To: President and Members of Town Council

From: Dustin Anderson, Town Manager
Lance Reinsma, Information Technical Specialist

Date: September 29, 2016

Re: Agreement between Town of Munster and Munster Medical Research Foundation

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We are requesting approval from the Munster Town Council to enter into an agreement between the Town of Munster and the Munster Medical Research Foundation, Inc. (MMRF), an Indiana non-profit corporation d/b/a The Community Hospital, for Right-of-Way access of a fiber optic network. Following attachments include lease agreement, IRU (Indefeasible Right of Use), mapping of network, Subscription Agreement Sample, and Terms of Use.

In August 2014, MMRF proposed to the Town of Munster to undergo a project in which MMRF would build out a fiber optic network at their expense, utilizing the Town of Munster's Right-of-Way. In exchange for access to the fiber, the Town would be granted several strands of fiber, along with any other businesses that wish to subscribe via payment schedule. Subscriptions from businesses would be retained by a management company on behalf of the Town of Munster. The proceeds would offset maintenance of the fiber optic network and possible future expansion

MMRF will be responsible for installing any new conduit and fiber optic cabling. When the project is complete, MMRF will be an anchor tenant of the network, with a determined amount of fiber strands. Completion of the project will be set by an arbitrary financial date, meaning MMRF will release ownership of the conduit/fiber once the project is self-funded through business subscriptions. If business subscriptions fail to fund the ongoing maintenance, MMRF will still release ownership with an agreement to monetarily maintain it for 35 years. At the time of physical completion, the Town of Munster will take proprietorship of the conduit/fiber optics for the cost of $1.

This project comes at an opportune time for the Town of Munster because of the need to upgrade our fiber optic network. The Town is operating on a lower rated fiber, and is unable to handle the network speed to operate in an efficient manner. The Town will also be able to expand to other locations not covered now with fiber, along with creating a "ring" network with the School Town of Munster for a seamless backup.

Besides the benefits the Town and MMRF receive, other Munster businesses will be able to join the fiber network via a payment subscription. This is an incentive for businesses that are looking to Munster for relocating. Munster will also position itself in Northwest Indiana as a high-tech friendly Town in which businesses will have access to high-speed network technology.

Recommendation: By motion and voice vote, approve the agreement between the Town of Munster and the Munster Medical Research Foundation and direct the Town Manager to execute said agreement.

AGREEMENT FOR LEASE OF TOWN CONDUIT AND PUBLIC RIGHT-OF-WAY FOR LOCATION OF NEW CONDUIT AND FIBER OPTIC CABLE

This Agreement for Lease of Town Conduit and Public Right-of-Way for the Location of New Conduit and Fiber Optic Cable (this "Agreement") is made and entered into on October ___, 2016, between the Town of Munster, Indiana, an Indiana municipal corporation (the "Town") and Munster Medical Research Foundation, Inc., an Indiana non-profit corporation d/b/a The Community Hospital ("MMRF"). The Town and MMRF are each referred to herein as a "Party" and together as the "Parties".

Background

A. MMRF is a non-profit hospital located in Munster, Indiana which provides a broad range of healthcare services at its main hospital campus and affiliated facilities in Munster.

B. MMRF desires to enhance its communications systems, facility integration and overall delivery of healthcare services, by investing in the installation and use of a fiber optic network.

C. The Town owns certain underground conduit facilities located within the boundaries of the Town of Munster, including a 2" conduit (of approximately 12,000 feet) located from the Performing Arts Center to Calumet Avenue and Columbia Avenue as depicted in red on **Exhibit A** attached hereto (the "Town Conduit").

D. MMRF desires to furnish and install (i) approximately 12,000 feet of 114 Strand SM outdoor fiber optic cable within the Town Conduit (together with installing in-ground handholes for six (6) handoff points); and (ii) approximately 3,800 feet of new conduit (along with necessary handholes for four (4) handoff points) and 144 fiber optic cable within public rights-of-way, from Calumet Avenue down Columbia Avenue and down and around Hapsburg Drive, as depicted in blue on **Exhibit A** attached hereto (the "New Conduit" or "MMRF Conduit").

E. The Town desires to (i) lease space within the Town Conduit, including without limitation, access rights to the handholes throughout the Town Conduit (if any) (the "Leased Conduit") to MMRF for the building of a new fiber network, and (ii) permit MMRF to install the New Conduit within the public rights-of-way by granting a long-term lease thereon (generally in the locations depicted in blue on **Exhibit A**), all in exchange for the consideration and on the terms and conditions set forth in this Agreement.

Agreement

In consideration of the mutual covenants, terms, conditions and obligations contained herein, and intending to be legally bound, the Parties agree as follows:

1. **Background Provisions**. The background provisions above are incorporated into the body of this Agreement as if fully set forth herein.

2. **Definitions**. As used in this Agreement, the following words and phrases shall have the meaning given in this Section.

A. "Lease Area" means the 3 feet located on either side of the center line of the "as-built" location of the Leased Conduit and New Conduit.

B. "MMRF Fiber" means the strands of fiber optic cable installed by MMRF in the Leased Conduit and the New Conduit, for which MMRF retains an indefeasible right of use pursuant to the terms of this Agreement and/or Transfer and Assignment Agreement (as defined in Section 5).

C. "Public Rights-of-Way" means streets, alleys, bridges, roads, lanes, sidewalks, public easements, public rights of way, and dedicated easements within the Town.

D. "Town Fiber" means those strands of fiber optic cable installed by MMRF which are transferred to the Town pursuant to terms and conditions of the Transfer and Assignment Agreement (as defined in Section 5 below).

3. **Lease of Conduit; Lease within Public Rights-of-Way**.

A. Lease of Town Conduit. The Town hereby leases to MMRF, sufficient space within the Town Conduit for MMRF to install, locate and maintain 114 Strand SM outdoor fiber optic cable (including the Town Fiber and MMRF Fiber) together with the right to make reasonable and lawful use of the Public Rights-of-Way within the Lease Area in the segments shown in red on **Exhibit A**, solely for access to the Town Conduit in connection with the operation, maintenance, repair and replacement of a fiber optic network.

B. Lease within Public Rights-of-Way. The Town hereby grants to MMRF the right to install, locate and maintain the New Conduit, along with MMRF Fiber and Town Fiber, and to make reasonable and lawful use of the Public Rights-of-Way within the Lease Area in the segments shown in blue on **Exhibit A**, solely for access in connection for the construction, operation, maintenance, repair and replacement of a fiber optic network. The Town reserves the right to grant similar uses, franchises, permits or any other rights with regard to the Public Rights-of-Way or any other Town interest to any other person; provided the same do not unreasonably interfere with the location and use of the New Conduit. The rights granted under this lease are also expressly subject to any rights granted previously by the Town to any person.

C. Assignment and Subletting. MMRF shall not assign the leases granted in this Section nor sublease its interest in the Leased Conduit or the Lease Area or any part thereof without the prior written consent of the Town; provided, however, that the consent of the Town shall not be required for an assignment of MMRF's interest herein to the Town or to an entity that directly or indirectly controls, is controlled by or is under common control with MMRF.

4. **Term**. The term of this Agreement and of the leases granted herein (the "Term") shall commence upon approval of this Agreement by the Town of Munster (the "Effective Date") and shall terminate at 11:59 p.m. on the twenty-fifth (25th) annual anniversary of the Effective Date, unless earlier terminated by either Party in accordance with the provisions herein. MMRF may renew the leases granted herein for an additional ten-year term upon sixty (60) days' written notice to the Town of its intent to renew. The extended term, if elected by MMRF, shall be governed by the same terms and conditions as the initial twenty-five year term unless otherwise agreed to by the Parties in writing.

5. **Consideration**. In exchange for the leasehold rights granted by the Town, MMRF agrees that from and after the date it completes (i) the installation of the MMRF Fiber within the Town Conduit and New Conduit, and (ii) applicable testing of such fiber (the "Transfer Date"), the parties agree:

A. MMRF will adopt the "Dark Fiber IRU Terms of Use" in the form attached to this Agreement as **Exhibit B** (the "Dark Fiber Terms of Use");

B. MMRF will execute and deliver to the Town, a Transfer and Assignment Agreement in the form attached to this Agreement as **Exhibit C** (the "Transfer and Assignment Agreement") transferring and assigning to the Town (i) ownership of the New Conduit, (ii) ownership of the Town Fiber, subject to MMRF's reservation/retention of an indefeasible rights of use in favor of MMRF as to certain strands of the fiber optic cable (which rights shall be considered Customer Fibers as defined in the Dark Fiber Terms of Use), and (iii) assigning MMRF's rights as the Provider under the Dark Fiber Terms of Use;

C. MMRF will execute and deliver to the Town, a Commitment in the form attached to this Agreement as **Exhibit D** committing to pay the net cost of operating and maintaining the fiber optic network until its operation is sustainable; and

D. The Town will deliver to MMRF an Acknowledgement in the form attached to this Agreement as **Exhibit E**, acknowledging that MMRF is entitled to a full credit against any and all costs and assessments that could be charged to it as an owner of the IRUs under the Dark Fiber Terms of Use, for the life of such IRUs.

6. **Installation/Improvements of Conduit and Fiber.**

A. Town Conduit. In connection with MMRF's installation of fiber within the Town Conduit, MMRF shall have the right (at its sole cost and expense) to make certain improvements to the Town Conduit, including the installation/construction of six (6) handoff points, consisting of in-ground handholes equipped with appropriate splice enclosures, to accommodate potential future expansion into the following locations: Performing Arts Center, Cancer Resource Center, Dr. Medina Office, Ridge Road Business Center, Community Hospital and Lake Park Business Center.

