



## Resolution 2006-003

### **A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO STANDARDIZED SERVICE CONTRACTS FOR SHERWOOD BROADBAND**

**WHEREAS**, the City established its own telecommunication utility known as Sherwood Broadband in 2005;

**WHEREAS**, Sherwood Broadband is now operational, and the City's legal counsel and staff have developed standardized contracts for conducting the business of Sherwood Broadband;

**WHEREAS**, the City Council tentatively approved the sales process and goals for Sherwood Broadband on October 4, 2005, and directed the City Manager to bring a resolution for formal approval of the goals, contracts and sales process before the City Council; and

**WHEREAS**, the Technical Advisory Board for Sherwood Broadband has reviewed the goals, contracts and sales process and recommends the City Council approve this resolution and its Exhibits.

### **NOW, THEREFORE, THE CITY COUNCIL RESOLVES AS FOLLOWS:**

**Section 1.** The attached Exhibits are hereby approved for use by Sherwood Broadband:

- Exhibit 1: Master Service Agreement
- Exhibit 2: Internet Service Addendum
- Exhibit 3: Acceptable Use Policy
- Exhibit 4: Sherwood Broadband Goals
- Exhibit 5: Sherwood Broadband Sales Process

**Section 2:** The City Manager is authorized to enter into agreements with customers, other governmental entities, and service providers in order to carry out the approved goals for Sherwood Broadband. Where the agreements are consistent with the approved Goals and are substantially in the form attached to this resolution, or where any modifications have been approved by the City's legal counsel, individual City Council approval of each agreement is not required.

**Section 3.** This Resolution shall take effect immediately upon its passage by the Council and execution by the Mayor.

**Duly passed by the City Council this 3<sup>rd</sup> day of January 3, 2006.**

  
\_\_\_\_\_  
Keith S. Mays, Mayor

ATTEST:

  
\_\_\_\_\_  
Donna M. Martin, Interim City Recorder

# Sherwood Broadband Master Service Agreement



This Master Service Agreement (“Agreement”) sets forth the terms and conditions by which Sherwood Broadband (“SBB”) agrees to provide communication services to Customer. The parties agree as follows:

## 1. DEFINITIONS

In addition to terms defined elsewhere and industry standard terms, where capitalized, the following words and phrases used herein shall be defined as follows:

(a) **Acceptance Date.** The beginning date of the Service Term and the date billing commences for the Service. The Acceptance Date is the earlier of: (i) when testing following installation of a Service has been successfully completed and Customer agrees that the Service is working properly; (ii) when Customer accesses and utilizes the Service; or (iii) five days past the Service Installation Date if testing is complete but Customer has failed to accept.

(b) **Circumstances which may lead to termination of this Agreement as described in Section 5,** including but not limited to: (i) any material breach of any term of this Agreement; (ii) an assignment for the benefit of creditors; (iii) a voluntary filing of bankruptcy; or (iv) any proceedings filed against the party under any law relating to creditor’s rights in general provided such proceeding is not dismissed within 90 days of its filing.

(c) **Emergency Maintenance.** Maintenance which, if not performed promptly by SBB, could result in a serious degradation or loss of Service to SBB customers.

(d) **On-Net Services.** Services provided entirely on SBB-controlled facilities that connect two locations served by SBB’s network

(e) **Planned Service Interruption.** Any Service Outage caused by scheduled maintenance, planned enhancements or upgrades to the SBB Network.

(f) **Point of Presence (“POP”).** A specific location where Customer terminates and/or originates Service.

(g) **Point of Termination.** The point at which SBB’s responsibility to provide Service ends and where the Customer or End-User responsibilities begin.

(h) **Premises.** The address to which Service is provided, identified on the Service Order.

(i) **Service(s).** “Service(s)” will mean the communication service ordered by Customer and provided by SBB pursuant to a Service Order provided by Customer, subject to the terms and conditions of this Agreement and the applicable Service Addendum.

(j) **Service Installation Date.** The date SBB designates for installation of Service following receipt of a complete and accurate Service Order.

(k) **Service Order.** A document provided by the Customer to SBB, which identifies the type of Service desired and provides all information necessary for SBB to provide the Service to Customer, including but not limited to the following: quantity and type of Service; location

served; Point of Termination; protocols; Service Term; and the date Customer would like Service to be installed and activated.

(l) Service Term. The period of time Customer has requested that the Service be provided, as identified on each Service Order. If the Service Term is not stipulated in the Service Order, a 12-month term will apply. Following each Service Term, the Services will continue on a month-to-month term unless terminated by either party by providing thirty (30) days prior written notice to the other party.

## 2. SERVICE DESCRIPTION

(a) SBB will provide communication Services to Customer pursuant to a Service Order issued by Customer, and in accordance with these terms and conditions and any applicable Service Addendum. SBB reserves the right, in its sole reasonable discretion, to reject any Service Order.

(b) SBB will provide Services to Customer using SBB owned and managed facilities in conjunction with facilities of SBB's network partners. SBB reserves the right to substitute, change or rearrange any equipment used in delivering Services that does not affect the quality, cost or type of Services.

