



Dave Cummings
Chief Information Officer

Technology Services

121 Library Court Oregon City, OR 97045

July 9, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

Approval for a Service Level Agreement between Clackamas Broadband
eXchange and The Park Academy for a dark fiber connection

Purpose/Outcomes	Clackamas Broadband eXchange (CBX) is looking for approval for a Service Level Agreement (SLA) with The Park Academy for a dark fiber connection to Clackamas ESD.
Dollar Amount and Fiscal Impact	The Park Academy will pay a nonrecurring fee of \$4,250.00 for the extension of the fiber network and pay a recurring annual 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 The Park Academy.
Duration	Effective upon signature by the board, the SLA is effective for five (5) years.
Previous Board Action	Board previously approved CBX to build and maintain a dark fiber network for the Colton School District.
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, June 17, 2020
Contact Person	Dave Devore (503)723-4996
Contract No.	N/A

BACKGROUND:

CBX is looking for approval to provide 1 new dark fiber connection for The Park Academy in Lake Oswego. The dark fiber connection will connect The Park Academy to Clackamas ESD for essential services.

RECOMMENDATION:

Staff respectfully recommends approval to enter into this fiber agreement with The Park Academy. 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

The Park Academy
(Customer Name)

1. Recitals

WHEREAS, Clackamas County (County) desires to provide to The Park Academy (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, Customer desires to use 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 completion of 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, and the date of such notice shall be called the "Service Start Date". Unless terminated as herein provided, this Agreement shall continue through June 30, 2025.

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

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. If the Customer fails to pay within sixty (60) days of receipt of an invoice it shall constitute grounds for County to terminate 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 day's 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 County

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 Express
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

Dr. Mary Mollway
1915 South Shore Blvd
Lake Oswego, OR 97034
mmollway@parkacademy.org
(503) 594-1779

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, and 28, 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

The Park Academy
(Customer Name)

By (signature): Dr. Mary Mallway

Name (print): Dr. Mary Mallway

Title: Asst. Head of School

Date: 06/30/2020

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	Clackamas Education Service District 13455 SE 97th Ave. Clackamas, Oregon 97015	Park Academy 1915 South Shore Blvd. Lake Oswego, OR 97034	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	Clackamas Education Service District 13455 SE 97th Ave. Clackamas, Oregon 97015	Park Academy 1915 South Shore Blvd. Lake Oswego, OR 97034	Construction	\$4,250.00

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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Dave Cummings
Chief Information Officer

Technology Services

121 Library Court Oregon City, OR 97045

Board of County Commissioners
Clackamas County

July 9th, 2020

Members of the Board:

Approval of Intergovernmental Agreement with State of Oregon Department of Administrative Services for Albert Security Monitoring

Purpose/Outcomes	Seeking approval to enter into an Intergovernmental Agreement with the State of Oregon / Department of Administrative Services for use of the Albert Security Monitoring service for Clackamas County systems.
Dollar Amount and Fiscal Impact	No Cost, covered by the State of Oregon.
Funding Source	N/A
Duration	Indefinite as long as service is provided by Oregon State and Clackamas County is a part of the service program.
Previous Board Action	None
Strategic Plan Alignment	1. Build a strong infrastructure. 2. Build public trust through good government.
Counsel Review	County Counsel previously reviewed and approved this IGA on 6/23/2020
Contact Person	Dave Devore (503) 723-4996

BACKGROUND:

Technology Services (TS) is tasked with maintaining a secure environment for the County's technology including, but not limited to, network, servers, work stations, phones, applications, communications, data and even polices. This is a never ending battle utilizing an ever increasing array of services, monitors and systems to be both proactive and reactive in our efforts. All this while trying to maintain a balance between security and access to required services utilizing a limited pool of resources.

As the quantity and quality of security threats increases, so must the sophistication of the security protection, especially given the rise in remote access, cloud utilization and attacks on financial and election systems. To combat these threats, government agencies must increase their cooperation in consistent monitoring and reporting of threats to provide a more unified front in the prevention of cyber threats and crime. To this end, the State of Oregon, in cooperation with the Department of Administrative Services, the Secretary of State Elections Division and Multi-State Center for Internet Security have worked together to procure, organize and provide a cyber security monitoring system named Albert for use by local governments of Oregon.

Along with providing additional monitoring of potential threats or attacks of an agency network, this system also alerts other local agencies and the State of any identified threats to help other agencies be proactive in their securing of agency systems. This enhanced communication may make the difference between a successful attack and a blocked threat. While Clackamas County employs numerous methods of securing the County systems, and will continue to

expand this protection to meet new threats, any additional monitoring and communication of threats can only enhance our security status. The State in recognizing the need for such a service is providing this service free of charge to the local agencies in return for access to the information provided by Albert in identifying threats to help prevent the spread of any attack.

