

EQUIPMENT ACQUISITION, INSTALLATION AND MAINTENANCE AGREEMENT

This Equipment Acquisition, Installation and Maintenance Agreement ("**Agreement**") is effective [REDACTED] 20 [REDACTED] ("**Effective Date**") and is between **Laramie County**, a Wyoming [REDACTED] (type of entity) (the "**County**") and **Advanced Communications Technology, Inc. DBA Range**, a Montana corporation ("**Range**") (each is a "**Party**," and collectively they are the "**Parties**").

For valuable consideration the Parties agree:

1. **Contracted Services.** Range shall retain one or more third-party contractors (the "**Contractors**") to acquire and install micro ducts, the handholes, and the associated equipment shown on attached **Exhibit A** (the "**Route**") pursuant to the specification sheet(s) (the "**Specifications**") attached as **Exhibit B**, which exhibits are incorporated into this Agreement. The micro ducts the Contractors install along the Route (each a "**Micro Duct**," and collectively the "**Micro Ducts**") shall all be located within one larger duct (the "**Macro Duct**"), as shown in the Specifications. Range will, on behalf of the County, blow a 96-strand fiber cable into the County's one Micro Duct. As used in this Agreement, (a) "**Equipment**" refers to the Micro Ducts, Macro Duct, handholes, fibers, and associated equipment identifies in the Specifications, and (b) "**Services**" refers to the acquisition, installation, operation, maintenance, and repair of the Equipment pursuant to the terms and conditions of this Agreement.

2. Term of Agreement.

(a) The term of this Agreement will commence on the Effective Date and will, unless terminated sooner pursuant to this Agreement, continue until December 31, 2043 (the "**Term**"); provided, the Term shall automatically renew on renewable one-year bases unless a Party provides the other Party at least sixty (60) days advance written notice of its decision to terminate this Agreement at the end of the then-existing Term or renewal term.

(b) The Agreement can be terminated for cause, as defined in paragraph 11(a), at any time provided the alleged breaching Party is provided an opportunity to cure the alleged breach in the manner set forth in paragraph 11(a) below or a Permitted Delay, as defined in paragraph 11(d), does not apply.

(c) The Agreement can also be terminated as specified in Section 14.C below.

3. Fees and Payment Terms.

(a) Range shall pay the Contractors to acquire and install the Equipment along the Route. However, the County shall fully reimburse Range all the payments it makes directly, or that Range makes to Contractors, for the acquisition and installation of the Equipment along the Route, and the County will pay all Range's invoices related to same within forty-five (45) days of the invoice date.

(b) A late charge of one percent (1%) per month, or the legal maximum if less, shall accrue on past due billings. The County shall be responsible for any costs incurred by Range in the collection of unpaid invoices including, but not limited to, costs and reasonable attorney's fees.

(c) If the County does not pay Range's invoice(s) within ninety (90) days of the issuance date, then all rights, title, possession, and interest in and to the County-owned assets described in Section 4(a) below shall become solely owned by Range.

4. Ownership and Maintenance of the Equipment

(a) The County shall exclusively own a single Micro Duct in the Macro Duct along the Route and the 96-strand fiber cable located within the County's one Micro Duct. These items belonging to the County shall not be transferred, sold, or otherwise tampered with without written approval of the County. As the exclusive owners of these items, they would not be Range assets subject to sale in the event of a Range bankruptcy proceeding.

(b) Excluding the one Micro Duct and 96-strand fiber cable located within it that are owned by the County along the Route, Range shall exclusively own all the Equipment along the Route, including but not limited to the other Micro Ducts along the Route, the fibers located within those three Micro Ducts, the Macro Duct, the handholes, and all the other Equipment.

(c) Range or its Contractors shall identify the (a) Micro Duct owned by the County by color with the County's Micro Duct colored **Blue** ("**County Fibers**"), and (b) the Micro Ducts owned by Range by color with Range's Micro Duct colored **Brown, Orange, and Green** ("**Range Fibers**").

