



MEMORANDUM

January 11, 2013

TO: Board of Mayor & Aldermen

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

SUBJECT: City of Brentwood Request for Fiber Optic Service

Purpose

The purpose of this memorandum is to provide information to the Board of Mayor and Aldermen (BOMA) to consider an agreement with the City of Brentwood for access to the City of Franklin fiber network at their facility on General George Patton Drive in Brentwood, TN 37027.

Background

The City of Brentwood Information Technology Department wants to attach their City facility at 1750 General George Patton Drive to the City of Franklin's existing fiber network. The City of Franklin will own the network and control all aspects of the system. Brentwood will only manage their segment at their facility. The purpose of the agreement is to improve communication connectivity between Brentwood and Franklin.

Financial Impact

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

Options

The Board can approve, reject, or modify the proposed agreement.

Recommendation

Approval of the proposed agreement with the City of Brentwood is recommended.

**Interlocal Agreement
Between the City of Brentwood and the City of Franklin
COF Contract #2012-0200**

THIS Interlocal Agreement, (“Agreement”), is entered into by and between CITY OF BRENTWOOD, (“COB”), and the CITY OF FRANKLIN, (“COF”), for mutual cooperation between the two entities to share access between both fiber optic networks.

I. **Parties.** The COB and COF are Tennessee governmental entities and as such are authorized to execute cooperative agreements.

II. **Purpose of Agreement.** The COF and COB have constructed fiber optic networks. The capacities of the networks were built to exceed initial needs with the intent of sharing access with other local governmental entities. The purpose of this Agreement is to define the obligations of the parties for the connection and sharing use of the fiber optic network.

III. **COB’s Responsibilities.**

- a. COB shall provide access to its property and permit the COF to install and connect its lines to the access points of the COB’s Network located at 1750 General George Patton Drive, Brentwood, TN 37027.
- b. COB shall furnish to the COF written documentation for the site of the fiber connections.
- c. The cost of the installation shall be divided equally between COB and COF.
- d. COB shall be responsible for paying for any consulting or programming of the COB’s switching or routing equipment necessary for the connections to function properly.
- e. COB shall be responsible for the cost of the COB’s use of the Network.

IV. **COF’s Responsibilities.**

- a. COF shall provide access to its property and permit the COB to install and connect its lines to the access points of the COF’s Network.
- b. COF shall furnish to the COB written documentation for the site of the fiber connections.
- c. The cost of the installation shall be divided equally between COB and COF.
- d. COF shall be responsible for paying for any consulting or programming of the COF’s switching or routing equipment necessary for the connections to function properly.
- e. The COF shall provide the COB 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.
- f. COF shall be responsible for the cost of its use of the Network.

V. **Term.** The Term of this Agreement shall be in effect until such time that either party wishes to terminate the contract.

VI. **Termination.** This Agreement 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 Agreement, or if a party should violate a material term of this Agreement, the non-

breaching party or parties shall provide the breaching party with written notice of the breach. The breaching party will then have thirty (30) calendar days from the receipt of the notice to cure the breach. Should the breaching party be unable to cure the breach within thirty (30) 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 Agreement for convenience by providing a minimum of ninety (90) days' written notice to the other party.
- c. This Agreement may be terminated at any time if agreed upon in writing by both parties.

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 Agreement 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 COB:

City of Brentwood
Attention: Technology Director
5211 Maryland Way
PO Box 788
Brentwood, Tennessee 37024
Fax: 615-371-2288
email: Tech@Brentwood-tn.org

- ii. If to COF:

COF of Franklin
Attention: Fred Banner, Director of MIT
109 Third Avenue South
PO Box 305
Franklin, TN 37064

email: fredb@franklintn.gov

- d. Modification of Contract. This Agreement 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 Agreement. 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 Agreement. The COF and COB expressly acknowledge and agree that this Agreement sets forth the terms and conditions governing the role and responsibilities of each party.
- h. Severability. If any provision of this Agreement 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 Agreement remain legal and enforceable, the remainder of this Agreement 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 Agreement.
- 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 Agreement has the authority to act on behalf of the other party or bind the other party to any obligation. This Agreement is not intended to be enforceable in any court of law or dispute resolution form. The remedy for non-performance under this Agreement shall be termination of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Interlocal Agreement on the _____ day of _____, 2013.

City of Brentwood

City of Franklin

By: _____
Paul L. Webb, Mayor

By: _____
Mayor Ken Moore

Attest:

Attest:

By: _____
Deborah Hedgepath, City Recorder

By: _____
Eric S. Stuckey, City of Franklin Administrator

APPROVED AS TO LEGALITY AND FORM:

APPROVED AS TO LEGALITY AND FORM:

Roger A. Horner
City of Brentwood
City Attorney

Shauna R. Billingsley
City of Franklin
City Attorney