



## RESOLUTION No. 2016-3323

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO APPROVE THE PURCHASE OF AN AIRBUS VESTA 9-1-1 PHONE SYSTEM FOR \$243,156.48.**

### RECITALS:

1. The 9-1-1 telephone system in the Newberg-Dundee 9-1-1 Center is seven years old and due for replacement.
2. Of two phone systems approved and offered for consideration by Oregon Emergency Management, Newberg-Dundee 9-1-1 determined the AirBus Vesta 9-1-1 phone system meets the needs of the communications center.
3. Oregon Emergency Management and Frontier Communications negotiated and set the purchase price following guidelines set out for use of 9-1-1 funds in ORS 403, Public Communications Systems and OAR Division 80, 9-1-1 Emergency Communications System Program.
4. The Oregon Department of Justice and Oregon Emergency Management has approved the Frontier Services Agreement, which has been reviewed by the City of Newberg legal department.
5. Oregon Emergency Management, through their authority as the fiscal entity which oversees the State of Oregon 9-1-1 funding per ORS 403, will pay for the system from State of Oregon 9-1-1 funds.

### THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

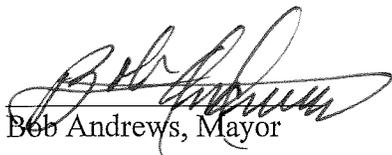
1. The City Council, acting as the Contract Review Board for the City, does hereby authorize the City Manager to approve the purchase of an AirBus Vesta 9-1-1 phone system for \$243,156.48 (Exhibit A).
2. The City Manager is authorized to sign the contract substantially in the form presented with this resolution, subject to review by the City Attorney as to form and content.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: July 19, 2016.

**ADOPTED** by the City Council of the City of Newberg, Oregon, this 18th day of July, 2016.

  
Sue Ryan, City/Recorder

**ATTEST** by the Mayor this 20th day of July, 2016.

  
Bob Andrews, Mayor



This Frontier Services Agreement ("FSA") is effective as of June 30, 2016, by and between Frontier Communications of America, Inc. on behalf of itself and its affiliates which provide Equipment and Services identified in the Schedules ("Frontier"), and Newberg-Dundee Police Department, whose primary address is Public Safety Building, 401 East Third Street, Newberg, OR 97132 ("Customer").

## 1. Provision of Services and Equipment

a. Frontier will provide and the Customer agrees to pay for the communications, installation and maintenance services (collectively "Service"), and/or purchase or lease equipment ("Equipment"), described in this FSA and Schedules executed by Customer. Pursuant to the provisions of ORS 403.235 - 403.245, the State of Oregon, Military Department, Office of Emergency Management ("OEM") provides Customer funding for some or all of the Equipment and Services under this FSA. OEM is not the Customer and is not a party to this FSA.

b. Intentionally omitted.

c. Frontier will provide, maintain and repair the Frontier owned facilities and equipment used to provide the Services ("Frontier's Network"), up to and including the point at which Frontier's Network is made available for interconnection to Customer's premises equipment or inside wiring. Subject to Customer's security and access policies and procedures, Customer shall provide Frontier reasonable access to Customer's premises during normal business hours for the purpose of installing, inspecting, testing, rearranging, repairing or removing any Frontier Network components, including obtaining approvals, permits or licenses from third parties as necessary. Customer will cooperate in good faith and provide all reasonable information and authorizations required by Frontier for the purpose of installing Services and/or Equipment, performing routine network grooming, maintenance, upgrades, and addressing emergencies, including but not limited to design layout records of any Customer or third party network elements to be connected to the Services and Letters of Agency allowing Frontier to act on the Customer's behalf related to the Services and auxiliary third party services.

d. Only authorized agents and representatives of Frontier may perform maintenance work with respect to Frontier's Network. Any repair, alteration, configuration or servicing of Frontier's Network, Services or Equipment by Customer or third parties without the written consent of Frontier is a material breach of this FSA and cause for termination at Frontier's option.

e. If Frontier is unable to commence performance hereunder due to circumstances within Customer's control, any related costs incurred by Frontier, including but not limited to travel at normal rate and overtime labor rate expenses, will be reimbursed by Customer. Customer will reimburse Frontier for all costs incurred for installation, maintenance and repair if: (i) Frontier's Network is altered, maintained or repaired by any party other than Frontier, without Frontier's prior written consent, (ii) the malfunction of the Service or Equipment is the result of mishandling, abuse, misuse, improper operation, improper storage, or improper installation by anyone other than Frontier (including use in conjunction with equipment electrically or mechanically incompatible); or (iii) if the problem originated from a source unrelated to Frontier's Network.

f. Customer will provide (i) suitable building facilities (including but not limited to space, circuitry, power, backup power, and surge protectors) for the installation, operation, and maintenance of Frontier's Network in accordance with manufacturer's documentation and Frontier's installation standards, more fully described in the applicable Schedule; and (ii) a well-lighted and safe working area that complies with all local safety standards and regulations.

