

CITY ATTORNEY MEMORANDUM TO CITY COUNCIL

To: City Council Members
FROM: Megan McCullough, City Attorney
Cc: City Administrator David Cameron, Mayor Matthew Russell
RE: Amendment to Agenda Item Number 10 (Ordinance 22-22)
DATE: 04/19/2022

On April 5, 2022, this Council took up for first read Ordinance No. 22-22, entitled "An Ordinance of the City Council Authorizing the City Administrator to Execute a Participation Agreement with City Utilities and Various Other Surrounding Communities as part of a Regional Broadband Initiative Dedicated to Extending Broadband High-Speed Internet Services to Republic and Surrounding Areas." Attached to Ordinance No. 22-22 was a proposed version of the agreement being considered for approval. Following that date, the parties to the agreement made a few minor revisions to include the addition of language clarifying circumstances under which the agreement would terminate and duties/compensation of the Custodian (Greene County), and other basic formatting adjustments. The changes made do not materially alter any of the substantive provisions previously considered by this Council on April 5, 2022.

Attached to this Memorandum is a copy of the revised/updated agreement with the changes shown in highlighted text for ease of review. The revised/updated agreement without highlights (clean copy) is attached to Ordinance No. 22-22, to be presented to the City Council for second read on April 19, 2022.

Signed:



A handwritten signature in blue ink, appearing to read 'Megan McCullough', is written over a horizontal line.

REGIONAL BROADBAND INITIATIVE
PARTICIPATION AGREEMENT

THIS AGREEMENT (“Agreement”) is made and entered into on this ____ day of _____, 2022 (the “Effective Date”), by and between the parties defined below (collectively referred to as “Parties”).

WITNESSETH:

WHEREAS, the Parties have determined that there is an opportunity to improve the local community’s health, safety, and welfare by combining efforts, funds, and opportunities to improve access to broadband high-speed internet throughout the region served by the Parties; and

WHEREAS, the Parties desire to continue these combined efforts through a Regional Broadband Initiative Board (“RBI Board”) and enter into this Agreement to provide for the terms and conditions necessary for the Parties to each participate in, and receive value from, the RBI Board.

NOW THEREFORE, in consideration of the foregoing and the mutual covenants and agreements herein contained, the Parties agree as follows:

1. Parties to the Agreement. The following entities are parties to this Agreement (in alphabetical order).

1.1 Christian County Missouri, by and through the Commissions of Christian County Missouri (“Christian County”).

1.2 City of Nixa, Missouri (“Nixa”).

1.3 City of Ozark, Missouri (“Ozark”).

1.4 City of Republic, Missouri (“Republic”).

1.5 City of Strafford, Missouri (“Strafford”).

1.6 City of Willard, Missouri (“Willard”).

1.7 Greene County Missouri, by and through the Commissioners of Greene County, Missouri (“Greene County”).

2. Purpose. The purpose of this Agreement is:

2.1 For the Parties to explore the possibility of jointly conducting, and cost sharing a broadband feasibility analysis (“Analysis”) for extension of broadband services to citizens within the municipal limits of Nixa, Ozark, Republic, Strafford, Willard, and unincorporated areas as determined by Greene County and Christian County.

2.2 For the Parties to create the RBI Board which shall facilitate the Analysis by, among other things, selecting a Consultant for the Analysis; and in the event the Analysis finds expanding broadband into these areas is feasible under such conditions as are acceptable to the Parties, to then manage and direct such expansions.

3. Term of the Agreement.

3.1 The initial term (“Initial Term”) of this Agreement shall begin as of the Effective Date of this Agreement and shall terminate on March 31, 2026.

3.2 Upon termination of the Initial Term, the Agreement shall automatically continue thereafter on a year-to-year basis until terminated. Any party may choose to withdraw by giving at least one (1) year advance written notice to all other Parties of their intent to terminate the Agreement.

3.3 Termination for Cause. The RBI Board, as described below, may remove any party upon the party’s failure to pay any cost assessment approved by the RBI Board.

4. RBI Board. The RBI Board will consist of seven members. Each Member will appoint one (1) designated primary member to the RBI Board. In addition to the appointment of a designated primary member, each of the Members shall appoint an authorized designated alternative representative who shall be authorized to act in the absence of the designated primary member.

4.1 Each member shall have one (1) vote on the RBI Board.

4.2 A quorum shall consist of half the Members plus one (1).

4.3 Decisions of the RBI Board require at least four (4) affirmative votes of the Members, regardless of the size the quorum present at the time of the vote, except those decisions to expend funds will require five (5) affirmative votes regardless of the size of the quorum present at the time of the vote.

4.4 The Members shall select one of the Members to serve as chairperson, and one to serve as vice-chairperson (who shall serve in the absence of the elected chairperson), each for a term of one (1) year. The chairperson and vice-chairperson shall rotate among the Members. The chairperson and the vice-chairperson shall have the same voting rights as the other Members but shall have no other special voting rights additional to or different from the other Members.

