

HARRIS COUNTY

OFFICE OF THE COUNTY ENGINEER

1001 Preston, Suite 500
Houston, Texas 77002
(713) 755-5370

March 17, 2021

Honorable County Judge
& Commissioners

SUBJECT: Partnership Agreement

Recommendation for authorization to execute a statutory authorized Right of Way commitment with Centric Fiber, LLC to ensure timely and effective utility relocations on Harris County road projects through the granting of variances from certain provisions of the Harris County Right of Way Regulations, Countywide.

Sincerely,



John R. Blount, P.E.
County Engineer

Attachment

Commissioner Rodney Ellis
Commissioner Adrian Garcia
Commissioner Tom S. Ramsey, P.E.
Commissioner R. Jack Cagle
Brandon Dudley
William Taylor
Amar Mohite
Mittie Anderson
Thomas Walker
Mike Lykes
Milton Rahman, P.E.
Tiko Reynolds-Hausman
Faustino Benavidez, P.E.
Misty Rios
Rosalie Brockman

Juan Hernandez
Reynaldo Guerra
Jose Jimenez
Chris Saddler
Tiffany Harding
Lynn Blue
Cheryl Guenther
Pamela Rocchi
Freddie Jebousek
Kiley Holbrook

STATUTORY AUTHORIZED RIGHT OF WAY COMMITMENT

This Commitment (“Commitment”) is made and entered into by **Harris County** (“County”), a body corporate and politic under the laws of the State of Texas, and the **Centric Fiber, LLC** (“User”) The County and User may each be referred to herein collectively as the “Parties” and individually as a “Party.”

1) GENERAL SCOPE OF COMMITMENT

- A) The County has adopted the *Rules of Harris County, including the Harris County Toll Road Authority, a Division of Harris County, and the Harris County Flood Control District for the Construction of Facilities within Harris County and the Harris County Flood Control District Rights-Of-Way* with an effective date of October 1, 2020 and as amended and incorporated herein by reference (the “Rules”);
- B) If the User desires to construct a permanent utility and related appurtenances (“Permanent Utility”) that does not conform to the Rules then the User agrees that the Permanent Utility will be subject to the requirements of this Commitment.
- C) The User agrees that the location of the Permanent Utility is not in accordance with Section 18, Condition I of the Rules and that this Commitment fulfills Section 18, Condition II of the Rules.
- D) The User warrants and represents it will perform the relocation of the Permanent Utility in compliance with all federal, state, and local laws, ordinances, rules, and regulations relating to the Relocation.
- E) Unless otherwise stated in this Commitment, words that have well-known technical or industry meanings are used in accordance with such recognized meaning.
- F) “As Built” drawing of the exact location of the Permanent Utility shall be provided to Harris County. The drawings will be an AutoCAD file that can be viewed with the County version of the software.

2) USER’S RESPONSIBILITIES

In response to Harris County Capital Improvement Projects, User agrees:

- A) It shall acknowledge the preliminary notification advising the User that a facility owned by the User is located within the limits of a County project (“Preliminary Notification”) sent by the County within seven (7) business days of receipt.
- B) It shall provide, within fourteen (14) business days of receipt of the Preliminary Notification, all record drawings or documentation of any existing permanent facilities.

