



Community Connectivity Consortium Consortium Project Agreement Template Policy

I. PURPOSE OF POLICY

As stated in the Consortium's Bylaws, this policy outlines how the parties will work together on Projects for the benefit of all the Parties. This policy also outlines the roles and responsibilities of all the Parties and use of the fiber cables today and into the future.

II. RELATIONSHIPS AMONG PARTICIPATING AGENCIES

Each of the Parties to a project have a portion of what is required to build a fiber network but do not want to duplicate efforts. The Parties and their respective 'citizens' have a vested interest in supporting and improving educational opportunities, community & public safety communications, and infrastructure.

A. PRINCIPLES

Agreements among the Participating Agencies for sharing of Projects shall conform to the following principles:

1. Participation in Projects is voluntary and can depend on specific cable routes.
2. Arrangements for cooperation should be fair and equitable among Participating Agencies. Any special configuration, such as a routing change to accommodate a particular Participating Agency, should be paid for in whole by that Participating Agency.
3. If a Facility Owner requires a route change due to the requirements for optimal Facility access, the costs of such a change shall be considered general project costs of the affected Participating Agencies and not the sole responsibility of the Facility Owner as a Participating Agency.
4. Participating Agencies may have varying amounts of financial and other responsibilities

on different projects. One or more Project Agreement(s) will define and document those responsibilities. As a general principle, Participating Agencies should share maintenance proportionately based on each Participating Agency's share of the Fiber Strands deployed or as described in the Project Agreement(s).

5. Participating Agencies may, from time to time, act variously and simultaneously as Lead Agencies and/or Facility Owners.
6. The Lead Agency for a specific Project Agreement may be changed with the mutual consent of all Participating Agencies that are party to that specific Project Agreement.
7. All work put into a particular project does not have to be equal. For example, one participating agency may provide access to conduit, another may provide actual funds and yet another staff time or project management resources. The goal is to get the work done in a way that all participating agencies money and/or effort by doing them jointly, and all agency's needs are met.

B. TERM

This Addendum shall become effective upon a vote of the Consortium's membership, and unless terminated sooner in accordance with the provisions of this Addendum, shall continue for a period of ten (10) years, and automatically renew for an additional ten (10) years upon the agreement of the parties.

As a starting point for negotiations of a renewal Agreement, the Participating Agencies will use this Addendum as the framework for further negotiations. Under the terms of any renewal agreement, the Participating Agencies shall continue to make payments as specified in any applicable Project Agreement(s).

C. FIBER OPTIC PROJECT

All Projects among Participating Agencies shall have a Project Agreement specifying the following; including contact names and addresses where appropriate.

- Participating Agencies
- Lead Agency and Project Manager
- Route
- Facilities to be Used; Facility Owners; and the Facility Manager(s)
- Project Budget, including Contingency and Terms of Cost Sharing
- Apportionment of Liability
- Project Schedule
- Changes or Addenda to General Terms and Conditions
- Bond and Insurance Requirements for Contracting and Participating Agencies
- Fiber Allocation including Spares.
- Maintenance Responsibilities and Costs, including Ongoing Maintenance and Responsibilities for Moves.
- Points of Demarcation

D. GENERAL PLANNING, ENGINEERING AND DESIGN CONSIDERATIONS

Upon execution of a Project Agreement, the Participating Agencies shall develop, review and/or revise the planning, engineering, design, installation, and maintenance procedures for the Fiber Optic Project. The procedures will be subject to the approval of the Participating Agencies and of the Facility Owners as specified in Section IV and in related Exhibits and Addenda. The procedures will be substantially similar to the following:

1. Perform Feasibility Review

A Participating Agency with an interest in a shared Fiber Optic Project will undertake a feasibility review to determine which of the Participating Agencies has an interest in participating in the Fiber Optic Project, the possible routes, the availability of Facilities, the approximate cost and the time frame required for installation. Prospective Facility Owners shall be included in the feasibility review process.

2. Execute Project Agreement

The Project Agreement must ensure that approval by the appropriate authority is granted for Facilities to be used and shall specify the information listed in Section IV.C.

3. Perform Detailed Engineering Design

The Lead Agency shall work with Facility Owners to complete routing, obtain permission for use of Facilities, etc. Any changes exceeding the approved Project Budget (see definitions above) shall require approval by the Participating Agencies; such approval shall not be unreasonably withheld.

4. Install Project

The Lead Agency shall be responsible to ensure compliance with all reasonable requirements of the Facility Owner.

Facility Owner staff shall be authorized to stop Work on an installation that is being conducted by the Lead Agency and its contractors on the Optic Project if Facility Owner or Participating Agency reasonably determines that the Work in question is inadequate, unsafe or would or could potentially cause a problem.

