

INTERGOVERNMENTAL AGREEMENT
OWNER'S PROJECT MANAGEMENT FOR DESIGN AND IMPLEMENTATION
BETWEEN
CITY OF WESTFIELD GAS & ELECTRIC LIGHT DEPARTMENT
AND
TOWN OF ROYALSTON (RoyalstonNet)

This AGREEMENT made _____, 2018, by and between City of Westfield Gas & Electric Light Department, a Massachusetts municipal lighting plant, with offices at 100 Elm Street, Westfield, MA 01086-0990 (hereinafter "WG+E"), and the Town of Royalston, acting through its Board of Selectmen, with offices at 13 On the Common, Royalston, MA 01368 (hereinafter "Royalston"). WG+E and Royalston are collectively referred to herein as "Parties" and individually as a "Party."

WHEREAS, Royalston has requested WG+E to assist Royalston in its design and implementation for a wireless broadband network in the Town of Royalston; and

WHEREAS, WG+E and Royalston are each a "Governmental Body" as provided in G.L. c.30B, §2; and

WHEREAS, this Agreement engages WG+E to perform services on behalf of Royalston, which WG+E is authorized by law to perform; and

WHEREAS, WG+E is willing to assist Royalston in the design and implementation of its wireless broadband network as provided herein; and

WHEREAS, Royalston is willing to reimburse WG+E for costs associated with the Scope of Services as provided in Exhibit A hereof. The associated costs are shown in the Cost of Services attached hereto as Exhibit B.

NOW THEREFORE, in consideration of the mutual promises and agreements contained herein, Royalston and WG+E hereby agree as follows:

1. **NETWORK SERVICES**

WG+E will perform such services including without limitation, proposing vendor candidates, procurement, implementation, and Project Management, as more fully set forth in Exhibit A hereof (hereinafter "Network Services"). Such Network Services may be amended from time to time by written agreement between the Parties.

2. **COST OF SERVICES**

Royalston will pay WG+E for the Network Services at the price and on the terms set forth in Exhibit B. Such Network Services prices may be amended from time to time by written agreement between the Parties. The price set forth in this Agreement does not include any sales, use, service, or similar taxes. WG+E and Royalston are exempt from state and federal taxes.

Notes:

- All quantities included are estimates. Actual costs will be calculated based upon actual network design components and services required.
- Procurement and project management costs are estimated based upon the estimated costs of construction and materials necessary for the Town of Royalston. Actual procurement costs will be calculated following material and construction bid results.

3. **SCOPE OF SERVICES**

The Scope of Services to be provided pursuant to this Intergovernmental Agreement are detailed in Exhibit A.

4. **PERSONNEL**

Each Party shall bear all personnel costs associated with its own employees for those activities contemplated under this Agreement. Employees injured while engaging in activities which could benefit all Parties to this Agreement shall, nonetheless, be considered the employee of the Party which hired him/her.

5. **TERM**

The term of this Agreement will begin on the Effective Date above and terminate on March 19, 2021, unless otherwise terminated earlier by one or both of the Parties as set forth herein. This Agreement may be extended for one or more one-year terms by the mutual written agreement of both Parties. Either Party may terminate this Agreement for any reason with 180 days' prior written notice.

Should either Party default in the performance of any material obligation under this Agreement, and such default shall not have been cured within 15 days following the written notice of such breach by the non-defaulting Party, the non-defaulting Party may terminate this Agreement for cause effective upon the expiration of such 15-day period, unless the non-defaulting Party has specified a later date.

This Agreement terminates automatically, without necessity of notice, upon the bankruptcy or insolvency of either Party. In the event of any termination, Royalston will pay WG+E for services satisfactorily rendered prior to the date of termination.

The applicable provisions of this Agreement shall continue in effect after termination of this Agreement to the extent necessary to provide for final true-ups, billing, billing adjustments, payments of amount due, and discharge of any residual obligations under the Agreement.

6. **BILLING**

WG+E shall invoice Royalston on a monthly basis for all costs incurred by WG+E for the specific work, as outlined in the Scope of Work, performed during the prior month. WG+E will provide sufficient detail on the invoice to identify the work performed during the preceding month with each such invoice.