- C) It shall, within sixty (60) business days of receipt of the Preliminary Notification, provide a draft plan or exhibit clearly identifying all utilities identified within the County project limits, including the user's proposed method of relocation.
- D) It shall acknowledge the receipt of the final utility notification ("Final Notification") sent by the County within seven (7) business days of receipt.
- E) It agrees that, within thirty (30) business days of receipt of Final Notification, it shall submit the final relocation plans for review by the County.
- F) It agrees that, within thirty (30) business days of receipt of an Interpose No Objection("INO"), it shall submit a relocation schedule and start date of construction of the Permanent Utility.
- G) To accept full ownership of the Permanent Utility and responsibility for the perpetual maintenance of the Permanent Utility.
- H) To relocate the Permanent Utility, at no cost to the County, where applicable, in accordance with the standards set forth in this Commitment for road improvement projects.
- I) Maintenance required by the User shall include, but not be limited to, maintaining the intended function and may also include removing and relocating the Permanent Utility if the County determines that it will be desirable due to changes in applicable regulations or planned future improvements to the road and road right of way including but not be limited to, new roadway construction, roadway reconstruction, roadway widening, signalization or construction of additional lanes. In addition to satisfying the standards set forth in this Commitment in performance of its responsibilities, the User's performance shall conform to the standards prevailing in the County at the time of such maintenance and relocation with respect to scope, quality, due diligence, and care, in regard to usual and customary maintenance by the County on its typical medians and appurtenances in the median.
- J) If the Harris County Engineer ("County Engineer") determines that any relocation work is not being performed in accordance with the standards for same, as specified in this Section, they shall give notice to the User and request that the User cure and if the User fails to do so after fourteen (14) business days the County Engineer may request that the work be discontinued. The User shall thereafter discontinue such work until the User demonstrates to the County Engineer that the work will be performed in accordance with such standards and the County Engineer provides notice that the User may proceed.
- K) To make necessary repairs, to the extent such repairs to the road right of way are necessary, due to damage to the Permanent Utility or is otherwise caused by the Permanent Utility or maintenance of the Permanent Utility, as soon as reasonably practicable. Should the deficiencies requiring such repairs endanger the public, the User shall implement interim safety measures until it can provide such Maintenance. However, the County may provide such measures on behalf of the

User without prior notice to the User if the County Engineer, in his sole discretion, determines that it is necessary to implement interim safety measures until such time as the User can provide its own safety measures. The User shall be responsible for the cost incurred by the County in providing any interim safety measures on its behalf. In any event, the User agrees to provide necessary Maintenance within a reasonable time period, not to exceed fourteen (14) business days from the date the User becomes aware or reasonably should have become aware of the need for such Maintenance.

- L) Prevention and Repair of Damage. In performing the relocation, the User shall follow necessary safety measures and shall take measures to prevent damage to persons and property resulting from the conditions that the User is responsible for repairing and maintaining and resulting from repairs thereto.
- M) Notice of Relocation. The User shall notify the County in writing before commencement of relocation work under this Section, other than routine maintenance. If the relocation is of an emergency nature, such notification may be provided by telephone and confirmed in writing as soon as reasonably practicable thereafter. The User shall provide written documentation to the County of the work done after completion of any non-routine maintenance or repairs within ten (10) business days of completion of such repairs.
- N) Failure to Relocate
 - a. If the County believes the User has failed to perform the relocation pursuant to this Commitment, the County shall notify the User in writing of such failure and allow the User thirty (30) days to cure any such failure ("Notice to Cure"). If the User has not taken reasonable steps to cure such failure within thirty (30) days of receipt of the Notice to Cure, then the County may refer the matter to the County Attorney for legal action.
 - b. Notwithstanding the foregoing provisions in Section H, (a) the County may remove or cause to be removed the Permanent Utility that are in need of relocation and (b) the User has failed to perform such relocation in a timely manner. If the County performs any relocation or removal of any of the Permanent Utility, the County shall not be required to restore the Permanent Utility to their previous condition or specifications. The User shall then have the right, at any time in the future, to enhance, replace, or restore any Permanent Utility repaired, replaced, modified, or removed by the County, and in this event, the User will return all salvageable materials utilized by the County.

3) COUNTY'S RESPONSIBILITIES

- A) The County shall provide the Preliminary Notification of a road improvement project to the User within a reasonable time after such project is initially planned. User shall acknowledged the request within seven (7) business days of receipt. The

County shall provide a minimum of seven (7) business days advance notice and an opportunity to participate in any planning or coordination meetings related to such project.

