

RESOLUTION R-4871

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND APPROVING AN INTERLOCAL AGREEMENT ESTABLISHING THE COMMUNITY CONNECTIVITY CONSORTIUM BETWEEN THE CITY OF KIRKLAND OTHER GOVERNMENT AGENCIES FOR THE CONSTRUCTION AND MANAGEMENT OF FIBER OPTIC PROJECTS.

WHEREAS, the City of Kirkland ("City") is a participant and founding member of the Regional Fiber Consortium, the purpose of which is to construct and operate regional fiber optic facilities; and

WHEREAS, the current members of the Regional Fiber Consortium, along with new local government agencies, wish to enter into a new interlocal agreement that updates and streamlines the Consortium's policies and procedures; and

WHEREAS, Chapter 39.34 RCW authorizes the parties to enter into an interlocal cooperation agreement to perform any governmental service, activity or undertaking which each contracting party is authorized by law to perform;

NOW, THEREFORE, be it resolved by the City Council of the City of Kirkland as follows:

Section 1. The City Manager is hereby authorized and directed to execute on behalf of the City of Kirkland an interlocal agreement substantially similar to that attached as Exhibit "A", which is entitled "Interlocal Agreement Establishing the Community Connectivity Consortium."

Passed by majority vote of the Kirkland City Council in open meeting this 15th day of March, 2011.

Signed in authentication thereof this 15th day of March, 2011.


MAYOR

Attest:


City Clerk

INTERLOCAL AGREEMENT ESTABLISHING THE COMMUNITY CONNECTIVITY CONSORTIUM

THIS AGREEMENT (“Agreement”) is entered into among the public agencies organized under the laws of the State of Washington, hereinafter referred to as the “Members” which are parties signatory to this Agreement.

This AGREEMENT replaces the previous Interlocal Agreement: General Terms and Conditions for Sharing Fiber Optic Installation Projects, which took effect on December 6, 2003 (“Fiber Interlocal”), except for the limited purposes set forth in Section 5E of this Agreement.

This Agreement is being made pursuant to the Interlocal Cooperation Act, Chapter 39.34 RCW, and has been authorized by the legislative body of each jurisdiction.

RECITALS

Whereas the University of Washington, Lake Washington School District, City of Kirkland and City of Bellevue signed Interlocal Agreement: General Terms and Conditions for Sharing Fiber Optic Installation Projects, effective December 6, 2003 (“Fiber Interlocal”) for the purpose of outlining how the parties will work together on fiber optic projects for the benefits of all the participating parties and established the original backbone of the Fiber Consortium network through contributions of budget, fiber assets, conduit, right of way and staff expertise.

Whereas Evergreen Hospital, Bellevue School District, City of Renton, Renton School District, Bellevue College, City of Seattle and City of Federal Way have signed the Fiber Interlocal and the joining amendments were fully executed by the participating parties.

Whereas all projects to be completed under the Fiber Interlocal were required to have a Fiber Optic Project Agreement signed by all participating parties specifying lead agency and participant roles, project schedule, budget, route, fiber allocation and ownership, points of demarcation, maintenance responsibilities, and other details of each project.

Whereas projects completed under a Fiber Optic Project Agreement defines the Fiber Consortium network, which is separate from each participating parties’ networks unless transfers of a party’s fiber assets were executed through a Fiber Optic Project Agreement.

Whereas the growing Fiber Consortium network with additional agencies in the process of joining and executing more projects has become cumbersome to manage under the current structure. The City of Algona, City of Auburn, City of Pacific, City of Puyallup,

City of Tukwila, and Valley Communication Center have approved joining the Consortium and executed a joining Fiber Optic Agreement.

Whereas the loosely organized members of the Fiber Consortium network are seeking grant opportunities to fund expansion to serve members' needs and has been successful in recent grant programs and thus the fiscal, administrative and project oversight responsibilities require more structure.

Whereas the rights established for each participant in each Fiber Optic Project Agreement shall not terminate with the replacement of the Fiber Interlocal.

IT IS HEREBY AGREED AS FOLLOWS:

I. ESTABLISHMENT OF THE CONSORTIUM

There is hereby created a Community Connectivity Consortium ("Consortium"). The Consortium shall be created as a separate legal entity as authorized by RCW 39.34.030.

