

**INTERGOVERNMENTAL AGREEMENT
BETWEEN CLACKAMAS COUNTY
AND THE CITY OF SANDY**

THIS AGREEMENT (“Agreement”) is entered into and between Clackamas County (“County”), a political subdivision of the State of Oregon, and the City of Sandy (“City”), a political subdivision of the State of Oregon, pursuant to ORS Chapter 190 (Cooperation of Governmental Units), collectively referred to as the “Parties” and each a “Party.”

RECITALS

WHEREAS, authority is conferred under ORS Chapter 190 to local governments to enter into agreements for the performance of any and all functions and activities that a party to the agreement, its officers or agencies have authority to perform; and

WHEREAS, the County desires to contract out work to the City to perform on-call or as needed fiber drop construction and management services for the Colorado and Gunderson Rd Fiber-to-the-home project (“Project”); ~~and~~

NOW, THEREFORE, in consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Term.** This Agreement shall be effective upon execution by both Parties, and shall expire twelve (12) months from the Agreement execution, or as otherwise terminated by the parties.
2. **Scope.** The Parties acknowledge and agree that they have entered into other IGAs involving fiber services. However, this Agreement is limited solely to the Project. Any rights or obligations between the Parties are mutually exclusive from any other existing projects, agreements, or IGAs.
3. **Access.**
 - A. **County ROW.** County permits City and its employees and contractors to access County ROW in connection with City’s completion of the Project.
 - B. **Private Property.** City and County recognize that City be required to enter onto certain private property or properties in order to fully complete the Project. County will be fully responsible for obtaining all needed easements, rights of entry, or other access agreements needed to permit County, City, and City’s employees and contractors to enter onto the private property in connection with the Project, and City’s performance of the Project will be conditioned on the same.
 - ~~B.C.~~ **General Access.** All other easements, leases, licenses, franchise authorities, authorizations, or other agreements needed to secure access rights in connection with the performance of this Agreement are the sole responsibility of County.
4. **Rights and Obligations of the City.**
 - A. Upon written request from the County and acceptance by the City, City shall construct the necessary underground fiber-to-the-home infrastructure from County right-of-way (ROW) to the subscriber premises as part of the Project (“FTTH Construction”). The County shall remain the owner of any infrastructure constructed by the City. The City shall be reimbursed for any work that is performed in accordance with Section ~~65~~, below. Infrastructure shall be installed per County requirements, in a good workmanlike manner, and in accordance with

applicable law. Prior to City performing the FTTH Construction, City will consult with County to ensure that the specifications of the infrastructure are compatible with the County's systems and requirements. Prior to the City performing the FTTH Construction, the County shall ensure the following construction and installation requirements are satisfied at each property:

- a. A path acceptable to the City is provided from the County infrastructure/ROW to the site demarcation point for service. A path acceptable to the City is provided for the fiber optic cable from the point of entry into the site to the termination panel or CSP (Customer Splice Point) and into the home demarcation that complies with all applicable building, electrical, fire and related codes.
 - b. The City and its employees, agents, lessees, officers and its authorized vendors, upon reasonable notice, have reasonable ingress and egress into and out of the properties and buildings in connection with the provision and construction of service.
- B. Following construction and County inspection and acceptance of the installation of such infrastructure, the City shall no longer maintain and or repair any FTTH Construction, except as expressly set forth in Section C below.
- C. City shall be responsible for correcting any FTTH Construction that is defective in workmanship for one (1) year following City's installation thereof. As used herein, "defective" means any work not completed in accordance with County's specifications or applicable law. City shall repair or replace, at its sole cost, any defective FTTH Construction during such time period. City shall not be responsible for future maintenance to the FTTH Construction following such time period.
- D. The City reserves the right to deny to perform any Project-related work that it considers in its sole discretion to not be in the interest of the City, including but not limited to factors such as: cost, environment, complexity, or safety.
- E. The City shall not enter any subcontract for any of the work scheduled under this Contract without obtaining the prior written approval of the County.
- F. The City shall notify the County at least two weeks prior to scheduled vacation or other time away that will result in the City's inability to perform requested work. Notification of time unavailable shall be sent by email to the County's designated liaison.
5. **Rights and Obligations of the County.**

A. From time to time, the County may request that the City complete certain FTTH Construction work by a written request setting forth a scope of work, project site(s), project complexities, timelines, and any other necessary information that County believes is needed for City to appropriately assess the FTTH Construction work. City shall review the request and either accept or reject the requested FTTH Construction work. All provisions and covenants contained in said accepted written requests are hereby incorporated by reference and shall become a part of this Agreement as if fully set forth. Any conflict between this Agreement and accepted written requests (if any) shall be resolved first in favor of this Agreement.