g. The Services or Equipment may be connected with the services or facilities of other carriers. Frontier may, when authorized by Customer and as may be agreed to by Frontier, act as Customer's agent for ordering facilities provided by other carriers to allow such connection of Customer's locations to Frontier's Network or to the network of an underlying carrier or service.

h. Customer is responsible for all charges billed by other carriers or third parties. Frontier shall not be responsible for the installation, operation, repair or maintenance or performance of equipment, facilities, software or service not provided directly by Frontier. Customer is responsible to provide equipment compatible with the Service or Equipment and Frontier's Network, and any wiring required to extend a communications termination and/or demarcation at the Customer premises. Customer will provide suitable building facilities for the provision of Services in accordance with local codes, including but not limited to ducting, conduit, structural borings, etc. for cable and conductors in floors, ceilings and walls; electrical service with suitable terminals and power surge protection devices; and metallic grounds with sufficient slack in the equipment room, installed in conformity with the National Electrical Code and local codes, and Frontier's installation standards.

i. Customer is solely responsible for the selection, implementation and maintenance of security features for protection against unauthorized or fraudulent use of the Services and Equipment. Customer is solely responsible for ensuring that all of Customer's data are adequately secured, documented and backed-up at all times. Frontier and its contractors are not responsible or liable for data loss for any reason.

j. Frontier will manage the Frontier Network in Frontier's sole discretion, and reserves the right to substitute, change or rearrange any equipment or facilities used in delivering Services or provisioning the Equipment, provided such changes do not adversely affect the Services. Frontier will endeavor to provide reasonable notice prior to any scheduled maintenance, planned enhancements or upgrades, which may result in a degradation or disruption in Service. Frontier reserves the right to suspend Service for emergency maintenance to Frontier's Network without notice to Customer. Customer shall designate a primary contact for receipt of such notice.

k. Customer represents and warrants that its use of the Service and Equipment will comply and conform with all applicable federal, state and local laws, administrative and regulatory requirements and any other authorities having jurisdiction over the subject matter of this FSA and Customer will be responsible for applying for, obtaining and maintaining all registrations and certifications which may be required by such authorities with respect to such use.

l. Except as expressly identified in a Schedule, Customer and its employees shall be the only permitted end-user of the Services and leased Equipment. Customer shall not resell or bundle the Services or leased Equipment, nor permit any third party to access the Services or leased Equipment in exchange for compensation of any kind.

## 2. Term

The term of this FSA will commence as of the date identified in the introductory paragraph above or the date the FSA is executed by both Parties, whichever is later (the "Effective Date") and will continue through the Service Term with respect to any Service or Equipment provided pursuant to this FSA. Customer will purchase the Services, or lease Equipment, identified in each Schedule for the period of time stated in the Schedule (the "Service Term"). Unless otherwise stated in the Schedule, the Service Term and billing for the Service, will begin upon the earlier of (i) Customer's use of the applicable Service(s) or Equipment or (ii) five (5) days following Frontier's installation of such Service(s) or Equipment, and such date is deemed the commencement of the applicable Service Term. If neither party provides the other with written notice of its intent to terminate a Service at least sixty (60) days prior to expiration, the Service Term of each Service will automatically renew for additional one-year periods, subject to the terms and conditions of this FSA and at the then applicable one-year term rate,

excluding promotional rates. If the parties agree to negotiated renewal terms, such terms will not be effective unless and until documented in writing and executed by both parties.

### 3. Payment

a. Customer shall pay all charges set forth in the Schedules and if, as agreed to in a Schedule, a tariff(s), is applicable to the Service described in the Schedule, all charges in that tariff(s) as set forth in the Schedule. Frontier will invoice Customer any applicable non-recurring charges ("NRC"), monthly recurring charges ("MRC"), and usage based charges.

b. Unless otherwise exempt, Customer shall pay all applicable federal, state or local use, privilege, utility, excise or other taxes (excluding taxes based on Frontier's net income), or any charges in lieu thereof, and any applicable surcharges or fees, including but not limited to Primary Interexchange Carrier Charge, Federal Pre-Subscribed Line Charge, Carrier Cost Recovery Surcharge, E-911, and Universal Service and Local Number Portability, in the amounts applicable at the time of billing.

c. All payments shall be due within thirty (30) days of the invoice date and, in addition to and not in lieu of any other remedies Frontier may have hereunder or under the law as a result of Customer's failure to pay, payments not made within forty-five (45) days of the invoice date are subject to a late payment fee of the lesser of two-thirds of one percent (2/3%) per month or the maximum allowed by law.

d. In the event Customer disputes any invoiced amount, Customer will pay all charges not disputed, and notify Frontier of the dispute in writing, providing an explanation of the basis for the dispute. If Frontier does not receive notice of a payment dispute by Customer within ninety (90) calendar days after the date of an invoice, such invoice will be final and not subject to further challenge. For the purpose of computing partial month charges, a month will consist of thirty (30) calendar days. Frontier reserves the right to immediately suspend or terminate any or all Services or the installation or lease of any or all Equipment if Customer is overdue more than sixty (60) days for payments that have not been disputed in good faith. All payments are subject to ORS 293.462.

