



Dave Cummings
Chief Information Officer

Technology Services

121 Library Court Oregon City, OR 97045

May 20, 2021

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Service Level Agreements between
Clackamas Broadband eXchange and Link Oregon

Purpose/Outcomes	Clackamas Broadband eXchange (CBX) is looking for approval to enter into a Service Level Agreement (SLA) with Link Oregon that will serve Clackamas County Extension and 4-H Service District (CC4H) for a dark fiber connection.
Dollar Amount and Fiscal Impact	Link Oregon will pay a non-recurring fee of \$2,400.00 for the new fiber construction and pay an annual recurring lease fee of \$3,060.00.
Funding Source	The funding source for the expansion of the CBX fiber network will be contributed from the CBX budget and then reimbursed by Link Oregon.
Duration	Effective upon signature by the board the SLA is effective for one (1) year that automatically renews for successive one-year renewal terms but the contract shall not exceed a total of five (5) years.
Previous Board Action	Board previously approved CBX to build and maintain a similar fiber connections for Astound Broadband, LLC on February 16, 2020.
Strategic Plan Alignment	<ol style="list-style-type: none">1. Build a strong infrastructure.2. Build public trust through good government.
Counsel Review	Andrew Naylor, May 13, 2021
Contact Person	Dave Devore (503)723-4996
Contract No.	N/A

BACKGROUND:

CBX is proposing to build a new dark fiber connection to extend the CBX network to the Oregon State Extension building on the Red Soils campus in Oregon City. This new dark fiber connection will create a circuit for Oregon State University to connect back into the state wide educational network located at Clackamas Educational Service District. The agreement is with Link Oregon that serves all of the State of Oregon universities with their technology needs.

RECOMMENDATION:

Staff respectfully recommends approval to enter into this Service Level Agreements. Staff further recommends the Board delegate authority to the Technology Services Director to sign agreements necessary in the performance of this agreement.

Sincerely,

Dave Cummings
CIO Technology Services

Clackamas County

FIBER OPTIC SERVICE LEVEL AGREEMENT

Oregon Fiber Partnership, dba Link Oregon

(Customer Name)

1. Recitals

WHEREAS, Clackamas County (County) desires to provide to Oregon Fiber Partnership, dba Link Oregon (Customer) the services set forth in this Agreement (the “Services”), between the specified Customer sites listed in Appendix A, and at the price contained in Appendix A; and

WHEREAS, Oregon State University (OSU) is a founding member of the Oregon Fiber Partnership, dba Link Oregon (Customer); which provides network services to OSU and its CCES, through its Division of Extension and Engagement; and

WHEREAS, Customer desires to provision the Services; and

WHEREAS, the Parties desire to set forth herein their respective rights and obligations with respect to the provision of Services,

NOW, THEREFORE, in consideration of the foregoing, and the mutual covenants and promises set forth herein, intending to be legally bound, the Parties agree as follows.

2. Fiber Optic Network Description

County will provide Customer with point-to-point single mode fiber optic network connectivity, including a termination panel for the fiber optic cables, at each Customer site on a path designated by the County.

3. Service Description

Services provided to Customer by County are physical connectivity of one (or more) strands of optical fiber (“Fiber”), between sites specifically identified in Appendix A for the exclusive use of the Customer’s internal communication needs. Each site listed in Appendix A will have a single mode fiber termination. The Fiber is and shall remain property of the County.

4. Construction and Installation Requirements

- a. County, when installing Fiber on the property of Customer, shall do so in a neat and professional manner. Routing and location of these cables shall be mutually agreed upon between the parties.
- b. Customer shall secure any easements, leases, permits or other agreements necessary to allow County to use existing pathways to, into and within each site to the demarcation point for service. Customer shall provide a path for the Fiber from

the point of entry into the site to the termination panel that complies with all applicable building, electrical, fire and related codes.

