

March 11, 1998

Introduced By:

ROB MCKENNA
Kent Pullen

pj

Proposed No.:

98-109

MOTION NO. **10420**

A MOTION authorizing the Executive to enter into a multi-year interagency agreement among King County, the City of Seattle Department of Executive Services and the Seattle Public Library to share Internet access services for a period of one year to begin upon execution of the agreement.

WHEREAS, Internet access services can promote governmental efficiency; and

WHEREAS, it is less costly to share Internet access services than for separate agencies to individually contract for these services, and

WHEREAS, shared Internet access can enhance interagency communications;

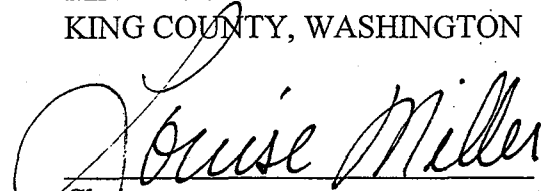
NOW, THEREFORE, BE IT MOVED by the Council of King County:

The King County executive is hereby authorized to execute an interagency

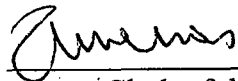
1 agreement for the sharing of Internet access for a term of one year from date of execution,
2 with the option to renew the agreement for four additional one year terms in accordance
3 with the terms set forth in Attachment A and subject to budget authorization.

4 PASSED by a vote of 12 to 0 this 16th day of March
5 1998.

6 KING COUNTY COUNCIL
7 KING COUNTY, WASHINGTON

8 
9 Chair

10 ATTEST:

11 
12 Clerk of the Council

13 Attachments: Interlocal Agreement for Sharing Internet Access

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**Interlocal Agreement
for Sharing Internet Access**

THIS INTER-LOCAL AGREEMENT is made this _____ day of _____, 1998, by and between the City of Seattle and King County, (hereinafter "Parties"):

WITNESSETH:

WHEREAS, the Parties need access to the Internet; and

WHEREAS, the Parties are willing, to the extent they may lawfully do so, and subject to the terms and conditions hereinafter set forth, to share access to the Internet; and

WHEREAS, the Parties recognize the benefits of such an arrangement and have agreed to the following terms and conditions, including sufficient consideration;

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the Parties to this agreement hereby agree and covenant as follows:

1. Purpose of Agreement

The purpose of this Agreement is to define the basis for sharing access to the Internet between the Parties in order to share the substantial cost savings and performance increases realized by pooling purchasing power and technical resources.

2. Principles

- A. The Parties to this Agreement are King County, the City of Seattle Department of Executive Services and the Seattle Public Library (hereinafter "City of Seattle"). The City of Seattle, through its Executive Services Department, shall be the Lead Party until such time as changed by the Operations Management Board. King County, the City of Seattle's Executive Services Department and the Seattle Public Library shall have an equal share in the Agreement. Additional Parties may be added, provided that all existing Parties agree to the addition. All Parties shall be public agencies.
- B. Arrangements for sharing Internet access shall be fair and equitable between the Parties. Generally, costs shall be shared equally between the Parties. Any special configuration requirements that are deployed to meet the requirements of a single Party shall be paid for by that entity.
- C. Parties shall have free and unrestricted access to the Internet; a Party shall not restrict access to the Internet Access Provider without written permission.
- D. Each Party shall have management responsibility for and control of its connection to the device (router) connected to the Internet Access Provider.
- E. No Party shall be responsible for data passing through the router connected to the Internet Access Provider. The router shall function as a pass-through device, effectively operating in the mode of a multiplexer. The Parties shall jointly monitor the amount of traffic passing through this device for the purpose of capacity planning and making any adjustments to cost allocation. No Party shall be responsible for monitoring content passing through this device.
- F. No Party shall resell services provided by the Internet Access Provider. Parties may allow the public, as well as public and/or educational agencies, to utilize their network(s) for Internet access as long as they are not acting as a reseller, and competing with the Internet Access Provider.

3. Incorporation of Internet Access Contract

The Party that contracts for the shared Internet Access Services shall be designated as the Lead Party. All rights and responsibilities, including service limitations agreed to by the Internet Access Provider(s), contained in any and all contract(s) for shared Internet access services shall apply to all Parties. Those contract(s) shall be incorporated by reference into this Agreement as applicable as if fully stated herein as Appendices.

4. Responsibility of the Lead Party

The Lead Party shall be responsible for the overall management, installation and maintenance or repair of the connection to the Internet Access Provider as the agent of all Parties. The Lead Party shall manage and enforce the terms of the contract(s) for Internet Access Services. Prior to executing any future agreement for shared Internet access with any Internet Access Provider or amending the existing agreement for Internet access, the Lead Party shall establish the process for procuring the Internet Access Provider.

5. Maintenance and Repair Responsibilities

Maintenance and repair of the connection to the Internet Access Provider shall be the responsibility of the Lead Party. Any changes to the configuration of the connection shall be reviewed and approved by the Operations Management Board prior to implementation, except in an emergency. The Parties shall be responsible for the expense of maintenance and repair of the equipment required to connect to the Internet Access Provider.

