

STAFF ACTION NO: S-2009-0650

**AGREEMENT  
WITH  
FiberComm**

County	<u>Woodbury</u>
Project No.	<u>ITS-29-6(190)141--25-97</u>
Iowa DOT	
Agreement No.	<u>2009-16-059</u>

**T**his Agreement, is entered into by and between the Iowa Department of Transportation, hereinafter designated the "DOT", and FiberComm in Woodbury County, Iowa (1605 9th Street, Sioux City, Iowa 51101), hereafter designated "COMPANY";

WITNESSETH; that

WHEREAS, the DOT proposes to design, let and inspect a project for the installation of a fiber optic cable network in and about the city of Sioux City, Iowa, for the purpose of providing communications connectivity of an Intelligent Transportation System (ITS) project; and

WHEREAS, The COMPANY owns and maintains an existing fiber optic network; and

NOW, THEREFORE, IT IS AGREED as follows:

1. The DOT shall install a 2" (two inch) HDPE conduit from a DOT fiber cabinet located on Southgate Drive and heading northerly to U.S. 20 and then heading northerly and easterly to the intersection of U.S. 20 and Gordon Drive in Sioux City then continue westerly and northerly to the Western Iowa Tech Community College Campus. The DOT shall install a 96 strand, single mode fiber optic cable, for the exclusive use of the DOT and its designees. The DOT shall install in said conduit a 144 (one hundred forty four) strand, single mode fiber optic cable, to be shared jointly between the COMPANY and OTHERS. The DOT-installed 144 strand fiber optic cable shall be jointly owned by the COMPANY (72 fibers) and OTHERS (72 fibers), pursuant to the terms of this agreement and the DOT's Utility Accommodation Policy.
2. The DOT shall install hand holes and quazite tubs at various locations along the path of conduit described in Item 1. The DOT shall install hand-holes and necessary conduit at the locations in this Item to extend COMPANY fiber optic cable from DOT hand-holes to hand-holes for the COMPANY:

- a. Southgate Drive at Singing Hills Boulevard
  - b. U.S. 20 at Southern Hills Drive
  - c. U.S. 20 at Lakeport Street
  - d. U.S. 20 at Sunnybrook Drive
  - e. U.S. 20 at Morningside Avenue
  - f. U.S. 20 at Gordon Drive
  - g. Western Iowa Tech Community College Campus
3. The COMPANY shall, at no cost or obligation to the DOT, provide to the DOT for a period of 20 years, 15 Mbps of public internet bandwidth and 6 static public (routable) IP addresses for access to the ITS network and for the hosting by the DOT of a public internet web page. The COMPAY shall provide technical support for public internet connection in the event of problems or outage. The COMPANY shall respond to any disruption in service to the public internet bandwidth or IP addresses referenced in this Item within one business day of notice by the DOT of disruption of service. The internet access shall be provided for the DOT at the City of Sioux City's Dr. Martin Luther King Jr. Transportation Center (hereafter KING) server room, located at 501 Nebraska Street in Sioux City, Iowa. The public internet bandwidth provided by the COMPANY is for the DOT's exclusive use only and may not be resold, leased, or utilized to provide similar services as provided by COMPANY by any entity not a party to this Agreement.
4. The COMPANY shall, within 4 months of notification by the DOT, at no cost or obligation to the DOT, perform mid-sheath splices and terminate a total of up to 48 (forty-eight) fiber optic strands (both directions) per location, for use by the DOT and OTHERS, into cabinets provided by the DOT, at the following locations (see plan sheets for additional details):
- a. Southgate Boulevard at Singing Hills Boulevard;
  - b. Iowa 376 (South Lewis Boulevard) at Lincoln Way;
  - c. Iowa 376 (South Lewis Boulevard) at Glenn Avenue;
  - d. Iowa 376 (South Lewis Boulevard) adjacent to Floyd Park Golf Course;
  - e. Iowa 376 (South Lewis Boulevard) at Vine/Transit Avenue;
  - f. Iowa 376 (South Lewis Boulevard) at Gordon Drive.

