



Home of the Tualatin River National Wildlife Refuge

CITY COUNCIL MEETING PACKET

FOR

Tuesday, January 6, 2026

**Sherwood City Hall
22560 SW Pine Street
Sherwood, Oregon**

5:30 pm City Council Work Session

7:00 pm City Council Regular Meeting

**This meeting will be live streamed at
<https://www.youtube.com/user/CityofSherwood>**



Home of the Tualatin River National Wildlife Refuge

5:30 PM CITY COUNCIL WORK SESSION

- 1. Elementary School Crossing Assessment Study**
(Joy Chang, Project Manager)
- 2. Transportation System Plan (TSP) Performance Measure Options** (Joy Chang, Project Manager)
- 3. Discussion of Contract Review for the City Attorney**
(Craig Sheldon, City Manager)
- 4. Discussion of Contract Review for the Municipal Judge**
(Craig Sheldon, City Manager)

7:00 PM CITY COUNCIL REGULAR SESSION

- 1. CALL TO ORDER**
- 2. PLEDGE OF ALLEGIANCE**
- 3. ROLL CALL**
- 4. APPROVAL OF AGENDA**
- 5. NEW BUSINESS**
 - A. Selection of Council President** (Tim Rosener, Mayor)
- 6. CONSENT AGENDA**
 - A. Approval of December 2, 2025 City Council Meeting Minutes** (Sylvia Murphy, City Recorder)
 - B. Resolution 2026-001, Authorizing an amendment to the Automated Photo Enforcement Agreement with Redflex Traffic Systems, Inc.** (Ty Hanlon, Police Chief)
 - C. Resolution 2026-002, Declaring a City owned property located at 22468 SW Pacific Highway as Surplus Property** (Eric Rutledge, Community Development Director)
 - D. Resolution 2026-003, Authorizing the City Manager to sign the Reconnect Program Grant and Security Agreement and Supporting Documents** (Brad Crawford, IT Director)
- 7. CITIZEN COMMENTS**
- 8. CITY MANAGER REPORT**
- 9. COUNCIL ANNOUNCEMENTS**

AGENDA

SHERWOOD CITY COUNCIL **January 6, 2026**

5:30 pm City Council Work Session

7:00 pm City Council Regular Session

Sherwood City Hall
22560 SW Pine Street
Sherwood, OR 97140

This meeting will be live streamed at
<https://www.youtube.com/user/CityofSherwood>

10. ADJOURN

How to Provide Citizen Comments and Public Hearing Testimony: Citizen comments and public hearing testimony may be provided in person, in writing, or by telephone. Written comments must be submitted at least 24 hours in advance of the scheduled meeting start time by e-mail to Cityrecorder@Sherwoodoregon.gov and must clearly state either (1) that it is intended as a general Citizen Comment for this meeting or (2) if it is intended as testimony for a public hearing, the specific public hearing topic for which it is intended. To provide comment by phone during the live meeting, please e-mail or call the City Recorder at Cityrecorder@Sherwoodoregon.gov or 503-625-4246 at least 24 hours in advance of the meeting start time in order to receive the phone dial-in instructions. Per Council Rules Ch. 2 Section (V)(D)(5), Citizen Comments, "Speakers shall identify themselves by their names and by their city of residence." Anonymous comments will not be accepted into the meeting record.

How to Find out What's on the Council Schedule: City Council meeting materials and agenda are posted to the City web page at www.sherwoodoregon.gov, generally by the Thursday prior to a Council meeting. When possible, Council agendas are also posted at the Sherwood Library/City Hall and the Sherwood Post Office.

To Schedule a Presentation to the Council: If you would like to schedule a presentation to the City Council, please submit your name, phone number, the subject of your presentation and the date you wish to appear to the City Recorder, 503-625-4246 or Cityrecorder@Sherwoodoregon.gov

ADA Accommodations: If you require an ADA accommodation for this public meeting, please contact the City Recorder's Office at (503) 625-4246 or Cityrecorder@Sherwoodoregon.gov at least 48 hours in advance of the scheduled meeting time. Assisted Listening Devices available on site.



SHERWOOD CITY COUNCIL MEETING MINUTES

22560 SW Pine St., Sherwood, Or

December 2, 2025

WORK SESSION

- 1. CALL TO ORDER:** Council President Young called the meeting to order at 5:30 pm.
- 2. COUNCIL PRESENT:** Council President Kim Young, Councilors Renee Brouse, Keith Mays, Taylor Giles, Doug Scott and Dan Standke. Mayor Tim Rosener was absent.
- 3. STAFF PRESENT:** City Manager Craig Sheldon, Assistant City Manager Kristen Switzer, City Attorney Ryan Adams, Community Development Director Eric Rutledge, Public Works Director Rich Sattler, Volunteer Coordinator Tammy Steffens, Center for the Arts Manager Chanda Hall, Library Manager Adrienne Doman Calkins, Police Captain Nathan Powell, IT Desk Support Dan Bolton, Senior IT Analyst Mohamed Jama, Communications and Engagement Coordinator Sarah Lopez, Human Resources Director Lydia McEvoy, Deputy City Recorder Colleen Resch, and City Recorder Sylvia Murphy.

OTHERS PRESENT: Planning Commission Chair Jean Simson, Budget Committee Chair Kady Strode, Parks and Recreation Advisory Board Chair David Scheirman, Library Advisory Board Chair Sean Garland (remote), Cultural Arts Commission Chair Jennifer Casler, Police Advisory Board Chair Richard Amicci, Senior Advisory Board Chair Caz Thomson, Traffic Safety Board Chair Jason Wuertz, and Youth Advisory Board Chair Finn McEvoy.

4. TOPICS:

1. Washington County Commissioner Jason Snider Update

Commissioner Jason Snider provided a brief update and discussed issues specific to Sherwood. He informed the Council of a gravel road south of the urban growth boundary that was being misused. He referred to the ODOT required right turn only from Brookman Road onto Hwy 99 and said this caused drivers to divert to Middleton Road to access Hwy 99. Discussion followed. Commissioner Snider asked the Council for questions.

Councilor Mays asked for a status update of the Major Streets Transportation Improvement Program (MSTIP) projects in Sherwood. Community Development Director Eric Rutledge provided an update and stated the County had been moving projects forward.

Councilor Giles commented on Immigration and Customs Enforcement (ICE) activity in the County and asked Commissioner Snider for an update. Commissioner Snider said the Oregon Attorney General along with other District Attorneys sent a letter to the US Department of Justice that notified them of an investigation into alleged unlawful actions by Federal Officers in Oregon. He said the Washington County Commission

had concluded that there was an attack on the most vulnerable members of the community and the Commission devoted \$250,000 to combat food insecurity and \$200,000 to support immigrant refugee communities that were also under pressure. He said the money came from one-time strategic investment plan funds. Discussion followed.

Commissioner Snider announced that both the Public Safety Levy and Library Levy passed in November.

Council President Young thanked Commissioner Snider and addressed the next item on the agenda.

2. Discuss City Boards and Commissions Annual Work Plan

Council President Young recapped that this was a work session with Boards and Committee Chairs. She explained that what was discussed at this meeting would inform Council goal setting in January. She asked those in attendance to introduce themselves.

Library Advisory Board Chair Sean Garland said the Library Advisory Board married their goals with the Council goals and examined fiscal responsibility, community engagement, and livability. He said the goal for fiscal responsibility was to provide feedback to staff on the next steps for WCCLS funding. He commented on community engagement and said the library outreach goals were to convene community groups to learn more about the work of other groups in Sherwood and foster networking. He referred to the library marketing and visibility and said the library was a central hub of the city and we needed to get the message out to the community. He commented on livability and said they would continue to support fundraising for the public meeting pod and continue to seek long term planning for expanding the library building or for a new Library building.

Police Advisory Board Richard Amicci reported that the Police Department had several transitions this year in terms of staffing. He stated the top goals for 2026 were to evaluate and endorse key initiatives for the Sherwood Police Department, examine funding needs of the department to ensure sustainability of current services while planning for future growth and technology needs, and provide thorough review and validation of new policies and procedures.

Traffic Safety Board Chair Jason Wuertz stated the Traffic Safety Committee was changed to a Board in 2025 and he thanked the Council. He stated top goals for 2026 were to stay involved with the Transportation System Plan (TSP) update and provide input for all modes of transportation, continue to receive and discuss traffic safety issues, and examine ways to be more proactive in addition to reactive.

Senior Advisory Board Chair Caz Thomson stated the top goals for 2026 were to continue senior transportation, form partnerships to help provide affordable housing and address the ongoing needs for transportation and promote the Age Friendly business brochure and provide it to local businesses.

Budget Committee Chair Kady Strode stated the city prepares a budget that meets the Council goals. She reported that the city moved to a biennial budget and during this off year the goal was to make sure the city stays on track with spending and hits the targets. She stated another goal was to continue pursuing revenue opportunities.

Cultural Arts Commission Chair Jennifer Casler commented on past years accomplishments which included the Pedestrian Bridge medallions. She stated the top goals for 2026 were to continue funding sources and

maintain robust art programs, continue building relationships with the other Boards and Committees and schedule one or two work sessions with the Council.

Planning Commission Chair Jean Simson provided a handout with staff identified and Planning Commission identified priorities (see record, Exhibit A). She reported that the Commission had a light schedule for 2025. She stated the top goals for 2026 were update and cleanup the Code, begin implementation for Sherwood West Comprehensive planning, Old Town Strategic Plan, and Oregon Housing Needs Analysis, advise on the TSP update and other master plans, consider a more comprehensive tree code update, and consider a PUD code amendment.

Youth Advisory Board Chair Finn McEvoy reported the top goals for 2026 were to increase communication among youth and seek more engagement, establish events that foster community with the youth, and work towards more civic engagement.

Parks and Recreation Advisory Board Chair David Scheirman reported that the top goals for 2026 were to provide senior citizen appropriate exercise equipment in Langer Park, obtain more park land, construct a second dog park, and construct or plan for more connective trails.

Council President Young asked if there were any questions.

Councilor Brouse thanked everyone for their time and dedication and asked if there had been any outreach to Chehalem Parks and Recreation regarding how they acquired land donations for parks. Discussion followed.

Councilor Standke asked how residents could offer ideas for different types of art around the city. Chair Casler suggested attending a Cultural Arts Commission meeting or reaching out to staff.

Councilor Giles thanked the board members for their service. He asked the Budget Committee to rename “contingency fund” to avoid confusion. He reported that he met with a resident and vendor regarding a park for people with disabilities and discussion followed.

Chair Simson reminded the attendees of the challenges cities are facing with the housing legislation coming out of the State legislature. Discussion followed about the impacts the new laws would have on Sherwood and Sherwood West. Councilor Brouse recognized Chair Simson for her 22 years of service to the Planning Commission.

The Board Chairs thanked the City Council for the opportunity to report on their accomplishments and goals.

Council President Young thanked the presenters and adjourned the work session at 6:58 pm.

REGULAR SESSION

- 1. CALL TO ORDER:** Council President Young called the meeting to order at 7:05 pm.
- 2. COUNCIL PRESENT:** Council President Kim Young, Councilors Renee Brouse, Keith Mays, Taylor Giles, Doug Scott and Dan Standke. Mayor Rosener was absent.

3. STAFF PRESENT: City Manager Craig Sheldon, Assistant City Manager Kristen Switzer, City Attorney Ryan Adams, Police Captain Nathan Powell, Community Development Director Eric Rutledge, Public Works Director Rich Sattler, IT Desk Support Dan Bolton, Senior IT Analyst Mohamed Jama, Communications and Engagement Coordinator Sarah Lopez, Volunteer Coordinator Tammy Steffens, and City Recorder Sylvia Murphy.

4. APPROVAL OF AGENDA:

Council President Young addressed approval of the agenda and asked for a motion.

MOTION: FROM COUNCILOR BROUSE TO ADOPT THE AGENDA. SECONDED BY COUNCILOR MAYS. MOTION PASSED 6:0, ALL PRESENT MEMBERS VOTED IN FAVOR. MAYOR ROSENER WAS ABSENT.

Council President Young addressed the next agenda item and asked for a motion.

5. CONSENT AGENDA:

- A. Approval of October 28, 2025 City Council Meeting Minutes**
- B. Approval of November 4, 2025 City Council Meeting Minutes**
- C. Approval of November 18, 2025 City Council Meeting Minutes**
- D. Resolution 2025-080, reappointing Caz Thomson to the Sherwood Senior Advisory Board**
- E. Resolution 2025-081, reappointing Donna Nevedal to the Sherwood Senior Advisory Board**
- F. Resolution 2025-082, Authorizing Full Faith and Credit Financing for Sherwood Broadband**
- G. Resolution 2025-083, Authorizing City Manager to Enter into a Contract with Northwest Success for Janitorial Services, Hard Floor Maintenance, Carpet and Window Cleaning**
- H. Resolution 2025-084, Ratifying the Collective Bargaining Agreement with the Sherwood Police Officers Association (SPOA)**

MOTION: FROM COUNCILOR BROUSE TO ADOPT THE CONSENT AGENDA. SECONDED BY COUNCILOR MAYS. MOTION PASSED 6:0, ALL PRESENT MEMBERS VOTED IN FAVOR. MAYOR ROSENER WAS ABSENT.

Council President Young addressed the next agenda item.

