



# MEMORANDUM

EUGENE WATER & ELECTRIC BOARD

*Rely on us.*

TO: Commissioners Helgeson, Brown, Mital, Simpson and Carlson  
FROM: Mel Damewood, Engineering Manager  
DATE: February 7, 2017  
SUBJECT: Downtown Fiber  
OBJECTIVE: Approval of Downtown Fiber Project IGA with City of Eugene

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## Issue

Eugene Water and Electric Board (EWEB) and the City of Eugene (COE) are seeking to enter into an agreement for the construction, ownership and maintenance for a high speed fiber optic system in the downtown core of Eugene. Over the years, this partnership has progressed from concept, to pilot project testing and master planning, and now is the time to formalize the partnership through a design and construction contracts. Management is requesting approval to enter into a design, construction agreements, ownership and maintenance for the downtown fiber network.

## Background

In May of 2016 the board approved the management to enter into construction agreements for the downtown fiber projects. In the creation of the construction IGA with COE some of the requests were beyond a typical construction agreement. Management felt it prudent to present the final IGA and re-request authorization to enter into the agreement.

EWEB, the City of Eugene and LCOG have formed a partnership to forward a high speed fiber optic system in the downtown core of Eugene. Over the years, this partnership has progressed from concept, to pilot project testing and master planning. Starting in 2014 the partnership has completed three demonstration projects to pilot an innovative new fiber optic network construction concept in the downtown Eugene Business District. The projects were funded by the City of Eugene's Telecommunications Fund, with some capital contributions from EWEB and LCOG. As a result, three multi-tenant buildings have been connected via fiber optic cable to 'Tier 2' (non-incumbent) Internet Service Providers with a point of presence in LCOG's Willamette Internet Exchange (WIX).

In 2015, EWEB partnered with LCOG, the City of Eugene and the Technology Association of Oregon (TAO) to form a 'Fiber Implementation Team' (FIT) whose goal is to expand the footprint of these services by provisioning an open, low-cost, high-speed municipal broadband network throughout the business district. COE Urban Renewal and general funds along with Federal grants are the funding sources being explored to help cover the capital expenditures.

The FIT anticipates interconnection of up to 120 multi-tenant commercial and residential buildings

within roughly a ten block area. The network will consist of many small conduit pathways (one ‘microtube’ and fiber optic cable per building), placed inside of EWEB electric ducts, connecting end-use customers directly to the WIX. This point-to-point design will minimize infrastructure operating costs by enabling replacement/reconfiguration/rerouting of fiber without vault entry or splicing. This high density model will reduce EWEB’s ongoing operations and maintenance costs; therefore its cost recovery requirements are lower when compared with EWEB’s conventional dark fiber services.

EWEB will also directly benefit from this project as our Electric Operations will have access to the fiber system to monitor and control the EWEB’s Downtown Secondary Network.

## **Discussion**

To date, EWEB has not committed any funding to the overall Downtown Fiber Network. EWEB has contributed about \$20,000 to the pilot projects in labor and materials, in essence, to gain experience of how to build the fiber network in our existing duct and vault system, as well as to help develop our standards for the fiber system. Staff also is committed to communicating to requestors of such services to pay 100% of all costs associated with the extension of service, which is consistent with EWEB policies.

Upon commitment to construct the Downtown Fiber Network, EWEB is taking on the responsibility of renewal and replacement of the fiber optic cables at the end of their useful life. EWEB would also be responsible for fiber optic cable and microduct repairs caused by electrical faults in the downtown Secondary Network system.

Along with normal renewal and replacement commitments EWEB agrees to lease dark fiber capacity in the Network to other interested parties at EWEB board approved lease rates based on cost recovery model in accordance with EWEB policy and procedures. EWEB also agrees to provide information, upon request, to COE in regards to network utilization.

## **Recommendation**

Management recommends that EWEB continues to provide ‘last mile’ dark fiber service for the proposed municipal fiber optic network and enter into the IGA with the City of Eugene for construction and maintenance of the Downtown Fiber Network.

## **Requested Board Action**

Approval of continued partnership of the downtown fiber optic system and approve management to enter into design and construction, and maintenance IGA with the City of Eugene to execute the creation of the downtown fiber optic system.

If you have any questions please contact Mel Damewood at [mel.damewood@eweb.org](mailto:mel.damewood@eweb.org) or 541-685-7145.

