

Site Name: Eagle Crest to Whipper
Site Number: F72704 to F72407

INTERGOVERNMENTAL CIRCUIT USE AGREEMENT 2 MB WIPPER TO EAGLE CREST

This Agreement is between the State of Oregon acting by and through its Department of Transportation (“State”) and City of Salem (“Local Government”), each a “Party” and, together, the “Parties”.

SECTION 1: RECITALS

- A. Authority. This Agreement is authorized by ORS 190.110.
- B. Purpose. The purpose of this Agreement is to define specific roles and responsibilities for authorizing Local Government use of State circuits from the Eagle Crest Communications Site to the Whipper Communications Site for government and public safety Wireless Communications purposes.

In consideration of the mutual obligations provided in this Agreement, the Parties hereby agree as follows:

SECTION 2: DEFINITIONS

- 2.1 “Business Days” means 8:00 AM to 5:00 PM Monday through Friday, except for holidays recognized by the State of Oregon.
- 2.2 “Communications Equipment” means communications equipment, including but not limited to routers, antenna, other transmitting or receiving equipment for radio and microwave, and associated accessories and ancillary devices used to support Wireless Communications and other forms of communications.
- 2.3 “Demarcation Point” means the physical, electrical, or logical location where the communications facilities of one party interface with the other party. There may be multiple demarcation points along the line of a Circuit.
- 2.4 “Service Protocols” means the operations and maintenance service protocols and procedures set forth on Exhibit C, Service Protocols.
- 2.5 “State Microwave Network” means the State-owned microwave antennas, data network, facilities and associated hardware at Wireless Communications sites.
- 2.6 “Wireless Communications” means communications accomplished without the use of a hard wire connection via radio, microwave or infrared technologies, including but not limited to fixed, mobile, and portable radios licensed under Federal Communications Commission rules and regulations as detailed in 47 CFR Parts 90 and 101, cellular phones, wireless networking (i.e. WiFi, WiMAX), or satellite communications.

SECTION 3: EFFECTIVE DATE AND DURATION

- 3.1 This Agreement is effective on the date of the last signature (“Effective Date”), and expires on June 30, 2028, unless terminated earlier in accordance with Section 15.
- 3.2 Local Government may request that this Agreement be extended for up to two additional five (5) year terms by providing written notice to State at least sixty (60) days prior to the expiration of this Agreement. Local Government must not be in default or in breach of any of the Agreement terms. State and Local Government shall negotiate in good faith the terms of such renewal. Fee amount applicable to each renewal period will be established at the time of renewal based on current State rates. If the Parties are unable to negotiate terms for renewal of this Agreement, the Agreement will terminate according to its terms.
- 3.3 The terms and conditions of the Agreement may be amended by the Parties as set forth in Section 18.

SECTION 4: AUTHORIZED REPRESENTATIVES AND CONTACT INFORMATION

- 4.1 State’s Authorized Representative is:
 ODOT Wireless Communications Section Manager, or designee
 455 Airport Rd. SE, Building C
 Salem, OR 97301-5375
 WirelessWorkOrderDesk@ODOT.state.or.us
 (503) 986-2911

4.2 Local Government's Authorized Representative is:

Technical Services Manager, or Designee
Willamette Valley 9-1-1
City of Salem Police Department
555 Liberty Street SE RM P-107
Salem, Oregon 97301
503-378-1911
wvcchelpdesk@cityofsalem.net

4.3 A Party may designate a new Authorized Representative by written notice to the other Party.

SECTION 5: RESPONSIBILITIES OF EACH PARTY

5.1 State Responsibilities:

- 5.1.1 State agrees to permit Local Government to use a 2 Mbs Ethernet circuit to support Local Government public safety Wireless Communications ("Authorized Circuit Use"). The Authorized Circuit Use begins at the Eagle Crest Communications Site and ends at the Whipper Communications Site.
- 5.1.2 State will identify the Demarcation Points and notify Local Government.
- 5.1.3 If required State shall perform testing on the newly provisioned circuits.

5.2 Local Government's Responsibilities:

- 5.2.1 Local Government shall notify State when circuits are put into use and pay State as described in Section 6.