(d) During the Term Range shall operate, maintain, and repair the Equipment along the Route pursuant to the Specifications.

(e) After the Equipment is installed along the Routes, and during the Term of this Agreement, neither Party may relocate all or any portion of the Micro Ducts, the Macro Duct, the handholes, or other Equipment from said Equipment's location unless (i) the other Party agrees to such relocation in a writing signed by the Parties, (ii) there is an emergency that requires that said Equipment be relocated so, for example, Range may continue providing services to its customers and the County may continue receiving services at its office locations along the Route; provided, in the event of such emergency the impacted Party shall first make its best effort to communicate in writing the existence of the emergency, the impacted Party's intent to relocate all or a part of the Equipment, and all specifics related to same (e.g., what Equipment is being impacted, the location of that Equipment, where the impacted Equipment is being relocated to, when it is being relocated, how long that relocation process is expected to take, how long the relocated Equipment will remain relocated [temporarily or permanently, for example], etc.) to the other Party, (iii) the impacted Party merely pulls the fibers out of said Party's owned Micro Duct[s] but otherwise does not relocate any of the other Equipment, (iv) a city, county, or other governmental entity requires that any of the Micro Ducts, Macro Duct, handholes, or other Equipment be moved, (v) Range does not, despite making commercially reasonable efforts, retain an easement, right of way, or other license for the Micro Ducts, Macro Duct, handholes, and/or other Equipment to remain in its current location.

(f) If at any time Range chooses to abandon the Macro Duct, Micro Duct(s), and/or fiber cable owned by Range along the Route, an authorize representative of Range (VP or higher) shall notify the County in writing of Range's decision to abandon those assets, in which case the County shall be deemed the sole owner of those assets, and the County shall have no obligation to pay Range to acquire those assets.

5. **Additional Services.** If the County requests additional services or services that exceed the above-defined Services, Range will charge an additional fee for such additional services or out-of-scope work. Fees for such additional services or out-of-scope work will be set forth on an amendment to this Agreement signed by the Parties, which amendment will also provide a description of the changed or additional service(s) being requested. Once such an amendment is signed by the Parties, it will be incorporated into the Agreement. Range will not be deemed to have agreed to provide additional services that exceed the Services unless the Parties both sign an amendment to this Agreement agreeing to the changed scope of services and the fees for same.

6. Intentionally Blank.

7. County Responsibilities. In addition to any duties described in this Agreement, the County shall cooperate with Range, without cost, to address any Service-related matters.

8. Warranty Disclaimer. RANGE HEREBY DISCLAIMS ALL WARRANTIES, EXPRESSED AND IMPLIED, ORAL AND WRITTEN, CONTRACTUAL AND STATUTORY AND COMMON LAW, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

9. No Consequential Damages; Limitation of Liability. THE COUNTY AGREES THAT RANGE SHALL NOT BE LIABLE TO THE COUNTY, OR ANY THIRD PARTY, FOR (A) ANY LIABILITY, CLAIMS, LOSS, DAMAGES OR EXPENSE OF ANY KIND ARISING DIRECTLY OR INDIRECTLY OUT OF THE SERVICES, (B) ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED, AND THE COUNTY AGREES TO INDEMNIFY, DEFEND, AND HOLD RANGE HARMLESS AGAINST SUCH LIABILITIES, CLAIMS, LOSSES, DAMAGES (CONSEQUENTIAL OR OTHERWISE) OR EXPENSES, OR ACTIONS IN RESPECT THEREOF, ASSERTED OR BROUGHT AGAINST RANGE BY OR IN RIGHT OF THIRD PARTIES, OR (C) ANY PUNITIVE DAMAGES. FOR PURPOSES OF THIS AGREEMENT, INCIDENTAL OR CONSEQUENTIAL DAMAGES SHALL INCLUDE, BUT NOT BE LIMITED TO, LOSS OF ANTICIPATED REVENUES, INCOME, TAXES, PROFITS OR SAVINGS; LOSS OF OR DAMAGE TO REPUTATION OR GOOD WILL; LOSS OF CUSTOMERS; LOSS OF BUSINESS OR FINANCIAL OPPORTUNITY; OR ANY OTHER INDIRECT OR SPECIAL DAMAGES OF ANY KIND CATEGORIZED AS CONSEQUENTIAL OR INCIDENTAL DAMAGES UNDER THE LAW OF THE STATE OF MONTANA OR WYOMING. RANGE'S LIABILITY FOR ANY DAMAGES SHALL IN NO EVENT EXCEED FIFTY THOUSAND DOLLARS.