(c) Unless otherwise provided herein, Customer is responsible to provide equipment compatible with the Service and SBB's network and facilities. Customer will bear the cost of any additional equipment or protective apparatus (e.g. surge protectors) reasonably required to be installed because of the use of SBB's network or facilities by Customer or Customer's authorized users ("End Users"). Any wiring required to extend a communications termination and/or demarcation at the Customer or End User premises is not the responsibility of SBB, and SBB is not responsible for the costs thereof.

(d) Customer's use of the Services provided herein and any equipment associated therewith will not: (i) interfere with or impair service over SBB's network or facilities; (ii) impair privacy of any communications over such network or facilities; (iii) cause damage of any nature to SBB's assets; (iv) be used to transmit, distribute or store any material in violation of any applicable law or regulation; or (v) be used to frighten, abuse, torment or harass another. At the time Customer becomes or is made aware of the interference, Customer shall immediately take all necessary action to discontinue any event of interference. Notwithstanding any other provision herein, in the event Customer is in breach of this Section, SBB may suspend the affected Service until the equipment or wrongful conduct is modified to prevent said interference. In most circumstances SBB will provide 24 hours notice of such interference to Customer and suspend the Service if Customer fails to cure the interference within such 24 hour period. However, if the interference is a threat to the integrity of SBB's network, in SBB's sole discretion, SBB may suspend the affected Service immediately. Customer's failure to diligently pursue and cure such interference within a reasonable time of such suspension will be deemed a material breach of this Agreement.

(e) SBB will manage its network in SBB's sole discretion. Customer will provide all reasonable information and authorizations required by SBB for the purpose of installing Services, performing routine network maintenance, upgrades, and addressing emergencies.

(f) SBB will maintain a point-of-contact for Customer to report a Service Outage to SBB twenty-four (24) hours a day, seven (7) days a week.

(g) SBB will use its best efforts to restore On-Net Services within four (4) hours after SBB receives notification of a Service Outage from Customer. Restoration of dark fibers shall be completed on a mutually agreed upon schedule.

### 3. TERM

(a) This Agreement shall commence on the Effective Date of this Agreement and shall remain in effect through the Service Term of each Service Order issued hereunder (“Term”).

(b) Each Service Order is effective upon execution, and the Service Term of each Service Order begins on the Acceptance Date of the applicable Service. Following expiration of the Service Term, the Service Order shall continue in effect on a month to month basis until terminated by either party with at least thirty (30) days advance written notice to the other party.

### 4. CUSTOMER CHANGES, CANCELLATION, TERMINATION

(a) Customer may change or cancel a Service Order without incurring termination charges by submitting a Change Order or providing written notification of cancellation to SBB at least five (5) business days prior to the Service Installation Date. Customer will be liable to SBB for a reasonable administrative fee associated with any such change or cancellation, as determined by SBB on an individual case basis.

(b) If Customer changes a Service Order less than five (5) days prior to the Service Installation Date but prior to installation, the change will be deemed a termination of the original Service Order and submission of a new Service Order with the change incorporated. The ordering process will start over, and Customer will be liable to SBB for a reasonable administrative fee.

(c) If Customer cancels a Service Order less than five (5) days prior to the Service Installation Date but prior to installation, such cancellation will be deemed a termination of such Service and will be subject to Section 5(c).

### 5. DEFAULT AND TERMINATION

(a) Either party may terminate this Agreement without incurring termination liability if the other party is in Default (“Defaulting Party”), provided that: (i) prior written notice is given to the Defaulting Party specifying the circumstances which may lead to Default and allowing fifteen (15) days to cure such circumstances, or a longer period of time if mutually agreed (“Cure Period”), and (ii) the Defaulting Party fails to cure the circumstances within the Cure Period.

(b) Notwithstanding the Cure Period referenced in Section 5(a), Customer’s failure to comply with the terms of Section 6 of this Agreement shall be deemed a Default, and upon such a Default SBB may immediately suspend and/or terminate this Agreement or any individual Service Order.

(c) If a Service is terminated either by Customer without cause, or by SBB for cause or Customer’s breach identified in Section 5(b), Customer will pay SBB an amount equal to the following: (i) any unpaid amounts for Services provided through the date of termination; (ii) any charges from providers related to the terminated Service; (iii) any special build costs incurred by SBB through the date of such termination; and (iv) one hundred percent (100%) of the monthly recurring charge (“MRC”) for the remainder of the Service Term.

(d) It is agreed that SBB's damages in the event of early termination will be difficult or impossible to ascertain. These provisions are intended, therefore, to establish liquidated damages in the event of termination and are not intended as a penalty.

## 6. PAYMENT FOR SERVICES

(a) Customer will pay all undisputed charges related to the Services, beginning on the applicable Acceptance Date. Invoices are due upon receipt, and subject to a late fee of 1.5% per month, or the legal rate if lower, if not paid on or before the thirtieth (30th) day following the invoice date. When the Acceptance Date falls on a day other than the first day of the month, or the Service Term ends on a day other than the last day of the month, the charges will be determined by prorating the monthly payment by the number of days during which Service was provided. SBB reserves the right to adjust the rates and charges for any renewal term hereof by providing thirty (30) days written notice to Customer prior to the end of the current Service Term. All payments will be in United States currency.

