

## INTERGOVERNMENTAL AGREEMENT

THIS AGREEMENT is made between the GILLIAM COUNTY (“County”) a political subdivision of the State of Oregon, and THE CITY OF CONDON (“City”), an Oregon municipal corporation, for the purpose of establishing a Fiber Council for the City-County Fiber Project that serves the residents of both Gilliam County and the City of Condon.

### RECITALS

- A. Each party has entered into an Agreement with Inland Development Corporation for the development of an underground fiber optic telecommunications link between Arlington, Oregon, and Condon, Oregon, in order to promote the availability of broadband and other advanced telecommunications services to residents and businesses throughout Gilliam County, including those located within the City’s boundaries (collectively referred to in this Agreement as “the Fiber Project”);
- B. WHEREAS, since each Party’s Agreement with Inland Development Corporation depends on the financial contribution of the other Party to the payment of the overall costs associated with the Project, the Parties wish to enter into an IGA setting forth their understanding regarding the funds each will contribute toward the Fiber Project and the management of financial services of the Fiber Project and creating the Fiber Council;
- C. WHEREAS, the Parties find the performance of this IGA will benefit the public; and,
- D. WHEREAS, this IGA is entered into pursuant to ORS 190.010, *et seq.*

NOW, THEREFORE, in consideration of the mutual benefits and obligations set forth herein, the parties hereby agree as follows:

### AGREEMENT

#### 1. The Board; Authority and Party Responsibilities

- a. **Creation.** Pursuant to this Agreement, the Fiber Council (the “Council”) is hereby created as an intergovernmental entity pursuant to ORS Chapter 190. The Council shall be governed by a Fiber Council Board of Directors (the “Board”). The Board shall be the governing body and shall exercise broad authority over all matters of Council concern except as limited in Section 1(b) below or elsewhere in this Agreement.
- b. **General Powers; Responsibilities.** Initially, it is the intent of the Parties that the Council shall have only the limited authority as expressly described below.

However, the Parties may in the future broaden the scope of the Council's authority by amending this Agreement as provided in Section 2(c) below.

- i. The Board shall have the power to adopt, through action of its Board of Directors, such bylaws, rules, regulations and policies necessary to further the purposes of this Agreement;
  - ii. The Board shall have the responsibility and authority for overseeing and administering the financial services associated with the Fiber Project, including, but not limited to: providing accounting and bookkeeping services to split revenue and expenses from the Fiber Project (including fees to Inland Development Corporation and other professional fees), as further detailed in subsection vi and vii below. Such services shall be referred to in this Agreement as "Financial Services."
  - iii. The Board shall have the power to enter into agreements with other public or private entities and to exercise all powers granted to the Council under this Agreement pursuant to the applicable acts or laws of each Party which are necessary or desirable to economically and efficiently administer Financial Services for the Fiber Project.
  - iv. Gilliam County shall establish a separate fund in its budget to record receipt of all Fiber Project revenues and expenses. Gilliam County shall, in accordance with Oregon Budget Law, record and account for all such revenues and expenses.
  - v. All Board-approved Fiber Project expenses will be shared equally between the parties 50/50 and will be paid out of the Fiber Project revenues received into Gilliam County for Fiber Project leased items or other Fiber Project revenues. If Fiber Project expenses exceed revenues at the end of each fiscal year, Gilliam County will notify the City in writing by September 1 of the following fiscal year and the City will promptly issue payment to Gilliam County for half of the excess amount. Gilliam County will pay the remaining half of the excess expenses.
  - vi. All Fiber Project Revenues will be receipted into Gilliam County, including but not limited to any revenues for Fiber Project leased items. If revenue exceeds expenses at the end of each fiscal year, the Parties agree Gilliam County will receive 2/3 of such excess annual revenue and the City will receive 1/3.
- c. **Offices:** The offices of the Council shall be located at 221 S. Oregon Street, Condon, Oregon 97823.

