contribute any Operating Cost Advances to the COG as set forth in this Section, the COG shall deliver to the City and the County a Promissory Note in the form set forth hereto as Exhibit M (“Operating Costs Advance Note”) in the principal amount of the Operating Cost Advance received from each Cooperative Party, wherein the COG shall agree to repay the Operating Costs Advance Note upon the availability of funds based on the order of priority of COG obligations set forth in Section 6.3(b), above. Said Operating Costs Advance Note shall bear interest at the rate of three percent (3%) per annum on any unpaid principal balance. For the sake of clarity, while the funds advanced under this Section are termed Operating Costs Advances, the same shall also be required for any capital repair and replacement necessary for the ongoing operation of the Data Center Improvements, Data Center Equipment and Fiber Ring.

In the event insufficient funds exist at the end of any calendar year to pay any costs set forth in Section 6.3(b)(iv) for costs associated with the Data Center OMM Agreement, Fiber Ring OMM Agreement and County Services Agreements, the COG shall either (i) deliver to the City and/or County an Operating Costs Advance Note in the principal amount of the amount unpaid by the COG to the City under the Data Center OMM Agreement and Fiber Ring OMM Agreement or the County under the County Services Agreements for that calendar year, wherein the COG shall agree to repay the Operating Costs Advance Note upon the availability of funds based on the order of priority of COG obligations set forth in Section 6.3(b), above, or (ii) draw funds from the County-COG Credit Line Loan to pay the same to the City and/or the County. In making its election under this paragraph, the COG may elect to provide an Operating Costs Advance Note for a portion of the costs owed to the City and/or County and to draw the remaining portion from the County-COG Credit Line Loan. Any Operating Costs Advance Note issued under this paragraph shall bear interest at the rate of three percent (3%) per annum on any unpaid principal balance.

In the event insufficient funds exist at the end of any calendar year to pay any costs set forth in Section 6.3(b)(v) and (vi), the terms of the Operating Costs Advance Notes (for costs under Section 6.3(b)(v)) and the County-COG Credit Line Note, as defined below (for costs under Section 6.3(b)(vi)) shall provide that the same will remain outstanding until the time that funds are available to pay the same.

In the event insufficient funds exist at the end of any calendar year to pay any costs set forth in Section 6.3(b)(vii), the terms of the Data Center Site Lease, Data Center Site Sublease, Data Center Improvements Lease, Data Center Equipment Lease, and Fiber Ring Lease provide for any unpaid base rent to be deferred and paid as set forth therein.

In the event insufficient funds exist at the end of any calendar year to pay any costs set forth in Section 6.3(b)(viii), then such costs shall be discharged and shall not be further due and payable by the COG to either the City or the County.

(d) Annual Appropriations. The City and the County shall each annually appropriate a sum of at least \$500,000.00 in general funds to support its obligations to contribute funds under Section 6.3(c) of this Agreement towards the operating costs of the COG. Nothing contained herein is intended to limit the obligation of either the City or County to contribute funds pursuant to Section 6.3(c) of this Agreement to the \$500,000.00 appropriated by each party, and, in the event either party's obligation to contribute funds under Section 6.3(c) exceeds that amount, then such party shall appropriate such additional funds and contribute the same to the COG. The County's obligation to appropriate funds in the amount of at least \$500,000.00 shall be in addition to any appropriation made by the County to satisfy its obligations to fund the County-COG Credit Line Loan and any advances thereunder.

(e) Surplus Revenue. If, at the end of any calendar year, after payment in full of all due and owing obligations set forth in Section 6.3(a) and (b) for that year, which includes payment in full of any obligations set forth in Sections 6.3(b)(v)-(viii), there exists surplus revenue in the COG's operating account, then the COG may take any of the following actions: (i) retain all or part of said surplus funds in its operating account, (ii) transfer all or part of said surplus funds to the COG's capital reserve account set forth in Section 6.3(e), (iii) pre-pay any future obligations due to the City or County as set forth in Section 6.3(b)(viii) in proportionate share, or (iv) distribute all or part of said surplus funds to the City and the County in equal shares.

(f) Capital Reserve Account. In addition to any operating funds maintained by the COG, the COG shall also maintain a capital reserve account for the fulfillment of its obligations under the Data Center Site Lease, Data Center Site Sublease, Data Center Improvements Lease, Data Center Equipment Lease and Fiber Ring Lease to repair and replace the real and personal property leased by the COG thereunder, and to otherwise make necessary capital repairs and replacements concerning the Data Center Improvements, Data Center Equipment and Fiber Ring. The COG may, from time to time, after the payment of its due and owing obligations set forth in Sections 6.3(a) and (b), deposit surplus revenue unto such capital reserve account as set forth in Section 6.3(e).

