

May 7, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

Board Order in the Matter of an Extension of the Cable Television Franchise with
Beaver Creek Cooperative Telephone Company

Purpose/Outcome	Extend current cable television franchise to allow time for evaluation and negotiations.
Dollar Amount and Fiscal Impact	N/A
Funding Source	N/A
Duration	Effective May 7, 2020 through May 7, 2021
Previous Board Action/Review	The original franchise agreement was approved by the BCC in March 2008 and extended in March 2018 and March 2019 for one year periods.
Strategic Plan Alignment	Building public trust through good government.
Counsel Review	County Counsel has reviewed and approved
Contact Person	Sue Hildick, Public & Government Affairs, 503-742-5900

BACKGROUND:

The Beaver Creek Cooperative Telephone Company (Beaver Creek) Cable Franchise Permit Agreement expired on March 20, 2020, but the contract has continued under the same terms and conditions pursuant to applicable law unless and until the county issues a termination of franchise notice. Beaver Creek is serving over 900 subscribers in the unincorporated area of Clackamas County. The County is currently negotiating a renewal of the cable franchise with Beaver Creek.

This extension, if granted, would not affect either party's rights in the renewal process and includes a provision to preserve the County's right to retroactive PEG funding negotiated in the renewal. The County will evaluate Beaver Creek's legal, technical and financial qualifications to operate the cable system, as well as the community's needs, in its determination of whether to renew the franchise and on what terms and conditions.

RECOMMENDATION:

Staff respectfully recommends the Board approve the extension of the franchise permit agreement to assure that the terms of the current franchise agreement continue to be met through May 7, 2021.

Respectfully submitted,

Sue Hildick, Director
Public and Government Affairs

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON**

In the Matter of Approving an Extension
of the Cable Television Franchise with
Beaver Creek Cooperative Telephone
Company



Order No. _____

This matter coming before the Clackamas County Board of Commissioners at its regularly scheduled public meeting on May 7, 2020 to consider approving an extension of the cable television franchise with Beaver Creek Cooperative Telephone Company.

WHEREAS, Beaver Creek Cooperative Telephone Company holds a cable television franchise with Clackamas County, which expired on March 20, 2020, but the respective contract has continued under the same terms and conditions pursuant to applicable law unless and until the County issues a termination of franchise notice; and

WHEREAS, County staff and representatives of Beaver Creek Cooperative Telephone Company began discussions in the winter of 2019 to evaluate and negotiate terms regarding the renewal of the applicable franchise; and

WHEREAS, the amount of time required to conclude negotiations and allow for public review of a new franchise agreement extended beyond the current expiration date; and

WHEREAS, it is in the public interest to extend the current franchise for an additional period of time to accommodate the renewal process and avoid a potentially unnecessary disruption of service to affected residents

NOW, THEREFORE, the Clackamas County Board of Commissioners do hereby order that the franchise granted to Beaver Creek Cooperative Telephone Company shall be extended until and including May 7, 2021, and that all rights and obligations provided the parties under the franchise agreement shall remain in full force and effect during that period, including the rights of the parties under the Cable Communications Policy Act of 1992 and the Telecommunications Act of 1996. Neither Beaver Creek Cooperative Telephone Company nor the County shall assert any claim, denial or defense based upon the original expiration date of the Franchise Agreement, excepting therefrom that the County may assert in negotiations that any increase in PEG funding included in the new franchise agreement shall include the time period covered by this extension. This extension of the franchise is explicitly conditioned upon written acceptance thereof by the Franchisee.

DATED this 7th day of May, 2020

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary



May 7, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of an Intergovernmental Agreement with Multnomah County, for Use of Videography Services of Clackamas County On-Call Videographers

Purpose/Outcome	This agreement allows Clackamas County to facilitate the videography services of its on-call contracts with videographers to perform services for the benefit of Multnomah County.
Dollar Amount and Fiscal Impact	Multnomah County agrees to pay Clackamas the amounts charged by the videographers for services performed under the contract and task orders.
Funding Source	N/A
Duration	Effective March 26, 2020 and terminates on December 31, 2020.
Previous Board Action/Review	N/A
Strategic Plan Alignment	Building public trust through good government.
Counsel Review	April 28, 2020
Contact Person	Sue Hildick, Public & Government Affairs, 503-742-5900

BACKGROUND:

Clackamas County has on-call contracts with videographers that allow Clackamas County to submit a task order to the videographer. The videographer will then perform the work as specified in the task order consistent with the contract. Clackamas County has capacity in these contracts that it is willing to allow Multnomah County to utilize to meet their current need for videographer services related to COVID-19 in some capacity. Multnomah County will pay Clackamas County for the use of the services of the videographers that they have under contract.