6. Service Interruptions

A. Unplanned

A service interruption is a condition which blocks the transmission of data between the gateway router shared by the Parties, and the router(s) at the site(s) of a Party. The Lead Party shall monitor such interruptions and, should they appear actually or potentially to be of more than momentary duration, take steps to correct the condition causing the transmission failure, as follows:

1. Contact the Party whose line is experiencing the condition
2. If, in the judgment of the Lead Party, the problem is such that a condition on the line of one Party immediately threatens the access of another Party, the Lead Party may unilaterally take steps to remedy the problem, including but not limited to shutting down the link on which the condition exists.
3. The Lead Party shall notify the Party whose link is shut down immediately, preferably prior to the shutdown. It shall be the top priority of the Lead Party to restore access to any Party whose link is shut down. Every reasonable effort will be taken by the Lead Party to restore service.
4. Any changes to the router configuration shall be approved by the Operations Management Board before the configuration change becomes permanent

B. Planned

The Lead Party shall notify all Parties of any planned outage notifications as received from the Internet Access Provider immediately upon receipt.

7. Operations Management Board

A. Membership

The Operations Management Board will have one voting member from the City Department of Executive Services, one voting member from the Seattle Public Library, and one voting member from King County.

B. Decision Mechanism

The Operations Management Board will make all decisions by consensus, so that all voting members must be in agreement in order to proceed.

C. Meetings

The Operations Management Board will meet at least once each quarter or more often as needed. Any Party may request a meeting at any time. Minutes will be kept, reviewed and published for each meeting.

D. Responsibilities

The Operations Management Board responsibilities include creation of initial configurations, and review and approval of any changes to:

- The shared router software;
- The shared router hardware;
- Maintenance contracts on hardware and software;
- Monitoring and reporting software;
- Monitor and report access and control; and
- Operations procedures and reporting rules.

The Operations Management Board responsibilities also include:

- Determination of which Party shall be the Lead Agency;
- Review and approval of any changes in who is the Lead Agency;
- Review and approval of any additions to the Parties included in the Internet Access Sharing Agreement;
- Review of all unplanned outages;
- Review and approval of any changes in the service from the Internet Access Provider; and
- Review and approval of any changes to the Internet Access Provider.

8. Financial Reimbursements and Other Payments to Be Provided to the Lead Party

All costs and expenses incurred by the Lead Party for installation, operation and management of the connection for the Internet Access Services will be shared equally among King County, the City of Seattle's Executive Services Department and the Seattle Public Library. Costs and expenses shall be actual and verifiable.

Costs for installation of the Internet Access Service shall be shared equally among King County, the City of Seattle's Executive Services Department and the Seattle Public Library. Installation costs include the equipment required for the connection to the Internet Access Provider's network and the installation charge specified in the contract with the Internet Access Provider. The cost for installation of the 22.1 Mbps service will be divided equally among King County, the City of Seattle's Executive Services Department and the Seattle Public Library and is \$10,017.92 for each entity.

The annual cost to King County, the City of Seattle's Executive Services Department and the Seattle Public Library for the 22.1 Mbps service from the Internet Access Provider plus Usenet News service is \$45,200 each plus sales tax. King County shall pay the annual cost each year. During the 1997 calendar year, King County shall pay a pro rated amount which shall be paid within thirty (30) days of receipt of the invoice from the City. If the Parties decide to migrate to a

BGP4/Autonomous Number System (ANS Routing), the cost for the installation by the Internet Access Provider is \$500.00.

Costs for the Internet Access Service, including any credits from the Internet Access Provider or charges for services performed for repairs or troubleshooting shall be shared equally.

9. Audit

The Lead Party shall permit Parties, or agent(s) thereof, from time to time including after the expiration or termination of this Agreement, to inspect and audit at any and all reasonable times in King County, or at such other reasonable location as mutually agreed to by the Parties, all pertinent books and records of the Lead Party, contractors or any other person or entity in connection or related to the Internet Access connection with respect to the services provided and costs and expenses.

10. Subject to Laws

This Agreement and any related agreements are subject to all applicable federal, state, and local laws, and regulations, rulings and orders of governmental agencies. If at any time during the term of this Agreement, the action of a governmental agency requires modification of terms and conditions of the Agreement in order to meet legal requirements, or renders performance by any Party unreasonable, the Parties will enter into negotiations to achieve an equitable adjustment of any increased costs or liabilities incurred by any Party as a result of such required modification.

11. Term

This Agreement shall become effective upon the execution of all Parties and at the time the Internet Access Service has been accepted by the Lead Party, and unless terminated in accordance with the provisions of Article 12. Termination. This Agreement shall continue in effect for a term of one year from date of execution, with the option to renew the Agreement for four additional one year terms. The Agreement shall be renewable by the written authorization of the Parties:

12. Termination

A. For Cause

Any Party may terminate this Agreement in the event that another fails to perform its obligations as described in this Agreement, and such failure has not been corrected within sixty (60) days after the non-performing Party has been notified in writing of its failure to perform.

