

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO.

98-1-21-9

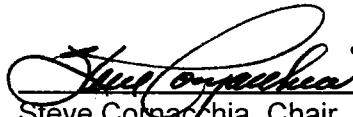
-) IN THE MATTER OF APPROVING AN
-) INTERGOVERNMENTAL AGREEMENT
-) WITH THE STATE OF OREGON DEPARTMENT
-) OF ADMINISTRATIVE SERVICES FOR
-) FRAME RELAY TELECOMMUNICATIONS
-) SERVICES

WHEREAS, in accordance with and pursuant to the provisions of O.R.S. Chapter 190, entitled "Intergovernmental Cooperation", the State is authorized to cooperate with and furnish services to a city, county, district, or other municipal corporation, commission, authority, entity or political subdivision organized and existing under statute or city or county charter in Oregon, and

AND WHEREAS, the State, through an Intergovernmental Agreement, agrees to allow Lane County Regional Information System use of their telecommunications "Fast Packet Contract";

THEREFORE, IT IS NOW HEREBY ORDERED, that the State of Oregon Department of Administrative Services Intergovernmental Agreement for Telecommunication Services be approved; and that the Lane County Administrator is authorized to sign the Intergovernmental Agreement.

DATED this 21st day of January, 1998



Steve Cornacchia, Chair
Lane County Board of Commissioners

FILED

JAN 27 1998

COUNTY CLERK

BY M. Buldwin

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State of Oregon
Department of Administrative Services

INTERGOVERNMENTAL AGREEMENT
FOR TELECOMMUNICATIONS SERVICES

USE OF STATE'S STATEWIDE FAST PACKET SERVICES CONTRACT

This agreement, hereinafter referred to as "Agreement", is made and entered into this _____ day of _____ 19 ____, by and between the State of Oregon, Department of Administrative Services, Information Resources Management Division, hereinafter referred to as "State", and

(Political Subdivision) (address)

(city, state, zip code)

hereinafter referred to as "Political Subdivision".

1. STATUTORY AND ADMINISTRATIVE RULE AUTHORITY.

a) In accordance with and pursuant to the provisions of O.R.S. Chapter 190, entitled "INTERGOVERNMENTAL COOPERATION", State is authorized to cooperate with and furnish services to a city, county, district, or other municipal corporation, commission, authority, entity or political subdivision organized and existing under statute or city or county charter in Oregon.

b) By executing this Agreement, Political Subdivision represents that: i) it may lawfully contract for these services without first undertaking additional competitive solicitation, ii) it meets the criteria for eligibility for cooperation with and receipt of service from State, and iii) that it has the necessary power and authority to enter into this Agreement and has complied with all laws and regulations applicable to the execution, delivery and performance therein.

2. SERVICES TO BE PROVIDED.

a) State is making Frame Relay Services ("Frame Relay Service") available to Political Subdivision through State's contract with US West Communications, Inc. ("US West"), dated November 28, 1995 (the "Fast Packet Contract").

b) To order the specific Frame Relay Services, Political Subdivision shall submit a Telecommunications Service Order ("TSO") to State. In the context of this agreement, a TSO is used to

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implement Frame Relay Services by specifying the Address of the installation, Nonrecurring Charges, the type of Circuit requested, Monthly Recurring Charges, and a US West Circuit Identification Number. A TSO cannot be used to otherwise amend the terms and conditions of this Agreement. In the event of conflict between this Agreement and a TSO, the terms of this Agreement shall prevail.

c) If State agrees to provide the services ordered in the TSO ("Specific Services"), State shall countersign the TSO and provide the Specific Services through the Fast Packet Contract. The Specific Services may be modified by execution of an amended TSO agreed to by both parties.

3. TERM. This Agreement is effective, and will be considered fully executed, upon signature by both parties. The initial term of this Agreement shall not extend beyond: 1) the expiration of the Fast Packet Contract; or 2) a period of five (5) years from the date this Agreement becomes effective; whichever period is shorter. The term of this Agreement may be extended or renewed if it is mutually agreeable to do so. Such extension or renewal shall be in writing.

4. TERMINATION.

a) State may terminate this agreement without liability or penalty upon forty-five (45) days written notice to Political Subdivision. No such termination shall prejudice any obligations or liabilities of either party already accrued prior to the effective date of termination.

b) Political Subdivision may terminate this Agreement without liability or penalty upon forty-five (45) days written notice to State, only if State reasonably determines that termination of the Specific Services under the Fast Packet Contract would be at no cost or liability to State. No such termination shall prejudice any obligations or liabilities of either party already accrued prior to the effective date of termination.

c) In addition to its rights under subsection 4(a) above, State may immediately terminate this agreement without penalty or liability on written notice to Political Subdivision that:

i) use of Specific Services in a manner which violates any applicable law, rule or regulation;

ii) funding sufficient to support the intergovernmental telecommunications services program is suspended, withdrawn, denied or terminated. The Administrator of the Information

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Resources Management Division within the Department of Administrative Services, shall have absolute discretion to determine the availability of sufficient funding, and may effect cancellation of this Agreement by delivery of written notice to Political Subdivision. By mutual agreement of the parties, this Agreement may be amended to accommodate a reduction in the funding of either party; or

iii) the Fast Packet Contract has terminated.

5. RESPONSIBILITIES OF POLITICAL SUBDIVISION.

a) It is understood that utilization of the services authorized by this Agreement are elective on the part of Political Subdivision. Political Subdivision shall provide State with any information necessary to provide effective Frame Relay Services.

Political Subdivision agrees to provide State with the name and telephone number of its contact person ("Contact Person"). The Contact Person will be the individual US West will contact to provide the services under this Agreement.

Once Political Subdivision has provided State with the Contact Person information, State will forward the information to US West and instruct US West to work directly with Political Subdivision for the purposes of preparing orders for any service provided under the Fast Packet Contract.

b) Political Subdivision shall purchase ALL of its requirements for Frame Relay Services from State under the Fast Packet Contract.

c) Political Subdivision shall use Specific Services only for lawful purposes and official government business.

d) Political Subdivision shall not resell or otherwise allow a third party to use the Specific Services. For the purpose of this agreement, a Political Subdivision shall not be considered as reselling the Specific Services when the Political Subdivision is a consortium consisting of Political Subdivisions as defined in ORS190.

e) Political Subdivision shall pay the Service Charges as set forth in approved TSO's as follows:

1) The Political Subdivision shall obtain an estimate of Nonrecurring Charges for each TSO. This figure is an estimate only and is not to be construed as a not-to-exceed

bid. The Political Subdivision shall be responsible for the actual cost of the Nonrecurring Charges based upon time and materials used to install the Specific Services.

2) State will invoice Political Subdivision on the first of each month for the previous months Recurring and Nonrecurring Charges. Political Subdivision shall pay such Charges within 30 days of State's invoice.

3) If Political Subdivision does not pay the Recurring Charges within 30 days after invoice, interest from date of invoice until paid at the annual rate of 12%, shall constitute an additional amount payable by Political Subdivision under this Agreement and shall be paid by Political Subdivision to State on demand.

6. RESPONSIBILITIES OF STATE; LIABILITIES.

a) State shall make reasonable efforts to provide Political Subdivision with satisfactory Frame Relay Services on parity with all other users of the Fast Packet Contract. State also shall make reasonable efforts to keep Political Subdivision informed of any planned changes or pending amendments to the Fast Packet Contract as well as provide Political Subdivision with copies of any amendments that to the extent such amendments adversely impact Political Subdivision. State's failure to provide information about or copies of changes or amendments shall not invalidate any such change or amendment.

b) State will grant Political Subdivision a credit for loss of, interruption to, or the provision of substandard Specific Services (collectively "Substandard Service") as follows:

1) If State recovers damages from US West under section 3.4.4 of the Fast Packet Contract, State shall allocate pro rata the recovered amount, less State's reasonable costs incurred in recovering such damages (including reasonable administrative and legal costs) to Harmed Users of the Fast Packet Contract. State's calculation and the allocation of the recovered amount shall be conclusive absent a manifest error. A user is a "Harmed User" only if State's recovery of damages for Substandard Service is based in whole or in part upon that user's receipt of Substandard Service. Distribution shall be in the form of a credit against future amount owing to State.

2) State has exclusive right in its discretion to pursue or waive any and all claims for damages under the Fast Packet

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Contract if State, in its sole discretion, determines it is in the best interest of State to do so.

3) Political Subdivision shall provide timely notice to State of Substandard Service. Political Subdivision shall cooperate with State and provide all necessary information to assist State recover any claim for damages under the Fast Packet Contract.

c) In the event of disputes regarding service or priority of installation of service, Political Subdivision may communicate directly with US West. Political Subdivision's resolution of any dispute with US West shall not affect Political Subdivision's obligation to State hereunder unless State expressly consents to the resolution. If Political Subdivision is unable to resolve the dispute with US West, Political Subdivision may notify State of the conflict or issue. State will consult with Political Subdivision to attempt to resolve the dispute to Political Subdivision's satisfaction, but State expressly reserves the right to resolve all issues with US West as the State in its sole discretion determines best for the State's interest. Except as expressly stated elsewhere in this Agreement, State shall not be liable to affected Political Subdivision for State's resolution of Political Subdivision's dispute with US West.

d) State's obligation under this Agreement is to provide Specific Services to Political Subdivision, and State's liability for any failure to do so is limited to granting credit as set forth in subsection 6(b) of this Agreement. State does not warrant that Specific Services will meet Political Subdivision's requirements or that Specific Services will operated uninterrupted or error-free.

THE FOREGOING UNDERTAKING IS IN LIEU OF ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. STATE MAKES NO REPRESENTATION OR WARRANTY AS TO WHETHER THE SERVICES ARE USABLE FOR A PARTICULAR PURPOSE, WHETHER OR NOT STATE HAS BEEN INFORMED OF THE NATURE OF ANY SUCH PURPOSE OR HAS OFFERED AN OPINION AS TO THE USE OF THE FRAME RELAY SERVICE FOR SUCH A PURPOSE.

e) State shall not be subject to any claim, action, or liability arising out of any malfunction, error, interruption or cessation of service under this Agreement. State shall not be liable or responsible for any direct, indirect, special incidental or consequential damages sustained by Political Subdivision, including, but not limited to, delay, interruption of business or activities, or lost receipts that may result from any

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malfunction, error, interruption or cessation of Specific Services.

f) In no event shall State's total liability in connection with the performance of this Agreement exceed an amount equal to the prior month's Service Charges paid by Political Subdivision plus any credit expressly required by this Agreement.

g) Nothing in this agreement shall be construed to prevent State from taking any action necessary to protect its receipt of Frame Relay Services, to amend or terminate or exercise any of its rights under the Fast Packet Contract as State in its sole discretion desires, or to provide Frame Relay Service to State Agencies, other political subdivisions, or third parties.

h) Nothing in this Agreement shall be construed as authorizing or permitting Political Subdivision to bind State in any agreement with any third party (including but not limited to US West).

8. INDEMNIFICATION BY POLITICAL SUBDIVISION. To the full extent permitted by the Oregon Tort Claims Act, the Oregon Constitution, and Political Subdivision's charter Political Subdivision shall indemnify, defend, and hold harmless the State of Oregon and State, its officers, divisions, agents, and employees from all claims, damages, losses suits, or actions of third parties of any nature arising out of the acts or omissions of Political Subdivision, its officers, contractors, subcontractors, agents or employees under this Agreement.

9. ASSIGNMENT. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. Neither party shall assign or transfer its interest in this Agreement without the prior written approval of the other.

10. WAIVER. The failure of either party to enforce any provision of this Agreement shall not constitute a waiver by that party of that or any other provision of this Agreement, or the waiver by that party of the ability to enforce that or any other provision in the event of any subsequent breach.

11. SEVERABILITY. If any provision of this Agreement shall be held invalid or unenforceable by any court or tribunal of competent jurisdictions, such holding shall not invalidate or render unenforceable any other provision 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.

12. MERGER. THIS AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES ON THE SUBJECT MATTER HEREOF. NO WAIVER, CONSENT, MODIFICATION OR CHANGE OF TERMS OR PROVISIONS OF THIS AGREEMENT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE, IF MADE, SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS AGREEMENT.

13. GOVERNING LAW. This Agreement shall be governed and construed in accordance with the laws of the State of Oregon. Any claim, action suit or proceeding that arises from or relates to this Agreement shall be brought in and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon. Provided, however, if a claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

14. NOTICES. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be mailed by certified mail, return receipt requested, postage prepaid, addressed to the parties as follow:

For the State:

For Political Subdivision:

Any notice or other communication shall be deemed to be given at the expiration of 48 hours after the time of deposit in the United States mail. The addresses to which notices or other communications shall be mailed may be changed from time to time by giving written notice to the other party as provided in this section.

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15. SIGNATURES. Each party, by the signature below of its authorized representative, hereby acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions. Each person signing this Agreement represents and warrants to have the authority to execute this Agreement.

STATE:

POLITICAL SUBDIVISION:

(Signature)

(Signature)

(Title)

(Title)

(Date)

(Date)

APPROVED FOR LEGAL SUFFICIENCY:

Juan Rosik

(Assistant Attorney General)

8-8-96

(Date)