

Service Agreement between the City of John Day, an Oregon municipal corporation dba Grant County Digital Network Coalition, and Oregon Telephone Corporation, an Oregon corporation, related to provision of Internet services under the 2019 USDA ReConnect Fund Grant

THIS SERVICE AGREEMENT (the "Agreement") for carrier services (as hereinafter defined) is made effective the 1st day of April 2022, by and between Oregon Telephone Corporation, an Oregon corporation (hereinafter "OTC"), having offices at One Telephone Drive, Mount Vernon, OR 97865 and City of John Day, an Oregon municipal corporation dba Grant County Digital Network Coalition (hereinafter "Customer"), having offices at 450 East Main Street, John Day, OR 97845.

RECITALS

- A. WHEREAS, OTC has applied for and been awarded a 2019 Reconnect Fund grant (the "Grant");
- B. WHEREAS, under the terms of the Grant, certain matching funds need to be provided and OTC is providing at least One Million Dollars (\$1,000,000) in matching funds;
- C. WHEREAS, Customer desires to have certain capacity for Internet access and telecommunications along the route that OTC is constructing with the Grant and is willing to participate in providing matching funds in exchange for the Services to be provided under this Agreement in the amount of One Million Dollars (\$1,000,000);

NOW, THEREFORE, OTC and Customer hereby agree as follows:

This Agreement sets forth the terms and conditions under which OTC shall provide Services to Customer.

AGREEMENT

1. Definitions

"CPE" means Customer Premises Equipment used at the End User location or Customer location in conjunction with the Services.

"Customer Equipment" means CPE.

"End User" means Customer's clients or any third party who utilizes or accesses the Services or OTC's network via the Services provided hereunder. End Users are strictly limited to: Customer, other Oregon municipal corporations and public agencies in Grant County, Oregon; and Grant County nonprofit organizations provided such organizations are not engaged in providing similar telecommunications services as those provided by OTC.

"Force Majeure" means an unforeseeable event beyond the reasonable control of that Party, including without limitation: act of God, fire, flood, labor strike, sabotage, cable cut not caused by OTC, acts of terror, pandemics, government laws or regulations, war or civil disorder.

"Parties" means, collectively, OTC and Customer. "Party" means either OTC or Customer.

"Service" or "Services" means: one gigabit of capacity used for Internet access and telecommunications between the following points: Customer and Monument; Customer and Long Creek; Customer and

Seneca; and Customer and John Day - with a point of presence at a single publicly-owned building in each location, as determined by Customer. Customer premises shall be located within a publicly-owned building within the incorporated boundaries of each jurisdiction.

2. Terms and Conditions

- 2.1 This Agreement shall not be modified or amended except via written instrument agreeable to both Parties. In the event a conflict exists between this Agreement and the terms of any Amendment hereto, then the term in the Amendment shall take precedence with respect to the subject matter of the Amendment and the term in the Agreement shall take precedence with respect to all other matters.
- 2.2 OTC will provide the Services or cause the Services to be provided to Customer in accordance with this Agreement.
- 2.3 The consideration for the Services to be provided by OTC to Customer is Customer's contribution and payment of One Million Dollars (\$1,000,000) to be paid as follows: (i) \$500,000 as a grant within 30 business days upon signing the Agreement and (ii) \$500,000 as an interest only loan paid in advance at five percent (5%) interest, compounded monthly. Notwithstanding the foregoing, interest payments will be due as a lump sum in twenty-four (24) months of signing the Agreement if the Services to Customer's premises are not completed within this timeframe; noting that if the Services are completed within twenty-four (24) months of signing the Agreement, then the interest will be forgiven.

3. Term

- 3.1 This Agreement is for the term of a twenty (20) year initial period (the "Initial Term"). The Initial Term begins on the date each of the four Customer premises are connected to Services ("Start Date"). After the Initial Term, all Services shall automatically continue from month to month, with services provided to the Customer at OTC's cost to provide the Services, communicated to Customer in writing, unless and until terminated by Customer through a resolution of the Customer's board of directors adopted at a public meeting or by all parties to Customer's Digital Network Coalition, submitted in writing, with minutes of the public meetings from each agency where the decision to terminate was reached.
- 3.2 OTC shall notify Customer of the Start Date for the Services, which in any event shall not be earlier than the date on which the Services are available at each of the four Customer locations.
- 3.3 Customer and OTC acknowledge and agree that no changes to Services shall be made during the term of the Agreement, unless explicitly authorized in writing by mutual agreement of both parties.

