

**INTERGOVERNMENTAL AGREEMENT
BETWEEN THE CITY OF SALEM AND
THE STATE OF OREGON**

AGREEMENT between the State of Oregon, acting by and through its Department of Administrative Services, and the City of Salem, an Oregon municipal corporation, for the use and occupation of City of Salem Rights-of-Way.

Recitals:

- 1) Pursuant to ORS 276A.206, Office of the State Chief Information Officer, is charged by law with the coordination, review and oversight of the State of Oregon's Telecommunications and Cable Services.
- 2) The State of Oregon owns certain Telecommunications facilities located in City of Salem Rights-of-Way, commonly known as the Salem Metropolitan Area Network(MAN).
- 3) The MAN Network is and will be used by the State of Oregon for the provision of Telecommunications Services to State of Oregon Administrative Agencies, located within the City of Salem, and other customers as described in this Agreement.
- 4) The MAN Network is and will continue to be used to provide Telecommunications Services, including data transmission and voice and video transmissions, primarily to the State of Oregon and other governmental entities, and incidentally to the private sector, and to provide private citizens with electronic access to government services.
- 5) Pursuant to ORS Chapter 190 and SRC Chapter 35, the State of Oregon and the City of Salem wish to enter into an intergovernmental agreement to authorize the use of City of Salem Rights-of-Way, and to provide consideration therefor.

Agreement:

Now, therefore, the parties agree and follows:

Section 1: Definitions.

Agency or State Agency: means a board, commission, department, division, office or other entity within the executive department of state government, except:

- The Secretary of State
- The State Treasurer
- The Oregon State Lottery and
- A public university that is listed in ORS 352.002

Cable Service: the one-way transmission to subscribers of video or other programming services and the subscriber interaction, if any, which is required for the selection of such video programming or other programming services.

City: the City of Salem.

MAN Network: the Telecommunications facility owned by the State, and occupying City Rights-of-Way, which is and will be used by the State for the provision of Telecommunications Services to State Administrative Agencies located within the City and other customers, as authorized under this Agreement.

OSCIO: the Office of the State Chief Information Officer.

Rights-of-Way: the present and future streets, viaducts, elevated roadways, alleys, public highways and avenues in the City, including rights-of-way held in fee, or by virtue of an easement or dedication.

State: the State of Oregon.

Telecommunications: the transmission between and among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

Telecommunications Service: the offering of Telecommunications and Cable Services, including data transmission and voice and video transmissions, primarily to the State of Oregon and other governmental entities, and incidentally to the private sector, and to provide private citizens with electronic access to government services, using the MAN Network.

Section 2: Use of City Right-of-Way; Expansion of Service.

(a) The City hereby grants to State a nonexclusive right and privilege to erect, construct, operate, repair and maintain in, over, under, upon, along, and over the City's Rights-of-Way, lines, poles, anchors, wires, cables, conduits, laterals and other necessary and convenient fixtures and equipment, for the purposes of constructing, operating and maintaining the MAN Network within the City.

(b) The parties acknowledge that the MAN system will involve incidental use by the private sector, resulting from private sector access to government services. The State may, upon written notification to the City, expand use of the MAN Network to include use by additional public and private sector entities.

Section 3: Non-Exclusivity. Nothing contained in this Agreement shall in any way be construed as a limitation on the rights of the City to grant to other persons rights, privileges or authority the

same as, similar to, or different from, the rights, privileges or authority set forth herein, in and to the same or other City Rights-of-Way, by virtue of a contract, franchise, permit, or other agreement, in whatsoever form.

Section 4: Term and Termination.

This Agreement shall become effective on January 1, 2021 and, subject to applicable statutory or regulatory limitations on the maximum term allowed for State contracts, shall continue in full force and effect until June 30, 2025. The term shall automatically renew for one additional five-year period after the expiration of the initial term unless either party provides the other party written notice, at least 180 days prior to the expiration of the current term, that it does not desire to renew this Agreement, or does not desire to renew this Agreement unless and until the parties renegotiate one or more provisions of this Agreement. Either party may terminate this Agreement prior to the end of the initial five-year term or prior to the end of the subsequent renewal term, by providing not less than ninety days advance notice to the other party. Upon termination or expiration of the Agreement, the disposition of the State's property and facilities that occupy the City's Rights-of-Way shall be governed by the provision of Section 13 below.

Section 5: No Limitation of City Authority.