~~A.B.~~ The County shall be the owner of all FTTH Construction following successful inspection and acceptance of work.

~~B.C.~~ Upon completion by City of [the respective FTTH Construction milestones, as further identified in Exhibit A, work](#), the City shall invoice the County for reimbursement in accordance with Section [65](#), below. County shall issue payment within 30 days of receiving an invoice.

~~C.D.~~ County may provide materials or equipment for City to utilize during the project. Any materials or equipment not directly procured by the County shall be approved by County prior to City purchase. County shall reimburse City upon invoice for purchased materials and equipment.

~~D.E.~~ The County and City shall mutually agree on dates which [the respective FTTH Construction](#) work will be performed. Once dates are agreed upon and publicized, they cannot be changed without the written consent of the County.

6. **Consideration.** The maximum amount County may pay City for performing FTTH Construction, from available and authorized funds, shall not exceed the sum of \$120,000. Consideration is on a time and materials basis in accordance with the schedule of fees attached hereto as [Exhibit A](#) and incorporated by this reference herein. Because the FTTH Construction is on-call or as-needed, and exact amount of FTTH Construction is unknown, nothing herein shall be construed as a promise by County to pay City the entire \$120,000 authorized by this Agreement.

7. **Representations and Warranties.**

- A. *City representations and warranties:* City represents and warrants to County that City has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of City enforceable in accordance with its terms.
- B. *County Representations and Warranties:* County represents and warrants to City has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of County enforceable in accordance with its terms.
- C. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

8. **Termination.**

- A. The County and City, by mutual written agreement, may terminate this Agreement [or any individual accepted request for FTTH Construction work](#) at any time.
- B. Either Party may terminate for its convenience, upon thirty (30) days advance written notice to the other Party. Upon termination for convenience, the terminating Party shall pay the non-terminating Party any undisputed amounts incurred as of the date of notice of termination.
- C. Either the County or City may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination however, the Party seeking the termination shall give the other Party written notice of the breach and of the Party's intent to terminate. If the breaching Party has not entirely cured the breach within fifteen (15) days of deemed or actual receipt of the notice, or other time as may be agreed between the parties in writing, then the Party giving notice may terminate the Agreement at any time thereafter by giving written notice of termination stating the effective date of the termination. If the default is of such a nature that it cannot be completely remedied within such fifteen (15) day

period, this provision shall be complied with if the breaching Party begins correction of the default within the fifteen (15) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. The Party giving notice shall not be required to give more than one (1) notice for a similar default in any twelve (12) month period. Upon termination for breach, each Party shall have all rights and remedies available to it at law, in equity, or under this Agreement.

- D. The County or City shall not be deemed to have waived any breach of this Agreement by the other Party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach is of the same nature as that waived.
- E. Either Party may terminate this Agreement in the event the Party fails to receive expenditure authority sufficient to allow that Party, in the exercise of its reasonable administrative discretion, to continue to perform under this Agreement, or if federal or state laws, regulations or guidelines are modified or interpreted in such a way that performance under this Agreement is prohibited, or a Party is prohibited from paying for such work from the planned funding source.
- F. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

9. **Indemnification.**

- A. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the County agrees to indemnify, save harmless and defend City, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof arising out of or based upon the negligent or willful acts of the County or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the County has a right to control.
- B. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, City agrees to indemnify, save harmless and defend the County, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof arising out of or based upon the negligent or willful acts of City or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which City has a right to control.

10. **Insurance.** The Parties agree to maintain insurance levels sufficient to cover the obligations agreed to in this Agreement.

11. **Party Contacts**

- A. Duke Dexter or his designee will act as liaison for the County.

Contact Information:

Duke Dexter
121 Library Court
Oregon City, Oregon 97045
ddexter@clackamas.us
Fax: 503-655-8255

Greg Brewster or his designee will act as liaison for City.

Contact Information:

Greg Brewster
39250 SE Pioneer Blvd
Sandy, Oregon 97055
gbrewster@ci.sandy.or.us
503-489-0937

- B. Either Party may change the Party contact information, or the invoice or payment addresses by giving prior written notice thereof to the other Party at its then current notice address.
- C. Any notice required to be provided under this Agreement shall be provided to the Party Contact at the address specified herein. Notices shall be made by personal service, in which case they are effective on the date of service, or by certified mail, in which case they are effective on the date of delivery, or if delivery is refused, upon the date of delivery refusal.

