



Linu Parappilly
CIO / Director

Technology Services

150 Beaver Creek Road, Oregon City, OR 97045

September 24, 2024

BCC Agenda Date/Item: _____

Board of County Commissioners
Clackamas County

Approval of a Contract Amendment with the State of Oregon to add a dark fiber connection to the Gladstone Department of Motor Vehicles office. Total Amendment Value is \$85,665 for 1 year. Funding is through the Clackamas Broadband eXchange Fund. No County General Funds are involved.

Previous Board Action/Review	The Board has previously authorized contracts for broadband expansion with the City of Sandy for enhanced Internet services. Briefed at Issues 9/24/2024.		
Performance Clackamas	1. Which indicator of success does this item affect? a. Build strong infrastructure b. Grow a vibrant economy		
Counsel Review	Yes	Procurement Review	No
Contact Person	Duke Dexter	Contact Phone	503-722-6663

EXECUTIVE SUMMARY:

Clackamas Broadband eXchange (CBX) is seeking authorization to amend an existing Service Level Agreement (SLA) with the State of Oregon to add a service drop to the Gladstone DMV. CBX will extend a fiber drop to the Gladstone DMV and then route this site back to the State of Oregon's router at Clackamas ESD. The original contract was signed on 11/18/2013 with amendments to this contract on 3/31/2014, 6/25/2014, 12/20/2017, 1/18/2018, 8/22/2018 and 8/5/2021 to add additional sites and term length. The State of Oregon contract is set to expire on 6/30/2026.

RECOMMENDATION:

Staff respectfully recommends approval of the amendment with the State of Oregon for the additional circuit to the Gladstone DMV. 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

**AMENDMENT #5 to
INTERGOVERNMENTAL AGREEMENT # 107-55434-14
BETWEEN CLACKAMAS COUNTY AND THE STATE OF OREGON**

This is Amendment No. #5 is entered into by and between the State of Oregon, acting by and through the Department of Administrative Services ("Customer"), and Clackamas County, a political subdivision of the State of Oregon ("County"), and will become part of the Intergovernmental Agreement No. 107-55434-14 ("Agreement"), as amended, entered into between the parties on or about November 18, 2013.

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 to amend the Agreement as follows:

1. Appendix A is hereby replaced in its entirety with the amended Appendix A, attached hereto and incorporated by this reference herein.

Except as expressly amended above, all other terms and conditions of original Agreement are still in full force and effect.

IN WITNESS WHEREOF, the parties hereto have approved and executed the above Amendment to the Agreement.

Clackamas County

By (signature): _____

Name: _____

Title: _____

Date: _____

**State of Oregon, acting by and through the Department of Administrative Services,
Enterprise Information Services, Data Center Services**

By (signature): _____

Name: JAMES FOSTER

Title: DIRECTOR DATA CENTER

Date: 8-5-2024

State of Oregon, acting by and through the Department of Administrative Services,
Procurement Services

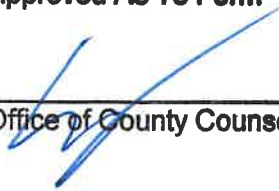
By (signature): Brent Lutz Digitally signed by Brent Lutz
Date: 2024.08.07 11:14:58 -07'00'
Adobe Acrobat version: 2024.002.20895

Name: _____

Title: Procurement Manager

Date: 8/7/24

Approved As To Form

 8/29/24
Office of County Counsel Date

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 Development Services Building 2051 Kaen Rd Oregon City, OR 97045	Clackamas Education Service District 13455 SE 97th Ave. Clackamas, Oregon 97015	One Pair (two) dark fibers	\$255.00
2	ODOT Maintenance 325 SW 2 nd Ave Estacada, OR 97023	Clackamas Education Service District 13455 SE 97th Ave. Clackamas, Oregon 97015	One Pair (two) dark fibers	\$255.00
3	ODOT/OSP Government Camp 90300 E Highway 26 Government Camp, OR 97028	Clackamas Education Service District 13455 SE 97th Ave. Clackamas, Oregon 97015	One Pair (two) dark fibers	\$255.00
4	Unemployment Office 506 High St Oregon City, OR 97045	Clackamas Education Service District 13455 SE 97th Ave. Clackamas, Oregon 97015	One Pair (two) dark fibers	\$255.00
5	Sandy DMV 37395 Highway 26	Clackamas Education Service District	One Pair (two) dark	

