



Home of the Tualatin River National Wildlife Refuge

RESOLUTION 2020-017

AUTHORIZING THE CITY MANAGER TO SIGN AN IGA WITH NEWBERG SCHOOL DISTRICT FOR DARK FIBER AND DATA SERVICES

WHEREAS, the City of Sherwood's broadband utility, Sherwood Broadband, provides internet services to customers on its network; and

WHEREAS, Newberg School District has requested service from Sherwood Broadband; and

WHEREAS, Sherwood Broadband would construct fiber to Newberg School District sites and provide both dark fiber and data connectivity; and


WHEREAS, Newberg School District would compensate Sherwood Broadband for the services provided for a period of at least ten years.

NOW, THEREFORE, THE CITY OF SHERWOOD RESOLVES AS FOLLOWS:

Section 1. The City Manager is hereby authorized to execute the Intergovernmental Agreement (IGA) with Newberg School District for dark fiber and data connectivity services in a form substantially similar to the attached Exhibit A.

Section 2. This Resolution shall be effective upon its approval and adoption.

Duly passed by the City Council this 17th day of March, 2020.


Keith Mays, Mayor

Attest:


Sylvia Murphy, MMC, City Recorder

Intergovernmental Agreement For Provision of Broadband Services

This agreement (“Agreement”) is entered into by and between the City of Sherwood acting by and through its Sherwood Broadband utility (“City”) and the Newberg School District (“District”), both municipal corporations of the State of Oregon, pursuant to ORS Chapter 190.

RECITALS

- A. City, through its Sherwood Broadband utility, provides broadband services to a variety of public and private customers.
- B. District desire to obtain from City, and City is willing to provide to District, certain broadband services.
- C. In order to provide such services, City will need to undertake a major construction project. As a result, it is necessary for City and District to enter into a long-term agreement in order to ensure that City will be adequately compensated for the costs of such project.
- D. District believes it is in its best interest to enter into such an agreement in order to obtain the services it requires at a satisfactory cost.

AGREEMENT

Now, therefore, based on the foregoing, the parties agree as follows:

- 1. **Construction Project.** No later than March 1, 2020, unless otherwise agreed by the parties in writing, City will commence all necessary engineering and construction in order to provide the services described herein (the “Construction Project”), and will complete said construction to all locations listed below with the exception of Ewing Young and Dundee Elementary no later than July 1, 2021, unless otherwise agreed by the parties in writing. Due to the distance of Ewing Young and Dundee Elementary from the other District schools construction is expected to be extended and completed on or before July 1, 2022.
- 2. **Services Provided.**
 - 2.1. Upon completion of the Construction Project, City will provide to District the following services:
 - 2.1.1. One unused optical fiber pair (Dark Fiber) that connects to each of the following locations:
 - 2.1.1.1. Mountain View Middle School, 2015 N Emery Dr. Newberg, OR
 - 2.1.1.2. Joan Austin Elementary, 2200 N Center St. Newberg, OR
 - 2.1.1.3. Chehalem Valley Middle School, 403 W Foothills Dr. Newberg, OR
 - 2.1.1.4. Dundee Elementary, 140 SW 5th St. Dundee, OR

- 2.1.1.5. Ewing Young Elementary, 17600 NE North Valley Rd Newberg, OR
- 2.1.1.6. NSD Physical Plant/District Office, 714 E. 6th St. Newberg, OR
- 2.1.2. 10 GB private connection to Clackamas ESD, 13455 SE 97th Ave Clackamas, OR

- 2.2. The architecture for the fiber connections will be a collapsed ring where each location connects to a location near to it and continues this method until all locations are connected. Full ring redundancy for sites inside Newberg city limits may be possible as future fiber expansion occurs. City will provide District the additional fiber pair to create a full ring at no additional cost when this redundant fiber route is available.
- 2.3. The District will be responsible for providing a conduit from the telecom/data room at each location described in Section 2.1.1 to the outside of each building. City will utilize this conduit to extend its fiber into each location. The location of this conduit will be determined by mutual agreement of the parties so as to minimize disruption of school grounds and to ease the extension of the cable into the building.
- 2.4. City may begin to provide the above-described services to District in phases as the Construction Project progresses.
- 2.5. City will begin to provide all above-described services to District no later than January 1, 2021 except as otherwise provided herein and unless otherwise agreed by the parties in writing.

3. **Payment for Services.**

- 3.1. District will commence payment to City for the above-described services when City begins to provide such services to District. If City begins providing such services in phases, District's payments to City will be based on the services being provided in the then-current phase.
- 3.2. The amount of District's payments to City for the services provided will be as follows:
 - 3.2.1. Dark fiber connections at the following locations:
 - 3.2.1.1. Mountain View Middle School – Five hundred and twenty-five dollars (\$525.00) per month.
 - 3.2.1.2. Joan Austin Elementary – Five hundred and twenty-five dollars (\$525.00) per month.
 - 3.2.1.3. Chehallem Valley Middle School – Five hundred and twenty-five dollars (\$525.00) per month.
 - 3.2.1.4. Dundee Elementary – Five hundred and twenty-five dollars (\$525.00) per month.
 - 3.2.1.5. Ewing Young Elementary – Five hundred and twenty-five dollars (\$525.00) per month.

3.2.1.6. NSD Physical Plant/District Office – Five hundred and twenty-five dollars (\$525.00) per month.

3.2.2. 10 GB private connection to Clackamas ESD – One-thousand dollars (\$1,000.00) per month.

3.3. The above pricing is effective for the period beginning on the date City first provides any of the above-described services to District and ending on the date that is ten (10) years later (the “Initial Term”).

3.4. Unless otherwise agreed by the parties in writing, during any Renewal Term (as defined below), the amount of District’s payments to City for the services provided shall be the same as during the Initial Term.

4. **Invoicing and Prepayment.**

4.1. The City will invoice the District on a monthly basis. The District shall pay the City the amount billed within forty-five (45) calendar days of receiving each invoice.

4.2. District may elect to pre-pay City for services under this Agreement. In the event District elects to do so, the parties shall enter a written agreement specifying the amount of the pre-payment and the specific services and dates of service to which it applies. If this Agreement is terminated prior to the provision of all of the services for which District has pre-paid City, City will, within forty-five (45) calendar days after the termination date, refund to District the amount of the pre-payment attributable to the services not provided as of the termination date, subject to an offset for any amounts owed by District to City pursuant to Section 6.2 of this Agreement.

5. **Term of Agreement.** This Agreement shall be effective upon the date of last signature below and shall remain in full force and effect until expiration of the Initial Term. It shall thereafter automatically renew for one (1) year terms (each a “Renewal Term”) unless either party provides written notice of non-renewal of this Agreement to the other party at least ninety (90) calendar days prior to the date on which any Renewal Term would otherwise commence.

6. **Breach and Termination.**

6.1. Notwithstanding any other provision of this Agreement, either party may terminate this Agreement at any time as a result of material breach of this Agreement by the other party, provided the non-breaching party first provides the breaching party with written notice of such breach and a reasonable opportunity to cure, which shall not be less than ninety (90) calendar days. If the breach remains uncured after such time, the non-breaching party may then terminate this Agreement effective upon written notice to the breaching party, or upon such other date as may be specified in such notice.

6.2. This Agreement may be terminated at any time by mutual agreement of the parties, upon such terms as the parties may agree in writing.

6.3. If this Agreement is terminated prior to the expiration of the Initial Term for any reason, District shall, within thirty (30) calendar days after the effective date of such termination, pay to City an amount equal to the costs actually incurred by City in connection with the Construction Project, minus any amounts actually paid by District to City under this Agreement prior to the effective date of such termination.

7. **General Provisions.**

7.1. **Compliance with Laws.** Each party shall comply with all applicable federal, state and local laws, including but not limited to those related to discrimination in employment because of race, color, ancestry, national origin, religion, sex, sexual orientation, marital status, age, medical condition or disability, and all applicable laws and regulations regarding the handling and expenditure of public funds.

7.2. **Authority.** The parties signing this Agreement are authorized to sign and to bind their respective contracting parties to the terms of the Agreement.

7.3. **Governing Law; Forum.** The provisions of this Agreement shall be construed in accordance with the provisions of the laws of the State of Oregon, without regard to conflicts of law principles. Any action or suits involving any question arising under this Agreement must be brought in the appropriate court in Washington County, Oregon or, only if there is no Oregon state court jurisdiction, the United States District Court for the District of Oregon, and each party hereby submits to the exclusive jurisdiction of those courts for purposes of any such proceeding. Any trial will be to the court without a jury.

7.4. **Indemnification.** The Agreement is for the benefit of the parties only. To the extent permitted by the Oregon Tort Claims Act, each party agrees to indemnify and hold harmless the other party and its officers, employees, and agents, from and against all claims, demands, and causes of actions and suits of any kind or nature for personal injury, death, or damage to property, on account of or arising out of services performed, the omission of services, or in any way resulting from the negligent or wrongful acts or omissions or unlawful policies or laws of the indemnifying party and its officers, employees, and agents in connection with this Agreement. Notwithstanding the foregoing, under no circumstances will City be liable for payment of any delay damages in relation to this Agreement. Each party shall promptly give the other party to this Agreement notice of any claim made or case filed that relates to this Agreement or services performed under this Agreement.

- 7.5. Limitation of Liability. If City is found liable to District in relation to the provision of broadband services, the amount of damages recoverable against City will not exceed, in the aggregate, the dollar amount paid by District to City pursuant to this Agreement. This limitation is not intended to apply to any damages the District incurs to staff, students or property by construction, initial installation and/or on-going maintenance or other potential torts. Damages for these issues will be subject to the standard indemnification clause in Section 7.4.
- 7.6. Insurance. Each party agrees to maintain liability and workers compensation insurance, or to self-insure, in accordance with statutory requirements at levels necessary to protect against liabilities allowed by law, including, as applicable, the then-current liability limits under the Oregon Tort Claims Act.
- 7.7. Modification. No waiver, consent, modification, or change of terms of this Agreement shall be binding unless in writing and signed by both parties. The failure of a party to enforce any provision of this Agreement shall not constitute a waiver by that party of that or any other provision.
- 7.8. Dispute Resolution. The parties shall first attempt to informally resolve any dispute concerning this Agreement. A neutral party may be used to facilitate those negotiations if mutually agreed. In the event of an impasse, the issue shall be submitted to the parties' governing bodies for a recommendation or resolution. If the dispute remains unresolved, either party may thereafter commence litigation.
- 7.9. Excused Performance. In addition to the specific provisions of this Agreement, performance by either party shall not be in default where delays or default are due to war, insurrection, strikes, walkouts, riots, floods, drought, earthquakes, fires, casualties, acts of God, governmental restrictions imposed or mandated by governmental entities other than the parties, enactment of conflicting laws or regulations by governmental entities other than the parties, new or supplementary environmental regulations, litigation, or similar bases for excused performance that are not within the reasonable control of the party to be excused.
- 7.10. Severability. If any of the provisions contained in this Agreement is invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions of this Agreement will not be affected or impaired in any way.
- 7.11. Entire Agreement. This Agreement is the entire agreement of the parties on its subject and supersedes any prior discussions or agreements regarding the same subject.

7.12. Notice. Any notice required under this Agreement shall be deemed effective when deposited, postage prepaid, in the U.S. mail and addressed as follows:

For the City:
Joseph Gall, City Manager
22560 SW Pine St.
Sherwood, OR 97140

For the District:
Joe Morelock, Superintendent
714 E 6th St.
Newberg, OR 97132

7.13. Appropriations Clause. The obligations of the parties are subject to appropriations by their governing bodies. This Agreement is subject to the debt limitations in Oregon Constitution, Article XI, section 10 and any debt limitations contained in a city charter.

7.14. Background Checks. All City employees performing working under this Agreement will be subject to a criminal background check at time of hire.

7.15. Assignment. Neither party shall assign any part of this Agreement without the prior written approval of the other party. Any attempted assignment of this Agreement without the prior written approval of the parties shall be void. Notwithstanding such approval, the subcontracting, assigning, or transferring party shall remain obligated for full performance hereunder, and the other party shall incur no obligation other than its obligations to the subcontracting, assigning, or transferring hereunder, unless otherwise agreed by the parties in writing. Nothing in this section shall prevent City from subcontracting engineering or installation work under this Agreement.

7.16. Each party shall have access to the books, documents and other records of the other party which are related to this Agreement for the purpose of examination, copying and audit unless otherwise limited by law. Each party shall maintain such books and records for a minimum of three (3) years, or such longer period as may be required by applicable law, following final payment and termination of this Agreement or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later.

7.17. At all times during the term of this Agreement the City represents it has any currently required licenses, certificates or other evidence of the necessary skills, abilities and professional knowledge needed to carry out the terms of this Agreement.

- 7.18. The City represents and warrants to the District that any and all work under this Agreement shall be performed in a good workmanlike manner and in accordance with the highest professional standards. In addition, the City warrants employees assigned to perform service(s) under this Agreement will have the required qualifications and licenses to perform their normal professional duties. Upon request, the City will provide the District with additional information concerning City's employees' qualifications and expertise.
- 7.19. Upon written request from the District, City will immediately remove any City employee, agent, or officer from all District schools or locations in cases where the District determines, in its sole discretion, that removal of the employee, agent, or officer is in the District's best interest. City will thereafter hire a subcontractor to perform the work that was being performed by the City employee, agent, or officer, at District's expense. District will reimburse City for any such subcontractor costs within thirty (30) calendar days after invoice by City. District will be solely responsible for any resulting delays in the work to be performed under this Agreement.



CITY OF SHERWOOD, OREGON

NEWBERG SCHOOL DISTRICT, OREGON

Name: _____

Name: Joe Morelock

Title: _____

Title: Superintendent

Date: _____

Date: 3/3/2020

Approved as to form: _____

Approved as to form: _____