TS has evaluated the Albert Security Proposal from the State of Oregon and feel this will be a useful additional to both Clackamas County as well as other local agencies security portfolios. TS would like to add Albert to the County's security arsenal as well as increase our inter-cooperation with the State of Oregon, Center for Internet Security and other local agencies security teams. This is one area of technology support where any help is needed and welcome.

PROCUREMENT PROCESS:

Clackamas County is not responsible for any of the procurement process, this is managed by the State of Oregon.

RECOMMENDATION:

Staff recommends the Board of County Commissioners approve the Intergovernmental Agreement with the State of Oregon / Department of Administrative Services for the use of the Albert Security Monitoring and reporting service.

Respectfully Submitted,



Dave Cummings,
Chief Information Officer, Director

Purchase Approved by Chair _____ Date _____

INTERGOVERNMENTAL AGREEMENT

DAS PS Agreement No. DASPS-3450-20

Local Government Agreement No ##

This Agreement is between the State of Oregon (State) acting by and through its Department of Administrative Services, Procurement Services (DAS PS), on behalf of the Office of the State Chief Information Officer acting as Enterprise Information Services (EIS), Cyber Security Services (CSS), and Clackamas County, each a "Party" and, together, the "Parties".

RECITALS

1. CSS, in coordination with the Oregon Secretary of State Elections Division, has contracted with the Center for Internet Security, Inc. (CIS) to provide CIS' Albert Monitoring Services for county-level elections services.
2. Local Government wishes to receive the Albert Monitoring Services.
3. CSS and the Oregon Secretary of State Elections Division wish to receive data and analysis on information security for Oregon's election systems, and Local Government agrees to share this information with the State.

AGREEMENT

In consideration of the foregoing Recitals, the Parties agree as follows:

SECTION 1: DEFINITIONS

Unless otherwise defined in this Agreement, all capitalized terms have the following meanings.

"Agreement" means this Intergovernmental Agreement, including all terms and conditions herein and all Exhibits attached hereto.

"Authorized Representative" means a person representing a party to this Agreement who is authorized to make commitments and decisions on behalf of the Party regarding this Agreement.

"Business Days" means Monday through Friday, 8:00 a.m. to 5:00 p.m., Pacific Time, excluding State of Oregon holidays and business closure days.

"Calendar Days" mean contiguous days.

"Confidential Information" is Local Government's confidential information described in Section 7.2.

"Services" means the Albert Monitoring Services delivered by CIS.

SECTION 2: AUTHORITY

This Agreement is an intergovernmental agreement subject to Chapter 190 of the Oregon Revised Statutes. The Agreement is a cooperative agreement under ORS 190.110 under which the Parties are exercising authority over state systems and election security. The Agreement does not constitute an authorization by

Local Government for a party to perform one or more inherent governmental responsibilities for Local Government.

SECTION 3: PURPOSE

The purpose of this Agreement is to facilitate Local Government's receipt of Albert Monitoring Services as further described in Exhibit A, which is hereby incorporated by this reference. CSS wishes to facilitate Local Government's receipt of Albert Monitoring Services, including necessary hardware. In exchange, CSS will receive information from CIS (the third party provider of Albert Monitoring Services) resulting from the Services, as further described in this Agreement.

SECTION 4: EFFECTIVE DATE AND DURATION

- 4.1 This Agreement is effective on May 15, 2020, or the date of the last signature, whichever occurs first (Effective Date), and will be terminated in accordance with the Termination provision in Section 16 of this Agreement.
- 4.2 The initial term of the Albert Monitoring Services will begin on the date the pre-Service requirements as set forth in Exhibit A are met and the Services are made available (Service Start Date), and will run for a 12-month period following the Service Start Date unless terminated earlier in accordance with this Agreement. Subject to the State and CIS continuing their contract, the Parties may agree to subsequent 12-month renewal terms for the Services.

SECTION 5: AUTHORIZED REPRESENTATIVES

- 5.1 The following individuals are authorized to make commitments and decisions on behalf of their respective Parties regarding this Agreement

5.1.1 CSS's Authorized Representative is: Mark E. Johnston
Director of Cyber Security
mark.e.johnston@oregon.gov
503-947-0488

5.1.2 Local Government's Authorized Representative is: Chris Gensler

- 5.2 A Party may designate a new Authorized Representative by written notice to the other Party.

