



City of Green River
City Council Meeting
Agenda Documentation

Preparation Date: June 29, 2016	Department: Finance
Meeting Date: July 5, 2016	Department Head: Chris Meats
	Presenter: Chris Meats

Subject:

Approval of a Maintenance Agreement with the Joint Powers Telecom Board (JPTB) for Internet Services

Background/Alternatives:

This is an agreement which outlines the terms and conditions of the JPTB to provide broadband services and fiber optic connections to the City of Green River.

Attachments:

Agreement

Fiscal Impact:

The maintenance contract is for \$27,360 annually, which are budgeted within the IT Division

Staff Impact:

Internet services are a major part of the everyday activities of the City. We utilize several cloud applications and other direct services on the internet. These connections also allow us to provide our telephone services for the City and help in connecting our City buildings.

Legal Review:

The Agreement has been reviewed by Counsel.

Legal Review:

I move to approve the agreement with JPTB for fiber optic services, in the amount of \$27,360.

**AMNDEDED AND RESTAED
JOINT ACTION AGREEMENT**
between
**THE JOINT POWERS TELECOM BOARD FOR THE
CITIES OF ROCK SPRINGS AND GREEN RIVER WYOMING**
and
THE CITY OF GREEN RIVER, WYOMING

for fiber optic services

* * *

THIS AMENDED AND RESTATED JOINT ACTION AGREEMENT is made and entered into this ____ day of _____, 2016 (the Effective Date), by and between the Joint Powers Telecom Board for the Cities of Rock Springs and Green River Wyoming (“JPTB”), a duly authorized Joint Powers Board pursuant to the Wyoming Joint Powers Act, Wyoming Stat. §§ 16-1-101 et seq., and City of Green River, Wyoming (“City”), a political subdivision of the State of Wyoming. The JPTB and the City may sometimes be referred to herein, individually as Party and, collectively, as the Parties.

RECITALS:

WHEREAS, the JPTB owns and operates a fiber optic Network; and

WHEREAS, the City intends to use the JPTB’s Network for its internal communications; and

WHEREAS, the JPTB is willing to provide access to, and operations and maintenance for the Network to provide for City’s internal communications; and

WHEREAS, the JPTB’s Network has sufficient capacity to accommodate the City’s needs; and

WHEREAS, the City is willing to compensate the JPTB for the City’s use of the Network.

WHEREAS, it is mutually beneficial for the JPTB and the City to work cooperatively to provide the City’s internal communications across the JPTB’s Network; and

WHEREAS, the Wyoming Joint Powers Act, Wyoming Stat. §§ 16-1-101 et seq. (the “Act”) authorizes agencies to enter into an agreement for joint and cooperative action; and

WHEREAS, the JPTB and the City are agencies as defined by the Act; and

WHEREAS, the JPTB and the City had previously entered into an Agreement, dated _____, 200_, which has been amended numerous time to reflect additional fiber optic services provided to the City by the JPTB. Both Parties feel that it would be in their best interests to re-execute a new Agreement that restates these same terms previously agreed upon by the Parties as well as incorporating Addendums 1- into a new Agreement reflecting the present state of fiber optic services being provided by the JPTB to the City and also to provide for a more efficient process for initiating any future requests for fiber optic services.

NOW, THEREFORE, the Parties mutually agree as follows:

1. **Definitions.** For the purposes of this Agreement, the following terms shall have the meanings set forth in this Paragraph:

a. **Agreement** means this agreement and incorporates any Exhibits, Appendices, or other attachments referenced herein.

b. **Network** means optical fiber strands, inner duct, conduit, electronics, collocation space and associated appurtenances owned or leased, directly or indirectly, by the JPTB, as they are

updated, supplemented or replaced from time to time. Network does not include voice, video or internet service.

- c. GB means Gigabytes.
- d. GE means Gigabit Ethernet.
- e. V-LAN means Virtual Local Area Network.