(b) If Customer does not make payment of undisputed charges within the period specified in Section 6(a) above, SBB may suspend Service after written notice to Customer and a reasonable period of time (in accordance with any applicable statutory requirements) to cure all undisputed amounts. Following such a suspension, SBB may condition reinstatement of Service on one or more of the following events: (i) payment of all charges then due, including any late fees and interest charges; (ii) satisfactory assurance (such as a deposit) of Customer's ability to pay for Service, and (iii) advance payment for the cost of reinstating Service. If Customer fails to timely cure the nonpayment, Customer will be deemed to have terminated the Service as of the effective date of the suspension and will be in default of this Agreement pursuant to Section 5(b).

(c) In the event Customer disputes any billing by SBB, Customer will (i) pay all charges not disputed, and (ii) notify SBB of the dispute in writing, providing the billing identification, and an explanation of the issue in dispute. No charges may be disputed more than one hundred fifty (150) days after the date such charges are invoiced. Payment will not prejudice Customer's right to dispute charges, so long as they are disputed in the manner and within the time specified in this Section. The parties will cooperate in good faith to resolve any such disputes within a sixty (60) day period after the dispute is submitted to SBB. If the dispute is not resolved during this period, then either party may seek dispute resolution in accordance with Section 21. If a disputed amount is determined to be a legitimate charge, Customer will pay such amount within ten (10) calendar days of such determination.

(d) Without waiving any right of termination or any other rights hereunder, SBB may require Customer to tender a deposit, of up to two months of Customer's aggregate MRC, to guarantee payment hereunder if (i) in SBB's sole discretion, the initial credit check warrants the request for a deposit; (ii) Customer fails to make a payment when due; (iii) Customer files for bankruptcy; or (iv) any Service Order exceeds established credit limits initially approved by SBB ("Deposit"). Upon request, Customer will provide SBB with information regarding payment history for communications services, number of years in business, financial statement analysis and commercial credit bureau rating. Approval of any Service Order issued hereunder is subject to final approval by SBB.

## 7. TAXES, FEES, SURCHARGES AND OTHER CHARGES

(a) Any and all applicable national, federal, state, county and local taxes, fees, surcharges and all other related charges that may be imposed or levied on the Customer or SBB by any appropriate statute or regulation which provides the authority for the imposition of taxes, fees, surcharges and all other charges (collectively, "Taxes") with respect to the provision, sale or use of Services and/or equipment will be paid by the Customer in addition to all other fees and charges as set forth elsewhere in this Agreement. Taxes include, but are not limited to, business and occupation, commercial, death, district, excise, franchise fee, gross receipts, high cost fund, license, lifeline assistance, low income, occupational, privilege, property, Public Utility Commission, right-of-ways, sales, telecommunications relay service, telephone assistance, universal service funding, use, utility user, value-added, 911, or other similar taxes, fees and surcharges as is or may be levied against SBB and passed through to customer.

(b) When applicable, Customer shall furnish SBB a valid and properly executed tax exemption/resale certificate(s) and/or an SBB-approved statement of indemnification for any request of exemption from Taxes. Any exemption/resale certificate and/or SBB-approved statement of indemnification shall be effective only for Services provided subsequent to the receipt of the exemption/resale certificate or statement of indemnification by SBB. SBB approval of Customer's tax exempt status will not be unreasonably withheld or delayed. SBB shall not bill Customer for any Taxes covered by an SBB-approved exemption/resale certificate or an SBB-approved statement of indemnification.

(c) If any exemption claimed is disallowed, Customer agrees to indemnify SBB for any and all Taxes, interest and penalties, including all legal and collection fees or any other costs that may be assessed against SBB or Customer by any authority or jurisdiction for which this exemption has been claimed by Customer.

(d) Customer and SBB agree to cooperate with each other and coordinate their mutual efforts concerning audits, or other such inquiries, filings, reports, etc., as may relate solely to the provision, sale or use of purchases, activities or transactions arising from or under this Agreement, which may be required or initiated from or by Customer, SBB or any duly authorized governmental authority relating to Taxes.

## 8. INSTALLATION, MAINTENANCE AND REPAIR OF EQUIPMENT

(a) SBB will provide, install, maintain, repair, operate and control the telecommunications equipment necessary for Service ("SBB Equipment"). Except as otherwise provided herein, SBB will pay the cost of purchasing and installing all SBB Equipment necessary for Service to the Point of Termination. SBB is responsible for the procurement and maintenance of all rights-of-way and private or public easements or licenses required for the installation of SBB Equipment. Notwithstanding any provision of this Agreement to the contrary, if Customer provides its own telecommunications equipment, SBB will have no obligation to install, maintain or repair such Customer equipment. Maintenance and repair of the system will be performed so as to meet the manufacturer's specifications and any specifications identified in the Service Addendum.

(b) SBB will endeavor to provide one week advance notice, via telephone or email, prior to any scheduled maintenance, planned enhancements or upgrades, which may result in a degradation or disruption in Service. SBB reserves the right to suspend Service for Emergency Maintenance to SBB's network without notice to Customer.

