

**Connectivity Services Agreement
With Community Anchor Institution(s)
For Broadband Services
At Co-location Service Site(s)**

This Agreement, entered into by and between:

1. **COUNTY of Anoka** (Anoka County), 2100 Third Avenue North, Anoka, Minnesota 55303; and
2. _____, (Entity), _____, _____, Minnesota, 55____.

WHEREAS, ZAYO Bandwidth LLC (ZAYO) was recently awarded a grant from the National Telecommunications and Information Administration (NTIA) which is to be combined with matching funds from ZAYO and Anoka County to build a fiber optic network in Anoka County to provide high-speed broadband services to Community Anchor Institutions; and

WHEREAS, Anoka County has recently entered into a Master Fiber Indefeasible Right of Use (IRU) Agreement and a Wholesale Master Service Agreement with ZAYO in order to facilitate the purposes of the grant obtained by ZAYO; and

WHEREAS, Anoka County and ZAYO have identified multiple Community Anchor Institutions to be connected by the Core Backbone and Distribution Network which will comprise the fiber optic network; and

WHEREAS, Anoka County desires to arrange for co-location service sites at various Community Anchor Institutions which have been identified for the purposes of building the fiber-optic network; and

WHEREAS, Connectivity Services will become available to each of the Community Anchor Institutions at the co-location service sites as a result of the fiber-optic network built by Anoka County and ZAYO; and

WHEREAS, the Community Anchor Institutions will have the option of accepting Connectivity Services initially, or allowing the equipment to be installed and reserving the acceptance of Connectivity Services until a later time; and

WHEREAS, Entity is a community anchor institution which owns, leases, controls, rents or administers a designated co-location service site; and

WHEREAS, it is in the interest of Entity to work together with Anoka County to facilitate ZAYO in building the fiber optic network.

NOW, THEREFORE, the parties hereto agree as follows:

I. DEFINITIONS

That the parties agree the following definitions for terms used in this Agreement:

- a) Community Anchor Institutions: quasi-government, government, educational and public safety institutions.
- b) Co-location service sites: designated physical sites located in various Community Anchor Institutions located in and around Anoka County. (See Attachment A.)
- c) ZAYO System: an integrated multi-cable, multi-ring fiber optic communication system comprised of cables and ducts, lateral connections, and the manholes and handholds located therein, and related equipment required to provide Connectivity Services as provided through the NTIA grant.
- d) Connectivity Services: As described in Article V.
- e) Underlying Rights: all deeds, IRUs, (exclusive or non-exclusive) easements, rights-of-way agreements, licenses, grants, contracts and other rights, titles and interests to use real property of any third person, which are reasonably necessary for the construction, placement, location, installation, operation, use, IRU, rental, maintenance, repair or replacement by ZAYO or Anoka County, as the case may be, of the ZAYO System, Ducts, County Equipment, Cable or County Dark Fibers.
- f) IRU: Indefeasible Right of Use.
- g) Equipment: electronics, optronics, and other devices as necessary to deliver the Connectivity Services.
- h) Permitted use: Connectivity services shall only be used by Community Anchor Institutions for quasi-governmental, governmental, educational or public safety purposes and shall not be used to directly or indirectly compete with ZAYO.
- i) ZAYO Staff: Employees, consultants, and other sub-contractors working under the direction of ZAYO to install and support the ZAYO System.

II. SCOPE OF SERVICES

A. Anoka County will provide, through its contract with ZAYO, Connectivity Services to Entity through the fiber optic network built by ZAYO. Once the fiber optic network is built and the system is installed in the various co-location service sites,

Anoka County, through its agreement with ZAYO, its successors and/or assigns, will provide ongoing support for the provision of Connectivity Services to Entity. Only site locations identified with fee amounts on Attachment A will receive Connectivity Services. Any mutually agreed changes to Connectivity Services will require a modification to Attachment A pursuant to section XII.

B. Entity shall provide space for a co-location service site where ZAYO, on behalf of Anoka County, can install equipment to be connected to the ZAYO system in order to build the Fiber Optic network. Entity shall provide Underlying Rights to the co-location site to Anoka County for the purpose of building the Fiber Optic network to the point of demarcation.

C. Nothing in this agreement affects Entity's cable franchising authority.

III. COSTS AND COMPENSATION

A. A. To the extent that Connectivity Services are used by Entity, Entity will pay Anoka County a monthly fee as detailed in Attachment A. Fees reflect the actual costs to provide the Connectivity Services. For entities receiving connectivity services, the initial fee is established at \$75.00 per month per site for 100 mbps and \$400.00 per month per site for 1 gbps. Fees will be periodically reviewed to reflect current costs, but will not be modified without the agreement of both parties. Initially the fees will primarily be used to pay the proportionate share of the county's match to the project. Once the proportionate share of this match is recovered, it is expected the fee amount will decrease if other factors remain constant. Fees will be invoiced starting the month following when Connectivity Services begin. Entity will provide payment within 30 days of receipt of an invoice. Nonpayment shall be grounds for default.

B. Entity shall not charge Anoka County, or ZAYO through Anoka County, for the Underlying Rights in the co-location site used by Anoka County and ZAYO to build the Fiber Optic Network. Additionally, Entity shall not charge rent, access fees, lease payments, or any other fee to Anoka County or ZAYO for the co-location space provided for the installation and housing of Equipment provided for connectivity service for Entity.

IV. PHYSICAL ACCESS TO CO-LOCATION SITE

A. Entity shall provide co-location space at co-location service sites indicated on Attachment A where ZAYO, on behalf of Anoka County, can install Equipment to provide services. Security shall be maintained at the site as indicated in Attachment B. Entity shall provide adequate power and temperature control as may be further detailed on the service order Attachment B. Entity shall provide all Underlying Rights and rights of access necessary for ZAYO to enter the premises and to construct and maintain fiber connections across the co-location service site whether the site is owned, leased, rented or administered by Entity.

