

**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

SUBJECT: Fiber Optic Communication Network Interlocal Agreement

DEPARTMENT: Information Technologies **DIVISION:** Telecommunications

AUTHORIZED BY: Chris Grasso **CONTACT:** Greg Holcomb **EXT.** 1010
Director

Agenda Date <u>04/27/04</u> Regular <input type="checkbox"/> Consent <input checked="" type="checkbox"/> Work Session <input type="checkbox"/> Briefing <input type="checkbox"/>
Public Hearing – 1:30 <input type="checkbox"/> Public Hearing – 7:00 <input type="checkbox"/>

MOTION/RECOMMENDATION:

Request the Board approve the Fiber Optic Communication Network interlocal Agreement (FOCN). The purpose of the agreement is to set forth terms and conditions associated with provisions for the shared use of the FOCN by the City of Oviedo.

BACKGROUND:

This agreement is authorized under the provisions of Chapter 163, Florida Statutes. Both parties desire to enter into an agreement for the use of the existing FOCN. This agreement is identical in nature to previously executed agreements with all participants of the FOCN. Upon execution of this agreement participation will include Altamonte Springs, Casselberry, Lake Mary, Longwood, Oviedo, Sanford, Winter Springs, Florida Department of Revenue, Seminole County School Board, and Seminole Community College. The shared use will enhance the ability of Seminole County and the City of Oviedo to serve the residents through improved local government resources.

The County Attorney's office has reviewed and found the attached Agreement acceptable.

Reviewed by Co Atty: <u>[Signature]</u> DFS: _____ Other: _____ DCM: _____ CM: <u>[Signature]</u> File No. <u>2004-0010</u>
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**FIBER OPTIC COMMUNICATIONS NETWORK INTERLOCAL AGREEMENT
BETWEEN SEMINOLE COUNTY AND THE CITY OF OVIEDO**

THIS AGREEMENT is made and executed this ____ day of _____, 2004, by and between **SEMINOLE COUNTY**, a political subdivision of the State of Florida, whose address is 1101 East First Street, Sanford, Florida, 32771, hereinafter referred to as the "COUNTY" and the **CITY OF OVIEDO**, whose address is 400 Alexandria Boulevard, Oviedo, Florida, 32765, hereinafter referred to as the "CITY" for the purpose of facilitating the CITY'S accessibility to the COUNTY'S Fiber Optic Communications Network, hereinafter referred to as "FOCN".

W I T N E S S E T H:

WHEREAS, the COUNTY and the CITY are mutually desirous of entering into a cooperative venture to facilitate CITY'S access to various databases available within the COUNTY'S FOCN system;

WHEREAS, the COUNTY and the CITY (hereinafter sometimes referred to collectively as the "parties") have, after due consideration of the facts and circumstances of the necessary hardware/software configurations, the economic factors, funding and the logistics inherent to the FOCN system venture have determined that the terms and covenants of this Agreement represent the most practical, economic and beneficial means to accomplish the parties objectives relating to participation in the FOCN system; and

WHEREAS, the CITY'S access to FOCN will be more advantageous to both parties hereto as well as the general public within the areas served by both parties including particularly the citizens of the COUNTY than would be possible without this Agreement; and

WHEREAS, the COUNTY has sufficient capacity within its FOCN to better accommodate the CITY than does the CITY with its current or foreseeable resources acting alone; and

WHEREAS, the parties have both determined that the CITY'S participation in FOCN is a true public purpose and will further the public interest, consistent with all applicable provisions of the Florida Statutes, including, but not limited to Chapters 125, 163, and 166, Part I, Florida Statutes, the County's Charter and the CITY'S Charter and Code; and

WHEREAS, both parties hereby represent, each to the other, that they are legally empowered to enter into this Agreement and have done all steps necessary and incidental to the execution of this Agreement; and

WHEREAS, this Agreement is authorized under the provisions of Chapter 163, Florida Statutes, which authorizes the exercise by Agreement of two (2) or more public agencies of any power common to them,

NOW THEREFORE, in consideration of the mutual covenants, terms and conditions contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

SECTION 1. RECITALS. The recitals set forth above are true and correct and form a material part of this Agreement upon which the parties have relied.

SECTION 2. PURPOSE. The purpose of this Agreement is to set forth the terms and conditions associated with provisions for the shared use of the FOCN by the CITY.

SECTION 3. TERM. The initial term of this Agreement begins upon execution of this Agreement by the parties and shall remain in effect until terminated by either party after first giving a thirty (30) days written notice. By March 1 of each year, COUNTY shall provide CITY with a cost analysis for the next fiscal year.

SECTION 4. SHARING AND OWNERSHIP.