(c) The parties agree that if any party, in its sole discretion, determines that an emergency action is necessary to protect its own network the party may block any transmission path over its network by the other party where transmissions do not meet standard industry requirements. The parties further agree that none of their respective obligations to one another under this Agreement will be affected by any such blockage and that no party will have any obligation to the other party for any claim, judgment or liability resulting from such blockage.

(d) Employees or agents of SBB will have escorted access to any SBB Equipment or facilities at a Customer or End User Premises. If Customer provides equipment and/or conduit space for SBB Equipment, Customer will grant SBB access to its premises for the installation, operation, removal, repair and maintenance of the facilities and equipment for the Services hereunder. To the extent access is outside the control of Customer, Customer will cooperate with SBB in obtaining access to its premises or its End Users' premises to install, operate, and maintain, repair and remove such SBB Equipment. SBB employees or agents will comply with the State/Federal, End-Users and/or Customer access and security rules and regulations. SBB will provide notice to Customer prior to entering the Customer POP to install, maintain or repair any SBB Equipment in connection with the Service provided. SBB will only enter the Customer POP if escorted by Customer personnel, unless Customer gives SBB unescorted access.

#### 9. EQUIPMENT OWNERSHIP

(a) SBB Equipment will remain the sole and exclusive property of SBB or SBB's assignee, and nothing contained herein will give or convey to Customer any right, title or interest whatsoever in such SBB Equipment, which will at all times be and remain personal property notwithstanding that it may be or become attached to or embedded in realty. Customer will not tamper with, remove or conceal any SBB identifying plates, tags or labels. Customer hereby grants to SBB the right to recover SBB provided equipment from Customer's premises upon termination of this Agreement.

(b) Neither party will adjust, align, or attempt to repair the other party's telecommunications equipment except as expressly authorized in advance in writing by the other party. Neither party's telecommunications equipment will be removed or relocated by the other party.

(c) Customer will indemnify hold harmless and defend SBB against any liens placed on SBB Equipment due to Customer's action or inaction. Any lien will be discharged by Customer within ten (10) days of notice of filing. Failure to discharge any such lien is a material breach of this Agreement, and may result in immediate termination.

#### 10. SBB WARRANTIES

(a) SBB represents and warrants to Customer that it has the right to provide Customer the Service specified herein, and that it is a municipal corporation, duly organized, validly existing and in good standing under the laws of Oregon, with all requisite power to enter into and perform its obligations under this Agreement in accordance with its terms.

(b) SBB represents and warrants that its provision of the Service will comply and conform with all applicable federal, state and local laws, administrative and regulatory requirements and any other authorities having jurisdiction over the subject matter of this Agreement and it will be responsible for applying for, obtaining and maintaining all registrations and certifications which may be required by such authorities.



(c) The warranties and remedies set forth in this Agreement constitute the only warranties and remedies with respect to this Agreement. SUCH WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR USE.

#### 11. CUSTOMER WARRANTIES

(a) The Customer represents and warrants that it is an entity, duly organized, validly existing and in good standing under the laws of its origin, with all requisite power to enter into and perform its obligations under this Agreement in accordance with its terms.

(b) Customer represents and warrants that neither its equipment nor facilities will pose a hazard to SBB's Equipment or facilities or create a hazard to SBB's personnel or customers or the public in general.

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

(d) Customer represents and warrants that either (a) it has filed an FCC Form 499-A with the Federal Communications Commission (individually or on a consolidated basis) in accordance with the registration requirement of 47 C.F.R. 64.1195, or (b) it will not resell interstate telecommunications service(s) provided by SBB under this Agreement, unless it first registers with the Federal Communications Commission in accordance with the registration requirement of 47 C.F.R. 64.1195. Customer will indemnify and hold SBB harmless from any and all loss, liability, claim, demand, and expense (including reasonable attorneys' fees) related to Customer's violation of this Section.

#### 12. COMPLIANCE WITH LAW

This Agreement is subject to all applicable federal, state and local laws, and regulations, rulings, orders, and other actions of governmental agencies ("Rules"), including, but not limited to: the Communications Act of 1934 as amended by the Telecommunications Act of 1996, the rules and regulations of the Federal Communications Commission ("FCC"), and the obtaining and continuance of any required approvals, authorizations, or tariffs filed with the FCC or any other government agency. SBB will use its good faith reasonable efforts to obtain, retain, and maintain such approvals and authorizations. If any such Rule adversely affects the Services or requires SBB to provide Services other than in accordance with the terms of this Agreement, either party may, without liability to the other party, terminate the affected Services upon 30 days prior written notice to the other party. In performing their obligations under this Agreement, the parties will comply with all applicable federal, state and local laws, regulations, rules and orders. When Customer uses the Services to carry a mixture of intrastate and interstate communications, Customer represents that the interstate communications will constitute at least 10% of the total communications carried over the Services. Upon request, Customer will make its records available to SBB for inspection and verification.

### 13. INDEMNIFICATION

Subject to the limits of applicable laws, SBB will indemnify and hold Customer harmless from and against any and all loss, liability, claim, demand, and expense for damages to any property, or injury to or death of any person to the extent caused by a negligent or intentional act or omission of SBB. Customer will indemnify and hold SBB harmless from and against any and all loss, liability, claim, demand, damage and expense (including reasonable attorneys' fees) to the extent caused by any act or omission of Customer or End User. The provisions of this Section shall survive the termination of Services and any Service Order(s) issued hereunder.