Royalston will pay such invoiced costs of the specific work within thirty (30) days of receipt of such invoice. Should Royalston disagree with any amount invoiced it shall pay the undisputed amount and notify WG+E of any disputed amounts. Royalston will notify WG+E in writing of any dispute with any invoice (along with a reasonably detailed description of the dispute) within ninety (90) days from Royalston's receipt of such invoice. Royalston will be deemed to have accepted all invoices for which WG+E does not receive timely notification of disputes and will pay all undisputed amounts due under such invoices within the period set forth herein. The Parties will seek to resolve all such disputes expeditiously and in good faith. Notwithstanding anything to the contrary, the Parties will continue performing their obligations under this Agreement during any such dispute, including, without limitation, Royalston's obligation to pay all due and undisputed invoice amounts.

Except for invoiced payments that Royalston reasonably disputes, Royalston will pay interest on all late payments, calculated daily and compounded monthly at the lesser of the rate of 1.00% per month or the highest rate permissible under applicable Law, calculated daily and compounded monthly.

7. **CONTRACTOR VENDOR BILLING**

Vendor contracts will be directly between selected vendor companies and Royalston. As part of the Scope of Services provided herein, WG&E will receive, review and approve all invoices prior to forwarding to Royalston for payment processing per the terms of the agreement between Royalston and vendor.

8. **NOTICES**

All notices under this Agreement shall be in writing and will be deemed sufficiently given to WG+E, and Royalston at the address set forth below, unless otherwise advised of a different address, by mail, or by overnight delivery service (with one acknowledged receipt), at the addresses set forth below.

WG+E:

Westfield Gas & Electric Light Department
100 Elm Street, P. O. Box 990
Westfield, Massachusetts 01086-0990
Attention: General Manager

Royalston:

Town of Royalston
13 On the Common POB 125
Royalston, Massachusetts 01368
Attention: Jon Hardie Project Lead SPOC

9. **INDEPENDENT CONTRACTOR**

The Parties each agree and acknowledge that WG+E is an independent contractor and is not nor shall be deemed to be an employee or agent of Royalston for any purpose. Nothing herein shall be construed to create any partnership, joint venture or agency relationship of any kind between the Parties. WG+E has no authority to enter into any agreements or contracts on behalf of Royalston, or to bind Royalston in any way, and shall not represent, either explicitly or implicitly, that it possesses any such authority. Royalston shall not be responsible for the payment or withholding of any federal, state or local income, unemployment or other employment-related taxes in connection with the performance of this Agreement.

10. **NON-EXCLUSIVE ARRANGEMENT**

WG+E may represent, perform services for, or be employed by any third-party persons or companies, provided that such other services do not interfere with WG+E's full performance of all of the Network Services under this Agreement or be deemed a conflict of interest.

11. **CONFIDENTIAL INFORMATION**

Subject to applicable law and regulation, all information relating to Royalston that is known to be confidential or proprietary, or which is clearly marked as such, will be held in confidence by WG+E and will not be disclosed or used by WG+E except to the extent that such disclosure or use is reasonably necessary to the performance of WG+E's duties and obligations under this Agreement in performance of the Network Services.

Subject to applicable law and regulation, all information relating to WG+E that is known to be confidential or proprietary, or which is clearly marked as such, will be held in confidence by Royalston and will not be disclosed or used by Royalston except to the extent that such disclosure or use is reasonably necessary to the performance of Network Services

These obligations of confidentiality will continue after the termination of this Agreement but will not apply with respect to information that is independently developed by the Parties, lawfully becomes a part of the public domain, or of which the Parties gained knowledge or possession free of any confidentiality obligation or which a Party is required by law or court order to disclose.

12. STANDARD OF CARE, WARRANTY AND DISCLAIMER

WG+E will provide the Network Services in a good and workmanlike manner, and in conformity with generally prevailing industry standards and the time frame, if any, set forth in the description of Network Services herein. THIS WARRANTY IS EXCLUSIVE AND IS IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY ORAL OR WRITTEN REPRESENTATIONS, PROPOSALS OR STATEMENTS MADE ON OR PRIOR TO THE EFFECTIVE DATE OF THIS AGREEMENT.

13. NO THIRD-PARTY BENEFICIARIES

Nothing in this Agreement shall be construed to create any duty, liability or standard of care to any person not a party to this Agreement or to create any rights or expectations in any such third party.

14. NON-WAIVER

A waiver of a specific default shall not be a waiver of any other or subsequent default. No waiver by either Party of any provisions hereof shall constitute a waiver of any other matter and all waivers shall be in writing and executed by an officer of the waiving Party. No failure on the part of either Party to exercise, and no delay in exercising, any right or remedy hereunder shall operate as a waiver thereof.

