



Linu Parappilly  
CIO / Director

## Technology Services

150 Beaver Creek Road Oregon City, OR 97045

September 10, 2024

BCC Agenda Date/Item: \_\_\_\_\_

Board of County Commissioners  
Clackamas County

**Approval of Contract with the City of Sandy for Clackamas Broadband eXchange storage space. Total value is \$9,980 for 16 months. Funding is through the Clackamas Broadband eXchange ARPA Broadband Expansion Fund. No County General Funds are involved.**

<b>Previous Board Action/Review</b>	Briefed at Issues September 10, 2024		
<b>Performance Clackamas</b>	1. Which indicator of success does this item affect? a. Build strong infrastructure b. Grow a vibrant economy		
<b>Counsel Review</b>	Yes	<b>Procurement Review</b>	Yes
<b>Contact Person</b>	Duke Dexter	<b>Contact Phone</b>	503-722-6663

### EXECUTIVE SUMMARY:

Clackamas Broadband eXchange (CBX) is seeking authorization to enter a contract with City of Sandy (City) for storage space of 18 x 62 square foot space at the address of 39055 Pleasant St, Sandy, OR 97055 in the City of Sandy for a variety of materials related to the ARPA Broadband Expansion projects. This contract supports the CBX effort to provide enhanced Internet service to unserved or underserved areas within Clackamas County as part of the American Rescue Plan Act (ARPA) funding. This funding encompasses funding for FY 2023 - 2024 and FY 2024-2025.

### RECOMMENDATION:

Staff respectfully recommends approval of the contract with the City of Sandy for the storage space for ARPA materials. Staff further recommends the Board delegate authority to the Technology Services Director to sign agreements necessary in the performance of this agreement.

Respectfully submitted,

Linu Parappilly  
CIO Director

For Filing Use Only

**INTERGOVERNMENTAL AGREEMENT  
BETWEEN CLACKAMAS COUNTY  
AND THE CITY OF SANDY**

THIS AGREEMENT (this "Agreement") is entered into and between Clackamas County ("County"), a political subdivision of the State of Oregon, and the City of Sandy ("Agency"), a local government, collectively referred to as the "Parties" and each a "Party."

**RECITALS**

Oregon Revised Statutes Chapter 190.010 confers authority upon local governments to enter into agreements for the performance of any and all functions and activities that a party to the agreement, its officers or agencies have authority to perform.

The County desires to use certain real property owned by Agency for purposes of storing fiber optic materials for constructing a new fiber optic plant. Agency has agreed to grant County a license to use the real property subject to the terms of this Agreement.

In consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

**TERMS**

1. **Term.** This Agreement shall be effective upon execution and shall expire on December 31, 2025.
2. **License.** The Agency hereby grants County a non-exclusive license to use a portion of the following real property: a 18 x 62 square foot portion of real property commonly described as 39055 Pleasant St, Sandy, OR 97055 ("Property"), as detailed on the map attached hereto as Exhibit A and incorporated by this reference herein.
3. **Scope of Use:** County shall have the right to use the Property for the following purpose: storage of fiber optic materials for constructing new outside fiber optic plant. County is further authorized to bring all personnel, equipment, and other personal property onto the Property as may be reasonably necessary for the purposes described above. County shall operate and maintain the Property and store materials thereon in a neat, orderly way in compliance with all applicable federal, state, and local laws.
4. **Consideration.** The County agrees to pay Agency, from available and authorized funds, a sum not to exceed \$5,000.00 annually for use of the Property.
5. **Payment.** County shall make monthly payments to Agency in the sum of \$ 415 per month, due on the 1<sup>st</sup> day of each month following the Effective Date of this Agreement. The Parties acknowledge that County is currently using the Property for the purposes described in this Agreement and has incurred fees in the amount of \$4980. County will pay all undisputed, previously-accrued fees within 30 days of execution of this Agreement.
6. **Representations and Warranties.**
  - A. *Agency Representations and Warranties:* Agency represents and warrants to County that Agency has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of Agency enforceable in accordance with its terms.