Attachments:

- 1) EWEB/City of Eugene IGA

## INTERGOVERNMENTAL AGREEMENT

**BETWEEN:** City of Eugene (CITY), A city within Lane County, Oregon

**AND:** Eugene Water & Electric Board (EWEB) A municipal utility of the State of Oregon

**EFFECTIVE DATE:** Upon Execution

### RECITALS

- A. WHEREAS, ORS 190.010 provides that units of local government may enter into agreements for the performance of any and all functions and activities that any party to the agreement, its officers, or agents have the authority to perform.
- B. WHEREAS, the CITY and EWEB has determined that economic development in Eugene will be enhanced by improving downtown broadband infrastructure by developing a downtown fiber network and utilizing EWEB electrical conduit ("Downtown Fiber Project"). The Downtown Fiber Project will increase the availability of accessible and affordable high-speed broadband services within Eugene, which will provide economic and other benefits within Eugene.
- C. WHEREAS, the CITY desires EWEB to design, install, operate, and maintain a dark fiber optic network, utilizing EWEB's electrical conduit, in downtown Eugene (the "Network").
- D. WHEREAS, EWEB agrees to design, install, own, operate and maintain the proposed dark fiber optic Network for the term of this agreement. Operation and maintenance shall be in compliance with dark fiber customer lease agreements.
- E. WHEREAS, the parties acknowledge that EWEB's contribution of the use of its existing electrical conduit infrastructure avoids significant construction costs, without which this project would likely be infeasible.
- F. WHEREAS, EWEB and CITY desire to enter into an agreement wherein EWEB will provide the services described in this agreement and Attachment A (attached hereto and incorporated herein by reference). Provision of services for the remuneration specified in this agreement will mutually benefit the parties.
- F. WHEREAS, the parties agree that in an emergency repair situation EWEB's first priority is the restoration of the electrical system. Any needed fiber optic network repair will happen as soon as practicable, taking into account the needs of the electrical network. Depending on the severity and location of the repair fiber optic outages could be lengthy.

### AGREEMENT

NOW, THEREFORE, based upon the foregoing recitals, which are fully incorporated herein, the parties agree as follows:

- 1. **Duration.** The agreement term shall take effect on the Effective Date and shall continue in place until December 31, 2026 followed by automatic 5 year renewals up to 20 years total term or until earlier terminated pursuant to Paragraph 4 of this agreement.
- 2. **EWEB Obligations; Services to be Provided.** EWEB agrees to provide services to CITY, upon CITY's request, as more specifically outlined in Attachment A, and generally described as designing, installing, operating and maintaining a dark fiber optic Network.
  - A. As part of the installation services, EWEB will apply for and obtain all necessary permits to do the work. (CITY will directly pay the City of Eugene permit fees that are required for the work.)

- B. EWEB agrees to begin work as soon as practicable, and no later than 30 days, after receiving CITY's request to begin working in a particular quadrant of the Project area, as shown in Exhibit B. As used in this subsection, "to begin work" includes planning, applying for and obtaining permits, and other preparatory work necessary for the Project. EWEB also agrees to complete the requested work as soon as practicable, taking into account EWEB's other priorities. CITY will not request work to begin in simultaneous quadrants.
- C. In addition to the installation work requested by the CITY, EWEB agrees that during the term of the agreement, upon request of private parties, such as building owners, tenants, and service providers, EWEB will construct service laterals from the fiber Network to the requested buildings.
- D. As part of the operation of the Network, EWEB agrees to lease dark fiber capacity in the Network to other interested parties at EWEB board approved lease rates based on cost recovery model in accordance with EWEB policy and procedures.
- E. EWEB agrees that during the term of this agreement, CITY may lease fiber within the Network at the same rates as other similarly situated public entities.
- F. Within the first five years of the term of this agreement, once a year and upon written request by the CITY, EWEB will provide CITY with information regarding the entities leasing fiber within the Network, the length of fiber leased, and the number of buildings served
- G. EWEB agrees to comply with the Oregon Standard Specifications for Construction, as amended by the City of Eugene, for any work on CITY-owned infrastructure in the right-of-way.

### **3. Compensation.**

- A. CITY shall pay the costs for constructing the Network. The estimated total cost for the Project as designed is \$2,700,000 which includes EWEB standard overhead percentage. The actual size and scope of the Network will be dependent upon appropriations for the Project.
- B. EWEB will submit monthly invoices for construction costs to Patrick Cox, project manager for the Downtown Fiber Project, for approval. Except for charges that are reasonably disputed, CITY shall pay the invoices within thirty days of receipt.
- C. Each invoice shall detail the amount charged, the work tasks completed, including the positions of the workers and their rates, and the geographic locations (as depicted in the map included within Exhibit B as the Downtown Urban Renewal District, Riverfront Urban Renewal District, and areas outside those districts) in which the work was done.