	Sandy, OR 97055	13455 SE 97th Ave. Clackamas, Oregon 97015	fibers	\$255.00
6	OLCC Office 9079 SE McLoughlin Blvd Portland, OR 97222	Clackamas Education Service District (South Route) 13455 SE 97th Ave. Clackamas, Oregon 97015	One Pair (two) dark fibers	\$255.00
7	OLCC Warehouse 1777 SE Milport Rd Milwaukie, OR 97222	Clackamas Education Service District 13455 SE 97th Ave. Clackamas, Oregon 97015	One Pair (two) dark fibers	\$255.00
8	OLCC Office 9079 SE McLoughlin Blvd Portland, OR 97222	Clackamas Education Service District (North Route) 13455 SE 97th Ave. Clackamas, Oregon 97015	One Pair (two) dark fibers	\$255.00
9	DEQ 9350 SE Clackamas Rd Clackamas, OR 97015	Clackamas Education Service District 13455 SE 97th Ave. Clackamas, Oregon 97015	One Pair (two) dark fibers	\$255.00
10	ODOT-HWY 26 34250 SE Highway 26 Boring, OR 97009	Clackamas Education Service District 13455 SE 97th Ave. Clackamas, Oregon 97015	One Pair (two) dark fibers	\$255.00
11	ODF 14995 D HWY 211, Molalla, OR 97038 site (US Forestry Building).	Clackamas Education Service District 13455 SE 97th Ave. Clackamas, Oregon 97015	One Pair (two) dark fibers	\$255.00
12	ODOT Estacada District 2C Office 2225 NW Campus Dr Estacada, OR 97023	Clackamas Education Service District 13455 SE 97th Ave. Clackamas, Oregon 97015	One Pair (two) dark fibers	\$255.00
13	Gladstone DMV 10 82 nd Ave Gladstone, OR 97207	Clackamas Education Service District 13455 SE 97th Ave. Clackamas, Oregon 97015	One Pair (two) dark fibers	\$255.00

5. Nonrecurring Charges

From (Connecting Point A:Site Name & Address)	To (Connecting Point B:Site Name & Address)	Service	Amount (\$)
1 Gladstone DMV 10 82 nd Ave Gladstone, OR 97207	Clackamas Education Service District 13455 SE 97th Ave. Clackamas, Oregon 97015	Construction	\$16,050.00

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 two-thirds of one percent (2/3 of 1%) per month, or eight percent (8%) annually, on any installment not paid within forty-five (45) days after receipt.

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/ro9xq01.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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**AMENDMENT #4 to
INTERGOVERNMENTAL AGREEMENT # 107-55434-14
BETWEEN CLACKAMAS COUNTY AND THE STATE OF OREGON**

This is Amendment No. #4 to Intergovernmental Agreement No. 107-55434-14 (“Agreement”), as amended, executed by and between the State of Oregon, acting by and through the Department of Administrative Services, Procurement Services on behalf of Enterprise Technology Services (“Customer”), and Clackamas County, a political subdivision of the State of Oregon (“County”), on or about November 18, 2013.

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 to amend the Agreement as follows:

1. Paragraph 5(b) of the Agreement is hereby deleted and replaced in its entirety with the following:

(b) This Agreement is effective upon the date all approvals necessary by law have been obtained and the Agreement is signed by all the parties (“Effective Date”). The Agreement is effective through June 30, 2026, unless amended or terminated. Customer, at its option, may by Amendment renew the Agreement for subsequent years, at the County’s then-current rate schedule, provided, however, that the entire term of the Agreement, including all renewals, will not be more than thirteen (13) years from the Effective Date. Customer shall send County written notice of its intent to renew the Agreement at least thirty (30) days prior to the end of the current term.