10. Intentionally Blank.

11. Termination.

(a) **Termination for Cause:** If either Party believes the other Party has failed in any material respect to perform its obligations under this Agreement, then that Party may provide written notice to the other Party describing the alleged failure in specific detail. If the breaching Party does not cure the material failure within thirty (30) calendar days after receiving such written notice, then the non-breaching Party may terminate this Agreement, in whole or in part, for cause by providing written notice to the breaching Party.

(b) **Termination for Bankruptcy:** Either Party shall have the immediate right to terminate this Agreement, by providing written notice to the other Party, if (i) the other Party becomes insolvent, has a receiver appointed over it or its assets, is the subject of a voluntary or involuntary bankruptcy proceeding, or makes an assignment for the benefit of creditors; or (ii) a substantial part of the other Party's property becomes subject to any levy, seizure, assignment or sale for or by any creditor or government agency.

(c) **Payments Due:** The termination of this Agreement shall not release either Party from the obligation to make payment of all amounts then or thereafter due and payable.

(d) **Permitted Delays:** Each Party shall be excused from performance for any period and to the extent that it is prevented from performing any services in whole or in part, as a result of delays caused by the other Party or an act of God, or other cause beyond its reasonable control including, without limitation, acts of nature, acts of civil or military authority, government regulations, embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, landslides, nuclear accidents, floods, work stoppages, power blackouts, facility cuts, outages occurring in relation to facilities or equipment not owned by Range, inadequate internet connection, volcanic action, other major environmental disturbances, weather conditions, including failures or fluctuations in electric power, heat, light, air conditioning or equipment, acts or omissions of transportation carriers, and the inability to secure products or services of third parties on a reasonable timeframe or at reasonable costs (each is a "Force Majeure Event"), and such nonperformance shall not be a default or a ground for termination or other remedy. Range's time of performance shall be enlarged, if and to the extent reasonably necessary, in the Event of a Force Majeure Event.

12. Intentionally Blank.

13. General: Range may provide the same or similar services to other customers. The rights and remedies provided to each of the Parties shall, subject to the terms and conditions of this Agreement, be cumulative and in addition to any other rights and remedies provided by law or otherwise. Any failure in the exercise by either Party of its right to terminate this Agreement or to enforce any provision of this Agreement for default or violation by the other Party shall not prejudice such Party's rights of termination or enforcement for any further or other's default or violation or be deemed a waiver or forfeiture of those rights. Neither Party will be liable to the other for failure to perform its obligations if and to the extent that such failure to perform results from a Force Majeure Event. If any term or provision of this Agreement is held to be illegal or unenforceable, the validity or enforceability of the remainder of this Agreement will not be affected. The paragraph headings in this Agreement are intended solely for convenience of reference and shall be given no effect in the construction or interpretation of this Agreement. This Agreement shall inure to the benefit of the Parties and their respective permitted successors or assigns. No third party shall have any rights under this Agreement. This Agreement, including any and all amendments to it, may be executed electronically and in counterparts, and together those counterparts constitute one and the same Agreement.

14. Additional Provisions.

A. **Independent Contractor:** The services to be performed by Range are those of an independent contractor and not as an employee of the County. Range is not eligible for Laramie County Employee benefits and will be treated as an independent contractor for federal tax filing purposes. Range assumes responsibility for its personnel who provide services pursuant to this Agreement and will make all deductions required of employers by state, federal and local laws and shall maintain liability insurance for each of them. Range is free to perform the same or similar services for others.

