

**BEFORE THE CITY COUNCIL OF THE CITY OF INDEPENDENCE
STATE OF OREGON, COUNTY OF POLK**

An Ordinance Approving an Amended and]
Restated Intergovernmental Agreement of the]
Monmouth Independence Network (MINET)] Council Bill #2022-13
Between Independence and the City of Monmouth;]
And Declaring an Effective Date]

ORDINANCE NO. 1604

WHEREAS, in 2004 the cities of Independence and Monmouth entered into an intergovernmental agreement that formed MINET (MINET IGA); **and**

WHEREAS, pursuant to ORS 190.085, the City of Independence ratified the creation of MINET as an intergovernmental entity and adopted the MINET IGA via Ordinance 1436; **and**

WHEREAS, the MINET IGA was amended in 2006 and 2010 via ordinances 1457 and 1491, **and**

WHEREAS, the cities have worked together to update and consolidate all prior MINET IGA restatements into one complete document and to clarify the respective roles of the Board and General Manager of MINET;

NOW, THEREFORE, THE CITY OF INDEPENDENCE DOES ORDAIN AS FOLLOWS:

Section 1. Amendment. All prior Council ordinances adopting or amending the MINET IGA are hereby amended to reflect the Council's approval of The Amended and Restated Intergovernmental Agreement of the Monmouth Independence Network (MINET) between the City of Independence and the City of Monmouth attached hereto as Exhibit A and incorporated herein by this reference (Restated MINET IGA).

Section 2. Ratification. The Council hereby ratifies the Restated MINET IGA, which hereafter replaces all prior versions of the MINET IGA.

Section 3. Authorized Execution. The City Manager is hereby authorized and directed to sign the Restated MINET IGA on the City's behalf.

Section 4. Effective Date. This ordinance will take effect thirty (30) days after the date of passage and signature by the Mayor.

First Reading to the Council, this 13th day of December, 2022

Second Reading to the Council, this 13th day of December, 2022

Adopted, this 13th day of December, 2022

Signed by the Mayor, this 13th day of December, 2022

ATTEST:

/s/ John McArdle
JOHN McARDLE, MAYOR

/s/ Karin Johnson
Karin Johnson, MMC, City Recorder

**AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT OF THE
MONMOUTH INDEPENDENCE NETWORK (MINET)**

This Amended and Restated Intergovernmental Agreement (“Agreement”) of the Monmouth Independence Network (MINET) is an Intergovernmental Agreement (“IGA”) pursuant to Chapter 190 of the Oregon Revised Statutes, and is made and entered into by and between the City of Independence, a municipal corporation, hereinafter referred to as “Independence” and the City of Monmouth, a municipal corporation, hereinafter referred to as “Monmouth.” Independence and Monmouth are each referred to herein as “party” and collectively as “parties,” or individually as “city” and collectively as “cities.”

WITNESSETH:

WHEREAS, the parties to this Agreement are governmental units of the state of Oregon in Polk County; and

WHEREAS, the City Council of Monmouth and the City Council of Independence determined in 2004 that their communities suffered from a lack of available, and affordable broadband services; and

WHEREAS, the City Council of Independence and the City Council of Monmouth decided to provide their citizens with the economic development and quality of life opportunities occasioned by the provision of affordable broadband service; and

WHEREAS, the Cities of Monmouth and Independence cooperated in the development and expansion of the fiber optic loop constructed by the Cities for the delivery of services to individual users within each City, and have cooperated in the continued operation, maintenance, repair, replacement and expansion of the broadband system and operations inside and outside of the cities consistent with ORS 759.016, which recognizes the state’s goal of promoting access to broadband services; and

WHEREAS, the parties have amended and restated the original IGA several times and now desire to incorporate those changes and others in one document;

NOW THEREFORE, in consideration of the promises and covenants hereinafter contained, the parties hereto agree as follows:

1. General Purpose.

The general purpose of this Agreement is to provide for an organization through which the parties may jointly and cooperatively provide for the establishment, operation, repair, maintenance, replacement and expansion of broadband facilities and systems for the use and benefit of the parties and others, both inside and outside of the respective cities.

2. Definition of Terms.

For the purposes of this Agreement, the terms defined in this article shall have the meanings given them, as follows:

(a) “MINET” means the organization created pursuant to this Agreement, the Monmouth Independence Network, which organization is hereafter referred to as MINET.