B. New Conduit. In connection with MMRF's installation of New Conduit, MMRF shall have the right (at its sole cost and expense) to install/construct four (4) handoff points, consisting of in-ground handholes equipped with appropriate splice

enclosures, to accommodate potential future expansion into the following locations: Fitness Point, Community Diagnostics Center, Community Sleep Center (existing conduit) and Hartsfield Village (existing conduit).

7. **Construction Standards and Other Rights**.

A. Design and Construction Standards. The parties acknowledge that MMRF intends to engage Midwestern Electric, Inc. as its contractor ("Contractor") to complete the construction of the New Conduit and installation of fiber optic cable within the Town Conduit and New Conduit. MMRF shall require Contractor to comply with all of the construction and maintenance procedures and requirements of Town law pertaining to the use of and work in the public right-of-way.

B. Inspection of Town Conduit. Prior to installing MMRF Fiber and Town Fiber in the Leased Conduit, MMRF shall inspect the Town Conduit, document the condition of the segment in a format agreeable to both Parties, and provide such documentation to the Town. Such documentation shall include, for each segment in the Leased Conduit:

(1) identification of any empty conduits that are not continuous, are obstructed, or are otherwise not usable;

(2) physical labeling of the identified bad conduits at the endpoints;

(3) identification of the cables installed in non-empty conduits by cable type and owner (if available based on labels and markings);

(4) GIS coordinates of all access points; and

(5) identification of any abandoned fiber cables.

If MMRF discovers damage to the Town Conduit, it shall immediately notify the Town of such damage. In the case of damage, MMRF shall install the MMRF Fiber in undamaged conduit, where possible. If no individual conduit is undamaged in a particular segment, the Town shall be responsible for repairing or replacing at least one conduit, which shall then be the Leased Conduit for that segment. Upon the Town's request, MMRF shall repair or replace damaged conduit at the Town's sole cost and expense.

C. As-built Drawings. MMRF shall provide the Town with "as-built" drawings for the New Conduit upon completion. The "as-built" location of the New Conduit (as well as existing location of the Town Conduit) shall be the centerline for determining the Lease Area.

D. Maintenance and Repair Responsibilities. The parties acknowledge and agree that from and after the date of the Transfer Date, the Town shall have rights under and be responsible for the operation, maintenance and repair of the Town Conduit, New

Conduit, Town Fiber and MMRF Fiber, as more specifically set forth in the Dark Fiber Terms of Use and MMRF shall not have responsibility for any such costs.

E. Relocation. The Town reserves the right, at its cost (and by providing at least 30 days prior notice (unless failure to relocate poses a threat to health, safety or welfare of the public or individuals, as determined by the Town, in which case the Town shall have the right to move the conduit and fiber without such notice or with a lesser notice)) to relocate any segment of the Leased Conduit or the New Conduit.

8. **Notice**. All notices shall be in writing and shall be delivered by certified mail return receipt requested or by overnight delivery that is capable of providing proof of delivery. Any such notice shall be deemed effective on the date of mailing. All notices shall be addressed to the Parties as specified below:

To Town: Town of Munster
1005 Ridge Road
Munster, IN 46321
Attention: Town Manager

To MMRF: Munster Medical Research Foundation, Inc.
901 MacArthur Boulevard
Munster, IN 46321
Attention: Chief Information Officer

9. **Removal/Ownership of Facilities**. Upon the termination or non-renewal of this Agreement, and at MMRF's discretion, MMRF shall either remove all facilities owned by MMRF within the Town Conduit and the Lease Area, at MMRF's sole cost and expense, or abandon the facilities in place. All facilities abandoned in place, which are not otherwise owned by the Town, shall become the property of the Town.

10. **Termination**.

A. Material Breach. If either Party defaults in the performance of any material term of this Agreement and does not substantially cure such default within sixty (60) days after receiving written notice of such default, then the non-defaulting Party may terminate this Agreement by providing ten (10) days prior written notice of termination to the defaulting Party.

B. Bankruptcy or Insolvency. Either Party may terminate this Agreement effective upon written notice stating its intention to terminate in the event the other Party: (1) makes a general assignment of all or substantially all of its assets for the benefit of its creditors; (2) applies for, consents to, or acquiesces in the appointment of a receiver, trustee, custodian, or liquidator for its business or all or substantially all of its assets; (3) files, or consents to or acquiesces in, a petition seeking relief or reorganization under any bankruptcy or insolvency Laws; or (4) a petition seeking relief or reorganization under

any bankruptcy or insolvency Laws is filed against that other Party and is not dismissed within sixty (60) days after it was filed.

11. **Confidential Information**. Records maintained by the Town are subject to public disclosure pursuant to the Indiana Access to Public Records Act (I.C. § 5-14-3-1 et seq. ("APRA"). Certain confidential business and other records are exempt under APRA or do not meet the definition of public records. If MMRF provides to the Town documents that include trade secrets, privileged information, or confidential commercial/financial information, or if the Town provides documents to MMRF that it considers confidential or otherwise not subject to disclosure under APRA ("Confidential Information"), the Party disclosing Confidential Information (the "Discloser") shall segregate any documents including Confidential Information from other documents provided to the Party receiving Confidential Information (the "Recipient") and shall clearly identify such documents with a stamp, watermark or other clear mark identifying the documents as Confidential Information.

A. Subject to the provisions and exceptions set forth in APRA, the Recipient (i) shall use such Confidential Information only in order to fulfill its obligations under this Agreement (the "Purpose"); (ii) shall reproduce such Confidential Information only to the extent necessary for the Purpose; (iii) shall not disclose such Confidential Information to any other party without prior written approval of the Discloser; and (iv) shall protect such Confidential Information with at least the same degree of care as it normally exercises to protect its own proprietary information of a similar nature, which shall be no less than reasonable care.

B. Notwithstanding the foregoing, nothing in this Agreement shall restrict either Party with respect to information or data identical or similar to that contained in the Confidential Information of the other Party but which (i) that Party rightfully possessed before it received such information from the other as evidenced by written documentation; (ii) subsequently becomes publicly available through no fault of that Party; (iii) is subsequently furnished rightfully to that Party by a third party without restrictions on use or disclosure; or (iv) is required to be disclosed by law, provided that the disclosing Party will exercise reasonable efforts to notify the other Party prior to disclosure.

12. **Representations and Warranties**. Each Party represents and warrants that:

A. It has full right and authority, including any requisite corporate authority, to perform its respective obligations under this Agreement;

B. The execution of this Agreement is not violative of its charter, by-laws or any law, regulation or agreement by which it is bound or to which it is subject;

C. No litigation or governmental proceeding is pending or threatened in writing which might have a material adverse effect on this Agreement, the transaction contemplated by this Agreement or the rights of the Parties hereunder.

13. **Miscellaneous Provisions**.

A. Scope of Agreement. If the scope of any provision of this Agreement is too broad in any respect whatsoever to permit enforcement to its fullest extent, then such provision shall be enforced to the maximum extent permitted by law, and the Parties consent to and agree that such scope may be judicially modified accordingly and that the whole of such provision of this Agreement shall not thereby fail, but that the scope of such provision shall be curtailed only to the extent necessary to conform to law.

B. Time of Performance. Time is expressly made of the essence with respect to each and every term and provision of this Agreement.

C. Force Majeure. Neither Party shall be in default by reason of any failure or delay in performance of this Agreement of its terms and conditions, or one or more of its obligations hereunder, and such excused Party's performance of such obligation or obligations shall be excused and extended for and during the period of any such delay if such failure arises out of causes beyond the control of the non-performing Party including, but not restricted to, acts of God or nature, including an earthquake, flood or tornado; acts of governmental authority, government codes, ordinances, actions, laws, rules, regulations or restrictions; insurrections, war or civil disorder; fires, floods, accidents; epidemics, quarantines; restrictions; strikes or other labor disputes (other than such excused Party's employees); lack of or delay in transportation, freight embargoes, inability to secure raw materials or transportation facilities; acts of omissions of other entities or any and all other causes beyond such Party's reasonable control. Such Party shall notify the other Party in writing of the existence of the event relied on and the cessation or termination of said event of Force Majeure and such Party shall exercise commercially reasonable efforts to minimize the time of any such delay.

D. Amendment. No amendments, changes or modifications to this Agreement shall be valid except if the same are in writing and signed by a duly authorized representative of each of the Parties. Neither Party shall assign any of its rights hereunder without the prior written consent of the other Party.

E. Assignment. This Agreement may not be assigned by MMRF without the prior written consent of the Town. This Agreement shall be binding upon and inure to the benefit of the heirs, successors and assigns of the Parties.

F. Third Party Beneficiaries. This Agreement is entered into solely for the benefit of the Parties and shall not confer any rights upon any person or entity not a party to this Agreement.

G. Waiver. The failure of either Party at any time to require performance by the other Party of any provision of this Agreement shall not effect in any way the full right to require such performance at any subsequent time; nor shall the waiver by either Party of a breach of any provision of this Agreement be taken or held to be a waiver of the provision itself.

H. Applicable Law; Venue. This Agreement shall be construed in accordance with the Laws of the State of Indiana. Any action or proceeding brought to interpret or enforce the provisions of this Agreement shall be brought before the state or federal court situated in Lake County, Indiana and each Party consents to jurisdiction and venue before such courts.

I. Entire Agreement. This Agreement, including any Exhibits, contains the entire agreement between the Parties and supersedes all prior and contemporaneous communications, understandings and agreements with respect to the subject matter hereof, whether written or oral, expressed or implied. No other agreement, statement, promise, or practice between the Parties relating to the Agreement shall be binding upon the Parties.

