



MEMORANDUM

October 10, 2012

TO: Board of Mayor and Aldermen

FROM: Eric Stuckey, City Administrator
Fred Banner, MIT Director

SUBJECT: Williamson County Request for Fiber Service

Purpose

The purpose of this memorandum is to provide the Board of Mayor and Aldermen (BOMA) with information to consider an agreement with Williamson County for access to the City of Franklin fiber network.

Background

The Williamson County Information Technology Department wants to attach their Court Houses (old and new), Jail and Justice Center and main office on West Main Street to the City of Franklin's existing fiber optic network. The City will continue to own the network and control all aspects of the system. The County will manage their segment. Through this agreement, we can interconnect those departments between the City and County where appropriate which will improve communications regarding data exchanges that occur today.

Financial Impact

All costs for the attachment to the City's network will be the responsibility of the County. Any future costs such as a break in a fiber line attached to their facilities will their responsibility as well. City staff will oversee the project during installation and approve all connections. Any approved future changes will be administered by City staff.

Options

Approve, reject or amend the proposed agreement.

Recommendation

Approval of the proposed agreement with Williamson County for use of the City of Franklin fiber optic network is recommended.

**MEMORANDUM OF UNDERSTANDING
BETWEEN WILLIAMSON COUNTY AND THE CITY OF FRANKLIN
COF Contract #2012-0149**

THIS MEMORANDUM OF UNDERSTANDING, (“MOU”), is entered into by and between WILLIAMSON COUNTY, (“County”), and the CITY OF FRANKLIN, (“ City”), for mutual cooperation between the two entities to share access to the City’s fiber optic network.

I. Parties. The County and City are Tennessee governmental entities and as such are authorized to execute cooperative memorandums of understanding.

II. Purpose of MOU. The City constructed a fiber optic network. The capacity of the network the City installed substantially exceeded the City’s need with the intent of sharing access with other local governmental entities. The purpose of this MOU is to define the obligations of the parties for the connection and sharing use of the City’s fiber optic network, (“Network”), in exchange for the sharing of information such as GIS data and property records.

III. County’s Responsibilities.

- a. County shall be responsible for the total cost for the purchase, maintenance, modification and installation of lines to access points in the City’s network and other material needed to connect to the Network.
- b. County shall be responsible for paying for and overseeing the installation and connection of the County lines to the Network.
- c. County shall return any property owned by the City that the County disturbs to substantially the same condition as it was prior to the County’s installation of its lines.
- d. County shall be responsible for the cost of the County’s use of the Network.

IV. City’s Responsibilities.

- a. City shall provide access to its property and Network to permit the County to install and connect its lines to the access points of the City’s Network.
- b. City shall furnish to the County written and tangible material known by the City to be in its possession concerning conditions above or below ground at the site of the installation of the lines. Such written and tangible material is furnished by the City only in order to make disclosure of such material in the possession of the City and for no other purpose.
- c. The City shall provide the County sole exclusive use of one pair of the fiber optic Network and access to another pair to be shared with other local governmental entities and public school systems.
- d. City shall be responsible for the cost of its use of the Network.

V. Term. The Term of this MOU shall be for a 5-year term and shall extend from the date this MOU is fully executed to the fifth year anniversary of the execution. This MOU may not be extended unless agreed in writing by the parties. To be effective, any extension must be approved by the County’s attorney for form and signed by the County Mayor and must be approved by the City’s attorney for form and signed by the City Mayor. In no event shall the term of the MOU extend beyond which is permissible under Tennessee Law.

VI. Termination. This MOU may be terminated upon the occurrence of any of the following:

- a. Should either party fail to fulfill in a timely and proper manner its obligations under this MOU, or if a party should violate a material term of this MOU, the non-breaching party or parties shall provide the breaching party with written notice of the breach. The breaching party will then have 30 calendar days from the receipt of the notice to cure the breach.

