



RESOLUTION 2022-039

AUTHORIZING THE CITY MANAGER TO SIGN AN IGA WITH CLACKAMAS COUNTY FOR SHARING OF CONDUIT AND COST REIMBURSEMENT

WHEREAS, the City of Sherwood along with other fiber providers jointly constructed a conduit system under Interstate 5 and along Sagert Street in Tualatin; and

WHEREAS, the City of Sherwood and Clackamas County agreed to share the cost of Sherwood's portion of that construction; and

WHEREAS, Clackamas County agreed to pay the City of Sherwood \$23,060.11 for its share of this conduit system.

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

Section 1. The City Manager is hereby authorized to execute an Intergovernmental Agreement with Clackamas County 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 21st of June, 2022.



Keith Mays, Mayor

Attest:



Sylvia Murphy, MMC, City Recorder

INTERGOVERNMENTAL AGREEMENT REGARDING
SHARING DATA NETWORK RESOURCES
BETWEEN THE CITY OF SHERWOOD AND CLACKAMAS COUNTY

This Intergovernmental Agreement Regarding Sharing Data Network Resources (this "Agreement") is entered into by and between the City of Sherwood, a municipal corporation of the State of Oregon (the "City"), and Clackamas County, a political subdivision of the State of Oregon (the "County") (collectively, the "Parties"), pursuant to ORS 190.003 to 190.110, which allows units of government to enter into agreements for the performance of any or all functions and activities which such units have authority to perform.

RECITALS

WHEREAS, the City and the County have found many areas of mutual benefit in sharing data network resources; and

WHEREAS, intergovernmental cooperation between the City and County in data transport and the provision of access to fiber resources benefit the citizens and taxpayers of the City and County; and WHEREAS, the Parties desire to formalize this practice of cooperation through an Intergovernmental Agreement;

NOW, THEREFORE, the City and County agree as follows:

AGREEMENT

ARTICLE 1

Ownership and Use Rights.

- 1.1. City presently owns conduit and vaults along SW Sagert St from SW Martinazzi Ave to SW 65th Ave as generally described and depicted in Exhibit A-1, consisting of approximately 4,260 feet of 1 ¼" HDPE conduit and seven (7) 2x3 vaults with mule tape pulled in all conduit (collectively the "Conduit"). In consideration for payment by County to City in the amount of \$23,060.11, City grants County an irrevocable, indefeasable, and exclusive right of use (IRU) to use 50% of the Conduit, at no additional cost, subject to the terms of this Agreement.
- 1.2. County may use the Conduit for the following purposes: County may place fiber cable in its 50% share of the conduit.
- 1.3. County and City may, from time to time, agree to install shared fiber and infrastructure into the Conduit. Any agreement regarding shared fiber and infrastructure to be installed into the Conduit must be in writing and on terms and conditions acceptable to both parties. The parties agree to negotiate, in good faith, regarding future placement of shared fiber and infrastructure into the Conduit. In the event either party desires to install individually owned or leased fiber or infrastructure into the Conduit, that party will provide written notice thereof to the other party as far in advance as is reasonably practicable, but in any event no less than thirty (30) calendar days prior to installation, in order to allow the parties the opportunity to coordinate work involving the Conduit.
- 1.4. Control of Network. City and County shall each have full and complete control and responsibility for determining any network and service configuration or designs, routing configurations, regrooming, rearrangement or consolidation of channels or circuits and all related functions with regard to the use of their respective fiber strands located in the Conduit.

City and County shall not control the other's fiber strands nor be responsible for any of the above for the other party. For purposes of this section and determining control of the fiber strands, the fiber strands a party has use of under this Agreement shall be considered to be that Party's fiber strands.

- 1.5. No Electronics. The Parties acknowledge and agree that they are responsible for their own optronics, electronics, optical and electrical equipment, and other similar facilities. Neither Party is responsible for performing any work other than as specified in this Agreement.