(g) County-COG Credit Line Loan. In order to facilitate the start-up of the operations of the COG, the Data Center Improvements and the Fiber Ring, and to provide for ongoing capital in the operation of the same, the County and the COG shall enter into a certain loan agreement and promissory note ("County-COG Credit Line Loan") and ("County-COG Credit Line Note"), attached hereto as Exhibit N and O, respectively, whereby the County will extend a revolving line of credit to the COG in the amount of \$2,000,000.00 to be repaid in accordance with the terms set forth therein and in accordance with the order of priority of the repayment of the COG's obligations. The COG may, from time to time, request advances under the County-COG Credit Line Loan ("Credit Line Advances") for its ongoing costs of operating the Data Center Improvements, Data Center Equipment and Fiber Ring, including, without limitation, the costs set forth in sections 6.3(b)(i) to (iii). Additionally, the COG may, to the extent necessary, request advances to reimburse the City for costs incurred by the City under the Data Center OMM

Agreement and Fiber Ring OMM Agreement, or the County under the County Services Agreements, as set forth in Section 6.3(b)(iv), and as further provided in Section 6.3(c). Said County-COG Credit Line Loan and County-COG Credit Line Note shall bear interest at zero percent (0%) per annum on any unpaid principal balance for the first five years, and three percent (3%) per annum on any unpaid principal balance thereafter. Said County Credit Line Loan shall be available to the COG for a term of twenty (20) years.

(h) County to Serve as Fiscal Agent; Procurement of Goods and Services on Behalf of the COG; Payment for Goods and Services. The County shall serve as the fiscal agent of the COG and shall hold all operating and capital funds in County-held agency fund accounts in the name of the COG. Initially, the County shall create an operating fund account, capital fund account, revenue sweep account and credit line fund account. All revenues paid to the name of the COG shall be initially paid to the County and deposited in the sweep account and then transferred to the operating fund account. All operating expenses of the COG, whether identified above or otherwise, shall be paid from the operating fund account, and all capital expenses of the COG, whether identified above or otherwise, shall be paid from the capital fund account.

The County shall provide access to all agency fund accounts held in the name of the COG through the County's financial accounting system, which the parties anticipate shall be used upon the commencement of such agency fund accounts, but which may, in the County's sole discretion, change from time to time.

Generally, the City shall be responsible for procuring goods and services on behalf of the COG through the City's Director of Public Service, or some other City employee at the direction of the Mayor. In so doing, and except as modified herein or by purchasing policies adopted by the COG Board, the City shall comply with the City's Codified Ordinances and internal purchasing policies in making all purchases of goods and services. Except as set forth herein or by purchasing policies adopted by the COG Board, all contracts for goods and services procured for the COG shall be entered into in the name of the COG, and any purchase order for the same shall be approved by the Board of Directors of the COG if in the amount of \$50,000.00 or more, and, if less than \$50,000.00, upon the execution of a purchase order by either the Mayor of the City or the Executive of the County signing in their capacity as a member of the COG Board. No purchase of goods or services shall be made in excess of the funds available to the COG in the COG operating fund account, COG capital fund account and COG credit line account without the approval of the COG Board, regardless of the amount. Upon an affirmative vote of the COG Board, the County may also be utilized by the COG to procure goods and services on behalf of the COG, and, in such event, the County shall follow its Codified Ordinances and procurement policies, except as modified herein or by procurement policies adopted by the COG Board.

All invoices for charges incurred by the COG for the purchase of any goods or services procured as set forth herein shall be invoiced in the name of the COG and directed to the attention of the County's Department of Finance and Budget. Both the City and the County, in the event they receive any invoice for the COG shall forward the same to the County's Department of Finance and Budget for processing and payment. The County's Department of Finance and Budget shall process and pay all invoices to the COG pursuant to check, ACH, wire, or credit card, as the County determines appropriate, in accordance with the County's policies and procedures from the

COG operating fund account, COG capital funds account or COG credit line account, whichever is appropriate.

The Cooperative Parties understand and agree that while the City will primarily purchase goods and services on behalf of the COG and in the name of the COG, that occasionally the City will procure Goods and services under the Data Center OMM Agreement and Fiber Ring OMM Agreement in the name of the City and then provide the same to the COG pursuant to said agreements, at which point, the same shall be reimbursed to the City by the COG as set forth in said Agreements. In the event the City is routinely incurring substantial costs on behalf of the COG for the purchase of goods and services pursuant to the Data Center OMM and Fiber Ring OMM, the COG and the City may agree for the COG to advance funds to the City for the purchase of such goods and services.

[End of Article VI - Balance of page intentionally left blank.]

ARTICLE VII

Additional Cooperative Arrangements

7.1 COG to Establish Rate and Terms of Agreements for Rental of Data Center Improvements and Data Center Equipment, Fiber Ring and Associated Services.

Following creation of the COG, the COG Board shall establish the rental rates, fees, costs and other terms and conditions of the agreements for both public and private third-parties to (i) lease, use and store data in a portion of the space in the Data Center Improvements, (ii) lease, use and store data upon the Data Center Equipment, and (iii) lease, use and transport data over the Fiber Ring. The COG Board shall further establish the rates, fees and costs for the COG to provide associated services, of the type and nature to be determined by the COG Board, to any public or private third-party who enters into a lease or usage agreement for the Data Center Improvements and Data Center Equipment and/or Fiber Ring. The COG Board shall also develop certain agreements necessary for matters set forth in this paragraph. In so doing, the COG Board shall hire such legal counsel as are necessary to fulfill the terms of this Section and to further negotiate and draft any necessary agreements between the COG and public and private third-party users of the Data Center Improvements, Data Center Equipment and Fiber Ring. Any costs incurred by the COG for such legal services shall be considered administrative costs of the COG pursuant to Section 6(a)(iii)(a), above. Administratively, the City shall be the Cooperative Party responsible for the COG for the day-to-day negotiation or such agreements, engaging public and private third-parties regarding the same and managing any issues regarding the same, as more fully set forth in the Data Center OMM Agreement and Fiber Ring OMM Agreement, provided, however, that no such agreement as provided for in this Section may be entered into by or on behalf of the COG without the approval of the COG Board.