- B) After receipt of the draft plans pursuant to section 2) C) above, the County may issue the Final Notification to the User.
- C) Pursuant to section 2) E) above, after receiving the final plans of the Permanent Utility from the User, the County may issue an INO letter to the User.
- D) The execution of this Commitment in itself does not constitute the County's approval of the Permanent Utility within the road right of way. If drawings and specifications that include the Permanent Utility are submitted to the County in accordance with the Rules, the County will review such drawings and specifications provided by the User. If such drawings and specifications are approved by the County, the Permanent Utility must be constructed in accordance with the approved and permitted drawings and specifications
- E) When the drawings and specifications are submitted to the County for permitting, the specific locations of any proposed Permanent Utility shall be clearly indicated on such drawings.
- F) In consideration of the User agreeing to this Commitment, and consistent with D) above the County agrees that it shall not refuse to approve the installation of the Permanent Utility if installed in accordance with the approved and permitted drawings.
- G) It is specifically agreed that the County shall have no responsibility for the condition or maintenance of the Permanent Utility.
- H) Notwithstanding any provision of this Commitment that might be construed to the contrary, the Permanent Utility shall be considered part of the road right of way. The County may at any time alter or remove the Permanent Utility, at the Users's sole expense, including any actual costs of labor and/or materials associated with the alteration or removal, if and when the County, in the sole discretion of the County Engineer or the Applicable County Precinct Road and Bridge Superintendent ("County Representative"), determines it interferes with the proper use, safety, or operation of the road right of way, for road purposes, or is necessary in order to make improvements to the Road. The County Engineer or the County Representative shall provide notice to the User at least sixty (60) days prior to any such alteration or removal. The County agrees that the User may replace, repair, or reconstruct the Permanent Utility altered or removed by the County pursuant to this Section 3(H), at the User's sole cost and expense and subject to approval of plans and specifications by the County.

4) INDEPENDENT PARTIES

This Commitment is not intended to create and shall not constitute a partnership or joint venture between the Parties. Each Party shall have and retain the exclusive right of control over employment, firing, discipline, compensation, insurance, and benefits in accordance with the applicable laws of the State of Texas. Neither Party has authority to bind or otherwise obligate the other Party orally, in writing or by any act or omission. Nothing contained herein shall establish an agency, employee-employer relationship, partnership, joint enterprise, joint employer, or joint venture relationship by or between the County and the User.

5) TERM

This Commitment is effective as of the date that it has been approved and executed by all Parties (the “Effective Date”) and remains in force and effect for a period of 20 years (“Term”). Thereafter, this Commitment shall be renewed for successive one (1) year terms (each a “Renewal Term”).

6) LIMITATION OF APPROPRIATION

The User understands and agrees, said understanding and Commitment also being the absolute essence of this Commitment, that the County is not appropriating any funds under this Commitment.

7) TEXAS PUBLIC INFORMATION ACT

A) The Parties expressly acknowledge that this Commitment is subject to the Texas Public Information Act, Tex. Gov’t Code Ann. §§ 552.001 *et seq.*, as amended (the “Act”). User expressly understands and agrees that the County shall release any and all information necessary to comply with Texas law without the prior written consent of User.

B) It is expressly understood and agreed that the County, its officers and employees may request advice, decisions and opinions of the Attorney General of Texas (“Attorney General”) in regard to the application of the Act to any software, or any part thereof, or other information or data furnished to the County, whether or not the same are available to the public. It is further understood that the County, its officers and employees shall have the right to rely on the advice, decisions, and opinions of the Attorney General, and that the County, its officers, and employees shall have no liability or obligations to User for the disclosure to the public, or to any person or persons, of any software, or a part thereof, or other information or data furnished to the County in reliance on any advice, decision or opinion of the Attorney General.

- C) In the event the County receives a written request for information pursuant to the Act that affects User's rights, title to, or interest in any information or data or a part thereof, furnished to the County by User under this Commitment, then the County will promptly notify User of such request. User may, at its own option and expense, prepare comments and submit information directly to the Attorney General stating why the requested information is exempt from disclosure pursuant to the requirements of the Act. User is solely responsible for submitting the memorandum brief and information to the Attorney General within the time period prescribed by the Act. User is solely responsible for seeking any declaratory or injunctive relief regarding the disclosure of information that it deems confidential or privileged.
- D) Electronic Mail Addresses. User affirmatively consents to the disclosure of its e-mail addresses that are provided to the County, including any agency or department of the County. This consent is intended to comply with the requirements of the Act, and shall survive termination of this Commitment. This consent shall apply to e-mail addresses provided by User and agents acting on behalf of User and shall apply to any e-mail address provided in any form for any reason whether related to this Commitment or otherwise.