### **4. Termination.**

- A. During construction of the fiber optic Network and upon thirty days' prior written notice delivered to the persons designated in Paragraph 6 to receive notice, either party, with reasonable cause, may terminate its participation in this agreement.
- B. CITY may terminate this agreement at any time if it deems termination is in the public interest or if appropriations for the Downtown Fiber Project are insufficient.
- C. If there is a termination for any reason, the CITY shall pay EWEB for all work tasks completed as of the termination date.
- D. After construction of the downtown fiber optic Network is completed, termination can only occur if both entities agree to terminate.
- E. In the event of any termination, the parties agree to work in good faith to develop a plan that will best benefit the public interest in the Downtown Fiber Project.
- F. For reasonable cause either party may opt to cancel automatic renewal as defined in paragraph 1 with one year notice.

5. **Amendments.** This agreement may only be modified or extended by written amendment signed by both parties.
6. **Administration.** Each party designates the following person as its representative for purposes of administering this agreement. Either party may change its designated representative by giving written notice to the other as provided in paragraph 14.

For CITY: Anne Fifield  
125 East 8<sup>th</sup> Ave  
Eugene, OR 97401  
Ph: 541-682-5451

For EWEB: Nick Nevins  
4200 Roosevelt Blvd.  
Eugene, OR 97402  
Ph: 541-685-7751

7. **Records/Inspection.** EWEB and CITY shall each maintain records of its costs and expenses under this agreement for a period of not less than three full fiscal years following completion of this agreement. Upon reasonable advance notice, either party or its authorized representatives may from time to time inspect, audit, and make copies of the other party's records related to this agreement.
8. **Indemnification.** To the extent allowed by the Oregon Constitution and the Oregon Revised Statutes, each of the parties hereto agrees to indemnify, defend, and save the other harmless from any claims, liability or damages including attorney fees, at trial and on appeal, arising out of any error, omission or act of negligence on the part of the indemnifying party, its officers, agents, or employees in the performance of this agreement.
9. **Dispute Resolution.** The parties shall exert every effort to cooperatively resolve any disagreements they may have under this Agreement. In the event that the parties alone are unable to resolve any conflict under this Agreement, they agree to present their disagreements to a mutually agreeable mediator for mediation. Each party shall bear its own costs for mediation and the parties shall share the cost of the mediator. This mediation procedure shall be followed to its conclusion prior to either party seeking relief from the court, except in the case of an emergency.
10. **Subcontracting.** EWEB reserves the right to subcontract the Work under this agreement, in whole or in part. EWEB shall provide the CITY with notification of any subcontracting. EWEB shall require any approved subcontractor to agree, as to the portion of the Work subcontracted, to comply with all obligations of EWEB specified in this agreement. Notwithstanding CITY's approval of a subcontractor, EWEB shall remain obligated for full performance of this agreement and CITY shall incur no obligation to any sub-contractor.
12. **Assignment.** Neither party shall assign this agreement in whole or in part, or any right or obligation hereunder, without the other party's written approval.
13. **Compliance With Laws.** EWEB shall comply with all applicable federal, state, and local laws, rules, ordinances, and regulations at all times and in the performance of the Work, including all applicable State and local public contracting provisions.
14. **Notices.** Any notices permitted or required by this agreement shall be deemed given when personally delivered or upon deposit in the United States mail, postage fully prepaid, certified, return receipt requested, addressed to the representative designated in paragraph 6. Either party may change its address by notice given to the other in accordance with this paragraph.
15. **Integration.** This agreement embodies the entire agreement of the parties. There are no promises, terms, conditions or obligations other than those contained herein. This agreement shall supersede all prior communications, representations or agreements, either oral or written, between the parties.
16. **Interpretation.** This agreement shall be governed by and interpreted in accordance with the laws of the State of Oregon.
17. **Jurisdiction; Venue.** This agreement shall be governed by and interpreted in accordance with the laws of the State of Oregon. Jurisdiction of any dispute or litigation arising from or related to this agreement shall be in Lane County Circuit Court.

**CITY OF EUGENE:**

**EUGENE WATER AND ELECTRIC BOARD**

**By:** \_\_\_\_\_  
(name, title)

**By:** \_\_\_\_\_  
Mel Damewood,  
Chief Engineering and Operations Manager

**Date:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**ATTACHMENT A  
WORK PROGRAM**

On request of CITY, EWEB shall provide the following services:

1. Planning assistance of a proposed installation of a fiber optic Network in those portions of downtown Eugene currently served with underground electrical services.
2. Complete engineering design of proposed fiber optic Network.
3. Successfully complete installation of necessary microduct and fiber optic networks to predetermined buildings in downtown Eugene.
4. EWEB shall own, operate and maintain the dark fiber optic Network for the natural life of the products.
5. EWEB shall lease dark fiber capacity in the fiber Network to other interested parties.