(a) Except as provided in Section 6 below, nothing in this Agreement shall in any way be construed or interpreted to prevent, or in any way limit, the City from modifying or performing any work in its Rights-of-Way, or granting other Agreements for use of Rights-of-Way, or of adopting general ordinances regulating use of or activities in the Rights-of-Way, or of otherwise abrogating or limiting any rights, privileges or property interest the City now has in its Rights-of-Way, whether now owned or hereinafter acquired.

(b) In the event that any portion of the State's infrastructure interferes with any present or future use the City desires to make of its Rights-of-Way, State shall, upon request, and at its sole expense, promptly relocate such infrastructure to an area approved by the City that grants to the State equivalent access to that previously provided under this Agreement, and restore the area where such relocation occurs to as good a condition as existed before the work was undertaken, unless otherwise directed by the City.

(c) Except as otherwise provided by law, and subject to Section 6 herein, nothing in this Agreement shall be construed to give the State any credit or exemption from any permit fees or inspection fees required as a condition of construction of any improvements upon City's real property and imposed under a generally applicable ordinance or resolution.

Section 6: Construction, Maintenance and Repair of Infrastructure.

(a) State may make all needful excavations in any right-of-way for the purpose of placing, erecting, laying, maintaining or repairing State's MAN Network infrastructure, and shall repair, renew and replace the same as reasonably possible to the condition that existed prior to such excavation. State shall obtain all necessary permits for such excavation and

construction, and pay all applicable fees. Such work shall be done only in accordance with plans or designs submitted to, and approved by, the City, such plans to be evaluated by the standards applied to the construction of other similar Telecommunications Systems in the City. Such work shall be performed in a good and workmanlike manner, and in compliance with all rules, regulations, or ordinances which may, during the term of this Agreement, be adopted from time to time by the City, or any other authority having jurisdiction over Rights-of-Way. Prior to commencing excavation or construction, State shall give appropriate notice to other states, licensees or permittees of the City owning or maintaining facilities which may be affected by the proposed excavation or construction.

(b) In the event emergency repairs are necessary for State's facilities, State may initiate such emergency repairs upon discovery. State shall give notice to the City's Department of Public Works by telephone, electronic data transmittal or other appropriate means. State shall make such repairs in compliance with applicable ordinances and regulations, and shall apply, and pay, for all necessary permits no later than the business day next following the discovery of the need for such repairs.

(c) Upon written notification to the City and all adjoining property owners, the State may, using proper arbor cultural practices, prune or cause to be pruned any tree in the City's Rights-of-Way which interfere with the operation of the State's MAN Network. All pruning performed by contract shall be by a tree service licensed by the City to perform such work in city Rights-of-Way. All wood, debris, or other matter shall be removed from the right-of-way the same day as the pruning occurs.

(d) State shall construct and maintain its MAN Network in such a manner so as to not interfere with City sewer or water systems, or other City facilities, or otherwise cause injury to any other public or private property. The State shall repair, renew, modify and improve its facilities from time to time as may be necessary to accomplish this purpose.

Section 7: Insurance.

(a) General. At all times during the term of this Agreement, State, at its own cost and expense, shall provide the insurance specified in this section through the State's self-insurance program.

(b) Evidence Required. Within thirty (30) days of the effective date of this Agreement, State shall provide the City with a certificate of self-insurance executed by an authorized representative of the State, evidencing that State's self-insurance coverage complies with this section.

(c) Notice of Cancellation, Reduction, or Material Change in Coverage. State shall notify City not less than thirty (30) calendar days prior to any reduction, or material change in coverage. If self-insurance coverage is reduced or materially changed, State shall, prior to the effective date of such cancellation, reduction or material change, obtain the coverage required under this section, and provide the City with documentation of such coverage.

(d) Insurance Required. During the term of this contract, State shall provide, at its own expense, the following insurance:

(1) Workers' compensation insurance for all subject workers in compliance with ORS 656.017;

(2) Through its self-insurance program, general liability insurance with combined single limits, or the equivalent, of not less than \$2,000,000 (two million dollars) per occurrence / \$4,000,000 (four million dollars) in the aggregate for bodily injury, death, property damage, contractual liability, and completed operations. The State shall also obtain and maintain in effect during the term of this Agreement professional liability coverage with combined single limits of not less than \$2,000,000 (two million dollars). The insurance shall be without prejudice to otherwise existing coverage and shall name and cover as additional insureds the City, its officials, officers, agents, and employees; provided, however, that if at any time during the term of this Agreement the amounts herein provided are less than those provided under the Oregon Tort Claims Act, or any successor statute, State will increase the amounts of coverage to amounts not less than those provided under such Act or successor statute.