5. Complete Acceptance of Fiber Optic Project

The Lead Agency shall formally accept installation of the Project by issuing a formal letter to the contractor(s) and the Participating Agencies stating that the Work has been completed in accordance with contract specifications, final test documentation has been received, and all punch-list items have been resolved to the satisfaction of the Lead Agency and Facility Owner(s). Such acceptance shall authorize final payment(s) to contractor(s). The Lead Agency shall also document and identify ownership of Fiber Strands, providing a copy of such documentation to all Participating Agencies.

6. Include in Maintenance Plan

The Lead Agency shall ensure that the new project is included in the appropriate maintenance plan(s) for the purpose of location services and repair.

7. Keep Records

The Lead Agency shall develop and keep copies of computerized records that document installation or modification Work performed by the Lead Agency or its contractors. They must also provide the Consortium Board, Participating Agencies and/or Facility Owners with copies of these documents. The initial cost to prepare these records shall be included as part of the Project Budget (see definitions above).

8. Public Access to Records

To the extent that any of these records are publicly disclosable, the agency to whom the request is made must notify the Consortium Board within five days of receiving the request.

E. CHANGES

Participating Agencies shall have the right to propose changes to the Project Agreement which must first be approved by all Participating Agencies, including replacing the Lead Agency and adjusting Project Budgets. Changes that impact Facility Owners shall be subject to approval by the Facility Owners.

The costs of any changes proposed by and beneficial to an individual Participating Agency made after the signing of a Project Agreement shall be borne by that Participating Agency. However, if a Facility Owner requires a route relocation due to the requirements for optimal Facility access, the costs of such a relocation shall be considered general project costs and not the sole responsibility of the Facility Owner as a Participating Agency. The costs of other changes that are approved by the Participating Agencies because they are deemed necessary to complete the Project shall become part of the total project cost.

F. ALLOCATION AND OWNERSHIP OF FIBER OPTIC CABLE

All Fiber Optic Cable and Fiber Strands installed as part of a Fiber Optic Project shall be allocated to the individual Participating Agency, or Agencies, as specified in the Project Agreement. The Participating Agency shall own all right and title to these allocated Fiber Strands.

G. USE OF FIBERS

A Participating Agency shall have complete free and unrestricted use of the Fiber Strands installed and allocated to it under a Project Agreement for any lawful purpose subject to applicable agreements, approvals, permission and permits.

Common Fiber Spares, if provided for in a Project Agreement, shall be held in trust by the Consortium for the future benefit of the members. Identified Common Fiber Spares shall be used only as replacements for disabled Fibers Strands unless documented and agreed to in a Fiber Optic Project Document. Use of Common Fiber Spares shall be implemented by the Executive Board with notification to all Consortium Members and Participating Agencies.

H. SALE OF FIBERS

1. Fiber which has been paid for by a consortium member may be sold, donated or leased

to other consortium members. An addendum to the original project agreement shall be signed by all of members of the original project agreement, and a copy of the addendum must be provided to the Consortium.

2. Fiber which has been paid for by a consortium member may be leased (but not sold) to other entities who are not Consortium members subject to notification to the Board and approval by at least 75% of the other owners of strands in the affected fiber bundles. Such approval shall not be unreasonably withheld. In this case, the owning consortium member is responsible for meeting all of the terms and conditions of this document for all fiber that they own regardless of whether or not it is leased to another party. The Facility Owner(s) shall be notified in writing of any such lease.
3. If a Consortium Member abandons fiber which has been allocated to it previously, such abandoned fiber shall be returned to the common fiber spares.
4. Fiber which has been paid for by a grant cannot be sold or leased by individual Consortium Member unless specifically called for in grant language.

I. FUTURE USE OF FIBER OPTIC CABLE ALREADY OWNED BY INDIVIDUAL PUBLIC AGENCIES

Nothing in this document precludes Members from entering into separate agreements with other Members to utilize fiber optic cable other than the Fiber Optic Cable installed pursuant to a Project Agreement.

J. TAXES

The Members participating in a Project Agreement shall pay, before delinquency, all applicable taxes, levies, and assessments arising from their joint installations and undertakings under a Project Agreement.

K. PAYMENTS

Participating Agencies shall pay all amounts owed to the Lead Agency within forty-five (45) days of receipt of the billing. If a Participating Agency disputes all or a part of the payment owed to the Lead Agency, then such dispute shall be resolved through the Dispute Resolution process identified in the Consortium's Administrative Policies.

If the Participating Agency fails to make payment as required, after receiving a written notice in compliance with Section VII.M, providing twenty (20) business days to cure the default in payment, then its allocated Fiber Strands shall become the property of the other Participating Agencies and those Participating Agencies may either reallocate the Fiber Strands amongst themselves, other Members or sell the Fiber Strands pursuant to the provision of Section II. H above.