6. CITIZEN COMMENTS:

No comments were received. Council President Young addressed the next agenda item.

7. PRESENTATION:

A. Recognition of Eagle Scout Award Recipients

Brandon Will came forward and provided background information and a picture of his Eagle Scout project (see record, Exhibit B). He stated his project was to move the statue of Mary to a place with better access for everyone, especially those with disabilities. He explained the goal was to help the parish free up space for a potential addition to the St. Francis School or a prayer garden. Councilor Mays asked how long the project took and if he had any help. Brandon said his project took 6 months of planning and his fellow scouts

and adult leader helped. Councilor Brouse asked Brandon how he chose the project. Brandon replied that he attended St. Francis School and noticed that the Mary statue was difficult to see and access and he decided to move the statue to a more open area next to the statue of Jesus. Councilor Mays asked if he needed permission or a permit. Brandon said he had a meeting with the priest and received approval. Council President Young asked if he received any donations. Brandon said he received anonymous donations, and he raised \$500 from returning cans and bottles. He said the total project cost \$700. Council President Young presented Brandon with a certificate.

Jackson Dooley came forward and provided background information and pictures of his Eagle Scout project (see record, Exhibit C). He said his project was building bull pens for the Hawks View Elementary School baseball fields. He explained that he built one bull pen for each field and there were four fields. He said he built a mound and a platform for home plate. Councilor Brouse asked him to explain the process. Jackson stated he spoke with the Sherwood Junior Baseball president who approved the project. He said the materials included wood and turf. Councilor Brouse asked what the project cost. Brandon stated the cost was \$1300 and he raised \$1000 through GoFundMe and received separate donations from family and friends. He stated his help included troop members, adult leaders, and community members. Councilor Standke mentioned that he was a youth baseball coach and appreciated the project. Council President Young presented Jackson with a certificate.

B. Recognition of Sherwood Citizen University Participants

Communications and Engagement Coordinator Sarah Lopez provided a brief explanation of Sherwood Citizen University, which was a six-week program meeting once a week. She asked participants to come forward, and Council President Young presented them with a certificate. Council President Young said she attended the first Sherwood Citizen University in 2016, before becoming a City Councilor. She stated each session focused on a different department within the city.

8. CITY MANAGER REPORT:

City Manager Craig Sheldon recognized retiring Officer Rodriguez, who served 24 years with the Sherwood Police Department. He announced that the Sherwood Holiday Festival was this weekend. He stated the Budget Committee meeting was on December 4 at 6 pm at City Hall. He said the City Council annual goal setting was scheduled for January 24 from 9 am to 1 pm. He thanked the City Council, Boards and Commission members, and staff for their hard work which made 2025 successful for Sherwood.

Council President Young thanked Police Captain Powell for attending the meeting and asked Assistant City Manager Switzer to introduce Sarah Lopez. Ms. Switzer introduced Sarah Lopez and said she had transitioned to the new position of Communications and Engagement Coordinator at the beginning of August after working in the Utility Billing Department. Ms. Lopez said she had worked for the city since 2009 and was enjoying her new position. Councilor Scott said this role had been needed for a long time and was the result of a City Council goal.

9. COUNCIL ANNOUNCEMENTS:

Councilor Brouse reported that she attended the Town Hall at the YMCA and met the new Chief Executive Officer (CEO). She said the Chamber of Commerce Annual luncheon was scheduled for Tuesday, December 9. She reported that the Youth Advisory Board met before Thanksgiving and agreed to join the City Council float in the Holiday Parade.

Councilor Giles shared a story about a local business, Fat Milos, that installed a shed behind the restaurant with available resources for those experiencing food insecurity. He said the project was funded primarily by Fat Milos and others throughout the community.

Councilor Standke reported that he attended the Library Advisory Board meeting, and they shared ideas about their vision for the future of the library. He stated the Sherwood School Board met and addressed inclement weather policies and said two snow days were built into the calendar. He reported that the School District was starting a pilot project in January and would be hiring instructional assistants and providing training. He addressed the continued ICE presence and said the Oregon Attorney General along with other District Attorneys sent a letter to the US Department of Justice to notify them of an investigation into alleged unlawful actions by Federal Officers in Oregon. He provided examples of the alleged unlawful actions and said one of the paragraphs in the letter resonated with him and he read the following: *Each time law enforcement acts unlawfully in violation of our Constitution or with unwanted force it undermines public trust and confidence in our government and weakens the very principles our nation stands for, keeping communities safe and holding those who commit violent crimes accountable and only happens when the public has trust in all law enforcement institutions. The public does not often differentiate between abuses by one agency or another and just view it as abuse by law enforcement.*

Councilor Scott reported that he attended the Parks Board meeting, and they discussed trail improvements and additions. He stated he participated in the Give 'N Gobble with his wife and was thankful for her improved health.

Councilor Mays reported that he attended the Cultural Arts Commission meeting, and they discussed all the successful city projects and upcoming projects. He reported that he attended the National League of Cities conference in Salt Lake City for the first time. He thanked the Council and staff for all their efforts during 2025.

Council President Young reported that she attended the YMCA Town Hall and said it was encouraging to hear from the new CEO. She attended the ODOT Region 1 Area Commission on Transportation meeting and they had a capital investment plan update. She attended the Police Advisory Board meeting, and they discussed goals for 2026.

City Manager Craig Sheldon said the YMCA is requesting a work session with the Council to provide feedback from the Town Hall.

10. ADJOURN

Council President Young adjourned the meeting at 7:45 pm.

Attest:

Sylvia Murphy, MMC, City Recorder

Tim Rosener, Mayor

TO: Sherwood City Council

FROM: Ty Hanlon, Police Chief

Through: Craig Sheldon, City Manager and Ryan Adams, City Attorney

SUBJECT: Resolution 2026-001, Authorizing an amendment to the Automated Photo Enforcement Agreement with Redflex Traffic Systems, Inc.

Issue:

Should the City of Sherwood approve an Amendment to the Automated Photo Enforcement Agreement with Redflex Traffic Systems, Inc.?

Background:

The City contracts with Redflex Traffic Systems, Inc. to operate automated photo enforcement for red-light and speed violations. To enhance enforcement in school zones and designated safety corridors, the Police Department is requesting approval of an Amendment to the existing agreement. The Amendment adds the option to deploy transportable speed safety camera systems and updates the associated pricing, service-level accuracy requirements, and liability provisions. These updates support targeted enforcement where speeding concerns have increased and allow more flexibility in addressing safety issues.

Financial Impacts:

There are no immediate financial impacts associated with approving this amendment. Costs associated with the transportable systems will be incorporated into the Police Department's annual budget and addressed through the City's standard budgeting process.

Recommendation:

Staff respectfully recommends City Council adoption of Resolution 2026-001, Authorizing an amendment to the Automated Photo Enforcement Agreement with Redflex Traffic Systems, Inc.



RESOLUTION 2026-001

AUTHORIZING AN AMENDMENT TO THE AUTOMATED PHOTO ENFORCEMENT AGREEMENT WITH REDFLEX TRAFFIC SYSTEMS, INC.

WHEREAS, the City of Sherwood contracts with Redflex Traffic Systems, Inc., agreement #178111 to provide automated photo enforcement services for red-light and speed violations within the City; and

WHEREAS, the Police Department has identified the need for enhanced enforcement capabilities, including transportable speed safety camera systems for use in school zones and designated safety corridors; and

WHEREAS, the proposed Amendment number 3, updates the agreement to incorporate transportable systems, revise associated compensation terms, establish service-level accuracy requirements, and update liability provisions; and

WHEREAS, the City has determined that these updates support roadway safety and operational flexibility; and

WHEREAS, the Amendment is attached to this Resolution, as Exhibit A and incorporated herein by reference.

NOW, THEREFORE, THE CITY OF SHERWOOD RESOLVES AS FOLLOWS:

Section 1. The City Council hereby approves the amendment to the Automated Photo Enforcement Agreement with Redflex Traffic Systems, Inc., attached hereto as Exhibit A.

Section 2. The City Manager is authorized to execute the amendment and take all actions necessary to implement its terms.

Section 3. This Resolution shall become effective immediately upon passage by the City Council.

Duly passed by the City Council this 6th of January, 2026

Tim Rosener, Mayor

Attest:

Sylvia Murphy, MMC, City Recorder

Resolution 2026-001

January 6, 2026

Page 1 of 1 with Exhibit A (3 pgs)

THIRD AMENDMENT TO EXCLUSIVE AGREEMENT BETWEEN
THE CITY OF SHERWOOD, OREGON AND REDFLEX TRAFFIC SYSTEMS, INC. FOR AN
AUTOMATED PHOTO ENFORCEMENT PROGRAM

This Third Amendment (the "Third Amendment") to the Exclusive Agreement #178111 between the City of Sherwood, Oregon and Redflex Traffic Systems, Inc. for an Automated Photo Enforcement Program is entered into this _____ day of _____, 2025 (the "Effective Date") by and between the City of Sherwood ("City") and Redflex Traffic Systems, Inc., a Delaware Corporation ("Redflex") (with City and Redflex each individually a "Party" and collectively the "Parties"). Unless specifically defined herein or the context requires otherwise, all capitalized terms used in this Third Amendment shall have the meaning given to such term in the Agreement.

RECITALS

WHEREAS, City and Redflex entered into a contract dated May 15, 2018, which was amended by a First Amendment on June 2, 2020, and Second Amendment on March 18, 2022 for the provision of automated photo enforcement within the City's corporate limit (with the contract as amended by the First Amendment, and Second Amendment referred to herein as the "Agreement");

WHEREAS, Section 11.6 of the Agreement requires any amendments or modifications of the Agreement to be in writing and signed by the Parties; and

WHEREAS, the City and Redflex mutually desire to amend and modify certain terms and conditions of the Agreement.

NOW THEREFORE, in consideration of the mutual covenants and promises contained in this Third Amendment, the Parties do hereby agree as set forth below:

1. DEFINITIONS.

"Transportable Speed Safety Camera System": A Camera System, which is capable of capturing speed Events, capable of being moved from a Designated Safety Zone to another.

2. INDEMNIFICATION AND LIABILITY - Section 8.3 is hereby modified as follows:

2.1 Limited Liability. In no event shall Redflex's liability under this Agreement exceed the greater of \$1,000,000 or the prior twelve (12) months of Fees paid by City pursuant to this Agreement. Notwithstanding anything to the contrary in this Agreement, neither Party shall be liable to the other, by reason of any representation or express or implied warranty, condition or other term or any duty at common or civil law, for any indirect, incidental, special, or consequential damages, or lost profits, lost fines, or lost data however caused and on any theory of liability, arising out of or relating to this Agreement.

3. Pricing. Pricing under Exhibit "D" COMPENSATION & PRICING section 1.1 is hereby modified to include Transportable Speed Safety Camera System.

Product Description	Fee*
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Transportable Speed Safety Camera System – the Parties shall mutually agree on the number of Camera Systems to be installed or upgraded through a notice to proceed. Fee includes up to 500 issued Citations per month per Camera System. Fee is \$8.00 per Citation issued above 500 per month per Camera System.	\$5,800.00 Fixed Fee per Month per Camera System*
<p>*Monthly price per Mobile Speed Transportable includes: initial deployment, battery replacements and up to 1 relocation every 30 days. Additional relocations are priced at \$300 per relocation.</p>	

4. Service Level Agreement – Citation Accuracy

Citation Accuracy Standard

The Contractor shall ensure that all citations issued and mailed to violators contain accurate and complete information. For each citation mailed that contains inaccurate or incomplete information attributable to the Contractor, a service credit of ten dollars (\$10.00) per citation shall be applied and deducted from the Contractor's subsequent monthly invoice.

Applicability of Service Credit

The service credit shall apply to any citation containing errors, including but not limited to:

- inaccurate dates, deadlines, or statutory timelines;
- incorrect location, jurisdiction, or site information;
- incorrect or missing statutory or ordinance references;
- inaccuracies resulting from improperly configured citation-generation logic;
- mismatched, incomplete, or incorrect evidence or vehicle data fields.

5. Except as expressly amended or modified by the terms of this Third Amendment, all terms of the Agreement shall remain in full force and effect. In the event of a conflict between the terms of this Third Amendment and the Agreement, the terms of this Third Amendment shall prevail and control.

6. The provisions of the Agreement, as amended by this Third Amendment, including the recitals, comprise all of the terms, conditions, agreements, and representations of the Parties with respect to the subject matter hereof.

7. This Third Amendment may be executed in one or more counterparts, each of which shall constitute an original, but all of which taken together shall constitute one and the same instrument.

Each Party represents and warrants that the representative signing this Third Amendment on its behalf has all rights and authority to bind and commit that party to the terms and conditions of this Third Amendment.

IN WITNESS WHEREOF, the Parties have executed this Third Amendment effective as of the Effective Date.

CITY OF SHERWOOD, OREGON

REDFLEX TRAFFIC SYSTEMS, INC.

By: _____

Name: _____

Title: _____

By: _____

Name: Jon Baldwin _____

Title: EVP, Government Solutions _____

TO: Sherwood City Council

FROM: Eric Rutledge, Community Development Director

Through: Craig Sheldon, City Manager and Ryan Adams, City Attorney

SUBJECT: Resolution 2026-002, Declaring a City owned property located at 22468 SW Pacific Highway as Surplus Property

Issue:

Shall the City Council declare a City owned property located at 22468 SW Pacific Highway as surplus property?

