

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
GOLDEN STATE CONNECT AUTHORITY  
AND  
COUNTY OF SONOMA  
FOR USE OF COUNTY RIGHT OF WAY AND SIMILAR PROPERTIES FOR  
BROADBAND INTERNET NETWORK**

**THIS MEMORANDUM OF UNDERSTANDING** (“MOU”) is dated \_\_\_\_\_, 20\_\_ and made between **GOLDEN STATE CONNECT AUTHORITY** (“GSCA”) and **COUNTY OF SONOMA** (“County”). This MOU is made in reference to the following facts:

**RECITALS:**

- (a) GSCA is a joint powers authority organized and existing under Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code. Under that certain *Golden State Connect Authority Joint Exercise of Powers Agreement*, GSCA is authorized to establish and operate programs and projects to facilitate the provision and expansion of broadband internet access service in rural communities, and to acquire, construct, improve, and maintain broadband infrastructure and operate broadband internet access service. By virtue of the authority of its contracting constituent public agencies under Government Code section 26231, GSCA is authorized to acquire, construct, improve, and maintain broadband infrastructure and operate broadband internet access service.
- (c) County is a political subdivision of the State of California, and a full Member of GSCA.
- (d) GSCA proposes to finance, construct, own, and operate an open access broadband internet access service network, in the same manner as a municipal utility. Portions of the proposed network may be located within the unincorporated area of County.
- (e) County desires to promote and facilitate the construction and operation of GSCA's proposed network, which will serve the public purposes of County, and provide significant benefits for County residents.
- (f) Under the Joint Exercise of Powers Act (Gov. Code, §§ 6500 et seq.), GSCA and County (collectively, the “Parties”) are authorized to enter into an agreement to jointly exercise any power common to both entities. Government Code section 6504 further provides that the “personnel, equipment or property of one or more of the parties to the agreement” may be contributed for the purpose set forth in the agreement.

**THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

1. Recitals Incorporated. The above recitals are true and correct, and are hereby incorporated into this MOU.
2. Authority. This MOU is authorized by Government Code sections 6500 et seq. and 26231.
3. No Separate Entity. This MOU does not create an agency or entity that is separate from the parties to the agreement.
4. Irrevocable License. Pursuant to Government Code section 25526.6 and Streets and Highways Code section 1460, the County hereby contributes the following to GSCA in furtherance of the public purposes of the proposed broadband project:
  - a. Subject to the terms and conditions of this MOU, GSCA is hereby granted a non-exclusive license to construct, improve, operate, and maintain fiber-optic lines and other broadband infrastructure, with the necessary appurtenances, across, along, in, under, over, or upon any public right of way or any utility easement, to the extent such right of way or easement is owned by or otherwise under the possession or control of County, including any road, street, alley, avenue, or highway, and across, under, or over any railway, canal, ditch, or flume which the route of such works intersects, crosses, or runs along. County does not warrant or guarantee availability, suitability, or any other condition or aspect of any rights of way or easements, or as to any particular right of way or easement or any portion thereof, including with regard to any future conditions or activities in the subject right of way or easement. This license shall survive withdrawal of County from GSCA or termination of this MOU, and shall be irrevocable with respect to any broadband infrastructure financed or constructed in reliance upon such license.
  - b. Construction of broadband infrastructure under this MOU shall be contingent upon obtaining an encroachment permit or similar authorization from County, as provided in Section 5, which shall not be unreasonably withheld, conditioned, or delayed. Permits shall be required as applicable on a project-level basis (based on geographic area, construction contract, etc.) and shall not be granted on a programmatic level. Nothing in this MOU shall be deemed to satisfy or waive the requirement to obtain separate County approval as to any actual improvement to or activity in any County property or right of way, as is otherwise required by Public Utility Code section 10103.
  - c. Except as provided in Section 5, this license and the exercise of GSCA's rights hereunder shall be without cost to GSCA.
  - d. This license shall have the same terms and conditions as the franchise granted to municipal corporations under Article 3 (commencing with

Section 10101) of Chapter 1 of Division 5 of the Public Utilities Code, to the extent not inconsistent with the terms of this MOU.

Notwithstanding, nothing herein grants nor shall be deemed to constitute a grant of any exclusive franchise or exclusive rights as to broadband infrastructure or service in any County rights of way, easements, or other properties.

