



Dave Cummings  
Chief Information Officer

## Technology Services

121 Library Court Oregon City, OR 97045

June 11, 2020

Board of County Commissioners  
Clackamas County

Members of the Board:

Approve a Non-Disclosure Agreement between Clackamas Broadband eXchange and Verizon Business Network Services, Inc.

<b>Purpose/Outcomes</b>	Clackamas Broadband eXchange (CBX) and Verizon need a Non-Disclosure Agreement signed so they can share network information with one another.
<b>Dollar Amount and Fiscal Impact</b>	None.
<b>Funding Source</b>	N/A
<b>Duration</b>	Through June 11, 2021.
<b>Previous Board Action</b>	Board approved an NDA with Verizon on June 13 <sup>th</sup> , 2019.
<b>Strategic Plan Alignment</b>	<ol style="list-style-type: none"><li>1. Build a strong infrastructure.</li><li>2. This item follows the Board's Key Initiatives of making high speed internet available throughout the County.</li></ol>
<b>Counsel Review</b>	Andrew Naylor, June 3, 2020
<b>Contact Person</b>	Dave Devore (503) 723-4996
<b>Contract Number</b>	N/A

**BACKGROUND:**

Clackamas Broadband eXchange is pursuing partnerships and operational cooperation from other communications providers. Verizon is willing to share detailed information and have these discussions with staff in CBX but only if they are subject to a Non-Disclosure Agreement.

**RECOMMENDATION:**

Staff respectfully recommends that the Board approve this Non-Disclosure Agreement.

Sincerely,

Dave Cummings  
CIO Technology Services

## NON-DISCLOSURE AGREEMENT

This NON-DISCLOSURE AGREEMENT (“Agreement”), is made and entered into as of June 11th, 2020 (“Effective Date”) by and between THE COUNTY OF CLACKAMAS, a government entity (“County”) of the State of Oregon and Verizon Business Network Services Inc., a Delaware corporation with its principal offices at One Verizon Way, Basking Ridge, New Jersey, 07920 (“VBNS”) and its affiliates (defined as an entity controlling, majority-owned, controlled or under common voting control with VBNS, or a contractual or joint venture partner, possessing, whether by contract or otherwise, similar rights or obligations (individually or collectively, the “Company”). County and the Company may be referred to herein collectively as the “Parties” and individually as a “Party”.

WHEREAS, the Parties desire to engage in preliminary discussions concerning the deployment of wireless and wireline network infrastructure in the County, among other related matters;

WHEREAS, the Parties may provide Confidential Information (as defined below) to one another to understand the wireless and wireline network deployment;

NOW, THEREFORE, in consideration of the foregoing, County and Company hereby agree as follows:

1. Notwithstanding anything to the contrary, County’s obligations under this Agreement are expressly subject to the Oregon Public Records Law, Oregon Revised Statutes (“ORS”) Chapter 192 *et. seq.*, and any other applicable state or federal law. Company asserts that Confidential Information, defined below, submitted pursuant to this Agreement is exempt from disclosure under one or more exceptions including, but not limited to: ORS 192.345(2) (trade secrets) and ORS 192.354(4) (confidential submissions). While County will make good faith efforts to perform under this Agreement, County’s disclosure of Confidential Information, in whole or in part, will not be a breach of the Agreement if such disclosure was pursuant to a request under the Oregon Public Records Law, or any other state or federal law, or if such disclosure was compelled by deposition, interrogatory, request for documents, subpoena, civil investigative demand, or similar processes.

If County is subject to such a disclosure order or receives from a third party any public records request for the disclosure of Confidential Information, County shall notify Company within a reasonable period of time of the request. Company is exclusively responsible for defending Company’s position concerning the confidentiality of the requested information. County is not required to assist Company in opposing disclosure of Confidential Information. Notices under this provision shall be sent to [donna.barrett@verizonwireless.com](mailto:donna.barrett@verizonwireless.com).

2. “Confidential Information” means information not generally known to the public, marked confidential and which is maintained by either of the Parties as confidential, and is reasonably considered confidential, whether of a technical, business or other nature that relates to the infrastructure and network deployment or a potential agreement between County and the Company. Other information, although not necessarily directly related to the infrastructure and network deployment or a potential agreement between County and Company, is nevertheless disclosed as a result of the Parties’ discussions, and is marked confidential or proprietary because of: (i) legends or other markings, the Parties may provide Confidential Information in written or tangible form (including information in computer

software or held in electronic storage media) or by oral, visual or other means. Confidential Information may also, without limitation, include confidential or proprietary documents, plans, records, reports, correspondence, applications, data and any and all other sources of information. If the Confidential Information is provided orally, it shall be deemed to be confidential or proprietary if identified as such by the Parties at the time it is provided. Confidential Information shall not include information that is in the public domain, information that the Parties independently and lawfully obtain and/or information that either Party obtains by a court order.

