

**MEMORANDUM OF UNDERSTANDING
BETWEEN
GOLDEN STATE CONNECT AUTHORITY
AND
COUNTY OF NEVADA
REGARDING
THE CONSTRUCTION, IMPROVEMENT, OPERATION, AND MAINTAINANCE
OF BROADBAND INTERNET ACCESS SERVICE**

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is dated _____, 2022 and made between **GOLDEN STATE CONNECT AUTHORITY** (“GSCA”) and **COUNTY OF NEVADA** (“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.
- (c) County is a political subdivision of the State of California, and a full Member of GSCA. County is authorized to acquire, construct, improve, and maintain broadband infrastructure and operate broadband internet access service under Government Code section 26231.
- (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. A portion of the proposed network will 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 SHALL JOINTLY EXERCISE THEIR COMMON POWER 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 6504, the County hereby contributes the following property interests to GSCA in furtherance of public purposes of this MOU:
 - a. GSCA is hereby granted a 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 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, or any utility easement, owned by or otherwise under the possession, control, or jurisdiction of County. 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 license 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.
 - 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.
 - e. The property interests 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.
5. Encroachment Permits.
 - a. County shall collaborate with GSCA in good faith to streamline issuance of any permits or authorizations necessary for construction, improvement, or maintenance of broadband infrastructure as set forth in Section 4.

- b. Any fees charged in connection with such permit or authorization shall not exceed the reasonable costs to process and issue the permit. No rent, license fee, franchise fee, or other recurring fee or charge shall be imposed 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.
- 6. Fiber Huts. County shall collaborate with GSCA in good faith to identify appropriate locations on public property for ancillary broadband network equipment (i.e., "fiber huts"), and shall exercise its best efforts to make such locations available for use by GSCA at no cost.
- 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.
- 8. Grant-Related Services. Upon mutual agreement of the County Executive Officer of County and GSCA's Executive Director, GSCA may provide consulting or administrative services to County to facilitate implementation of any federal or state grants received by County relating to broadband services. County shall use its best efforts to include the reasonable costs of GSCA's services within the grant, and shall reimburse those amounts to GSCA from grant funds to the extent allowed by the grant.
- 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.
- 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, during the provision of services provided for herein, except when 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: Information and General Services
Attn: Chief Information Officer
950 Maidu Ave, Suite 130
Nevada City, CA 95959

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

Date: 9/16/2022

GOLDEN STATE CONNECT AUTHORITY

By: 
Executive Director

Date: _____

COUNTY OF NEVADA

By: _____
Chair, Board of Supervisors