- e. The licenses contributed to GSCA under this MOU are in addition to, and do not diminish, the rights, if any, possessed directly by GSCA under Article 3 (commencing with Section 10101) of Chapter 1 of Division 5 of the Public Utilities Code.
- f. GSCA expressly recognizes and understands that this MOU may create a possessory interest subject to taxation and that GSCA may be subject to the payment of property taxes levied on such interest.

5. Encroachment Permits.

- a. County shall collaborate with GSCA in good faith to streamline issuance of any permits or authorizations necessary for activity in County roadways or other properties licensed herein, including for any construction, improvement, or maintenance of broadband infrastructure as set forth in Section 4.
- b. Fees charged in connection with such permit or authorization shall be at standard, generally-applied rates for all such encroachment permits.. No rent, license fee, franchise fee, or other recurring fee or charge shall be imposed by County for such permit or for use of the right-of-way or utility easement.
- c. Such permits or authorizations may be subject to those conditions determined necessary by County to afford security for life and property, provided that County shall collaborate with GSCA in good faith to reduce the costs of compliance with any such conditions to the greatest extent practicable. As part of GSCA's due diligence for project construction and GSCA's related bidding or procurement, GSCA shall in submit in advance all construction plans and specifications to County. County shall review such materials for conformance with applicable requirements, regulations, and road construction standards, and provide timely feedback to GSCA.
- d. All access, construction, maintenance, and other activity by GSCA, or anyone acting pursuant to this MOU, shall comply with all County requirements and regulations for encroachments and activity in County roadways, including under County's Road Construction Standards. The applicability of said standards and requirements shall survive the expiration of any encroachment permit.
- e. All infrastructure and other improvements installed or maintained by GSCA, or by anyone acting pursuant to this MOU, shall be the sole

responsibility of GSCA and not County, including as to all costs, expenses, and liabilities for maintenance, repair, design defect, replacement, inspection, and record keeping. Said responsibility shall survive any encroachment permit.

- f. Upon completion of each installation project, GSCA shall submit as-built plans to County reflecting actual infrastructure construction, and shall report all installations to Underground Service Alert.
  - g. As to all infrastructure and other improvements installed or maintained by GSCA or any person employed by or under GSCA in any capacity, County reserves the right to require GSCA, at GSCA's sole cost and expense, to remove, relocate and/or modify the improvements or any portion thereof in the event that any County roadway project or program necessitates such action. In the event of non-compliance, County shall have the right but not the obligation, to remove, relocate and/or modify any such improvements. The cost of such work shall be paid to County on demand.
6. Fiber Huts. County shall collaborate with GSCA in good faith to identify and grant license rights to locations on public property for ancillary broadband network equipment (i.e., "fiber huts") so long as said properties and locations are amenable for such use and that GSCA's use or improvement will not conflict or interfere with County's use of same, and County shall exercise its best efforts to make such locations available for use by GSCA at no cost. Work and improvements in such locations shall comply with applicable County standards and regulations, including building codes and standards pertaining to structures adjacent to roadways and paths of travel.
  7. Technical Assistance. Upon request by GSCA, County shall cooperate with GSCA to review plans for the proposed network infrastructure in order to identify any potential constraints to the timely and efficient construction and operation of the network. Any such technical assistance shall be on a courtesy basis only with no other obligation, including no duty to inquire, and with no representation or warranty as to the existence, quality, accuracy, or suitability of such assistance or information provided or not provided thereunder. Such assistance shall supplement, and not be in lieu of, GSCA conducting its own appropriate due diligence as to all aspects of its network project.
  8. Consultations. GSCA shall regularly consult with County regarding the construction and operation of GSCA's proposed network within the county. GSCA shall solicit County's recommendations regarding the location of broadband infrastructure within the county and will consider those recommendations and any supporting data prior to making a decision. The parties intend that equity will be a guiding principle in selecting locations for broadband infrastructure within the county, subject to Section 10.

9. Lead Agency. Pursuant to California Code of Regulations section 15051, subdivision (d), the parties hereby designate GSCA as the lead agency for purposes of the California Environmental Quality Act with respect to this Memorandum of Understanding and any construction, improvement, operation, or maintenance of broadband internet access service undertaken in accordance herewith.
10. No Commitment to Construct or Operate. No provision of this MOU shall be construed to obligate GSCA to finance, construct, or operate any broadband infrastructure within or outside County, or to provide any broadband services at any time. Moreover, neither party has definitely committed itself to the construction or operation of the proposed broadband network as a whole or to any particular features, so as to effectively preclude any alternatives or mitigation measures, including the alternative of not going forward with the project.