(b) “Board” means the governing Board of Directors of MINET established under Section 4 of this Agreement.

(c) “Council” means the governing body of a city.

(d) “Franchise authority” or “Franchisor” means a government authority, under the State of Oregon, desiring to receive services from MINET.

3. Membership/Service Agreements

After July 1, 2004, any new franchise authority is eligible to receive services from MINET upon the favorable vote of two-thirds of the members of the Board. A franchisor desiring services shall execute a service agreement in a form acceptable to MINET in its sole discretion.

4. Board of Directors

(a) The governing body of MINET shall be a six-member Board. Each city shall be entitled to one director who is an elected official of that city, one director selected from the general public using the city’s board and commission appointment process, and a third director who is the City Manager or city council-appointed director for each city. Each director shall have one vote. Directors shall be appointed by the council of each member city except for the City Managers of the cities. If the City Manager resigns or declines to serve, or is removed by the City Manager’s city council, a director will be appointed by that city’s council to serve in place of the City Manager. Should a city choose to not place its City Manager as a voting member of the Board, that City Manager shall then be a non-voting member of the Board.

(b) Upon departure of a director, the departing director’s city will appoint a replacement director within 60 days, or as soon as possible thereafter, for the balance of the departing director’s term.

(c) Directors shall serve without compensation from MINET. The Board may authorize the payment of reasonable and necessary expenses of officers and directors incurred in connection with their duties, but this shall not include the expenses of attending meetings of MINET within the Monmouth and Independence Urban Growth Boundary areas.

(d) When a city appoints a director, it shall give notice of such appointment to MINET in writing as soon as possible. Such notice shall include the mailing address and contact information of the new director. The names and addresses shown on such notices may be used

as the official names and addresses for the purposes of giving any notices required by this Agreement.

(e) Directors shall be appointed to staggered three-year terms which can be renewed by the governing body of the city with no limit on the number of terms that a director may serve.

(f) There shall be no voting by proxy. All Board votes must be cast in person, via teleconference or virtually as permitted by Oregon law.

(g) Any director shall be subject to removal by the council of the appointing city, at any time, with or without cause.

(h) A majority of the directors shall constitute a quorum of the Board.

5. Meetings

a. All MINET public meetings will be held in compliance with Oregon's public meetings laws. Regular public meetings of the Board shall be held at least quarterly in the months of January, April, July and October, unless the schedule is modified by the Board.

b. Special or emergency meetings of the Board may be called (a) by the president, or (b) upon the written request of 2 or more directors.

c. The specific date, time and location of regular, special and emergency meetings of the Board shall be determined by the Board. Regular, special and emergency meetings of the Board shall be held within the Monmouth or Independence Urban Growth Boundary areas. The Board may also hold regular, special or emergency meetings virtually.

d. Notice of regular meetings of the Board shall be given to the directors by the secretary-treasurer of the Board or a designee in advance and the agenda for such meetings shall accompany the notice. However, business at regular meetings of the Board need not be limited to matters set forth in the agenda.

e. Notice for special and emergency meetings shall be consistent with Oregon's public meetings laws.

6. Officers

(a) The officers of the Board shall consist of a president, a vice-president and a secretary-treasurer who shall be elected at the regular annual meeting of the Board held in July, or as soon as reasonably possible thereafter, of each even numbered year. New officers shall take office at the adjournment of the annual meeting of the Board at which they are elected, or as otherwise agreed to by the Board. The President and Vice-President shall be from different cities. The Vice President shall succeed to the office of President at the end of the President's term.

(b) A vacancy shall immediately occur in the office of any officer upon the resignation, death or upon the ceasing to be a director. Upon a vacancy occurring in any office,

the Board shall fill such position at the next regularly scheduled meeting of the Board or as soon as possible thereafter.

(c) The three officers shall all be members of the Board.

(d) The president shall preside at all meetings of the Board. The vice-president shall act as president in the absence of the president. The Secretary Treasurer shall preside at any meetings where the president and vice-president are absent.

7. Powers and Duties of the Board

(a) The powers and duties of the Board shall include the powers set forth in this Section.

