

CITY OF NORMAN
Agreement for Use of Right-Of-Way and Build-out of Fiber Optic Strands for
Benefit of Norman Public Schools

This AGREEMENT is made and entered into this _____ day of _____, 20____ between the OneNet/Oklahoma State Regents for Higher Education ("ONENET") and the CITY OF NORMAN ("CITY"), collectively the "Parties."

WITNESSETH:

WHEREAS, ONENET is a division of the Oklahoma Regents for Higher Education that advances technology for government, education, and research; and

WHEREAS, ONENET desires to install fiber optic strands in the CITY's right-of-way for the use and benefit of internet services in Norman Public Schools; and

WHEREAS, Norman Public Schools has a datacenter located at Norman High School near Main and Berry; and

WHEREAS, CITY owns right-of-way sufficient for such installation; and

WHEREAS, CITY desires to allow ONENET to use its right-of-way for installation of these fiber optic strands in exchange for use of these strands; and

Now, THEREFORE, in consideration of the promises contained herein, the parties hereto agree as follows:

- I. Installation: CITY shall allow ONENET to install fiber optic strands from 201-C West Gray Street to the Norman High School (just east of Berry and Main) within the CITY's right-of-way at no cost to ONENET for the use of the right-of-way.
 - A. ONENET shall construct a 2" conduit from 201-C West Gray Street to the Norman Public Schools datacenter located at Norman High School (Main Street and Berry Road). ONENET shall install one 144-strand SMF-28e+ fiber optic cable in the new conduit system to Norman High School and register new conduit path with Oklahoma One Call. ONENET shall fund any and all costs for the construction and installation.
 - B. ONENET shall allot the CITY 132 of the 144 strands of single mode fiber optic cable and 12 strands shall be reserved for ONENET to use in serving Public Schools, libraries, and Higher Education in Norman.
 - C. ONENET shall provide terminations and splicing at each traffic control cabinet along the path of the fiber optic cable.

- D. The CITY shall allow the use of existing conduit(s) containing copper cables(s) to be repurposed for placement of fiber optic cable where possible and replacement of unsatisfactory ground boxes with new fiber optic type ground boxes along Main Street as seen in Stamped Project Plans/Statement of Work attached (Exhibit A) and the Fiber Project Map (Exhibit B- Kari is making- do not yet have).
 - E. The CITY shall provide construction permits to ONENET at no cost.
 - F. The CITY shall provide ONENET with use of 6 pre-spliced strands of single mode fiber optic cable in the CITY fiber optic cable system from 201-C West Gray Street to One Partner's Place located at 350 David L. Boren Blvd., Norman, OK. This will allow for ONENET to connect the internet services from Norman High School to ONENET's internet router point of presence at One Partner's Place. This connection is required for ONENET to provide fiber connectivity to Norman Public Schools at the bandwidth that the schools desire. ONENET shall provide any equipment needed to provide internet access service to Norman High School.
 - G. The CITY shall provide cable locates on new and existing conduit routes as identified by Oklahoma One Call.
 - H. The CITY shall provide maintenance and repair of the fiber optic cable and conduit after construction is completed.
 - I. Project scope and details regarding pay items, item quantities, splices, terminations, etc. are detailed in Exhibit A as the cost proposal from Telco Supply to ONENET leveraging state contract B1407.
- II. Internet Access: ONENET shall provide a fault tolerant internet path to the CITY, equal to the present internet connection at no additional cost. The fault tolerant connection will not use the same path as the present internet connection. It will be a fail-over connection from a second point of presence so that should one connection fail, the other will carry the CITY connection. CITY shall provide strands other than the six assigned to ONENET for fault tolerant connection.
- III. Term & Termination. This Agreement may be terminated at any time, with or without cause, upon thirty (30) days written notice to the other Party.
- A. Use Other Than Public Entity: In the event that ONENET determines it will no longer use the 12 fibers reserved for Public Schools, libraries, or Higher Education in Norman purposes, ONENET must notify CITY immediately and the CITY reserves the right to purchase the 12 fibers from ONENET.