- c. Subject to the terms of this Agreement, and at no cost to County, Customer shall provide adequate environmentally controlled space and electricity required for installation, operation, and maintenance of the Fiber used to provision the service within each site.
- d. Customer shall provide a clean, secure, relatively dry and cool location (consistent with environmental requirements for fiber optic network connectivity equipment) at each of its sites for necessary equipment, as determined by the County in its sole discretion.
- e. Customer will provide or arrange for County and its employees, agents, lessees, officers and its authorized vendors, upon reasonable notice, to have ingress and egress into and out of Customer properties and buildings in connection with the provision of Service.
- f. If the presence of asbestos or other hazardous materials exists or is detected, Customer must have such hazardous materials removed immediately at Customer's expense or notify County to install the applicable portion of the Fiber in areas of the site that do not contain hazardous material. Any additional expense incurred as a result of encountering hazardous materials, including but not limited to any additional equipment that may be required, shall be paid by Customer.
- g. County has no obligation to install, operate, or maintain Customer-provided facilities or equipment.
- h. County shall construct Fiber into each Customer building enumerated herein; splice fiber into existing County fiber optic resources; terminate County's optical fiber in each Customer building; test and certify appropriate Fiber performance at each Customer location; and provide the appropriate fiber patch panel ("hand-off's") at each location for Customer utilization. Test results for physical connection will be made available to Customer upon request.

5. Term of Agreement

Upon execution by both parties, this Agreement is effective on July 1, 2021. At such time as County completes installation and connection of the necessary facilities and equipment to provide service herein, County shall then certify and notify Customer in writing that the service is available for use. Unless terminated as herein provided, this Agreement shall continue for a period of one (1) year and shall automatically renew for successive one-year renewal terms, at the County's then-current rate schedule, unless either party terminates the Agreement pursuant to the terms herein. Provided, however, that the total Agreement term length, including any renewal, shall not exceed five (5) years.

6. Rates

In return for County providing the Services described in Appendix A for the term indicated herein, Customer shall pay County both nonrecurring construction/installation charges and recurring charges for Services described in Appendix A, as amended from time to time.

7. **Payment**

Annual Payments

County shall provide an invoice for twelve months of service (July 1 through June 30), or prorated weekly for any portion thereof, to Customer at the beginning of the service period. The annual charge shall be payable within thirty (30) days of receipt of invoice. Interest charges shall be assessed for late payments in accordance with Appendix A. Failure of Customer to pay within thirty (30) days of receipt of an invoice shall constitute an event of default and County may pursue any remedies provided in this Agreement including, but not limited to, terminating the Agreement upon appropriate advance written notice to Customer.

8. **Fiber Maintenance**

County shall maintain the structural aspects of the Fiber in good operating condition, utilizing commercially reasonable practices in accordance with Appendix B, throughout the Agreement Term. In the event the Fiber fails at any time to meet the specifications outlined in Appendix C, County shall endeavor to restore the Fiber to meet the specification standards in as timely and expedited a manner as reasonably possible.

County may subcontract for testing, maintenance, repair, restoration, relocation, or other operational and technical services it is obligated to provide hereunder.

Customer shall promptly notify County of any matters pertaining to any damage or impending damage to or loss of the use of the Fiber that are known to it and that could reasonably be expected to adversely affect the Fiber. County shall promptly notify Customer of any matters pertaining to any damage or impending damage to or loss of the Fiber that are known to it and that could reasonably be expected to adversely affect the Fiber and/or Customer's use thereof.

9. **Confidentiality**

All Customer data, voice, or video transmission using County Fiber shall be treated by County as confidential information, to the extent allowable by law. Customer expressly acknowledges and agrees that County's confidentiality obligations under this Agreement are subject to, and only enforceable to the extent permitted by, the Oregon Public Records Law, Oregon Revised Statutes ("ORS") Chapter 192 *et. seq.*, and any other applicable state or federal law

10. **Content Control and Privacy**

Customer shall have full and complete control of, and responsibility and liability for, the content of any and all communications transmissions sent or received using the

Fiber.

11. Assignment and Successors

Either party may assign this Agreement upon prior written consent of the other party. Such consent shall not be unreasonably withheld. Upon such assignment, all rights and obligations of County and Customer under this Agreement shall pass in total without modification to any successor(s) regardless of the manner in which the succession may occur.

12. Damage

County shall be responsible for restoring, or otherwise repairing to its prior condition, any portion of the Customer's premises or facilities, which are damaged by the negligent acts or omissions of County. Customer shall be responsible for restoring, or otherwise repairing to its prior condition, any portion of County's connectivity equipment or other facilities, located at Customer premises, which are damaged by Customer or its agents.

Customer will reimburse all related Costs associated with damage to the Fiber caused by the negligent acts or omissions of Customer, its affiliates, employees, agents, contractors or customers. As used herein, "Costs" includes the following: (a) labor costs, including wages, salaries, and benefits together with overhead allocable to such labor costs; and (b) other direct costs and out-of-pocket expenses on a pass-through basis (such as equipment, materials, supplies, contract services, sales, use or similar taxes, etc.).