### 15. LIMITATION OF LIABILITY

SBB'S LIABILITY AND THE EXCLUSIVE REMEDY OF CUSTOMER FOR DAMAGES ASSOCIATED WITH THE INSTALLATION, PROVISION, TERMINATION, MAINTENANCE, REPAIR OR RESTORATION OF SERVICES, WILL BE SOLELY LIMITED TO AN AMOUNT NO GREATER THAN THE AMOUNTS PAID BY CUSTOMER TO SBB DURING THE CONTRACT TERM. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, RELIANCE, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE WHATSOEVER, INCLUDING BUT NOT LIMITED TO ANY LOST PROFITS, LOST REVENUES, LOST SAVINGS, OR HARM TO BUSINESS. EACH PARTY HEREBY RELEASES THE OTHER PARTY, ITS SUBSIDIARIES AND AFFILIATES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, AND AGENTS, FROM ANY SUCH CLAIM. THE PROVISIONS OF THIS SECTION WILL SURVIVE THE TERMINATION OF THIS AGREEMENT, THE SERVICES AND ANY SALES ORDER(S) ISSUED HEREUNDER.

### 16. FORCE MAJEURE

In the event that either party's performance is delayed, prevented, obstructed, or inhibited because of any act of God, fire, casualty, delay or disruption in transportation, flood, war, strike, lockout, epidemic, destruction or shut down of facilities, shortage or curtailment, riot, insurrection, governmental acts or directives, any full or partial failure of any communications or computer network or any cause beyond such party's reasonable control, the party's performance will be excused and the time for the performance will be extended for the period of delay or inability to perform resulting from such occurrence. The occurrence of such an event will not constitute grounds for a declaration of default by either party hereunder.

### 17. NOTICES

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

### 18. WAIVER

The failure of either party to insist upon the performance of any provision herein or to exercise any right or privilege granted to it hereunder will not be construed as a waiver of such provision or any provisions herein, and the same will continue in full force. The various rights and

remedies given to or reserved by either party herein or allowed by law, are cumulative, and no delay or omission to exercise any of its rights will be construed as a waiver of any default or acquiescence, nor will any waiver of any breach of any provision be considered a waiver of any continuing or subsequent breach of the same provision.

19. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon.

20. ASSIGNMENT

Customer may not assign its obligations hereunder without the prior written consent of SBB, which consent will not be unreasonably withheld.

21. DISPUTE RESOLUTION

Except as otherwise specifically provided in or permitted by this Agreement, all disputes, differences of opinion or controversies arising in connection with this Agreement shall first be resolved through good faith negotiation to arrive at an agreeable resolution. If, after negotiating in good faith for a period of ninety (90) calendar days or any agreed further period, the parties are unable to resolve the dispute, the parties shall submit the dispute to mediation. Mediation is a necessary prerequisite before the filing of any litigation or the commencement of arbitration. Either party may request mediation. The requesting party must suggest an independent mediator with the request for mediation. If the parties cannot agree upon a mediator, either party may apply to the Presiding Judge, Washington County Circuit Court, for appointment of a mediator. The parties shall share equally in the fees and costs of the mediator. Each party shall be responsible for its own attorney fees. Mediation shall be at Portland, Oregon, unless the parties agree otherwise. If the dispute is not resolved by mediation, the parties shall submit the matter to binding arbitration utilizing the Arbitration Service of Portland, Inc. (ASP) and by filing a claim within ten (10) business days of the notice by the mediator that mediation has failed. Said arbitration shall be in accordance with the filing and effective arbitration rules of the ASP and judgment upon the award rendered pursuant to such arbitration may be entered in any court having jurisdiction thereof. The parties shall be responsible for their own attorneys fees and costs incurred in the arbitration and share equally the costs of the arbitrator.

22. SEVERABILITY OF PROVISIONS

In the event any provision in this Agreement is held invalid, illegal or unenforceable, the unaffected provisions shall remain in full force and effect. The parties shall negotiate in good faith to substitute for such invalid, illegal or unenforceable provision a mutually acceptable provision consistent with the original intentions of the parties.

23. RULES OF CONSTRUCTION

(a) Unless expressly defined herein, words having well-known technical or trade meanings shall be so construed. All listing of items shall not be taken to be exclusive, but shall include other items, whether similar or dissimilar to those listed, as the context reasonably requires.

(b) Except as set forth to the contrary herein, any right or remedy of either party will be cumulative and without prejudice to any other right or remedy, whether or not contained herein.

(c) Except as set forth in this Agreement, nothing in this Agreement is intended to provide any legal rights to anyone not an executing party of this Agreement. Except as otherwise stated, this Agreement does not provide and is not intended to provide third parties with any remedy, claim, liability, reimbursement, cause of action, or other privilege.

24. ENTIRE AGREEMENT

This Agreement and any documents referenced herein constitute the entire agreement between the parties with respect to the subject matter hereof, and supersedes any and all prior or contemporaneous agreements, representations, statements, negotiations, and undertakings written or oral. This Agreement and any of the provisions hereof may not be amended, altered or added to in any manner except by a written document signed by an authorized representative of each party. In the event of a conflict between the provisions of this Agreement and those of any Service Addendum or Service Order, unless specifically otherwise agreed, the provisions of this Agreement shall prevail and such Addendum or Service Order will be interpreted accordingly.

