



Dave DeVore
Interim Director

Technology Services

121 Library Court Oregon City, OR 97045

July 27, 2021

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of an Intergovernmental Agreement between
Clackamas Broadband eXchange and City of Hillsboro

Purpose/Outcomes	Clackamas Broadband eXchange (CBX) is looking for approval to enter into an Intergovernmental Agreement (IGA) with the City of Hillsboro for project management of a new \$240,000.00 fiber construction project for the Metro Area Joint CAD Services (MAJCS) and Washington County Consolidated Communications Agency (WCCCA).
Dollar Amount and Fiscal Impact	CBX will provide project management of the project for the City of Hillsboro to install 2 new redundant fiber paths to the new WCCCA building. The City of Hillsboro will reimburse CBX for staff time and expenses up to \$5,000.00.
Funding Source	The funding source for the expense of CBX staff time will be contributed from the CBX budget and then reimbursed by the City of Hillsboro.
Duration	Effective upon signature by the board the IGA will be in effect until the completion of the fiber project. This project is not expected to last longer than 6 months.
Previous Board Action	Board has not previously reviewed a similar IGA.
Strategic Plan Alignment	<ol style="list-style-type: none"> 1. Build a strong infrastructure. 2. Build public trust through good government.
Counsel Review	Andrew Naylor, June 10, 2021
Contact Person	Dave Devore (503)723-4996
Contract No.	N/A

BACKGROUND:

CBX is proposing to provide project management oversight for a new redundant dark fiber connection for the new WCCCA building in Hillsboro. This new dark fiber project will provide necessary infrastructure for emergency services in both Washington County and Clackamas County.

Washington County Consolidated Communications Agency (WCCCA) is one of four 911 centers in the MAJCS (Metro Area Joint CAD System) that shares a regional Computer Aided Dispatch (CAD) system which is the brains for all 911 centers. Clackamas County (C-COM), Lake Oswego Communications (LOCOM) and Columbia 911 (C911) are all partners of this CAD system. It is important that the CAD Network be built on dark fiber that is owned and not commercially shared so that none of these 911 centers lose connectivity to all 4 of the partners involved in this project.

The four 911 centers have sought to ensure the highest levels of redundancy and resilience to provide a stable CAD environment, not only for the 911 partners, but also for all of the police, fire

and Emergency Medical Service (EMS) providers who rely on the life safety information shared by 911 callers within these four jurisdictions.

RECOMMENDATION:

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

Sincerely,



Dave DeVore
Interim Director, Technology Services



INTERGOVERNMENTAL AGREEMENT

This Agreement ("Agreement") is made by and between the City of Hillsboro, a municipal corporation of the State of Oregon ("City"), and Clackamas County, Oregon, a political subdivision of the State of Oregon. ("County").

RECITALS

Whereas, the City of Hillsboro and Clackamas County agree that reliable fiber optic cable connectivity to the Washington County Consolidated Communications agency is a benefit to the entire region ;

Whereas, Clackamas County has the expertise to coordinate the installation of fiber optic cable; and

Whereas, the City of Hillsboro is willing to incorporate the new fiber cabling into the City's existing network.

The parties agree as follows:

TERMS AND CONDITIONS

1. **START AND END DATES.**

The **effective date** of this Agreement is the date fully executed by both parties. This Agreement shall continue until June 30, 2022. Agreement may be terminated earlier or term may be extended, as provided in this Agreement.

2. **AGREEMENT DOCUMENTS.**

This Agreement consists of these Terms and Conditions and the documents ("Exhibits") listed below in descending order of precedence. A conflict in these documents shall be resolved in the priority listed below with these Terms and Conditions taking precedence. The Exhibits to this contract are:

- Exhibit A: Fiber Plans;

3. **RESPONSIBILITIES OF THE PARTIES.**

3.1. City of Hillsboro Responsibilities:

- 3.1.1. City will provide an approved design for the installation of fiber (Exhibit A).
- 3.1.2. City will pay County a project management fee not to exceed \$5,000. Fee's to include, but not limited to the procurement process for a construction contractor and any legal fee's.
- 3.1.3. City will participate in a joint procurement process with County for construction of the fiber network. The City will provide the design, pay monthly invoices and have final approval on any change orders. City will provide all City permits required for this project.
- 3.1.4. City will join County in entering into a contract with the contractor that has been awarded the contract under the joint procurement process.