13. Force Majeure

Neither party hereto shall be deemed to be in default of any provision of this Agreement, for any failure in performance resulting from acts or events beyond the reasonable control of such party. For purposes of this Agreement, such acts shall include, but shall not be limited to, acts of nature, civil or military authority, civil disturbance, war, strikes, fires, power failure, other catastrophes or other force majeure events beyond the parties' reasonable control, provided however that the provisions of this paragraph and article shall not preclude Customer from cancelling or terminating this Agreement as otherwise permitted hereunder, regardless of any force majeure event occurring to County.

14. Consequential Damages

NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES, WHETHER FORSEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH, TRANSMISSION INTERRUPTIONS OR DEGRADATION, INCLUDING BUT NOT LIMITED TO DAMAGE OR LOSS OF PROFITS OR EQUIPMENT, LOSS OF PROFITS OR REVENUE, COST OF CAPITAL, COST OF REPLACEMENT SERVICES OR CLAIMS OF CUSTOMERS, WHETHER

OCCASIONED BY ANY REPAIR OR MAINTENANCE PERFORMED BY OR FAILED TO BE PERFORMED BY A PARTY, OR ANY OTHER CAUSE WHATSOEVER, INCLUDING WITHOUT LIMITATION BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE OR STRICT LIABILITY.

15. Public Contracting Provisions

The provisions of Oregon public contracting law, ORS 279B.020 through 279B.235, to the extent applicable, are incorporated herein by this reference.

16. Non-Appropriation or Change in Law

Notwithstanding any other provisions of this Agreement, the parties hereby agree and understand that if County fails to receive expenditure authority sufficient to allow the County, in the exercise of its reasonable administrative discretion, to perform under this Agreement, or if federal or state laws, regulations or guidelines are modified or interpreted in such a way that County is prohibited from performing under this Agreement, the Agreement shall terminate and Customer shall pay County any remaining pro rata fees for services due to the date of such termination payable pursuant to Section 7 of this Agreement.

17. Compliance with Laws

Customer shall comply with all applicable federal, state, county and city laws, ordinances and regulations, including regulations of any administrative agency thereof, heretofore or hereafter adopted or established, during the entire term of this Agreement.

18. Taxes and Assessments

- a. Customer agrees to pay any and all applicable national, federal, state, county and local taxes, fees, assessments or surcharges, and all other similar or related charges, which are imposed or levied on the Fiber, or because of Customers use of the Services under this Agreement (collectively, "Taxes), whether or not the Taxes are imposed or levied directly on the Customer, or imposed or levied on the County because of or arising out of the use of the Services either by the Customer, or its affiliates, or anyone to whom Customer has sold or otherwise granted access to the Services. Customer agrees to pay these Taxes in addition to all other fees and charges as set forth elsewhere in this Agreement.
- b. "Taxes" include, but are not limited to, business and occupation, commercial, district, excise, franchise fee, gross receipts, license, occupational, privilege, property, Public Utility Commission, right-of-ways, utility user, or other similar taxes, fees surcharges and assessments as may be levied against Customer, or against County and passed through to Customer.

19. Termination

- a. Either party may terminate this Agreement for convenience following 90 days'

written notice to the other party.

- b. Pursuant to Section 20 of this Agreement, either party may terminate this Agreement in the event of default of the Agreement by the other party. Neither the County nor the Customer shall be deemed to have waived any breach of this Agreement by the other party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach is of the same nature as that waived.
- c. If Customer terminates this Agreement for any reason other than County's default or failure to perform, County shall be entitled to 5% of the remaining contract amount for the unexpired term of this Agreement.

20. Default

1. Either of the following events shall constitute a default:
 - a. Failure to perform or comply with any material obligation or condition of this Agreement; or
 - b. Failure to pay any sums due under this Agreement.
2. Any defaulting party shall have thirty (30) days in which to cure following written notice of default by the non-defaulting party.

21. Remedies

If this Agreement is terminated by the County due to a breach by the Customer, then the County shall have any remedy available to it in law or equity. If this Agreement is terminated for any other reason, Customer's sole remedy is reimbursement of the pro rata amounts paid to County on the unexpired term of this Agreement, less any setoff to which the County is entitled.