7.2 Lease of Data Center Improvements and Data Center Equipment to City and County.

Following completion of construction of the Data Center Improvements and the installation of the Data Center Equipment, the City and County shall enter into agreements with the COG for the lease, use and storage of the Data Center Improvements and Data Center Equipment necessary to support the operations of the City and the County. Additionally, the City shall enter into such an agreement with the COG necessary to support the City's FairlawnGig utility operations. Neither the City nor the County shall maintain a data center separate and apart from the Data Center Improvements during the term of this Cooperative Agreement. The COG, City and County shall cooperate to establish the rental rates, fees, costs and other terms and conditions for the City and the County related to the same, and shall share in, as will be determined by the parties, the legal costs in developing said agreements.

7.3 Lease of Fiber Ring to City and County.

Following completion of construction of the Fiber Ring, or earlier if portions of the same can be utilized by the Cooperative Parties prior to full construction of the same, the City and County shall enter into agreements with the COG for the lease, use and transportation of data over the Fiber Ring necessary to support the operations of the City and the County. Additionally, the

City shall enter into such an agreement with the COG necessary to support the City's FairlawnGig utility operations. Except as set forth herein, neither the City nor the County shall own, maintain construct, use or lease fiber separate and apart from the Fiber Ring during the term of this Cooperative Agreement if the Fiber Ring can meet the needs of the City and County for a particular purpose, use or area. However, the Cooperative Parties understand and agree that the City and the County will need to continue to own, maintain, construct, use or lease fiber that serves other purposes, uses or areas than those served by the Fiber Ring, and that the same is permitted hereunder. Additionally, neither the City nor the County shall be required to discontinue use of, or divest ownership in, any fiber that the City or County own at the time of execution of this Cooperative Agreement, which may be connected to the Fiber Ring and used in connection with the Fiber Ring, but shall not become part of the Fiber Ring. The COG, the City, and the County shall cooperate to establish the rental rates, fees, costs and other terms and conditions for the City and the County related to the same, and the legal costs in developing said agreements shall be paid by the COG unless the parties agree otherwise.

7.4 Amendment of Cooperative Agreement to Add COG as Party.

Upon the creation of the COG, the COG Board shall adopt a resolution whereby the COG shall become a Cooperative Party to this Cooperative Agreement by execution of an amendment to this Cooperative Agreement by the COG, City and County, in the form attached hereto as Exhibit P (the "COG Cooperative Agreement Amendment"). The City and the County shall also execute the COG Cooperative Agreement Amendment and any legislative approval to approve and authorize the City and County to enter into this Cooperative Agreement shall automatically include the authorization of the City and the County to enter into the COG Cooperative Agreement Amendment when the same may be executed by the COG. It is expressly understood, acknowledged and agreed by the City and the County, and, the COG, upon execution of the COG Cooperative Agreement Amendment, that the terms and conditions of this Cooperative Agreement shall become full and binding as and to the COG, and shall prevail over any of the terms and conditions of the COG Intergovernmental Agreement or COG Bylaws not consistent herewith.

7.5 Prohibition Against Further Lease, Sale or Transfer.

Except as provided in Section 7.8, the City shall not, during the term of the Data Center Site Lease and Data Center Site Sublease, sell, transfer, further lease, or otherwise dispose of, the Data Center Site without the written consent of the COG, except as provided for herein. The County shall not, during the term of the Data Center Site Sublease sell, transfer, further lease, or otherwise dispose of, its leasehold interest in the Data Center Site without the written consent of the COG, except as provided for herein. The County shall not, during the term of the Data Center Improvements Lease or Data Center Equipment Lease sell, transfer, further lease, or otherwise dispose of, the Data Center Improvements or the Data Center Equipment without the written consent of the COG, except as provided for herein. The County shall not, during the term of the Fiber Ring Lease sell, transfer, further lease, or otherwise dispose of, the Fiber Ring without the written consent of the COG, except as provided for herein.

7.6 Application for Grant Proceeds; Amendment of Cooperative Agreement to Account for Grant Funds and/or Additional Assets.

The Cooperative Parties agree that they will cooperate with one another to apply for, and attempt to obtain, any federal, state or other grants available to either offset the costs of the Data Center Improvements, Data Center Equipment and Fiber Ring, or to construct or obtain additional assets such as last-mile fiber connections or additional redundant loops built off of the fiber ring. In such event, the Cooperative Parties shall take all appropriate steps to amend this Cooperative Agreement and the agreements contemplated and set forth herein to account for the additional grant funds and the impact of the same on the cooperative and other relationship of the parties, including, but not limited to, revising the definitions of “Data Center Improvements,” “Data Center Equipment” and “Fiber Ring” to include any new assets that may be acquired that are not contemplated herein, adding additional assets to the terms of this agreement that are outside the scope of those already-defined assets, adjusting the financial relationships and obligations between the Cooperative Parties and any other reasonable and necessary amendments to this Cooperative Agreement.