II. PURPOSE

The mission of the Consortium is to create a vibrant and competitive region by providing connectivity services to meet the needs of our community institutions – hospitals, universities, schools and government agencies. The Consortium shall have the following purposes:

- A. Create a regionally coordinated, open-access network that leverages the assets and resources of the members using strategic opportunities to provide low-cost, stable, robust, efficient connectivity services to members and their communities.
- B. Ensure the network infrastructure remains free of encumbrance and can be used for innovative opportunities by members.
- C. Develop and enhance working relationships among members and explore ways to the use the network collaboratively to make our community a better place to live, work and play by sharing risks and rewards equitably.
- D. Explore public/private partnerships to the benefit of the members and member communities.

- E. Achieve economies of scale through collaboration and coordination of projects and investments.
- F. Balance current needs with future needs in decision making to achieve lower long-term costs.

III. PARTIES TO AGREEMENT

Each party to this Agreement certifies that it intends to and does contract with all other parties who are signatories of this Agreement and, in addition, with such other parties as may later be added to and become signatories of this Agreement.

IV. MEMBERSHIP/MEETINGS

Membership in the Consortium shall be limited to government agencies authorized to become signatories to an Interlocal Agreement as authorized by RCW 39.34.030, who contribute assets, resources, and/or shared services for the benefit of members. The addition of new members shall be subject to the approval of a simple majority of the Consortium Board, as established by the Consortium to manage its operations.

- A. Membership Policy: Members shall develop and maintain a Membership Policy for the purpose of sustaining Consortium activities, projects, equipment, staffing, services and infrastructure. Said Membership Policy shall be contained within the Consortium's Administrative Policies and shall be reviewed as necessary.
- B. Meetings: An annual meeting of the Consortium's general membership shall be conducted for the purposes of adopting an annual budget, presentation of an annual report, approval of policies, and other business as determined by the Consortium Board and Consortium Members.

V. GOVERNANCE:

The Consortium's daily business activities shall be managed by a Consortium Board, elected annually, by the Consortium's Members. The Consortium Board shall establish such operating committees as necessary for the expedient conduct of the Consortium's business activities.

- A. Composition: The Consortium Board is comprised of representatives approved by member agencies. These representatives should possess the special knowledge required to participate in the conduct of Consortium business and should include the Chief Information Officer, Information Technology Director, or other designee.

- B. Powers: The Consortium Board shall govern the Consortium. The powers of the Consortium Board shall be to: (1) develop and recommend the Consortium's Administrative Policies for approval by the Consortium Members; (2) create Consortium work programs; (3) determine services to be provided; (4) develop an annual budget for adoption by Consortium Members; (5) adopt a membership policy; (6) recommend a fee policy for approval by the Consortium Members; (7) make purchases or contract for services to accomplish the purposes of the Consortium; (8) enter into agreements with third parties for goods and services as necessary to carry out the Consortium's purposes; (9) hire staff, consultants or private vendors as necessary; (10) identify and contract for the services of fiscal agent for the purposes of carrying out and recording Consortium financial transactions; and (11) conduct any and all other business allowed by applicable law.
- C. Responsibilities of Consortium Board Members: Consortium Board Members shall participate fully in matters before the board, attend all meetings, advocate on behalf of the Consortium, and contribute expertise to guide decisions.
- D. Administrative Policies: The Consortium Members shall adopt Administrative Policies that govern Consortium operations and decision making.
- E. The previous Fiber Interlocal shall remain in effect for the limited purpose of governing the administration of ongoing fiber optic projects which were undertaken prior to the effective date of this Agreement. Fiber optic project agreements for which work is ongoing at the time this Agreement takes effect shall remain in effect.

VI. FINANCE & BUDGET

- A. Authority: The Consortium Board is authorized to accept grants and such other financial opportunities as may arise in order to accomplish the purposes of the Consortium consistent with Chapter 39.34 RCW. The Consortium is empowered to receive all funds and assets allocated to it by its members. The Consortium Board may establish partnerships with public and private corporations or entities as allowed by law. The Consortium Board shall recommend an annual budget for adoption by the Consortium Members.
- B. Ownership of Property: The Consortium may own real and personal properties. Ownership of assets, such as fiber strands, equipment or software, shall be defined in the allocation noted within any Consortium Project Agreement to which the Member is signatory. Assets deemed surplus by participants in a Project Agreement shall be held by the Consortium in an Asset Bank administered by the Consortium Board for the benefit of the Consortium Members. Future allocation of surplus assets shall be at the

discretion of the Consortium Board. Existing assets owned by the Consortium Members may be transferred to the Consortium for the benefit of Consortium Members at the owner's discretion.