SECTION 6: RESPONSIBILITIES OF EACH PARTY

- 6.1 To receive Albert Monitoring Services, Local Government will perform the activities outlined in Exhibit A. Approximately 90 Calendar Days' prior to the end of a 12-month Services period, the Parties will confer and agree to continue or discontinue the Services for Local Government.
- 6.2 CSS will pay CIS for the Albert Monitoring Services to be received by Local Government in accordance with CSS' agreement with CIS, State of Oregon contract number 0540.
 - 6.2.1 While CSS anticipates Local Government receiving continuous Services throughout the 12-month period commencing with the Service Start Date, and Services continuing through any Services renewal period, CSS cannot guarantee and is not liable to Local Government for any gaps in the term of Services.

SECTION 7: INTELLECTUAL PROPERTY RIGHTS & CONFIDENTIAL INFORMATION

- 7.1 No Intellectual Property Rights in the Services.** This Agreement conveys no intellectual property rights in the Services. CIS retains all rights in the software, hardware, and services comprising the Albert Monitoring Services.
- 7.2 Local Government Confidential Information.** Local Government may provide information that is confidential to Local Government to CSS, the Oregon Secretary of State, or to CIS as part of establishing and receiving the Services, and such confidential information may be generated and collected by CIS in the performance of the Services (Confidential Information). Local Government consents to the generation, collection, use, and distribution of information on information security, including Confidential Information, as described in this Agreement.
- 7.2.1** Confidential Information includes without limitation: information regarding the infrastructure and security of Local Government's information systems, such as internal IP addresses; assessments and plans that relate specifically and uniquely to the vulnerability of Local Government's information systems; the results of tests of the security of Local Government's information systems insofar as those results may reveal specific vulnerabilities; event, incident, or breach information not publicly disclosed by Local Government's; or information otherwise marked as confidential by Local Government.
- 7.2.2** Local Government shall make reasonable efforts, consistent with applicable law, to limit the scope and nature of Confidential Information it discloses to CIS.
- 7.2.3** Confidential Information does not include: information that becomes part of the public domain through lawful means and without breach of any confidentiality obligation by the State; information subsequently and rightfully received from third parties who have the necessary rights to transfer the information without any obligation of confidentiality; information that was known to the State prior to the Effective Date of this Agreement without obligation of confidentiality; Information that is independently developed by the State or a third party and without use of, or reference to, any Confidential Information; and information required to be disclosed by compulsory judicial or administrative process or by law or regulation.
- 7.3 CIS Rights and Obligations as to Local Government's Confidential Information.**
- 7.3.1** CSS' agreement with CIS requires CIS to hold Local Government's Confidential Information in confidence in accordance with the highest standard of care applicable but no less than to the same extent and the same manner as CIS protects its own confidential information of the same classification, and in no event less than reasonable care. CIS is obligated under its agreement with CSS to use reasonable steps to ensure that Local Government's Confidential Information that CIS receives as part of providing the Services is not disclosed in violation of CIS' obligations.
- 7.3.2** CSS' agreement with CIS requires CIS to not disclose Local Government's Confidential Information, and not disclose any information about CSS or Local Government in any identifiable form without the express written permission of the owner or subject of the information except as required pursuant to lawfully authorized subpoena, or similar compulsive directive, or as required to be disclosed by law.

- 7.3.3** By receiving the Services, Local Government consents to CIS disclosing relevant aspects of Local Government's Confidential Information to its officers, employees, and federal partners for the purposes of security analysis and intelligence on third party threat actors, provided each agrees to protect Local Government's Confidential Information to the same extent as required under CIS' agreement with the State of Oregon (described in this Section 7.3).
- 7.3.4** CIS may use de-identified aggregated data of its service recipients, including Local Government, in any format for any purpose, provided that such data cannot be identified to or associated with Local Government.
- 7.4 Local Government's Consent and Authorization for CSS and State of Oregon.** In exchange for receipt of the Services, Local Government authorizes CIS to distribute information CIS generates and collects as part of the Services, and CIS' analysis of the information, to CSS. This include Local Government's Confidential Information. Except as otherwise provided for in the Agreement, CSS will hold such information in confidence according to standards and practices comparable to those set forth in Section 7.3.