7.7 Dissolution and Winding Down Affairs of the COG; Distribution or Sale of Assets upon Dissolution.

The COG may be dissolved upon a unanimous vote of the Board. Upon such dissolution, all assets of the COG shall be marshalled and liquidated by the Fiscal Agent of the COG, and all liabilities of the COG shall be paid in the same order of priority as set forth in Section 6.3 of the COG. In the event that, after marshalling liquidating all of the assets of the COG, there remains insufficient funds to pay all liabilities of the COG, then (i) any unpaid liabilities of the COG owed to the City and County shall be discharged as and to the COG, and (ii) any unpaid liabilities of the COG owed to parties other than the City and the County shall be paid in full by the City and the County with each contributing one-half of the funds necessary to satisfy such outstanding liabilities.

Additionally, upon the vote of the COG Board to dissolve the COG, the following shall occur:

(i) The County and City shall each hire, at their separate cost, a qualified appraiser or appraisers who shall appraise the Data Center Site, Data Center Building, and Data Center Equipment and determine the value of the Data Center Site (“Data Center Site Value”), Data Center Building (“Data Center Building Value”) and Data Center Equipment (“Data Center Equipment Value”). If the collective sum of the Data Center Site Value, Data Center Building Value and Data Center Equipment Value determined by each appraiser varies by less than ten percent (10%), then the mean of the two shall constitute the collective appraised value of the Data Center Site, Data Center Building and Data Center Equipment (“Collective Appraised Value”). If the collective sum of the Data Center Site Value, Data Center Building Value and Data Center Equipment Value determined by each appraiser varies by more than ten percent (10%), then the appraiser of the Data Center Building hired by the County and the appraiser of the Data Center Building hired by the City shall agree on a third appraiser or appraisers to appraise the Data Center Site, Data Center Building and Data Center Equipment, who shall appraise the same, and that final appraisal shall constitute the Collective Appraised Value.

(ii) Within thirty (30) days of the determination of the Collective Appraised Value, and in lieu of a sale of the Data Center Site, Data Center Building and Data Center Equipment to a third party as set forth in items (iii) and (iv), below, either the County or the City may elect to obtain full ownership of the same by providing written notice upon the other of its intention to do so. If such election is made, the cost to acquire the same shall be the Collective Appraised Value, which shall be allocated, distributed and reconciled as follows:

- (a) first, the following obligations will be allocated amongst the City and County in proportion to the amount of the following obligations owed by the COG to the County and City:
 - (i) the City shall receive an amount owed to the City under any outstanding and unpaid Operating Costs Advance Notes in the name of the City that were not paid by the COG,
 - (ii) the County shall receive an amount equal to any outstanding and unpaid Operating Costs Advance Notes in the name of the County that were not paid by the COG,
 - (iii) the County shall receive any outstanding and unpaid amount owed to the County by the COG under the County-COG Credit Line Note.
- (b) second, the following obligations will be allocated amongst the City and County in proportion to the amount of the following obligations owed by the COG to the County and City:
 - (i) the City shall receive an amount equal to any unpaid base rent under the Data Center Site Lease and Data Center Site Sublease, both due and owing to the City and scheduled for the balance of the term,
 - (ii) the County shall receive an amount equal to any unpaid base rent under the Data Center Building Lease and Data Center Equipment Lease, both due and owing to the County and scheduled for the balance of the term
- (c) third, the remaining amount of the Collective Appraised Value shall be allocated one-half to the County and one-half to the City.

Following the calculation of the above allocation, the party acquiring the full interest in the Data Center Site, Data Center Building and Data Center Equipment shall pay to the other the amount due to that party. Additionally, the parties agree that they will enter into, execute and deliver such other documents as are reasonable and necessary to effectuate the transfer of all real and personal property to the other, including, but not limited to the Data Center Site, Data Center Improvements and Data Center Equipment.

(iii) If neither the City nor the County elect to obtain full ownership of the Data Center Site, Data Center Improvements, and Data Center Equipment as set forth in item (ii) above,

following the expiration of the thirty (30) day window to make such an election, the City shall transfer to the County, and the County shall accept, the Data Center Site within thirty (30) days of the expiration of the election under item (ii), above.