III. LEAD AGENCY RESPONSIBILITIES

A. GENERAL RESPONSIBILITY OF LEAD AGENCY

The Lead Agency shall be responsible for the overall management of the Work

necessary for the successful completion of the Project, as the agent of the Participating Agencies in the Project, pursuant to the terms and condition of the applicable Project Agreement. The Lead Agency shall have the authority and be responsible for negotiating and entering into such separate contract agreements as are necessary with Facility Owners for the specific use of their Facilities in furtherance of the Project. The Lead Agency will also have the authority to enter into and manage such separate contract agreements with contractors as are necessary to perform all or part of the Work associated with the Fiber Optic Project.

The Lead Agency is responsible for ensuring that all applicable terms and conditions of the Project Agreement(s), General Terms and Conditions, exhibits and addenda are included in the contract agreements with Facility Owners and contractors.

Prior to execution of any contract agreements with Facility Owners or contractors, the Lead Agency shall provide an opportunity for the Participating Agencies to review and comment on such agreements. In the event there is a dispute regarding any of the provisions or lack of provisions of any agreement, such dispute shall be resolved through the Dispute Resolution process identified in Section IV.I.

The Lead Agency shall keep the Participating Agencies informed as to the status of the Project.

B. AGREEMENTS, APPROVALS, PERMISSIONS AND PERMITS

The Lead Agency shall be responsible for obtaining all necessary agreements, approvals, permissions and permits and any other documents required or necessary for the successful completion of the Project and to keep them in-place and current for the life of the agreement.

C. NOTICE OF INSTALLATION AND TESTING

The Lead Agency shall notify the Participating Agencies when initial installation of the Fiber Optic Cable and acceptance testing of all of the Fiber Strands have been completed.

D. MAINTENANCE AND REPAIR RESPONSIBILITIES

1. Responsibility for Maintenance Agreements

The Consortium Board is responsible for obtaining and managing a consortium-wide fiber-maintenance agreement or for approving multiple agreements, whichever is the most expedient. The Board will periodically review the maintenance agreements in place and competitively bid any agreements for which it is directly responsible.

2. Review of Maintenance Agreements

The current maintenance agreements will be reviewed with the membership at every annual meeting.

3. Maintenance and Repair of Fiber Optic Cable, Fiber Strands, and Pathway

Maintenance of the Fiber Optic Cable and Fiber Strands within Fiber Optic Cable installed pursuant to a Project Agreement shall be the responsibility of the Lead Agency as agent for the Participating Agencies up to the point in time where the project is

complete and the Lead Agency has passed appropriate documentation to the Consortium's maintenance contractor(s) and to the Consortium.

4. Restoration of Services

Restoration of telecommunications, traffic control, and public safety services shall be given the highest priority in the event that any of these services and the Participating Agencies' telecommunications services are interrupted at the same time, unless otherwise agreed to by the Participating Agencies at the time of restoration. In the event of an outage, the Participating Agencies shall promptly work to restore the functionality of the Fiber Optic Cable as soon as reasonably possible and practical after restoration of any other necessary services. The Participating Agencies shall not cut or otherwise damage Fiber Optic Cable unless absolutely necessary for the safe and prompt restoration of telecommunications, traffic control and street lighting systems.

2. Maintenance and Repair Expenses

The Participating Agencies shall be responsible for the expense of maintenance and repair of the Fiber Optic Cable and Fiber Strands for a Project Agreement on a basis proportional to the ownership of Fibers Strands allocated to each Participating Agency or by such other method as may be specified in the applicable Project Agreement(s). Spares and otherwise unallocated strands will be split by the same percentage as actual ownership or right to us is split.

The Consortium Board shall contract with a vendor capable of making any necessary repairs. The contract shall provide for around the clock service, defined response times and supply guarantees.

E. FINANCIAL REIMBURSEMENTS AND OTHER PAYMENTS TO BE PROVIDED TO THE LEAD AGENCY

All reasonable and necessary costs and expenses incurred by the Lead Agency in performance of any Work to successfully complete a Project shall be actual and verifiable. The Lead Agency shall provide documentation of its methodology for computing any Indirect Costs, including Indirect Costs for Facility Owners. The Participating Agencies shall reimburse the Lead Agency within forty-five (45) days of receipt of the Lead Agency's statement of charges.

F. LEAD AGENCY'S NONCOMPLIANCE

The Lead Agency shall make its best good faith effort to adhere to the terms, conditions, and requirements of the Work as provided in the Project Agreement, and the required record keeping as provided in this Agreement. Absent negligence or other misconduct on the part of the Lead Agency, any additional Work necessary to conform the Work to requirements of the Project Agreement will be a general project cost allocated to the Participating Agencies. Where there has been negligence or other misconduct on the part of the Lead Agency, and additional Work is necessary to conform the Work to requirements of the Project Agreement, it shall be at the expense of the Lead Agency.