- 3.1.5. City will be responsible for paying approved construction related charges to the selected contractor.
 - 3.1.6. Upon inspection, approval, delivery of asbuilts, and payment to County, the City will assume ownership of the installed infrastructure and responsibility for its maintenance.
 - 3.2. Clackamas County Responsibilities:
 - 3.2.1. County will provide all project management services related to the installation of the infrastructure as shown in Exhibit A. Installation will include a complete solution including any conduits, fiber cable, handholes, splice enclosures, splicing, testing, etc.
 - 3.2.2. County will participate in a joint procurement process with City for construction of the fiber network. County will review all monthly invoices for accuracy, approve any change orders and provide accuracy and quality control of fiber project.
 - 3.2.3. County will join City in entering into a contract with the contractor that has been awarded the contract under the joint procurement process.
 - 3.2.4. County will review invoices submitted by the contractor to ensure they align with work completed, perform all tasks to meet BOLI requirements, and provide detailed asbuilts and fiber test results upon completion of the project.
4. **COMPLIANCE WITH APPLICABLE LAWS.**

Each party shall comply with all applicable federal, state and local laws; and rules and regulations on non-discrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition or handicap. In addition, each party agrees to comply with all local, state and federal ordinances, statutes, laws and regulations that are applicable to the services provided under this Agreement.
5. **RECITALS.**

The recitals above are incorporated herein as if fully set forth.
6. **INDEPENDENT CONTRACTOR.**

Each party is an independent contractor with regard to each other party and agrees that the performing party has no control over the work or the manner in which it is performed. No party is an agent or employee of any other. 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.
7. **TERMINATION.**
 - 7.1. Termination for cause. Either party may terminate this Agreement, in whole or in part, immediately upon notice, or at such later date as may be established in such a notice, to the other party upon the occurrence of the following events: One party commits any material breach or default of any covenant, warranty, obligation, certification or agreement under this Agreement, fails to perform the work or services under this Agreement within the time specified herein or any extension thereof, or so fails to pursue the work or services as to endanger the performance under this Agreement in accordance with its terms.

- 7.2. Either party may terminate this Agreement in the event that party fails to receive expenditure authority sufficient to allow the terminating party, in the exercise of its reasonable administrative discretion, to continue to perform under this Agreement, or if federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the project described in this Agreement is prohibited or the terminating party is prohibited from paying for such work from the planned funding source. Neither party shall enter into any contract arising from the joint procurement described in Section 3, above, without obtaining expenditure authority to do so.
8. **CHANGES.**
Modifications to this Agreement are valid only if made in writing and signed by all parties.
9. **INDEMNIFICATION.**
Subject to the limitations of liability for public bodies set forth in the Oregon Tort Claims Act, ORS 30.260 to 30.300, and the Oregon Constitution, each party agrees to hold harmless, defend, and indemnify each other, including their officers, agents, and employees, against all claims, demands, penalties, actions and suits (including the cost of defense thereof and all attorney fees and costs, through all appeals) arising from the indemnitor's performance of this Agreement where the loss or claim is attributable to the acts or omissions of that party or its officers, employees or agents.
10. **ACTION, SUITS OR CLAIMS.**
Each party shall give the other immediate written notice of any action or suit filed or any claim made against that party that may result in claims or litigation in any way related to this Agreement.
11. **INSURANCE.**
Each party agrees to maintain insurance levels or self-insurance in accordance with ORS 30.282, for the duration of this Agreement at levels necessary to protect against public body liability as specified in ORS 30.269 to 30.274.
12. **NO THIRD PARTY BENEFICIARIES.**
Except as set forth herein, this Agreement is between the parties and creates no third-party beneficiaries. Nothing in this Agreement gives or shall be construed to give or provide any benefit, direct, indirect or otherwise to third parties unless such third parties are expressly described as intended to be beneficiaries of its terms.
13. **REMEDIES, NON-WAIVER.**
The remedies provided under this Agreement shall not be exclusive. The parties shall also be entitled to any other equitable and legal remedies that are available. No waiver, consent, modification or change of terms of this Agreement shall bind the parties unless in writing and signed by all parties. 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 a party to enforce any provision of this Agreement shall not constitute a waiver by a party of that or any other provision.

14. **OREGON LAW, DISPUTE RESOLUTION AND FORUM.**

This Agreement shall be construed according to the laws of the State of Oregon. The parties shall negotiate in good faith to resolve any dispute arising out of this Agreement. If the parties are unable to resolve any dispute within fourteen (14) calendar days, the parties are free to pursue any legal remedies that may be available. Any litigation between the parties arising under this Agreement or out of work performed under this Agreement shall occur, if in the state courts, in the Washington County Circuit Court, and if in the federal courts, in the United States District Court for the District of Oregon located in Portland, Oregon.

15. **ASSIGNMENT.**

No party shall assign its rights or obligations under this Agreement, in whole or in part, without the prior written approval of the other party or parties.