e. Nothing in this FSA may be construed to permit any violation of the Oregon Constitution, ORS 403.235 – 403.245 or any other law regulating liabilities or monetary obligations of Customer or the State of Oregon. Customer's obligation to pay for Equipment or Services is contingent upon Customer or the State receiving the funding, appropriations, limitations, allotments or other expenditure authority from its governing body or the Oregon Legislative Assembly (including its Emergency Board) sufficient to allow Customer, in the exercise of its reasonable administrative discretion to continue to compensate Frontier

### 4. Cancellation and Early Termination Charges

a. If Customer cancels any Service or Equipment prior to delivery of any Equipment or installation of the Service or Equipment, Customer shall pay a cancellation charge equal to the NRC and one (1) month of MRC for the Service, plus the actual costs and expenditures of Frontier in connection with establishing the Service prior to Frontier's receipt of notice of cancellation, including but not limited to any Equipment restocking fees.

b. Following installation, Customer may terminate a Service or Equipment by providing at least thirty (30) days prior written notice to Frontier. All unpaid amounts shall be due upon termination of any Service identified in a Schedule for any reason. In addition, and unless otherwise specifically provided in the applicable Schedule, if any Service or Equipment is terminated by Customer for any reason other than breach by Frontier or by Frontier due to Customer's breach, then Customer shall pay Frontier a termination charge equal to ten percent (10%) of the remaining MRC and all related taxes and surcharges multiplied by the number of months remaining in the Service Term. Partial months shall be prorated.

c. Customer agrees that Frontier's damages in the event of early termination will be difficult or impossible to ascertain, and that the charges identified in this Section are intended, therefore, to establish liquidated damages in the event of termination and are not intended as a penalty.

d. Customer may terminate this FSA without cause upon sixty (60) days prior written notice to Frontier

e. **Non-Appropriation of Governmental Funds.** To the fullest extent required by law, the following shall apply. Customer represents that the Services are funded by governmental appropriations. In the event Customer is not appropriated governmental funds to continue to subscribe to the Services under this Agreement, despite taking all necessary steps to secure such funding, then Customer will provide Frontier with reasonable advance notice, but not less than thirty (30) business days, of the need to terminate this FSA or a Schedule for lack of appropriated funds, or the need to modify the quantity of Services under this Agreement. Frontier and Customer will work cooperatively in good faith to complete the termination of or reduction in Services in a reasonable time frame. In the event of such termination or reduction, Customer will be responsible for paying for Services provided up to the date of termination of or reduction in Services but early termination charges will not apply. If Customer terminates this Agreement for non-appropriation in order to procure the same or comparable services from another service provider, then early termination charges will apply.

### 5. Limitation of Liability and Warranty Provisions

a. The liability of Frontier and its affiliates related to this FSA or the Service or Equipment provided under this FSA, shall in no event exceed the limitations of liability set forth in the applicable or regulatory rule or order. If there is no applicable regulatory rule or order, the total amount paid for the applicable Service or Equipment during the prior 12 months. In cases of an Outage, Frontier's liability shall be limited to 1/720 of the MRC for each hour after Frontier is notified of the Outage. An "Outage" is an interruption in Service or use of the Equipment caused by a failure of Frontier's Network, excluding degradation or disruption due to planned or emergency maintenance or an event outside Frontier's direct control. Notwithstanding the above, Frontier will not be liable to Customer for interruptions in Services or Equipment caused by failure of hardware or software, failure of communications services, power outages, or other interruptions not within the complete control of Frontier. In addition, there will be no credits, reductions or set-offs against charges for Services or Equipment, or for interruptions of Services or Equipment, except as expressly set forth herein.

b. IN NO EVENT WILL FRONTIER OR ITS AFFILIATES BE LIABLE FOR ANY LOST PROFITS OR BUSINESS OPPORTUNITIES, OR FOR ANY OTHER SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY THEREOF. FRONTIER AND ITS AFFILIATES SHALL NOT BE LIABLE FOR ANY LOSS, LOSS OF USE, COST, CLAIM OR EXPENSE EXPERIENCED OR INCURRED BY CUSTOMER OR THIRD PARTIES RESULTING FROM THE USE OF THE SERVICES OR EQUIPMENT PROVIDED HEREUNDER, INCLUDING BUT NOT LIMITED TO DAMAGE, LOSS OR LOSS OF USE OF CUSTOMER DATA OR FRAUD BY THIRD PARTIES.

c. Frontier warrants that Frontier's Network will be maintained in good working order. If any Service does not function substantially in accordance with applicable Service specifications as a result of Frontier's failure to maintain Frontier's Network (excluding degradation related to the acts or omissions of Customer or anyone using the Services, a force majeure event, or scheduled maintenance), Frontier's sole obligation is to repair the affected Service at Frontier's expense. THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND FRONTIER DISCLAIMS ALL OTHER WARRANTIES WITH RESPECT TO FRONTIER'S NETWORK, SERVICES OR EQUIPMENT PROVIDED PURSUANT TO THESE TERMS INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE

OR FUNCTION. FRONTIER DOES NOT WARRANT THAT THE SERVICES OR EQUIPMENT OR ACCESS OR OPERATION OF THE SERVICES OR EQUIPMENT WILL MEET CUSTOMER'S NEEDS, OR WILL BE UNINTERRUPTED, ERROR-FREE, OR SECURE.

d. This FSA shall not be construed as granting a license with respect to any patent, copyright, trade name, trademark, service mark, trade secret or any other intellectual property, now or hereafter owned, controlled or licensable by Frontier. Customer agrees that Frontier has not made, and that there does not exist, any warranty, express or implied, that the use by Customer of Frontier's Services and/or the Equipment provided under this FSA will not give rise to a claim of infringement, misuse, or misappropriation of any intellectual property right.

e. Customer agrees that the Services and Equipment, and Frontier's performance hereunder are subject to the terms, conditions and restrictions contained in any applicable agreements (including software or other intellectual property license agreements) between Frontier and Frontier's vendors.

f. No action, regardless of form, arising out of this FSA or the Schedules may be brought more than two (2) years after the cause of action has arisen or charges have been billed whichever is earlier. The parties hereby waive the right to invoke any different limitation on the bringing of actions provided under applicable law.

## 6. Indemnification

a. Each party shall indemnify, defend and hold harmless the other party and its affiliates, and their respective directors, officers, employees, successors, assigns and agents, harmless from and against any and all third party claims, loss, damage, cost or expense to the extent arising out or relating to any claim, action or proceeding brought by any third party based upon: (i) the other party's breach of this FSA; (ii) the other party's negligence or willful misconduct in the performance of its obligations under this FSA; (iii) use of the Equipment or Services, including but not limited to the content of communications transmitted thereby; (iv) any infringement of intellectual property or misappropriation of any patent, copyright, trademark, trade secret or other proprietary right arising from Customer's or any other person's use of the Equipment or Services, any combination of the Equipment or Services with other products or services not provided by Frontier, or any modification of the Equipment or Services by anyone other than Frontier; (v) any bodily injury (including illness or death) or property damage caused by the other party or anyone within its control. Customer's obligations, if any, are subject to the provisions of the Oregon Constitution, ORS 403.235 – 403.245 and any other law regulating liabilities or monetary obligations of Customer or the State of Oregon.

b. If Frontier believes at any time that the Equipment or Services, infringe a third party's Intellectual Property Rights, Frontier may upon receipt of Customer's prior written consent, which Customer will not unreasonably withhold, (i) replace an infringing item with a non-infringing item that meets or exceeds the performance and functionality of the replaced item; or (ii) obtain for Customer the right to continue to use the infringing item; or (iii) modify the infringing item to be non-infringing, provided that, following any replacement or modification made pursuant to the foregoing, the Equipment or Services continue to function in material conformance with the specifications set forth in this FSA. Frontier's failure or inability to accomplish any of the foregoing will be deemed a breach of this FSA, and Customer may pursue any rights and remedies available to it under this FSA, including termination. Frontier will not be liable for any claim for infringement based solely on the following:

- Customer's modification of the Equipment or Services other than as contemplated by this FSA, the specifications, or as otherwise authorized by Frontier in writing;
- Use of the Equipment or Services in a manner other than as contemplated in this FSA, the specifications, or as otherwise authorized by Frontier in writing; or

- Use of Equipment or Services in combination, operation, or use of with other products other than as contemplated by this FSA, the specifications, or as otherwise authorized by Frontier in writing.

c. Control of Defense and Settlement. Frontier's obligation to indemnify Customer, OEM or the State of Oregon as set forth in this FSA is conditioned on Customer providing to Frontier prompt notification of any claim or potential claim of which Customer becomes aware that may be the subject of those Sections. Frontier will have control of the defense and settlement of any claim, however, neither Frontier nor any attorney engaged by Frontier will defend the claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the approval of the Attorney General, nor will Frontier settle any claim on behalf of the State of Oregon without the approval of the Attorney General. The State of Oregon may, at its election and expense, assume its own defense and settlement in the event that the State of Oregon determines that Frontier is prohibited from defending the State of Oregon, is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue and the State of Oregon desires to assume its own defense.

d. With respect to any hardware or software furnished by Frontier to Customer, but not manufactured by Frontier ("Third Party Product(s)"), Frontier will secure from the applicable manufacturer(s) such warranties and indemnities as may be available with respect to such Third Party Products at no additional cost to Customer and assign and pass through to Customer all available warranties and indemnities for such Third Party Products to the extent legally assignable.

