

Contract with University of Wyoming / Wyoming Technology Business Center

Date: May 14, 2010

Purpose: To request Wyoming Business Council Board of Directors approval for continuation of the contract for data center maintenance at the Wyoming Technology Business Center at the University of Wyoming.

Contract Amount: \$679,650

Contract Term: From Date of signatures through June 30, 2011.

Background:

1. WBC purchasing policy requires Board approval of budgeted contracts in excess of \$100,000.
2. The current contract with University of Wyoming / Wyoming Technology Business Center will expire on June 30, 2010.
3. Attached is the program report as of May 3, 2010.

Benefits: The Wyoming Technology Business Center is maintaining one of the most modern if not the most modern data center in Wyoming through this contract. Numerous businesses at the center as well as others are using the service provided. Other data center managers in the state are able to tour the center for information and ideas on the procedures, processes and equipment necessary for a data center.

Recommendation:

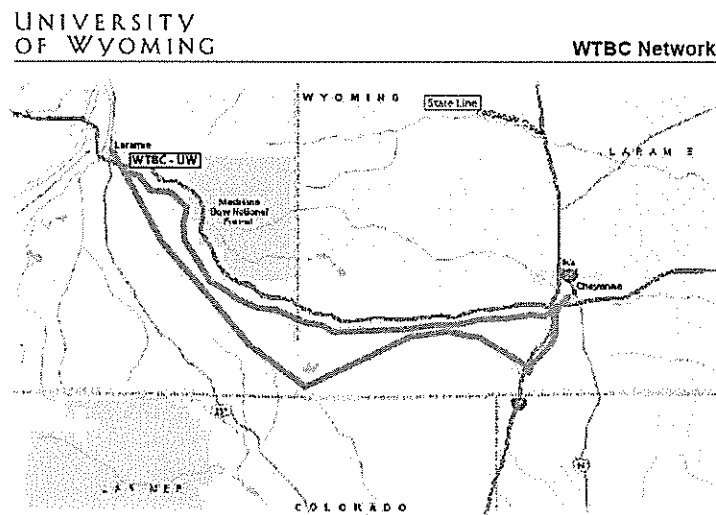
I recommend approval of this contract as presented.

Ben E. Avery
Business & Industry Division Director

**THE WYOMING TECHNOLOGY BUSINESS CENTER
REPORT TO WYOMING BUSINESS COUNCIL
May 3, 2010**

To comply with the Governor’s 2005-2006 Supplemental Budget to provide high capacity Internet connectivity service to the Wyoming Technology Business Center (WTBC), the University of Wyoming entered into an agreement with the Wyoming Business Council. The agreement permitted the University of Wyoming to provide the necessary infrastructure to install and support high-capacity, redundant fiber-optic broadband services for start-up and other businesses housed in the new Wyoming Business Technology Center.

The University of Wyoming’s Division of Information Technology prepared and issued a Request for Proposal for the provision of high capacity, fiber optic broadband telecommunications services for the use of businesses in the Wyoming Technology Business Center. Through a competitive evaluation process, Bresnan Communications was selected as the provider. Below is an approximate illustration of the redundant loop connection Bresnan has supplied to the WTBC. At Cheyenne, for redundancy, Bresnan has two separate Internet paths to two other Internet Service Providers – completing fully redundant Internet access for businesses located in the WTBC.



The project and the Wyoming Technology Business Center have been highly successful. The high-capacity, fiber-optic broadband infrastructure, with its redundancy, has specifically allowed three technology-based businesses to be located in the WTBC, and has been instrumental in the development of six others. These companies’ basic business operations require redundant, high-capacity Internet access. Without those two elements the businesses could not be located in the WTBC nor in Wyoming. The following items are the report to the Wyoming Business Council:

- Companies implementing and managing broadband services:

Bresnan Communications was awarded the contract to install and manage the broadband service to the WTBC. The University of Wyoming, Division of Information Technology manages the internal network infrastructure connecting the WTBC to the Bresnan service.

Within the 2011 fiscal year, the University of Wyoming, Division of Information Technology will implement a secondary Internet Service Provider provided by the Front Range GigaPop (FRGP). The FRGP is a peering location in Denver where many universities (and other organizations) peer. The University of Wyoming has redundant links to the FRGP. At the FRGP, data is routed to commodity networks (currently Level3, Qwest, & Comcast) or research networks (Internet2 and National Lambda Rail). Traffic to or from the WTBC would be routed over one of the commodity networks.