J. Counterparts. This Agreement may be executed in counterparts, each of which when executed and delivered shall be an original, but all of which shall constitute one and the same instrument. Facsimile signatures and scanned and emailed signatures shall be treated as originals.

[Signature page follows]

IN WITNESS WHEREOF, and in order to bind themselves legally to the terms and conditions of this Agreement, the duly authorized representatives of the Parties have executed this Agreement as of the Effective Date.

TOWN OF MUNSTER, INDIANA

By: _____
Printed:_____
Title: _____

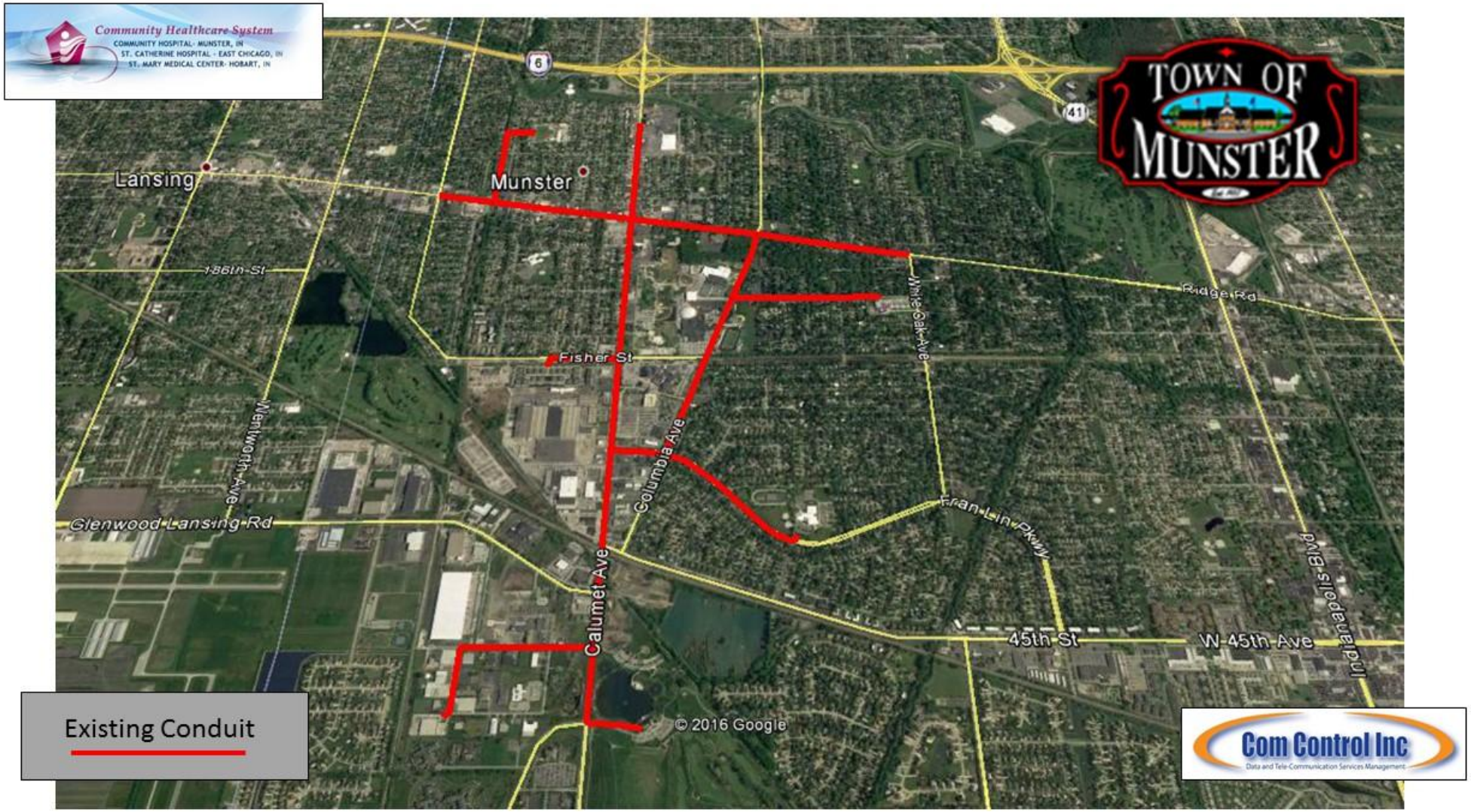
MUNSTER MEDICAL RESEARCH FOUNDATION, INC.

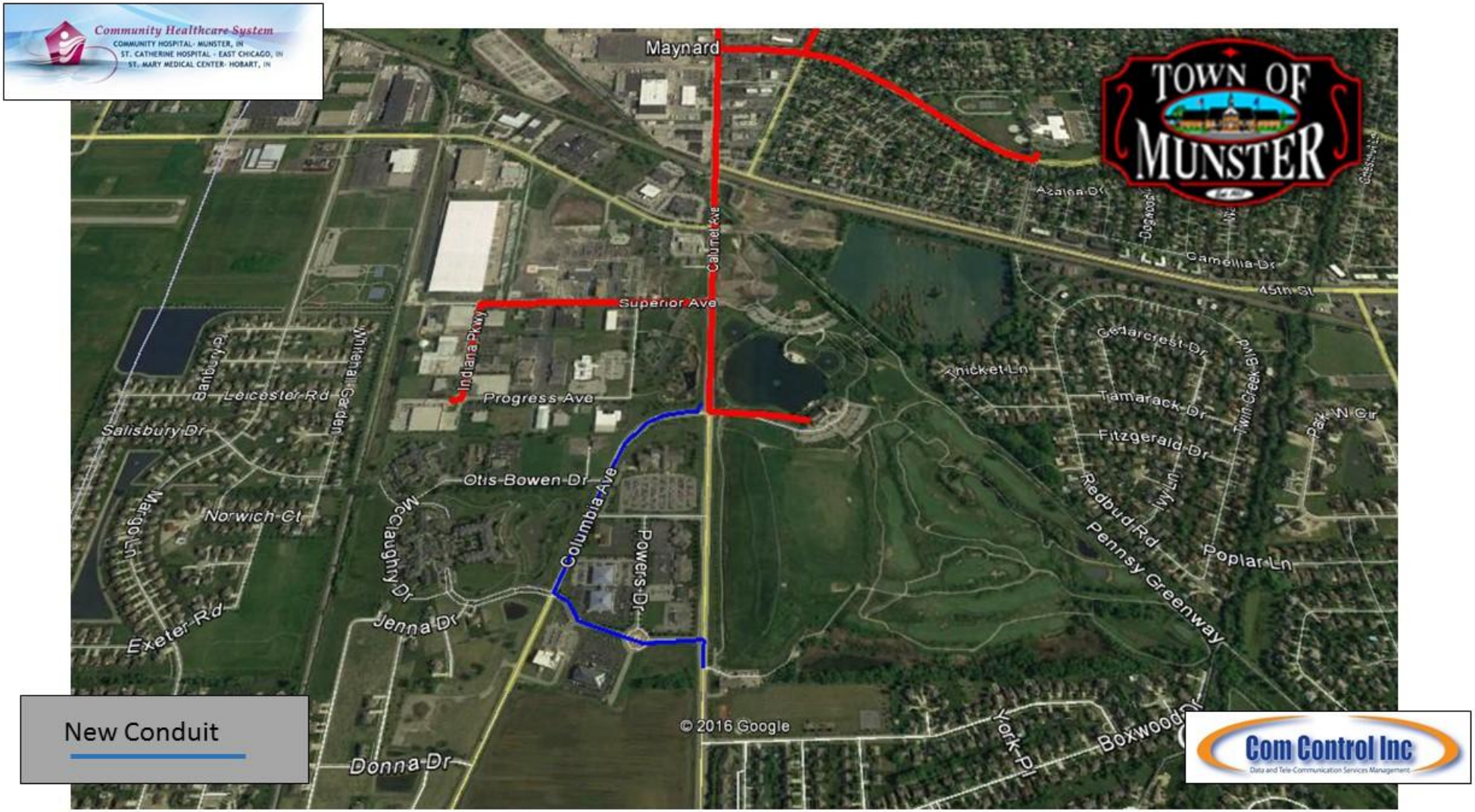
By: _____
Printed:_____
Title: _____

EXHIBIT A

LOCATION OF TOWN CONDUIT & NEW CONDUIT

[Please see attached]


Community Healthcare System
COMMUNITY HOSPITAL- MUNSTER, IN
ST. CATHERINE HOSPITAL - EAST CHICAGO, IN
ST. MARY MEDICAL CENTER- HOBART, IN
TOWN OF MUNSTER
Lansing
Munster
186th St
Fisher St
Wentworth Ave
Glenwood Lansing Rd
Columbia Ave
Calumet Ave
White Oak Ave
Ridge Rd
Franklin Pkwy
45th St
W 45th Ave
Indianapolis Blvd
© 2016 Google
Existing Conduit
Com Control Inc
Data and Tele-Communication Services Management


Community Healthcare System
COMMUNITY HOSPITAL- MUNSTER, IN
ST. CATHERINE HOSPITAL - EAST CHICAGO, IN
ST. MARY MEDICAL CENTER- HOBART, IN
TOWN OF MUNSTER
Maynard
Calumet Ave
Superior Ave
Indiana Pkwy
Progress Ave
Otis Bowen Dr
Columbia Ave
Powers Dr
McCaughry Dr
Jenna Dr
Donna Dr
Banbury Pl
Leicester Rd
Whitehall Garden
Salisbury Dr
Norwich Ct
Marygold Ln
Exeter Rd
Azalea Dr
Camellia Dr
45th St
Cedarcrest Dr
Cricket Ln
Tamarack Dr
Fitzgerald Dr
Twin Creek Blvd
Park W Cir
Redbud Rd
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Com Control Inc
Data and Tele-Communication Services Management
New Conduit