5.3 Additional Responsibilities of the Parties:

- 5.3.1 Parties agree that Authorized Circuit Use does not constitute an assignment or transfer of State microwave licenses. The Authorized Circuit Use is subject to the Communications Act of 1934, as amended, and the rules and regulations of the Federal communications Commission ("FCC").
 - 5.3.1.1 Local Government shall not assign or otherwise transfer its rights to use of the circuit to a third party;
 - 5.3.1.2 Local Government shall restrict its use of the Circuit to permissible activities allowed under FCC rules; and
 - 5.3.1.3 Local Government shall maintain access and control over all facilities authorized under its FCC license.
- 5.3.2 Each Party will be responsible for resolving service affecting problems with its Wireless Communications Equipment over the Term of this Agreement.

SECTION 6: COMPENSATION AND PAYMENT TERMS

- 6.1 Local Government shall pay State an annual fee of \$3,816.00 ("Base Rent"). Base Rent will commence when Local Government notifies State that the circuits have been put into use, but not sooner than June 1, 2018 and not later than September 1, 2018. Base Rent will be charged on the fiscal year starting on July 1st and ending on June 30th, and rent for the first year will be pro-rated accordingly. Base Rent shall increase annually by three percent (3%) unless otherwise agreed by the Parties.
- 6.2 In addition to the Base Rent due and payable under Subsection 6.1, Local Government agrees to reimburse State for any and all fees or other costs and expenses assessed upon State that are attributable solely to Local Government's Authorized Circuit Use ("Other Charges"). State shall send an invoice to Local Government for Other Charges, if any, due and owing under this Subsection within sixty (60) days of such Other Charges becoming due. Any delay or failure of State in computing or invoicing Local Government for Other Charges shall not constitute a waiver of or in any way impairs the obligation of Local Government to pay such Other Charges.

- 6.3 Local Government shall send all payments required under this Agreement to the State Authorized Representative within forty five (45) days of receipt of invoice from State

SECTION 7: REPRESENTATIONS AND WARRANTIES

- 7.1 Local Government represents and warrants to State that:
- 7.1.1 Local Government is a city duly organized and validly existing. Local Government has the power and authority to enter into and perform this Agreement;
 - 7.1.2 The making and performance by Local Government of this Agreement (a) have been duly authorized by Local Government, (b) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of Local Government's charter or other organizational document and (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Local Government is party or by which Local Government may be bound or affected. No authorization, consent, license, approval of, or filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Local Government of this Agreement, other than those that have already been obtained;
 - 7.1.3 This Agreement has been duly executed and delivered by Local Government and constitutes a legal, valid and binding obligation of Local Government enforceable in accordance with its terms;
 - 7.1.4 The representations and warranties set forth in this Section are in addition to, and not in lieu of, any other representations or warranties provided by Local Government.
- 7.2 State represents and warrants to Local Government that State has funding, appropriations, limitations or other expenditure authority for the current biennium at levels sufficient, in State's reasonable administrative discretion to perform its obligations under this Agreement.

SECTION 8: GOVERNING LAW, CONSENT TO JURISDICTION

This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively "Claim") between Local Government or any other agency or department of the State of Oregon, or both, and State that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. Local Government, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS. In no event shall this Section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, to or from any Claim or from the jurisdiction of any court.

SECTION 9: CONTRIBUTION

- 9.1 If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 (a "Third Party Claim") against a Party (the "Notified Party") with respect to which the other Party (the "Other Party") may have liability, the Notified Party shall promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party, along with the written notice, a copy of the claim, process and all legal pleadings with respect to the Third Party Claim that have been received by the Notified Party. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this Section and a meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's contribution obligation under this Section with respect to the Third Party Claim.

- 9.2 With respect to a Third Party Claim for which State is jointly liable with Local Government (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Local Government in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Local Government on the other hand in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of Local Government on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if the State had sole liability in the proceeding.
- 9.3 With respect to a Third Party Claim for which Local Government is jointly liable with State (or would be if joined in the Third Party Claim), Local Government shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of Local Government on the one hand and of State on the other hand in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Local Government on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Local Government's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if it had sole liability in the proceeding.

