

**CONSULTING SERVICES AGREEMENT
BY AND BETWEEN CITY OF PLACERVILLE
AND ENTRYPOINT NETWORKS**

This Consulting Services Agreement ("Agreement") is made and entered into this 15th day of March 2023 by and between the CITY OF PLACERVILLE, a municipal corporation of the State of California (hereinafter referred to as "City" or "Municipality"), and EntryPoint Networks, Inc., a Delaware Corporation (hereinafter referred to as "Consultant").

RECITALS:

A. WHEREAS, City and Consultant entered into the Agreement on or around May 27, 2021, whereby Consultant agreed to provide consulting services relevant to the construction and operation of an open access broadband network; and,

B. WHEREAS, Consultant prepared a broadband strategic plan and has been assisting the City with implementation of that plan; and,

C. WHEREAS, the City would like to retain Consultant for additional consulting associated with the implementation of the broadband strategic plan.

D. WHEREAS, the City obtained a State Local Agency Technical Assistance Grant in the amount of \$499,958.91 to further the implementation of the broadband strategic plan

NOW, THEREFORE, in consideration of their mutual covenants, the parties hereto agree as follows:

AGREEMENT

1. **INCORPORATION OF RECITALS.** The recitals set forth above, and all defined terms set forth in such recitals and in the introductory paragraph preceding the recitals, are hereby incorporated into this Agreement as if set forth herein in full.

2. **DEFINITIONS.**

a. The term "City Manager" shall mean the duly appointed City Manager of the City of Placerville, California, or his/her designated representative.

b. The term "City Attorney" shall mean the duly appointed City Attorney of the City of Placerville, California, or his/her designated representative.

c. The term "City Clerk" shall mean the duly appointed City Clerk of the City of Placerville, California, or his/her designated representative.

3. PROJECT COORDINATION.

a. CITY. The City Manager shall be representative of CITY for all purposes under this Agreement. The City Manager or designee is hereby designated as the PROJECT MANAGER. The PROJECT MANAGER shall supervise the progress and execution of this Agreement.

b. CONSULTANT. The CONSULTANT shall assign a single PROJECT DIRECTOR to have overall responsibility for the progress and execution of this Agreement for CONSULTANT. CONSULTANT shall designate a PROJECT DIRECTOR, subject to the approval of the CITY. Should circumstances or conditions subsequent to the execution of this Agreement require a substitute PROJECT DIRECTOR for any reason, the CONSULTANT shall immediately notify PROJECT MANAGER of the name of the new PROJECT DIRECTOR.

4. SCOPE AND PERFORMANCE OF SERVICES.

a. Services to be Furnished. Subject to such policy direction and approvals as the CITY through its staff may determine from time to time, CONSULTANT shall perform the services set forth in the "Scope of Services" attached hereto as **Exhibit A** and incorporated herein by reference.

CONSULTANT shall devote such services pursuant to this Agreement as may be reasonably necessary for satisfactory performance of CONSULTANT's obligations pursuant to this Agreement.

b. Standard of Quality. All work performed by CONSULTANT under this Agreement shall be in accordance with all applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in CONSULTANT's field of expertise.

c. Compliance with Laws. CONSULTANT shall comply with all applicable federal, state, and local laws, codes, ordinances, regulations, orders, and decrees. In the event that CONSULTANT believes that there is a conflict between existing and applicable federal, state and/or local law, codes, ordinances, regulations, orders and decrees, that would preclude CONSULTANT from complying with the requirements set forth in this paragraph, CONSULTANT shall notify CITY in writing, and meet and confer with CITY to determine an appropriate course of action. CONSULTANT represents and warrants to CITY that it has all licenses, permits, qualifications, insurance, and approvals of whatsoever nature, which are legally required for CONSULTANT to practice its profession. CONSULTANT represents and warrants to CITY that CONSULTANT shall, at its own cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, insurance and approvals which are legally required for CONSULTANT to practice its profession or are necessary and incident to the due and lawful execution of the services it performs under this Agreement. CONSULTANT shall maintain a City of Placerville business license. CONSULTANT shall at all times during the term of this Agreement, and for one year thereafter, provide written proof of such licenses, permits, insurance, and approvals upon request by the CITY. The CITY is not

responsible or liable for CONSULTANT's failure to comply with any or all of the requirements contained in this paragraph.

5. COMPENSATION.

(a) Consultant will provide Owner Representative consulting services to the City of Placerville at a rate of \$200 per hour.

(b) Network Design services from Biarri Networks will be billed as a passthrough to the City of Placerville.