The State shall maintain on file with the City's Franchise Administrator a certificate of insurance certifying the coverage required above. The adequacy of the insurance shall be subject to the approval of the City's Risk Manager. The certificate of insurance as specified under this section shall provide that this insurance shall not be canceled or materially altered without thirty (30) days written notice first being given to the City Manager and the City's Franchise Administrator. If the insurance is canceled or materially altered within the term of this Agreement, the State shall provide a replacement policy with the same terms.

Section 8: Transfers and Change in Control.

(a) Transfer. The State's MAN Network shall not be sold, leased, assigned or otherwise transferred without advance notice to the City, nor shall any of the rights or privileges herein granted or authorized be leased, assigned, sold or transferred, either in whole or in part, nor shall title hereto, either legal or equitable, pass to or vest in any person, either by act of the State or by operation of law, without advance written notice to and consent by the City, expressed in writing, such consent not to be unreasonably withheld. If the State wishes to transfer this Agreement, the State shall give City written notice of the proposed transfer and shall request consent of the transfer by the City. The notice shall contain such technical, legal and financial information as is reasonably necessary to identify the nature and scope of the transfer. The granting of such consent in one instance shall not render unnecessary any subsequent consent in another instance.

Any transfer of rights in this Agreement affected without the written consent of the City

shall render this Agreement subject to revocation. Upon receipt of the written notice regarding the proposed transfer, the City shall have 90 days to act upon any request for approval of a transfer, or to request additional information for purposes of determining consent. If the City fails to render a final decision on, or request additional information concerning, the request within 90 days, the request shall be deemed granted unless the State and the City agree to an extension of time.

The requirements of this section shall not be deemed to prohibit sale of tangible assets of the State in the ordinary conduct of the State's business without the consent of the City. The requirements of this section shall not be deemed to prohibit, without the consent of the City, a transfer of rights in this Agreement to another State Agency whose primary business is Telecommunications System.

(b) Successors and Assigns. After this Agreement is executed, the State shall not assign or transfer any of its interest in this Agreement, without the prior written consent of the City; provided, however, that State may assign or transfer its interest in this Agreement to other State Agencies without the City's consent upon written notice to the City. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and assigns.

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 13 with respect to the Third Party Claim.

9.2 With respect to a Third Party Claim for which State is jointly liable with City (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 City in such proportion as is appropriate to reflect the relative fault of State on the one hand and of City 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 City 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 City is jointly liable with State (or would be if joined in the Third Party Claim), City 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 City 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 City 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. City'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: Compensation.

(a) Amount of compensation.

As compensation for the benefits and privileges under this Agreement and in consideration for use of City's Rights-of-Way, beginning upon the Effective Date of this Agreement and then annually thereafter, OSCIO shall pay the City the sum of Forty Thousand Dollars (\$40,000) as an annual fee.

The fee is subject to CPI adjustments, to be applied annually. The amount of the annual fee shall increase annually on July 1st at the rate of adjustment in the CPI for the Urban Wage Earners and Clerical Workers for the West Region, Size A (over 1.5 million) for the prior calendar year, unadjusted for seasonal variations, as determined by the US Bureau of Labor and Statistics of the US Department of Labor and as published in such US Bureau of Labor Statistics Detailed Report.

(b) Payments.

(1) The Fee shall be paid to the City annually. The initial fee shall be due within thirty days of the effective date of this Agreement and will be prorated as appropriate. During each successive year during the term of this Agreement, and the renewal hereof, the Fee shall be due and payable on or before August 15.

(2) Fee payments not received by the City within forty-five (45) days of their due date shall bear interest at the rate of $\frac{2}{3}$ of 1% per month (8% per annum), compounded daily until paid, pursuant to ORS 293.462.

(c) Payment of the compensation under this Agreement shall not exempt the State from payment of any other license fee, tax or charge on the business, occupation, property or income of the State that may be lawfully imposed by the City or any other taxing authority

for use of City services or Rights-of-Way other than those covered under this Agreement.