SECTION 10: LOCAL GOVERNMENT DEFAULT

Local Government will be in default under this Agreement upon the occurrence of any of the following events:

- 10.1 Local Government fails to perform, observe or discharge any of its covenants, agreements or obligations under this Agreement;
- 10.2 Any representation, warranty or statement made by Local Government in this Agreement or in any documents or reports relied upon by State to measure the delivery of services, the expenditure of funds or the performance by Local Government is untrue in any material respect when made;

SECTION 11: STATE DEFAULT

State will be in default under this Agreement if State fails to perform, observe or discharge any of its covenants, agreements, or obligations under this Agreement.

SECTION 12: REMEDIES

- 12.1 In the event Local Government is in default under Section 10 State may, at its option, pursue any or all of the remedies available to it under this Agreement and at law or in equity, including, but not limited to: (a) termination of this Agreement under Section 15.2, (b) reducing or withholding payment for work that Local Government has failed to deliver within any scheduled completion dates or has performed inadequately or defectively, (c) requiring Local Government to perform, at Local Government's expense, additional work necessary to satisfy its performance obligations or meet performance standards under this Agreement, (d) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief, or (e) exercise of its right of recovery of overpayments under Section 13 of this Agreement or setoff, or both. These remedies are cumulative to the extent the remedies are not inconsistent, and State may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.
- 12.2 In the event State is in default under Section 11, Local Government may, at its option, pursue any or all of the remedies available to it under this Agreement and at law or in equity, including, but not limited to: (a) termination of this Agreement under Subsection 15.3, or (b) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief. These remedies are cumulative to the extent the remedies are not inconsistent, and Local Government may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.

SECTION 13: RECOVERY OF OVERPAYMENTS

If payments to Local Government under this Agreement, or any other agreement between Local Government and State exceed the amount to which Local Government is entitled, State may, after notifying Local Government in writing, withhold from payments due Local Government under this Agreement, such amounts, over such periods of times, as are necessary to recover the amount of the overpayment.

SECTION 14: LIMITATION OF LIABILITY

EXCEPT FOR LIABILITY ARISING UNDER OR RELATED TO SECTION 9, NEITHER PARTY WILL BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, OR OTHER INDIRECT DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, REGARDLESS OF WHETHER THE LIABILITY CLAIM IS BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, PRODUCT LIABILITY OR OTHERWISE. NEITHER PARTY WILL BE LIABLE FOR ANY DAMAGES OF ANY SORT ARISING SOLELY FROM THE TERMINATION OF THIS AGREEMENT IN ACCORDANCE WITH ITS TERMS.

SECTION 15: TERMINATION

15.1 This Agreement may be terminated at any time by mutual written consent of the Parties.

15.2 State may terminate this Agreement as follows:

15.2.1 Upon 90 days advance written notice to Local Government;

15.2.2 Immediately upon written notice to Local Government, if State fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient in State's reasonable administrative discretion, to perform its obligations under this Agreement;

15.2.3 Immediately upon written notice to Local Government, if federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that State's performance under this Agreement is prohibited or State is prohibited from paying for such performance from the planned funding source;

15.2.4 Immediately upon written notice to Local Government, if Local Government is in default under this Agreement and such default remains uncured 45 days after written notice thereof to Local Government; or

15.2.5 As otherwise expressly provided in this Agreement.

15.3 Local Government may terminate this Agreement as follows:

15.3.1 Upon 90 days advance written notice to State;

15.3.2 Immediately upon written notice to State, if Local Government fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient in Local Government's reasonable administrative discretion, to perform its obligations under this Agreement;

15.3.3 Immediately upon written notice to State, if federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that Local Government's performance under this Agreement is prohibited or Local Government is prohibited from paying for such performance from the planned funding source;

15.3.4 Immediately upon written notice to State, if State is in default under this Agreement and such default remains uncured 45 days after written notice thereof to State; or

15.3.5 As otherwise expressly provided in this Agreement.

SECTION 16: INSURANCE

Each Party shall provide insurance or self-insurance as described below:

16.1 The State is self-insured under ORS 30.282(2) up to the limits described in ORS 30.269 to 30.273. In addition, the State has qualified for self-insurance under ORS 806.130 of the Oregon Vehicle Code up to the limits as set forth in ORS 806.070. Upon request by the Local Government, the State shall provide written proof of self-insurance to Local Government.

