

ORIGINAL

RESOLUTION NO 2012 - 16

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
SUNNYSIDE, WASHINGTON, AUTHORIZING THE INTERLOCAL
AGREEMENT WITH YAKIMA COUNTY FOR PARTICIPATION
IN BROADBAND TECHNOLOGIES OPPORTUNITIES
PROGRAM GRANT**

WHEREAS, pursuant to the powers accorded by Chapter 39.34, RCW, the City of Sunnyside and Yakima County possess authority to execute an inter-governmental cooperation agreement for the purpose of providing services and facilities to meet the various needs and ongoing development of the participating municipalities; and

WHEREAS, Yakima County has proposed an interlocal agreement for the City of Sunnyside to participate in a broadband infrastructure project; and

WHEREAS, said broadband infrastructure project is part of a Broadband Technologies Opportunity Program Grant to the Northwest Open Access Network (NoaNet), of which Yakima County is a participant, and

WHEREAS, the City Council finds and determines that entering into such interlocal agreement is in the best interests of the residents of the City of Sunnyside and will promote the general health, safety and welfare.

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE CITY COUNCIL OF THE CITY OF SUNNYSIDE, WASHINGTON as follows:

SECTION 1. That the City Council hereby authorizes an interlocal agreement with Yakima County concerning the Broadband Technologies Opportunities Program Grant, as attached hereto as Exhibit "A", and the City Manager is hereby authorized to enter into said agreement for and on behalf of the City of Sunnyside, and to prepare, execute and administer all documents and reports necessary or appropriate to accomplish the purposes of the agreement.

SECTION 2. This Resolution shall be effective upon passage, approval and signatures hereon in accordance with law.

PASSED this 13th day of February, 2012.


DON VLIEGER, DEPUTY MAYOR

ATTEST:


DELILAH SAENZ, CITY CLERK

APPROVED AS TO FORM:


MENKE, JACKSON, BEYER, EHLIS, HARPER & PLANT, LLP
Attorneys at Law

EXHIBIT "A"



YAKIMA COUNTY
INTERLOCAL AGREEMENT
BTOP Grant
(Broadband Technologies Opportunities Program)

THIS INTERLOCAL AGREEMENT is entered into between YAKIMA COUNTY, Washington (hereinafter referred to as "Yakima County"), whose address is 128 North Second Street, Yakima, Washington 98901, and the **City of Sunnyside** whose address is 818 East Edison Avenue, Sunnyside, WA 98944 (hereinafter referred to as "**City**") pursuant to Chapter 39.34 RCW.

WITNESSETH:

In consideration of the terms and conditions contained herein, the parties hereto agree as follows:

- I. Yakima County agrees:
 - a. To provide the **City** with "best effort" access to (100) mb of bandwidth across Yakima County's network.
 - b. To carry and provide access to **City** VLAN's (Virtual Local Area Network) that resides within Yakima County's network transport infrastructure in order to allow **City** to conduct business.

- II. **City** agrees:
 - a. To pay Yakima County (\$33,250) in cash as part of the required BTOP (Broadband Technologies Opportunities Program) Grant 20% matching funds for fiber installation to **City's** location at 818 East Edison Avenue, Sunnyside, WA 98944.
 - b. To pay maintenance and operation costs only to Yakima County of (\$2,720) per year for (4) years to offset matching funds contributed toward BTOP Grant.
 - c. That after the Return on Investment period is met, rates will be adjusted to the then current bandwidth rate that is charged by Yakima County.
 - d. That other charges for additional services will be paid at the then current rate that is charged by Yakima County.

- III. BTOP Grant Requirements for Term of Grant (3 Years):
 - a. Yakima County is required to diligently proceed and complete construct the fiber improvement on our wide area network in a manner that meets all grant construction and procurement requirements and provide broadband service for the term of the grant.
 - b. Yakima County is required to procure and maintain all franchises, permits and licenses for duration of grant.
 - c. Yakima County, **City** and all other partners are responsible to cover all costs greater than grant funds. If RFP responses are greater than 110% of engineering estimates, Yakima County, **City** and all other partners will renegotiate project commitments before construction commences. After construction commences any additional costs greater than grant funds will be assigned evenly to all partners gaining benefit from that portion of the construction.
 - d. All equipment purchased with grant funds must be maintained in good working order for its useful life.
 - e. Yakima County must supply all records and documents to the primary awardee of the BTOP grant, NoaNet, needed for request and distribution of awarded funds.
 - f. Yakima County must comply with all first-tier recipient reporting requirements.
 - g. **City** will provide any records or information to Yakima County needed to comply with reporting requirements.
 - h. Yakima County, **City** and all other partners must maintain liability and automobile insurance with coverage of at least \$1,000,000 per occurrence.