## Sherwood Broadband Internet Access Service Addendum



This Internet Access Service Addendum ("Addendum") shall be attached to and become a part of the Master Service Agreement ("Agreement") by and between Sherwood Broadband ("SBB") and Customer. For Internet Access Services to be provided by SBB, the parties further agree as follows:

1. Description of Services. SBB will provide to Customer and Customer will procure from SBB certain Internet Access Service pursuant to the terms and conditions of this Addendum and the Agreement, including but not limited to: Access to SBB's Internet Network, or other service as more fully described on the Service Order ("Services").
2. Rates and Charges. Rates for Services will be determined on an individual case basis at the time a new Service Order is prepared.
3. Domain Name Service. Domain Name Service ("DNS") is a corner stone capability and requirement in any use of the Internet. Domain names and DNS servers are essential to the proper function of anyone who uses or provides services via the Internet. There must be a valid Internet Domain Name attached to any network connected to the Internet. Customer must have a registered Internet Domain Name before SBB can host primary DNS for Customer's network, or provide secondary DNS for Customer's network. SBB does not register Internet Domain Names on behalf of Customer.
4. Service Reliability. While SBB strives to deliver as near error free transmission and access Services as reasonably possible, it accepts no responsibility for failure of routes, connections, packet loss or router/server rejections that are beyond its control. SBB may from time to time purchase network access from national service providers to facilitate its own deployed backbone network. Because the information flow and network traffic changes dynamically, SBB may find it necessary to rebalance its own backbone to provide efficient routing capabilities. These changes may impact the routing paths that a Customer's information uses to enter or exit SBB's network. For these reasons, SBB does not guarantee specific network entrance or exit points.
5. Routing Ability on the Internet. Customer acknowledges and recognizes that the Internet is a world-wide interconnection of privately owned networks and as such, the ability to route or transmit or receive messages, data and/or files is limited to the capabilities of the various systems and the individual policies of the network owners. SBB will maintain its own network in its sole discretion and in a fashion that will provide the necessary bandwidth to carry Customer's contracted traffic in an efficient manner. SBB will filter non-aggregated routes at a level that is consistent with best engineering practices.

6. Rights and Obligations of Customer.

(a) Customer shall, at Customer's expense, undertake all necessary preparation required to comply with SBB's installation and maintenance instructions. Customer is responsible for obtaining IP addresses prior to order completion. All IP address space allocated or assigned by SBB is non-portable. Renumbering IP networks is considered a part of normal network management activities. All costs associated with all such renumbering activities, whether voluntary or involuntary, are solely the responsibility of Customer, Customer's failure to obtain IP addresses prior to the installation and testing of Services does not release Customer from its obligation to accept such Services. In addition, if SBB supplies routers or other equipment to Customer as part of SBB Services ("Equipment"), Customer shall be responsible for the costs of relocation of such Equipment once installed by SBB, and shall provide to SBB and suppliers of communications lines reasonable access to Customer's premises to maintain such Equipment or to perform any acts required by the Master Service Agreement and this Addendum.

(b) Customers without their own domain names shall maintain a deliverable mailbox, and agree to actively review said mailbox on a regular basis. Customers with their own domain names shall maintain separate abuse, hostmaster, and postmaster email addresses maintained and actively reviewed on a regular basis.

7. Acceptable Use Policy. Customer agrees to comply with SBB's Acceptable Use Policy (AUP) as a condition of receiving and continued eligibility for Service. The SBB AUP is attached to this Addendum as Appendix 1.

8. Equipment or Software not provided by SBB.

(a) Except as otherwise agreed to by the parties, SBB shall not be responsible for the provision and installation of equipment or software not provided by SBB; nor shall SBB be responsible for the transmission or reception of information by equipment or software not provided by SBB.

(b) It is expressly understood that Customer shall be responsible for the use and compatibility of equipment or software not provided by SBB. In the event that Customer uses equipment or software not provided by SBB which impairs Customer's use of the Service, Customer shall nonetheless be liable for payment for the Service. Upon notice from SBB that the equipment or software not provided by SBB is causing or is likely to cause hazard, interference or Service obstruction, Customer shall eliminate the likelihood of hazard, interference or Service obstruction. At Customer's request, SBB will trouble shoot difficulties caused by equipment or software not provided by SBB. Customer shall pay SBB for these troubleshooting Services at current prevailing rates.

(c) SBB shall not be liable if changes in the Service cause Customer's equipment or hardware to become obsolete, require modification or alteration, or otherwise affect performance of Customer's equipment or hardware.

(d) In the event Customer provides one or more routers to interface with the Service, the following terms apply:

(i) SBB reserves the right to allow or reject the make, model and or software revision of Customer-provided router to be used as the gateway to the Service.

(ii) Customer will cooperate with SBB in setting the initial configuration for the router's interface into the Service.

9. Rights and Obligations of SBB; Disclaimer of Warranties.

(a) SBB shall operate and maintain the Service. Customer shall be responsible for maintaining its own network and routers that interface with the Service. SBB shall not be responsible for cabling that connects equipment not provided by SBB to SBB Equipment or the Service.