2. Appendix A is hereby replaced in its entirety with the Appendix A that is attached in its entirety to this Amendment.

Except as expressly amended above, all other terms and conditions of original Agreement are still in full force and effect.

[Remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have approved and executed the above Amendment to the Agreement.

Clackamas County

By (signature): *Tootie Smith*

Name: Tootie Smith

Title: Chair

Date: 8/5/2021

**State of Oregon, acting by and through the Department of Administrative Services,
Enterprise Technology Services**

By (signature): *Sandy C Wheeler*

Name: Sandy C. Wheeler

Title: Director, EIS- Data Center Services

Date: 7/19/2021

**State of Oregon, acting by and through the Department of Administrative Services,
Procurement Services**

By (signature): *Lori Nordlien*

Name: Lori Nordlien

Title: IT Procurement Strategist

Date: 7/16/2021

Agreement Approved: Oregon Department of Justice – NOT REQUIRED

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 Development Services Building 2051 Kaen Rd Oregon City, OR 97045	Clackamas Education Service District 13455 SE 97th Ave. Clackamas, Oregon 97015	One Pair (two) dark fibers	\$255.00
2 Oregon ME Office 13309 SE 84 th Ave Clackamas, OR 97015	Clackamas Education Service District 13455 SE 97th Ave. Clackamas, Oregon 97015	One Pair (two) dark fibers	\$255.00
3 ODOT Maintenance 325 SW 2 nd Ave Estacada, OR 97023	Clackamas Education Service District 13455 SE 97th Ave. Clackamas, Oregon 97015	One Pair (two) dark fibers	\$255.00
4 ODOT/OSP Government Camp 90300 E Highway 26 Government Camp, OR 97028	Clackamas Education Service District 13455 SE 97th Ave. Clackamas, Oregon 97015	One Pair (two) dark fibers	\$255.00
5 Unemployment Office 506 High St	Clackamas Education Service District	One Pair (two) dark	

	Oregon City, OR 97045	13455 SE 97th Ave. Clackamas, Oregon 97015	fibers	\$255.00
6	Sandy DMV 37395 Highway 26 Sandy, OR 97055	Clackamas Education Service District 13455 SE 97th Ave. Clackamas, Oregon 97015	One Pair (two) dark fibers	\$255.00
7	OLCC Office 9079 SE McLoughlin Blvd Portland, OR 97222	Clackamas Education Service District (South Route) 13455 SE 97th Ave. Clackamas, Oregon 97015	One Pair (two) dark fibers	\$255.00
8	OLCC Warehouse 1777 SE Milport Rd Milwaukie, OR 97222	Clackamas Education Service District 13455 SE 97th Ave. Clackamas, Oregon 97015	One Pair (two) dark fibers	\$255.00
9	OLCC Office 9079 SE McLoughlin Blvd Portland, OR 97222	Clackamas Education Service District (North Route) 13455 SE 97th Ave. Clackamas, Oregon 97015	One Pair (two) dark fibers	\$255.00
10	DEQ 9350 SE Clackamas Rd Clackamas, OR 97015	Clackamas Education Service District 13455 SE 97th Ave. Clackamas, Oregon 97015	One Pair (two) dark fibers	\$255.00
11	ODOT-HWY 26 34250 SE Highway 26 Boring, OR 97009	Clackamas Education Service District 13455 SE 97th Ave. Clackamas, Oregon 97015	One Pair (two) dark fibers	\$255.00
12	ODF 14995 D HWY 211, Molalla, OR 97038 site (US Forestry Building).	Clackamas Education Service District 13455 SE 97th Ave. Clackamas, Oregon 97015	One Pair (two) dark fibers	\$255.00
13	ODOT Estacada District 2C Office 2225 NW Campus Dr Estacada, OR 97023	Clackamas Education Service District 13455 SE 97th Ave. Clackamas, Oregon 97015	One Pair (two) dark fibers	\$255.00