SECTION 8: REPRESENTATIONS AND WARRANTIES

8.1 Local Government represents and warrants to CSS that:

- 8.1.1** Local Government is a county within the State of Oregon, duly organized and validly existing. Local Government has the power and authority to enter into and perform this Agreement;
- 8.1.2** The making and performance by Local Government of this Agreement (a) is duly authorized by all necessary action of Local Government, (b) does not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of Local Government's charter or other organizational document and (c) does not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Local Government is party or by which Local Government may be bound or affected. No authorization, consent, license, approval of, or filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Local Government of this Agreement, other than those that have already been obtained;
- 8.1.3** This Agreement has been duly executed and delivered by Local Government and constitutes a legal, valid and binding obligation of Local Government enforceable in accordance with its terms;

8.2 CSS represents and warrants to Local Government that:

- 8.2.1** CSS has the power and authority to enter into and perform this Agreement;
- 8.2.2** The making and performance by CSS of this Agreement (a) have been duly authorized by all necessary action of CSS, (b) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency and (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which CSS is party or by which CSS may be bound or affected. No authorization, consent, license, approval of, or filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or

performance by CSS of this Agreement, other than those that have already been obtained; and

8.2.3 This Agreement has been duly executed and delivered by CSS and constitutes a legal, valid and binding obligation of CSS enforceable in accordance with its terms.

8.3 DISCLAIMER OF WARRANTIES. CSS IS FUNDING RECEIPT BY LOCAL GOVERNMENT OF THIRD PARTY SERVICES. THE STATE OF OREGON ASSUMES NO RESPONSIBILITY OR LIABILITY FOR ANY ACT OR OMISSION OR OTHER PERFORMANCE RELATED TO THE PROVISION OF ALBERT MONITORING SERVICES OR FOR THE ACCURACY OF THE INFORMATION PROVIDED AS PART OF THE SERVICES. AS BETWEEN THE STATE AND LOCAL GOVERNMENT, THE SERVICES ARE PROVIDED ON AN "AS-IS" BASIS, WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED.

8.4 The representations and warranties set forth in this section are in addition to, and not in lieu of, any other representations or warranties provided.

SECTION 9: DISPUTE RESOLUTION

The Parties should attempt in good faith to resolve any dispute arising out of this Agreement. This may be done at any management level, including at a level higher than persons directly responsible for administration of the agreement. In addition to other processes to resolve disputes arising under the Agreement, either Party may notify the other that it wishes to engage in a more guided dispute resolution process. Upon such notification, the Parties shall engage in non-binding arbitration to resolve the dispute. If the Parties do not reach agreement as a result of the non-binding discussion, the Parties may agree to consider further appropriate dispute resolution processes, including binding arbitration. The rights and remedies set forth in this Agreement are not intended to be exhaustive and the exercise by either Party of any right or remedy does not preclude the exercise of any other rights or remedies at law or in equity.

SECTION 10: GOVERNING LAW, CONSENT TO JURISDICTION

This Agreement is governed by and to be construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between the Parties that arises from or relates to this Agreement must be brought and conducted solely and exclusively within a circuit court for the State of Oregon of proper jurisdiction. Each Party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

SECTION 11: CONTRIBUTION

11.1 If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 (a "Third Party Claim") against a Party (the "Notified Party") with respect to which the other Party (the "Other Party") may have liability, the Notified Party shall promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party, along with the written notice, a copy of the claim, process and all legal pleadings with respect to the Third Party Claim that have been received by the Notified Party. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this section and a meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's contribution obligation under this Section 11 with

respect to the Third Party Claim.

- 11.2** With respect to a Third Party Claim for which the State is jointly liable with Local Government (or would be if joined in the Third Party Claim), CSS shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Local Government in such proportion as is appropriate to reflect the relative fault of CSS on the one hand and of Local Government on the other hand in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of CSS on the one hand and of Local Government on the other hand will be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. CSS's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if the State had sole liability in the proceeding.
- 11.3** With respect to a Third Party Claim for which Local Government is jointly liable with CSS (or would be if joined in the Third Party Claim), Local Government shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by CSS in such proportion as is appropriate to reflect the relative fault of Local Government on the one hand and of CSS on the other hand in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Local Government on the one hand and of CSS on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Local Government's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if it had sole liability in the proceeding.

SECTION 12: LOCAL GOVERNMENT DEFAULT

Local Government will be in default under this Agreement if it fails to perform, observe or discharge any of its covenants, agreements or material obligations under this Agreement.

SECTION 13: CSS DEFAULT

CSS will be in default under this Agreement if it fails to perform, observe or discharge any of its covenants, agreements, or material obligations under this Agreement.

SECTION 14: REMEDIES

In the event a Party has materially failed to perform under the Agreement, the Party that is then not in default shall be entitled to seek all rights and remedies available to it under the Agreement or by law. Provided, however, all remedies, whether by under the Agreement or at law or equity, shall be subject to the limits of the Oregon Tort Claims Act and the Oregon Constitution. No remedy provided for is exclusive of any other available remedy. All remedies are cumulative and in addition to every other remedy available under the Agreement, at law, in equity, or by statute.