E. AUDIT

The Lead Agency shall permit the Community Connectivity Consortium Board, Participating Agencies, or designated agent(s) thereof from time to time (including up to five years after the

expiration or termination of a Project Agreement) to inspect and audit all pertinent books and records of the Lead Agency, the subcontractors or any other person or entity in connection with or related to the Project with respect to the services provided, costs thereof, and the compensation paid therefore. Such audit shall occur at such reasonable times and at such reasonable location(s) as mutually agreed to by the Participating Agencies and the Lead Agency.

IV. FACILITY OWNER RIGHTS AND RESPONSIBILITIES

A. PRINCIPLES FOR USE OF PARTICIPATING AGENCY FACILITIES

1. Use of and Facilities owned by a Participating Agency shall comply with all requirements of the Participating Agency that owns them. Use of a Facility shall be designed and constructed so as to maximize the reasonable additional future use of such Facility. The general project costs shall include all fees and charges for the use of the Facility.
2. This Agreement shall not be construed to authorize any Participating Agency to make use of any other Participating Agency's Facilities unless such use is specifically authorized by the Participating Agency in its capacity as a Facility Owner.
3. The Facility Owner has final approval of planning, engineering, design, material, and maintenance for all portions of a Project on or within its Facilities.

B. APPROVALS

All contractors hired by the Lead Agency to Work within or on Facilities shall be subject to approval by Facility Owner(s), such approval not to be unreasonably withheld. In all agreements with contractors, the Facility Owner(s) may require the Lead Agency to specify that the contractors attend one or more pre-construction meetings with the appropriate Participating Agencies and Facility Owners to review installation requirements for the Work and any restrictions or other requirements that must be adhered to, prior to any Work being performed in or on Facilities. The contractor agreement shall state that the Facility Owner or the Participating Agency has authority to stop inadequate or unsafe Work or require that inadequate or unsafe Work be corrected, as provided by this Agreement.

C. ACKNOWLEDGMENT AND ACCEPTANCE OF RISKS

1. Risk of Co-location

In choosing to co-locate any components of a Project in any Facilities, the Participating Agencies acknowledge and accept all risks that are associated with having components of the Project co-located within any such Facility.

2. Easements

Participating Agencies acknowledge that existing easements may not be sufficient and are not warranted to be available for the purpose of this Agreement and/or any Project Agreement. Additional easements may be required.

3. **Locates**

The Lead Agency shall assume the responsibility for all locates of Consortium fiber. This responsibility may be delegated, in whole or in part, to other members of the Project Agreement.

D. ACCESS TO AND USE OF FACILITIES

The Lead Agency shall obtain access to and use of Facilities from Facility Owners for the purpose of installing, maintaining and repairing components of the Fiber Optic Project, including all agreements, approvals, permissions, and permits required. Such Access shall be subject to Facility availability as reasonably determined by the Facility Manager, and any and all reasonable conditions specified by the Facility Owner.

1. **Permission to Enter**

Access to Facilities shall be allowed only after the Facility Owner has been notified per item 2., below, and permission has been granted by the Facility Owner.

2. **Requests for Access**

All requests for access to Facilities must be made through the appropriate Facility Manager or designee in writing (facsimile or email acceptable), and shall be subject to the restrictions and conditions in this Agreement.

In the event of an emergency, requests for access may be made in person or by telephone. In such cases, prompt written documentation of the request will follow.

3. **Buildings**

If the Lead Agency desires to utilize space in any building, the Lead Agency shall comply with the restrictions and conditions specified by the designated building manager.

4. **Conformance to Regulations**

Access to and use of any Facility shall be in conformance with all codes, regulations and requirements.

E. BUILDING ENTRANCES

In the event that an existing Building Entrance that is owned or controlled by one of the Participating Agencies is not usable or is inadequate, unsafe or would or could potentially cause a problem for either entering a building or for providing access to the location in a building where the Participating Agencies have installed Project components, then the Lead Agency will have the responsibility for making alternative arrangements for Building Entrance with the Facility Owner.

The expense associated with any required alternative Building Entrance because the Existing Building Entrance is not usable or is inadequate, unsafe or would or could potentially cause a problem for either entering a building or for providing access to the location in a building

where the Participating Agencies have installed Project components shall be borne by the Participating Agencies utilizing the building as a general project cost.

F. MODIFICATIONS TO FACILITIES

At the Lead Agency's request, the Facility Owner shall make reasonable and necessary modifications to any existing Facilities or the Building Entrance to facilitate building access for the Project. Any requests by the Lead Agency for such modifications shall be made to the Facility Owner and/or Manager. Costs for such modifications shall be paid as allocated in the Project Agreement.

The design and construction of any required modifications to any Facility or Building Entrance shall be subject to the review and approval by the Facility Owner and Participating Agencies. Any unauthorized modifications must be corrected at the expense of the Lead Agency.