## 2. The Board of Directors.

- a. **The Board Membership; Director Terms.** The Council Board of Directors shall consist of five (5) members, each of whom must be a qualified elector residing within the boundaries of either Party. The governing body of each Party will appoint two members, including at least one elected official. The fifth member will be appointed by the other four Board members.

The term of each Director shall be one year; however, the Directors shall serve at the pleasure of their appointing governing body and may be removed at any time upon the sole discretion of the appointing governing body. Board members are allowed to send a proxy from his or her own jurisdiction, with voting authority, to Board meetings.

- b. **Voting and Quorum.** Each Director shall have one vote. A majority of all Directors is required for a quorum. An affirmative majority vote of all Directors is required for the passage of any item before the Council, subject to any additional voting requirements as provided in this Agreement, including specifically the additional voting requirements for amending this Agreement in Subsection 4(c), below.
- c. **Authority:** In addition to the General Powers described in Section 1(b) above, the Board of Directors shall have authority to do the following:
  - i. Adopt bylaws for the Board, if deemed necessary, which shall set forth the rules by which the Board shall be run. The Bylaws may be amended from time to time by a majority vote of the Council of Directors. In the event of a conflict between any bylaws or administrative rules and this Agreement, this Agreement shall prevail.
  - ii. Oversee and have full responsibility for all matters pertaining to the development and operations of the Board.
  - iii. Enter into contracts for goods and services for the Council development and operations or for the provision of Financial Services, as described above, subject to budgetary constraints and requirements.
  - iv. Review and approve the Council budget pursuant to Oregon Local Budget Law, when applicable.
  - v. Determine the projected costs to be allocated to each Party in accordance with this Agreement.

- vi. Provide guidelines, direction and approval, if appropriate, of Standard Operating Procedures.
- vii. Approve capital purchase requests, if not previously approved in the budget.
- viii. Appoint advisory committees to consider any issue before it, if it so desires.
- ix. Establish the Council mission and goals.
- x. Review performance relative to the implementation of the Council policies and budget.

**d. Meetings:** The Board will initially meet monthly in order to develop necessary policies and procedures. Once the Board is fully operational, the frequency of the meetings will be determined at the discretion of the Council, but in no case shall the Council meet less than one (1) time per year.

**3. Budget.** The Board of Directors shall prepare the annual operating budget. The Board shall adopt a final budget, in accordance with ORS 294.900 to 294.930, no later than March 1<sup>st</sup> of each preceding year. The budget period shall be on a fiscal year basis beginning on the first of July each year. The Board shall follow the budget process of Gilliam County and Oregon State Budget Law.

**a. Approval Stage.** The Board of Directors shall consider and shall adopt said budget, or a modification thereof, and forward it to Gilliam County on or before the first day of March.

**b. Adopted Stage.** The Gilliam County Court may approve the budget as a part of the Gilliam County budget for the ensuing fiscal year or may remand it back to the Fiber Council for further consideration and/or amendments. If remanded back to the Fiber Council, Gilliam County shall provide the reasons for the remand.

**c. Budget Changes.** In the event that there are any Fiber Project changes that require a supplemental budget, such changes shall go through the budget stages set forth herein and shall comply with all applicable Oregon Local Budget Laws.

#### **4. Term, Termination and Amendment**

**a. Term.** Notwithstanding the date of counterparts, the effective date of this Agreement, and all of the obligations set forth shall be deemed in full force and effect for all purposes when signed by both Parties. The Term of this Agreement shall be perpetual unless terminated as provided below.