5. Nonrecurring Charges

	From (Connecting Point A:Site Name & Address)	To (Connecting Point B:Site Name & Address)	Service	Amount (\$)
1	ODF 14995 D HWY 211, Molalla, OR 97038 site (US Forestry Building).	Clackamas Education Service District 13455 SE 97th Ave. Clackamas, Oregon 97015	Construction	\$5,000.00
2	ODOT Estacada District 2C Office 2225 NW Campus Dr Estacada, OR 97023	Clackamas Education Service District 13455 SE 97th Ave. Clackamas, Oregon 97015	Construction	\$28,900.00

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 two-thirds of one percent (2/3 of 1%) per month, or eight percent (8%) annually, on any installment not paid within forty-five (45) days after receipt.

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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Clackamas County

FIBER OPTIC SERVICE LEVEL AGREEMENT

State of Oregon, acting by and through the Department of Administrative Services, Procurement Services on behalf of Enterprise Technology Services ("Agreement")

1. Recitals

WHEREAS, Clackamas County (County) desires to provide to State of Oregon, acting by and through the Department of Administrative Services, Procurement Services on behalf of Enterprise Technology Services (Customer) the Services set forth in this Agreement; 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 premises on a path designated by the County.

3. Service Description

From time to time, Customer may submit Service Orders to County for Services as set forth in this Agreement. A Service and Rate Schedule substantially in the form attached hereto as Appendix A shall be attached to each Service Order designating the sites, rates and services. Service provided to Customer by County is physical connectivity of one (or more) strands of optical fiber ("Fiber") between sites designated by Customer in the Service Order for the exclusive use of the Customer's internal communication needs. Each site will have a single mode fiber termination.

4. Construction and Installation Requirements

- a. County, when installing fiber optic cables 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 optic cable from the point of entry into the site to the termination panel that to the best of Customer's knowledge, 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 County's fiber optic cables 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 premises for necessary equipment.
- e. Customer will provide or arrange for County and its employees, agents, lessees, officers and its authorized vendors, upon reasonable notice, to have reasonable ingress and egress into and out of Customer properties and buildings in connection with the provision of service, subject to Customer's access and security policies and procedures.
- 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 optic network in areas of any such site not containing such hazardous material. Any additional expense incurred as a result of encountering hazardous materials, including but not limited to, any additional equipment shall be borne by Customer, subject to the provisions of Article IX, Section 4 and Article XI, Section 7 of the Oregon Constitution.
- g. County shall have 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 "hand-off's" at each location for Customer utilization. Test results for physical connection will be made available upon request.

5. Term of Service; Term of Agreement

- a. At such time as County completes installation and connection of the necessary facilities and equipment to provide Services requested by Customer in the Services Order, County shall then certify and notify Customer in writing that the Services are available for use. Customer shall have ten (10) days to notify County that Customer accepts the service, and the date of such acceptance shall be called the "Service Start Date."
- b. This Agreement is effective upon the date all approvals necessary by law have

been obtained and the Agreement is signed by all the parties ("Effective Date"). Unless terminated with thirty (30) days notice as herein provided, this Agreement shall continue to July 1 following the date of commencement. Customer, at its option, may renew the Agreement for subsequent years for a term(s) of one year, at the County's then-current rate schedule, provided, however, that the entire term of the Agreement, including all renewals, will not be more than ten (10) years from the Effective Date. Customer shall send County written notice of its intent to renew the Agreement at least thirty (30) days prior to the end of the then current term.

6. Rates

In return for County providing the services described in Appendix A, Customer shall pay County both nonrecurring construction/installation charges and recurring charges for the Services under the Service Order(s), as specified in Appendix A as it shall be amended from time to time.