(b) The Board shall take such action as it deems necessary and appropriate to accomplish the general purposes of the organization including the establishment, operation, repair, maintenance, replacement and expansion of broadband facilities and systems for the use and benefit of the parties and others, both inside and outside the respective cities.

(c) The Board may enter into contracts, leases or other agreements with others, whenever the Board shall deem this to be advisable.

(d) The Board may acquire, hold and dispose of property both real and personal as the Board deems necessary, and contract for space, materials, supplies and personnel.

(e) The Board shall approve subscriber rates, dues, fees and charges. The Board may direct the General Manager and Staff to develop cost of service and rate models for the Board's consideration.

(g) The Board may accept donations on behalf of MINET, apply for and use grants or loans of money or other property from the state, or any other governmental units or commercial organizations and may enter into agreements required in connection therewith and may hold, use, and dispose of such moneys or property in accordance with the terms of the donation, grant, loan, or agreement relating thereto.

(h) The Board shall cause an annual independent audit of the books to be made and shall make an annual financial accounting and report in writing to the cities. MINET's books and records shall be available for and open to examination by the cities and subscribing franchise authorities at all reasonable times.

(i) The Board shall establish and approve an annual budget for the organization as provided in this Agreement. The Board may direct the General Manager and Staff to develop a budget for the Board's consideration.

(j) The Board may accumulate and maintain reasonable working capital reserves. In addition, subject to Section 15 of this Agreement, the Board may invest and reinvest funds not currently needed for the purposes of the organization. Such investment and reinvestment shall be in accordance with and subject to the laws applicable to the investment of municipal funds.

(k) The Board may make MINET's broadband information systems available to the cities and subscribing franchise authorities, subject to reasonable charges that cover the costs for the development and processing thereof.

(l) The Board may provide for any of MINET's employees to be members of the public employees retirement association or other retirement plans and may make any required employer contributions to that plan and any other employer contributions which municipalities are authorized to make.

(m) The Board may purchase public liability insurance and such other bonds or insurance as it may deem necessary to supplement the insurance requirements provided in Section 27.

(n) The Board may adopt and amend Bylaws of MINET from time to time; provided, nothing in the bylaws may conflict with the provisions of this Agreement, and any such bylaw, practice, or custom in conflict with this Agreement shall be void.

(o) The Board may exercise any other power necessary and incidental to the implementation of its powers and duties.

(p) The Board shall act as MINET's local contract review board, and may approve its own procurement policies consistent with Oregon law.

(q) The Board may create subcommittees with appropriate powers and duties that report to the Board.

(r) The Board may delegate appropriate powers and duties to the General Manager in addition to that which are delegated in Section 8.

8. General Manager

A General Manager shall be appointed by the Board to manage the day-to-day operations of MINET's business affairs. The General Manager shall have full control and management of the day-to-day business affairs of MINET, including authority to:

- Enter into contracts with a value less than \$75,000, as necessary and appropriate;
- Procure insurance;
- Engage accountants, auditors and legal counsel as necessary and appropriate;
- Create budgets and develop cost of service and rate recommendations for the Board;
- Provide for the prosecution and defense or other participation in actions or proceedings at law in which MINET may have an interest;
- Employ personnel as necessary on a full-time, part-time or consulting basis;
- Make employment and personnel decisions;
- Conduct such research and investigation as he/she deems necessary on any matter related to or affecting the general purposes of the organization;

- Look for new business and expansion opportunities consistent with the purpose of the organization and to report such opportunities to the Board; and
- Contract for space, materials, supplies and personnel.

9. Financial Matters

- (a) The fiscal year of MINET shall be the year from July 1 through June 30.
- (b) An annual budget shall be adopted by the Board in June of each year. Copies shall be transmitted promptly to the city manager of each member city.
- (c) MINET funds may be expended by the Board in accordance with procedures established by law for the expenditure of funds by municipalities. Orders, checks, drafts, and other legal instruments shall be signed by the president or vice-president and countersigned by the secretary-treasurer or such other person as shall be designated by the Board.

10. Contracts

- (a) Contracts shall be bid, offered, negotiated, and executed and purchases shall be made in accordance with the legal requirements applicable to contracts and purchases by Oregon municipal corporations.