- b. Termination; Withdrawal.** This Agreement, and all obligations herein, may be terminated, in writing, by mutual consent of all the Parties. In such a termination, the Parties agree to follow the Dissolution procedures set out in this Agreement. One party may withdraw by providing written notice of its intent to withdraw at least six (6) months' in advance. Such unilateral withdrawal shall take effect no sooner the last day of the fiscal year in which the notice became effective. In the event of a termination or withdrawal, each Party agrees to pay its debts or liabilities due and owing prior to the effective date of the termination or withdrawal and to cooperate with the Dissolution process provided in this Agreement.
  - c. Amendment.** This Agreement may be amended only upon a unanimous vote of the Council of Directors and written approval of each Party's governing body. If the Parties' governing bodies do not approve of the amendment, they shall remand it back to the Council with suggestions. Any amendments to this Agreement shall signed by the Council President and each Party and shall be attached hereto and become a part hereof.
- 5. Disputes.** In the event there are disputes or claims by the Parties related to this Agreement, the Council's actions under this Agreement, or the Council Rules, the following dispute resolution process will be followed. The disputing Parties agree that this process will serve as the sole dispute resolution process regarding such disputes or claims.

The disputing Parties shall address disputes in the below order. Dispute resolution will be documented by mutually-signed memorandum.

- a.** File complaint with the Board President describing the matter in detail specifically citing any alleged violations of the IGA.
- b.** The President shall inform the Board and the Board shall schedule a meeting to hear the matter. All Board decisions are final.
- c.** In the event the dispute is not resolved using the above process, either disputing Party may proceed to mediation. To begin the mediation process, the disputing Parties will each submit three (3) names of potential mediators and shall agree upon a mutually acceptable mediator from the list of names. The costs of mediation shall be borne equally between the disputing Parties.
- d.** In the event the dispute is not resolved using the above mediation process, the dispute shall be subject to final and binding arbitration. Arbitration shall be conducted pursuant to the rules of the Arbitration Service of Portland or alternate rules as agreed upon by the Parties and shall be conducted in Gilliam County, Oregon, unless otherwise agreed by the disputing parties.
- e.** In the event of any arbitration arising out of or relating to this Agreement or the

enforcement thereof, the prevailing disputing Party in such action shall be entitled to recover its reasonable arbitration and attorney fees, costs, and expenses from the non-prevailing disputing Party.

- f. The laws of the State of Oregon shall be applied in the interpretation, execution, and enforcement of this Agreement.

## 6. General Provisions.

- a. **Complete Agreement.** This Agreement represents the complete and integrated understanding of the Parties with respect to all particulars covered herein. All prior agreements pertaining to the creation of an intergovernmental entity, written and oral are hereby cancelled. No prior written or oral representation, negotiation or statement which conflicts with the terms of this Agreement shall be considered to in any way modify, abridge or invalidate any provision hereof, and no evidence of such shall be admitted in any proceedings in which the terms and application of this Agreement are at issue.
- b. **Severability.** In the event any provision of this Agreement is held to be invalid and unenforceable, the remaining provisions shall be valid and binding upon the Parties.
- c. **Governing Law.** This Agreement shall be governed by the laws of the State of Oregon without regard to conflict of laws principles. Exclusive venue for litigation of any action arising under this Agreement shall be in a Circuit Court of the State of Oregon.
- d. **Force Majeure.** The Parties shall not hold any other Party or Parties responsible for damages or delay in the performance of this Agreement when caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the other Party or Parties' officers, employees or agents.
- e. **Debts, Liabilities Obligations, and Indemnification.** All debts, liabilities and obligations of any of the Parties shall be and shall remain debts, liabilities and obligations of that or those Parties and shall not become debts liabilities and obligations of the other Parties or of the Council. All debts, liabilities and obligations incurred by or on behalf of the Council shall remain debts, liabilities and obligations of the Council. Subject to the limitations of liability for public bodies set forth in the Oregon Tort Claims Act, ORS 30.260 to 30.300, and the Oregon Constitution, each Party agrees to hold harmless, defend, and indemnify each other, including its officers, agents, and employees, against all claims, demands, actions and suits (including all attorney's fees and costs) arising from the performance of this Agreement where the loss or claim is solely attributable to the purposeful or negligent acts or omissions of that Party.