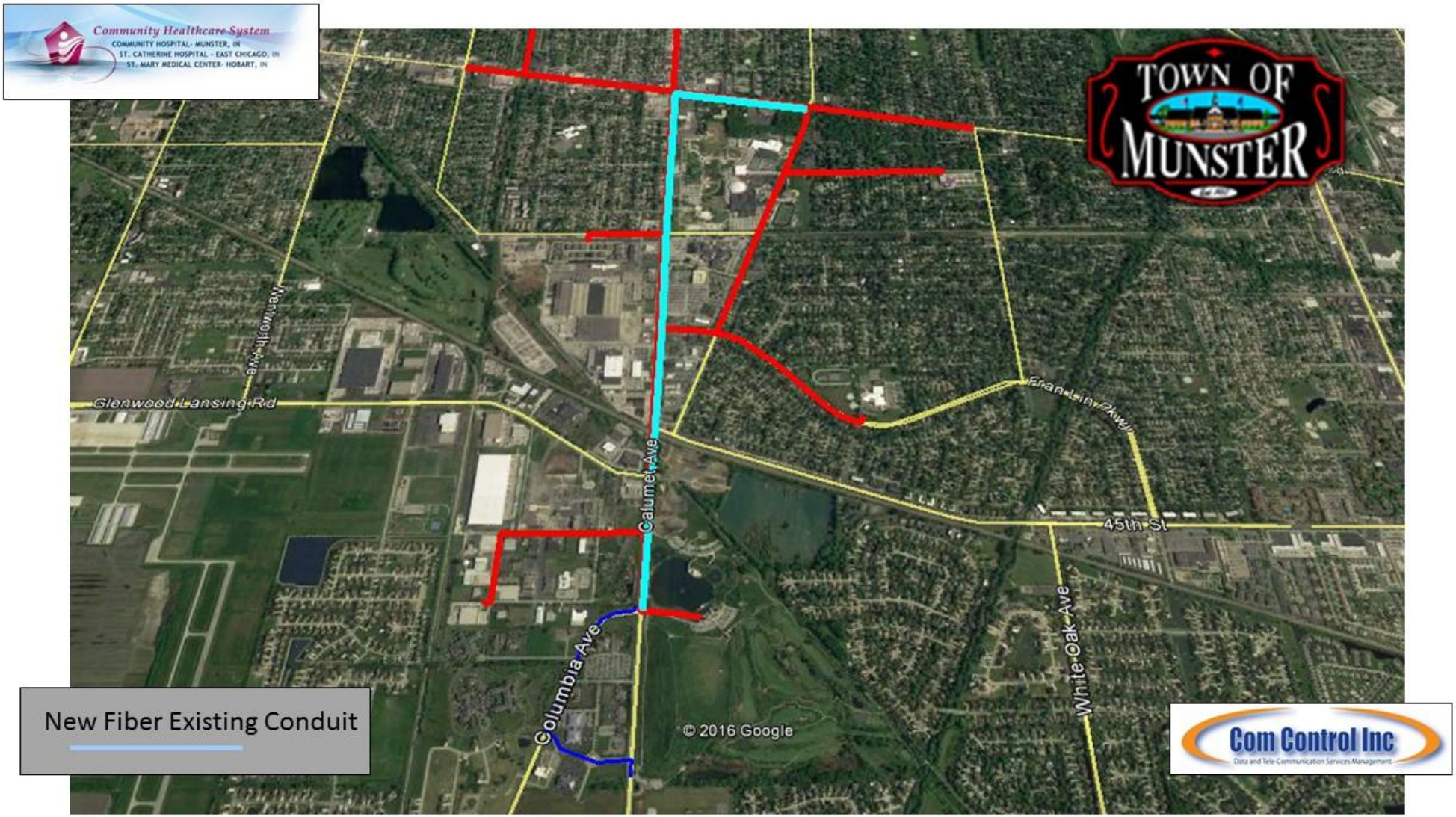

Community Healthcare System
COMMUNITY HOSPITAL- MUNSTER, IN
ST. CATHERINE HOSPITAL - EAST CHICAGO, IN
ST. MARY MEDICAL CENTER- HOBART, IN
TOWN OF MUNSTER
Glenwood Lansing Rd
Calumet Ave
Columbia Ave
Franklin Pkwy
45th St
White Oak Ave
© 2016 Google
New Fiber Existing Conduit
Com Control Inc
Data and Tele-Communication Services Management

EXHIBIT B
DARK FIBER TERMS OF USE

[Please see attached]

DARK FIBER IRU TERMS OF USE

These DARK FIBER IRU TERMS OF USE (the "**Terms of Use**") are promulgated as of October __, 2016 (the "**Effective Date**") by MUNSTER MEDICAL RESEARCH FOUNDATION, INC. D/B/A COMMUNITY HOSPITAL ("**Provider**").

RECITALS

1. Provider will install certain fiber optic telecommunications cables identified below which may be made available to other parties either by purchase or by grant.
2. Those parties who acquire an IRU to use certain dark fiber strands within Provider's network are referred to in these Terms of Use as a Customer and acquire an IRU on the terms and conditions set forth in these Terms of Use.
3. Each Customer wishes to have Provider perform, and Provider is willing to perform, certain maintenance and operations functions for Customer during the period of time and on the terms and conditions specified in these Terms of Use.

AGREEMENT

Provider and Customer agree as follows:

Article 1. DEFINITIONS

Capitalized terms used in these Terms of Use shall have the meanings set forth below or where they are defined in the text of the Terms of Use.

"**Actual Cost**" means actual direct cost paid to Third Parties, including any Licensor, and actual cost of internal personnel, including appropriate allocations of benefit and overhead charges in addition to base salary/wages.

"**Associated Property**" means the Required Rights, Cable Accessories and Structures.

"**Cable**" means fiber optic cable along the Route identified in Exhibit A, having fiber optic filaments contained in any suitable jacketing or sheath.

"**Cable Accessories**" means the attachment and suspension hardware, and other components necessary either for the placement or protection of the Cable either underground or overhead or for the continuity of the fiber filaments within the Structures.

"**Customer Fibers**" means the Fibers in which a Customer acquires an IRU, pursuant to the terms and conditions herein. The number and location of Customer Fibers will be set forth in the IRU Grant.

"**Customer Side**" means the side of the Demarcation Point opposite the Provider System.

"**Customer System**" means the telecommunications system owned or controlled by the Customer on the Customer Side of the Demarcation Points including, without limitation, all associated Equipment.

"**Decommissioning**" means the act of permanently taking a Cable out of service in compliance with the procedures contained in Section 3.2.

"**Demarcation Point**" means a boundary point located at a splice point where a cable from the Customer System is joined to the Customer Fibers. On the side of the Demarcation

Point where the Customer System is located, which shall be called the "**Customer Side**," Customer shall have all responsibility. The other side of the Demarcation Point shall be called the "Network Side," on which the Customer Fibers are located and on which Provider shall have responsibilities and rights as set forth herein.

"**Equipment**" means the power equipment, electronic and optronic equipment including, without limitation, repeaters, junctions, patch panels, alarm monitoring equipment and other equipment necessary to provide a network of fiber optic transmission capacity and located on the Customer Side of the Demarcation Point. The word "equipment," when not capitalized, refers to equipment of any type.

"**Fibers**" means the fiber optic filaments contained in the Cable.

"**Force Majeure Event**" means any event or circumstance beyond the reasonable control of the impacted Party, including but not limited to earthquake, hurricane, fire, flood, lightning, sinkhole or other forces of nature, acts of war, terrorism or civil unrest, strikes, lockouts or other labor unrest, or legal order, government action or application of laws, regulations or codes.

"**IRU**" means an indefeasible right of use permitting a Customer to have exclusive use of the Customer Fibers and non-exclusive use of the Associated Property throughout the Term.

"**IRU Grant**" means an instrument, the form of which is attached as Exhibit B, by which Provider transfers an IRU in one or more Customer Fibers.

"**Licensor**" means the grantor, licensor or issuer of any Required Right.

"**M&O Agreement**" means the Maintenance and Operation Agreement, pursuant to which a person will perform certain maintenance services on behalf of Provider and all Customers.

"**Network Side**" means the side of the Demarcation Point on which the Customers Fibers are located.

"**Pro Rata Share**" means a fraction, the numerator of which is the number of Customer Fibers for a Customer in the subject Cable and the denominator of which is the total number of Fibers within that Cable.

"**Provider Fibers**" means all Fibers in the Cable which is the subject of these Terms of Use other than the Customer Fibers.

"**Provider System**" means the entire communications system assembled by Provider, including the Cable, Cable Accessories, Structures and Required Rights.

"**Required Right**" means any agreement, conveyance, easement, license, franchise or permit obtained by Provider from a government entity or other Third Party governing the terms under which Provider may access and use public rights-of-way, private property, Structures, and other property in order for Provider to use, install, construct and maintain Cable, Cable Accessories and Structures.

"**Route**" means the path or paths on which the Cable is located, as identified in Exhibit A.

"**Route Segment**" means a portion of the Route between any two splice points.

"**Structures**" means towers, poles, conduit, manholes, hand holes, splice cases, and

associated civil works on or in which the Cable is located.

"**Term**" means the period of time during which a Customer shall hold the IRU granted hereunder, which shall commence on the date of the IRU Grant and continue thereafter for a period ending twenty-five (25) years after the Effective Date, unless sooner terminated in compliance with these Terms of Use.

"**Third Party**" means any party, person or entity other than a Provider or a Customer or an affiliate of any one of them.