(c) Third Party contract services for Door-to-Door Community Engagement will be billed as a passthrough to the City of Placerville.

(d) During the term of this Agreement the hourly fees and contract fees listed above in 2(a), 2(b) and 2(c) will not exceed the following budgeted amounts for each of the following categories:

Market Analysis = \$11,200
Community Engagement = \$20,200
High Level Network Design for City of Placerville = \$64,170
Shovel Ready Network Design for City of Placerville = \$80,505
Project Plan = \$28,800
Procurement = \$13,200
Capacity Building Digital Programs = \$10,000

Total Budget for all Categories = \$228,075

(e) Municipality shall pay the Consultant's reasonable and necessary out-of-pocket expenses incurred for the Project, including travel pre-approved by Municipality inclusive of airfare, transportation, lodging, meals, and related travel expenses, subject to Municipality's expense and reimbursement policies. Consultant shall retain and provide legible receipts and documentation of expenses.

(f) Fees and expenses will be billed monthly, Municipality shall pay all undisputed invoices on a net-30 basis. The fees do not include federal, state, or local sales or use taxes, or any other taxes or fees assessed on, or in connection with the Services, which Consultant may invoice separately if required by applicable law.

(g) Consultant shall deliver a signed W9 to Municipality upon execution of this Agreement.

(h) Total compensation for the project shall not exceed two hundred twenty eight thousand seventy five (\$228,075) dollars.

6. **ADDITIONAL SERVICES.** CONSULTANT shall not commence any work exceeding the Scope of Services without prior written authorization from CITY. CONSULTANT agrees to perform such work only if requested in writing by CITY and shall bill for such services in a separate agreement.

7. **TERM.** This Agreement shall be effective and shall remain in effect until terminated as provided herein.

8. **SUSPENSIONS; TERMINATION; EXTENSIONS.**

a. **Right to Suspend or Terminate.** The City Manager may suspend or terminate this Agreement for any reason by giving written notice to CONSULTANT. Upon receipt of such notice, CONSULTANT shall immediately discontinue its performance under this Agreement. CONSULTANT may suspend or terminate this Agreement for any reason by giving thirty (30) days' written notice to CITY. CONSULTANT shall not discontinue its performance under this Agreement until such notice period has expired.

b. **Termination for Cause.** Should CONSULTANT fail within three (3) working days from receipt of CITY's written notice to correct any deficiencies related to failure to perform the Work in accordance with this Agreement including its Exhibits; failure to comply with the directions of CITY; or failure to pay its creditors, CITY may terminate this Agreement. Following a termination for default, CITY shall have the right to take whatever steps it deems necessary to correct and complete the work and charge the cost thereof to CONSULTANT, who shall be liable for the full cost of CITY's corrective action, including reasonable overhead, profit, and attorneys' fees.

c. **Extension of Time.** Consultant may, for good cause, request extensions of time to perform the services required hereunder. Such extensions shall be authorized in advance by the City in writing.

d. **Delay.** The Consultant shall at all times employ such force, plant, materials, and tools as will be sufficient, in the opinion of the City Engineer, to prosecute the Work at not less than the rates fixed under the terms of the Contract and to complete the Work thereof within the time limits fixed therein. If the Consultant refuses or fails to prosecute the Work, or any separable part thereof, with such diligence as will ensure the completion within the time specified in the Contract, or any extension thereof, or fails to complete said work within such time, City may exercise the termination provisions set forth herein.

e. **Payment.** Upon such suspension or termination, CONSULTANT shall be paid for all services actually rendered to CITY to the date of such suspension or termination.

f. **Rights and Remedies.** The rights and remedies of the CITY provided in this Section are in addition to any of the rights and remedies provided by the law or under this Agreement.

9. **CLAIMS.** If any dispute shall arise between CITY and CONSULTANT regarding performance of the work, or any alleged change in the work, CONSULTANT shall timely

perform the disputed work and shall give written notice of a claim for additional compensation for the work to CITY within ten (10) days after commencement of the disputed work. CONSULTANT's failure to give written notice within the ten (10) day period constitutes an agreement by CONSULTANT that it will receive no extra compensation for the disputed work.

10. INSPECTION. CONSULTANT shall furnish CITY with every reasonable opportunity for CITY to ascertain that the services of CONSULTANT are being performed in accordance with the requirements and intentions of this Agreement. All work done and all materials furnished, if any, shall be subject to the PROJECT MANAGER'S inspection and approval. The inspection of such work shall not relieve CONSULTANT of any of its obligations to fulfill its agreement as prescribed. Any materials created by CONSULTANT shall become the property of CITY upon delivery. CONSULTANT shall not be held liable for any reuse of the CITY-owned materials for purposes outside this Agreement.

