



Dave Cummings
Chief Information Officer

Technology Services

121 Library Court Oregon City, OR 97045

October 8, 2015

Board of County Commissioners
Clackamas County

Members of the Board:

Approval to Enter into an Intergovernmental Agreement (IGA) with the City of Oregon City (City) for conduit use and a Service Level Agreement (SLA) for lease of CBX fiber

Purpose/Outcomes	CBX is looking for approval to enter into an IGA with the City for the use of the City's conduit and a SLA for the City to use CBX fiber.
Dollar Amount and Fiscal Impact for CBX	The City will pay an annual fee of \$6,120.00 to CBX for the use of (2) pair of fiber.
Dollar Amount and Fiscal Impact for the City of Oregon City	For the use of the City's conduit, Clackamas County installed a 48 fiber optic cable for the City's ownership and use. The 48 count fiber was installed in 2008 through a Clackamas County capital improvement project.
Funding Source	-The 48 count fiber that was installed for the City was paid for through a capital improvement project by Clackamas County. -The fiber connection for the City to use CBX fiber is funded through a fiber extension by the City.
Safety Impact	N/A
Duration	-The IGA will allow CBX the use of the City's conduit for (20) years that will renew for an additional (10) years if neither party objects. -The SLA for fiber usage is a (1) year contract that automatically renews for an additional (1) year if neither party objects.
Previous Board Action	N/A
Contact Person	Dave Devore (503)723-4996

BACKGROUND:

Clackamas County received a federal grant to develop a dark fiber network throughout Clackamas County. The grant funded a 180 mile dark fiber network throughout Clackamas County between the years of 2010 to 2013. A franchise agreement had been signed between Clackamas County and the City of Oregon City back in March 2013 for CBX to be in the City's right-of-way. This Conduit Use agreement finalizes Clackamas County's fiber deployment in Oregon City and secures the authority to operate within the city limits of Oregon City for a minimum of 20 years. The Service Level Agreement allows CBX to increase its footprint within Clackamas County.

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

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

RECOMMENDATION:

Staff respectfully recommends approval to enter into this intergovernmental agreement. This IGA will allow CBX to provide fast effective fiber connectivity to the City of Oregon City at an affordable cost. Staff further recommends the Board delegate authority to the Technology Services Director to sign agreements necessary in the performance of this agreement.

Sincerely,

A handwritten signature in black ink, appearing to read "Dave Cummings", written in a cursive style.

Dave Cummings
CIO Technology Services

Conduit Use Agreement between the City of Oregon City and Clackamas County

This Conduit Use Agreement (this "Agreement") is entered into as of September __, 2015, by and between the City of Oregon City, a municipal corporation of the State of Oregon (the "City"), and Clackamas County, a political subdivision of the State of Oregon (the "County" and collectively, the "Parties").

RECITALS

WHEREAS, the City currently owns and maintains conduit within the rights-of-way or easements in the City; and

WHEREAS, the County uses City-owned conduit to install fiber optic cable or other communications systems for communication between County facilities as well as part of its Clackamas Broadband Express dark fiber network that may be used by public or private entities to provide communications services, and may desire to use additional City-owned conduit in the future; and

WHEREAS, the City desires to permit the County to continue to use City-owned conduit and facilities under the terms and conditions set forth in this Agreement.

WHEREAS, the County has fiber that connects to and supports traffic lights and related safety equipment on behalf of the City; and

WHEREAS, the County placed a 48-count dark fiber line from 320 Warner Milne Road to 624 7th Street in Oregon City ("OC 48 Fiber") and will transfer ownership of the OC 48 Fiber to the City as consideration for this Agreement;

NOW THEREFORE, the City and the County agree as follows:

Section 1: Definitions. As used in this Agreement, the following terms have the meanings set forth herein:

- A. "Conduit" means a City-owned underground structure containing one or more ducts in which Fiber may be installed.
- B. "Facilities" means all City-owned vaults, hand holes, junction boxes or any other equipment or facilities required for the County to install, operate, and maintain Fiber or to access Conduit.
- C. "Fiber" means fiber optic cable or other wires or cable designed and used for communications purposes.

Section 2: Rights Granted.

- A. The City hereby grants to the County the revocable, nonexclusive license to install Fiber in Conduit and to use Facilities subject to and consistent with the terms of this

Agreement. This Agreement does not convey any ownership interest in any Conduit or Facilities and does not grant any right or privilege to use any Conduit or Facilities except as expressly permitted by the City pursuant to Section 3. This Agreement does not permit the County to install conduit, Fiber, poles lines, wires, cable or any other equipment or facilities in the City's rights of way other than in Conduit and Facilities and consistent with the terms of this Agreement.

- B. Notwithstanding any other provision of this Agreement, the County agrees to comply with applicable provisions of federal and state laws, rules and regulations, as well as applicable codes, ordinances, orders, resolutions and regulations of the City with respect to the rights and obligations set forth in this Agreement. This Agreement does not grant any authority to provide communications or other services in the City, and the County hereby agrees to obtain any required franchise, license, permit or other authorizations as needed prior to using the Fiber to provide such services.
- C. This Agreement covers only the use of Conduit and Facilities or access to the same owned by the County or the City and the transfer of the OC 48 Fiber to the City, and does not include any related underlying rights, such as franchises, easements or other agreements, that may be owned or held by the County or the City. Neither party is granting privity or an independent right to use third party agreements held by the other for the use of facilities controlled or managed by any entity not a party to this Agreement, including but not limited to Portland General Electric ("PGE"). The parties acknowledge that a portion of the OC 48 Fiber utilizes County attachment space on PGE poles pursuant to a County-PGE agreement (the "PGE Pole Agreement"). The County hereby grants City permission to utilize the County's attachment space under the PGE Pole Agreement for the OC 48 Fiber during the term of this Agreement; provided, however, that if the County ceases to have the PGE Pole Agreement with PGE, it is under no obligation to provide replacement attachment space.

Section 3: Use of Conduit.

- A. Prior to accessing or installing any Fiber in any Conduit or Facilities, the County will submit a written request to the City describing in detail the Fiber to be installed, including but not limited to the number, width, and ownership of Fiber to be installed, and the work required for such installation, including but not limited to any required cutting, breaking or digging in the rights of way and any Facilities the County desires to access or use. The City may request additional information needed to evaluate the request. The City will use its best efforts to respond to the request within fifteen (15) business days. The City may grant or deny the request in its sole discretion. The City and County agree that Conduit and Facilities used by the County as of the effective date of this Agreement, as described in Exhibit A, is permitted as if a request had been filed and granted pursuant to this Section.
- B. For installations in Conduit or use of Facilities after the effective date of this Agreement, the County agrees to comply with the following conditions, each to be performed by the County or its agent, contractor or subcontractor at the County's sole cost:
 - i. Apply for and receive any permits required by the City or other government agency;
 - ii. Install interduct as requested by the City;

- iii. Immediately after installation, test Fiber connections of any City Fiber to ensure no damage to City Fiber if City Fiber and County Fiber share the same Conduit;
 - iv. Promptly repair any damaged City Fiber or other equipment or Facilities as required by the City;
 - v. Promptly repair and restore any damage to the right of way or other property;
 - vi. Provide as-built or butterfly drawings for sections of Conduit and any Facilities where installation occurred or work was performed;
 - vii. If requested by the City, pull City-supplied Fiber through the Conduit the County has been authorized to use; and
 - viii. Pay the compensation, if any, required by the City pursuant to subsection 5.B of this Agreement.
- C. The County may contract with qualified subcontractors for the performance of any installation, maintenance, and repair services contemplated by this Agreement, but the County shall remain ultimately responsible for the performance of such services in accordance with the requirements of this Agreement regardless of whether such services were by the County or its designated subcontractors.
- D. The City is providing the Conduit and Facilities, and the County is providing the OC 48 Fiber, in an "as is" condition. The City is not aware of any damage to the Conduit or Facilities and the County is not aware of any damage to the OC 48 Fiber; however, under no circumstances whatsoever shall the City be held liable for the repair or replacement of any damage discovered by the County during its preparation of, or use of, the Conduit or Facilities. If the County in any way damages the Conduit, Facilities or any other equipment belonging to or managed by the City or a third party, the County shall be responsible for causing any such damage to be repaired at the County's cost and at no cost to the City. In the event of damage to the OC 48 Fiber and County Fiber where the OC 48 Fiber and County Fiber are bundled together and attached to PGE poles, either Party may repair all damaged Fiber and the other Party shall pay its proportionate share of the reasonable repair costs based on the number of Fibers owned by each Party or other reasonable allocation mechanism agreed upon by the Parties.
- E. The County may remove any County Fiber installed in Conduit or Facilities upon at least fifteen (15) days' prior notice to the City and receipt of any permits required by the City or other government agency. Upon removal, the County must immediately test Fiber connections of any City Fiber to ensure no damage to City Fiber if the City and County Fiber share the same Conduit, promptly repair any damaged Fiber, Conduit or Facilities as required by the City, and promptly repair and restore any damage to the right of way or other property.

Section 4: Management, Ownership and Maintenance.

- A. Notwithstanding any other provision of this Agreement, except as set forth in Section 6, in no event does this Agreement create or vest in the County or any other party any right, title or interest in the Conduit or Facilities. The City will manage, maintain and repair its Conduit and Facilities as the City, in its sole discretion, determines is necessary or desirable. If the County believes maintenance or repairs are necessary and the City refuses to make such repairs, the County has the authority to make such repairs at its sole cost, provided the County gives the City at least fifteen (15) days' prior notice and complies with the provisions of subsection 3.B.i and 3.B.iii through 3.B.vi.

- B. Notwithstanding any other provision of this Agreement, except as set forth in Section 6, in no event does this Agreement create or vest in the City or any other party any right, title or interest in County Fiber installed pursuant to this Agreement. The County will be solely responsible for managing, maintaining and repairing County Fiber to prevent any damage to or interference with City Fiber, Conduit or Facilities.
- C. The County shall at its sole cost provide utility locates for the shared Conduit.

Section 5: Compensation. The County agrees to compensate the City for use of Conduit and Facilities as follows:

- A. For all Conduit and Facilities used by the County as of the effective date of this Agreement, as described in Exhibit A, the consideration paid by the County for such use is the provision and installation of the OC 48 Fiber and the transfer of ownership of the OC 48 Fiber to the City. The County will provide documentation of such transfer of ownership as reasonably requested by the City. The County shall not pay any additional compensation for use of the Conduit described in Exhibit A.
- B. For any Conduit and Facilities the County desires to use after the effective date of this Agreement, the City may request reasonable compensation, which may include monetary payment, provision of labor or services to the City related to the Conduit, Facilities or Fiber, or such other compensation determined by the City taking into consideration the County's obligations under subsections 3.B.vii and 4.C. The City shall provide the County with a written determination of compensation with its response to a County request as described in subsection 3.A. Within thirty (30) days of receipt of the determination, the County shall, in writing, accept or reject the compensation determination. In the event the County accepts the compensation determination, the written determination and acceptance shall be an addendum to this Agreement without further action by either party. In the event the County rejects the compensation determination, the County's request to use additional Conduit and/or Facilities shall be deemed denied. The County's rejection of a compensation determination does not terminate or otherwise impact the validity of this Agreement. Notwithstanding any other provision of this Agreement, nothing in the Agreement requires the City to permit the County to use additional Conduit or Facilities after the effective date of this agreement.

Section 6: Term and Termination.

- A. The effective date of this Agreement will be the date it is fully executed by authorized representatives of the City and the County. The initial term for this Agreement will be for twenty (20) years. After the expiration of the initial term, the Agreement shall automatically renew for an additional ten (10) years unless either party gives written notice to the other party of its intent to terminate the Agreement.
- B. Either Party may terminate this Agreement in the event the other Party fails to comply with any material provision of this Agreement ("Breach"), provided that the non-breaching Party shall provide the other Party written notice of the Breach and thirty (30) days to cure. If the Breach is not cured within the thirty (30) day period (or such other period agreed to in writing by the non-breaching Party), the non-breaching Party may terminate this Agreement immediately upon written notice to the other Party.
- C. Upon written notice of termination, the County will remove or, with the consent of the City, abandon in place all County Fiber in the Conduit. If the City concurs with the

County decision to abandon the Fiber in place, all such abandoned Fiber shall become property of the City and the County will have no further ownership interest, liability or obligation with respect to such Fiber. If the County terminates this Agreement prior to September __, 2025 due to a Breach by the City, the City shall disconnect from and cease utilizing the OC 48 Fiber and the City shall reconvey the OC 48 Fiber into the ownership of the County.

- D. Except as permitted to remain in place pursuant to subsection 6.C, the County must remove all County Fiber from the Conduit within one hundred eighty (180) days of the end of the term of the Agreement, or such longer period of time agreed to by the City. Following removal, the County must immediately test City Fiber connections of to ensure no damage to City Fiber and promptly repair any damaged City Fiber (if the City and County Fiber share the same Conduit), Conduit or Facilities as required by the City, and promptly repair and restore any damage to the right of way or other property.
- E. Nothing in this Agreement shall be deemed to require the County to remove Fiber that is not in Conduit or Facilities and that is authorized by a valid franchise or other written authorization from the City to be located in City right of way.
- F. Termination of this Agreement shall not terminate any easements or permissions granted to either Party except specifically those relating to the sharing of conduit as set forth in this Agreement.

Section 7: Insurance and Indemnification. To the full extent permitted by law, the County agrees to indemnify and hold harmless the City, its Commission, officers, employees, and agents from any and all claims, demands, damages, actions, or other harm caused by the County or its agents, including any attorneys fees or other costs of defense. Further, independent of the indemnity obligation, and as may be allowed under law, each party agrees to maintain general liability insurance in an amount not less than Oregon Tort Claim limits applicable to public agencies as set forth in ORS 30.260 – 30.300.

Section 8: Limitation of Liability. Notwithstanding any provision of this Agreement, in no event shall the City be liable to the County for any special, incidental, indirect, punitive, reliance or consequential damages, whether foreseeable or not, arising out of or in connection with use of the Conduit pursuant to this Agreement, including but not limited to transmission interruptions or problems, damage or loss of property or equipment, loss of profits or revenue, cost of capital, cost of replacement services, or claims of customers, by any cause whatsoever, including but not limited to breach of contract, breach of warranty, negligence or strict liability.

Section 9: Authority. All parties acknowledge that the persons executing this Agreement on behalf of each entity have the legal power, right, and actual authority to bind their respective entities to the terms and conditions of this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Conduit Use Agreement effective as of the date set forth above.

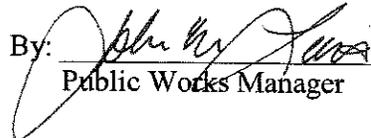
DATED: _____

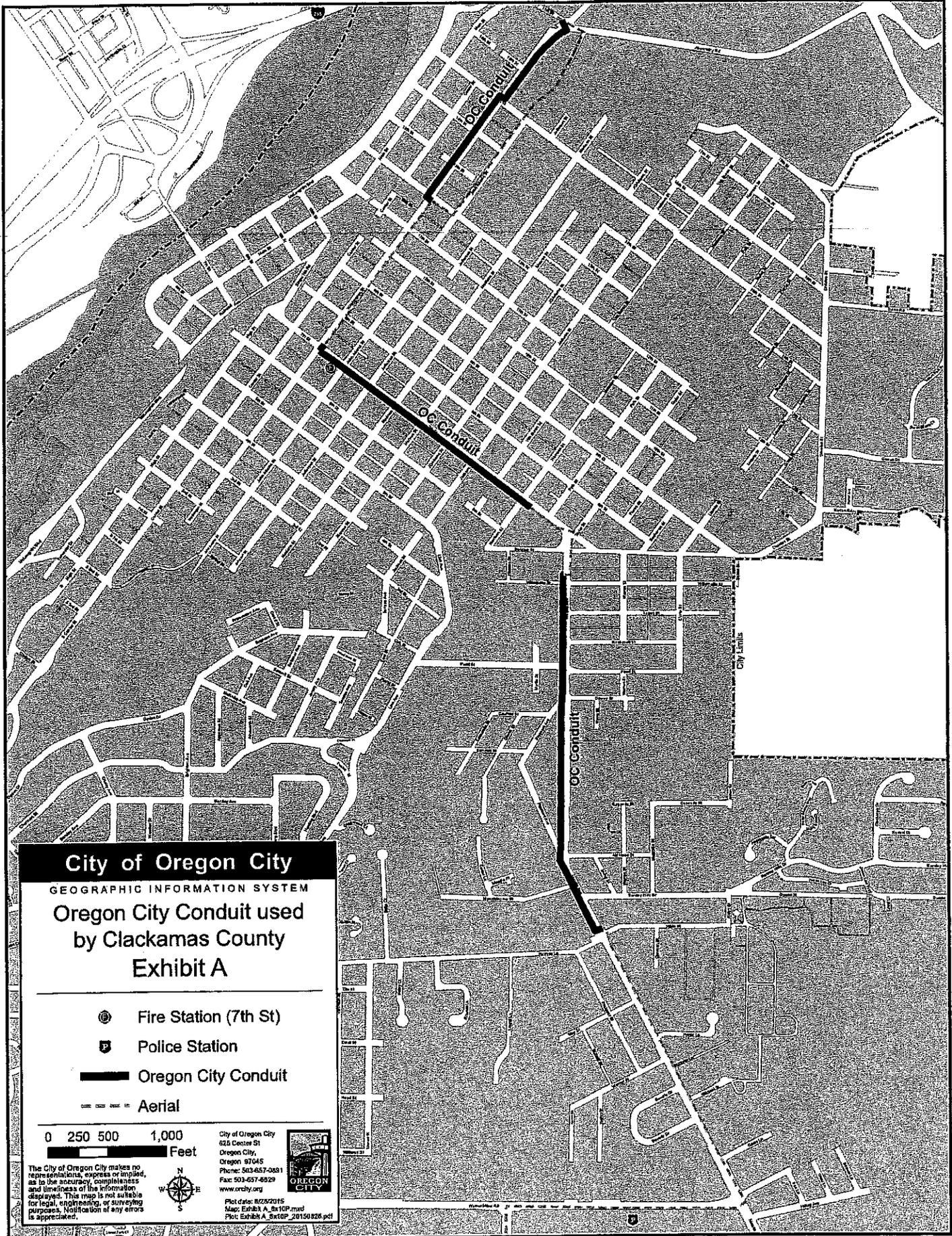
Clackamas County

By: _____
Chair

DATED: 9-29-15

John M Lewis
City of Oregon City

By: 
Public Works Manager



City of Oregon City

GEOGRAPHIC INFORMATION SYSTEM

**Oregon City Conduit used
by Clackamas County
Exhibit A**

- ⊙ Fire Station (7th St)
- Ⓜ Police Station
- Oregon City Conduit
- Aerial

0 250 500 1,000
Feet

City of Oregon City
625 Center St
Oregon City,
OR 97045
Phone: 503-657-0351
Fax: 503-657-4629
www.ocity.org



The City of Oregon City makes no representations, express or implied, as to the accuracy, completeness and timeliness of the information displayed. This map is not suitable for legal, engineering, or surveying purposes. Notification of any errors is appreciated.

Plot date: 8/25/2015
Map: Exhibit A_8x10P.mxd
Plot: Exhibit A_8x10P_20150826.pdf

Clackamas County

FIBER OPTIC SERVICE LEVEL AGREEMENT

City of Oregon City
(Customer Name)

1. Recitals

WHEREAS, Clackamas County (County) desires to provide to City of Oregon City (Customer) the Services set forth in this Agreement, between the specified Customer sites listed in Appendix A, and at the price contained in Appendix A; and

WHEREAS, Customer desires to use the Services; and

WHEREAS, the Parties desire to set forth their respective rights and obligations with respect to the provision of Services in this Agreement,

NOW, THEREFORE, in consideration of the foregoing, and the mutual covenants and promises set forth below, intending to be legally bound, the Parties agree as follows.

2. Fiber Optic Network Description

County will provide Customer with point-to-point single mode fiber optic network connectivity, including a termination panel for the fiber optic cables at each Customer premises on a path designated by the County.

3. Service Description

Service provided to Customer by County is physical connectivity of one (or more) strands of optical fiber ("Fiber"), between sites specifically identified in Appendix A for the exclusive use of the Customer's communication needs. Each site listed in Appendix A will have a single mode fiber termination.

4. Construction and Installation Requirements

- a. County, when installing fiber optic cables on the property of Customer, shall do so in a neat and professional manner. Routing and location of these cables shall be mutually agreed upon between the parties.
- b. Customer shall secure any easements, leases, permits or other agreements necessary to allow County to use existing pathways to, into and within each site to the demarcation point for service. Customer shall provide a path for the fiber optic cable from the point of entry into the site to the termination panel that complies with all applicable building, electrical, fire and related codes. The County and City have entered into that certain Right of Way Use and Franchise Agreement, effective as of December 1, 2012 ("ROW Agreement") and nothing in

this Agreement shall change or be understood to conflict with the ROW Agreement.

- c. Subject to the terms of this Agreement, and at no cost to County, Customer shall provide adequate environmentally controlled space and electricity required for installation, operation, and maintenance of the County's fiber optic cables used to provide the service to each site.
- d. Customer shall provide a clean, secure, relatively dry and cool location (consistent with environmental requirements for fiber optic network connectivity equipment) at each of its premises for necessary equipment.
- e. Customer will provide or arrange for County and its employees, agents, lessees, officers and its authorized vendors, upon reasonable notice, to have reasonable ingress and egress into and out of Customer properties and buildings in connection with the provision of service.
- f. If the presence of asbestos or other hazardous materials exists or is detected, Customer must have such hazardous materials removed immediately at Customer's expense or notify County to install the applicable portion of the fiber optic network in areas of any such site not containing such hazardous material. Any additional expense incurred as a result of encountering hazardous materials, including but not limited to, any additional equipment and labor, shall be borne by Customer.
- g. County shall have no obligation to install, operate, or maintain Customer-provided facilities or equipment.
- h. County shall: (i) construct Fiber into each Customer building enumerated in Appendix A; (ii) splice fiber into existing County fiber optic resources; (iii) terminate County's optical fiber in each Customer building; (iv) test and certify appropriate Fiber performance at each Customer location; and (v) provide the appropriate "hand-off's" at each location for Customer utilization. Test results for physical connection will be made available upon written request.

5. Term of Agreement

At such time as County completes installation and connection of the necessary facilities and equipment to provide service pursuant to Section 3, County shall then certify and notify Customer in writing that the service is available for use, and the date of such notice shall be called the "Service Start Date." Unless terminated with 30 days notice in accordance with Section 23, this Agreement shall continue to July 1 following the date of commencement, and shall be automatically renewed on July 1 of each subsequent year, for a term of one year, at the County's then-current rate schedule.

6. Rates

In return for County providing the services described in this Agreement and

Appendix A for the term indicated in Section 5, Customer shall pay County both nonrecurring construction/installation charges and recurring charges for services as specified in Appendix A as it shall be updated from time to time upon mutual agreement of the parties.

7. Payment Options

a. Annual Payments

County shall provide an invoice for twelve months of service (July 1 through June 30), or prorated weekly for any portion thereof, to Customer at the beginning of the service period. The annual charge shall be payable within thirty (30) days of receipt of invoice. Interest charges shall be assessed for late payments in accordance with Appendix A. If the Customer fails to pay within sixty (60) days of receipt of an invoice it shall constitute grounds for County to terminate the Agreement upon appropriate advance written notice to Customer.

b. Alternative Payment Frequency

If Customer demonstrates that prepaid billings present a hardship, Customer may prepay semi-annually, quarterly, and in extreme circumstances may pay monthly. County shall provide an invoice for one quarter or month of service, or prorated weekly for any portion thereof, to Customer at the beginning of the service period. The quarterly or monthly charge shall be payable within thirty (30) days of receipt of invoice. Interest charges shall be assessed for late payments in accordance with Appendix A. If the Customer fails to pay within sixty (60) days of receipt of an invoice it shall constitute grounds for County to terminate the Agreement upon appropriate advance written notice to Customer.

8. Fiber Maintenance

County shall maintain the structural aspects of the Fiber in good operating condition, utilizing sound engineering practices and in accordance with Appendix B, throughout the Agreement Term. In the event the Fiber fails at any time to meet the specifications outlined in Appendix C, County shall endeavor to restore the Fiber to meet the specification standards in as timely and expedited a manner as reasonably possible.

County may subcontract for testing, maintenance, repair, restoration, relocation, or other operational and technical services it is obligated to provide hereunder.

Customer shall promptly notify County of any matters pertaining to any damage or impending damage to or loss of the use of the Fiber that are known to it and that could reasonably be expected to adversely affect the Fiber. County shall promptly notify Customer of any matters pertaining to any damage or impending damage to or loss of the Fiber that are known to it and that could reasonably be expected to adversely affect the Fiber and/or Customer's use thereof.

9. Confidentiality

All Customer data, voice, or video transmission using County fiber optic facilities shall be treated by County as confidential information, to the extent allowable by law. County agrees that this information shall not be made available, in any form, to any party other than County or its agents or contractors as may be necessary to conduct maintenance or repair activity, without written permission of Customer, except as required by law or a court of competent jurisdiction.

10. Content Control and Privacy

Customer shall have full and complete control of, and full responsibility and liability for, the content of any and all communications transmissions sent or received using the Fiber.

11. Assignment and Successors

Either party may assign this Agreement upon prior written consent of the other party. Such consent shall not be unreasonably withheld. Upon such assignment, all rights and obligations of County and Customer under this Agreement shall pass in total without modification to any successor(s) regardless of the manner in which the succession may occur.

12. Damage

County shall be responsible for restoring, or otherwise repairing to its prior condition, any portion of the Customer's premises or facilities, which are damaged by the actions of County employees or its agents. Customer shall be responsible for restoring, or otherwise repairing to its prior condition, any portion of County's connectivity equipment or other facilities, located at Customer premises, which are damaged by Customer or its agents.

Customer will reimburse all related Costs associated with damage to the Fiber caused by the negligence or willful misconduct of Customer, its affiliates, employees, agents, contractors or customers, except to the extent caused by the gross negligence or willful misconduct of County, its affiliates, employees, contractors or agents. "Cost(s)", as used in this Section include the following: (a) labor costs, including wages, salaries, and benefits together with overhead allocable to such labor costs; and (b) other direct costs and out-of-pocket expenses on a pass-through basis (such as equipment, materials, supplies, contract services, sales, use or similar taxes, etc.).

13. Force Majeure

Neither party hereto shall be deemed to be in default of any provision of this Agreement, for any failure in performance resulting from acts or events beyond the reasonable control of such party. For purposes of this Agreement, such acts shall include, but shall not be limited to, acts of nature, civil or military authority, civil disturbance, war, strikes, fires, power failure, other catastrophes or other force majeure events beyond the parties' reasonable control, provided however that the

provisions of this paragraph and article shall not preclude County or Customer from cancelling or terminating this Agreement as otherwise permitted hereunder, regardless of any force majeure event occurring to the other party.

14. Consequential Damages

NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES, WHETHER FORSEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH, TRANSMISSION INTERRUPTIONS OR DEGRADATION, INCLUDING BUT NOT LIMITED TO DAMAGE OR LOSS OF PROFITS OR EQUIPMENT, LOSS OF PROFITS OR REVENUE, COST OF CAPITAL, COST OF REPLACEMENT SERVICES OR CLAIMS OF CUSTOMERS, WHETHER OCCASIONED BY ANY REPAIR OR MAINTENANCE PERFORMED BY OR FAILED TO BE PERFORMED BY A PARTY, OR ANY OTHER CAUSE WHATSOEVER, INCLUDING WITHOUT LIMITATION BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE OR STRICT LIABILITY.

15. Public Contracting Provisions

The provisions of Oregon public contracting law, ORS 279B.020 through 279B.235, to the extent applicable, are incorporated by this reference.

16. Non-Appropriation

Notwithstanding any other provisions of this Agreement, the parties agree and understand that any obligation of Customer to obtain services provided by this Agreement is subject to fund availability and appropriation by Customer for such services through its adoption of an annual budget. Should funds not be appropriated or be available from Customer during the term of 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.

17. Compliance with Laws

Customer and County shall comply with all applicable federal, state county and city laws, ordinances and regulations, including regulations of any administrative agency adopted or established during the entire term of this Agreement.

18. Taxes and Assessments

- a. Customer agrees to pay any and all applicable national, federal, state, county and local taxes, fees, assessments or surcharges, and all other similar or related charges, which are imposed or levied on the Fiber, or because of Customers use of the Services under this Agreement (collectively, "Taxes), whether or not the Taxes are imposed or levied directly on the Customer, or imposed or levied on the County because of or arising out of the use of the Services either by the

Customer, or its affiliates, or anyone to whom Customer has sold or otherwise granted access to the Services. Customer agrees to pay these Taxes in addition to all other fees and charges as set forth elsewhere in this Agreement.

- b. "Taxes" include, but are not limited to, business and occupation, commercial, district, excise, franchise fee, gross receipts, license, occupational, privilege, property, Public Utility Commission, right-of-ways, utility user, or other similar taxes, fees surcharges and assessments as may be levied against Customer or County.

19. Termination

- a. This Agreement shall terminate ninety (90) days following written notice by either party.
- b. In the event Customer terminates this Agreement based upon County's default or failure to perform as described in this Agreement, County shall reimburse to Customer the pro rata amounts paid on the unexpired term of this Agreement.
- c. If Customer terminates this Agreement for any reason other than that based on non-appropriation or on County's default or failure to perform without providing ninety (90) days written notice, County shall be entitled to 5% of the remaining contract amount for the unexpired term of this Agreement.
- d. In the event County terminates this Agreement, County shall reimburse to Customer all amounts paid on the unexpired term of this Agreement. In the event County terminates this Agreement prior to the end of the first year of service, County shall also reimburse to Customer any nonrecurring charges set forth in Appendix A.

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 by any party; 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. Amendment

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

22. No recourse Against the Grantor

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

23. Notice

Any notice required by this Agreement shall be in writing and shall be delivered by personal service or by United States certified or registered mail, with postage prepaid, or by facsimile addressed as follows:

Notice to the County

Manager, Clackamas Broadband Express
Clackamas County Technology Services
121 Library Court
Oregon City, Oregon 97045
Fax Number (503) 655-8255

with a copy to

Chief Information Officer
Clackamas County Technology Services
121 Library Court
Oregon City, Oregon 97045
Fax Number: (503) 655-8255

Notice to the Customer

IT Supervisor
City of Oregon City
625 Center St
Oregon City, OR 97045
(503) 657-0891

with a copy to

ROW Program Manager
City of Oregon City
625 Center St
Oregon City, OR 97045
(503) 657-0891

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

24. Whole Contract

THIS CONTRACT CONSTITUTES THE COMPLETE AND EXCLUSIVE STATEMENT OF THE CONTRACT BETWEEN THE PARTIES RELEVANT TO THE PURPOSE DESCRIBED AND SUPERSEDES ALL PRIOR AGREEMENTS OF PROPOSALS, ORAL OR WRITTEN, AND ALL OTHER COMMUNICATION BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT. 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 below have executed this Agreement as of the date and year first written above.

Clackamas County

By (signature): 

Name: David Cummings

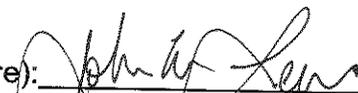
Title: Chief Information Officer, Clackamas County Technology Services

Date: 9-28-15

Customer

Clackamas County Board

City of Oregon City
(Customer Name)

By (signature): 

Name (print): John M Lewis

Title: Director

Date: 8/28/15

By (signature): _____

Name (print): _____

Title: _____

Date: _____