- B. Affiliation with Oklahoma State Regents for Higher Education: ONENET is currently a division of the Oklahoma State Regents for Higher Education an agency of the State of Oklahoma. In the event that ONENET is no longer affiliated with the State of Oklahoma, then the 12 fibers shall be offered to the CITY for valuable consideration at the fibers current value payable to the Oklahoma State Regents for Higher Education. Should the CITY decline to purchase the 12 fibers, the CITY would offer a lease agreement at the current value, payable to the City of Norman, for the use of the right-of-way, conduit access, and include a lease option for the continued use of 6 strands providing the connectivity of the 12 strands to One Partners Place.
- IV. Indemnification: The parties intend that each shall be responsible for its own intentional and negligent acts or omissions to act. ONENET and CITY shall each be responsible for the acts and omissions to act of its officers and employees while acting within the scope of their employment according to the Governmental Tort Claims Act, Title 51 O.S. Section 151 et seq. It is the express intention of the parties hereto that this agreement shall not be construed as, or given the effect of, creating a joint venture, partnership, or affiliation or association that would otherwise render the parties liable as partners, agents, or employer-employee or otherwise create any joint and several liability. ONENET and CITY each agree to promptly serve notice on the other party of any claims arising hereunder, and shall cooperate in the defense of such claims.
- V. Insurance: ONENET has hired Dobson Technologies, Inc. Telco Supply Company, and Trans-Tel Central, Inc. to install the fiber optic cable for this project under state contract B1407. These entities, pursuant to this contract are required to be insured and bonded. The state contract term runs from March 31, 2014 to March 30, 2019.
- VI. Delegation and Assignment: ONENET may not, without the prior written consent of CITY, delegate or subcontract the construction or use of the right-of-way or fiber optic cables, or any portion of this contract, which is by this AGREEMENT undertaken by ONENET except as provided in Section V of this agreement.
- VII. Uncontrollable Forces: Neither CITY or ONENET shall be considered to be in default of this Agreement if construction of build-out or use of the fiber-optic strands and the internet service provided by said strands is limited or restricted in some way due to forces which are beyond the control of the parties.
- VIII. Notice: Any notice, demand, or request required by or made pursuant to this Agreement shall be deemed properly made if personally delivered in writing

or deposited in the United States mail, postage prepaid, to the address specified below:

To:

CITY:	ONENET:
Kari Madden	Bob Anthony
Information Technology	General Counsel for Oklahoma
City of Norman	State Regents for Higher Education
201-C West Gray	655 Research Parkway, Suite 200
Norman, OK 73069	Oklahoma City, OK 73104

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of ONENET and CITY.

- IX. Integration and Modification: This AGREEMENT represents the entire and integrated AGREEMENT between the Parties on this matter; and supersedes all prior negotiations, representations, or agreements pertaining to the scope of services herein, either written or oral. This AGREEMENT may be amended only by a written instrument signed by each of the Parties.
- X. Severability: If any portion of this AGREEMENT shall be construed by a court of competent jurisdiction as unenforceable, such portion shall be severed herefrom, and the balance of this AGREEMENT shall remain in full force and effect.
- XI. Waiver: No waiver of the terms, conditions, and/or covenants of this AGREEMENT shall be binding and effective unless the same shall be in writing signed by the Parties. No waiver by either party of any provision of condition of this AGREEMENT shall be construed or deemed to be a waiver of any other provision or condition of this AGREEMENT, or a waiver of a subsequent breach of the same provision or condition, unless such waiver be so expressed in writing signed by the Parties.
- XII. Section Headings: Headings of particular sections are inserted only for convenience and are in no way to be construed as a part of this AGREEMENT or as a limitation of the scope of the section to which they refer.
- XIII. Governing Law: The validity, interpretation, and performance of this AGREEMENT, and the legal relations of the Parties, shall be governed by and construed in accordance with the laws of the State of Oklahoma.

[Remainder of Page Left Blank Intentionally]

CITY:

By: _____
Cindy Rosenthal, Mayor Date _____

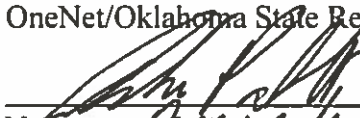
ATTEST:

City Clerk Date _____

Approved as to its form and legality on _____ day of _____, 20__.

By: _____
Leah Messner, Assistant City Attorney

OneNet/Oklahoma State Regents for Higher Education:


Name: AMANDA YALTON

Vice Chancellor, Budget + Finance,
Title: Information Technology, Telecommunications + OneNet

9/29/15
Date _____

Approved
As To Form
Initials QJH