B. ZAYO, on behalf of Anoka County, shall provide, install, maintain, repair, operate and control its Equipment, as necessary. Unless specifically provided in Attachment A, there shall be no cost to Entity for the purchase and/ or installation of the ZAYO Equipment. Any ZAYO Equipment shall be maintained and replaced at no expense to Entity until the earlier of August 17, 2017, or this contract is otherwise terminated. Thereafter, if the ZAYO Equipment deteriorates, or no longer supports the provisioning of services, Entity agrees that it shall pay the prorata costs incurred in the replacement of such ZAYO Equipment.

C. ZAYO, through Anoka County, may request permission to place additional ZAYO Equipment at the co-location service site identified in Attachment A to solely service commercial customers. If Entity elects to allow such installation for commercial service at the co-location service site, ZAYO shall pay to Entity \$250 per month for the first device, and \$100 per month for each additional device. No co-location fees will apply if ZAYO Equipment used to provide services to Entity and to Anoka County if such ZAYO Equipment is also used to serve a commercial customer.

D. The ZAYO Equipment shall remain the sole and exclusive property of ZAYO, and nothing contained herein shall give or convey to Entity any right, title or interest whatsoever in the ZAYO Equipment. The ZAYO Equipment shall remain personal property, notwithstanding that it may be or become attached to, or embedded in, realty. The ZAYO Equipment shall not be considered a fixture of that real property.

Neither Anoka County nor Entity shall tamper with, remove or conceal any identifying plates, tags, or labels identifying ZAYO's ownership interest in the ZAYO Equipment.

E. Equipment and service beyond the point of demarcation and/or interconnection between ZAYO's facilities and Entity terminal Equipment and the wiring at the point of demarcation shall be the responsibility of the Entity.

F. Entity shall provide access to ZAYO on behalf of Anoka County to provide services for purposes of installation, maintenance and repair of ZAYO Equipment. ZAYO, on behalf of Anoka County, shall restrict access to the co-location site space to authorized ZAYO staff. ZAYO staff shall abide by any physical security requirements provided to ZAYO in writing. ZAYO shall make reasonable attempts to provide at least two days notice prior to entering the co-location site to install, maintain, or repair any of the ZAYO Equipment. If it is not reasonably possible to provide such notice, or in an emergency, ZAYO shall provide notice as soon as practicable, but in all events prior to entering the co-location site. See Attachments B and D.

G. If Entity provides its own Equipment, Anoka County, or ZAYO on Anoka County's behalf, shall have no obligation to install maintain or repair the Equipment. If, on responding to an Entity initiated service call, Anoka County, ZAYO and Entity jointly determine that the cause of the service delinquency was a failure, malfunction or the inadequacy of Entity's Equipment, Entity shall compensate Anoka County/ZAYO for ZAYO's actual time and materials expended during the service call.

H. Neither party shall adjust, align, attempt to repair, relocate or remove the other party's Equipment, or ZAYO's Equipment, except as expressly authorized in writing by the other party or ZAYO.

I. Prior to any installation of the SYSTEM, ZAYO will submit to Entity entrance and construction plans specifying the location, construction and method of installation related to the System. Entity shall respond to the plans with any objections as soon as reasonably possible, but in any event no later than 60 days. Entity shall immediately provide notice to ZAYO of known asbestos or other hazardous substances, pollutants or contaminants as defined by the Comprehensive Environmental Response

Compensation and Liability Act (CERCLA), Title 42, U.S. Code, or similar state or federal law.

J. Entity shall provide to Anoka County 24-hour contact information for the purpose of gaining co-location service site access. This information shall be used for both business hour and non-business hour services access. Entity will review and update the information provided as needed, but at least on an annual basis. See Attachment D.

K. Entity shall not arbitrarily or capriciously require ZAYO to relocate ZAYO Equipment. However, upon ninety (90) days written notice, or, in the event of any emergency, Entity may require ZAYO to relocate co-located ZAYO Equipment; provided, however, the site of relocations shall afford comparable environmental conditions for the ZAYO Equipment and a comparable accessibility to the ZAYO Equipment.

V. CONNECTIVITY SERVICE LEVEL REQUIREMENTS

A. Anoka County, through its agreement with ZAYO, shall provide Connectivity Services to Entity at the capacity level indicated in Attachment A. Any upgrades to service will be dependent on costs of Equipment, fees to ZAYO, capacity limitations of the network, and other relevant factors. Entity recognizes that the network has a total bandwidth of 10GB on the core ring and 1GB on distribution rings and distribution laterals. This total capacity is shared among other Community Anchor Institutions which are part of this project. Entity agrees to work with Anoka County to manage bandwidth and equitably resolve capacity issues on the network.

B. Dark fibers will be installed at each co-location service site as indicated in Attachment A. These dark fibers will be terminated at the site and are reserved for future use. This agreement neither contemplates nor conveys to Entity present or future rights to the use of the dark fiber. Any future use will be by a separate agreement and at an additional cost.

C. Entity may use the network only to provide service to itself, and agencies and departments of the Entity in keeping with the Permitted Uses of this Agreement.

D. Transport Availability: The transport services being provided will meet or exceed 99.999% network availability for protected optical service, 99.99% for protected TDM based services such as DS3s and DS1s and 99.9% for unprotected services as measured on a monthly basis. If Network Availability is below the percentage above in two out of the three preceding calendar months not due to an Excused Outage, the same shall constitute an event of default hereunder.

E. Ethernet Availability: The Ethernet Services being provided will meet or exceed 99.9% network availability for unprotected service and 99.95% for protected service as measured on a monthly basis. If Network Availability is below 99.9% for unprotected circuits and 99.95% for protected circuits in two out of the three preceding calendar months not due to an Excused Outage, the same shall constitute an event of default hereunder.

F. Mean Time To Repair (MTTR): ZAYO's MTTR will be four hours for protected services and eight hours for unprotected services as measured on a monthly basis for outages of the services provided or any part of the services provided; for example an individual DS3 or group of DS3s. If ZAYO's MTTR for all protected services is greater than four hours in two out of the three preceding months not due to a Force Majeure Event such occurrence shall constitute an Event of Default on the part of ZAYO, on behalf of Anoka County, for the affected circuit.

