

RESOLUTION NO. 13-07

A RESOLUTION GRANTING A RIGHT OF WAY USE AND FRANCHISE AGREEMENT TO CLACKAMAS COUNTY TO INSTALL BROADBAND INFRASTRUCTURE AND PROVIDE DARK FIBER SERVICE WITHIN THE CITY

OREGON CITY MAKES THE FOLLOWING FINDINGS:

WHEREAS, the County received a \$7.8 million federal grant to construct an open Broadband infrastructure network in the form of a dark fiber optic network ("Network") through the City and throughout the County to connect about 160 public buildings; and

WHEREAS, the County desires to construct the Network, and to connect to public buildings in Oregon City, including schools, fire stations, medical facilities, social services and libraries, as well as to provide nondiscriminatory access to private entities; and

WHEREAS, the County is obligated by the terms of the grant to operate the Network in a manner that provides significant benefits to the City and its residents, which benefits are unique among entities that own facilities in the City as of the date of this Resolution; and

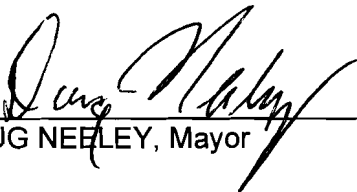
WHEREAS, the City has reviewed Clackamas County's request to construct the Network in City rights of way and finds that it has the requisite authority to install facilities in the City and that the level of impact on the City's rights of way will be acceptable, and the City therefore agrees to allow the County the right to use and occupy the rights of way within the City of Oregon City.

NOW, THEREFORE, OREGON CITY RESOLVES AS FOLLOWS:

Section 1. The City Manager is authorized and directed to execute the Right of Way Use and Franchise Agreement for Broadband Infrastructure substantially in the form attached hereto as Exhibit A.

Section 2. This Resolution shall be in full force and effect upon its adoption by the Commission.

Approved and adopted at a regular meeting of the City Commission held on the 6th day of March 2013.



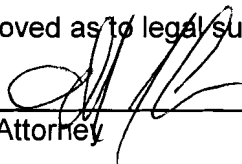
DOUG NEALEY, Mayor

Attested to this 6th day of March 2013:



Nancy Ide, City Recorder

Approved as to legal sufficiency:



City Attorney

**Right of Way Use and Franchise Agreement
for
Broadband Infrastructure
between
City of Oregon City and Clackamas County**

This Right of Way Use and Franchise Agreement ("Agreement") is made and entered into by and between the City of Oregon City, Oregon, an Oregon municipal corporation ("City"), and Clackamas County, Oregon, a political subdivision of the State of Oregon ("County").

RECITALS

WHEREAS, the County received a \$7.8 million federal grant to construct an open Broadband infrastructure network throughout the County and to connect about 160 public buildings; and

WHEREAS, the County desires to construct the advanced Broadband infrastructure in the form of a dark fiber optic network through the City, and to connect to public buildings in Oregon City including schools, fire stations, medical facilities, social services, and libraries; and

WHEREAS, because the City is the County seat, the County maintains significant fiber and other infrastructure in City rights of way and the presence of County-owned property in the City significantly impacts the City's tax base; and

WHEREAS, the City acknowledges the significant benefits the County's fiber optic communications facilities will bring to the City and its residents, which benefits are unique among entities that own facilities in the City as of the effective date of this Agreement; and

WHEREAS, the City has reviewed Clackamas County's request to construct the dark fiber network in City rights of way and finds that it has the requisite authority to install facilities in the City and that the level of impact on the City's rights of way will be acceptable, and the City therefore agrees to allow the County the right to use and occupy the rights of way within the City of Oregon City.

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

1. Rights Granted

a. Subject to the terms and conditions contained herein, the City authorizes the County to construct, operate, repair, or maintain its fiber optic communications facilities and modify, remove or add additional facilities within the rights of way as defined in Section 13.24.030 of the City Code. For purposes of this Agreement, the fiber optic communications facilities ("Facilities") means those facilities installed in the City by or on

behalf of the County solely to provide public institutions and private service providers access to and use of dark fiber as set forth in the Financial Assistance Award to the County from the United States Department of Commerce, Award No. NT10BIX5570079, and the documents incorporated therein by reference ("Grant").

b. The County agrees to comply with all applicable City, state and federal laws, ordinances, rules and regulations in existence as of the effective date of this Agreement or hereafter enacted. Except as expressly set forth herein, the County agrees to comply with the terms and conditions Chapter 13.24 of the Oregon City Municipal Code ("Code") as though fully set forth herein.

c. This Agreement does not create or vest in the County or any other party any right, title or interest in City easements or rights-of-way, nor does this Agreement create or vest in the City or any other party any right, title or interest in the Facilities.