3. By submitting the Confidential Information, the Parties do not grant to one another or any third party any license, explicitly or implicitly, under any trademark, patent, copyright, mask work, protection right, trade secret or any other intellectual property right, except for the uses identified herein. Further, any submittal of the Confidential Information does not constitute or imply any commitment, promise, or inducement by the Company or County to enter into any further agreements.
4. Except as otherwise required by law, the Confidential Information and information derived directly from the Confidential Information related to the infrastructure network will be used solely for the purpose of evaluating the infrastructure and network deployment or a potential agreement between County and the Company. The Parties and any party to whom the Confidential Information is furnished as provided herein, shall keep the Confidential Information confidential and shall not disclose the Confidential Information to any third persons except as required by law or as permitted pursuant to the terms set forth in this Agreement.
5. The Parties may disclose the Confidential Information or portions thereof only to the persons to whom such disclosure is permissible (collectively, the "Representatives") as follows: (i) officers, employees and legal counsel of the Parties on a need-to-know basis; or (ii) other state agencies, local governments or local development authorities and their respective officers and employees, whose assistance may be requested or required in connection with evaluating infrastructure and network deployment or a potential agreement between County and the Company; (iii) or as otherwise allowed by the terms of this Agreement. Prior to providing any of the Confidential Information to the Representatives, the Parties shall advise any and all of the Representatives of the confidential nature of the Confidential Information and require each such Representative to comply with the requirements of this Agreement.
6. Any person who is provided with Confidential Information shall make best efforts to fully protect the Confidential Information, including but not limited to (i) if the Confidential Information contains hard copies, to keep that Confidential Information in a locked location and to restrict access to anyone who does not have permission to review the Confidential Information; and (ii) if Confidential Information is in digital format, to maintain the Confidential Information in a system with encryption and to restrict access to anyone who does not have permission to review the Confidential Information.
7. Neither Party shall issue any press releases announcing the infrastructure and network deployment or any potential agreement between County and Company or make any similar affirmative announcement to any third person unless the other party provides written consent or if compelled by law, subject to the provisions of Paragraph 9 below.

8. County agrees and acknowledges as follows: (i) the Confidential Information provided by Company to County is owned by Company, and (ii) that breach of this Agreement may cause significant harm to Company.
9. Each actual breach of this Agreement herein shall generate a claim in favor of the other Party that the other Party may assert against the breaching Party. Upon such breach, the other Party shall be authorized to seek all remedies available at law or in equity, including actual and punitive damages, injunctive relief and specific performance. The Parties agree that monetary damages may not be adequate compensation for any loss incurred by reason of a breach by it of the provisions of this Agreement.
10. This Agreement will expire upon the earlier of (i) one (1) year from the Effective Date or (ii) upon the completion of the infrastructure and network deployment or execution of an agreement between County and Company. If a subsequent agreement is executed that contains a confidentiality provision, the terms and conditions of that agreement shall govern the issues of non-disclosure and confidentiality. Upon written request made by the Company or in the event this Agreement expires without a subsequent agreement, County shall have thirty (30) days to either (i) promptly return to Company all Confidential Information, all copies thereof, and any notes, reports, compilations, records, or similar documents derived or made therefrom, or (ii) agree with Company upon appropriate methods and certification of destruction or other disposition of the foregoing. Notwithstanding such expiration or termination, all of the Parties' non-disclosure obligations under this Agreement will survive with respect to any Confidential Information received prior to such expiration or termination unless a subsequent agreement is in effect in which case it shall govern.
11. This Agreement also applies to Confidential Information related to the wireless and wireline infrastructure already disclosed to County and County represents that Confidential Information disclosed prior to the Effective Date has not been disclosed to any third persons. Any previously disclosed Confidential Information is subject to the terms and conditions of this Agreement.
12. No failure or delay by Company or County to exercise any right, power or privilege hereunder will operate as a waiver, nor will any single or partial exercise preclude any other or further exercise.
13. This Agreement shall be binding upon and inure to the benefit of County and Company and their respective successors and assigns. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without reference to its conflict of law provisions. Any claim between County and Company that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas County for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the County of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.
14. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute the same agreement.

15. This Agreement contains the entire agreement and understanding concerning the subject matter hereof between County and Company and may not be amended except by a writing executed by both County and Company.
16. Except as expressly provided herein, nothing in this Agreement creates, implies or evidences any partnership or joint venture between the Parties, or the relationship between them of principal and agent. No Party has any authority to make any representation or commitment, or to incur any liability, on behalf of the others.
17. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each Party represents and warrants to the others that the execution and delivery of the Agreement and the performance of such Party's obligations hereunder have been duly authorized.
18. 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.

IN WITNESS WHEREOF, County and Company have executed this Agreement effective as of the date first above written.

**COUNTY OF CLACKAMAS**

**By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**VERIZON BUSINESS NETWORK  
SERVICES INC.**

**By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_