SECTION 15: LIMITATION OF LIABILITY

NEITHER PARTY WILL BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, OR OTHER INDIRECT DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, REGARDLESS OF WHETHER THE LIABILITY CLAIM IS

BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, PRODUCT LIABILITY OR OTHERWISE. NEITHER PARTY WILL BE LIABLE FOR ANY DAMAGES OF ANY SORT ARISING SOLELY FROM THE TERMINATION OF THIS AGREEMENT IN ACCORDANCE WITH ITS TERMS OR TERMINATION OF THE AGREEMENT BETWEEN THE STATE AND CIS.

15.1 Disclaimer of Liability; No Rights in State Contract; Basis of the Bargain. This Agreement does not create a contractual relationship between Local Government and CIS, and Local Government is not a third party beneficiary of the State's agreement with CIS. The State of Oregon is not responsible to Local Government for any acts or omissions of CIS, CIS' employees, officers, agents or third parties receiving information from CIS, which may be the basis of any claim between CIS and Local Government under contract, at law, or in equity, including without limitation claims for personal injury, including death, or damage to real property, tangible or intangible personal property, or claims arising from use or disclosure of Local Government's information (including Confidential Information). This provision is a fundamental element of the basis of the agreement between the State and Local Government. The disclaimer of warranties, limitations of liability, and the limitations of this Section 15.1 are factored into CSS' offer to facilitate Local Government's receipt of the Services.

SECTION 16: TERMINATION

16.1 The Parties may terminate this Agreement upon written agreement, or on a date set in advance in the written agreement.

16.2 CSS may terminate this Agreement as follows:

16.2.1 Upon at least 30 Calendar Days' advance written notice to Local Government;

16.2.2 Immediately upon written notice to Local Government, or on a date set in advance in the notice, if CSS fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient in CSS's reasonable administrative discretion, to cover the cost of Services;

16.2.3 Immediately upon written notice to Local Government, or on a date set in advance in the notice, if federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that CSS's payment for the Services is prohibited or CSS is prohibited from paying for such performance from the planned funding source; or

16.2.4 Immediately upon written notice to Local Government, or on a date set in advance in the notice, if Local Government is in default under this Agreement and such default remains uncured 15 Calendar Days after written notice thereof to Local Government.

16.3 Local Government may terminate this Agreement as follows:

16.3.1 Upon at least 60 Calendar Days' advance written notice to CSS;

16.3.2 Immediately upon written notice to CSS, or on a date set in advance in the notice, if Local Government fails to receive funding, or appropriations, limitations or other expenditure authority at

levels sufficient in Local Government's reasonable administrative discretion, to perform its obligations under this Agreement;

16.3.3 Immediately upon written notice to CSS, or on a date set in advance in the notice, if federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that Local Government's performance under this Agreement is prohibited or Local Government is prohibited from paying for such performance from the planned funding source; or

16.3.4 Immediately upon written notice to CSS, or on a date set in advance in the notice, if CSS is in default under this Agreement and such default remains uncured 15 Calendar Days after written notice thereof to CSS.

16.4 Return or Destruction of Hardware. Upon termination of this Agreement, Local Government will return hardware owned by CIS to CIS, or otherwise sanitize and dispose of the hardware as consented to in writing by CIS.

16.5 Right to Direct Contract. If the State terminates its contract with CIS and Local Government wishes to continue to receive Services, Local Government may enter into its own agreement with CIS.

SECTION 17: NONAPPROPRIATION

CSS's obligation to pay any amounts and otherwise perform its duties under this Agreement is conditioned upon CSS receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow CSS, in the exercise of its reasonable administrative discretion, to meet its obligations, including under this Agreement. Nothing in this Agreement may be construed as permitting any violation of Article XI, section 7 of the Oregon Constitution or any other law limiting the activities, liabilities or monetary obligations of CSS.

SECTION 18: AMENDMENTS

The terms of this Agreement may not be altered, modified, supplemented or otherwise amended, except by written agreement signed by both of the Parties. To avoid ambiguity, the Parties may change their Authorized Representative(s) without amending the Agreement by providing the other Party with written notice of such change.

SECTION 19: NOTICE

Except as otherwise expressly provided in this Agreement, including any notices pursuant to Sections 11 and 16, all notices to be given relating to this Agreement must be given in writing by facsimile, personal delivery, or postage prepaid mail, to a Party's Authorized Representative at the physical address, fax number or email address set forth in this Agreement, or to such other addresses as either Party may indicate pursuant to this section. Any notice so addressed and mailed becomes effective five (5) Calendar Days after mailing. Any notice given by personal delivery becomes effective when actually delivered. Any notice given by facsimile becomes effective upon electronic confirmation of successful transmission to the designated fax number.