Background:

In November 2024, the City acquired a 0.98-acre property located at 22468 SW Pacific Highway (Washington County Tax Lot 2S131B000300) via donation from a private party. The property is situated along Highway 99W and is zoned Office Commercial. A review of the City's adopted parks, utility, and other master plans indicates that the site is not identified for current or future public use.

Given its location and zoning, the property may be better suited for private development that could support needed commercial and/or residential uses within the community. As a result, staff is bringing forward consideration of declaring the property surplus and no longer necessary for public use.

This resolution would not authorize the City to sell or otherwise dispose of the property without further action by the City Council pursuant to ORS 221.725. If the City Council chooses to declare the property as surplus, the City would still be required to hold a public hearing prior to any sale of the property. The public hearing would include public notice, a description of the property to be sold, the proposed uses for the property, and the reasons why the City Council considers it necessary to sell the property.

Financial Impacts:

There are no financial impacts as a result of declaring the property surplus.

Recommendation:

Staff respectfully recommends the City Council adopt Resolution 2026-002, declaring a City owned property located at 22468 SW Pacific Highway as surplus property.



0 50 100 200
Feet

Resolution 2026-002
Attachment to Staff Report
January 6, 2026 Page 1 of 1

Map data provided by METRO and the City of Sherwood. The City of Sherwood's infrastructure records, drawings, and other documents have been gathered over many years, using many different formats and standards. While the data provided is generally believed to be accurate, occasionally it proves to be incorrect; thus its accuracy is not guaranteed.

**RESOLUTION 2026-002****DECLARING A CITY OWNED PROPERTY LOCATED AT 22468 SW PACIFIC HIGHWAY AS SURPLUS PROPERTY**

WHEREAS, in November 2024, the City acquired a 0.98-acre property located at 22468 SW Pacific Highway via private party donation, identified as Washington County Tax Lot 2S131B000300; and

WHEREAS, the subject property is located along Highway 99W and is zoned Office Commercial; and

WHEREAS, the subject property is not identified in the City's adopted parks, utility, or other master plans as a site needed for current or future public use; and

WHEREAS, development of the subject property by a private party may represent the highest and best use of the property and could help deliver needed commercial and/or residential uses within the City; and

WHEREAS, the City Council finds that the subject property is surplus to the City's needs and is no longer required for public use.

NOW, THEREFORE, THE CITY OF SHERWOOD RESOLVES AS FOLLOWS:

Section 1. The City Council hereby declares the subject property, identified as 22468 SW Pacific Highway and otherwise known as Tax Lot 2S131B000300 in Washington County as surplus property and no longer needed for public use.

Section 2. This Resolution shall become effective immediately upon its adoption.

Duly passed by the City Council this 6th day of January, 2026.

Tim Rosener, Mayor

Attest:

Sylvia Murphy, MMC, City Recorder

TO: Sherwood City Council

FROM: Brad Crawford, IT Director

Through: Craig Sheldon, City Manager and Ryan Adams, City Attorney

SUBJECT: Resolution 2026-003, Authorizing the City Manager to sign the Reconnect Program Grant and Security Agreement and Supporting Documents

Issue:

Shall the City Council authorize the City Manager to sign the grant program documents with the United States Department of Agriculture (USDA) for providing broadband expansion in the rural area south of Sherwood?

Background:

The City of Sherwood was awarded \$1,000,000 through the Congressionally Directed Spending program at the federal government. This funding came from Representative Salinas and her support for a rural broadband project just outside Sherwood. The project will bring service to about 100 unserved and underserved residents, spread across two distinct project areas. One area is on Parret Mountain, and the other is on Kruger Rd. The Parret Mountain portion of this project directly ties to the city's BDP project and will connect two distinct areas served by Sherwood Broadband, creating ubiquitous coverage in that area.

Financial Impacts:

The total award amount is \$1,000,000 which staff believe will cover just the mainline construction but not include any service drop costs. The service drop work and fiber splicing will be done with internal staff when customers sign up for service.

Recommendation:

Staff respectfully recommends City Council adopt Resolution 2026-003, Authorizing the City Manager to sign the Reconnect Program Grant and Security Agreement and Supporting Documents.



RESOLUTION 2026-003

AUTHORIZING THE CITY MANAGER TO SIGN THE RECONNECT PROGRAM GRANT AND SECURITY AGREEMENT AND SUPPORTING DOCUMENTS

WHEREAS, the City of Sherwood has been awarded funding of \$1,000,000.00 to construct broadband infrastructure; and

WHEREAS, funding was awarded through the Congressionally Directed Spending from the Federal Government and with support from Representative Salinas; and

WHEREAS, this project will extend existing Sherwood Broadband infrastructure in the unserved/underserved rural areas around Sherwood; and

WHEREAS, funds will be deposited into a separate bank account and will be held in accordance with the provisions of the Grant and Security Agreement and the Deposit Account Control Agreement.

NOW, THEREFORE, THE CITY OF SHERWOOD RESOLVES AS FOLLOWS:

Section 1. The City Manager is hereby authorized to sign, execute, and administer the Grant and Security Agreement, the Deposit Account Control Agreement attached as Exhibit A, and any other documents necessary to secure the grant funding.

Section 2. This Resolution shall be effective upon its approval and adoption.

Duly passed by the City Council this 6th of January, 2026.

Tim Rosener, Mayor

Attest:

Sylvia Murphy, MMC, City Recorder

RUS Project Designation:

OR 1715 A70

ReCONNECT PROGRAM

GRANT AND SECURITY AGREEMENT

December 16, 2025

between

CITY OF SHERWOOD

and

THE UNITED STATES OF AMERICA

UNITED STATES DEPARTMENT OF AGRICULTURE
RURAL UTILITIES SERVICE

ReCONNECT PROGRAM GRANT AND SECURITY AGREEMENT

THIS GRANT AND SECURITY AGREEMENT (this "Agreement"), dated as of December 16, 2025, is between **CITY OF SHERWOOD** ("Awardee"), a local government existing under the laws of (OREGON,) and the **UNITED STATES OF AMERICA**, acting through the Administrator of the Rural Utilities Service ("RUS").

The Principal Awardee has been provided Congressionally Directed Spending under the Consolidated Appropriations Act, 2024, Public Law 118-42 (further Consolidated Appropriations Act 2024- Public Law 118-47), under which RUS was directed to finance the construction of a broadband infrastructure project to serve rural areas (the "Project").

RUS is willing to extend financial assistance, in the form of a grant to the Awardee, pursuant to the Consolidated Appropriations Act, 2018, Pub. L. 115-141, § 779 (the "FY2018 Appropriations"), the Infrastructure Investment and Jobs Act, Pub. L. 117-58 (the "IIJA"), the Funding Opportunity Announcement published at 87 Fed. Reg. 47690 (Aug. 4, 2022),, and Title VI of the Rural Electrification Act of 1936 (7 U.S.C. §§ 901 *et seq.*), and all applicable federal regulations, on the terms and conditions stated herein.

The Awardee is willing to secure the grant and its other obligations to RUS on the terms stated herein.

THEREFORE, in consideration of the promises and mutual covenants herein contained, the parties agree and bind themselves as follows:

ARTICLE I – DEFINITIONS

The terms defined herein include both the plural and the singular. Unless otherwise specifically provided herein or in the FOA, all accounting terms not otherwise defined herein shall have the meanings assigned to them, and all determinations and computations herein provided for shall be made in accordance with Accounting Requirements.

"Accounting Requirements" shall mean compliance with U.S. Generally Accepted Accounting Principles (GAAP) acceptable to RUS, as well as compliance with the requirements of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 C.F.R. 200 and the system of accounting prescribed by RUS Bulletin 1770B-1.

"Advance" or "Advances" shall mean the disbursement of grant funds in accordance with this Agreement.

"Affiliate" or "Affiliated Company" of any specified person or entity means any other person or entity directly or indirectly controlling of, controlled by, under direct or indirect common control with, or related to, such specified person or entity, or which exists for the sole purpose of providing any service to one company or exclusively to companies which otherwise meet the definition of affiliate. This definition includes Variable Interest Entities as described in Financial Accounting Standards Board Interpretation (FIN) No. 46(R), *Consolidation of Variable Interest Entities*. For the purpose of this definition, "control" means the possession directly or indirectly, of the power to direct or cause the direction of the management and policies of a company, whether such power is exercised through one or more intermediary companies, or alone, or in conjunction with, or pursuant to an agreement with, one or more other companies, and whether such power is established through a majority or minority ownership voting of securities, common directors, officers, or stockholders, voting trust, holding trusts (other than money exchanged) for property or services.

"Application" shall have the meaning as defined in the second paragraph hereof.

"Approved Project Service Area" shall mean all or a portion of the Proposed Funded Service Area, as such term is defined in the FOA and detailed in the map submitted to the Agency by the Awardee, that is approved by the Agency for funding.

"Award" shall mean the grant described in Article III.

"Awardee" shall mean the grant recipient named in the first paragraph hereof.

"Buildout Timeline" shall mean the detailed schedule describing the Project build out, submitted with the RUS approved Application, as may be amended from time to time with prior written RUS consent.

"Business Day" shall mean any day that RUS and the Department of Treasury are both open for business.

"Collateral" shall mean any of the property financed with the grant, and pledged as security for the grant, described in Article IX, and more particularly described in Schedule 2.

"Composite Economic Life" means the weighted (by dollar amount of each class of facility in the Award) average economic life of all classes of facilities in the Award, as determined by RUS.

"Distribution" shall have the meaning as defined in Section 7.4.

"Eligible Purposes" shall mean purposes and expenses which are specified in the FOA as being eligible for funding.

"Event of Default" shall have the meaning as defined in Article X.

"Expiration Date" shall have the meaning as defined in Section 3.1(b).

"FOA" shall mean the Funding Opportunity Announcement, published in the Federal Register at 87 Fed. Reg. 47690 (Aug. 4, 2022).

"Form 481" shall have the meaning as defined in Section 4.3(e).

"GAAP" shall mean generally accepted accounting principles in the United States.

"Grant" shall mean the grant described in Section 3.1.

"Grant Agreement" shall mean, collectively, this Agreement and the Security Documents.

"Laws" shall have the meaning as defined in paragraph (e) of Article II.

"Material Adverse Effect" shall mean a material adverse effect on, or change in, the condition, financial or otherwise, operations, properties, business or prospects of the Awardee or on the ability of the Awardee to perform its obligations under the Grant Agreement as determined by RUS.

"Network Design" shall mean the network as described in the RUS approved Application.

"Permitted Encumbrances" shall mean:

(1) liens for taxes, assessments and other governmental charges which are not delinquent;

- (2) liens for taxes, assessments and other governmental charges already delinquent which are currently being contested in good faith by appropriate proceedings; PROVIDED the Awardee shall have set aside on its books adequate reserves with respect thereto;
- (3) mechanics', workmen's, repairmen's, materialmen's, warehousemen's and carriers' liens and other similar liens arising in the ordinary course of business and which are not delinquent, or which are being contested in good faith and have not proceeded to judgment; PROVIDED the Awardee shall have set aside on its books adequate reserves with respect thereto;
- (4) liens in respect of judgments or awards with respect to which the Awardee shall in good faith currently be prosecuting an appeal or proceedings for review and with respect to which the Awardee shall have secured a stay of execution pending such appeal or proceedings for review; PROVIDED the Awardee shall have set aside on its books adequate reserves with respect thereto;
- (5) liens or privileges of any employees of the Awardee for salary or wages earned but not yet payable;
- (6) any obligations or duties, affecting the property of the Awardee, to any municipality or governmental or other public authority with respect to any franchise, grant, license or permit;
- (7) any right which any municipal or governmental authority may have by virtue of any franchise, license, contract or statute to purchase, or designate a purchaser of or order the sale of, any property of the Awardee upon payment of cash or reasonable compensation therefor or to terminate any franchise, license or other rights or to regulate the property and business of the Awardee; PROVIDED, HOWEVER, that nothing in this clause 7 is intended to waive any claim or rights that RUS may otherwise have under Federal laws; and
- (8) any lien required by law or governmental regulations as a condition to the transaction of any business or the exercise of any privilege or license, or to enable the Awardee to maintain self-insurance or to participate in any fund established to cover any insurance risks or in connection with workmen's compensation, unemployment insurance, old age pensions or other social security, or to share in the privileges or benefits required for companies participating in such arrangements; PROVIDED, HOWEVER, that nothing in this clause 8 is intended to waive any claim or rights that RUS may otherwise have under Federal laws.

"Pledged Deposit Account" shall have the meaning as defined in Section 5.4.

"Project" means all of the work, as approved by the Agency, to be performed to bring broadband service to all premises in the Approved Project Service Area under the Application, including construction, the purchase and installation of equipment, and professional services including engineering and accountant/consultant fees, whether funded by federal assistance or other funds.

"Project Completion" shall mean that all Award funds for construction of the broadband system, excluding those funds for subscriber drop connections and customer premises equipment, have been advanced to the Awardee by RUS.

"RE Act" shall mean the Rural Electrification Act of 1936 (7 U.S.C. 901 *et seq.*).

"ReConnect Program Construction Procedures" shall mean the procedures for construction and Advances, attached hereto as Attachment 1.

“Release of Funds Date” shall mean the date funds are first made available as evidenced by the notice sent by the Agency to the Awardee.