VI. TERM

This Agreement will be for a period commencing on the date of signing by both parties, and continuing until August 16, 2015 (Initial Term), with up to a total of three (3) renewal periods of additional five (5) years terms (Renewal Terms) upon written amendment. Both parties shall provide written notice of intent to renew this agreement not less than one hundred eighty days (180) before the end of the Initial Term or Renewal Term. For purposes of this agreement, written notices shall be sent to the addresses of each of the Parties as indicated above. Upon the termination or expiration

of this Agreement, Anoka County shall have no further obligation to provide Services and no further liability to Entity. Upon termination or expiration of this agreement, ZAYO shall be provided a reasonable opportunity to retrieve its equipment from the co-location service site(s). Any underlying rights granted by the Entity under this Agreement shall terminate or expire with the Agreement without need for further action or notice by any party.

VII. INDEMNIFICATION

To the extent permitted by law, each party shall indemnify, defend and hold harmless the other party, its commissioners, council members, school board members, superintendents, directors, officers, employees and agents, successors and assigns, from all damages, costs, expenses and liabilities, including reasonable attorney's fees and disbursements, sustained in any action commenced by any third party in connection with the indemnifying party's performance of its obligations and duties under this Agreement except those damages, costs, expenses, and liabilities arising from the negligence or willful misconduct of the other party. The indemnified party shall promptly notify the other party in writing of any such law suit or claim.

Under no circumstances shall a party be required to pay on behalf of itself and other parties, any amounts in excess of the limits on liability established in Minnesota Statutes, Chapter 466, or any similar statutory limits on tort liability.

VIII. INSURANCE

During the Initial Term, and during each renewal term, each party shall obtain and maintain not less than the insurance set forth in Attachment C.

IX. LIABILITY AND LIMITATIONS OF LIABILITY

A. Entity shall be liable for any loss of or damage to the ZAYO Equipment at the co-location site caused by Entity's negligence, intentional acts, willful misconduct or unauthorized maintenance subject to statutory limits. Entity shall reimburse Anoka County on behalf of ZAYO for the reasonable cost of repair of the ZAYO Equipment, or

the replacement thereof, within thirty (30) days after receipt by Entity of a written request for reimbursement.

B. Anoka County shall be liable for any loss of or damage to Entity's equipment caused by Anoka County or ZAYO's negligence, intentional act, willful misconduct or unauthorized maintenance. Anoka County shall reimburse Entity for the reasonable cost of repair of the equipment, or the replacement thereof, within thirty (30) days after a written request for reimbursement and ZAYO has reimbursed Anoka County for the loss or damage pursuant to Anoka County's Agreement with ZAYO. Anoka will make reasonable effort to pursue reimbursement on the Entity's behalf.

C. Anoka County shall not be liable for delays in installation, commencement or restoration of the service; for any temporary or permanent cessation of service; for errors, malfunctions, delays or defects in transmission of the service; for loss or damage occasioned by a Force Majeure Event. Anoka County's liability for any and all causes and claims whether based in contract, warranty, negligence or otherwise shall in no event exceed: 1) an amount equivalent to the proportionate charge by Anoka County to Entity for the period of service affected, or 2) if applicable, the replacement value of any Entity equipment which is lost or damaged as a result of Anoka County's gross negligence or willful misconduct.

D. ANOKA COUNTY NEITHER ASSUMES NOR MAKES ANY WARRANTY, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE AS TO THE DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS OR FITNESS FOR ANY PARTICULAR PURPOSE OR USE OF THE SERVICE, LOCAL ACCESS OR ANY OTHER MATTER, EXCEPT AS SET FORTH IN THIS AGREEMENT. SUCH WARRANTIES ARE HEREBY EXCLUDED AND DISCLAIMED.

X. FORCE MAJEURE

Neither party individually and Anoka County on behalf of ZAYO shall be liable for any failure of performance hereunder due to causes beyond its reasonable control including, but not limited to acts of God, fire, explosion, vandalism, cable cut, flood, storm, or other similar catastrophe, any law, order, regulation, direction, action or

request of the government, or any department, agency, commission, court, or bureau of a government, or any civil or military authority, national emergency, insurrection, riot, war, strike, lockout, or work stoppage (each a “Force Majeure event”). The party claiming relief under this section shall notify the other party of the occurrence or existence of the Force Majeure event and of the termination of such event. In the event Anoka County through ZAYO is unable to deliver services as a result of a Force Majeure event which precludes ZAYO from performing, the other party shall not be obligated to pay for the services so affected for as long as ZAYO is unable to deliver the Services.

XI. COMPLIANCE WITH LAWS

In providing all services pursuant to this Agreement, the parties shall abide by all statutes, ordinances, rules and regulations pertaining to or regulating the provision of such services, including those now in effect and hereafter adopted. Any violation of said statutes, ordinances, rules, or regulations shall constitute a material breach of this Agreement and shall entitle the Parties to terminate this Agreement immediately upon delivery of written notice of termination.

XII. MODIFICATIONS

Any material alterations, modifications, amendments, or variations of the terms of this Agreement shall be valid and enforceable only when they have been reduced to writing as an amendment and signed by the parties.

XIII. DATA PRIVACY

In collecting, storing, using and disseminating data on individuals in the course of providing services hereunder, the parties agree to abide by all pertinent state and federal statutes, rules and regulations covering data privacy, including, but not limited to, the Minnesota Government Data Practices Act and all rules promulgated pursuant thereto by the Commissioner of the Department of Administration.

All data created, collected, received, stored, used, maintained, or disseminated by the parties in performing this Agreement is also subject to the provisions of Minn. Stat. § 13 et. seq. (the Minnesota Government Data Practices Act) and, pursuant to that statute, the parties must comply with the requirements of that statute. All remedies set forth in Minn. Stat. § 13.08 shall also apply to the parties.

XIV. EARLY TERMINATION

This Agreement may be terminated by either party at any time, with or without cause, upon One Hundred Eighty (180) days written notice delivered by mail or in person. If notices are delivered by mail, they shall be effective two days after mailing.