- B. *County Representations and Warranties*: County represents and warrants to Agency that County has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of County enforceable in accordance with its terms.
- C. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

**7. Termination.**

- A. Either the County or the Agency may terminate this Agreement at any time upon sixty (60) days written notice to the other party.
- B. Either the County or the Agency may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination however, the Party seeking the termination shall give the other Party written notice of the breach and of the Party's intent to terminate. If the breaching Party has not entirely cured the breach within fifteen (15) days of deemed or actual receipt of the notice, then the Party giving notice may terminate the Agreement at any time thereafter by giving written notice of termination stating the effective date of the termination. If the default is of such a nature that it cannot be completely remedied within such fifteen (15) day period, this provision shall be complied with if the breaching Party begins correction of the default within the fifteen (15) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. The Party giving notice shall not be required to give more than one (1) notice for a similar default in any twelve (12) month period.
- C. The County or the Agency shall not 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.
- D. Either Party may terminate this Agreement in the event that Party fails to receive expenditure authority sufficient to allow the Party, in the exercise of its reasonable administrative discretion, to continue to perform under this Agreement, or if federal or state laws, regulations or guidelines are modified or interpreted in such a way that performance under this Agreement is prohibited.
- E. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

8. **Insurance.** The Parties agree to maintain levels of insurance, or self-insurance, sufficient to satisfy their obligations under this Agreement and all requirements under applicable law.

9. **Notices; Contacts.** Legal notice provided under this Agreement shall be delivered personally, by email or by certified mail to the individuals identified below. Any communication or notice so addressed and mailed shall be deemed to be given upon receipt. Any communication or notice sent by electronic mail to an address indicated herein is deemed to be received 2 hours after the time sent (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered. Any communication

or notice by personal delivery shall be deemed to be given when actually delivered. Either Party may change the Party contact information, or the invoice or payment addresses by giving prior written notice thereof to the other Party at its then current notice address.

A. Duke Dexter or their designee will act as liaison for the County.

**Contact Information:**

CBX Program Manager  
150 Beaver Creek Rd, Suit 305  
Oregon City, OR 97045  
[ssexter@clackamas.us](mailto:ssexter@clackamas.us)  
971-219-3339

Greg Brewster or their designee will act as liaison for the Agency.

**Contact Information:**

It Director/SandyNet General Manager  
[gbrewster@ci.sandy.or.us](mailto:gbrewster@ci.sandy.or.us)  
503-489-0937

## 10. General Provisions.

- A. **Oregon Law and Forum.** This Agreement, and all rights, obligations, and disputes arising out of it will be governed by and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without giving effect to the conflict of law provisions thereof. Any claim between County and Agency that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas County for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the County of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. Agency, by execution of this Agreement, hereby consents to the in personam jurisdiction of the courts referenced in this section.
- B. **Compliance with Applicable Law.** Both Parties shall comply with all applicable local, state and federal ordinances, statutes, laws and regulations. All provisions of law required to be a part of this Agreement, whether listed or otherwise, are hereby integrated and adopted herein. Failure to comply with such obligations is a material breach of this Agreement.
- C. **Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not

preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.

- D. **Access to Records.** Agency shall retain, maintain, and keep accessible all records relevant to this Agreement (“Records”) for a minimum of six (6) years, following Agreement termination or full performance or any longer period as may be required by applicable law, or until the conclusion of an audit, controversy or litigation arising out of or related to this Agreement, whichever is later. Agency shall maintain all financial records in accordance with generally accepted accounting principles. All other Records shall be maintained to the extent necessary to clearly reflect actions taken. During this record retention period, Agency shall permit the County’s authorized representatives’ access to the Records at reasonable times and places for purposes of examining and copying.
- E. **Debt Limitation.** This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act, and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.
- F. **Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.
- G. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties on the matter of the Project. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.
- H. **Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- I. **Independent Contractor.** Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.

- J. **No Third-Party Beneficiary.** Agency and County are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- K. **Subcontract and Assignment.** County shall not enter into any subcontracts or assign or transfer any of its interest in this Agreement by operation of law or otherwise, without obtaining prior written approval from Agency.
- L. **Counterparts.** This Agreement may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- M. **Survival.** All provisions in Sections 10 (A), (C), (D), (E), (F), (G), (H), (J), (M), (P), and (R) shall survive the termination of this Agreement, together with all other rights and obligations herein which by their context are intended to survive.
- N. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.
- O. **Time is of the Essence.** Agency agrees that time is of the essence in the performance this Agreement.
- P. **Successors in Interest.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- Q. **Force Majeure.** Neither Agency nor County shall be held responsible for delay or default caused by events outside of the Agency or County's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, Agency shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.
- R. **No Attorney Fees.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each party shall be responsible for its own attorneys' fees and expenses.

**[signature page to follow]**

**IN WITNESS HEREOF**, the Parties have executed this Agreement by the date set forth below.

**City of Sandy**

*Tyler Deems*  
\_\_\_\_\_  
Signature

August 9, 2024  
\_\_\_\_\_  
Date

**Clackamas County**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date



**Approved As To Form:**

*[Signature]* 08/29/2024  
\_\_\_\_\_

Exhibit A  
Map of Property



**Legend**

-  39055 Pleasant St
-  CBX Fiber Network