22. Amendment

Any amendments to this Agreement shall be in writing and shall be signed by all parties.

23. No recourse Against the Grantor

Customer shall have no recourse whatsoever against County or its officials, boards, commissions, or employees for any loss, costs, expense, or damage arising out of any provision or requirement contained herein, or in the event this Agreement or any part thereof is determined to be invalid.

24. Notice

Any notice hereunder shall be in writing and shall be delivered by personal service or

by United States certified or registered mail, with postage prepaid, or by electronic mail as follows:

Notice to the County

Manager, Clackamas Broadband eXchange
Clackamas County Technology Services
121 Library Court
Oregon City, Oregon 97045
ddexter@clackamas.us
Fax Number (503) 655-8255

with a copy to

Chief Information Officer
Clackamas County Technology Services
121 Library Court
Oregon City, Oregon 97045
cbxinfo@co.clackamas.or.us
Fax Number: (503) 655-8255

Notice to the Customer

Tina Kirk
Business Manager
PO Box 13309
Portland, OR 97213
(503) 744-1304
billing@linkoregon.org

Either Party, by similar written notice, may change the address to which notices shall be sent.

25. Debt Limitations

This Agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and County's performance is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.

26. No Attorney Fees

No attorney fees shall be paid for or awarded to either party in the course of any dispute or other recovery under this Agreement. It is the intent of the parties that each shall bear the costs of its own legal counsel.

27. Governing Law

This Agreement shall be governed and construed in accordance with the laws of the

State of Oregon without regard to principles of conflicts of law. Any claim, action, or suit between County and Customer that arises out of or relates to the performance of this Agreement shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit must be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

28. Survival

All rights and obligations shall cease upon termination or expiration of this Agreement, except for the rights and obligations set forth in Sections 9, 12, 14, 21, 23, 25, 26, 27, 28, and 30, and all other rights and obligations which by their context are intended to survive.

29. Severability

If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

30. Whole Contract

THIS CONTRACT CONSTITUTES THE COMPLETE AND EXCLUSIVE STATEMENT OF THE CONTRACT BETWEEN THE PARTIES RELEVANT TO THE PURPOSE DESCRIBED HEREIN AND SUPERSEDES ALL PRIOR AGREEMENTS OF PROPOSALS, ORAL OR WRITTEN, AND ALL OTHER COMMUNICATION BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF THIS CONTRACT. NO WAIVER, CONSENT, MODIFICATION, OR CHANGE OF TERMS OF THIS CONTRACT WILL BE BINDING ON EITHER PARTY EXCEPT AS A WRITTEN ADDENDUM SIGNED BY AUTHORIZED AGENTS OF BOTH PARTIES.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the date and year first above written.

Clackamas County

By (signature): _____

Name: _____

Title: _____

Date: _____

Customer

Oregon Fiber Partnership, dba Link Oregon
(Customer Name)

By (signature): *S. C. Corbato*

Name (print): Steven C. Corbato

Title: Executive Director

Date: May 18, 2021

APPENDIX A

SERVICE AND RATE SCHEDULE

1. Specified Services and Rates

The following are the sites, services, and rates agreed to by County and Customer at which Customer shall be provided services on the fiber optic network during the term of the Agreement. It is understood by both parties that service to these sites shall be provided for the rates below, subject to any rate increases otherwise applicable in accordance with terms herein. It is further understood that, during the term of the Agreement, Customer may add services to existing or new locations, or change services and/or locations, but that such changes are subject to the rates for such additional services.

2. Construction, Installation and Activation

For construction, installation and activation work and provision of fiber optic network components, the County shall charge Customer nonrecurring charge(s) as specified in Section 5 of Appendix A. All facilities constructed under this Agreement and Appendix A shall be owned, operated, and maintained by the County.

3. Service Changes and Conversions

Both parties agree that Customer may add or change services during the term of the Agreement, but that such changes are subject to applicable rates, and upgrade and downgrade charges.