(iv) Following acquisition of the Data Center Site, the County shall sell, in a single sale, the Data Center Site, Data Center Building and Data Center Equipment to a third party, following the County's Codified Ordinances governing the sale of County-owned property. In so doing, the County shall use all reasonable efforts to sell the Data Center Site, Data Center Building and Data Center Equipment for an amount equal to or more than the Collective Appraised Value, provided, however, if, after the County has used all reasonable commercial efforts to sell the same for an amount equal to or more than the Collective Appraised Value, it has failed to do so, then the County may sell the same for less than the Collective Appraised Value. The proceeds of such sale shall be distributed as follows:

- (a) first, the proceeds will be paid or retained by the County as follows in proportion to the amount of the following obligations owed by the COG to the County and City:
 - (i) the County shall pay to the City any amount owed to the City under any outstanding and unpaid Operating Costs Advance Notes in the name of the City that were not paid by the COG,
 - (ii) the County shall retain an amount equal to any outstanding and unpaid Operating Costs Advance Notes in the name of the County that were not paid by the COG,
 - (iii) the County shall retain an amount equal to any outstanding and unpaid amount owed to the County by the COG under the County-COG Credit Line Note.
- (b) second, the proceeds will be paid or retained by the County as follows in proportion to the amount of the following obligations owed by the COG to the County and City:
 - (i) the County shall pay to the City an amount equal to any unpaid base rent under the Data Center Site Lease and Data Center Site Sublease, both due and owing to the County and scheduled for the balance of the term,
 - (ii) and the County shall retain an amount equal to any unpaid base rent under the Data Center Building Lease and Data Center Equipment Lease both due and owing to the County and scheduled for the balance of the term.
- (c) third, the County shall divide the remaining amount of the proceeds of the sale in half and pay one-half to the City and retain the remaining proceeds.

The dissolution of the COG shall have no effect on the County's ownership of the Fiber Ring and the County shall continue to own the same with no obligation to sell the same to the City or otherwise.

Recognizing that remedies traditionally available to the City and County for the breach of the terms of this Section would be insufficient and that actual damages for a breach of this Section would be extremely difficult to calculate, the City and County shall each have the right to compel the adherence of the other to the terms set forth in this Section, including the right to file and pursue a writ of mandamus against the other party in the event either party fails to comply with the terms and conditions contained herein, in addition to any remedy that either may have at law or equity.

7.8 Sale of Assets Upon Agreement of the Parties.

Upon mutual agreement of all of the Cooperative Parties, during the term of the Data Center Site Lease and Data Center Site Sublease, Data Center Improvements Lease, Data Center Equipment Lease, and Fiber Ring Lease, the Data Center Site, Data Center Improvement Data Center Equipment and Fiber Ring may be sold to a third party. In undertaking such a sale, the Data Center Site, Data Center Improvements and Data Center Equipment shall be sold collectively to such third party, and the Fiber Ring may or may not be sold together with the same.

In the event of a sale of the Data Center Site, Data Center Improvement and Data Center Equipment to a third party, the City first shall transfer to the County, and the County shall accept, the Data Center Site prior to the sale to the third party. Then, upon the sale, the proceeds of the sale shall be distributed or paid by the County as follows:

- (a) first, the proceeds will be paid or retained by the County as follows in proportion to the amount of the following obligations owed by the COG to the County and City:
 - (i) the County shall pay to the City any amount owed to the City under any outstanding and unpaid Operating Costs Advance Notes in the name of the City that were not paid by the COG,
 - (ii) the County shall retain an amount equal to any outstanding and unpaid Operating Costs Advance Notes in the name of the County that were not paid by the COG,
 - (iii) the County shall retain an amount equal to any outstanding and unpaid amount owed to the County by the COG under the County-COG Credit Line Note.
- (b) second, the proceeds will be paid or retained by the County as follows in proportion to the amount of the following obligations owed by the COG to the County and City:

- (i) the County shall pay to the City an amount equal to any unpaid base rent under the Data Center Site Lease and Data Center Site Sublease, both due and owing to the County and scheduled for the balance of the term,
 - (ii) and the County shall retain an amount equal to any unpaid base rent under the Data Center Building Lease and Data Center Equipment Lease both due and owing to the County and scheduled for the balance of the term.
- (c) third, the County shall divide the remaining amount of the proceeds of the sale in half and pay one-half to the City and retain the remaining proceeds.

In the event of a sale of the Fiber Ring to a third party, the proceeds of the sale shall be distributed or paid by the County as follows:

- (a) first, the proceeds will be paid or retained by the County as follows in proportion to the amount of the following obligations owed by the COG to the County and City:
- (i) the County shall pay to the City any amount owed to the City under any outstanding and unpaid Operating Costs Advance Notes in the name of the City that were not paid by the COG,
 - (ii) the County shall retain an amount equal to any outstanding and unpaid Operating Costs Advance Notes in the name of the County that were not paid by the COG,
 - (iii) the County shall retain an amount equal to any outstanding and unpaid amount owed to the County by the COG under the County-COG Credit Line Note.
- (b) second, the proceeds will be paid or retained by the County as follows in proportion to the amount of the following obligations owed by the COG to the County and City:
- (i) the County shall pay to the City an amount equal to any unpaid base rent under the Data Center Site Lease and Data Center Site Sublease, both due and owing to the County and scheduled for the balance of the term,
 - (ii) and the County shall retain an amount equal to any unpaid base rent under the Data Center Building Lease and Data Center Equipment Lease both due and owing to the County and scheduled for the balance of the term.
- (c) third, the County shall retain all of the remaining proceeds.

[End of Article VII - Balance of page intentionally left blank.]