- C. **Retained Responsibility and Authority:** Consortium Members retain the responsibility and authority for managing and maintaining their own internal systems, including security and privacy of all data which may be linked to the Consortium's network.
- D. **Fiscal Agent:** The Fiscal Agent refers to that agency or government that performs all accounting services for the Consortium as it may require, in accordance with the requirements of Chapter 39.34 RCW. The Consortium Board shall appoint a Fiscal Agent for the Consortium. The Fiscal Agent shall have a non-voting, ex officio seat on the Consortium Board if the agency is not serving on a Consortium Board seat.
- E. **Intergovernmental Cooperation:** The Consortium will cooperate with federal, state, county, and other local agencies to maximize use of any grant funds or other resources and enhance the effectiveness of the Consortium systems, programs and projects.

VII. GENERAL PROVISIONS

- A. **Duration:** This Agreement shall commence upon full execution and continue to remain in existence as long as it has Consortium Members.
- B. **Member Withdrawal:** A Consortium Member may notify the Consortium of its intent to withdraw from this Agreement by written notice to the Consortium Board. Any commitment for the current calendar year shall be terminated upon such withdrawal. The Consortium Member withdrawing from the Consortium also forfeits any of the Consortium Member's proportional interest in Consortium assets including but not limited to: (1) ownership rights to hardware, software, fiber and/or services owned/provided by the Consortium, and (2) any present or future revenues associated with Consortium products and/or services. The Consortium Member seeking withdrawal shall continue full participation in any Consortium Project Agreements executed during the membership period. A Member retains full ownership in assets designated as belonging to the member in any Consortium Project Agreement but may elect to transfer assets back to the Consortium with the agreement of the Consortium Board.
- C. The Consortium shall defend, indemnify and hold each Consortium Member, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees and costs, arising out of or resulting from the acts, errors or omissions of the Consortium or its agents or employees acting on behalf of the Consortium in performance

of this Agreement, except to the extent the injuries and damages or loss is caused by the sole negligence of the Consortium Member. The Consortium Member shall defend, indemnify and hold the Consortium, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees and costs, arising out of or resulting from the acts, errors or omissions of the Consortium Member in performance of this Agreement, except to the extent the injuries, damages or loss is caused by the negligence of the Consortium.

To the extent of the foregoing indemnifications, the parties waive any immunity that may be granted to it under the Washington State Industrial Insurance Act, Title 51 RCW and such indemnification shall not be limited in any way by any limitation on the amount of damages, compensation or benefits payable to or by any third party under Worker's Compensation acts, disability benefit acts or any other benefits acts or programs.

The Consortium agrees that Consortium Members will be mutually liable for, and shall protect and defend any Consortium Member for any claims arising out of or related to, intellectual property, patent, trademark, trade secret or copyright infringement and breach of contract.

The provisions of this section shall survive the expiration or termination of this Agreement with respect to any event occurring prior to such expiration or termination.

- D. Insurance: The Consortium will obtain and provide appropriate insurance against loss or liability for the actions of the Consortium Board and/or staff.
- E. Work Product/Confidentiality: All work product including records, data, information, documents, files, designs, sketches, finished or unfinished documents or other documents, material or data produced in performance of this Agreement shall become the property of the Consortium. All such work product shall be kept confidential by all of the Consortium Members and the Member's employees and agents and shall not be made available to any individual or organization by any Consortium Member without the prior written consent of the Consortium Board or unless required pursuant to court order, the Public Disclosure Act RCW 42.56 or other applicable law.
- F. Miscellaneous: This Agreement contains all of the agreements of the parties with respect to any matter covered or mentioned in this Agreement. No provision of the Agreement may be amended or modified except by written agreement signed by the parties. This Agreement shall be binding upon and inure to the benefit of the parties' successors in interest and assigns. Any provision of this Agreement which is declared invalid or illegal shall in no way effect or invalidate any other provision. The venue for any dispute related to this Agreement shall be King County, Washington. Time is of the essence of

this Agreement and each and all of its provisions in which performance is a factor.

This Agreement has been executed by each party on the date set forth below:

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