## 7. Confidentiality

a. Both parties agree that all terms and conditions set forth in this FSA shall be considered confidential, and that details of the terms of this FSA, shall not be disclosed to third parties, other than affiliates, employees, agents or contractors who have a need to know such information in the scope of their employment or engagement, without the prior written consent of the other party, unless required by law.

b. Customer and Frontier may disclose to each other information that is confidential in nature. In order to receive confidential treatment, all such information (hereafter "Information") shall be either (i) clearly marked as confidential if written, or clearly identified as confidential if oral or (ii) reasonably understood by the recipient, based on the nature of the Information or the circumstances of disclosure, to be confidential or proprietary to the discloser. Except as required by law or regulation, Customer and Frontier agree not to disclose any Information to any third party and to keep Information in a secure place available only to employees, affiliates, contractors or agents who are subject to obligations of confidentiality no less restrictive than those set forth herein, and who need to know the Information for purposes of the business dealing between Customer and Frontier, and to use Information only in connection with such business dealings. This Section is enforceable by injunction.

c. Information will lose its confidential status if obtained legitimately from a third party without restriction or upon the expiration of five (5) years from delivery of each item of Information. Information shall remain the property of the disclosing party and shall be returned to such party on request or upon termination of the business dealing between Customer and Frontier.

d. Customer's obligations of confidentiality, if any, are subject to the Oregon Public Records Laws, ORS 192.410 to 192.505.

## 8. Breach

a. Breach by Customer: If Customer fails to make any payment when due and such failure continues for ten (10) days after notice, or Customer fails to comply with any other term or condition of this FSA or any Schedule and such failure continues for thirty (30) days after notice, then Frontier may either suspend the applicable Schedule (or any portion thereof) until the breach is remedied, terminate the applicable Schedule (or any portion thereof), or terminate this FSA and all Schedules.

Notwithstanding the foregoing, Frontier may immediately suspend Services and, after giving notice to Customer with an opportunity to respond appropriate to the circumstances and Customer's failure to respond, Frontier may terminate any or all Services, retrieve Frontier Network elements from the service location and Equipment for which title has not transferred to Customer, in the following circumstances: (i) in the event of unauthorized, unlawful or improper use or abuse of the Frontier Network or Service; (ii) if, in the reasonable judgment of Frontier, Customer's use of the Frontier Network or Service has or will damage or have an adverse effect on Frontier's Network, its personnel, property or service; (iii) such action is necessary to meet the exigencies of an emergency; or (iv) a court or other governmental authority having jurisdiction issues an order prohibiting Frontier from furnishing the Equipment or Services to Customer.

**b. Breach by Frontier:** If Frontier has not remedied any breach within thirty (30) days after Frontier's receipt of written notice from Customer of such breach (providing reasonable detail), Customer may terminate the Service which is the subject of such breach, and Customer will not be liable for any early termination fees. This is in addition to other remedies available to the Customer for a breach by Frontier.

#### 9. Force Majeure

In no event will Frontier or its affiliates be liable for any delay in performance directly or indirectly caused by events beyond their control, including, but not limited to: acts or omissions of Customer, its agents, employees or contractors; acts of God; acts of the public enemy; acts of the United States, a state or other political subdivision; fire, floods or other natural disasters; accidents; wars; terrorism; cyber security events; labor disputes or shortages; and inability to obtain material, power, equipment or transportation.

#### 10. Assignment

This FSA may not be assigned by either party without the other party's prior written consent, which consent shall not be unreasonably withheld or delayed, except that Frontier may assign this FSA to any successor to the business of Frontier by merger, consolidation or sale of assets or to any corporation controlling, controlled by or under common control with Frontier. Frontier may subcontract portions of the work to be performed hereunder to provision the Services or Equipment, provided, however, Frontier shall not enter into any subcontracts for any of Services required under this FSA, on Customer's premises, without Customer's prior written consent. Customer's consent to any subcontract shall not relieve Frontier of any of its duties or obligations under this FSA. The provisions of this FSA are binding upon, and inure to the benefit the parties and their respective successors and permitted assigns, if any.

#### 11. Work Site Conditions

a. If asbestos, or material containing asbestos, or any other hazardous or toxic materials are discovered during work pursuant to this FSA, Frontier will suspend its work for a reasonable period of time to permit Customer to engage a qualified firm to remove and dispose of the asbestos or other toxic or hazardous materials from the site. Such suspension may result in an equitable adjustment to the charges identified in the related Schedule, based on any increase in costs incurred by Frontier.

b. Customer agrees to release, indemnify, defend and hold harmless Frontier from and against any damages, losses, claims, demands or lawsuits arising out of or relating to the presence, removal or disposal of asbestos or any other hazardous or toxic material from the Customer's premises or location where Services or Equipment will be installed. Customer's obligations, if any, are subject to the Oregon Constitution, ORS 403.235 – 403.245 or any other law regulating liabilities or monetary obligations of Customer or the State of Oregon.