Article 2. CONDITIONS OF CUSTOMER FIBER USE

Section 2.1 Generally. A Customer may use the Customer Fibers for any lawful purpose, provided that such use is technologically compatible with the overall use of the Provider System for communications services and that the use does not interfere with the use of Customer Fibers by other Customers or the use of the Provider Fibers by Provider or any Third Party. Customer shall exercise its rights in the Customer Fibers and Associated Property in compliance with all applicable state, local, and federal laws, regulations, and codes. Except to the extent already satisfied by the Required Rights, Customer at its sole cost and expense shall obtain and maintain any and all necessary permits, licenses, easements, franchises and approvals that may be required by federal, state or local law, statute, regulation or ordinance and shall continuously comply with all such laws, statutes, regulations or ordinances as may now or in the future be applicable to (1) its control, operation or use of the Customer Fibers and (2) Customer's connection, installation, maintenance and operation of Equipment on the Customer Side of the Demarcation Point. Customer shall at Customer's expense be solely responsible for all aspects of the operation of the Customer System and the operation and maintenance of the Customer System and Equipment on the Customer Side of the Demarcation Point. Customer shall have no right to use the Provider Fibers or the Customer Fibers of other Customers. Customer shall ensure that the Equipment on the Customer Side shall be designed and deployed in a manner that will not conflict physically or otherwise interfere with Provider or other users of the Cable, Cable Accessories, or Structures, or with any other facilities permitted under the Required Rights. Customer shall also obtain any government approvals, licenses and permits necessary for the installation, maintenance, use and ownership of Equipment installed and/or used on the Customer Side of the Demarcation Point.

Section 2.2 Associated Property. Although Customer's right to use Customer Fibers shall be exclusive, Customer's incidental use of the Associated Property shall be nonexclusive and subject to the terms and conditions of these Terms of Use and the Required Rights, which Customer shall not violate.

Section 2.3 No Signal Regeneration or Space. Provider has no responsibility to provide equipment to regenerate or amplify the communications signals transmitted by Customer on the Customer Fibers, or to provide land or building space or electric power or any other support facility that would enable Customer to accomplish such regeneration. Customer may, as provided below, connect to the Customer Fibers to establish its own regeneration facilities.

Section 2.4 Connection to Customer Fiber. Customer's IRU in the Customer Fibers shall include a right to connect, at Customer's expense, the Customer Fibers to the Customer System or to the fibers or system of a Third Party at a reasonable number of mutually acceptable Demarcation Points using a Customer or Third Party's right-of-way or public right-of-way.

Customer shall obtain Provider's approval, not to be unreasonably withheld, of the location and manner in which such connections will be made at Provider's manholes, handholes or overhead splice cases. Customer shall at Customer's expense obtain and maintain rights of way, easements, franchises, permits and all other public and private approvals needed for installation of the facilities to be connected to the Customer Fibers, and upon reasonable request from Provider shall deliver to Provider proof that Customer holds such rights. Such connections shall be made in a manner consistent with the then current standard specifications of Provider and any relevant Licensor and in a manner that does not interfere with the performance of the Customer Fibers. Provider shall have the right to require that all splicing to the Customer Fibers and all other work at the Demarcation Point, within a Structure or on the Network Side be performed by Provider or a contractor approved and/or supervised by Provider, and within thirty (30) days after receipt of a reasonably itemized invoice, Customer shall reimburse Provider for the Actual Cost of any such work. If Provider elects to permit any such work to be performed by Customer or a Third Party selected by Customer, Provider shall have the right to supervise, review and approve such work, and within thirty (30) days after receipt of a reasonably itemized invoice, Customer shall reimburse Provider for the Actual Cost of any such supervision or review. Any review and approval of such work by Provider is done strictly for the protection of the Provider System, and will not create any warranties to Customer regarding the quality of such work.

Section 2.5 Access by Customer.

(a) In order to protect the integrity of the Provider System for all users thereof, Provider may from time to time promulgate reasonable standard procedures and restrictions on physical access to the Provider System. In no event shall Customer be permitted access to the property of Licensor, Provider or their affiliates without prior notice to Provider and agreement to a mutually acceptable time, and in no event shall Customer be permitted access to the electric space in or on the Structures. Any consent to Customer access by Provider shall be subject to the terms of the Required Rights. Customer shall be responsible for the Actual Cost of any safety inspectors or other technical personnel whose presence is required by Licensor or Provider.

(b) Customer shall at all times perform its work in accordance with the applicable provisions of local, state and federal occupational safety and health laws. Provider shall have the authority to suspend Customer work or operations in and around the Route if, in the sole judgment of Provider, at any time hazardous conditions arise or any unsafe practices are being followed by Customer employees, agents, or contractors. Customer agrees to pay Provider for having Provider's or Licensor's employee or agent present when Customer work is being done in and around the Route. Such charges shall be at Provider's Actual Cost. The presence of Provider's or Licensor's authorized employee or agents shall not create any warranties to Customer regarding the quality of the work observed or relieve Customer of its responsibility to conduct all of its work operations in and around the Route in a safe and competent manner, and in accordance with the terms and conditions of these Terms of Use.

(c) Any of Customer's representatives (including without limitation employees, contractors, or subcontractors) who enter the property of Provider, Licensor or their affiliates shall be qualified to perform all work in accordance with applicable requirements of local, state and federal occupational safety and health laws and prevailing industry standards. Customer shall ensure that the work will be completed

consistently with the foregoing requirements. Customer shall indemnify, defend and hold harmless Provider, Licensor and their affiliates for any damage or harm (including property damage or bodily injury) caused by or to any or all of Customer's representatives entering the property of Provider, Licensor or their affiliates. Provider shall have the right to bar without liability the entry of any of Customer's representatives onto the property of Provider, Licensor or their affiliates if they do not satisfy the foregoing qualifications or act in violation of the foregoing standards.

(d) Provider may, in its discretion and regardless of whether required under the Required Rights, require that all work related to a connection between the Customer Fibers and the rest of the Customer System, or otherwise requiring opening of or entry into any Structure, be performed by Licensor or Provider personnel or contractors hired by Licensor or Provider, and Customer shall within thirty (30) days after receipt of reasonably itemized invoice reimburse Provider for Provider's Actual Cost of performing such work.

Section 2.6 Building Entrances. Customer acknowledges and agrees that connectivity into buildings is solely the Customer's responsibility and at Customer's expense.

Section 2.7 No Liens. Customer acknowledges that it has no title to and cannot in any way encumber the Cable, Cable Accessories, the Structures, or any other property that is the subject of these Terms of Use that is not owned by Customer (including, without limitation, rights-of-way and the Customer Fibers and Provider Fibers). If, notwithstanding the foregoing, any property of Provider or any Licensor or one of their Affiliates becomes encumbered by any unauthorized liens, claims, or other encumbrance as a result of any act or omission of the Customer, Customer shall: a) within five (5) business days cause the lien to be discharged of record, by posting a bond, paying the underlying debt or otherwise and b) indemnify, defend and hold harmless Provider, Licensor and their Affiliates from the encumbrance.

Article 3. OWNERSHIP AND TAXES

Section 3.1 Title. During the Term title to the Structures, Cable, Cable Accessories, Fibers, and any property installed or constructed on Structures, shall be held by Provider, Licensor or other Third Party pursuant to the terms of the Required Rights. The interest of Customer in the Customer Fibers during the Term shall be an indefeasible right of use under the terms specified in these Terms of Use.

Section 3.2 Decommissioning. Customer acknowledges that the Customer Fibers are located in a Cable with other fiber optic strands that are or will be owned by other entities, and that the Customer Fibers cannot be removed from the Cable. Customer further acknowledges that casualty, technological obsolescence or other business considerations might lead some or all of such owners to request that the Cable be Decommissioned. Customer agrees that the owners of a majority of the Fibers in a Cable may elect in writing to Decommission the Cable upon not less than twelve (12) months notice. Provider shall be responsible for the costs of removing and disposing of the Cable and performing any site restoration work mandated by the Required Rights. Customer's IRU in the impacted Cable shall terminate upon the Cable Decommissioning.

Section 3.3 Required Rights.

(a) Provider has obtained (or will obtain) the Required Rights needed for installation of the Cable along the Route. Customer's IRU shall be subject to the terms, limitations and reservations of the Required Rights, and subject to the terms under which the right of way is owned or held by the Licensors granting the Required Rights, including, but not limited to, covenants, conditions, restrictions, easements, reversionary interests, bonds, mortgages and indentures, and other matters, whether or not of record, and to the rights of tenants and licensees in possession. Customer's IRU shall be further subject and subordinate to the prior right of the Licensors of the Required Rights to use the right of way for other business activities, including public road and railroad operations, communications uses, pipeline operations or any other utility purposes. Except as expressly set forth herein, nothing herein shall be construed as to be a representation, warranty or covenant of Provider's right, title or interest with respect to the right of way or the Required Rights.

(b) On Customer's written request, Provider shall make available for inspection by Customer, at Provider's offices during normal business hours, copies of all Required Rights, to the extent that their terms or other legal restrictions permit disclosure. Provider may redact confidential or proprietary business terms.

(c) Throughout the Term, Provider shall use commercially reasonable efforts to comply with the terms and conditions of the Required Rights and to keep the Required Rights in full force and effect. Neither Provider nor Customer shall take any action, or fail to take a required action, that would constitute a breach of a Required Right.

(d) Upon the expiration or other termination of a Required Right, Provider shall use commercially reasonable efforts to obtain an extension or replacement of the Required Right or an alternate right of way. Provider shall pay the Actual Cost of obtaining an extension or replacement or alternate right of way, but Customer shall be responsible for any costs of connecting the relocated Customer Fibers with the Customer Network.