2. **Services.** The JPTB will provide the City with connections and services (collectively the Services), as follows:

a. Provide fiber optic bandwidth service, as set forth in Exhibit "A" to the City's facilities located at the Green River City Hall 50 E. North 2nd St., Green River, Wyoming. The Parties expressly agree that Exhibit A may be amended from time to time by the Parties without the need for further approval by the governing body of either Party, upon written approval and amendment to this Agreement by the Chief Executive Officer of each Party, subject to the limitations, if any, set forth in the Act.

b. Ongoing operation, management and maintenance of the Network; provided, however, that the JPTB will provide the City with the ability to directly monitor the City's bandwidth services and the ability to directly manage the City's bandwidth services, so long as such management does not interfere with the JPTB's operation and management of other portions of the Network; provided further that the JPTB retains all rights, at the JPTB's sole discretion, to reconfigure the City's bandwidth services (in a manner that does not interfere with the City's systems) to ensure optimal performance of the Network for all of the JPTB's Network customers.

c. Reasonable "industry standard" emergency repair and restoration on damaged fiber; provided, however, that in no event shall such emergency repairs and restoration occur later than forty-eight (48) hours after the JPTB receives notice of the damage. The JPTB will use 'Best Efforts' to restore services to the City that may include but not necessarily limited to establishing a wireless connection, or similar type secondary temporary connection until full services are restored.

3. **Compensation.** In consideration for the Services described in Paragraph 2, the City will compensate the JPTB according to the pricing schedule set forth in Exhibit A, which may be amended from time to time by the Parties without the need for further approval by the governing body of either Party, upon written approval and amendment to this Agreement by the Chief Executive Officer of each Party, subject to the limitations, if any, set forth in the Act. The City's monthly payment of *Two Thousand Two Hundred and Eighty dollars (\$2280.00)* for 40 Mb of bandwidth shall be due no later than 1st day of each month.

4. **Term.** This Agreement shall remain in full force and effect for five (5) years from the Effective Date, and shall automatically renew for three (3) successive extension periods of five (5) years each, unless either Party gives written notice of its intent to terminate this Agreement at least three hundred sixty five (365) days before the end of the initial term, or any extension term, or unless this

Agreement has been earlier terminated in accordance with Paragraph 5 during the initial term or the extension term(s).

5. **Termination.** The occurrence and continuance of the following events may result in the termination of this Agreement, at the sole discretion of the terminating Party, subject to the provisions of this Paragraph 5:

a. **Breach or Default.** A material breach or a material default under the terms, covenants and conditions of this Agreement by either the JPTB or the City, including, without limitation, the failure of the City to make any payments under the terms of this Agreement when due, or the failure of the JPTB to provide the Services set forth in Paragraph 2.

b. **Change in Law.** A change in any law, regulation or rule, or the issuance of an Order by the Federal Communication Commission, that materially impacts the JPTB's ownership or operation of the Network.

c. **Right to Cure.** If the termination event is a breach or default described in Paragraph 5.a., the non-defaulting Party shall give written notice of such occurrence to the defaulting Party. The defaulting Party shall be given a reasonable time to cure any breach or default as follows:

- i. In the case of a monetary default, the defaulting Party shall have thirty (30) days after receipt of the written notice in which to effect a cure.
- ii. In the case of a non-monetary default, the defaulting Party shall have sixty (60) days after receipt of the written notice in which to effect a cure. In the non-monetary default cannot be corrected within such sixty (60) day period, the defaulting Party shall have an additional reasonable time in which to effect a cure, provided the defaulting Party commences corrective action within the original sixty (60) day period and thereafter diligently prosecutes the corrective action to completion. If the defaulting Party does not timely cure the breach of default within the time periods specified above, the non-defaulting Party may elect to terminate this Agreement by providing written notice of such election to the defaulting Party.

6. **Governmental Immunity.** Each Party hereto acknowledges that it is a governmental entity subject to the provisions of the Wyoming Governmental Claims Act (the "Claims Act"), Wyoming Stat. §§ 1-39-101 et seq. As such each entity, subject to the provisions of the Claims Act, assumes responsibility for its own negligence and misconduct, and that of its officers, employees and agents. Execution of this Agreement shall not constitute a waiver of any defense or limitation of liability under the Act nor be considered to have been entered into for the benefit of any person other than the Parties hereto.