#### 12. Title and Risk of Loss

a. Risk of loss or damage for Frontier Network elements installed at a Customer designated service location shall pass to Customer at time of delivery to Customer.

b. Any Frontier Network elements or Equipment installed at Customer's premises or location where Services or Equipment will be installed (which is leased or for which title has not transferred to Customer) remain the personal property of Frontier or Frontier's assignee, notwithstanding that it may be or become attached to or embedded in realty, and upon termination of this FSA or any Schedule (in whole or in part), all Frontier property shall be returned to Frontier in the same condition as installed, normal wear and tear excepted. Customer will not tamper with, remove or conceal any Frontier identifying plates, tags or labels. In the event Frontier property is not returned to Frontier in accordance with this Section, Customer will be billed for and pay to Frontier an amount equal to the retail value of the Frontier property, except to the extent such failure is caused by the negligence or willful misconduct of Frontier or its agents.

#### 13. Competition

Customer recognizes the availability of competitive alternatives for receiving the Services and Equipment provided under this FSA, and has freely elected to enter into this FSA in order to receive the benefits it offers.

#### 14. Government Regulation

To the extent that any Service(s) provided hereunder are subject to the jurisdiction of the Federal Communications Commission ("FCC") or any state public utilities commission or other regulatory agency, this FSA shall at all times be subject to changes, modifications, orders and rulings by the FCC and/or state public utilities commission or other regulatory agency. Frontier will provide Customer with written notice of its taking of any of the foregoing actions, which notice, where reasonably possible given the timing of the regulatory event and its impact on Frontier, shall be in advance thereof and otherwise prompt. The parties shall negotiate an amendment to this FSA. If the parties are unable to come to agreement, Customer may terminate this FSA without incurring any early termination liability. Frontier reserves the right to suspend, modify or terminate any Service without liability where any statute, regulation and/or ruling, including modifications thereto, by any regulatory agency (including the FCC), legislative body or court of competent jurisdiction, (i) prohibits, restricts or otherwise prevents Frontier from furnishing such Service, or (ii) has a material negative impact on Frontier's performance hereunder or the benefits provided by this FSA. If provision of any Service pursuant to this FSA is subject to advance approval of the FCC and/or any state public utilities commission, Frontier shall obtain such approval and this FSA shall not become effective with respect to such Service until after receipt by Frontier of written notice of such approval.

#### 15. Governing Law

This FSA shall be governed by and construed according to the laws of the State of Oregon, without regard to its conflicts of laws provisions. Any related litigation may be brought and conducted exclusively in the Circuit Court of Marion County for the State of Oregon in Salem, Oregon, unless the claim must be brought in a federal forum, in which case it must be brought and adjudicated exclusively within the United States District Court for the District of Oregon. Frontier consents to personal jurisdiction in such courts. Neither this section nor any other term of the FSA is a waiver by the State of Oregon of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States, or otherwise, from any claim or from the jurisdiction of any court.

## 16. No Waiver

If either party fails, at any time, to enforce any right or remedy available to it under this FSA, that failure shall not be construed to be a waiver of the right or remedy with respect to any other breach or failure by the other party.

## 17. Severability

A declaration by any court, or other binding legal source, that any provision of this FSA or any Schedule is illegal and void, will not affect the legality and enforceability of any other provisions of this FSA, unless the provisions are mutually dependent.

## 18. Notice

All notices provided pursuant to this FSA will be in writing and delivered by registered or certified US Mail, postage prepaid, or by commercial overnight delivery service, or by facsimile, or by regular mail and shall be deemed delivered either on the date of return receipt acknowledgment (in the case of certified US Mail), or on the next day after the sending of the notice if sent overnight mail, or three (3) days after mailing if by regular mail to the address of the party designated to receive such notice. A copy of all notices will be sent to:

Office of Emergency Management  
Mark Tennyson  
PO Box 14370  
Salem, Oregon 97309  
FAX No: 503-373-7833

## 19. Independent Relationship

Each party understands and agrees that it and its personnel are not employees of the other party, and that each party is an independent contractor hereunder for all purposes and at all times. Frontier is not an "officer," "employee" or "agent" of Customer or any other Customer, office, or department of the State of Oregon, as those terms are used in ORS 30.265, and Frontier shall make no representations to third parties to the contrary.

## 20. Dispute Resolution

Except as otherwise specifically provided in or permitted by this FSA, all disputes arising in connection with this FSA shall first be resolved through good faith negotiation. If, after negotiating in good faith for a period of ninety (90) calendar days or any agreed further period, the parties are unable to resolve the dispute, then each party may seek resolution by exercising any rights or remedies available at law or in equity. Customer and Frontier agree that each may only bring claims against the other in an individual capacity and not as a plaintiff or class member in any purported class, representative, or private attorney general proceeding. In addition, ORS 403.160 provides as follows:

403.160 Mediation of disputes; arbitration; costs and fees.

(1) All disputes between a governing body, 9-1-1 jurisdiction and public or private safety agency regarding the emergency communications system must be mediated if the dispute cannot be resolved in accordance with a written agreement. When a governing body or 9-1-1 jurisdiction obtains knowledge that a dispute exists and cannot be resolved by the agencies, the governing body or the 9-1-1 jurisdiction shall notify the Office of Emergency Management of the dispute in writing. Within 30 days after this notification, the disputing agencies shall mutually select a mediator and notify the office in writing of this selection. If a mediator is not mutually selected by the agencies within this period, the Director of the Office of Emergency Management shall select a mediator from the list of mediators established under subsection (3) of this section. Once selected, the mediator shall establish a schedule for the mediation process. The disputing agencies shall resolve the dispute within 60 days after the date the mediator is agreed upon or selected unless the agencies mutually agree in writing to an extension of this deadline. A copy of all extensions must be submitted to the office.

