

INTERGOVERNMENTAL AGREEMENT FOR
SHARING DATA NETWORK RESOURCES
BETWEEN THE CITY OF PORTLAND AND CLACKAMAS COUNTY

This Intergovernmental Agreement Regarding Sharing Data Network Resources (this "Agreement") is entered into by and between the City of Portland, a municipal corporation of the State of Oregon (the "City"), and Clackamas County, a political subdivision of the State of Oregon (the "County") (each, a "Party," and collectively, the "Parties"), pursuant to ORS 190.003 to 190.110, which allows units of government to enter into agreements for the performance of functions and activities that such units have authority to perform.

RECITALS

WHEREAS, the City and the County have found many areas of mutual benefit in sharing data network resources; and

WHEREAS, intergovernmental cooperation between the City and the County in data transport and the provision of access to fiber resources benefit the citizens and taxpayers of the City and County; and

WHEREAS, the Parties desire to formalize this practice of cooperation through an Intergovernmental Agreement;

WHEREAS, the Parties intend to cooperate in the installation of a 288 strand fiber optic cable running from the eastern to the western end of the Sellwood Bridge and continuing to approximately Foothills Road in Lake Oswego (the "Bridge Fiber"), of which the City and the County will each own 144 strands; and

WHEREAS, the Parties intend to share certain strands of fiber optic cable located within their networks other than the Bridge Fiber.

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

AGREEMENT

ARTICLE 1

Construction, Ownership and Use Rights.

1.1 Construction. The Parties agree that the County shall construct the Bridge Fiber according to the norms and procedures of the industry. This construction shall include design, installation, termination, connection, testing, and all other activities reasonably necessary to construct and connect the Bridge Fiber with existing

networks or new facilities. The City shall contribute fifty percent (50%) of the actual documented costs of constructing the Bridge Fiber against such work as are typically accounted for in County construction projects of this nature, all as determined by the County. Provided, however, that such cost-sharing shall not include any costs or expenses relating to the extension of service to the Tryon Creek Wastewater Treatment Plant (“the TCWTP Extension”). The TCWTP Extension will be managed by the County with costs paid exclusively by the City. The County shall provide a written invoice for work associated with the TCWTP Extension, documenting in sufficient detail the costs associated therewith. The City shall pay such undisputed invoice within 30 days of receipt. Insufficiently documented invoices shall be returned to the County.

- 1.2 Ownership. After construction of the Bridge Fiber, the County shall own 144 strands of fiber optic cable (the “County Fiber”) and the City shall own 144 strands of fiber optic cable (the “City Fiber”). This ownership shall vest immediately upon final payment by the City of its share of the construction cost as required in Section 1.1 above without any further action or documentation needed.
- 1.3 City Use Rights. The County hereby grants the City exclusive and unrestricted use of twelve (12) fiber strands on the County’s fiber network other than the Bridge Fiber in the locations described and depicted in Exhibit A-1 (collectively, “the City Strands”). The County grants to the City for the Term (as defined in Section 3.1) the nonexclusive right to use the tangible and intangible property in which the City Strands are located and which is required for the use of the City Strands (collectively, the “County Associated Property”), including but not limited to: (1) the associated conduit; and (2) the City’s Underlying Rights, as that term is defined in Article V below, for the City Strands.
- 1.4 County Use Rights. The City hereby grants the County exclusive and unrestricted use of eight (8) fiber strands on the City’s fiber network other than the Bridge Fiber that is generally described and depicted in Exhibit A-2 (collectively, “the County Strands”). The City grants to the County for the Term the nonexclusive right to use the tangible and intangible property in which the County Strands are located and which is required for the use of the County Strands (collectively, the “City Associated Property”), including but not limited to: (1) the associated conduit; and (2) the County’s Underlying Rights, as that term is defined in Article V below, for the County Strands.
- 1.5 Control of Network. The City and the County shall have full and complete control and responsibility for determining any network and service configuration or designs, routing configurations, regrooming, rearrangement or consolidation of channels or circuits and all related functions with regard to the use of their respective fiber strands. The City and the County shall not control the others’ fiber strands nor be responsible for any of the above for the other Party.

1.6 No Electronics. The Parties acknowledge and agree that each is responsible for its own optronics, electronics, optical and electrical equipment, and other related facilities. Neither Party is responsible for performing any work other than as specified in this Agreement.

ARTICLE 2
Consideration

- 2.1 The Parties understand and acknowledge that the access to fiber optic infrastructure each Party will provide to the other under this Agreement is adequate consideration for each Party's provision of that infrastructure.
- 2.2 Except as necessary for the construction efforts described in Section 1.1 above, neither Party can charge any fees to the other. This includes, but is not limited to, franchise fees, utility fees, usage fees, right-of-way fees, or other fees that can be levied by one government entity against another.

ARTICLE 3
Term

- 3.1 The term of this Agreement (the "Term") shall be perpetuity, unless terminated as provided herein.
- 3.2 This Agreement or any part thereof may be terminated with the mutual, written consent of both Parties. Additionally, a Party may unilaterally terminate this Agreement by withdrawing from it with proper notice to the other Party. Mutual and unilateral termination will only take effect after the withdrawing Party has settled all unpaid invoices and agreed with the remaining Party, in writing, how the operation and maintenance obligations of the Parties' assets subject to this Agreement will be apportioned between them. If the withdrawing Party fails to comply with the invoice-payment and operations-and-maintenance obligations of this section within thirty days after providing written notice to the remaining Party, ownership of the withdrawing Party's portion of the Bridge Fiber will transfer to the remaining Party without compensation to the withdrawing Party.
- 3.3 Either Party may transfer, convey, or assign its rights and responsibilities under this Agreement without the consent of the other Party, provided that the assignee executes an agreement covenanting and agreeing that the assignee will fully perform, without charge or additional costs, the responsibilities of the assignor.
- 3.4 If any part of this Agreement is invalidated by a court of competent jurisdiction, all remaining parts of this Agreement shall be severed from the invalid parts and shall remain in full force and effect.
- 3.5 This Agreement may be amended only by the mutual, written agreement of the Parties.

ARTICLE 4

Maintenance and Work

- 4.1 The City will be responsible for maintenance of those elements of the Bridge Cable, the County Strands identified in Exhibit A-2 as City Fiber for County Use, and all associated infrastructure that are located within the City of Portland's jurisdictional boundary (collectively, "the In-City Fiber"). If the In-City Fiber is damaged or it requires relocation or replacement, the City will pay those costs, unless the Parties mutually arrange a different written funding agreement.
- 4.2 The County will be responsible for maintenance of those elements of the Bridge Cable, the City Strands identified in Exhibit A-1 as County Fiber for City Use, and all associated infrastructure that are located outside the City of Portland's jurisdictional boundary (collectively, "the Out-of-City Fiber"). If the Out-of-City Fiber is damaged, or it requires relocation or replacement, the County will be responsible for those costs, unless the Parties mutually arrange a different written funding agreement.
- 4.3 Maintenance, repairs and relocation will be done in a timely fashion in accordance with industry standards, and neither Party will be liable to the other for costs or penalties that arise out of such work. Downtime is to be limited as much as is practical and in accordance with communication industry practice.

ARTICLE 5

Underlying Rights

- 5.1 Underlying Rights. Each Party has obtained certain rights-of-way and building access rights for construction and operation of their respective networks (the "Underlying Rights"). This Agreement is subject to the terms and limitations of the Underlying Rights, and subject to the terms under which the right-of-way and other property interests are owned or held by the grantor of the Underlying Rights, including, but not limited to, covenants, conditions, restrictions, easements, reversionary interests, bonds, mortgages and indentures, and other matters, whether or not of record, and to the rights of tenants and licensees in possession. Nothing herein shall be construed as to be a representation, warranty or covenant of either Party's right, title or interest with respect to the right of ways or the Underlying Rights, all of which are disclaimed.
- 5.2 County's Obligations. The County agrees to use the County Fiber and the County Strands only in a manner consistent with the Underlying Rights and for lawful purposes, and that its rights shall in all respects be subject to the terms and conditions of the Underlying Rights. The County agrees not to cause or allow to be caused any default under the Underlying Rights.

5.3 City's Obligations. The City agrees to use the City Fiber and the City Strands only in a manner consistent with the Underlying Rights and for lawful purposes, and that its rights shall in all respects be subject to the terms and conditions of the Underlying Rights. The City agrees not to cause or allow to be caused any default under the Underlying Rights.

ARTICLE 6
Use of the Fibers

- 6.1 The County and the City each represents, warrants, and covenants that it will use the County Fiber, City Fiber, the County Strands, the City Strands, and Associated Property, respectively, in compliance with and subject to the Underlying Rights and all applicable federal, state and local government codes, ordinances, laws, rules and regulations.
- 6.2 The County and the City each shall not use the County Fiber, the City Strands, the City Fiber, or the County Strands, respectively, in a way that interferes with or adversely affects the use of the fibers or cable of any other person using each other's networks. The Parties acknowledge that their networks may include other participants, including the City or the County and other owners and users of telecommunication systems.
- 6.3 Subject to the limitations of the Oregon Constitution, the Oregon Tort Claims Act, and section 4.3 above, each Party agrees to indemnify, defend, and hold the other Party harmless against all claims and suits arising from the performance of the second Party's acts or omissions in relation to this Agreement except to the extent that such claims or suits arise out of the negligence or willful misconduct of the first Party.

ARTICLE 7
Notices

All notices and other communications required or permitted under this Agreement shall be in writing and shall be given by United States first class mail, postage prepaid, registered or certified, return receipt requested, or by hand delivery (including by means of a professional messenger service or overnight mail) addressed as follows:

All Operational notices and other communications shall be given to the City at:

City of Portland Bureau of Technology
1120 SW 5th Ave
Portland, Oregon 97204
Attention: Rob Durkin, mail Code 106, BTS Network Support

With a copy to:

City of Portland Bureau of Environmental Services
5001 N. Columbia Blvd.
Portland, Oregon 97203-2098
Attention: Jeff Hanks, E&I Supervisor

All Operational notices and other communications shall be given to the County at:

Clackamas County
Chief Information Officer
121 Library Court
Oregon City, OR 97045
Telephone 503 655-8525

With a copy to

Clackamas County
Broadband Program Manager
121 Library Court
Oregon City, OR 97045
Telephone 503 77-6663

In addition, The Parties may provide notice of the availability or interruption of the services or a planned maintenance, by electronic delivery at all of the following Internet addresses:

Electronic Notice address for County:

info@cbx.com
ddexter@clackamas.us

Electronic Notice address for City:

BTSNetworkNotifications@portlandoregon.gov
rob.durkin@portlandoregon.gov
david.berg@portlandoregon.gov
jeff.hanks@portlandoregon.gov (BES Electrical Supervisor)
roland.chadburn@portlandoregon.gov (BES Communications Engineer)

In the case of an emergency, either Party may notify the other Party either through the Internet addresses set forth above, or at the following telephone numbers:

Telephone Number for County: 503 742-4219 (24/7 call service) and

Telephone Number for City:

1. Call 503-823-1000, and leave a voice mail with a call back number. This will page the on-call Fiber Optic Network Engineer. When leaving the voice mail, speak clearly to ensure the number is recorded correctly. If no response within an hour proceed to option 2.
2. Call the City of Portland helpdesk at 503-823-5199. If speaking to a person, ask for BTS Network Support for a Fiber Optic Network issue. If the call is after hours or is not answered, select Option 4, BTS Telecommunication, and then select Option 3. I-Net and Data.
3. The primary responder notification is done in steps 1 and 2. Also provide courtesy notification to the Bureau of Environmental Services by calling 503-823-2500 - Inform the answering party that the communications network for automation has been compromised at < provide location > and that BTS has been notified.

Any such notice or other communication shall be deemed to be effective when actually received or refused. Either Party may by similar notice given change the address to which future notices or other communications shall be sent.

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Exhibit A-1

The City Strands, Section 1.3

1. Yellow – 12 County Fiber for City Use

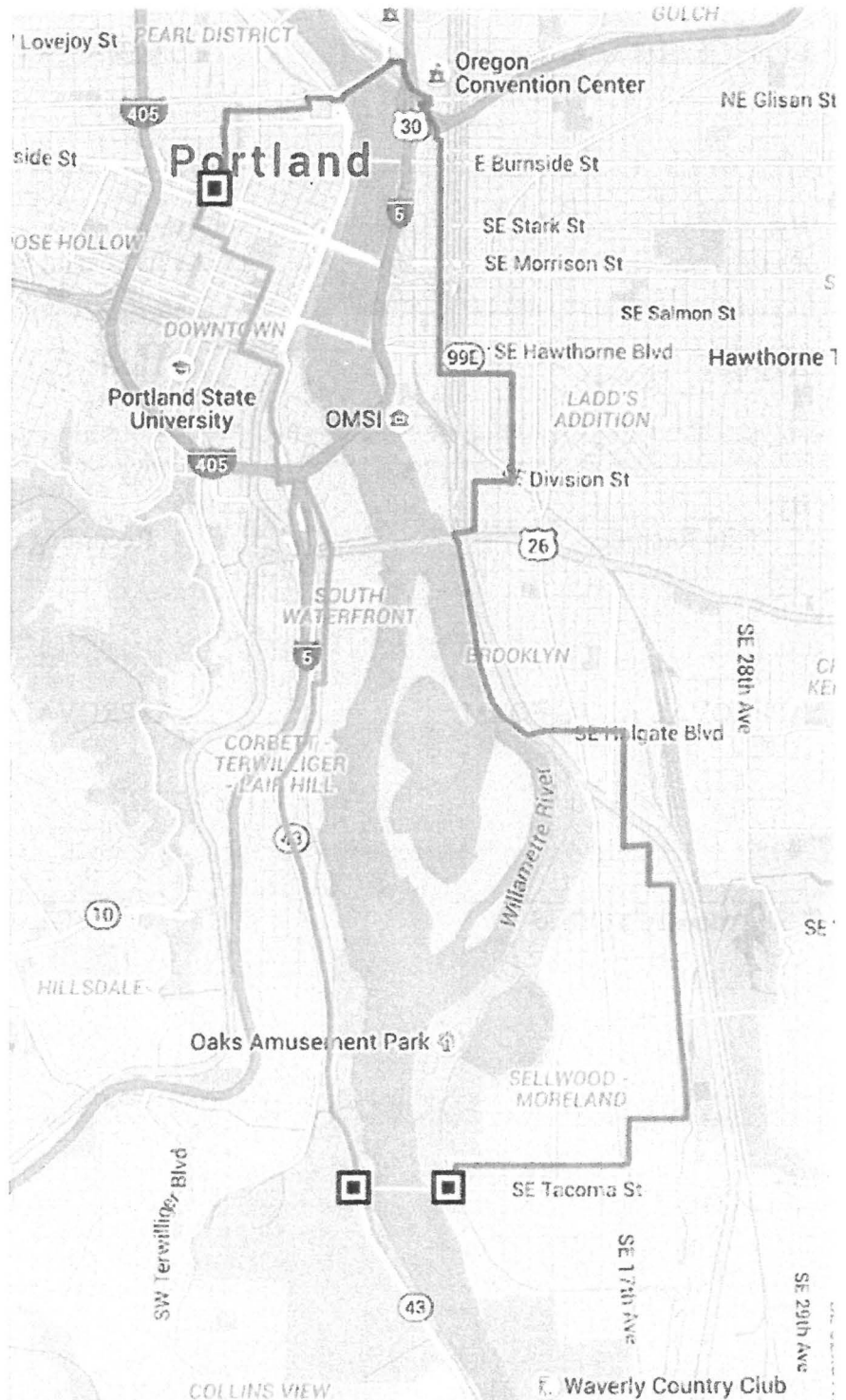


Exhibit A-2

The County Strands, Section 1.4

1. Green – 4 City Fiber for County Use
2. Cyan – 4 City Fiber for County Use

- ✓ CBX_Sellwood to Pittock
- └ Individual styles
- ▣ East Sellwood Br Cab/Splice...
- ↳ Untitled Path
- ↳ Sullivan Pump Station
- ↳ Untitled Path
- ↳ Grassy Knoll Cabinet
- ↳ Untitled Path
- ↳ W.Steel Br Cabinet
- ↳ Untitled Path
- ↳ Pittock Bldg
- ▣ West Sellwood Vault
- ↳ Untitled Path
- ↳ Ross Island//Moody Cabinet
- ↳ Untitled Path
- Market & Naito Splice Vault
- ↳ Untitled Path
- Broadway & Taylor Splice
- ↳ Untitled Path
- ▣ The Pittock Block



This Agreement may be signed in one or more counterparts, including by electronic means, and this Agreement and all its counterparts will result in one Agreement.

IN WITNESS HEREOF, the Parties hereto agree to the foregoing:

CITY OF PORTLAND

CLACKAMAS COUNTY

By:
As Its:

By: _____
As Its: Chair, Board of Commissioners

ATTEST:

ATTEST:

By: _____
City Recorder

By: _____
Recording Secretary

APPROVAL AS TO FORM

APPROVAL AS TO FORM

City Attorney's Office

County Attorney's Office