8) TERMINATION

- A) This Commitment may be terminated if the Permanent Utility is relocated to meet the criteria as stated in the Rules including any amendments thereof.
- B) If the County permanently removes road right of way with Permanent Utility from the Road Log for any reason, the User will have no further obligation to relocate the Permanent Utility under this Commitment. If the road right of way with Permanent Utility covered under this Commitment are removed from the Road Log, this Commitment will terminate.
- C) The above termination provisions of this Section are in addition to rights of the County to terminate this Commitment under Section 2.
- D) Copies of all completed or partially completed information, programs, inventions, software (including source code), firmware, designs, documentation or data (the "Documents") developed, created or invented under this Commitment shall be delivered to the County when this Commitment is terminated or completed.

9) NOTICE

Any notice provided or permitted to be given under this Commitment ("Notice") must be in writing and may be served by (a) depositing same in the United States mail, certified and addressed to the Party to be notified; (b) delivering the same in person to such Party;

or (c) sending same by electronic mail ("Email"). Notice given by mail shall be effective upon deposit in the United States mail and Notice delivered in person or sent by Email shall be effective upon receipt. The addresses for Notice are as follows:

COUNTY:

Harris County Engineering Department
1001 Preston, 7th Floor
Houston, Texas 77002
Attention: County Engineer

USER:

Centric Fiber, LLC
9750 FM 1488
Magnolia, Texas 77354
Attention: Richard W. Bard, P.E., Director of Project Engineering

The Parties may designate another address for all purposes of this Commitment by giving to the other Party not less than fifteen (15) days' advance written notice of such change of address.

All other communications, except for Notices required under this Commitment, may be sent by electronic means or in the same manner as Notices described herein.

10) COMPLIANCE AND STANDARDS

- A) User represents and warrants that it is capable and willing to provide the work called for in the Commitment, and agrees to render the Maintenance in accordance with the generally accepted standards applicable to the Maintenance. User shall use that degree of care and skill commensurate with the profession to comply with all applicable federal, state, and local laws, ordinances, rules, and regulations relating to the work and User's performance to be rendered hereunder. User represents that User and its personnel are fully qualified to perform the work and provide the deliverables described in this Commitment.
- B) User agrees to keep confidential the contents of all its discussions with County officials. User agrees to keep confidential the contents of all County records and all other information obtained during User's performance of work under this Commitment. User shall not release any confidential information unless the County, in writing, authorizes User to release specific information to any third parties.

- C) User shall not access any information it is not authorized to receive, nor shall User copy, recreate, or use any proprietary information or Documents obtained in connection with this Commitment other than for the performance of this Commitment.
- D) User warrants and represents that it is not in breach of any other contract, obligation or covenant that would affect User's ability to perform hereunder and, as a result of entering into this Commitment, will not breach any such contract, obligation, or covenant.
- E) User warrants and represents that it is registered with the Texas Secretary of State to transact business in Texas, and is current on all state and local fees and taxes, including but not limited to Franchise Account Status of "in good standing" with the Texas Comptroller of Public Accounts.
- F) User warrants and represents that neither it, nor any of its principals or other affiliated entities, owe any debts to Harris County, including, but not limited to delinquent taxes, court judgments, tickets, tolls, fees, or fines. Taxes are deemed delinquent on the date certain as specified by the Harris County Tax Office. For the purposes of this Commitment, a court judgment is not required for delinquent taxes to be considered a debt.
- G) Conflict of Interest: User warrants and represents to the County that it does not have nor shall it knowingly acquire any interest that would conflict in any manner with the performance of its obligations under this Commitment. Furthermore, User warrants that no company or person, other than a bona fide employee, has been employed to solicit or secure this Commitment with County, and that User has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Commitment. For breach or violation of this provision, the County shall have the right to terminate the Commitment without liability.
- H) Lobbying: User shall not use County funds to directly or indirectly pay any person for influencing or attempting to influence any public employee or official in connection with the awarding of any contract or the extension, continuation, renewal, amendment or modification of any contract. Pursuant to 31 U.S.C.A. § 1352 (2003), if at any time during the Commitment term funding to User exceeds \$100,000.00, User shall file with the County the Federal Standard Form LLL titled "Disclosure Form to Report Lobbying."