Should the breaching party be unable to cure the breach within 10 calendar days then both parties may agree in writing to a reasonable extension to cure the breach at the discretion of the non-breaching party. Should the breaching party fail to cure the breach, the non-breaching party may terminate this Agreement. Such termination shall not relieve the breaching party of any damages sustained to the non-breaching party;

- b. Either party may terminate this MOU for convenience by providing a minimum of 365 days' written notice to the other party.
- c. This MOU may be terminated at any time if agreed upon in writing by both parties.
- d. Should the MOU be terminated, the County shall have the option to disconnect and remove the County's lines at the County's cost.

VII. Miscellaneous Terms.

- a. Compliance with Laws. The parties agree to comply with all applicable federal, state and local laws and regulations.
- b. Notice. Except as otherwise provided herein, any notice or other communication between the parties hereby regarding the matters contemplated by this MOU may be sent by United States mail (first class, airmail or express mail), commercial courier, facsimile or electronic mail, in each case delivered to the address set forth below for the recipient. Communications shall be deemed received, if by mail, on the earlier of receipt or the third calendar day after deposit in the mail with postage prepaid; if by courier, when delivered as evidenced by the courier's records; if by facsimile, upon confirmation of receipt by the sending telecopier; and if by electronic mail, when first available on the recipient's mail server. If received on a day other than a business day, or on a business day but after 4:30 p.m., recipient's local time, the communication will be deemed received at 9:00 a.m. the next business day.
- c. Addresses.
 - i. If to County:

Williamson County Mayor's Office
1320 West Main Street, Suite 125
Franklin, Tennessee 37064
 - ii. If to City:

City of Franklin
109 Third Avenue South
PO Box 305
Franklin, TN 37064
- d. Modification of Contract. This MOU may be modified only by written amendment executed by all parties and their signatories hereto.
- e. Discriminatory Practices. The parties shall not subscribe to any policy or practice which permits or allows the refusal of services to individuals in need due to the individual's race, creed, color, national origin, age, sex or which is in violation of any applicable laws.
- f. Relationship between the Parties. The relationship of the parties shall be that of an independent contractor. No principal-agent or employer-employee relationship is created by this MOU. No party shall become liable for any representation, act or omission of any other entity contrary to the terms of this paragraph. Each entity shall maintain its own identity in providing services. Each entity is separately responsible for establishing its own policies and financing its own activities.
- g. Nature of Memorandum of Understanding. The City and County expressly acknowledge and agree that this MOU sets forth the terms and conditions governing the role and responsibilities of each party.
- h. Severability. If any provision of this MOU is held illegal or unenforceable in a judicial proceeding, such provision shall be severed and shall be inoperative, and, provided that

the fundamental terms and conditions of this MOU remain legal and enforceable, the remainder of this MOU shall remain operative and binding on the parties.

- i. Required Approvals. Each party shall be responsible for receiving all approvals from the appropriate bodies prior to executing this MOU.
- j. Miscellaneous. Each party shall be liable for its actions as well as the actions of the respective party's employees, volunteers, agents, or officers. Neither party to this MOU has the authority to act on behalf of the other party or bind the other party to any obligation. This MOU is not intended to be enforceable in any court of law or dispute resolution form. The remedy for non-performance under this MOU shall be termination of this MOU.

IN WITNESS WHEREOF, the parties have executed this MOU on the _____ day of _____, 2012.

<p>WILLIAMSON COUNTY</p> <p>By: _____ Mayor Rogers Anderson</p> <p>APPROVED AS TO LEGALITY AND FORM:</p> <p>_____ Williamson County, Tennessee County Attorney</p>	<p>CITY OF FRANKLIN</p> <p>By: _____ Mayor Ken Moore</p> <p>Attest:</p> <p>By: _____ Eric S. Stuckey, City Administrator</p> <p>APPROVED AS TO LEGALITY AND FORM:</p> <p>_____ City of Franklin Attorney</p>
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