“Security Documents” shall mean, collectively, any security agreement, financing statement, deposit account control agreement or other document providing collateral for the grant and other obligations hereunder.

“Service Obligation” shall mean the period in which grant assets must be placed into service to carry out the purposes of the ReConnect Program, and the time period in which grant assets must be secured as an exclusive, first lien on behalf of the government.

“Subsidiaries” shall mean the subsidiaries listed in Schedule 1.

ARTICLE II - REPRESENTATIONS AND WARRANTIES

Recognizing that RUS is relying hereon, the Awardee represents and warrants, as of the date of this Agreement, as follows:

- (a) *Organization; Power; Etc.* The Awardee: (i) is the type of organization specified in the first paragraph hereof, duly organized, validly existing, and in good standing under the laws of the State identified in the first paragraph hereof; (ii) is duly qualified to do business and is in good standing in each jurisdiction in which the transaction of its business make such qualification necessary; (iii) has legal power to own and operate its assets and to carry on its business and to enter into and perform its obligations under the Grant Agreement; (iv) has duly and lawfully obtained and maintained all material licenses, certificates, permits, authorizations and approvals necessary to conduct its business or required by applicable Laws; and (v) is eligible to obtain the financial assistance from RUS contemplated by this Agreement.
- (b) *Authority.* The execution, delivery and performance by the Awardee of the Grant Agreement and the performance of the transactions contemplated hereby and thereby have been duly authorized by all necessary actions and do not violate any provision of law or any charter, articles of incorporation, organization documents or bylaws of the Awardee or result in a breach of, or constitute a default under, any agreement, security agreement, note or other instrument to which the Awardee is a party or by which it may be bound. The Awardee has not received any notice from any other party to any of the foregoing that a default has occurred or that any event or condition exists that with the giving of notice or lapse of time or both would constitute such a default.
- (c) *Consents.* No consent, approval, authorization, order, filing, qualification, license, or permit of any governmental authority is necessary in connection with the execution, delivery, performance or enforcement of the Grant Agreement, except such as have been obtained and are in full force and effect.
- (d) *Binding Agreement.* Each part of the Grant Agreement is, or when executed and delivered will be, the legal, valid, and binding obligation of the Awardee, enforceable in accordance with its terms, subject only to limitations on enforceability imposed in equity or by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally.
- (e) *Compliance with Laws.* The Awardee is in compliance in all material respects with all federal, state and local laws, rules, regulations, ordinances, codes and orders (collectively, "Laws.").

- (f) *Litigation.* There are no pending or threatened legal, arbitration or governmental actions or proceedings to which the Awardee is a party or to which any of its property is subject which, if adversely determined, could have a Material Adverse Effect.
- (g) *Information Submitted with Application.* All information, reports, and other documents and data submitted to RUS in connection with the Application were, at the time the same were furnished, complete, and correct in all material respects. Any financial statements or data submitted to RUS in connection with the Application present fairly, in all material respects, the financial position of the Awardee and the results of its operations in conformity with Accounting Requirements. Since the date thereof, there has been no material adverse change in the financial condition or operations of the Awardee.
- (h) *Principal Place of Business.* The principal place of business and chief executive office of the Awardee is at the address of the Awardee specified in Schedule 1 hereto.
- (i) *Organization Number.* The Awardee's organization number is correctly identified in Schedule 1 hereto.
- (j) *Subsidiaries and Parent.* Any subsidiaries or parent of the Awardee are disclosed on the attached Schedule 1.
- (k) *Defaults Under Other Agreements.* No default by the Awardee has occurred under any agreement or instrument to which the Awardee is a party or to which any of its property is subject that could have a Material Adverse Effect.
- (l) *Additional Representations and Warranties.* The Awardee further represents and warrants as set forth in Schedule 1.

ARTICLE III – THE GRANT

Section 3.1 Grant Amount and Expiration Date.

- (a) *Grant Amount.* RUS agrees to make and the Awardee agrees to accept, on the terms and conditions stated in this Agreement and subject to 31 U.S.C. 1551 and 1552, a grant, in the amount specified in Schedule 1 hereto (the "Grant").
- (b) *Expiration Date.* The obligation of RUS to advance the Award, or any portion thereof, shall expire on a date ("Expiration Date") five (5) years from the Release of Funds date.

Section 3.2 Security Documents

The Awardee shall execute the Security Documents, covering the Collateral, in form and substance satisfactory to RUS, and such other security instruments as required by RUS.

Section 3.3 Project

- (a) *Grant Purpose.* The grant has been made solely to finance the broadband infrastructure project specifically defined herein ("Project").
- (b) *Changes to Project.* The Awardee shall obtain the prior written approval of RUS for any material change to the network design, construction, buildout timeline, delivery of services, and/or objective(s) of the Project.

Section 3.4 ACH Payments

The Awardee consents to the use of the Automated Clearing House (ACH) Payment System and to the deposit of award funds directly into the Pledged Deposit Account.

ARTICLE IV – CONDITIONS OF FINANCIAL ASSISTANCE

Section 4.1 Conditions Precedent to Closing

In connection with the execution and delivery of this Agreement, each of the following conditions shall be satisfied (all documents, certificates and other evidence of such conditions are to be satisfactory to RUS in its discretion):

- (a) *Legal Matters.* All legal matters incident to the consummation of the transactions hereby contemplated shall be satisfactory to counsel for RUS;
- (b) *Grant Agreement.* RUS shall receive duly executed originals of the Grant Agreement;
- (c) *Filed and Recorded Security Documents.* RUS shall have received executed, filed and indexed financing statements covering the Collateral;
- (d) *Articles of Incorporation, Charter, Bylaws and Organizational Documents.* With respect to corporate and cooperative Awardees, RUS shall have received certified copies of the Awardee's most recent articles of incorporation or charter and bylaws. With respect to limited liability companies or similar organizations, RUS shall have received certified copies of the Awardee's most recent organization documents;
- (e) *Authorizations.* RUS shall have received satisfactory evidence that all parts of the Grant Agreement and proceedings of the Awardee necessary for duly authorizing the execution, delivery and performance of the Grant Agreement have been obtained and are in full force and effect;
- (f) *Approvals.* RUS shall have received satisfactory evidence that the Awardee has duly registered when and where required by law with all state, Federal and other public authorities and regulatory bodies and obtained all authorizations, certificates, and approvals necessary for, or required as a condition of, the validity and enforceability of each part of the Grant Agreement;
- (g) *Property Rights.* RUS shall have received satisfactory evidence that the Awardee holds, or will hold, such franchises, permits, leases, easements, rights, privileges, licenses, or right-of-way instruments, reasonably adequate in form and substance, as may be required by law for the continued maintenance and operation of the Project;
- (h) *Management, Service, and Operating Agreements.* Except as otherwise provided in Sections 4.2 and/or 4.3 herein, RUS shall have received all management, service, and operating agreements, in form and substance acceptable to RUS, which shall be in accordance with fees or rates presented in the *pro forma* financial statements submitted to RUS in the RUS approved Application;
- (i) *Cybersecurity Risk Management.* RUS shall have received satisfactory evidence that the Awardee has considered and addressed cybersecurity risks consistent with the cybersecurity performance goals for critical infrastructure and control systems directed by the National Security Presidential Memorandum on Improving Cybersecurity for Critical Infrastructure Control Systems, or the current draft of these goals, found at <https://www.cisa.gov/cross-sector-cybersecurity-performance-goals>;

- (j) *Affordable Connectivity Program.* RUS shall have received evidence that the Awardee has applied to participate in the Affordable Connectivity Program established by the IIJA;
- (k) *Opinion of Counsel.* RUS shall have received an opinion of counsel for the Awardee (who shall be acceptable to RUS) in form and substance acceptable to RUS for each state in which the Awardee operates; and
- (l) *Additional Conditions.* The Awardee has met all additional conditions specified in Schedule 1 hereto.

Section 4.2 General Conditions Precedent to RUS' Obligations to Release Funds for Advance

The obligations of RUS hereunder are subject to the satisfaction of each of the following conditions precedent (all documents, certificates and other evidence of such conditions are to be satisfactory to RUS in its discretion):

- (a) *Current Financial Information and Certificate of Authority.* RUS has received from the Awardee: (i) its updated balance sheet, statement of cash flow, and income statement and (ii) a duly authorized and executed certification, Form 675, "Certification of Authority," designating an officer, employee, or agent of the Awardee as the person or persons authorized to execute and submit, on behalf of the Awardee, RUS Form 481, "Financial Requirement Statement;"
- (b) *Additional Conditions.* The Awardee has met all additional conditions specified in Schedule 1 hereto.

Section 4.3 Conditions to Individual Advances

The obligations of RUS to approve any Advance are subject to the satisfaction of each of the following conditions precedent on or before the date of such Advance (all documents, certificates and other evidence of such conditions precedent are to be satisfactory to RUS in its discretion):

- (a) *Continuing Representations and Warranties.* That the representations and warranties of the Awardee contained in this Agreement be true and correct on and as of the date of such Advance as though made on and as of such date;
- (b) *Expenditure of Funds.* Notwithstanding Section 4.4, that the Awardee has deposited into the Pledged Deposit Account sufficient funds to complete the Project as specified on Schedule 1.
- (c) *Material Adverse Effect.* That no event has occurred which has had or could have a Material Adverse Effect;
- (d) *Event of Default.* That no Event of Default and no event which with the passage of time or giving of notice, or both, would constitute an Event of Default shall have occurred and be continuing, or shall have occurred after giving effect to any Advances on the books of the Awardee;
- (e) *Requisitions and Supporting Documentation.* That RUS shall have received not more frequently than once a month, unless otherwise agreed to by RUS, a completed RUS Form 481, "Financial Requirement Statement" (hereinafter "Form 481"), bearing the original signature of the officer, employee, or agent of the Awardee authorized to receive, disburse, or receive and disburse the Award, with supporting documentation from the Awardee in accordance with the ReConnect Program Construction Procedures. Advances shall be limited to the minimum amounts required for the

Awardee's immediate disbursement needs and shall be requested by the Awardee only for actual immediate cash requirements of the Awardee. Such grant advances shall be provided on a reimbursement basis, or based on unpaid third-party invoices for Eligible Purposes, or contracts approved by RUS, in accordance with the ReConnect Program Construction Procedures;

- (f) *Flood Insurance.* That for any Advance used in whole or in part to finance the construction or acquisition of any building in any area identified by the Secretary of Housing and Urban Development pursuant to the Flood Disaster Protection Act of 1973 (the "Flood Insurance Act") or any rules, regulations or orders issued to implement the Flood Insurance Act as any area having special flood hazards, or to finance any facilities or materials to be located in any such building, or in any building owned or occupied by the Awardee and located in such a flood hazard area, the Awardee shall have submitted evidence, in form and substance satisfactory to RUS or RUS has otherwise determined, that (i) the community in which such area is located is then participating in the national flood insurance program, as required by the Flood Insurance Act and any related regulations, and (ii) the Awardee has obtained flood insurance coverage with respect to such building and contents as may then be required pursuant to the Flood Insurance Act and any related regulations;
- (g) *Current Financial Information.* That RUS has received from the Awardee: its current, updated balance sheets, income statements and statements of cash flow;
- (h) *Compliance with Buildout Timeline and Reporting Requirements.* That RUS has received from the Awardee evidence, satisfactory to RUS, that the Project is being constructed in accordance with the Buildout Timeline and Reporting requirements in Section 6.4;
- (i) *Compliance with Grant Agreement.* That the Awardee is in material compliance with the Grant Agreement;
- (j) *Permits, Licenses and Franchises.* That RUS shall have received satisfactory evidence that the Awardee has obtained the permits, licenses, franchises and other approvals identified on Schedule 1;
- (k) *Deposited Funds.* That Awardee has maintained on deposit in the Pledged Deposit Account funds to complete the Project as specified on Schedule 1, unless expended and withdrawn as authorized by RUS;
- (l) *Additional Documents.* That the Awardee agrees to provide RUS with such additional documents as RUS may request; and
- (m) *Additional Conditions.* That the Awardee has met all additional conditions specified in Schedule 1 hereto.

Section 4.4 First Advance to Pay Off Pre-Application Expenses

Funds to pay off certain pre-application expenses, as defined in the FOA, if any, must be included in the first Advance.

ARTICLE V – AFFIRMATIVE COVENANTS

Section 5.1 General

Unless otherwise agreed to in writing by RUS, while this Agreement is in effect, the Awardee shall duly observe each of the affirmative covenants contained in this Article V.

Section 5.2 Use of Advances

The Awardee shall expend Award funds only for Eligible Purposes in accordance with the RUS approved line-item Project budget and Form(s) 481 submitted to RUS prior to the advance of funds.

Section 5.3 Unused and Disallowed Advances

- (a) The Awardee shall return to RUS forthwith all or any advanced portion of the grant not disbursed by the Awardee for the Project or not needed to complete the Project with any interest earned thereon when deposited in the Pledged Deposit Account.
- (b) The Awardee shall reimburse RUS for any advanced funds whose original expenditure has been disallowed by an RUS grant audit. Disallowances shall be satisfied, as directed by RUS, by either administrative offset against other approved purposes on Form(s) 481 or repaying the disallowed amount directly to the United States Treasury. Such disallowed amounts shall accrue interest payable to RUS from the date RUS delivers to the Awardee a written demand for payment. Interest shall accrue on disallowed grant Advances at the then current United States Treasury rate as prescribed by the Secretary of the Treasury. Closeout of the grant will not affect the right of RUS to disallow expenditures and recover, in full, any amount on the basis of a subsequent audit or other review or the Awardee's obligation to return any disallowed expenditures.