ARTICLE 3

Term, Amendment, and Assignment

- 3.1 The term of this Agreement (the "Term") shall be in perpetuity upon signatures by both parties.
- 3.2 Except as otherwise provided herein, any amendment of this Agreement, or parts thereof, requires the written consent of the governing bodies of both Parties.
- 3.3 Either party may terminate this Agreement under any of the following circumstances:
 - 3.3.1 In the event of a breach of this Agreement by the other party. Prior to such termination, however, the party seeking the termination shall give to the other party written notice of the breach and of the party's intent to terminate. If the other party has not entirely cured the breach within thirty (30) calendar days of the notice, then the party giving the notice may terminate this Agreement at any time thereafter by giving a written notice of termination.
 - 3.3.2 The party fails to receive expenditure authority sufficient to allow the party, in the exercise of its reasonable administrative discretion, to perform under this Agreement.
 - 3.3.3 Federal or state laws, regulations or guidelines are modified or interpreted in such a way that performance under this Agreement is prohibited.
 - 3.3.4 For convenience after providing the non-terminating party one hundred and eighty (180) days' written notice.
- 3.4 The termination of this Agreement, regardless of cause, shall not prejudice any rights or obligations accrued to the parties prior to termination. Each party shall have all rights and remedies available to it at law, in equity, or under this Agreement.
- 3.5 Either party may transfer, convey, or assign its rights and responsibilities under this Agreement to a third party with the consent of the other party, which shall not be unreasonably withheld, and provided that the third party executes an agreement covenanting and agreeing that it will fully perform, without change or additional costs, the responsibilities of the party transferring, conveying, or assigning its rights and responsibilities. Provided, however, that prior to transfer, conveyance, or assignment of rights and responsibilities under this Agreement by either party to a third party, the other party shall have the opportunity to obtain said rights and responsibilities on the same terms and conditions as the third party, or for the actual costs incurred under this Agreement by the party seeking to transfer, convey, or assign its rights and responsibilities, whichever is less.
- 3.6 If any part of the Agreement is invalidated by court of competent jurisdiction, all remaining parts of the Agreement shall be severed from the invalid parts and shall remain in full force and effect.

ARTICLE 4
Maintenance and Work on the Fiber and Infrastructure

- 4.1 The City will be responsible for performance of maintenance of the Conduit if the Conduit is damaged, or it requires relocation or replacement.
- 4.2 Subject to availability of funds, City and County will equally share the cost of maintenance, relocation, and replacement of the Conduit.
- 4.3 Maintenance, relocation, and replacement of any shared fiber or infrastructure in the Conduit will be subject to the terms and conditions of any future agreement regarding said fiber and infrastructure.
- 4.4 Each party will be responsible for maintenance of the fiber and infrastructure individually owned or leased by that party and installed in the Conduit if such fiber or infrastructure is damaged, or it requires relocation or replacement.
- 4.5 Maintenance, repairs, and relocation will be done in a timely fashion in accordance with industry standards. Downtime is to be limited as much as practical and in accordance with communication industry practice.

ARTICLE 5
Underlying Rights

- 5.1 Underlying Rights. Each party has obtained certain rights of way and building access rights for construction and operation of their respective City network and County network (the "Underlying Rights"). This Agreement is subject to the terms and limitations of the Underlying Rights, and subject to the terms under which the right of way and other property interests are owned or held by the grantor of the Underlying Rights, including, but not limited to, covenants, conditions, restrictions, easements, reversionary interests, bonds, mortgages and indentures, and other matters, whether or not of record, and to the rights of tenants and licensees in possession. Nothing herein shall be construed as to be a representation, warranty or covenant of either party's right, title or interest with respect to the right of ways or the Underlying Rights, all of which are disclaimed.
- 5.2 County's Obligations. County agrees to use the fiber and infrastructure installed in the Conduit only in a manner consistent with the Underlying Rights and all applicable laws, and agrees that its rights shall in all respects be subject to the terms and conditions of the Underlying Rights. County agrees not to cause or allow to be caused any default under the Underlying Rights.
- 5.3 City's Obligations. The City agrees to use the fiber and infrastructure installed in the Conduit, and to otherwise maintain and use the Conduit, only in a manner consistent with the Underlying Rights and all applicable laws, and agrees that its rights shall in all respects be subject to the terms and conditions of the Underlying Rights. The City agrees not to cause or allow to be caused any default under the Underlying Rights.