(2) When the mediation process in subsection (1) of this section ends, the mediator shall notify the office in writing of the outcome of the mediation. If the agencies are not able to resolve their dispute through mediation, the 9-1-1 jurisdiction or governing body and public or private safety agency or agencies shall submit the dispute to arbitration. The agencies shall select an arbitrator within 30 days after the end of the mediation. If the disputing agencies are unable to mutually select an arbitrator within this period, the director shall request the presiding judge for the judicial district in which the 9-1-1 service area is located to select an arbitrator. The arbitrator shall hear and decide the dispute within 30 days after selection unless the agencies mutually agree in writing to an extension of this deadline. A party to arbitration under this subsection may seek confirmation, vacation, modification or correction of the arbitrator's decision as provided in ORS 36.700, 36.705 and 36.710. A court may vacate a decision only if there is a basis to vacate the decision as described in ORS 36.705 (1)(a) to (d). The court may modify or correct a decision only for the grounds given in ORS 36.710.

(3) The office shall establish a roster of mediators qualified to mediate disputes under subsection (1) of this section. This list may be used by the disputing agencies when selecting a mediator.

(4) Unless otherwise agreed upon, the costs of the mediation or arbitration, including the mediator's or arbitrator's fees, must be divided equally among the disputing agencies. [Formerly 401.785]

403.165 Office to ensure compliance; proceedings authorized.

(1) The Office of Emergency Management may institute proceedings against a public or private safety agency, a 9-1-1 jurisdiction or other person to compel compliance with or to restrain further violation of ORS 305.823 and 403.105 to 403.250 or rules adopted pursuant to ORS 403.120.

(2) Proceedings authorized by subsection (1) of this section may be instituted without official notice, hearing or order provided in ORS chapter 183. However, proceedings brought against a telecommunications utility must be brought before the Public Utility Commission as provided by ORS chapter 756. [Formerly 401.790]

**21. No Third Party Beneficiaries.** Customer and Frontier are the only parties to the FSA and are the only parties entitled to enforce its terms. Nothing in the FSA gives, is intended to give, or will be construed to give or provide, any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of the FSA. OEM and the State are third party beneficiaries of this FSA.

**22. Incorporation of Oregon Statutes.** ORS 279B.220, 279B.230 and 279B.235 are incorporated into this FSA by reference.

**23. Tax Certification.** By signature on this FSA for Frontier, the undersigned hereby certifies under penalty of perjury that the undersigned is authorized to act on behalf of Frontier; that Frontier has the power and authority to enter into and perform this FSA; that this FSA when executed and delivered will be a valid, binding obligations of Frontier, enforceable according to its terms; that Frontier will, at all times during the term of this FSA, be qualified to do business in the State of Oregon, professionally competent and duly licensed to perform the Services; and that for a period of no fewer than six years preceding the effective date of this FSA, Frontier, to the best of the undersigned's knowledge, has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state and is not in violation of any Oregon Tax Laws and that Frontier will comply with all tax laws of this state and the applicable political subdivision. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250 and ORS chapters 118, 314, 316, 317, 318, 321 and 323 and the elderly rental assistance program under ORS 310.630 to 310.706 and local taxes administered by the Department of Revenue under ORS 305.620.

**24. Records Maintenance; Access.** Frontier shall use reasonable commercial efforts to maintain all financial records relating to the subject matter of this FSA in accordance with Generally Accepted Accounting Principles ("GAAP"). Frontier shall also maintain any other records pertinent to this FSA in such a manner as to document clearly Frontier's

performance of its duties which are subject to this FSA. Frontier shall retain and keep accessible all financial records, books, documents, papers, plans, and writings for a minimum of six years, or such longer period as may be required under applicable law, following final payment and termination of this FSA, or until the conclusion of any audit, controversy, or litigation arising out of or related to this FSA, whichever date is later. Frontier shall permit Customer or the State and their duly authorized representative's access to Frontier's financial records and other books, documents, papers, plans, and examinations and audits and make excerpts and transcripts when requested.

**25. Attorney Fees.** Neither party to the FSA nor the State is entitled to obtain judgment from the other party for attorney fees it has incurred in any litigation between the parties or in defense of any claim asserted by a third party.

**26. Amendments.** This FSA may be amended, modified, or supplemented only by a written amendment signed by Frontier and Customer. Any amendment that provides for additional Equipment or Services may only provide for Equipment or Services directly related to the scope of Equipment and Services described in the FSA, and no amendment will be effective until all requisite signatures and approvals are obtained. Either Frontier or Customer may request a change to this FSA, including all Schedules issued under this FSA and exhibits attached, by submitting a written proposal describing the desired change to the other party.

