

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

- 1) **Parties.** This intergovernmental agreement (hereinafter referred to as “Agreement”) is made and entered into by and between the City of Sandy (City), whose address is 39250 Pioneer Blvd, Sandy, OR 97055, and Clackamas County (County), whose address is 168 Warner Milne Ave, Oregon City, OR 97045.
- 2) **Purpose.** The purpose of this Agreement is to establish the terms and conditions under which the back-office systems for the Colorado and Gunderson Rd Fiber-to-the-home project (Project) will be set up and maintained. The Project is initially set up to serve the Colorado and Gunderson Rd communities with fiber optic service and requires several pieces of technology, including a server to manage the network access systems, a network to connect the server to the internet, a Virtual Private Network (VPN) for remote access as well as electricity, rack space for the systems and broadband connectivity for the network. The physical location of the equipment shall reside at 39250 Pioneer Blvd, Sandy, OR 97055.
- 3) **Term of Agreement.** This Agreement is effective upon the day and date last signed and executed by the duly authorized representatives of the parties to this Agreement and the governing bodies of the parties’ respective counties or municipalities and shall remain in full force and effect for not longer than 24 months. This Agreement may be terminated, without cause, by either party upon 30 days written notice, which notice shall be delivered by hand, electronically or by certified mail to the City address listed above.
- 4) **Responsibilities of the City.** The City shall host the physical equipment required for the Project. Hosting includes the necessary rack space for the Project equipment, necessary electricity to run the Project equipment and a single 1Gbps broadband service for the Project management network. The City shall also handle (mount, unmount, or adjust) any Project equipment that resides at the Agreement address listed above. The following physical equipment shall be hosted and handled by the City: (1) Network routers, (2) Network switches, (3) Servers, (4) Battery systems, (5) Power Distribution Units (PDUs). The City shall be responsible for setting up, configuring, adjusting, upgrading, and removing network systems and their configuration. The City shall configure and maintain a remote VPN that will allow Clackamas County and any other individual deemed authorized by the County to access the maintenance network. The City shall manage the creation, modification, suspension, and deletion of VPN users at the request of the County. The City shall install, configure, and update the OLT management server including its operating system, device parameters, network configuration and any other server component necessary to fulfill its responsibilities. The City shall not manage or have access to any fiber access system or database containing County data. All County data shall remain the property of the County during and after the term of this agreement.
- 5) **Responsibilities of the County.** The County shall provide all hardware required for hosting, including OLT and network router/switches. All hardware provided for hosting is and will

remain property of the County. The County shall compensate the City for hosting and network services at the rate of \$225 a month. The parties may, by written agreement, permit County to use alternative consideration to pay the City the monthly hosting and network service fee including, but not limited to, trading of equipment, staff time, or other methods as agreed to in writing by the parties. City shall submit to County a monthly invoice for payment of the hosting and network service fee. Unless disputed by County, County will pay the invoice within thirty (30) days of receipt. Upon initial network and server hosting and turn up, the County shall request changes to the server and network environments electronically and shall not directly interface with the systems software and configuration.

6) General Provisions.

- a) **Amendments.** Either party may request changes to this Agreement. Any changes, modifications, revisions, or amendments to this Agreement which are mutually agreed upon by and between the parties to this Agreement shall be incorporated by written instrument, and effective when executed and signed by all parties to this Agreement.
- b) **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.
- c) **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.
- 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) **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, or 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.

- k) **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.
- l) **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.
- m) **Severability.** Should any portion of this Agreement be judicially determined to be illegal or unenforceable, the remainder of the Agreement shall continue in full force and effect, and either party may renegotiate the terms affected by the severance.
- n) **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.
- o) **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.
- p) **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, or war.
- q) **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"). 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.
- r) **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.

Jury Trial Waiver. The Parties hereby expressly waive any right that each may have to a trial by jury in connection with any claim, action, or other proceeding brought in connection with this Agreement

[Signatures on Following Page]

8. Signatures. In witness whereof, the parties to this Agreement through their duly authorized representatives have executed this Agreement on the days and dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Agreement as set forth herein.

The effective date of this Agreement is the date of the signature last affixed to this page.

City of Sandy

[Name and Title]

Date

Clackamas County

[Name and Title]

Date