



Dave Cummings  
Chief Information Officer

## Technology Services

121 Library Court Oregon City, OR 97045

August 08, 2019

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval for an Intergovernmental Agreement between  
Clackamas Broadband eXchange and The City of Sandy

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| <b>Purpose/Outcomes</b>                | Clackamas Broadband eXchange (CBX) is looking for approval to enter into an Intergovernmental Agreement (IGA) with the City of Sandy for Internet Services (ISP) to the Kiwanis project.                     |
| <b>Dollar Amount and Fiscal Impact</b> | CBX will provide the funding for the expansion of the existing CBX network to interested residents along the USFS roads 29, 31, 35, 35A and 35B. CBX has these funds available in its current fiscal budget. |
| <b>Funding Source</b>                  | The funding source for the expansion of the CBX fiber network will be contributed from the CBX budget and then reimbursed by the monthly internet service fee.   |
| <b>Duration</b>                        | Effective upon signature by the board the initial contract is for 5 years with automatic one year renewals. The contract is not to exceed 10 years in length.  |
| <b>Previous Board Action</b>           | Board previously approved CBX to partner with other commercial carriers to complete dark fiber connection.   |
| <b>Strategic Plan Alignment</b>        | <ol style="list-style-type: none"><li>1. Build a strong infrastructure.</li><li>2. Build public trust through good government.</li></ol>   |
| <b>Contact Person</b>                  | Dave Devore (503)723-4996  |

**BACKGROUND:**

CBX is proposing an IGA to partner with the City of Sandy to provide ISP services to residents along USFS roads 29, 31, 35, 35A and 35B or the Kiwanis Project. This is a pilot project to demonstrate that CBX can partner with an ISP provider and deliver internet services to an underserved area within Clackamas County. CBX contacted the existing ISP provider but they declined to partner with CBX to provide enhanced ISP services. CBX will be responsible for the physical infrastructure and the City of Sandy will provide the internet service.

**RECOMMENDATION:**

Staff respectfully recommends approval to enter into this Intergovernmental Agreement with the City of Sandy. Staff further recommends the Board delegate authority to the Technology Services Director to sign agreements necessary in the performance of this agreement.

This Intergovernmental Agreement has been reviewed and approved by County Counsel.

Sincerely,

Dave Cummings  
CIO Technology Services

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

THIS AGREEMENT (“Agreement”) is entered into and by and between Clackamas County (“County”), a political subdivision of the State of Oregon, and the City of Sandy (“City”), a political subdivision of the State of Oregon, pursuant to ORS Chapter 190 (Cooperation of Governmental Units), collectively referred to as the “Parties” and each a “Party.”

**RECITALS**

WHEREAS, authority is conferred under ORS Chapter 190 to 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; and

WHEREAS, the parties desire to partner for a pilot fiber project whereby the City will serve as the Internet Service Provider (“ISP”) and the County will construct the necessary infrastructure and provide the dark fiber connections to the City’s customers (the “Project”); and

NOW, THEREFORE, 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:

1. **Term.** This Agreement shall be effective upon execution by both Parties, and shall continue for a term of five (5) year from the date of execution. This Agreement shall automatically renew for an additional one (1) year term each year thereafter unless otherwise terminated by the parties but not to exceed a maximum of 10 years from date executed.
2. **Rights and Obligations of the County.**
  - A. Upon written request from the City, County shall construct the necessary infrastructure and install a dark fiber connection to the property owners who have agreed to have the City serve as an ISP as part of the Project (“Infrastructure Construction”). Infrastructure Construction shall be performed by County in its sole discretion. The County is and will remain the owner of any infrastructure and dark fiber installed as part of the Infrastructure Construction. Prior to County performing the Infrastructure Construction, the County will consult with the City to ensure that the specifications of the infrastructure and fiber are compatible with City’s system. Prior to the County performing the Infrastructure Construction, the City shall ensure the following construction and installation requirements are satisfied at each property:
    - a. The City has secured all easements, leases, licenses, authorizations, or other agreements from property owner to allow County to use existing pathways to, into and within each site to the demarcation point for service, and to otherwise perform the Infrastructure Construction.
    - b. A path acceptable to the County is provided for the fiber optic cable from the point of entry into the site to the termination panel or CSP (Customer Splice Point) and into the home demarcation that complies with all applicable building, electrical, fire and related codes.
    - c. The County and its employees, agents, lessees, officers and its authorized vendors, upon reasonable notice, have reasonable ingress and egress into and out of the properties and buildings in connection with the provision of service.