11. INDEPENDENT JUDGMENT. Failure of CITY to agree with CONSULTANT's independent findings, conclusions, or recommendations, if the same are called for in this Agreement, on the basis of differences in matters of judgment shall not be construed as a failure on the part of the CONSULTANT to meet the requirements of this Agreement.

12. ASSIGNMENT; SUBCONSULTANTS; EMPLOYEES.

a. Assignment. CONSULTANT shall not assign, delegate, transfer, or convey its duties, responsibilities, or interests in this Agreement or any right, title, obligation, or interest in or to the same or any part thereof without the CITY's prior written consent. Any assignment without such approval shall be void and, at CITY's option, shall terminate this Agreement and any license or privilege granted herein.

b. Subconsultants; Employees. CONSULTANT shall be responsible for employing or engaging all persons necessary to perform the services of CONSULTANT hereunder. No subconsultant of CONSULTANT will be recognized by CITY as such; rather, all subconsultants are deemed to be employees of CONSULTANT, and CONSULTANT agrees to be responsible for their performance. CONSULTANT shall give its personal attention to the fulfillment of the provisions of this Agreement by all of its employees and subconsultants, if any, and shall keep the work under its control. If any employee or subconsultant of CONSULTANT fails or refuses to carry out the provisions of this Agreement or appears to be incompetent or to act in a disorderly or improper manner, he or she shall be discharged immediately from the work under this Agreement on demand of the PROJECT MANAGER.

13. INTEREST OF CONSULTANT.

a. No Conflict of Interest. CONSULTANT (including principals, associates, and professional employees) covenants and represents that it presently has no investment or interest, and shall not acquire any investment or interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the services hereunder. CONSULTANT further covenants and represents that it does not now have and shall not acquire any source of income, business entity, interest in real property

or investment which would be affected in any manner or degree by the performance of CONSULTANT's services hereunder. CONSULTANT further covenants and represents that no person having any such investment or interest shall perform any services under this Agreement.

b. Independent Contractor. It is expressly agreed that, in the performance of the services hereunder, CONSULTANT shall at all times be deemed an independent contractor and not an agent or employee of CITY. CONSULTANT, its officers, employees, agents, and subconsultants shall have no power to bind or commit the CITY to any decision or course of action and shall not represent to any person that they have such power.

c. Financial Records. CONSULTANT shall retain all financial records, including, but not limited to, documents, reports, books, and accounting records that pertain to any work or transaction performed pursuant to this Agreement for four (4) years after the expiration of this Agreement. CONSULTANT or any of its duly authorized representatives shall, with reasonable notice, have access to and the right to examine, audit, and copy such records.

14. INDEMNITY.

a. Consultant shall indemnify, defend, and hold harmless the City, its officers, officials, agents, and employees against all claims, damages, demands, liability, costs, losses and expenses, including without limitation court costs and reasonable attorneys' fees, arising from Consultant's negligent acts or negligent failure to act, errors, omissions or willful misconduct incident to the performance of this Contract except such loss or damage caused by the active negligence, sole negligence, or willful misconduct of the City.

b. The provisions of this Section shall survive termination or suspension of this Contract and no other provision of this Agreement or any attachment thereto shall reduce the indemnification obligations imposed under this Section.

15. WORKERS' COMPENSATION.

a. Covenant to Provide. CONSULTANT certifies that it is aware of the provisions of the Labor Code of the State of California which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and it certifies that it will comply with such provisions before commencing the performance of the work of this Agreement.

b. Waiver of Subrogation. CONSULTANT and CONSULTANT's insurance company agree to waive all rights of subrogation against the CITY, its elected or appointed officials, agents, and employees for losses paid under CONSULTANT's workers' compensation insurance policy which arise from the work performed by CONSULTANT for CITY.

c. Coverage. CONSULTANT shall obtain workers' compensation insurance in the amounts and form outlined in Section 16 of this Agreement.