15. SEVERABILITY

If any provision of this instrument is prohibited by the Commonwealth of Massachusetts, such provision shall be ineffective to the extent of such prohibition without invalidating the remaining provisions hereof.

16. **GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

17. **ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes any and all previous understandings, oral or written, which pertain thereto.

18. **MODIFICATION**

No modification to this Agreement shall be valid unless reduced to writing and executed by the authorized representatives of each of the Parties.

19. **COUNTERPARTS**

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but taken together, shall constitute one and the same instrument.

20. **HEADINGS, PRONOUNS**

The headings used in this Agreement are for convenience only and shall not be deemed to be a binding portion of this Agreement. The pronouns he, she, or it, are also used for convenience, and in the event that an improper pronoun has been used, it shall be deemed changed so as to render the sentence in which it is contained effective in accordance with its terms.

21. **CONFORMANCE WITH APPLICABLE LAW**

WG&E shall strictly observe and comply with all federal, state and local laws and regulations which may govern the work performed under the terms of this Agreement.

22. **NONDISCRIMINATION**

WG&E shall not discriminate against any person because of race, gender, age, color, religion, ancestry, handicap, sexual orientation, sexual identity, gender identity, veteran status, natural origin or any other protected class under the law.

23. **INSURANCE**

WG&E shall, at all times during the term of this Agreement, maintain in full force and effect the following insurance: Employer's Liability, Workers' Compensation, Commercial Automobile Liability, Commercial General Liability, including contractual liability coverage. All insurance shall be by insurers and for policy limits acceptable to Royalston

and, before commencement of work hereunder, WG&E agrees to furnish Royalston with certificates of insurance or other evidence satisfactory to Royalston to the effect that such insurance has been procured and is in force. WG+E will notify Royalston of any change or cancellation in insurance coverage thirty (30) days in advance of any change.

For the purpose of the Contract, WG&E shall carry insurance of not less than the limits specified below:

COVERAGE LIMITS OF LIABILITY

Specific & Aggregate Excess Workers' Compensation	Statutory Limit
Employers' Liability	\$1,000,000
Insured's Specific Retention	\$550,000
Commercial General Liability, and if necessary, Excess/Umbrella Liability	\$2,000,000 each occurrence \$2,000,000 aggregate
Commercial Automobile Liability, and if necessary, Excess/Umbrella Liability	\$2,000,000 each occurrence

The Town of Royalston shall be added as a named insured on the general liability, excess umbrella liability and automobile liability insurance coverage. The general liability insurance policy shall cover liability arising from contracts, premises, operations, independent contractor, products-completed operations, personal and advertising injury, and liability assumed under an insured contract.

Prior to commencement of any work under this Agreement, WG+E shall provide Royalston with Certificates of Insurance which include a thirty-day notice of cancellation to Royalston.

24. ACCESS TO RECORDS

WG&E will make all books, accounts, data, records, reports, files and other papers required to be kept or kept in the course of the work to be performed under this Agreement available at all reasonable times for inspection, review and audit by Royalston or its authorized representative. These obligations of access will extend for a period of 1 year after the termination of this Agreement.

25. OWNERSHIP OF DOCUMENTS

The Parties agree that all documents produced or created for Royalston pursuant to this Agreement that do not contain proprietary information of WG+E shall belong to Royalston with all rights established thereby. All information acquired from Royalston, or from others at the expense of Royalston, in the performance of this Agreement shall be and remain the property of Royalston. As used herein, the term “document[s]” includes but is not limited to all records, data files, computer records in any form, work sheets, deliverable products (complete and incomplete) and all other types of information prepared or acquired by the WG&E in the performance of WG&E’s services in any form whatsoever. Royalston shall own and shall have all rights to the use of the drawings, specifications, and other documents prepared by WG&E for the completion and use of this project. The provisions of this Section shall survive the termination of the Agreement. All documents will be submitted to Royalston in a timely manner, upon request not to exceed 30 days.

26. INDEMNITY

To the fullest extent permitted by law, WG&E shall defend, indemnify, and save harmless the Town of Royalston, the Royalston Select Board, and its respective duly elected or appointed officials, agents and employees (referred to collectively as “Royalston”) from and against all demands, claims, damages, liabilities, losses, costs, and expenses (including, but not limited to, reasonable attorney fees) (referred to collectively as “demands”) arising out of or resulting from any work performed pursuant to this Agreement including but not limited to any wrongful or negligent acts, errors, or omissions of WG&E, any subcontractors of WG&E, or any person directly or indirectly employed by any of them, or by a defect of a product or design supplied by WG&E or subcontractors. Such obligation shall not negate, abridge, or reduce in any way any additional indemnification rights of the Town that otherwise may exist under statute or in law or equity.