2. Construction standards

The construction standards of Title 13 of the Oregon City Municipal Code, as well as any other applicable construction standards in existence at the time of this Agreement or hereafter enacted, shall apply to all work performed on or installation of Facilities by or on behalf of the County in City rights of way.

3. Franchise Fees

a. The annual franchise fee payable to the City shall be the greatest of six percent (6%) of the County's gross revenues earned or derived from the Facilities in the City or a minimum annual fee of twelve thousand dollars (\$12,000.00). "Gross revenues" shall mean any and all revenue, of any kind, nature or form, without deduction for expense, less net uncollectible, subject to all applicable limitations imposed by federal or state law. The minimum annual fee set forth herein shall be adjusted annually based on the consumer price index for the Portland Metropolitan Area for January 1st of that year, beginning January 1, 2014.

b. The initial franchise fee due from the effective date of this Agreement through December 31, 2013, shall be paid no later than January 31, 2014, and shall include, in addition to the franchise fee required in section 3a for calendar year 2013, one thousand dollars (\$1,000.00) as the pro rated minimum annual fee for December 2012. Thereafter, the franchise fee required in section 3a shall be paid quarterly, in arrears, for each quarter during the term of the franchise and shall be due and payable within forty-five (45) days of the end of each calendar quarter. Each quarterly payment shall be the greater of 6% of gross revenues from the preceding quarter or one-quarter of the minimum annual fee, except that the County shall adjust its payment for the fourth quarter of the calendar year as necessary to ensure accurate payment of the franchise fee set forth in section 3a.

c. In addition to the fee set forth in section 3a, the County agrees to pay an interim right of way usage fee and application fee of twenty-one thousand dollars (\$21,000.00), paid within fifteen (15) days of the execution of this Agreement by both parties.

4. County's Continuing Obligation

a. The County intends to make the installed Facilities available to other telecommunications carriers. In the event that the County allows another telecommunication carrier to use the Facilities, the County will inform the City of the use and provide assistance to the City in securing any necessary franchise or license from the telecommunications carrier.

b. The County shall instruct all private users of the Facilities to comply with the City's Municipal Code. The County shall provide the City with the names of all private users of the Facilities in the City, subject to any confidentiality or nondisclosure agreement reasonably required by the County.

c. In the event that the County desires to offer telecommunications services other than use of dark fiber as set forth in the Grant or enhancement of existing governmental uses, the County agrees to notify the City and obtain any additional authority, including additional franchises and payment of applicable taxes and fees, as lawfully required by the City.

5. Term and Termination

The term of this Agreement shall be twenty (20) years from the effective date of this Agreement, which shall be as of December 1, 2012. This Agreement may be amended by mutual consent of the parties in writing. The City and County agree to review this Agreement in the 5th, 10th, and 15th year of its term to ensure compliance with applicable law changes and to reaffirm that the Agreement is still mutually beneficial and is not resulting in material loss to either party.

6. Indemnification

Subject to the conditions and limitations of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, the County shall indemnify, defend and hold harmless the City, its commissioners, employees and agents from and against any and all liability, claims, damages, losses, and expenses, including but not limited to reasonable attorneys fees, arising out of or resulting from the acts of the County, its officers, employees, and agents in the performance of this Agreement or arising out of or resulting from the construction, operation, repair and/or maintenance of the Facilities.

7. Authority

The parties acknowledge that the persons executing this Agreement on behalf of each entity have the legal power, right, and actual authority to bind their respective entities to

the terms and conditions of this Agreement

8. Entire Agreement

The parties agree and acknowledge that this Agreement is a complete, integrated agreement that supersedes any prior understandings related to implementation of the Facilities and that it is the entire agreement between them relative to the Facilities, and the City's rights-of-way.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth below.

Clackamas County

By: Steve Woods
County Administrator

Dated: 3/2/13, 2013

City of Oregon City

By: David W. Fausch
City Manager

Dated: 3-6, 2013