B. **Acceptance Not Waiver:** The County's approval of the work or materials furnished hereunder shall not in any way relieve Range of responsibility for the technical accuracy of the work. The County approval or acceptance of, or payment for, any of the services shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

C. **Termination:** This Agreement may be terminated (a) by either party at any time for failure of the other party to comply with the terms and conditions of this agreement; (b) by either party, with thirty (30) days' prior written notice to the other party; or (c) upon mutual written agreement by both Parties.

D. **Entire Agreement:** This Agreement is the entire and integrated agreement and understanding between the Parties and supersedes all prior negotiations, statements, representations and agreements, whether written or oral, pertaining to its subject matter.

E. **Assignment:** Neither this Agreement, nor any rights or obligations hereunder shall be assigned or delegated by a party without the prior written consent of the other party, which will not be unreasonably withheld, conditioned, or delayed.

F. **Modification:** This Agreement shall be modified only by a written agreement, duly executed by all Parties hereto.

G. **Invalidity:** If any provision of the Agreement is held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof. It is the express intent of the Parties that the provisions of this Agreement are fully severable.

H. **Applicable Law and Venue:** The Parties mutually understand and agree this Agreement shall be governed by and interpreted pursuant to the laws of the State of Wyoming. If any dispute arises between the Parties from or concerning this Agreement or the subject matter hereof, any suit or proceeding at law or in equity shall be brought in the District Court of the State of Wyoming, First Judicial District, sitting at Cheyenne, Wyoming. The foregoing provisions of this paragraph are agreed by the Parties to be a material inducement to Range and to the County in executing this Agreement. This provision is not intended, nor shall it be construed to waive the County's governmental immunity as provided in this Agreement.

I. **Contingencies:** Range certifies and warrants no gratuities, kickbacks or contingency fees were paid in connection with this Agreement, nor were any fees, commissions, gifts or other considerations made contingent upon the award of this Agreement.

J. **Discrimination:** All Parties agree they will not discriminate against any person who performs work under the terms and conditions of this Agreement because of race, color, gender, creed, handicapping condition, or national origin.

K. **ADA Compliance:** All Parties agree they will not discriminate against a qualified individual with disability, pursuant to a law as set forth in the Americans with Disabilities Act, P.L. 101-336, 42 U.S.C. § 12101, et seq., and/or any properly promulgated rules and regulations relating thereto.

L. **Governmental/Sovereign Immunity:** The County does not waive its Governmental/ Sovereign Immunity, as provided by any applicable law including W.S. § 1-39-101 et seq., by entering into this Agreement. Further, the County fully retains all immunities and defenses provided by law with regard to any action, whether in tort, contract or any other theory of law, based on this Agreement.

N. **Third Parties:** The Parties do not intend to create in any other individual or entity the status of third-party beneficiary, and this Agreement shall not be construed so as to create such status. The rights, duties and obligations contained in this Agreement shall operate only between the Parties to the Agreement and shall inure solely to the benefit of the Parties to this Agreement and their permissible successors and assigns (see Section 14.E above).

O. **Conflict of Interest:** The County and Range affirm, to their knowledge, no Range employee has any personal beneficial interest whatsoever in the Agreement described herein. No staff member of Range, compensated either partially or wholly with funds from this Agreement, shall engage in any conduct or activity which would constitute a conflict of interest relative to this Agreement.

P. **Force Majeure:** Neither party shall be liable to perform under this Agreement if such failure arises out of causes beyond the party's control, and without the fault or the negligence of said party. Such causes may include, but are not restricted to, Acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. In every case, however, a failure to perform must be beyond the control and without the fault or the negligence of said party.