- I) No Federal Exclusion: User warrants and represents that it is not debarred, suspended, or otherwise excluded from or ineligible for participation in any Federal programs, including but not limited to the following: Department of Health and Human Services (DHHS), Office of Inspector General (OIG) - List of Excluded Individuals & Entities (LEIE); U.S. General Services Administration (GSA) – Excluded Parties List System (EPLS); All States (50) Health & Human Services Commission Medicaid OIG Sanction List; Government Terrorist Watch List (OFAC / Patriot Act); Department of Commerce, Bureau of Industry and Security, Denied Persons List; and Department of Homeland Security, Immigration and Customs Enforcement (ICE) Most Wanted. User must immediately notify the County of any such exclusion or suspension. User warrants and represents that it is in good standing with all State and Federal agencies that have a contracting or regulatory relationship with the County. User warrants and represents that no person who has an ownership or controlling interest in User’s business or who is an agent or managing employee of User has been convicted of a criminal offense related to involvement in any federal program.
- J) County and its designee shall have the right to conduct examinations, studies and audits of the services, payments, and efficiencies provided under this Commitment and County may make such examinations, studies, and audits at any time whether before or after payment. User shall cooperate with such examinations, studies, and audits and provide County with such records, data, documents, including all of User’s backup and support data for billings, and User shall provide access to such records, data, documents and personnel as are requested by County or the County Auditor. This section shall survive termination of this Commitment.
- K) Whistleblower Protection Act: User understands and agrees that this Commitment and employees working on this Commitment will be subject to the whistleblower rights and remedies in the pilot program on contractor employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) and FAR 3.908. User shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. 4712, as described in section 3.908 of the Federal Acquisition Regulation. User shall insert the substance of this clause; paragraph M (“Whistleblower Protection Act”), in all subcontracts providing services under this Commitment.
- L) Prior to execution of the Commitment, User shall, as an update, complete Form 1295 in accordance with Tex. Gov’t Code Ann. § 2252.908 concerning “Interested

Parties,” User warrants and represents that all the information on the form is complete and accurate.

- M) Foreign Terrorists Organizations. In accordance with Tex. Gov’t Code Ann. Chapter 2252 Subchapter F, User warrants and represents that, at the time of execution of this Commitment and for the duration of the Term of this Commitment and any Renewal Terms, User does not appear on the Texas State Comptroller’s list of companies known to have contracts with or provide supplies or services to a foreign terrorist organization.
- N) Anti-Boycott. In accordance with Tex. Gov’t Code Ann. § 2270.002, User warrants and represents that it does not boycott Israel and agrees that it will not boycott Israel during the term of this contract.

11) APPLICABLE LAW AND VENUE

- A) The Commitment is subject to the state and federal laws, orders, rules, and regulations relating to the Commitment and funded by state or federal funds or of applicable conditions of participation in Medicaid or Medicare program(s).
- B) This Commitment is governed by the laws of the State of Texas.
- C) The forum for any action under or related to the Commitment is exclusively in a state or federal court of competent jurisdiction in Texas.
- D) The exclusive venue for any action under or related to the Commitment is in a state or federal court of competent jurisdiction in Houston, Harris County, Texas.

12) PROHIBITION ON LIENS

In accordance with Texas Property Code §43.002, the User, or its contractors or agents, will not create or place, or permit to be created or placed, a lien or any other encumbrance on County property. If any such lien or encumbrance is placed on County property, the User shall pursue any lawful effort, including but not limited to seeking relief in a court of competent jurisdiction, to remove the lien or encumbrance from the property.

13) INSURANCE

- A) The User shall acquire and maintain liability insurance with a responsible insurance company or companies, insuring against liability for bodily or personal injury or death or damage to property.
- B) Every such policy of insurance shall provide coverage limits in amounts at least as great as the maximum liability authorized to be imposed against a similar contractor

for governmental acts by the Texas Tort Claims Act, Chapter 101, Texas Civil Practices and Remedies Code, as amended and then in effect.