- Cost of installing and managing broadband services:

Under the terms of the contract, and its amendment, \$1.6 million was expended in installing the infrastructure to support the service in 2006. In 2010, \$679,650 was invested to support infrastructure updates and modifications as well as continued networking support provided by the University of Wyoming, Division of Information Technology. The WTBC Data Center employs 3 full-time employees to monitor the environmental and networking services provided to clients. The WTBC CEO and one Assistant Director dedicate time to management oversight and client communication relating to the WTBC Data Center.

- Companies utilizing broadband services:

The WTBC Data Center provides broadband services for eight companies. Thought Equity Motion (TEM) and Medicine Bow Technologies have dedicated suites to house their equipment, and are the largest consumers of broadband services.

Medicine Bow Technologies (MBT) provides access to premier hospital information systems: Meditech, for use in streamlining the data management operations of small to medium-sized hospitals, and DR Systems, for digitizing and transmitting medical diagnostic images (such as x-rays and MRI). MBT hosts and runs Meditech and DR Systems under customer-specific service models, which run on servers located in the WTBC data center.

Thought Equity Motion provides motion imagery licensing and management for the entertainment, creative and corporate production industries. Their Wyoming operations handle digitization, metadata tagging, and fulfillment for the organization. Additionally, a significant portion of the company's computer hardware infrastructure resides in the WTBC Data Center.

Other companies have equipment in a collocation space and utilize smaller amounts of broadband services. These companies are: chapaCode, WindRider Technologies, Happy Jack Software, Arista Tek, and Handel IT.

- Revenues from the provision of broadband services:

MBT paid \$35,699.76 in service fees in FY 2010. This sum is for office space, datacenter space and broadband connectivity. TEM paid \$ \$37756.32 for the same time period. Total service fees for clients utilizing the collocation area are \$9,500. These clients are: HappyJack Software, chapaCode, AristaTek, and Handel IT.

- Numbers of employees and average wages of employees of those companies utilizing broadband services:

Medicine Bow Technologies employed 12 FTE's (full-time-equivalents) in 2010 with an average salary of \$74,456. Thought Equity Motion employed 13 FTE's with an average salary of \$36,192. HappyJack Software employed 10 FTE's with an average salary of \$43,550. Arista Tek, Handel IT, chapaCode, employed a total of 39.5 FTE's in 2010 with an average salary of \$38,666.66.

**AGREEMENT BETWEEN THE WYOMING BUSINESS COUNCIL AND THE
UNIVERSITY OF WYOMING, WYOMING TECHNOLOGY BUSINESS CENTER**

1. **Parties.** The parties to this Agreement are the Wyoming Business Council, an agency of the State of Wyoming, by and for its Business & Industry Division, 214 West 15th Street, Cheyenne, Wyoming 82002 (Council), and the University of Wyoming, Wyoming Technology Business Center, 1000 E. University Avenue, Dept 3945, Laramie, Wyoming 82071 (University).

2. **Purpose of Agreement.** This Agreement is to continue the provisioning and operation of the high-capacity Internet connectivity service to the Wyoming Technology Business Center. The University of Wyoming, Wyoming Technology Business Center shall use its diligence, expertise and contract procedures to continue to provide high capacity, fully redundant fiber-optic broadband services and the associated data center environment for start-up and existing businesses in the Wyoming Business Technology Center. More specifically this agreement requires:

A. The University of Wyoming, Wyoming Technology Business Center to ensure that the broadband services are managed and maintained in such a way as to meet the stated goals of the program and serve as a demonstration of the value of high capacity, fully redundant broadband infrastructure throughout the state.

3. **Term of Agreement.** This Agreement shall become effective on July 1, 2010 or upon the date the last signature is affixed hereto, whichever is later, and shall expire on June 30, 2011 unless otherwise amended or terminated in accordance with the terms and conditions specifically provided herein. All services shall be completed during this term and there is no right or expectation of renewal and any renewal will be determined at the discretion of the Council.

By law, contracts for professional or other services must be approved as to form by the Attorney General, Wyo. Stat. § 9-1-403(b)(v).

4. **Payment.** The Council agrees to pay the University for the services described herein and in Attachment A. The total payment under this Agreement shall not exceed six hundred seventy nine thousand, six hundred fifty dollars (\$679,650). Payment shall be in conformance with the budgeted amounts as shown in Attachment B. Payment of the amount due may be made incrementally upon submission of agreed upon invoices. The monetary proceeds of this Agreement are specifically for the project specified in this Agreement and cannot be used for any lobbying efforts. The University shall ensure that no state funds are used in this manner.