- 3.4 Customer hereby acknowledges that the Internet is not owned, operated, managed by, or in any way affiliated with OTC or its Affiliates; it is a community network independent of OTC. Customer's use of the Internet is at Customer's sole risk and is subject to all applicable local, State, Federal, and International laws and regulations. Access to the Internet is dependent on numerous factors, technologies, and systems beyond OTC's authority and control.
- 3.5 Access to networks connected to OTC's network must be established under rules appropriate to those networks. OTC exercises no control whatsoever over the content and information passing through its network.
- 3.6 Routine maintenance and periodic system repair, upgrades and reconfigurations, public emergency or necessity, Force Majeure, restrictions imposed by law, acts of God, labor disputes, and other situations, including mechanical or electronic breakdowns, may result in temporary impairment or interruption of Service. As a result, OTC does not guarantee continuous or uninterrupted Services and reserves the right from time to time to temporarily reduce or suspend Service without notice. Customer releases OTC and its directors, officers, employees and agents from any and all obligations, charges, claims, liabilities, opportunity costs and fees incurred, whether foreseeable or unforeseeable, as the result of Service interruption, omission or degradation, including the impact resulting to Customer.
- 3.7 Use of OTC's name, trademark, service mark, copyright or other intellectual property owned by OTC or its Affiliates is strictly prohibited without the express written consent of an OTC corporate officer. Nothing herein constitutes a license authorizing the use of OTC's name, trademark, service mark, copyright or other intellectual property owned by OTC or its Affiliates.
- 3.8 Customer represents that it is not by law or agreement with others, prohibited from entering into this Agreement.
- 3.9 The following information will be considered proprietary information under the Agreement concerning non-disclosure of information between OTC and Customer: (a) the existence, negotiation or results of any arbitrations or settlements relating to Agreement; (b) Information and documentation related to Telecommunication systems, including cellular, wireless or radio systems that may be exempt from public disclosure under Oregon public records law due to cybersecurity or physical security issues related to such equipment.
- 3.10 The terms, representations and warranties of this Agreement may only be waived by a written instrument executed by the Party waiving compliance. Except as otherwise provided for herein, neither Party's failure at any time, to enforce any right or remedy available to it under this Agreement shall be construed as a continuing waiver of such right or a waiver of any other provision hereunder.

- 3.11 Notwithstanding anything else in this Agreement, there are no third-party beneficiaries to this Agreement.
- 3.12 OTC shall be solely responsible for all outside plant. Customer shall be solely responsible for the following: (a) any costs associated with Customer Equipment; (b) access-related charges within Customer premises, including any charges for interconnection, cross-connection, installation, wiring and construction and other access-related charges; and/or (c) ordering, installing and ensuring proper operation of any and all equipment required to enable Customer to receive the Service.
- 3.13 Service to any person or entity that is not an End User as defined in this Agreement shall result in a Notice of Default, which must be issued in writing by OTC to Customer. Customer shall have 30 days to resolve the Default either by 1) terminating service to the non-End User; or 2) providing documentation to OTC that End User meets the terms for service under this Agreement. In the event of a Default that cannot be cured through one of these two methods, OTC shall have the option to pursue mediation, arbitration, or legal action, but shall not have the right to terminate service without an order by a court of competent jurisdiction.

