2120-25

MEMORANDUM OF UNDERSTANDING

Between

THE CITY OF TUALATIN, OREGON
And

THE CITY OF SHERWOOD, OREGON, operating as SHERWOOD BROADBAND

WHEREAS, the City of Tualatin ("Tualatin") has enacted regulations governing the use of its rights of way by telecommunications carriers, codified at Chapter 10.1 of the Tualatin Municipal Code ("TMC"); and

WHEREAS, the City of Sherwood has created a utility which operates as Sherwood Broadband ("SBB"), to deploy technology that will improve access to the internet for businesses and residents within and outside the City's boundaries; and

WHEREAS, SBB wishes to deploy fiber within Tualatin's city limits to occupy limited rights of way, and Tualatin wishes to allow such deployment, with due regard for the enforceability of its regulations and the best interests of Tualatin and its residents;

NOW, THEREFORE, Tualatin and SBB agree as follows:

1. Tualatin and SBB recognize that the TMC requires a franchise for a "telecommunications carrier" wishing to occupy Tualatin's rights of way. SBB is not operating as a "telecommunications carrier" as that term is defined in the TMC. Nevertheless, SBB wishes to occupy certain limited Tualatin rights of way. The parties wish to document that Tualatin's right of way construction standards apply to SBB's work in the rights of way to deploy its fiber. The parties further wish to document that SBB is required to pay fair and reasonable compensation to Tualatin for its use of Tualatin's rights of way.

2. Significant regulatory uncertainty currently exists in the area of local government franchising of various users of its rights of way, including SBB. The parties wish to assure that Tualatin is treating SBB and all other right of way users in a legally sound and competitively neutral manner.

3. Due to this regulatory uncertainty, negotiations for a traditional franchise agreement could not be completed prior to SBB's commencement of construction of its fiber in Tualatin. Tualatin and SBB recognize the benefits of the timely installation and completion of the fiber to Tualatin, its constituents and to SBB. Accordingly, Tualatin recognizes that time is of the essence and therefore agrees to timely review of all properly completed permit applications for the construction of the fiber. SBB and Tualatin agree to meet and establish procedures and a timetable, in good faith, for negotiating a franchise or other required lawful authority for SBB's use and occupancy of Tualatin rights of way. City will not delay the issuance of permits in the interim.

4. SBB has no plans to offer telecommunications or cable service in Tualatin at this time. If SBB decides to offer such services, SBB will notify Tualatin promptly and begin negotiations for an appropriate franchise agreement prior to offering such service, in accordance with applicable law.

5. SBB will comply with all requirements of any permit issued by Tualatin and with all applicable construction requirements of the TMC. The compensation for SBB's right of way occupancy will be $500.00 per year, in lieu of the minimum annual payment otherwise established by the City Council, based on the limited right of way usage contemplated by this Agreement.

Each person signing below represents that he/she is authorized to execute this agreement on behalf of the party entering into this Agreement.

For the City of Tualatin

Sherilyn Lombos, City Manager

Dated: 9/12/08

For City of Sherwood

Jim Patterson, City Manager

Dated: 9/10/08

APPROVED AS TO LEGAL FORM

Brenda L. Braden

CITY ATTORNEY