G. RELOCATION OF FIBER OPTIC CABLE

The Lead Agency will work with the Facility Owner to make a good faith effort to ensure that the Cable within or on Facilities is designed and constructed so as to minimize the likelihood of future relocation. However, upon notice from the Facility Owner that relocation is required, the Lead Agency shall work with the Facility Owner to ensure timely relocation of such Fiber Optic Cable. The Facility Owner has the right of pre-approval and post-construction acceptance of any work required either to remove cable from within or on Facilities or to place cable within or on alternative Facilities.

1. All relocations of Fiber Optic Cable, regardless of reason, will be managed by the Lead Agency. All relocations will be managed as a part of and under the terms and conditions of existing Project Agreement that controlled the original construction and installation.

2. **Notice**

Except for emergency situations, the Facility Owner will give the Lead Agency at least ninety (90) days notice of the need to relocate any components of the Fiber Optic Project located within or on Facilities.

3. **Relocation**

When relocation is required, the Facility Owner shall, when possible, provide substitute Facilities within or on which the Participating Agencies may relocate the components of the Fiber Optic Project.

The cost of any and all relocations will be borne by the parties to this agreement. Recoverable costs will cover the relocation of the shared cable only. All physical assets, conduit, handholds, vaults and appurtenances are owned by the jurisdiction wherein the project is built, as described in the Project Description above. Cost shall be apportioned based on the percent of fiber owned by each participating project member.

H. PROPERTY RIGHTS

Nothing in this Addenda shall be construed to convey to the Participating Agencies any property rights in existing Facilities of a Facility Owner. Nothing in this Addenda shall be construed to compel a Facility Owner to maintain any of its Facilities for a period longer than is necessary for its own service requirements. In the event that Facilities are abandoned by the Facility Owner, the Participating Agencies may remain in such Facilities at their own risk, subject to the approval of the Facility Owner. Any property rights in Facilities created or constructed as part of a Project Agreement will be allocated per the Project Agreement.

I. DEFAULT AND DISPUTE RESOLUTION

The Participating Agencies desire to resolve disputes, controversies and claims ("Disputes") arising out of this Agreement or any Project Agreement without litigation.

To that end, if any Participating Agency believes that another Participating Agency, whether as a Participating Agency, Facility Owner, or Lead Agency, has failed to perform any obligation under this Agreement or any Project Agreement or has performed such obligation in a manner inconsistent with any Project Agreement, then the Participating Agency shall provide written notice to all Participating Agencies, stating with reasonable specificity the nature of the Dispute.

Thereafter, each Participating Agency shall appoint a knowledgeable, responsible management representative to meet within thirty (30) days of the date of the written notice and negotiate in good faith to resolve any Dispute. The Participating Agencies intend that these negotiations be conducted by non-lawyer, business representatives. The discussions shall be left to the discretion of the representatives.

The Participating Agencies agree that the discussions and correspondence among the representatives for purposes of these negotiations shall be treated as confidential information developed for purposes of settlement, shall be exempt from discovery and production, and shall not be admissible in any action or proceeding arising under or concerning this Agreement or any Project Agreement, without the concurrence of all parties. Documents identified in or provided with such communications, which are not prepared for purposes of the negotiations, are not so exempted and may, if otherwise admissible, be admitted in evidence in any such action or proceeding.

If the negotiations between the Participating Agencies do not resolve the Dispute within sixty (60) days of the initial written request, the Dispute shall be submitted to the Executive Board as described in the Consortium's Administrative Policies.

Each Participating Agency shall bear its own cost of these Dispute resolution procedures. The Participating Agencies that are party to the mediation shall equally share the fees of the mediation and the mediator.

Nothing in this paragraph precludes any Participating Agency from seeking relief from King County Superior Court should mediation efforts be unsuccessful.

V. RELATIONSHIP BETWEEN LEAD AGENCY AND CONTRACTORS

A. RESPONSIBILITY

The Lead Agency is responsible for ensuring that the applicable terms and conditions of the Project Agreement are included in Agreements with Facility Owners and contractors. However, each contractor shall be held liable for any negligence caused by its performance or failure to perform the work under the Project Agreement or any contracts with the Lead Agency.

B. APPROVALS

All contractors hired by the Lead Agency to work within or on Facilities shall be subject to approval by Facility Owner(s). In all agreements with contractors, the Facility Owner(s) may require the Lead Agency to require such contractors to attend a pre-construction meeting with the appropriate authority to review installation requirements and Work restrictions prior to any Work being performed in or on Facilities. The contractor's agreement shall state that the Facility Owner or the jurisdiction having rights-of-way has authority to stop Work or require that inadequate Work be corrected.

C. INSURANCE

Prior to undertaking any work under any Project Agreement, the Lead Agency shall ensure that all contractors, at no expense to the Lead Agency, Participating Agencies and Facility Owner(s), have obtained and filed with the Lead Agency, acceptable evidence of a policy or policies of insurance as enumerated in the applicable Project Agreement.