16.2 Local Government shall, at its own cost and expense, either (1) secure and maintain a policy of insurance from a qualified insurance company(s) through the term of this Agreement, (2) provide similar type protection through an Administrative Trust commonly known as City County Insurance Services or Special Districts of Association of Oregon (SDAO)

insurance, (3) fulfill the insurance obligations listed in this Agreement through a program of self –insurance, or (4) fulfill the insurance obligations listed in this Agreement through any combination of a program of self-insurance, a policy of insurance from a qualified insurance company, and similar type protection through an Administrative Trust. In any case, Local Government shall secure liability protection with respect to its operations and operations of its officers, employees, and agents including volunteers acting within the scope of their employment or duties arising out of a governmental or proprietary function, equivalent to the limits identified in the Oregon Tort Claims Act, ORS 30.260 through 30.300.

- 16.3 The insurance certificates will be located in each Party’s files and will be made available upon request by any of the Parties.
- 16.4 All employers, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers’ Compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability insurance with coverage limits of not less than \$500,000 must be included. Both Parties shall ensure that each of its contractors or subcontractors complies with these requirements.

SECTION 17: NONAPPROPRIATION

State’s obligation to pay any amounts and otherwise perform its duties under this Agreement is conditioned upon State receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to meet its obligations under this Agreement. Nothing in this Agreement may be construed as permitting any violation of Article XI, section 7 of the Oregon Constitution or any other law limiting the activities, liabilities or monetary obligations of State.

SECTION 18: AMENDMENTS

The terms of this Agreement may not be altered, modified, supplemented or otherwise amended, unless by written amendment executed by the Parties.

SECTION 19: NOTICE

Except as otherwise expressly provided in this Agreement, any notices to be given relating to this Agreement must be given in writing by facsimile, email, personal delivery, or postage prepaid mail, to a Party’s Authorized Representative at the physical address, fax number or email address set forth in this Agreement, or to such other addresses as either Party may indicate pursuant to this Section. Any notice so addressed and mailed becomes effective five (5) days after mailing. Any notice given by personal delivery becomes effective when actually delivered. Any notice given by email becomes effective upon the sender’s receipt of confirmation generated by the recipient’s email system that the notice has been received by the recipient’s email system. Any notice given by facsimile becomes effective upon electronic confirmation of successful transmission to the designated fax number.

SECTION 20: SURVIVAL

All rights and obligations of the Parties under this Agreement will cease upon termination of this Agreement, other than the rights and obligations arising under Sections 8, 9, 13, 14 and 21 hereof and those rights and obligations that by their express terms survive termination of this Agreement; provided, however, that termination of this Agreement will not prejudice any rights or obligations accrued to the Parties under this Agreement prior to termination.

SECTION 21: SEVERABILITY

The Parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the Parties will be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

SECTION 22: COUNTERPARTS

This Agreement may be executed in several counterparts, all of which when taken together shall constitute one agreement, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the Agreement so executed constitutes an original.

SECTION 23: COMPLIANCE WITH LAW

In connection with their activities under this Agreement, the Parties shall comply with all applicable federal, state and local law.

SECTION 24: INDEPENDENT CONTRACTORS

The Parties agree and acknowledge that their relationship is that of independent contracting parties and that Local Government is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265 or otherwise.

SECTION 25: INTENDED BENEFICIARIES

Local Government and State are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement provides, is intended to provide, or may be construed to provide any direct or indirect benefit or right to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of this Agreement.

SECTION 26: FORCE MAJEURE

Neither Party is responsible for any failure to perform or any delay in performance of any obligations under this Agreement caused by fire, civil unrest, labor unrest, natural causes, or war, which is beyond that Party's reasonable control. Each Party shall, however, make all reasonable efforts to remove or eliminate such cause of failure to perform or delay in performance and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement. State may terminate this Agreement upon written notice to Local Government after reasonably determining that the failure or delay will likely prevent successful performance of this Agreement.

SECTION 27: ASSIGNMENT AND SUCCESSIONS IN INTEREST

Local Government may not assign or transfer its interest in this Agreement without the prior written consent from State and any attempt by Local Government to assign or transfer its interest in this Agreement without such consent will be void and of no force or effect. The provisions of this Agreement will be binding upon and inure to the benefit of the Parties hereto, and their respective successors and permitted assigns.

SECTION 28: SUBCONTRACTS

Local Government shall not, without State's prior written consent, enter into any subcontracts for any of the rights or responsibilities of Local Government under this Agreement. State's consent to any subcontract will not relieve Local Government of any of its duties or obligations under this Agreement.