(e) In the event that Provider is unable to obtain an extension or replacement of or an alternate to a Required Right and is forced to remove a portion of the Cable containing Customer Fibers, such removal shall be treated as a Decommissioning of that Cable.

Section 3.4 Income Taxes. Customer and Provider agree that each Party will be responsible for paying its own existing or future federal, state and local income, franchise and/or other similar existing or future taxes imposed on business activities or entities. Provider and Customer agree that Provider will be responsible for paying any and all existing or future federal, state or local income taxes imposed on the receipt of payments made by Customer to Provider under these Terms of Use.

Section 3.5 Sales Taxes. Customer and Provider agree that Customer will be responsible for paying any and all existing or future sales, use, gross receipts, excise or other transfer or transactional taxes imposed or levied by any federal, state or local taxing authority on the sums paid by Customer to Provider hereunder.

Section 3.6 Franchise Fees. Provider shall pay any municipal or other right-of-way or franchise fees levied on a per-foot basis upon the entire Cable of which the Customer Fibers are a part. Customer shall pay any such fees levied specifically on the Customer Fibers or Customer's right to use the Customer Fibers, including but not limited to any fee based upon the revenue received by Customer in its use of the Customer Fibers.

Section 3.7 Property Taxes. Within thirty (30) days after receipt of a reasonably itemized invoice, Customer shall reimburse Provider for Customer's Pro Rata Share of any real property, ad valorem, or similar tax imposed upon the Cables in which Customer holds the IRU.

Section 3.8 Reversion. Customer's IRU to use all of the Customer Fibers shall revert to Provider at the end of the Term. Upon the early termination of the IRU for all or any portion of the Customer Fibers along a particular Route Segment, Customer's IRU for the relevant Customer Fibers shall revert to Provider.

Section 3.9 Operation and Maintenance Fee. Provider will enter into a M&O Agreement with a Third Party for the Provider System. Within thirty (30) days after receipt of a reasonably itemized invoice, Customer shall reimburse Provider for Customer's Pro Rata Share of the Actual Cost of operation and maintenance.

Article 4. DISCLAIMERS

Section 4.1 PROVIDER MAKES NO WARRANTIES, REPRESENTATIONS, COVENANTS OR GUARANTEES IN CONNECTION WITH THIS AGREEMENT, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Section 4.2 Limitations under the Required Rights. Customer understands and agrees that the obligations of Provider hereunder, including but not limited to the construction, installation, operation, use, and maintenance of the Provider System are expressly subject to its rights and obligations under the Required Rights and applicable laws and regulations.

Section 4.3 Condition of Cable. Provider makes no representations with respect to the Cable installed under these Terms of Use (including, without limitation, any Customer Fibers contained in such Cable). Provider shall not have any obligation or liability whatsoever for, or in connection with, any Cable failure (including, without limitation, failure of the Customer Fibers contained in the Cable). Provider shall have no responsibility for Customer's Equipment or any Equipment on the Customer Side of the Demarcation Point. Customer shall not take any action that would interfere with the pursuit of claims under warranties or guarantees against the Cable manufacturer and/or installation contractor.

Section 4.4 Limitation of Liability. IN NO EVENT SHALL PROVIDER OR CUSTOMER BE LIABLE TO THE OTHER OR TO THE OTHER'S CUSTOMERS, WHETHER IN CONTRACT, TORT, BY INDEMNITY OR OTHERWISE, FOR ANY PUNITIVE, SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR ANY LOST BUSINESS DAMAGES IN THE NATURE OF LOST REVENUES OR PROFITS.

Article 5. FORCE MAJEURE

Section 5.1 Force Majeure Events. Notwithstanding any other provision of these Terms of Use, neither Customer nor Provider shall be liable for any failure or delay in performing its obligations hereunder, or for any loss or damage, resulting from a Force Majeure Event.

Section 5.2 Response to Force Majeure. A Party whose performance is impacted by a Force Majeure Event shall provide reasonable notice to the other Party and shall make commercially reasonable efforts to minimize the impact of the Force Majeure Event on its performance.

Section 5.3 Suspension Pending Force Majeure. The deadline by when a Party must perform an obligation under these Terms of Use, other than payment of money, shall be postponed by the period of time by which the Party's ability to perform that obligation is materially prevented or interfered with by a Force Majeure Event.

Section 5.4 No Suspension of Indemnities. The obligation of a Party to indemnify the other Party that is specified anywhere in these Terms of Use shall not be suspended or eliminated due to the occurrence of a Force Majeure Event.

Article 6. ASSIGNMENT; AMENDMENT

Section 6.1 Terms of Use Binding; Assignees. These Terms of Use shall be binding upon and inure to the benefit of the Provider, each Customer and their respective successors and permitted assigns. No assignment shall release the assignor from liability under these Terms of Use. Notwithstanding the foregoing, a Provider which assigns its rights and obligations hereunder shall not be responsible or otherwise liable hereunder from and after the date of such assignment in the event the successor provider agrees to assume all obligations of Provider hereunder.

Section 6.2 Assignment. Provider may assign its rights and duties under these Terms of Use together with its ownership of the Provider System by notice to any Customers.

Section 6.3 Amendment. Provider may amend these Terms of Use so long as the Provider Fibers exceed sixty percent (60%) of the Fibers in the Cable and, if they do not, with the consent of Customers holding IRUs in Customer Fibers sufficient, when added to the Provider Fibers, to bring that amount to sixty percent (60%).

Article 7. NOTICES

All notices, demands and requests required or permitted to be given under the provisions of these Terms of Use shall be (a) in writing, (b) delivered by personal delivery, facsimile transmission (to be followed promptly by written confirmation mailed by commercial delivery service or certified mail as provided below) or sent by commercial delivery service or certified mail, return receipt requested, (c) deemed to have been given on the date of personal delivery, the date of transmission and receipt of facsimile transmissions, or the delivery date set forth in the records of the delivery service or on the return receipt, and (d) addressed as follows:

If to Customer to the address specified in the IRU Grant.

If to Provider: Munster Medical Research Foundation, Inc.
901 MacArthur Boulevard
Munster, IN 46321
Attention: Chief Information Officer

or to any such other persons or addresses as the Parties may from time to time designate in a writing delivered in accordance with this Section.

Article 8. MISCELLANEOUS

Section 8.1 Applicable Law. These Terms of Use shall be construed under and in accordance with the laws of the State of Indiana, without regard to any choice of law provisions that would fix jurisdiction in a different State.