The Agreement is effective March 26, 2020 and continues through December 31, 2021. This agreement is retroactive due to the time-sensitive video needs of Multnomah County during the Pandemic.

RECOMMENDATION:

Staff respectfully recommends the Board approve the IGA to allow Clackamas County to facilitate the videography services of its on-call contracts with videographers to perform services for the benefit of Multnomah County.

Respectfully submitted,

Sue Hildick, Director
Public and Government Affairs

**INTERGOVERNMENTAL AGREEMENT
BETWEEN
CLACKAMAS COUNTY AND MULTNOMAH COUNTY**

THIS AGREEMENT (this "Agreement") is entered into and between Clackamas County ("Clackamas"), a political subdivision of the State of Oregon, and Multnomah County ("Multnomah"), a political subdivision of the State of Oregon, an Oregon municipal corporation, 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.

Clackamas County has on-call contracts with videographers that allow Clackamas County to submit a task order to the videographer. The videographer will then perform the work as specified in the task order consistent with the contract. Clackamas County has capacity in these contracts that it is willing to allow Multnomah County to utilize to meet their current needs for videographer services. Multnomah County will pay Clackamas County for the use of the services of the videographers that they have under contract according to the terms below.

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 upon the completion of each and every obligation of the Parties set forth herein, or June 30, 2020, whichever is sooner.
2. **Scope of Work.** Clackamas County agrees to issue task orders to videographers under contract to perform services for the benefit of Multnomah County consistent with the existing contracts. The issuance of these task orders will herein be referred to as ("Work").
3. **Consideration.** Multnomah agrees to pay Clackamas, the amounts charged by the videographers for the services performed under the contracts and task orders from available and authorized funds, a sum not to exceed \$75,000 for accomplishing the Work required by this Agreement.
4. **Payment.** Unless otherwise specified, Clackamas County shall submit monthly invoices for Work performed and shall include the total amount billed to date by the videographers prior to the current invoice. Invoices shall describe all Work performed with particularity, by whom it was performed, and shall itemize and explain all expenses for which reimbursement is claimed. Payments shall be made to Clackamas County following Multnomah County's review and approval of invoices submitted by Clackamas County. Clackamas County shall not submit invoices for, and Multnomah County will not pay, any amount in excess of the maximum compensation amount set forth above. Multnomah County will pay in accordance with the rates listed on **Exhibit A: Producer Pay Rates**, attached to this Agreement.
5. **Representations and Warranties.**
 - A. *Clackamas County Representations and Warranties:* Clackamas County represents and warrants to Multnomah County that Clackamas 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 Clackamas County enforceable in accordance with its terms.
 - B. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.
6. **Termination.**
 - A. Either Clackamas County or Multnomah County may terminate this Agreement at any time upon thirty (30) days written notice to the other party.
 - B. Either Clackamas County or Multnomah County 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. Clackamas County or Multnomah County 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. Multnomah County may terminate this Agreement in the event Multnomah County fails to receive expenditure authority sufficient to allow Multnomah County, 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 either the Project under this Agreement is prohibited or Multnomah County 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.** Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, Multnomah County agrees to indemnify, save harmless and defend Clackamas 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 the Multnomah County or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the Multnomah County has a right to control.
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. Kellie Lute or her designee will act as liaison for the Clackamas.

Contact Information:

Kellie Lute
Administrative Services Manager
Department of Public and Government Affairs
2051 Kaen Rd.
Oregon City, OR 97045
(503) 742-
klute@clackamas.us

Jessica Morkert-Shibley or their designee will act as liaison for Multnomah County.