(b) Customer agrees that SBB Equipment may not be used for unauthorized purposes. Equipment provided by SBB to Customer is owned and controlled by SBB and such equipment will be returned to SBB upon termination of this Agreement. Customer hereby grants to SBB the right to recover SBB Equipment from Customer's premises upon termination of this Agreement or any Service Order.

(c) Customer understands that Customer, End Users, and Customer's authorized users may access the Internet through the Service. Customer understands further that, except for certain products and Services specifically offered by SBB, SBB does not operate or control the Internet in any way, and all merchandise, information and Services offered or made available or accessible over the Internet are offered or made available or accessible by third parties who are not affiliated with SBB. Customer assumes total responsibility and risk for Customer's use and authorized users' use of the Service and the Internet. SBB makes no express or implied warranties, representations or endorsements whatsoever (including without limitation warranties of title or noninfringement, or the implied warranties of merchantability or fitness for a particular purpose) with regard to any merchandise, information or Service provided through the Internet. SBB shall not be liable for any cost or damage arising either directly or indirectly from any such transaction. It is solely Customer's responsibility and Customer's authorized users' responsibility to evaluate the accuracy, completeness and usefulness of all opinions, advice, services and other information, and the quality and merchantability of all merchandise, provided through the Service or on the Internet generally.

(d) Customer understands further that the Internet contains unedited materials some of which are sexually explicit or may be offensive to some people. Customer and authorized users access such materials at their own risk. SBB has no control over and accepts no responsibility whatsoever for such materials.

(e) The Service is provided on an "as is" and "as available" basis without warranties of any kind, either express or implied, including but not limited to warranties of title, noninfringement or implied warranties of merchantability or fitness for a particular purpose. No advice or information given by SBB or its employees shall create a warranty. SBB does not warrant that the Service will be uninterrupted or error free or that any information, software or other material accessible on the Service is free of viruses, worms, Trojan horses or other harmful components.

(f) If Customer is dissatisfied with the Service or with any terms, conditions, rules, policies, guidelines, or practices of SBB in operating the Service, Customer's sole and exclusive remedy is to terminate the Service Order in accordance with the Master Service Agreement and discontinue using the Service.

(g) SBB has no obligation to monitor the Service. However, Customer agrees that SBB has the right to monitor the Service electronically from time to time and to disclose any information as necessary to satisfy any law, regulation or other governmental request, to operate the Service properly, or to protect itself or its subscribers. As provided above, SBB will monitor the transmission of the Service. However, SBB will not monitor the content of any of the Service, including, but not limited to, any private electronic-mail messages. SBB reserves the right to refuse to post or to remove any information or materials, in whole or in part, that are in violation of this Agreement.

(h) SBB does not guarantee sequential delivery of data packets. Packet loss and latency are inherent in IP design. SBB will use reasonable efforts to maintain delivery of streaming media.

#### 10. Failure to Comply with Agreement.

(a) SBB may deny Customer access to all or part of the Service, or may suspend Customer's access or refuse to post or remove any information or materials proposed to be posted by Customer or Customer's authorized users, if any conduct or activity violates any of the terms and conditions in this Agreement; provided that SBB will give Customer twenty-four (24) hours prior notice and opportunity to cure the violation prior to suspension of the Service. Notwithstanding the foregoing, in the event of an emergency SBB reserves the right to immediately suspend Service to prevent degradation of network integrity. If SBB suspends Service because of such a violation, Customer and Customer's authorized users shall have no right to access any materials or third party services, merchandise or information stored on the Internet through SBB Services, and Customer shall have no right to credit(s) related to such unavailability of Service. SBB shall not be responsible for notification of the suspension to any party other than Customer.

(b) Notwithstanding the foregoing, in the event SBB's system integrity is threatened or SBB is served with any court or governmental order requiring suspension or termination of Service, SBB may suspend or terminate Service immediately.



## Sherwood Broadband Acceptable Use Policy



This Sherwood Broadband (SBB) Acceptable Use Policy (the "Policy") for SBB's Internet Products and Services is designed to help protect SBB, SBB's customers and the Internet community in general from irresponsible or, in some cases, illegal activities. The Policy is a non-exclusive list of the actions prohibited by SBB. SBB reserves the right to modify the Policy at any time.