- C) The User shall keep insured the Permanent Utility with a responsible insurance company or companies against risks, accidents, or casualties against which and to the extent insurance is usually carried by a similar contractor; provided, however, that at any time while any contractor engaged in construction work shall be fully responsible for the construction work, the User shall not be required to carry insurance on that construction work. In such instances, the User shall require any contractor engaged in construction work to procure, carry and maintain the insurance coverage set forth in this Section.

14) INDEMNIFICATION

THE PROVISIONS OF THIS ARTICLE SHALL SURVIVE THE TERMINATION OF THIS COMMITMENT HOWEVER CAUSED, AND NO PAYMENT, PARTIAL PAYMENT, OR ISSUANCE OF EITHER A CERTIFICATE OF SUBSTANTIAL COMPLETION OR FINAL SYSTEM ACCEPTANCE IN WHOLE OR IN PART SHALL WAIVE OR RELEASE ANY OF THE PROVISIONS OF THIS ARTICLE.

USER SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE COUNTY ITS OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, SUCCESSORS AND ASSIGNS ("INDEMNIFIED PARTIES") FROM AND AGAINST ALL CLAIMS AND LIABILITY DUE TO THE ACTIVITIES OF USER, OR ANOTHER ENTITY OVER WHICH USER EXERCISES CONTROL, PERFORMED UNDER THIS COMMITMENT AND WHICH RESULT FROM ANY NEGLIGENT ACT, ERROR, OR OMISSION; INTENTIONAL TORT; INTELLECTUAL PROPERTY INFRINGEMENT; OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER; COMMITTED BY USER OR ANOTHER ENTITY OVER WHICH USER EXERCISES CONTROL.

USER SHALL ALSO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE COUNTY FROM AND AGAINST ANY AND ALL EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES WHICH MIGHT BE INCURRED BY THE COUNTY, IN LITIGATION OR OTHERWISE RESISTING SAID CLAIMS OR LIABILITIES WHICH MIGHT BE IMPOSED ON THE COUNTY AS THE RESULT OF SUCH ACTIVITIES BY USER OR ANOTHER ENTITY OVER WHICH USER EXERCISES CONTROL.

USER SHALL INDEMNIFY, DEFEND, AND HOLD THE COUNTY HARMLESS FROM ANY AND ALL LIABILITY, EXPENSE, JUDGMENT, SUIT, CAUSE OF ACTION, OR DEMAND FOR PERSONAL INJURY, DEATH, OR DIRECT DAMAGE TO TANGIBLE PROPERTY WHICH MAY ACCRUE AGAINST THE COUNTY TO THE EXTENT IT IS CAUSED BY THE NEGLIGENCE OF USER OR ANOTHER ENTITY OVER WHICH USER EXERCISES CONTROL, WHILE PERFORMING SERVICES UNDER THIS COMMITMENT. COUNTY WILL

GIVE USER PROMPT, WRITTEN NOTICE OF ANY SUCH CLAIM OR SUIT. COUNTY SHALL COOPERATE WITH USER IN ITS DEFENSE OR SETTLEMENT OF SUCH CLAIM OR SUIT.

IF A RESTRAINING ORDER OR TEMPORARY INJUNCTION IS GRANTED DUE TO ANY ACT, ERROR, OR OMISSION COMMITTED BY USER OR ANOTHER ENTITY OVER WHICH USER EXERCISES CONTROL, USER SHALL MAKE EVERY EFFORT, INCLUDING BUT NOT LIMITED TO SECURING A SATISFACTORY BOND, TO OBTAIN THE SUSPENSION OF ANY SUCH RESTRAINING ORDER OR TEMPORARY INJUNCTION.

COUNTY RESERVES THE RIGHT, AT ITS OWN EXPENSE, TO BE INDEPENDENTLY REPRESENTED BY COUNSEL OF ITS OWN CHOICE IN CONNECTION WITH ANY SUCH SUIT OR PROCEEDING.