11. Indebtedness

- (a) Except as specifically provided in this Section 11, any debts, liabilities and obligations issued or incurred by MINET shall be obligations solely of MINET, and neither City shall be liable for those debts, liabilities or obligations jointly, severally or in any other fashion. This Section shall not preclude either City from separately agreeing to guarantee obligations of MINET.

- (b) The Cities of Monmouth and Independence may, from time to time, borrow money for the benefit of MINET, on such terms as the Cities and MINET may, from time to time, agree. The amount of borrowing by each City for each purpose shall be:

Monmouth	--	55 percent
Independence	--	45 percent

These percentages shall be adjusted upon amendment of this Agreement by the cities. MINET shall be obligated to pay to each city all amounts that each city is required to pay on a city borrowing described in this subsection, as specifically provided in the documents executed by MINET and the Cities at the time each borrowing occurs.

- (c) MINET may borrow money through revenue bonds or with financing Agreements as provided in ORS 271.390 with the consent of both cities. Unless otherwise expressly agreed by both cities, each city shall be severally, but not jointly, liable for its proportionate share of any

borrowing described in this subsection, but only for each city's percentage of that borrowing calculated as provided in subsection (b) of this Section.

12. Franchise Fee

To the extent permitted by law, MINET shall enter a franchise agreement and pay a franchise fee to each city for the privilege of operating a system under this Agreement. The individual subscriber's service location will determine city jurisdiction.

13. Withdrawal

(a) Either city may, at any time, give written notice of withdrawal from MINET. The nonpayment of charges as set forth herein and the refusal or declination of either city to be bound by any obligation to the organization shall also constitute notice of withdrawal.

(b) Actual withdrawal shall not take effect for a period of 180 days from the date of such notification.

(c) Upon effective withdrawal, the withdrawing city shall continue to be responsible for its share of debt and any fees for service until the debt is retired or service agreements have expired.

(d) A city withdrawing from this Agreement at a time when such withdrawal does not result in dissolution of the organization shall forfeit its claim to any assets of the organization.

14. Dissolution

(a) The organization shall be dissolved whenever either city withdraws from MINET, unless the remaining city finds another government entity to replace the withdrawing city, or is otherwise continued by the remaining city as permitted under Oregon law.

(b) In the event of dissolution, the Board shall determine the measures necessary to effect the dissolution and shall provide for the taking of such measures as promptly as circumstances permit and subject to the provisions of this Agreement.

(c) Upon dissolution and payment of all obligations, the remaining assets of MINET shall be distributed among the cities in proportion to their contributions, as determined by the allocation of revenue specified herein and specifically as detailed in Section 11 of this Agreement.

(d) If, upon dissolution, there is an organizational deficit, such deficit shall be charged to and paid by the cities in proportion to their contributions, as determined by the allocation of revenue specified herein and specifically as detailed in Section 11 of this Agreement.

15. Revenue

The cities of Independence and Monmouth agree that any MINET revenue declared to be surplus shall be used to retire the MINET debt early. Surplus revenue shall be an amount that exceeds the amount needed to pay for core business operations, which includes salaries and benefits, debt service, contractual obligations, payment of franchise fees, insurance, repair, maintenance, replacement and expansion of the system and a responsible operating reserve. When the initial startup debt is retired, 66 2/3% of the surplus revenue is to be returned to the cities and apportionment is to be based on the relative amount of revenue received per jurisdiction. The remaining 33 1/3% may be returned to the individual subscribers in a manner approved by the Board, or used for any other purpose deemed appropriate by the Board. Further changes to this provision will require a unanimous vote of the Board.

16. Employment Issues

(a) All employees of MINET shall be employees of MINET only, and shall not be deemed to be employed by Monmouth or Independence.

(b) MINET employees will be subject to the terms and conditions of MINET personnel policies, subject to and consistent with applicable state and federal law.

MISCELLANEOUS

17. Each party to this Agreement covenants to cooperate with the other party and agrees that this Agreement, and any rights and obligations there under, shall be governed by the laws of the State of Oregon, without regard to any principles of conflicts of laws.

If a dispute arises between the parties to this Agreement, the parties shall first attempt to resolve the dispute by negotiation, followed by mediation, and finally by arbitrating with a mutually acceptable arbitrator pursuant to the following Steps:

Step One: One party must provide written notice to the other, initiating Step One. The parties shall then authorize a person (“Authorized Official”) to negotiate on their behalf. If the dispute is resolved at this step, there shall be a written determination of such resolution, signed by the parties’ Authorized Official and ratified by each city, if required. Step One will be completed when the final written determination is delivered to each party.