County has not made and makes no representation or warranty, express or implied, as to any of the County property contributed hereby, or any aspect or quality thereof. All such property shall be in its "as-is, where-is" condition and state of repair and suitability, subject to all existing and pre-existing uses and conditions, and taken and used at GSCA's sole risk and responsibility.

11. Compliance with Law. GSCA and County shall perform all functions related to the services or activities described herein in accordance with all applicable federal, state, and local laws, ordinances, regulations, and rules, and in accordance with the terms of the aforementioned grants.
12. Independent Contractor. GSCA shall, during the entire term of this MOU, be construed to be an independent contractor and nothing in this MOU is intended nor shall be construed to create an employer-employee relationship, a joint venture relationship, or to allow County to exercise discretion or control over the professional manner in which GSCA performs the services which are the subject matter of this contract. GSCA staff performing services under this MOU not be deemed employees of County for any purpose.
13. Indemnification. In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between the parties hereto pursuant to Government Code section 895.6, the parties agree that all losses or liabilities incurred by a party shall not be shared pro rata but instead the parties agree, pursuant to Government Code section 895.4, as follows:
  - a. GSCA shall hold harmless, defend, and indemnify County, its agents, officers, and employees, against all claims, suits, actions, costs, expenses (including but not limited to reasonable attorney's fees, expert fees, litigation costs, and investigation costs), damages, judgments or decrees by reason of any person's or persons' bodily

injury, including death, or property (including property of County) being damaged by the negligent acts, willful acts, or errors or omissions of GSCA, or any person employed by or under GSCA in any capacity, in exercise of the rights or activities under this Agreement, provided for herein, except to the extent the injury or loss is caused by the sole negligence or intentional wrongdoing of County.

- b. County shall hold harmless, defend, and indemnify GSCA, its agents, officers, and employees, against all claims, suits, actions, costs, expenses (including but not limited to reasonable attorney's fees, expert fees, litigation costs, and investigation costs), damages, judgments or decrees by reason of any person's or persons' bodily injury, including death, or property (including property of GSCA) being damaged by the negligent acts, willful acts, or errors or omissions of County, or any person employed by or under County in any capacity, during the provision of services provided for herein, except when the injury or loss is caused by the sole negligence or intentional wrongdoing of GSCA.
14. Insurance. GSCA and County shall each secure and maintain in full force and effect during the full term of this agreement commercial general liability insurance or participation in a self-insurance program with limits of liability of not less than \$1 million combined single limit bodily injury and property damage. Policies shall be written by carriers reasonably satisfactory to each party. On request, a certificate evidencing the insurance requirements of this paragraph shall be provided.
15. No Third Party Beneficiary. Nothing in this MOU shall be construed to create any rights of any kind or nature in any other party not a named party to this MOU.
16. Authorization. Each party executing this MOU and each person executing this MOU in any representative capacity, hereby fully and completely warrants to all other parties that he or she has full and complete authority to bind the person or entity on whose behalf the signing party is purporting to act.
17. Entire Agreement/Amendments. This MOU supersedes all previous agreements or understandings, and constitutes the entire understanding between the parties with respect to the above referenced services, terms of compensation, and otherwise. This MOU shall not be amended, except in a writing that is executed by authorized representatives of both parties.
18. Governing Law and Venue. This agreement shall be deemed to be made in, and shall be governed by and construed in accordance with the laws of the State of California (excepting any conflict of laws provisions which would serve to defeat application of California substantive law). Venue for any action arising from this agreement shall be in Sacramento County, California.

19. Term and Termination.

- a. This Agreement shall become effective when fully executed by both parties ("Effective Date") and shall remain in effect until terminated in accordance with this section.
- b. Either Party may terminate this MOU by giving at least ninety (90) calendar days' written notice to the other Party, subject to Section 4.a.

20. Notices. Any notice required to be given pursuant to the terms and provisions of this MOU shall be in writing and shall be sent first class mail to the following addresses:

GSCA:                      Golden State Connect Authority  
                                  Attn: Executive Director  
                                  1215 K Street, Suite 1650  
                                  Sacramento, CA 95814

County:                    \_\_\_\_\_  
                                  \_\_\_\_\_  
                                  \_\_\_\_\_

**IN WITNESS WHEREOF**, GSCA and County have executed this Memorandum of Understanding on the day and year set forth below.

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

**GOLDEN STATE CONNECT AUTHORITY**

By: \_\_\_\_\_  
**Executive Director**

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

**COUNTY OF SONOMA**

By: \_\_\_\_\_  
**Chair, Board of Supervisors**