Section 5.4 Deposit of Advances into Pledged Deposit Account

- (a) The Awardee shall open and maintain a deposit account pledged to RUS ("Pledged Deposit Account,") in a bank or depository whose deposits are insured by the Federal Deposit Insurance Corporation or other federal agency acceptable to RUS and shall be identified by the RUS' designation of the Awardee followed by the words "Pledged Deposit Account." The Awardee shall promptly deposit proceeds from all Advances, including previously advanced funds whose original expenditure has been disallowed by an RUS audit into the Pledged Deposit Account. Moneys in the Pledged Deposit Account shall be used solely for the purposes for which Advances were made, or for such other purposes as may be approved in writing by RUS. Deposits and disbursements from the Pledged Deposit Account shall be made and recorded in accordance with the ReConnect Program Construction Procedures.
- (b) *First Lien on Pledged Deposit Account.* The Awardee shall perfect and maintain a first and prior lien in the Pledged Deposit Account (pursuant to a deposit account agreement or similar agreement or mechanism for perfecting as provided by applicable law) in form acceptable to RUS.

Section 5.5 Additional Project Funding

The Awardee shall ensure that adequate funding is in place to complete the Project and will, after obtaining the prior written approval of RUS, obtain additional loans or funds or receive binding commitments for supplemental funding in an amount needed to ensure completion of the Project.

Section 5.6 Miscellaneous Notices

The Awardee shall furnish to RUS:

- (a) *Notice of Default.* Promptly after becoming aware thereof, notice of the occurrence of any default under the Grant Agreement or the receipt of any notice given pursuant to the Grant Agreement with respect to the occurrence of any event which with the giving of notice or the passage of time, or both, could become an Event of Default hereunder or under any other part of the Grant Agreement.
- (b) *Notice of Litigation.* Promptly after the commencement thereof, notice of the commencement of all actions, suits or proceedings before any court, arbitrator, or governmental department, commission, board, bureau, agency, or instrumentality affecting the Awardee or any Affiliate which, if adversely determined, could have a Material Adverse Effect.
- (c) *Regulatory and Other Notices.* Promptly after receipt thereof, copies of any notices or other communications received from any governmental authority with respect to any matter or proceeding which could have a Material Adverse Effect.
- (d) *Material Adverse Effect.* Promptly after becoming aware thereof, notice of any matter which has resulted or may result in a Material Adverse Effect.
- (e) *Corporate Document Changes.* Thirty (30) days prior to their effectiveness, any amendments, supplements or modifications to the Awardee's Articles of Incorporation, Charter, Bylaws, Operating Agreement, Members Agreements or other Organizational Documents.
- (f) *Other Information.* Such other information regarding the condition, financial or otherwise, or operations of the Awardee as RUS may, from time to time, reasonably request.

Section 5.7 Service Obligation

The Awardee shall provide the level of broadband service described in the RUS approved Application commencing from the date of Project Completion until the end of the Composite Economic Life of the facilities financed by the Award as specified on Schedule 1. Awardee acknowledges that given the significant amount of government contribution to the Project in the form of a grant, the Service Obligation is a significant portion of the public benefit of the Award, and that a material breach of the Service Obligation shall be an Event of Default. Awardee also acknowledges that grant assets must be secured as an exclusive, first lien on behalf of the government, as required by the ReConnect Program.

Section 5.8 Obligations with Respect to the Construction, Operation and Maintenance of the Project

- (a) *Project Management and Operation.* The Awardee shall be responsible for the management of the Project and will operate the Project in an efficient and economic manner as well as maintaining the Project in good repair.
- (b) *Construction in Accordance with Network Design and Buildout Timeline.* The Awardee shall cause the Project to be constructed and/or built out, and completed in accordance with the Network Design submitted with the RUS approved Application, as such design may be amended with prior RUS consent, and the Buildout Timeline. The Awardee shall also ensure that facilities constructed with award funds are capable of delivering 100 Mbps symmetrical service to every premise in the Approved Project Service Area at the same time.
- (c) *General Insurance Requirements.* The Awardee shall take out and maintain insurance on the Project and any other property acquired with the grant in accordance with 7 CFR Section 1788.

(d) *Contracting.* The Awardee may, in accordance with the ReConnect Program Construction Procedures, contract for goods and services to be funded by the Award, using RUS form contracts or private contracts; provided that private contracts must comply with equal employment opportunity and civil rights requirements.

(e) *Commencement and Completion of the Project.*

(1) Awardees are required to commence the Project within 180 days from the date that RUS notifies in writing that the environmental review process has been concluded; and

(2) Project Completion shall occur within five years from the Release of Funds Date.

(f) *National Programmatic Agreement.* If indicated on Schedule 1, Awardee shall be bound by the requirements of the National Programmatic Agreement (NPA), whose terms and conditions shall be incorporated into this Agreement. Failure to abide by the NPA, if entered into, shall be an Event of Default hereunder.

Section 5.9 Preservation of Existence and Rights

The Awardee shall take or cause to be taken all such actions as from time to time may be necessary to preserve its existence and to preserve and renew all franchises, contracts, rights of way, easements, permits, and licenses now or hereafter to be granted or conferred upon it, with respect to the Project, the loss of which would have a Material Adverse Effect.

Section 5.10 Compliance with Laws

Awardees shall comply with all applicable federal and state laws, including but not limited to:

(i) The nondiscrimination and equal employment opportunity requirements of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000e *et seq.*, 7 CFR pt. 15); (ii) Section 504 of the Rehabilitation Act (29 U.S.C. § 794 *et seq.*; 7 CFR pt. 15b); (iii) The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 *et seq.*; 45 CFR pt. 90); (iv) Executive Order 11375, amending Executive Order 11246, Relating to Equal Employment Opportunity (3 CFR pt. 102); (v) The Architectural Barriers Act of 1968, as amended (42 U.S.C. § 4151 *et seq.*); (vi) The Uniform Federal Accessibility Standards (UFAS), as published by the United States Access Board; (vii) The Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA and certain related federal environmental laws, statutes, regulations, and Executive Orders found in 7 CFR 1970; (viii) The Native American Graves Protection and Repatriation Act (25 USC 3001 *et seq.*, 43 CFR § 10.4); (ix) The Communications Act of 1934, as amended, (47 U.S.C. § 151 *et seq.*); (x) The Telecommunications Act of 1996, as amended (Pub. L. 104-104, 110 Stat. 56 (1996); and (xi) The Communications Assistance for Law Enforcement Act (47 U.S.C. § 1001 *et seq.*) (CALEA).

Section 5.11 Equal Opportunity Requirements

(a) *Equal Opportunity Provisions in Construction Contracts.* The Awardee shall incorporate or cause to be incorporated into any construction contract, as defined in Executive Order 11246 of September 24, 1965 and implementing regulations, which is paid for in whole or in part with funds obtained from RUS or borrowed on the credit of the United States pursuant to a grant, contract, loan, insurance or guarantee, or undertaken pursuant to any RUS program involving such grant, contract, loan, insurance or guarantee, the equal opportunity provisions set forth in Attachment 2 hereto, entitled Equal Opportunity Contract Provisions.

(b) *Equal Opportunity Contract Provisions Also Bind the Awardee.* The Awardee further agrees that it shall be bound by such equal opportunity clause in any federally assisted

construction work which it performs itself other than through the permanent work force directly employed by an agency of government.

(c) *Sanctions and Penalties.* The Awardee agrees that it shall cooperate actively with RUS and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations and relevant orders of the Secretary of Labor, that it shall furnish RUS and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it shall otherwise assist the administering agency in the discharge of RUS' primary responsibility for securing compliance. The Awardee further agrees that it shall refrain from entering into any contract or contract modification subject to Executive Order 11246 with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to Part II, Subpart D of Executive Order 11246 and shall carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by RUS or the Secretary of Labor pursuant to Part II, Subpart D of Executive Order 11246. In addition, the Awardee agrees that if it fails or refuses to comply with these undertakings RUS may cancel, terminate or suspend in whole or in part this Agreement, may refrain from extending any further assistance under any of its programs subject to Executive Order 11246 until satisfactory assurance of future compliance has been received from the Awardee, or may refer the case to the Department of Justice for appropriate legal proceedings.

Section 5.12 Purchases with Award Funds

Except as specifically authorized in writing in advance by RUS, all facilities, materials, equipment, supplies, replacements and all other items purchased with Award funds shall be purchased outright, and not subject to any conditional sales agreement, chattel mortgage, bailment lease or other agreement reserving to the seller any right, title or lien.

Section 5.13 Awardee to Defend Title and Remove Liens

Except for Permitted Encumbrances, the Awardee will maintain and preserve the lien of this Agreement superior to all other liens affecting the Collateral, and will forever warrant and defend the title to the Collateral against any and all claims and demands whatsoever. The Awardee shall make, execute, acknowledge, deliver, file and record all such mortgages, financing statements, continuation statements, security agreements, instruments and conveyances as is necessary to preserve the lien of this Agreement against the Collateral superior to all other liens. The Awardee shall maintain the Collateral free of all liens except for Permitted Encumbrances, and will promptly pay or discharge any and all obligations for or on account of which any such lien or charge might exist or could be created and any and all lawful taxes, rates, levies, assessments, liens, claims or other charges imposed upon or accruing upon any of the Collateral, as and when the same shall become due and payable; and whenever called upon so to do by RUS will furnish to RUS adequate proof of such payment or discharge; provided, however that this provision shall not be deemed to require the payment or discharge of any tax, rate, levy, assessment or other governmental charge while the Awardee is contesting the validity thereof by appropriate proceedings in good faith and so long as it shall have set aside on its books adequate reserves with respect thereto.

Section 5.14 Further Assurances

(a) The Awardee shall from time to time upon written demand of RUS make, execute, acknowledge and deliver or cause to be made, executed, acknowledged and delivered all such further and supplemental financing statements, continuation statements, and security agreements with respect to the Grant Collateral as may be requested by RUS.

(b) The Awardee shall cause this Agreement, financing statement, continuation statement and every additional instrument which shall be executed pursuant to subsection (a)

immediately above, to forthwith upon execution to be filed and recorded and refiled and rerecorded as conveyances and security interests in personal property in such manner and in such places as may be required by law or requested by RUS in order to fully preserve the security for the grant, and to perfect and maintain the superior lien of this Agreement and all supplemental security instruments.

Section 5.15 Buy American

- (a) *Funding to Non-Federal Entities.* Awardees that are Non-Federal Entities, defined pursuant to 2 CFR 200.1 as any State, local government, Indian tribe, Institution of Higher Education, or nonprofit organization, shall be governed by the requirements of Section 70914 of the Build America, Buy America Act (BABAA) within the IIJA. Any requests for waiver of these requirements must be submitted pursuant to USDA's guidance available online at <https://www.usda.gov/ocfo/federal-financial-assistance-policy/USDABuyAmericaWaiver>.
- (b) *Funding to All Other Entities.* Awardees that are not Non-Federal Entities shall be governed by the Agency's Buy American requirement at 7 CFR part 1787. Any requests for waiver of these requirements must be submitted pursuant to those regulations.

Section 5.16 Financial Requirements

The Awardee shall maintain a positive ending cash balance as reflected on the cash flow statement for each year in which grant funds are expended.

Section 5.17 Corrective Action

Within thirty (30) days of: (i) sending the financial reports required by Section 6.4(a) hereof that show the Financial Requirements of Section 5.16 were not met for the reported fiscal period; or (ii) being notified by RUS that such requirements were not met for the period, whichever is earlier, the Awardee, in consultation with RUS, shall provide a written plan satisfactory to RUS setting forth the actions that shall be taken to achieve the specified Financial Requirements on a timely basis and shall promptly implement said plan.

Section 5.18 RDOF Funding

If the Awardee is a recipient of Rural Digital Opportunity Fund (RDOF) funding, Awardee acknowledges and certifies that neither funds under this Award nor under the RDOF award will be used to reimburse the same expenditures. Such Awardees must also maintain separate accounts to track sources and uses of each funding source.

Section 5.19 Scoring Criteria Commitments

If identified on Schedule 1 hereto, the Awardee agrees to be bound by the following commitments:

- (a) Awardee will offer in their service offerings at least one low-cost option offered at speeds that are sufficient for a household with multiple users to simultaneously telework and engage in remote learning.
- (b) Awardee will utilize the labor standards outlined in its Application at least until Project Completion.
- (c) Awardee agrees to use net neutrality with respect to its network and will not (1) block lawful content, applications, services, or non-harmful devices, subject to reasonable

network management; (2) impair or degrade lawful Internet traffic on the basis of Internet content, application, or service, or use of a non-harmful device, subject to reasonable network management; and (3) engage in paid prioritization, meaning the management of a broadband provider's network to directly or indirectly favor some traffic over other traffic, including through use of techniques such as traffic shaping, prioritization, resource reservation, or other forms of preferential traffic management, either (A) in exchange for consideration (monetary or otherwise) from a third party, or (B) to benefit an affiliated entity.