SECTION 20: SURVIVAL

All rights and obligations of the Parties under this Agreement will cease upon termination of this Agreement, other than the rights and obligations that by their express terms survive termination of this Agreement, including Sections 11 through 15; provided, however, that termination of this Agreement will not prejudice any rights or obligations accrued to the Parties under this Agreement prior to termination.

SECTION 21: 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 will not be affected, and the rights and obligations of the Parties will be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

SECTION 22: COUNTERPARTS

This Agreement may be executed in several counterparts, all of which when taken together shall constitute one agreement, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the Agreement so executed constitutes an original.

SECTION 23: COMPLIANCE WITH LAW

In connection with their activities under this Agreement, the Parties shall comply with all applicable federal, state and local laws and regulations.

SECTION 24: INDEPENDENT CONTRACTORS

The relationship of the Parties is that of independent contracting parties and Local Government is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265 or otherwise.

SECTION 25: INTENDED BENEFICIARIES

CSS and Local Government are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement provides, is intended to provide, or may be construed to provide any direct or indirect benefit or right to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of this Agreement.

SECTION 26: FORCE MAJEURE

Neither Party is responsible for any failure to perform or any delay in performance of any obligations under this Agreement caused by fire, civil unrest, labor unrest, natural causes, or war, which is beyond that Party's reasonable control. Each Party shall, however, make all reasonable efforts to remove or eliminate such cause of failure to perform or delay in performance and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement. Each Party may terminate this Agreement upon written notice to the other party after reasonably determining that the failure or delay will likely prevent successful performance of this Agreement.

SECTION 27: ASSIGNMENT AND SUCCESSORS IN INTEREST

Local Government may not assign or transfer its interest in this Agreement without the prior written consent of CSS, and any attempt by Local Government to assign or transfer its interest in this Agreement without such consent will be void and of no force or effect. CSS's consent to Local Government's assignment or transfer of its interest in this Agreement will not relieve Local Government of any of its duties or obligations under this Agreement. The provisions of this Agreement will be binding upon and inure to the benefit of the Parties hereto, and their respective successors and permitted assigns.

SECTION 28: TIME IS OF THE ESSENCE

Time is of the essence in each party's performance of its obligations under this Agreement.

SECTION 29: MERGER, WAIVER

This Agreement and all exhibits and attachments, if any, constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver or consent under this Agreement will bind a Party unless signed by an authorized person representing the consenting or waiving Party. Such waiver or consent, if made, is effective only in the specific instance and for the specific purpose given. EACH PARTY, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

SECTION 30: RECORDS MAINTENANCE AND ACCESS

Local Government shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, Local Government shall maintain any other records, books, documents, papers, plans, records of shipments and payments and writings of Local Government, whether in paper, electronic or other form, that are pertinent to this Agreement in such a manner as to clearly document Local Government's performance. All financial records, other records, books, documents, papers, plans, records of shipments and payments and writings of Local Government, whether in paper, electronic or other form, that are pertinent to this Agreement, are collectively referred to as "Records." Local Government acknowledges and agrees that CSS and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives will have access to all Records to perform examinations and audits and make excerpts and transcripts. Local Government shall retain and keep accessible all Records for a minimum of six (6) years, or such longer period as may be required by applicable law, following termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later. Subject to foregoing minimum records retention requirement, Local Government shall maintain Records in accordance with the records retention schedules set forth in OAR Chapter 166.

SECTION 31: HEADINGS

The headings and captions to sections of this Agreement have been inserted for identification and reference purposes only and may not be used to construe the meaning or to interpret this Agreement.

SECTION 32: AGREEMENT DOCUMENTS

This Agreement consists of the following documents, which are listed in descending order of precedence: this Agreement less all exhibits, attached Exhibit A (Statement of Services), Exhibit B).

SECTION 33: ORDER OF PRECEDENCE

No term stated on any schedule, exhibit, attachment, or other document incorporated into the Agreement will take precedence over a conflicting term in the Agreement unless the term references the conflicting term in the Agreement and clearly recites the parties' intent that it take precedence.

SECTION 34: SIGNATURES

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates set forth below.

STATE OF OREGON acting by and through its Department of Administrative Services, Procurement Services

Ginny Beckwith, Procurement Services Manager

Date

STATE OF OREGON acting by and through its Department of Administrative Services, Office of the State Chief Information Officer, Enterprise Information Services, Cyber Security Services

Mark E. Johnston / Director of Cyber Security

Date

Local Government



DAVE Cummings CIO

6-24-2020

Date

Approved for Legal Sufficiency in accordance with ORS 291.047

[Approved via email on May 28, 2020]

Ellen Flint Senior Assistant Attorney General
Oregon Department of Justice (Matter GF0192-20)

EXHIBIT A
SERVICES DESCRIPTION

This Exhibit A sets forth the respective responsibilities of and activities of CIS, CSS, and Local Government in establishing and maintaining Albert Monitoring Services.