4.5 The RBI Board’s responsibilities and authority shall include:

4.5.0 Establishing bylaws and administrative guidelines for the RBI Board, but limited to the scope of purpose and authority provided in this Agreement.

4.5.1 Selecting a consultant to perform the Analysis.

4.5.2 Developing and approving the Analysis.

4.5.3 Determining appropriate actions in response to the results of the Analysis.

4.5.4 Scheduling and participating in meetings no less than four (4) times per year.

5. Consultant Selection.

5.1 The RBI Board will review qualified consultants to perform the Analysis which will be provided by City Utilities of Springfield, Missouri, pursuant to separate contract.

5.2 Should, after review of the consultants, the RBI Board approve proceeding with the Analysis, the RBI Board will select a consultant to assist it with the project and take appropriate action thereafter.

6. Cost Allocation.

6.1 For the work performed by the Consultant, for the cost of the Analysis, and costs identified in Paragraph 13 of this Agreement, each of the Parties will pay a pro rata percentage identified in Exhibit A.

6.2 Termination:

6.2.0 Any Party may terminate their participation in the RBI Board, and the fiber expansion project within thirty days of a cost analysis submitted to it by the Consultant (or any subsequent amendment to the cost analysis), if it feels, in its sole discretion, the cost exceeds its available funds for the project. In the event that less than 5 parties remain on the RBI Board, this Agreement shall automatically be terminated, and the RBI Board shall be dissolved.

6.2.1 Non-Appropriation. In the event no funds are appropriated for this agreement, any member who is a public entity pursuant to Missouri Law, will have the right in any given fiscal year to terminate this contract without penalties of any sort. Notice of non-appropriate must be given to all other parties within fifteen (15) days of the failure to appropriate said funds. Said termination shall be effective on the first day of the member's fiscal year following notice of failure to appropriate.

6.2.2 Any such Party terminating participation will be responsible for all costs incurred prior to their termination.

6.3 In the event a Party to this Agreement terminates its participation pursuant to the terms of this Agreement permitting such termination, the amounts in Exhibit A will be recalculated to reflect each remaining Party's pro-rata share. The parties understand that if a party

terminates their participation, it is expected that the total cost of the project will be reduced, as the estimated cost of the project consists of, at least in large part, a per household analysis basis.

7. Force Majeure. In case any of the Parties to this Agreement should be delayed in or prevented from performing or carrying out any of the covenants or obligations made by and imposed upon said party by this Agreement by reason of Force Majeure, then in such case or cases, the Parties shall be relieved of performance under this Agreement except for the obligation to pay for services already received under this Agreement, and shall not be liable to any other party for or on account of any loss, damage, injury, or expense resulting from or arising out of such delay or prevention; provided, however, that the party suffering such delay or prevention shall use due or practicable diligence, to remove the cause or causes thereof; and provide, further, that neither party shall be required by the foregoing provisions to settle a strike except when, according to its own best judgment, such a settlement seems advisable. The term "Force Majeure" shall be any cause not reasonably within the control of the party claiming Force Majeure, not attributable to such party's neglect, including, but not limited to, the following: strikes, stoppages in labor, failures of contractors or suppliers of materials, unavailability of a fuel or resource use in connection with the generation of electricity, riots fires, floods, ice, invasions, civil wars, commotion insurrections, military or usurped power, order of any court granted in any bona fide adverse legal proceeding or action, order of any civil or military authority explosion, act of God or the public enemies, sabotage, or orders or permits, or the absence of the necessary order or permits, of any kind which have been properly and timely applied for from the government of the United States of America, or any political subdivision thereof.

8. Choice of Law and Venue. This Agreement shall be governed by and construed in accordance with Missouri law. Venue shall be proper in accordance with Missouri law.

9. Entire Agreement. This Agreement constitutes the entire Agreement between the Parties relating to the subject matter hereof and supersedes any other agreements, written or oral, between the Parties concerning such subject matter.

10. Modification. No modification of the terms and provisions of this Agreement shall be or become effective except by written amendment executed by the Parties.

11. Notices. All written notices under this Agreement shall be deemed properly sent if delivered in person, registered or certified mail, return receipt requested, postage prepaid to the persons specified below:

Christian County:
Attn: Christian County
Commission
100 W. Church # 304
Ozark, MO 65721

City of Nixa:
Attn: City Administrator
715 W. Mt Vernon Street
Nixa, Mo 65714

City of Ozark:
Attn: City Administrator
205 N. 1st Street
Ozark, Mo 65721

City of Republic:
Attn: City Administrator
213 N. Main Street
Republic, Missouri 65738

City of Strafford:
Attn: City Administrator
126 Washington St
Strafford, Missouri 65757

City of Willard:
Attn: City Clerk,
224 West Jackson St
Willard Missouri, 65781

Greene County:
Attn: Chris Coulter, County
Administrator
Greene County Commission
1443 N. Robertson Ave., 10th
Floor
Springfield, Missouri 65802

Courtesy Copy to:
N. Austin Fax
Lowther Johnson Attorneys at
Law, LLC
901 E. St. Louis St., 20th
Floor,
Springfield, MO 65806

12. Authority. Each party represents that it has the necessary corporate, legal, and regulatory authority to enter into this Agreement and to perform each and every duty and obligation imposed therein. Each individual affixing a signature to this Agreement represents and warrants that he or she has been duly authorized to execute this Agreement on behalf of the party he or she represents, and that by signing the Agreement, a valid, binding and enforceable legal obligation of said party has been created.