4. Annual Recurring Charges

From (Connecting Point A:Site Name & Address)	To (Connecting Point B:Site Name & Address)	Service	Monthly Rate (\$)
1 Oregon Fiber Partnership at Clackamas County Extension and 4-H Service District 200 Warner Milne Rd Oregon City, OR 97045	Clackamas Educational Services District 13455 SE 97thAve Clackamas, OR 97015	One Pair (two) dark fibers	\$255.00

5. Nonrecurring Charges

From (Connecting Point A:Site Name & Address)	To (Connecting Point B:Site Name & Address)	Service	Amount (\$)
1 Oregon Fiber Partnership at Clackamas County Extension and 4-H Service District 200 Warner Milne Rd Oregon City, OR 97045	Clackamas Educational Services District 13455 SE 97thAve Clackamas, OR 97015	Construction	\$2,400.00

6. Late Payment Interest

Customer will be charged interest for any payment made after its due date (thirty (30) days after receipt of invoice). Interest is charged at a rate of one and a half percent (1.5%) per month, or eighteen percent (18%) annually, on any installment not paid when due.

7. Annual Consumer Price Index (CPI) Adjustments

All fees and minimum charges are subject to Consumer Price Index (CPI) adjustments, to be applied annually. The amount of the fees and charges specified herein may increase annually by a percentage up to the change in the West Region (West City Size B/C 2.5 Million or less) Consumer Price Index of the US Dept. of Labor, Bureau of Labor Statistics (<https://www.bls.gov/regions/west/data/xg-tables/ro9xg01.htm>), based upon the rate of change as stated from the last month reported to the same month of the preceding year. In the event such Consumer Price Index (or a successor or substitute index) is not available, a reliable governmental or other nonpartisan publication evaluating the information theretofore used in determining the Consumer Price Index shall be used in lieu of such Consumer Price Index.

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APPENDIX B

MAINTENANCE AND OPERATIONS SPECIFICATIONS AND PROCEDURES

1. Defined Terms

- a. “Routine Maintenance” is all preventive maintenance activities and repairs.
- b. “Non-Routine Maintenance” is all efforts and activities in response to an emergency circumstance which requires restoration of service.

2. General

- a. County shall operate and maintain a Network Control and Management Center (NCAM) staffed twenty-four (24) hours a day, seven (7) days a week, by trained and qualified personnel. County shall maintain (503) 742-4219 telephone number to contact personnel and NCAM. County’s NCAM personnel shall dispatch maintenance and repair personnel along the fiber optic network to repair problems detected through the NCAM’s remote surveillance equipment, by the Customer, or otherwise.
- b. In the event Customer identifies a circumstance which requires restoration of service, Customer shall provide NCAM personnel the name and address of the facility with the problem, the identification number of the Fiber circuits in question, and the name and telephone numbers of Customer’s personnel to contact for site access and status updates. NCAM personnel shall immediately contact a County technician and provide the Customer contact information. County technician shall contact Customer within one (1) hour of initial call.
- c. If the County’s technician cannot repair the service interruption by telephone, County shall use commercially reasonable efforts to have its first maintenance employee or contractor at the site requiring repair within five (5) hours of the initial call to the NCAM. County will then work continuously until service has been restored.
- d. County shall use commercially reasonable efforts to notify Customer seven (7) days prior to the date of any planned non-emergency maintenance activity. In the event that a County planned activity is canceled or delayed for any reason as previously notified, County shall notify Customer as soon as reasonably possible and will comply with the provisions of the previous sentence to reschedule any delayed activity.

3. Fiber Optic Network

- a. County shall maintain the fiber optic network in good and operable condition and shall repair the fiber in a manner consistent with industry standards and using commercially reasonable efforts.
- b. County shall perform appropriate routine maintenance on the fiber optic network in accordance with County's then current preventive maintenance procedures. County's maintenance procedures shall not substantially deviate from industry practice.

4. Restoration

- a. When restoring damaged fiber, the Parties agree to work together to restore all traffic as quickly as possible. County, immediately upon arriving on the site of the damage, shall determine the best course of action to be taken to restore the fiber and shall begin restoration efforts.
- b. It will be the responsibility of County and Customer to report to one another respectively any known environmental hazards which would restrict or jeopardize any maintenance work activities in shelters or right of way areas of operation.
- c. Upon notification of interruption of fiber optic network service, disrepair, impairment or other need for repair or restoration of the fiber and the location of the damaged fiber, County shall pursue commercially reasonable efforts to mobilize technicians to achieve necessary repair or restoration, including, but without limitation, having maintenance personnel at the affected site within five (5) hours after receipt of such notice with the required restoration material and equipment.
- d. In the event that Customer's use of the fiber optic network is interrupted due to an occurrence of a force majeure event, repairs and restoration shall be made as expeditiously as reasonably possible. Customer recognizes that five (5) hour response time represents optimal conditions, and may be impossible to achieve when emergency restoration of fiber optic network integrity is required or when responding to certain remote locations. Actual response times will be influenced by such factors as terrain, weather conditions present at the time the request is made and actual mileage to the fault site.
- e. For purposes of this section, "commercially reasonable efforts" means activities and performances consistent with prudent utility practice, existing contract provisions for County technicians and/or employees, practices required for preserving the integrity of the fiber optic network, and response times that do not jeopardize the health and safety of the employees, contractors and agents of County and Customer.