B. For Non-Appropriation

If expected or actual funding is withdrawn, reduced or limited in any way prior to the termination date set forth in the Agreement or in any amendment hereto, the Parties may, upon written notice, terminate the Agreement in whole or in part. Such termination shall be in addition to the right to terminate for cause.

Payment shall not exceed the appropriation for the year in which termination is effected. If the Agreement is terminated for non-appropriation:

1. The terminating Party will be liable only for payment in accordance with the terms of the Agreement for services rendered prior to the effective date of termination; and
2. The other Parties shall be released from any obligation to provide further services pursuant to the Agreement.

Funding for the Agreement beyond the current appropriation year is conditional upon appropriation by the appropriate funding body of a Party of sufficient funds to support the activities described in the Agreement. Should such an appropriation not be approved, the Agreement will terminate at the close of the current appropriation year. The appropriation year ends on December 31 of each year.

13. Force Majeure

Any Party may suspend this Agreement without recourse by another where performance is rendered impossible or impracticable for reasons beyond such Party's reasonable control, such as, but not limited to: acts of nature, war or warlike operations, civil commotion, riot, labor dispute including strike, walkout, or lockout, sabotage, or superior governmental regulation or control.

Any Party may terminate its obligations under this Agreement if ordered to do so by the final order or filing of a court or other governmental agency or if such order or ruling would make it impossible for any Party to carry out its obligations under this Agreement.

14. No Waiver

No Party's review, approval, acceptance of, or payment for any of the services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement

Failure of a Party to insist upon strict performance or that Party's waiver of any of the terms, conditions, or obligations of this Agreement shall not be a waiver of any other term, condition, covenant or obligation, or of any subsequent default by breach of the same or other term, condition, covenant or obligation contained herein.

15. Severability

In the event any section, sentence, clause, or phrase of this Agreement is adjudicated to be invalid or illegal by a court of last resort and of competent jurisdiction, the remainder of the Agreement shall be unaffected by such adjudication and all other provisions shall remain in full force and effect as though the section, clause, or phrase so adjudicated to be invalid had not been included herein. The Parties agree to then negotiate in good faith the replacement section, sentence, clause, or phrase which is legal and most closely represents the original intent of the Parties.

16. Rights Cumulative

The rights and remedies of the Parties provided for under this Agreement are in addition to any other rights and remedies provided by law. The failure to exercise, on any occasion, any right shall not operate to forfeit such right on another occasion. The use of one remedy shall not be taken to exclude or waive the right to use another.

17. Headings

The titles of sections are for convenience only and do not define or limit the contents.

18. Applicability and Venue

This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington and venue of any action brought hereunder shall be in the Superior Court for King County.

19. Binding Effects

The provisions, covenants and conditions in this Agreement apply to bind the Parties, their legal heirs, representatives, successors, and assigns.

20. Assignment

No Party shall assign its rights or assign its duties under this Agreement without the prior written consent of the other Parties, which consent shall not be unreasonably withheld.

21. Notices

All notices and other materials to be delivered hereunder, shall be in writing and shall be delivered or mailed to addresses as identified in this Agreement.

22. Non-Exclusivity

This is a non-exclusive arrangement. Only public agencies shall be eligible for consideration as Parties.

23. Modification or Amendment

No modification to or amendment of the provisions of this Agreement shall be effective unless in writing and signed by authorized representatives of the Parties. The Parties expressly reserve the right to modify this Agreement, from time to time, by mutual agreement. All proposed amendments or modifications must be approved in writing by all of the Parties' voting members of the Operations Management Board. The Operations Management Board shall forward amendments or modifications for execution by those representatives of the Parties authorized to execute such amendments to this Agreement. The King County Executive or the King County Director of the Department of Information and Administrative Services are the only County officials authorized to execute any amendments to this Agreement. The Director of the Executive Services Department or its designee shall be the only officials of the City of Seattle authorized to execute any amendments to this Agreement.

24. Attorney Fees and Costs

In the event legal action is taken or commenced between the Parties hereto, declaratory or otherwise, for the enforcement of any of the covenants, terms, or conditions of this Agreement, the prevailing party shall be entitled to its costs and reasonable attorney fees as determined by the trial and appellate courts. Costs and reasonable attorney fees shall include, but not be limited to, reasonable attorneys fees, paralegal and legal support staff expenses, costs of arbitration, mediation, expert witnesses, exhibits, reasonable investigations, and reimbursement for all time, expense, and overhead of all prevailing party personnel or consultants assisting in the legal action or responding to or investigating a claim or demand.

25. Arbitration/Mediation

If a dispute arises out of or relates to this Agreement, or the breach thereof, and if said dispute cannot be settled through direct discussions, the Parties agree to first endeavor to settle the dispute in an amicable manner by mediation. Thereafter, any unresolved controversy or claim arising out of or relating to this Agreement, or breach thereof, may be settled by arbitration, and judgment upon the award

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rendered by the arbitrator may be entered in any court having jurisdiction thereof. Nothing in this paragraph precludes any Party from seeking relief from King County Superior Court at any time..

CITY OF SEATTLE:
Department of Executive Services

KING COUNTY

By

By

Title

Title

Date

Date

Approved as to form only:

Office of the Prosecuting Attorney