- B. Following construction, County shall maintain and repair, as necessary and as determined by County in its sole administrative discretion, the infrastructure throughout the term of this Agreement.
- C. Subject to the availability of funds, as determined by the County in its sole administrative discretion, the County will provide all funds for the expansion of the fiber network to serve the property owners involved in the Project including, but not limited to, the expansion of the backbone fiber, all drops or laterals and cost of in-home wireless routers. The County will also contribute up to \$15,000.00 for purchase of new ISP equipment necessary to provide service to the property owners. This ISP equipment shall be procured and managed solely by the City. In procuring the ISP equipment, the City shall comply with all local, state, or federal law, including the Oregon Public Contracting Code, applicable to the procurement of goods and services. Upon termination of this agreement, title and ownership to all ISP equipment purchased by the City with County funds will be conveyed to County and will be removed from the City's network at the City's expense.

**3. Rights and Obligations of City.**

- A. If County performs the Infrastructure Construction necessary to serve a property owner, the City will provide ISP services to the property owner pursuant to those terms and conditions as may be mutually agreed to between the City and the property owner. County will have no involvement or interest in, and will not be a party to, any such agreement entered into by and between City and the property owner.
- B. In serving as an ISP, City shall provide all commercially reasonable ISP services including, but not limited to, IP addresses, billings, and general customer service. Customer service will be available Monday through Friday from 9 am to 5 pm, excluding federal holidays.
- C. As of the date of this Agreement, City will provide the ISP services to property owners at a cost of \$64.95 per month per customer for a symmetrical 300 Mg service or \$84.95 per month per customer for a symmetrical 1 Gig service. Of this fee, \$24.00 will be withheld by the City for each 300 Mbps customer and \$34.00 for each Gig customer. The remainder of the funds received from each customer for the ISP services will be sent to County.
- D. Rate increases shall occur no more than once per year and shall be mutually agreed upon by both parties and an amendment to this agreement.

**4. Location.**

- A. The rights and obligations of the Parties pursuant to this Agreement apply only in the geographic area described in Appendix A.

**5. Representations and Warranties.**

- A. *City representations and warranties:* City represents and warrants to County that City 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 City enforceable in accordance with its terms.
- B. *County Representations and Warranties:* County represents and warrants to City 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.

## 6. Termination.

- A. The County and City, by mutual written agreement, may terminate this Agreement at any time. Either Party may terminate for convenience upon providing one hundred twenty (120) days' written notice to the other Party.
- B. Either the County or City 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, or other time as may be agreed between the parties in writing, 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 City 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 the Party fails to receive expenditure authority sufficient to allow that 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 or a Party is prohibited from paying for such work from the planned funding source.
- E. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

## 7. Indemnification.

- A. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the County agrees to indemnify, save harmless and defend City, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the County or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the County has a right to control.
- B. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, City agrees to indemnify, save harmless and defend the County, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of City or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which City has a right to control.

8. **Insurance.** The Parties agree to maintain insurance levels sufficient to cover the obligations agreed to in this Agreement.

9. **Party Contacts**

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

**Contact Information:**

Duke Dexter  
121 Library Court  
Oregon City, Oregon 97045  
[ddexter@clackamas.us](mailto:ddexter@clackamas.us)  
Fax: 503-655-8255

Greg Brewster or his designee will act as liaison for City.

Contact Information:

Greg Brewster  
39250 SE Pioneer Blvd  
Sandy, Oregon 97055  
[gbrewster@ci.sandy.or.us](mailto:gbrewster@ci.sandy.or.us)  
503-489-0937

B. 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.

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 without giving effect to the conflict of law provisions thereof. Any claim between County and City 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 either Party 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. City, 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 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.** The Parties 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. The Parties 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 each Party shall permit the other Parties’ 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 debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law 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 regarding its subject matter. 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.** City 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. **Assignment.** Neither Party shall assign or transfer any of its interest in this Agreement, by operation of law or otherwise, without obtaining prior written approval from the other Party, which shall be granted or denied in that Party's sole and absolute discretion. One Party's consent to any assignment shall not relieve the other Party of any of its duties or obligations under this Agreement.
- L. **Counterparts.** This Contract 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.** The provisions of Sections 5, 7, and 10 shall survive the termination of this Agreement.
- 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. **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.
- P. **Force Majeure.** Neither City nor County shall be held responsible for delay or default caused by events outside of City's or County's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war.
- Q. **Confidentiality.** The Parties and their employees or agents may, in the course of this Agreement, be exposed to or acquire material identified as confidential information. Such information shall be deemed confidential information of the Party identifying it as such ("Confidential Information"). The Parties agree to hold Confidential Information in strict confidence, using at least the same degree of care that each Party uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purpose unless specifically authorized in writing under this Agreement.

**[Signatures on Following Page]**

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

**Clackamas County**

**City of Sandy**

\_\_\_\_\_  
Chair, Board of County Commissioners

\_\_\_\_\_  
By:  
Its:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Recording Secretary