4. MISCELLANEOUS

- 4.1 Choice of Law. This Agreement and all disputes arising out of or relating to this Agreement will be governed by, enforced, and construed in accordance to the laws of the State of Oregon. THE PARTIES AGREE THAT ANY ACTION BROUGHT BY EITHER PARTY UNDER OR IN RELATION TO THIS AGREEMENT, INCLUDING WITHOUT LIMITATION TO INTERPRET OR ENFORCE ANY PROVISION OF THIS AGREEMENT, SHALL BE BROUGHT EXCLUSIVELY IN, AND EACH PARTY AGREES TO AND DOES HEREBY SUBMIT TO THE JURISDICTION AND VENUE OF, ANY STATE OR FEDERAL COURT LOCATION IN GRANT COUNTY, OREGON AND AGREES THAT SUCH COURTS WILL NOT BE CONSIDERED AND HEREBY WAIVES ANY CLAIM THAT SUCH COURTS CONSTITUTE INCONVENIENT FORUM.
- 4.2 Successor and Assigns. Neither Party shall assign any of its rights, obligations or privileges (by operation of law or otherwise) hereunder without the prior written consent, which shall not be unreasonably withheld, of the other Party. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective permitted successors and assigns of the Parties. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the Parties hereto or their respective successors and assigns any rights, remedies, obligations or liabilities under or by the reason of this Agreement, except as expressly provided in this Agreement.

- 4.3 Headings. Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent.
- 4.4 No Ability to Bind Other Party. Neither Party shall have the authority to bind the other by contract or otherwise or make any representations or guarantees on behalf of the other. The relationship arising from this Agreement does not constitute an agency, joint venture, partnership, employee relationship or franchise.
- 4.5 Notices. All communications required or permitted to be given by this Agreement shall be made in writing and shall be sent by a recognized overnight commercial delivery or certified U.S. mail to the address for the respective Party shown on the signature page of this Agreement or such other address as either Party may specify from time to time in writing.
- 4.6 Force Majeure. Neither Party shall be liable for any failure or delay in the performance of its obligations under this Agreement for any cause beyond its reasonable control including, without limitation, acts of God, fire or other disaster, pandemic or telecommunications, power or Internet failure. The occurrence of any such event shall toll the time period provided in this Agreement for performance by the affected Party.
- 4.7 Construction; Interpretation. The term "this Agreement" means this Service Agreement together with the exhibits hereto, as the same may from time to time be amended, modified, supplemented or restated in accordance with the terms hereof. No Party, nor its respective counsel, shall be deemed the drafter of this Agreement for purposes of construing the provisions hereof, and all provisions of this Agreement shall be construed according to their fair meaning and not strictly for or against any Party. Unless otherwise indicated to the contrary herein by the context or use thereof: (i) the words, "herein," "hereto," "hereof" and words of similar import refer to this Agreement as a whole, including the appendixes and exhibits, and not to any particular section, subsection, paragraph, subparagraph or clause contained in this Agreement; (ii) masculine gender shall also include the feminine and neutral genders, and vice versa; (iii) words importing the singular shall also include the plural, and vice versa; and (iv) the words "include," "includes" or "including" shall be deemed to be followed by the words "without limitation."
- 4.8 Survival. Such provisions that are by nature and content continuing obligations on conditions shall survive termination of this Agreement.

The undersigned Parties have read and agree to the terms and conditions set forth in the Agreement. This Agreement, its exhibits and appendices and any documents expressly referred to in this Agreement constitute the entire agreement between the Parties and supersede all prior understandings and agreements, whether written or oral, that may relate to the subject matter of this Agreement.

Should any provision of this Agreement be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, such provision shall be deemed modified to the extent necessary (consistent with the intent of the Parties) to eliminate the illegal, invalid or unenforceable effect or to delete such provision if modification is not feasible, and the remaining terms shall continue in full force and effect.

This Agreement may be executed by the Parties in separate counterparts, each of which, when so executed and delivered, shall be an original, but all such counterparts shall together constitute one and the same Agreement. Facsimile signatures shall be deemed to be, and shall constitute and be treated as an original signed Agreement or counterpart.

In witness thereof, the Parties have caused this Agreement to be signed by their duly authorized representatives.

City of John Day

Oregon Telephone Corporation

By: _____

By: _____

Its: _____

Its: _____

Notice Address
450 East Main Street
John Day, OR 97845

Notice Address
P.O. Box 609
Mt. Vernon, OR 97865

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