16. INSURANCE.

a. CONSULTANT shall not commence any work before obtaining and shall maintain in force at all times during the duration and performance of this Contract, the policies of insurance specified in this Section. Such insurance must have the approval of the City as to limit, form, and amount, and shall be placed with insurers with a current A.M. Best's rating of no less than A VII (an NR rating is acceptable for Worker's Compensation insurance written with the State Compensation Insurance Fund of California).

b. Prior to execution of this Contract and prior to commencement of any work, the CONSULTANT shall furnish the City with certificates of insurance and copies of endorsements providing evidence of coverage for all policies required by the Contract. The CONSULTANT and its contractors and subcontractors shall, at their expense, maintain in effect at all times during the performance of work under the Contract not less than the following coverage and limits of insurance, which shall be maintained with insurers and under forms of policy satisfactory to the City. The maintenance by CONSULTANT and its contractors and subcontractors of the following coverage and limits of insurance is a material element of this Contract. The failure of CONSULTANT or of any of its contractors or subcontractors to maintain or renew coverage or to provide evidence of renewal may be treated by the City as a material breach of this Contract. Approval of the insurance by the City shall not relieve or decrease any liability of CONSULTANT.

1. Commercial General Liability Insurance.

(i) CONSULTANT shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than two million dollars (\$2,000,000) per occurrence for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. CONSULTANT's general liability policies shall be primary and shall not seek contribution from the City's coverage and be endorsed using Insurance Services Office form CG 20 10 (or equivalent) to provide that City and its officers, officials, employees, and agents shall be additional insureds under such policies. For construction projects, an endorsement providing completed operations coverage for the additional insured, ISO form CG 20 37 (or equivalent), is also required.

(ii) Any failure to comply with reporting provisions of the policies by CONSULTANT shall not affect coverage provided the City.

(iii) Coverage shall state that CONSULTANT insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(iv) Coverage shall contain a waiver of subrogation in favor of the City.

2. Workers' Compensation and Employers' Liability. CONSULTANT shall maintain Workers' Compensation Insurance and Employer's Liability Insurance with limits of at least one million dollars (\$1,000,000). CONSULTANT shall submit to City, along with the certificate of insurance, a waiver of subrogation endorsement in favor of City, its officers, agents, employees, and volunteers.

3. Professional Liability. Consultant shall maintain professional liability insurance that insures against professional errors and omissions that may be made in performing the Services to be rendered in connection with this Agreement, in the minimum amount of one million dollars (\$1,000,000) per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this agreement, and Consultant agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this agreement.

4. All Coverages.

(i) Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or reduced in limits except after thirty (30) days' prior written notice has been given to the City, except that ten (10) days' prior written notice shall apply in the event of cancellation for nonpayment of premium.

(ii) All self-insurance, self-insured retentions, and deductibles must be declared and approved by the City.

(iii) Evidence of Insurance - Prior to commencement of work, the CONSULTANT shall furnish the City with certificates, additional insured endorsements, and waivers of subrogation evidencing compliance with the insurance requirements above. The CONSULTANT must agree to provide complete, certified copies of all required insurance policies if requested by the City.

(iv) Acceptability of Insurers - Insurance shall be placed with insurers admitted in the State of California and with an A.M. Best rating of A- VII or higher.

(v) Subcontractors and CONSULTANTS - A category of risk and the applicable insurance requirements will be determined on a "per subcontractor" or "per consultant" basis, considering the particular work to be done by the subcontractor or consultant and the interrelationship of that work to other work being conducted by the CONSULTANT.

5. No other provision of this Agreement or any attachment thereto shall reduce the insurance obligations imposed under this Section.

c. In addition to any other remedy the City may have, if CONSULTANT fails to maintain the insurance coverage as required in this Section, the City may obtain such insurance coverage as is not being maintained, in form and amount substantially the same as is required herein, and the City may deduct the cost of such insurance from any amounts due or which may become due CONSULTANT under this Contract.

d. No policy required by this Contract shall be suspended, cancelled, terminated by either party, or reduced in coverage or in limits unless CONSULTANT has provided thirty (30) days' prior written notice by certified mail, return receipt requested, to the City.

e. Any deductibles or self-insured retentions in excess of \$10,000 must be declared to, and approved by, the City.

The requirement as to types, limits, and the City's approval of insurance coverage to be maintained by CONSULTANT are not intended to, and shall not in any manner, limit or qualify the liabilities and obligations assumed by CONSULTANT under the Contract.

17. NOTICE. Any notices or other communications to be given to either party under this Agreement shall be in writing, shall be delivered to the addresses set forth below, and shall be effective, as follows:

- a. By personal delivery, effective upon receipt by the addressee.
- b. By certified U.S. mail, return receipt requested, effective 72 hours after deposit in the mail.

CITY: CITY OF PLACERVILLE
Attn: Cleve Morris
3101 Center Street
Placerville, CA 95667
cmorris@cityofplacerville.org

CONSULTANT: EntryPoint Networks, Inc.
Attn: Legal Department
2138 E 6200 S
Holladay, Utah 84121
bbanyai@entpnt.com

Either party may change its address for notices by complying with the notice procedures in this Section.

