

INTERLOCAL COOPERATIVE AGREEMENT
BETWEEN
THE CITY OF KENNEWICK AND PUBLIC UTILITY DISTRICT NO. 1 OF BENTON COUNTY
FOR ADVANCED WIRELESS AND BROADBAND TELECOMMUNICATIONS TECHNOLOGY
COLLABORATION
CONTRACT # #19-46-09

THIS INTERLOCAL AGREEMENT is entered into this 20th day of ~~July~~ ^{August}, 2019, between the City of Kennewick, Washington, a Washington Municipal Corporation, hereinafter "City" and Public Utility District No. 1 of Benton County, a Washington Public Utility District, hereinafter "PUD," collectively referred to as "Parties" and individually as "Party".

WHEREAS, the Parties are, pursuant to Chapter 39.34 RCW (the Interlocal Cooperation Act) authorized to exercise their powers jointly, thereby maximizing their ability to provide services and facilities which will best fulfill common needs of the Parties; and

WHEREAS, the City has a desire to utilize high-speed broadband communications capability for the purposes of traffic control; and

WHEREAS, the demand for access to mobile data continues to grow each year; and

WHEREAS, the desire for wireless connectivity is driving demand for wireless networks with greater coverage and capacity; and

WHEREAS, advanced wireless technology and systems being planned by private and public entities will require a significant increase in the density of radio equipment and related facilities; and

WHEREAS, access to public rights-of-way and facilities will be essential to the deployment of advanced wireless systems; and

WHEREAS, City street light poles and PUD power poles are expected to play a major role in advanced wireless system deployments; and

WHEREAS, the City and PUD will be required to process agreements and permits to enable advanced wireless system deployments by multiple private and public entities; and

WHEREAS, the anticipated high volume and desired rapid deployment of advanced wireless infrastructure will require improved planning, permitting and construction processes in order to

best balance the interests of wireless service providers, citizens of Kennewick, the City and PUD; and

WHEREAS, the community will benefit from further economic development capability due to the availability of high-speed cellular data services; and

WHEREAS, the PUD owns and operates a wholesale broadband business which includes fiber-optic and wireless networks deployed in the City and throughout Benton County; and

WHEREAS, the PUD through a services agreement with Northwest Open Access Network (NoaNet) has established business relationships and operating capabilities with major cellular service providers; and

WHEREAS, these relationships and capabilities provide an opportunity to proactively work with cellular and other wireless service providers to facilitate early adoption of next generation mobile data capabilities to the benefit of our community; and

WHEREAS, a collaborative effort on the part of the City and PUD creates an opportunity to standardize approaches to design and permitting of advanced wireless infrastructure which will help ensure predictable and desirable outcomes for deployment of next generation mobile data capabilities in our community; NOW, THEREFORE,

In consideration of the foregoing recitals and the mutual covenants contained herein, the Parties agree as follows:

Section 1. Purpose. The purpose of this Agreement is to establish the respective roles of the Parties in the planning, permitting, standard adoption, and deployment of advanced wireless systems within the City of Kennewick.

Section 2. Designated Contacts. The designated contacts for the purposes of administration of this Agreement shall be:

CITY: Cary M. Roe P.E.
Public Works Director
1010 E. Chemical Drive
P.O. Box 6108
Kennewick, WA 99336-0108
(509)585-4292

PUD: Chris Folta
Director of Information Technology & Broadband Services
2721 West 10th Avenue
P.O. Box 6270
(509)582-1212

Section 3. Responsibilities of Parties.

3.1 The City and PUD shall:

- a. Meet periodically to discuss infrastructure planning to accommodate the deployment of advanced wireless and broadband telecommunications facilities to be located on City and PUD facilities within the City of Kennewick.
- b. Collaborate in the review and adoption of agency-specific infrastructure standards pertaining to placement, aesthetics, and structure mounting heights.
- c. Collaborate on the deployment and use of broadband telecommunication infrastructure to provide connectivity to the City's traffic control management system.