7. Payment Options

a. Annual Payments

County shall provide an invoice for twelve months of service (July 1 through June 30), or prorated weekly for any portion thereof, to Customer at the beginning of the service period. The annual charge shall be payable within thirty (30) days of receipt of invoice. Interest charges shall be assessed for late payments in accordance with Appendix A. All payments are subject to ORS 293.462. If the Customer fails to pay all undisputed charges within sixty (60) days of receipt of an invoice it shall constitute grounds for County to terminate the Agreement upon thirty (30) days advance written notice to Customer.

b. Alternative Payment Frequency

If Customer demonstrates that prepaid billings present a hardship, Customer may prepay semi-annually, quarterly, and in extreme circumstances may pay monthly. County shall provide an invoice for one quarter or month of service, or prorated weekly for any portion thereof, to Customer at the beginning of the service period. The quarterly or monthly 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. All payments are subject to ORS 293.462. If the Customer fails to pay all undisputed charges within sixty (60) days of receipt of an invoice it shall constitute grounds for County to terminate the Agreement upon thirty (30) days advance written notice to Customer.

8. Fiber Maintenance

County shall maintain the structural aspects of the Fiber in good operating condition, utilizing sound engineering practices and 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 restore the Fiber to meet the specification standards in as timely and expedited a manner as reasonably possible.

With Customer's prior consent, 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 optic facilities shall be treated by County as confidential information, to the extent allowable by law. County agrees that this information shall not be made available, in any form, to any party other than County or its agents or contractors as may be necessary to conduct maintenance or repair activity, without written permission of Customer, except as required by 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 or 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; Contribution; Insurance

- a. Subject to the limitations of Article XI, Section 10 of the Oregon Constitution, County, at its sole cost, shall be responsible for restoring, or otherwise repairing to its prior condition, reasonable wear and tear excepted, any portion of the Customer's premises or facilities, which are damaged by County or its agents. Subject to the provisions of Article IX, Section 4 and Article XI, Section 7 of the Oregon Constitution, Customer, at its sole cost, shall be responsible for restoring, or otherwise repairing to its prior condition, reasonable wear and tear excepted, any portion of County's connectivity

equipment or other facilities, located at Customer premises, which are damaged by Customer or its agents.

Subject to the provisions of Article IX, Section 4 and Article XI, Section 7 of the Oregon Constitution, Customer will reimburse all related Costs associated with damage to the Fiber caused by the negligence or willful misconduct of Customer, its affiliates, employees, agents, contractors or customers, except to the extent caused by the gross negligence or willful misconduct of County, its affiliates, employees, contractors or agents. "Cost(s)", as used herein include 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.).

- b. **Contribution.** 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 ("Third Party Claim") against a party (the "Notified Party") with respect to which the other party ("Other Party") may have liability, the Notified Party must promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Either 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 paragraph and 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 liability with respect to the Third Party Claim.

With respect to a Third Party Claim for which Customer is jointly liable with the County (or would be if joined in the Third Party Claim), Customer 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 the County in such proportion as is appropriate to reflect the relative fault of Customer on the one hand and of the County on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Customer on the one hand and of the County 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. Customer's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if Customer had sole liability in the proceeding.

With respect to a Third Party Claim for which the County is jointly liable with Customer (or would be if joined in the Third Party Claim), the County 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 Customer in such proportion as is appropriate to reflect the relative fault of the County on the one hand and of Customer on the other

hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the County on the one hand and of Customer 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. The County'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.

- c. Insurance. County shall obtain and maintain the insurance coverages set forth in Appendix D attached hereto. County is self-insured and its self-insurance will satisfy the requirements of this section.

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 END USERS, 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.220 through 279B.235, to the extent applicable, are incorporated herein by this reference.