WG&E assumes full responsibility for relations with any subcontractor employed directly or indirectly by WG&E and WG&E shall defend, indemnify, and save harmless the Town from all demands made against the Town by such subcontractors, such subcontractor’s agent or employee, or any person, as the result of such subcontractor’s work performed pursuant to this Agreement including but not limited to wrongful or negligent acts, errors, or omissions that arise out of, result from, or are connected with the performance of this Agreement or any subsequent Agreement and is not otherwise subject to indemnifications under the immediately preceding subparagraph.

WG&E shall defend, indemnify, and hold harmless the Town from any and all demands relating to wages, overtime compensation, or other employee benefits by employees employed directly or indirectly by WG&E for work performed in connection with the work hereunder or required by state or federal law, including but not limited to Fair Labor Standards Act and Massachusetts Prevailing Wage Law.

The indemnification obligations of WG&E and subcontractors shall not be limited in any way by any limitations on the amount or type of damages, compensations, or benefits payable by or for WG&E or subcontractor under any federal or state law, except as provided in Section 11 herein.

In the event of a breach of this Agreement by WG&E, WG&E shall pay the Town all reasonable attorney fees, costs and other litigation expenses incurred by the Town in enforcing its rights as a result of said breach in addition to any damages for said breach.

27. **COMMUNICATION**

WG+E agrees to assign a specific individual as Project Manager and primary contact for Royalston within 30 days of the execution of this Agreement. The Parties agree that there will be a scheduled bi-weekly conference call from the Project Manager at a mutually agreeable time to update Royalston regarding vendors, timeline and budgetary changes, and overall project recommendations.

28. **PROCUREMENT COMPLIANCE**

WG+E agrees to comply with the Commonwealth of Massachusetts applicable laws and regulations.

IN WITNESS WHEREOF, The Town of Royalston and Westfield Gas & Electric Light Department have caused this Agreement to be signed by their respective duly authorized representatives effective as of the day and year first above written.

**WESTFIELD GAS & ELECTRIC
LIGHT DEPARTMENT**

Daniel J. Howard, General Manager

TOWN OF ROYALSTON

Jon H. Hardie, RoyalstonNet Project Lead

Christine Long, Chair Select Board & Chief Executive

EXHIBIT "A" **SCOPE OF SERVICES**

1) Project Management

- a) Management of project timeline and services
- b) Budget oversight – over/ under/ change order variance reporting. WG&E will provide to the Town electronically, an itemized monthly detailed financial report, of all project costs incurred by line item, of all WG&E approved disbursements.
- c) WG&E will provide On-site support to Royalston & Vendors as needed.
- d) Regular scheduled project status meetings or reporting
- e) Evaluation of prospective technologies and vendors
- f) Validation and Testing Services

2) Notification

- a) Items needing immediate attention, response or escalation, will be directed to the respective Project Manager & Project Lead by email, text messages & cell phone.

3) Project Management for overall project delivery and coordination between contractors, field project managers, and vendors

- a) Field project managers to manage customer /contractor communications and contractor management
- b) Quality Control / Quality Assurance: Network Performance, Service and/or Performance Level Addenda. Royalston believes that measurable qualitative and quantitative customer experience & satisfaction, beyond the CPE, is critical to the success of this project.
- c) There will be four (4) Service or Performance Level addenda (SLA's & PLA's) so as to guarantee a high-quality consumer experience. These SLA's and PLAs will bind the owner, the owner's project manager, various vendors & installers, the Network Operator and ISP, to specific, measurable performance criteria, network performance, and customer SLA (service level addenda) and outcomes.
- d) Service and Performance Level Addenda are specified as follows: See Addendum
- e) Administrative Staff to and field project managers

4) Procurement – Construction and Deployment Contractor Bidding

- a) Preparation of all construction specifications
- b) Preparation of all contract documents
- c) Pre-bid meeting with prospective contractors
- d) Notices in MA **Central Register, CommBuys, and Prevailing Wage**
- e) Setup in WCF electronic sourcing and bidding platform
- f) Contractor evaluation and reference verification
- g) Bid Evaluation and award recommendation