MUNSTER MEDICAL RESEARCH FOUNDATION, INC.
D/B/A COMMUNITY HOSPITAL

By: _____

Printed: _____

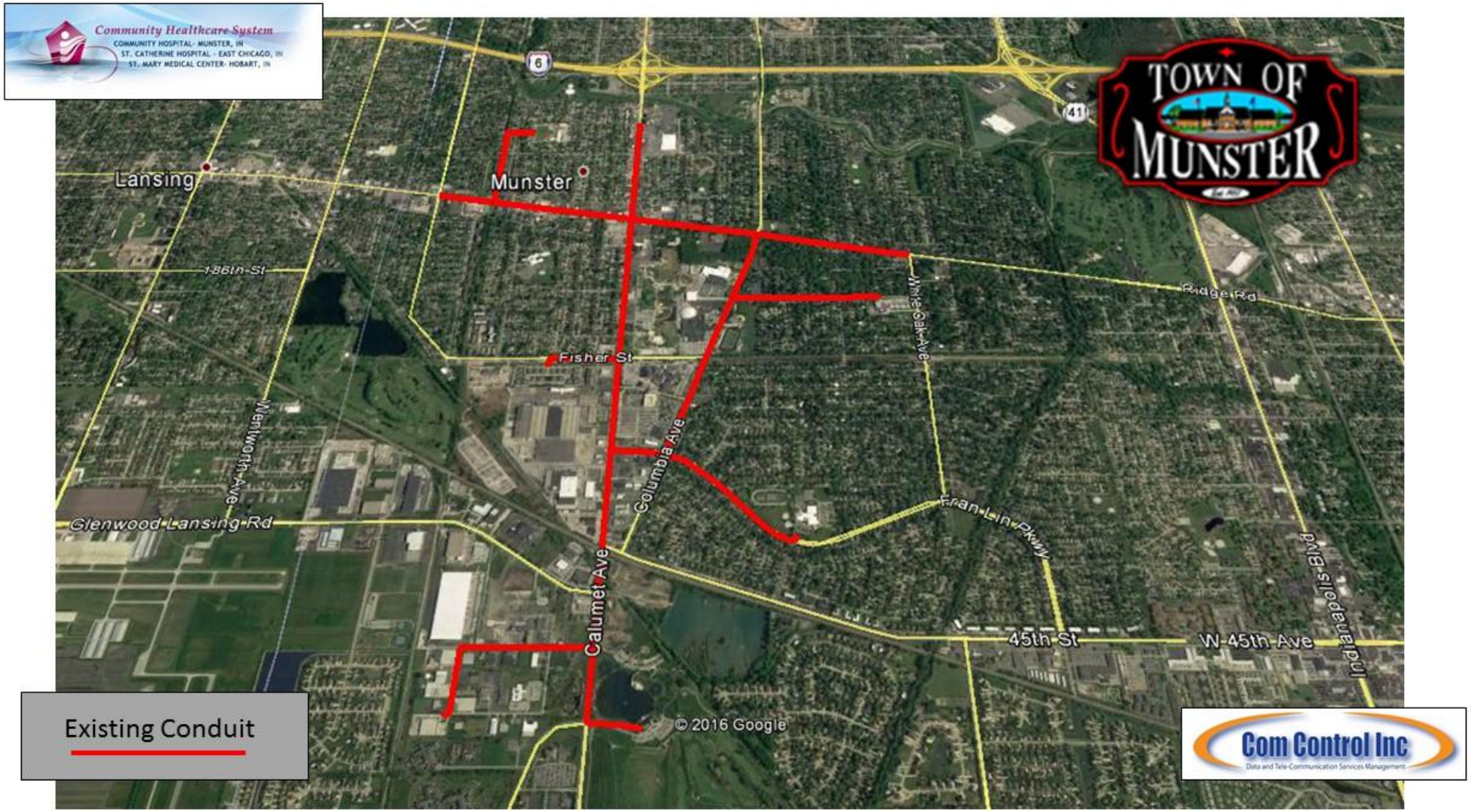
Title: _____

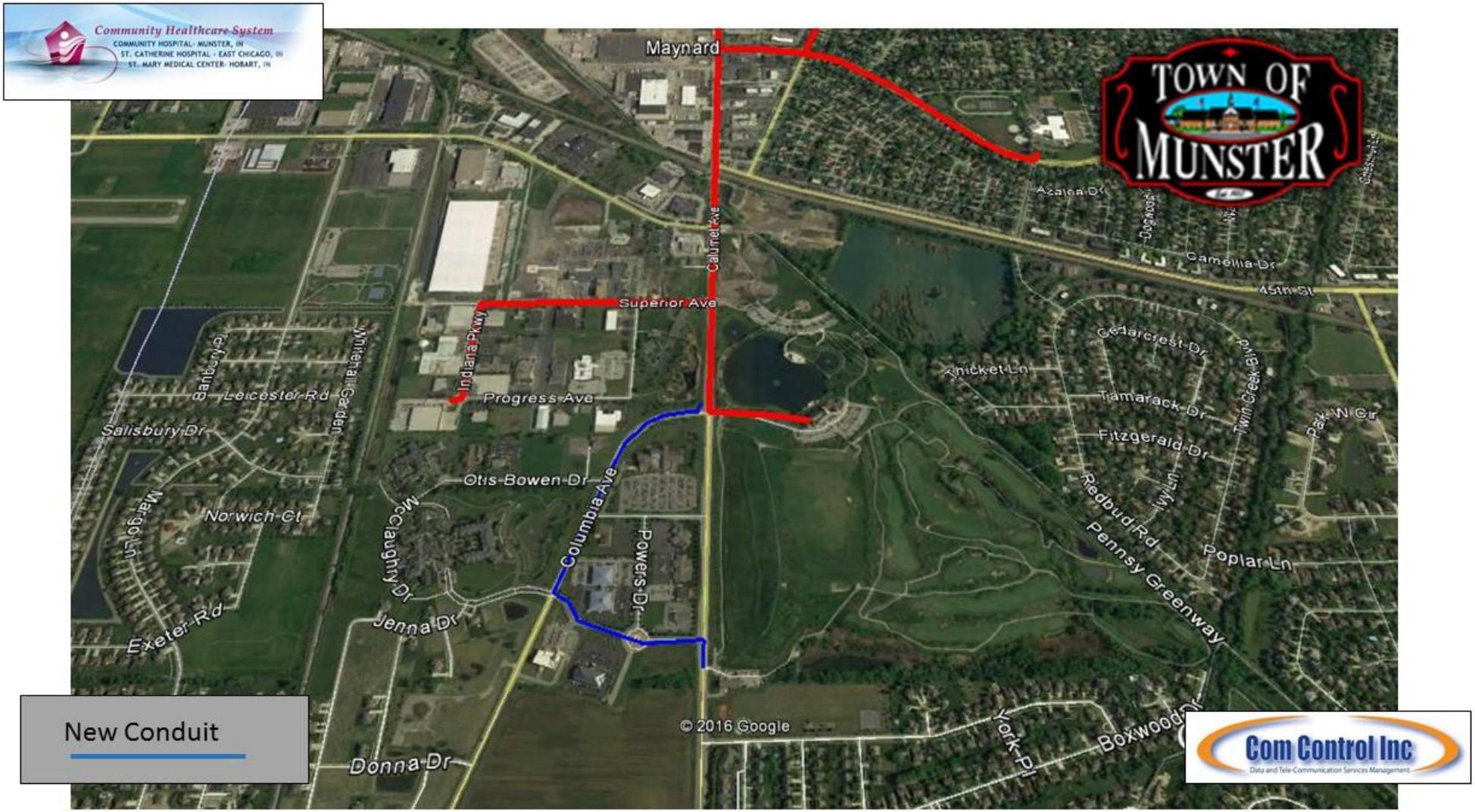
EXHIBITS

A	The Route
B	Grant of IRU Form

EXHIBIT A
THE ROUTE

(See attached)


Community Healthcare System
COMMUNITY HOSPITAL- MUNSTER, IN
ST. CATHERINE HOSPITAL - EAST CHICAGO, IN
ST. MARY MEDICAL CENTER- HOBART, IN
TOWN OF MUNSTER
Lansing
Munster
186th St
Fisher St
Wentworth Ave
Glenwood Lansing Rd
Columbia Ave
Calumet Ave
White Oak Ave
Ridge Rd
Franklin Pkwy
45th St
W 45th Ave
Indianapolis Blvd
© 2016 Google
Existing Conduit
Com Control Inc
Data and Tele-Communication Services Management


Community Healthcare System
COMMUNITY HOSPITAL- MUNSTER, IN
ST. CATHERINE HOSPITAL - EAST CHICAGO, IN
ST. MARY MEDICAL CENTER- HOBART, IN
TOWN OF MUNSTER
Maynard
Calumet Ave
Superior Ave
Indiana Pkwy
Progress Ave
Otis Bowen Dr
Columbia Ave
Powers Dr
McCaughry Dr
Jenna Dr
Donna Dr
Banbury Pl
Leicester Rd
Whitehall Garden
Salisbury Dr
Norwich Ct
Marygold Ln
Exeter Rd
Azalea Dr
Camellia Dr
45th St
Cedarcrest Dr
Cricket Ln
Tamarack Dr
Fitzgerald Dr
Twin Creek Blvd
Park W Cir
Redbud Rd
Ivy Ln
Pennsy Greenway
Poplar Ln
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Com Control Inc
Data and Tele-Communication Services Management
New Conduit

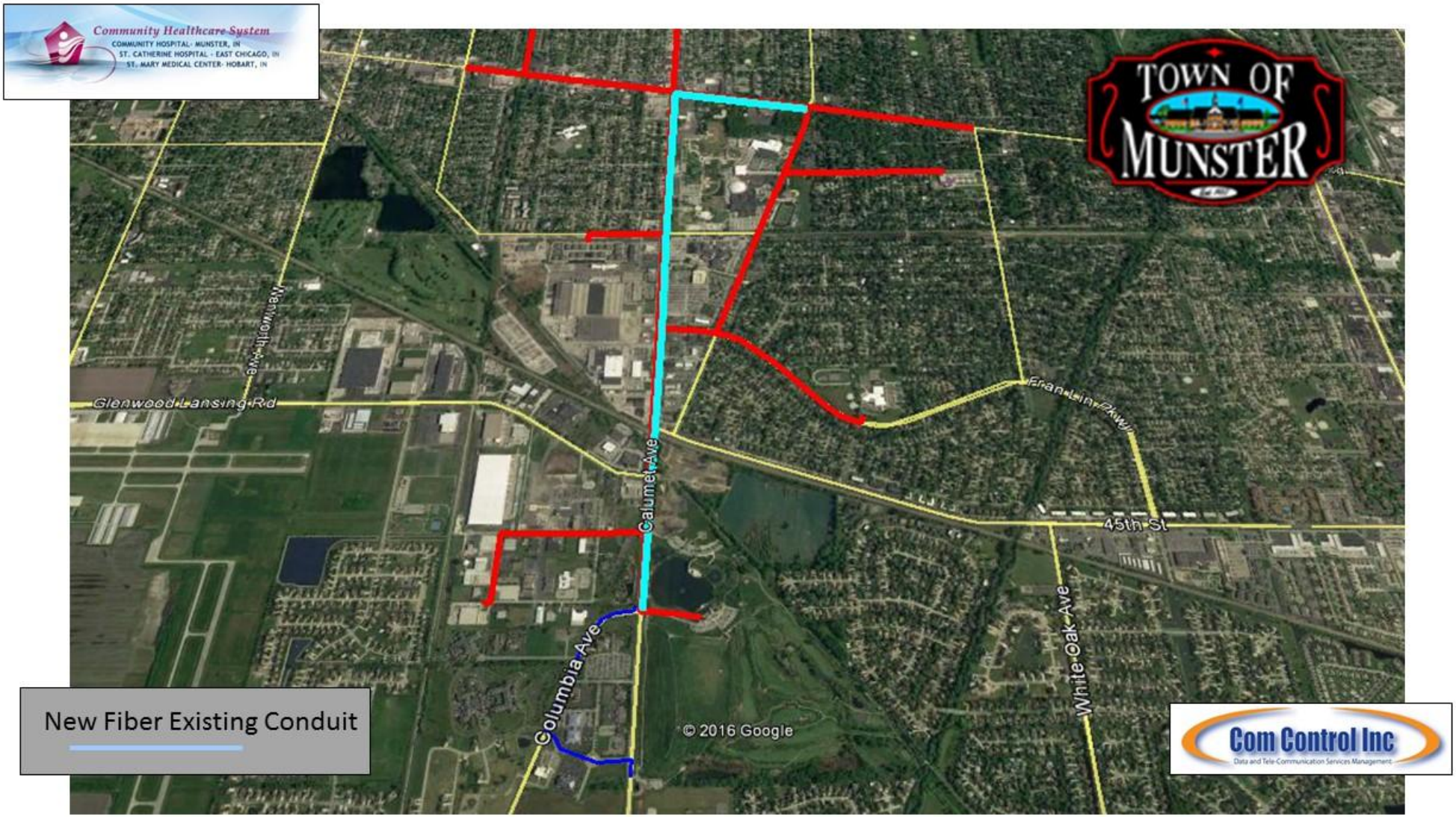
Community Healthcare System
COMMUNITY HOSPITAL- MUNSTER, IN
ST. CATHERINE HOSPITAL - EAST CHICAGO, IN
ST. MARY MEDICAL CENTER- HOBART, IN
TOWN OF MUNSTER
Glenwood Lansing Rd
Calumet Ave
Columbia Ave
Franklin Pkwy
45th St
White Oak Ave
© 2016 Google
New Fiber Existing Conduit
Com Control Inc
Data and Tele-Communication Services Management