The COMPANY shall provide all splice cases and all ancillary materials to ensure the successful splices and terminations described in this ITEM.

5. The COMPANY shall, at no cost or obligation to the DOT, provide to the DOT for a period of 10 years, 4 strands of dark fiber optic cable from the Orpheum Building to the KING server room and these fibers will be for DOT's exclusive use only and may not be resold, leased, or utilized to provide similar services as provided by COMPANY by any entity not a party to this Agreement. The fiber optic cable shall be terminated at both ends of the fibers. These fibers shall not be used for the purpose of providing the internet connection referenced in Item 3.

6. The COMPANY shall, at no cost or obligation to the DOT, provide the following services for a period of 20 years:
  - a. Provide, at no cost or obligation to the DOT, all necessary Iowa One Call locating and maintenance of the underground facilities referenced in Item 1, Item 2, Item 4, and Item 5, as well as fiber optic cable located:
    - In downtown Sioux City on Gordon Drive, Pearl Street and Fifth Street; as well as from the intersection of Gordon Drive and Pearl Street southerly beneath I-29 to a location east of Wesley Way and south of I-29;
    - From a location east of the Big Sioux River and north of the I-29 right of way heading easterly to the I-29 Riverside interchange;
    - From the I-29 interchange with Hamilton Boulevard heading northerly to the DOT's Maintenance Garage located at 200 South Hamilton Boulevard;
    - From a fiber termination cabinet at South Lewis Boulevard at Lincoln Way (Item 4b) extending westerly to the west right of way line of I-29 and then extending to DOT devices (i.e. cameras, sensors) located at and near the I-29 U.S. 20 interchange;
    - From a fiber cabinet located at the intersection of Southgate Boulevard and Singing Hills Boulevard (Item 4a) extending westerly to a location near the I-29 Singing Hills Boulevard interchange;
    - From a hand hole provided by OTHERS at the intersection of 8<sup>th</sup> street at Harbor Drive northerly to a DOT camera location and then southerly to the I-29 and 1<sup>st</sup> Street interchange in Sergeant Bluff;
    - Additional locations as shown in Fiber Optic Design Plans for DOT Project Number ITS-29-2(66)47--25-78.
  - b. COMPANY will perform all necessary Iowa One Call notifications in compliance with section 480.4 Required Notice – Location and Marking of Underground Facilities – Exception, as defined in Chapter 480 of Iowa Code.
  - c. Provide on-call service 24 hours a day, seven days a week. COMPANY shall provide DOT with a telephone number to report any problems with the referenced underground facilities. COMPANY will respond to all such calls within two hours. In the event, COMPANY's ability to respond is inhibited for reasons out of its control, including but not limited acts of God or war, strikes or inability to obtain labor, information, content or materials, COMPANY will make every reasonable effort to respond as soon as practically possible.
  - d. Once COMPANY has responded, assessed the situation, and have determined that repairs are necessary, COMPANY will take the appropriate steps to initiate repairs by either contacting a qualified contractor or perform the necessary repairs itself. In addition,

COMPANY will notify the DOT of the situation, its plan for repair, and the estimated time of repair.