VI. INDEMNIFICATION AND LIMITATION OF LIABILITY

A. LIMITATION OF LIABILITY AND INDEMNITY—LEAD AGENCY

The Lead Agency, when acting in that capacity, shall not be liable, in law or in equity, to the Facility Owner, Participating Agencies, or any subsequent user for any damages relating to the interruption of service or interference with the operation of the Fiber Optic Project, except to the extent caused by the negligence or willful misconduct of the Lead Agency. The Facility Owners and Participating Agencies shall indemnify and save harmless the Lead Agency, its officers, employees, and agents from all claims, actions, liability, and damages of any nature arising out of any act or omission, except in the event of negligence or willful misconduct by the Lead Agency in connection with this Agreement.

If any claim arises to which this indemnification provision may be applicable, the Facility Owner shall immediately upon learning of such claim, notify the Lead Agency, and upon such notice, the Lead Agency shall promptly notify the Participating Agencies. The Participating Agencies may, at their option, settle or compromise such claim. In no event shall the Facility Owner or Lead Agency have the right to pay, settle or otherwise compromise such claim without the prior written consent of the Participating Agencies who shall not unreasonably withhold such consent.

THE LEAD AGENCY SHALL NOT BE LIABLE TO THE FACILITY OWNER, PARTICIPATING AGENCIES OR THEIR USERS OR ANY SUBSEQUENT USER UNDER ANY CIRCUMSTANCES FOR INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OR DAMAGES ALLEGED TO HAVE

ARISEN DUE TO AN INTERRUPTION OF SERVICE OR DAMAGE TO ANY FIBER OPTIC CABLE OR ASSOCIATED EQUIPMENT.

B. LIMITATION OF LIABILITY AND INDEMNITY—FACILITY OWNERS

Facility Owners, when acting in that capacity, shall not be liable, in law or in equity, to the Lead Agency, Participating Agencies, or any subsequent user for any damages relating to the interruption of service or interference with the operation of the Fiber Optic Project, except to the extent caused by the negligence or willful misconduct of the Facility Owner. The Lead Agency and Participating Agencies shall indemnify and save harmless Facility Owners, their officers, employees, and agents from all claims, actions, liability, and damages of any nature arising out of any act or omission, except in the event of negligence or willful misconduct by the Facility Owner in connection with this Agreement.

If any claim arises to which this indemnification provision may be applicable, the Facility Owner shall immediately upon learning of such claim, notify the Lead Agency, and upon such notice, the Lead Agency shall promptly notify the Participating Agencies. The Participating Agencies may, at their option, settle or compromise such claim. In no event shall the Facility Owner or Lead Agency have the right to pay, settle or otherwise compromise such claim without the prior written consent of the Participating Agencies who shall not unreasonably withhold such consent.

THE FACILITY OWNER SHALL NOT BE LIABLE TO THE PARTICIPATING AGENCIES OR THEIR USERS OR ANY SUBSEQUENT USER UNDER ANY CIRCUMSTANCES FOR INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OR DAMAGES ALLEGED TO HAVE ARISEN DUE TO AN INTERRUPTION OF SERVICE OR DAMAGE TO ANY FIBER OPTIC CABLE OR ASSOCIATED EQUIPMENT.

C. LIMITATION OF LIABILITY AND INDEMNITY—PARTICIPATING AGENCIES

A Participating Agency, when acting in that capacity, shall not be liable, in law or in equity, to the Lead Agency, the Facility Owners or any other Participating Agency, or any subsequent user for any damages relating to the interruption of service or interference with the operation of the Fiber Optic Project, except to the extent caused by the negligence or willful misconduct of that Participating Agency. The Lead Agency, the Facility Owner and the other Participating Agencies shall indemnify and save harmless a Participating Agency and its officers, employees, and agents from all claims, actions, liability, and damages of any nature arising out of any act or omission, except in the event of negligence or willful misconduct by that Participating Agency in connection with this Agreement.

If any claim arises to which this indemnification provision may be applicable, the Facility Owner shall immediately upon learning of such claim, notify the Lead Agency, and upon such notice, the Lead Agency shall promptly notify the Participating Agencies. The Participating Agencies may, at their option, settle or compromise such claim. In no event shall the Facility Owner or Lead Agency have the right to pay, settle or otherwise compromise such claim without the prior written consent of the Participating Agencies who shall not unreasonably withhold such consent.

A PARTICIPATING AGENCY SHALL NOT BE LIABLE TO THE LEAD AGENCY, THE FACILITY OWNER, OR OTHER PARTICIPATING AGENCIES OR THEIR USERS OR ANY SUBSEQUENT USER UNDER ANY CIRCUMSTANCES FOR INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OR DAMAGES ALLEGED TO HAVE ARISEN DUE TO AN INTERRUPTION OF SERVICE OR DAMAGE TO ANY FIBER OPTIC CABLE OR ASSOCIATED EQUIPMENT.

