



THE POWER IS YOURS

AGREEMENT NO. 9101 BETWEEN

CITY OF CONNELL AND

PUBLIC UTILITY DISTRICT NO. 1 OF FRANKLIN COUNTY

FOR THE UTILIZATION OF STREET LIGHT FACILITIES TO INSTALL WIRELESS COMMUNICATIONS EQUIPMENT

Whereas, the City of Connell, hereinafter referred to as the "CITY", and the Public Utility District No. 1 of Franklin County, hereinafter referred to as "DISTRICT", collectively referred to as "the PARTIES" and individually referred to as "PARTY", desire to enter into an agreement under which the CITY will provide access to all Street Lights Facilities located in Connell, Washington for DISTRICT wireless communications equipment access, all as defined herein.

And after due and proper consideration, the sufficiency of which is acknowledged, the PARTIES hereby agree as follows:

Definitions

"Agreement" refers to this Agreement No. 9101.

"Street Light Facilities" refers to all CITY owned street light facilities, including but not limited to poles, masts, fixtures, and power that are located in the City of Connell.

Force Majeure

If a PARTY fails to comply with any of its obligations under this Agreement due to an event over which it has no reasonable control, including, but not limited to, strikes, lockouts, accidents, fire, flood, import or export embargo, war, acts of terrorism or natural catastrophes (a "Force Majeure Event"), then such non-performance shall be excused until the termination of the Force Majeure Event and it shall not be held responsible for any loss or damage which may be incurred by the other as a result thereof.

Hold Harmless

CITY shall protect, hold free and harmless, defend and pay on behalf of the DISTRICT (including its managers, commissioners and employees) all liability, penalties, costs, losses, damage, expense, causes of action, claims, or judgments, (including attorney's fees) resulting from injury or death, sustained by any person (including CITY or CITY's employees) or damage to tangible property of any kind to the extent caused by CITY's or its subcontractor's negligent

performance of this Agreement. CITY's hold harmless agreement shall apply to any negligent act or omission, or willful misconduct whether passive or active, on the part of CITY (its agents, Subcontractors, or employees); except, that this hold harmless/indemnification provision shall not be applicable to injury, death, or damage to property or persons arising from the sole negligence or the willful misconduct of the DISTRICT's managers, commissioners, and employees.

DISTRICT shall protect, hold free and harmless, defend and pay on behalf of the CITY (including its managers, commissioners and employees) all liability, penalties, costs, losses, damage, expense, causes of action, claims, or judgments, (including attorney's fees) resulting from injury or death, sustained by any person (including DISTRICT or DISTRICT's employees) or damage to tangible property of any kind to the extent caused by DISTRICT's or its subcontractor's negligent performance of this Agreement. DISTRICT's hold harmless agreement shall apply to any negligent act or omission, or willful misconduct whether passive or active, on the part of DISTRICT (its agents, Subcontractors, or employees); except, that this hold harmless/indemnification provision shall not be applicable to injury, death, or damage to property or persons arising from the sole negligence or the willful misconduct of the CITY's managers, commissioners, and employees.

In any and all claims against a PARTY by any employee of the other PARTY or its Subcontractor, the indemnification and hold-harmless obligation herein shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the PARTY under worker's compensation acts, disability benefit acts, or other employee benefit acts, **AND CONSULTANT SPECIFICALLY AND EXPRESSLY WAIVES ANY IMMUNITY UNDER SUCH ACTS. CONSULTANT ACKNOWLEDGES THAT THIS WAIVER HAS BEEN MUTUALLY NEGOTIATED BY THE PARTIES.**

Limited Liability

Notwithstanding anything to the contrary in this Agreement, neither PARTY makes any warranties of any kind, either express or implied, and each PARTY specifically disclaims all implied warranties to the maximum extent permitted by applicable law. Except for any claims involving the gross negligence or willful misconduct of a PARTY, neither PARTY shall be liable to the other PARTY, whether in contract, tort or otherwise, for any indirect, incidental, consequential, special or punitive damages, or lost profits (even if such damages are foreseeable, and whether or not a PARTY has been advised of the possibility of such damages).

Street Light Facilities for Wireless Communications Equipment Access

Once established and agreed upon by the PARTIES, the location of the Street Light Facilities and the DISTRICT owned wireless communications equipment shall not be moved to a new location without the mutual consent of both PARTIES. DISTRICT may not assign its interest in this Agreement without the permission of the CITY. The CITY agrees to not interfere with the DISTRICT's wireless communication equipment attached to the CITY's Street Light Facilities, and the DISTRICT agrees to not interfere with the CITY's Street Lights Facilities.

DISTRICT shall use the services of a licensed electrician, and shall pay for all charges related to extending a single 5 amp 120 volt circuit from the existing secondary low voltage

electric service serving the CITY facility to be installed for the wireless communications equipment. DISTRICT electrical requirements exceeding a single 5 amp 120 volt circuit shall be met by DISTRICT acquiring a separately metered electric service.

DISTRICT's Responsibilities With Regard to Installation, Repairs, and Maintenance

DISTRICT shall be solely responsible for all costs and expenses associated with the permitting, installation, and construction of the wireless communications equipment and its operations. DISTRICT shall be responsible for the repair and maintenance of the wireless equipment cabinet, antenna, cabling, all other wireless equipment, and any other associated equipment owned by the DISTRICT.