Section 11: Right to Inspect Records. In order to manage the City's Rights-of-Way, and to the extent permitted or required by applicable law, the State shall provide, upon request, the following information in such form as may be reasonably required by the City: maps of the State's MAN Network; The information or a signed statement verifying that no such information exists, along with any further directly related data which may be required by the City to adequately understand the information, shall be furnished by the State to the City within thirty days of when the City provides notice requesting such information, at the State's cost and expense. State and City acknowledge that any information submitted to the City is a public record under ORS 192.311-192.478. However, to the extent allowed by law, the City agrees that any information submitted will remain confidential and that the City will use such information only for the purpose of managing its Rights-of-Way and determining compliance with the terms of this Agreement.

Section 12: Right to Inspect Construction. The City or its representatives shall have the right to inspect all construction or installation work performed pursuant to this Agreement and to make such tests as it shall find necessary to ensure compliance with the terms of this Agreement and other pertinent provisions of law relating to management of the City's Rights-of-Way.

Section 13: Discontinuation of Use; Right to Require Removal of Property at Expiration of Agreement.

(a) Whenever the State intends to discontinue use of the MAN Network, or any part thereof, within any City rights of way, or upon termination or expiration of this Agreement, the State shall submit to the Director of Public Works an application describing which part of the system will be discontinued (the Discontinued System), along with a notice that the Discontinued System will be removed, or a request that the Discontinued System be allowed to remain in place and abandoned. If permission to allow the Discontinued System to remain in place is granted, or no notice that permission is denied is given by the Director of Public Works to the State within one hundred and twenty days after submission of the application, the Discontinued System shall be deemed abandoned property, and, if requested by the City, ownership of the Discontinued System shall be transferred to the City.

(b) If the State's request to abandon the Discontinued System is granted, the Director of Public Works may require the State to remove part or all of the Discontinued System that consists of fiber optic cable, copper wire, vaults or other facilities (Removable Facilities) if the Director determines such removal is in the public interest. Upon notice, the State shall complete such removal or modification of Removable Facilities in accordance with a schedule determined by the Director of Public Works.

(c) Until such time as the Discontinued System is abandoned and ownership of the Discontinued System, is transferred to the City, the State shall remain the owner of the Discontinued System, and be and remain responsible for any necessary repairs, relocations or restorations of Rights-of-Way made necessary by the Discontinued System, in such a manner, and in the same degree, as if the Discontinued System were still in active use.

(d) At the termination or expiration of this Agreement, or the last renewal thereof, or upon forfeiture or revocation as provided for herein, if the State has decided not to remove the MAN Network and has submitted an application to the City to allow the MAN Network to remain in place, and permission to allow the MAN Network to remain in place is granted, or no notice is given by the Director of Public Works to the State within one hundred and twenty (120) days after submission of the application, the MAN Network shall be deemed abandoned property and ownership of the MAN Network transferred to the City. If the State's application to allow the MAN System to remain in place is denied within the time period required herein, the City shall have the right to require the State to remove, at State's own expense, all or any part of the Removable Facilities of MAN Network from Rights-of-Way within the Agreement area. If the State fails to do so within one hundred and eighty (180) days after receipt of notice from the City, the City may perform the work and collect the cost thereof from the State.

Section 14: Default; Remedies; Limitation of Liability. In the event either party breaches any agreement, term or obligation imposed on it by this Agreement, the other party shall be entitled to all remedies available at law and in equity for such breach, provided, that the parties agree that neither party shall be liable to the other for any indirect, special, or consequential damages, or any lost profits, arising out of any provision or requirement contained herein, and provided further, that each party's maximum liability to the other party for any damages, whether in contract or tort, shall not exceed the Agreement Fees which the State has paid the City under this Agreement.

Section 15: Compliance with Applicable Laws. State and City shall comply with all applicable federal, state, and local laws, ordinances, and regulations, whether now in existence or hereinafter enacted. Nothing contained in this Agreement shall be construed as authorizing the State or the City or either's officers, employees or agents, to violate any federal, state or local law, whether now in existence or hereinafter enacted, including, by way of illustration but not of limitation, any provision of Oregon anti-trust law, ORS 646.750-646.836, or the Oregon Unlawful Trade Practices Act, ORS 646.605-646.652. Nothing contained in this section shall be construed as requiring State or City to comply with any federal, state or local law that is repealed or otherwise rendered unenforceable subsequent to the adoption of this Agreement. Each party's performance under this Agreement is conditioned upon the other party's compliance with the provisions of ORS 279B.220, ORS 279B.230 and ORS 279B.235, which are incorporated herein by reference.