XV. DEFAULT AND REMEDY

A. Default by Entity: Entity is in default of the agreement if Entity:

- 1) is more than 15 days past due in paying for services as agreed in this Agreement, or any invoice pursuant to its terms, excluding those amounts which Entity has notified Anoka County as reasonably being in dispute; or
- 2) materially fails to observe or perform any non-monetary obligation or covenant hereunder; or
- 3) files or initiates proceedings or has proceedings filed or initiated against it, seeking liquidation, reorganization or other relief (such as the appointment of a trustee, receiver, liquidator, custodian or such other official) under any bankruptcy, insolvency or similar law; or
- 4) violates the permitted uses.

In the event of default by Entity, notification of Default shall be sent to the address provided below in Section XVI. Entity shall have five days to cure a monetary breach, or thirty days to cure a non-monetary breach. If the Default remains uncured, Anoka County may suspend services until Entity remedies the Default, terminate or suspend services under this agreement and/or the applicable services being provided under the service order.

If Anoka County terminates this Agreement pursuant to this article of the Agreement, Anoka County shall have the right to seek full payment for amounts due for services rendered prior to the date of termination.

B. Anoka County shall be in default under this Agreement if it:

1) fails to arrange for ZAYO to provide the services in accordance with the Service Order (see Exhibit E) or otherwise fails to cure any breach of the Agreement after receiving written notice of default from Entity; or

2) defaults on its agreement with ZAYO and does not cure said default within five days for a monetary breach or thirty days of a non-monetary breach of that agreement: or

3) fails to notify Entity of default by ZAYO within five days of said Default, or fails to notify Entity that ZAYO has alleged that Anoka County is in Default, within five days of receipt of notification from ZAYO.

Notification of Default by Anoka County shall be sent to the address provided below in Section XVI. Anoka County shall have five days to cure a monetary breach and thirty days to cure an non-monetary breach of the agreement.

If Anoka County is caused to be in default of this agreement by the breach of ZAYO, Anoka County shall notify ZAYO in writing and allow ZAYO thirty days to cure, or such longer period of time as may be reasonably necessary to cure as long as the cure is initiated and diligently pursued within such thirty days or provide notice of a dispute about the existence such default. However, Entity and Anoka County may terminate this agreement upon written notice if ZAYO causes Anoka County to default by not meeting the terms of Article V. CONNECTIVITY SERVICE LEVEL REQUIREMENTS as noted above.

XVI. NOTICES

Notices shall be sent to the parties at the following:

Anoka County:

Information Technology Director
Anoka County Government Center
Information Technology Department
2100 Third Avenue North Ste. 300
Anoka, Minnesota 55303

Entity:

_____, Minnesota 55____

XVII. AFFIRMATIVE ACTION

In accordance with Anoka County’s Affirmative Action Policy and the County Commissioners’ policies against discrimination, no person shall illegally be excluded from full-time employment rights in, be denied the benefits of, or be otherwise subjected to discrimination in the program which is the subject of this Agreement on the basis of race, creed, color, sex, sexual orientation, marital status, public assistance status, age, disability, or national origin.

XVIII. SURVIVAL OF REPRESENTATIONS AND WARRANTIES.

The representations, warranties, covenants, and agreements of the parties under this Agreement, and the remedies of either party for the breach of such representations, warranties, covenants, and agreement by the other party shall survive the execution and term of this Agreement.

XIX. WAIVER.

The waiver of any of the rights and/or remedies arising under the terms of the Agreement on any one occasion by any party hereto shall not constitute a waiver of any rights or remedies in respect to any subsequent breach or default of the terms of the Agreement. The rights and remedies provided or referred to under the terms of the Agreement are cumulative and not mutually exclusive.

XX. GOVERNING LAW.

This Agreement shall be interpreted and construed according to the laws of the State of Minnesota, excluding the State of Minnesota's choice of law provisions. Jurisdiction and venue shall reside in the County of Anoka, Minnesota.

XXI. SEVERABILITY.

The provisions of this Agreement shall be deemed severable. If any part of this Agreement is rendered void, invalid, or unenforceable, such rendering shall not affect the validity and enforceability of the remainder of this Agreement.

XXII. NO RIGHTS OF THIRD PARTIES.

Except for specific provisions as related to ZAYO acting through the auspices of Anoka County, nothing in this Agreement is intended to confer any rights or remedies on other than the parties to the Agreement

XXIII. ATTACHMENTS AND EXHIBITS.

The following Exhibits are attached to this agreement and are incorporated into this agreement by reference:

Attachment A: Capacity and costs for each co-location service site

Attachment B: Co-location service site requirements

Attachment C: Insurance Requirements

Attachment D: Building Access Contact Information

Attachment E: Service Order Form

Attachment F: Frequently Asked Questions (FAQ)

The following Attachments are included for reference in this agreement and are informational exhibits, but do not confer any rights onto the Entity unless also specifically included in this agreement:

Attachment G: Wholesale Master Service Agreement, Anoka County Contract #2010-0239. This is a separate document in a pdf format.

Attachment H: Master Fiber IRU by and between ZAYO BANDWIDTH, LLC and Anoka County, Minnesota dated August 17, 2010. This is a separate document in a pdf format. (This exhibit does not include 20 pages of photographic exhibits which are included in the original, and are available to Entities on request.)

XXIV. AUDIT, DISCLOSURE AND RETENTION OF RECORDS

Both parties agree to make available to duly authorized representatives of the other and of the State of Minnesota, for the purpose of audit examination pursuant to Minn. Stat. § 16C.05, any books, documents, papers, and records of the party that are pertinent to the provision of services hereunder. Both parties further agree to maintain all such required records for six (6) years after receipt of final payment and the closing of all other related matters.

XXV. INDEPENDENT CONTRACTOR

A. Anoka County has entered into a separate contract with ZAYO for the construction of the ZAYO system/fiber optic network. See informational Exhibits G and H. ZAYO remains an independent contractor, however, and neither that agreement nor this one creates a partnership, joint venture or agency relationship between Zayo or the County. Anoka County has no authority to bind ZAYO beyond the obligations and responsibilities of those contracts.