ARTICLE VIII

Miscellaneous

Section 8.1 Notices. All notices, certificates, requests or other communications hereunder shall be in writing and shall be deemed to be sufficiently given when mailed by registered or certified mail, postage prepaid, or delivered by overnight courier service, and addressed to the appropriate Notice Address. A duplicate copy of each notice, certificate, request or other communication given hereunder to any Cooperative Party shall also be given to the other Cooperative Parties. The Cooperative Parties, by notice given hereunder, may designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent. If, because of the suspension of delivery of certified or registered mail or for any other reason, notice, certificates or requests or other communications are unable to be given by the required class of mail or courier service, any notice required to be mailed or delivered by courier service by the provisions of this Agreement shall be given in such other manner as in the judgment of the Cooperative Party shall most effectively approximate mailing thereof or delivery by courier service, and the giving of that notice in that manner for all purposes of this Agreement shall be deemed to be in compliance with the requirement for delivery under this Section. Except as otherwise provided herein, the mailing of any notice shall be deemed complete upon deposit of that notice in the mail and the giving of any notice by any other means of delivery shall be deemed complete upon receipt of the notice by the delivery service.

Section 8.2 Extent of Covenants; No Personal Liability. All covenants, obligations and agreements of the Cooperative Parties contained in this Agreement shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement shall be deemed to be a covenant, obligation or agreement of any present or future officer, official, employee or agent of any Cooperative Party or their respective Legislative Authorities, in other than its official capacity, and neither the members of any Legislative Authorities nor any official executing this Agreement shall be liable personally on this Agreement or be subject to any personal liability or accountability by reason of the covenants, obligations or agreements of the Cooperative Parties contained in this Agreement.

Section 8.3 Binding Effect. This Agreement shall inure to the benefit of and shall be binding in accordance with its terms upon the Cooperative Parties and their respective permitted successors and assigns. This Agreement may be enforced only by the Cooperative Parties, their assignees and others who may, by law, stand in their respective places.

Section 8.4 Amendments and Supplements. Except as otherwise expressly provided in this Agreement, no provision of this Agreement may be effectively amended, changed, modified, altered or terminated unless set forth in a writing signed by all of the Cooperative Parties.

Section 8.5 Execution Counterparts/PDF. This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument. Copies of signatures sent or provided electronically in portable document format (PDF) shall be deemed to be originals for purposes of execution and proof of this Agreement.

Section 8.6 Severability. If any provision of this Agreement, or any covenant, obligation or agreement contained herein is determined by a court to be invalid or unenforceable, that determination shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if the invalid or unenforceable portion were not contained herein. That invalidity or unenforceability shall not affect any valid and enforceable application thereof, and each such provision, covenant, obligation or agreement shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

Section 8.7 Limitation of Rights. With the exception of rights conferred expressly in this Agreement, nothing expressed or mentioned in or to be implied from this Agreement is intended or shall be construed to give to any Person other than the Cooperative Parties any legal or equitable right, remedy, power or claim under or with respect to this Agreement or any covenants, agreements, conditions and provisions contained herein. This Agreement and all of those covenants, agreements, conditions and provisions are intended to be, and are, for the sole and exclusive benefit of the Cooperative Parties, as provided herein.

Section 8.8 Governing Law. This Agreement shall be deemed to be a contract made under the laws of the State and for all purposes shall be governed by and construed in accordance with the laws of the State. Any legal suit, action or proceeding arising out of or relating to this Agreement shall be instituted in a State court sitting in the County.

Section 8.9 Entire Agreement. This Cooperative Agreement, and the agreements contemplated herein, constitute the entire agreement between the parties and supersedes all prior understandings or agreements regarding matters contained herein. There are no conditions or inducements relied upon by the parties prior to the execution of this Cooperative Agreement.

[End of Article VII - Balance of page intentionally left blank.]

IN WITNESS WHEREOF, the Cooperative Parties have caused this Agreement to be duly executed in their respective names, all as of the date first hereinbefore written.

COUNTY OF SUMMIT, OHIO

By: _____
Ilene Shapiro, Executive

Approved as to form and correctness:

Deborah Matz, Director
Department of Law and Risk Management

CITY OF FAIRLAWN

By: _____
William J. Roth, Jr., Mayor

Approved as to form and correctness:

R. Bryan Nace, Director of Law

[Signature Page (ii) of (ii) – Cooperative Agreement]

FISCAL OFFICER'S CERTIFICATE
COUNTY OF SUMMIT, OHIO

The undersigned, Fiscal Officer of the County of Summit, Ohio, hereby certifies that the moneys required to meet the obligations of the County during the year 2022 under the Agreement have been lawfully appropriated by the Legislative Authority of the County for such purposes and are in the treasury of the County or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

Fiscal Officer
County of Summit, Ohio

Dated: _____, 2022

[County Fiscal Officer Certificate – Cooperative Agreement]

FISCAL OFFICER'S CERTIFICATE
CITY OF FAIRLAWN, OHIO

The undersigned, Finance Director of the City of Fairlawn, Ohio, hereby certifies that the moneys required to meet the obligations of the City during the year 2022 under the Agreement have been lawfully appropriated by the Legislative Authority of the City for such purposes and are in the treasury of the City or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

Finance Director
City of Fairlawn, Ohio

Dated: _____, 2022

[Fairlawn Fiscal Officer Certificate – Cooperative Agreement]