**f. Liability and Insurance.**

i. **Liability.** Unless otherwise expressly agreed to in writing, there shall be no joint and several liability of the Parties either in contract or tort, and all obligations of the Board or the Parties shall be several only. Without limiting the foregoing, no Party to this Agreement shall be liable for damages, debts or claims caused solely by the negligent act, omission or other wrongful act by the Board or other Parties hereto. The Party causing damages by its sole negligent act, omission, or wrongful act shall be individually liable.

ii. **Insurance.** The Parties and the Board shall each individually maintain comprehensive general liability insurance coverage or sufficient self-insurance reserves to cover the reasonable risks of damage or loss in the form of personal injury, bodily injury, or property damage for acts or omissions done in the course and scope of this Agreement in at least the coverage amounts for which public entities are liable under Oregon Revised Statutes and the Oregon Constitution, as those laws now exist or as they may be amended. The Board shall name the Parties as additional insureds. Notwithstanding anything herein to the contrary, the Board may, by majority vote and without amending this Agreement, require additional insurance coverage, limits, and terms. The Board shall secure all necessary and desirable insurance coverages, which shall include Errors and Omissions coverage.

**g. Dissolution.** In the event that the Parties agree to terminate this Agreement (as provided above) and dissolve the Fiber Council, the dissolution motion shall provide an estimated timeline for the dissolution and shall name two Board members (called "Dissolution Managers" in this Agreement) responsible for overseeing the dissolution process. The Dissolution Managers may retain professional assistance as needed and shall take immediate steps to begin to permanently terminate and dissolve the Council. Such dissolution steps shall include but are not limited to the following:

i. Providing written notice to all Parties' elected officials of the pending dissolution, including the proposed timeline for a final dissolution and the Board's expected process for ending employment relationships.

ii. Notification to all neighboring governments, all necessary State and federal agencies, and all partners of such dissolution.

iii. Creation of a budget document which shall account for all Council funds, revenues, and assets and all Council debts and financial responsibilities.

- iv. Satisfaction of all Council debts and financial responsibilities, including a final financial and accounting of all debts and resources.
- v. Any funds or revenues remaining in Council accounts after satisfying all Council debts and financial responsibilities shall be distributed to the Parties in proportion to their funding contributions. Such distribution plan shall be documented in writing and shall be provided to all Parties prior to distribution.
- vi. Any personal property, equipment and furnishings not identified for return to a third party or a Party shall be sold in accordance with applicable public contracting and procurement law. After ensuring payment or satisfaction of all Council debts or financial responsibilities, the funds from such sale shall be distributed to the Parties in proportion to their funding contribution to Council. Such distribution plan shall be documented in writing and provided to all Parties prior to distribution.
- vii. Any other actions or decisions required to fully dissolve the Council, as determined by the Board's Dissolution Managers, including specifically, a plan for either maintaining or abandoning the infrastructure.

**h. Counterparts.** Each Party shall sign a counterpart of the original of this Agreement. The Parties intend that all the signed counterparts taken together will be considered as one original document and given full force and effect as if all Parties had signed one document.

**7. No Shared Employees.** Employees or volunteers of the Parties shall be at all times employees and/or volunteers of their original employer for the purposes of this Agreement. No employment or business partnerships between the Parties shall be imputedly created by this Agreement. Employees and volunteers remain subject solely to the personnel policies, rules, and regulations of their employer. The intent of this provision is to prevent the creation of any "special employer" relationships under Oregon workers' compensation law, PERS regulations, or other state or federal laws.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed in their respective names by their duly authorized representatives as of the dates set forth below.

GILLIAM COUNTY

CITY OF CONDON

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Elizabeth Farrar, Gilliam County Judge

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Jim Hassing, Mayor



Date: \_\_\_\_\_

Date \_\_\_\_\_