16. Non-Appropriation

Notwithstanding any other provisions of this Agreement, the parties hereby agree

and understand that any obligation of Customer to obtain services as provided herein is subject to fund availability and appropriation by Customer for such services through its adoption of an annual budget. Should funds not be appropriated or be available from Customer during the term of 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 or, in the alternative, if Customer has prepaid County for the services, County shall reimburse Customer a pro-rata amount based upon the term remaining.

17. Compliance with Laws

The parties 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 Customer's 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 granted access to the Services, provided however if Customer is exempt from such Taxes it shall not be required to pay the portion attributable to its use which are covered by such exemption. Customer agrees to pay these Taxes in addition to all other fees and charges as set forth elsewhere in this Agreement, subject to the provision regarding exemption from such Taxes. Customer shall deliver a copy of its exemption certificate to County.
- 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. This Agreement shall terminate ninety (90) days following written notice by either party.
- b. In the event Customer terminates this Agreement based upon County 's default or failure to perform as described in this Agreement, County shall reimburse to Customer the pro rata amounts paid on the unexpired term of this Agreement.
- c. If Customer terminates this Agreement for any reason other than that based on non-appropriation or on 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 by any party; 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. Amendment

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

22. 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 facsimile addressed as follows:

Notice to the County

Manager, Clackamas Broadband Express
Clackamas County Technology Services
121 Library Court
Oregon City, Oregon 97045
Fax Number (503) 655-8255

with a copy to

Chief Information Officer
Clackamas County Technology Services
121 Library Court
Oregon City, Oregon 97045
Fax Number: (503) 655-8255

Notice to the Customer

Patricia K. Middelburg
Business Support Team Lead
Enterprise Technology Services

Department of Administrative Services
530 Airport Road SE
Salem, OR 97301
(503) 373-1365
Pat.middelburg@state.or.us [

with a copy to:

Kurtis Danka
Deputy Administrator
Enterprise Technology Services
Department of Administrative Services
530 Airport Road SE
Salem, OR 97301
(503) 378-6430
Kurtis.Danka@state.or.us

And:
Robert L Shike, OPBC, CPPB
1225 Ferry Street SE
Salem, OR 97301
Phone: 503-373-0763
Fax: 503-373-1626
Email: robert.shike@state.or.us

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

23. Whole Contract

THIS AGREEMENT 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 AGREEMENT. NO WAIVER, CONSENT, MODIFICATION, OR CHANGE OF TERMS OF THIS AGREEMENT WILL BE BINDING ON EITHER PARTY EXCEPT AS A WRITTEN ADDENDUM OR AMENDMENT 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: David Cummings

Title: Chief Information Officer, Clackamas County Technology Services

Date: 11-18-2013

**State of Oregon, acting by and through the Department of Administrative Services,
Procurement Services**

By (signature): 

Name (print): Debbie Dennis

Title: Manager

Date: 11-1-13

Approved: State of Oregon, acting by and through the Department of Administrative Services, Enterprise Technology Services

By (signature): 

Name (print): KURTIS DANKER

Title: DEPUTY ADMINISTRATOR

Date: 10-31-2013

Approved:

Oregon Department of Justice

By: email: Karen Johnson
Assistant Attorney General

Date: 10/31/13
107009, GF0789-13

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. Semi-Annual Recurring Charges

From (Connecting Point A:Site Name & Address)	To (Connecting Point B:Site Name & Address)	Service	FY 13-14 Monthly Rate (\$)	Customer Initials
1 Site A	Site B	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 (\$)	Customer Initials
1 Site A	Site B	Construction	\$0	

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 two-thirds of one percent (2/3%) per month, or eight percent (8%) annually, on any installment not paid when due. All payments are subject to ORS 293.462.

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 Consumer Price Index (CPI) for urban wage earners and clerical workers for the Portland, Oregon metropolitan region for the prior year, unadjusted for seasonal variations, as determined by the Bureau of Labor Statistics of the Department of Labor and as published in such Bureau of Labor Statistics Detailed Report.

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.

- 4. 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.

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.

