



## RESOLUTION 2023-039

### AUTHORIZING THE CITY MANAGER TO SIGN AN IGA WITH THE WILLAMETTE WATER SUPPLY SYSTEM FOR BROADBAND SERVICES

**WHEREAS**, Sherwood Broadband has been working with the Willamette Water Supply System to provide broadband services to its new locations in Sherwood and Wilsonville; and

**WHEREAS**, both agencies worked collaboratively together in developing an IGA that outlines the services Sherwood Broadband would provide; and

**WHEREAS**, the terms of service under this IGA closely align with the terms of service for our other public agencies and commercial customers.

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

**Section 1.** The City Manager is hereby authorized to execute an Intergovernmental Agreement with the Willamette Water Supply System 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 6<sup>th</sup> of June 2023.**

Tim Rosener, Mayor

Attest:

Sylvia Murphy, MMC, City Recorder

## **INTERGOVERNMENTAL AGREEMENT FOR BROADBAND SERVICES**

This Intergovernmental Agreement (“Agreement”) is between the Willamette Water Supply System (“WWSS”) Commission and the City of Sherwood (“City”) (each a “Party and collectively “the Parties”) pursuant to authority granted in ORS Chapter 190.

### **1. Service Description**

City shall provide a combination of dark fiber and wavelength circuits on the Sherwood Broadband network to the WWSS Commission for the purpose of connecting WWSS infrastructure. City will provide these circuits to WWSS Commission-defined service locations, provided City has sufficient excess capacity to provide such services, as determined by City in City’s sole discretion, within the Sherwood Broadband network outlined in Exhibit D. City will also provide lit services in the form of point to point connections and Internet access to WWSS Commission-defined service locations, provided City has sufficient excess capacity to provide such services, as determined by City in City’s sole discretion, within said network. Notwithstanding the foregoing, City has capacity to provide the services described in Exhibit E as of the date of execution of this Agreement.

### **2. Term of Agreement.**

The initial Agreement term will be Date to Date (“Termination Date”). Unless either Party notifies the other Party no fewer than one hundred eighty (180 days) prior to the Termination Date that it does not intend to renew the Agreement, this Agreement shall automatically renew in one-year increments until terminated as provided in Section 8 of this Agreement.

### **3. Pricing.**

For the service described in Section 1, WWSS shall pay City as follows:

- Dark Fiber - \$250/month per site (two site minimum)
- Wavelength - \$250/month per site (two site minimum)
- 1gb Internet - \$250/month per site
- 1gb Point to Point - \$125/month per site (two site minimum)

The pricing for services described above does not include any applicable taxes or fees that may be imposed, which the WWSS Commission will be responsible for paying in addition to the amounts set forth above. The WWSS Commission shall begin incurring the monthly amounts set forth above in the first month that the WWSS Commission has at least two sites connected to the Sherwood Broadband network.

WWSS Commission shall additionally pay City for installation services necessary to allow City to provide the above-described services requested by WWSS Commission and as defined in an executed Service Order. Installation services will be billed at City’s actual cost plus ten percent (10%).

### **4. Service Orders**

The Parties will execute a Service Order for any services to be provided under this Agreement prior to the provision of such services. Such Service Order will specify the applicable service and installation charges.

### **5. WWSS Responsibilities.**

The WWSS Commission shall:

- Submit a written request to City for installation/connection services at each connection site.
- Review each Service Order provided by City and provide comments or return an executed copy.

- Provide conduits at WWSS connection sites that can be used to connect to the Sherwood Broadband fiber network, at no cost to City.
- Provide locating services for WWSS Commission owned conduits within 200 feet of the connection sites, at no cost to City.
- Promptly pay all invoices for services under this Agreement, but in any event make payment for undisputed invoices no later than thirty (30) calendar days after the date of invoice by the City.