**Change Control.** Subject to the conditions above, amendments to a Schedule issued under this FSA and related costs may be managed through an authorized change control process that reflects at least the processes described in this section. Either Frontier or Customer may request a change by submitting a written proposal describing the requested change to the other party. Frontier's and Customer's Authorized Representatives will review the written change request and either mutually approve it for further analysis or reject it.

**Analysis of Change Requests; Change Orders.** The parties will analyze each change request (that has not been rejected) in accordance with the authorized change control process to determine the effect that the implementation of the change will have on the Schedule, and related costs. If Frontier requests to make changes in its design or implementation of the Network or Services to enable the System or Services to meet the requirements, such changes will be made at no cost to Customer, unless such changes are due to the failure of Customer or its agents to perform their responsibilities in a timely manner. If the analyzed change request is mutually approved, the agreed-upon party will prepare a written change order, detailing all modifications to the Schedule and related costs (the "Change Order"). A Change Order at a minimum must contain:

- The effective date of the Change Order;
- A detailed description of the Services to be performed under the Change Order;
- The particular specification or matter in the Schedule which will be altered, and the precise scope of that alteration;
- Whether the Change Order modifies critical path for delivery of equipment or Services;
- Any change in the cost of the Services to be performed pursuant to the Change Order; and
- The cumulative cost changes of all Change Orders previously issued.

- A Change Order may alter only that portion of the Schedule and related costs to which it expressly relates and must not otherwise affect the terms and conditions of this FSA. Both parties must sign the Change Order to authorize the Services described therein and incorporate the changes into this Schedule. No Services may be performed pursuant to the Change Order and no payment will be made on account of the Change Order until the Change Order is fully executed and all required State of Oregon approvals are received.

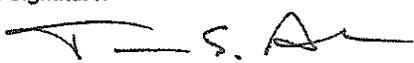
**Payments.** Subject to the foregoing provisions of this Section and performance of the Services, Customer will pay for Services performed pursuant to a Change Order according to the acceptance and payment procedures set forth in this FSA.

#### **27. Applicable Statutory Obligations:**

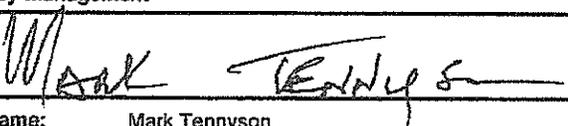
**ORS 403.110 Liability of 9-1-1 Providers.** A provider or a 9-1-1 jurisdiction or the employees or agents of a provider or a 9-1-1 jurisdiction may be held civilly liable for the installation, performance, provision or maintenance of the emergency communications system if the provider or the 9-1-1 jurisdiction or the employees or agents of the provider or the 9-1-1 jurisdiction act with willful or wanton conduct. A provider or seller is not liable for damages that result from providing or failing to provide access to the emergency communications system or from identifying or failing to identify the telephone number, address, location or name associated with any person or device accessing or attempting to access the emergency communications system. This section does not affect any liability a 9-1-1 jurisdiction may have for employee negligence in receiving emergency calls from the public and dispatching emergency services to the public.

#### **28. Authorization and Entire Agreement**

Each party represents that the person executing this FSA is authorized to enter into this FSA on its behalf. This FSA, the terms and conditions at, and any Schedules executed by the parties constitute the entire agreement between the parties pertaining to the subject matter herein and supersedes all prior oral and written proposals, correspondence and memoranda with respect thereto. This FSA may not be modified, amended or supplemented except by written agreement signed by an authorized representative of each party. Notwithstanding anything otherwise stated, a Customer purchase order document (whether signed by one or both parties) shall be construed solely as evidence of Customer's internal business processes, and the terms and conditions contained thereon shall be void and of no effect or application toward this FSA.

Frontier Communications of America, Inc.	
Frontier's Signature: 	
Printed Name: Trent S. Anderson	
Title: SVP	
Date: 6.28.16	
Contractual Notice: Frontier Communications 111 Field Street Rochester, NY 14620 Attn: Legal Department	

Newberg-Dundee Police Department	
Customer's Signature:	
Printed Name:	
Title:	
Date:	
Contractual Notice: Newberg-Dundee Police Department Public Safety Building 401 East Third Street Newberg, OR 97132  Attn: Mary Newell, Support Services Manager	

State of Oregon, acting by and through the Office of Oregon Emergency Management	
	
Printed Name: Mark Tennyson	
Title: Section Director	
Date: 6/28/16	
Contractual Notice: Solely pursuant to ORS 403.235 through 403.245 and for no other purpose: State of Oregon, acting by and through the Military Department, Office of Emergency Management  Address: 911 Program, PO BOX 14370 Salem OR 97309-5062  Attn: Gillien Duvall, 9-1-1 Technology Operations Coord. / Program Lead And  Office of Emergency Management Mark Tennyson PO Box 14370 Salem, Oregon 97309 FAX No: 503-373-7833	