18. AGREEMENT BINDING. The terms, covenants, and conditions of this Agreement shall apply to, and shall bind, the heirs, successors, executors, administrators, assigns and subconsultants of both parties.

19. WAIVERS. The waiver by either party of any breach or violation of any term, covenant, or condition of this Agreement or of any provisions, ordinance, or law shall not be deemed to be a waiver of such term, covenant, condition, ordinance, or law or of any

other term, covenant, condition, ordinance, or law. The subsequent acceptance by either party of which may become due hereunder shall not be deemed to be a waiver of any preceding breach or violation by the other party of any term, covenant, or condition of this Agreement or of any applicable law or ordinance.

20. COSTS AND ATTORNEYS' FEES. If either party commences any legal action against the other party arising out of this Agreement or the performance thereof, the prevailing party in such action may recover its reasonable litigation expenses, including court costs, expert witness fees, discovery expenses, and attorneys' fees.

21. NONDISCRIMINATION. No discrimination shall be made in the employment of any person under this Agreement on the basis of race, color, national origin, ancestry, religion, age, sex, sexual orientation, marital status, disability, or place of birth.

22. VENUE. Any action arising out of this Contract shall be brought in El Dorado County, California, regardless of where else venue may lie.

23. TIME OF ESSENCE. CONSULTANT understands and agrees that time is of the essence in the completion of the work and services described in the Scope of Services.

24. AGREEMENT CONTAINS ALL UNDERSTANDINGS. This document represents the entire and integrated agreement between CITY and CONSULTANT and supersedes all prior negotiations, representations, or agreements, either written or oral. This document may be amended only by written instrument, signed by both CITY and CONSULTANT. All provisions of this Agreement are expressly made conditions. This Agreement shall be governed by the laws of the State of California and interpreted as if written by both parties.

[Signatures appear on following page]

IN WITNESS WHEREOF, CITY and CONSULTANT have executed this Agreement the day and year first above written.

CITY OF PLACERVILLE, a municipal corporation of the State of California:

Cleve Morris, City Manager

Date:_____

ATTEST:

Regina O'Connell, City Clerk

Date:_____

APPROVED AS TO FORM:

Mona Ebrahimi, City Attorney

Date:_____

ENTRYPOINT NETWORKS, INC:

Brad Banyai, Finance Director

Date:_____

Exhibit A

Statement of Work

EntryPoint Networks Solution Services Group appreciates the opportunity to develop a feasibility study for a publicly funded digital access infrastructure that could be constructed to address the current access, affordability, and reliability needs for the following areas:

- Residential areas within the City of Placerville, CA, consisting of approximately 4,567 properties,
 - Commercial districts within the City of Placerville, CA,
 - New development areas and projects underway within the City of Placerville, CA.
- **Conduct Market Analysis**
 - Review of previously collected and generally available data to identify and document broadband availability and costs as advertised and experienced to identify needs and quantify demand.
 - Prepare and administer a comprehensive analysis with detailed access results within identified census blocks.
 - Document potential funding opportunities based on market analysis.
 - **Initiate Community Engagement**
 - Create brand and marketing
 - Conduct door to door survey and sign-up process
 - Institutionalize community engagement to support future functions
 - **Perform High Level Design in Geospatial Software**
 - Collect and prepare all available data to inform design process
 - Develop and document a fiber-to-the-address design for the identified areas
 - Develop an initial bill of materials and cost estimates for construction of the design.
 - **Complete a Shovel Ready Design**
 - A shovel design for a fiber-to-the-address infrastructure in GIS shapefile format capable of being input directly into a construction management platform
 - A complete Bill of Materials (BOM), including cost and labor estimates to construct the designs
 - All electronic and print documents required for procurement, construction, and permitting
 - **Project Plan**
 - Develop a comprehensive plan with clear step by step direction that documents the findings of the market analysis, community engagement, and design parameters to inform the process for best outcomes

- Detail economic model(s) that would leverage public infrastructure investments capable of providing affordable capital recovery, operational, and service costs and the steps to implement
- Identify specific economic challenges and gaps for construction, operations, and services.
- Detail potential strategies and solutions that could be implemented to achieve universal access and affordability
- **Procurement**
 - Develop procurement documents for review and approval by the City
 - Provide technical and administrative assistance to the City for procurement processes
 - Provide technical expertise for review and award processes
- **Capacity Building Digital Programs**
 - Provide technical and administrative assistance to the identification and establishment of digital literacy and equity programs to address broadband gaps in Placerville
 - Provide ongoing technical and administrative support for the maintenance and operation of these programs as needed