## **6. City Responsibilities.**

City shall:

- Provide a proposed Service Order to WWSS Commission in response to each request for installation/connection services.
- Provide services as described in this Agreement and as detailed in one or more jointly executed service orders.
- Maintain and repair all Sherwood Broadband owned or controlled fiber and Sherwood Broadband owned or controlled equipment used by WWSS in connection with said services consistent with prudent utility practices and industry standards.
- Notify WWSS Commission of planned and unplanned outages and maintenance activities consistent with prudent utility practices and industry standards.
- Invoice WWSS Commission for services provided on a monthly basis.
- Provide the WWSS Commission reasonable access to facilities, records, as-built drawings, and related information in connection with WWSS Commission's efforts to independently review Sherwood Broadband infrastructure and related operational procedures to understand overall seismic resiliency of the system and any potential deficiencies. WWSS Commission will provide the results of any such review to City. WWSS Commission will not disclose the results of such review, or any information obtained by the WWSS Commission in connection with such review, to any third party and will use the same degree of care to protect such information as it would with respect to its own information of like importance which it does not desire to have published or disseminated, but in any event no less than reasonable care. If WWSS Commission faces legal action, is subject to legal proceedings, or otherwise legally required or potentially required to disclose such information, then, to the extent permissible by law, before disclosing any such information, WWSS Commission will promptly notify City so that City may contest such disclosure.

## **7. 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. Notwithstanding the foregoing, City may subcontract, in whole or in part, its performance under this Agreement.

## **8. Termination.**

This Agreement may be terminated (a) by mutual written agreement at any time or (b) by either Party upon not less than one hundred eighty (180) calendar days' advance written notice to the other Party. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

## **9. Exhibits and Other Agreements.**

This Agreement is subject to the Master Services Agreement, Acceptable Use Policy, Internet Access Addendum, and the terms of any Service Orders. Any conflicts between the terms of this Agreement and the terms thereof shall be resolved in the following order of precedence, in descending order:

1. Service Orders
2. This Agreement

3. Master Service Agreement (Exhibit A)
4. Acceptable Use Policy (Exhibit B)
5. Internet Access Addendum (Exhibit C)

**10. Access to Records.**

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.

**11. Compliance with Applicable Law.**

Each Party will comply with all applicable laws, statutes, codes, ordinances, rules, regulations, and lawful orders.

**12. 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.

**13. 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.

**14. Force Majeure.**

In no event shall a Party have any claim against the other Party for any failure of performance by the other Party, if such failure of performance is caused by or the result solely of causes beyond the reasonable control of the 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 other than the Party being excused from performance, or of any civil or military authority, national emergency, or lockout, labor shortage, or materials shortage.

**15. Governing Law; Jurisdiction.**

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.

**16. 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, as determined in the reasonable discretion of either Party, the issue shall be submitted to the Parties' governing bodies for a recommendation or resolution. If the dispute remains unresolved sixty (60) calendar days thereafter, either Party may commence litigation.

**17. Entire Agreement.**

This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. 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 that Party of that or any other provision.

**18. Severability.**

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.

**19. 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.

**20. Notices.**

Notices shall be made by personal service, in which case they are effective on the date of service, or by certified mail, in which case they are effective on the date of delivery, or if delivery is refused, upon the date of delivery refusal, or by e-mail, effective upon acknowledgement by the receiving party. Either Party may alter the person designated for receipt of notices under this Agreement by written notice to the other Party.

For City:

City of Sherwood / Sherwood Broadband  
Attn: Brad Crawford  
22560 SW Pine St.  
Sherwood, OR 97140  
503 625-4203  
crawfordb@sherwoodoregon.gov

For WWSS Commission:

Willamette Water Supply Program  
Attn: David Kraska  
1850 SW 170<sup>th</sup> Ave.  
Beaverton, OR 97003  
503 941-4561  
David.Kraska@TVWD.org

**21. Signatures.**

This Agreement may be executed in several counterparts, each of which will be an original, all of which will constitute one and the same instrument. An electronic signature will be considered an original. The individuals signing this Agreement certify that they are authorized to execute this Agreement on behalf of the WWSS Commission and City, respectively.

**22. Waiver of Consequential Damages.**

Neither Party, nor any of its officers, directors, employees, or agents, shall be liable for any indirect, punitive, consequential, or exemplary damages of any nature, including, but not limited to, fines, penalties, or lost profits, whether said claim is based upon contract, warranty, tort (including negligence and strict liability), indemnity, or any other theory of law.

The undersigned have read this contract, including all exhibits and attachments, and certify that they have the authority to sign and enter into this contract on behalf of their respective Party and agree to be bound by its terms.

**WILLAMETTE WATER  
SUPPLY SYSTEM COMMISSION**

**CITY OF SHERWOOD**

\_\_\_\_\_  
David Kraska, General Manager                      Date

\_\_\_\_\_  
Keith Campbell , City Manager                      Date