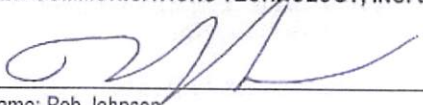
Q. **Notices:** All notices required and permitted under this Agreement shall be deemed to have been given, if and when deposited in the U.S. Mail, properly stamped and addressed to the party for whom intended at such Parties' address listed herein, or when personally delivered personally to such party. A party may change its address for notice hereunder by giving written notice to the other party.

R. **Compliance with Law:** Both Parties shall comply with all applicable laws, regulations, and ordinances, whether Federal, State or Local.

// The Signature Page and Referenced Exhibits Follow //

THE PARTIES sign below intending to be bound by this Facilities Installation Agreement.

ADVANCED COMMUNICATIONS TECHNOLOGY, INC. d/b/a RANGE



Printed Name: Rob Johnson

Title: Regional Manager

Address:

Advanced Communications Technology, Inc. DBA Range

Attn: Regional Manager

P.O. Box 7039

Sheridan, WY 82801

E-mail: rob.johnson@range.net

Date: _____

LARAMIE COUNTY, WYOMING

By: _____ Date _____

Laramie County Commissioners

ATTEST:

By: _____ Date _____

Laramie County Clerk

REVIEWED AND APPROVED AS TO FORM ONLY

By: W. Weese

Date 5.30.23

Laramie County Attorney's Office

EXHIBIT A
 TO
 EQUIPMENT ACQUISITION, INSTALLATION AND MAINTENANCE AGREEMENT

The Route



EXHIBIT B
TO
EQUIPMENT ACQUISITION, INSTALLATION AND MAINTENANCE AGREEMENT

The Specifications

Laramie County Footages by Route Segment

Laramie County Courthouse (309 W 20th St, Cheyenne, WY 82001) to Laramie County Library (2200 Pioneer Ave, Cheyenne, WY 82001)

Duct Length: 1,754'

Fiber Length: 2,436'

Laramie County Library (2200 Pioneer Ave, Cheyenne, WY 82001) to Board of Public Utilities (2416 Snyder Ave, Cheyenne, WY 82001)

Duct Length: 2,680'

Fiber Length: 3,414'

Fiber/Duct Specifications

5,850' of 96-count micro-fiber

4,434' of 18mm x 15mm micro-duct (Blue)

MAINTENANCE, REPAIR AND ACCESS OF THE EQUIPMENT

The maintenance and repair of the "*Equipment*," as defined in the Equipment Acquisition, Installation and Maintenance Agreement ("*Agreement*") shall be provided in accordance with below provisions.

2. **Scheduled Maintenance.** "*Scheduled Maintenance*" is routine maintenance and repair of the Equipment that shall be performed by or under the direction of Range at its reasonable discretion. Scheduled Maintenance includes the following services by Range:
 - (a) Patrol of the Route on a regularly scheduled basis, which will not be less than one (1) time per year;
 - (b) Maintenance of a "Call Before You Dig" program for all required and related cable locates;
 - (c) Maintenance of signposts along the Route with the number of the local "Call Before You Dig" organization and the "800" number of the "Call Before You Dig" program;
 - (d) Provide County with the emergency contact telephone numbers at Range and of maintenance technicians for the Equipment; and
 - (e) If requested by the County, Range shall perform one OTDR test annually and provide the results to County. The OTDR tests shall be performed at 1310 nm and 1550 nm and the results will be provided to County in a format mutually agreed upon.
3. **Unscheduled Maintenance.** "*Unscheduled Maintenance*" means the non-routine maintenance and repair of the County Fibers, which shall be performed by or under the direction of Range.
 - (a) "*Emergency Unscheduled Maintenance*" in response to an alarm identified by the dispatch center or notification by any third person of any failure or interruption or impairment in the operations of the Equipment or any event imminently likely to cause failure, interruption or impairment in the County Fibers or Range Fibers. "*Non-Emergency Unscheduled Maintenance*" in response to any potential service-affecting situation to prevent failure, service interruption or impairment in the operation of the Equipment, not covered by Scheduled Maintenance, County shall immediately report the need for Unscheduled Maintenance to Range. Range will log the time of the County notification, verify the problem and dispatch personnel promptly to take corrective action.
 - (b) In performing Scheduled Maintenance or Unscheduled Maintenance, Range shall comply with industry standards.
4. **Dispatch Center.** Range shall operate a dispatch center that is staffed on a 24-hour per day basis. Maintenance personnel shall be available for dispatch twenty-four hours per day, seven days a week. Range shall endeavor to have its first maintenance personnel at the site requiring Emergency Unscheduled Maintenance activity within four (4) hours after the time that Range becomes aware of an event requiring Emergency Unscheduled Maintenance, unless delayed by Force Majeure Events. Range shall maintain a toll-free telephone number to contact personnel at the dispatch center. The dispatch center personnel shall dispatch maintenance and repair personnel along the Route to handle and repair problems detected in the County Fibers: (a) through the County's remote surveillance equipment, if any, and/or upon notification by County or Range, or (b) upon notification by a third Person.

Range shall not be responsible for monitoring the performance or operation of the County Fibers. If County detects a failure in the operation of the County Fibers which may indicate the need for **Unscheduled Maintenance**, County shall report the same to Range's dispatch center.

5. **Planned Service Work Period.** Scheduled Maintenance which is reasonably expected to produce any signal discontinuity must be coordinated between the Parties. Generally, this work should be scheduled after 12:00 a.m. and before 6:00 a.m. Monday through Friday local time.

6. **Facilities.** Range shall maintain the Equipment in such a manner which will permit County's use of the County Fibers in accordance with the terms and conditions of this Agreement.

7. **Cable/Fibers:**

(a) Range shall perform Scheduled Maintenance on the cables in accordance with Range's current preventative maintenance procedures, which Range may change from time-to-time, but which shall not substantially deviate from standard industry practice.

(b) Range shall maintain sufficient capability to teleconference with County during an Emergency **Unscheduled Maintenance** in order to provide regular communications during the repair process. When correcting or repairing cable discontinuity or damage, including but not limited to an event of **Emergency Unscheduled Maintenance**, Range shall use reasonable efforts to repair traffic-affecting discontinuity within eight (8) hours after Range representatives arrive at the problem site. To accomplish such objective, it is understood that the repairs so affected may be temporary in nature. In such event, within twenty-four (24) hours after completion of such **Emergency Unscheduled Maintenance**, Range shall commence its planning for permanent repair within an appropriate time thereafter. Restoration of non-provisioned fibers or fiber strands not immediately required for service shall be completed on a mutually agreed upon schedule. Priority shall be given to the fiber required for immediate service.

(c) County acknowledges and agrees that in the event of damage to the Equipment that adversely affects Range's operations, first priority shall be given to the restoration of Range's operations (if applicable). Each Party will cooperate with each other to permit the repair of the Equipment as promptly as possible.

8. **Restoration**

(a) Range shall respond to any event giving rise to the need for **Unscheduled Maintenance** (in any event, an outage) as quickly as possible (allowing for delays caused by **Force Majeure Events**) in accordance with the procedures set forth herein. When restoring a cut cable on the Route, the Parties agree to work together to restore all service as soon as possible. The maintenance representatives, upon arriving on the site of the cut, shall determine the course of action to be taken to restore the cable and shall begin restoration efforts.

(b) The maintenance representatives shall give first-priority to repairing and restoring the fiber strands that are carrying traffic.

9. **Subcontracting.** Range may subcontract any of the maintenance and repair services hereunder, provided that Range shall require the subcontractor(s) to perform in accordance with the requirements set forth herein.

10. **Equipment Access.** Range will grant the County access to all Hand Hole locations along the network route specified in Exhibit A for network expansion purposes; provided, Range requires 7-day written notice of the County's intent to access the network and may require that all access to the network by the County occur with a Range-appointed representative present at the time of such access.