(d) Awardee shall offer wholesale broadband services at rates and terms that are reasonable and nondiscriminatory, and at a minimum Awardee agrees to publicly advertise in the service area that broadband service is available at wholesale to any service provider.

The Awardee acknowledges that for those commitments identified on Schedule 1, Awardee agreed to these commitments so as to receive special consideration in the scoring its Application, and that without these commitments, Awardee may not have received this Award. Awardee acknowledges that failure to perform on any identified commitment is a material violation of this Agreement.

Section 5.20 Additional Affirmative Covenants

The Awardee shall comply with the additional affirmative covenants set forth in Schedule 1 hereto.

ARTICLE VI – ACCOUNTING AND REPORTING

Section 6.1 Financial Records

(a) Awardees must establish an accounting system satisfactory to RUS in compliance with Accounting Requirements. Such a system of accounts must account for all funds advanced under this Agreement separately from all other funds for the Project.

(b) The Awardee shall maintain, at its premises, such books, documents, papers, or other records and supporting documents, including, but not limited to, invoices, receipts, payroll records and bills of sale, adequate to identify the purposes for which, and the manner in which grant and other funds were expended on the Project. The Awardee shall at all times keep, and safely preserve, proper books, records and accounts in which full and true entries shall be made of all dealings, business, and affairs of the Awardee and its Subsidiaries, in accordance with its system of accounts complying with Paragraph (a) immediately above. The Awardee shall maintain copies of all documents submitted to RUS in connection with the Award until the longer of (i) all audits have been completed, (ii) the term of this Agreement or (iii) three years subsequent to close-out of the Award.

Section 6.2 Rights of Inspection

The Awardee shall afford RUS, the Office of the Inspector General of USDA, and the Government Accountability Office, through their representatives, reasonable opportunity, at all times during business hours and upon prior notice, to have access to and right to inspect the Project, any other property encumbered by the Security Documents, and any and all books, records, accounts, including electronic books, records, accounts and electronic mail messages, regardless of the physical form or characteristics, invoices, contracts, leases, payroll records, canceled checks, statements, and other documents, and papers of every kind belonging to or in any way pertaining to its property or business, including its Subsidiaries, if any, and to make copies or extracts therefrom.

Section 6.3 Annual Audit

- (a) Non-Federal Entities, which include Awardees that are States, local governments, Indian tribes, institutions of higher education, or nonprofit organizations, shall provide RUS with an audit pursuant to 2 C.F.R. part 200, Subpart F (Audit Requirements). The Awardee must follow subsection 200.502 in determining federal awards expended. All RUS loans impose an ongoing compliance requirement for the purpose of determining federal awards expended during a fiscal year. In addition, the Awardee must include the value of new federal loans made along with any grant expenditures from all federal sources during the Awardee's fiscal year. Therefore, the audit submission requirement for this program begins in the Awardee's fiscal year that the loan is made and thereafter, based on the balance of federal loan(s) at the beginning of the audit period. All required audits must be submitted within the earlier of: (i) 30 calendar days after receipt of the auditor's report; or (ii) nine months after the end of the Awardee's audit period.
- (b) For all other entities, Awardees shall provide RUS with an audit within 120 days after the as of audit date in accordance with 7 C.F.R. part 1773, Policy on Audits of RUS Borrowers. Note that with respect to Advances that contain loan funds, the audit is required after an Advance has been made, and, thereafter, from the close of each subsequent fiscal year until the loan is repaid in full. With respect to Advances that only contain grant funds, the audit is required until all grant funds have been expended or rescinded. While an audit is required, Awardees must also submit a report on compliance and internal controls over financial reporting, as well as a report on compliance with aspects of contractual agreements and regulatory requirements.

Section 6.4 Reporting

- (a) *Quarterly Report.* No later than thirty (30) calendar days after the end of each calendar year quarter during the period in which grant funds are available for expenditure, the Awardee must submit to RUS utilizing RUS' online reporting system, the following information: balance sheets, income statements, statements of cash flow, and the number of customers taking broadband service. In addition, the Awardee must provide RUS with such other reports concerning the financial condition or operation of the Awardee, including its Subsidiaries, as RUS may request.
- (b) *Annual Performance Report.* For three years starting the first January 31st after Project Completion, the Awardee must submit the following information utilizing RUS' online reporting system:
 - (i) existing network service improvements and facility upgrades, as well as new equipment and capacity enhancements that support high-speed broadband access for educational institutions, health care providers, and public safety service providers;
 - (ii) the estimated number of end users who are currently using or forecasted to use the new or upgraded infrastructure;
 - (iii) the progress towards fulfilling the objectives for which the assistance was granted;
 - (iv) the speed and average price of the most subscribed tier of the Awardee's broadband service offerings in the Project's service area; and
 - (v) the average price of broadband service in the Project's service area.

- (c) *Annual Map Reporting:* No later than thirty (30) calendar days after the end of the Calendar Year, the Awardee shall be required to submit annually updated Approved Project Service Area(s) maps through RUS' online mapping tool showing the areas where construction has been completed and geospatial location of residences and businesses that are receiving new broadband service until the entire Approved Project Service Area can receive the broadband service.
- (d) *Close Out Report.* The Awardee shall deliver a close out report to RUS no later than one hundred twenty (120) days after the expiration or termination of the Award or expenditure of all Award funds. The close out report shall address: (i) a comparison of actual accomplishments to the objectives set forth in the Application; (ii) a description of problems, delays, or adverse conditions that occurred, or which affected the attainment of overall Project objectives, prevented the meeting of time schedules or objectives, or precluded the attainment of particular Project work elements during established time periods; (iii) a comparison of how funds were spent against the original general budget submitted with the RUS approved Application, and (iv) a final buildout map on the RUS mapping tool indicating that all construction has been completed as proposed in the application. If parts of the Approved Project Service Area have not been constructed, RUS may require a portion of the award to be rescinded or paid back.

ARTICLE VII – NEGATIVE COVENANTS

Section 7.1 General

Unless otherwise agreed to in writing by RUS, while this Agreement is in effect, the Awardee shall duly observe each of the negative covenants set forth in this Article VII.

Section 7.2 Negative Pledge

The Awardee shall not create, incur or suffer any lien, mortgage, pledge, assignment, or other encumbrance on, or security interest in the Collateral, other than Permitted Encumbrances.

Section 7.3 Contracts

The Awardee shall not, without the prior written consent of RUS, enter into any contract or contracts for the operation or management of all or any substantial part of the Project, and shall not enter into any contract for the use by others of all or any substantial part of the Project.

Section 7.4 Distributions or Withdrawals

Before Project Completion, the Awardee shall not, without the prior written approval of RUS, make any dividend, stock, or capital distribution, or any membership withdrawals, unit redemptions, or other type of profit allocation to its members, or other distribution in the nature of an investment, guarantee, extension of credit, advance, or loan, nor make a capital credit distribution (all such distributions being hereinafter collectively called "Distributions;") *provided, however,* Distributions may be made in each fiscal year as follows:

- (a) Aggregate, annual Distributions not to exceed twenty-five percent (25%) of the prior fiscal year's Net Income or Margins may be made if, after such aggregate annual Distributions, the Awardee's net worth is at least one percent (1%) of its Total Assets;
- (b) Aggregate annual Distributions not to exceed fifty percent (50%) of the prior fiscal year's Net Income or Margins may be made if, after such aggregate annual

Distributions, the Awardee's Net Worth is at least twenty percent (20%) of its Total Assets;

- (c) Aggregate annual Distributions not to exceed seventy-five percent (75%) of the prior fiscal year's Net Income or Margins may be made if, after such aggregate annual Distributions, the Awardee's Net Worth is at least thirty percent (30%) of its Total Assets; or
- (d) There is no limit on aggregate, annual Distributions if, after making such aggregate, annual Distributions, the Awardee's Net Worth is at least forty percent (40%) of its Total Assets.

Section 7.5 Changing Principal Place of Business, Place of Conducting Business, or Type of Organization

The Awardee shall not change its principal place of business, place of conducting business, or type of organization without the prior written consent of RUS.

Section 7.6 Changing Name or Place of Incorporation or Organization

The Awardee shall not change its legal name or place of incorporation or organization without giving RUS sixty (60) days prior written notice.

Section 7.7 Historic Preservation

The Awardee shall not, without the prior written consent of RUS, use any Advance to construct any facility which shall involve any district, site, building, structure or object which is included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior pursuant to the Historic Sites Act of 1935 and the National Historic Preservation Act of 1966.

Section 7.8 Restrictions on Transfers of Property

- (a) Except as provided in Paragraph (b), and excluding any property which the Awardee must sell to customers in the ordinary course of business, the Awardee shall not sell, lease or transfer any Collateral to any other person or entity (including any subsidiary or affiliate of the Awardee) without the prior written consent of the RUS.
- (b) So long as the Awardee is not in default hereunder, the Awardee may, without obtaining the consent of RUS, sell or otherwise dispose of, free from the lien hereof, any of the Collateral which is neither necessary to, nor useful for, the operation of the Awardee's business, or which has become obsolete, worn out, damaged, or otherwise unsuitable for the purposes of the Awardee; provided, however, that the Awardee shall follow 2 C.F.R. 200 with respect to any proceeds.

Section 7.9 Restrictions on Changes to Line Item Budget

The Awardee agrees that the budget for the Project is a line item budget and agrees not to make any revisions to the RUS approved line item Project budget, including, without limitation, the part of the budget for construction, without the prior written approval of RUS.

Section 7.10 Affiliated Transactions

With respect to the Project, the Awardee shall not enter into any transaction, contract, or dealing with an Affiliate or with the Awardee's or Affiliate's directors, trustees, officers, managers, members (if the Grantee is a limited liability company), or other corporate officials, without the prior written consent of RUS. RUS' consent to advance grant funds or approve the expenditure of other funds for affiliated

transactions on the Project will be limited to an amount which is the lower of cost or market rate and which is subject to verification by RUS and its representatives having access to the books and records of the Affiliate.

Section 7.11 Additional Negative Covenants

The Awardee shall comply with the additional negative covenants set forth in Schedule 1 hereto.

ARTICLE VIII – GRANTOR’S RIGHTS

Section 8.1 Termination of Award Offer

RUS, in its sole discretion, may terminate the offer to make the grant if it does not receive the Grant Agreement, duly executed on behalf of the Awardee and all conditions in Section 4.1 hereof are not satisfied within sixty (60) days from the date that RUS notifies in writing that the environmental review process has been concluded.

Section 8.2 Audits and Compliance Reviews

After giving prior notification to the Awardee, RUS has the right to conduct compliance reviews and audits of the Awardee to assure compliance with the Grant Agreement, FOA, and the Accounting Requirements.

Section 8.3 Disallowed Expenditures

Upon a determination by RUS that the Awardee did not expend Award funds on Eligible Purposes in accordance with the RUS approved line item Project budget and the Form(s) 481 approved by RUS prior to the advance of funds, RUS may, in its sole discretion:

- (a) Disallow all or a part of the expenditures and disbursements of the Award and require the Awardee to deposit such funds in the Pledged Deposit Account to be applied toward other approved Project purposes on Form(s) 481 or to reimburse the Government, as provided in Section 5.3 hereof;
- (b) Suspend future Advances; and/or
- (c) Take any other action RUS determines to be necessary including, without limitation, exercising any right or remedy available under the Grant Agreement or law.

Section 8.4 Suspension of Advances

RUS may, in its absolute discretion, suspend approving Advances on the Award upon its making a determination that an event has occurred that is likely to have a Material Adverse Effect. RUS may also suspend approving advances of the Award upon the occurrence of an Event of Default.

Section 8.5 Right to Expend Money

RUS shall have the right (without prejudice to any of its rights with respect to any Event of Default) to advance or expend moneys for the purpose of procuring insurance, or for the payment of insurance premiums as required hereunder, or to advance or expend moneys for the payment of taxes, assessments or other charges, or to save the Collateral from sale or forfeiture for any unpaid tax or assessment, or otherwise,

or to redeem the same from any tax or other sale, or to purchase any tax title thereon, or to remove or purchase any mechanics' liens or other encumbrance thereon, or to make repairs thereon or to comply with any covenant herein contained or to prosecute and defend any suit in relation to the Collateral or in any manner to protect the Collateral and the title thereto, and all sums so advanced for any of the aforesaid purposes with interest thereon at the highest legal rate, but not in excess of twelve per centum (12%) per annum shall be deemed a charge upon the Collateral and shall be forthwith paid to RUS upon demand. It shall not be obligatory for RUS in making any such advances or expenditures to inquire into the validity of any such tax title, or of any such taxes or assessments or sales therefor, or of any such mechanics' liens or other encumbrance.

Section 8.6 Right to File Financing Statements

RUS shall have the right to file such financing statements and continuation statements on its behalf, as secured party, and on behalf of the Awardee, as RUS deems necessary to perfect a first lien on the Collateral and to maintain and preserve such perfected first lien for the Composite Economic Life. The Awardee shall reimburse RUS for any expenses incurred in the exercise of this right.

ARTICLE IX - GRANT OF SECURITY INTEREST

Section 9.1 Collateral

To secure the payment and performance of the Service Obligation, the Awardee hereby pledges, assigns, and transfers to RUS, and grants to RUS a continuing security interest in the Collateral, as more particularly described in Schedule 2.

