



Dave Cummings
Chief Information Officer

Technology Services

121 Library Court Oregon City, OR 97045

January 9, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

Amendment #3 to the Service Level Agreement between
Clackamas Broadband eXchange and the State of Oregon

Purpose/Outcomes	Clackamas Broadband eXchange (CBX) would like authorization to extend the term length for all dark fiber connections to the State of Oregon.
Dollar Amount and Fiscal Impact	The monthly recurring cost (MRC) for the 11 dark fiber laterals will be \$2,805.00.
Funding Source	All costs will be contributed from the CBX budget and then reimbursed by State of Oregon.
Duration	Effective upon signature by the board the existing SLA will be amended.
Previous Board Action	Board approved CBX to build and maintain a dark fiber network for the State of Oregon through previous Board submissions.
Strategic Plan Alignment	<ol style="list-style-type: none">1. Build a strong infrastructure.2. Build public trust through good government.
Contact Person	Dave Devore (503)723-4996

BACKGROUND:

CBX currently provides dark fiber connectivity to 11 sites within Clackamas County to the State of Oregon. If approved, the 11 sites will continue to receive the benefits of the CBX dark fiber connectivity through June 30th, 2026.

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.

This amendment agreement has been reviewed and approved by County Counsel.

Sincerely,

Dave Cummings
CIO Technology Services

**AMENDMENT #3 to
INTERGOVERNMENTAL AGREEMENT # 107-55434-14
BETWEEN CLACKAMAS COUNTY AND THE STATE OF OREGON**

This is Amendment No. #3 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 Data Center 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"). This Agreement may be terminated with thirty (30) days' notice as herein provided. 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 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 current term.

2. Paragraph 16 of the Agreement is hereby deleted and replaced in its entirety with the following:

Notwithstanding any other provisions of this Agreement, the parties hereby agree and understand that if either party fails to receive expenditure authority sufficient to allow it, in the exercise of its reasonable administrative discretion, to perform under this Agreement, or if federal or state laws, regulations or guidelines are modified or interpreted in such a way that either party is prohibited from performing under 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.

3. Appendix A to the Agreement is hereby deleted in its entirety and replaced with the new Appendix A that is attached hereto.
4. The Agreement is hereby amended to add the following new sections:

24. Debt Limitation

This Agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and County's performance is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.

25. No Attorney Fees

No attorney fees shall be paid for or awarded to either party in the course of any dispute or other recovery under this Agreement. It is the intent of the parties that each shall bear the costs of its own legal counsel.

26. Governing Law

This Agreement shall be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, or suit between County and Customer that arises out of or relates to the performance of this Agreement shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit must be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

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,
Data Center Services**

By (signature): Sandy C. Wheeler

Name: Sandy C. Wheeler

Title: Data Center Services, Director

Date: 12/24/2019

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

By (signature): Ginny Becht

Name: Ginny Becht

Title: Procurement Services Mgr

Date: 12/27/19

Oregon Department of Justice

Name Karen Johnson by email dated 12/24/2019

Title Asst. AG

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	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.	One Pair (two) dark fibers	\$255.00

		Clackamas, Oregon 97015		
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 Oregon City, OR 97045	Clackamas Education Service District 13455 SE 97th Ave. Clackamas, Oregon 97015	One Pair (two) dark 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

5. Nonrecurring Charges

	From (Connecting Point A: Site Name & Address)	To (Connecting Point B: Site Name & Address)	Service	Amount (\$)
1	ODOT-HWY 26 34250 SE Highway 26 Boring, OR 97009	Clackamas Education Service District 13455 SE 97th Ave. Clackamas, Oregon 97015	Construction	\$86,100.00

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/xq-tables/r09xq01.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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