Contact Information:

Jessica Morkert-Shibley

Public Affairs Coordinator
Communications Office
501 SE Hawthorne Boulevard, ste 600
Portland, OR 97214
jessica.morkert-shibley@multco.us

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 Clackamas County and Multnomah County 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 Clackamas 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. Multnomah County, 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.** Multnomah County 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. Multnomah County 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, Multnomah County shall permit the Clackamas's authorized representatives' access to the Records at reasonable times and places for purposes of examining and copying.
- E. **Work Product.** All work performed under this Agreement shall be considered work made for hire and shall be the sole and exclusive property of the party requesting the work to be performed. The requesting party shall own any and all data, documents, plans, copyrights, specifications, working papers and any other materials produced in connection with this Agreement.
- F. **Hazard Communication.** Multnomah County shall notify Clackamas County prior to using products containing hazardous chemicals to which Clackamas County employees may be exposed, which includes any hazardous, toxic, or dangerous substance, waste, or material that is the subject of environmental protection legal requirements or that becomes regulated under any applicable local, state or federal law, including but not limited to the items listed in the United States Department of Transportation Hazardous Materials Table (49 CFR §172.101) or designated as hazardous substances by Oregon Administrative Rules, Chapter 137, or the United States Environmental Protection Multnomah (40 CFR Part 302), and any amendments thereto. Upon Clackamas County's request, Multnomah County shall immediately provide Material Safety Data Sheets for the products subject to this provision.

- G. **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.
- H. **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.
- I. **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.
- J. **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.
- K. **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.
- L. **No Third-Party Beneficiary.** Multnomah County and Clackamas 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.
- M. **Subcontract and Assignment.** Multnomah County shall not enter into any subcontracts for any of the work required by this Agreement, or assign or transfer any of its interest in this Agreement by operation of law or otherwise, without obtaining prior written approval from Clackamas County, which shall be granted or denied in Clackamas County's sole discretion. Clackamas County's consent to any subcontract shall not relieve Multnomah County any of its duties or obligations under this Agreement.
- N. **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.
- O. **Survival.** All provisions in Sections 5, 7, and 10 (A), (C), (D), (G), (H), (I), (J), (L), (S), and (T) shall survive the termination of this Agreement, together with all other rights and obligations herein which by their context are intended to survive.
- P. **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.
- Q. **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.
- R. **Force Majeure.** Neither Multnomah County nor Clackamas County shall be held responsible for delay or default caused by events outside of Multnomah County or Clackamas County's reasonable

control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, the parties 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.

- S. **Confidentiality.** Multnomah County acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire confidential information. Any and all information of any form obtained by Multnomah County or its employees or agents in the performance of this Agreement shall be deemed confidential information of Clackamas County ("Confidential Information"). Multnomah County agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Multnomah County 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.
- T. **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.

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

Clackamas County

Multnomah County

Chair, Board of Clackamas Commissioners

DocuSigned by:
Emilie Schulhoff for Deborah Kafoury
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Date

4/22/2020

Date

Producer Pay Rates

\$28.00/hr Training

Receiving training from staff.

\$32.00/hr Producer

Script and project development. Operating camera/ audio equipment, interviewing, technical services, post-production, and training as an instructor.

\$40.00/hr Lead Producer

Same duties as Producer but managing a crew of 3 or more.

\$40.00/hr Hosting Talent

Hosting live or recorded production.

\$40.00/hr Voiceover Talent

Providing professional voiceover for an edited production.

\$40.00/hr DSB Auditorium Director

Operating switcher in the Development Services Building auditorium and recording meetings for future playback.

\$125.00 / First two hours*

BCC Hearing Room Audio Technician

Operating audio mixer during live meetings in the Board of County Commissioners Hearing Room. Creating DVD copies and assisting Director as needed.

\$150.00 / First two hours*

BCC Hearing Room Director

Operating switcher during live meetings in the Board of County Commissioners Hearing Room. Creating files for channel and website playback. Adding completed meetings to schedule.

*Producer standard rate (\$32.00) after first two (2) hours.

Mileage

↗ Will be paid at the current Federal rate

↗ Is paid from county offices to the shoot location

↗ Is not paid for editing purposes, equipment pick-up or drop-off, coming into the office for voiceover, script writing, program scheduling or staff meetings.