Section 9.2 Continuing Rights with Respect to Grant Assets

- (a) Given the significant grant to the Project, the government must be provided an exclusive first lien on all grant assets during the Service Obligation of the Award, as defined in Section 5.7, which shall not be shared *pari passu* with any other entity. Thereafter, any sale or disposition of grant assets must comply with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, codified in 2 C.F.R. part 200. Awardee acknowledges that this part will apply to all grant funds of Awardee received under the Grant, regardless of Awardee's entity status or type of organization.
- (b) Awardee agrees and acknowledges that pursuant to the FOA, Awardee must repay all funds advanced under the grant to the government if the Project or Awardee is sold or merged without RUS approval during the Service Obligation of the grant.

ARTICLE X - EVENTS OF DEFAULT

Section 10.1 Events of Default

The following shall be events of default (each an "Event of Default") under this Agreement:

- (a) Representations and Warranties. Any representation or warranty made by the Awardee in the Grant Agreement, Form(s) 481 or any certificate furnished to RUS under the Grant Agreement, or in the Application shall prove to have been incorrect in any material respect at the time made;
- (b) Improper Expenditures. The Awardee expends Award funds on costs which are not Eligible Purposes in accordance with the RUS approved line item Project budget and the Form(s) 481 approved by RUS prior to the advance of funds;

- (c) Failure to Keep Adequate Records. The Awardee fails to keep adequate records, including the failure to document Award fund expenditures for Eligible Purposes as required herein;
- (d) Failure to Build in Accordance with Buildout Timeline. The Awardee fails to commence build out of the Project within 180 days from the date that RUS notifies in writing that the environmental review process has been concluded or otherwise fails to meet or exceed milestones established in the Buildout Timeline, as it may be amended with prior written RUS consent;
- (e) Failure to Comply with Accounting and Reporting Requirements. The Awardee fails to comply with the accounting and reporting requirements in Article VI;
- (f) Other Covenants. Default by the Awardee in the observance or performance of any other covenant or agreement contained in any part of the Grant Agreement, which shall remain unremedied for thirty (30) calendar days after written notice thereof shall have been given to the Awardee by RUS;
- (g) Adverse Effects. The Awardee shall forfeit or otherwise be deprived of its charter, articles of organization, franchises, permits, easements, consents or licenses required to carry on any material portion of its business or the Awardee files for or an event occurs which can reasonably be expected to result in its dissolution or termination;
- (h) Other Obligations. Default by the Awardee in the payment of any obligation, whether direct or contingent, for borrowed money in excess of ten thousand dollars (\$10,000.00) or in the performance or observance of the terms of any instrument pursuant to which such obligation was created or securing such obligation which default shall have resulted in such obligation becoming or being declared due and payable prior to the date on which it would otherwise be due and payable;
- (i) Bankruptcy. A court having jurisdiction in the premises shall enter a decree or order for relief with respect to the Awardee in an involuntary case under any applicable bankruptcy, insolvency, or other similar law now or hereafter in effect: (1) appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator, or similar official, or (2) ordering the winding up or liquidation of its affairs; or the Awardee shall commence a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or under any such law, or consent to the appointment or taking possession by a receiver, liquidator, assignee, custodian or trustee, of a substantial part of its property, or make any general assignment for the benefit of creditors;
- (j) Dissolution or Liquidation. Other than as provided in the immediately preceding subsection, the dissolution or liquidation of the Awardee, or the filing of such by the Awardee;
- (k) Impaired Business. The failure by the Awardee to promptly forestall or remove any execution, garnishment or attachment of such consequence as shall impair its ability to continue its business or fulfill its obligations and such execution, garnishment or attachment shall not be vacated within thirty (30) days; and/or
- (l) Service Obligation. The Awardee fails to provide the Service Obligation on the Project with respect to the grant; and/or

(m) Payment of Final Judgment. A final judgment in an amount of ten thousand dollars (\$10,000.00) or more shall be entered against the Awardee and shall remain unsatisfied or without a stay in respect thereof for a period of thirty (30) days.

ARTICLE XI - REMEDIES

Section 11.1 General

Upon the occurrence of an Event of Default, RUS may pursue all rights and remedies available to RUS that are contemplated by the Grant Agreement in the manner, upon the conditions, and with the effect provided in the Grant Agreement, and may pursue such other remedies that are generally available at law or in equity including, without limitation, a suit for specific performance, injunctive relief or damages. Nothing herein shall limit the right of RUS to pursue all rights and remedies available to a creditor following the occurrence of an Event of Default listed in Article X hereof. Each right, power and remedy of RUS shall be cumulative and concurrent, and recourse to one or more rights or remedies shall not constitute a waiver of any other right, power or remedy.

Section 11.2 Remedies

In addition to the remedies referred to in Section 11.1 hereof, upon the occurrence of an Event of Default, RUS may:

- (a) Refuse to make any advance or further advance on account of the Award, but any advance thereafter made by RUS shall not constitute a waiver of such default;
- (b) Terminate the obligation to further advance on account of the Award;
- (c) RUS shall have the right to enter and/or remain upon the premises of the Awardee without any obligation to pay rent to the Awardee or others, or any other place or places where any of the Collateral is located and kept and: (i) remove the Collateral therefrom in order to maintain, collect, sell, and/or liquidate the Collateral or, (ii) use such premises, together with materials, supplies, books, and records of the Awardee, to maintain possession and/or the condition of the Collateral, and to prepare the Collateral for sale, liquidation, or collection. RUS may require the Awardee to assemble the Collateral and make it available to RUS at a place to be designated by RUS;
- (d) RUS shall have, in addition to any other rights and remedies contained in this Agreement, all of the rights and remedies of a secured party under the Uniform Commercial Code in force in the state identified in the first paragraph hereof, as well as the state where the Collateral is located, as of the date hereof, all of which rights and remedies shall be cumulative and nonexclusive.

ARTICLE XII - MISCELLANEOUS

Section 12.1 Notices

All notices, requests and other communications provided for herein including, without limitation, any modifications of, or waivers, requests or consents under, this Agreement shall be given or made in writing (including, without limitation, by email) delivered to the intended recipient at the "Address for Notices" specified below; or, as to any party, at such other address as shall be designated by such party in a notice to each other party. Except as otherwise provided in this Agreement, all such communications shall be deemed to have been duly given when transmitted by email delivered or, in the case of a mailed

notice, upon receipt, in each case given or addressed as provided for herein. The Addresses for Notices of the respective parties are as follows:

RUS

Rural Utilities Service
United States Department of Agriculture
1400 Independence Avenue, S.W.
Washington, D.C. 20250-1510
Attention: Administrator

Email: sm.reconnect.cds@usda.gov

Awardee

See Schedule 1

With a copy to:

Rural Utilities Service
United States Department of Agriculture
1400 Independence Avenue, S.W.
Stop 1590, Room No. 4121
Washington, D.C. 20250-1590
Attention: Aylene Mafnas
Email: TelecomPMRA@usda.gov

With a copy to:

See Schedule 1

Section 12.2 Notices of Actions Against Collateral

Any notice required to be given by RUS of a sale or other disposition or other intended action by RUS with respect to any of the Collateral, or otherwise, made in accordance with this Agreement at least five (5) days prior to such proposed action, shall constitute fair and reasonable notice to the Awardee of any such action.

Section 12.3 Expenses

To the extent allowed by law, the Awardee shall pay all costs and expenses of RUS, including reasonable fees of counsel, incurred in connection with the enforcement of the Grant Agreement or with the preparation for such enforcement if RUS has reasonable grounds to believe that such enforcement may be necessary.

Section 12.4 Filing Fees

To the extent permitted by law, the Awardee agrees to pay all expenses of RUS (including the fees and expenses of its counsel) in connection with the filing or recordation of all financing statements and instruments as may be required by RUS in connection with this Agreement, including, without limitation, all documentary stamps, recordation and transfer taxes and other costs and taxes incident to recordation of any document or instrument in connection herewith. The provisions of this section shall survive the execution and delivery of this Agreement.

Section 12.5 No Waiver

No failure on the part of RUS to exercise, and no delay in exercising any right hereunder shall operate as a waiver thereof nor shall any single or partial exercise by RUS of any right hereunder preclude any other or further exercise thereof or the exercise of any other right.

Section 12.6 Governing Law

This Agreement shall be governed by and construed in accordance with applicable federal law and, in the absence of controlling federal law, by the laws of the State identified in the first paragraph herein, except those that would render such choice of law ineffective.

Section 12.7 Consent to Jurisdiction

The Awardee hereby irrevocably submits to the jurisdiction of the U.S. District Court for the District of Columbia and the US Court of Appeals for the Federal Circuit (both the "DC Federal Courts") for any action or proceeding arising out of or relating to this Agreement, and hereby irrevocably agrees that all claims in respect of such action or proceeding shall be heard and determined in such federal courts. The Awardee irrevocably consents to the service of process out of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to the Awardee's address set forth in Schedule 1. The Awardee hereby irrevocably waives any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions or proceedings arising out of or in connection with this Agreement brought in the DC Federal Courts and hereby further irrevocably waives and agrees not to plead or claim in such court that any such action or proceeding brought in any such court has been brought in a forum *non conveniens*. Nothing herein shall affect the right of the Government to serve process in any other manner permitted by law or to commence legal proceedings or otherwise proceed against the Awardee in its own jurisdiction.

Section 12.8 Waiver of Jury Trial

EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT, OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, SECURED PARTY, OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 12.9 Rescission

The Awardee may elect to rescind the Award, in which event RUS shall release the Awardee from its obligations hereunder, provided the Awardee complies with such terms and conditions as RUS may impose for such release.

Section 12.10 Successors and Assigns

- (a) This Agreement shall be binding upon and inure to the benefit of the Awardee and RUS and their respective successors and assigns, except that the Awardee may not assign or transfer its rights or obligations hereunder without the prior written consent of RUS.
- (b) Pursuant to federal claims collection laws, RUS' claims hereunder may be transferred to other agencies of the United States of America; in the event of such a transfer, all rights and remedies hereby granted or conferred on RUS shall pass to and inure to the benefit of any such successor agency.

Section 12.11 Complete Agreement; Waivers and Amendments

Subject to RUS Regulations, this Agreement and all parts of the Grant Agreement are intended by the parties to be a complete and final expression of their agreement. However, RUS reserves the right to waive its rights to compliance with any provision of this Agreement and any other part of the Grant Agreement. No amendment, modification, or waiver of any provision hereof or thereof, and no consent to any departure of the Awardee herefrom or therefrom, shall be effective unless approved in writing by RUS in the form of either a RUS Regulation or other writing signed by or on behalf of RUS, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

Section 12.12 Headings

The headings and sub-headings contained in the titling of this Agreement are intended to be used for convenience only and do not constitute part of this Agreement.

Section 12.13 Severability

If any term, provision, condition, or any part thereof, of this Agreement or the Security Documents shall for any reason be found or held invalid or unenforceable by any governmental agency or court of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder of such term, provision, or condition nor any other term, provision, or condition, and this Agreement and the Security Documents shall survive and be construed as if such invalid or unenforceable term, provision or condition had not been contained therein.

Section 12.14 Schedules and Attachments

Each Schedule and Attachment attached hereto and referred to herein is each an integral part of this Agreement.

Section 12.15 Authority of Representatives of RUS

In the case of any consent, approval or waiver from RUS that is required under this Agreement or any other part of the Grant Agreement, such consent, approval or waiver must be in writing and signed by an authorized RUS representative to be effective. As used in this section, "authorized RUS representative" means the Administrator of RUS, and also means a person to whom the Administrator has officially delegated specific or general authority to take the action in question.

Section 12.16 Term

This Agreement shall remain in effect until one of the following two events has occurred:

- (a) The Awardee and RUS replace this Agreement with another written agreement; or
- (b) All of the Awardee's obligations under this Agreement, including the Service Obligation, have been discharged and paid.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

CITY OF SHERWOOD

by _____

Name:

Title:

(Seal)

Attested to by: _____
Secretary

UNITED STATES OF AMERICA

by _____
Administrator
of the Rural Utilities Service

SCHEDULE 1

Article II Representations and Warranties

1. Paragraph (h) Awardee's Principal Place of Business: 22560 SW Pine St. Sherwood, OR 97140
2. Paragraph (i) Awardee's Organization Number: N/A
3. Paragraph (j) Awardee's Subsidiaries: N/A
4. Paragraph (j) Awardee's Parent: N/A
5. Paragraph (l) Additional Representations and Warranties: N/A
[If entity is an electric coop]:
The Awardee represents and warrants that it is a transmitting utility.

Article III The Grant

1. Section 3.1(a) Grant amount: \$1,000,000.00

Article IV Conditions Precedent to Closing

1. The additional conditions referred to in Section 4.1(l) are as follows: N/A

Pursuant to 7 CFR 1970.11(b), the Agency has determined that assurance of funding for this Project is necessary for economic rural development. As a result, this Agreement is subject to the completion of all necessary environmental procedures required by Federal law, and funds may not be disbursed until successful completion of such procedures. The Awardee acknowledges that it may not engage in any work on the Project until Awardee has received written notice from the Agency, except for work required to finalize the environmental reviews. Such environmental work, however, shall be done at the Awardee's own risk and may not be reimbursed if the environmental reviews cannot be completed as required by 7 CFR 1970.11(b). Awardee understands and acknowledges that unauthorized work will result in the termination of this Agreement. Awardee also acknowledges that any findings in the environmental reviews requiring significant changes to the Project will constitute an immediate deobligation of funding and termination of this Agreement and will not result in an amended agreement until revised terms are agreed upon and funding is determined to be still available.