5) MATERIAL BIDDING AND PROCUREMENT

- a) Preparation of all material specifications
- b) Preparation of all contract documents
- c) Pre-bid meeting with prospective vendors (if required)
- d) Notice in Central Register and CommBuys
- e) Setup in WCF electronic sourcing and bidding platform
- f) Bid Evaluation and award recommendation

**EXHIBIT "B"
NETWORK SERVICE FEES**

1) Procurement

- a) Construction Contractor Bidding: 1.25% of construction contractor bid price
- b) Material Bidding and Procurement: 1.00% of material costs

2) Project Management

- a) **Vendor Selection, Engineering and Design, Construction and Incremental Deployment, through Final Compliance Validation and Testing.** Full Office / Field Project Management Services: 6% of Total Network Costs, Less PM fees

Note: WG+E's Owner's Project Management Services to provide advice, quality control, and other services to Royalston, during Vendor Selection, Engineering and Design, Construction and Deployment, From Final Engineering Design, Vendor Performance Validation, Including real-time, networkwide, Royalston RoyalstonNet passive data access, thru Modular Buildout & Incremental Commissioning, (NO) Network Operator, (ISP) Internet Service Provider, and Final Commissioning Compliance Testing, from the ISP demarcation point, past the CPE, are all included in the above referenced unit pricing.

**ADDENDA
SERVICE LEVEL AND PERFORMANCE LEVEL ADDENDA**

1) Performance Level Addendum #1, between The Town of Royalston and WG&E as the Owner's Project Manager.

- a) Each month, Royalston & WG&E will review and document the following Performance Level Adherence, Changes & Variance Criteria:
 - i) Project Timeline,
 - ii) Line Item Budget,
 - iii) (BOM) Bill of Materials,
 - iv) (SOW) Statement of Work,
 - v) Vendor Performance,
 - vi) Ongoing Network Engineering Design & Buildout Issues,
 - vii) Ongoing Realtime Network Performance & Validation Data,
 - viii) Real-time Customer Experience Validation & Data,
 - ix) Learnings: What can we learn, and How can we do it better?
 - x) Agreed upon modifications to this agenda.

Important SLA and PLA Note: WG&E and Royalston agree that the following (SLA) Service Level Addenda and (PLA) Performance Level Addenda, will appear in the respective Request for Proposals to any vendor under consideration for this project, from initial inception to completion. No vendor shall be considered acceptable, should they not agree to the following conditions.

2) Performance Level Addendum #2 between Royalston and all Prospective Final Engineering Design Vendors

- a) WG&E will notify prospective RoyalstonNet Final Engineering Design Vendors, that a complete response to the Final Engineering Design RFP,
 - i) Must incorporate an agreed upon Performance Level in situ Test, Validation, and Proof of Concept Addendum with Royalston, and
 - ii) Each vendor must complete and submit the in situ, on the ground, network and CPE simulation, testing and validation of their Proposed Final Engineering Design, across the community,
 - iii) prior to being considered for inclusion, in the subsequent final engineering design selection process.

3) Performance Level Addendum #3, and Customer Service Level Addendum #1, between Royalston, and the Final RoyalstonNet Network Incremental Commissioning, Builder / Subcontractors, and enduser subscribers as incrementally installed.

- a) All prospective RoyalstonNet Buildout Vendors, that respond to the RoyalstonNet Buildout RFP, must
 - i) Incorporate an ongoing Network Performance Level Addendum with Royalston, incorporating, criteria a) thru h) in PLA #1 and
 - ii) a Customer Service Level Agreement. effective with 1st CPE install
 - iii) Provide Royalston with ongoing, highly granular, passive remote electronic RoyalstonNet network access in real time 24/7, to permit full remote network testing and validation across the community, from the demarc past the CPE, effective with 1st CPE install.

4) Performance Level Addendum #4 and CLA #1 between Royalston, the RoyalstonNet (NO) Network Operator, the (ISP) Internet Service Provider, and all municipal, residential, business, and educational subscribers,

- a) All prospective RoyalstonNet Network Operators and ISP's, responding to the RoyalstonNet RFP, must incorporate specific ongoing
 - i) Network Performance Level, and
 - ii) Customer Service Level Addenda with Royalston.
- iii) Effective the 1st CPE install. Provide Royalston with full ongoing, highly granular, 24/7 passive remote electronic RoyalstonNet network access. To permit full remote RoyalstonNet testing and validation of the network across the community, from the ISP fiber demarcation point past the CPE.