- 5.** Customer shall be responsible for paying County standard maintenance fees for

any calls to County for maintenance issues related to the Fiber that County later confirms as resulting from another source other than functionality of the Fibers.

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APPENDIX C

FIBER SPLICING AND TESTING STANDARDS AND PROCEDURES

1. Fiber and Connector Standards

a. **Connector Standards**

The loss value of any pigtail connector and any associated fiber jumper or pigtail with matching mode field diameters will not exceed .5dB at 1550 nm. The loss value of a connector and its associated jumper with mismatched mode field diameters should not exceed .8 dB.

b. **Field Splice Standards**

The objective for each splice is an averaged loss value of 0.1 dB or less when measured bi-directionally with an OTDR at 1550 nm. In the event of damage and subsequent restoration of the Fibers, commercially reasonable efforts will be made to restore the Fibers to this standard. If after 3 restoration splicing attempts, County is not able to produce a loss value of 0.1 dB or less bi-directionally at 1550 nm, then 0.5 dB or less bi-directionally at 1550 nm will be acceptable. Fibers not meeting the 0.1 dB or less specification will be identified as Out Of Specification (OOS). Documentation of the three attempts (re-burns) to bring the OOS fiber within specification will be provided.

c. **Span Loss**

It is County's responsibility to insure proper continuity of all fibers at the fiber level, not just the pigtail level. Any "frogs" or fibers that cross in the route will be remedied by County. The following span loss calculation will be used:

$$(A * L) + (0.1 * N) + C = \text{Acceptable Span Loss}$$

A = Attenuation per KM at 1550 nm

L = Optical length of cable measured in kilometers (from OTDR Trace)

N = Number of splices in a span

C = Connector loss. The connector loss will not exceed .5dB. The section test will have (2) pigtail connectors/splices under test, so 1.0dB will be allowed for this loss.

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CBX agreement to support the Clackamas County Extension site

Final Audit Report

2021-05-19

Created:	2021-05-18
By:	Molly Thurston (molly@nwacc.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAkYhOj91ZD9XMGqeyVI-KEfZ5KGnCASM3

"CBX agreement to support the Clackamas County Extension site" History

-  Document created by Molly Thurston (molly@nwacc.org)
2021-05-18 - 4:16:09 PM GMT- IP address: 73.164.240.50
-  Document emailed to Steven C. Corbato (corbato@linkoregon.org) for signature
2021-05-18 - 4:16:59 PM GMT
-  Email viewed by Steven C. Corbato (corbato@linkoregon.org)
2021-05-18 - 4:21:32 PM GMT- IP address: 76.115.184.21
-  Document e-signed by Steven C. Corbato (corbato@linkoregon.org)
Signature Date: 2021-05-19 - 0:38:43 AM GMT - Time Source: server- IP address: 76.115.184.21
-  Agreement completed.
2021-05-19 - 0:38:43 AM GMT



Dave Cummings
Chief Information Officer

Technology Services

121 Library Court Oregon City, OR 97045

June 1, 2021

Board of County Commissioners
Clackamas County

Members of the Board:

Approve a Non-Disclosure Agreement between Clackamas Broadband eXchange
and Verizon Business Network Services, Inc.

Purpose/Outcomes	Clackamas Broadband eXchange (CBX) and Verizon need a Non-Disclosure Agreement signed so they can share network information with one another.
Dollar Amount and Fiscal Impact	None.
Funding Source	N/A
Duration	Effective for two (2) years from the date the NDA is fully signed.
Previous Board Action	Board approved an NDA with Verizon on June 11 th , 2020.
Strategic Plan Alignment	<ol style="list-style-type: none">1. Build a strong infrastructure.2. This item follows the Board's Key Initiatives of making high speed internet available throughout the County.
Counsel Review	Andrew Naylor, March 3, 2021
Contact Person	Dave Devore (503) 723-4996
Contract Number	N/A

BACKGROUND:

Clackamas Broadband eXchange is pursuing partnerships and operational cooperation from other communications providers. Verizon is willing to share detailed information and have these discussions with staff in CBX but only if they are subject to a Non-Disclosure Agreement.