EXHIBIT B

GRANT OF IRU FORM

KNOW ALL PERSONS BY THESE PRESENTS that the undersigned, [NAME OF PROVIDER] ("**Provider**"), hereby grants to [NAME OF CUSTOMER] ("**Customer**") an indefeasible right of use ("**IRU**") in and to the individual strands of optical Fiber (the "**Customer Fibers**") identified on Exhibit A attached hereto,

TOGETHER WITH an IRU in common with others to use so much of the Associated Property as is reasonably required for the beneficial use of the Customer Fibers.

The foregoing IRU to use the Customer Fibers and Associated Property is subject to the terms, conditions and restrictions of that certain Dark Fiber IRU Terms of Use dated _____ __, 2016 (the "**IRU Terms of Use**") which Customer hereby accepts. Any capitalized terms used in this Grant of IRU but not defined herein shall have the meaning defined in the IRU Terms of Use. The provisions contained in the following Sections of the IRU Terms of Use are incorporated herein by reference as permanent conditions on the rights conveyed hereby and shall survive indefinitely the delivery of this Grant of IRU and any expiration or termination of the IRU Terms of Use: Sections 2.1 through 2.7, 3.1 through 3.9 and 4.1 through 4.4.

Provider represents and warrants that immediately prior to the delivery of this Grant of IRU it owned sufficient title to the Customer Fibers, free and clear of liens, adequate to enable Provider to grant this IRU to Customer. Provider agrees to defend the IRU forever against the claims of third parties (except persons or entities claiming rights based upon rights in the real property where the Customer Fibers are located). Provider makes no other representations and warranties, whether express or implied, and all such other representations and warranties are hereby disclaimed. The IRU in the Customer Fibers is granted to Customer on as "as is, where is" basis. This Grant of IRU is subject to the terms of the Required Rights.

Customer executes this Grant of IRU to acknowledge the existence of the foregoing conditions and restrictions imposed by the IRU Terms of Use, including the obligation for Customer to impose such conditions and restrictions on any third party obtaining an interest in the Customer Fibers from Customer.

IN WITNESS WHEREOF, Provider and Customer have caused this Grant of IRU to be executed by their duly authorized representatives as of the ___ day of _____, 2016.

[NAME OF PROVIDER]	[NAME OF CUSTOMER]
By: _____	By: _____
Printed: _____	Printed: _____
Title: _____	Title: _____

EXHIBIT C

TRANSFER AND ASSIGNMENT AGREEMENT

[Please see attached]

TRANSFER AND ASSIGNMENT AGREEMENT

MUNSTER MEDICAL RESEARCH FOUNDATION, INC., an Indiana non-profit corporation D/B/A COMMUNITY HOSPITAL ("**MMRF**"), pursuant to that certain Agreement for Lease of Town Conduit and Public Right-of-Way for the Location of New Conduit and Fiber Optic Cable, dated October __, 2016 (the "**Conduit Agreement**"), by and between MMRF and the TOWN OF MUNSTER, INDIANA ("**Munster**"), for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby: (i) transfers, assigns and conveys to Munster all right, title and interest in and to the MMRF Conduit and the Town Fiber (as those terms are defined in the Conduit Agreement) subject to: (y) the Dark Fiber Terms of Use dated October __, 2016 (the "**Terms of Use**"); and (z) the retained indefeasible right of use ("**IRU**") in and to the individual strands of optical fiber identified on Schedule 1 attached hereto (the "**Retained Fibers**" (also referred to as the MMRF Fiber in the Conduit Agreement)) together with an IRU in common with others to use so much of the Associated Property as is reasonably required for the beneficial use of the Retained Fibers; and (ii) assigns its rights and duties as Provider under the Terms of Use to Munster in accordance with Section 6.2 of the Terms of Use.

Any capitalized terms used in this Transfer and Assignment Agreement but not defined herein shall have the meaning defined in the Terms of Use. The provisions contained in the following Sections of the Terms of Use are incorporated herein by reference as permanent conditions on the rights retained hereby and shall survive indefinitely the delivery of this Transfer and Assignment Agreement and any expiration or termination of the Terms of Use: Sections 2.1 through 2.7, 3.1 through 3.9 and 4.1 through 4.4.

Munster hereby fully accepts the assignment of all MMRF's rights and assumes all of MMRF's duties as Provider under the Terms of Use.

THE PARTIES ACKNOWLEDGE AND AGREE THAT ALL PROPERTY IS BEING TRANSFERRED BY MMRF IN AN "AS IS", "WHERE IS" CONDITION, SUBJECT TO "ALL FAULTS", INCLUDING, BUT NOT LIMITED TO, BOTH LATENT AND PATENT DEFECTS. MMRF MAKES NO WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE TITLE, CONDITION AND USE OF THE TRANSFERRED PROPERTY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

[*Signatures on following page*]

IN WITNESS WHEREOF, MMRF and Munster have executed this Transfer and Assignment Agreement effective as of the date first set forth above.

MUNSTER MEDICAL RESEARCH FOUNDATION, INC.
D/B/A COMMUNITY HOSPITAL

By: _____

Name: _____

Title: _____

TOWN OF MUNSTER, INDIANA

By: _____

Name: _____

Title: _____

SCHEDULE 1

MMRF Strands | MMRF FIBER

[To be completed]

DMS 4289144v2

EXHIBIT D

COMMITMENT REGARDING OPERATING EXPENSES

[Please see attached]

_____, 2016

Town of Munster
1005 Ridge Road
Munster, IN 46321

Ladies and Gentlemen:

We have installed a fiber optic network which is being transferred and assigned to you at this time (subject to our retaining certain indefeasible rights of use as set forth in that certain Transfer and Assignment Agreement between us dated the same date hereof). Capitalized terms are used as defined in the Dark Fiber IRU Terms of Use dated October __, 2016 (the "**Terms of Use**").

This letter evidences our commitment to fund the net operating cost of the network until the revenue for its operations are sufficient to cover those expenses. We have been advised by [_____] that those expenses are anticipated to be approximately $[_____] per month. Our obligation to fund any operational deficit shall terminate as of the third consecutive month of break-even or cash flow positive operation.

In addition, we have agreed to reimburse the Town for the amount by which: (i) the Actual Cost to repair the Provider System in any calendar year; exceeds (ii) the sum of: (y) the revenue received by the Town from the lease, sale, license or other grant of the right to use some or all of the Provider System during that calendar year; and (z) any recoveries from third parties. To the extent any portion of the Provider System is leased or otherwise provided by the Town to a person at reduced rate, the revenue received by the Town for the purpose of this calculation will be determined as if that person paid the standard rate. For this purpose, Actual Cost shall be determined on the cash basis of accounting but revenue received shall be determined based on the accrual method of accounting. As conditions to our obligation to reimburse the Town: (i) the Town shall have diligently pursued any claims against third parties for damages caused by third parties to the Provider System; and (ii) no later than March 31 of the following year the Town shall provide us an invoice accompanied by a reasonably detailed statement of the revenue, insurance proceed and recoveries received and the Actual Cost paid during the preceding calendar year with supporting documentation. We will reimburse the Town within sixty (60) days after receipt of a satisfactory invoice and supporting documentation.

Our obligations under this letter will terminate in the event that the Town assigns or transfer its ownership of the Provider System.

In addition, we reserve the right to terminate our obligations under this letter on one year's notice to you so long as we terminate or relinquish all IRUs effective as of, or prior to, the date of termination of our obligations under this letter.

Very truly yours,

MUNSTER MEDICAL RESEARCH FOUNDATION, INC.
D/B/A COMMUNITY HOSPITAL

By: _____

Name: _____

Title: _____

ACKNOWLEDGED AND AGREED:

TOWN OF MUNSTER, INDIANA

By: _____

Name: _____

Title: _____

EXHIBIT E
TOWN ACKNOWLEDGEMENT

[Please see attached]

_____, 2016

Munster Medical Research Foundation, Inc.
d/b/a Community Hospital
901 MacArthur Blvd.
Munster, IN 46321

Ladies and Gentlemen:

This acknowledges that Community Hospital is the owner of indefeasible rights of use under the Dark Fiber IRU Terms of Use ("**Terms of Use**"), dated October ___, 2016. Community Hospital is entitled to a credit against the full amount of the operation and maintenance fee payable under Section 3.9 of the Terms of Use since Community Hospital transferred the MMRF Conduit and the Town Fiber to Munster and will pay the amounts under its commitment to fund the net operating cost of the Provider System during the startup period.

This acknowledgement has been executed by the Town of Munster, Indiana, in its capacity as the Provider under the Terms of Use.

Capitalized terms shall have the meaning defined in the Terms of Use.

Very truly yours,

TOWN OF MUNSTER, INDIANA

By: _____

Name: _____

Title: _____