1. Services Definitions

Albert Monitoring Services. Combined Netflow and intrusion detection system monitoring, with analysis of related data; event notification and delivery; and management of associated devices, including hardware and software necessary for service delivery. Also referred to as "Services".

Security Operation Center (SOC) – 24 X 7 X 365 watch and warning center that provides network monitoring, dissemination of cyber threat warnings and vulnerability identification and mitigation recommendations.

2. CIS Responsibilities

CIS will provide the following as part of the Albert Monitoring Services in accordance with its agreement with CSS.

2.1. Monitoring and Event Related Services. CIS will provide the following monitoring and event related services to Local Government as a participating county, and will provide shareable information to the State.

2.1.1. Specifications for the sensor(s)/server(s) to be delivered by CIS to Local Government for provision of the Albert Monitoring Services. Only security devices supported by CIS fall within the scope of the Services.

2.1.2. Analysis of events from monitored devices for attacks and malicious traffic.

2.1.3. Analysis of security events.

2.1.4. Correlation of security data/logs/events with information from other sources.

2.1.5. Notification of security events per the Escalation Procedures provided by Customer and Counties.

2.1.6. 24/7 telephone (1-866-787-4722) availability for assistance with resolution of security events detected by the Albert Monitoring Services.

2.2. Device Management. CIS is responsible for the correct functioning of devices used as part of Albert Monitoring Services, including ensuring that all upgrades, patches, configuration changes and signature upgrades are applied to such devices. CIS shall provide the sensor(s)/server(s) to be used for Albert Monitoring Services, in type and numbers as agreed to by CIS and the State.

2.3. Batch Queries. CIS will process batch queries of Netflow data upon State request, with a limit of 10 queries per month per device, and provide the results to the requesting entity. CIS maintains flow records for a period of six (6) months.

3. State and Local Government Activities

- 3.1.** CIS's ability to perform the Albert Monitoring Services is subject to CSS and Local Government, as a participating county receiving Services, completing certain activities. CIS' obligation to perform or to continue to perform Albert Monitoring Services diminishes to the degree Local Government does not complete required activities.
- 3.2.** Local Government shall provide logistic support in the form of rack space, electricity, Internet connectivity, and any other infrastructure necessary to support communications at its expense.
- 3.3.** Local Government shall provide the following to CIS prior to the commencement of Albert Monitoring Services and updates during the Services term if the information changes:
 - 3.3.1.** Current network diagrams to facilitate analysis of security events on the portion(s) of county's network being monitored. Network diagrams will need to be revised whenever there is a substantial network change;
 - 3.3.2.** In-band access via a secure Internet channel to manage the device(s);
 - 3.3.3.** Outbound access via a secure Internet channel for log transmission;
 - 3.3.4.** Reasonable assistance to CIS, including, but not limited to, providing all technical information related to the Albert Monitoring Service reasonably requested by CIS, to enable CIS to perform the Albert Monitoring Service for the benefit of the county and CSS;
 - 3.3.5.** Public and Private IP address ranges including a list of servers being monitored including the type, operating system and configuration information, as well as a list of IP ranges and addresses that are not in use by the county (DarkNet space);
 - 3.3.6.** Completed Pre-Installation Questionnaires (PIQ) in the form provided by CIS. The PIQ will need to be revised whenever there is a change that would affect CIS's ability to provide the Cyber Device Monitoring Services;
 - 3.3.7.** A completed Escalation Procedure Form including the name, e-mail address, and 24/7 contact information for all designated Points of Contact (POC); and
 - 3.3.8.** The name, email address, and landline, mobile, and pager numbers for all shipping, installation, and security points of contact.
- 3.4.** Local Government shall provide the following with respect to any Device Monitoring Services:
 - 3.4.1.** Written notification to CIS SOC (SOC@cisecurity.org) of changes in hardware or network configuration affecting CIS's ability to provide Albert Monitoring Services, in advance (30 calendar days unless not feasible);
 - 3.4.2.** Written notification to CIS SOC (SOC@cisecurity.org) in advance of any scheduled downtime or other network and system administration scheduled tasks that would affect CIS's ability to provide Albert Monitoring Service (12 hours

minimum advance unless not feasible);

3.4.3. A revised Escalation Procedure Form when there is a change in status for any POC.

3.4.4. Subject to county's security restrictions, current maintenance and technical support contacts and information applicable and shareable for County's hardware vendors for any device affected by Albert Monitoring Services.