Section 16: Revocation.

(a) **General.** In addition to any rights set out elsewhere in this document, the City reserves the right to declare a forfeiture or otherwise revoke this Agreement, and all rights and privileges pertaining thereto, under the following circumstances:

(1) Following a hearing as provided herein, the State is determined to be in violation of any material provision of this Agreement and fails to correct the violation after written notice of the violation, proposed forfeiture and reasonable opportunity thereafter to cure;

(2) the State is found to have engaged in fraud or deceit upon the City or any other persons;

(3) the State fails to obtain and maintain any permit required by any federal or state regulatory body for the construction, maintenance and operation of its MAN Network; provided, however, that the State shall be allowed a reasonable time to cure failure to obtain any permit, and that such permit is material to the operation of State's MAN Network or the City's management of its Rights-of-Way; or

(4) the State fails to maintain the full amount of its self-insurance coverage as required under the terms of this Agreement.

Upon the occurrence of one of the events set out above, and following not less than 30 days written notice, the City shall conduct a hearing upon the proposed forfeiture. The State shall be afforded due process rights as if the hearing were a contested case hearing subject to ORS Chapter 183, including the right to present evidence, to subpoena and cross-examine witnesses, to subpoena documents, and to require that all testimony be on the record. Findings from the hearing shall be written and shall stipulate the reasons for the City's decision. If the City finds that the Agreement should be forfeited, the City shall by ordinance declare a forfeiture of the Agreement. In the event that the State believes that the City has improperly declared a forfeiture, the State may file such proceeding as is appropriate in a court of competent jurisdiction to determine whether the City has properly declared a forfeiture. If a forfeiture is lawfully declared by a court of competent jurisdiction, all rights of the State shall immediately be divested without a further act upon the part of the City.

Section 17: Notice. Any notice provided for under this Agreement shall be sufficient if in writing and (1) delivered personally to the other party or deposited in the U.S. Mail, postage prepaid, certified mail, return receipt requested; (2) sent overnight by commercial courier; or (3) sent by facsimile transmission, provided receipt of such facsimile is confirmed, in writing, on the first business day following the date of transmission. Notice shall be sent to the following address, or such other address as each party may specify in writing:

City Manager
City of Salem
555 Liberty St. SE
Salem, OR 97301
FAX (503) 588-6057

Sandy Wheeler
State of Oregon
Data Center Services (DCS) Director
Salem, OR 97301
FAX: (503) 378-8333

Notice shall be deemed effective upon the earliest date of actual delivery; three business days after deposit in the U.S. mail as provided herein; one business day after shipment by commercial courier; or the same day as transmitted by facsimile, provided transmission of such facsimile is confirmed in writing as provided herein.

Section 18: Captions. The captions to sections of this Agreement are intended solely to facilitate reading and reference of the sections and provisions contained herein, and shall not affect the meaning or interpretation of any section or provision of this Agreement.

Section 19: Severability. The provisions of this Agreement are severable; if any section, subsection, sentence or clause shall be found by a court of competent jurisdiction to be invalid, unconstitutional, or is clearly and specifically preempted by federal or state laws, the remaining sections, subsections, sentences, or clauses shall remain in full force and effect, unless the effect of such invalidity, unconstitutionality or preemption effects a material alteration in the benefit of a party's bargain contained herein. Should any provision be declared invalid or unconstitutional, or be preempted, the parties shall enter into negotiations within ten days of final judgment or effective date of the law regarding any such matter, and make a good faith effort to reform or replace such provision or part thereof with a valid and enforceable provision that comes as close as possible to providing the parties the benefit of its bargain as originally expressed herein.

Section 20: No Third-Party Beneficiaries. State and City are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, or is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement. OSCIO is an intended beneficiary of this Agreement.

Section 21: Funds Available and Authorized. City shall not be compensated for rights granted under this Agreement by any other Agency or department of the State of Oregon. OSCIO believes it has sufficient funds currently available and authorized for expenditure to finance the costs of this Agreement within its biennial appropriation or limitation. City understands and agrees that State's payment of amounts under this Agreement is contingent on OSCIO receiving from the Oregon Legislative Assembly appropriations, limitations, or other expenditure authority sufficient to allow OSCIO, in the exercise of its reasonable administrative discretion, to continue to make payments under this Agreement, provided that any such failure of the Oregon Legislative Assembly to authorize appropriations, limitations or other expenditure sufficient to allow State to continue making payments under this Agreement shall allow City to exercise its rights pursuant to Sections 13 and 16 of this Agreement.