EXHIBIT LIST

- Exhibit A – Depiction of Data Center Site
- Exhibit B – COG Intergovernmental Agreement
- Exhibit C – COG Bylaws
- Exhibit D – Data Center Site Lease
- Exhibit E – Data Center Site Sublease
- Exhibit F – Description of Data Center Equipment
- Exhibit G – Data Center Improvements Lease
- Exhibit H – Data Center Equipment Lease
- Exhibit I – Fiber Ring Route
- Exhibit J – Fiber Ring Lease
- Exhibit K – Data Center OMM Agreement
- Exhibit L – Fiber Ring OMM Agreement
- Exhibit M – Operating Costs Advance Note
- Exhibit N - County-COG Credit Line Loan
- Exhibit O - County-COG Credit Line Note
- Exhibit P - COG Cooperative Agreement Amendment

Exhibit A

Depiction of Data Center Site

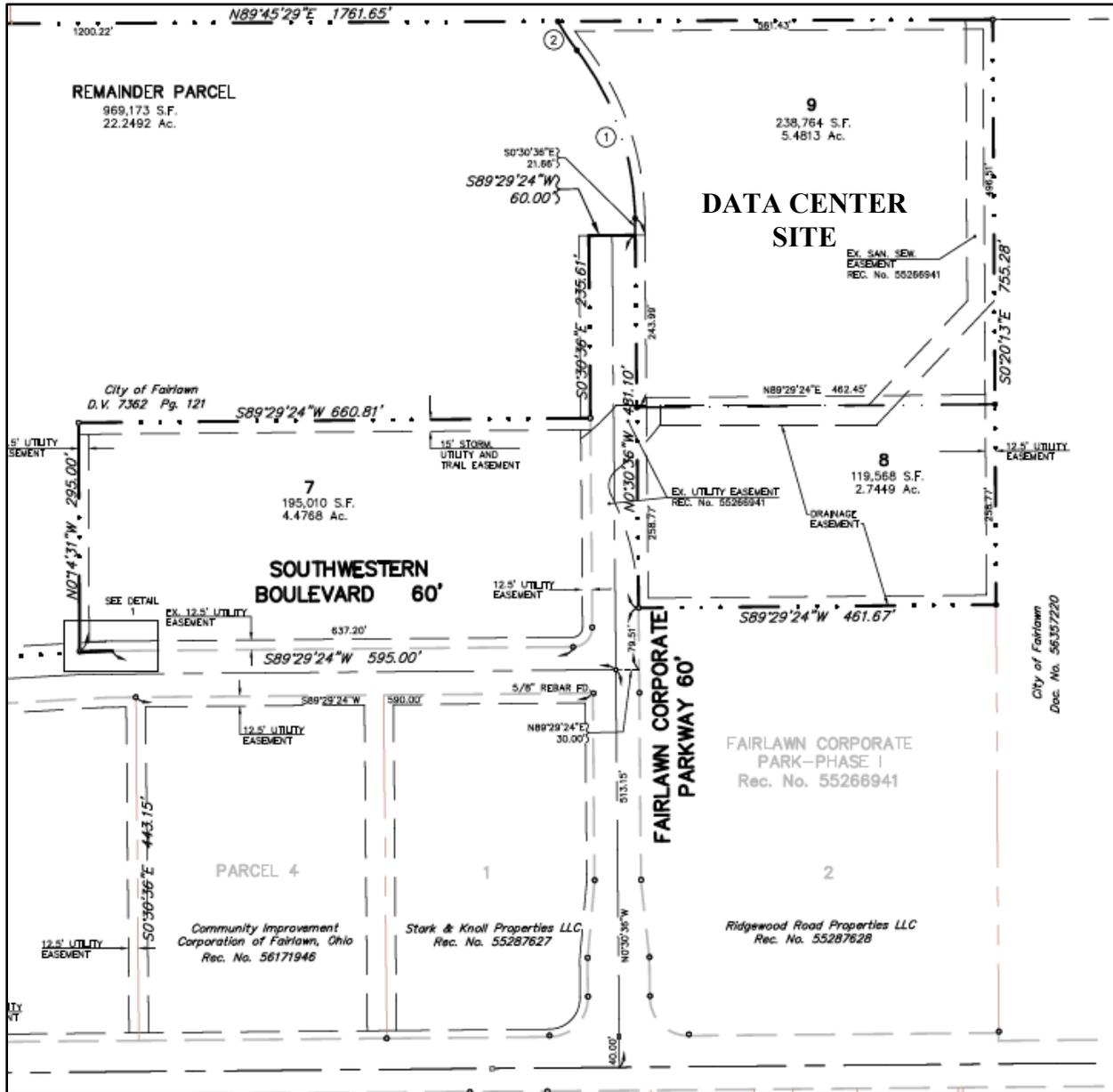


Exhibit B
COG Intergovernmental Agreement

See attached.

2022-192 Exhibit A

Exhibit C
COG Bylaws

See attached.

Exhibit D
Data Center Site Lease

See attached.

Exhibit E
Data Center Site Sublease

See attached.