B. It is agreed by the parties that at all times and for all purposes hereunder, the relationship of the County to the Entity is that of an independent contractor and not an employee or agent of the Entity.

C. It is agreed by the parties that at all times and for all purposes hereunder, the relationship of the Entity to the County is that of an independent contractor and not an employee or agent of the County.

XXVI. ENTIRE AGREEMENT

It is understood and agreed by the parties that the entire agreements of the parties is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof as well as any previous agreements presently in effect between the Anoka County and Entity relating to the subject matter hereof. The parties hereto revoke any prior oral or written agreement between themselves and hereby agree that this Agreement is the only and complete agreement regarding the subject hereof.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date first written above, notwithstanding the date of the signatures of the parties..

ANOKA COUNTY

_____ **MINNESOTA**

By: _____
Rhonda Sivarajah, Chair
County Board of Commissioners

By: _____

Dated: _____

Dated: _____

ATTEST

ATTEST

By: _____
Terry L. Johnson
County Administrator

By: _____

Dated: _____

Dated: _____

APPROVED AS TO FORM

APPROVED AS TO FORM

By: _____
Kathryn M. Timm
Assistant County Attorney

By: _____

Dated: _____

Dated: _____

Attachments

Attachment A: Capacity and costs for each co-location service site

Attachment B: Co-location service site requirements

Attachment C: Insurance Requirements

Attachment D: Building Access Contact Information

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¹ *Note Bene*, the MSA has two attachments which will be amended, but have not been so at the time of this writing. The list of 145 co-location sites has been altered since the MSA was signed on August 17, 2010. Once the final sites are approved by the NTIA, this attachment will be amended. Additionally, there is an attachment which details minimum power requirements at the co-locations site of 48 volts DC. The County and Zayo verbally agreed that these requirements will be changed to standard 110 AC. This verbal agreement has not been reduced to writing as of the date of this writing, but is expected shortly.

ATTACHMENT A

Capacity and Costs for Co-location Sites

1. Entity Name: _____ **MINNESOTA**

2. Entity Contact Information:

Principal Contact:

Name: _____
Position: _____
Office Phone: _____ () _____
Cell Phone: _____ () _____
Home Phone: _____ () _____
Pager: _____ () _____
Email: _____

Secondary Contact:

Name: _____
Position: _____
Office Phone: _____ () _____
Cell Phone: _____ () _____
Home Phone: _____ () _____
Pager: _____ () _____
Email: _____

Billing Contact:

Name: _____
Position: _____
Office Phone: _____ () _____
Cell Phone: _____ () _____
Home Phone: _____ () _____
Pager: _____ () _____
Email: _____

3. Following are the site locations included for equipment co-location:

Site #	Location	Address	City	Service Capacity	Monthly Costs
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Attachment B

Co-Location Service Site requirements

A. Security Requirements.

Entity shall provide best practices physical security to the co-location service site in the form of traditional lock service, key card, numeric access code, or electronic security system equal to that which Entity provides for its own assets. Keys, key cards, numeric access codes and the electronic security systems shall be maintained according to industry standards. Entity shall take all reasonable precautions to ensure the integrity of the security of the co-location service site. Anoka County shall make reasonable efforts to ensure that its employees and agents, including ZAYO, follow all written instructions at the co-location site as provided by the Entity.

B. Temperature and Environmental Control Requirements.

Space provided to ZAYO for the housing of the ZAYO system and equipment in the co-location service site shall meet industry standards for temperature controls, humidity, lighting, and protection from power surges and outages. Entity shall ensure that the co-location service site temperature remains in a constant range between 68°F and 83°F, and humidity remains in a constant range of 40%--60%. Entity shall use best efforts to implement a protection plan ensuring that the ZAYO System remains functional in the event of a power outage or similar emergency.

C. Environmental Space Requirements.

Entity shall provide sufficient cubic space for the installation of the ZAYO system and equipment in a secure area. ZAYO shall provide the space specifications for each co-location service site directly to Entity. Entity shall ensure that the space provided to ZAYO for the installation of the ZAYO System and equipment will also include sufficient space for ZAYO to access the equipment for repairs, maintenance and upgrades. The space will be convenient to the demarcation point, and will include any necessary space to install cable, conduit, fiber, and or circuitry from the demarcation point to the equipment.

Attachment C

Insurance Requirements

Insurance Limits. During the Term, each party shall obtain and maintain not less than the insurance set forth below:

Worker's Compensation:

Statutory limits.

Automobile Liability Insurance:

Such policy coverage will include coverage for all vehicles owned, hired, non-hired, non-owned and borrowed by the party in the performance of the obligations covered under this agreement: Combined single limit: \$1,000,000.00

Commercial General Liability and /or Umbrella Liability:

All liability insurance must meet the requirements of Minn. Stat § 466.04 subdivision 1 (a) (3) or \$500,000.00, minimum liability for claims of death by wrongful act or omission and \$500,000.00 to any claimant in any other case, whichever is greater.

All liability insurance must meet the requirements of Minn. Stat. § 466.04 Subdivision 1 (a) (7) or \$1, 500,000.00 minimum liability for any number of claims arising out of a single occurrence, whichever is greater.

All umbrella insurance must meet the requirements of Minn. Stat. §466.04 Subd. 1(a) (8). Umbrella insurance coverage must be on a "follow-form" basis.

The above minimum requirements as to insurance coverage shall not limit the liability of either party under this agreement. The above limits may be satisfied using a combination of primary and excess coverage, self insurance as provided by Minn. Stat. § 471.981.

Each Party shall obtain and maintain the insurance policies required above with insurance and /or reinsurance companies authorized to insure risks in Minnesota. With the exception of Worker's Compensation, each party, its Affiliates, and their officers, directors and employees and any other person entitled to indemnification hereunder, shall be named as additional insured to the extent of such indemnification. Each Party shall provide the other party with a certificate of insurance showing that the party has complied with the insurance requirements of this Attachment. Each insurance policy shall contain a provision providing such other party with thirty days advanced notice of any cancellation or material change in coverage at which time such party will notify the other party immediately of such cancellation or material change in coverage.