Section 4. No Third Party Rights. Except as expressly provided herein, nothing in this Agreement shall be construed to permit anyone other than the Parties hereto and their successors and assigns to rely upon the covenants and agreements herein nor to give any such third party a cause of action (as a third-party beneficiary or otherwise) on account of nonperformance hereunder.

Section 5. Modification. This Agreement may be modified only by written amendment signed by both Parties.

Section 6. Allocation of Liability/Indemnification.

- 6.1 Each of the Parties to this Agreement shall be solely responsible for the acts or omissions of its employees, agents and contractors.
- 6.2 Each Party shall indemnify and hold the other Party harmless from liability, obligation or claims arising solely from the negligent actions or omissions of the indemnifying Party, to the extent permitted by law. In the event the liability, obligation or claim arises from the joint action or inaction of the Parties, then each Party shall be responsible to the extent that its negligent action or inaction contributed to the liability, obligation or claim.
- 6.3 Each Party shall indemnify and hold the other Party harmless from any environmental claims and liabilities that derive from transport, installation, maintenance, use, ownership or decommissioning of the Parties' separate equipment and facilities, and will also indemnify each other for any such claims deriving from the Parties' individual transport, installation, maintenance, use, or decommissioning of Shared Property, to the extent otherwise allowed by law. The Parties shall defend and share equally in environmental claims or liability deriving from Shared Property for which neither Party has greater responsibility.

6.4 This section shall remain in effect beyond the termination of this Agreement.

Section 7. Insurance. The Parties recognize that each of them are insured to a sufficient level and with appropriate limits of liability through respective risk pools and will maintain insurance in the same coverage and amounts as each Party currently has coverage. If either Party makes changes that decrease the coverage or amounts of coverage, they shall notify the other Party in writing 60 days prior to the effective date of said change.

Section 8. Term of Agreement and Termination. This Agreement shall become effective upon full execution hereof and shall continue in perpetuity. Either Party may withdraw from this Agreement with ninety (90) days written notice to the non-withdrawing Party. Any liability or obligation incurred by the withdrawing Party prior to the date of withdrawal and not satisfied prior to the date of withdrawal shall remain in the obligation or liability of the withdrawing Party and must be satisfied within thirty (30) days from the date of withdrawal.

Section 9. Exchange of Information/Confidentiality.

9.1 The Parties may exchange information as needed to facilitate the collaborative efforts. To the extent the Parties have access to sensitive and confidential materials, including, but not limited to, attorney-client privileged documents, e-mails, and social security numbers, a Party shall not exchange that information if it would become a public record subject to disclosure. Employees of the Parties shall not disclose this information to any person without the prior written permission of the Party who maintains the information. This section shall remain in effect beyond the termination of this Agreement.

9.2 The records and documents with respect to all matters covered by this Agreement shall be available for inspection by either Party during the term of this Agreement and for three years after its termination.

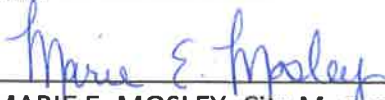
Section 10. No Separate Legal Entity. It is not the intention of the parties to create a separate legal entity to conduct the cooperative undertaking and none of the provisions of this Agreement should be construed as such. The acquiring, holding or disposing of real or personal property not otherwise described herein is not contemplated by or authorized by this Agreement.

Section 11. Severability. In the event any term or condition of this Agreement or application thereof to any person, entity or circumstance is held invalid, such invalidity shall not affect any other terms, conditions or applications of this Agreement which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this Agreement are declared severable.

Section 12. Entire Agreement. The Parties agree that this Agreement is the complete expression of its terms and conditions. Any oral or written representations or understandings not incorporated in this Agreement are specifically excluded.

IN WITNESS WHEREOF, the parties have signed this Agreement as of the 20th day of August ~~July~~ 2019.

CITY OF KENNEWICK



MARIE E. MOSLEY, City Manager

Public Utility District No. 1 of Benton County



CHAD BARTRAM, General Manager

Approved as to Form:



LISA BEATON, City Attorney