5. **Responsibilities of the University.** The University shall provide broadband services and an appropriate data center environment to the Wyoming Business Technology Center in conformance with the requirements described in Attachment A, which is attached and made a part of this Agreement.

6. **General Provisions.**

A. Amendments. Any changes, modification, revisions or amendments to this Agreement which are mutually agreed upon by the parties to this Agreement shall be incorporated by written instrument, executed and signed by all parties to this Agreement.

B. Applicable Law/Venue. The construction, interpretation and enforcement of this Agreement shall be governed by the laws of the State of Wyoming. The Courts of the State of Wyoming shall have jurisdiction over this Agreement and the parties, and the venue shall be the First Judicial District, Laramie County, Wyoming. The parties acknowledge and agree that the State of Wyoming and the Council do not waive sovereign immunity by entering into this Agreement, and specifically retain immunity and all defenses available to them as sovereigns pursuant to Wyo. Stat. § 1-390-104 (a) and all other state law.

C. Assignment/Agreement Not Used as Collateral. Neither party shall assign or otherwise transfer any of the rights or delegate any of the duties set forth in this Agreement without the prior written consent of the other party. The University shall not use this Agreement, or any portion thereof, for collateral for any financial obligation, without written permission of the Council.

D. Audit. The University will allow the Council and/or federal auditors and a designated representative Council staff member access to all records relating to this Agreement, for audit and inspections, and monitoring of services. Such access shall be during normal business hours and by appointment only.

E. Availability of Funds. Each payment obligation of the Council is conditioned upon the availability of government funds that are appropriated or allocated for the payment of this obligation. If funds are not allocated and available for the continuance of the services performed by the University, the Agreement may be terminated by the Council at the end of the period for which the funds are available. The Council shall notify the University at the earliest possible time of the services that will or may be affected by a shortage of funds. No penalty shall accrue to the Council in the event this provision is exercised, and the Council shall not be obligated or liable for any future payments due or for any damages as a result of termination under this section. This provision shall not be construed to permit the Council to terminate this Agreement to acquire similar services from another party.

F. Certificate of Good Standing. The University shall provide Certificate of Good Standing verifying compliance with the unemployment insurance and workers' compensation programs prior to performing work under this Agreement.

G. Compliance with Law. The University shall keep informed of and comply with all applicable federal, state and local laws and regulations in the performance of this Agreement.

H. Entirety of Agreement. This Agreement, consisting of six (6) pages, Attachment A, consisting of one (1) page and Attachment B, consisting of two (2) pages represents the entire and integrated Agreement between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.

I. Ethics. The University shall keep informed of and comply with the Wyoming Ethics Disclosure Act (Wyo. Stat. § 9-13-101, et seq.), and any and all ethical standards governing the University's profession.

J. Extensions. Nothing in this Agreement shall be interpreted or deemed to create an expectation that this Agreement will be extended beyond the term described herein. Any extension of this Agreement shall be initiated by the Council, and shall be effective only after it is reduced to writing and executed by all parties to this Agreement. Any Agreement to extend the term of this Agreement shall include, but not necessarily be limited to: an unambiguous identification of the Agreement being extended; the term of the extension; the amount of any payment to be made during the extension, or a statement that no payment will be made during the extension; a statement that all terms and conditions of the original Agreement shall, unless explicitly delineated in the exception, remain as they were in the original Agreement; and if the duties of either party will be different during the extension than they were under the original Agreement, a detailed description of those duties.

K. Force Majeure. Neither party shall be liable for failure to perform under this Agreement if such failure to perform arises out of causes beyond the control and without the fault or negligence of the non-performing party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays. This provision shall not be effective unless the failure to perform is beyond the control and without the fault or negligence of the non-performing party. The parties intend and agree that the State of Wyoming and the Council do not waive sovereign immunity by entering into this Agreement and specifically retain immunity and all defenses available to them as sovereigns pursuant to Wyo. Stat. § 1-39-104(a) and all other applicable law.

L. Indemnification. Each party to this Agreement shall assume the risk of any liability arising from its own conduct. Neither party agrees to insure, defend or indemnify the other.

M. Independent Contractor. The University shall function as an independent contractor for the purposes of this Agreement. The University shall assume sole responsibility for any debts or liabilities that may be incurred by the University in fulfilling the terms of this Agreement, and shall be solely responsible for the payment of all federal, state and local taxes which may accrue because of this Agreement. Nothing in this Agreement shall be interpreted as authorizing the University or its agents and/or employees to act as an agent or representative for the Council, or to incur any obligation of any kind on the behalf of the Council.