### **PROHIBITED USES OF SBB'S SYSTEMS, PRODUCTS AND SERVICES**

1. Transmission, distribution or storage of any material in violation of any applicable law or regulation is prohibited. This includes, without limitation, material protected by copyright, trademark, trade secret or other intellectual property right used without proper authorization, and material that is obscene, defamatory, constitutes an illegal threat, or violates export control laws.
2. Sending unsolicited mail messages, including the sending of "junk mail" or other advertising material to individuals who did not specifically request such material (e.g., "e-mail spam"). This includes, but is not limited to, bulk-mailing of commercial advertising, informational announcements, and political materials. It also includes posting the same or similar message to one or more newsgroups (excessive cross-posting or multiple-posting). SBB accounts or services may not be used to collect replies to messages sent from another Internet Service Provider where those messages violate this Policy or that of the other provider.
3. Maintaining, or sending e-mail to, "opt-in targeted marketing lists" if Customer cannot demonstrate, to SBB's satisfaction, that the member(s) of the list(s) have knowingly requested to be added to the list(s) in question through direction action of their own doing, and that easily accessible, automated opt-out/removal mechanisms are in place and available to the members of the list(s).
4. Unauthorized use, falsification or forging, of mail header information (e.g., "spoofing").
5. Unauthorized attempts by a user to gain access to any account or computer resource not belonging to that user (e.g., "cracking").
6. Obtaining or attempting to obtain service by any means or device with intent to avoid payment.
7. Unauthorized access, alteration, destruction, or any attempt thereof, of any information of any SBB customers or end-users by any means or device.
8. Knowingly engaging in any activities that will cause a denial of service (e.g., synchronized number sequence attacks) to any SBB customers or end users whether on the SBB network or on another provider's network.

9. Using SBB's Products and Services to interfere with the use of the SBB network by other customers or authorized users.
10. Intentionally transferring viruses, worms, Trojan horses or other harmful components.
11. Posting commercial advertisements if the target forum is not specifically chartered for public advertisement.

Each SBB IP customer is responsible for the activities of its customer base, representatives and end users and, by accepting service from SBB, is agreeing to ensure that its customers, representatives and end-users abide by this Policy. If violations of the SBB Acceptable Use Policy occur, SBB reserves the right to terminate services with or take action to stop the offending customer from violating SBB's Policy as SBB deems appropriate, without notice.

### **Terms of Service**

To ensure that all SBB Network users experience reliable service, SBB requires users to adhere to the following terms and conditions. If you have any questions or concerns regarding SBB service, call the appropriate contact listed on your monthly billing statement. The following conditions apply to Services provided by SBB:

- The network user may provide bandwidth directly to its own customers or maintain multiple business locations or internet domain names. It is the responsibility of the network user to ensure that its customers do not resell bandwidth obtained from or through SBB.
- Bandwidth use will be monitored by monitoring the internet traffic that is generated by the user and leaves the SBB network, combined with traffic that enters the SBB network destined for the network user's IP address. Should a Service site exceed the maximum sustained downstream bandwidth specified in the Service Order, the user may receive a notification requiring the service level to be upgraded to match the needs of usage, and is subject to loss of data for which SBB is not responsible.

SBB will maintain the integrity and use of its bandwidth and therefore strictly prohibits the reselling of bandwidth by any of its users except as authorized above.

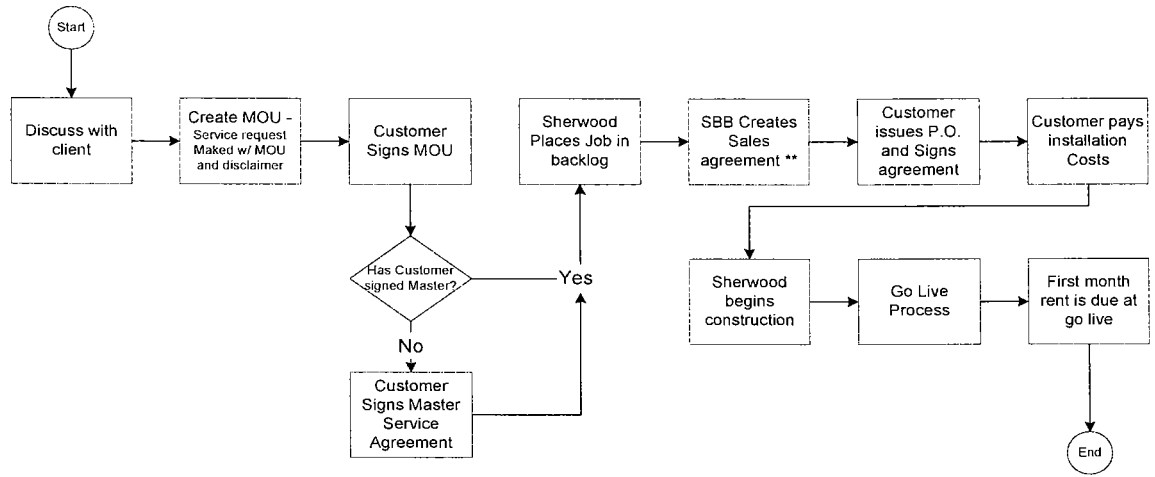
Users must conform to this Acceptable Use Policy and Federal Communications Commission rules and laws. In the event SBB determines that any user is acting in violation of this Policy, FCC regulations or State or Local law, service may be terminated immediately.

Your cooperation ensures that SBB users of all levels of service will experience reliable high-speed Internet service.

**Sherwood Broadband Goals**

1. Use our Fiber Asset to stimulate Economic Development in Sherwood.
2. Use our Fiber Assets to generate other internet access for the benefit of our Citizens.
3. Use Sherwood Broadband to promote a competitive marketplace and to not compete with private enterprise.
4. Develop our asset as a revenue generator to Support 1 and 2 above and excess to be returned to the General Fund.
5. Be a revenue generator

SBB Sales Process



\*\* Sales agreement includes installation costs, monthly charges, SLA, timeline for go live and anything else required to close the agreement.