VII. ADDITIONAL TERMS AND CONDITIONS

A. LAWS, LICENSES, AND PERMITS

1. General Requirement

All Work done under this Agreement or any Project Agreement shall comply with all applicable federal, state, and local laws, and all rules, regulations, orders, and directives of the administrative agencies and officers thereof.

2. Licenses, Permits and Similar Authorizations

The Participating Agencies shall have and maintain in effect at all times all necessary franchises, licenses, permits, consents and easements from federal, state and local authorities and the owners of rights-of-way and private property. The Participating Agencies will comply with all requirements thereof to install, construct, maintain, operate and remove any fiber optic installation(s).

B. PERFORMANCE

Each Participating Agency will perform all of its obligations under this Agreement or any Project Agreement in a reasonable and timely manner. The standard for such performance will be the normal industry standard in the relevant market. Where any Participating Agency's approval, satisfaction, authorization, or similar approbation is required, such approval, satisfaction, authorization, or similar approbation will be forthcoming in a timely manner and will not be unreasonably withheld.

C. SUBJECT TO LAWS

This Agreement and any Project Agreements are subject to all applicable federal, state, and local laws, and regulations, rulings and orders of governmental agencies. Any Participating Agency may terminate its obligations under this Agreement or any Project Agreement if ordered to do so by the final order or filing of a court or other governmental agency or if such order or ruling would make it impossible for any Participating Agency to carry out its obligations. In addition, if at any time during the term of this Agreement or any Project Agreement, the action of a governmental agency requires modification of any terms and conditions in order to meet legal requirements, or renders performance by any Participating Agency unreasonable, the Participating Agencies will enter into negotiations to achieve an equitable adjustment and accounting of any increased costs or liabilities incurred by any Participating Agency as a result of such required modification. The preceding section shall not apply to a court order determining that the Participating Agencies' use violates a private easement.

The Participating Agencies, in their capacity as Facility Owners, have no actual knowledge of any restriction in their agreements with third parties which would prohibit the Participating

Agencies' use of Facilities as contemplated herein. The Participating Agencies recognize that the Facility Owners have done no special searches or investigations with respect to restrictions in their agreements with third parties that may affect the use of Facilities as contemplated this Agreement or by any Project Agreement.

D. FORCE MAJEURE

Any Participating Agency may suspend performance under this Agreement or any Project Agreement and such non-performance will be excused where performance is rendered impossible or impracticable for reasons beyond such Participating Agency's reasonable control, such as, but not limited to, acts of nature, war or warlike operations, civil commotion, riot, labor dispute including strike, walkout, or lockout, sabotage, or superior governmental regulation or control. Upon removal or termination of the force majeure event, the Participating Agency claiming force majeure shall promptly perform the affected obligations in an orderly and expedited manner or procure a substitute for such obligation. The Participating Agencies shall use all reasonable efforts to eliminate or minimize any delay caused by a force majeure event.

E. NO WAIVER

No term or provision hereof shall be deemed waived or consented to, and no breach excused unless such waiver or consent shall be in writing and signed by the Participating Agency claimed to have waived or consented.

Failure of any one more Participating Agencies to insist upon strict performance of, or that Participating Agency's waiver of, any of the terms, conditions, or obligations of a specific Project Agreement, shall not be a waiver of any other term, condition, covenant or obligation, or of any subsequent default by breach of the same or other term, condition, covenant or obligation contained herein by any one or more particular Participating Agencies, nor shall such action or inaction by any one or more Participating Agencies be constructed as to bind or prejudice any other Participating Agency .

F. SEVERABILITY

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

G. RIGHTS CUMULATIVE

The rights and remedies of the Participating Agencies provided for under a specific Project Agreement are in addition to any other rights and remedies provided by law. The failure to exercise on any occasion any right shall not operate to forfeit such right on another occasion. The use of one remedy shall not exclude or waive the right to use another.

H. CONTRACTUAL RELATIONSHIP

The Project Agreements do not constitute the Participating Agencies as the agent or legal representative of a Facility Owner for any purpose whatsoever. The Participating Agencies are not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of the Facility Owner or to bind the Facility Owner in any manner or thing whatsoever.

I. HEADINGS

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

J. APPLICABLE LAW AND VENUE

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

K. BINDING EFFECTS

The provisions, covenants and conditions in any specific Project Agreement apply to bind the Participating Agencies, their legal heirs, representatives, successors, and assigns.

L. ASSIGNMENT

No Participating Agency or Lead Agency shall assign its rights or assign its duties under this Agreement or any Project Agreement without the prior written consent of the other Participating Agencies, which consent shall not be unreasonably withheld.