Appendix D

Insurance

A. REQUIRED INSURANCE. County shall obtain at County's expense the insurance specified in this Attachment D prior to performing under this Contract and shall maintain it in full force and at its own expense throughout the duration of this Contract and all warranty periods. County shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in State and that are acceptable to Agency.

i. WORKERS COMPENSATION. All employers, including County, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). County shall require and ensure that each of its subcontractors complies with these requirements.

ii. PROFESSIONAL LIABILITY

Required by Agency Not required by Agency.

Professional Liability. Professional Liability Insurance covering any damages caused by an error, omission or any negligent acts related to the services to be provided under this Contract. County shall provide proof of insurance of not less than the following amounts as determined by the Agency:

iii. COMMERCIAL GENERAL LIABILITY.

Required by Agency Not required by Agency.

Commercial General Liability. Commercial General Liability Insurance covering bodily injury, death, and property damage in a form and with coverages that are satisfactory to the State. This insurance shall include personal injury liability, products, and completed operations. Coverage shall be written on an occurrence basis. County shall provide proof of insurance of not less than the following amounts as determined by the Agency:

Bodily Injury/Death:

 \$ 500,000.00 Per occurrence limit for any single claimant; and
 \$1,000,000.00 Per occurrence limit for multiple claimants

 Per occurrence limit for any single claimant:

From commencement of the Contract term to June 30, 2014: \$100,100, and

Per occurrence limit for multiple claimants:

From commencement of the Contract term to June 30, 2014: \$500,600.

iv. AUTOMOBILE Liability Insurance: Automobile Liability.

X Required by Agency Not required by Agency.

Automobile Liability. Automobile Liability Insurance covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for "Commercial General Liability" and "Automobile Liability"). County shall provide proof of insurance of not less than the following amounts as determined by the Agency:

Bodily Injury/Death:

- X \$500,000.00 Per occurrence limit for any single claimant; and
- \$1,000,000.00 Per occurrence limit for multiple claimants

AND

Property Damage:

X Per occurrence limit for any single claimant:

From commencement of the Contract term to June 30, 2014: \$100,100, and

Per occurrence limit for multiple claimants:

From commencement of the Contract term to June 30, 2014: \$500,600.

vi. EXCESS/UMBRELLA INSURANCE.

A combination of primary and excess/umbrella insurance is acceptable. If you are using excess/umbrella insurance to meet the minimum insurance requirement, your certificate must include a list of the policies that fall under the excess/umbrella insurance. Sample wording is "The Excess/Umbrella policy is excess over General Liability, Auto Liability, etc."

B. ADDITIONAL INSURED. The Commercial General Liability insurance and Automobile Liability insurance required under this Contract shall include the State of Oregon, its officers, employees and agents as Additional Insureds but only with respect to County's activities to be performed under this Contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

C. "TAIL" COVERAGE. If any of the required professional liability insurance is on a "claims made" basis, County shall either maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of this Contract, for a minimum of 24 months following the later of (i) County's completion and Agency's acceptance of all Services required under this Contract, or, (ii) The expiration of all warranty periods provided under this Contract. Notwithstanding the foregoing 24-month requirement, if County elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the 24-month period described above, then County shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace for the coverage required under this Contract. County shall provide to Agency, upon Agency's request, certification of the coverage required under this section C.

D. NOTICE OF CANCELLATION OR CHANGE. There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without 30 days' written notice from this County or its insurer(s) to Agency. Any failure to comply with the reporting provisions of this clause shall constitute a material breach of Contract and shall be grounds for immediate termination of this Contract by Agency.

E. CERTIFICATE(S) OF INSURANCE. County shall provide to Agency Certificate(s) of Insurance for all required insurance before delivering any Goods and performing any Services required under this Contract. The Certificate(s) must specify all entities and individuals who are endorsed on the policy as Additional Insured (or Loss Payees). County shall pay for all deductibles, self-insured retention and self-insurance, if any.