Deductible/ Self Insured Retentions: All proof of insurance shall clearly set forth deductible or self insured retentions. Each Party shall be responsible for its deductible and/or self insured retentions.

ATTACHMENT D

Building Access Contact Information

Entity shall provide 24 hour, seven day a week access to ZAYO for the ZAYO System equipment housed in the Co-location service site for the purposes of maintenance, service, upgrade and repairs of the equipment and system. Such access will include the name and contact information of co-location site key-holder for business and non-business hour access. All access shall comply with written instructions provided to ZAYO and County (see section IV.F).

Please provide contacts below.

Business Hour Contact(s) – List contacts in the order you would like them to be called. Provide a ***minimum of 2*** contacts (you may provide as many as you would like).

Contact #1

Name: _____
Position: _____
Office Phone: _____ () _____
Cell Phone: _____ () _____
Home Phone: _____ () _____
Pager: _____ () _____
Email: _____

Contact #2

Name: _____
Position: _____
Office Phone: _____ () _____
Cell Phone: _____ () _____
Home Phone: _____ () _____
Pager: _____ () _____
Email: _____

Contact #3

Name: _____
Position: _____
Office Phone: _____ () _____
Cell Phone: _____ () _____
Home Phone: _____ () _____
Pager: _____ () _____
Email: _____

Non-Business Hour Contact(s) – List contacts in the order you would like them to be called. These contacts should have keys for building access to the co-location equipment area and be available after hours. Select people you would like called in case of such emergencies as equipment failures, fiber hits, storm damage, emergency locates, etc. Provide a ***minimum of 2*** contacts (you may provide as many as you would like).

Contact #1

Name: _____
Position: _____
Office Phone: _____
Cell Phone: _____
Home Phone: _____
Pager: _____
Email: _____

Contact #2

Name: _____
Position: _____
Office Phone: _____
Cell Phone: _____
Home Phone: _____
Pager: _____
Email: _____

Contact #3

Name: _____
Position: _____
Office Phone: _____
Cell Phone: _____
Home Phone: _____
Pager: _____
Email: _____

Updates may be submitted to Anoka County IT at address provided in the Notices Section.

ATTACHMENT E

METROPOLITAN (LOCAL LOOP) NETWORK FIBER ACCEPTANCE TESTING PROCEDURES AND STANDARDS

The intent of this Exhibit is to identify the fiber acceptances testing procedures and standards used within the Zayo's metropolitan networks. Deviations from these specifications may occur if Zayo acquires a portion of the Zayo System from a third party pursuant to the Agreement.

1. All splices shall be fusion spliced. Mechanical splices are only allowed during temporary restoration and will be replaced with fusion splices.
2. After end-to-end connectivity on the fibers has been completed, bi-directional OTDR span and power meter testing will be completed. Zayo shall perform tests after the fiber cable is installed and the splicing enclosures have been completed and are in their final resting configuration with the cable vault or hand hole covers closed. This ensures that no micro or macro bending problems with the cable or fiber strands will contribute to the loss/attenuation measurements.
3. Power meter tests shall be completed to verify and insure that no fibers have been crossed at any of the splice points within the network. Zayo shall test and record power level readings on all fiber strands in both directions of transmission (bi-directionally) using the 1310 & 1550 nm wavelengths.
4. All OTDR and power meter tests shall be completed as follows:
 - a. All OTDR traces shall be taken from both ends of a section (between adjacent locations) and recorded using the 1310 nm & 1550 nm wavelength. Loss/attenuation measurements for each splice point from both directions shall be taken and recorded.
 - b. The end-to-end loss value as measured with an industry-accepted laser source and power meter should have an attenuation rating of less than or equal to the following:
 - (1) At 1310 nm: $(0.35 \text{ dB/km} \times \text{km of cable}) + (\text{number of connectors} \times 0.50) + (0.15 \times \text{number of splices})$.
 - (2) At 1550 nm: $(0.25 \text{ dB/km} \times \text{km of cable}) + (\text{number of connectors} \times 0.50) + (0.15 \times \text{number of splices})$.
 - c. Zayo's loss/attenuation objective for each fiber optic splice is 0.15 dB when measured in one direction with an OTDR test set (excluding connector loss, which is typically 0.50 dB per mated connector pair). If after three attempts this parameter is not met, the splice will be marked as Out-Of-Spec (OOS) and the splice will remain provided the average loss/attenuation value of all splices on an individual fiber basis shall not exceed 0.15 dB for the entire ring or subsystem.
 - d. For bi-directional OTDR testing, the distance from Location "A" and Location "Z" shall be recorded for each splice point. The loss/attenuation at each splice point shall be recorded at both wavelengths (1310 nm & 1550 nm) in each direction. Zayo shall then average the two readings to obtain the final average splice loss/attenuation for each splice point of each fiber strand within the fiber optic cable.
 - e. Each fiber strand color must be recorded along with its buffer tube color or the ribbon color. The laser source transmit power level using the 1310 & 1550 nm wavelengths will always be recorded together with the receive power level reading at the receiving end of the test.
5. OTDR traces will be taken and splice loss measurements recorded. Zayo will store OTDR traces on electronic media. Loss measurements will be recorded using an industry-

accepted laser source and a power meter. Copies of all data sheets and tables as well as electronic files with all traces will be available to Lessee.

6. Following emergency restoral, Zayo personnel shall perform span test documenting end-to-end attenuation measurement of each fiber at 1310 & 1550 nm wavelengths. Upon permanent repair, new splice loss readings should be no greater than the original splice loss specifications.

ATTACHMENT F

Connect Anoka County Frequently Asked Questions

1. What is Connect Anoka County?

Connect Anoka County is the county-led effort to increase the amount of fiber optic cable in the county. The Connect Anoka County project has resulted in a partnership between Zayo Bandwidth, LLC and Anoka County. Through the partnership, Zayo Bandwidth applied for and received a National Telecommunications Information Administration (NTIA) grant paying 70 percent of the fiber construction cost and initial equipment. The grant project will construct an approximately 286 mile fiber network throughout Anoka County linking 145 governmental institutions.