(a) The COUNTY shall provide adequate physical fiber connectivity to the CITY at the physical address of 400 Alexandria Boulevard, Oviedo, Florida 32765, from the existing FOCN and the planned future expansions by the COUNTY.

(b) The COUNTY shall provide reasonable planning and construction management assistance to the CITY for the construction of any new link needed to complete the desired connectivity as requested by the CITY.

(c) The COUNTY shall share responsibility for the maintenance of the FOCN and render all necessary services as soon as the schedules permit based upon the critical importance of the service needed as determined by the Wide Area Communication Network Task Force.

(d) The CITY agrees to pay its fair share of the maintenance activities and provide funds for construction of new link(s) required for its use as described in Section 5 of this Agreement.

SECTION 5. FEES, CHARGES AND INVOICING.

(a) The CITY shall pay the required maintenance charges for the segments of the FOCN provided to the CITY for its use as specified in Exhibit "A" "Schedule of Charges" and Exhibit "B" "Schedule of Service Charges" attached hereto and incorporated by this reference, at the rates specified for the links used by the CITY. These charges shall be for the purpose of routine maintenance and emergency repairs; providing locating services to others when requested; and data transport services provided. The COUNTY shall submit an annual invoice on October 1 of each year for these charges commencing October 1, 2004. The CITY shall pay the COUNTY'S invoice in accordance with the provisions of the Florida Prompt Payment Act, Chapter 218, Part VII, Florida Statutes. The COUNTY shall update the information provided in Exhibits "A" and "B" as changes occur. A new Exhibit "A" and "B" shall be furnished to the CITY within fifteen (15) days of the change. All new charges due to a change in Exhibits "A" and "B" shall be appropriately pro-rated to reflect the date of the change.

(b) The CITY shall be responsible for providing adequate funds for construction of any new link(s) required solely for its use as the CITY deems appropriate. All joint projects shall be funded jointly by the parties based upon a fair share contribution of the construction costs as mutually agreed by the parties. All funds required for the construction of new projects shall be deposited into the appropriate account as specified by the COUNTY prior to commencement of the project.

SECTION 6. DEFAULT, NON-PERFORMANCE AND REMEDIES.

(a) Nonpayment of invoiced amounts within the forty-five (45) days provided for in section 218.74(2), Florida Statutes shall be deemed an event of default under this Agreement. In the event of such default, the COUNTY reserves the right to disconnect the FOCN and, if such delinquency continues for longer than ninety (90) days, to terminate this Agreement. In any event of default, the COUNTY shall also have the right to demand the entire balance due under the then current annual billing cycle of the Agreement, which amount shall become immediately due and payable, be invoiced by the COUNTY and be payable by the CITY in accordance with the Florida Prompt Payment Act.

(b) Failure of the COUNTY to provide the enumerated services for the CITY for reasons not beyond its control shall be grounds for the nonpayment of the fees then owed by the CITY for the period such services were not rendered. Continued failure by the COUNTY to install and maintain the FOCN for reasons not beyond its control for longer than thirty (30) days shall be grounds for the CITY to terminate this Agreement without further financial obligation to the COUNTY.

(c) In the event of any default, notice shall be given to the defaulting party with a reasonable period of time allowed to cure the default. Failure of a party to exercise its rights in a particular event of default shall not be construed as a waiver of that party's right to exercise such option in any subsequent event of default.

SECTION 7. NOTICES. Whenever either party desires to give notice unto the other, it must be given by written notice, sent by certified United States mail, with return receipt requested, addressed to the party for whom it is intended at the place last specified and the place

for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this Section. For the present, the parties designate the following as the respective places for giving of notice, to wit:

For COUNTY:

Gregory A. Holcomb, Telecommunications Manager
Seminole County Department of Information Technologies
150 Bush Boulevard, Suite 3-105
Sanford, Florida 32773

For CITY:

Eugene Miller, City Manager
City of Oviedo
400 Alexandria Boulevard
Oviedo, Florida 32765

The parties may effect changes or substitution to the names and addresses of the contact persons by written notice to the other party which notice can also be sent via facsimile transmission, provided that a record of such communications shall be maintained by both parties.

SECTION 8. TERMINATION. Anything else in this Agreement to the contrary notwithstanding, this Agreement may be terminated at the sole discretion of the COUNTY if it determines that continued use by the CITY of the FOCN proves to be incompatible with or an undue burden upon the COUNTY'S fiber optic or other information network systems or that it is no longer in the best interest of the COUNTY to continue under this Agreement. Additionally, termination may be implemented in accordance with Section 3 hereof. In such circumstances, the terminating party shall give the other party at least thirty (30) days notice of such intent to terminate and the CITY shall then have an

additional sixty (60) days to make other arrangements for procuring similar services. If the COUNTY decides to terminate this Agreement for non-convenience in the manner provided herein, it shall refund to the CITY the full amount of any monthly service fees that may have been paid for the remaining unused term of this Agreement. The COUNTY shall have no other liabilities to the CITY whatsoever.