12. **FEDERAL CONTRACTING REQUIREMENTS.** County intends that all or a portion of the consideration paid to City is eligible for reimbursement by one or more federal agencies. This Agreement is subject to the additional terms and conditions, required by federal law for a federal award, set in Exhibit B, attached hereto and incorporated by this reference herein. All terms and conditions required under applicable federal law for a federal reward including, but no limited to, 2 C.F.R. § 200.326 and 2 C.F.R. § Pt. 200, App. II, are hereby incorporated by this reference herein.

13. **General Provisions**

- A. **Oregon Law and Forum.** This Agreement, and all rights, obligations, and disputes arising out of it will be governed by and construed in accordance with the laws of the State of Oregon without giving effect to the conflict of law provisions thereof. Any claim between County and City that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas County for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by either Party of any form of defense or immunity, whether 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. City, by execution of this Agreement, hereby consents to the in personam jurisdiction of the courts referenced in this section.
- B. **Compliance with Applicable Law.** Both Parties shall comply with all applicable local, state and federal ordinances, statutes, laws and regulations. All provisions of law required to be part of this Agreement, whether listed or otherwise, are hereby integrated and adopted herein. Failure to comply with such obligations is a material breach of this Agreement.
- C. **Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of

any other remedies for the same default or breach, or for any other default or breach, by the other Party.

- D. **Access to Records.** The Parties shall retain, maintain, and keep accessible all records relevant to this Agreement (“Records”) for a minimum of six (6) years, following Agreement termination or full performance or any longer period as may be required by applicable law, or until the conclusion of an audit, controversy or litigation arising out of or related to this Agreement, whichever is later. The Parties shall maintain all financial records in accordance with generally accepted accounting principles. All other Records shall be maintained to the extent necessary to clearly reflect actions taken. During this record retention period each Party shall permit the other Parties’ authorized representatives’ access to the Records at reasonable times and places for purposes of examining and copying.
- E. **Debt Limitation.** This Agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and any debt limitations contained in any City or County charter, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.
- F. **Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.
- G. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties regarding its subject matter. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.
- H. **Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- I. **Independent Contractor.** Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.
- J. **Safety and Health Requirements.** Work performed under this Agreement shall comply with all federal Occupational Safety and health Administration (“OSHA”) requirements and with all Oregon safety and health requirements, including those of the State Workers’ Compensation Division.

- K. **Project Information.** The Parties will attempt, in good faith, to jointly agree upon any news or press release related to the Project.
- L. **No Third-Party Beneficiary.** City and County are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall 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 this Agreement.
- M. **Assignment.** Neither Party shall assign or transfer any of its interest in this Agreement, by operation of law or otherwise, without obtaining prior written approval from the other Party, which shall be granted or denied in that Party's sole and absolute discretion. One Party's consent to any assignment shall not relieve the other Party of any of its duties or obligations under this Agreement.
- N. **Counterparts.** This Contract may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- O. **Survival.** The provisions of Sections 6, 8, and 12 (A), (B), (C), (D), (E), (F), (G), (H), (L), (O), (Q), (S), and (T), shall survive the termination of this Agreement, together with all other rights and obligations herein which by their context are intended to survive.
- P. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.
- Q. **Successors in Interest.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- R. **Force Majeure.** Neither City nor County shall be held responsible for delay or default caused by events outside of City's or County's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, strikes, pandemics, or war.
- S. **Confidentiality.** The Parties and their employees or agents may, in the course of this Agreement, be exposed to or acquire material identified as confidential information. Such information shall be deemed confidential information of the Party identifying it as such ("Confidential Information"). Subject to Oregon public records laws and regulations, the Parties agree to hold Confidential Information in strict confidence, using at least the same degree of care that each Party uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purpose unless specifically authorized in writing under this Agreement or required by law.
- T. **No Attorney Fees.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each party shall be responsible for its own attorneys' fees and expenses.

[Signatures on Following Page]

IN WITNESS HEREOF, the Parties have executed this Agreement by the date set forth opposite their names below.

Clackamas County

City of Sandy

Chair, Board of County Commissioners

By:
Its:

Date

Date

Recording Secretary

Approved as to Form:
