



RESOLUTION 2020-076

AUTHORIZING THE CITY MANAGER TO SIGN AN IGA WITH CLACKAMAS EDUCATIONAL SERVICES DISTRICT FOR DATA CONNECTIVITY SERVICES

WHEREAS, the City of Sherwood's broadband utility, Sherwood Broadband, has an extensive network around the Portland Metro area; and

WHEREAS, Sherwood Broadband has a section of network that ends at the Clackamas Educational Services District and is not connected in a redundant fashion back to Sherwood Broadband's main network in Portland; and

WHEREAS, Clackamas Educational Services District has offered to trade Sherwood Broadband some fiber optic wavelengths back into Portland in exchange for some fiber optic wavelengths from Portland to Hillsboro; and

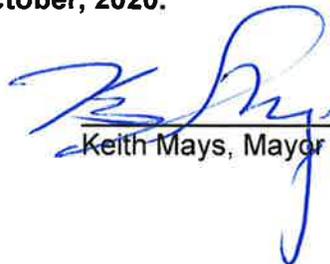
WHEREAS, Sherwood Broadband and Clackamas ESD would like to exchange these wavelengths at no cost in an effort to enhance both networks.

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

Section 1. The City Manager is hereby authorized to execute an Intergovernmental Agreement (IGA) with Clackamas Educational Services District for 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 6th day of October, 2020.


Keith Mays, Mayor

Attest:


Sylvia Murphy, MMC, City Recorder



STANDARD SERVICE CONTRACT AGREEMENT (IGA)
ISP & Data Center Services

This Intergovernmental Agreement (“Agreement”) is between **CLACKAMAS EDUCATION SERVICE DISTRICT** (“CESD”) and **CITY OF SHERWOOD** (“CITY”), (collectively, “the Parties”) pursuant to authority granted in ORS Chapter 190.

Service Description

CESD and CITY desire to mutually expand their network capacity via exchanging access to dark fiber multiplexed wavelengths. Therefore, the Parties agree as follows:

Term of Agreement. The initial Agreement term will be November 1, 2020 through June 30, 2023, when one or both Parties terminate this Agreement, whichever occurs first. If no termination notice is received by the end of Agreement term date, then this contract, automatically renews for a period of one (1) year with a maximum of two (2) renewals.

Consideration. The consideration for CESD’s use of CITY’s dark fiber shall be unrestricted use of two (2) light wavelengths. The consideration for CITY’s use of CESD’s dark fiber shall be unrestricted use of two (2) light wavelengths.

I. The **CESD** shall be responsible for the following:

- Provide CITY connectivity to two (2) wavelengths from CESD’s data center where CITY’s equipment is located to CESD’s cabinet at the Pittock building in Portland.
- Maintain support of any multiplexing & pre-amp equipment
- Maintain active lease or ownership of dark fiber capacity sufficient to supply connectivity to CITY
- CESD shall pay for any applicable cross connect fees at Edge Connects to leave CITY’s cabinet

II The **CITY** shall be responsible for the following:

- Provide CESD connectivity to two (2) wavelengths from CESD’s data center where CITY’s equipment is located to CITY’s cabinet at the Edge Connects building in Hillsboro.
 - Maintain support of any multiplexing & pre-amp equipment
 - Maintain active lease or ownership of dark fiber capacity sufficient to supply connectivity to CESD staying outside of downtown Portland
 - CITY shall pay for any applicable cross connect fees at Pittock Building to leave CESD’s cabinet
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STANDARD TERMS AND CONDITIONS

- I. **Subcontracts and Assignment.** Neither party will assign any part of the Agreement without the prior written approval of the other party, and any purported assignment without written approval will be void. Despite this prohibition on assignment, CESD may subcontract, in whole or in part, its performance under this Agreement.

2. **Termination.** This Agreement may be terminated (a) by mutual agreement at any time or (b) by either party upon not less than **ninety (90)** calendar days' advance written notice.
3. **Access to Records.** Each party will have access to the books, documents and other records of the other which are related to this Agreement for the purpose of examination, copying and audit, unless otherwise limited by law.
4. **Compliance with Applicable Law.** Each party will comply with all applicable laws, statutes, codes, ordinances, rules, regulations, and lawful orders.
5. **CITY's Indemnification.** CITY agrees to indemnify, hold harmless, and reimburse, CESD, and its officers, agents, and employees, from, for, and against all claims, suits, actions, damages, and expenses, including, but not limited to, attorneys' fees related to or arising out of this Agreement, but only to the extent caused by the negligence, breach of contract, breach of warranty (express or implied), or other improper conduct of CITY, its employees, subconsultants, or anyone for whose acts CITY is responsible, and only to the extent of the liability limits and other requirements of the Oregon Tort Claims Act and the Oregon Constitution.
6. **CESD's Indemnification.** CESD agrees to indemnify, hold harmless, and reimburse, CITY, and its officers, agents, and employees, from, for, and against all claims, suits, actions, damages, and expenses, including, but not limited to, attorneys' fees related to or arising out of this Agreement, but only to the extent caused by the negligence, breach of contract, breach of warranty (express or implied), or other improper conduct of CESD, its employees, subconsultants, or anyone for whose acts CESD is responsible, and only to the extent of the liability limits and other requirements of the Oregon Tort Claims Act and the Oregon Constitution.
7. **Force Majeure.** In no event shall a party have any claim against the other party for any failure of performance by such party, if such failure of performance is caused by or the result solely of causes beyond the reasonable control of such other party, including, but not limited to: damage caused by a third party, electrical storms, fire, heavy rain, heavy snow, other acts of God, or other natural catastrophe; laws, orders, rules, regulations, directions, or action of governmental authorities, or of any civil or military authority, national emergency, or lockout, labor shortage, or materials shortage.
8. **Governing Law; Arbitration.** The provisions of this Agreement will be construed in accordance with the laws of the State of Oregon. All claims, disputes and other matters in question between CESD and CITY arising out of or relating to this Agreement will be subject to binding arbitration in accordance with ORS 190.710 to 190.800.
9. **Entire Contract.** This Agreement constitutes the entire, legally-binding contract between the Parties regarding its subject matter. This Agreement supersedes any and all prior or contemporaneous understandings, agreements, or representations, whether oral or written, not specified herein.
10. **Waiver; Severability.** The failure of either party to enforce any provision of this Agreement will not constitute a waiver by that party of that or any other provision of this Agreement. If any term or provision of this Agreement is determined to be illegal, in conflict with any law, void, or otherwise unenforceable, and if the essential terms and provisions of this Agreement remain unaffected, then the validity of the remaining terms and provisions will not be affected and the offending provision will be given the fullest meaning and effect allowed by law.
11. **Modification.** No waiver, consent, modification, or change of terms of this Agreement will bind either party unless in writing and signed by both Parties. Such waiver, consent, modification, or change, if made, will be effective only in the specific instance and for the specific purpose given.
12. **Notices.** Any notice or other communication regarding this Agreement will be served in one of the following manners: (1) personal delivery, (2) facsimile transmission, (3) electronic mail or (4) delivery by courier or messenger service that maintains records of its deliveries.

