

**MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF JOHN DAY AND  
OREGON TELEPHONE CORPORATION REGARDING FIBER OPTIC NETWORK  
CONSTRUCTION AND OPERATION**

**This Memorandum of Understanding (“MOU”)** is entered into on \_\_\_\_\_ (“Effective Date”) by and between the City of John Day (“City”), an incorporated city in Grant County, Oregon and the Oregon Telephone Corporation (“OTC”), a certified public utility incorporated in the State of Oregon with its principal offices located at One Telephone Drive, Mount Vernon, Oregon 97865.

**WHEREAS**, the City is the lead agency and fiduciary agent for the Grant County Digital Network Coalition (“Grant County Digital”), an intergovernmental entity organized pursuant to Oregon Revised Statute 190 on April 10, 2018. The purpose of Grant County Digital is to share resources and to deploy and promote broadband connectivity to unserved and underserved residents in Grant County; and

**WHEREAS**, OTC is a certified public utility that has been providing communications services since 1914 and is the first company to provide internet service in the John Day Valley in eastern Oregon; and

**WHEREAS**, City, for and on behalf of Grant County Digital, wishes to expand broadband access to farms, businesses and residents in Grant County within a publicly funded service area that includes eligible areas in the cities of Seneca, John Day, Long Creek, Monument, Spray and the surrounding communities; and

**WHEREAS**, City, as lead agency for Grant County Digital, has dedicated funding for the construction of a broadband network to reach these unserved and underserved residents; and

**WHEREAS**, OTC does not have fiber optic lines covering the proposed funded service area (“PFSA”) due to low population densities and the long distances to reach them; and

**WHEREAS**, the City and OTC wish to work together to promote their mutual interests in extending their networks and providing high speed broadband service to unserved and underserved areas; and

**WHEREAS**, City desires to obtain the right to use certain dark fibers and transport services in the OTC network and OTC desires to grant to the City an Indefeasible Right of Use (“IRU”) in certain fibers in the network subject to the terms and conditions set forth in the proposed IRU agreement;

**NOW THEREFORE** in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the City and OTC agree as follows:

1. **City Financial Contribution:** The City, as lead agency for Grant County Digital, shall contribute \$750,000 toward the construction of the fiber optic connections as proposed in OTC’s 2019 USDA ReConnect application and described in Section 2 of this MOU.

2. Network. OTC shall apply to the 2019 USDA ReConnect program to build approximately 80-miles of fiber optic infrastructure to service rural communities in Grant and Wheeler counties. The proposed network will extend broadband from Seneca to John Day in southern Grant County, and from the Mt. Vernon area north and west to Long Creek, Monument, Kimberly and Spray in northwest Grant County and Wheeler County. The network will be capable of delivering gigabit speed internet to homes, farms, ranches and businesses in these communities, which currently lack broadband access.

3. IRU Agreement. Upon notice of award by USDA, City and OTC shall enter into an IRU agreement substantially in the form of Enclosure A, to be negotiated by the parties.

4. Network Operation. OTC shall provide broadband service and operate the network in the PFSA. The specific terms and conditions of the network operation as well as cost-recovery compensation shall be included in a separate Service Agreement to be negotiated by the parties.

5. Term. Unless terminated prior to the expiration date in accordance with the terms and conditions of this MOU, the term of this MOU shall be for a period of three (3) years from the Effective Date. The parties may decide to extend the term of this MOU at any time by mutual agreement in writing.

6. Proprietary Information.

a. The term “proprietary information” used in this MOU means confidential information and/or data exchanged between the parties in oral, visual, written, printed, or electronic form during the course of their communications. The parties agree to protect each other’s proprietary information. Proprietary information must be clearly marked as such in writing by the disclosing party within ten (10) days of such disclosure. The parties agree that any proprietary information will be used solely for the purposes outlined in this MOU and neither party will divulge such proprietary information to any person or other parties without prior written consent of the disclosing party. The standard of care for protecting such information, imposed on the party receiving proprietary information, will be that degree of care the receiving party uses to prevent disclosure, publication or dissemination of its own proprietary information.

b. Proprietary information does not include information which: (1) is in the public domain at the time of disclosure or thereafter enters the public domain other than through a breach of this MOU; (2) is lawfully obtained from a third party under circumstances permitting the receiving party to use or disclose the information without restriction; (3) is independently developed by the receiving party; or (4) is required to be disclosed as a result of the Oregon Public Records Law, ORS 192.410 *et seq.*, or by governmental or judicial action.

c. Upon termination or expiration of this MOU, unless prior to the termination or expiration the parties mutually sign and execute one or more definitive agreements regarding

the transactions contemplated by this MOU, the receiving party shall return or destroy the other party's proprietary information.

7. Indemnification. The City, including its elected and appointed officials, and OTC, including its officers, directors, employees and any affiliates, agree to mutually indemnify and hold each other harmless from and against any and all claims, damages, losses, liabilities, and expenses (including reasonable attorneys' fees, incurred in connection with investigating or defending against any such claims, damages, losses or liabilities), related to or arising out of their activities hereunder. Notwithstanding the foregoing, neither party shall be liable for indemnification with respect to any loss, claim, damage, liability, or expense if, by a final judgment, such loss, claim, damage, liability, or expense primarily resulted from the other party's willful misconduct or gross negligence in performing its obligations hereunder.

8. Dispute Resolution. The City and OTC shall attempt in good faith to resolve any controversy, claim, or dispute between them arising out of or relating to this MOU and the transactions contemplated hereby, by prompt negotiation between representatives who have authority to settle the dispute. If any dispute is not resolved by mutual agreement, the parties may, by mutual written consent, submit the dispute to non-binding mediation, in a forum and according to the procedures jointly agreed to by the parties. If non-binding mediation does not result in a resolution of the dispute, then the parties shall submit the dispute to binding arbitration in accordance with the rules and processes of the American Arbitration Association.

9. Assignment. Neither the City nor OTC may assign this MOU or any part thereof or interest therein without the prior express written consent of the other party.

10. Governing Law. The interpretation and enforcement of this MOU shall be governed by the laws and regulations of the State of Oregon applicable to agreements made to be performed entirely within that state.

11. Change in Law: In the event there is a change in a federal or state statute or regulation applicable to this MOU, either party may notify the other party in writing of its desire to amend this MOU in order to comply with the change in statute or regulation. The City and OTC may by written request amend this MOU to comply with such change in statute or regulation provided that such amendment is approved by both parties.

12. Amendment: This MOU may be amended only by a written amendment that is signed by the authorized representatives of both parties.

13. Severability: Should any provision or sections of this MOU be determined to be void, invalid, or otherwise unenforceable by any court of competent jurisdiction, that determination shall not affect the remaining provisions or sections of this MOU, which shall remain in full force and effect.

**IN WITNESS WHEREOF,** This MOU shall inure to the benefit of and be binding upon the parties and their respective successors and assigns.

**OREGON TELEPHONE CORP.**

**CITY OF JOHN DAY**

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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