



MEMORANDUM

EUGENE WATER & ELECTRIC BOARD

Rely on us.

TO: Commissioners Simpson, Brown, Helgeson, Mital and Carlson
FROM: Mel Damewood, Chief Engineering & Operations Officer
DATE: January 10th, 2017
SUBJECT: Downtown Fiber Joint Agreement
OBJECTIVE: Approval Downtown Fiber Joint Agreement and Resolution No. 1702

Issue

The City of Eugene (COE), the Eugene Water and Electric Board and the Lane Council of Governments (LCOG) have applied for a grant from the Economic Development Administration of the US Department of Commerce to facilitate the construction of a fiber optic system in downtown Eugene. It is a requirement of the grant that the applicants enter into a joint agreement providing for compliance with the grant conditions, and that the governing bodies of the participating entities adopt a resolution authorizing the chief executives of the bodies to sign the joint agreement. Management is requesting approval of Resolution 1702 and the IGA.

Background

EWEB, the City of Eugene and LCOG are seeking to formalize 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, and now is the time to formalize the partnership through a joint agreement specifying the roles and responsibilities of the individual project partners. Over the past 3 years EWEB and LCOG have 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. Federal grants are one funding source that is being explored to help cover roughly half of the capital expenditures. As public agencies EWEB, LCOG and the City of Eugene have applied for the grant. Being co-applicants provide added level of complexity. One of those complexities is the requirement to have a Joint Agreement between all co-applicants specifying roles and responsibilities.

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

The underlying purpose for this joint agreement is to meet grant requirements to clearly define the specific roles and responsibilities for each of the co-applicant agencies. Below is a high level breakdown of those roles and responsibilities.

Eugene Water and Electric Board

EWEB owns and operates the electrical conduit and electric service laterals wherein the microduct will be installed. EWEB will own, during and after construction, the microduct and the fiber optic cable that is installed in the EWEB electrical system, including any service laterals extending into buildings identified by the parties as being a part of the project.

City of Eugene

The City of Eugene will serve as the primary fiscal agent of the downtown fiber project, providing fiscal support for the monetary match, and for other costs as agreed to among the parties, and will, with the assistance of EWEB and LCOG, provide all necessary information for reimbursement from the EDA of approved project expenses.

Lane Council of Governments

LCOG owns and operates the Willamette Internet Exchange (WIX) and associated fiber optic cable connecting the WIX to the Internet outside the project area. LCOG will own, during and after construction, any additional facilities or material added to the WIX and to an expansion of the WIX, and any optical fibers installed to facilitate expansion of the WIX or the use of the WIX.

Recommendation

Management recommends that EWEB enter into a joint agreement to specify roles and responsibilities as well as meet requirements of potential federal grant funding.

Requested Board Action

Approval of continued partnership of the downtown fiber optic system and approve management to enter into a joint agreement with the City of Eugene and Lane Council of Governments. Approval of Resolution 1702.

If you have any questions please contact Mel Damewood at mel.damewood@eweb.org or 541-685-7145.

Attachments:

- 1) Resolution No. 1702, January 2017
- 2) Eugene Downtown Fiber Project Joint Agreement

Eugene Downtown Fiber Project Joint Agreement

Between and Among

The City of Eugene,
The Eugene Water and Electric Board,
The Lane Council of Governments

RECITALS

- A. 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. The City of Eugene (hereinafter "CITY") the Eugene Water and Electric Board (hereinafter "EWEB") and the Lane Council of Governments (hereinafter "LCOG"), or "the Parties" collectively, are joint applicants for an economic development grant from the U.S. Department of Commerce, Economic Development Administration (EDA). The Parties wish to clarify roles and responsibilities for the downtown fiber project in order to facilitate receipt and use of grant funds.

AGREEMENT

1. This intergovernmental agreement represents the agreed upon terms for administration of an EDA grant and the supervision and management of the downtown fiber project for the completion of the Downtown Eugene Oregon Fiber Optic Network. This agreement is intended to supplement any existing agreements among any two of the parties concerning the project. In the event of any conflict or discrepancy between this agreement and any two party agreements, the specific provision of this agreement shall prevail. Each party to this agreement, and co-applicant for the EDA grant, is recognized as playing a unique and essential role in the completion of the downtown fiber project. This agreement draws upon and recognizes the mutual support and interest among the parties, and describes the interaction necessary to achieve the shared goals of a successful project intended to bring opportunities for the downtown area.
2. EWEB owns and operates the electrical conduit and electric service laterals wherein the microduct and fiber will be installed. EWEB will own, during and after construction, the electrical system, the microduct and the fiber optic cable that is installed as personal property collocated in the EWEB electrical system, including any service laterals extending into buildings identified by the parties as being a part of the project. EWEB will own and maintain all EWEB installed microduct and fiber for the useful life of the microduct and fiber optic cable. EWEB shall make the installed fiber optic cable available to any person, or business entity seeking to lease the fiber from EWEB, subject to availability. EWEB shall charge all entities leasing the fiber the applicable standard rate for use of the fiber, which rates shall be available for inspection or review by any entity.
3. LCOG owns and operates the Willamette Internet Exchange (WIX) and associated fiber optic cable connecting the WIX to the Internet outside the project area. LCOG will own, during and after construction, any additional facilities or material added to the WIX and to an expansion of the WIX, and any optical fibers installed to facilitate expansion of the WIX or the use of the WIX. LCOG's ownership and management of these facilities and associated equipment will be maintained during the useful life of any material, equipment

or facilities associated with the downtown fiber project. LCOG shall make the WIX and associated fiber connections available to any person or business entity seeking to lease space in the WIX, subject to availability. LCOG shall charge standard rates for the lease of space in the WIX, which rates shall be available for inspection or review by any entity.