SECTION 9. INSURANCE REQUIREMENTS. The CITY shall be responsible for maintaining adequate insurance coverage or self insurance program against claims by third persons arising from the CITY'S use, misuse and/or reliability of the FOCN. The COUNTY shall maintain adequate insurance coverage to protect its own interests and obligations under this Agreement.

SECTION 10. INDEMNIFICATION.

(a) Each party to this Agreement is responsible for all personal injury and property damage attributable to the negligent acts or omissions arising out of this Agreement of that party and the officers, employees and agents thereof.

(b) The parties further agree that nothing contained herein shall be construed or interpreted as denying to any party any remedy or defense available to such parties under the laws of the State of Florida, nor as a waiver of sovereign immunity of the COUNTY and the CITY beyond the waiver provided for in *Section 768.28, Florida Statutes*.

(c) The waiver of a provision herein by either party shall not constitute the further waiver of said provision or the waiver of any other provision.

SECTION 11. INDEPENDENT CONTRACTORS. It is agreed that nothing herein contained is intended or should be construed as in any manner creating or establishing a relationship of copartners between the parties, or as constituting the CITY, including its officers, employees, and agents, the agent, representative, or employee of the COUNTY for any purpose, or in any manner, whatsoever. The parties are to be and shall remain independent contractors with respect to all services performed under this Agreement.

SECTION 12. DISCLAIMER OF THIRD PARTY BENEFICIARIES. This Agreement is solely for the benefit of the formal parties hereto and no right or cause of action shall accrue under or by reason hereof, to or for the benefit of any third party not a formal party hereto.

SECTION 13. UTILIZATION OF DOCUMENTS. All documents including user manuals and/or technical reports, if any which are necessary for the installation, maintenance, design limitations or operational requirements and for performance of the COUNTY'S responsibilities under this Agreement shall, during the term of the Agreement, be provided to the COUNTY in written and/or digital form for use by the COUNTY. Such use may include, but shall not be limited to, reproduction, distribution and preparation of derivative works as necessary. The COUNTY shall reciprocally provide the CITY with such documentation as it may have and which are necessary for the CITY'S use of the FOCN system.

SECTION 14. EQUAL OPPORTUNITY EMPLOYMENT. The parties agree that they will not discriminate against any employee or applicant for employment for work under this Agreement because of race, color, religion, sex, age, national origin, or disability and will take steps

to ensure that applicants are employed, and employees are treated during employment, without regard to race, color, religion, sex, age, national origin or disability. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

SECTION 15. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida and the parties consent to venue in the Circuit Court in and for Seminole County, Florida, as to State actions and the United States District Court for the Middle District of Florida as to Federal actions.

SECTION 16. INTERPRETATIONS. In the event any provision of this Agreement conflicts with, or appears to conflict with, the other terms of this Agreement including exhibits or attachments, hereto, if any, this Agreement shall be interpreted as a whole to resolve any inconsistency. The parties agree to engage in positive and constructive communication to ensure that the positive collaboration of the parties occurs.

SECTION 17. FORCE MAJEURE. In the event any party hereunder fails to satisfy in a timely manner any requirements imposed by this Agreement, due to a hurricane, flood, tornado, or other act of God or force majeure, then said party shall not be in default hereunder, provided, however, that performance shall recommence upon such event ceasing its effect.

SECTION 18. MODIFICATIONS, AMENDMENTS OR ALTERATIONS. No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith; provided, however, no formal amendment shall be required for mere changes or substitution of designated contact persons per Section 7 hereof or for changes to Exhibits "A" and "B" per Section 5 hereof.

SECTION 19. SEVERABILITY. If any part of this Agreement is found invalid or unenforceable by any court, such invalidity or unenforceability shall not affect the other parts of this Agreement if the rights and obligations of the parties contained herein are not materially prejudiced and if the intentions of the parties can continue to be affected. To that end, this Agreement is declared severable.

SECTION 20. BINDING EFFECT. This Agreement shall be binding upon and inure to the benefit of the parties hereto and the successors in interest, transferees and designees of the parties.

SECTION 21. PUBLIC RECORDS. Each party shall allow public access to all documents, papers, letters or other materials which have been made or received in conjunction with this Agreement in accordance with *Chapter 119, Florida Statutes*.

SECTION 22. RECORDS AND AUDITS. The parties agree to maintain all books, documents, papers, accounting records and other evidences pertaining to work performed under this Agreement in such a manner as will readily conform to the terms of this Agreement and to make such materials available at all reasonable times during the Agreement period

and for five (5) years from the date of final payment under the contract for audit or inspection.