SECTION 29: TIME IS OF THE ESSENCE

Time is of the essence in State's performance of its obligations under this Agreement.

SECTION 30: MERGER, WAIVER

This Agreement and all exhibits and attachments, if any, 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 or consent under this Agreement binds either Party unless in writing and signed by both Parties. Such waiver or consent, if made, is effective only in the specific instance and for the specific purpose given. EACH PARTY, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

SECTION 31: RECORDS MAINTENANCE AND ACCESS

Local Government shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, Local Government shall maintain any other records, books, documents, papers, plans, records of shipments and payments and writings of Local Government, whether in paper, electronic or other form, that are pertinent to this Agreement in such a manner as to clearly document Local Government's performance. All financial records, other records,

books, documents, papers, plans, records of shipments and payments and writings of Local Government, whether in paper, electronic or other form, that are pertinent to this Agreement, are collectively referred to as "Records." Local Government acknowledges and agrees that State and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives will have access to all Records to perform examinations and audits and make excerpts and transcripts. Local Government shall retain and keep accessible all Records for a minimum of six (6) years, or such longer period as may be required by applicable law, following 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. Subject to foregoing minimum records retention requirement, Local Government shall maintain Records in accordance with the records retention schedules set forth in OAR Chapter 166.

SECTION 32: HEADINGS

The headings and captions to sections of this Agreement have been inserted for identification and reference purposes only and may not be used to construe the meaning or to interpret this Agreement.

SECTION 33: ADDITIONAL REQUIREMENTS

Local Government shall comply with the additional requirements set forth in **Exhibit A Service Protocols**.

SECTION 34: AGREEMENT DOCUMENTS

This Agreement consists of the following documents, which are listed in descending order of precedence: this Agreement less all exhibits, attached Exhibit A (Service Protocols).

SECTION 35: SIGNATURES

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates set forth below.

CITY OF SALEM, a Municipal Corporation

**STATE OF OREGON, by and through its
Department of Transportation**

DATED this ____ Day of _____ 2018.

By _____
State Maintenance and Operations Engineer

By _____
Steven Powers

Date _____

REVIEWED

APPROVAL RECOMMENDED

By _____
Local Government Legal Counsel

By _____
ODOT Wireless Section Manager, or designee

Date _____

Date _____

APPROVED FOR LEGAL SUFFICIENCY

N/A Does not meet threshold

EXHIBIT A – SERVICE PROTOCOLS

State will provide operations and maintenance through the ODOT Wireless Communications Section. All notifications to Local Government required under this Agreement will be made to the following Local Government Contact:

Local Government Dispatch: Supervisor's Desk at (503) 763-1400 or wvccsupdesk@cityofsalem.net

If by mail:

Technical Services Manager, or Designee
Willamette Valley 9-1-1
City of Salem Police Department
555 Liberty Street SE RM P-107
Salem, Oregon 97301

The Local Government Contact for this notice may be changed by written notification to State at:

ODOT Wireless Communications Section
455 Airport Road SE, Building C
Salem, OR 97301

Or:

WirelessWorkOrderDesk@ODOT.state.or.us

24 hour dispatch: (503) 986-2911

There are four (4) levels of support provided under this Agreement, Standard Coverage and After-Hours Coverage as further described below and are the support levels provided by State when it receives the Support Request from Local Government and represent generalist support. If this level of support cannot resolve the problem, the Support Request is escalated to State systems specialists.

- Severity 1 - Major Functionality Failure Dispatched 7 x 24 x 365 days. (Weather and access dependent).
- Severity 2 - Significant Functionality Impairment Dispatched 8 x 5 Monday - Friday, standard Business Days.
- Severity 3 - Technical Question: Upgrades or intermittent problems, system problems presently being monitored, parts questions if technician is not on site, and general questions concerning a problem. Work to be performed at a later time. 8 x 5 Monday - Friday, standard business hours.
- Severity 4 - Scheduled Maintenance, Scheduled upgrades.

2. HOURS OF OPERATION

The Core business hours for the State specialists ("Specialists") are from 8 AM to 4:30 PM Monday through Friday ("Core Business Hours". Exception - Many Specialists work alternative work schedules and may be available earlier and later each day and not available on a Monday or Friday.