7. **Assignment and Preservation of Rights.** The JPTB, and any assignee hereunder, shall have the right to assign its interest in this Agreement without the City's prior consent. In the event that the JPTB, or any assignee hereunder, assigns its interest in this Agreement, the JPTB, or any assignee hereunder, shall obtain from such assignee a written commitment that so long as the City performs its obligations under the terms of this Agreement, the City's right to use the Network, on the terms provided in this Agreement, shall not be disturbed, or terminated, and that in the event the JPTB, or any assignee hereunder, loses title to the Network, for any reason, the JPTB's, or the assignees, successor or successors in interest with respect to the Network shall honor this Agreement, and permit the City to continue using the Network in accordance with the terms of this Agreement.

8. **Attornment.** In the event that title to the Network changes pursuant to Paragraph 9, the City's obligations under this Agreement shall remain in force and in effect, and shall attorn to the benefit of the successor or successors in interest.

9. **General Provisions.** Under this Agreement the general provisions in this Paragraph 9 shall apply.

a. **Independent Contractor Status.** The JPTB and the City reserve no control whatsoever over the employment, discharge, compensation of or services rendered by the employees or contractors of each other. Nothing in this Agreement shall be construed as inconsistent with the foregoing independent status and relationship or as creating or implying a partnership or joint venture between the JPTB and the City.

b. **Notices.** Notices must be hand delivered or sent by nationally recognized overnight courier or by certified mail, return receipt requested, postage prepaid, addressed to the addresses specified below. Either Party may change its address for receipt of notices by written notice to the other. Notice shall be deemed given upon tender of delivery (in the case of a hand-delivered notice), upon the next business day after delivery to an overnight courier service, or on the third day after deposit in the United States mail.

If to the JPTB: David Halter, Chairman
Joint Powers Telecom Board
212 D Street
Green River, WY 82901

With a copy to: JPTB Legal Counsel
Robert A. Spence, P.C.
2632 Foothill Blvd., Suite 203
Green River, WY 82901
(307)-363-6875/Fax: 307-362-6957

If to the City: Green River City Council
Green River City Hall
50 E. North 2nd Street
Green River, WY 82935
Fax: 307-872-

With a copy to: Galen West, Green River City Attorney
Green River City Hall
50 E. North 2nd Street
Green River, WY 82935
Fax: 307-872-

c. **Governing Law and Choice of Forum.** This Agreement and all matters relating hereto shall be governed by, construed and interpreted in accordance with the laws of the State of Wyoming. Jurisdiction for any disputes arising out of this Agreement shall be exclusively in the courts of the State of Wyoming, state or federal.

d. **Entire Agreement.** This Agreement contains the entire agreement of the Parties and may not be modified or amended, except by instrument in writing signed by both Parties.

e. **Severability.** If any term or provision of this Agreement shall, to any extent, be determined by a court of competent jurisdiction to be void, voidable, or unenforceable, such void, voidable, or unenforceable term or provision shall not affect any other term or provision of this Agreement.

f. **Waivers.** The failure by the JPTB or the City at any time or times hereafter to require strict performance by the other of any of the undertakings, agreements or covenants contained in this Agreement shall not waive, affect or diminish any right of the JPTB or the City hereunder to demand strict compliance and performance therewith. None of the undertakings, agreements, or covenants of the JPTB and the City under this Agreement shall be deemed to have been waived unless such waiver is evidenced by an instrument in writing signed by the Party to be charged specifying such waiver.

g. **Time is of the Essence.** Time is of the essence in this Agreement.

h. **Survival.** The covenants and provisions contained in this Agreement which, by their terms, require or contemplate their performance after the expiration or termination of this Agreement shall be enforceable notwithstanding the expiration or termination of this Agreement including, without limitation, all indemnities by either Party.

i. **Not Recordable.** Unless required by law, neither Party shall record this Agreement or any memorandum of this Agreement in the real estate records of any City in Wyoming where the Network is located.

j. **Counterparts.** This Agreement may be executed in multiple counterparts, and by each Party on separate counterparts, each of which shall be deemed to be an original but all of which shall together constitute one agreement.

k. **No Third-Party Beneficiaries.** Except as otherwise expressly provided in this Agreement, the terms, covenants and conditions of this Agreement, shall not be construed as being for the benefit of any person who is not a signatory to this Agreement.