ARTICLE 6
Use of the Fibers

6.1 County and City each shall not use any fiber and infrastructure installed in the Conduit in a way that interferes in any way with or adversely affects the use of the fibers or infrastructure of any other person using the City network or the County network. The Parties acknowledge that the City network and the County network may include other participants, including City or the County and other owners and users of telecommunication systems.

ARTICLE 7
Notices

7.1 All notices and other communications required or permitted under this Agreement shall be in writing and shall be given by United States first class mail, postage prepaid, registered or certified, return receipt requested, or by personal delivery (including by means of a professional messenger service or overnight mail) addressed as follows:
All notices shall be given to City at:

City of Sherwood
22560 SW Pine Street
Sherwood, Oregon 97140
Attention: Brad Crawford

All notices shall be given to County at:

Clackamas County
Chief Information Officer
121 Library Court
Oregon City, OR 97045

With a copy to

Clackamas County
Broadband Program Manager
121 Library Court
Oregon City, OR 97045

In addition, the Parties may provide notice of the availability or interruption of the services or a planned maintenance, by electronic delivery to the following e-mail addresses:

Electronic Notice address for County: ddexter@clackamas.us;
Electronic Notice address for City: crawfordb@sherwoodoregon.gov

In the case of an emergency, either Party may notify the other Party either through the e-mail addresses set forth above, or at the following telephone numbers:

Telephone Number for County: 503 742-4219 24/7 call service and
Telephone Number for City: (503) 625-4203

Any such notice or other communication shall be deemed to be effective when actually received or refused. Either Party may by similar notice given change the address to which future notices or other communications shall be sent.

ARTICLE 8 Indemnification

8.1 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 the City, its officers, elected officials, agents and employees, from and against all third party costs, losses, damages, claims or actions, and all expenses incidental to the investigation and defense thereof, including reasonable attorney fees, arising out of or based upon damages or injuries to persons or property caused by 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, in performing under this Agreement.

Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the City agrees to indemnify, save harmless and defend the County, its officers, elected officials, agents and employees, from and against all third party costs, losses, damages, claims, or actions, and all expenses incidental to the investigation and defense thereof, including reasonable attorney fees, arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the City, or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the City has a right to control, in performing under this Agreement.

This section will survive the termination or revocation of this Agreement, regardless of cause.

ARTICLE 9 Miscellaneous Provisions

9.1 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 the 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.

9.2 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 a 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.

9.3 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.

- 9.4 Access to Records. Both 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. Both 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 party's authorized representatives' access to the Records at reasonable times and places for purposes of examining and copying.
- 9.5 Debt Limitation. This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act, and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.
- 9.6 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.
- 9.7 Integration, Amendment and Waiver. Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the parties on the matter described herein. 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.
- 9.8 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.
- 9.9 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

- 9.10 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.
- 9.11 Counterparts. This Agreement may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- 9.12 Survival. All provisions in Sections 9.1, 9.3, 9.4, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 9.12, 9.14, and 9.16 shall survive the termination of this Agreement, together with all other rights and obligations herein which by their context are intended to survive.
- 9.13 Necessary Acts. Each party shall execute and deliver to the other all such further instruments and documents as may be reasonably necessary to carry out this Agreement.
- 9.14 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.
- 9.15 Force Majeure. Neither City nor County shall be held responsible for delay or default caused by events outside of the reasonable control of City or County including, but not limited to, fire, terrorism, riot, acts of God, or war. However, each party shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.
- 9.16 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.

IN WITNESS HEREOF, the Parties hereto agree to the foregoing:

<p>CITY OF SHERWOOD</p> <p>By: _____ As Its: _____</p> <p>Date: _____</p>	<p>CLACKAMAS COUNTY</p> <p>By: _____ As Its: Chair, Board of Commissioners</p> <p>Date: _____</p>
---	---