2. Who owns the fiber optic cable?

The fiber optic cable that is installed as part of the grant will be owned by Zayo Bandwidth. Zayo will provide the capacity services for the governmental network and separately offer connectivity services to the private sector. The grant will also provide dark fiber strands for Anoka County use. The right to use these dark strands is conveyed to the county through a fiber Indefeasible Right to Use (IRU), which is similar to a long-term lease. Should the county decide to use the dark fiber, equipment will need to be purchased and a monthly maintenance fee paid to Zayo.

3. What are the project costs and how are they paid?

The total grant-funded project budget is \$19.1 million. Seventy percent of the costs (\$13.4 million) will be paid by the NTIA grant. The balance of the project (\$5.7 million) will be paid equally by Zayo Bandwidth and Anoka County (\$2.8 million each). The county intends to recoup a portion of the \$2.8 million match by charging the anchor institutions a proportional share based on a per connection charge.

4. What services are offered?

The project is only providing connectivity, meaning that any governmental institution will still need to have an Internet Service Provider (ISP). The county purchases its ISP service from the State of Minnesota, Office of Enterprise Technology (OET) and is in discussions with OET to expand ISP services to include cities that are a part of the project. If this option becomes available, Cities will be notified.

5. How were the 145 anchor institutions decided upon?

The agreements between Anoka County and Zayo Bandwidth specify 145 governmental and quasi-governmental anchor institutions as a part of the grant project. The list was made by asking each jurisdiction to submit a list of facilities to include in the project. As the project developed, some sites were added and others dropped at the request of the entities. NTIA will need to approve all changes.

6. Can sites be added in the future?

The agreements between Anoka County and Zayo Bandwidth limit the number of sites to 145. Any additional sites on the network will require a service request to Zayo Bandwidth. As additional governmental sites require fiber, each entity will need to conduct an analysis as to the most cost-effective way to serve the location. In some cases it may be possible to connect through one of the original 145 sites. In other cases it may be cost effective to have Zayo Bandwidth or another private company serve the facility.

7. What is the project schedule?

The project is currently underway. The environmental assessment is scheduled to be completed by spring 2011. Some connectivity service may be provided in 2011, but project completion will not be until 2012. Zayo Bandwidth is also working with road authorities to acquire the appropriate permits.

8. What are the decisions needed by my entity and when?

Thus far, entities have only been asked for good-faith non binding commitments. However, Anoka County will need to have written agreements in place with any entity that wishes to participate by April 1, 2011. Specifically, each jurisdiction will need to confirm the sites and the connection speed.

9. What are the costs to my entity?

Anoka County will charge each entity that connects a monthly fee. Any fee charged will be included in the agreement. The proposed agreement establishes a fee of \$75/month for 100 mbps service, and \$400/month for 1gbps service. Cities that do not need service immediately can elect through the agreement to have equipment placed at their facility as part of the project and then establish service during the term of the agreement. The monthly fee will not be charged until service is established. To establish service at that time or make some other change for sites that have equipment, the entity and Anoka County will need to modify Attachment A of the agreement.

10. What do I do if a business in my community asks me about service?

Zayo Group provides a full range of business products to the private sector. If you are interested in learning more, or getting information for business expos, chamber of commerce meetings, or specific businesses, the contact is Steve Kopp, Senior Account Manager, Zayo Enterprise Networks, at 952-230-4861 or steve.kopp@zayoenterprise.com, Web site www.zayo.com.

11. Who is Zayo and how were they selected for this project?

Anoka County developed a Request for Proposal (RFP) seeking a partner for the Connect Anoka County project and to submit for an NTIA grant. The county received five proposals and, after review, selected Zayo Bandwidth. Zayo Bandwidth is a part of the Zayo Group which provides telecom and bandwidth infrastructure solutions that span over 153 markets and 30 states plus the District of Columbia including over 21,000 miles of fiber optic infrastructure.

12. Will each Entity be required to provide easements without cost to Anoka County and/or Zayo?

Yes, it is contemplated that the easement will be provided without charge to get from the right of way to your facility across the private property of your facility. Entities retain authority to charge for building permits, franchises, etc. in the right of way.

13. Will physical access be required by Zayo?

The agreement contemplates that there may be specific requirements that vary from location to location. Zayo must abide by your written security requirements. For example, if you want equipment installed in a location that you do not want to give unaccompanied access to, simply state that requirement in writing. Also, you do not need to give keys, access codes, or access cards to Zayo, so presuming that you keep your facilities locked, they would not be able to enter them without someone to let them in. The access that Zayo needs to maintain your equipment is similar to other providers such as Qwest, Comcast, US Cable, etc.

14. What assurances are in place for Zayo performance?

Zayo has obligations under the agreement with the County to perform as well as NTIA grant requirements that Zayo must follow. In addition, Zayo will have an incentive to complete the fiber network so they can sell connectivity services to their commercial customers.

15. Does the County agreement with Zayo include a Performance Bond requirement?

No, there is no performance bond requirement. However, Zayo has notified the County that performance bonds will be required from Contractors that Zayo employs in the construction process.

16. What happens if Zayo goes bankrupt?

Prior to entering into an agreement with Zayo, an analysis was completed that determined that Zayo was in a healthy financial situation. If, in the future, Zayo files for bankruptcy, the outcome would be determined by the bankruptcy court. Additionally, Anoka County has an IRU in the dark fiber, there is added protection for the integrity of the network even if Zayo is no longer available to provide maintenance and support.

17. Concern was expressed with the warranty language in Section IX.D.

This type of warranty language is very typical of fiber agreements such as this. This warranty language is a pass through to the Entities of the warranties negotiated between Zayo and the County. Anoka County cannot bind Zayo to any other warranties than what is provided in the Master Service Agreement and the IRU which are attached to the agreement in Exhibits G and H.