N. Kickbacks. The University certifies and warrants that no gratuities, kickbacks or contingency fees were paid in connection with this Agreement, nor were any fees, commissions, gifts, or other considerations made contingent upon the award of this Agreement. If the University breaches or violates this warranty, the Council may, at its discretion, terminate this Agreement without liability to the Council, or deduct from the agreed upon price or consideration, or otherwise recover, the full amount of any commission, percentage, brokerage, or contingency fee.

O. Monitoring Activities. The Council shall have the right to monitor all activities related to this Agreement that are performed by the University or its subcontractors. This shall include, but not be limited to, the right to make site inspections at any time and with reasonable notice; to bring experts and consultants on site to examine or evaluate completed work or work in progress; to examine the books, ledgers, documents, papers, and records pertinent to this agreement; and, to observe personnel in every phase of performance of the related work.

P. No Finder's Fee. No finder's fee, employment agency fee, or other such fee related to procurement of this Contract shall be paid by either party.

Q. Nondiscrimination. The University shall comply with the Civil Rights Act of 1964, the Wyoming Fair Employment Practices Act (Wyo. Stat. § 27-9-105 et seq.), the Americans With Disabilities Act (ADA), 42 U.S.C. 12101, et seq., and the Age Discrimination Act of 1975 and/or any properly promulgated rules and regulations thereto and shall not discriminate against any individual on the grounds of age, sex, color, race, religion, national origin, or disability in connection with the performance under this Agreement. Federal law requires the University to include all relevant special provisions of this Agreement in every subcontract awarded over Ten Thousand Dollars (\$10,000.00) so that such provisions are binding on each subcontractor.

R. Notices. All notices arising out of, or from, the provisions of this Agreement shall be in writing and given to the parties at the address provided under this Agreement, either by regular mail or delivery in person.

S. Prior Approval. This Agreement shall not be binding upon either party, no services shall be performed under the terms of this Agreement, and the Wyoming State Auditor shall not draw warrants for payment on this Agreement, until this Agreement has been reduced to writing and approved as to form by the Office of the Attorney General.

T. Publicity. Any publicity given to the program or services provided herein, including, but not limited to, notices, information, pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the University, and related to the services and work to be performed under this Agreement, shall identify the Council as the sponsoring agency and shall not be released without prior written approval of the Council.

U. Records Administration. The University shall maintain or supervise the maintenance of all records necessary to properly account for the payment duly authorized herein. Such records shall be retained by the University for at least four (4) years after this Agreement

terminates, or until such time as all audits initiated within the four (4) year period are satisfied, whichever is longer in duration.

V. Severability. Should any portion of this Agreement be judicially determined to be illegal or unenforceable, the remainder of this Agreement shall continue in full force and effect, and wither party may renegotiate the terms affected by the severance.

W. Sovereign Immunity. The State of Wyoming, the University of Wyoming and the Council do not waive sovereign immunity by entering into this Agreement, and specifically retain immunity and all defenses available to them as sovereigns pursuant to Wyo. Stat. § 1-39-104(a) and all other state law. Designations of venue, choice of law, enforcement actions, and similar provisions should not be construed as a waiver of sovereign immunity.

X. Taxes. The University shall pay all taxes and other such amounts required by federal, state and local law, including but not limited to federal and social security taxes, workers compensation, unemployment insurance and sales taxes.

Y. Termination of Agreement. This Agreement may be terminated, without cause, by either party upon thirty (30) days written notice. The Council may terminate this Agreement immediately for cause if the University fails to perform in accordance with the terms and conditions of this Agreement. Should the University fail to perform in a manner consistent with the terms and conditions set forth in this Agreement, payment under this Agreement may be withheld until such time as the University performs its duties and responsibilities.

Z. Third Party Beneficiary Rights. The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Agreement shall not be construed so as to create such status. The rights, duties and obligations contained in this Agreement shall operate only between the parties to this Agreement, and shall inure solely to the benefit of the parties to this Agreement. The provisions of this Agreement are intended only to assist the parties in determining and performing their obligations under this Agreement.

AA. Time is of the Essence. Time is of the essence in all provisions of this Contract.

BB. Titles Not Controlling. Titles of paragraphs are for reference only, and shall not be used to construe the language of this Contract.

CC. Waiver. The waiver of any breach in term or condition in this Contract shall not be deemed a waiver of any prior or subsequent breach. Failure to object to a breach shall not constitute a waiver.