l. **Excuse of Performance.** Notwithstanding anything in this Agreement to the contrary, neither the JPTB nor the City shall be liable or responsible for a delay or failure in performing or carrying out any of its obligations (other than obligations to make payments) under this Agreement caused by Force Majeure (as defined below).

i. **Definition.** The term Force Majeure as used in this Agreement shall mean any cause beyond the reasonable control of the JPTB or the City, as applicable, or beyond the reasonable control of any of their respective contractors, subcontractors, suppliers or vendors, including without limitation:

- (1) **Acts of God.** Acts of God, including, but not necessarily limited to, lightning, earthquakes, adverse weather of greater duration or intensity than normally expected for the job area and time of year, fires, explosions, floods, other natural catastrophes, sabotage, acts of a public enemy, utility outages, acts of government or regulatory agencies, wars, blockades, embargoes, insurrections, riots or civil disturbances;
- (2) **Labor Disputes.** Labor disputes, including, but not necessarily limited to, strikes, work slowdowns, work stoppages or labor disruptions, labor or material shortages, or delays or disruptions of transportation;

- (3) **Court Orders.** Orders and judgments of any federal, state or local court, administrative agency or governmental body;
- (4) **Change in Law.** The adoption of or change in any federal, state or local laws, rules, regulations, ordinances, permits or licenses, or changes in the interpretation of such laws, rules, regulations, ordinances, permits or licenses, by a court or public agency having appropriate jurisdiction after the Effective Date; or
- (5) **Government Approvals.** Any suspension, termination, interruption, denial or failure to issue or renew by any government authority or other Party having approval rights of any approval required or necessary hereunder for the construction, installation or operation of the Network or for either Party to perform its obligations hereunder, except when such suspension, termination, interruption, denial or failure to issue or renew results from the negligence or failure to act of the Party claiming the occurrence of an event of Force Majeure.
- (6) **Continuance after Force Majeure Event.** If either the JPTB or the City cannot fulfill any of its obligations under this Agreement by reason of Force Majeure, such Party shall promptly notify the other and shall exercise due diligence to remove such inability with all reasonable dispatch; provided, that nothing contained in this Paragraph shall be construed as requiring the JPTB or the City to settle any strike, work stoppage or other labor dispute in which it may be involved, or to accept any permit, certificate, license or other approval on terms deemed unacceptable to such Party, or to enter into any contract or other undertaking on terms which the Party deems to be unduly burdensome or costly.

m. **Multiple Copies.** Each copy of this Agreement that is signed, by original or facsimile signature, by both the JPTB and the City shall be deemed an original thereof.

Signature page to follow.

IN WITNESS WHEREOF, the Parties have subscribed their names and seals the day and year first above written.

**THE JOINT POWERS TELECOM
BOARD FOR THE CITIES OF
ROCK SPRINGS AND GREEN RIVER,
WYOMING**

By _____
David Halter, Chairman

CITY OF GREEN RIVER, WYOMING

By _____
Hon. Pete Rust, Mayor

By _____
Mark Peterson, City Councilman

By _____
Allan Wilson, City Councilman

By _____
Lisa Maes, City Councilman

By _____
Ted Barney, City Councilman

By _____
Brett Stokes, City Councilman

By _____
Gary Killpack, City Councilman

EXHIBIT A

USE OF JPTB NETWORK SERVICES BY THE CITY

Facility	Connection	Monthly Throughput	Monthly Cost
Green River City Hall	Internet #1	20Mb	\$1140.00
Green River City Hall	Internet #2	20 Mb	\$1140.00
Total Monthly Cost			\$2280.00
Total Annual Cost			\$27,360.00
Additional facilities requiring additional bandwidth will be charged at similar prices.			

DATED this ____ day of _____, 2016.

JPTB:

By: _____
Its: _____

DATED this ____ day of _____, 2016.

CITY of GREEN RIVER

By: _____
Its: _____

Definition: 1 GE Connection Capacity shall consist of not less than one lit fiber connection per physical location, a 1 GE capacity card, and V-LANs as requested by the City