Exhibit F

Description of Data Center Equipment

Enclosures

Cabinets
Relay racks
Cages and other dividers

Fiber Distribution

Patch Panels
Splice Trays
Ceiling Fiber Trays
Distribution patch panels
Outside plant terminations

Facility Management

Internal switching
CAT-6 Wiring
Workstations / PC's
Monitors / Displays
Records Servers / Storage

Electrical Distribution

Substation / Power Feed
Generators & Fuel
AC & DC Uninterruptible Power / Batteries
Power distribution units / Managed Power Strips

Office furniture, TBD

Desks & Chairs
Lab
Crash Cart
Lift Assist equipment

Security features, TBD

Cameras
Card Scanners / ID Scanners
Gate

Specialized HVAC, TBD

Backup Dispatch equipment, TBD

Exhibit G
Data Center Improvements Lease

See attached.

Exhibit H
Data Center Equipment Lease

See attached.

Exhibit I

Fiber Ring Route

FIGURE 1: Community Locations

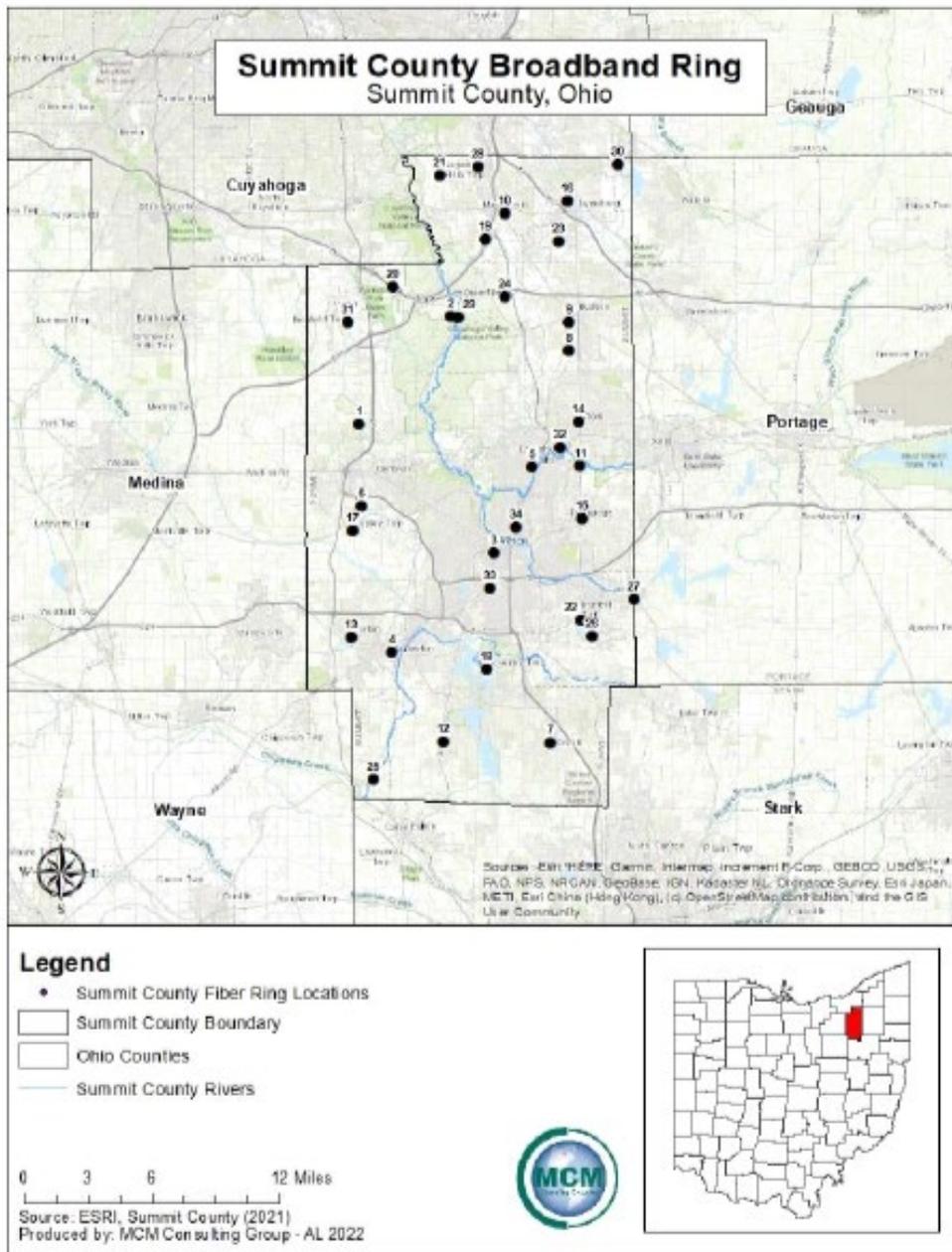


Exhibit J
Fiber Ring Lease

See attached.

Exhibit K
Data Center OMM Agreement

See attached.

Exhibit L
Fiber Ring OMM Agreement

See attached.

Exhibit M
Operating Costs Advance Note

See attached.

Exhibit N
County-COG Credit Line Loan

See attached.

Exhibit O
County-COG Credit Line Note

See attached.