RECOMMENDATION:

Staff respectfully recommends that the Board approve this Non-Disclosure Agreement.

Sincerely,

Dave Cummings
CIO Technology Services

NON-DISCLOSURE AGREEMENT

This NON-DISCLOSURE AGREEMENT (“Agreement”), is made and entered into as of the date of full execution by the Parties (“Effective Date”) by and between THE COUNTY OF CLACKAMAS, a government entity ("County") of the State of Oregon and Verizon Business Network Services Inc., a Delaware corporation with its principal offices at One Verizon Way, Basking Ridge, New Jersey, 07920 (“VBNS”) and its affiliates (defined as an entity controlling, majority-owned, controlled or under common voting control with VBNS, or a contractual or joint venture partner, possessing, whether by contract or otherwise, similar rights or obligations (individually or collectively, the "Company"). County and the Company may be referred to herein collectively as the “Parties” and individually as a “Party”.

WHEREAS, the Parties desire to engage in discussions concerning the deployment of wireless and wireline network infrastructure in the County, among other related matters;

WHEREAS, the Parties may provide Confidential Information (as defined below) to one another to understand the wireless and wireline network deployment;

NOW, THEREFORE, in consideration of the foregoing, County and Company hereby agree as follows:

1. Notwithstanding anything to the contrary, County’s obligations under this Agreement are expressly subject to the Oregon Public Records Law, Oregon Revised Statutes (“ORS”) Chapter 192 *et. seq.*, and any other applicable state or federal law. Company asserts that Confidential Information, defined below, submitted pursuant to this Agreement is exempt from disclosure under one or more exceptions including, but not limited to: ORS 192.345(2) (trade secrets) and ORS 192.354(4) (confidential submissions). While County will make good faith efforts to perform under this Agreement, County’s disclosure of Confidential Information, in whole or in part, will not be a breach of the Agreement if such disclosure was pursuant to a request under the Oregon Public Records Law, or any other state or federal law, or if such disclosure was compelled by deposition, interrogatory, request for documents, subpoena, civil investigative demand, or similar processes.

If County is subject to such a disclosure order or receives from a third party any public records request for the disclosure of Confidential Information, County shall notify Company within a reasonable period of time of the request. Company is exclusively responsible for defending Company’s position concerning the confidentiality of the requested information. County is not required to assist the Company in opposing disclosure of Confidential Information. Notices under this provision shall be sent to donna.barrett@verizonwireless.com.

2. “Confidential Information” means information not generally known to the public, marked confidential and which is maintained by either of the Parties as confidential, and is reasonably considered confidential, whether of a technical, business or other nature that relates to the infrastructure and network deployment or a potential agreement between the County and the Company. Other information, although not necessarily directly related to the infrastructure and network deployment or a potential agreement between County and Company, is nevertheless disclosed as a result of the Parties’ discussions, and is marked confidential or proprietary because of: (i) legends or other markings, the Parties may provide Confidential Information in written or tangible form (including information in computer software or held in electronic storage media) or by oral, visual or other means. Confidential Information may also, without limitation, include confidential or proprietary documents, plans, records, reports, correspondence, applications, data and any and all other sources of information. If the Confidential

Information is provided orally, it shall be deemed to be confidential or proprietary if identified as such by the Parties at the time it is provided. Confidential Information shall not include information that is in the public domain, information that the Parties independently and lawfully obtain and/or information that either Party obtains by a court order.