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- IV. Demarcation Points:
Demarcation is defined as the point at which Yakima County's network ends and connectivity to **City's** network begins.
- a. **City** agrees to maintain a locked area acceptable to the County for placing Yakima County equipment related to the delivery of services provided for in this agreement.
 - i. Access by authorized personnel only
 - ii. Logged if deemed necessary
 - b. **City** agrees to provide not less than 120 watts of power for operation of the equipment.
 - c. **City** agrees to provide sufficient access to demarcation point for inspection and maintenance and upgrade.
 - d. Yakima County agrees to install demarcation equipment within locking enclosure if required to meet data security mandates.
- V. Ownership of equipment:
- a. Yakima County retains ownership of network infrastructure on wide area network from demarcation including demarcation switch towards Yakima County.
 - b. **City** retains ownership of all network infrastructure from demarcation towards **City** equipment.
- VI. Maintenance/Administration of Equipment:
Maintenance/Administration is defined as those activities required to keep the wide area network running at peak efficiency. This includes change out of components, configuration, repair and troubleshooting.
- a. County administers/maintains network operations on wide area network from the demarcation towards Yakima County
 - b. County administers/maintains physical and logical network security on wide area network from the demarcation towards Yakima County
 - c. **City** administers/maintains internal networking from the demarcation towards City, switches, PCs, virus protection and applications, etc.
- VII. Operations:
- a. If equipment at **City** connects to Yakima County **and** any other network, **City** is required to install and maintain a firewall on effected equipment and coordinate with Yakima County to ensure network security.
 - b. **City** is required to install virus protection and maintain latest version and updated virus definitions on PC's and servers connected to Yakima County's Network. If virus definitions are not kept updated and a virus is introduced through **City's** network into Yakima County's network, **City** will be billed for recovery costs.
 - c. Yakima County will operate, secure, and monitor Yakima County's wide area network.
 - d. Yakima County will provide transport encryption within Yakima County network transport infrastructure
 - e. **City** may provide further encryption if desired.
 - f. Yakima County will maintain vendor equipment maintenance/support agreements and/or hot spares as appropriate for Yakima County's wide area network.
 - g. Yakima County's network is a best effort network.
 - h. Troubleshooting by Yakima County that is found to be caused by **City** will be billed at then current Yakima County rates including travel time.
 - i. Hours of operations, service request procedures and change request procedures will be provided to **City** separately.
- VIII. Term and Termination:
The initial term for this agreement is four years and commences from the date of initial fiber service. After the initial term, the agreement will automatically renew in one year increments and charges will be adjusted to then current Yakima County rates unless terminated. **City** may terminate the agreement at any time upon (60) days written notice sent to the address listed above. **City** is not entitled to any reimbursement. Yakima County may terminate the agreement any time after the initial term is fulfilled upon (60) days written notice sent to the address listed above.

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- IX. Each party shall treat all information made available to or disclosed to any other party as a result of or related to this agreement or the grant award which is either marked as confidential or is reasonably known by the party to contain confidential information, as confidential and shall not disclose or use such confidential information for the benefit of any person other than the parties.
- X. The **City** shall not be prohibited from implementing its own security in the form of a firewall or proxy server, if it is deemed necessary, provided that said security does not interfere with the County's equipment or services.
- XI. Yakima County Director of Technology Services is authorized to sign this form on behalf of the Yakima County Commissioners.
- XII. Each party agrees that it shall not discriminate against any person on the grounds of race, creed, color, religion, national origin, sex, sexual orientation, age, marital status, political affiliation or belief, or the presence of any sensory, mental or physical handicap in violation of the Washington State Law Against Discrimination (R.C.W. Chapter 49.60) or the Americans with Disabilities Act (42 U.S.C. 1201 et seq.) or any other applicable state, federal or local law, rule or regulation.
- XIII. Neither party shall assign any portion of the contracted activities without obtaining prior written approval from the other party.
- XIV. Except as provided herein, each party shall indemnify and hold harmless the other party, its officers, agents, and employees, from all liability, loss or damage, including costs of defense that may suffer as a result of the claims, demands, actions, damages, costs or judgments which result from the actions performed by the indemnifying party, its agents, employees, or subcontractors pursuant to this Agreement.
- XV. ***YAKIMA COUNTY DISCLAIMS ALL WARRANTIES BOTH EXPRESSED AND IMPLIED, INCLUDING IMPLIED WARRANTIES RESPECTING MERCHANTABILITY, TITLE, AND FITNESS FOR A PARTICULAR PURPOSE. YAKIMA COUNTY ACCEPTS NO LIABILITY RESULTING FROM DELIVERY OR NON-DELIVERY OF SERVICES OR FOR DAMAGES TO ANY EQUIPMENT OWNED OR OPERATED BY THE CITY OR ANY OTHER PERSON OR FOR ANY CONSEQUENTIAL DAMAGES INCLUDING LOSS OF PROFITS OR LOSS OF USE OF ANY PROPERTY. THE CITY ACKNOWLEDGES THAT ITS ONLY REMEDY FOR FAILURE OF ANY SERVICE OR EQUIPMENT PROVIDED FOR HEREIN IS CANCELLATION OF THIS AGREEMENT***
- XVI. This Agreement shall be governed by the laws of the State of Washington. Any action suit or judicial proceeding for the enforcement of this Agreement shall be brought in the Superior Court for the State of Washington in Yakima County, Washington.

CITY OF SUNNYSIDE

YAKIMA COUNTY

(Name), (Title)

George D. Helton, Director
Technology Services

Date

Date