16. **SEVERABILITY/SURVIVAL OF TERMS.**

If any provision of this Agreement is found to be illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the provision shall be stricken. All provisions concerning indemnity survive the termination of this Agreement for any cause.

17. **FORCE MAJEURE.**

In addition to the specific provisions of this Agreement, performance by any Party shall not be in default where delay or default is due to war, insurrection, strikes, walkouts, riots, floods, drought, earthquakes, fires, casualties, acts of God, governmental restrictions imposed or mandated by governmental entities other than the parties, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation, litigation or similar bases for excused performance that are not within the reasonable control to the Party to be excused.

18. **INTERPRETATION OF AGREEMENT.**

This Agreement shall not be construed for or against any party by reason of the authorship or alleged authorship of any provision. The Section headings contained in this Agreement are for ease of reference only and shall not be used in construing or interpreting this Agreement.

19. **INTEGRATION.**

This document constitutes the entire agreement between the parties on the subject matter hereof and supersedes all prior or contemporaneous written or oral understandings, representations or communications of every kind on the subject.

20. **OTHER NECESSARY ACTS.**

The Parties shall execute and deliver to each other any and all further instruments and documents as may be reasonably necessary to carry out this Agreement.

21. **NOTICE.**

Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery or mailing with postage prepaid to Agency or City at the address set forth below. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

For the City of Hillsboro

Contract Administrator Name, Title: **Greg Mont, Information Services Director**

Address, City, State and ZIP Code: **150 E Main St., Hillsboro, OR 97123**

Telephone: **503-681-5401**

Email: **greg.mont@hillsboro-oregon.gov**

For the Agency

Contract Administrator Name, Title: **Duke Dexter, Clackamas Broadband eXchange Manager**

Address, City, State and ZIP Code: **121 Library Crt, Oregon City, Oregon 97045**

Telephone: **503-722-6663**

Email: **ddexter@clackamas.us**

22. **COUNTERPARTS.**

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

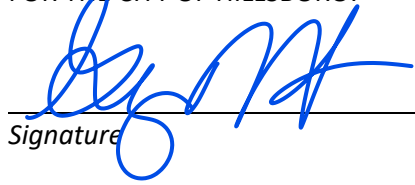
This writing is intended both as the final expression of the Agreement between the parties with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement.

All of the aforementioned is hereby agreed upon by the parties and executed by the duly authorized representatives of the parties signing on the next page.

23. **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.

24. **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.

FOR THE CITY OF HILLSBORO:



Signature

Greg Mont
Name (Printed)

IS Director
Title

7/20/21
Date

FOR CLACKAMAS COUNTY:

Signature

Name (Printed)

Title

Date



Dave DeVore
Interim Director

Technology Services

121 Library Court Oregon City, OR 97045

July 27, 2021

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of an Amendment #4 between
Clackamas Broadband eXchange and the State of Oregon

Purpose/Outcomes	Clackamas Broadband eXchange (CBX) is looking for an amendment with the State of Oregon to add sites for dark fiber services.
Dollar Amount and Fiscal Impact	The monthly recurring cost (MRC) for the 2 new dark fiber laterals will be \$510.00 and the nonrecurring cost (NRC) is \$33,900.00.
Funding Source	The funding source for the expansion of the CBX fiber network will be contributed from the CBX budget and then reimbursed by the State of Oregon.
Duration	Effective upon signature by the board the IGA will be in effect until June 30, 2026.
Previous Board Action	Board has previously approved similar amendments with the State of Oregon for other sites within Clackamas County.
Strategic Plan Alignment	<ol style="list-style-type: none"> 1. Build a strong infrastructure. 2. Build public trust through good government.
Counsel Review	Amendment # 4 was approved by Andrew Naylor May 6, 2021.
Contact Person	Dave Devore (503)723-4996
Contract No.	N/A

BACKGROUND:

CBX currently provides dark fiber connectivity to 11 sites within Clackamas County for the State of Oregon. CBX is looking to provide connectivity to 2 more sites bringing the total to 13. If approved, the 13 sites will receive the benefits of the CBX dark fiber connectivity through June 30, 2026 for current and future communication requirements.

RECOMMENDATION:

Staff respectfully recommends approval to continue providing dark fiber connections to the State of Oregon. Staff further recommends the Board delegate authority to the Technology Services Director to sign agreements necessary in the performance of this agreement.

Sincerely,

Dave DeVore
Interim Director, Technology Services

**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): _____

Name: _____

Title: _____

Date: _____

**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.

[Remainder of this page intentionally left blank.]