3. By submitting the Confidential Information, the Parties do not grant to one another or any third party any license, explicitly or implicitly, under any trademark, patent, copyright, mask work, protection right, trade secret or any other intellectual property right, except for the uses identified herein. Further, any submittal of the Confidential Information does not constitute or imply any commitment, promise, or inducement by the Company or County to enter into any further agreements.
4. Except as otherwise required by law, the Confidential Information and information derived directly from the Confidential Information related to the infrastructure network will be used solely for the purpose of evaluating the infrastructure and network deployment or a potential agreement between the County and the Company. The Parties and any party to whom the Confidential Information is furnished as provided herein, shall keep the Confidential Information confidential and shall not disclose the Confidential Information to any third persons except as required by law or as permitted pursuant to the terms set forth in this Agreement.
5. The Parties may disclose the Confidential Information or portions thereof only to the persons to whom such disclosure is permissible (collectively, the "Representatives") as follows: (i) officers, employees and legal counsel of the Parties on a need-to-know basis; or (ii) other state agencies, local governments or local development authorities and their respective officers and employees, whose assistance may be requested or required in connection with evaluating infrastructure and network deployment or a potential agreement between County and the Company; (iii) or as otherwise allowed by the terms of this Agreement. Prior to providing any of the Confidential Information to the Representatives, the Parties shall advise any and all of the Representatives of the confidential nature of the Confidential Information and require each such Representative to comply with the requirements of this Agreement.
6. Any person who is provided with Confidential Information shall make best efforts to fully protect the Confidential Information, including but not limited to (i) if the Confidential Information contains hard copies, to keep that Confidential Information in a locked location and to restrict access to anyone who does not have permission to review the Confidential Information; and (ii) if Confidential Information is in digital format, to maintain the Confidential Information in a system with encryption and to restrict access to anyone who does not have permission to review the Confidential Information.
7. Neither Party shall issue any press releases announcing the infrastructure and network deployment or any potential agreement between County and Company or make any similar affirmative announcement to any third person unless the other party provides written consent or if compelled by law, subject to the provisions of Paragraph 9 below.
8. County agrees and acknowledges as follows: (i) the Confidential Information provided by Company to County is owned by Company, and (ii) that breach of this Agreement may cause significant harm to Company.
9. Each actual breach of this Agreement herein shall generate a claim in favor of the other Party that the other Party may assert against the breaching Party. Upon such breach, the other Party shall be authorized to seek all remedies available at law or in equity, including actual and punitive damages, injunctive relief and specific performance. The Parties agree that monetary damages may not be

adequate compensation for any loss incurred by reason of a breach by it of the provisions of this Agreement.

10. This Agreement will expire upon the earlier of (i) two (2) years from the Effective Date or (ii) upon the completion of the infrastructure and network deployment or execution of an agreement between the County and Company. If a subsequent agreement is executed that contains a confidentiality provision, the terms and conditions of that agreement shall govern the issues of non-disclosure and confidentiality. Upon written request made by the Company or in the event this Agreement expires without a subsequent agreement, County shall have thirty (30) days to either (i) promptly return to Company all Confidential Information, all copies thereof, and any notes, reports, compilations, records, or similar documents derived or made therefrom, or (ii) agree with Company upon appropriate methods and certification of destruction or other disposition of the foregoing. Notwithstanding such expiration or termination, all of the Parties' non-disclosure obligations under this Agreement will survive with respect to any Confidential Information received prior to such expiration or termination unless a subsequent agreement is in effect in which case it shall govern.
11. This Agreement also applies to Confidential Information related to the wireless and wireline infrastructure already disclosed to County and County represents that Confidential Information disclosed prior to the Effective Date has not been disclosed to any third persons. Any previously disclosed Confidential Information is subject to the terms and conditions of this Agreement.
12. No failure or delay by Company or County to exercise any right, power or privilege hereunder will operate as a waiver, nor will any single or partial exercise preclude any other or further exercise.
13. This Agreement shall be binding upon and inure to the benefit of County and Company and their respective successors and assigns. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without reference to its conflict of law provisions. Any claim between County and Company that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas County for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the County of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.
14. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute the same agreement.
15. This Agreement contains the entire agreement and understanding concerning the subject matter hereof between County and Company and may not be amended except by a writing executed by both County and Company.
16. Except as expressly provided herein, nothing in this Agreement creates, implies or evidences any partnership or joint venture between the Parties, or the relationship between them of principal and agent. No Party has any authority to make any representation or commitment, or to incur any liability, on behalf of the others.
17. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each Party represents and warrants to the others that the execution and delivery of the Agreement and the performance of such Party's obligations

hereunder have been duly authorized.

18. Debt Limitation. This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act, and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.

IN WITNESS WHEREOF, County and Company have executed this Agreement which is effective as of the Effective Date.

COUNTY OF CLACKAMAS

By: _____

Name: _____

Title: _____

Date: _____

VERIZON BUSINESS NETWORK SERVICES INC.

By: _____

Name: _____

Title: _____

Date: _____