- e. In the event of an accidental severance or damage of the underground facilities by a third party or natural occurring events, each Party shall be responsible for the cost of such repairs as it relates to their facilities. COMPANY will be reimbursed by the DOT for such repairs. This provision shall not be interpreted to prohibit either of the Parties from seeking reimbursement from any responsible third parties.
  - f. In no event shall COMPANY be liable to the DOT for any interruptions to service or interference with the operation of DOT's business operations.
7. The COMPANY shall reimburse the DOT for one half (50%) of all costs of the installation of fiber optic cable and any ancillary materials (e.g. COMPANY hand-holes, conduit, fiber termination cabinets) associated with the 144 strand fiber optic cable at the locations referenced in Items 1 and 2. The basis of cost(s) shall be determined by the unit cost of the corresponding items in the contract for the DOT's Project Number ITS-29-2(66)47--25-78. The COMPANY shall not be responsible for the cost of conduit or hand-holes occupied jointly by DOT and COMPANY fiber optic cables.
  8. The DOT shall allow, with advance notice and approval, the COMPANY to access the COMPANY provided tubs, hand-holes, and cabinets referenced in Item 1 and 2, in DOT right-of-way. When accessing the facilities provided by the COMPANY at these locations, the COMPANY shall be responsible for providing the appropriate traffic control measures consistent with the current Iowa Department of Transportation RS Series Road Standards for Traffic Control (see plan sheets for additional details).
  9. Unless otherwise terminated, this Agreement shall continue for a period of twenty (20) years after execution and approval by both parties. At the expiration of this agreement or upon its termination, the COMPANY and DOT will renegotiate an extension of this agreement that is mutually acceptable to both parties.
  10. The DOT and COMPANY hereby agree on consideration of the fair market value of the 15 MB of public internet bandwidth. The current value of internet service provided by the COMPANY will be reviewed by the COMPANY on a periodic basis, at the written request of the DOT, and adjusted to reflect changes in the cost of internet access. The DOT shall not request a review more frequently than once every two years (bi-annually).
  11. The fair market value of the public internet bandwidth and other services and items provided by the COMPANY and described in this agreement provide a value equivalent to the fees associated with longitudinal occupancy of a freeway as prescribed in the DOT's Utility Accommodation Policy. As such, the DOT shall not require additional compensation from the COMPANY, except as described in this agreement, for the duration of this agreement.

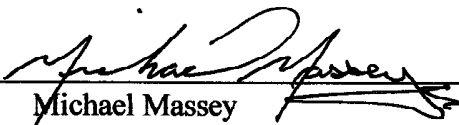
12. The parties agree that all conditions of this Agreement shall be transferable to any successors and assigns in interest of the COMPANY. The DOT shall be notified of any such transfer or assignment of its occurrence.
13. The COMPANY shall indemnify and hold harmless the DOT from all claims and liability due to the activities of persons employed by COMPANY. The DOT shall indemnify and hold harmless the COMPANY for all claims and liability due to the activities of persons employed by the DOT. Each party further agrees to defend, at its own expense, any action commenced for the purpose of asserting any such claim of whatever character arising as a result of their actions. Any failure to meet the obligations of the COMPANY or the DOT contained in this agreement constitutes a breach of the entire agreement.

#### **Miscellaneous Provisions**

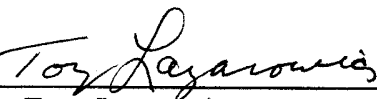
14. It is the intent of both parties that no third party beneficiaries be created by this Agreement.
15. If any section, provision, or part of this Agreement shall be found to be invalid or unconstitutional, such finding shall not affect the validity of the Agreement as a whole or any section, provision, or part thereof not found to be invalid or unconstitutional, except to the extent that the original intent of the Agreement cannot be fulfilled.
16. This Agreement may be executed in two counterparts, each of which so executed will be deemed to be an original.
17. This document; as well as the unaffected provisions of any previous agreement(s), addendum(s), and/or amendment(s); represents the entire Agreement between the COMPANY and DOT regarding this project. Any subsequent change or modification to the terms of this Agreement will be in the form of a duly executed amendment to this document.

**IN WITNESS WHEREOF**, each of the parties hereto has executed Cooperative Agreement No. 2009-16-059 as of the date shown opposite its signature below.

**FIBERCOMM:**

By:  Date 2-24, 2009.  
Michael Massey  
General Manager

**IOWA DEPARTMENT OF TRANSPORTATION:**

By:  Date 3-12, 2009.  
Tony Lazarowicz  
District Engineer  
District 3