DISTRICT will label all equipment with company name and phone number; and provide photo documentation as an Exhibit to this Agreement of its installed equipment within 30 days of installation.

Access Rights With Regard to Installation, Repairs, and Maintenance

DISTRICT will be allowed to access all Street Light Facilities at any time to perform maintenance and upgrades to its wireless communications system.

Strict Performance

Either PARTY's failure to enforce or insist upon strict performance of any provision of this Agreement or to exercise any of their rights or remedies under this Agreement or otherwise by law will not be construed as a waiver or relinquishment to any extent of the PARTY's right to rely on any such provision, right, or remedy in that or any other instance. Neither the course of conduct between PARTIES nor trade practice will act to modify any provision of this Agreement.

Severability

If any provision of the Agreement is held invalid or unenforceable by any court of final jurisdiction, it is the intent of the Parties that all other provisions of this agreement be construed to remain fully valid, enforceable and binding on the PARTIES.

Modifications

This Agreement constitutes the complete and exclusive Agreement between DISTRICT and the CITY with respect to the subject matter hereof, and supersedes all prior oral or written understandings, communications or agreements not specifically incorporated herein. This Agreement may not be modified except in a writing duly signed by an authorized representative of DISTRICT and the CITY.

Term

The term of this Agreement begins upon signature of all PARTIES and terminates ten (10) years from such date. This period may be extended by mutual agreement for an additional ten (10) year period by addendum.

Termination

The PARTIES acknowledge this wi-fi project at the CITY is a DISTRICT pilot project and as such this Agreement may be terminated by either PARTY by providing advance written notice to the other PARTY at least 180 days in advance of the Agreement termination date. Upon termination by either PARTY, DISTRICT shall pay for all expenses incurred to remove the wireless communications equipment access site and all associated equipment and gear.

Assignability

This Agreement may be assigned to the purchaser if the CITY-owned Street Light Facilities located in the City of Connell, WA are sold to a third party. Notice of any such assignment or transfer shall be furnished promptly to DISTRICT.

Successors and Assigns

Subject to the provisions hereof pertaining to assignment, the covenants and terms of this Agreement shall be binding upon the heirs, legal representatives, successors and assigns of the PARTIES hereto.

Cancellation

In the event interference and/or technical problems occur with regard to the DISTRICT wireless communication equipment located on any Street Light Facilities, DISTRICT will resolve the issue within 30 days. In the event that interference and/or technical problems cannot be resolved, the CITY may request that the wireless communications equipment be removed or relocated from that specific location and DISTRICT shall pay for all expenses incurred to remove the wireless communications equipment and associated equipment, and return all used portions of the CITY property to its original condition prior to installation of the wireless equipment.

Dispute Resolution

Any disputes arising under this Agreement shall be resolved through arbitration except as may be otherwise expressly provided by Washington law. During the process of dispute resolution the Parties shall continue to perform under the terms of this Agreement. Prior to any arbitration, the Parties agree to consult about any differences they may have arising from this Agreement. If the Parties are unable to agree upon a resolution within ten (10) days, the Parties shall engage in arbitration. The Parties agree to arbitrate their dispute through the selection of a mutually acceptable neutral arbitrator. Written notice requesting arbitration shall name a proposed arbitrator. Consent to the selection of an arbitrator shall not be unreasonably withheld.

Upon receipt of written notice requesting arbitration, the receiving Party shall, in writing and within ten (10) days after the receipt of such notice, either agrees to the proposed arbitrator or rejects the proposed arbitrator and proposes an alternate arbitrator. If the proposed alternate arbitrator is rejected by the Party requesting arbitration, the Parties will notify the Presiding Judge of Franklin County Superior Court for the State of Washington and request that a qualified arbitrator be appointed.

The arbitrator shall apply applicable provisions of Washington law, including those related to arbitration, in reaching a determination, which will be rendered within sixty (60) days after the arbitrator is selected by the Parties or appointed. The arbitrator shall issue a written statement to the Parties setting forth in reasonable detail the reasons for the determination.

The determination by the arbitrator shall be binding upon the Parties absent any appeal, which may proceed if there is an outstanding issue or mistake of law. Each Party shall bear its own costs and expenses for the arbitration, including attorney's fees and costs incurred in the arbitration for consultants and witnesses. The Parties shall share equally the cost of the arbitrator.

Notices

All notices or demands of any kind required or desired to be given hereunder shall be in writing and shall be deemed delivered 72 hours after depositing the same into the United States mail, first class, postage prepaid, directed to the PARTY at the address set forth after

its signature at the end of this Agreement, or to such other address as one PARTY may give by notice to the other.

Governing Law

This Agreement shall be governed by the laws of the State of Washington and the Parties consent to jurisdiction by the Franklin County Superior Court in the State of Washington.

IN WITNESS WHEREOF, the PARTIES hereto have signed this Agreement:

CITY OF CONNELL

By: Bruce Blackwell

Honorable Bruce Blackwell
Mayor – City of Connell

Date: June 20, 2017

Mailing Address:

PO Box 1200
Connell, WA 99326-
1200

PUBLIC UTILITY DISTRICT NO. 1 OF FRANKLIN
COUNTY

By: Victor Scarano

Victor Scarano
Director of Administrative Services

Date: 6-27-2017

Mailing Address:

Broadband
FRANKLIN PUD
PO Box 2407
Pasco, WA 99302