18. How will equipment replacement be made after the expiration of the warranty on August 17, 2017?

If the equipment needs to be replaced after that time, the entity will need to pay the prorata costs for such replacement. In addition, consideration will need to be made for future maintenance of this new equipment. If the entity is not getting connectivity service, or no longer wants service, no replacement equipment at entity cost is required.

19. Will there be a forum for the entities to provide input in the future?

It is the County's intent to continue meetings with the entities. In addition, if there is interest, we could consider creating advisory committees (i.e. technical, administrative) to provide a forum for interested entities to meet more frequently.

20. Does the agreement only address the installation of equipment at the co-location site, or does it also include the construction of dark fiber to the site?

The entity needs to approve the agreement to allow the placement of equipment at the site as well as construction of the network including dark fiber to the co-location site. However, the entity may initially elect not to receive the connectivity service at a site.

21. I note the service site requirements in Attachment B (security, temperature and environmental, and space requirements). What is the size of the equipment; how much space is required, and; are there any special location requirements?

The County and Zayo staff will be conducting a review of each site location over the next couple of months. It should also be noted that the Zayo equipment will be owned and managed by Zayo. The equipment will be switches that will fit into standard racks commonly found in data closets. See #27.

22. Should additional language be included for waiver of subrogation?

No, the mutual indemnification language included in the agreement eliminates the need for any waiver of subrogation.

23. What is the point of demarcation contemplated in the Agreement? It is clear in the Agreement that the Entity is responsible for interconnection and wiring beyond the point of demarcation. Does this mean that the Entity will be required to wire to individual sites within the co-location service site?

Yes, the Entity is responsible for wiring within each co-location site. This wiring is likely the entity's existing network. See Exhibit H for definition of demarcation point.

24. What exactly will the Entity be paying for? Does the agreement contemplate the use of dark fiber, or any additional cost to add capacity in the future?

The entity is paying for connectivity which includes transport and ethernet service. The Entity will only pay if the connectivity service is used. The dark fiber will be installed with the network, but additional equipment will be required to utilize it. No specific use of the dark fiber is included in the agreement.

25. The Agreement states that the Entity will work with the County to manage bandwidth, but what does that mean?

If there are capacity issues, all the entities will need to work together to resolve them to the mutual benefit of the parties. We will also be working to monitor bandwidth utilization to identify potential problems before they impact the service.

26. Have the insurance issues been resolved so that the requirements coincide with what is currently provided through the League of Minnesota Cities?

We have made edits to the insurance language with input from the cities. Kurt Glaser, Lexington City Attorney, requested an opinion from the League of Minnesota Cities, which was received on March 2, 2011. Additional edits were made to the insurance requirements in order to comply with this opinion.

27. What are the space and environmental requirements for the Zayo Equipment?

Ideally there would be rack space (19'X72" standard steel or aluminum telecom relay rack) available for the switch of 8u or about 12 inches, with sufficient space to access the equipment for repairs, maintenance and upgrades. The space should also be convenient to the entity's demarcation point. To maintain maximum uptime, it would be best to meet the specified requirements for space and environmental conditions. However, if all specifications cannot be met, the County and Zayo will work with the entity to determine an acceptable equipment location. See #21.

28. Why isn't Zayo a party to the Connectivity Services agreement?

Some attorneys have suggested that ZAYO should be a party to this agreement. The County's agreement with ZAYO provides that the County must secure the various co-location sites, whether the properties are County owned or owned by another governmental or quasi-governmental agency. ZAYO has expressed disinterest in directly contracting with the various entities.

29. Who is responsible if Zayo damages equipment or systems belonging to a third party that are at the co-location site during installation?

This agreement does not confer any third party benefits to anyone. The agreement is between the County and the Entity, with Zayo subordinate to the County. If the entity is concerned that Zayo will not use due care regarding a third party's equipment located at the co-location site, then the Entity should limit ZAYO's access to third party property.

30. We are not clear on the meaning of certain terms, such as Demarcation Point, Fiber Optic Network, Ducts, Network Availability, Transport Services, Ethernet Services, etc. Are these terms defined anywhere?

Many of these terms are defined in the Master Service Agreement and Indefeasible Right of Use Agreement executed between the County and Zayo on August 17, 2010. A copy of these two agreements will be attached to the Connectivity Services Agreement for reference as informational exhibits. Additionally, some of these terms are "terms of

art” in the broadband and Information Technology industry, and are used here in standard industry usage.

31. Why doesn't the Entity gain ownership rights in the equipment if the city is required to pay a pro-rata share for repairs and/or replacement after the warranty period expires on August 16, 2017?

The initial equipment is paid for by the grant, at no cost to the Entity. Contrast this with more typical agreements, where the Entity pays a much larger monthly fee to a provider for both the service and the equipment. If, after 2017, equipment is replaced completely the situation may change. Options for total replacement at that time, if necessary, may include replacement with Zayo Equipment, Entity Equipment or County Equipment,

32. May the entity, in particular a city, charge building permit fees, franchises, etc. to Zayo outside of the co-location site?

Pursuant to Paragraphs II.C. and III.B., Entities retain franchising authority, and may issue building permits, franchise fees as allowed by Minnesota statutes. The entity may not charge these fees for the co-location site itself (for example, the entity may not charge fees for underlying rights needed to place equipment in City Hall, or a fire station which are the designated co-location sites described in Exhibit A.)

33. Will Zayo or Anoka County be providing cable services in competition with Comcast or other private cable carriers through this agreement?

No. Anoka County will not be a cable provider. Providing cable TV services is not consistent with Anoka County's mission statement. The County's fibers may only be used for governmental and quasi-governmental purposes. Zayo is not a cable provider, nor does it offer triple- play services (telephone/voice, data/internet, and cable/video). While no one can predict the future, a more likely scenario is that private carriers will contract with Zayo to use Zayo's fibers to provide services to private customers throughout the county.

34. Where can I get more information on the project?

By phone: 763-422-7537 (Carrie Johnson)
By e-mail: ConnectAnokaCounty@co.anoka.mn.us
By mail: Connect Anoka County,
Attn: Information Technology
2100 3rd Avenue, Suite 300
Anoka, MN 55303