Section 22: Records Maintenance; Access. The parties shall maintain all fiscal records relating to this Agreement in accordance with generally accepted accounting principles. In addition, City shall maintain any other records pertinent to this Agreement in such manner as to clearly document City's receipt of payments hereunder. The parties acknowledges and agrees that the City, the State, the Oregon Secretary of State and the federal government and their duly authorized representatives shall have access to such fiscal records and other books, documents, papers, plans, and writings of the parties that are pertinent to this Agreement to perform examinations and audits and make excerpts and transcripts. The parties shall retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of three (3) years, or such longer period as may be required by applicable law, following final payment and 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.

State and City acknowledge that any information submitted to the City or the State is a public record under ORS 192.311-192.478. However, to the extent allowed by law, the City agrees that any information submitted will remain confidential and that the City will use such information only for the purpose of managing its Rights-of-Way and determining compliance with the terms of this Agreement.

Section 23: Waiver.

(a) The City is vested with the power and authority to reasonably regulate, and manage, its Rights-of-Way in a competitively neutral and non-discriminatory manner, and in the public interest. State shall not be relieved of its obligations to comply with any provision of this Agreement by reason of the failure of the City to enforce prompt compliance, nor does the City waive or limit any of its rights under this Agreement by reason of such failure or neglect.

(b) No provision of this Agreement will be deemed waived unless such waiver is in writing and signed by the party waiving its rights. However, if State gives written notice of a failure or inability to cure or comply with a provision of this Agreement, and the City fails to object within a reasonable time after receipt of such notice, such provision shall be deemed waived.

Section 24: Amendments. This Agreement may be amended, modified, or supplemented only by a written amendment signed by State and City.

Section 25: 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 the parties that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within a circuit court for the State of Oregon of proper jurisdiction. THE PARTIES, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENT TO THE IN PERSONAM JURISDICTION OF SAID COURTS. Except as provided in this section, neither party waives 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, from any Claim or from the jurisdiction of any court. The parties acknowledge that this is a binding and enforceable agreement and, to the extent permitted by law, expressly waive any defense alleging that either party does not have the right to seek judicial enforcement of this Agreement.

Section 26: Dispute Resolution. The Parties should attempt in good faith to resolve any dispute arising out of this Agreement. This may be done at any management level, including at a level higher than persons directly responsible for administration of the agreement. In addition to other processes to resolve disputes arising under the Agreement, either Party may notify the other that it wishes to engage in a more guided dispute resolution process. Upon such notification, the Parties shall engage in non-binding arbitration to resolve the dispute. If the Parties do not reach agreement as a result of the non-binding discussion, the Parties may agree to consider further appropriate dispute resolution processes, including binding arbitration. The rights and remedies set forth in this

Agreement are not intended to be exhaustive and the exercise by either Party of any right or remedy does not preclude the exercise of any other rights or remedies at law or in equity.

Section 27: 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. Each Party may terminate this Agreement upon written notice to the other party after reasonably determining that the failure or delay will likely prevent successful performance of this Agreement.

Section 28: Time is of the Essence. 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. Each Party may terminate this Agreement upon written notice to the other party after reasonably determining that the failure or delay will likely prevent successful performance of this Agreement.

Section 29: 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 30: Order of Precedence. No term stated on any schedule, exhibit, attachment, or other document incorporated into the Agreement will take precedence over a conflicting term in the Agreement unless the term references the conflicting term in the Agreement and clearly recites the parties' intent that it take precedence.

Section 31: Merger. This Agreement and all exhibits and attachments, if any, constitute the entire agreement between the Parties on the subject matter hereof. This Agreement supersedes the previous intergovernmental agreement between the parties effective April 7, 2003, and the previous agreement is hereby terminated and of no longer force and effect. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement.

CITY OF SALEM:

Steven D. Powers, City Manager

Date

STATE OF OREGON, Acting by and
Through its Department of Administrative
Services, Office of the State Chief Information Officer

Date

STATE OF OREGON, Acting by and
Through its Department of Administrative
Services, Procurement Services

Date

Approved for Legal Sufficiency by the
Oregon Department of Justice:

Karen J. Johnson, Assistant Attorney General

Date