M. NOTICES

All notices and other materials to be delivered hereunder, shall be in writing and shall be delivered or mailed to addresses of the Members as maintained by the Consortium's Fiscal Agent.

N. MODIFICATION OR AMENDMENT

No modification to or amendment of the provisions of any specific Project Agreement shall be effective unless in writing and signed by authorized representatives of the Participating Agencies to this Agreement and the Project Agreement. The Participating Agencies expressly reserve the right to modify any agreement, from time to time, by mutual agreement.

VIII. DEFINITIONS

Whenever used in this Agreement with initial letters capitalized, the following terms shall have the following specified meanings, unless the context clearly requires a different meaning:

- A. **Agreement**
Refers to this document, Terms and Conditions for Project Agreements.
- B. **Building Entrance**
Conduit or Conduits usually connecting a Vault, Handhole, or Maintenance Hole in the public right-of-way to a building.
- C. **Common Fiber Spares**
Fiber strands installed as part of a Fiber Optic Project held in reserve solely for replacement of disabled fibers.
- D. **Conduit or Duct**
Enclosed runway or tube designed to house cables for their protection.
- E. **Dark Fiber**
An optical fiber strand not coupled to an optical light source.
- F. **Demarcation Point**
A point agreed to between the facility owner and lead agency that documents where one party's responsibilities end and the other begins and is required to be documented, agreed to and approved in the Project Agreement.
- G. **Indirect Costs**
Indirect costs are costs determined in accordance with a Participating Agency's standard methodology for computing indirect costs. Indirect costs shall include costs of labor, benefits, equipment usage, miscellaneous materials, material handling, and administrative and general charges. This definition also applies to Facility Owner indirect costs.
- H. **Facility or Facilities**
A structure including but not limited to: Buildings, Vaults, Maintenance Holes, Handholes, Conduit, Building Entrances.
- I. **Facility Manager**
The person designated by the Facility Owner to manage the Facility, including granting access, determining and approving its use and terms and conditions for such use.
- J. **Facility Owner**
The Participating Agency that is the legal owner of a Facility or Facilities or the Participating Agency holding the legal right to grant permission to occupy, use or modify Facilities.
- K. **Fiber Optic Cable**
A cable installed by the Participating Agencies pursuant to this Agreement that is composed of strands of glass fiber, each strand which is designed to conduct signals of modulated light (optical signals) from one end to the other.
- L. **Fiber Optic Project**
The Work associated with the installation of fiber optic transmission materials, pursuant to a Project Agreement.
- M. **Project Agreement**
An agreement for a specific Fiber Optic Project with Participating Agencies that specifies the contractual relationships between and among the participants.

- N. **Fiber Strand or Strand of Fiber**
A single thin transparent fiber of glass enclosed by a material of a lower index of refraction that reflects light throughout its length by internal reflections.
- O. **Handhole**
An underground structure (usually concrete) providing an opening in a Conduit in which workers may reach into but usually do not enter for the purposes of installation and maintenance of cable.
- P. **Lead Agency**
The Participating Agency designated by mutual consent in a Project Agreement that is responsible for managing Fiber Optic Project related Work, including entering into construction contracts and overseeing the construction work for the Participating Agencies and ongoing maintenance of the Fiber Optic Project(s).
- Q. **Make-Ready Work**
Any and all planning, analysis, design, review, adjustment to equipment, construction, and/or other activities (such as tree trimming) necessary to prepare existing Facilities for use by the Lead Agency as determined by the Facility Owner.
- R. **Participating Agency**
A public agency that is a signatory to this Agreement for the purpose of engaging in the shared Fiber Optic Project(s).
- S. **Participating Agency Facilities**
Those Facilities owned, managed, occupied, by a Participating Agency Department or Division.
- T. **Pathway**
Aerial or underground Facilities used for the purpose of placing fiber optic cables, splice cases, trace wire, etc.
- U. **Project Budget(s)**
A required section of all Project Agreements which identifies the total anticipated costs for Work performed as part of that agreement, including contingency, and allocates responsibility for those costs, including ongoing maintenance, to all parties to that Project Agreement.
- V. **Splice**
The point where two separate optical fiber strands are joined together either mechanically or by fusion to make one continuous optical fiber strand.
- W. **Telecommunications Service(s)**
Telecommunications service(s) is the transmission of information over Fiber Strands from one location to another (not including services provided between two areas within the same building) meeting industry accepted transmission standards, their equivalent or replacement service. Such information includes but is not limited to voice, video, data, pictures, and facsimile. Telecommunication service(s) does not include Dark Fiber or services other than transmission services.
- X. **Work**
All activities related to the planning, right-of-way acquisition, scheduling, analysis, design, engineering, preparation, construction, installation, evaluation, maintenance, repair and operation of a Fiber Optic Project as provided for in this Agreement or a Project Agreement including Make-Ready Work but not including work done prior to the execution of a Fiber Optic