- Administrative Support 7:00 AM to 4:30 PM Monday through Friday,
- Engineering support 7:00 AM to 5:30 PM Monday through Friday.
- The 24 hour dispatch is available after hours by calling (503) 986-2911.
- State will provide immediate and stand-by support for special operations when requested by Local Government.

3. PLANNED OUTAGE NOTICES

Forty-Eight (48) Hours Prior Notice

State will give a minimum of a forty-eight (48) hour (two (2) Business Days) prior notice to Local Government for all planned microwave outages affecting or having the possibility to affect its operations.

State shall include the following information in the notification of a planned outage:

- scope of work (routine maintenance, tower repair, facilities, etc)
- time scheduled for the outage and expected outage duration
- list of circuits impacted (hops or systems affected)
- And any other information that may be helpful to Local Government for contingency and further notification actions.

The forty-eight (48) hours notification will be via ODOT Wireless Work Order Desk email notification system to the Local Government Contact.

Thirty (30) Minute Notice - prior to taking the ODOT Microwave Network off line

State will contact the Local Government Dispatch and notify them exact time they will take the outage, confirm the estimate timeframe the system is expected to be off line, and provide contact information in case the Local Government needs to get a hold of the State.

Immediate Notification - when ready to turn off the switch

State will contact the Local Government Dispatch and notify them that are now taking the outage.

State shall postpone a scheduled outage if Local Government notifies State that the outage will present a life safety or significant adverse impact to field operations.

4. UNPLANNED IMMEDIATE OUTAGE NOTIFICATION

Notice for unplanned immediate outages will be provided by contacting Local Government Dispatch.

Notice for unplanned equipment failure will be provided to the Local Government Dispatch immediately upon identifying the failure if possible, but not less than five minutes from identifying the failure.

5. PREVENTATIVE MAINTENANCE

State will perform preventative maintenance at the frequency prescribed by the manufacturer or on specified intervals as needed. If maintenance of the equipment requires moving Local Government equipment, or will cause an outage of service, ODOT will notify Local Government of the planned outage if possible seven (7) calendar days, but not less than forty-eight (48) hours prior to commencing the work. The Parties will work together if the outage requested will occur in less than forty-eight (48) hours. Such notification shall be made to the Local Government Contact.. If at the sole discretion of ODOT during the course of routine preventative maintenance it is determined that an outage is required to perform work that will prevent future more prolonged outages, ODOT shall notify the Local Government Contact prior to taking the outage and performing the work.

6. SUPPORT REQUEST

Support Request is generally defined as a request for support to fix a defect in an existing device or a request for support that involves functionality of the stated device and providing the information identified in the “Sample Support Request” attached hereto. The Support Request will be sent via email, phone call, US Mail, or in person.

a. Process: Requestor will submit an email copy of the Support Request to State at the following email address: WirelessWorkOrderDesk@ODOT.state.or.us

or

b. Phone call to the Wireless Communications Section at (503) 986-2911 with all information

in the Support Request.,

Support Response – Local Government personnel, or their designee, will contact the State representative within one (1) hour of the report to discuss the problem during normal business hours. Once a Support Request has been submitted, ODOT will make itself available to work with the Local Government person assigned to the Support Request. Support Requests are taken by State during Core Business hours as identified in Section 2. ODOT representative will provide all information required to open a “Support Request” form and provide all information identified in the “Support Requests”. A sample Support Request form is provided as Attachment 1 to this Exhibit C. SYSTEMS AVAILABILITY - State will strive to maintain the State Microwave Network availability at 100 percent, realizing any electronic equipment, power systems, and facilities can fail for a variety of reasons.

State personnel, or its designee, shall contact the Local Government representative and report a circuit problem within one (1) hour of discovery of the problem.

7. CHANGE MANAGEMENT – ODOT shall coordinate and present new or changed processes, practices, or policies that impact the terms of Service Protocols and that have an impact on the ODOT Microwave Network maintenance, operation, or repair, to Local Government to help them understand processes, practices and policies prior to implementation. Changes that impact the terms of this AGREEMENT shall be implemented by amendment and made part of this AGREEMENT.

Site Name: Eagle Crest to Whipper
Site Number: F72704 to F72407

EXHIBIT C: ATTACHMENT 1

SAMPLE SUPPORT REQUEST

[illegible]