15) NO FEDERAL EXCLUSION

- A) User warrants that User is not an “Ineligible Person.” An “Ineligible Person” is an individual or entity who:
 - i) is currently excluded, debarred, suspended, or otherwise ineligible to participate in any federal and/or state grant, health care program, or in federal and/or state procurement or non-procurement programs. This includes but is not limited to persons who are on the List of Excluded Individuals or Entities of the Inspector General, List of Parties excluded from Federal Programs by the General Services Administration or the Medicaid Sanction List; or,
 - ii) has been convicted of a criminal offense related to the provision of health care items or services [within the rules and regulations of 42 USC §1320a-7(a)], but has not yet been excluded, debarred, suspended, or otherwise declared ineligible.
- B) User agrees to report immediately to the County if User becomes an “Ineligible Person” during the term of this Commitment.

16) OWNERSHIP OF DOCUMENTS; COPYRIGHT

- A) User agrees that for the purposes of assigning copyright ownership, any and all completed or partially completed data, information, reports, programs, inventions, software, firmware, designs, preliminary layouts, record drawings, digital files, photographs, sketches, and all other electronic or hardcopy documents or documentation (the “Documents”) developed pursuant to the Maintenance performed under this Commitment, shall be the sole property of the County.

- B) User represents that it has the right to assign and hereby assigns to the County all rights, title, copyright ownership and interest in any completed or partially completed data (including source codes), information, reports, programs, inventions, software, firmware, designs, preliminary layouts, record drawings, digital files, photographs, sketches, and all other electronic or hardcopy documents or documentation to be developed or has already been developed, created or invented pursuant to this Commitment or any other Commitments that User may currently have or had in the past, with the County.
- C) Within seven (7) days after its development, creation, or invention, User agrees to deliver to the County, copies, in a form acceptable to the County, of any and all such Documents. User may retain one set of reproducible copies of all Documents for the sole use of performing Maintenance for the County. User is expressly prohibited from selling, donating, licensing or otherwise marketing, or divulging to third parties, any Document, or using such Documents in the preparation of other work for any other client, without the express written permission of the County.

17) AUDIT RIGHTS

- A) Audit Rights. The User shall cooperate to the fullest extent with any and all federal, state, local, or County audits related to this Commitment. The User's cooperation shall include, but not be limited to access to all books, records, contracts, spreadsheets, correspondence, and documents, in whatever form, that are applicable to this Commitment and requested by any federal, state, local, or County entity that has rights or jurisdiction over any part of this Commitment or the funds applicable to this Commitment.
- B) Record Retention. The User agrees to retain within the boundaries of Harris County, for six (6) years after the expiration of this Commitment, all books, records, contracts, spreadsheets, correspondence, and documents applicable to this Commitment. The User will retain and make available, and insert the requisite clause in each applicable subcontract requiring its subcontractors to retain and make available, the books, records, contracts, spreadsheets, correspondence, and documents applicable to this Commitment.

18) WAIVER OF BREACH

Waiver by either Party of a breach or violation of any provision of the Commitment is not a waiver of any subsequent breach.

19) SEVERABILITY

If any provision or part of the Commitment or its application to any person, entity, or circumstance is ever held by any court of competent jurisdiction to be invalid for any reason, the remainder of the Commitment and the application of such provision or part of the Commitment to other persons, entities, or circumstances are not affected.

20) SURVIVAL OF TERMS

Any provision of this Commitment that, by its plain meaning, is intended to survive the expiration or earlier termination of this Commitment including, but not limited to the indemnification provision, shall survive such expiration or earlier termination. If an ambiguity exists as to survival, the provision shall be deemed to survive.

21) CONTRACT CONSTRUCTION

- A) This Commitment shall not be construed against or in favor of any Party hereto based upon the fact that the Party did or did not author this Commitment.
- B) The headings in this Commitment are for convenience or reference only and shall not control or affect the meaning or construction of this Commitment.
- C) When terms are used in the singular or plural, the meaning shall apply to both.
- D) When either the male or female gender is used, the meaning shall apply to both.