Section 23. Conflicts Of Interest.

(a) The parties agree that they will not engage in any action that would create a conflict of interest in the performance of their obligations pursuant to this Agreement or which would violate or cause others to violate the provisions of *Part III, Chapter 112, Florida Statutes*, relating to ethics in government.

(b) The parties hereby certify that no officer, agent or employee has any material interest (as defined in *Section 112.312(15), Florida Statutes*, as over 5%) either directly or indirectly, in the business of the party to be conducted hereunder; that no such person shall have any such interest at any time during the term of this Agreement; and that no person shall use any monies derived under this Agreement for lobbying the Legislature in contravention of *Section 216.347, Florida Statutes*. The occurrence of an event of ethics violation as envisioned herein shall be grounds for unilateral termination of this Agreement by the non-offending party.

SECTION 24. COMPLIANCE WITH LAWS AND REGULATIONS. In performing under this Agreement, the parties shall abide by all statutes, ordinances, rules, and regulations pertaining to, or regulating to the acts contemplated to be performed herein, including those now in effect and hereafter adopted. Any material violation of said statutes, ordinances, rules, or regulations shall constitute a material breach of this Agreement, and entitle the non-violating party to terminate this

Agreement immediately upon delivery of written notice of termination to the violating party.

SECTION 25. DISPUTE RESOLUTION. Disputes shall be resolved in accordance with any dispute resolution agreements pertaining to the parties and the provisions of Chapter 164, Florida Statutes.

SECTION 26. CONSTRUCTION OF AGREEMENT. This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the parties, it being recognized that each of the parties have contributed substantially and materially to the preparation hereof.

SECTION 27. HEADINGS. All sections and descriptive headings in this Agreement are inserted for convenience only and shall not affect the construction or interpretation hereof.


SECTION 28. ENTIRE AGREEMENT. This Agreement states the entire understanding between the parties and supersedes any written or oral representations, statements, negotiations, or agreements to the contrary. This Agreement shall bind the parties, their assigns, and successors in interest.

SECTION 29. EXHIBITS. Exhibits to this Agreement, if any, shall be deemed to be incorporated into this Agreement as if fully set forth verbatim into the body of this Agreement.


SECTION 30. COUNTERPARTS. This Agreement may be executed in any number of counterparts each of which, when executed and delivered, shall be an original, but all counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth below.

ATTEST:

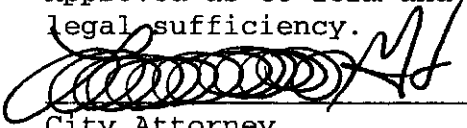

BARBARA J. BARBOUR
City Clerk

CITY OF OVIEDO

By: 
THOMAS WALTERS
Mayor

Date: April 5, 2004

Approved as to form and legal sufficiency.


City Attorney
LONNIE N. CNOOT
ATTEST:

BOARD OF COUNTY COMMISSIONERS
SEMINOLE COUNTY, FLORIDA

MARYANNE MORSE
Clerk to the Board of
County Commissioners of
Seminole County, Florida.

By: _____
DARYL G. MCLAIN, Chairman

Date: _____

For the use and reliance
of Seminole County only.

As authorized for execution
by the Board of County Commissioners
at their _____, 20____
regular meeting.

Approved as to form and
legal sufficiency.

County Attorney

AS/lpk
5/14/03 1/22/04 2/4/04 3/12/04
interlocal w/ Oviedo - fiber optic

Attachments:

- Exhibit "A" - Schedule of Charges
- Exhibit "B" - Schedule of Service Charges

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**EXHIBIT "A"- SCHEDULE OF CHARGES
FIBER OPTIC COMMUNICATION NETWORK
INTERLOCAL AGREEMENT**

Schedule of Maintenance Charges

Number of Linear Foot of Cable: 0 L.F.

Charges per L.F. of Cable: 13.0 Cents per L.F.

Total Annual Maintenance Charge: \$ 0

Distance Calculations By: _____ Date: _____
David Muniz

Approved By: _____ Date: _____
Melonie C. Barrington

**EXHIBIT "B"- SCHEDULE OF DATA TRANSPORT SERVICE CHARGES
FIBER OPTIC COMMUNICATION NETWORK
INTERLOCAL AGREEMENT**

Schedule of Maintenance Charges

Service Type: Ethernet 10Mbps

Service Location: Oviedo City Hall

Segment One(1): From: _____

Segment Two(2): To: _____

As of _____

(Date)

Charge per month per segment: Ethernet 10Mbps: \$150.00

Installation charge per segment: Ethernet: \$ \$500.00

Total Charge: Installation: \$ 500.00 (one time)

Annual: \$1800.00

Approved By: _____ Date: _____

Gregory A. Holcomb