Step Two: If the dispute cannot be resolved within fifteen (15) business days of the written notice initiating Step One, the parties may continue to negotiate or either party may submit the matter to mediation. The parties shall attempt to agree on a mediator. If they cannot agree, the parties shall request a list of five (5) mediators from an entity or firm providing mediation services. The parties will mutually agree on a mediator from the list provided. If the parties cannot mutually agree upon a mediator, the parties shall alternatively strike one name from the list until one mediator remains. The remaining mediator shall be the mediator for the dispute. Any common costs of mediation shall be borne equally by the parties, who shall each bear their own attorneys’ fees, costs and other expenses. If the issue is resolved at this step, a written determination of such resolution shall be signed by each Authorized Official and ratified by their

respective governing bodies, if necessary.

Step Three: If the parties are unsuccessful at Steps One and Two, the dispute shall be resolved by initiating an arbitration action with a mutually acceptable arbitrator. If the parties are unable to agree upon an arbitrator, the parties shall each prepare a list containing three arbitrators and appear before the presiding judge of the Circuit Court of the State of Oregon for Polk County to select an arbitrator. Any common costs of arbitration shall be borne equally by the parties, who shall each bear their own attorneys' fees, costs and other expenses.

18. This Agreement may only be changed, modified or amended upon a unanimous vote of the Parties.

19. All notices or other communications which are required or permitted herein shall be in writing and are sufficient if delivered personally, sent by prepaid overnight air courier, or sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

IF TO Monmouth:

City Manager
City of Monmouth
151 W Main
Monmouth, Oregon 97361
503-838- 0725, fax
503-751-0146, voice

IF TO Independence:

City Manager
City of Independence
P.O. Box 7
555 S. Main St.
Independence, Oregon 97351
503-838-5548, fax
503-838-1212, voice

20. Independent Contractor.

The relationship of the parties is that of independent contractors, and under no circumstances is to be construed as being that of partners or agents. Nothing contained in this Agreement shall be deemed to constitute between or among the parties a partnership or agency agreement for any purposes, including but not limited to federal income tax purposes.

21. Enforceability.

If any provision of this Agreement is held to be invalid, illegal, or unenforceable in any way, the remaining provisions shall nevertheless continue in full force and effect without any impairment or invalidation.

22. No Waiver.

Failure of either party at any time to require performance of any provision of this agreement shall not limit that party's right to enforce that provision.

23. Assignment.

This Agreement shall not be assignable except at the written consent of the parties hereto, and if so assigned, shall extend to and be binding upon the successors and assigns of the parties hereto.

24. Duration.

This Agreement shall continue in effect indefinitely, until terminated in accordance with its terms.

25. Applicable Law.

This Agreement will be governed by the laws of the State of Oregon.

26. Indemnity.

Consistent with the provisions of the Oregon constitution, both parties agree to defend, indemnify and hold harmless the other party and its officers, agents, and employees from and against all suits, actions, or claims of any character brought because of any injury or damage received or sustained by any person, persons, or property arising out of or resulting from any negligent act, error, or omission of the cities or its agents or employees.

27. Insurance.

MINET, through its General Manager, shall maintain insurance coverage with a carrier rated A- or better by A.M. Best in the following minimum limits, which shall include, but not be limited to:

General Liability Insurance - \$2,000,000 per occurrence and \$4,000,000 aggregate.

MINET's insurance under this Section shall service as primary insurance and shall name the cities as additional insureds.

28. Complete Agreement.

This Agreement and any future written restatements or amendments hereto, shall constitute the complete Agreement between the City of Independence and City of Monmouth and supersedes all prior written or oral discussions or Agreements.

29. Effective Date. The Effective Date of this Agreement shall be the date this Agreement is executed by both cities below.

IN WITNESS WHEREOF, the Cities of Independence and Monmouth have each caused this Agreement to be executed by a duly authorized official, acting pursuant to action of the Independence City Council, and the Monmouth City Council, and have executed this Agreement on the date hereinabove first written.

CITY OF INDEPENDENCE

Date

By:

CITY OF MONMOUTH

Date

By: