

June 27, 2023

Nicholas Green  
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Grant County Digital Board of Directors  
c/o City of John Day  
450 E. Main Street  
John Day, Oregon 97845

RE: 90-Day Action Plan for Grant County Digital Transition

Dear Board Members:

This memo is in response to your request at the June 20, 2023, Grant County Digital board meeting that I create a 90-day action plan for the agency's transition in conjunction with the end of my professional services agreement with the Board that was made effective on June 22, 2022, and expired at 11:59:59 on June 21, 2023.

Per the Board's motion, my time for this engagement will be billed at my hourly rate separately from the original contract on an on-call or as-needed basis.

## **I. Overall Considerations**

### **A. Ownership.**

Grant County Digital was certified as an ORS 190 organization by the Oregon Secretary of State on May 16, 2018. The agency just completed its fifth anniversary. The Secretary of State file number is AG 2018-0003. The parties to the agreement are John Day, Seneca, and Grant County (Exhibit A).

Over the last five years, Grant County Digital has raised over \$10M in funding for various middle-mile fiber optic projects, including fiber to Seneca, Long Creek, and Monument and local distribution between critical community facilities in John Day and Canyon City.

The City of John Day, as the Coalition's lead agency, holds title to all of Grant County Digital's assets and is responsible for its liability payments through the City's IT Fund (Fund 07). Section I(B) describes these assets and liabilities. The budget for the IT Fund in FY24 is enclosed (Exhibit B).

No party contributed to the agency's operating expenses because it was entirely grant funded. Therefore, the agency never implemented the cost-sharing agreement outlined in Exhibit B of the intergovernmental agreement. No party (including John Day) transferred funds to John Day's IT Fund to cover the agency's operating expenses.

**B. Transition Considerations.**

1. Capital Assets. Grant County Digital will need a plan for the disposition of its capital assets in the event the agency dissolves. The agency’s capital assets are in Table 1.

*Table 1. Grant County Digital Capital Assets*

<b>Designation</b>	<b>Asset</b>	<b>Transition Recommendation</b>	<b>Approval Required</b>
F-1	John Day Fire Hall to John Day City Hall Fiber Optic Line	Transfer to ESD	John Day city council + ESD board of directors
F-2	John Day City Hall to the School Buildings (ESD, Grant School District 3 Office, GUHS, and Humbolt Elementary)	Transfer to ESD	John Day city council + ESD board of directors
F-3	Fiber Optic Cable (Planned) under EDA Grant: 1) 4 <sup>th</sup> Avenue, Airport, and Airport Industrial Park 2) Grant County Courthouse (TBD) 3) John Day EDA municipal buildouts (remaining infrastructure including Valley View Drive + 7 <sup>th</sup> Street)	Transfer to ESD (post-construction)	John Day city council + ESD board of directors + EDA
B-1	John Day CyberMill Building	Sell to R3 or GC CyberMill or Rally	John Day city council + EDA
B-2	Seneca CyberMill Building	Sell to R3 or GC CyberMill or Rally	John Day city council

The agency owns fiber optic assets (F-1 and F2) built as part of Grant County Digital’s broadband network expansion to critical community facilities.

The agency also owns two facilities, the John Day CyberMill and Seneca CyberMill (B-1 and B-2), which were purchased for a combined \$175,000 from the IT Fund:

- The John Day CyberMill (B-1) for \$90,000 on June 18, 2021.
- The Seneca CyberMill (B-2) for \$85,000 on March 24, 2022.

All assets are held in John Day’s IT Fund and were paid from the Department of Administrative Services HB5006 grant funding. The buildings are also titled in the name of the City of John Day. Solutions CPAs maintain a depreciation schedule for these assets as part of the City’s financial documents (Exhibit C).

Grant County Digital contributed an additional \$1M from HB5006 toward constructing the middle-mile fiber optic assets that Rally owns. The value of this contribution is a 1 Gpbs

connection to each of four publicly-owned facilities in Grant County (John Day, Monument, Long Creek, and Seneca). The terms of this agreement are documented in the Internet Services Agreement dated May 1, 2023, between the City of John Day, Grant County Digital, and Oregon Telephone, now Rally (Exhibit D). The value of this pre-paid 20-year fiber optic agreement is also included in John Day's assets.

2. Construction in Progress. Grant County Digital has planned multiple broadband buildouts within John Day and Canyon City under the EDA Grant awarded to John Day (F-3). These assets are scheduled for construction in 2024 and are currently in final design and permitting. The grant terms are documented in EDA Grant Award No. 07-79-07789 (Exhibit E).

EDA's points of contact for the grant are:

Richard A. Moore  
Civil Engineer  
Economic Development Administration  
U.S. Department of Commerce  
Jackson Federal Bldg.  
915 2nd Ave., Room 1890  
Seattle, WA 98174  
[Rmoore4@eda.gov](mailto:Rmoore4@eda.gov)  
Tel. 202.507.4839

J. Wesley Cochran (He/Him/His)  
Economic Development Rep.-Oregon  
Seattle Regional Office  
Economic Development Administration  
U.S. Department of Commerce  
915 2nd Ave., Room 1890  
Seattle, WA 98174  
[jcochran@eda.gov](mailto:jcochran@eda.gov)  
Tel. 206.561.6646

The grant award amount was \$1,804,475. None of these grant funds have been disbursed to the City. They can be requested once the City meets its special award conditions. This grant agreement has multiple special award conditions identified in the initial award as amended by Amendment No. 1, effective February 3, 2023. The City has five years to complete the grant obligations from the award date.

The City needs to clear SACs 16, 17, and 27 before you can put documents out to bid. The submittal requirements for SACs 16 & 17 are:

- A completed and signed Site Certificate (SC) for each project. The SC needs to be completely filled out – if there is a space for a response, a response should be entered, even if it is “NA.” Voluminous documents (like Title Reports) should not be attached to the SC file, but should be submitted as separate files. Reference and guidance (Instructions and Checklist) are enclosed.
- An authorized representative must complete/sign the Site Certificate Checklist and send that in with the SC submittal.

SAC's 16 and 17 require a metes and bounds legal description of the project area to be completed by a licensed surveyor or engineer, which requires the design to be completed. LS Networks, formerly Commstructure, should complete the design within 60 days but will need a contract amendment since their professional services agreement expired on June 14. The city engineer and city attorney must both sign the site certificates.

For SAC 27:

- EDA usually routes the submittals for the Title and Mortgage SACs together to the EDA attorney for their review. When John Day’s SACs were set up, separate Title SACs for the two projects were made; not so for the mortgage SAC. However, EDA will also try to see if they can sign off on the mortgage SACs separately.
- I’ve attached a pdf and a Word version of the mortgage document that EDA wants the City to use.

After EDA receives the revised submittals and they’re complete, Mr. Moore will route them to the EDA attorney for her review. The time frame to get legal review is likely at least a couple of months.

Concurrent with the legal review, Mr. Moore must review and approve the solicitations for the broadband component (Component 1) and Grant County CyberMill (Component 2). The City’s engineer, Sisul Engineering, prepared the Component 1 bid docs (Exhibit F) and the City’s project architect, Urban Patterns Architecture, drafted these for Component 2 (Exhibit G).

Component 1 consists of fiber optic buildouts, as the enclosed project map shows (Exhibit H). This broadband network buildout will be completed in multiple segments and is estimated to serve about 243 customers (Table 2).

*Table 2. EDA Broadband Network (Component 1)*

<b>Segment</b>	<b>Potential Subscribers</b>
<b>Airport/Industrial Park</b>	<b>94</b>
Commercial/Industrial	60
Government Agency	2
Residential	32
<b>Innovation Gateway</b>	<b>17</b>
Commercial/Industrial	14
Government Agency	3
<b>Valley View</b>	<b>126</b>
Commercial/Industrial	5
Government Agency	3
Residential	118
<b>7th Street (Parks &amp; Rec)</b>	<b>4</b>
Government Agency	4
<b>Grant County Courthouse</b>	<b>2</b>
Government Agency	2
<b>Grand Total</b>	<b>243</b>

If the City elects to sell the CyberMill building (Component 2), there are several options that EDA and the City can pursue:

1. The purchasing entity can be co-listed as an applicant with the City through an agreement amendment and would be responsible for Component 2.
2. The City can also de-obligate the funding from Component 2 and shift it to Component 1 through an amendment, and remove Component 2 from the scope of the award.

Either option would require EDA review and concurrence on an amendment. John Day can also elect to retain the building(s) and fulfill their grant obligations.

The Grant County CyberMill has created a budget for the Component 2 project in John Day, which is also enclosed. A grant application with the Ford Family Foundation has been submitted for \$250,000 and requires proof of local support to complete the process. The Intake application for the Brownfield grant for remediation can be completed once a General Contractor has been selected for the John Day CyberMill renovation.

3. Liabilities. The agency has no long-term liabilities. Current liabilities consist of pole attachment fees to OTEC and the negative fund balance in the IT fund for construction in progress. The negative fund balance will be cleared if John Day elects to sell the CyberMill buildings. The City's joint-use pole attachment agreement is enclosed (Exhibit I).

4. Accounts Receivable. The Council approved lease agreements with Rally and the Grant County CyberMill nonprofit for space utilization at the Seneca CyberMill. If the City elects to sell the buildings, Estoppel certificates will need to be issued to the current Seneca CyberMill tenants or their lease agreements amended to reflect the new ownership before Rally and the Grant County CyberMill Nonprofit sign them. Copies of the lease agreements are enclosed (Exhibit J).

### **C. Dissolution Procedures.**

Section 7.2 of the intergovernmental agreement describes the dissolution process.

*7.2 Dissolution. Upon dissolution, each Party on the date of dissolution will be responsible for its share of the Operating Expenses through the date of dissolution. Upon dissolution, Agency's cash, if any, will be distributed in proportion to the Party's percentage of the Operating Expenses and all remaining Agency assets will be distributed in the manner agreed upon by the Parties, which may include, without limitation, the sale of Agency's facilities to a telecommunications provider or other utility. If the Parties are unable to agree on the manner and method in which Agency's physical assets will be distributed upon dissolution, each Party will receive those physical assets located in the Party's jurisdictional limits; provided, however, Grant County will receive only those physical assets located outside a Party's jurisdictional limits.*

As defined in the Agreement, if the Party's cannot agree on the manner and method in which the Agency's physical assets will be distributed upon dissolution, each Party will receive those physical assets located in the Party's jurisdictional limits. As a result, the City of Seneca would

receive the fiber optic assets in Seneca and the Seneca CyberMill (if unsold); the remaining assets would default to John Day as none exist outside of the incorporated city limits except for the fiber optic lines originating from John Day and extending to the school buildings in Canyon City, which are inseparable from John Day's infrastructure.

## **II. Recommendation**

John Day and Grant County Digital should coordinate with Grant ESD to assume responsibility for the fiber optic assets, outside plant, and equipment held in the IT Fund. ESD would receive the dark fiber optic lease revenue from Rally for the EDA build, and John Day would continue to receive the franchise fees from Rally. Council should sell the CyberMill buildings and use the proceeds to clear the negative fund balance. Once the EDA grant is completed, any residual funding can be transferred to ESD for operations and maintenance and the IT Fund closed.

Very truly yours,



Nick Green

### Exhibit(s)

- A. ORS 190 Organizing Documents
- B. FY24 IT Fund Budget
- C. IT Fund Depreciation Schedule
- D. Fiber Optic Infrastructure Lease Agreement
- E. EDA Grant Award No. 07-79-07789
- F. Component 1 (Broadband) Bid Docs (two segments)
- G. Component 2 (CyberMill) Bid Docs
- H. EDA Project Map
- I. COJD Joint Use Pole Attachment Agreement with OTEC
- J. Seneca CyberMill Lease Agreements (unsigned)