22) SUCCESSORS AND ASSIGNS

- A) The County and User bind themselves and their successors, executors, administrators, and assigns to the other Party of this Commitment and to the successors, executors, administrators, and assigns of such other Party, in respect to all covenants of this Commitment.
- B) Neither the County nor User shall assign, sublet, or transfer its interest in this Commitment without written consent of the other Party, which will not be unreasonably withheld.

23) NO THIRD-PARTY BENEFICIARIES

- A) The County is not obligated or liable to any party other than User for the performance of this Commitment.
- B) Nothing in the Commitment is intended or shall be deemed or construed to create any additional rights or remedies in any third party.
- C) Nothing contained in the Commitment shall be construed to or operate in any manner whatsoever to increase the rights of any third party, or the duties or responsibilities of County with respect to any third party.

24) NO PERSONAL LIABILITY; NO WAIVER OF IMMUNITY

- A) Nothing in the Commitment is construed as creating any personal liability on the part of any officer, director, employee, or agent of any public body that may be a Party to the Commitment, and the Parties expressly agree that the execution of the Commitment does not create any personal liability on the part of any officer, director, employee, or agent of the County.
- B) The Parties agree that no provision of this Commitment extends the County's liability beyond the liability provided in the Texas Constitution and the laws of the State of Texas.
- C) Neither the execution of this Commitment nor any other conduct of either Party relating to this Commitment shall be considered a waiver by the County of any right, defense, or immunity under the Texas Constitution or the laws of the State of Texas.
- D) The County does not agree to binding arbitration, nor does the County waive its right to a jury trial.

25) ENTIRE COMMITMENT; MODIFICATIONS

- A) This instrument contains the entire Commitment between the Parties relating to the rights herein granted and obligations herein assumed.
- B) Any oral or written representations or modifications concerning this instrument shall not be effective excepting a subsequent written modification signed by both Parties.

26) EXECUTION, MULTIPLE COUNTERPARTS

This Commitment may be executed in several counterparts. Each counterpart is deemed an original. All counterparts together constitute one and the same instrument. Each Party warrants that the undersigned is a duly authorized representative with the power to execute this Commitment.

[EXECUTION PAGES FOLLOW]

HARRIS COUNTY, TEXAS

By: _____
Lina Hidalgo, County Judge
Date: _____

By: _____
John Blount, P.E., County Engineer

APPROVED AS TO FORM:

CHRISTIAN D. MENEFEE
County Attorney

By: Philip Berzins
Philip Berzins
Assistant County Attorney
C.A.O. File No.: 21GEN0551

CENTRIC FIBER, LLC

By: B. Bawell
President, Board of Directors
Date: 3-11-21

ORDER OF COMMISSIONERS COURT

Authorizing execution of the Commitment

The Commissioners Court of Harris County, Texas, convened at a meeting of said Court at the Harris County Administration Building in the City of Houston, Texas, on _____, 2021 with all members present except _____.

A quorum was present. Among other business, the following was transacted:

ORDER AUTHORIZING EXECUTION OF THE COMMITMENT BETWEEN HARRIS COUNTY AND THE CENTRIC FIBER, LLC

Commissioner _____ introduced an order and made a motion that the same be adopted. Commissioner _____ seconded the motion for adoption of the order. The motion, carrying with it the adoption of the order, prevailed by the following vote:

| Vote of the Court | <u>Yes</u> | <u>No</u> | <u>Abstain</u> |
|--------------------|--------------------------|--------------------------|--------------------------|
| Judge Hidalgo | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comm. Ellis | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comm. Garcia | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comm. Ramsey, P.E. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comm. Cagle | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

The County Judge thereupon announced that the motion had duly and lawfully carried and that the order had been duly and law-fully adopted. The order thus adopted follows:

IT IS ORDERED that County Judge Lina Hidalgo be, and she is hereby, authorized to execute for and on behalf of Harris County, the Commitment with the Centric Fiber, LLC to grant a variance from certain provisions in the Rules that otherwise apply to the Centric Fiber, LLC The Commitment is incorporated herein by reference for all purposes as though fully set forth word for word.

All Harris County officials and employees are authorized to do any and all things necessary or convenient to accomplish the purpose of this Order.