4. The City of Eugene will serve as the primary fiscal agent of the downtown fiber project, providing fiscal support for the monetary match under the grant, and for other costs as agreed to among the parties, and will, with the assistance of EWEB and LCOG, provide all necessary information for reimbursement from the EDA of approved project expenses. When disbursements are received by the City, the City will promptly reimburse EWEB and LCOG for expenses submitted for payment, consistent with the direct agreements between the City and EWEB and the City and LCOG. The City will issue all required permits for work, when consistent with the City's existing regulations and requirements. The City will maintain all records required by the EDA and by state law.

5. All parties will abide by state procurement regulations, as adopted by each local jurisdiction. All parties will abide by federal and state prevailing wage laws, and shall require any contractors subject to the law to provide weekly payroll reports. The City of Eugene will be the project manager responsible for collecting any such weekly payroll reports and complying with applicable state and federal laws with regard to registering the project with the state and maintaining all prevailing wage reports and otherwise observing all prevailing wage requirements.

6. The parties specifically agree to the following division of responsibilities:

a. the City of Eugene shall be responsible for filing all EDA project reports.

b. the City of Eugene shall receive and distribute grant funds and file EDA financial reports.

c. EWEB shall be responsible for bidding, awarding and managing the procurement contracts for the acquisition of construction materials, specifically the microduct and the fiber as personal property subject to a federal security interest, and for any contracts associated with installation of the microduct or fiber colocated within the electrical system. Except where using outside contractors would create a cost savings, or where it would facilitate timely completion of the project, EWEB is expected to use EWEB personnel to install all microduct and all fiber installation involving work within the electrical vaults.

d. LCOG shall be responsible for bidding, awarding and managing the procurement contracts for the acquisition of any materials for the expansion of the WIX. LCOG shall be responsible for bidding, awarding, and managing any construction contracts, including installation of fiber, for work outside the electrical system. Given the variety of work and the possibility that the work may be more involved than a single contractor could handle, LCOG may, as long as it acts consistent with applicable procurement rules, use a qualification for types of work procurement solicitation, and select more than one qualified contractor, as long as all contractors selected meet the specified minimum qualifications.

e. The City of Eugene will be responsible for providing and documenting the EDA match requirement.

7. The parties have reviewed and understand the EDA grant application forms and award documents and the applicable statutes and regulations as those are referenced in the award documents, as those documents have been presented to them, and the parties agree to individually submit the EDA required application materials, including this agreement, to the EDA.

8. This Agreement shall remain in effect during the useful life of any material or equipment or facilities built, constructed or installed in accordance with the terms of the EDA grant. If any material, equipment or facilities must be replaced during such time as it would have otherwise been within the calculated original life of the replaced material, equipment or facilities, this agreement shall apply to the replacement equipment, material or facilities in the same manner that it would apply to the original material, equipment or facility. Given that the expected useful life of fiber optic cable, at twenty (20) years, is the longest expected useful life of any element of the EDA grant, the term of this agreement shall be twenty (20) years. The US Department of Commerce, EDA, shall remain an interested party and beneficiary of the parties' individual maintenance responsibilities during the term of this agreement. Certain material and facilities covered by this Agreement are intended to be leased to private parties to facilitate the use of the materials, and any such lease of, and any pledge of an interest in, any material or equipment or facilities developed pursuant to the downtown project shall be consistent with the long term maintenance and ownership obligations set forth in this Agreement.

9. The parties agree that any change to this Agreement must be in writing, signed by all the parties and must be submitted to the EDA.

10. The parties agree to provide the EDA with certified resolutions, providing that the authorized representative of each party is authorized to sign this agreement on behalf of the party adopting the resolution.

Signed:

The City of Eugene

Jon Ruiz, Eugene City Manager

Date

Eugene Water and Electric Board (EWEB)

Frank Lawson, EWEB General Manager

Date

Lane Council of Governments (LCOG)

Brendalee s Wilson, LCOG Executive Director

Date

**RESOLUTION NO. 1702
JANUARY 2017**

**EUGENE WATER & ELECTRIC BOARD
DOWNTOWN FIBER JOINT AGREEMENT**

WHEREAS, the City of Eugene, the Eugene Water and Electric Board and the Lane Council of Governments have applied for a grant from the Economic Development Administration of the US Department of Commerce to facilitate the construction of a fiber optic system in downtown Eugene; and

WHEREAS it is a requirement of the grant that the applicants enter into a joint agreement providing for compliance with the grant conditions, and that the governing bodies of the participating entities adopt a resolution authorizing the chief executives of the bodies to sign the joint agreement;

NOW THEREFORE IT IS RESOLVED BY THE BOARD OF THE EUGENE WATER AND ELECTRIC BOARD

1. That the Eugene Water and Electric Board, being aware of the terms of the joint agreement, and the grant application, and being fully supportive of the project and the benefits that will be derived for downtown Eugene and the area as a whole, hereby accepts the joint agreement and authorizes the General Manager to execute the joint agreement in substantially the form presented to the Board.

Dated this 10th day of January, 2017.

THE CITY OF EUGENE, OREGON
Acting by and through the
Eugene Water & Electric Board

President

I, ANNE M. KAH, the duly appointed, qualified, and acting Assistant Secretary of the Eugene Water & Electric Board, do hereby certify that the above is a true and exact copy of the Resolution adopted by the Board at its January 10, 2017 Regular Board Meeting.

Assistant Secretary