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7. **Signatures.** The parties to this Agreement, either personally or through their duly authorized representatives, have executed this Agreement on the dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Agreement.

The effective date of this Agreement is the date of the last signature affixed to this page.

WYOMING BUSINESS COUNCIL

Robert K. Jensen, Chief Executive Officer

Date

Ben E. Avery, Director, Business & Industry

Date

UNIVERSITY OF WYOMING

Dorothy C. Yates, Associate Vice President
for Research and Economic Development

Date

ATTORNEY GENERAL'S OFFICE APPROVED AS TO FORM

Don Gerstein, Sr. Asst. Attorney General

Date

ATTACHMENT A

AGREEMENT BETWEEN THE WYOMING BUSINESS COUNCIL AND THE UNIVERSITY OF WYOMING, WYOMING TECHNOLOGY BUSINESS CENTER

Project Description

Continuance of the Broadband Enhancement Program, establishing competitive advantage for high-capacity broadband dependant businesses by providing cost advantaged primary and redundant broadband capacity in the Wyoming Technology Business Center (WTBC). The enhancement program will support the continued growth of Wyoming entrepreneurs through high capacity broadband educational networking programs. The Broadband Enhancement Program shall make broadband services and an associated data center environment as detailed below available to businesses associated with the WTBC. In addition,

Scope of Work

1. The University of Wyoming, WTBC will ensure that the broadband services are managed and maintained in such a way as to meet the stated purpose of the program and serve as a demonstration of the value of high capacity, fully redundant broadband infrastructure throughout the state.
2. The University shall plan, purchase and install equipment necessary to provide the primary and redundant high capacity Internet connectivity and access for the data center within the WTBC in conformance with the requirements described in this Attachment.
3. The University of Wyoming, WTBC will report annually to the Wyoming Business Council on the effect of broadband on businesses in the WBTC. Report will include:
 - Companies implementing and managing broadband services
 - Cost of installing and managing broadband services
 - Companies utilizing broadband services
 - Revenues from provision of broadband services
 - Number of employees and average wages of employees of those companies utilizing broadband services.
4. The University of Wyoming, WTBC will provide periodic reports (monthly) concerning outages in the data center and client relations, including new and existing clients.
5. The University of Wyoming, WTBC will support the continuance of the Broadband Enhancement Program by developing and implementing entrepreneurial educational and networking programs throughout the state to further support the development and growth of technology companies.

ATTACHMENT B

2010-11 WTBC Data Center Budget

Maintenance

ATS maintenance	Grounded Technologies Contract	\$ 2,750.00
Chiller Maintenance	JCI Contract	\$ 2,000.00
Generator Maintenance	Materials, batteries	\$ 4,000.00
CRAH Units	Monthly UW, and Outside Contract Filter replacement, standard maintenance	\$ 11,550.00
Humidifiers		\$ 9,500.00
Sensors	JCI replacement, repair	\$ 1,000.00
Unplanned Replacement Cost	Major equipment failure/replacement rental	\$ 25,000.00
		<u>\$ 55,800.00</u>

Utilities

Electrical	Electricity at \$5,500/month	\$ 66,000.00
Chilled Water	Chilled water from CEP at \$700/month	\$ 8,400.00
Broadband	Bresnan charges at \$9,700/month	\$116,400.00
Secondary ISP	Front Range Gigapop	\$ 10,000.00
		<u>\$200,800.00</u>

Miscellaneous

Office Supplies	Office supplies, computer replacement	\$ 7,533.42
Parts and Tools	Replacement cables, hoses, tools, etc.	\$ 11,400.00
Employee Training/Continuing Education	Professional seminars, travel	\$ 14,000.00
On-site Training/Consulting	Content experts, site reviews, accreditation	\$ 9,000.00
		<u>\$ 41,933.42</u>

Salaries

Assistant Director	Oversight, client relations, budget management	\$ 47,500.00
Assistant Data Center Manager	Control and automation systems, electrical and cooling systems, on-call	\$ 73,188.00
Network Systems Specialist	Network maintenance, monitoring systems support, client gear installation, on-call	\$ 76,884.00
Data Center Specialist	Onsite monitoring and on-call	\$ 33,828.00
Project Coordinator, Senior	Client relations to include recruitment, advertising and retention	\$ 41,400.00
Fringe Benefits		<u>\$108,316.58</u>
		\$381,116.58
<hr/> TOTAL		\$679,650.00