



Dave Cummings
Chief Information Officer

Technology Services

121 Library Court Oregon City, OR 97045

October 8, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Non-Disclosure Agreement between
Clackamas Broadband eXchange and Ziplly Fiber

Purpose/Outcomes	Clackamas Broadband eXchange (CBX) and Ziplly Fiber need a Non-Disclosure Agreement signed so they can share network information with one another.
Dollar Amount and Fiscal Impact	None.
Funding Source	N/A
Duration	Term length of 2 years.
Previous Board Action	Board approved an NDA with Verizon on June 11 th , 2020.
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, September 28, 2020
Contact Person	Dave Devore (503) 723-4996
Contract Number	N/A

BACKGROUND:

Clackamas Broadband eXchange is pursuing partnerships and operational cooperation from other communications providers. Ziplly Fiber 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 (NDA)

This Nondisclosure Agreement (the "Agreement") is entered into by and between **ZiPLY Fiber** with its principal offices at **135 Lake Street so., Suite 155, Kirkland, WA 98033 ATTN: Legal Dept.**, ("Disclosing Party") and **Clackamas County**, located at **2051 Kaen Rd, Oregon City, OR 97045** ("Receiving Party") for the purpose of preventing the unauthorized disclosure of ZiPLY's Confidential Information as defined below. The parties agree to enter into a confidential relationship concerning the disclosure of certain proprietary and confidential information ("Confidential Information").

1. Definition of Confidential Information. For purposes of this Agreement, "Confidential Information" shall include all information or material that has or could have commercial value or other utility in the business in which Disclosing Party is engaged. If Confidential Information is in written form, the Disclosing Party shall label or stamp the materials with the word "Confidential" or some similar warning. If Confidential Information is transmitted orally, the Disclosing Party shall promptly provide writing indicating that such oral communication constituted Confidential Information.

2. Exclusions from Confidential Information. Receiving Party's obligations under this Agreement do not extend to information that is: (a) publicly known at the time of disclosure or subsequently becomes publicly known through no fault of the Receiving Party; (b) discovered or created by the Receiving Party before disclosure by Disclosing Party; (c) learned by the Receiving Party through legitimate means other than from the Disclosing Party or Disclosing Party's representatives; or (d) is disclosed by Receiving Party with Disclosing Party's prior written approval.

3. Obligations of Receiving Party. Receiving Party shall hold and maintain the Confidential Information in strictest confidence for the sole and exclusive benefit of the Disclosing Party. Receiving Party shall carefully restrict access to Confidential Information to employees, contractors and third parties as is reasonably required and shall require those persons to sign nondisclosure restrictions at least as protective as those in this Agreement. Receiving Party shall not, without the prior written approval of Disclosing Party, use for Receiving Party's benefit, publish, copy, or otherwise disclose to others, or permit the use by others for their benefit or to the detriment of Disclosing Party, any Confidential Information. Receiving Party shall return to Disclosing Party any and all records, notes, and other written, printed, or tangible materials in its possession pertaining to Confidential Information immediately if Disclosing Party requests it in writing.

4. Time Periods. The nondisclosure provisions of this Agreement shall survive the termination of this Agreement and Receiving Party's duty to hold Confidential Information in confidence shall remain in effect until the Confidential Information no longer qualifies as a trade secret or for a period of two years from termination, whichever occurs first.

5. **Relationships.** Nothing contained in this Agreement shall be deemed to constitute either party a partner, joint venture or employee of the other party for any purpose.

6. **Severability.** If a court finds any provision of this Agreement invalid or unenforceable, the remainder of this Agreement shall be interpreted so as best to affect the intent of the parties.

7. **Integration.** This Agreement expresses the complete understanding of the parties with respect to the subject matter and supersedes all prior proposals, agreements, representations, and understandings. This Agreement may not be amended except in writing signed by both parties.

8. **Waiver.** The failure to exercise any right provided in this Agreement shall not be a waiver of prior or subsequent rights.

9. **Public Records.** Notwithstanding anything to the contrary, both parties expressly acknowledge and agree that Receiving Party's obligations under this Agreement are subject to the Oregon Public Records Law, Oregon Revised Statutes ("ORS") Chapter 192 *et. seq.*, and any other applicable state or federal law. Disclosing Party 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). While Receiving Party will make good faith efforts to perform under this Agreement, Receiving Party'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 Receiving Party is subject to such a disclosure order or receives from a third party any public records request for the disclosure of Confidential Information, Receiving Party shall notify Disclosing Party within a reasonable period of time of the request. Disclosing Party is exclusively responsible for defending Disclosing Party's position concerning the confidentiality of the requested information. Receiving Party is not required to assist Disclosing Party in opposing disclosure of Confidential Information.

This Agreement and each party's obligations shall be binding on the representatives, assigns and successors of such party. Each party has signed this Agreement through its authorized representative.

DISCLOSING PARTY

Signature _____

Typed or Printed Name _____ Date: _____



RECEIVING PARTY

Signature _____

Typed or Printed Name _____ Date: _____