



Dave Cummings
Chief Information Officer

Technology Services

121 Library Court Oregon City, OR 97045

September 17, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

Approval for a Service Level Agreement between Clackamas Broadband
eXchange and Molalla Communications for a dark fiber connection

Purpose/Outcomes	Clackamas Broadband eXchange (CBX) is looking for approval for a Service Level Agreement (SLA) with Molalla Communications for dark fiber connection.
Dollar Amount and Fiscal Impact	Molalla Communications will pay a nonrecurring fee of \$510.00 for the extension of the fiber network and pay a recurring monthly fee of \$2,950.00.
Funding Source	The funding source for the expansion of the CBX fiber network will be contributed from the CBX budget and then reimbursed by Molalla Communications.
Duration	Effective upon signature by the board, the SLA is effective for three (3) years.
Previous Board Action	Board previously approved CBX to build and maintain a dark fiber connection for Cascade Access (Reliance Connects).
Strategic Plan Alignment	<ol style="list-style-type: none">1. Build a strong infrastructure.2. This item follows the Board's Key Initiatives of making high speed internet available throughout the County.
Counsel Review	Andrew Naylor, August 26, 2020
Contact Person	Dave Devore (503)723-4996
Contract No.	N/A

BACKGROUND:

CBX is looking for approval to provide a dark fiber connection to Molalla Communications. This SLA will provide the necessary connectivity to Molalla Communications to better facilitate the operations of their service within Clackamas County.

RECOMMENDATION:

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

Sincerely,

Dave Cummings
CIO Technology Services

that waived.

- c. If Customer terminates this Agreement for any reason other than 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; 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. Remedies

If this Agreement is terminated by the County due to a breach by the Customer, then the County shall have any remedy available to it in law or equity. If this Agreement is terminated for any other reason, Customer's sole remedy is reimbursement of the pro rata amounts paid to County on the unexpired term of this Agreement, less any setoff to which the County is entitled.

22. Amendment

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

23. No recourse Against the County

Customer shall have no recourse whatsoever against County or its officials, boards, commissions, or employees for any loss, costs, expense, or damage arising out of any provision or requirement contained herein, or in the event this Agreement or any part thereof is determined to be invalid.

24. 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 electronic mail as follows:

Notice to the County

Manager, Clackamas Broadband Express
Clackamas County Technology Services
121 Library Court

Oregon City, Oregon 97045
ddexter@clackamas.us
Fax Number (503) 655-8255

with a copy to

Chief Information Officer
Clackamas County Technology Services
121 Library Court
Oregon City, Oregon 97045
cbxinfo@co.clackamas.or.us
Fax Number: (503) 655-8255

Notice to the Customer

Lance Eves
211 Robbins St
Molalla, OR 97038
lance@molalla.com
503-829-1100

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

25. Debt Limitations

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.

26. 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.

27. 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.

28. Survival

All rights and obligations shall cease upon termination or expiration of this Agreement, except for the rights and obligations set forth in Sections 9, 12, 14, 21, 23, 25, 26, 27, and 28, and all other rights and obligations which by their context are intended to survive.

29. Severability

If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

30. Whole Contract

THIS CONTRACT 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 CONTRACT. NO WAIVER, CONSENT, MODIFICATION, OR CHANGE OF TERMS OF THIS CONTRACT WILL BE BINDING ON EITHER PARTY EXCEPT AS A WRITTEN ADDENDUM 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: _____


Title: _____

Date: _____

Customer

Molalla Communications Company

(Customer Name)

By (signature): 

Name (print): Lance Eves

Title: VP/COO

Date: 08-27-2020

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	Vault located @ 320 N Molalla Ave, Molalla, OR 97038	Pittock Building 921 SW Washington St Portland, OR 97205	One Pair (two) dark fibers	\$2,950.00

5. Nonrecurring Charges

	From (Connecting Point A:Site Name & Address)	To (Connecting Point B:Site Name & Address)	Service	Amount (\$)
1	Vault located @ 320 N Molalla Ave, Molalla, OR 97038	Pittock Building 921 SW Washington St Portland, OR 97205	Construction	\$510.00

6. Late Payment Interest

Customer will be charged interest for any payment made after its due date (thirty

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(30) days after receipt of invoice). Interest is charged at a rate of one and a half percent (1.5%) per month, or eighteen percent (18%) annually, on any installment not paid when due.

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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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 telephone number (503) 742-4219 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 four (4) 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 twenty one (21) 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 or safety hazards which would restrict or jeopardize any maintenance work.
- 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 four (4) 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 four (4) 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.

5. Customer shall be responsible for paying County standard maintenance rates and charges 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.

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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.

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