13. Public Body. The Parties recognize that the RBI Board is a public governmental body subject to the Missouri Sunshine Law. All records created by the RBI Board shall be provided to Greene County and the Greene County Clerk shall be appointed custodian of records for the RBI Board. Custodian of Records shall be entitled to repayment of reasonable costs expended in connection with their duties as required by this agreement. The RBI Board will appoint a clerk who shall be responsible for ensuring compliance with the Missouri Sunshine Law including but not limited to providing records to the Custodian of Records and posting meeting notices on behalf of the RBI Board.

**REMAINDER OF PAGE INTENTIONALLY
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SIGNATURE PAGE FOLLOWS**

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed by its duly authorized representative.

Christian County Commissioner

By: _____

Name: _____

Title: _____

Christian County Commissioner

By: _____

Name: _____

Title: _____

Christian County Commissioner

By: _____

Name: _____

Title: _____

Attest:

Kay Brown, Christian County Clerk

Auditor Certification

I certify that the expenditure contemplated by this document is within the purpose of the appropriation to which it is to be charged and that there is an unencumbered balance of anticipated revenue appropriated for payment of same.

Amy Dent, Christian County Auditor

Approved as to Form:

By: _____
Christian County Counselor

City of Nixa

By: _____

Name: _____

Title: _____

Approved as to Form (City of Nixa)

By: _____

Name: _____

City of Ozark

By: _____

Name: _____

Title: _____

Approved as to Form (Ozark)

By: _____

Name: _____

City of Republic

By: _____

Name: _____

Title: _____

Approved as to Form (City of Republic)

By: _____

Name: _____

City of Strafford

By: _____

Name: _____

Title: _____

Approved as to Form (City of Strafford)

By: _____

Name: _____

City of Willard

By: _____

Name: _____

Title: _____

Approved as to Form (City of Willard)

By: _____

Name: _____

Greene County Commissioner

By: _____

Name: _____

Title: _____

Greene County Commissioner

By: _____

Name: _____

Title: _____

Greene County Commissioner

By: _____

Name: _____

Title: _____

Attest:

Approved as to Form:

Shane Schoeller, Greene County Clerk

By: _____

Greene County Counselor

Auditor Certification

I certify that the expenditure contemplated by this document is within the purpose of the appropriation to which it is to be charged and that there is an unencumbered balance of anticipated revenue appropriated for payment of same.

Cindy Stein, Greene County Auditor

EXHIBIT A
Cost share

For the work performed by City Utilities, each Partner will pay to City Utilities the amount shown as their proportional share on Exhibit A under the column titled “%of \$20K NTE” except that:

- Christian County will also be responsible for paying the shares of the following cities: Fremont Hills, Sparta, Saddlebrook, Highlandville, Clever and Billings; and
- Greene County will also be responsible for paying the shares of the following cities: Walnut Gove, Ash Grove, Fair Grove, Rogersville and Battlefield.

County	Address (Count)	% of total	% of \$20K NTE
Greene County	41,717	42.42%	\$ 8,484.84
Christian County	16,972	17.26%	\$ 3,451.94

Municipalities	Address (Count)	% of total	
Willard	2,174	2.21%	\$ 442.17
Walnut Grove	379	0.39%	\$ 77.09
Ash Grove	717	0.73%	\$ 145.83
Fair Grove	820	0.83%	\$ 166.78
Rogersville	48	0.05%	\$ 9.76
Strafford	1,119	1.14%	\$ 227.59
Republic**	7,482	7.61%	\$ 1,521.77
Battlefield*	2,437	2.48%	\$ 495.66
Fremont Hills	458	0.47%	\$ 93.15
Nixa	10,441	10.62%	\$ 2,123.60
Sparta	908	0.92%	\$ 184.68
Saddlebrooke	160	0.16%	\$ 32.54
Ozark	10,218	10.39%	\$ 2,078.24
Highlandville	484	0.49%	\$ 98.44
Clever	1,210	1.23%	\$ 246.10
Billings	589	0.60%	\$ 119.80
Total:	98,333	100.00%	\$ 20,000.00

* A part of Battlefield is already served by City Utilities for broadband services

** A small part of Republic is in Christian County