Conditions Precedent to Release of Funds

2. The additional conditions referred to in Section 4.2(b) are as follows: N/A

Conditions Precedent to Individual Advances

3. Section 4.3(b) Other funds required for Project completion that must be deposited into the Pledged Deposit Account: N/A
4. Section 4.3(j) Required permits, licenses, franchise, and other approvals:
5. The additional conditions to advance referred to in Section 4.3(m) are as follows:

Article V Affirmative Covenants

1. Section 5.7 Composite Economic Life of RUS financed facilities: 20 Years
2. Section 5.8(f) Awardee is subject to the following National Programmatic Agreement (NPA):
N/A

[If one exists, list agreement: **title, parties, and date**

If no agreement is necessary, put: N/A, or

If it is not known at time of Agreement, state: **The requirement to enter into an NPA has not yet been determined. Notwithstanding, Grantee acknowledges that if an NPA is entered into after the date hereof, it shall be incorporated into this Agreement without further action.**]

3. Section 5.19 Scoring Criteria Commitments: Awardee has agreed to the following commitments for this Award: N/A
4. The additional affirmative covenants referred to in Section 5.20 are as follows: N/A

Article VII Negative Covenants

1. The additional negative covenants referred to in Section 7.11 are as follows: N/A

Article XII Miscellaneous

1. Section 12.1 Awardee's address for purposes of notification:
Craig Sheldon
City Manager
22560 SW Pine Street
Sherwood, OR 97140
2. Section 12.1 Address for Awardee's notification copy:
Ryan Adams
City Attorney
22560 SW Pine Street
Sherwood, OR 97140

SCHEDULE 2

COLLATERAL

Collateral shall include the following:

All personal property, assets, rights, and fixtures of the Awardee acquired with Award funds, of every kind and description, tangible and intangible, of the kind or nature specifically mentioned herein, or any other kind or nature now owned or hereafter acquired, or built by the Awardee, wherever located, including without limitation all or in part the following (hereinafter the "Collateral"):

I

All right, title, and interest of the Awardee in and to fixtures and personal properties acquired with Award funds, whether tangible or intangible, of every kind or description, now or hereafter owned, leased, constructed, or acquired by the Awardee, wherever located, and in and to all extensions, improvements, and additions thereto, including but not limited to all structures, towers, antennas, fixtures, apparatus, materials, supplies, machinery, tools, implements, poles, posts, crossarms, conduits, ducts, lines, wires, cables, whether underground, overhead, or otherwise, exchanges, switches, including, without limitation, host and remote switches, desks, testboards, frames, racks, motors, generators, batteries, and other items of central office equipment, pay stations, protectors, instruments, connections and appliances, office furniture; equipment, and any and all other fixtures and personal property of every kind, nature, and description;

II

All right, title, and interest of the Awardee in, to, and under all personal property and fixtures of every kind and nature acquired with Award funds, including without limitation all goods (such as inventory, equipment and any accessions thereto), documents, accounts (such as deposit accounts or trust accounts pursuant hereto) software, general intangibles (such as payment intangibles), supporting obligations, co tract rights or rights to the payment of money, insurance claims, and proceeds (as such terms are presently and hereafter defined in the UCC);

III

All right, title, and interest of the Awardee in, to, and under any and all agreements, leases or contracts heretofore or hereafter executed by and between the Awardee and any person, firm, corporation, or other corporate entity relating to the Collateral (including contracts for the lease, occupancy, or sale of the Collateral, or any portion thereto);

IV

All right, title, and interest of the Awardee in, to, and under any and all books, records and correspondence relating to the Collateral, including, but not limited to, all records, ledgers, leases, computer and automatic machinery, software, programs, databases disc or tape files, print-outs, batches, runs, and other electronically-prepared information indicating, summarizing, evidencing, or otherwise necessary or helpful in the collection or realization on the Collateral; and

V

Also, all right, title, and interest of the Awardee in, to, and under all other fixtures and personal property acquired with Awards funds, tangible or intangible, of every kind, nature, and description, and wherever situated, now or hereafter owned or leased by the Awardee, it being the intention hereof that all such property paid for with Award funds now owned or leased but not specifically described herein, or acquired or held by the Awardee after the date hereof, shall be as fully embraced within and subjected to the lien hereof as if the same were now owned by the Awardee and were specifically described herein to the extent only, however, that the subjection of such property to the lien hereof shall not be contrary to law.

ATTACHMENT 1
RECONNECT PROGRAM CONSTRUCTION PROCEDURES

ATTACHMENT 2
EQUAL OPPORTUNITY CONTRACT PROVISIONS

During the performance of this contract, the contractor agrees as follows:

- (a) The contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this non-discrimination clause.
- (b) The contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants shall receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (c) The contractor shall send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or worker's representative of the contractor's commitments under this section, and shall post copies of the notice in conspicuous place available to employees and applicants for employment.
- (d) The contractor shall comply with all provisions of Executive Order 11246 of September 24, 1965 and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (e) The contractor shall furnish all information and reports required by Executive Order 11246 of September 24, 1965 and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and shall permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulation, and orders.
- (f) In the event of the contractor's non-compliance with the non-discrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or part by the Government, and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with the procedure authorized in Executive Order 11246 of September 14, 1965, and such other sanctions may be imposed and remedies invoked as provided in said Executive Order or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (g) The contractor shall include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246, dated September 24, 1965, so that such provisions shall be binding upon each subcontractor or vendor. The contractor shall take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for non-compliance; provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

DEPOSIT ACCOUNT CONTROL AGREEMENT

version 1 dated February 13, 2006

available from the American Bar Association's Business Law Section at
<http://www.abanet.org/dch/committee.cfm?com=CL710060>¹

Executed and Delivered as of _____, 20__

PARTIES

This Agreement is among the persons signing this Agreement as the "*Secured Party*", the "*Debtor*" and the "*Bank*".

BACKGROUND

The Debtor is the Bank's customer with respect to one or more demand deposit accounts identified by the account numbers specified below (individually and collectively, as re-numbered and including any funds in the account or accounts, the "*Deposit Account*"). The Debtor has granted the Secured Party a security interest in the Deposit Account. The Debtor is requesting that the Bank enter into this Agreement. The Bank is willing to do so upon the terms contained in this Agreement.

This Agreement includes the General Terms, the Specific Terms and the Exhibit, each as defined or referred to below.

AGREEMENTS

A. GENERAL TERMS. This Agreement is subject to the General Terms for Deposit Account Control Agreement version 1 dated February 13, 2006, developed by a special task force of the American Bar Association's Business Law Section and available from the Business Law Section at <http://www.abanet.org/dch/committee.cfm?com=CL710060> (the "*General Terms*"). The General Terms are incorporated in this Agreement by reference and without modification except as may be provided in Section 10 of the Specific Terms.

¹ This document is a model form produced by the Joint Task Force on Deposit Account Control Agreements of the Business Law Section of the American Bar Association. The provisions of the form have not been approved by the House of Delegates or Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the policy of the American Bar Association.

B. SPECIFIC TERMS. The following terms (the “*Specific Terms*”) complete, supplement or modify the General Terms:

1. Deposit Account (see “Background” above). The following account or accounts comprise the Deposit Account [*list by account number*]:

2. Business Day (see definition of “Business Day” in Section 1 of the General Terms).

A day will not be considered as a “Business Day” if commercial banks in the following city or cities are closed on that day:

_____ . If the preceding sentence is not completed, no additional days are excluded from the definition of “Business Day”.

3. Outside Time (see definition of “Outside Time” in Section 1 of the General Terms).

If the Outside Time is to be based on a period of less than two Business Days, the following is the earlier period:_____. If an earlier period is not inserted in the preceding sentence, then the Outside Time will be based on two Business Days.

4. Disposition of less than all or multi-disposition of funds (see Section 4(a)(ii)(E) of the General Terms).

The following is any computation or formula by which a Disposition Instruction originated by the Secured Party may provide for a disposition of less than all of the funds in the Deposit Account and whether there may be multiple recipients of the funds:

.

If the preceding paragraph is not completed to permit a disposition of less than all of the funds in the Deposit Account, then a Disposition Instruction originated by the Secured Party must be for a disposition of all of the funds. If the preceding paragraph is not completed to permit a disposition of the funds in the Deposit Account to multiple recipients, then a Disposition Instruction originated by the Secured Party must require that the funds be sent to a single recipient.

5. Reimbursement Claim Period (see Section 6(b) of the General Terms).

The number of days following the termination of the Agreement in which a reimbursement claim must be made against the Secured Party under Section 6(b) of the General Terms is _____. If a number is not inserted in the preceding sentence, the number is 90.

6. Electronic Records (see definition of "writing" in Section 1 of the General Terms):

Checking this line ___ means that the parties permit a writing to include an electronic record and permit communications by email. Otherwise, the parties do not permit a writing to include an electronic record and do not permit communications by email.

7. Governing Law (see Section 13(a) of the General Terms):

The jurisdiction whose law governs this Agreement is _____. If a jurisdiction is not inserted in the preceding sentence, the jurisdiction will be determined by applicable law.

8. Bank's Jurisdiction for UCC Purposes (see Section 13(b) of the General Terms):

The Bank's jurisdiction for purposes of part 3 of UCC Article 9 is _____. If the Bank's jurisdiction for such purposes is not inserted in the preceding sentence, the Bank's jurisdiction for such purposes will be determined by applicable law.

9. Delivery of Executed Copy (see Part D):

Checking this line ___ means that the delivery of an executed copy of this Agreement may be made by electronic transmission in addition to a transmission by facsimile. Otherwise, delivery of an executed copy of this Agreement may not be made by a form of electronic transmission other than facsimile.

10. Additional Provisions (see Section 12(b) of the General Terms):

The following provisions modify or supplement the General Terms:

If no provisions are inserted above in this Section 10, then there are no modifications to or supplements of the General Terms.

C. EXHIBIT. The parties have completed and attach hereto the Exhibit to be used as the form of the Initial Instruction. *[Note to person completing this Agreement: the Exhibit requires the designation of the person or persons or department at the Bank to receive the Initial Instruction. See Note 1 to the Exhibit.]*

D. SINGLE AGREEMENT; COUNTERPARTS. The General Terms, the Specific Terms and the Exhibit shall be read and construed together with the other provisions of this Agreement as a single agreement. Delivery of executed copies of this Agreement may be made by facsimile or, if so permitted in Section 9 of Part B, by another form of electronic transmission. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which collectively shall constitute a single agreement.

[remainder of page intentionally left blank]

SIGNATURES

Debtor:

By: _____

Name:

Title:

Address:

Attention:

Telephone Number (for information only):

Facsimile Number:

Electronic mail address (if Section 6 of Part B permits):

Secured Party:

By: _____

Name:

Title:

Address:

Attention:

Telephone Number (for information only):

Facsimile Number:

Electronic mail address (if Section 6 of Part B permits):

Bank:

By: _____

Name:

Title:

Address:

Attention:

Telephone Number (for information only):

Facsimile Number:

Electronic mail address (if Section 6 of Part B permits):

Exhibit

[LETTERHEAD OF THE SECURED PARTY]

DEPOSIT ACCOUNT CONTROL AGREEMENT

INITIAL INSTRUCTION

[Date]

[Name of Bank]

[Address of Bank]

Attention: _____
[Person or Persons or Department] *[See Note 1 below]*

Ladies and Gentlemen:

This is the Initial Instruction as defined in the Deposit Account Control Agreement dated _____, 20____, among you, us and [Debtor] (the “*Debtor*”) (as currently in effect, the “*Control Agreement*”). A copy of the Control Agreement as fully executed is attached. Capitalized terms used in this Initial Instruction have the meanings given them in the Control Agreement

This Initial Instruction directs the Bank no longer to comply with the Debtor’s Disposition Instructions.

[As an included Disposition Instruction, we direct you to send the funds in the Deposit Account to us by the method and at the address indicated below. We recognize that, as a condition to your complying with this Disposition Instruction and to the extent that we have not already done so, we must provide to you evidence reasonably required by you as to the authority of the person giving this Disposition Instruction to act for us. We also recognize that your obligation to comply with this Disposition Instruction is subject to the other provisions of Section 4(a)(ii) of the General Terms. *[See Note 2 below]*]

Funds transfer instructions:

Receiving bank: _____.

ABA routing number for domestic wire: _____.

ABA routing number for ACH transaction: _____.

International: Swift Code No. _____.

Reference details: _____.]

Very truly yours,

[SECURED PARTY]

By: _____

Title: _____

Notes to the person completing this form of Initial Instruction:

1. *The “attention” line should be completed with particular care. Until the Initial Instruction is actually received by the person or persons or department at the Bank designated in the “attention” line, the time period by which the Bank must comply with the Initial Instruction will not commence. Accordingly, it is advisable to provide in the “attention” line a specific department or specific officer or officers at the Bank by title rather than by name. If an individual at the Bank is to be designated by title or even by name, it is advisable that one or more additional individuals at the Bank be designated as alternatives to receive the Initial Instruction if the first individual is not available.*

2. *The bracketed language relating to a Disposition Instruction (including funds transfer instructions) is optional. Not including this language does not preclude the Secured Party from subsequently giving a Disposition Instruction.*