3.4.5. Active involvement with CIS SOC to resolve any tickets requiring county input or action; and

3.4.6. Reasonable assistance in remotely installing and troubleshooting devices including hardware and communications.



Dave Cummings
Chief Information Officer

Technology Services

121 Library Court Oregon City, OR 97045

June 25, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

Approval for a Service Level Agreement between Clackamas County
Technology Services and Clackamas 800 Radio Group for a dark fiber connection

Purpose/Outcomes	Technology Services (TS) is looking for approval of a Service Level Agreement (SLA) with the Clackamas 800 Radio Group (C800) for a dark fiber connection between the CCOM Building and County Jail.
Dollar Amount and Fiscal Impact	C800 will pay a nonrecurring fee of \$180.00 for the certification of the fiber pair and pay a recurring annual fee of \$444.00.
Funding Source	The funding source for the certification of the fiber will be contributed from the TS Telecom budget and then reimbursed by C800.
Duration	Effective upon signature by the board, the SLA is effective for five (5) years.
Previous Board Action	Board has previously approved TS to provide dark fiber for various agencies.
Strategic Plan Alignment	<ol style="list-style-type: none">1. Build a strong infrastructure.2. Ensure safe, healthy and secure communities.
Counsel Review	Andrew Naylor, May 27, 2020
Contact Person	Dave Devore (503)723-4996
Contract No.	N/A

BACKGROUND:

TS is looking for approval to provide 1 dark fiber pair connection for the Clackamas 800 Radio Group between the CCOM Building and County Jail. C800 will use the fiber pair to connect their 800 MHz radio equipment to the Jail and enhance the radio signal within the Jail.

RECOMMENDATION:

Staff respectfully recommends approval to enter into this fiber agreement with the Clackamas 800 Radio Group. 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

Clackamas 800 Radio Group "C-800"

(Customer Name)

1. Recitals

WHEREAS, Clackamas 800 Radio Group "C-800" (Customer) desires to use the services of Clackamas County (County) set forth in this Agreement (the "Services"), between the specified County sites listed in Appendix A, and at the price contained in Appendix A; 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 dark fiber between County sites as described in Appendix A.

3. Service Description

Services provided to Customer by County are physical connectivity of one pair of optical fiber ("Fiber"), between sites specifically identified in Appendix A for the exclusive use of the Customer's internal communication needs. The Fiber is and shall remain property of the County. Conduit, raceway, innerduct and any other physical infrastructure is and shall remain property of the County.

4. Construction and Installation Requirements

- a. No construction is necessary for the requirements of this Agreement between the County and Customer.
- b. County has no obligation to install, operate, or maintain Customer-provided facilities or equipment.

5. Term of Agreement

Upon certification of the necessary facilities and equipment to provide service herein, County shall 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. County shall notify Customer in writing that the service is available for use, and the date of such notice shall be called the "Service Start Date". Unless terminated as herein provided, this agreement shall continue through June 30, 2025.

6. Rates

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

7. Payment

County shall provide an invoice for twelve months of service (July 1 through June 30), or prorated weekly for any portion thereof for both nonrecurring and annual recurring charges, to Customer at the beginning of the service period. The charges shall be payable within thirty (30) days of receipt of invoice. Interest charges shall be assessed for late payments in accordance with Appendix A. If the Customer fails to pay within sixty (60) days of receipt of an invoice it shall constitute grounds for County to terminate 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, the County shall endeavor to restore the Fiber 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 pair of 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

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 day's 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

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

Notice to the Customer

John Hartsock, Manager
Clackamas 800 Radio Group
11300 Se Fuller Rd
Milwaukie, OR 97222
(503) 780-4806

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, and 28, 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

Clackamas 800 Radio Group
(Customer Name)

By (signature):  _____

Name (print): John Hartsock

Title: Manager

Date: June 22, 2020

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	Clackamas County Communications Building (CCOM) 2200 Kaen Rd Oregon City, OR 97045	Clackamas County Jail (Main Electronics room) 2206 Kaen Rd Oregon City, OR 97045	One Pair (two) dark fibers	\$37.00

5. Nonrecurring Charges

	From (Connecting Point A:Site Name & Address)	To (Connecting Point B:Site Name & Address)	Service	Amount (\$)
1	Clackamas County Communications Building (CCOM) 2200 Kaen Rd Oregon City, OR 97045	Clackamas County Jail (Main Electronics room) 2206 Kaen Rd Oregon City, OR 97045	Fiber testing	\$180.00

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) 655-8346 telephone number to contact personnel and NCAM. County’s NCAM personnel shall dispatch maintenance and repair personnel.
- 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.
- 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.
 - 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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